

The European Fiscal Board

Accountability-multiplier in the Economic and Monetary Union or just another Commission body?

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Introduction

The sovereign debt crisis exposed the clear failure of the enforcement of budgetary rules in the European Union (hereafter: EU). Member States could infringe European budgetary rules without being sanctioned, due to insufficient coordination of economic policies, the absence of strong enforcement powers and the lack of political will to adhere to the budgetary rules.¹ During the last few years, several reforms of the EU economic framework attempted to address these problems.² However, the current economic framework cannot yet be considered fully effective.³ Complaints rise about the high complexity of the framework, leading to decreased ownership of the budgetary rules.⁴ Member States such as France and Spain are still involved in an excessive deficit procedure and have been judged not to take sufficient measures to ensure a durable correction of these excessive deficits in the coming years.⁵ The European Commission (hereafter: the Commission) is criticised for not objectively monitoring the budgetary rules, which is interpreted as part of its increasingly political role and is held to lead to unequal treatment of Member States.⁶ This criticised attitude culminated

¹ R. Smits, 'Correspondence', 49 *Common Market Law Review* (2012), page 829, P. Craig, 'The Financial Crisis, the European Union Institutional Order, and Constitutional Responsibility', 22 *Indiana Journal of Global Legal Studies* (2015), pages 255-256, F.L. Pasini, 'Economic Stability and Economic Governance in the Euro Area: what the European Crisis can teach on the limits of economic integration', 16 *Journal of International Economic Law* (2013), page 213, S.M. Seyad, 'A legal analysis of the control of national budgets by the EU institutions', 30 *Journal of International Banking Law and Regulation* (2015), page 251, M. Burda and S. Gerlach, 'A credible Stability and Growth Pact: Raising the bar for fiscal transparency', in R. Baldwin and D. Gros (eds.), *Completing the Eurozone Rescue: What more needs to be done?* (VoxEU, CEPR 2010), <http://voxeu.org/article/credible-stability-and-growth-pact-raising-bar-budgetary-transparency> and A. Verdun, 'A historical institutionalist explanation of the EU's responses to the euro area financial crisis', 22 *Journal of European Public Policy* (2015), page 230.

² E. Chiti and P.G. Teixeira, 'The Constitutional Implications of the European Responses to the Financial and Public Debt Crisis', 50 *Common Market Law Review* (2013), page 288, K. Tuori and K. Tuori, *The Eurozone Crisis: A Constitutional Analysis* (Cambridge University 2014), pages 105-111 and J. Pisani-Ferry, 'Rebalancing the governance of the euro area', *France Stratégie Working Paper* (2015), pages 11-13.

³ Z. Darvas and A. Leandro, 'The Limitations of Policy Coordination in the Euro Area under the European Semester', 19 *Breugel Policy Contribution* (2015), page 2 and 4 and J. Pisani-Ferry, 'Rebalancing the governance of the euro area', *France Stratégie Working Paper* (2015), page 9.

⁴ M. Ruffert, 'The European Debt Crisis and European Union Law', 48 *Common Market Law Review* (2011), page 1803, Tuori and Tuori, *supra* n. 2, page 219, Report on the review of the economic governance framework: stocktaking and challenges, 2014/2015, Committee on Economic and Monetary Affairs, Rapporteur Pervenche Berès (17 June 2015), paragraph 13, 45 and 48, ECB Economic Bulletin, Issue 7/2015, Box 5, page 28 and Pisani-Ferry, *supra* n. 2, pages 13-14.

⁵ Recommendation for a Council Recommendation on the 2016 national reform programme of France and delivering a Council opinion on the 2016 stability programme of France, COM(2016) 330 final, pages 3-4, Recommendation for a Council Recommendation on the 2016 national reform programme of Spain and delivering a Council opinion on the 2016 stability programme of Spain, COM(2016) 329 final, pages 3-4 and Stability and Growth Pact: update on the fiscal situation of Spain and Portugal, *European Commission Press Release* 7 July 2016.

⁶ A. Wille, 'The politicization of the EU Commission: democratic control and the dynamics of executive selection', 78 *International Review of Administrative Sciences* (2012), page 399 and A. Wille, *The Normalization of the European Commission: Politics and Bureaucracy in the EU executive* (Oxford University Press 2013), pages 208-209 and Claeys, G., Z. Darvas and A. Leandro, 'A Proposal to Revive the European Fiscal

recently in President Juncker's statement that the Commission gave France two more years to bring its budget deficit below three percent of GDP 'because it is France'. Subsequently, Eurogroup President Dijsselbloem held this to 'damage the Commission's credibility as guardian of the pact'.⁷

One of the most recent reforms to further improve the EU economic framework is the establishment of the European Fiscal Board in October 2015. The European Fiscal Board is an independent advisory body comprising five experts that have as their task to advise the Commission when it exercises its functions in the multilateral surveillance in the euro area.⁸ The Board was first mentioned in the non-binding Five Presidents' Report in June 2015 as a proposal for one of the first steps towards a Fiscal Union.⁹ According to the Report, this European Fiscal Board should lead to better compliance with the common fiscal rules, a more informed public debate and stronger coordination of national fiscal policies.¹⁰ Only a few months later, the European Fiscal Board was formally established by the Commission Decision of 21 October 2015.¹¹ The Board is expected to become operational per September 2016.¹² It has a broad mandate that ranges from providing the Commission with evaluations of the implementation of the Union fiscal framework, advising the Commission on the appropriate euro area fiscal stance to cooperating with the national fiscal councils established in the EU Member States.¹³

This thesis focuses on the European Fiscal Board within the larger story of the euro crisis because it is a new and interesting institutional innovation within the Economic and

Framework', *Bruegel Policy Contribution* (2016), page 3. See also for example <http://www.euractiv.com/section/public-affairs/opinion/what-is-wrong-with-the-european-commission/>, <http://www.europarl.europa.eu/news/en/news-room/20150413IPR41658/Commission's-economic-decision-making-needs-to-become-more-neutral-say-MEPs>, <http://www.cer.org.uk/insights/what-wrong-european-commission> and <http://euro.boellblog.org/2013/05/07/doubts-about-rehns-position-as-independent-commissioner/>.

⁷ <http://uk.reuters.com/article/uk-eu-deficit-france-idUKKCN0YM1N0>, <http://www.breitbart.com/london/2016/06/03/junckers-remarks-france-damage-credibility-commission-dijsselbloem/> and <http://www.politico.eu/article/jeroen-dijsselbloem-jean-claude-juncker-damaging-commissions-credibility/>.

⁸ Article 2(1), Commission Decision (EU) 2015/1937 of 21 October 2015 establishing an independent advisory European Fiscal Board.

⁹ 'Completing Europe's Economic and Monetary Union', Report by the Commission's President Juncker, drafted in close cooperation with Euro Summit's President Tusk, Eurogroup's President Dijsselbloem, European Central Bank's President Draghi and European Parliament's President Schultz, 22 June 2015, page 14.

¹⁰ Juncker, *supra* n. 9, page 14.

¹¹ Commission Decision (EU) 2015/1937 of 21 October 2015 establishing an independent advisory European Fiscal Board.

¹² Call for expressions of interest for the selection of the members of the European Fiscal Board (2016/C 140/04), European Commission Announcement, page 4.

¹³ See Article 2(2), Commission Decision (EU) 2015/1937 of 21 October 2015 establishing an independent advisory European Fiscal Board.

Monetary Union (hereafter: EMU). Although the Board cannot be said to be at the main stage of the EMU drama (this thesis will not claim that the Board will revolutionise the EMU), it has the potential to address ‘gaps’ in the current budgetary framework and raises questions about the EU budgetary supervisory system. For example, the Board can potentially make the multilateral budgetary surveillance more objective and independent. Another example is its task to cooperate with national fiscal councils, which has consequences at both the European and the national level and leads to questions of its exact relation to these national fiscal councils and to the Commission.

Furthermore, the European Fiscal Board and its process of establishment provide for interesting insights into the development of the EMU and, thus, can contribute to the broader debate on the course of EU economic integration. There are striking differences between the initial proposal of the Board in the Five Presidents’ Report in June 2015 and its formal establishment in the Commission Decision in October 2015, which raise questions as to the reasons for these changes. Since the European Fiscal Board has been set up very recently, it is especially useful at this time to set out what it has become and what the thinking is on how it should function and develop. Besides, it should be emphasised that this study of the Board and the EU budgetary framework does not aim to impose austerity. This thesis only looks at how budgetary rules can be enforced effectively and does not express any normative judgment on how these rules should be.

This thesis examines the nature of this new European body by looking at the legal context in which it was set up, its legal and institutional set-up, its genesis and the different objectives for which it was set up – objectives that differed at various stages of the Board’s process of establishment. On that basis, two main research questions are answered that focus respectively on the functioning of the Board itself and on the Board in the ‘bigger picture’ of the EMU. Firstly, how do the nature and legal set-up of the European Fiscal Board fit its objectives? Secondly, what will be the impact of the Board’s nature and legal set-up on EU budgetary supervision, in terms of enforcement and centralisation, and does the development of the Board permit any general conclusions on the direction of the development of the EMU?

A range of sub questions are addressed in order to be able to answer these main questions. The questions develop from practical and descriptive to more fundamental and analytic. Firstly, a descriptive overview of the Board and its context needs to be given. What is the legal background of the European Fiscal Board, what is the nature and legal set-up of

the Board and how did the Board originate? Then, based on this information, it is possible to analyse the broad range of objectives which have been mentioned for the Board, after which the core analysis of this thesis takes place about whether the current Board seems fit to serve these objectives. What are the different objectives the European Fiscal Board is supposed to achieve and how does its nature and legal set-up fit these objectives? Finally, the information about the Board and its process of establishment gives the opportunity to look at the Board from a broader perspective. This will be done in two respects. Firstly, the Board's impact on the levels of enforcement and of centralisation of EU budgetary supervision is analysed. What will be the impact of the European Fiscal Board's nature and legal set-up on EU budgetary supervision, in terms of enforcement and centralisation? Secondly, the evolutionary process of the Board will be used as a 'magnifying glass' of the dynamics of integration in the EMU. How can the discrepancies between the initial plans for the European Fiscal Board and its formal establishment be explained and do the dynamics of the evolutionary process permit any more general conclusions on the direction of the development of the EMU?

The thesis is divided into three chapters. Chapter 1 has a descriptive nature. It starts with depicting the background against which the European Fiscal Board has been set up and describing the main features of the Board. Thereafter, with an understanding of the current structure and legal set-up of the Board, its process of establishment will be examined chronologically. This way, the significance of the differences between the initial thoughts on the Board and its formal establishment can be grasped and put into perspective. Chapter 2 analyses what different objectives have been formulated for the Board and whether the Board's structure and legal set-up fit these objectives. Finally, Chapter 3 focuses on the Board from a broader and more fundamental perspective, considering its place in the development of EU economic integration.

Method and Limitations

This thesis is based on an analysis of the available literature, official documents and rules concerning the EU economic framework and the European Fiscal Board. However, the subject of this thesis, the European Fiscal Board, is still in a preparatory phase, as its intended start of operations lies in the near future (September 2016). This poses a serious restriction on the available information on the Board, since empirical data on its functioning is – by definition – not yet available. Therefore, I decided to personally interview some stakeholders concerning the realisation of the Board, thereby creating an additional layer of ‘soft data’ that was crucial in my understanding of how the Board originated and how its current nature and legal set-up relate to its objectives. My understanding of the Board and its context also builds on other research that I am conducting on the national fiscal councils in the Eurozone.¹⁴

In May 2016, in Brussels, I held in-depth interviews with Philipp Rother, Chief Economic Analyst at the European Commission and Alice Zoppè, Economist at the Economic Governance Support Unit of the European Parliament. Mr. Rother played a central role in the establishment of the Board from within the Commission and, initially, was its planned Head of Secretariat. Ms. Zoppè is an expert in the field of economic governance at the European Parliament. Together, they represent the views and experiences of two principal EU institutions concerning this topic. Furthermore, I involved the perspective of the national fiscal councils, another essential group of actors in this field. In June 2016, I held an in-depth interview with L’udovít Ódor, Deputy of the Network of EU Independent Fiscal Institutions and Member of the Slovak Council for Budget Responsibility. In the same month, I also spoke to Ad Melkert, Extraordinary Councillor of the Dutch Council of State, for my research on the national fiscal councils.¹⁵ If I refer to the views of these interviewees in the rest of this thesis, these views have been expressed in these specific interviews.

The interviews were semi-structured and based on a detailed list of questions, added as supplements to the thesis.¹⁶ The interviewees allowed me to quote them on some parts. For other parts, the Chatham House Rule applies. These insider perspectives played an important role in the reasoning and analyses of this thesis. Naturally, there might be additional

¹⁴ See Working Paper A. Cuyvers, C.I.J. Klostermann and A.E.J.C. Scholten, ‘Tussen handhaving en advisering: een rechtsvergelijkend overzicht van nationale budgettoezichthouders’ (24 September 2014).

¹⁵ The Dutch Council of State forms the Dutch fiscal council together with the Netherlands Bureau for Policy Analysis (CPB).

¹⁶ See Annexes I, II and III for the three lists of questions. The list of questions for Ad Melkert is not attached, because this interview mainly related to my other research on the national fiscal councils.

perspectives which these interviews do not fully cover, but the interviews provided the perspectives of some main stakeholders in the field.

Chapter 1

The European Fiscal Board

A. Background and legal framework

The European Fiscal Board can only be understood and analysed against the background in which it was set up: the sovereign debt crisis in the EU and the consequent legal reforms that took place. Therefore, before going into the characteristics of the Board, the background and the relevant legal framework are depicted.

The legal response to the crisis is characterised by a plurality and diversity of instruments.¹⁷ First, the most important EU measures that have been taken in response to the sovereign debt crisis are discussed. Then, the intergovernmental Fiscal Compact Treaty and the resulting establishment of national fiscal councils throughout the EU are addressed. Due to the limited scope of this thesis, only the essence of the reforms is described, with reference to the extensive literature on the topic for further information.

i. EU measures

The sovereign debt crisis in the EU exposed the flawed institutional structure of an Economic and Monetary Union that was characterised by a fundamental asymmetry between, on the one hand, a monetary union that was centralised and, on the other hand, an economic union that comprised the mere coordination of economic policies.¹⁸ This absence of sufficient coordination of economic policies resulted in a lack of Member States' compliance with European budgetary rules. No clear legal framework in the Eurozone harmonised the fiscal policies and provided for strong enforcement powers.¹⁹ The enforcement system allowed for political discretion, leading to Germany and France infringing the rules of the Stability and Growth Pact in 2003 and avoiding subsequent sanctions through political pressure within the Council.²⁰ As a response, several legislative changes took place in order to address this lack of

¹⁷ K.A. Armstrong, 'The new governance of EU fiscal discipline', 38 *European Law Review* (2013), page 616.

¹⁸ Craig, *supra* n. 1, pages 255-256, Pasini, *supra* n. 1, page 213, F. Amtenbrink and J. De Haan, 'Economic governance in the European Union: Fiscal policy discipline versus flexibility', 46 *Common Market Law Review* (2003), page 1077, Verdun, *supra* n. 1, pages 230-231, G. Martinico, 'The Constitutional implications of the crises', 37 *Journal of European Integration* (2015), page 706 and P. Statham and H.J. Trenz, 'The Politicization of the European Union: From Constitutional Dreams to Eurozone Crisis Nightmares', *ARENA Working Paper* (2012), page 18.

¹⁹ Seyad, *supra* n. 1, page 251, Smits, *supra* n. 1, page 829 and Burda and Gerlach, *supra* n. 1.

²⁰ R.D. Kelemen and T.K. Teo, 'Law and the Eurozone Crisis', Paper prepared for American Political Science Association Annual Convention, September 2012, page 3 and R. Morris, H. Ongena and L. Schuknecht, 'The

coordination of EU economic policy, the absence of strong enforcement powers and the resulting budgetary indiscipline.²¹ First, the legal changes to the Stability and Growth Pact will be discussed in chronological order. Then, some other important legal reforms will be touched upon briefly.

Several changes to the Stability and Growth Pact took place since 2011. These reforms aimed at creating more effective EU controls on national budgets through closer monitoring and stricter enforcement mechanisms. The first reform was the so-called ‘Six Pack’ (five regulations and one directive) in 2011.²² The Six Pack attempted to enhance fiscal convergence and budgetary controls, added a system of graduated enforcement mechanisms and strengthened sanctions, for example by introducing reverse qualified majority voting in the Council in the context of recommending sanctions.²³

These changes were complemented in 2010 by the European Semester, an annual six-month cycle in economic policy coordination which strives to strengthen economic policy coordination across countries.²⁴ The European Semester was called into being by a proposal in the Commission’s Communication of 12 May 2010 and a Council’s approval of it on 7 September 2010.²⁵ The cycle was formalised through the Six Pack Regulation 1175/2011.²⁶ It

Reform and Implementation of the Stability and Growth Pact’, 47 *European Central Bank Occasional Paper Series* (2006), pages 16-17.

²¹ Tuori and Tuori, *supra* n. 2, pages 105-111, J. Yiangou, M. O’Keeffe and G. Glöckler, ‘Tough love: How the ECB’s Monetary Financing Prohibition Pushes Deeper Euro Area Integration’, *Redefining European Economic Governance*, eds. M. Chang, G. Menz and M.P. Smith, *Routledge* 2014, page 38, Seyad, *supra* n. 1, page 251, Communication from the Commission on Steps towards Completing Economic and Monetary Union, COM(2015) 600 final, page 2, Armstrong, *supra* n. 17, pages 601-602,

²² Regulation (EU) No 1173/2011 of the European Parliament and of the Council of 16 November 2011 on the effective enforcement of budgetary surveillance in the euro area, Regulation (EU) No 1174/2011 of the European Parliament and of the Council of 16 November 2011 on enforcement measures to correct excessive macroeconomic imbalances in the euro area, Regulation (EU) No 1175/2011 of the European Parliament and of the Council of 16 November 2011 amending Council Regulation (EC) No 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies, Regulation (EU) No 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances, Council Regulation (EU) No 1177/2011 of 8 November 2011 amending Regulation (EC) No 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure and Council Directive 2011/85/EU of 8 November 2011 on requirements for budgetary frameworks of the Member States.

²³ Ruffert, *supra* n. 4, page 1795, M. Andrieu, J. Bluedorn, L. Eyraud, T. Kinda, P.K. Brooks, G. Schwartz, A. Weber, ‘Reforming Fiscal Governance in the European Union’, *IMF Staff Discussion Note* May 2015, page 7, Vade Mecum on the Stability and Growth Pact 2016 Edition, *European Economy Institutional Paper* 021 March 2016, page 11 and Verdun, *supra* n. 1, page 228.

²⁴ B. De Witte, ‘Euro crisis responses and the EU legal order: increased institutional variation or constitutional mutation?’, 11 *European Constitutional Law Review* (2015), page 442.

²⁵ ‘How effective and legitimate is the European Semester? Increasing the role of the European Parliament’, Directorate-General for Internal Policies, Policy Department A: Economic and Scientific Policy, Economic and Monetary Affairs, Briefing Paper, August 2011, page 8.

²⁶ Tuori and Tuori, *supra* n. 2, page 113.

requires Member States to submit medium-term budgetary strategies in their stability and convergence programmes in order to enable the European Council and the Council to take the relevant policy advice.²⁷ The Commission plays an important role in this cycle, because it undertakes yearly analyses of Member States' economic policies and provides several documents within this cycle, such as recommendations and an Annual Growth Survey.²⁸

In 2013, the European budgetary framework was further reformed by the so-called 'Two Pack' (two regulations).²⁹ It built on the Six Pack by introducing additional surveillance and monitoring procedures for Eurozone Member States.³⁰ It also completed the European Semester by enabling the Council and the Commission to examine Member States' budgets before their approval by national parliaments.³¹

Other major legal reforms since the crisis are the following. In 2012, a European Stability Mechanism was set up, functioning as a permanent financial rescue mechanism that can provide financial assistance to Member States. Since 2012, a banking union has been gradually developing.³² Since these developments do not directly relate to the functioning of the European Fiscal Board, they will not be elaborated upon any further.

ii. Fiscal Compact and national fiscal councils

In addition to these EU measures, twenty-five Member States signed the Fiscal Compact, an intergovernmental treaty that entered into force on 1 January 2013.³³ This Treaty was supplemented by a non-binding Communication of the Commission containing Common

²⁷ Ruffert, *supra* n. 4, page 1800, 'How effective and legitimate is the European Semester? Increasing the role of the European Parliament', Directorate-General for Internal Policies, Policy Department A: Economic and Scientific Policy, Economic and Monetary Affairs, Briefing Paper, August 2011, page 7-8 and <http://www.consilium.europa.eu/en/policies/european-semester/>.

²⁸ http://ec.europa.eu/europe2020/making-it-happen/index_en.htm.

²⁹ Regulation (EU) No 472/2013 of the European Parliament and of the Council of 21 May 2013 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 and Regulation (EU) No 473/2013 of the European Parliament and of the Council of 21 May 2013 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.

³⁰ Andrieu, Bludorn, Eyraud, Kinda, Brooks, Schwartz, Weber, *supra* n. 23, page 7 and Verdun, *supra* n. 1, page 229.

³¹ S. De la Parra, 'The two pack on economic governance: an initial analysis', 3 *ETUI* (2013), page 5.

³² On the ESM: Treaty Establishing the European Stability Mechanism. See A. Merino, 'Legal developments in the Economic and Monetary Union during the debt crisis: the mechanisms of financial assistance', 49 *Common Market Law Review* (2012) pages 1621 and F. Amtenbrink, 'Legal Developments', 51 *Journal of Common Market Studies* (2013). On the banking union, see 'A Banking Union for the Euro Area', *IMF Staff Discussion Note* February 13, 2013.

³³ The Treaty on Stability, Coordination and Governance in the Economic and Monetary Union.

Principles on national fiscal correction mechanisms.³⁴ Article 3 Fiscal Compact obliges contracting Member States to implement certain budgetary rules in their national law. These rules are a balanced budget rule,³⁵ a so-called fiscal correction mechanism³⁶ and an obligation to have an independent institution at the national level monitoring compliance with European budgetary rules.³⁷ These independent institutions, also known as fiscal councils, are not only mentioned in the Fiscal Compact, but also in Principle 7 of the Commission's Common Principles and in the previously mentioned legislative reforms – Article 6(1)(b) Directive 2011/85/EU of the Six-Pack and Article 2(1)(a), Article 4(4) and Article 5 Regulation 473/2013 of the Two Pack.³⁸ During the last few years, national fiscal councils have been set up in Member States throughout the EU.³⁹

Such an obligation to set up national fiscal councils is meant to increase national ownership of the budgetary rules and to shift the responsibility for the monitoring of fiscal rules from the European to the national level.⁴⁰ Thus, this obligation aims to decentralise the monitoring of budgetary rules.⁴¹

Over time, these national fiscal councils started to unite in different types of networks, resulting in a diverse landscape of networks of fiscal councils at the European as well as the international level. In 2013, the national fiscal councils within the EU started to have informal meetings together in order to discuss common problems. These informal meetings led to a formal establishment of a Network of EU Independent Fiscal Institutions (hereafter: the Network) on 11 September 2015, uniting fiscal councils from 23 Member States.⁴² The Network's Chair and Deputy have the responsibility to represent the common interests of the

³⁴ Communication from the Commission Common Principles on national fiscal correction mechanisms, COM (2012) 342 final.

³⁵ Article 3(1)(a)-(d) Fiscal Compact.

³⁶ Such a correction mechanism entails that when the government deficit reaches a certain level, an obligation automatically arises for the Government to implement measures to correct this deficit. Article 3(1)(e) Fiscal Compact.

³⁷ Article 3(2) Fiscal Compact and further specified in Principle 7 of the Commission's Common Principles on national fiscal correction mechanisms, COM (2012) 342 final.

³⁸ See also Tuori and Tuori, *supra* n. 2, page 212.

³⁹ See database by European Commission on the national fiscal councils in Europe and their main characteristics, to be found via

http://ec.europa.eu/economy_finance/db_indicators/fiscal_governance/independent_institutions/index_en.htm.

⁴⁰ A Fiscal Compact for a stronger Economic and Monetary Union, ECB Monthly Bulletin May 2012, Page 79 and 88 and ECB Monthly Bulletin June 2014, Box 8, page 96, Report on the review of the economic governance framework: stocktaking and challenges, 2014/2015 (INI), Committee on Economic and Monetary Affairs, Rapporteur Pervenche Berès, 17 June 2015, paragraph 14, Yiangou, O'Keeffe and Glöckler, *supra* n. 21, page 38-39.

⁴¹ Pisani-Ferry, *supra* n. 2, page 22.

⁴² <http://www.euifis.eu/eng/fiscal/108/about-us>.

members of the Network to external stakeholders.⁴³ According to Ódor, Deputy of the Network, the decision to formally establish this Network is partly a reaction to the Five Presidents' Report in June 2015, in which the intention was pronounced to have the Board 'coordinate' the national fiscal councils. Therefore, as Ódor stated, by creating a more formal network, the national fiscal councils tried to guard their independence from the European institutions. Moreover, the Commission has established an informal EU Network of Independent Fiscal Institutions (EUNIFI), that on average meets twice a year to share best practices across the EU.⁴⁴ Within the EUNIFI, the Directorate C4 (Fiscal Governance) of the Directorate-General Economic and Financial Affairs of the Commission has the role of secretariat.⁴⁵ Another network in which national fiscal councils operate is the OECD Network of Parliamentary Budget Officials and Independent Fiscal Institutions (PBO), in which not only fiscal councils, but also staff from in-house parliamentary budget research units and from parliamentary budget or finance committees take part.⁴⁶ The existence of all these networks gives rise to the question how the European Fiscal Board's task to cooperate with the national fiscal councils will relate to these already existing networks.

The preceding shows that budgets in the EU are monitored at the European as well as the national level. What is interesting about the European Fiscal Board is that its role will have an impact on both of these 'tracks'. On the one hand, it will provide advice to the Commission, acting at the European level, and on the other hand, it will cooperate with the fiscal councils, who act on the national level. When analysing the Board's objectives and how the Board fits these objectives in the second chapter, the existence of these two separate levels and their influence on each other will be taken into account.

After this outline of the background against which the European Fiscal Board is established, the most important characteristics of the Board are considered. What kind of body do we have now? Subsequently, the process of its coming into being will be examined. Both these factors are crucial in order to be able to understand the Board and to assess whether the Board's nature and legal set-up fit its objectives.

⁴³ Agreement of EU Independent Fiscal Institutions, 11 September 2015, page 1.

⁴⁴ First meeting on 27 November 2013 in Brussels, organised by the Commission's Directorate of Fiscal Policy of the Directorate General of Economic Affairs,

<http://www.pbo.gr/Activities/tabid/1086/ArtMID/2985/ArticleID/84/language/en-GB/Default.aspx>. See also A. Mijs, 'The Unsustainability of Independent Fiscal Institutions', Clingendael Policy Brief, April 2016, pages 6-7.

⁴⁵ Mijs, *supra* n. 44, page 7.

⁴⁶ <http://www.oecd.org/gov/budgeting/oecdnetworkofparliamentarybudgetofficialspbo.htm>.

B. The European Fiscal Board's composition, mandate, competences, independence and relation to European and national institutions

Introduction

The most important features of the European Fiscal Board are set out in the document that formally established it: the Commission Decision of 21 October 2015 (hereafter: the Decision).⁴⁷ Some details concerning the appointment and selection of its members are set out in an additional document. This is an Announcement containing a call for expressions of interest for the selection of the members of the European Fiscal Board (hereafter: the Announcement).⁴⁸ Announcements are not listed under the legal acts of the Union in Article 288 TEU. Therefore, the legal value of this document is not immediately clear. In principle, the document itself cannot be considered a binding document, although the document can possibly bind the Commission internally via the principle of legal certainty.

In succession, the focus is on the Board's composition, mandate and tasks, competences, independence and relation to other institutions, because these features determine the Board's position within the EU economic framework.

i. Composition

The European Fiscal Board will be an independent advisory body composed of a Chair and four members.⁴⁹ The Chair and the members shall be renowned international experts in the fields of macroeconomics and public finance and will be appointed on the basis of merit.⁵⁰ On 10 July 2016, no appointment has yet been made public.

The appointment procedures is as follows. The Chair and one member are appointed by the Commission upon proposal of its President, after consultation with the Vice-President for the Euro and Social Dialogue and the Commissioner for Economic and Financial Affairs, Taxation and Customs. The other three members are also appointed by the Commission upon proposal of the President, after consultation with the national fiscal councils, the European

⁴⁷ Commission Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board.

⁴⁸ Call for expressions of interest for the selection of the members of the European Fiscal Board, 2016/C 140/04.

⁴⁹ Article 3(1), Commission Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board.

⁵⁰ Article 3(3), Commission Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board.

Central Bank and the Eurogroup Working Group.⁵¹ The Decision further determines that ‘members’ of the Board shall be appointed for a period of three years, renewable once.⁵² Since the rest of the Decision speaks of the Chair and the four members separately, a strict reading of this provision would imply that the appointment period only applies to the four members and not to the Chair. Since there is no other provision devoted to the appointment period of the Chair, that would mean that there is no appointment period determined for the Chair and that it is unclear whether the Chair’s appointment is renewable. It is unlikely that this is intended. Also considering the further similarities in appointment between the Chair and the other members, it seems reasonable to apply the same terms to the Chair.

According to the Call for expressions of interest for the selection of the members of the European Fiscal Board, it is expected that the Chair will dedicate around twenty full days per year and the Members around ten full days per year to their respective responsibilities.⁵³ The Chair and the members will be remunerated by the Commission as so-called Special Advisors and their travel and subsistence expenses will be reimbursed by the Commission in accordance with the provisions in force within the Commission.⁵⁴ Concerning the status and remuneration of Special Advisors, the Decision refers to Articles 5, 123 and 124 of the Conditions of Employment of Other Servants of the Commission.⁵⁵ Article 5 of the Conditions of Employment of Other Servants of the European Economic Community states that a special adviser is a person who is engaged to assist one of the institutions of the Union, either regularly or for a specified period, and who is paid from the total appropriations for the purpose under the section of the budget relating to the institutions in which he serves.⁵⁶ According to Article 112 of these Conditions of Employment, the remuneration of special advisers shall be determined by direct agreement between the adviser and the authority. In addition, the Announcement specifies that the salary will be on a per diem basis at an AD 15 basic salary for the Chair and an AD 14 basic salary for the members.

⁵¹ Article 3(2), Commission Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board.

⁵² Article 3(4), Commission Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board.

⁵³ Call for expressions of interest for the selection of the members of the European Fiscal Board, 2016/C 140/04, C140/6 (page 2).

⁵⁴ Article 3(5)-(6), Commission Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board.

⁵⁵ Article 3(5), Commission Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board.

⁵⁶ Annex, Article 5 of Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, last corrected on 29 April 2015.

However, Article 112 of the Conditions of Employment also states that the contract of a special adviser shall be for a term not exceeding two years, although renewable.⁵⁷ This seems to clash with the Decision that specified, as stated above, that members are appointed for a period of three years.⁵⁸ When asked about this apparent conflict, a member of the Secretariat of the Board stated the following over e-mail: “The legal framework of the EFB and its Secretariat is indeed set by the Commission Decision of 21 October 2015, and the reference you cite from the Staff Regulations of Officials and the Conditions of Employment of Other Servants is correct. The Decision specifies the term of the mandate of the Board as three years, therefore the Board members will be chosen for three years. We can't speculate about the future contractual arrangements between the Members of the Board and the Commission, or about the detail of the College decision that will eventually approve the nominations of the Board Members. This is not under the purview of the Secretariat of the Board.”⁵⁹ This seems to mean that it is not yet clear how these conflicting provisions exactly relate to each other, although members will in principle be chosen for three years.

The Board is supported by a Secretariat, which is attached to the Secretariat-General of the Commission for administrative purposes.⁶⁰ A member of the Secretariat indicated over e-mail that the Secretariat currently consists of five people working fulltime and that, at this stage, there are no plans to modify the composition of the Secretariat.⁶¹ The Secretariat will assist in the decision-making process of the Board, provide analytical, administrative and logistical support and ensure cooperation with the national fiscal councils as necessary for supporting the Board's mission and tasks.⁶² Considering that members are expected to work only ten or twenty working days a year, it can be wondered whether the appointment of a five-people team working fulltime means that the Secretariat will not have enough work to do or, conversely, that they will be expected to do most of the work in practice.

⁵⁷ Annex, Article 112 of Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, last corrected on 29 April 2015.

⁵⁸ Article 3(4), Commission Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board.

⁵⁹ Stated by Alessandro Cugnasca from the Secretariat of the European Fiscal Board over e-mail on 7 July 2016.

⁶⁰ Article 3(7), Commission Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board.

⁶¹ As indicated by Alessandro Cugnasca from the Secretariat of the European Fiscal Board over e-mail on 23 June 2016.

⁶² Article 3(7)(a), (b) and (c), Commission Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board.

As determined in the Amendment, the Head of the Secretariat will be appointed for three years by the Commission, in consultation with the Chair of the Board if the Chair is already appointed. This appointment is renewable once. The Head of Secretariat will also be responsible for preparing the setting up of the Board.⁶³ On 10 July 2016, no public mention was yet made of the appointment of a Head of Secretariat.

Finally, the Commission's Call for expressions of interest also explicates specific eligibility criteria for the members, which entail that candidates must have a University degree, at least fifteen years of post-graduate experience, of which at least ten years in domains relevant to macroeconomic policies.⁶⁴

ii. Mandate and tasks

The European Fiscal Board's mission, according to the Decision, is to contribute in an advisory capacity to the exercise of the Commission's functions in the multilateral fiscal surveillance as set out in Articles 121, 126 and 136 TFEU as far as the euro area is concerned, without prejudice to the Treaty-based competences of the Commission.⁶⁵ In order to fulfil the mission as specified above, the Decision further specifies four advisory tasks for the European Fiscal Board. These are explained alternately.

a. Evaluation of the implementation of the EU fiscal framework

The Board's first task is to provide the Commission with 'an evaluation of the implementation of the Union fiscal framework, in particular regarding the horizontal consistency of the decisions and implementation of budgetary surveillance, cases of particularly serious non-compliance with the rules, and the appropriateness of the actual fiscal stance at euro area and national level.'⁶⁶ Thus, the Board needs to provide an evaluation in which several factors are to be taken into account. No further explanation of these factors is given. The Decision further

⁶³ Article 3(8) and (9), Commission Decision (EU) 2016/221 of 12 February 2016 amending Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board.

⁶⁴ Call for expressions of interest for the selection of the members of the European Fiscal Board, 2016/C 140/04, C140/6 and C140/7 (pages 2-3).

⁶⁵ Recital 3 and Article 2(1), Commission Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board.

⁶⁶ Article 2(2)(a), Commission Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board.

adds that, in this evaluation, it will also be possible for the Board to make suggestions for the future evolution of the EU fiscal framework.⁶⁷

The Decision does not determine when and how often the Board has to issue such an evaluation. It would make sense for the Board to issue their advice on moments where their evaluations feed into the decisions taken by the Commission in the context of the European Semester, as was proposed in the Five Presidents' Report.⁶⁸

The Decision specifies the 'appropriateness of the actual fiscal stance at euro area and national level' as one of the factors for the evaluation, whilst the second task (see below at (b)) completely focuses on the concept of the fiscal stance at euro area and national level. The concept of the fiscal stance will be further explained at (b) and the relation between the first and the second task will be further considered at (c).

b. Advice on appropriate fiscal stance

The Board's second task is to advise the Commission on the prospective fiscal stance appropriate for the euro area as a whole and on appropriate national fiscal stances, as long as these national fiscal stances are consistent with the advice on the euro area fiscal stance.⁶⁹ This advice should be based on an economic judgment (although it is not further explained what that means) and should be within the rules of the Stability and Growth Pact. Moreover, when the Board identifies 'risks jeopardising the proper functioning of the Economic and Monetary Union', it shall include in its advice a specific consideration of policy options available under the Stability and Growth Pact.⁷⁰ There is no definition given of such risks nor is it clarified what kind of policy options are intended here. Moreover, the Decision does not determine how often or at what specific moments the Board has to issue such an advice. Again, it is logical for the Board to issue their advice on moments where the opinions feed into the decisions taken by the Commission in the context of the European Semester.⁷¹

A national fiscal stance is the government's underlying net position in applying fiscal policy and can either be balanced, in deficit or in surplus, depending on the levels of the

⁶⁷ Article 2(2)(a), Commission Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board.

⁶⁸ As proposed in Juncker, *supra* n. 9, page 20.

⁶⁹ Article 2(2)(b), Commission Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board.

⁷⁰ Article 2(2)(b), Commission Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board.

⁷¹ As proposed in Juncker, *supra* n. 9, page 20.

government's tax revenues and its expenditures. The aggregate euro area fiscal stance is formed by the combination of the national stances of all EU Member States. Thus, calculating the aggregate fiscal stance of the euro area gives the opportunity to examine the fiscal situation of the euro area as a whole. Moreover, formulating an 'appropriate' euro area fiscal stance allows for a normative judgment on how the fiscal position of the Member States as a whole should be and gives the opportunity to 'translate' such a euro area fiscal stance into appropriate national fiscal stances. By comparing the different national fiscal stances with an 'appropriate' euro area fiscal stance, national fiscal policies can, in theory, be coordinated more by 'fiscal fine-tuning', by directing countries to either bring down their debt or to use their room for manoeuvre by encouraging domestic demand, for example by means of investment.⁷²

However, it should be emphasised that the calculations of such a fiscal stance and of the division of a euro area fiscal stance into national fiscal stances are complex economic issues that are far from straightforward. There is no definition yet as to how such an aggregate fiscal stance and corresponding national fiscal stances would be calculated or as to what the consequence of an appropriate euro area fiscal stance would be for the different national stances.⁷³ Under the Stability and Growth Pact, each Member State is responsible for its own national fiscal policies.⁷⁴ The idea of an aggregate euro area fiscal stance is not present in this framework.⁷⁵ The addition in the Decision that the advice on the prospective euro area fiscal stance should be based 'on an economic judgment' is not very helpful in this respect.⁷⁶

Formulating appropriate national and euro area fiscal stances can even be said to be fundamentally different from the normative framework of the Stability and Growth Pact. The norms in the Stability and Growth Pact contain boundaries that Member States may not cross, whilst the fiscal stance concept has the potential of being more of a prescriptive nature, obliging Member States to undertake certain positive action. This is currently not possible

⁷² See for example Recommendation (4) in Recommendation for a Council Recommendation on the implementation of the broad guidelines for the economic policies of the Member States whose currency is the euro, COM(2015) 251 final, page 3.

⁷³ Z. Darvas and A. Leandro, 'The Limitations of Policy Coordination in the Euro Area under the European Semester', 19 *Breugel Policy Contribution* (2015), page 3.

⁷⁴ M. Buti, S. Eijffinger and D. Franco, 'Revisiting EMU's Stability Pact: A Pragmatic Way Forward', 19 *Oxford Review of Economic Policy* (2003), page 103.

⁷⁵ K. Albrecht, 'An economic analysis of the fiscal policy framework in the EMU', 1 *UCL Journal of Law and Jurisprudence* (2012), page 88.

⁷⁶ Article 2(2)(b), Commission Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board.

under the Stability and Growth Pact.⁷⁷ Thus, it should be emphasised that the formulation of an appropriate fiscal stance carries political considerations with it and is not an uncontroversial topic in the public debate.⁷⁸

Although some attention has been paid to the aggregate fiscal stance in the recommendations made in the European Semester cycles since 2012, this was always without defining how the optimal fiscal stance should be determined or which fiscal stance actually is appropriate.⁷⁹ Therefore, it is currently unclear what kind of notion of an ‘appropriate fiscal stance’ the European Fiscal Board will have to advise on.

c. The concept of the fiscal stance in the first and the second task

The concept of the fiscal stance is mentioned in both the first and the second task. The evaluation in the first task has to be regarding ‘the appropriateness of the actual fiscal stance at euro area and national level’, whilst the second task determines that the Board should advise on the ‘prospective fiscal stance appropriate for the euro area’ and on ‘the appropriate national fiscal stances that are consistent with its advice on the aggregate fiscal stance of the euro area’.⁸⁰ There are several differences between the formulations of the two tasks that raise some questions.

Since the tasks use different concepts, those of ‘evaluation’ and ‘advice’, it can be asked whether and to what extent these concepts differ from each other. Furthermore, in the first task, the Board is to evaluate the appropriateness of the *actual* fiscal stance, whilst in the second task, the advice is to concern the appropriateness of the *prospective* fiscal stance. However, the second task only mentions the qualification ‘prospective’ for the euro area fiscal stance in the first sentence and not for the appropriate national fiscal stances in the second sentence. Therefore, it is not immediately clear whether these ‘appropriate national fiscal stances’ are to be prospective, actual, or both. The second sentence also states that these appropriate national fiscal stances are to be consistent with the Board’s ‘advice on the aggregate fiscal stance of the euro area within the rules of the Stability and Growth Pact’. Again, it is not at once clear to which advice this provision refers. Since the first task already

⁷⁷ Darvas and Leandro, *supra* n. 73, page 16.

⁷⁸ The literature is full of conflicting views on the value of this concept. For a positive view, see for example Darvas and Leandro, *supra* n. 73, page 16. For a negative view, see for example ‘Completing Economic and Monetary Union 3: Fiscal Union’, *Centrum für Europäische Politik Policy Brief* No. 2015-22, page 3.

⁷⁹ Darvas and Leandro, *supra* n. 73, pages 10-11.

⁸⁰ Article 2(2)(a) and (b), Commission Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board.

determines that the appropriate actual fiscal stance of both euro area and national level are to be evaluated, it seems more logical to read the ‘advice on the aggregate fiscal stance of the euro area’ as referring to the prospective euro area fiscal stance mentioned in the first sentence of the second task’s provision, although the qualification of ‘aggregate’ and the lack of the mention ‘prospective’ seem to suggest that it encompasses a different concept.

Another difference in the formulation of the first two tasks is that in the first task, the Board ‘shall’ provide an evaluation of the appropriateness of the actual fiscal stance at euro area *and* national level, whilst the second task entails that the Board ‘shall advise’ on the euro area prospective fiscal stance, whilst it ‘may advise’ on the appropriate national fiscal stances that are consistent with its advice on the aggregate fiscal stance of the euro area within the rules of the Stability and Growth Pact.⁸¹ Therefore, the first task seems to oblige the Board to evaluate both the euro area and national fiscal stances, whilst the second task only obliges the Board to advise on the prospective fiscal stance at euro level, leaving it up to the Board’s discretion whether they advise on the (prospective?) national fiscal stances as well. The question can be asked whether this distinction is made deliberately or that such a strict distinction should not be made.

d. Cooperation with the national fiscal councils

As a third task, the European Fiscal Board shall cooperate with the national fiscal councils. This cooperation shall in particular be aimed at exchanging best practices and facilitating common understanding on matters related to the Union fiscal framework.⁸² As stated above, the Secretariat of the Board has explicitly been made responsible for ensuring the cooperation with the national fiscal councils as is necessary for the Board in order to fulfil this third task.⁸³

In a Communication published together with the Decision, the Commission states about this cooperation that it will be undertaken ‘in direct connection to the Board’s tasks and in mutual respect of the prerogatives and legal grounding of the national fiscal councils and the European Fiscal Board’.⁸⁴

⁸¹ Article 2(2)(a)-(b), Commission Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board.

⁸² Article 2(2)(c), Commission Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board.

⁸³ Article 3(7)(c), Commission Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board.

⁸⁴ Communication from the Commission on Steps towards Completing Economic and Monetary Union, COM(2015) 600 final, page 11.

No plans have yet been made public as to the practical arrangements of this cooperation and as to the relations with the already existing networks of national fiscal councils. Ódor, Deputy of the Network, indicated that, after the publication of the Decision, the Network had been in discussion with the Commission about the involvement of the Network, although this mainly related to the consultation for the appointment of Board members and not really to the cooperation in general. Both Ódor and Rother, Chief Economic Analyst at the Commission, remarked that the successfulness of this cooperation in practice will very much depend on the members of the Board and their assertiveness.

e. Ad-hoc advice

The fourth task of the European Fiscal Board is to provide ad-hoc advice on the request of the Commission's President.⁸⁵ No further explanation on this task is given in the Decision.

The exercise of the Board's tasks can only be meaningfully assessed in light of the Board's legal competences, which will be discussed now.

iii. *Competences*

The Decision provides the European Fiscal Board with advisory tasks only and not with any powers to make binding decisions nor to request information. The Decision does not contain a so-called 'comply-or-explain principle' for the Commission concerning the opinions of the Board. Furthermore, the Decision does not contain any provision stating explicitly that the Commission has to take the advices into account.

Concerning the publicity of the Board, the Decision only determines that the Board shall publish an annual report of its activities, including summaries of its advice and evaluations.⁸⁶ Since nothing else is stated about the publicity of the Board's opinions, a strict reading of the Decision implies that there is no obligation for the Board to make its opinions public *nor* a prohibition to publish its opinions. Given that the Board has to establish its Rules of Procedure,⁸⁷ no definitive statement can yet be made concerning the publicity of the Board's opinions. This will depend on whether or not the Board establishes provisions on this in their Rules of Procedure or starts to publish its opinions in practice.

⁸⁵ Article 2(2)(d), Commission Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board.

⁸⁶ Article 6, Commission Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board.

⁸⁷ Article 5(2), Commission Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board.

The question can be raised what the legal effect of the Board's assessments will be. Can a Member State rely on the assessments if the Commission goes against them? Given the absence of a comply-or-explain principle for the Commission and of any other binding power for the Board, it seems likely that it will not be possible for other parties to rely on the Board's assessments. Evidently, if the Board does not end up publishing its opinions, it becomes practically impossible for Member States to rely on the content of these opinions.

No explicit provision on the right of access to information can be found in the Decision. The Decision does determine that a memorandum of understanding shall be concluded between the Board and the relevant Commission services, laying down 'practical modalities regarding the scope and means of cooperation, including in particular the access to relevant information'.⁸⁸ More generally, there is a right of access to Commission documents for all natural and legal persons in the EU according to Article 2(1) Regulation 1049/2001.⁸⁹ Yet, it should be noted that this Regulation contains an absolute exception to this right where the protection of the public interest as regards the financial, monetary or economic policy of the Community or a Member State would be undermined.⁹⁰

iv. Independence

The Decision states that the members of the Board shall act independently and shall neither seek nor take instructions from other institutions or bodies. The members of the Board's Secretariat shall only take instructions from the Board.⁹¹ Moreover, members have to disclose any potential conflict of interest with respect to a particular assessment or opinion to the Chair, who may decide that the member concerned shall not participate in the preparation and adoption of that specific assessment or opinion.⁹²

The Decision does not provide the Board with its own budget. The Chair and members are remunerated as Commission employees and other expenses are also reimbursed by the

⁸⁸ Article 5(4), Commission Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board.

⁸⁹ Article 2(1), Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

⁹⁰ Article 4(1)(a), Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

⁹¹ Article 4(1), Commission Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board.

⁹² Article 4(2), Commission Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board.

Commission ‘within the limits of the available appropriations allocated under the annual procedure for the allocation of resources’.⁹³

Naturally, other factors also have impact on the Board’s independence. The Board’s independence is discussed more elaborately in Chapter 2.

v. *Relation to other European and national institutions*

The European Fiscal Board is connected to the Commission in several ways. Obviously, its opinions and assessments are provided to the Commission. The Secretariat is administratively attached to the Commission’s Secretariat-General.⁹⁴ Its Chair and members are appointed by the Commission. As explained above, the Board will cooperate with the national fiscal councils, particularly exchanging best practices and facilitating common understanding.

The Decision does not provide for any relation of the Board with the European Parliament, nor does it provide for any other relation with a European institution such as the Council and the ECB and with national institutions. However, the Announcement does specify that the Chair of the Board is responsible to ‘represent the Board in contacts with the Commission and other EU, national and international bodies and organisations’.⁹⁵ This seems to imply that the Board is expected not just to interact with the Commission. Moreover, the Board’s meetings are not open to the public.⁹⁶

The current nature and legal set-up of the European Fiscal Board has now been depicted. However, its current form can only be fully understood by also looking at what has led up to its establishment. This process of establishment is discussed only now, so that, with the understanding of the nature and scope of the ‘end product’, the significance of the changes throughout the evolutionary process can be comprehended and put into perspective. It is particularly relevant to focus on these changes, since the Board’s starting point in the Five Presidents’ Report had a different and broader scope compared to the Board as established in the Decision. Therefore, in order to develop a real understanding of the Board, its future

⁹³ Article 3(5) and (6), Commission Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board.

⁹⁴ Article 3(7), Commission Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board.

⁹⁵ As specified in Call for expressions of interest for the selection of the members of the European Fiscal Board, 2016/C 140/04, C140/6 (page 2).

⁹⁶ Article 5(3), Commission Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board.

potential and its relevance for the developments in the EMU, it is necessary to understand the Board in its context and its process of creation.

C. The road to the European Fiscal Board

The evolutionary process of the European Fiscal Board is discussed chronologically. This way, it is possible to systematically grasp which changes have taken place over time and what factors have made the Board as it is now.

i. 2010: The first calls for a European fiscal council

From 2010 on, proposals to set up a fiscal council at the European level emerged from different sides. Authors such as Von Hagen, Calmfors, Burda and Gerlach called for an independent European institution that would depoliticise the monitoring of fiscal developments in the Eurozone.⁹⁷ Similarly, the ECB repeatedly called for such a European fiscal council to monitor the enforcement of EU budgetary rules.⁹⁸ Such a council would have as an advantage that it could focus on the sustainability of public finances as its only mission, without having to take into account policies in other spheres of European integration, as the Commission has to do.⁹⁹ Grant aptly described the risk that the increasing politicisation of the Commission carries. The fact that it is not at once clear whether the Commission's choice to give certain Member States another two years to lower its excessive deficit is a result of objective economic analysis or a reflection of a shifting political climate gives people an excuse to criticise the Commission.¹⁰⁰

⁹⁷ J. Von Hagen, 'The Sustainability of Public Finances and Fiscal Policy Coordination in the EMU', 412 *CASE Working Paper* (2010), page 32, L. Calmfors, 'Fiscal Policy Coordination in Europe', *European Parliament Policy Department A*, PE 464.450, page 7 and 9 and Burda and Gerlach, *supra* n. 1.

⁹⁸ ECB Eurosystem 'Reinforcing Economic Governance in the Euro Area', 10 June 2010, page 1 and 7, ECB Economic Bulletin, Issue 7/2015, Box 5, page 28, Speech by Jean-Claude Trichet, President of the ECB, 30 November 2010, <https://www.ecb.europa.eu/press/key/date/2010/html/sp101130.en.html>.

⁹⁹ Von Hagen, *supra* n. 97, page 32.

¹⁰⁰ C. Grant, 'What is wrong with the European Commission?', *Centre for European Reform* (27 June 2013), <http://www.cer.org.uk/insights/what-wrong-european-commission>.

ii. *End of 2011: the establishment of the position of Chief Economic Analyst in the European Commission*

In response to such calls for more independent monitoring of the budgetary rules, the new position of an independent Chief Economic Analyst was constituted within the Commission in late 2011.¹⁰¹ The function of this Chief Economic Analyst is to verify forthcoming Commission decisions and their analytical base in the field of coordination and surveillance of the economic and budgetary policies of the Member States, in particular of the Euro area. This verification takes place particularly with regard to the uniform application of the rules, the follow-up methodology and consistency with precedents.¹⁰²

The Chief Economic Analyst acts independently from everyone within the Commission.¹⁰³ Thus, the establishment of this position tries to prevent political battles within the College of Commissioners in this field.¹⁰⁴ According to the current Chief Economic Analyst, Rother, the idea behind this position was that the recent legal reforms of the Stability and Growth Pact enlarged the powers of the Commission in such a way that some stakeholders considered it necessary to control the Commission more.¹⁰⁵ Eventually, a position was set up to exercise this control internally, but independent from the Commission.¹⁰⁶

iii. *2011 – 2015: Lack of visibility of the Chief Economic Analyst and repeated calls for a European fiscal council*

Rother stated that, as Chief Economic Analyst, he was only able to report internally and that this lack of visibility limited the usefulness of the position in the governance framework. In June 2015, a European Parliament Report on the review of the economic governance framework, also known as the Berès Report, was published that recognised the need for independent analysis of Member States' economic perspectives at the EU level and urged to further develop the position of Chief Economic Analyst, by making its analysis public and by making it serve as a basis for a well-informed debate and decision-making in the Commission,

¹⁰¹ Decision of the President of the European Commission of 17 April 2015 on the Chief Economist Analyst of the Commission, C(2015) 2665 and ECB Economic Bulletin, Issue 7/2015, Box 5, page 30.

¹⁰² Article 1(1), Decision of the President of the European Commission of 17 April 2015 on the Chief Economist Analyst of the Commission, C(2015) 2665.

¹⁰³ Article 1(4), Decision of the President of the European Commission of 17 April 2015 on the Chief Economist Analyst of the Commission, C(2015) 2665.

¹⁰⁴ Yiangou, O'Keeffe and Glöckler, *supra* n. 21, page 38.

¹⁰⁵ That the Commission's position has been strengthened through these recent reforms is, for example, indicated in Tuori and Tuori, *supra* n. 2, pages 192 and 221 and De Witte, *supra* n. 24, page 440.

¹⁰⁶ See also ECB Economic Bulletin, Issue 7/2015, Box 5, page 30.

the Council and the Parliament.¹⁰⁷ Around the same time, both the IMF and the Bundesbank underlined how a European fiscal council could ensure more objective monitoring of the budgetary rules.¹⁰⁸

iv. *June 2015: The Five Presidents Report*

In June 2015, the Five Presidents' Report was published, containing a proposal for the creation of a European Fiscal Board. This constituted the first public mention of the Board. The proposal contains a few substantial differences compared to the Decision that ultimately established the Board.

As stated in this non-binding Report, the European Fiscal Board would be an advisory entity that would 'coordinate and complement' the national fiscal councils and that would provide public and independent assessments at European level of how budgets perform against the economic objectives and recommendations from the EU fiscal governance framework.¹⁰⁹ Its advice should feed into the decisions taken by the Commission in the context of the European Semester.¹¹⁰ For example, the Commission's Annual Growth Survey would have to draw on the views of the European Fiscal Board.¹¹¹ Furthermore, the Report states that the composition of the Board should be pluralistic and drawn from a wide range of expertise.¹¹²

Moreover, the Report states five 'Guiding Principles' that the mandate of the European Fiscal Board should rest on. The first principle establishes that the Board should *coordinate* the network of national fiscal councils and that it should conform to the same standard of independence. The second principle states that it should advise and not implement policy, and that the Commission should be able to deviate from the Board's views provided that it *explains* its reasons for this. Thus, this principle proposes a comply-or-explain principle. The third principle states that the Board should form an economic, rather than a legal, judgment on the appropriate fiscal stances and that it should be based on the EU fiscal rules. According to the fourth principle, the Board should be able to issue opinions when it

¹⁰⁷ Report on the review of the economic governance framework: stocktaking and challenges, 2014/2015 (INI), Committee on Economic and Monetary Affairs, Rapporteur Pervenche Berès, 17 June 2015, paragraph 40.

¹⁰⁸ 2015 Article IV Consultation with the Euro Area Concluding Statement of IMF Mission', *IMF* (18 June 2015), <http://www.imf.org/external/np/ms/2015/061815.htm>, and 'Approaches to strengthening the regulatory framework of European monetary union', *Monthly Report Bundesbank* (March 2015), pages 29-30.

¹⁰⁹ Juncker, *supra* n. 9, page 14.

¹¹⁰ Juncker, *supra* n. 9, page 20.

¹¹¹ Juncker, *supra* n. 9, page 22.

¹¹² Juncker, *supra* n. 9, page 14.

considers it necessary. The fifth and last principle establishes that the Board should provide an *ex post* evaluation of how the governance framework was implemented.¹¹³

The Report laid out three main goals for the European Fiscal Board: better compliance with the common fiscal rules, a more informed public debate and a stronger coordination of national fiscal policies.¹¹⁴ The Report only mentions these goals and does not further elaborate on them.

Who were behind this proposal? The European Central Bank already expressed a strong wish in earlier public statements to have an independent fiscal agency at the European level that provides information so that the public and elected representatives are able to hold the Commission accountable for their actions.¹¹⁵ Therefore, also since it does not seem very probable that the Commission came up with the idea of an independent Board watching the Commission by itself, it is likely that the ECB has been an important driver behind this initial proposal in the Report.

v. *June 2015 – October 2015: after the Report and before the Decision*

There is no official information available about what happened in the period between the publication of the Five Presidents' Report and the publication of the Commission Decision in October. Were other institutions (unofficially) involved in this period? On the one hand, Zoppè, from the Economic Governance Support Unit of the European Parliament, has indicated that, as far as she knows, the European Parliament has not been involved after the Five Presidents' Report. On the other hand, Rother, Chief Economic Analyst at the Commission, was of the opinion that, since Parliament knew about the plan in the short run of the Board's creation through the Five Presidents' Report, there could have been an opportunity for the Parliament to get actively involved with the European Fiscal Board.

Ódor, Deputy of the Network of EU Independent Institutions, indicated that the Network had written a letter to the Commission in September 2015, in which they criticised the plan to coordinate the national fiscal councils. The reason given was that, in their opinion, a coordination by the Board would endanger the independence of the national fiscal councils,

¹¹³ Juncker, *supra* n. 9, Annex 3, page 23.

¹¹⁴ Juncker, *supra* n. 9, page 14.

¹¹⁵ ECB Eurosystem 'Reinforcing Economic Governance in the Euro Area', 10 June 2010, page 1 and 7, ECB Economic Bulletin, Issue 7/2015, Box 5, page 28, Speech by Jean-Claude Trichet, President of the ECB, 30 November 2010, <https://www.ecb.europa.eu/press/key/date/2010/html/sp101130.en.html> and Speech by Benoît Coeuré, Member of Executive Board of the ECB, 27 January 2016, <https://www.ecb.europa.eu/press/key/date/2016/html/sp160127.en.html>.

institutions that should be home-owned, independent and not connected or subordinated to any other institution. This letter has not been answered by the Commission.

vi. *October 2015 – February 2016: The Commission Decision and reactions to it*

Already four months after the publication of the Five Presidents' Report, the Commission formally established the European Fiscal Board with its Commission Decision of 21 October 2015. It is not known which departments or services within the Commission have contributed to the Decision. The Decision took effect on 1 November 2015.¹¹⁶

It has been suggested that the Commission opted for a Commission Decision instead of a co-decision procedure for reasons of efficiency.¹¹⁷ Ódor, Deputy of the Network, indicated that he had expected more consultation and involvement of other institutions in the process and that he was rather surprised with the publication of the Decision.

As is already apparent from the preceding, the Decision contains a few striking differences with regard to the competences, mandate and functioning of the Board as compared to the proposal in the Five Presidents' Report. Firstly, the task to 'coordinate' of the fiscal councils has been changed into the task to 'cooperate' with the fiscal councils.¹¹⁸ Coordination and cooperation imply different types of relations and the current outcome of cooperation seems to create a less hierarchical relationship than coordination would. Ódor, Deputy of the Network, considers it possible that the letter, mentioned above, to the Commission by the national fiscal councils in the Network might have played a role. Moreover, he pointed out that it would be difficult to find a legal basis in the Treaties for a competence to coordinate and that this could also have played a role. Rother, Chief Economic Analyst at the Commission, asserted that a major value of interaction with the national fiscal councils would be in bringing them together to talk about common problems, while it could be difficult to coordinate them tightly.

A second difference is that the Decision provides that the Board can only provide ad-hoc advice on the request of the President of the Commission, instead of when the Board *itself* considers this necessary, which the Five Presidents' Report proposed.¹¹⁹ Thirdly, the Decision does not contain a comply-or-explain principle for the Commission, whilst the Five Presidents' Report explicitly mentioned this. Fourthly, whilst the Report states that the Board should

¹¹⁶ Article 7, Commission Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board.

¹¹⁷ Mijs, *supra* n. 44, page 6.

¹¹⁸ Article 2(2)(c), Commission Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board.

¹¹⁹ Article 2(2)(d), Commission Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board.

provide public assessments, the Decision does not contain any provision on the publication of the Board's opinions.

Although the Five Presidents' Report was not a binding document in itself, the differences between the Report and the Decision raise questions as to the reasons behind these differences, and even as to the nature of this body itself. This discrepancy can likely be explained by the absence of public enthusiasm for the proposal of the Board in the Five Presidents' Report. Due to the lack of positive reactions by EU governments and parliaments and of public attention in general, it is probable that the Commission felt less obliged to set up such a watchdog for itself and, therefore, diluted the proposal. Considering the differences above, this seems to have resulted into a body that seems weaker than the one envisaged in the Five Presidents' Report.

The Decision led to critical reactions in the media.¹²⁰ Eurogroup President Dijsselbloem alleged that the Board's current set-up is not independent enough and that the Board as a whole should have been placed outside of the Commission, whilst Germany's Finance Minister Schäuble even stated that, according to him, the Board should be the ultimate decision-maker on the national budgets.¹²¹ The ECB made several comments in response to the publication of the Decision. It criticised a list of things: the degree of independence given the Board's organisational structure, the fact that it currently only has the right to publish an annual report, the lack of clarity as to how the advice of the Board will feed into the fiscal surveillance framework at the European level and the vagueness around the interplay between the Board's assessment of the application of the Stability and Growth Pact, on the one hand, and the assessment of the prospective fiscal stance, on the other hand.¹²² Furthermore, Benoît Coeuré, Member of the Executive Board of the ECB, argued in a public speech that there should be a comply-or-explain principle for the Commission and

¹²⁰ See for example <http://eulawanalysis.blogspot.nl/2015/11/further-development-of-emu-should.html>, <https://euroinsight.mni-news.com/posts/will-the-eu-s-new-independent-fiscal-board-turn-into-a-commission-committee-2217>, <https://www.euractiv.com/section/euro-finance/news/commission-defends-role-as-sole-guardian-of-fiscal-discipline/>, <http://www.reuters.com/article/us-europe-budgets-bundesbank-idUSKBN0TT2ID20151210> and <http://www.politico.eu/article/without-changing-treaties-eu-commission-tightens-economic-eurozone-screws/>.

¹²¹ <http://blogs.wsj.com/brussels/2015/11/13/not-all-on-board-with-the-european-fiscal-board/>. Schäuble's reaction is in line with Germany's earlier preference for strong independent controls on the national budgets when promoting the idea of a national constitutional debt brake in the Fiscal Compact: M.G. Schoeller, 'Providing political leadership? Three case studies on Germany's ambiguous role in the Eurozone crisis', *Journal of European Public Policy* 2016, pages 12-14 and V. Kreilinger, 'The making of a new treaty: Six rounds of political bargaining', *Policy Brief Notre Europe* 2012 no. 32, page 3.

¹²² ECB Economic Bulletin, Issue 7/2015, Box 5, pages 30-31.

that there currently might be a trade-off between the breadth of the Board's mandate and the effectiveness of its actions.¹²³

The European Parliament also expressed unfavourable reactions in response to the Commission Decision. European Parliament President Schultz is said to have sent a letter to Commission President Juncker after the publication of the Decision, in which he stated that the democratic accountability of the Board is not ensured, due to the fact that its members will be appointed without consultation of the European Parliament.¹²⁴ Furthermore, the European Parliament published a Resolution on 17 December 2015, in which it stresses that the European Fiscal Board should be accountable to Parliament and that its assessments should be public and transparent.¹²⁵ According to Zoppè, Economist at the Economic Support Governance Unit at the European Parliament, the Commission has not reacted to this statement, which was as expected.

vii. February 2016: the Amendment to the Commission Decision

On 12 February 2016, the Commission amended the Commission Decision establishing the European Fiscal Board.¹²⁶ The original Decision determined that the person in the position of Chief Economist Analyst would exercise the function of Head of Secretariat of the Board.¹²⁷ However, the Amendment replaced this specific provision and, instead, stated that the Commission shall appoint the Head of Secretariat, after having consulted the Chair of the Board.¹²⁸ The justification for this amendment is to be found in Recital 3: "For reasons of coherence and efficiency it is appropriate to separate the tasks of the Chief Economic Analyst and the Head of Secretariat of the European Fiscal Board".

Given the task of the Chief Economic Analyst to verify Commission decisions in the field of coordination and surveillance of the economic and budgetary policies of the Member

¹²³ Speech by Benoît Coeuré, Member of Executive Board of the ECB, <https://www.ecb.europa.eu/press/key/date/2016/html/sp160127.en.html>.

¹²⁴ <http://www.euractiv.com/section/euro-finance/news/schulz-in-row-with-commission-over-parliament-s-economic-oversight/>.

¹²⁵ European Parliament resolution of 17 December 2015 on completing Europe's Economic and Monetary Union (2015/2936(RSP)), paragraph 7.

¹²⁶ Commission Decision (EU) 2016/221 of 12 February 2016 amending Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board.

¹²⁷ Article 3(8), Commission Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board.

¹²⁸ Article 3(8) Commission Decision (EU) 2016/221 of 12 February 2016 amending Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board. According to Article 3(9) of the Amendment, if the Chair of the European Fiscal Board has not yet been appointed, the Commission shall directly appoint the Head of Secretariat.

States, whilst acting independently from everyone in the Commission, the question can be asked why it is inappropriate or incoherent to combine the tasks of the Chief Economic Analyst and the Head of Secretariat of the Board. Ódor, Deputy of the Network, stated that it was not clear to him why these tasks needed to be separated, also considering the fact that they could have considered this earlier on, when writing the Decision. However, an explanation he considers conceivable is that the Board itself should be free in choosing the person that will head the Secretariat, in order to create trust between the Board and the Secretariat. Nonetheless, apart from this explanation, there seems to be no other sound explanation for this Amendment. This view has also been expressed in the media.¹²⁹

viii. Post-February 2016

On 21 April 2016, the Commission published the Announcement containing a call for expressions of interest for the selection of the members of the European Fiscal Board.¹³⁰ Again, it is not known which departments or services within the Commission were responsible for writing this Announcement. The Announcement provides a tentative timeline, stating that it is envisaged to hold selection interviews in June so as to ensure that the Board is operational by September 2016.

On 19 May 2016, the European Ombudsman Emily O'Reilly sent a public letter addressed to the President of the European Commission concerning potential future transparency issues of the European Fiscal Board.¹³¹ In this letter, the European Ombudsman addresses a number of topics. Firstly, he asks whether the Commission intends to include documents relating to the Board's work in its register of documents so that citizens have an overview of the documentation to which they can request access, in light of the fundamental right of public access to documents under Article 42 of the Charter of Fundamental Rights. Further, he points out the absence of a comply-or-explain principle for the Commission in the Decision and asks whether and how such a principle can be expected to operate in practice. Moreover, he points out how limited the transparency provisions for the Board are and asserts that the Board itself should put ambitious transparency measures into place when it designs its Rules of Procedure. Drawing an analogy with the transparency regime of national fiscal

¹²⁹ <https://euroinsight.mni-news.com/posts/will-the-eu-s-new-independent-fiscal-board-turn-into-a-commission-committee-2217>, <https://euroinsight.mni-news.com/posts/commission-delays-report-on-national-fiscal-watchdogs-as-many-eu-members-lag-on-implementation-9486> and http://www.ilfoglio.it/esteri/2016/04/05/il-potente-selmayr-pensa-a-unopa-sullo-european-fiscal-board__1-v-140310-rubriche_c220.htm.

¹³⁰ Call for expressions of interest for the selection of the members of the European Fiscal Board, 2016/C 140/04.

¹³¹ The letter is to be found via <http://www.ombudsman.europa.eu/resources/otherdocument.faces/nl/67385/html.bookmark>.

councils, he speaks out his hope that the Board will publish proactively and in real time more documents than just the annual report mentioned in the Decision.

The interviewees expressed different expectations for the Board's future. Zoppè, from the Economic Governance Support Unit of the European Parliament, stated that she expected the Commission to change the Decision in such a way that the Board will have to publish its opinion and that the Board will be made accountable by the European Parliament, due to the criticism it has received on the lack of transparency and accountability. Ódor, Deputy of the Network, expects that the members themselves will decide to start publishing its opinions, but does not expect the European Parliament to become involved.

Both the current structure of the European Fiscal Board and the process of its establishment have exposed the nature and legal set-up of this Board. In the next Chapter, it will be determined what the different objectives are that the Board is supposed to achieve and, subsequently, how its nature and legal set-up fit these objectives.

Chapter 2

The alignment of the European Fiscal Board's structure with its goals

Introduction

This chapter focuses on the questions what the different objectives are that the European Fiscal Board is supposed to achieve and how its nature and legal set-up fit these objectives. First, it is examined what goals have been defined for the Board. Then, the alignment of the Board's structure and legal set-up with these goals is analysed: to what extent does the Board's structure and design seem to enable its objectives to be fulfilled?

A. The goals of the European Fiscal Board

A variety of goals have been formulated and suggested for the European Fiscal Board at different stages. When outlining these goals, a distinction is made between its official goals that flow from the Commission Decision and other goals that have been suggested explicitly or implicitly in other contexts, such as in the Five Presidents' Report.

i. Goals that can be derived from the Commission Decision

The Decision specifies as the mission of the European Fiscal Board that it shall contribute in an advisory capacity to the exercise of the Commission's functions in the multilateral fiscal surveillance as set out in Articles 121, 126 and 136 TFEU as far as the euro area is concerned.¹³² From this general mission, more specific aims can be derived. Some of these goals can be found explicitly in the Decision and others can be deduced from the Board's tasks in the Decision.

a. Contribute to a proper and consistent implementation of the Union fiscal framework

The Board's task to provide an evaluation of the implementation of the Union fiscal framework seems to imply a duty to monitor the quality of the implementation of the Union fiscal framework. Also given the fact that this evaluation should be in particular with regard to the horizontal consistency of the decisions and cases of serious non-compliance with the

¹³² Article 2(1), Commission Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board.

rules, this task can be said to eventually be supposed to contribute to a proper and consistent implementation of this framework.¹³³

b. An informed and broadened discussion within the Commission on the Union fiscal framework

Recital 5 of the Decision states that ‘the Board should also contribute to a more informed discussion within the Commission of the overall implications of budgetary policies at euro area and national level, with a view to achieving an appropriate fiscal stance for the euro area, within the rules of the Stability and Growth Pact’.¹³⁴ This constitutes an explicit aim for the European Fiscal Board. It involves not only an informed internal discussion, but also a broadening of that discussion, since it is supposed to be aimed at concepts that are not yet explicitly covered by the Stability and Growth pact: the overall implications of budgetary policies and an appropriate fiscal stance for the euro area.

The Recital explicitly refers to a more informed discussion *within* the Commission, excluding an informed debate outside of the Commission as an explicit goal for the Board. As will be considered below when discussing goals other than those from the Decision, this is in sharp contrast with the aim of a ‘more informed public debate’ as established in the Five Presidents’ Report.¹³⁵

In its Communication, published together with the Decision on the European Fiscal Board, the Commission also states that the Board should contribute to a more informed discussion of the overall implications of budgetary policies.¹³⁶ However, in that document, the qualification ‘within the Commission’ is not present. Therefore, the question can be asked why this differs from the Recital in the Decision.

c. Contribute to the expansion of the supervision of national budgets

Although the Decision does not explicitly state this as an aim, the tasks of the European Fiscal Board concerning the euro area and national fiscal stance imply that it is supposed to contribute to an expansion of the supervision of national budgets. As said before, these tasks

¹³³ Article 2(2)(a), Commission Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board.

¹³⁴ Recital 5, Commission Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board.

¹³⁵ Juncker, *supra* n. 9, page 14.

¹³⁶ Communication from the Commission on Steps towards Completing Economic and Monetary Union, COM(2015) 600 final, page 11.

go further than merely contributing to a discussion on the concept of fiscal stances. The first and second task do not merely oblige the Board to reflect on the possible scope of these concepts and to develop the thinking about how these ideas could be explained and calculated, but determine that the Board has to evaluate and advise on the *appropriateness* of these fiscal stances. The Board is supposed to give a normative judgment on how these fiscal stances should be. Thus, it expands the type of assessment of the national budgets compared to the framework in the Stability and Growth Pact.

Even though the Board's opinions in themselves are not binding and, therefore, do not expand the supervision of the Stability and Growth Pact in the strict sense, they feed into the Commission's budgetary surveillance. Moreover, the Board is able to make suggestions for the future evolution of the Union fiscal framework, enabling it to propose changes in the framework that would incorporate rules concerning the appropriate euro area and national fiscal stances.¹³⁷ Therefore, these tasks imply that the Board ultimately is to contribute to the expansion of the supervision of national budgets within EU budgetary surveillance.

d. More alignment between the national fiscal councils

The Board has the task to cooperate with the national fiscal councils and this cooperation should in particular aim at exchanging best practices and facilitating common understanding on matters related to the Union fiscal framework. This focus on the exchange of best practices and the facilitation of common understanding shows that the Board has to aim to bring these national fiscal councils together and ensure that they align with one another on issues related to their tasks within the Union fiscal framework and that they learn from each other by exchanging experiences.

e. Contribute to better compliance with the common fiscal rules

The Decision does not explicitly state that the Board's aim is to attain better compliance by Member States with the common fiscal rules. However, its task to evaluate the implementation of the Union fiscal framework, in particular with cases of serious non-compliance with the rules, clearly shows that the Board is supposed to monitor the implementation of the fiscal framework and, thereby, contribute to the improvement of Member States' compliance with the fiscal rules. Its task to provide the Commission with

¹³⁷ Article 2(2)(a), last sentence, Commission Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board.

specific policy options available when the Board identifies risks jeopardising the proper functioning of the EMU similarly implies the aim to contribute to improving compliance.

The preceding paragraphs have shown that several goals for the European Fiscal Board can be discerned on the basis of the Decision. Other goals have also been formulated as possible goals for the European Fiscal Board. In order to get a complete view of the perception of the European Fiscal Board's functions and of the divergence between some of these goals, the other possible goals for the European Fiscal Board are depicted.

ii. *Other possible goals for the European Fiscal Board*

a. The initial goals from the Five Presidents' Report

The Five Presidents' Report, mentioning the plan of a European Fiscal Board for the first time, made three different aims for the Board explicit: better compliance with the common fiscal rules, a more informed public debate and a stronger coordination of national fiscal policies.¹³⁸ As already stated above, the goal of better compliance with the common fiscal rules can be said to still be present in the Decision.

The most striking difference compared to the eventual aims derived from the Decision is the call for a *public* debate, by providing public assessments, whereas the Decision only mentions a debate within the Commission and does not specify anything about the publication of the Board's advices.¹³⁹ A goal of stronger coordination of national fiscal policies as such also cannot explicitly be derived from the Decision. Although the Board's tasks to evaluate and advise on the euro area and national fiscal stances can be said to contribute to the stronger coordination of national fiscal policies, the Decision does not call for the coordination of the national fiscal councils.

Apart from these initial goals that were explicitly stated in the Five Presidents' Report, other possible objectives have been suggested for the European Fiscal Board in different contexts.

b. Other goals

Three other aims for the European Fiscal Board have been suggested that cannot as such be found in the Decision nor in the Five Presidents' Report.

¹³⁸ Juncker, *supra* n. 9, page 14.

¹³⁹ Juncker, *supra* n. 9, page 14.

Firstly, the European Fiscal Board has been considered a possible ‘watchdog’ for the Commission when exercising its functions within the EU economic framework, particularly by the ECB.¹⁴⁰ This is particularly given the increased complexity of the economic framework, the significant enlargement of the Commission’s powers through the recent reforms of the economic framework and the increasingly political stance the Commission seems to take. This way, the Board could be seen as an extended version of the current Chief Economic Analyst. Publishing independent assessments on the implementation of the Union economic framework, free from political influence, could depoliticise the monitoring of the budgetary rules, increase the transparency of the Commission’s budgetary surveillance decisions and enable the public and elected representatives to hold the Commission accountable for their actions in the economic framework.¹⁴¹

Also the Commission itself stated in its Communication ‘On Steps towards Completing Economic and Monetary Union’ that the European Fiscal Board will contribute to increasing transparency of the way the rules of the Stability and Growth Pact are applied by the Commission.¹⁴² It is striking that the Commission states this, since it published this Communication together with the Decision establishing the European Fiscal Board, in which the provisions on the Board’s publicity are very limited.

Secondly, it has been suggested that an independent European Fiscal Board could reflect on possible ways to simplify the current economic framework, since the Board has the possibility to make suggestions for the future evolution of the Union fiscal framework.¹⁴³ The growing complexity of the current framework has been mentioned repeatedly and even the Commission itself recognised that the current rules should be simplified.¹⁴⁴ The ECB has also indicated that European legislators should make it a priority to reduce the excessive complexity of the rules.¹⁴⁵ Zoppè, from the Economic Governance Support Unit of the

¹⁴⁰ Von Hagen, *supra* n. 97, page 32, Calmfors, *supra* n. 97, page 7 and 9, Burda and Gerlach, *supra* n. 1, ECB Eurosystem ‘Reinforcing Economic Governance in the Euro Area’, 10 June 2010, page 1 and 7, ECB Economic Bulletin, Issue 7/2015, Box 5, page 28 and Speech by Jean-Claude Trichet, President of the ECB, 30 November 2010, <https://www.ecb.europa.eu/press/key/date/2010/html/sp101130.en.html>.

¹⁴¹ ECB Economic Bulletin, Issue 7/2015, Box 5, page 28. See also ‘Completing Economic and Monetary Union 3: Fiscal Union’, *Centrum für Europäische Politik Policy Brief* No. 2015-22, page 3.

¹⁴² Communication from the Commission on Steps towards Completing Economic and Monetary Union, COM(2015) 600 final, page 8.

¹⁴³ Article 2(2)(a) last sentence, Commission Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board.

¹⁴⁴ Communication from the Commission on Steps towards Completing Economic and Monetary Union, COM(2015) 600 final, page 8.

¹⁴⁵ Speech by Benoît Coeuré, Member of Executive Board of the ECB, <https://www.ecb.europa.eu/press/key/date/2016/html/sp160127.en.html>.

European Parliament, and Ódor, Deputy of the Network, also consider the simplification of the Union fiscal framework a task for the European Fiscal Board, especially since the Commission itself might be too biased to objectively review the economic framework, having designed the current framework. In a Position Paper from the Network, plans to reduce the complexity of the rules and the Board's task to make suggestions with regard to the future evolution of the Union fiscal framework are welcomed.¹⁴⁶

Thirdly, the European Fiscal Board could protect and strengthen the operational independence of the national fiscal councils, which forms a key feature for the effectivity of fiscal councils.¹⁴⁷ Ódor, Deputy of the Network, suggested the Board could help guard the independence of the fiscal councils, for example by designing and monitoring minimum standards for these fiscal councils. Rother, Chief Economic Analyst at the Commission, stated that national fiscal councils could also seek support from the Board if national fiscal councils are pressured by national governments.

Some aims from the Report and the Decision have also been underlined in other contexts. The Five Presidents' Report's aim of an informed public debate has been repeatedly called for by several parties.¹⁴⁸ Moreover, the need to look at the euro area and national fiscal stances has been stressed by the ECB and authors such as Buti, Eijffinger, Franco, Darvas, Vihriälä, Leandro and Bénassy-Quéré.¹⁴⁹ Also, there have been calls for further alignment between the national fiscal councils by the Network.¹⁵⁰

iii. The divergence between the different goals

The preceding paragraphs show that the objectives formulated for the European Fiscal Board form a diverse and slightly blurred landscape of different layers of explicit and more implicit objectives. The Decision does not state all its objectives explicitly and there is not one most

¹⁴⁶ 'Position Paper on Initiatives to strengthen the EU Fiscal Framework', Network of EU Independent Institutions, 5 November 2015, page 3.

¹⁴⁷ L. Calmfors, 'The Roles of Fiscal Rules, Fiscal Councils and Fiscal Union in EU Integration', *1076 IFN Working Paper* (2015), page 15 and X. Debrun and T. Kinda, 'Strengthening Post-Crisis Fiscal Credibility: Fiscal Councils on the Rise – A New Dataset', *IMF Working Paper WP/14/58* April 2014, page 28.

¹⁴⁸ ECB Economic Bulletin, Issue 7/2015, Box 5, page 28, Darvas and Leandro, *supra* n. 3, page 3 and Calmfors, *supra* n. 97, pages 7 and 9.

¹⁴⁹ ECB Economic Bulletin, Issue 7/2015, Box 5, page 28, Speech by Benoît Coeuré, Member of Executive Board of the ECB, <https://www.ecb.europa.eu/press/key/date/2016/html/sp160127.en.html>, Buti, Eijffinger and Franco, *supra* n. 74, page 103, Z. Darvas and E. Vihriälä, 'Does the European Semester deliver the right policy advice?', 12 *Bruegel Policy Contribution* (2013), page 5, Darvas and Leandro, *supra* n. 3, page 16 and A. Bénassy-Quéré, 'Economic policy coordination in the euro area under the European Semester', paper requested by the European Parliament's Economic and Monetary Affairs Committee November 2015, pages 5 and 17.

¹⁵⁰ 'Position Paper on Initiatives to strengthen the EU Fiscal Framework', Network of EU Independent Institutions (5 November 2015), page 2.

important aim that can be distinguished from the Decision. Also, the question can be raised to what extent these different goals can co-exist in practice. This will be discussed further in subchapter B, paragraph iv.

The Board's evolutionary process seems to be characterised by diverse and sometimes seemingly conflicting objectives that alternate or replace each other. This is illustrated by the clear change in focus for the Board between the Five Presidents' Report and the Decision and by the fact that the Commission underlines that the Board should contribute to transparency of the application of the rules of the Stability and Growth Pact, whilst it, simultaneously, publishes a Decision with very limited provisions on the Board's publicity. A similar tension that comes up when comparing the evolution of the Board and the final outcome concerns the importance of the role for the Board as a watchdog for the Commission. Does the current set-up of the European Fiscal Board, that is to stimulate debate *within* the Commission, allow for such a watchdog role to be fulfilled? More generally, the question can be asked whether the European Fiscal Board will be able to play a useful role in addressing the gaps in the current EU budgetary system.

After this overview of the different objectives that have been formulated for the European Fiscal Board, formally as well as informally, it will now be analysed to what extent the Board's current structure and design seem to enable these objectives to be fulfilled.

B. The alignment of the European Fiscal Board's structure with its goals

How does the Board's nature and legal set-up fit the different objectives? Instead of separately discussing each objective, the different objectives will be discussed in clusters. First, the objectives that are most likely to be met are considered. Subsequently, the objectives that are less likely to be met will be examined.

- i. The Board's nature and legal set-up facilitate an informed and broadened discussion within the Commission of the overall implications of budgetary policies*

A goal that in principle seems to be served by the European Fiscal Board is the contribution to an informed and broadened discussion within the Commission of the overall implications of

budgetary policies at euro area and national level.¹⁵¹ Since the Board will consist of five renowned international experts in the field of macroeconomics and public finance and will write opinions specifically for the Commission, its opinions will be able to contribute to informed discussions within the Commission. The Board's contribution to the discussions within the Commission will indeed relate to the overall implications of budgetary policies, since its tasks encompass advising on the actual and prospective fiscal stances at euro area and national level. Given the political will inside the Commission to further develop this fiscal stance concept, it is likely that the Commission will be open to the Board's contributions on this topic. Another indication that the legal set-up of the Board makes such an informed and broadened discussion within the Commission possible is the obligation for the Board to provide ad-hoc advice, if the Commission's President requests so.¹⁵²

However, the facilitation of this objective should be put into perspective by noting that the advisory capacity of the European Fiscal Board has its limits due to its current size and manpower. With a Chair that is expected to spend twenty working days a year, four members that are expected to spend ten working days a year and a Secretariat consisting of five persons working full-time, the Board's capacity does not seem sufficient, taking into account the Board's wide range of tasks and the fact that these tasks relate to the national budgets of nineteen Eurozone Member States. In practice, the Board's successfulness in contributing to an informed and broadened discussion within the Commission and in all the other objectives will therefore depend on the priorities the Board sets in its functioning.

Several other objectives can also be said to be served by the Board's current nature and legal set-up, albeit to a more limited extent.

ii. Other objectives that seem relatively aligned to the Board's nature and legal set-up

The Board's nature and legal set-up can be said to fit fairly well with some objectives, although a number of potential future tensions or problems can be identified.

a. The potential for fruitful cooperation with the national fiscal councils

Two objectives mentioned before relate to the national fiscal councils specifically: the Decision's objective of more alignment between the national fiscal councils and the other

¹⁵¹ Recital 5, Commission Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board.

¹⁵² Article 2(2)(d), Commission Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board.

suggested objective of protecting and strengthening of their independence. Concerning the objective of more alignment between the national fiscal councils, it should be emphasised that, since the task of cooperating with the national fiscal councils is only formulated generally in the Decision and the practical exercise of this task is not yet determined, the Board's current nature and legal set-up does not say very much about the Board's potential to align the national fiscal councils more. The generic formulation of the task leaves room for the Board's members and the Secretariat to fill in the details concerning the practical execution of the cooperation.

In general terms, the Board's set-up seems promising, since the Decision instructs the Board to focus in particular on exchanging best practices and facilitating common understanding. Pisani-Ferry has argued that fostering such exchange of best practices and developing common methodologies and instruments improves the fiscal surveillance system. It decentralises fiscal discipline, while keeping the requirement that national policies be consistent with the principles of monetary union.¹⁵³ Thus, the planned focus on the exchange of best practices and on facilitating common understanding can be said to contribute to more alignment between the national fiscal councils.

In practice, the successfulness of this objective will likely depend on the initiative that the members of the Board take in shaping this cooperation and the attitude and willingness to cooperate on the part of the national fiscal councils. It admittedly sets the tone that the national fiscal councils protested against their planned coordination and united formally in a network as a response. This shows that these fiscal councils apparently are not that interested in being subordinated by a body from Brussels. Therefore, as indicated by Ódor, Deputy of the Network, the fiscal councils' attitude will likely depend on whether they consider the members appointed by the Commission credible and truly independent.

However, the appointment procedure can be said to raise doubts concerning the Board's independence from the Commission, considering that the Chair and one member are appointed by the Commission, with consultation merely within the Commission, and that the other three members are also appointed by the Commission, with only the consultation of three different other parties, of which only one party consists of 'the national fiscal councils' seen together.¹⁵⁴ Zoppè, from the Economic Governance Support Unit of the European

¹⁵³ Pisani-Ferry, *supra* n. 2, page 22.

¹⁵⁴ Ódor, Deputy of the Network, did indicate that they went to Brussels several times already in order to discuss this consultation role.

Parliament, considers such an appointment by the Commission a political one that does not sufficiently guarantee the independence of the members.

Also contributing to doubts about the Board's independence are the facts that the mandates of the members are renewable and that the Commission remains in charge of the budget of the Board. Moreover, the discrepancy between the appointment period of members of three years in the Decision, on the one hand, and the condition of employment for Special Advisors that contracts shall not exceed two years, although renewable, on the other hand, raise the possibility of the members' *de facto* dependence on the Commission.¹⁵⁵

In and of itself, the Secretariat's attachment to the Commission's Secretariat-General does not have to detract from the Board's independence.¹⁵⁶ However, considering it in combination with the factors mentioned above, it can be said to contribute to these doubts.

Still, Ódor stated on behalf of the Network that he hopes for the appointment of independent and qualified members and that he is open to cooperation with the Board. The Network officially stated that it is open to explore possible cooperation with the European Fiscal Board that is mutually beneficial and efficient.¹⁵⁷ Nevertheless, it should be kept in mind that the Network represents 23 different fiscal councils, which probably all have different views of how cooperation on the European level and with the Board should take place. Therefore, the statement by the Network that it is open to explore possible cooperation does not guarantee the possibility of finding a consensus on the practical details of the cooperation.

The Network also proposed that the European Fiscal Board and the national fiscal councils could jointly develop a set of minimum standards for the fiscal councils.¹⁵⁸ More generally, the Network proposed to set up a monitoring system for such minimum standards.¹⁵⁹ If the Board would start designing and even monitoring minimum standards, this

¹⁵⁵ Annex, Article 112 of Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, last corrected on 29 April 2015.

¹⁵⁶ There are other examples of organisations that are administratively attached to another institution but still considered operationally independent, such as the Netherlands Bureau of Policy Analysis (CPB), part of the Ministry of Economic Affairs (<http://www.cpb.nl/over-het-cpb>) and the European Anti-Fraud Office OLAF, part of the European Commission (http://ec.europa.eu/anti-fraud/about-us/mission_en).

¹⁵⁷ 'Position Paper on Initiatives to strengthen the EU Fiscal Framework', Network of EU Independent Institutions, 5 November 2015, page 1-2.

¹⁵⁸ 'Position Paper on Initiatives to strengthen the EU Fiscal Framework', Network of EU Independent Institutions, 5 November 2015, page 2.

¹⁵⁹ 'Position Paper Defining and Enforcing Minimum Standards for Independent Fiscal Institutions', Network of EU Independent Fiscal Institutions, February 2016, page 2.

will evidently contribute to the suggested objective of protecting and strengthening the independence of the national fiscal councils. Similarly, the successfulness of this objective will depend on the attitude and priorities of the members and on whether they choose to make these calls public.

b. The Board's likely indirect influence on the design of the Union fiscal framework

Two objectives concern the Board's influence on the design of the Union fiscal framework; the expansion of European supervision of national budgets and the simplification of the current Union fiscal framework.

In principle, the Board's set-up seems to facilitate an expansion of the supervision of national budgets, albeit indirectly, by ensuring the expertise of the Board and by obliging the Board to advise the Commission on the appropriateness of the actual and prospective fiscal stances at euro area and national level. Although the Board has to determine what kind of fiscal stances should be deemed as appropriate *within* the rules of the Stability and Growth Pact, the determination of such appropriateness cannot be based on the current framework and, thus, necessarily has to be based upon reflections that go outside the existing economic framework.¹⁶⁰ Moreover, the Board's set-up facilitates this expansion by creating the discretion for the Board to make suggestions to the Commission for the future evolution of the Union fiscal framework, making it possible for the Board to formulate concrete proposals on enlarged supervision of the budgets by focusing on rules concerning the appropriate scope and calculations for euro area and national fiscal stances. Since the Board's advice will not directly change the Union fiscal framework, but will provide the Commission with starting points for the reform of the fiscal framework, the Board's influence on the expansion of the supervision will be indirect. At the same time, it should be established that it is probable that the Commission will be open to such suggestions on appropriate fiscal stances, because it has repeatedly emphasised its wish to focus on the appropriateness of the euro area fiscal stance.¹⁶¹

However, the Board's likelihood of contributing to the expansion of the supervision of national budgets should be put into perspective. As already explained, the current Union fiscal

¹⁶⁰ See Chapter 1, subchapter B, paragraph ii, sub-paragraph (b) for more information on the concept of fiscal stances and its relation to the current Union economic framework.

¹⁶¹ See for example Communication from the Commission on the 2016 European Semester: Country-Specific Recommendations, COM(2016) 321 final, page 11, Communication from the Commission on Steps towards Completing Economic and Monetary Union, COM(2015) 600 final, pages 4 and 11 and Juncker, *supra* n. 9, page 14.

framework does not determine an aggregate fiscal stance.¹⁶² There are no well-established methodological foundations that the Board can build on, whilst the determination of such an appropriate fiscal stance is a complex economic calculation of which many aspects are still unclear.¹⁶³ Therefore, it will be a challenge, to say the least, for the Board with its current capacity to independently calculate and determine the appropriateness of a euro area fiscal stance and nineteen different national fiscal stances.

Similarly, the Board's capacity to ensure a simplification of the Union fiscal framework seems ensured in theory by the Board's possibility to make suggestions for the future evolution of the Union fiscal framework. However, again, its limited capacity and the non-binding nature of the Board's opinions should be noted. Also, the Board's ability to contribute to the simplification will depend on whether the Board decides to publish its opinions. If the Board decides to do so, the opinions could be discussed in the European Parliament and the public debate, presumably enlarging the impact of the Board's proposals. Finally, it should be taken into account that, in the end, the Board's successfulness in contributing to the simplification of the fiscal framework is not just contingent upon its ability to come up with new ideas, but more so upon the political will of the European institutions responsible for new legislation.

c. The Board: not an independent fiscal council to the standards of the national fiscal councils

How does the Board's nature and legal set-up relate to the objectives, flowing from the Decision, of contributing to a proper and consistent implementation of the Union fiscal framework and of attaining better compliance with common fiscal rules? Although the Board's current nature and legal set-up reveal some factors that might contribute to these objectives, several other issues can be identified as problematic.

In principle, the Board's task to evaluate the implementation of the Union fiscal framework in combination with the expertise of the members of the Board seems to have the potential to improve the implementation of the Union fiscal framework and compliance with budgetary rules. This is even more so given the particular focus of this evaluation on the horizontal consistency of the decisions and on particularly serious non-compliance. In

¹⁶² Communication from the Commission on Steps towards Completing Economic and Monetary Union, COM(2015) 600 final, page 11.

¹⁶³ ECB Economic Bulletin, Issue 7/2015, Box 5, page 31.

principle, a body that examines the horizontal consistency of the decisions and of the implementation of budgetary surveillance can counterbalance the potentially more political stance of the Commission. It can be said to add something to what the national fiscal councils do, since the national fiscal councils only look at their national situations separately. Moreover, if the Board's cooperation with the national fiscal councils would indeed entail the designing and/or even monitoring of minimum standards for the national fiscal councils, that would also improve the implementation of the Union fiscal framework and the compliance with common fiscal rules.

However, the Board's current legal set-up also gives rise to concerns with regard to its potential to really contribute to a proper and consistent implementation of the Union fiscal framework and to better compliance with the fiscal rules. The first concern is the capacity issue as referred to before. Secondly, due to the Board's merely advisory competences, the absence of any binding powers and the lack of a comply or explain principle or a provision that the Commission has to duly take the Board's opinions into account, the Board's opinions will likely have no legal effect. This is even more so, considering that the Decision currently does not specify how the advice of the Board would feed into the European budgetary surveillance framework.¹⁶⁴ Thirdly, although there is a general right of access to Commission documents, the Board does not have an explicit right of access to information, whilst it is crucial to possess the right information for all Eurozone Member States in order to provide an evaluation of the implementation of the Union fiscal framework. Therefore, this set-up, in combination with the current absence of provisions concerning the publication of the Board's opinions, implies that the Board's influence with its opinions will mainly be indirect, being dependent on the Commission providing the Board with the right information and accepting and reproducing its conclusions.

The objectives of improving compliance and implementation seem to demand from the Board a role of a fiscal council at the European level. This leads to the question whether the Board adheres to the legal standards of independence from the Two Pack for the national fiscal councils. A guiding principle in the Five Presidents' Report stated that the Board should conform to the same standard of independence as the national fiscal councils, a view that the ECB underlined later on.¹⁶⁵ Article 2(1)(a) Regulation 473/2013 establishes that a body is

¹⁶⁴ ECB Economic Bulletin, Issue 7/2015, Box 5, page 31.

¹⁶⁵ Article 2(1)(a), Regulation (EU) No 473/2013 of the European Parliament and of the Council of 21 May 2013 on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of

considered independent if it is structurally independent or endowed with functional autonomy vis-à-vis the budgetary authorities of the Member State. In order to ensure this structural independence or functional autonomy, Article 2(1)(a) obliges Member States to have certain national legal provisions in place. The Board's current legal set-up does not conform to these requirements in several ways. Firstly, there is no legal provision ensuring the capacity to communicate publicly in a timely manner, since the Decision does not specify anything about the publications and the timing of the Board's opinions.¹⁶⁶ Secondly, since there is no provision in the Decision creating a right of access to information for the Board, there is no legal provision ensuring appropriate access to information to carry out its mandate.¹⁶⁷ Thirdly, there are no legal provisions ensuring a high degree of accountability, since nothing in the Decision provides for the Board's accountability.¹⁶⁸ Fourthly, it could be argued that, in light of the breadth of the mandate of the Board in combination with its limited staff and capacity, there are also no provisions ensuring adequate resources for the Board to carry out its mandate.¹⁶⁹ Therefore, the Board does not meet the national fiscal councils' standard of structural independence or functional autonomy. All this, in combination with the appointment procedure by the Commission as described above, leads to serious doubts concerning the degree of independence of the European Fiscal Board, whilst a strong legal basis for independence is of high importance for new fiscal councils.¹⁷⁰

These doubts about the Board's independence of the Commission can be said to detract from the Board's potential to fulfil the objectives of improving compliance and the implementation of the Union fiscal framework. Debrun and Kumar have found a strong positive relationship between the *de jure* influence of a fiscal council and its perceived impact

excessive deficit of the Member States in the euro area and Juncker, *supra* n. 9, page 23 and ECB Economic Bulletin, Issue 7/2015, Box 5, page 29.

¹⁶⁶ Article 2(1)(a)(iii), Regulation (EU) No 473/2013 of the European Parliament and of the Council of 21 May 2013 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.

¹⁶⁷ Article 2(1)(a)(v), Regulation (EU) No 473/2013 of the European Parliament and of the Council of 21 May 2013 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.

¹⁶⁸ Article 2(1)(a), Regulation (EU) No 473/2013 of the European Parliament and of the Council of 21 May 2013 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.

¹⁶⁹ Article 2(1)(a)(v), Regulation (EU) No 473/2013 of the European Parliament and of the Council of 21 May 2013 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. Resources can be considered essential for a fiscal council's effectiveness, see 'The Functions and Impact of Fiscal Councils', *IMF Staff Working Paper* July 16, 2013, page 35.

¹⁷⁰ 'The Functions and Impact of Fiscal Councils', *IMF Staff Working Paper* July 16, 2013, page 34 and 45, L. Schuknecht, P. Moutot, P. Rother and J. Stark, 'The Stability and Growth Pact: Crisis and Reform', *ECB Occasional Paper Series* No. 129 September 2011, page 15 and Debrun and Kinda, *supra* n. 147, page 21.

on fiscal performance.¹⁷¹ Moreover, the Board's task to evaluate the horizontal consistency of the decisions concerning budgetary surveillance has been called into being for the exact reason that the Commission has showed to have difficulties with applying the budgetary rules objectively and independently.

Finally, a crucial and yet undecided factor in determining how the Board's nature and legal set-up relate the objectives of the improvement of compliance and the implementation of the Union fiscal framework is the publicity of the Board. It should be emphasised that transparency, by issuing public assessments, is essential for a fiscal council's credibility and effectiveness.¹⁷² If the Board would choose not to further publish any documents apart from annual reports, one could even wonder whether such a body can be considered a true fiscal council at the European level, or whether it just functions as a think tank for the Commission.

In sum, a range of objectives seem to be served to some extent by the Board's current legal set-up, although not without difficulties. In addition to this, there are two goals formulated for the European Fiscal Board, outside of the Decision, of which it can be argued that the Board's current set-up does not serve them.

iii. Goals that the Board's nature and legal set-up do not seem to serve: an informed public debate and an independent watchdog for the Commission

In contrast to the previous objectives, the Board's nature and legal set-up do not seem to provide the opportunity for a more informed public debate and for an independent watchdog role for the Board with respect to the Commission.

Given the lack of provisions on the publication of opinions, the Board's set-up does not necessarily exclude the actual publication of opinions, but it demonstrates that the set-up clearly does not actively facilitate a more informed public debate. Other parts of the Decision arguably also indicate a lack of focus on the publicity of the Board. The recital specifically referring to a discussion 'within the Commission' and the mission of the Board to contribute to the Commission's functions both seem to limit the Board's *raison d'être* to its interaction with the Commission. The specification that the annual report has to contain summaries of the Board's advice can be said to imply that it is not further expected that the advices as a whole

¹⁷¹ X. Debrun and M. Kumar, 'Fiscal rules, fiscal councils and all that: commitment devices, signalling tools or smokescreens?', 9th Banca d'Italia Workshop on Public Finance 2008 and X. Debrun, D. Hauner and M. Kumar, 'Independent Fiscal Agencies', 23 *Journal of Economic Surveys* (2009), page 70.

¹⁷² Debrun and Kinda, *supra* n. 147, page 28, R. Hagemann, 'How Can Fiscal Councils Strengthen Fiscal Performance?', 1 *OECD Journal: Economic Studies* (2011), page 94.

are published. Finally, although it could be argued that the Decision's provision that its meetings shall not be open to the public also seems to imply the lack of a public character for the Board, this cannot be considered decisive, since it is a common characteristic of national fiscal councils not to have meetings that are open to the public.¹⁷³ Still, it is clear that the general set-up of the Board does not encourage the Board to contribute to an informed public debate.

The fulfilment of a watchdog role by the Board by holding the Commission accountable for the exercise of its powers within the EU economic framework also cannot be said to be served by the Board's current nature and legal set-up. Evidently, it is crucial for a supervisor to be operationally independent. Therefore, the first difficulty that comes up for this role are the earlier expressed doubts concerning the Board's independence from the Commission. Another factor that makes the exercise of a watchdog role difficult is that the Board currently does not have the right to issue ad-hoc opinions when it considers this necessary.¹⁷⁴

The lack of provisions on the publication of opinions makes it even harder to state that the Board's set-up seems fit to serve the objective of a watchdog role. If the Board does not make its opinions public, it is only able to exert internal pressure on the Commission to follow its advice or recommendations. The Board is arguably much more effective in supervising the Commission if it is able to apply external pressure on the Commission as well. That way, their advices will be able to not only have *direct* impact on the fiscal authorities, but also *implicit* impact, by inducing the Commission to adjust its exercise of budgetary surveillance preventively for fear of receiving public criticism.¹⁷⁵ Also, if the European Parliament or other parties in the public debate cannot access the Board's opinions, it is obviously impossible for them to hold the Commission accountable on the basis of these

¹⁷³ Article 5(3), Commission Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board. For example, meetings of the fiscal council are not open to the public in France (Article 12 Règlement intérieur du Haut Conseil des finances publiques) and Germany (Article 4(4) Geschäftsordnung des Beirats des Stabilitätsrates).

¹⁷⁴ Article 2(2)(d), Commission Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board and Juncker, *supra* n. 9, page 23.

¹⁷⁵ Similarly, the Commission underlines both the direct and implicit impact of national fiscal councils: Report on Public Finances in EMU 2014, European Commission, Directorate-General for Economic and Financial Affairs, *European Economy* 9/2014, page 56.

opinions nor is it possible for them to hold the European Fiscal Board itself accountable for its opinions.¹⁷⁶

It is ironic that this idea of a watchdog for the Commission, possibly held in mind by the ECB as the principal objective for the Board, is an objective that does not seem to be facilitated by the Decision. It is unsurprising that the ECB emphasised in reaction to the Decision that the Board can only be effective if it publishes its assessments in real time and if it has a strong public voice, and that, therefore, it is important that the Board's right to publish is not limited to an annual report.¹⁷⁷

Apart from analysing to what extent the current set-up of the Board is aligned to the different objectives separately, it is also necessary to consider the alignment of the Board to the combination of these goals.

iv. The compatibility of the different goals from the Decision

Presuming that the goals that flow from the Decision are the ones that the European Fiscal Board definitely will be striving for, these goals should be considered in conjunction as well. How do all these different objectives go together, considering the current structure and legal set-up of the Board? The first observation is the obvious understaffing of the Board for the broad range of tasks it has. Alessandro Cugnasca, member of the Secretariat of the Board, indicated over e-mail that although the composition of the Secretariat may change once the Board is in place, there are currently no specific plans for doing so at this stage.¹⁷⁸ Therefore, it is probable that the Board's capacity will prove not to be sufficient in the near future to adequately exercise all its tasks.

The Board has to do with the national fiscal councils in several ways. This raises the question what kind of effect it will have on the Board's relationship with these fiscal councils that the Board will function both as a kind of supervisor for the national budgetary situations and, simultaneously, as a forum for the exchange of best practices. A relevant factor in this is whether the national fiscal councils will be able to take notice of the Board's opinions, even if the Board does not decide to make them public. According to Rother, Chief Economic Analyst of the Commission, it is yet undecided how these dynamics would work in practice.

¹⁷⁶ See complaint in European Parliament resolution of 17 December 2015 on completing Europe's Economic and Monetary Union (2015/2936(RSP)), paragraph 7.

¹⁷⁷ ECB Economic Bulletin, Issue 7/2015, Box 5, page 28, 30-31.

¹⁷⁸ Emailed on 23 June 2016.

He also pointed out another question that arises if the Board does decide to make its opinions public. How would it work in practice if a Board's opinion conflicts with the advice issued by a national fiscal council? This should be thought through well, given the vulnerable credibility that is at stake for the independent fiscal institutions.¹⁷⁹

So how would the cooperation with the national fiscal councils be influenced by the Board's supervisory task and vice versa? There conceivably is a risk that there would not be a sufficiently open relationship between the Board and the national fiscal councils, because of the national fiscal councils fearing that any doubts or issues they show will have repercussions on the Board's advices concerning their national situations. Conversely, the national fiscal councils might realise that interacting with the Board benefits them overall. But what would the added value of the Board be on the national level, keeping in mind that the national fiscal councils likely have a much bigger capacity for their own budgetary situation than the Board has for the whole Eurozone? Possible ways in which the Board might be able to add value are by comparing the different budgetary situations, asking the national fiscal councils critical questions on that, clarifying issues on the Commission's methodology and functioning as a forum where national fiscal councils can 'test' their ideas. These possible ways fit well with Ódor's remark that the cooperation should be ruled by the principle of subsidiarity, with the national councils looking at the national dimension and the Board at the European dimension of problems. Furthermore, the national fiscal councils could give feedback and express their views on the Board's opinions and on possible suggestions for the future evolution of the EU fiscal framework. It could also give the national fiscal councils the opportunity to complain if, in their opinion, there are horizontal inconsistencies in the application of the budgetary rules at the EU level.

At the same time, it is probable that the contact and exchange of information with the national fiscal councils benefit the Board's supervisory tasks, because it would provide the Board with more in-depth knowledge of the local specifications of the budgetary situations. They could use this knowledge in order to improve their advices and their suggested policy options. Given the Board's limited capacity, it would save the Board time and work if they could approach the national fiscal councils with requests for information.

This way, it could even be argued that the Board, by acting at both the national and European level, might be able to create some kind of synergy between the different levels of

¹⁷⁹ 'The Functions and Impact of Fiscal Councils', *IMF Staff Working Paper* July 16, 2013, pages 48-49.

administration by functioning as a communication channel between the two levels. Simultaneously, it could be reasoned that creating another institution at the European level that the national fiscal councils are to communicate with, in addition to the Commission, complicates things and makes communication less efficient. The Network already complains that changes in the Commission methodologies are too frequent and that the transparency on these methodologies is limited.¹⁸⁰ Ódor, Deputy of the Network, similarly pointed out that a lot of methodological information from the Commission is missing or not available in time at the national level. Putting another institution in between might only hinder the already imperfect communication between the Commission and the national fiscal councils.

Furthermore, considering the combination of tasks to both evaluate the implementation of the Union fiscal framework *and* to advise or evaluate on the appropriate fiscal stance, the following possible tension can be discerned. Although the Decision divides the Board's tasks into a task to evaluate and a task to advise, there does not seem to be a strict distinction between evaluations based on already existing legal frameworks and on topics that are not yet part of the existing legal framework, since the evaluation task also encompasses the appropriateness of the actual euro area and national fiscal stances. Therefore, the risk arises that it becomes blurred when the Board judges based upon 'hard rules' and when upon its own reflections. This is even more so because the Board has to issue a normative judgment on how this fiscal stance should be. Rother, Chief Economic Analyst of the Commission, states that thinking about the fiscal stance is a political job that does not go together easily with the role of an independent supervisor that objectively enforces the rules.

Another possible tension caused by the different tasks of the Board is indicated by Ódor, Deputy of the Network. Ódor argues that the Board currently has tasks that oblige it to be the Commission's advisor and controller at the same time. He considers this a troubling combination, because it can create situations where the Board would have to question its own advice. Again, there are different roles that tend to be in conflict.

In short, the diverse range of tasks for the European Fiscal Board raises numerous questions as to the compatibility of these tasks. On the basis of the analysis of all objectives separately and seen together, this chapter will wrap up with some recommendations for the functioning of the European Fiscal Board.

¹⁸⁰ 'Position Paper on Initiatives to strengthen the EU Fiscal Framework', Network of EU Independent Institutions, 5 November 2015, page 2.

C. Recommendations for the European Fiscal Board

A number of recommendations can be given concerning the functioning of the European Fiscal Board that would possibly make the Board more effective in reaching its objectives. These recommendations focus on the Board's publicity and media presence, the role of the European Parliament, a comply-or-explain principle and possible ways of cooperating with the national fiscal councils.

i. Publicity and strong media presence

It is still open to the Board's members to decide to make its opinions public and it is highly recommendable for the Board to do this. This will be of great importance for the effectiveness of the European Fiscal Board.¹⁸¹ It will increase its perceived independence, its credibility and the possibility to exert pressure on the Commission to follow its advices, which in turn will improve its ability to reach the goals of better compliance and a proper and consistent implementation of the Union fiscal framework.

Also, it is to be hoped that the Board's members decide to take the initiative to have a strong media presence and communicate their assessment to the public, especially given the fact that they are a new body. This way, the Board would reach the objective of an informed public debate and would become more effective by being able to exert influence within the policy debate.¹⁸² In order to create credibility and legitimacy of the budgetary rules, visibility and acknowledgement by the citizens is highly necessary.¹⁸³ The importance of influence in the public debate arguably also grows given the absence of any right of access to information for the Board in the Decision, making it necessary for the Board to have publicity as a 'weapon' against the Commission in case it does not provide the Board all the information it needs. Another reason why it is recommended that the Board's opinions feed into the public debate is that the Board's advices and evaluations on the concepts of the euro area and national fiscal stances should be transparent, given the complexity of these concepts and the political considerations that underlie their calculations.

Publication of the opinions and a strong media presence of the Board would increase transparency of the Commission's exercise of its powers in an increasingly complex

¹⁸¹ See also: ECB Economic Bulletin, Issue 7/2015, Box 5, page 28 and 30.

¹⁸² 'The Functions and Impact of Fiscal Councils', *IMF Staff Working Paper* July 16, 2013, page 37, ECB Monthly Bulletin June 2014, Box 8, page 96.

¹⁸³ A.W. Heringa, H. Nguyen and S. Wolf, 'EU Legitimacy: Squaring the triangle', *7 Montesquieu Policy Papers* (2016), page 13.

economic framework and enable the European Parliament and the public arena to hold the Commission and the Board itself accountable in this field.¹⁸⁴ Thus, the Board could function as an ‘accountability-multiplier’ by activating a wide range of stakeholders.¹⁸⁵ Economic governance reforms since the crisis have created gaps in the EU’s accountability structure and the Commission itself even underlined in the debate concerning the future EMU that a future fiscal union requires accountability of decision-making and that the European Parliament has to ensure democratic accountability for decisions taken at EU level, particularly by the Commission.¹⁸⁶

ii. *Accountability: initiative by European Parliament*

In its Resolution of 17 December 2015, the European Parliament stressed that the European Fiscal Board should be accountable to the European Parliament. Although the Decision does not explicitly determine anything about the Board’s accountability, it is to be recommended that the Parliament, or the Committee on Economic and Monetary Affairs (hereafter: ECON committee) specifically, takes the initiative to invite the Board’s members to Parliament once the Board is in place. This would be in line with the recent emphasis on the strengthening of democratic legitimacy and accountability within the EMU by enlarging the Parliament’s role within the European Semester.¹⁸⁷ If sensitive information is involved, it could be chosen to mandate the Board to inform the Chairs and Vice-Chairs of the ECON committee or the other competent committee, obliging them to treat the information as confidential, as is similarly provided for draft macroeconomic adjustment programmes in Regulation 472/2013 of the Two Pack.¹⁸⁸

¹⁸⁴ ECB Economic Bulletin, Issue 7/2015, Box 5, page 28, Darvas and Leandro, *supra* n. 3, page 3-4.

¹⁸⁵ Report on Public Finances in EMU 2014, European Commission, Directorate-General for Economic and Financial Affairs, *European Economy* 9/2014, page 56.

¹⁸⁶ M. Dawson, ‘The Legal and Political Accountability Structure of ‘Post-Crisis’ EU Economic Governance’, 53 *Journal of Common Market Studies* (2015), pages 990-991 and Communication from the Commission, ‘A blueprint for a deep and genuine economic and monetary union’, COM(2012) 777 final/2, pages 31 and 36.

¹⁸⁷ Article 15 (1)-(3) Regulation (EU) No 473/2013 of the European Parliament and of the Council of 21 May 2013 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, Communication from the Commission, ‘A blueprint for a deep and genuine economic and monetary union’, COM(2012) 777 final/2, pages 35-37, Juncker, *supra* n. 9, pages 17 and 20 and J. White, ‘Politicizing Europe: The Challenge of Executive Discretion’, 72 *LSE ‘Europe in Question’ Discussion Paper Series* (2014), page 22.

¹⁸⁸ Article 7(1) last paragraph and (2) last paragraph Regulation 472/2013 of the European Parliament and of the Council of 21 May 2013 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.

iii. *Comply or explain principle*

Another recommendation for the Board's set-up would be to create a comply-or-explain principle for the Commission in the Decision. Such a principle would institutionalise the normative power of the opinions of the Board vis-à-vis the Commission and would give the Board the opportunity to 'bite' a bit more in its role as a watchdog. It would increase the weight of the Board's advices by making it more difficult for the Commission not to follow these advices. Also, it would meet the Commission's recommended standards for the national fiscal councils.¹⁸⁹ Obviously, such a comply-or-explain principle would have more significance if the Board decides to make its opinions public.

iv. *Possible ways of shaping the cooperation with the national fiscal councils*

The first remark that can be made is that, in order to deal with the earlier mentioned risk of diverging opinions from the Board and from national fiscal councils, clear and timely communication between the Board and the national fiscal councils will be essential. The risk of damaging credibility of these fiscal institutions can be minimised if the Board informs national fiscal councils, and vice versa, well in advance of possibly different opinions.

Concerning the forms of cooperation in practice, the following can be suggested in addition to the exchange of best practices and the facilitation of common understanding. In close cooperation with the Network, the Board could develop minimum standards for the national fiscal councils in the Eurozone.¹⁹⁰ The Secretariat of the Board could play an active role in this, considering their task to ensure the cooperation with the fiscal councils.¹⁹¹ Together with the Network, the Board could fill the 'gap' of the supervision of the quality of the national fiscal councils that arguably exists in the current economic framework.¹⁹² Although the Commission officially has the duty to report on the implementation of the Fiscal Compact, according to Article 8 Fiscal Compact, it still has not published such reports. Ódor, Deputy of the Network, indicated that the Network would be willing to undertake such a task together with the Board, and even suggested informally that the Board could monitor these standards. However, it must be noted that such a monitoring task reminds more of a task to 'coordinate' the fiscal councils. One can ask whether such a task can be seen as flowing from

¹⁸⁹ Communication from the Commission Common Principles on national fiscal correction mechanisms, COM (2012) 342 final, page 5 and 7.

¹⁹⁰ Also suggested by Calmfors in Calmfors, *supra* n. 97, page 7.

¹⁹¹ Article 3(7)(c), Commission Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board.

¹⁹² Mijs, *supra* n. 44, pages 6 and 8.

the Decision and whether the national fiscal councils would accept this. The personal view of one of the members of the Dutch national fiscal council, Ad Melkert from the Council of State, confirms these doubts. He stated that he would not favour the Board to become a kind of supervisor for the national fiscal councils and would rather have it derive its authority from promoting coordination of practices and convergence of standards. According to him, it would needlessly complicate things to have another institution with real enforcement powers in addition to the Commission. Nonetheless, that would still leave it open to the Board to design such minimum standards and monitor them without binding powers. It would raise the political cost for national governments of interfering with the independence of fiscal councils.¹⁹³

Thus, the Board could add value by filling the current ‘gap’ of the supervision of the quality of the national fiscal councils in the current economic framework. Moreover, enhancing the quality and role of the national fiscal councils will increase the fiscal councils’ credibility and will generate local ownership of the rules, because people in Member States with active and effective fiscal councils will not perceive the European budgetary rules as just ‘imposed by Brussels’ anymore.

Conclusion of Chapter 2

A diverse set of objectives has been formulated for the European Fiscal Board. The current structure and legal set-up of the Board fit these objectives to varying degrees. The Board seems fit to serve the objective of stimulating a more informed and broadened discussion within the Commission on the overall implications of EU budgetary policy, although the Board’s capacity limits its possibilities. The Board’s nature and legal set-up reveal some factors that might contribute to the objectives of more alignment between the national fiscal councils, strengthening the independence of the national fiscal councils, the expansion of European supervision of national budgets, the simplification of the Union fiscal framework, a proper and consistent implementation of the Union fiscal framework and better compliance with common fiscal rules. However, some issues complicate the attainment of these objectives. The Board’s nature and legal set-up do not seem to serve the objectives of a more

¹⁹³ L. Calmfors and S. Wren-Lewis, ‘What should fiscal councils do?’, *OECD* 11 March 2011, page 47. A proposal for non-binding minimal requirements covering *inter alia* fiscal councils was also made by the ‘Van Rompuy Task Force’ in ‘Strengthening Economic Governance in the EU’, *Report of the Task Force to the European Council* 21 October 2010, page 7.

informed public debate and of an independent watchdog role for the Board with respect to the Commission.

The Board can be recommended to publish its opinions, have a strong media presence and start designing and possibly even monitoring minimum standards for the national fiscal councils. It is also recommendable to establish a comply-or-explain principle for the Commission and for the European Parliament to take the initiative to hold members of the Board accountable.

After this analysis of how the European Fiscal Board's structure and legal set-up fit its objectives, this thesis will now end with some remarks on the meaning of the Board for the constitutional development of EU economic integration.

Chapter 3

Some remarks on the meaning of the European Fiscal Board for the constitutional development of the EMU

Introduction

This final chapter zooms out to examine some aspects of the place that the European Fiscal Board has within the broader evolutionary process of the EMU. In this context, two strands of thought will be elaborated upon. Firstly, the focus is on the character of EU budgetary supervision and on the Board's impact on this by looking at changes in budgetary supervision's levels of centralisation and enforcement. Secondly, the dynamics of the Board's evolution are critically scrutinised in order to reveal possible general trends within the development of the EMU and potential lessons that can be drawn from these trends.

A. The impact of the European Fiscal Board's structure and legal set-up on the nature of EU budgetary supervision

What is the impact of the European Fiscal Board's structure and legal set-up on the nature of EU budgetary supervision seen in levels of enforcement and centralisation? This impact will be examined in a systematic way, by conceptualising the character of EU budgetary supervision through locating it a diagram. The two axes of the diagram respectively represent the EU budgetary supervision's levels of *centralisation* and *enforcement*.

i. The diagram: centralisation and enforcement

a. Framework of analysis

In order to create a conceptual overview of the nature of developments within EU budgetary supervision, the following diagrammatic overview is used. Types of budgetary supervision are considered, on the one hand, in terms of either centralised or decentralised, and on the other hand, of either a more advisory or a more enforcing nature. These two factors are chosen, because the administrative level at which supervision takes place (level of centralisation) and the kind of competences that are used (level of enforcement) form fundamental features of a supervisory system and determine the way a system works.

Obviously, this diagram represents a simplification of reality and is not claimed to be of mathematical precision. It offers the opportunity to broadly indicate the characteristics of developments that change EU budgetary supervision. The legal developments that are placed in this diagram throughout this paragraph are the Fiscal Compact, the European Fiscal Board as envisaged in the Five Presidents' Report and the Board as established in the Commission Decision.

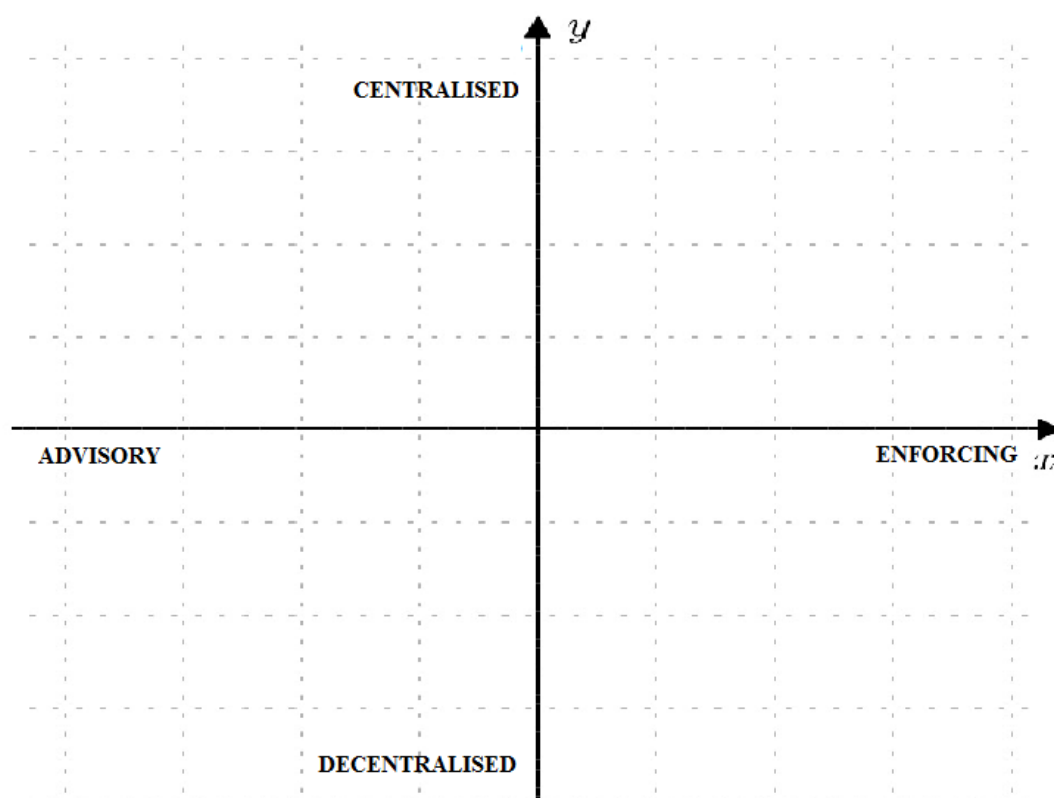


Diagram I

On the x -axis, the level of enforcement of the budgetary supervision is displayed. Does the type of supervision have a mere advisory nature or does it strictly enforce the rules? In order to determine this, it is necessary to look at the relevant competences that the type of supervision entails and the way these competences are exercised. On the y -axis, the level of centralisation is shown. Budgetary supervision at the European level by European institutions can be seen as centralised supervision, whilst supervision at the national level by national institutions can be seen as having a decentralised character. When locating a legal development in the diagram, the level of enforcement of the development on the x -axis will relate to the level of enforcement of that development *specifically*, whilst the level of centralisation on the y -axis will relate to the level of centralisation of the EU budgetary supervisory system *as a whole* with the addition of that development.

The best way to illustrate the existence of two different levels of budgetary supervision in the EU is to look at the ratio behind the Fiscal Compact, the legal reform that changed the nature of EU budgetary supervision by partly shifting the responsibility for compliance with the common fiscal rules to the national level.

b. The impact of the Fiscal Compact

As explained in Chapter 1, the Fiscal Compact does not just enshrine fiscal rules in an international treaty. Article 3 Fiscal Compact obliges contracting Member States to implement certain budgetary rules separately in their national law and to have independent institutions at the national level to monitor these rules. This way, the Fiscal Compact tries to decentralise the monitoring of budgetary rules and to increase national ownership of these rules.¹⁹⁴ In other words, it attempts to foster domestically-rooted fiscal responsibility rather than a discipline imposed top-down by EU institutions.¹⁹⁵ Hence, since the entering into force of the Fiscal Compact, EU budgetary supervision takes place at two levels, both the central (European) and the decentral (national) level.

Diagram II intends to show the Fiscal Compact's impact. This means that within the diagram, it is located slightly more downwards on the *y*-axis of the diagram, in the direction of decentralised supervision, and substantially more to the left on the *x*-axis in the direction of advisory competences. It is located slightly more down the *y*-axis, because it has created a form of decentral supervision in addition to the existing budgetary supervision at the European level. A detailed consideration of the change that the Fiscal Compact brought in the level of enforcement (on the *x*-axis) goes beyond the scope of this thesis. However, a rough determination of the Fiscal Compact's place on the *x*-axis would be on the 'advisory' side, although not all the way to the left. The Fiscal Compact does not give the national fiscal councils powers to make binding decisions or use sanctions, but the complementary, non-binding Common Principles of the Commission do offer the fiscal councils the possibility to have a comply-or-explain principle and to trigger the fiscal correction mechanism, of which it is arguable that these give the fiscal councils more of an 'enforcing' character.¹⁹⁶ Again, it

¹⁹⁴ A Fiscal Compact for a stronger Economic and Monetary Union, ECB Monthly Bulletin May 2012, Page 79 and 88, Report on the review of the economic governance framework: stocktaking and challenges, 2014/2015 (INI), Committee on Economic and Monetary Affairs, Rapporteur Pervenche Berès, 17 June 2015, paragraph 14 and Yiangou, O'Keeffe and Glöckler, *supra* n. 21, page 38-39.

¹⁹⁵ Pisani-Ferry, *supra* n. 2, page 22.

¹⁹⁶ Communication from the Commission Common Principles on national fiscal correction mechanisms, COM (2012) 342 final, pages 5 and 7.

should be emphasised that the location on this diagram is only meant to give a general impression of the impact on the two factors.

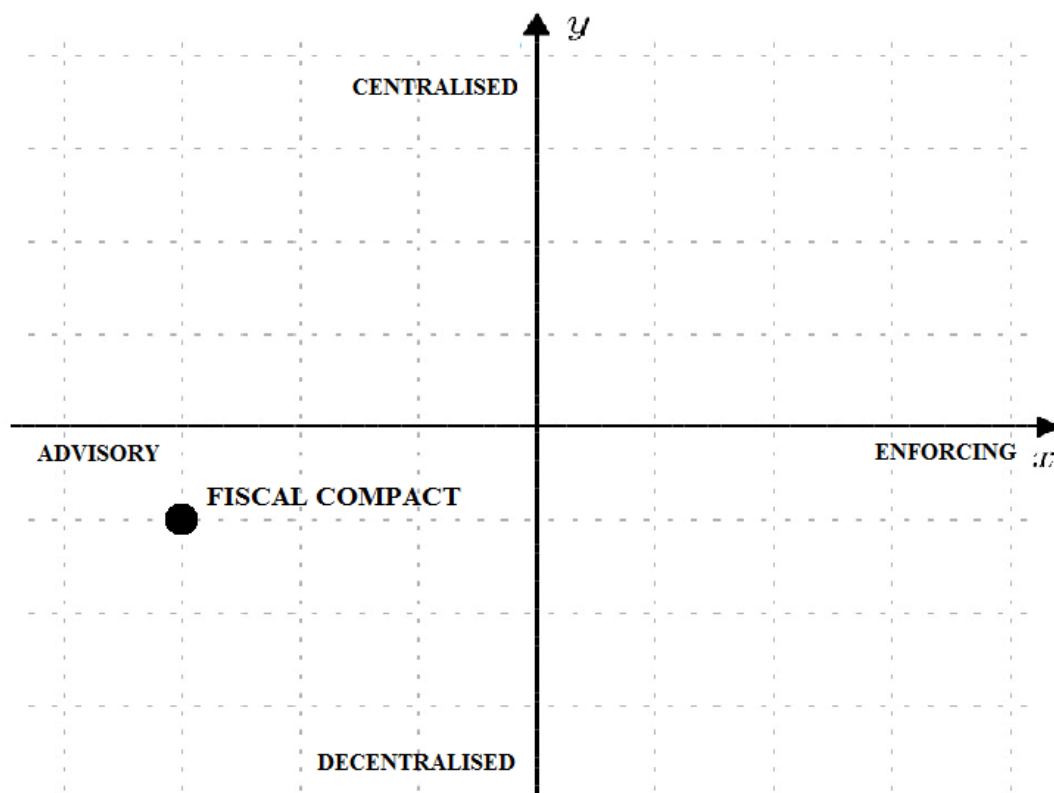


Diagram II

Given this starting point, how does the European Fiscal Board subsequently affect the levels of centralisation and enforcement of supervision?

ii. The impact of the European Fiscal Board's structure and legal set-up

When determining the place of the European Fiscal Board within the diagram, the structure and legal set-up as envisaged by the Five Presidents' Report are discussed first. Subsequently, the changes that the Commission Decision brought are set out. Thus, the divergence between the implications of the two 'versions' of the Board is demonstrated.

a. The impact as envisaged by the Five Presidents' Report

The Five Presidents' Report can be said to strive for more centralisation of budgetary supervision (on the y-axis), because of the statement that the Board should coordinate the national fiscal councils.¹⁹⁷ Coordination implies some kind of hierarchy between the Board and the national fiscal councils and an emphasis on taking decisions at the European instead

¹⁹⁷ Juncker, *supra* n. 9, page 14.

of the national level. Concerning the level of enforcement (on the x -axis), the Five Presidents' Report can be located on the 'advisory' side of the axis, because it explicitly states that the Board will be an advisory entity.¹⁹⁸ Also, one of the guiding principles states that the Board should advise and not implement policy and that enforcing the rules should remain the task of the Commission.¹⁹⁹ Nonetheless, the Board cannot be pinpointed all the way to the left of the x -axis. The comply or explain principle for the Commission and the Board's right of initiative in combination with the publication of the Board's assessments can be seen as proposals in the Report that have more of an enforcing character, since they make it more difficult for the Commission not to follow the Board's advice.²⁰⁰ Therefore, the Board as proposed in the Five Presidents' Report can be given the following position in Diagram III.

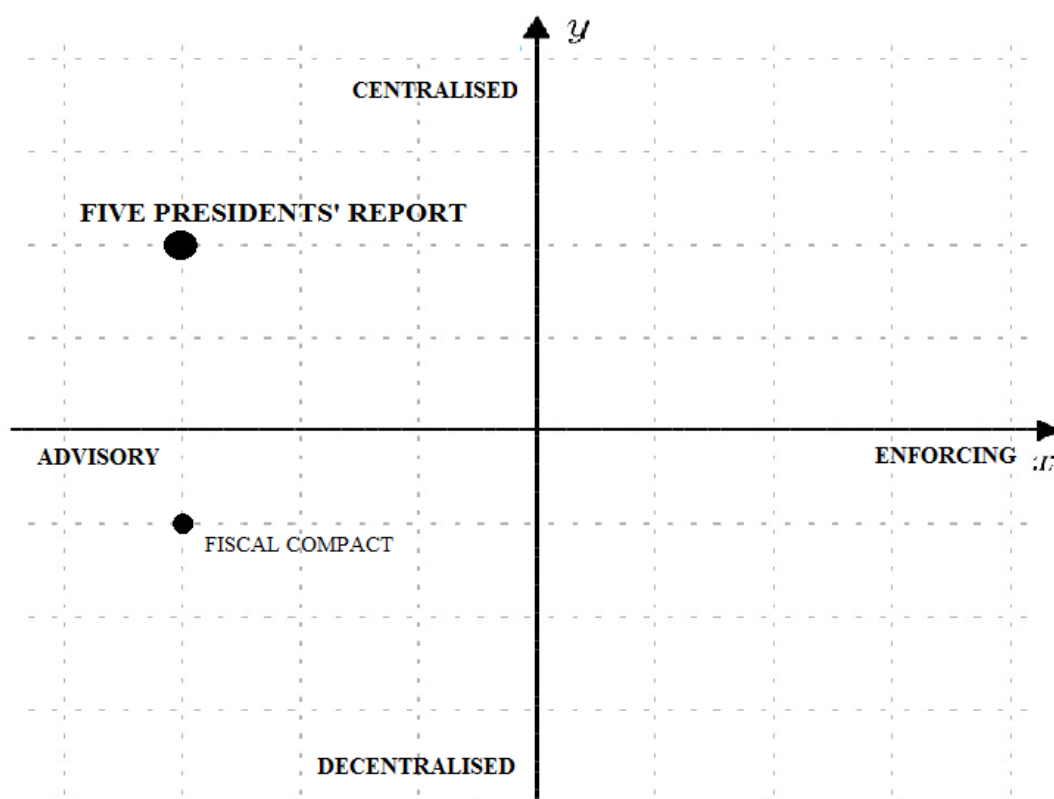


Diagram III

b. The impact through the Board's current structure and legal set-up

The Commission Decision has a different location in the diagram as compared to the Five Presidents' Report. Concerning the level of enforcement, the Decision similarly speaks of an advisory role, bringing its place again on the left side of the x -axis in the diagram. Given the

¹⁹⁸ Juncker, *supra* n. 9, page 14.

¹⁹⁹ Juncker, *supra* n. 9, page 23.

²⁰⁰ Juncker, *supra* n. 9, pages 14 and 23.

absence of a comply or explain principle, right of initiative and provisions on publicity, the set-up based on the Decision can be said to be located even more on the left side of the x-axis, containing less aspects with an enforcing character than the proposal in the Five Presidents' Report (see Diagram IV).

However, it should be noted that there is a possibility that the Board proves to be able to exercise internal pressure on the Commission to become more objective and consistent in its budgetary surveillance than before. Thus, the Board could possibly *indirectly* cause EU budgetary supervision to have more of an 'enforcing' character. This would even more be so if the Board eventually starts to publish its opinions, also creating external pressure on the Commission.

What is the estimated place of the Decision on the y-axis of the diagram? Since the Decision does not mention any coordination of the national fiscal councils, the centralisation as planned in the Report is not taking place. Thus, the Decision in principle does not seem to detract from the Fiscal Compact's shift of monitoring to the decentral level.

At the same time, the Board as established in the Decision arguably has the potential to indirectly *increase* the level of centralisation of EU budgetary supervision. The Board's task to advise on and evaluate the appropriate euro area and national fiscal stances could possibly jump-start the debate on changes to the rules in the Stability and Growth Pact concerning prescriptive formulations of appropriate national fiscal stances. This way, the Board's advice could indirectly lead to a stronger coordination of national fiscal policies at the European level and, thus, to a centralisation of EU budgetary supervision.

Obviously, it is not possible to determine the precise levels of these potential increases of centralisation and enforcement through the indirect impact of the Board in a diagram. Therefore, the location on Diagram IV shows the position of the Decision without taking these possible indirect influences into account. These hypothetical possibilities of the Board indirectly contributing to more enforcement and more centralisation are shown by the arrows pointing to the possible directions that the Decision's impact could turn to.

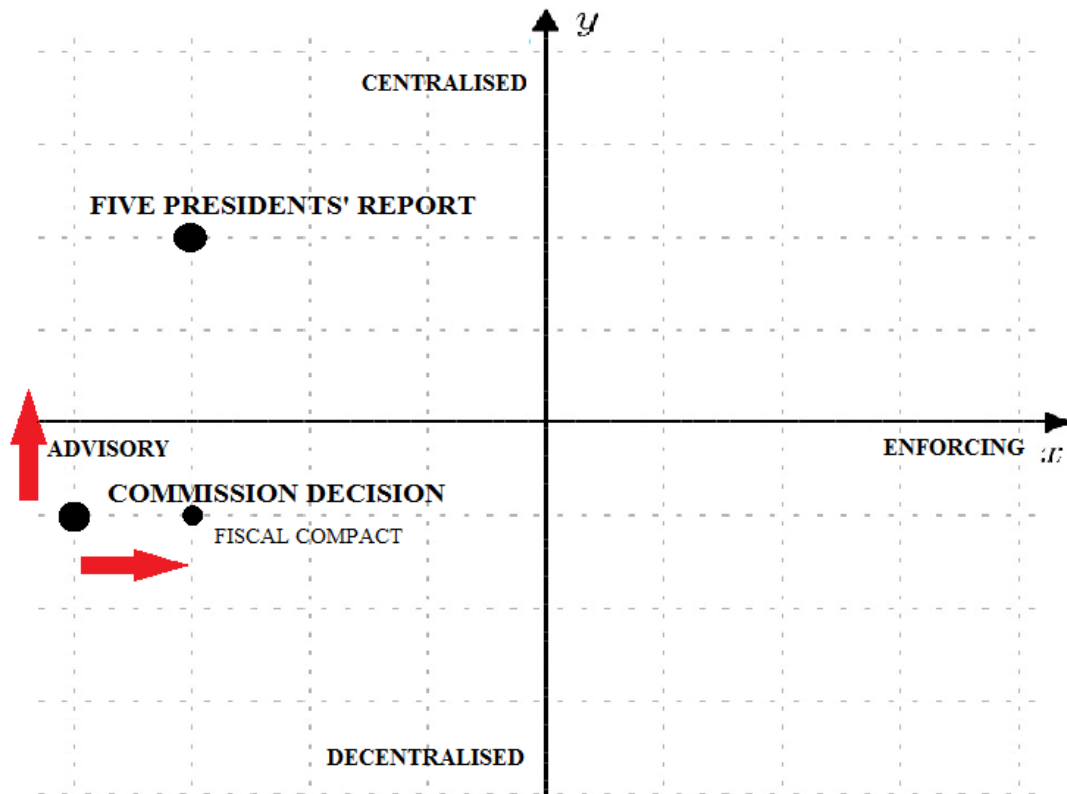


Diagram IV

Hence, the Board's current structure and legal set-up have different implications compared to what the Five Presidents' Report's proposal would have had. There is no direct centralisation of EU budgetary supervision and merely an indirect possibility of contributing to the centralisation of the supervision through the Board's task to formulate appropriate fiscal stances.

However, over time, it should not be ruled out that the Board might gradually try to take up more of a coordinating role. The initial call for coordination of the national fiscal councils seems to have parallels with a broader trend that has been identified within the EU of the creation of informal networks that unite national supervisory bodies at a European level and that gradually become more formal and influential by coordinating the national supervisory bodies more and more.²⁰¹ Step by step, such networks become vehicles for EU

²⁰¹ These trends are *inter alia* described in A. Ottow, 'Europeanisering van het markttoezicht', 1 *SEW Tijdschrift voor Europees en economisch recht* (2011), S. Lavrijssen-Heijmans and L. Hancher, 'Europese regulators in de netwerksectoren: revolutie of evolutie?', 11 *SEW Tijdschrift voor Europees en economisch recht* (2007), A.J.C. de Moor-van Vugt, 'Netwerken en de europeanisering van het toezicht', 3 *SEW Tijdschrift voor Europees en economisch recht* (2011), P.J.M.M. Van Cleynebreugel, 'Europeaniserend markttoezicht op zoek naar nieuwe evenwichten', 61 *SEW Tijdschrift voor Europees en economisch recht* (2014), M. de Visser, *Network-based Governance in EC Law. The example of EC Competition law and EC Communications Law* (Nijmegen: Wolf Legal Publishers 2009), p. 45, M. de Visser, 'Are you networked yet? On dialogues in European Judicial Networks', 100 *Utrecht Law Review* (2012) and S. Lavrijssen en L. Hancher, 'De rol van de netwerken van

institutions to have more control on national supervisors.²⁰² The current set-up of the European Fiscal Board does not seem to fit into this trend, since no coordination of the national fiscal councils is prescribed in the Decision. However, if the Board starts to exercise its task of cooperation with the national fiscal councils by developing and/or even monitoring minimum standards for the national fiscal councils, it should not be excluded from the outset that such a task gradually could become more of a coordinating nature. After all, European institutions often change gradually and step by step, building on existing structures.²⁰³

At the same time, it should be taken into account that the national fiscal councils have opposed to this initial plan of coordination. Given this apparent wish by the fiscal councils at the national level not to be subjugated by institutions at the European level, it is likely that the national fiscal councils would not readily accept such a development. Moreover, whether such a development would take place will depend on the attitude of the members of the Board.

The preceding has shown what the establishment of the European Fiscal Board will mean for the levels of centralisation and enforcement of EU budgetary supervision. Zooming out even more, it will now be considered whether an analysis of the Board's process of establishment can offer any insight into the patterns of the implementation of legal reforms in the EMU.

B. The evolution of a reform to the EU budgetary framework

How can the discrepancies between the initial plans for the European Fiscal Board and its formal establishment be explained and do the dynamics of the evolutionary process reveal more general trends within the development of the EMU? First, the development that the idea of a European Fiscal Board underwent throughout its evolutionary process will be critically scrutinised. Subsequently, the question will be raised whether any conclusions on a more general level can be drawn on this basis.

nationale toezichthouders bij de bevordering van good governance in de Europese Unie', P. Eijlander en R. Van Gestel, *Domeinconflicten tussen nationaal en Europees toezicht* (Den Haag: Boom Juridische Uitgevers 2006).

²⁰² Ottow, *supra* n. 201.

²⁰³ Lavrijssen-Heijmans and Hancher, *supra* n. 201, page 454. See also: M. Thatcher & D. Coen, 'Reshaping European Regulatory Space: An Evolutionary Analysis', 28 *West European Politics* (2008), page 4.

i. *A gradually diluted initiative to reform: the role of institutions*

Seen as a whole, the European Fiscal Board's evolutionary process is characterised by a wish to reinforce the economic framework that is gradually watered down throughout the process. After the launch of the idea of a Board that would function as an independent fiscal council or watchdog for the Commission, the Commission has managed to usurp the initiative to set up this new body without offering other institutions involvement in the process and without receiving much (negative) attention in the media for it. The substantial changes to the plan illustrate that the Commission effectively managed to sweep away a large part of the initial plan for the Board, and specifically the part that would contain the powers of the Commission. Thus, the fate of the European Fiscal Board seems more determined by political considerations and power struggles between the EU institutions than by objective functional imperatives.²⁰⁴ This seems to allow for a conclusion that if an institution such as the Commission gets the opportunity to retain its powers without being threatened by possible negative media attention on a large scale and without being opposed actively by other institutions, it will do so. Institutions prefer the reinforcement and extension of their own powers and competences above revolutionary proposals for institutional change.²⁰⁵

Looking at the future of the Board, the recent 'Brexit' vote by the British people on 23 June 2016 makes it even less likely that public attention for the Board and its fate will grow in the next few months. What does this teach us about the implementation of changes to the EMU?

ii. *The broader political landscape: lessons to be learned?*

It can be asked whether this process of gradual dilution of a proposal to reinforce the framework seems a recurring theme when changes are implemented in the EU economic framework. For example, such a process calls to mind the negotiations for the Fiscal Compact, where an initial provision that a balanced budget rule should be enshrined at the national level by a constitutional provision was watered down to having to be 'preferably constitutional'.²⁰⁶

²⁰⁴ R.D. Kelemen and A.D. Tarrant, 'The Political Foundations of the Eurocracy', 34 *West European Politics* (2011), page 923 and B. Rittberger and A. Wonka, 'Introduction: agency governance in the European Union', 18 *Journal of European Public Policy* (2011), page 782.

²⁰⁵ Lavrijssen-Heijmans and Hancher, *supra* n. 201, page 454.

²⁰⁶ Article 3(2) Fiscal Compact, R. O'Gorman, 'An Analysis of the Method and Efficacy of Ireland's Incorporation of the Fiscal Compact', in M. Adams, F. Fabbrini and P. Larouche (eds.), *The Constitutionalization of European Budgetary Restraints* (Hart Publishing 2014), page 277, D. Jancic, 'Parliamentary Involvement in the Economic and Monetary Union after the Euro Crisis', in N. Lupo and C. Fasone (eds.), *Interparliamentary Cooperation in the Composite European Constitution* (Hart Publishing 2016)

Another example is the strengthening of the Commission's surveillance powers by the legal reforms since the crisis, in particular by the Two Pack,²⁰⁷ after which the Commission has been accused of not using these enhanced surveillance powers and giving Member States too much leeway with their compliance with fiscal rules.

Naturally, one should be careful with too readily extrapolating overall changes in the EU legal order as a whole from specific changes within certain parts of the EMU.²⁰⁸ Nonetheless, these developments seem to resemble the Board's evolutionary process through the same gradual weakening of an initial idea. Following this line of reasoning, the evolutionary process of the European Fiscal Board seems to serve as a 'prism' for the tensions in the EMU between law and politics and between the different interests at stake for the involved European and national institutions.

Thus, the establishment of the European Fiscal Board seems to teach us something concerning the future development of the EMU. People or institutions that are involved with the reflection on the future design of the EU economic framework should be aware of the risks posed, at every stage of the procedure, by the tendency of specific political interests to gain ground and trump collective interests as soon as such the opportunity presents itself. Therefore, the role of the law should be shaped in such a way that it is protected against such mechanisms as much as possible. It is not possible to explain *in abstracto* how this should be done in all situations. Yet, strengthening both the internal and external accountability of EU economic governance can at least increase the visibility of the dynamics behind governance changes and will make it harder for an institution to run off with a specific plan on its own. For the European Fiscal Board specifically, this means that ensuring that the Board is transparent, accountable and visible in the media will be key for its effective functioning within the EU economic framework.

and V. Kreiling, 'The making of a new treaty: Six rounds of political bargaining', *Policy Brief Notre Europe* 2012 no. 32, page 4. See also: Craig, *supra* n. 1, page 260.

²⁰⁷ De Witte, *supra* n. 24, page 442 and 459, J.D. Savage and A. Verdun, 'Strengthening the European Commission's budgetary and economic surveillance capacity since Greece and the euro area crisis: a study of five Directorates-General', 23 *Journal of European Public Policy* (2016), page 114, B. Laffan and P. Schlosser, 'Public finances in Europe: fortifying EU economic governance in the shadow of the crisis', 38 *Journal of European Integration* (2016), page 241 and De la Parra, *supra* n. 31, page 13.

²⁰⁸ De Witte, *supra* n. 24, page 453.

Conclusion of Chapter 3

The European Fiscal Board will not directly cause big changes in the level of centralisation of EU budgetary supervision, although it might centralise the supervisory system in an indirect way by jump-starting normative discussions on the fiscal stance concept and by gradually taking up more of a coordinating role concerning the national fiscal councils. This outcome differs from what would have happened if the Five Presidents' Report's proposal was implemented, because that would have centralised budgetary supervision more by its plan to coordinate national fiscal councils. Furthermore, the Board as established in the Decision has an advisory character, even more than the proposal in the Five Presidents' Report, due to the lack of a comply-or-explain principle, right of initiative and provisions on publicity. Still, the general character of EU budgetary supervision might become a bit more 'enforcing' due to the Board's indirect influence, if it succeeds in making the Commission more objective and consistent in its budgetary surveillance.

Finally, the evolutionary process of the Board illustrates how institutions, such as the Commission, try to retain their powers as much as possible. Therefore, the law should be shaped in such a way that it is protected against such political influences, for example by strengthening the internal and external accountability of institutions that are involved with economic governance. For the Board, this means that its transparency, accountability and visibility in the media are key for its effectiveness within the EMU.

Conclusion

This thesis answered the following research questions. Firstly, how do the nature and legal set-up of the European Fiscal Board fit its objectives? Secondly, what will be the impact of the Board's nature and legal set-up on EU budgetary supervision, in terms of enforcement and centralisation, and does the development of the Board permit any general conclusions on the direction of the development of the EMU?

As a preliminary remark, it can be stated that the European Fiscal Board started off as an ambitious initiative to bring the Commission's budgetary surveillance under control, but lost some of its crucial safeguards along the way. Still, it has the potential to add value in some of the many areas that its mandate covers. However, if the Board's capacities are not extended, it is highly likely that it will not be capable of exercising all its tasks satisfactorily.

Firstly, how do the nature and legal set-up of the European Fiscal Board fit its objectives? Throughout its process of establishment, a diverse array of objectives have been formulated for the Board. Some of these flow from the Commission Decision that established the Board; others have been suggested informally in other contexts. The Board's current structure and legal set-up seems to serve these different objectives to different degrees. In practice, given the limited capacity of the Board, the successfulness of these objectives will depend on the priorities that the Board sets in the exercise of its tasks.

An informed and broadened discussion within the Commission of the overall implications of budgetary policies at euro area and national level is a goal that seems to be served by the set-up of the Board, given its tasks to advise in these areas, its expertise and the political will inside the Commission to further develop the concepts of euro area and national fiscal stances.

The Board's current structure and legal set-up do not say much about the potential for more alignment between the national fiscal councils and for the protection and strengthening of the national fiscal councils' independence. The Decision's focus on the exchange of best practices and on enhancing common understanding seems suitable for the contribution to more alignment between the national fiscal councils. For both of these objectives, success will depend on the initiative that members of the Board take, the attitude and willingness to cooperate on the side of the national fiscal councils and the publicity of the Board's opinions. The set-up of the Board leads to doubts about its independence from the Commission in

several respects, but the attitude of the fiscal councils will ultimately be decided by the profile and quality of the appointed members.

The expansion of European supervision of national budgets and the simplification of the current Union fiscal framework both seem to be facilitated indirectly by the Board's set-up, by the Board's task to advise on the appropriate fiscal stances and its discretion to make suggestions for the future evolution of the Union fiscal framework. However, concerns remain with regard to the Board's capacity, the lack of well-established methodology to fall back on for the fiscal stance task, the non-binding nature of the Board's opinions and its operational independence.

In principle, the Board's task to evaluate the implementation of the Union fiscal framework in combination with the expertise of the members of the Board seems to have the potential to improve the implementation of the Union fiscal framework and compliance with budgetary rules. Nonetheless, the expected absence of any legal effect of the Board's opinions, the lack of an explicit right of access to information and the doubts as to the Board's independence make it difficult for the Board to reach these objectives. Moreover, if the Board would choose not to further publish any documents apart from annual reports, one can even wonder whether the Board could be considered a true fiscal council at the European level, or that it just functions as a think tank for the Commission.

The Board's nature and legal set-up do not seem to serve the goals of an informed public debate and of an independent watchdog for the Commission, due to the general focus of the Decision that seems to exclude any form of publicity for the Board, the doubts concerning the Board's independence and the absence of any possibility to issue ad-hoc opinions freely. It is ironic that the idea of a watchdog for the Commission might have been the ECB's principal objective for the Board and turns out to be an objective that the current nature and set-up of the Board do not fit.

A consideration of the different objectives together raises numerous questions as to the compatibility of the different tasks of the Board, relating to the interaction between the European and the national level given the Board's cooperation with the national fiscal councils, the risk that it becomes blurred when the Board judges based upon 'hard rules' and when upon its own reflections and the fact that the Board is supposed to be an advisor and a controller at the same time.

It is essential that the Board's members start to publish their opinions and to have a strong media presence. Furthermore, it is recommendable that a comply-or-explain principle for the Commission is created in the Decision, that the European Parliament takes the initiative to hold Board members accountable and that the Board starts developing and possibly even monitoring minimum standards for the national councils in collaboration with the Network of EU Independent Institutions. Also, it should be thought through well what happens if a Board's opinion conflicts with an advice of a national fiscal council, given the vulnerable credibility that is at stake for these independent fiscal institutions.²⁰⁹

Secondly, what will be the impact of the Board's nature and legal set-up on EU budgetary supervision, in terms of enforcement and centralisation?

The Board's impact on the levels of enforcement and centralisation will likely be as follows. The Board will not directly change the level of centralisation of EU budgetary supervision in a significant way, although it might centralise supervision indirectly by jump-starting the debate on changes to the rules in the Stability and Growth Pact concerning prescriptive formulations of appropriate national fiscal stances. Another reason why the Board might centralise supervision over time is the possibility that the Board might gradually take up more of a coordinating role, in line with a broader trend of informal networks of national supervisory bodies that start coordinating the national bodies more and more. The impact of the Board differs from the proposal from the Five Presidents' Report, which would have centralised EU budgetary supervision more by its task to coordinate the national fiscal councils.

The Board has an advisory character, even more than the proposal in the Five Presidents' Report, due to the lack of a comply-or-explain principle, right of initiative and provisions on publicity in the Decision. However, the nature of EU budgetary supervision might gradually become a bit more 'enforcing' due to the Board's indirect influence, if it succeeds in making the Commission more objective and consistent in its budgetary surveillance.

Lastly, does the development of the Board permit any general conclusions on the direction of the development of the EMU? The development of the Board has painfully exposed how governance changes are often influenced more by political considerations and power struggles than by objective functional imperatives. This leads to the conclusion that the

²⁰⁹ 'The Functions and Impact of Fiscal Councils', *IMF Staff Working Paper* July 16, 2013, pages 48-49.

law should be shaped in such a way that it is protected against such political influences as much as possible, for example by the strengthening of internal and external accountability of institutions in the EMU.

The European Fiscal Board is an institutional innovation that has the potential to become an expert advisor for the Commission, but might not become the independent watchdog that the ECB has hoped for. It will have to find its place in an EU economic framework that has become highly complex over the years. If it increases its capacity, enhances its transparency and becomes visible in the parliamentary and public debate, it might become the accountability-multiplier that the ECB and many others are hoping for. If not, it might just become not more than a Commission think tank.

Bibliography

Legislation and Treaties

Commission Decision (EU) 2015/1937 of 21 October 2015 establishing an independent advisory European Fiscal Board.

Commission Decision (EU) 2016/221 of 12 February 2016 amending Decision (EU) 2015/1937 establishing an independent advisory European Fiscal Board.

Decision of the President of the European Commission of 17 April 2015 on the Chief Economist Analyst of the Commission, C(2015) 2665.

Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, last corrected on 29 April 2015.

Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

Regulation (EU) No 1173/2011 of the European Parliament and of the Council of 16 November 2011 on the effective enforcement of budgetary surveillance in the euro area.

Regulation (EU) No 1174/2011 of the European Parliament and of the Council of 16 November 2011 on enforcement measures to correct excessive macroeconomic imbalances in the euro area.

Regulation (EU) No 1175/2011 of the European Parliament and of the Council of 16 November 2011 amending Council Regulation (EC) No 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies.

Regulation (EU) No 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances.

Council Regulation (EU) No 1177/2011 of 8 November 2011 amending Regulation (EC) No 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure.

Council Directive 2011/85/EU of 8 November 2011 on requirements for budgetary frameworks of the Member States.

Regulation (EU) No 472/2013 of the European Parliament and of the Council of 21 May 2013 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.

Regulation (EU) No 473/2013 of the European Parliament and of the Council of 21 May 2013 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.

Treaty Establishing the European Stability Mechanism.

Treaty on Stability, Coordination and Governance in the Economic and Monetary Union.

Documents of EU institutions

‘Completing Europe’s Economic and Monetary Union’, Report by the Commission’s President Juncker, drafted in close cooperation with Euro Summit’s President Tusk, Eurogroup’s President Dijsselbloem, European Central Bank’s President Draghi and European Parliament’s President Schultz, 22 June 2015.

European Central Bank

ECB Economic Bulletin, Issue 7/2015, Box 5.

ECB Eurosystem ‘Reinforcing Economic Governance in the Euro Area’, 10 June 2010.

European Commission

Call for expressions of interest for the selection of the members of the European Fiscal Board (2016/C 140/04), European Commission Announcement.

Commission’s Common Principles on national fiscal correction mechanisms, COM (2012) 342 final.

Communication from the Commission on Steps towards Completing Economic and Monetary Union, COM(2015) 600 final.

Recommendation for a Council Recommendation on the implementation of the broad guidelines for the economic policies of the Member States whose currency is the euro, COM(2015) 251 final.

Recommendation for a Council Recommendation on the 2016 national reform programme of France and delivering a Council opinion on the 2016 stability programme of France, COM(2016) 330 final.

Recommendation for a Council Recommendation on the 2016 national reform programme of Spain and delivering a Council opinion on the 2016 stability programme of Spain, COM(2016) 329 final.

Report on Public Finances in EMU 2014, European Commission, Directorate-General for Economic and Financial Affairs, 9 *European Economy* (2014).

Stability and Growth Pact: update on the fiscal situation of Spain and Portugal, *European Commission Press Release* 7 July 2016.

Vade Mecum on the Stability and Growth Pact 2016 Edition, European Economy Institutional Paper 021 March 2016.

European Parliament

‘How effective and legitimate is the European Semester? Increasing the role of the European Parliament’, Directorate-General for Internal Policies, Policy Department A: Economic and Scientific Policy, Economic and Monetary Affairs, Briefing Paper, August 2011.

Report on the review of the economic governance framework: stocktaking and challenges, 2014/2015, Committee on Economic and Monetary Affairs, Rapporteur Pervenche Berès (17 June 2015).

Resolution of 17 December 2015 on completing Europe’s Economic and Monetary Union (2015/2936(RSP)).

Literature

2015 Article IV Consultation with the Euro Area Concluding Statement of IMF Mission’, *IMF* (18 June 2015).

‘Approaches to strengthening the regulatory framework of European monetary union’, *Monthly Report Bundesbank* (March 2015).

‘A Banking Union for the Euro Area’, *IMF Staff Discussion Note* (February 13, 2013).

‘Completing Economic and Monetary Union 3: Fiscal Union’, 22 *Centrum für Europäische Politik Policy Brief* (2015).

‘The Functions and Impact of Fiscal Councils’, *IMF Staff Working Paper* (July 16, 2013).

K. Albrecht, ‘An economic analysis of the fiscal policy framework in the EMU’, 1 *UCL Journal of Law and Jurisprudence* (2012).

K.A. Armstrong, ‘The new governance of EU fiscal discipline’, 38 *European Law Review* (2013).

- M. Andrieu, J. Bluedorn, L. Eyraud, T. Kinda, P.K. Brooks, G. Schwartz, A. Weber, 'Reforming Fiscal Governance in the European Union', *IMF Staff Discussion Note* (May 2015).
- F. Amtenbrink, 'Legal Developments', 51 *Journal of Common Market Studies* (2013).
- F. Amtenbrink and J. De Haan, 'Economic governance in the European Union: Fiscal policy discipline versus flexibility', 46 *Common Market Law Review* (2003).
- A. Bénassy-Quéré, 'Economic policy coordination in the euro area under the European Semester', paper requested by the European Parliament's Economic and Monetary Affairs Committee November 2015.
- M. Burda and S. Gerlach, 'A credible Stability and Growth Pact: Raising the bar for fiscal transparency', in R. Baldwin and D. Gros (eds.), *Completing the Eurozone Rescue: What more needs to be done?* (VoxEU, CEPR 2010).
- M. Buti, S. Eijffinger and D. Franco, 'Revisiting EMU's Stability Pact: A Pragmatic Way Forward', 19 *Oxford Review of Economic Policy* (2003).
- L. Calmfors, 'Fiscal Policy Coordination in Europe', *European Parliament Policy Department A*, PE 464.450.
- L. Calmfors, 'The Roles of Fiscal Rules, Fiscal Councils and Fiscal Union in EU Integration', 1076 *IFN Working Paper* (2015).
- E. Chiti and P.G. Teixeira, 'The Constitutional Implications of the European Responses to the Financial and Public Debt Crisis', 50 *Common Market Law Review* (2013).
- G. Claey's, Z. Darvas and A. Leandro, 'A Proposal to Revive the European Fiscal Framework', *Bruegel Policy Contribution* (2016).
- P. Craig, 'The Financial Crisis, the European Union Institutional Order, and Constitutional Responsibility', 22 *Indiana Journal of Global Legal Studies* (2015).
- A. Cuyvers, C.I.J. Klostermann and A.E.J.C. Scholten, 'Tussen handhaving en advisering: een rechtsvergelijkend overzicht van nationale budgettoezichthouders' (24 September 2014).
- Z. Darvas and A. Leandro, 'The Limitations of Policy Coordination in the Euro Area under the European Semester', 19 *Bruegel Policy Contribution* (2015).
- Z. Darvas and E. Vihriälä, 'Does the European Semester deliver the right policy advice?', 12 *Bruegel Policy Contribution* (2013).
- M. Dawson, 'The Legal and Political Accountability Structure of 'Post-Crisis' EU Economic Governance', 53 *Journal of Common Market Studies* (2015).

A.J.C. de Moor-van Vugt, 'Netwerken en de europeanisering van het toezicht', 3 *SEW Tijdschrift voor Europees en economisch recht* (2011).

M. de Visser, *Network-based Governance in EC Law. The example of EC Competition law and EC Communications Law* (Nijmegen: Wolf Legal Publishers 2009).

M. de Visser, 'Are you networked yet? On dialogues in European Judicial Networks', 100 *Utrecht Law Review* (2012).

X. Debrun and T. Kinda, 'Strengthening Post-Crisis Fiscal Credibility: Fiscal Councils on the Rise – A New Dataset', *IMF Working Paper* WP/14/58 April 2014.

X. Debrun, D. Hauner and M. Kumar, 'Independent Fiscal Agencies', 23 *Journal of Economic Surveys* (2009).

X. Debrun and M. Kumar, 'Fiscal rules, fiscal councils and all that: commitment devices, signalling tools or smokescreens?', 9th Banca d'Italia Workshop on Public Finance 2008.

R. O'Gorman, 'An Analysis of the Method and Efficacy of Ireland's Incorporation of the Fiscal Compact', in M. Adams, F. Fabbrini and P. Larouche (eds.), *The Constitutionalization of European Budgetary Restraints* (Hart Publishing 2014).

C. Grant, 'What is wrong with the European Commission?', *Centre for European Reform* (27 June 2013).

R. Hagemann, 'How Can Fiscal Councils Strengthen Fiscal Performance?', 1 *OECD Journal: Economic Studies* (2011).

A.W. Heringa, H. Nguyen and S. Wolf, 'EU Legitimacy: Squaring the triangle', 7 *Montesquieu Policy Papers* (2016).

D. Jancic, 'Parliamentary Involvement in the Economic and Monetary Union after the Euro Crisis', in N. Lupo and C. Fasone (eds.), *Interparliamentary Cooperation in the Composite European Constitution* (Hart Publishing 2016).

R.D. Kelemen and A.D. Tarrant, 'The Political Foundations of the Eurocracy', 34 *West European Politics* (2011).

R.D. Kelemen and T.K. Teo, 'Law and the Eurozone Crisis', Paper prepared for American Political Science Association Annual Convention, September 2012.

V. Kreiling, 'The making of a new treaty: Six rounds of political bargaining', 32 *Policy Brief Notre Europe* (2012).

B. Laffan and P. Schlosser, 'Public finances in Europe: fortifying EU economic governance in the shadow of the crisis', 38 *Journal of European Integration* (2016).

- S. Lavrijssen-Heijmans and L. Hancher, 'De rol van de netwerken van nationale toezichthouders bij de bevordering van good governance in de Europese Unie', P. Eijlander en R. Van Gestel, *Domeinconflicten tussen nationaal en Europees toezicht* (Den Haag: Boom Juridische Uitgevers 2006).
- S. Lavrijssen-Heijmans and L. Hancher, 'Europese regulators in de netwerksectoren: revolutie of evolutie?', 11 *SEW Tijdschrift voor Europees en economisch recht* (2007).
- G. Martinico, 'The Constitutional implications of the crises', 37 *Journal of European Integration* (2015), page 706 and P. Statham and H.J. Trenz, 'The Politicization of the European Union: From Constitutional Dreams to Eurozone Crisis Nightmares', ARENA Working Paper (2012).
- A. Merino, 'Legal developments in the Economic and Monetary Union during the debt crisis: the mechanisms of financial assistance', 49 *Common Market Law Review* (2012).
- A. Mijs, 'The Unsustainability of Independent Fiscal Institutions', Clingendael Policy Brief (April 2016).
- R. Morris, H. Ongena and L. Schuknecht, 'The Reform and Implementation of the Stability and Growth Pact', 47 *European Central Bank Occasional Paper Series* (2006).
- A. Ottow, 'Europeanisering van het markttoezicht', 1 *SEW Tijdschrift voor Europees en economisch recht* (2011).
- S. De la Parra, 'The two pack on economic governance: an initial analysis', 3 *ETUI* (2013).
- F.L. Pasini, 'Economic Stability and Economic Governance in the Euro Area: what the European Crisis can teach on the limits of economic integration', 16 *Journal of International Economic Law* (2013).
- J. Pisani-Ferry, 'Rebalancing the governance of the euro area', *France Stratégie Working Paper* (2015).
- 'Position Paper Defining and Enforcing Minimum Standards for Independent Fiscal Institutions', Network of EU Independent Fiscal Institutions (February 2016).
- 'Position Paper on Initiatives to strengthen the EU Fiscal Framework', Network of EU Independent Institutions (5 November 2015).
- B. Rittberger and A. Wonka, 'Introduction: agency governance in the European Union', 18 *Journal of European Public Policy* (2011).
- M. Ruffert, 'The European Debt Crisis and European Union Law', 48 *Common Market Law Review* (2011).

J.D. Savage and A. Verdun, 'Strengthening the European Commission's budgetary and economic surveillance capacity since Greece and the euro area crisis: a study of five Directorates-General', 23 *Journal of European Public Policy* (2016).

M.G. Schoeller, 'Providing political leadership? Three case studies on Germany's ambiguous role in the Eurozone crisis', *Journal of European Public Policy* (2016).

L. Schuknecht, P. Moutot, P. Rother and J. Stark, 'The Stability and Growth Pact: Crisis and Reform', 129 *ECB Occasional Paper Series* (September 2011).

S.M. Seyad, 'A legal analysis of the control of national budgets by the EU institutions', 30 *Journal of International Banking Law and Regulation* (2015).

R. Smits, 'Correspondence', 49 *Common Market Law Review* (2012).

M. Thatcher & D. Coen, 'Reshaping European Regulatory Space: An Evolutionary Analysis', 28 *West European Politics* (2008).

K. Tuori and K. Tuori, *The Eurozone Crisis: A Constitutional Analysis* (Cambridge University 2014).

P.J.M.M. Van Cleynenbreugel, 'Europeaniserend markttoezicht op zoek naar nieuwe evenwichten', 61 *SEW Tijdschrift voor Europees en economisch recht* (2014).

A. Verdun, 'A historical institutionalist explanation of the EU's responses to the euro area financial crisis', 22 *Journal of European Public Policy* (2015).

J. Von Hagen, 'The Sustainability of Public Finances and Fiscal Policy Coordination in the EMU', 412 *CASE Working Paper* (2010).

J. White, 'Politicizing Europe: The Challenge of Executive Discretion', 72 *LSE 'Europe in Question' Discussion Paper Series* (2014).

A. Wille, *The Normalization of the European Commission: Politics and Bureaucracy in the EU executive* (Oxford University Press 2013).

A. Wille, 'The politicization of the EU Commission: democratic control and the dynamics of executive selection', 78 *International Review of Administrative Sciences* (2012).

J. Yiangou, M. O'Keeffe and G. Glöckler, 'Tough love: How the ECB's Monetary Financing Prohibition Pushes Deeper Euro Area Integration', in M. Chang, G. Menz and M.P. Smith (eds.), *Redefining European Economic Governance* (Routledge 2014).

Websites

<http://blogs.wsj.com/brussels/2015/11/13/not-all-on-board-with-the-european-fiscal-board/>

<http://www.cer.org.uk/insights/what-wrong-european-commission>

<http://www.consilium.europa.eu/en/policies/european-semester/>

<https://www.ecb.europa.eu/press/key/date/2010/html/sp101130.en.html>

http://ec.europa.eu/europe2020/making-it-happen/index_en.htm

http://ec.europa.eu/economy_finance/db_indicators/fiscal_governance/independent_institutions/index_en.htm

<http://www.euifis.eu/eng/fiscal/108/about-us>

<http://eulawanalysis.blogspot.nl/2015/11/further-development-of-emu-should.html>

<http://www.euractiv.com/section/public-affairs/opinion/what-is-wrong-with-the-european-commission/>

<https://www.euractiv.com/section/euro-finance/news/commission-defends-role-as-sole-guardian-of-fiscal-discipline/>

<http://www.euractiv.com/section/euro-finance/news/schulz-in-row-with-commission-over-parliament-s-economic-oversight/>

<http://euro.boellblog.org/2013/05/07/doubts-about-rehns-position-as-independent-commissioner/>

<https://euroinsight.mni-news.com/posts/will-the-eu-s-new-independent-fiscal-board-turn-into-a-commission-committee-2217>

<https://euroinsight.mni-news.com/posts/commission-delays-report-on-national-fiscal-watchdogs-as-many-eu-members-lag-on-implementation-9486>

<http://www.europarl.europa.eu/news/en/news-room/20150413IPR41658/Commission's-economic-decision-making-needs-to-become-more-neutral-say-MEPs>

http://www.ilfoglio.it/esteri/2016/04/05/il-potente-selmayr-pensa-a-unopa-sullo-european-fiscal-board__1-v-140310-rubriche_c220.htm

<http://www.oecd.org/gov/budgeting/oecdnetworkofparliamentarybudgetofficialspbo.htm>

<http://www.ombudsman.europa.eu/resources/otherdocument.faces/nl/67385/html.bookmark>

<http://www.pbo.gr/Activities/tabid/1086/ArtMID/2985/ArticleID/84/language/en-GB/Default.aspx>

<http://www.politico.eu/article/without-changing-treaties-eu-commission-tightens-economic-eurozone-screws/>

<http://www.reuters.com/article/us-europe-budgets-bundesbank-idUSKBN0TT2ID20151210>

<http://voxeu.org/article/credible-stability-and-growth-pact-raising-bar-budgetary-transparency>

Annex I

Interview Questions for L'udovít Ódor, Deputy of the Network of EU Independent Fiscal Institutions and Member of the Slovak Council for Budget Responsibility

The Network

- What is your role within the Network of EU Independent Fiscal Institutions?
- Could you talk a bit about how the Network came into being?
 - o Formal establishment was on 11 September 2015; how much happened informally before? Two informal meetings? When?
 - o To what extent did the Commission know this was happening?
- What do you consider to be the functions of the Network?
 - o Would you also say there is a 'peer review function', commenting on each other's work?

'The road to' the EFB

- The EFB was first publicly mentioned in the Five Presidents Report, but do you know how did the idea of an EFB arose?
 - o Did a specific institution come up with it?
- The Five Presidents Report was published in June 2015.
 - o At that time, do you know whether there were already specific plans as to how the EFB would be established? Was the Network (informal, at that time) involved in that?
- Already in October, so four months later, the Commission published the Decision establishing an independent advisory EFB. Did you expect this?
 - o The Network was set up just before, right? Has the Network been in contact with the Commission before the Decision?
 - Position Paper stresses readiness to collaborate, but in November?
- What is your view on that it is set up through a Commission decision?
 - Do you know whether there were other institutions involved? And why?
 - Do you think other institutions should have been more involved?
- Compared to the Five Presidents report, the Decision contains quite a few changes. Do you know why the Commission decided to change the following:

- From ‘coordinating’ national fiscal councils to ‘cooperating with national fiscal councils’?
 - Has the Network been in contact with the Commission about this? How?
- From a ‘public assessment’ and a ‘more informed public debate’ to only an annual report?
 - Does this mean the IFIs will not see more than the annual report?
- From a guiding principle that the Commission ‘should be able to deviate from the views of the European Fiscal Board provided that it has justifiable reasons and explains them’ (comply or explain principle) to the disappearance of such a principle?
 - ➔ Concerning all these changes, do you consider them positive or negative changes?
- In February, the Commission amended the Decision. For ‘reasons of coherence and efficiency’, it was decided that the Chief Economic Analyst should not become Head of Secretariat.
 - What are your thoughts on this amendment?
- Do you expect there to come a new Chief Economic Analyst after Philipp Rother has left?
- Do you know whether there are any more updates as to the new Chair / Members of the EFB?
 - Were you consulted? According to Decision, only for the three remaining members.

Why a European Fiscal Board?

- What do you think is the main reason or are the main reasons it was ought necessary to set up an independent advisory European Fiscal Board? What are the ‘holes in the system’ it tries to fix?
 - Rother: idea of watchdog for Commission. Do you recognise this?

Relation to national fiscal councils

- Are there already practical discussions / plans as to what the cooperation with the national fiscal councils would look like?
 - What would the relation be between the EFB and the Network?

- For example, you proposed the designing of Minimum Standards in a position paper in February. How will the detailing of these principle go in practice? Role EFB? (as said in Position Paper)
- As website shows, you are meeting with Commission officials, such as Dombrovskis, what will EFB do in this?
- The position paper also proposes to set up a monitoring system with reporting ‘by the Commission’: was this wording a deliberate choice not to involve the EFB? Or will the EFB be involved in this?
- Memorandum of Understanding between the Commission and the IFIs?
- Why do you think the Commission created another cooperation mechanism next to the Network?
- What would be the ideal form of cooperation in your view?
 - Position Paper on Minimum Standards: ‘IFIs should not be mandated to engage in international cooperation or coordination of their activities by national or international law or any other means. Voluntary international cooperation should be encouraged...’
- Could the EFB be seen as a vehicle for the European Commission to have more control over the national fiscal councils?
- In Position Paper, states that Article 2 Decision could help in ‘direct, timely and more frequent participation of national IFIs in ongoing technical and preparatory work in the area of fiscal surveillance at the EU level’. → More national influence on European level expected? How?
- How do you currently perceive the relation between all the different networks: the Network, the Commission’s EUNIFI (EU Network of Independent Fiscal Institutions), the OECD’s Network of Parliamentary Budget Officials and Independent Fiscal Institutions and the EFB?
 - Do you think something should change? And will change?
 - E.g., will the EUNIFI stay in existence?
- During the last few years, many networks that unite national supervisors have been set up, such as the European Competition Network, the European Regulators’ Group for Electricity and Gas or the European Securities and Markets Authority. However, all these networks consist of representatives of the national supervisory bodies, whilst the EFB only consists of experts that do not represent national supervisors.

- Do you think there should be more national representation within the EFB itself?
- Can experts take into account the national specificities enough?

Tasks

- What do you think is the most important function of the EFB?
 - What should its function or role ideally be in your view?
 - Rother: protection of national fiscal councils. Do you agree?
- What do you think of its mandate?
 - Given the fact that there are five Members in total, do you think the mandate is very broad?
- What are your views on that its opinions will not be published?
- Right now, it seems that opinions will have no legal effect whatsoever (no comply or explain).
 - What do you think of this?
 - Or do you expect some legal effect to arise?
- What do you think of the fact that the EFB will start looking at the aggregate fiscal stance for the euro area?
- Looking at its task to provide an evaluation of the implementation of the Union fiscal framework:
 - What do you think that task will entail in practice?
 - Doesn't it seem to overlap with the Commission's obligation in article 8 Fiscal Compact to report on the Member State compliance with the implementation obligations there?

General

- Do you think the stance of the Commission will change due to the establishment of the EFB?
- Concerning the big differences between the FPR and the Decision, Philipp Rother gave as the most important explanation the absence of positive reactions to the idea of an EFB in general after the FPR came out and in general the lack of attention for this topic. Do you agree with this explanation?
- The obligation to set up national fiscal councils seemed to shift the responsibility for compliance with European budgetary rules more to the national level as opposed to the

European level. The Five Presidents report also refers to the ‘national ownership of EU rules’. Should this move of setting up the EFB be seen as ‘countering’ this decentralisation, or are they just two separate developments taking place that do not have to contradict each other?

- Do you think that the lack of political accountability of the EFB could become an issue if it starts issuing influential opinions with far-reaching consequences?
- What do you think of the doubts expressed about the independence of the EFB (the fact that members can be reappointed, that the Secretariat is attached to the Commission and that its assessments are not made public)?
- How do you expect the EFB to develop in the future?
 - o Will the Commission change its set-up in response to scepticism concerning its independence?
 - o Expectation European Ombudsman: Rules of Procedure. Realistic?
- What is your overall assessment of the establishment of the EFB?
 - o Would it have been more positive if the plan of the Five Presidents Report was retained?
- Do you have other suggestions for literature or people we should interview?
- Are there any important events or decisions in the nearby future that you think we should be aware of?
 - o On 18 May, there was a ‘public consultation’ of the Member States. What do you expect to happen with this on a short and long term?

Annex II

Interview Questions for Philipp Rother, Chief Economic Analyst at the European Commission

- What does the role of Chief Economic Analyst entail?
 - o As far as I know: verifying Commission decisions on the surveillance of Member States economic and monetary positions and advising the Vice President

The road to the EFB

- The EFB was first mentioned in the Five Presidents Report, but how did the idea of an EFB arise?
 - o Did a specific institution come up with it? When?
- How have you been involved with the establishment of the European Fiscal Board?
 - o Initially, you were supposed to become the Head of Secretariat. According to the Amendment to the Decision, this was for reasons of ‘coherence and efficiency’. What are your thoughts on this?
- The Five Presidents Report was published in June 2015.
 - o At that time, were there already specific plans as to how the EFB would be established?
- In October, the Commission already published the Decision establishing the EFB.
 - o According to some people working in the national fiscal councils, this was earlier than they expected.
 - o Were other institutions involved in this process? If not, why was the choice made not to involve other institutions in this process?
- Compared to the Five Presidents report, the Decision contains quite a few changes. Do you know why the Commission decided to change the following:
 - o From ‘coordinating’ national fiscal councils to ‘cooperating with national fiscal councils’?
 - o From a ‘public assessment’ and a ‘more informed public debate’ to only an annual report?
 - o From a guiding principle that the Commission ‘should be able to deviate from the views of the European Fiscal Board provided that it has justifiable reasons and explains them’ (comply or explain principle) to the disappearance of such a principle?
 - ➔ Concerning all these changes, do you consider them positive or negative changes?

Why the EFB?

- What is the main reason or are the main reasons for the establishment of the EFB?

What are the 'holes in the system' it tries to fix?

- Counterbalancing the increasingly political stance of the Commission?
- Is there something that the national fiscal councils lack? Is more central control of the national fiscal councils really needed and why?
- Aggregate fiscal stance
- The Fiscal Compact and, more specifically, the obligation to set up national fiscal councils seemed to shift the responsibility for compliance with European budgetary rules more to the national level as opposed to the European level. The Five Presidents report also refers to the 'national ownership of EU rules' established by the recent changes in the EU fiscal framework. Should this move of setting up the EFB be seen as 'countering' this decentralisation, or are they just two separate developments taking place that do not have to contradict each other?

National fiscal councils

- The Decision makes the EFB responsible for cooperation with the national fiscal councils, 'in particular aiming at exchanging best practices and facilitating common understanding on matters related to the Union fiscal framework'.
 - These kind of activities were already taking place within the Network of EU Independent Fiscal Institutions. Do you think this was not working sufficiently?
- Is there already a plan what the cooperation with national fiscal councils would look like?
 - And how would it relate to the current Independent Network ?
 - And what would the role of the Commission be in this?
- To what extent will the national fiscal councils be aware of the opinions the EFB produce? More than the yearly report?
 - What if the opinions go against the opinions of the national councils?

Tasks

- What do you think is the most important function of the EFB?
 - What should its function ideally be in your view?
- What will all the practical links with the European Commission be?
 - Secretariat, but also present during meetings?
 - When advices published, will they be presented to the Commission?
- How will its independence be guaranteed, considering the Secretariat's attachment to the Commission? For example when writing the country reports? Will there be 'Chinese walls'?
- What does the guiding principle in the Five Presidents report entail that it should only form economic, rather than legal, judgments on the appropriate fiscal stance at national and euro area level?
 - Also considering that the Five Presidents Report states that this economic judgment 'should be done on the basis of the rules in the SGP'.
- Why was the choice made not to make the EFB's opinions public?

- Also concerning that the Five Presidents Report also speaks about creating a ‘more informed public debate’ and that it admits that the current framework is complex?
 - What are your views on this?
- It seems that opinions will have no legal effect whatsoever (no obligation for the Commission to react/comply or explain etc.).
 - Do you think that is a good thing?
 - Or do you expect some legal effect to arise?
- Looking at the aggregate fiscal stance, for the euro area as a whole, is something that cannot really be found in existing EU legal frameworks. → am I right in that?
 - Do you think it is positive that the EFB starts looking at that?
 - How will they define such an aggregate stance in practice?
- By having the task to provide the Commission with an evaluation of the implementation of the Union fiscal framework, does that mean they will be involved with providing the compliance reports that the Commission needs to provide according to article 8 Fiscal Compact?

General

- There have been doubts expressed about the independence of the EFB because of the combination of the following factors: the fact that members can be reappointed, that the Secretariat is attached to the Commission and that its assessments are not made public.
 - What are your views on this?
- Do you think that the lack of political accountability of the EFB could become an issue if it starts issuing influential opinions with far-reaching consequences (e.g. on the implementation of the fiscal framework, on the proper functioning of the EMU or on the aggregate fiscal stance)?
- During the last few years, many networks that unite national supervisors have been set up, such as the European Competition Network, the European Regulators’ Group for Electricity and Gas or the European Securities and Markets Authority. However, all these networks consist of representatives of the national supervisory bodies, whilst the EFB only consists of experts.
 - Do you know why it was chosen not to give national representatives a place in this network? Or will this *de facto* be the case through the planned cooperation with national fiscal councils?
 - What are your views on the choice of having independent experts not linked to Member States? Will they be able to take into account national specificities sufficiently?
- President Juncker has indicated that he wants the Commission to be more political. Is the fact that a body is set up that will provide objective, independent and likely apolitical opinions concerning compliance with EU budgetary rules a ‘proof’ of the increasing political position of the Commission?

- And will it maybe even stimulate the Commission in being more political in its assessments, for example within the European Semester?
- What is your overall assessment of the establishment of the EFB?
 - What do you expect the EFB to add to the European fiscal framework during the next few years?
 - Do you expect the EFB to change majorly during the next few years?
- Do you have any other suggestions for literature or people we should interview?
- Are there any important events or decisions in the nearby future that you think we should be aware of?

Annex III

Interview Questions for Alice Zoppè, Economist at the Economic Governance Support Unit of the European Parliament

- What is your role within the European Parliament?
- How have you been involved with the establishment of the European Fiscal Board?

The road to 'the EFB

- The EFB was first publicly mentioned in the Five Presidents Report, but how did the idea of an EFB arise?
 - o Did a specific institution come up with it?
- The Five Presidents Report was published in June 2015.
 - o At that time, were there already specific plans as to how the EFB would be established? Was the European Parliament involved in that?
 - o In October, so four months later, the Commission already published the Decision establishing an independent advisory EFB. Did you expect this?
 - o What is your view on that it is set up through a Commission decision? Has the EP been involved in this (officially or unofficially)?
 - Were there other institutions involved and/or do you think other institutions should have been more involved?
- Compared to the Five Presidents report, the Decision contains quite a few changes. Do you know why the Commission decided to change the following:
 - o From 'coordinating' national fiscal councils to 'cooperating with national fiscal councils'?
 - o From a 'public assessment' and a 'more informed public debate' to only an annual report?
 - o From a guiding principle that the Commission 'should be able to deviate from the views of the European Fiscal Board provided that it has justifiable reasons and explains them' (comply or explain principle) to the disappearance of such a principle?
 - ➔ Do you consider these changes positive or negative?

- In February, the Commission amended the Decision. For ‘reasons of coherence and efficiency’, it was decided that the Chief Economic Analyst should not become Head of Secretariat.
 - What are your thoughts on this amendment?

Why a European Fiscal Board?

- What do you think is the main reason or are the main reasons to set up an independent advisory European Fiscal Board? What are the ‘holes in the system’ it tries to fix?
 - Counterbalancing the increasingly political stance of the Commission?
 - Is there something that the national fiscal councils lack?
 - Aggregate fiscal stance
- The Fiscal Compact and, more specifically, the obligation to set up national fiscal councils seemed to shift the responsibility for compliance with European budgetary rules more to the national level as opposed to the European level. The Five Presidents Report also refers to the ‘national ownership of EU rules’ established by the recent changes in the EU fiscal framework. Should this move of setting up the EFB be seen as ‘countering’ this decentralisation, or are they just two separate developments taking place that do not have to contradict each other?

Relation to national fiscal councils

- The Decision makes the EFB responsible for cooperation with the national fiscal councils, ‘in particular aiming at exchanging best practices and facilitating common understanding on matters related to the Union fiscal framework’.
 - These kind of activities were already taking place within the Network of EU Independent Fiscal Institutions. Do you think this was not working sufficiently? And what relation do you expect there to be between these two bodies now?
 - Could the EFB be seen as a vehicle for the European Commission to have more control over the national fiscal councils?
- During the last few years, many networks that unite national supervisors have been set up, such as the European Competition Network, the European Regulators’ Group for Electricity and Gas or the European Securities and Markets Authority. However, all these networks consist of representatives of the national supervisory bodies, whilst the EFB only consists of experts that do not represent national supervisors.
 - Do you think there should be more national representation in the EFB?

Tasks

- What do you think is the most important function of the EFB?
 - o What should its function ideally be in your view?
- What are your views on that its opinions will not be published?
- Right now, it seems that its opinions will have no legal effect whatsoever (no obligation for the Commission to react/comply or explain etc.).
 - o Do you think that is a good thing?
 - o Do you expect some legal effect to arise?
- Looking at the aggregate fiscal stance, for the euro area as a whole, is something that cannot really be found in existing EU legal frameworks.
 - o Do you think it is positive that the EFB starts looking at that?

General

- President Juncker has indicated that he wants the Commission to be more political. Is the fact that a body is set up that will provide objective, independent and likely apolitical opinions concerning compliance with EU budgetary rules a ‘proof’ of the increasing political position of the Commission?
- Do you think that the lack of political accountability of the EFB could become an issue if it starts issuing influential opinions with far-reaching consequences (e.g. on the implementation of the fiscal framework, on the proper functioning of the EMU or on the aggregate fiscal stance)?
- There have been doubts expressed about the independence of the EFB because of the combination of the following factors: the fact that members can be reappointed, that the Secretariat is attached to the Commission and that its assessments are not made public.
 - o What are your views on this?
- What is your overall assessment of the establishment of the EFB?
- Do you have other suggestions for literature or people we should interview?
- Are there any important events or decisions in the nearby future that you think we should be aware of?