

# Legislating in the shadow of the European Council: Empowering or silencing the European Parliament?

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## 1. Introduction

“As a result of this trend towards ‘summitization’, the fixation with meetings at which the Heads of State and Government, in a clear breach of the spirit of the Treaties, take more and more decisions themselves and seek to put their stamp even on the fine print of legislation, the Community institutions are increasingly being marginalized”.<sup>ii</sup> This is how the President of the European Parliament (EP) Martin Schulz recently portrayed decision-making in the European Union (EU): “a state of affairs” he added “reminescent of the era of the Congress of Vienna”. The academic literature has also captured a similar development and, especially (but not exclusively) in the field of economic and monetary policies, has described the European Council as “the political executive of the Union” (Fabbrini 2013, p. 1006) which has come to play “a superior role in relation to the Council and the Commission [...] the heads instruct the relevant Council formation and also the Commission to work towards specific objectives [...] and also to revise proposals” (Puetter 2014, p. 73). In the “new” formulation of “intergovernmentalism”, the role of supranational institutions change: rather than resisting intergovernmental coordination, they “act strategically [...] in a more hostile environment, they avoid putting forward proposals that have little chance of success” (Bickerton *et al.*, 2014, pp. 8-9).

As the financial and economic crisis broke out in 2009, the issue of reforming the Economic and Monetary Union (EMU) featured prominently in the EU agenda. In a context dominated by the heads of state and government, the ‘intergovernmental’ method became the dominant mode of decision-making, while the ‘community’ method – where the Commission sets the agenda, and the EP is on a par with the Council under the ordinary legislative procedure (Dehousse, 2011) – was marginalized. Yet, since the Lisbon Treaty came into force in 2009, the role of the EP in the adoption of legislative acts in the field of economic and fiscal policy improved considerably (see Fasone 2014, pp. 170-71; Rittberger, 2014). The ordinary legislative procedure replaced cooperation in the field of budgetary and economic surveillance (art. 121.6) with the EP formally placed on equal standing to the Council.

The aim of this paper is to assess the implications of “new intergovernmentalism” for supranational institutions and, particularly, for the EP. The literature on the new intergovernmentalism has theorized and empirically evaluated the ascendancy of the European Council in the post-Maastricht era (Puetter, 2014; Bickerton *et al.* 2014) and specifically in the context of the Eurocrisis (Fabbrini, 2013; 2015). In contrast, the impact of new intergovernmentalism on supranational institutions has been the object of some speculation (i.e. Puetter 2014, pp. 228-35; Fabbrini, 2015, pp. 33 ff.) but, so far, has not been systematically investigated. Therefore, this paper presents an in-depth analysis of the role of the EP in the negotiations leading to the adoption of the so-called ‘Six’ and ‘Two-pack’. These two legislative packages are exceptionally interesting because, while the EP is formally entrusted with the role of co-legislator, in fiscal policies and budgetary coordination the member states have kept control of the agenda. Indeed, it is in these policy areas where, together with security policies and immigration, that new intergovernmentalism – as also acknowledged by its critics (Schimmelfenning 2015, p. 5; see also Puetter 2014, p. 5) – is most visibly observed.

Against the backdrop of the literature on decision-making under codecision (i.e. Tsebelis & Garrett, 2000; Maurer, 2003; Corbett *et al.* 2011, p. 242-43) we would expect the EP to fully exercise its formal prerogatives. Yet, we present an overall sceptical assessment regarding the ability of the EP to shape policy outcomes when acting “in the shadow” of the European Council. Despite the ordinary legislative procedure, when the European Council sets the legislative agenda and monitors its development, the EP is left in a weak position. If the EP demands too much, it will face the credible threat that the member states will resort to intergovernmental negotiations. The pressure to conclude – and the associated ‘blame’ if the negotiations fail – is generally placed on the EP not only by the (European) Council, but also by the Commission. Furthermore, while the Council is able to negotiate cohesively, the EP is ideologically divided and struggles to reach a unified position on redistributive issues. More generally, we find support for the new intergovernmentalist claim that the rise of the European Council bears significant consequences for supranational actors: the formal powers of the EP in the ordinary legislative procedure do not represent a sufficient counter-weight to the political powers of the European Council in designing economic governance.

The rest of this paper is organized as follow. Section two introduces the “new intergovernmentalism” and its implications for the EU political system. Section three presents several theoretical propositions on the role of the EP in the reform of the Economic and Monetary Union (EMU) in the ‘shadow’ of the European Council. Section four process-traces the unfolding of the negotiations of the Six-pack and the Two-pack. Section five discusses the main findings and concludes.

## 2. The rise of new intergovernmentalism

When the financial crisis spread to Europe, and markets started to demand increasingly higher interest rates from several European countries with high debts and/or deficits, the EU reacted in two main ways. Firstly, it quickly established temporary assistance mechanisms to help countries experiencing severe financing problems – which later became a permanent financial ‘firewall’, the European Stability Mechanism (2012). Secondly, it introduced a set of reforms to tackle the root problems of EU’s system of economic governance – in particular, by creating new rules to make the coordination of national economic/fiscal policies considerably stricter, and assure that no country would spend beyond its means. In this process of (re)defining the EU’s system of economic governance, the key actors were the intergovernmental institutions of the EU: the European Council and the ECOFIN in particular. As Fabbrini (2013, p. 1004) argues, the “extremely complex system of economic governance set up during the euro crisis” has been fundamentally “decided through and within the intergovernmental institutional framework”. Other players, such as the Commission and the EP, were side-lined.

Yet, these intergovernmental logics and practices should be seen as parts of larger trends in European integration. More specifically, the Maastricht treaty is said to have formalised two different decision-making methods (Bickerton *et al.* 2014). On the one hand, the single market continues to be governed by the Community method, according to which policies are produced by the interaction of supranational and intergovernmental bodies. The EP has also seen its powers increased and strengthened by the introduction and progressive extension of the co-decision procedure. On the other hand, as new policy areas (foreign policy, immigration, economic and financial cooperation, social policy etc.) have been added to the remit of the EU, they have been largely directed by the intergovernmental institutions. This is what Uwe Puetter (2014) refers to as the “integration paradox” – the recognition of the national governments that further cooperation and even integration is needed in core sectors of the state, while at the same time granting the supranational actors a secondary (at best) and marginal (in general) role. In other words, the Maastricht treaty has boosted and legitimised an alternative method of integration, based on closer and more active intergovernmental policy coordination. The Lisbon treaty has then institutionalised this dual decision-making logic for different policy regimes – the classic community method for single market policies, and the new intergovernmentalism for a wide range of other policies (Fabbrini 2015).

The rise of new intergovernmentalism has wide consequences on the nature of the EU itself, as well as on the functioning of the EU as a political system. First and foremost, the European Council has become the new centre of political gravity (Puetter 2014): it does not limit itself in setting the general political guidelines for the EU or in solving stalemates of the Council, but plays a prominent role also in day-to-day politics – for instance, by regularly acting as a *de facto* agenda setter, instructing or highly conditioning

other actors in the pursuit of certain goals, and finalising detailed policy decisions. This was mostly visible in the field of economic governance, where the European Council has established itself as the '*gouvernement économique*' of the Union: decisions over the creation of common economic rules, and over the adjustments of national economic policies to them, necessitate the participation and commitment of the heads of state and/or government (Puetter 2012). In this vein, the EU's reaction to the euro crisis – as pledges of financial support or of significant domestic reforms require the full backing of the most senior national politicians – can be seen as the apex of the new intergovernmentalism (Fabbrini 2013).

The new role and activism of the European Council has important implications for how the other major EU institutions work. For instance, the Council has become a forum of intensive policy debates and coordination. "As the classic community method is no longer used to provide the procedural skeleton for collective decision-making – Puetter explains (2014, p. 220) – [...] ongoing policy dialogue around all key policy initiatives in the new areas of EU activity has become a key characteristic of Council decision-making". The various configuration of the Council work under the supervision of the European Council, which has come to heavily influence and dictate the legislative processes and outputs of the Council. In other words, the Council is the "operational centre of the EU's new intergovernmentalism" (*Ibidem*, p. 220). Yet, the institutional change has also affected the roles of supranational actors. The European Court of Justice (ECJ) has been given limited jurisdiction in the new policy areas. Significantly, it has reduced its activism in moving the European integration forward, as the ruling of the Court of Justice in Case C-27/04 (July 2004) – which reaffirmed the member states' sovereignty in economic policy – testifies (Bickerton *et al.* 2014, p. 10). Similarly, the Commission has only a coordinating or implementing role in the new policy areas. What is more, it did not advocate an extension of its powers, by instead accepting, for instance, the intergovernmental and decentralised decision-making modes of the open method of coordination (Puetter, 2014; see further below).

What are the repercussions of the rise of the new intergovernmentalism for the EP? If the EP has gained codecision rights in an increasing number of areas, to an extent that codecision is, after Lisbon, the 'ordinary' legislative procedure, its powers in economic governance, foreign or social policies remain very limited. Most of all, it has served as an arena in which decisions taken by the European Council, the Council or the European Central Bank (ECB) are debated publicly – often together with some key figures of these institutions (Fasone, 2014). In a few cases only – usually at the "intersection of policy coordination and EU legislative activity" – the EP was able to negotiate together with the intergovernmental institutions and jointly produce public policies (Puetter 2014, p. 234). The most prominent example are probably the two legislative packages (the "Six-pack" and "Two-pack") which contributed to reform the EU economic governance. Although they belong to a "new" policy area, they have been negotiated through the codecision procedure and the traditional community method. This is the domain of application of this paper.

To what extent is the European Parliament able to use its co-legislative powers within a traditionally intergovernmental policy regime? How eventually is the European Council (and the Council) able to curb the decision-making powers of the EP, and significantly shape these two legislative packages? Sergio Fabbrini (2013), for instance, hypothesises that the Six-pack and the Two-pack might be a (partial) exception in the story of the new intergovernmentalism – because their negotiation processes and policy outputs (EU legislative acts) have engaged, and strengthened, the supranational side of the EU.

The next section aims to investigate these issues further by specifying, in particular, the causal mechanisms associated to the new intergovernmentalism. It theorizes how, and under what conditions, the ‘shadow’ of the European Council would limit the legislative role of the EP. In this vein, it also responds to the plea that the new intergovernmentalism should do more in terms of theory-building and hypothesis formation (Schimmelfenning 2015).

### **3. New intergovernmentalism and the role of the European Parliament**

The starting point of the new intergovernmentalism in the EMU (and in the “new policy areas” more in general) is the predominant role of the member states. Rather than delegation to supranational authorities, coordination among member states was the *modus operandi* chosen at Maastricht (1992). The Stability and Growth Pact (SGP) attributed to the Council the key decision-making role, with considerable discretion in interpreting when sanctioning (what) states not respecting the budgetary criteria. For instance, when France and Germany failed to respect them, the ECOFIN – despite the contrary recommendation of the Commission – suspended the excessive deficit procedure. Although the Lisbon treaty slightly improved the position of the Commission (by allowing it to directly “address an opinion to the Member State concerned” without passing through the Council), the basic architecture of the surveillance procedures remained unchanged (Palmstorfer 2014). Yet, the Lisbon attributed to the EP the possibility to participate in the formulation of the rules of the game, establishing that the EP and the Council, acting “in accordance with the ordinary legislative procedure, may adopt detailed rules for the multilateral surveillance procedure” (art. 121(6)).

Different mechanisms could be part of a ‘new intergovernmentalist’ explanation accounting for the limited impact of the EP in economic governance. First of all, the active involvement of the heads of government or state in legislation could shift the power balance between intergovernmental and supranational institutions. When the European Council becomes the agenda-setter, as in the field of economic and budgetary policy, the Commission is no longer a policy-entrepreneur. Of course, the latter remains formally

responsible to introduce legislation, but in reality this is often “commissioned” by the member states. In this vein, in several aspects, the Commission often acts as a facilitator, a watchdog or even an armed branch of the European Council’s policy preferences and decisions (Bauer and Becker 2014). With the leading role of the European Council in policy-making, “then it is difficult to do something else” (Puetter 2014, p. 73). This is because the European Council has the power to ‘instruct’ the Commission, providing clear policy guidelines, as in the more and more detailed ‘Conclusions’ of its meetings. As the EP itself has noted, the proximity of the Council and the Commission in legislative negotiations has become problematic, as the Commission is allowed to attend the close-doors meetings of the Council (while the EP is not), with its role as arbiter called into question. Thus, the EP has been keen to remind the European Council that – according to art. 15(1) of the Treaty of Lisbon – it shall “not exercise legislative functions” (European Parliament 2014, p. 12). Yet, the new activism of the European Council is shown, for instance, by the growing tendency of the Commission to use the formulation “having regard to...the European Council conclusions” when introducing a legislative proposal (Werts 2008, pp. 45 ff.). This mode of proceeding stands in contrast to the traditional belief (a core feature of the community method) that the EP and the Commission are allies against the Council in legislative negotiations (Kreppel, 1999). Furthermore, if the EP has a stronger impact on legislation when the Commission supports its position – as shown by analyses of amendments in both the co-operation and the co-decision procedure (Tsebelis *et al.* 2001) – new intergovernmentalism constitutes a major challenge. Therefore, when the European Council becomes the legislative agenda-setter, we would expect the EP influence on legislation to diminish.

Secondly, the rise of the European Council at the centre stage of the EU (EMU) policy process might have a profound impact on how the EP perceives its legislative responsibilities. The heads of state/government are political actors who are highly visible and legitimated at the domestic level. The EP might accept the greater activism and engagement of the European Council in legislative issues, and – in cases where this latter institution wants to take the lead – develop its own version of “then it is difficult to do something else”. The EP would understand that, in such circumstances, the informal rules of codecision change, and would restrain from playing the traditional role of a full (and eventually tough) co-legislator. Instead, what would be expected from it is to acknowledge the driving role of the European Council, align with it and be (fairly) cooperative in the decision-making process. These dynamics are particularly discernible in the EMU (a policy area traditionally controlled by the national executives) and applicable to moments of acute crises (as it was in 2010-2012, where the pressures of the financial markets demanded quick responses from the EU institutions). In a nutshell, under the strong political leadership and highly legitimated authority of the European Council, the EP comes to redefine its role in terms of responsibility and (self-) restraint – a *de facto* subordination to the strategies of the European Council.

Thirdly, the new activism of the European Council can blend with, and reveal itself in a very important (and well-known) aspect of any negotiating situation: the definition of the actors' BATNA (Best Alternative To a Negotiated Agreement).<sup>iii</sup> BATNA is the best option available to the parties if their negotiation fails. In some cases, it might be the status quo of a certain situation; in others, it will be a new, different action that one of the parties will take. BATNA is important because it gives a clear benchmark against which the various players can compare the negotiating proposals. Clearly, a good BATNA increases the negotiating power, whereas limited or non-existent alternatives might lead one side to accept even unattractive demands. Strengthening one's negotiating position – through an improvement of the relative BATNA, and/or an alteration of the other side's BATNA – is thus a fundamental part of any negotiating strategy.

The European Council is perfectly located within the EU institutional architecture to determine and/or modify the BATNAs of the negotiating parties (including its own, of course). It has the (formal and informal) institutional resources to change the logic of the game, by, for instance, threatening to adopt new rules or to move to other decision-making settings. In the context of the negotiations with the EP, the European Council can indicate its intention to withdraw from the talks and seek an intergovernmental treaty, technically outside of the EU legal system, where the EP would not have any say.<sup>iv</sup> This would change the cards on the table, shifting the policy processes and outcomes closer to the preferences of the European Council. In other words, the active and ambitious role that the European Council plays in European affairs – in reaching treaty-like agreements or in intervening in more day-to-day political issues – grants it constant and significant opportunities to change its BATNA, as well as the options available to the other EU institutions (including the EP). The European Council thus acquires greater leverage in the negotiation process.

Fourthly, if the above arguments are made with respect to the institutional power of the European Council, a different one points to its internal cohesion. In general, the more internally divided an institution is, the weaker its bargaining power. A central tenet of new intergovernmentalism is that the (European) Council operates through consensus (hence the label of “deliberate intergovernmentalism”, Puetter 2012) and members “seek solutions from within the process and less through vetoes or exits” (Bickerton *et al.* 2014, p. 2).<sup>v</sup> Even in the contentious field of economic and budgetary coordination, therefore, the Council would look for a broad consensus and seek to smooth out disagreements among its members. In short, the (European) Council will operate as a very cohesive institution. As it was noted long ago (Judge *et al* 1994, p. 44), when the Council acts unanimously it is much more difficult for the EP to influence policy-making, as this latter cannot exploit divisions among member states.

*Ex adverso*, a lack of cohesion is likely to be particularly detrimental for the EP (Costello and Thomson 2013, pp. 1028-29). First of all, decision-making in the EP is fully transparent. If the legislators are divided, this information will be known to the Council from the early discussions at the committee level, whereas the opposite occurs less frequently. The EP has recently complained about this state of affairs, as it puts it at disadvantage in the negotiations (European Parliament 2014, p. 12). Second, the voting rules of the EP in the ordinary legislative procedure demand large majorities. At second reading, the EP needs an absolute majority to amend or reject the Council common position. If it takes no action, the act is adopted in line with the position of the Council. Indeed, the two largest political groups in the EP have often voted in grand-coalition to express the EP 'institutional' position, or united front, *vis-à-vis* the Council (Kreppel and Hix, 2003). Given the politicization of the EMU and the redistributive issues linked to "the politics of austerity" (Streek and Schafer, 2013), the EP is likely not to be a unitary actor when negotiating legislation in that field. In other words, its major groups – the European People's Party (EPP) and the Socialists and Democrats (S&D) – are likely to be on the opposite sides of the bench.<sup>vi</sup> This division could be exploited by the member states, which could work to build up a supportive coalition to their proposals in the EP.

Yet, the new intergovernmentalism might also trigger a reaction by the other supranational actors. If policy divisions are likely to matter in a field with redistributive implications, in other policy dimensions Parliament's internal divides might not be as relevant. On the integration dimension, for instance, the major political groups have similar preferences, and the Commission is normally close to the EP's position (Tsebelis and Garrett 2000). Here, the (European) Council might have to confront a united EP pushing for an extension of its own powers and those of the European Commission. On such issues, the EP might be able to exercise 'normative pressure' on the governments. As Schimmelfenning (2001) and Rittberger (2006; 2012) demonstrated, every time a 'legitimacy gap' in integration was perceived, the EP demanded that its powers should be extended. When reforms violate the 'liberal democratic norms' that underscore the political system of the EU, then the EP would step in to reduce the gap. Historically, the Parliament has been capable to embrace a legitimacy-seeking logic, that the member states were happy to accept in order to reduce the perception of a 'democratic deficit'. A similar picture could be made about the new intergovernmental Union. In intergovernmental treaties such as the ESM and the Fiscal Compact, the role of the EP is informational at best (Fasone, 2014). In this context, the EP could exploit the 'legitimacy gap' and claim for itself an enhanced role in the new institutional architecture (Rittberger, 2014). As it happened in other moments of integration history (e.g. Eastern enlargement, Schimmelfenning, 2001), the member states might find themselves rhetorically 'entrapped' and accept the logic of the EP's argument. Therefore, it could be alternatively hypothesized that, by 'exploiting' the lack of legitimacy in the EU's economic governance, the EP could have its role enhanced in the EU economic governance.

Finally, characteristics of the legislative negotiations might also counter-weight the power of the (European) Council in economic and budgetary matters. When the legislative process ‘goes informal’, with the co-legislators meeting in trilogues – as in both the Six and the Two-pact – it is argued that the EP enjoys an organizational advantage. This is not because of any inherent feature of the informal arena, but because the EP is well-staffed and organized, while the Council has limited resources in terms of both time and personnel (Häge and Keating 2007). Moreover, the ‘impatience’ of the Council to conclude a procedure early may clash with the longer time horizons of the EP. When a legislative dossier is listed among the priorities of a Council Presidency, that Presidency only has six months to close it. There might be a strong pressure to conclude the negotiations on time – what the EP itself refers to as the rotating Presidency “scoreboard” mentality (European Parliament 2014b, p. 44). Normally, most members of the Council also have shorter time horizons than MEPs. As the re-election prospects of the latter do not really depend on their publicly displayed policy performance, than they can more easily focus on longer term inter-institutional games (Héritier 2012). All in all, the EP could exploit the Council’s pressure to conclude and make a deal to its own advantage.

#### **4. Negotiating the reform of the EMU**

The empirical section of this paper process-traces the development of the Six-pact and the Two-pact from the initial proposal of the European Commission to the final document agreed by the co-legislators. In order to assess the arguments of new intergovernmentalism, predicting a lesser impact of the EP even when formally on a par with the Council, we compare the final legislative texts with the different drafts prepared by the Commission, the Council and the EP. This is not the only way to measure ‘impact’ on legislation (for an overview, see Maurer 2003, pp. 241-2; Judge and Earnshaw 2008, pp. 229 ff.). Empirical studies have focused on the rate of adoption of the EP amendments, with the most sophisticated studies classifying amendments on the bases of their importance (i.e. Tsebelis and Kalandrakis, 1999; Kreppel, 1999). Yet, we are not only interested in the final output here, but also in the negotiating process that leads to the adoption of the Six-pack and the Two-pack. Thus, on the bases of official documents, parliamentary debates, declarations of key actors and reports of the specialized EU press,<sup>vii</sup> we reconstructs the different phases of the negotiations and the positions of the different actors on the main controversial issues. By process-tracing the unfolding of the negotiations of the two legislative packages, we are able to uncover the causal processes at play and assess the implications of new intergovernmentalism in a ‘most difficult’ case – where the ordinary legislative procedure applies.

#### **4.1 The Six-pack**

On December 13<sup>th</sup> 2011 five Regulations and one Directive (four adopted under the ordinary legislative procedure) – together known as Six-pack – entered into force. Four of the six texts in the package dealt with fiscal issues, including a reform of the SGP. Regulations No. 1175/2011 and No 1177/2011 amended the preventive and corrective arms of the SGP by strengthening the surveillance of budgetary positions and economic policies, and by speeding up and clarifying the implementation of the Excessive Deficit Procedure, respectively. Regulation No. 1173/2011 further specified the range of fines for those Eurozone countries that break either their medium-term budgetary objectives, or the EU's debt and/or deficit limits. Finally, Directive 2011/85/EU laid down common standards for national accounts, including budgetary and statistical requirements and country-specific numerical fiscal rules. On the other hand, two new regulations developed a new system to detect (Regulation No. 1176/2011), address and eventually sanction (Regulation No. 1174/2011) macroeconomic imbalances in the EU.

Cooperating closely with, and significantly 'commissioned' by the European Council and the Task Force on economic governance (TF),<sup>viii</sup> the European Commission presented the six proposals on September 29<sup>th</sup> 2010. There was broad consensus among EU institutions and all the member states that the SGP needed to be strengthened and made more effective, that EU member states had to reduce their debt levels, and that the EU as a whole should give a strong and rapid response to the financial crisis.<sup>ix</sup>

In November, the Permanent Representatives Committee (COREPER) established the Ad-hoc Working Party on economic governance. Both this latter and the COREPER discussed the Six-pack in several of their meetings in the following weeks, in particular for the preparation of the two ECOFIN Council meetings of February 15<sup>th</sup> and March 15<sup>th</sup> 2011. There were some internal disagreements within the Council, both horizontal across the various files and more specifically concerning individual issues in each dossier. On a whole, these were relatively few and minor: the member States reached a preliminary position on the six legislative proposals, thus giving the Presidency a mandate for starting the negotiations with the EP.

On the other hand, the EP Committee on Economic and Monetary Affairs discussed the package three times between September 2010 and April 2011. The six rapporteurs presented their draft reports between December 2010 and January 2011, which were then amended (around 2000 amendments had been tabled) and adopted by the Committee on April 19<sup>th</sup> 2011. Since then, the trilogues between the Commission, the EP and the Council intensified. The objective was to reach an agreement before July, under the Hungarian Presidency. The European Council had been very clear on this point. In the conclusions of its 16-17<sup>th</sup> December meeting, it "called for the acceleration of the work on the six legislative proposals on economic governance [...] so that they can be adopted by June 2011".<sup>x</sup> In February 2011, it set specific deadlines to

achieve that goal. Along the same lines, the Hungarian Presidency considered its “number one priority”<sup>xi</sup> to successfully conclude the legislative procedure on the Six-pack during its term.

After intensive rounds of (“countless”)<sup>xii</sup> trilogues, consensus had been achieved on many points: the texts approved by the two institutions in June were indeed very similar. Five of the six texts had already been agreed upon essentially in all their parts. As Olli Rehn, Commissioner for Economic and Monetary Affairs, said to the EP and the Council: “You have agreed on 99.9% of the substance. I now ask both sides to go the last few centimetres to reach an agreement with the other”. The position of the Commission on this matter was extremely clear: “It is absolutely crucial for the credibility of the European Union to conclude the package before the summer break”. A failure to reach an agreement in June/July 2011 “would only result in frustration, bitterness and a worse outcome for everyone if we must come back to these files in September”.<sup>xiii</sup>

Yet, few issues remained open and the EP rejected the final and updated offer of the Council. In particular, the two institutions failed to find a common position on the scope of reverse qualified majority voting (RQMV). RQMV produces a transfer of power from the Council to the Commission, because the former needs a qualified majority to block a decision by the latter (see Bauer and Becker, 2014, p. 220; Buti and Carnot 2012, p. 907). This mechanism had already been established in five out of six decisions where it was legally possible. The remaining one concerned the strengthening of surveillance of budgetary positions and surveillance and coordination of economic policies (Regulation No 1175/2011). In the 22/23 June session, the EP voted only on the amendments, postponing the vote on the final legislative resolution – leaving thus open the possibility to conclude a first reading agreement. With the utmost priority, the trilogues resumed under the new Polish presidency. A final compromise was reached in mid-September, when it was decided that, if a significant deviation from the EU institutions’ recommendations persists, the Commission’s proposal is considered to be adopted unless a *simple* majority of member states rejects it. The package was then endorsed by both the EP and the Council.

What part did the EP play in the negotiation of the Six-pack? How influential was it in the reform of important aspects of the EMU? Olli Rehn praised the role of the EP, sustaining that “in your first legislative encounter with ECOFIN as a co-legislator in economic policy, you achieved almost all of your most important objectives [...] There is no time to set out all the gains made ... my staff have made me a summary list of no less than 50 major improvements won by you”.<sup>xiv</sup> Furthermore, the September arm-wrestling between the Council and the EP was essentially won by the latter, giving the impressions of the Parliament’s resounding success in the negotiations. However, a more careful analysis of the process reveals a more nuanced picture and a less positive evaluation of the EP’s achievements. We can organise the discussion around three dimensions – the procedural/informative; the content-related; and the institutional aspects of the Six-pack.

Firstly, as a result of a number of its amendments, the EP was able to make the policy-process more transparent and accountable. Being amply involved in the European Semester for economic policy coordination, the Parliament is certainly better informed at any stage of the monitoring, decision-making and eventually sanctioning processes. It has promoted and established an 'Economic Dialogue' with the EU and national institutions: it can invite, for instance, the president of the Council, Commission and (where appropriate) of the European Council or Eurogroup to discuss a number of financial and macroeconomic issues. The member states subject to Council recommendations can also be invited to appear (voluntarily) before the competent committee of the EP. In this way, the Parliament partially rehabilitated its position compared to the original proposals of the Commission, in which it was hardly mentioned (see Fasone 2014). Significantly, the EP wanted to remark that "strengthening economic governance should go hand in hand with reinforcing the democratic legitimacy of economic governance in the Union".<sup>xv</sup> However, this 'normative' indication has been consistently rejected by the Council and deleted in all the proposals.

Secondly, if we look at the policy content of the EMU reforms, the EP hardly shaped the substance of the Six-pack. The Six-pack introduces a series of measures aimed to produce more specific fiscal rules and to better enforce them through a swifter sanctioning system. Among other things, in the event of a significant deviation of a member state's fiscal position from the medium-term objectives, or the debt/deficit criteria, the Council and the Commission can impose financial sanctions which can eventually reach 0.5% of the GDP. There is also a stronger emphasis on debt than in the SGP: member states with debts higher than 60% of GDP are required to reduce the excess by at least 5% a year on average over three years. In other words, the focus of the legislative package was almost exclusively on achieving budgetary targets and sound public finances. Initiatives designed to promote growth and employment were remarkably absent. The EP managed to include in the recitals of the six acts some sporadic references to growth and jobs (whereas citations of social inclusion and poverty were excluded by the compromise texts), but did not go further than this.

However, it would not be accurate at all to consider the EP a cohesive actor: there was a profound divide between the EPP and the ALDE on one side; and the S&D on the other. The latter voted in favour of the EP's amendments (in June 2011) and of the legislative resolutions (September 2011) only in one case – where the rapporteur (Elisa Ferreira) was one of its members. The reasons for this opposition revolved around the fact that the package "focuses solely and exclusively on rigour and austerity and fails to promote growth", "continues down a one-way street that is one of austerity without growth", and that "today's economic and social agenda has been hijacked by the right".<sup>xvi</sup> The G-EFA gave their support to three files. Likewise, the main problem was that the revised SGP only foresees "austerity, austerity and more austerity".

The EPP and ALDE instead voted consistently in favour of the Six-pack and formed the majority which passed the legislation. They stressed on the one hand the need to "be responsible", to conclude a deal "to

send out a signal loud and clear ... both to our citizens, to restore their confidence in Europe, and to the markets, to stabilise our currency”;<sup>xvii</sup> and on the other they agreed with the economic approach of the Council and the Commission, by remarking that “the state cannot live beyond its means indefinitely ... The problem cannot be solved by throwing more money at it”, and that “the rules [must] tightened up ... the way to stability and growth is through healthy state finances”.<sup>xviii</sup> A majority of members of the EP was essentially in line with the economic preferences of the European Council, the ECOFIN and the Commission. As an EPP member said, “Our group is satisfied with the results we have achieved so far in the legislative package on economic governance ... [and] is striving for a final vote in the plenary in July”.<sup>xix</sup>

The EP also aimed to have strong and concrete response to the issue of the European sovereign bonds (eurosecurities). The goal was to obtain, before the end of 2011, a report from the Commission “accompanied, where appropriate, by legislative proposals ... to set up a system of common issuance of” eurosecurities.<sup>xx</sup> The report, however, was side-lined by the Council, and all that was left was a promise to carry out further studies on the topic.<sup>xxi</sup> As a Socialist MEP put it, “It is greatly disappointing that after all these months, not one of the intelligent proposals that were on the cards ended up in this package”.<sup>xxii</sup> Overall, the EP’s failure to shape the content of the Six-pack is hardly surprising: it reflects the fact that the agenda was substantially in the hands of the European Council, which constantly invited the EU institutions to reinforce the coordination of the economic policies (by indicating clear orientations),<sup>xxiii</sup> and “unilaterally” declared itself “the economic government” of the EU – as Martin Schulz bitterly complained.<sup>xxiv</sup>

Thirdly, the EP was more successful in designing or recalibrating the institutional design of the EMU. It did not (attempt to) obtain a significant role for itself. If it managed to co-determine the scoreboard for detecting possible macroeconomic imbalances, its direct decision-making and implementing powers remain extremely limited (Fasone 2014). It advocated instead a stronger and more independent role for the Commission, succeeding to improve its position in many stages of the process – from the provision of a permanent dialogue on economic issues to the execution of surveillance missions in the member states to assess their actual economic and budgetary situation (especially in those countries subject of recommendations); from the conferral of the exercise of the delegation (in the case of the Regulation No 1173/2011) to the preparation of reports on the effectiveness of the six acts. The Six-pack, and the reforms of the EMU more in general, revealed indeed that, if the Commission’s agenda-setting powers have been restrained by the close guidance of the European Council, its role in the formulation, and especially, in the implementation of policy has been substantially strengthened. And the EP significantly contributed to it.

Most importantly, the Six-pack introduces RQMV for some stages of the budgetary and macroeconomic scrutiny, on the basis of which a Commission recommendation is deemed to be adopted unless the Council decides by qualified majority to reject it. More automatic solutions were considered necessary by the EP to

avoid the opaque practices of the Council, which had proved unable to take the necessary decisions to coordinate national fiscal policies, and where large member states contravened rules simply because of their size and influence. RQMV had already been conceived by the TF and included in the original Commission's proposals in the Regulation 1173/2011 (three cases, art. 4, 5, 6) and in the Regulation No 1174/2011 (one case, art. 3[3]) – all confirmed by the Council and the EP. The EP wanted to extend the use of RQMV “wherever possible”, and, in general, to reduce “the role of the Council ... in the steps leading to potential sanctions”.<sup>xxv</sup> In addition, it proposed to use RQMV in fifteen more cases throughout the package. However, the Council (in particular France) did not want to lose control of the system and shift the decision-making balance toward the Commission any further. Although the Benelux countries, as well as few other states, were in favour of a larger use of RQMV, the Presidency considered that there was not enough support for an extension of this procedure beyond what was agreed in the TF report and Commission proposals.<sup>xxvi</sup>

Much of the diplomatic efforts during the May-June trilogues were directed to solve this controversy. Of the fifteen instances, some were rejected by the Council on legal grounds.<sup>xxvii</sup> In order to strike a deal with the EP before the summer, the Council agreed to one more situation of RQMV over and above its approach (Regulation No 1176/2011, art. 10). One case remained open – that is, the possibility of RQMV when a significant deviation from the adjustment path towards the medium term objectives persists, for Eurozone and non-Eurozone countries (art. 6 and 10, Regulation No 1175/2011). This is, essentially, the 0.01% of disaccord Olli Rehn was referring to, which impeded the package to be adopted under the Hungarian presidency. After new rounds of trilogues, the divergence was resolved, and the final compromise leaned towards the EP's position – although the victory was not complete. The procedure envisages two steps: if a state fails to take appropriate action, the Council can adopt, by qualified majority, a decision establishing that no effective action has been taken; if the Council does not sanction, and the non-compliance persists, the Commission issues another recommendation, which will be deemed to be adopted unless the Council decides, by *simple* majority, to reject it.

## **4.2 The Two-pack**

The Two-pack consists of two regulations: the first – Regulation No. 473/2013 – strengthens budgetary surveillance and ensures the correction of excessive deficit of the Member States in the Euro area. The second – Regulation no. 472/2013 – concerns only those Member States in the Euro area experiencing or threatened with serious difficulties with respect to their financial stability (in other words, those countries under bailout programmes). The two regulations aim at complementing the Six-pack, reinforcing the provisions of the SGP and bringing under EU law elements of the intergovernmental TSCG.

The draft legislative proposals were presented by the European Commission on November 23<sup>rd</sup> 2011 and were immediately listed among the priorities of the Danish Presidency of the Council. It is worth recalling that, at that moment, the economic crisis was hitting hard the Southern Member Countries of the Eurozone: in November, Monti had become the new Italian Prime Minister after the bonds yield record interest rates; the Zapatero government, because of its perceived inability to cope with the crisis, was heavily defeated in the Spanish general elections and the Greek government had agreed to new austerity measures. In the meanwhile, at the EU level the Member States were finalizing the TSCG, strengthening the SGP and enhancing budgetary surveillance. In the European Council conclusions of December 2011, the Heads of Government and State made explicit the urgency of approving the Two-pack: “We call on the Council and the EP to rapidly examine these regulations so that they will be in force by the next budgetary cycle”.<sup>xxviii</sup>

Thus, the ECOFIN Council instituted an *ad hoc* Working Group (AHWG) to take the work forward. At the beginning of 2012, the ECOFIN Council met twice to consider the recommendations of the AHWG and solve some pending issues. First, a few member states disagreed on the amount of budgetary information to be shared with the Commission and the Eurogroup. Second, some member states also questioned whether the Council should be empowered to issue a recommendation to member states to seek financial assistance,<sup>xxix</sup> and make it public. In January, however, the ECOFIN concluded that all member states should be subject to reporting requirements, and the Council would be empowered to issue a recommendation. Overall, controversies within the Council were not substantial and the dossiers were soon moved to the EP.

The discussion in the EP revealed a sharp ideological contrast between its political groups. On the day of the vote in the ECON Committee, the S&D Group proposed to postpone it, in order to take into account the important changes occurred in European politics in the meanwhile (the election of President Holland in France) which necessitated further modifications to the content of the legislation. Yet, a narrow majority hold (21 MEPs vs. 19) and the two reports were put to a vote. In both cases, the reports were approved as amended, notwithstanding a substantial share of MEPs (mainly Socialist) abstaining.<sup>xxx</sup> The main line of division emerging in the EP – distinctively, on the dossier on common provisions for monitoring and assessing draft budgetary plans (Rapporteur: Elisa Ferreira, S&D) – was between the EPP (supporting the austerity measures) and the S&D and the Greens-EFA (supporting measures for growth and the mutualisation of debt). The ALDE was located somewhere in-between but, at this moment, its preferences were closer to the left-wing camp. The key controversies between the political groups were essentially four: on the provision for a redemption fund to part-mutualize public debt; on a road-map for EU-level bonds; on the creation of a growth facility measure and, more generally, on a more extensive remit of the regulation from budgetary to (also) economic policy coordination. As the rapporteur Ferreira commented: “we can no longer co-legislate on initiatives that focus solely on discipline and austerity”.<sup>xxxi</sup>

These sharp divisions suggested the EP to postpone the negotiations with the Council and seek to get first a stronger mandate from the plenary. This strategy was chosen in order not to allow the Council to exploit the divisions between the MEPs during the informal negotiations. Apparently, the political groups were able to build a consensus before the plenary vote on June 13<sup>th</sup>. In the vote on the amended Commission proposals, an overwhelming majority of deputies from the EPP, the S&D, the ALDE and the G-EFA groups voted in favour, with the more 'extreme' groups on the left and the right of the spectrum opposing it.<sup>xxxii</sup> Yet, the EPP Group made clear in the debate that while they were open for a debate on a common debt issuance, they would not accept "to slide in a whole new chapter into the articles of this regulation". Furthermore, the EPP also added that "setting up a fund quickly...would be implausible".<sup>xxxiii</sup> In his intervention, the leader of the S&D warned: "listening to some of what the Group of the EPP has to say, I have to hope that they do not go through [the redemption fund], that this is not rejected again".<sup>xxxiv</sup> Quite clearly, the compromise between the groups was based on shaky grounds. Nonetheless, the EP decided not to vote on the final legislative resolution, leaving therefore open the possibility to conclude at first reading.

Most importantly, however, the pressure to find a deal and avoid a 'trial of strength' between the Council and the EP began to mount. Olli Rehn warned with the utmost clarity the MEPs of the risks of non-decision: "as co-legislator, you have a choice: either to move forward in a timely way or to delay and create a legal grey area...no legal acrobatics would enable us to hide the fact that we had failed to live up to our political responsibilities".<sup>xxxv</sup> The shadow of intergovernmentalism is explicitly invoked: if the EP refuses to come to terms with the Council, then there is a significantly higher chance that the Member States would opt for the intergovernmental route. The pressure is on the EP: the amendments represent a significant departure from the Commission proposal, and the Council is keen to emphasize that its position agreed on February 21<sup>st</sup> remains the "starting position for the negotiations".<sup>xxxvi</sup>

The trilogues meetings between the Council, the EP and the Commission started in July and, by December 2012, 16 tripartite meetings were held. As discussions unfold, there were two sets of issues that stood out in the agenda. With respect to the content of the Two-pack, the uneasy compromise struck by the political groups soon broke down. The EPP sided with the Council and the Commission, while the ALDE and the left-wing groups continued to ask for measures boosting growth and instruments to part-mutualize public debt. During the negotiations, the Commission was adamant in sustaining that no redemption fund could be included in the legislation without a prior change of the Treaties, and repeatedly stressed that the remit of the regulations was budgetary coordination, rather than broader economic issues.<sup>xxxvii</sup> The rotating Presidency – Cyprus in the second semester – and the European Council<sup>xxxviii</sup> also pressed for an early conclusion and worked on a compromise text. Eventually, the ALDE switched its position by accepting a compromise tabled by the European Commission and, by early 2013, an agreement appeared to be within reach. In the final text, there were no commitments for a redemption fund, but the Commission issued a

statement agreeing to set up an 'expert group' with the task to assess its feasibility. With all evidence, quite a change with respect to the provision that the redemption fund should be defined via the ordinary legislative procedure.<sup>xxxix</sup>

However, negotiations continued also on other aspects of the Two-pack, of institutional nature. The matter here was on the breadth of the delegated powers conferred to the European Commission. A controversial aspect of the Gauzès's report proved to be a special legal protection granted to defaulting states, according to which the Commission might place a State facing financial troubles under legal protection to allow it to stabilize its economic situation and regain access to capital markets.<sup>xi</sup> This was a substantial new power attributed the Commission, which was confronted with some resistance by the Council. In December, the Cyprus Presidency was able to include a much looser version of the 'special legal protection' clause in the recitals of the regulation<sup>xii</sup> (thus removing the specific article), to which the EP agreed.

A second controversial issue of the Guezès's report was the use of RQMV. In the draft regulation amended by the plenary of the EP, RMQV is to be used in seven circumstances:<sup>xiii</sup> for decisions to make a member state subject to enhanced surveillance (Art. 2.1), for the approval of macroeconomic adjustment programmes and their resubmission (art. 6.2 and 6.4); for decisions on non-compliance with the policy requirements (art. 6.5); for extending the post-programme surveillance and recommend corrective measures (art. 11.1 and 11.4). In the final compromise, RMQV remains in use for post-programme surveillance only. In all other cases, decisions are taken by the Council (using QMV) acting on a proposal of the Commission (except for the decision to make a member states subject to enhanced surveillance, taken by the Commission).

The final compromise between the Council and the EP was found in February 2013. Fifteen months passed from the date of the Commission proposal to the date of the agreement between the co-legislators. The pressure to conclude the negotiations mounted very strongly towards the end of 2012 and early 2013: Commissioner Rehn reminded MEPs that member states would have been tempted to push for an intergovernmental deal if discussions dragged for longer<sup>xiii</sup> while the new Irish Presidency of the Council set to conclude the negotiations "as soon as possible".<sup>xiv</sup> Ultimately, the EP came to accept a compromise that appeared to be quite distant from its early position.

Where the EP was able to affect the content of the legislation was on the extension of its powers of scrutiny and information. The EP – which was hardly mentioned in the draft legislative proposals of the European Commission – is now involved in the discussion of the opinion of the Commission on the draft budgetary plans presented by the member states, and the ECON committee may invite the member state concerned to participate in an exchange of views. Furthermore, to enhance Economic Dialogue the EP may further invite the Presidents to discuss matters arising in the assessment of budgetary plans.<sup>xiv</sup> In the name of transparency, the EP was able to push for a stronger recognition of its role and made the reporting

requirements stricter.<sup>xlvi</sup> Yet, stronger statements on the democratization of the EMU were removed from the final compromise text.<sup>xlvii</sup>

## 5. Discussion and (provisional) conclusions

In summarizing what the EP has been able to achieve, it is useful to consider three different dimensions. On a procedural dimension, the EP – for the sake of enhancing the transparency of decision-making – is now regularly informed by the Commission and/or the Council about ongoing developments. It has also managed to successfully include in the final documents provisions for an ‘Economic Dialogue’ with the other institutions. However, broader references to the ‘democratization’ of the EMU with a stronger institutional role for the EP have always been cut off the final resolution. On the policy dimension, the EP did not act as a unitary actor. It was ideologically divided between the left and right from the very start of the negotiations in the Six-pack, and the compromise agreed by its political groups in the Two-pack broke down immediately after the plenary vote. The EPP and the ALDE sided with the Council and the Commission, whereas the left-wing groups were on the minority side. Legislation focused on budgetary targets and sound fiscal policies, hardly including any reference to growth and unemployment. Finally, on the institutional dimension the EP record is mixed. Although the Council successfully resisted a broader use of RQMV, the delegation of powers to the Commission was stronger than initially foreseen.

Overall, we found sufficient evidence to back up the argument that the “shadow of the European Council” has a significant impact on the negotiations. In both legislative packages, the European Council is a very active actor, tracking the development of the negotiations, providing guidelines and monitoring their advancement. During the negotiations, the Council and the European Commission are often on the same side of the bench, with the EP (or a significant part of it) is on the other side. Moreover, the European Commission – on behalf of the European Council – makes frequently clear that ‘going intergovernmental’ is a credible alternative and the EP should take that into consideration in advancing its claims. Finally, very strong support has been found for the argument that, when the EP is ideologically divided, member states can strategically exploit its divisions, and actively seek to form a coalition endorsing the Council position. In contrast, the EP has not self-constrained itself – obeying to a logic of appropriateness in the new intergovernmental Union – avoiding to put forward its amendments.

The explanatory power of alternative arguments was weak. True, the EP used the rhetorical device of the ‘legitimacy gap’, being recognized the right to be informed of developments in the ‘Economic Union’ and strengthening the dialogue with the other institutions. Yet, a stronger recognition of its democratic role in

economic governance was meaningfully left out of the final legislative resolutions. No evidence was found for the argument that the EP could use the informal arena to its advantage either. Time pressure was formidable on the (European) Council, but the EP was not given the chance to extend for too long the inter-institutional negotiations (it managed to do it for a couple of months in the Six pack). Their break-down could have meant watching as spectator a new round of intergovernmental negotiations: obviously, hardly a palatable alternative.

There are two open questions that emerge from this analysis. First, to what extent is the ‘shadow of the European Council’ relevant for other policy areas beyond the EMU? In other salient and sensitive issue areas – for instance, Justice and Home Affairs – the European Council could also significantly affect the ordinary legislative procedure. In this area, more research would be welcomed (see also Puetter, 2014). Second, we could speculate on the importance of a partisan alignment between the EU institutions. In the two cases studied in the paper, there is a right-wing ideological alignment of the institutions (the (European) Council, the Commission and the EP). Would the outcome of the negotiations be identical if the EP and the Commission aligned on the left of the ideological spectrum? Would a left-wing Commission act as the ‘agent’ of a right-wing (European) Council? Leaving speculations aside, what we now know is that the ‘shadow of the European Council’ significantly constrains what the EP can achieve in the EMU under the ordinary legislative procedure.

## Endnotes

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<sup>ii</sup> M. Schulz, President of the EP, Speech to the Parliamentary Assembly of the Council of Europe, 30.01.2014

<sup>iii</sup> BATNA is a term coined by Fisher and Ury in their best-selling book, *Getting to Yes. Negotiating Agreements without Giving It* (1981). For a recent discussion of BATNA, within the wider range of state negotiating strategies, cf. Mckibben 2015.

<sup>iv</sup> Clearly, this option is not cost-free for the European Council, but it will be very likely that it will nonetheless (considerably) strengthen its negotiating power.

<sup>v</sup> Alternatively, it has been suggested that agreement in the European Council has been steered by Germany and, at least in a first phase of the crisis, France (cfr. Fabbrini 2013). Rather than deliberative, intergovernmentalism appears to be 'hierarchical'. Yet, this is not the place to elaborate more on this point.

<sup>vi</sup> One of the consequences of the activism of the European Council is that it can try to intervene directly to sharpen (if not create) these divisions – e.g., negotiating with the party group leaders. Some MEPs are likely to be particularly receptive to indications coming from the heads of government/state, as the latter are generally also party leaders, and control the re-election prospects of 'their' MEPs.

<sup>vii</sup> Furthermore, semi-structured interviews with key actors in the negotiations will be conducted in the spring 2015 in Brussels.

<sup>viii</sup> In March 2010, in order to come up with sustainable and incisive proposals to reform the EMU, the European Council set up a task force, which was composed of the finance ministers of the 27 member states and was chaired by the European Council President Herman Van Rompuy. The task force, which held six meetings, presented its final report at the European Council's meeting on 28-29 October 2010. The European Commission was also invited.

<sup>ix</sup> Cf. Explanatory memorandum of the Commission attached to the six proposals, 29/09/2010.

<sup>x</sup> Conclusions of the European Council, 16-17 December 2010.

<sup>xi</sup> András Kármán, *Debate in the EP*, Wednesday, 22 June 2011.

<sup>xii</sup> Sylvie Goulard, *ibidem*.

<sup>xiii</sup> Olli Rehn, *Debate in the EP*, Wednesday, 22 June 2011.

<sup>xiv</sup> *Ibidem*.

<sup>xv</sup> Cf., among others, Recital, 5f, Report on 2010/0280/COD of the Committee on Economic and Monetary Affairs, EP, 29/04/2011. The cooperation between the EP and national parliaments is less developed and definite (Fasone 2014).

<sup>xvi</sup> Francesco De Angelis, Explanations of vote, EP, 28 September 2011; Salvatore Caronna, Explanations of vote, EP, 28 September 2011; Stephen Hughes, *Debate in the EP*, Wednesday, 22 June 2011.

<sup>xvii</sup> Íñigo Méndez de Vigo, *Debate in the EP*, Wednesday, 22 June 2011; Jean-Paul Gauzès, *Debate in the EP*, Wednesday, 22 June 2011.

<sup>xviii</sup> Werner Langen, *Debate in the EP*, Wednesday, 22 June 2011; Olle Schmidt, *Debate in the EP*, Wednesday, 22 June 2011.

<sup>xix</sup> Corien Wortmann-Kool, *Debate in the EP*, Wednesday, 22 June 2011.

<sup>xx</sup> Cf. art. 8a, Report on 2010/0278(COD) of the Committee on Economic and Monetary Affairs, EP, 02/05/2011.

<sup>xxi</sup> Cf. Statement of the Commission, annex to the legislative proposal of the EP, 28/09/2011, Regulation No 1173/2011.

<sup>xxii</sup> Edward Scicluna, *Debate in the EP*, Wednesday, 22 June 2011.

<sup>xxiii</sup> Cf., for instance, European Council conclusions, 17 June 2010.

<sup>xxiv</sup> Europolitics, "Economy: MEPs demand 'Economic Governance Now'", 14 September 2011.

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- <sup>xxxv</sup> Report on 2010/0276(CNS) of the Committee on Economic and Monetary Affairs, EP, 02/05/2011, recital 2d. This provision was eliminated from the later drafts and the final version of the text.
- <sup>xxxvi</sup> Reports from the Presidency to Coreper, 01 March 2011 and 08 March 2011.
- <sup>xxxvii</sup> The Council and the Presidency argued that they fell outside the EU legal framework; see András Kármán, *Debate in the EP*, Wednesday, 22 June 2011. For an analysis of the (il)legality of the RQMV under the Six-pack, cf. Palmstofer 2014.
- <sup>xxxviii</sup> European Council, Conclusions, 8-9 Dec 2011.
- <sup>xxxix</sup> Art. 3.5 in the Commission proposal
- <sup>xxx</sup> These are the results of the votes in committee: (1) strengthening of economic and budgetary surveillance 2011/0385/COD: 18 + 12 – abs 14; (2) common provisions for monitoring and assessing draft budgetary plans 2011/0386(COD): 25 + 4 – ab 13.
- <sup>xxx</sup> Debates in the EP plenary, 12.06.2012.
- <sup>xxxii</sup> The Ferreira’s report (amended Commission proposal) was supported by 551 MEPs, with 88 voting against and 29 abstaining. The Gauzès’s report (amended Commission proposal) was voted by 471 MEPs in favour, 97 against and 78 abstaining.
- <sup>xxxiii</sup> M. Thyssen (on behalf of the EPP Group), debates in the EP plenary, 12.06.2012.
- <sup>xxxiv</sup> H. Swoboda (on behalf of the S&D Group), *ibidem*.
- <sup>xxxv</sup> O. Rehn, *ibidem*.
- <sup>xxxvi</sup> See Debate in Council, Summary, 10.07.2012.
- <sup>xxxvii</sup> The broader issue of reforming the Economic and Monetary Union was discussed by the ‘four Presidents’ (of the European Council, the Commission, the Eurogroup and the ECB) in June 2012. See the report “Towards a Genuine Economic and Monetary Union”, EUCO 120/12.
- <sup>xxxviii</sup> “The European Council invites the legislators to find an agreement with the a view to adopting the ‘Two-pack’ by the end of 2012 at the latest”, see the Conclusions of the European Council, 18/19 October 2012.
- <sup>xxxix</sup> See amendment 67 to the Ferreira’s report introducing the new Chapter IIIa (in particular, art. 6d par. 3)
- <sup>xl</sup> See amendment 63 to the Gauzès’s report introducing the new art. 10a
- <sup>xli</sup> See recital 17, Regulation (EU) No 472/2013.
- <sup>xlii</sup> Additionally, the decision to place a member state under legal protection by the Commission could be repealed by the Council by simple majority.
- <sup>xliii</sup> *Europolitics*, “Rehn on Debt Mutualization”, 14.01.2014.
- <sup>xliv</sup> Irish Presidency of the Council, Programme and Priorities, p. 20.
- <sup>xlv</sup> See amendment 76 introducing art. 11a to the Ferreira’s report and art. 15 of Regulation (EU) No 473/2013.
- <sup>xlvi</sup> As the own-initiative report of the EP of 24.10.2012 “with recommendations to the Commission on the report of the Presidents of the European Council, the European Commission, the European Central Bank and the Eurogroup “Towards a Genuine Economic and Monetary Union” (2012/2151(INI)) put it: “[the EP] considers a substantial improvement of the democratic legitimacy and accountability at Union level of the EMU governance by an increased role of Parliament as an absolute necessity and a precondition for any further step”.
- <sup>xlvii</sup> For instance, the amended recital 4 in the Ferreira’s report – demanding “enhanced democratic legitimacy of the EMU” – was not included in the final text.

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