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The Debate on the Revision of the European Fiscal Rules *Towards More Political Governance of the EMU?*

CLAIRE MONGOUACHON

The European fiscal framework is currently subject to an intensive and wide-ranging debate. In February 2020, the European Commission launched a review of the EU economic governance.¹ Just one month later, the Covid-19 pandemic led to the activation of the ‘general escape clause’ in order to allow member states to support their economies. The review then restarted in October 2021 in a totally different environment.² In December 2021, the French president Emmanuel Macron announced his willingness to put on the table a revision of the budgetary rules, which would lead to ‘a more political governance of the economic politics of the EU’.³ This declaration was followed by a call for softer fiscal rules, jointly with the former Italian prime minister Mario Draghi. Here, it has been stressed that the fiscal rules ‘should not prevent us from making all necessary investments’ and that ‘debt raised to finance such investments, which undeniably benefit the welfare of future generations and long-term growth, should be favoured by the fiscal rules’.⁴ The idea that the fight against climate change requires more public investment

¹ European Commission, ‘Commission presents review of EU economic governance and launches debate on its future’ (*European Commission Website*, 5 February 2020) https://ec.europa.eu/commission/presscorner/detail/en/ip_20_170.

² Commission, ‘Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European economic and social committee, the Committee of the Regions – The EU economy after COVID-19: implications for economic governance’ COM (2021) 662 final. The Commission invited stakeholders to reflect on the functioning of the EU economic governance framework and to present their views on how to enhance the framework’s effectiveness.

³ Eric Maurice, ‘The Challenges of the French Presidency of the Council’ (*Fondation Robert Schuman*, European Issue no 618, 10 January 2022) www.robert-schuman.eu/en/european-issues/0618-the-challenges-of-the-french-presidency-of-the-council.

⁴ Emmanuel Macron and Mario Draghi, ‘Op-ed by President Emmanuel Macron and Prime Minister Mario Draghi on EU Macroeconomic and Fiscal Strategy’ (*Élysée*, 23 December 2021) www.elysee.fr.

seems to be gaining ground. In its Communication on orientations for a reform of the EU economic framework from November 2022, the European Commission recognises that ‘the green and digital transitions ... will require sustained high levels of investment in the years to come.’⁵ This finding has been confirmed in the proposal for a regulation from the Commission dated April 2023.⁶

The purpose of this chapter is to present the terms of this debate in light of the historic evolution of the fiscal framework and to highlight that these statements represent a paradigm shift. Whereas the fiscal legal framework results from different reforms that complexified the comprehension of fiscal rules in Europe, traditionally considered a technical field, it seems that the fiscal area is becoming more ‘politicised’. The concept of politicisation, although not a legal concept, seems to be an appropriate concept for thinking about and questioning certain developments and proposals relating to the framework for the exercise of European budgetary rules. When referring to the current definition of the term,⁷ a form of politicisation of the rules in the sense that the matter becomes a political issue can easily be observed, on the basis of the content of the discussions noted above. More precisely, political scientists characterise politicisation by three components: issue salience, actor expansion and polarisation.⁸ Issue salience refers to the visibility of a given issue in public debate. Expansion refers to the mobilisation of actors becoming involved in a public debate. Polarisation refers to the intensity of conflict over the issue. Thus ‘the more salient the issue, the more actors and people participate in the debate, the more positions are polarized, and the more politicized a decision or institution is.’⁹ From a legal point of view, this results in the questioning of the degree to which the legal rule is open to political choices.

The theme of the politicisation of the European Union is currently receiving renewed interest in political science.¹⁰ But work on questions of ‘depolicitisation’ has been carried out over the last 20 years in the field of European governance.

fr/en/emmanuel-macron/2021/12/23/op-ed-by-president-emmanuel-macron-and-prime-minister-mario-draghi-on-eu-macroeconomic-and-fiscal-strategy.

⁵ Commission, ‘Communication from the Commission to the European Parliament, the Council, The European Central Bank, the European economic and social committee, the Committee of the Regions – Communication on orientations for a reform of the EU economic governance framework’ COM (2022) 583 final, 4.

⁶ Commission, ‘Proposal for a Regulation of the European Parliament and the Council on the effective coordination of economic policies and multilateral budgetary surveillance and repealing Council Regulation (EC) No 1466/97’ COM(2023) 240 final, 2.

⁷ The Cambridge Dictionary defines the term ‘politicise’ as follows: ‘to make something or someone political, or more involved in or conscious of political matters’ <https://dictionary.cambridge.org/dictionary/english/politicize?q=politicise>.

⁸ Edgar Grande and Swen Hutter, ‘Introduction: European integration and the challenge of politicisation’ in Swen Hutter, Edgar Grande and Hanspeter Kriesi (eds), *Politicising Europe: Integration and Mass Politics* (Cambridge, Cambridge University Press, 2016) 3–31.

⁹ Michael Zürn, ‘Politicization Compared: at National, European, and Global Levels’ (2019) 26 *Journal of European Public Policy* 977.

¹⁰ Reinout Arthur Van Der Veer, ‘Walking the Tightrope: Politicization and the Commission’s Enforcement of the SGP’ (2022), 60 *Journal of Common Market Studies* 81; Taru Haapala and Álvaro Oleart (eds), *Tracing the Politicisation of the EU: The Future of Europe Debates Before and After the 2019*

The term governance, which appeared in the early 2000s,¹¹ is deeply imbued with the idea of depoliticisation. Peter Burnham defines depoliticisation as ‘the process of placing at one remove the political character of decision-making’.¹² The law has been a major tool for depoliticising budgetary matters, as will be demonstrated in the following developments. European budgetary rules, which were initially conceived as a condition for membership of the eurozone, have become a real constitutional constraint, in other words, a fully-fledged element of the financial constitution of the Union (and of the member states). This has had the effect of removing this fiscal issue or reducing fiscal policy flexibility from the hands of elected politicians. Authors have underlined that some international organisations such as the World Bank have played a role in the process of depoliticisation by deconstructing the political debate and presenting the policy choices as a neutral and a technical exercise based on expertise.¹³ In the same vein, the influence of neoliberalism on the functioning of some economic policies exercised by the EU has been stressed many times.¹⁴ The severe and controversial argument of ‘Authoritarian Neoliberalism’ has been used in the context of the eurozone crisis to criticise the supposed attempts of the institutions of the EU to insulate economic decision-making from democratic influence.¹⁵ This will not be the approach defended in the present chapter.

Elections (Palgrave Macmillan, 2022); Anne-Marie Houde et al (eds), *The Politicization of the European Union: From Processes to Consequences*, 1st edn (Brussels, Editions de l’Université de Bruxelles, 2022). The authors analyse, from an empirical and normative perspective, the consequences of politicisation in different fields of European integration. Concerning the Euro Crisis, Ines Schäfer, ‘Ever more politicized and Europeanized? Public debates over European integration in France and Germany’ 107–27, 108 stresses that: ‘While European integration issues are primarily politicized at the domestic level, instances of high domestic politicization can spill over to other European member states, thereby causing horizontal Europeanization’; Michael Zürn, ‘Politicization Compared’; Tanja A Börzel and Thomas Risse, ‘From the Euro to the Schengen Crises: European Integration Theories, Politicization, and Politics’ (2018) 25 *Journal of European Public Policy* 83; Hutter, Grande and Kriesi, *Politicising Europe*; Pieter De Wilde, ‘No Polity for Old Politics? A Framework for Analyzing the Politicization of European Integration’ (2011) 33 *Journal of European Integration* 559 observed an ‘increase in the polarization of opinions, interests or values and the extent to which they are publicly advanced towards the process of policy formulation within the European Union’.

¹¹ Commission, ‘European Governance: A White Paper’ COM (2001) 428; Matthew Flinders, ‘Distributed Public Governance in the European Union’ (2004) 11 *Journal of European Public Policy* 520.

¹² Peter Burnham, ‘New Labour and the Politics of Depoliticisation’ (2001) 3 *British Journal of Politics and International Relations* 127.

¹³ eg Andy Storey, ‘The World Bank, Neo-Liberalism and Power: Discourse Analysis and Implications for Campaigners’ (2000) 10 *Development in Practice* 361.

¹⁴ See Thomas Biebricher’s chapter in this volume (ch 4).

¹⁵ Agustín José Menéndez, ‘Hermann Heller NOW’ (2015) 21 *European Law Journal* 285; Werner Bonefeld, ‘Human Economy and Social Policy: On Ordo-Liberalism and Political Authority’ (2013) 26 *History of the Human Sciences* 106; Thomas Biebricher, *The political theory of neoliberalism* (Stanford, CA, Stanford University Press, 2018); more recently: Werner Bonefeld, ‘Economic Constitution and Authoritarianism: Carl Schmitt and the Idea of a Sound Economy’ in Guillaume Grégoire and Xavier Miny (eds), *The Idea of Economic Constitution in Europe: Genealogy and Overview* (Leiden, Brill Nijhoff, 2022) 182–203; for further discussions: Vincent Valentin, ‘Discussion L’idée de constitution économique et l’hypothèse du libéralisme autoritaire’ in Grégoire and Miny, *The Idea of Economic Constitution in Europe* 237–58.

The elements of definition of the depoliticisation phenomenon will be taken as a guide to analyse the developments and discussions about the European budgetary framework from a legal perspective. In this respect, it is possible to distinguish between an institutional aspect and a substantive aspect of this process. Institutional depoliticisation operates by transferring the decision-making power to independent bodies or non-majoritarian institutions.¹⁶ These bodies are designed to be released to some extent from short-term political considerations.¹⁷ The substantial depoliticisation involves the adoption of a policy that builds explicit rules into the decision-making process constraining the need for political discretion. These analytical tools will allow us to examine the margin of discretion of the authorities responsible for the design and the enforcement of the European fiscal rules.

The response is dialectical and the proposed plan therefore follows a chronological path.

In the first part of this chapter, I shall return to the original budgetary framework and present the successive reforms that have been made to it. It will be shown that the Stability and Growth Pact (SGP) and the Treaty on Stability, Coordination and Governance (TSCG) illustrate a process of depoliticisation in the Economic and Monetary Union (EMU). Indeed, these reforms can be analysed as a kind of automatised of the rules focused on financial stability and safe assets, depriving member states of broader political choices.

The second part of the chapter then gives an overview of the contestation of the rules and of recent proposals, and especially the 'greening' of the rules, formulated by institutions and academia. It thus illustrates a paradox associated with the phenomenon of depoliticisation. Political scientists have already shown that depoliticised governance, by moving decisions away from representative bodies, can have the unexpected effect of stimulating political debate more intensively than would be the case in an ordinary legislative framework.

The third part of the chapter analyses the recent proposal from the European Commission. The question of whether this text marks a phase of re-politicisation of fiscal governance will be answered in a nuanced way. Processes of depoliticisation and re-politicisation may actually take place concurrently. The chapter concludes by questioning the need to establish a new institutional framework to arbitrate between the different goals which will possibly guide the implementation of the EU fiscal rules in the future.

¹⁶ Giandomenico Majone, 'Non-Majoritarian Institutions and the Limits of Democratic Governance: A Political Transaction-Cost Approach' (2001) 157 *Journal of Institutional and Theoretical Economics* 57; Giandomenico Majone, 'The Two Logics of Delegation: Agency and Fiduciary Relations in EU Governance' (2001) 2 *European Union Politics* 103, 106–07.

¹⁷ Matthew Flinders and Jim Buller, 'Depoliticisation: Principles, Tactics and Tools' (2006) 1 *British Politics* 293, 295–96.

1. A Movement to Automate Budgetary Rules: Depoliticised Fiscal Governance?

While budgetary rules had an instrumental place in the Maastricht Treaty (see section 1.1), these rules were significantly strengthened during the latest reforms introduced following the euro crisis, and were meant to increase constraints on states (see section 1.2).

1.1. The Introduction of the Original Budgetary Constraints – The Result of a Political Compromise

1.1.1. *The Unique Place of Budgetary Rules, between National Economic Sovereignty and Monetary Union*

‘Let us rediscover the Maastricht spirit – stability and growth can only go hand in hand’, said the President of the European Commission, Ursula von der Leyen, in her State of the Union address in September 2022.¹⁸ It seems essential to go back, at least briefly, to the context the Maastricht Treaty budgetary rules were introduced in, so as to assess the political role assigned to them. The political consensus¹⁹ that was reached at the time of the Maastricht Treaty is well known. The decision to endow the European Community with a single currency was legally translated into transferring member states’ monetary powers to a European system of central banks, whose essential prerogatives were entrusted to a supranational body: the European Central Bank (ECB). Monetary policy – one of the Community’s exclusive competences – was in a way federalised at the European level, which was a major paradigm shift for member states. Deprived of any possibility of acting on exchange rates to deal with their national economic situations, states were deprived of a major economic intervention instrument. However, they were not prepared to surrender all of their economic sovereignty; they wished to hang on to the exercise of their own national economic policies, which is subject to mere intergovernmental coordination at the European level. This political consensus sealed what some authors have called the ‘original asymmetry’²⁰ between monetary union and economic union.²¹ From an economic point of view, this dissociation might be deemed totally artificial or even absurd. However, from a legal point of view, it leads to the identification of two areas of action governed by very distinct

¹⁸ Ursula von der Leyen, State of the Union Address 2022 (*European Commission*) 11, https://state-of-the-union.ec.europa.eu/system/files/2022-09/SOTEU_2022_Address_EN.pdf.

¹⁹ Francesco Martucci, *L'ordre économique et monétaire de l'Union européenne* (Brussels, Bruylant, 2015) note 42, 440, mentioning the Bruxelles consensus.

²⁰ The expression used by Jean-Louis Victor was ‘systematic asymmetries’, quoted by Martucci, *L'ordre économique et monétaire de l'UE* 439.

²¹ See Christian Neumeier’s and Paul Tucker’s chapters in this volume (ch 2 and ch 1).

institutional mechanisms. The separation of monetary and economic competences has been greatly clarified by the Lisbon Treaty. On the one hand, Article 3(c) of the Treaty on the Functioning of the European Union (TFEU) grants exclusive competence to the Union for the conduct of ‘monetary policy by Member States whose currency is the euro’ – an area where the supranational integration rationale is fully operational. On the other hand, Article 5 TFEU grants the Union the specific competence to coordinate member states’ economic policies – following a simple cooperation logic. Budgetary rules hold a unique place in this initial division, since they are at the heart of the asymmetry between monetary union and economic union – caught in tension as they stand between the two.

What exactly is the role of the European budgetary rules introduced in the Maastricht Treaty? Their purpose was not exactly to establish a fiscal union. Economic theory teaches that in a monetary union, loss of monetary independence can be partially counterbalanced by setting up a federal budget.²² Hence, a fiscal policy must accompany the monetary union in order to guarantee one of the three traditional functions of a federal budget,²³ namely the monetary union’s macroeconomic stabilisation, intended to mitigate cyclical fluctuations. Such a stabilisation function has not been thought of at the eurozone level. It remains with the states. This makes economic ‘sense’:²⁴ since the EMU is not an optimal monetary zone, national budgetary policies focus on asymmetric shocks, ie those affecting only national or sub-national territories. Meanwhile, the ECB’s monetary policy makes it possible to absorb symmetric shocks, ie those affecting the entire eurozone, by acting on interest rates. It is therefore obvious that the budgetary rules set out in the Maastricht Treaty are not, as such, intended to fulfil one of fiscal policies’ traditional functions.²⁵

Rather, the Treaty simply establishes rules for coordinating national budgetary policies, which at that time were deemed essential for the monetary union’s proper functioning. Although the famous ‘Maastricht criteria’ are most often associated with the need for budgetary discipline, these rules, which are purely instrumental, are above all in the service of monetary stability. Article 104 of the Treaty establishing the European Community (TEC) (now Article 126 TFEU) provides that member states shall avoid excessive government deficits. Criteria are defined in the protocol on the excessive deficit procedure, with reference values set at 3 per cent of GDP government deficit and 60 per cent of GDP government debt.

²²Robert A Mundell, ‘A Theory of Optimum Currency Areas’ (1961) 51 *American Economic Review* 657.

²³The three traditional functions of fiscal policy are: the financing of public goods; the transfer between regions to correct territorial inequalities; the stabilisation of the economy: Richard Musgrave and Peggy Musgrave, *Public Finance in Theory and Practice* (Tokyo, McGraw-Hill Kogakusha, 1989).

²⁴Agnès Bénassy-Quéré, Xavier Ragot and Guntram Wolff, ‘Quelle union budgétaire pour la zone euro ?’ (2016) 2 *Notes du conseil d’analyse économique* 1, 3.

²⁵Nevertheless, it can be noted that the stabilising function of national fiscal policies is only effective if public finances are sound. Bénassy-Quéré, Ragot and Wolff, ‘Quelle union budgétaire pour la zone euro ?’ 3.

These criteria correspond to the convergence criteria required for membership in the single currency, which points to their monetary function. They could easily be described as functional rules. On the one hand, this monetary stability would be threatened in the event of excessive budgetary imbalances, hence becoming a source of inflation.²⁶ On the other hand, for the ECB to be able to dedicate itself fully to its price stability objective, national fiscal policies must be conducted responsibly, through rules that impose compliance with sound public finances. Thus, budgetary rules are not in themselves one of EMU's objectives, but are a means to the end of achieving the euro's overarching monetary stability. Lacking any intrinsic rationality, the budgetary criteria have been harshly criticised for their arbitrary nature.²⁷ The 3 per cent ratio, which was also the average in France at the time, was adopted by Mitterrand on 9 June 1982, and was upheld during the Maastricht Treaty negotiations by Jean-Claude Trichet.

The monetary justification of budgetary rules is not devoid of consequences for the constraints they place on the conduct of national policies, given the primacy granted to the objective of monetary stability.

1.1.2. A Mild Legal Constraint on National Budgetary Policies

The objective of monetary stability, by virtue of its pre-eminent place in EMU, was bound to exert a constraint on governments' exercise of their budgetary policies. Because of the preponderance given to the imperative of monetary stability from the outset of EMU creation, the compromise reached in the Maastricht Treaty between the transfer of monetary policy and the preservation of states' budgetary competences was, in fact, fated to remain fictitious. The objective of budgetary discipline would necessarily result in a loss of national budgetary sovereignty. This is quite a telling example of the influence that a highly integrated policy has on the conduct of policies that remain under state jurisdiction. Considered as a regulatory policy,²⁸ the conduct of monetary policy has quite logically been removed from any political deliberation mechanism. Bound by Article 105 TEC (now Article 127(1) TFEU) to guarantee, in complete independence, price stability maintenance, the ECB is not accountable for its decisions before a political body. No doubt such an arrangement can be seen as an element of 'depoliticising' monetary union,²⁹ in line

²⁶ Franklin Dehousse, 'L'Union économique et monétaire' (1995) 20 *Courrier hebdomadaire du CRISP* 1, 8.

²⁷ See eg Willem Buiters et al, 'Excessive Deficits: Sense and Nonsense in the Treaty of Maastricht' (1993) 8 *Economic Policy* 57.

²⁸ Paul Magnette, *Le régime politique de l'Union Européenne*, 4th edn (Paris, Presses de Science Po, 2023).

²⁹ Fabian Amtenbrink, 'A Legal and Political Economy Mapping of European Economic Monetary Union' in Grégory Kalflèche, Thomas Perroud and Matthias Ruffert (eds), *L'avenir de l'Union économique et monétaire: une perspective franco-allemande* (Paris, LGDJ, 2018) 111–31, 115: 'In vesting the power to conduct monetary policy for the single currency area in a supranational central bank a deliberate choice has been made to (attempt to) depoliticize monetary policy.'

both with the dominant monetarist paradigm of the time and with the European integration theories.

For all this, the budgetary rules useful for the proper functioning of this monetary union do not follow this same depoliticised model. The desire to impose budgetary constraints on states does not stem from the legal framework itself.

On the one hand, budgetary discipline is guaranteed more by market logics than by the law. Accordingly, the Treaty provides for two rules to warrant that states will conduct a responsible budgetary policy: the prohibition on the Eurosystem buying back public debt instruments, set out in Article 101 TEC (now Article 123 TFEU); and the prohibition on both the Union and eurozone states being answerable for commitments by other states in the eurozone, set out in Article 103 TEC (now Article 125 TFEU). This is intended to prevent states from taking budgetary decisions whose financial cost would be borne by the ECB or by the other states. The law here enshrines the submission of national budgetary authorities to market rules.³⁰ It enshrines a financial constraint supposed to reduce the scope for budgetary deviation by states. As will be shown, this rule proved insufficient and needed to be strengthened.

On the other hand, the legal constraint on states' budgetary choices does not exclude exercising a marginal degree of political discretion, both at European and state levels. As for states, it is worth noting they are only subject to a relative constraint. First, the wording of Article 126(1) TFEU is not particularly restrictive, since it provides that states 'shall avoid' excessive government deficits. Secondly, states are only required to comply with a ceiling, set at 3 per cent, which allows them to retain a measure of financial sovereignty in the composition of their fiscal revenues and expenditures. National governments are not subject to any prescription as to how they are supposed to achieve this budgetary target. Nevertheless, it is worth noting that a medium-term budgetary framework has existed since the beginning of EMU. States must prepare annual convergence or stability programmes, which include budgetary and macroeconomic projections for the current year and the following three years, covering all budgetary aggregates.

As far as Community institutions are concerned, they are not dispossessed of political choice. Granted, it is sometimes stressed that the budgetary surveillance procedure involves independent bodies that issue forecasts and analyses and make recommendations. Article 126(1) TFEU provides that the European Commission shall adopt a report that takes into account the medium-term economic and budgetary position of those states that do not meet at least one of the two criteria. Eurostat provides the necessary statistical data for this purpose. However, the procedure is not depoliticised, since the final word is indeed given to a political body – a real decision-making body. According to Article 126(6), it is the Council

³⁰ On the distinction between discipline by the market and discipline by law, see Martucci, *Ordre économique et monétaire de l'UE*; Herwig Hofmann, Katerina Pantazatou and Giovanni Zaccaroni, *The metamorphosis of the European economic constitution* (Cheltenham, Edward Elgar Publishing, 2019).

itself that 'decides' whether or not there is an excessive deficit. It is therefore a political institution, which enjoys indirect democratic legitimacy, that is responsible for the decision. This legal quirk seems to be linked to the wishes of the Monetary Committee of the European Community. In return for the above-mentioned reference values that were being proposed, it was intended to leave a certain role to public authorities, as opposed to a purely mechanical application of the criteria. The use of strict quantitative criteria was thereby counterbalanced by a degree of flexibility in the implementation process, leaving some room for political judgment.³¹

Overall, the budgetary framework established by the Maastricht Treaty reflects the unique place of budgetary rules: an embryonic constraint, necessary for the proper conduct of monetary policy, but also relative, because of its concern to preserve states' economic sovereignty.

It was the first reform of the Maastricht Treaty that paved the way for a system that more closely supervised budgetary policies – a process that was to be significantly amplified by the reforms introduced following the euro crisis.

1.2. The Attempt to Automate Budgetary Surveillance in the Wake of the Euro Crisis

1.2.1. *The First Step Towards a Rule-Based System*

While the Maastricht criteria were designed as a condition for states to join the eurozone, which could constitute a strong incentive to comply with them, the nature of the debate changed very quickly. The budgetary framework, considered insufficient, was the subject of two divergent positions, represented respectively by Germany and France.

Germany had long argued for stricter rules. As early as 1992, the Council of Wise Men had called for sanctions to be defined more precisely and enforced more strictly, a demand that was reiterated in 1995 in the form of a proposal for a 'budget pact'.³² This preference for a rule-based system was widely supported by the Bundesbank, and by public opinion, which was increasingly negative about EMU because of the dangers to macroeconomic stability. France, on the other hand, insisted on the principle of economic government. It advocated the establishment of a political body as a counterpart to the ECB and rules more oriented towards growth and employment issues, but to no avail.³³ In the absence of a consensus to propose a revision of the Maastricht Treaty, the Community turned to legislative reform.

³¹ Lorenzo Bini-Smaghi, Tommaso Padoa-Schioppa and Francesco Papadia, *The Transition to EMU in the Maastricht Treaty* (Princeton, NJ, Princeton Book Company, 1994).

³² Martin Heipertz and Amy Verdun, 'The Stability and Growth Pact – Theorizing a Case in European Integration' (2005) 43 *Journal of Common Market Studies* 985.

³³ These proposals were not compatible with the German position. Heipertz and Verdun note that Germany had proposed the establishment of a Stability Council, but that this proposal was withdrawn.

The purpose of the first reform of the Maastricht rules through the SGP was thus to strengthen economic stability and to establish budgetary discipline as an integral part of EMU (and no longer as a mere appendage to monetary union). Without getting into a detailed presentation of this pact, all that needs to be said is that it includes a preventive component (Council Regulation no 1466/97) that aims, through multilateral surveillance, to keep national public deficits below the 3 per cent threshold. States' stability programmes must contain a medium-term objective (MTO) of a position close to balance or in surplus, as well as an adjustment path that should make it possible to achieve this objective. In addition, a new criterion focusing on the level of public spending has been introduced: net spending may no longer grow beyond the reference rate for potential GDP growth in the medium term. It is therefore no longer only the results that are monitored, but also the means of achieving them. The coordination of budgetary policies is thus achieved through the inclusion of new budgetary constraints on states. The pact also includes a deterrent component (Regulation no 1467/97) that specifies a number of elements of the excessive deficit procedure. On the one hand, the notion of 'exceptional and temporary excess' of the 3 per cent public deficit was defined. On the other hand, the sanctions incurred are spelled out: in theory, the Commission and the Council can impose budgetary consolidation measures on the states concerned. All in all, the control of states' budgetary policies is undeniably reinforced.

However, this rule-based system does not remove all discretion from the authorities: the power to impose sanctions is vested in the Council and the Court of Justice has had occasion to specify that the exercise of this decision-making power is discretionary.³⁴

In contrast, the latest reforms have tended towards a form of budgetary rules automation.

1.2.2. Distancing from Politics by Strengthening Budgetary Constraints

Following the 2008 financial crisis, the Union adopted a series of legislative texts that it is impossible to present in detail here. Let us simply note that the Six Pack, composed of six regulations adopted in 2011,³⁵ and the Two

because of the fear that this body would gradually be transformed into an economic government that could give instructions to the ECB. See Heipertz and Verdun, 'The Stability and Growth' 998.

³⁴Case C-27/04 *Commission of the European Communities v Council of the European Union* ECLI:EU:C:2004:436.

³⁵Regulation (EU) No 1174/2011 of the European Parliament and of the Council on enforcement to correct excessive macroeconomic imbalances in the euro [2011] OJ L306/8; Regulation (EU) No 1175/2011 of the European Parliament and of the Council amending Council Regulation (EC) No 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies [2011] OJ L306/12; Regulation (EU) No 1176/2011 of the European

Pack,³⁶ approved in 2013, have very significantly limited the principle of national budgetary sovereignty.

On the one hand, budgetary objectives are more clearly defined, completing the rule-based system initiated with the SGP. With regard to the SGP preventive arm, a new public expenditure criterion has been introduced, which stipulates that, for countries that have not yet reached their MTO, public expenditure growth rate must not overshoot a reference rate for potential GDP growth in the medium term. The public debt criterion is subject to a numerical benchmark for assessing whether public debt is evolving at a satisfactory level, namely that the gap between the debt ratio and the 60 per cent value decreases by 1/20th per year, over an average of three years.

On the other hand, states experiencing difficulties in terms of budgetary stability are subject to increased surveillance by the Commission: Regulation 473/2013, in addition to subjecting eurozone states to a common budgetary timetable, requires states to communicate to the Commission the details of the measures they intend to implement to correct their excessive deficit. This may go as far as the presentation of an economic partnership programme detailing the structural reforms undertaken to remedy their excessive deficit.

In addition, the same regulation requires states to set up independent budgetary bodies to ensure better budgetary rules monitoring. In France, the High Council for Public Finance, attached to the Court of Auditors, was created in 2012, while, at the European level, the European Budget Committee was created in 2015 to evaluate the implementation of the EU budgetary framework.

Such tightening of the European budgetary framework is made all the more effective as it is intertwined with the more general framework of the Union's economic governance. For example, in 2010, the European Semester became an instrument for coordinating national economic and budgetary policies. States' macroeconomic measures must be consistent with the objectives and budgetary rules defined at the European level.

As a final point of this evolution, the Fiscal Compact was signed in 2012 to ensure better budgetary surveillance and coordination within the EU.³⁷ Although its budgetary part is relatively short and its legal contribution rather limited insofar as most of its provisions were already contained in the Six Pack and the Two Pack, it had the symbolic function of anchoring commitment to budgetary discipline.

Parliament and of the Council on the prevention and correction of macroeconomic imbalances [2011] OJ L306/25.

³⁶ Regulation (EU) No 472/2013 of the European Parliament of the Council on the strengthening of economic and budgetary surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability [2013] OJ L140/1; Regulation (EU) No 473/2013 of the European Parliament of the Council on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the euro area [2013] OJ L140/11.

³⁷ Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (Brussels, 2 March 2012).

Among the Treaty's contentious innovations, the first is the obligation for states to enshrine compliance with the SGP provisions in their national laws (if possible, at a constitutional level). This 'golden rule,' a real brake on indebtedness,³⁸ stipulates public administrations' budgetary situations must be in balance or in surplus.³⁹ Second, the monitoring mechanisms, already tightened in the Six Pack, are further strengthened in the SGP. Sanctions are triggered on the Commission's recommendation, unless the Council, acting by a qualified majority, opposes them. This procedure's generalisation is supposed to confer on sanctions a degree of automaticity.

This is precisely what has triggered a major wave of protest.

2. Challenging European Budgetary Governance

Paradoxically, this depoliticisation process of budgetary rules has given rise to a wave of political protests, particularly in France (section 2.1). In recent years, it has been followed by a debate that opens the way towards taking into account not only budgetary but also political and social issues (section 2.2).

2.1. The Political Challenge to the Process of Budgetary Tightening

2.1.1. *The Terms of the Challenge*

There are countless analyses produced both in academic circles and in public debate that question the process of strengthening the European budgetary constraint. Following the financial crisis, a number of so-called budgetary austerity measures were passed, provoking a feeling of rejection of the entire European project on the part of some citizens. The economic reforms introduced may have had negative economic effects on growth and may have been perceived as a direct consequence of European budgetary surveillance.

The terms of the debate have often been ideologised insofar as some of the new fiscal governance key features have been used to support a demonstration of the EMU's allegedly ordoliberal character.⁴⁰ In Germany as well as in France, this

³⁸ Olivier Clerc and Pascal Kauffmann, *L'Union économique et monétaire européenne* (Paris, Editions Pedone, 2016) 202.

³⁹ This rule is considered to be respected if the structural deficit of a state does not exceed 0.5% of GDP, or 1% for states with a debt level of less than 60%. In addition, states must pursue a specific medium-term objective defined in terms of structural balance.

⁴⁰ On this renewed interest in ordoliberalism in the context of the euro crisis, see Josef Hien and Christian Joerges, 'Dead Man Walking: Current European Interest in the Ordoliberal Tradition' (2018) EUI Working Paper LAW 2018/03 http://cadmus.eui.eu/bitstream/handle/1814/51226/LAW_2018_03.

demonstration has led to critical academic positions against the authoritarian slide of European economic and financial governance.⁴¹ Worse, in France, this ideologisation has led to extremely aggressive positions against Germany, which was suspected, particularly at the time of the Greek debt crisis, of imposing its rigorous economic views on all its European partners at the expense of democratic choice.⁴²

It is worth noting that this vehement criticism of the European budgetary framework focuses precisely on the constituent elements of what we have called the depoliticisation process of budgetary rules. Some authors have questioned the budgetary constitutionalisation phenomenon reinforced by the TSCG: the ordoliberal doctrine was said to have been ‘engraved in the marble of the treaties’.⁴³ The strengthening of the budgetary constraint has led to the claim that the European Union is a genuine ‘iron cage’.⁴⁴ The Union was said to have confiscated states’ political choice by imposing on them the pursuit of a single financial objective.⁴⁵

The distancing of political bodies has also been decried. We are witnessing a new form of governance by numbers,⁴⁶ steered by technocratic authorities, devoid of any political legitimacy. The crisis in the eurozone was said to have radicalised budgetary discipline and accelerated what some authors have called ‘tutelary federalism’:⁴⁷ by submitting to budgetary rules tutelage, exercised in the form of automatic steering, states were said to have de facto relinquished the exercise of their powers in economic matters and lost the sovereignty they had wished to preserve at the time of the Maastricht Treaty.

pdf; Josef Hien and Christian Joerges (eds), *Ordoliberalism, Law and the Rule of Economics* (Oxford, Hart Publishing, 2017).

⁴¹ Further to the reference mentioned above (cf n 12): Ulrich Beck, *Das deutsche Europa: Neue Machtlandschaften im Zeichen der Krise* (Berlin, Suhrkamp Verlag, 2012); Grégoire Chamayou, *La société ingouvernable: Une généalogie du libéralisme autoritaire* (Paris, La Fabrique, 2018); Nicolas Guillet, ‘Les finances publiques contemporaines: surveiller et punir? De la norme démocratique à la norme disciplinaire’ in Jacqueline Guitard, Émeric Nicolas and Cyril Sintez (eds), *Foucault face à la norme* (Paris, Mare et Martin, 2020) 87–106, the author advances that the state is put ‘under market surveillance’ by European budget discipline rules.

⁴² Jean-Christophe Cambadélis, ‘Lettre ouverte à un ami allemand’ (*EURACTIV*, 16 July 2015) www.euractiv.fr/section/politique/opinion/lettre-ouverte-a-un-ami-allemand; Dominique Strauss-Kahn, ‘Lettre ouverte à mes amis allemands’ (*Huffington Post*, 18 July 2015) www.huffingtonpost.fr/actualites/article/dsk-partage-ses-pensees-sur-la-grece-dans-une-lettre-ouverte-a-ses-amis-allemands_59003.html.

⁴³ Frédéric Lordon, *La malfaçon: Monnaie européenne et souveraineté démocratique* (Arles, Actes Sud, 2015).

⁴⁴ Pierre Dardot and Christian Laval, *Ce cauchemar qui n'en finit pas: Comment le néolibéralisme défait la démocratie* (Paris, La Découverte, 2016).

⁴⁵ Robert Salais, *Le viol d'Europe: Enquête sur la disparition d'une idée* (Paris, PUF, 2013).

⁴⁶ Alain Supiot, *La gouvernance par les nombres: Cours au collège de France (2012-2014)* (Paris, Fayard, 2015).

⁴⁷ Michel Dévoluy, ‘L’ordolibéralisme et la construction européenne’ (2016) 3 *Revue Internationale et Stratégique* 26.

2.1.2. *The Reasons for the Dispute*

Strikingly, the handling of the Greek debt crisis gave rise to radically divergent controversies on both sides of the Rhine. This is not to say that challenges to budgetary discipline have not occurred in Germany, as has been indicated. Rather, the focus was more on the departures from the legal framework.⁴⁸ Creating the European Stability Mechanism (ESM), in exchange for which the TSCG was signed, was seen by some as a violation of the prohibition in Article 125 TFEU.⁴⁹ The unconventional measures taken by the ECB in return for abiding by specific budgetary guarantees were deemed to violate the prohibition of the non-bailout clause and public debts monetarisation. While German doctrine perceived these developments as a possible ‘crisis of law’,⁵⁰ French doctrine seemed reassured by these mechanisms, which can be analysed as intervention decisions – both financial and monetary.

These divergences can no doubt be attributed to traditional differences between these two countries: the weight of German *Ordnungspolitik*, ie great attachment to a policy subject to rules in Germany, versus a long tradition of economic interventionism in France.⁵¹ There is, undoubtedly, more reluctance in France to accept that parliament, and especially the government in economic matters, should be limited as regards the exercise of their sovereign choices.

For whatever reasons, this protest movement, which has become polarised around the European budgetary framework, is akin to a process of budgetary issues politicisation. Fuelled by the Covid-19 crisis, this movement has generated, in a surprising reversal of fortune, a form of budgetary rules politicisation.

2.2. The Politicisation of the Debate

The second feature of the re-politicisation of budgetary rules lies in the current debate characteristics. This debate has not only intensified in recent years, but has also been broadly renewed to include imperatives that are less technical than political in nature.

⁴⁸ Matthias Ruffert, ‘Mehr Europa – eine rechtswissenschaftliche Perspektive’ (2013) *Zeitschrift für Gesetzgebung* 1, 5.

⁴⁹ Martin Seidel, ‘Europäische Währungsunion und rule of law’ (2012) ZEI Working Paper B05 2012 www.zei.uni-bonn.de/de/publikationen/medien/working-paper/wp2012_b05.pdf.

⁵⁰ Christian Callies, ‘Nach der Krise ist vor der Krise: Integrationsstand und Reformperspektiven der Europäischen Union’ in Jürgen Bröhmer (ed), *Europa und die Welt: Kolloquium zu aktuellen europa-, völker- und menschenrechtlichen Themen aus Anlass des 80. Geburtstages von Prof. Dr. Dr. h.c. mult. Georg Ress* (Baden-Baden, Nomos, 2016) 73–97.

⁵¹ On this approach, see Kalfèche, Perroud and Ruffert, *L’avenir de l’Union économique et monétaire* 9.

2.2.1. *The Diversity of Proposals*

While initially European budgetary rules may have seemed immune to any discussion given their functional nature, as described above (they are designed as a tool for monetary union functioning), they have been criticised and proposals for reform have been made in very different ways since the end of the 2010s, particularly in the wake of the Covid-19 crisis. In general, there is a form of polarisation in the debate that makes it difficult to reach a consensus, at all levels. At a political level, this growing polarisation and fragmentation can be observed both within and between countries. While France – although it does not comply with the rules – and Italy as well are arguing for more flexibility,⁵² other countries, such as the Netherlands and Germany, are calling for greater rigour.

At an academic level, the political divide is coupled with a debate fuelled by a wide variety of proposals from economists, beyond the shared observation that rules need streamlining. Among these proposals, Olivier Blanchard's suggestion has received much attention and deserves to be presented here.⁵³ Blanchard starts from the premise that the initial budgetary rules were economically unsatisfactory: the debt and deficit criteria could be easily met in prosperous economic times but, in contrast, could prove harmful in times of economic recession. Blanchard also notes that these initial rules were gradually made more complex, as a result of the reforms mentioned above: new criteria were added and flexibility clauses introduced. These rules have remained economically irrelevant and have been repeatedly breached, but these violations have never led to sanctions. Given these observations, Blanchard proposes replacing the current budgetary criteria (rules) with more general standards (principles) in order to obtain some flexibility in the determination of public finance objectives. The point is to examine each national situation to determine whether the debt is sustainable, which would not depend on debt and deficit criteria but on economic and political factors requiring specific analysis.

For all this, Blanchard's proposal does not lead to a more political governance of these budgetary 'principles' because the objectives would be set by independent institutions for each eurozone country. Therefore, the flexibility gained at the stage of defining the budgetary objectives assigned to states would be offset by strengthening the procedure for monitoring their enforcement. On the one hand, the Commission would be responsible for making recommendations to states, notably

⁵² Emmanuel Macron and Mario Draghi, 'Op-ed by President Emmanuel Macron and Prime Minister Mario Draghi on EU Macroeconomic and Fiscal Strategy' (*Élysée*, 23 December 2021) www.elysee.fr/en/emmanuel-macron/2021/12/23/op-ed-by-president-emmanuel-macron-and-prime-minister-mario-draghi-on-eu-macroeconomic-and-fiscal-strategy.

⁵³ Olivier Blanchard, Alvaro Leandro and Jeromin Zettelmeyer, 'Redesigning EU fiscal rules: From rules to standards' (2021) Peterson Institute for International Economics Working Papers 21-1 www.piie.com/sites/default/files/documents/wp21-1.pdf.

concerning their primary balance trajectory, and these recommendations would no longer be subject to a decision by the Council of the Union. In the event that a state does not comply with the changes requested by the Commission, the latter could prevent the adoption of a budget. On the other hand, if the Commission's recommendation is opposed, the state concerned would have to appeal to the Court of Justice (through the creation of a specialised chamber capable of rendering a decision quickly) or to the European Budget Committee, whose decisions would be binding for the state concerned.

Other proposals consist in keeping only the 60 per cent debt ratio to the detriment of other existing procedural rules (MTO, flexibility clauses, etc). Therefore, the only operational rule would be an expenditure rule implying a downward trend in debt, while allowing the deficit to fluctuate according to cyclical revenue variations.⁵⁴ Finally, some proposals are looking at alternative operational rules (expenditure rule, revenue rule and balanced budget rules) linked to the debt anchoring to make enforcement and sanctions more automatic and less political.

2.2.2. *The Debate's Political Reorientation*

Beyond the technical modalities for revising budgetary rules, some proposals reflect a desire to rethink these rules' political scope in depth. The price stability and financial sustainability imperatives are sometimes relegated to the background. Many authors suggest European budgetary rules should be more protective of public investment, rather than focusing exclusively on debt-level issues.

This was the core of one of the proposals that was paid a lot of attention in the public debate. The authors of the manifesto for the democratisation of Europe,⁵⁵ which will be discussed below, renewed their proposal in the context of the Covid-19 crisis. They presented a reform of the SGP to notably increase public investment⁵⁶ thereby proposing a new kind of golden rule that would exclude investments from public deficit ratios. This proposal, which could have been viewed as quite radical before 2020, has gained credibility since the social changes brought about by the pandemic.

As has already been noted, the pandemic has raised new political and societal challenges. After the Covid-19 crisis, the European Union committed itself to an unprecedented form of fiscal support for national economies. The economic

⁵⁴Zsolt Darvas, Grégory Claeys and Alvaro Leandro, 'A proposal to revive the European Fiscal Framework' (2016) *Bruegel Policy Contribution* Issue 2016/07; Agnès Bénassy-Quéré et al, 'Reconciling risk sharing with market discipline: A constructive approach to euro area reform' (2018) *CEPR Policy Insight* no 91; Zsolt Darvas, Philippe Martin and Xavier Ragot, 'European fiscal rules require a major overhaul' (2018) *Les notes du Conseil d'analyse économique* no 47; European Fiscal Board, 'Assessment of EU fiscal rules with a focus on the six and two-pack legislation' (11 September 2019).

⁵⁵Stéphanie Hennette-Vauchez et al, *How to Democratize Europe* (Cambridge, MA, Harvard University Press, 2019).

⁵⁶Manon Bouju et al, 'Face à la crise, construire l'Europe d'après le "consensus de Maastricht"' (*Le Grand Continent*, 18 December 2020) <https://legrandcontinent.eu/fr/2020/12/18/constituer-leurope-dapres>.

rebound from the health crisis exposed the weaknesses of the energy supply system, which was further compounded by the war in Ukraine and the closure of the Nord Stream gas pipeline. This has led to heightened awareness towards these new challenges and the need for massive public investment by states.

In this context, the idea of a 'green' golden rule that excludes net 'green' public investment from the deficit and debt calculations has found a degree of support. This is, for example, the solution proposed by Zsolt Darvas and Guntram Wolff⁵⁷ which encourages governments to cut current expenditures rather than capital expenditures. Discussions thus show that the debate on European budgetary rules has changed in nature. The priority objective is no longer necessarily debt sustainability, which used to be the objective traditionally associated with budget rules. This objective has shifted to extra-budgetary considerations, more broadly integrating environmental concerns. Yet, these proposals entail formidable political arbitrage, if only to define which investments can be qualified as 'green'.

European authorities' margin of discretion would be further reinforced, which amounts precisely to a form of budgetary rules re-politicisation, whose features can already be observed in the case of the European Commission.

3. Towards a Politicisation of the European Commission's Role in European Budgetary Governance?

Sometimes presented as an independent body, the European Commission is above all a political institution. As such, it is capable of placing its budgetary surveillance function within the framework of a more general action integrating the Union's major political priorities (section 3.1), which does not fail to raise questions about the institutional arrangements for exercising budgetary governance (section 3.2).

3.1. The European Commission's Increasingly Political Budgetary Surveillance

3.1.1. *The European Commission's Discretion Margin*

The depoliticisation process highlighted above has, on the surface, been achieved through the rigidifying political bodies' decision-making power: the reverse voting procedure was intended to make it easier for the Council to comply with the Commission's recommendations. Now, the analysis needs refining with regard

⁵⁷Zsolt Darvas and Guntram Wolff, 'A green fiscal pact: climate investment in times of budget consolidation' (2021) *Bruegel Policy Contribution* Issue no 18/21.

to the powers vested in the Commission. Indeed, once a body has a discretion margin – even though it is legally independent – it is driven to make choices that can be described as ‘political’. This is the situation the European Commission finds itself in when exercising its budgetary rules supervision function.

Far from favouring a pure and hard application of budgetary rules, the European Commission has, on the contrary, contributed to the introduction of more flexibility in the period preceding the suspension of the SGP.⁵⁸ Breaches of fiscal rules have remained frequent in the euro area. According to a study by the European Budget Committee in 2019, the average compliance rate has been at 57 per cent since the introduction of the SGP.⁵⁹ In 2020, it was found that 10 member states did not comply with the criteria, the highest number since the 2011 reforms. Although some states may have been placed under surveillance because they did not meet the SGP criteria, no sanction procedure was triggered by the Commission. Rather than initiating the sanction procedure, the Commission engaged in bilateral negotiations with the states affected by their questionable public debt and deficits levels. Pierre Moscovici, then Minister of Economy and Finance in France (between 2012 and 2014), described how he was able to negotiate deadlines with the Commission to meet the 3 per cent public deficit criterion.⁶⁰

The reason for this is that, despite the new sanctions introduced in 2011, the Commission has retained considerable leeway in implementing the rules. While some clarifications have been brought to budgetary indicators, many concepts remain vague. This is certainly true of potential growth and structural balance indicators, which ‘lead to estimates that are very political in nature.’⁶¹ Economists have pointed out that the Commission’s budget analysis is based on unobservable variables, which can account for their frequent revisions.⁶²

This margin of appreciation has been fully utilised by the Commission. Once appointed European Commissioner for Economic and Financial Affairs in the Juncker Commission, Moscovici was very open about promoting a ‘more intelligent reading of budgetary rules.’⁶³ This more intelligent reading was

⁵⁸ Reinout Arthur Van der Veer, ‘Walking the Tightrope: Politicization and the Commission’s Enforcement of the SGP’ (2022) 81 concludes in the same way that ‘politicization has gradually pushed the Commission towards increasingly flexible enforcement of EU fiscal rules’.

⁵⁹ European Fiscal Board, ‘Assessment of EU fiscal rules with a focus on the six and two-pack legislation’ 31.

⁶⁰ Hearing of Pierre Moscovici, reported in the French National Assembly’s Information Report no 4990 presented by Caroline Janvier, 17 www.assemblee-nationale.fr/dyn/15/rapports/duel/115b4990_rapport-information.

⁶¹ French National Assembly’s Information Report no 4990, 23 www.assemblee-nationale.fr/dyn/15/rapports/duel/115b4990_rapport-information.

⁶² Zsolt Darvas, Philippe Martin and Xavier Ragot, ‘European fiscal rules require a major overhaul’ (2018) *Les notes du Conseil d’analyse économique* no 47, quoted by Hamza Bennani et Baptiste Savatier, ‘Le cadre budgétaire européen, son architecture institutionnelle et son évolution dans le temps’ (2021) *Conseil d’analyse économique* no 056–2021, 6.

⁶³ Frédéric Mérand, *Un sociologue à la Commission européenne* (Paris, Presses de Sciences Po, 2021) 166.

very quickly translated into the adoption of a communication introducing more flexibility in the implementation of the SGP's preventive component on 13 January 2015.⁶⁴ The objective was to take into account the economic cycle fluctuations and to allow the states room for manoeuvre in implementing structural reforms and investments. A temporary deviation from the MTO, or from the path towards it, is allowed, so long as the proposed structural reforms or investments have a positive short-term fiscal impact and increase potential growth. In 2017, the Commission expressly recognised the exercise of 'some discretion when examining deviations from the budgetary adjustments implied by the matrix'.⁶⁵

This 'more intelligent reading' of budgetary rules can be seen as a political reading of these rules. For the European Commissioner it has meant examining the political factors supposed to determine the conduct of each state's economic policy, as some fieldwork has shown.⁶⁶ In contrast to a mechanical budgetary rule implementation, the Commission's examination is shifting from the assessment of purely budgetary data to the relevance of more general economic measures. This way, Spain and Portugal – two countries likely to be sanctioned for their excessive deficits between 2015 and 2019 – have not been subject to any proposal for financial sanctions by the European Commission. It has been said that the Commission is nothing more than a 'dog without teeth'.⁶⁷

Flexibility in fiscal rules' implementation has not failed to be reviled, particularly in Germany. For its part, the European Budget Committee denounced the bilateral nature of implementing rules, which resulted in opacity and less peer pressure.⁶⁸ Finally, in 2021, the Commission acknowledged that 'while elements of flexibility and discretion have been built into the current budgetary framework through a complex set of interpretative provisions, there is a need for transparency in the exercise of economic judgment within a rules-based framework'.⁶⁹ Despite its stated intention to place fiscal governance in a 'rules-based framework', the European Commission is nevertheless exercising a political role, which is manifested today in the reorientation of the objectives assigned to fiscal rules.

⁶⁴ Commission, 'Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank on the review of the flexibility under the Stability and Growth Pact' COM (2018) 335 final.

⁶⁵ Commission, 'Communication from the Commission, 2017 Draft Budgetary Plans: Overall Assessment' COM (2016) 730 final.

⁶⁶ Frédéric Mérand, *Un sociologue à la Commission européenne* 166.

⁶⁷ Mihajlo Babin, Iva Ivanov and Milos Eric, 'The long-lasting post-covid symptom: the case for the EU fiscal rules reform?' (2022) 13 *Pravni Zapisi* 76, 85.

⁶⁸ European Fiscal Board, 'Assessment of EU fiscal rules with a focus on the six and two-pack legislation' 31.

⁶⁹ Commission, 'Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee, the Committee of the Regions, The EU economy after COVID-19: implications for economic governance' COM (2021) 662 final.

3.1.2. *The European Commission's Reorientation of Budgetary Rules Purposes*

Finally, it is time to examine the Commission's latest orientations, as developed in its Communication of 9 November 2022.⁷⁰ This text led to a package of proposals to replace the preventive⁷¹ and corrective⁷² arms of the SGP in order to move to a risk-based common EU surveillance framework. In the face of the diversity of suggestions made – sometimes in contradictory directions as mentioned above, and following the positions expressed in the public consultation launched by the Commission – these proposals seek a form of compromise. Following the SGP's temporary suspension, they attempt to return to a simplified and more operational supervisory framework. The Commission proposes to remain within the current reference values framework, namely the 60 per cent debt and 3 per cent deficit ceilings. In line with the original paradigm, the public debt sustainability imperative must remain the Commission's priority. It is 'the starting point for EU fiscal surveillance'.⁷³ So, it is not exactly a case of relaxing budgetary constraints on states, but rather of paying more attention to each state's specific situation. The national medium-term fiscal-structural plans would be the proposed revised framework's cornerstone, thereby allowing for differentiating between member states by taking into account their public debt challenges. Rather than requiring states to make similar adjustment efforts, more account would be taken of their respective debt levels, which can vary considerably from one state to another. While maintaining the requirement of public deficits below 3 per cent, the Commission would adapt debt indicators to states' respective budgetary situations. The Commission thus proposes abandoning the 1/20th reduction rule – 'which imposed a too demanding fiscal effort'⁷⁴ – in favour of a focus on departures from the net expenditure path. The Commission should put forward a trajectory for net expenditure ensuring that 'the public debt ratio is put or remains on a plausibly downward path, or stays at prudent levels'⁷⁵ while the public deficit is kept below 3 per cent over the medium term. Lastly, the Commission proposes to strengthen the enforcement of the rules relatively to the current framework. The procedure for breaching the 60 per cent criterion would focus on departures from

⁷⁰ Commission, 'Communication on orientations for a reform of the EU economic governance framework' COM (2022) 583 final.

⁷¹ Commission, 'Proposal for a Regulation of the European Parliament and the Council on the effective coordination of economic policies and multilateral budgetary surveillance and repealing Council Regulation (EC) No 1466/97' COM(2023) 240 final.

⁷² Commission, 'Proposal for a Council Regulation amending Regulation (EC) No 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure' COM(2023) 241 final.

⁷³ Commission, 'Communication on orientations for a reform of the EU economic governance framework' COM (2022) 583 final, 7.

⁷⁴ Commission, 'Proposal for a Regulation of the European Parliament and the Council on the effective coordination of economic policies and multilateral budgetary surveillance and repealing Council Regulation (EC) No 1466/97' COM(2023) 240 final, 3.

⁷⁵ *ibid*, Article 6.

the fiscal path set by the Council.⁷⁶ In case of an excessive deficit, the Council would require that the state implements a corrective net expenditure path corresponding to a minimal annual adjustment of at least 0.5% of GDP.⁷⁷

Meanwhile, the Commission seems to be taking a more ‘permissive’ approach to public finances,⁷⁸ linked to the desire to preserve a number of non-exclusively fiscal imperatives. These imperatives are explicitly mentioned as ‘common priorities of the Union’ in the Annex VI of the proposal of the Commission.⁷⁹ While focusing on the debt sustainability objective, governments would be required to spell out the necessary reforms and investments responding to these main priorities. The commitments of the states to such reforms and investments could allow them to benefit from an additional adjustment period of up to three years.⁸⁰ As the Commission has already stated: ‘Improving the quality of public finances and protecting public investment should be central elements of medium-term fiscal-structural plans, in light of the essential role of public investment and reforms in enhancing potential growth and addressing major systemic challenges such as the green and digital transitions.’⁸¹ This new emphasis on investment is linked to the current political context. Here, the European Commission draws lessons from the Covid-19 crisis, which resulted in a significant increase in public- and private-sector debt ratios. ‘The green and digital transitions, the need to ensure energy security, as well as social and economic resilience, and to build up defence capabilities will require sustained high levels of investment in the years to come.’⁸² The Commission has underlined the need for ‘higher public investment, backed by a good composition and quality of public finances.’⁸³ As indicated above, determining whether states’ public finances are of good quality and composition implies a degree of appreciation margin for the European Commission. This requires determining whether states are indeed making the investments considered relevant.

⁷⁶ Commission, ‘Proposal for a Council Regulation amending Regulation (EC) No 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure’ COM(2023) 241 final, (10).

⁷⁷ *ibid.*, Article 3.

⁷⁸ The Commission concludes that ‘[t]he necessary financing for the just transition ... call[s] for fiscal rules that *allow* for strategic investment, while safeguarding fiscal sustainability’ (emphasis added) in its Communication on orientations for a reform of the EU economic governance framework’ COM (2022) 583 final, 20; and that ‘the reformed framework should help *build* the green, digital and resilient European economy of the future’ in its Proposal for a Regulation of the European Parliament and the Council on the effective coordination of economic policies and multilateral budgetary surveillance and repealing Council Regulation (EC) No 1466/97’ COM(2023) 240 final, 2 (emphasis added).

⁷⁹ Commission, ‘Proposal for a Regulation of the European Parliament and the Council on the effective coordination of economic policies and multilateral budgetary surveillance and repealing Council Regulation (EC) No 1466/97’ COM(2023) 240 final, Annex VI.

⁸⁰ *ibid.*, Article 13.

⁸¹ Commission, ‘Communication on orientations for a reform of the EU economic governance framework’ COM (2022) 583 final, 8.

⁸² *ibid.* 4.

⁸³ *ibid.*

This shows the Commission's desire to link European budgetary surveillance directly to European issues of a strictly political nature. Ultimately, it is the European Union's political priorities that would determine national budget plans' relevance. I believe this illustrates a form of budgetary rules politicisation, insofar as budgetary surveillance would be exercised in light of objectives of a political nature. Such a process necessarily brings into question the framework for exercising the political choices underpinning fiscal governance.

3.2. Which Institutional Arrangements for Legitimate Fiscal Governance of the European Union?

3.2.1. *Proposals for Parliamentarising the Eurozone*

Different goals are now guiding the implementation of the EU fiscal rules. The sustainability of government debt was the principal objective intended for fiscal rules with the Maastricht Treaty. It has since then been completed by the goal of financial stability during the euro crisis. And now the green transition and climate protection are becoming a new objective. This diversity of the end purposes shows that the European fiscal framework cannot be disconnected from the political project of the EU as a whole. Fiscal rules are part of the EU's economic policy.

Indeed, Article 120 TFEU foresees: 'Member States shall conduct their economic policies with a view to contributing to the achievement of the objectives of the Union, as defined in Article 3 of the Treaty on European Union, and in the context of the broad guidelines referred to in Article 121(2)'. And we know how broadly the objectives of the EU are defined in Article 3 of the Treaty on European Union (TEU), including for example sustainable development based on balanced economic growth and price stability, social market economy, full employment and social progress, improvement of the quality of the environment, and so on.

This plurality of goals raises the question of knowing which authority is legitimate to arbitrate between these different objectives.

When the goal is clear and can be objectively assessed, with numerical instruments, the rules-based system can devote the implementation of the fiscal rules to an independent authority. But this is more difficult in an environment where political issues have to be taken into account.

This is why a number of proposals have been made to democratise the functioning of EMU. In general, the French doctrine remains very attached to the idea of giving more powers to the European Parliament in order to reinforce EMU's democratic legitimacy.⁸⁴ In their famous proposal mentioned above,⁸⁵

⁸⁴ Frédéric Allemand and Francesco Martucci, 'The Democratic Legitimacy of European Economic Governance: Change in the Role of Parliament' (2014) 134 *Revue de l'OFCE* 112.

⁸⁵ Hennette-Vauchez et al, *How to Democratize Europe*.

Stéphanie Hennette-Vauchez, Thomas Piketty, Guillaume Sacriste and Antoine Vauchez suggest creating a budget for democratisation which would be debated in and voted for by a sovereign European Assembly. The Democratisation Treaty anticipated that 80 per cent of the members of this Assembly should come from the national parliaments of the member states and that 20 per cent of its members should come from the European Parliament. The principal virtue of this proposition is to make new opportunities to deliberate in a democratic framework about questions that are currently debated by the Eurogroup in informal circles. But the need to create new institutions for this purpose can be questioned.

3.2.2. Conclusion: Which Space for Discussion in a Multi-Level Governance?

The fiscal budgetary framework must be rethought in a multi-level system of governance.

If we stick to the Commission communication presented above, it seems essential to distinguish between two decision-making levels.

The first one relates to the definition of the main political priorities that should guide budgetary rules implementation. As has been said, these priorities would be part of the European Union's common framework, as is already the case, in a way, with the European Semester. At this level, budgetary governance is not a matter that derogates from the functioning of the European Union. The European Commission itself is an increasingly politicised institution. Since Jean-Claude Juncker and also with von der Leyen, this institution establishes clear priorities for its term in office.⁸⁶ Von der Leyen set six priorities 2019–24 and these objectives are purposed to guide the European Commission's action. Climate and digital transitions are the core of NextGenerationEU and there is no reason that these two priorities will not be reflected in the future implementation of the European fiscal rules. Undoubtedly, these major priorities could be further debated, but this would imply strengthening the Union's parliamentary system: it is therefore a general issue that concerns the European Union's political functioning – not specifically European fiscal governance.

The second level concerns budgetary choices, ie the concrete measures to be implemented in order to abide by the European budgetary rules and the criteria defined at the European level. This decision-making level pertains to states' responsibility. In its Communication, the Commission particularly insists on this point, since by making medium-term budgetary plans – the new budgetary governance essential tool – it seeks to enhance member states' weight when designing their national budgetary trajectories. It would be up to national

⁸⁶ Robert Stüwe and Thomas Panayotopoulos (eds), *The Juncker Commission: Politizing EU Policies* (Baden-Baden, Nomos, 2020) 19: Juncker expressed the desire to establish a 'political commission' at the start of his mandate.

governments to commit themselves to a series of reforms and investments likely to bring their debt levels back onto a sustainable path. These trajectories would be discussed with the European Commission and adopted by the Council. This is why the Commission calls for ‘a greater debate at national level and thus a higher degree of political buy-in and ownership of the medium-term plan.’⁸⁷

It is probably somewhat ironical for some countries such as France to denounce the lack of parliamentarisation of economic and budgetary choices at the European level while, at the national level, parliamentary control over these choices remains relatively weak. In order for European fiscal governance to enjoy greater political legitimacy, adjustments should therefore be made at the national level. This means, on the one hand, increasing transparency on the reforms and investments proposed by member states in their budgetary plans and on the annual progress reports sent to the Commission. On the other hand, it requires the emergence of higher standards of national parliamentary scrutiny for the preparation of medium-term national budgetary and structural plans. If this condition were guaranteed, states’ economic and social reforms could no longer be presented as constraints ‘imposed by Brussels’ but rather the expression of budgetary choices made by member states to achieve commonly shared objectives at the European level.

Without a doubt, the ability to develop mechanisms to make the European Union’s major political priorities visible and to clarify the terms of the debate on budgetary choices for public opinion will be decisive for the future of the Union.

⁸⁷ Commission, ‘Communication on orientations for a reform of the EU economic governance framework’ COM (2022) 583 final, 10.