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The Implications of the Revised EU Economic Governance Framework for National Economic Policy

Introduction

The discussion thus far has focused on the crisis-induced developments in the Economic and Monetary Union (EMU) and their bearing on the ongoing process of economic integration. So far we have concentrated on the changes that the new EU economic rules have brought about in the EU economic governance framework and on their significance for the EMU architecture. The focus now shifts to the effects of the crisis-induced legal and economic developments on the Member States, most notably in relation to their fiscal, economic, and social policy. The twin challenge is ‘to evaluate the modalities and effects of EU discipline on national fiscal and budgetary processes as this new governance architecture is put into practice’ and ‘to address the constitutional legality and democratic legitimacy of the new governance of fiscal discipline’.¹ The analysis of the effects of EU discipline on national economic policy will form the cornerstone of our assessment of the democratic legitimacy of the new economic governance architecture, which will be undertaken in the next chapter.

This chapter consists of three main parts. The first section of this chapter will analyse the substance and scope of the new EU economic rules. It will be argued that all EU Member States are now subject to more stringent fiscal rules as a result of ‘six-pack’ legislation. Moreover, Euro area Member States are subject to further restraints flowing from ‘six-pack’ legislation, ‘two-pack’ legislation, and the Fiscal Compact. Furthermore, the Eurozone crisis has de facto curtailed the fiscal sovereignty of the states that granted financial assistance to crisis-hit countries, in that the lender states have less money to spend for other purposes. Last, the crisis-hit Euro area countries are experiencing a further loss of their economic sovereignty through the conditionality attached to the financial assistance

which was granted to them, which persists in the form of post-programme surveillance.

The second section of this chapter will look at the important changes that the newly adopted EU legislation has brought about in EU economic surveillance. Some of these concern all EU Member States. First, the Union co-legislators have taken steps to ensure that the broad economic policy and employment guidelines (Articles 121(2) and 148(2) of the Treaty on the Functioning of the European Union (TFEU)) exert influence on national policy-making. Second, the scope of EU monitoring has been widened, thereby now covering general economic policy. Third, the ‘six-pack’ legislation on national budgetary frameworks makes inroads into the Member States’ substantive and procedural budgetary autonomy. The United Kingdom is exempt from some of these rules.

As regards Euro area Member States, it will be shown that the Union co-legislators have stepped up the application of sanctions for breaches of the Stability and Growth Pact (SGP). Moreover, it will be argued that the Fiscal Compact makes inroads into national budgetary processes. Furthermore, it will be argued that ‘two-pack’ legislation broadens economic surveillance beyond fiscal policy and that it brings the cycle of domestic budgetary policy within the framework of EU monitoring.

In view of these developments, it will be argued that the Union institutions now possess the tools that would enable them to closely monitor the economic, financial, and fiscal developments in an ailing Euro area Member State and to request that it effectuate changes in its economic and fiscal policy. It will be further argued that the new EU economic rules have redistributive effects in European societies and encroach on very sensitive areas of national policy.

The third section of this chapter will look at the implementation of EU economic rules and assess the rigorousness of EU and independent national fiscal oversight. The principal default line is between lender states and borrower states. First, we will examine the bearing of the crisis-induced economic developments on the lender Member States, as well as the EU economic guidance addressed to them in the context of the European Semester. It will be argued that the EU economic guidance addressed to Germany serves to illustrate that the Commission does not ‘go easy’ on stronger EU economies. Second, we will examine the bailout terms agreed with Greece in the context of the three rescue packages. It will be shown that these terms mandate far-reaching economic and social policy reforms, from which grave social repercussions could potentially flow. In addition, it will be argued that there is very rigorous EU and independent national assessment of the progress Greece is making in relation to its economic adjustment programme.
The Revised EU Economic Rules and Their Bearing on Member States

It is axiomatic that the EU rules on national fiscal and economic policy make inroads into the Member States’ fiscal and economic sovereignty.2 Their precise legal form is not an issue here. Whether enshrined in secondary EU legislation or adopted through the use of public international law instruments, these rules serve to limit the available policy options in this area, or indeed require that a national government adopt specific measures to lower the public deficit or debt and/or to address the macroeconomics imbalances detected. We have seen in the preceding chapter that the principal default line is between measures which are applicable to all EU Member States and rules that are only applicable to Euro area Member States. Accordingly, some of these rules have a bearing on the economic policy of all 28 Member States, whereas other rules only impact on the fiscal and economic policy of Euro area Member States. These will now be examined in turn.

EU-Wide Restrictions on National Economic Policy

Measured on their substance, the newly adopted EU rules which are applicable to all EU Member States can be divided into three categories: revised fiscal policy rules; new macroeconomic policy rules; and new rules governing national budgetary frameworks. First, the Union legislator has amended the SGP through two regulations forming part of ‘six-pack’ legislation.3 Second, the Union legislator has created a new Macroeconomic Imbalance Procedure to prevent and correct macroeconomic imbalances in the EU Member States.4 Third, there is new legislation governing national budgetary frameworks, also forming part of the ‘six pack’.5 Since these rules and processes are all embedded in a form of meta-coordination (‘European Semester’), the divide is not pristine, but it does serve to illustrate that these rules cover different areas of economic policy.

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2 See, for example, Mark Dawson and Floris de Witte, ‘Self-Determination in the Constitutional Future of the EU’ (2015) 21 ELJ 371, 372.
The Rules Which are Only Applicable to Euro Area Member States

The Member States which form part of the Eurozone are subject to further restraints flowing from ‘six-pack’ legislation, ‘two-pack’ legislation, and the Fiscal Compact. First, there is a separate sanctions regime that is only applicable to Euro area Member States. ‘Six-pack’ legislation sets out a system of sanctions for enhancing the enforcement of the preventive and corrective parts of the SGP in the Euro area. It further provides for sanctions for excessive macroeconomic imbalances. Second, the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (TSCG) lays down the balanced budget rule and provides for the adoption of a ‘correction mechanism’ at national level. Non-Euro area Contracting Parties will only be bound by the Fiscal Compact when they join the Eurozone, unless they declare their intention to be bound by it at an earlier date. We have seen that Bulgaria, Denmark, and Romania have decided to opt in, whereas the other five non-Euro area Member States that have ratified the TSCG are only bound by Title V thereof (‘Governance of the Euro area’). Third, ‘two-pack’ legislation provides for enhanced economic and budgetary surveillance, again only in the Euro area.

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9 Treaty on Stability, Coordination and Governance in the Economic and Monetary Union between the Kingdom of Belgium, the Republic of Bulgaria, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, Hungary, Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland and the Kingdom of Sweden <https://www.consilium.europa.eu/media/20399/st00tscg26_en12.pdf> accessed 31 October 2018 (hereafter TSCG).
10 ibid., Articles 1(2) and 14(5).
The Changing Nature and Scope of EU Monitoring

The discussion thus far has focused on the scope of application and the substance of EU economic rules. We have seen that some of these measures, which involve far-reaching economic restraints, are only applicable to Euro area Member States, whereas other measures apply to both Euro area and non-Euro area Member States. The focus now shifts to the bearing of these measures on the nature and scope of EU monitoring of national policies.

First, the Union co-legislators have taken steps to ensure that the broad economic policy and employment guidelines (Articles 121(2) and 148(2) TFEU) exert influence on national policy-making. This is achieved through the European Semester for economic policy coordination. The revised SGP sets a deadline for the submission of stability and convergence programmes,\(^\text{13}\) which seeks to ensure that these are submitted by the national authorities and assessed by the Union institutions and bodies ‘before key decisions on the national budgets for the succeeding years are taken’.\(^\text{14}\) Following the assessment of these programmes, the Council addresses guidance to the Member States, making full use of the legal instruments provided for in Articles 121 and 148 TFEU, the preventive part of the SGP and Regulation 1176/2011 on macroeconomic imbalances, ‘in order to provide timely and integrated policy advice on macrofiscal and macrostructural policy intentions’;\(^\text{15}\) In turn, ‘Member States shall take due account of the guidance addressed to them in the development of their economic, employment and budgetary policies before taking key decisions on their national budgets for the succeeding years.’\(^\text{16}\)

Second, the scope of EU monitoring has been widened, thereby now covering general economic policy. This was achieved through the new legislation on the prevention and correction of macroeconomic imbalances (Regulation 1176/2011). In this connection, Kaarlo Tuori and Klaus Tuori argue that:

Simultaneously, the scope of monitoring has been enlarged. The Stability and Growth Pact put the emphasis of the multilateral surveillance procedure under Art. 121 TFEU on fiscal policy. By contrast, the excessive imbalances procedure aims to cover all the main sources of economic imbalances and opens surveillance towards general economic policy.\(^\text{17}\)

\(^{13}\) Council Regulation (EC) 1466/97 of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies [1997] OJ L209/1, as currently in force, Articles 4(1) and 8(1).

\(^{14}\) Regulation 1175/2011 (n. 3), preamble recital 7.

\(^{15}\) Regulation 1466/97 (n. 13), first subparagraph of Article 2-a(3), as amended by Regulation 1175/2011 (n. 3).

\(^{16}\) Regulation 1466/97 (n. 13), second subparagraph of Article 2-a(3), as amended by Regulation 1175/2011 (n. 3).

\(^{17}\) Kaarlo Tuori and Klaus Tuori, The Eurozone Crisis: A Constitutional Analysis (CUP 2014) 190.
In a similar vein, Alicia Hinarejos argues that:

[T]here has been an extension of formal EU surveillance, in that formal surveillance mechanisms created through measures of EU law now apply not just in the budgetary area, but also to broader economic policy: there is, for the first time, formal surveillance of certain aspects of Member States’ economic policies to avoid macroeconomic imbalances, through a mechanism created as part of the Six-Pack.  

It is true that, upon the adoption of ‘six-pack’ legislation on macroeconomic imbalances, economic surveillance covers a broader area. Moreover, one should not lose sight of the implications of the identification of imbalances and/or the opening of an Excessive Imbalance Procedure for the national economy concerned. The Council, on a recommendation from the Commission, may address recommendations on appropriate policy responses to the Member State concerned. In turn, the Member State concerned ‘should use all available policy instruments under the control of public authorities.’ The policy response should … cover the main economic policy areas, potentially including fiscal and wage policies, labour markets, product and services markets and financial sector regulation. Consequently, the implications flowing from the identification of macroeconomic imbalances can be quite far-reaching for the national economy concerned. The measures proposed or enacted by the national government concerned with a view to bringing this situation to an end can cover different areas of national policy, including such sensitive areas as wage policy, collective labour law, and product and services markets.

Third, the ‘six-pack’ legislation on national budgetary frameworks makes inroads into the Member States’ substantive and procedural budgetary autonomy. Prior to the crisis, Article 3 of Protocol (No 12) on the Excessive Deficit Procedure, which is annexed to the EU Treaties, provided that, ‘The Member States shall ensure that national procedures in the budgetary area enable them to meet their obligations in this area deriving from these Treaties.’ However, there was no secondary EU legislation expanding on this obligation. This has now changed. Directive 2011/85, which forms part of the ‘six pack, provides that Member States (with the exception of the United Kingdom) shall have in place numerical fiscal rules that promote compliance with ‘the reference values on deficit and debt set in accordance with the TFEU’ and ‘the Member State’s medium-term budgetary objective.’ The annual budget legislation of the Member States shall reflect their country-specific

19 Regulation 1176/2011 (n. 4), Articles 6(1) and 7(2).
20 ibid., preamble recital 20.
21 ibid., preamble recital 20.
22 Directive 2011/85 (n. 5), Articles 5 and 8.
numerical fiscal rules in force. Consequently, these rules have a bearing on the substantive content of national budgets, thereby obliging national executives and parliaments to take EU fiscal rules seriously. They are also believed ‘to increase the ownership of fiscal rules’, which is perceived to be ‘one of the key requirements for the success of EMU’.

Moreover, Directive 2011/85 makes inroads into the procedural budgetary autonomy of the Member States. Member States are put under an obligation to adopt medium-term budgetary frameworks, which shall provide for a fiscal planning horizon of at least three years. What is more, the Directive lays down rules governing the scope of the obligations and processes set out therein, most notably in relation to the scope of budgetary frameworks.

In view of all the above, Kaarlo Tuori and Klaus Tuori rightly argue that:

Another characteristic of the incrementalist reinforcement of European economic governance has been increased intrusion into the procedural and substantive budgetary autonomy of the Member States.

Fourth, we have seen that the Union co-legislators have sought to step up the application of sanctions for breaches of the SGP in the Euro area. Regulation 1173/2011 now provides for sanctions within the preventive arm of the SGP where a Member State has failed to take action in response to a Council recommendation for the necessary policy measures for addressing a significant observed deviation from the adjustment path towards the medium-term budgetary objective. According to conventional wisdom, recommendations have no binding force (Article 288 TFEU). However, there are now sanctions for ‘breaches’ of ‘soft law’ instruments, or indeed a turn into hard(er) law. In this connection, Sonja Bekker rightly argues that, ‘This is a step on the continuum towards obligation of countries to comply with their own budgetary objectives.’

‘Breaches’ of soft law instruments within the preventive arm of the SGP also have a bearing on the sanctions (if any) imposed within the confines of the Excessive Deficit Procedure (i.e. the corrective arm of the SGP). These sanctions existed prior

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23 ibid., Article 7.
25 Directive 2011/85 (n. 5), Article 9(1).
26 ibid., Articles 12–14.
27 Kaarlo Tuori and Klaus Tuori (n. 17) 105.
28 Regulation 1173/2011 (n. 7), Article 4(1).
29 For an exegesis of EU soft law instruments, see among others Paul Craig and Gráinne de Búrca, EU Law: Text, Cases, and Materials (5th edn, OUP 2011) 107–08.
to the crisis, but now they have been amplified. If the Council decides that an excessive deficit exists in a Member State which had previously lodged an interest-bearing deposit for breach of the preventive arm of the SGP, the Commission shall recommend that the Council require the Member State concerned to lodge a non-interest bearing deposit. Regulation 1173/2011 further provides for the imposition of a fine in the event of a Member State’s failure to take effective action in response to a Council recommendation (Article 126(8) TFEU), thereby bringing forward the sanctions in the corrective part of the SGP.

In view of all these changes in the enforcement of the SGP in the Euro area, Sonja Bekker rightly argues that ‘more soft as well as hard law elements have been introduced in the SGP, thus further developing its hybrid coordination constellation, but also taking steps on the continuum towards more precision, obligation and delegation’. It remains to be seen whether the Commission would be willing to recommend that such sanctions be imposed on recalcitrant Member States.

Fifth, the TSCG obligation to establish a correction mechanism, which shall be triggered automatically in the event of significant observed deviations from the medium-term objective or the adjustment path towards it, also makes inroads into national budgetary processes. As mandated by the TSCG, the European Commission has established common principles for national fiscal correction mechanisms. According to these principles, ‘the correction, in terms of size and timeline, shall be made consistent with possible recommendations addressed to the concerned Member State under the Stability and Growth Pact’. Again, these recommendations are soft law instruments, which normatively piggyback on hard law instruments, and hence the Member State concerned is expected to follow them.

Though leaving considerable leeway to national authorities, these principles seek to (re)shape national fiscal frameworks. Notably, they provide that:

The size and timeline of the correction shall be framed by pre-determined rules. Larger deviations from the medium-term objective or the adjustment path towards it shall lead to larger corrections. … At the onset of the correction, Member

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31 Regulation 1173/2011 (n. 7), Article 5(1).
32 ibid., Article 6(1).
33 Sonja Bekker (n. 30) 6. See also Alicia Hinarejos (n. 18) 1632.
34 The experience thus far is that the Commission proposed that fines be imposed on Portugal and Spain, which it then recommended that they be cancelled. The Council followed the Commission’s recommendation and cancelled the fines for Spain and Portugal. See further European Commission, ‘Stability and Growth Pact: Council Adopts Recommendations on Spain and Portugal’ (Brussels, 9 August 2016) <http://europa.eu/rapid/press-release_IP-16-2761_en.htm> accessed 26 April 2019.
35 TSCG (n. 9), Article 3(1)(e).
36 ibid., Article 3(2).
37 Communication from the Commission COM(2012) 342 final Common principles on national fiscal correction mechanisms [2012].
38 ibid., principle (No. 2).
States shall adopt a corrective plan that shall be binding over the budgets covered by the correction period.\(^{39}\)

These principles further provide for the creation of independent bodies (or bodies with functional autonomy), which shall monitor the implementation of the TSCG precepts at national level.\(^{40}\) We will return to these later in our analysis.

Sixth, we have seen that ‘two-pack’ legislation provides for enhanced forms of economic and budgetary surveillance in the Euro area. Space precludes a detailed exegesis of these instruments, which was undertaken in the preceding chapter. Instead we will highlight certain features which are of particular importance.

Under Regulation 472/2013, the Commission may decide to subject to enhanced surveillance a Member State experiencing or threatened with serious difficulties with respect to its financial stability.\(^{41}\) It shall also subject to enhanced surveillance a Member State which is in receipt of financial assistance on a precautionary basis.\(^{42}\) The Member State concerned ‘shall, after consulting, and in cooperation with, the Commission, acting in liaison with the ECB, the ESAs, the ESRB and, where appropriate, the IMF, adopt measures’ to address its difficulties.\(^{43}\) Moreover, where a Member State requests financial assistance from other Member States, third countries, the EU financial mechanisms, or the IMF, it shall prepare, ‘in agreement with the Commission, acting in liaison with the ECB, and, where appropriate, with the IMF’, a draft macroeconomic adjustment programme.\(^{44}\)

Regulation 473/2013, also forming part of the ‘two pack’, provides for a common budgetary timeline,\(^{45}\) and for the monitoring and assessment of draft budgetary plans by the Commission and the Eurogroup.\(^{46}\) In the event of particularly serious non-compliance with the SGP precepts, the Commission would request a revised budgetary plan.\(^{47}\) Regulation 473/2013 also provides for economic partnership programmes ‘describing the policy measures and structural reforms that are needed to ensure an effective and lasting correction of the excessive deficit’.\(^{48}\)

In view of the above, it is readily apparent that Regulations 472/2013 and 473/2013 broaden economic surveillance beyond fiscal policy. This is achieved through enhanced surveillance and economic partnership programmes.\(^{49}\) Moreover,  

\(^{39}\) ibid., principle (No. 4).

\(^{40}\) ibid., principle (No. 7).

\(^{41}\) Regulation 472/2013 (n. 12), Article 2(1).

\(^{42}\) ibid., Article 2(3).

\(^{43}\) ibid., Article 3(1).

\(^{44}\) ibid., Article 7(1).

\(^{45}\) Regulation 473/2013 (n. 12), Article 4.

\(^{46}\) ibid., Articles 6–7.

\(^{47}\) ibid., Article 7(2).

\(^{48}\) ibid., Article 9(1).

\(^{49}\) Kaarlo Tuori and Klaus Tuori (n. 17) 112.
Regulation 473/2013 makes decisive inroads into national budgetary autonomy and goes much further than Directive 2011/85 in this respect. In this connection, Kenneth Armstrong rightly argues that:

\[\ldots\] for Eurozone States, EU influence over the budgetary process is exerted more directly through the extension of the technique of multilateral surveillance pioneered in the context of economic policy co-ordination to the budget-setting process itself. This is the effect of Regulation 473/2013 adopted under the ‘two pack’. Regulation 473/2013 brings the cycle of domestic budgetary policy within the framework of monitoring under the European semester.

Fundamentally, ‘two-pack’ legislation now enables the EU institutions to ‘get the system within the normal EU process’, as the MEPs have often demanded. ‘Getting the system within the normal EU process’ connotes the idea that the Union institutions themselves, rather than non-EU or external institutions, should be in charge of administering financial assistance to an ailing Euro area Member State and monitoring its fiscal and economic policies. The assumption here is that, if the EU institutions were acting within the scope of EU law, then the European Parliament would have more say on economic surveillance, and transparency and accountability would be improved in various ways. The preceding analysis serves to illustrate that the EU institutions now possess the tools that would enable them to closely monitor the economic, financial, and fiscal developments in an ailing Euro area Member State and to request that it effectuate changes in its fiscal and economic policy. There exist clear gains to EU monitoring over the current state of affairs in terms of its democratic legitimacy, transparency, and accountability. These will be examined in the next chapters.

Overall, there are three issues here which are of particular importance. First, there is, in the words of Hinarejos, a ‘shift towards direct interference with the distribution and redistribution of resources’. This is readily apparent from the principles governing the adjustment path towards the medium-term budgetary objective, the Council recommendations addressed to the Member States in the context of the European Semester and particularly of course macroeconomic adjustment programmes, which will be examined below. Second, ‘Via the backdoor of economic governance the EU moreover enters domains of national sovereignty,'

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50 ibid., 192.
51 Kenneth Armstrong (n. 1) 616.
53 Alicia Hinarejos (n. 18) 1632 fn 36. See also Mark Dawson and Floris de Witte (n. 2).
54 Regulation 1466/97 (n. 13), third subparagraph of Articles 5(1) and 9(1), as amended by Regulation 1175/2011 (n. 3).
such as unemployment, labour cost and wage bargaining, with the grave social repercussions that could potentially flow therefrom. This is in addition to the forces normally exerted by negative or positive integration (when the latter is possible). In this connection, the European Trade Union Confederation has expressed its fear ‘that the Commission seeks new ways to intervene in areas such as collective bargaining and labour market institutions’. To be sure, these policy areas are important from a macroeconomic perspective. Third, as regards the EMU architecture, Alicia Hinarejos rightly points out that, ‘The danger is that, in an effort to avoid the radical changes that come with a classic fiscal federalism model, the euro area may be slowly edging towards the surveillance model (or rather, progressing along its spectrum) without the necessary awareness and debate’. There is a real risk that such a development would not reflect the division of competences between the EU and the Member States in the Treaties, which remain largely unchanged. Nor would it find favour with the vast majority of citizens in the Member States, who demand that ‘their’ institutions retain meaningful powers over the budget and economic policy more generally. Nor would it—presumably—be matched by appropriate mechanisms of accountability if it slipped through the back door.

The Implementation of the Revised EU Economic Rules

So far we have concentrated on the revised EU economic governance framework and its bearing on national economic and budgetary policy. We have examined the inroads that these legal instruments make into national fiscal and economic policy. We now turn to consider the implementation of these rules. It has been rightly argued that, ‘It is one thing to write down obligations, whether in Treaty provisions, legislation, other international Treaties or contracts. It is quite another to enforce them’. The challenge in this section is to assess the rigorousness of EU and independent national economic oversight.

Again, the principal default line in our analysis is between borrower and lender states. To shed light on the implementation of these measures, we will be focusing

56 ibid., 363.
58 Alicia Hinarejos (n. 18) 1640.
59 Save for the addition of a third paragraph to Article 136 TFEU, which however confirmed the existence of a national competence.
on Greece and Germany. As regards crisis-hit countries, it will be argued that the EU institutions seek to steer national economic policy in great detail. The bailout terms agreed on in the context of the three Greek rescue packages involved a detailed prescription of a large number of economic and social policy measures through which it was hoped that Greece would enhance its competitiveness and secure sound and sustainable public finances. On the contrary, country-specific recommendations to Germany usually stop short of suggesting how to achieve the aims set out therein.

The Lender States

This section will focus on the bearing of the crisis-induced economic developments on the lender Member States, as well as on the EU economic guidance addressed to them in the context of the European Semester, namely in the form of (i) country-specific recommendations; (ii) in-depth reviews under Regulation 1176/2011 on the prevention and correction of macroeconomic imbalances; and (iii) Commission opinions on draft budgetary plans. These will now be examined in turn.

The crisis-induced economic developments and their bearing on lender states

It is almost trite to say that the budgetary sovereignty of the states which granted financial assistance to the ailing Euro area countries has been de facto curtailed, in that the lender states have less money to spend for other purposes.\textsuperscript{61} For example, Germany’s contribution to the first Greek rescue package was approximately €22.4 billion.\textsuperscript{62} It also agreed to contribute up to €147.6 billion (€123 billion plus 20 per cent) to the European Financial Stability Facility (EFSF).\textsuperscript{63} Germany’s total contribution to the first Greek rescue package and the EFSF was approximately €170 billion, which was much higher than the biggest item in the budget and considerably exceeded half of the federal budget.\textsuperscript{64} What is more, the total value of Germany’s paid-in shares in the authorized capital stock of the European Stability Mechanism (ESM) is €21.71712 billion, and the total value of its callable shares is €168.30768 billion. Accordingly, the Federal Ministry of Finance is authorized to grant to the

\addcontentsline{toc}{chapter}{References}

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\bibitem{Fiscal} Gesetz zur Übernahme von Gewährleistungen im Rahmen eines europäischen Stabilisierungsmechanismus (Euro-Stabilisierungsmechanismus-Gesetz) vom 22. Mai 2010 (BGBl I S. 627), § 1 Abs. 1 und Abs. 6.
\bibitem{Budget} BVerfG, 2 BvR 987/10 vom 7.9.2011 <135>.
\end{thebibliography}
ESM up to €168.30768 billion in the form of guarantees.\textsuperscript{65} Germany’s exposure to the Euro crisis has raised concerns over the budgetary autonomy of the Bundestag (the national parliament of the Federal Republic of Germany).\textsuperscript{66} Similar concerns have been raised in other lender states, such as Finland.\textsuperscript{67}

Country-specific recommendations, in-depth reviews, and opinions on draft budgetary plans: The example of Germany

We now turn to consider recommendations and opinions issued in the context of the European Semester, as well as in-depth reviews carried out within the same framework. It will be recalled that the European Semester is ‘the EU’s calendar for economic policy coordination’.\textsuperscript{68} The detailed structure of the European Semester is as follows:

The Semester begins with the Annual Growth Survey in November, where the Commission suggests EU-wide economic priorities for the following 12-18 months. At the same time, the Commission screens Member States for potential economic imbalances in the Alert Mechanism Report, and follows up with further analysis of selected economies in March. The AGS and AMR are discussed by Member States in the winter, and used as a basis for agreeing EU-wide economic priorities in March. These are taken into account in their annual budget and reform plans (submitted in April). The plans are analysed by the Commission to prepare the \textit{country-specific recommendations each spring}. There is also a new budgetary timetable for the euro area, where draft budgetary plans are assessed by the Commission and discussed in the Eurogroup before final budgets are adopted in December.\textsuperscript{69}

‘Country-specific recommendations (CSRs) offer tailored advice to Member States on how to boost growth and jobs, while maintaining sound public finances.’\textsuperscript{70} The CSRs are, according to the Commission, ‘the product of extensive and objective technical analysis, validated by thorough discussion between EU leaders and ministers.’\textsuperscript{71} They ‘focus on what can realistically be achieved in the next 12–18 months to make growth stronger, more sustainable and more inclusive, in line with the Europe 2020 strategy, the EU’s long-term growth and jobs plan.’\textsuperscript{72}

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\textsuperscript{65} Gesetz zur finanziellen Beteiligung am Europäischen Stabilitätsmechanismus (ESM-Finanzierungsgesetz), as amended by the Recommendation for a Resolution of the budget committee (BTDrucks 17/9048; 17/10126), § 1.
\textsuperscript{67} Kaarlo Tuori and Klaus Tuori (n. 17) 195–99.
\textsuperscript{69} ibid., 8.
\textsuperscript{70} ibid., 1.
\textsuperscript{71} ibid., 9.
\textsuperscript{72} ibid., 1.
The breadth of CSRs is striking. These can potentially cover, for the period under examination, four main areas: ‘public finances’; the ‘financial sector’; ‘structural reforms’; and ‘employment and social policies’. These are further divided into a large number of sub-categories. For example, recommendations about public finances can potentially concern the need to secure or maintain ‘sound public finances’, ‘pension and healthcare systems’, the ‘fiscal framework’ of the Member State concerned, or ‘taxation’. Not all EU countries receive recommendations on each of these issues every year. Rather, as shown in Figure 3.1, policy advice is tailored to the perceived needs of each country.

Previous research in this area suggests that CSRs addressed to Member States have both increased in number and become much more detailed over the last few years. They have become more precise, contain deadlines and at times make detailed policy suggestions, sometimes referring to specific national programmes instead of broad policy themes.

One might have expected that the CSRs which are addressed to stronger economies would be rather general, laconic, or abstract in terms of their content. This is not the case. The 2014 CSRs to Germany serve to illustrate this point. Upon criticizing the German Republic for the limited progress it had made, in its opinion, in various policy areas since the 2013 CSRs, the Commission recommended that the Council make four recommendations to Germany. As shown in the graph above, these covered almost all policy areas (see ‘DE’ for Deutschland). For the most part, the CSRs addressed to Germany only set out the objectives that the German authorities should pursue. They almost always stopped short of prescribing the means to achieve those objectives. Be that as it may, their level of detail was striking:

1. Pursue growth-friendly fiscal policy and preserve a sound fiscal position, ensuring that the medium-term budgetary objective continues to be adhered to throughout the period covered by the Stability Programme and that the general government debt ratio remains on a sustained downward path. In particular, use the available scope for increased and more efficient public investment in infrastructure, education and research. Improve the efficiency of the tax system, in particular by broadening the tax base, notably on consumption, by reassessing the municipal real estate tax base, by improving the tax administration and by reviewing the local trade tax, also with a view to foster private investment. Make additional efforts to increase the cost-effectiveness

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74 Sonja Bekker (n. 30) 15–16.
75 ibid., 17.
Fig 3.1 Overview of EU Country-Specific Recommendations for 2014–2015

of public spending on healthcare and long-term care. Ensure the sustainability of the public pension system by (1) changing the financing of new non-insurance/extraneous benefits (‘Mütterrente’) to funding from tax revenues, also in order to avoid a further increase of social security contributions, (ii) increasing incentives for later retirement, and (iii) increasing the coverage in second and third pillar pension schemes. Complete the implementation of the debt brake consistently across all Länder, ensuring that monitoring procedures and correction mechanisms are timely and relevant. Improve the design of fiscal relations between the federation, Länder and municipalities also with a view to ensuring adequate public investment at all levels of government.

2. Improve conditions that further support domestic demand, inter alia by reducing high taxes and social security contributions, especially for low-wage earners. When implementing the general minimum wage, monitor its impact on employment. Improve the employability of workers by further raising the educational achievement of disadvantaged people and by implementing more ambitious activation and integration measures in the labour market, especially for the long-term unemployed. Take measures to reduce fiscal disincentives to work, in particular for second earners, and facilitate the transition from mini-jobs to forms of employment subject to full mandatory social security contributions. Address regional shortages in the availability of full-time childcare facilities and all-day schools while improving their overall educational quality.

3. Keep the overall costs of transforming the energy system to a minimum. In particular, monitor the impact of the Renewable Energy Act reform on the cost-effectiveness of the support system for renewable energies. Reinforce efforts to accelerate the expansion of the national and cross-border electricity and gas networks. Step up close energy policy coordination with neighbouring countries.

4. Take more ambitious measures to further stimulate competition in the services sector, including certain professional services, also by reviewing existing regulatory approaches and converging towards best practices across Länder. Identify the reasons behind the low value of public contracts open to procurement under EU legislation. Increase efforts to remove existing planning regulations which restrict new entries in the retail sector. Take action to remove the remaining barriers to competition in the railway markets. Pursue consolidation efforts in the Landesbanken sector, including by improving the governance framework.76

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These recommendations were the result of the in-depth review of the German economy which was carried out by the Commission. It will be recalled that the Commission screens the EU Member States for potential macroeconomic imbalances on the basis of a scoreboard of indicators and carries out an in-depth review of the macroeconomic situation in a Member State where it is established that further examination of the emerging issues is warranted. In 2014, the Commission identified imbalances in Belgium, Bulgaria, Germany, Ireland, Spain, France, Croatia, Italy, Hungary, the Netherlands, Slovenia, Finland, Sweden, and the United Kingdom. As regards these countries, the Commission was of the view that Croatia, Italy, and Sweden were experiencing excessive imbalances. Again, one might be misguided into believing that the German authorities would get an easier ride from the Commission than other Member States. The existing evidence suggests otherwise. The in-depth review for Germany resulted in a 124-page report which scrutinized Germany’s current account surplus, household consumption and savings, private investment dynamics, corporate sector savings, public investment, and the banking sector. The Commission was overtly critical of Germany’s large and persistent current account surplus and recommended that Germany strengthen domestic demand, thereby enhancing the economy’s growth potential. The Commission noted that, ‘An increase in aggregate demand in Germany … would also entail the additional benefit of helping the economic recovery in the euro area.’ Spillovers from higher domestic demand in Germany could support overall aggregate demand in the euro area. The executive summary of the results of the in-depth review of Germany was as follows:

Germany is experiencing macroeconomic imbalances, which require monitoring and policy action. In particular, the current account has persistently recorded a very high surplus, which reflects strong competitiveness while a large amount of savings were invested abroad. It is also a sign that domestic growth has remained subdued and economic resources may not have been allocated efficiently. Although the current account surpluses do not raise risks similar to large deficits, the size and persistence of the current account surplus in Germany deserve close

77 Regulation 1176/2011 (n. 4).
80 ibid., 13.
81 ibid., 14.
82 ibid., 14.
attention. The need for action so as to reduce the risk of adverse effects on the functioning of the domestic economy and of the euro area is particularly important given the size of the German economy.

More specifically, relatively low private and public sector investment together with subdued private consumption over a longer period contributed to modest growth, falling trend growth, increased dependence of the economy on external demand and the build-up of the external surplus. The challenge is, therefore, to identify and implement measures that help strengthen domestic demand and the economy’s growth potential. Higher investment in physical and human capital, and promoting efficiency gains in all sectors of the economy, including by unleashing the growth potential of the services sector, which would also contribute to further strengthening of labour supply, are central policy challenges.\textsuperscript{83}

Last, as regards the common budgetary timeline established by Regulation 473/2013, it will be recalled that Member States must submit annually to the Commission and to the Eurogroup a draft budgetary plan for the forthcoming year by 15 October. This plan must be consistent with the recommendations issued in the context of the SGP and, where applicable, with recommendations issued in the context of the annual cycle of surveillance, including the Macroeconomic Imbalance Procedure as established by Regulation 1176/2011 and with opinions on economic partnership programmes (Regulation 473/2013).\textsuperscript{84}

On 15 October 2013, Germany submitted a Draft Budgetary Plan for 2014,\textsuperscript{85} and the Commission adopted an opinion on it.\textsuperscript{86} The Commission noted that ‘Germany [was] subject to the preventive arm of the SGP and should preserve a sound fiscal position which ensure[d] compliance with the medium-term objective.’\textsuperscript{87} ‘As the debt ratio exceeded 60% of GDP and stood at 80% of GDP in 2011 … Germany [was] subject to the transitional arrangements as regards compliance with the debt criterion.’\textsuperscript{88}

In the Commission’s view, “The macroeconomic scenario underlying the Draft Budgetary Plan [was] plausible and broadly in line with the Stability Programme’s macroeconomic scenario. It was also broadly in line with the Commission 2013 Autumn Forecast…”\textsuperscript{89} However, ‘Germany’s federal budget and fiscal projections at the level of general government [were] based on the federal government’s own

\textsuperscript{83} ibid., 3.
\textsuperscript{84} Regulation 473/2013 (n. 12), Article 6.
\textsuperscript{87} ibid., consideration no. 4.
\textsuperscript{88} ibid., consideration no. 4.
\textsuperscript{89} ibid., consideration no. 5.
macroeconomic forecast which … [was] not formally endorsed by an independent body as defined in Regulation (EU) No 473/2013. This conclusion was tempered by the fact that ‘the preparation of the government’s projections involve[d] the independent Joint Economic Forecast issued twice a year by leading research institutes and used as a benchmark for the government forecast.’

The Commission further noted that the draft budgetary plan ‘project[ed] a balanced general government budget for 2013, which [was] a slight improvement compared to the Stability Programme’s deficit target of ½% of GDP.’ Moreover, in the Commission’s view, ‘The budgetary targets [were] broadly in line with the Commission 2013 Autumn Forecast and appear[ed] overall realistic.’ Furthermore, the Commission noted that, ‘The Draft Budgetary Plan project[ed] a diminishing debt-to-GDP ratio in 2013 and 2014’ which ‘[was] broadly in line with the Stability Programme and also with the Commission Autumn 2013 Forecast.’ Consequently, ‘Germany’s debt ratio [was] declining appropriately, which [would] ensure compliance with the debt rule at the end of the transition period in 2014.’

In addition, ‘According to the information provided in the Draft Budgetary Plan, Germany [was] expected to continue to comply with its medium-term objective.’

As regards the Council recommendations that had been issued to Germany in the previous year, the Commission argued that:

The Draft Budgetary Plan does not address the Council recommendations issued to Germany in the context of the 2013 European Semester with respect to enhancing the cost-effectiveness of public spending on healthcare and long-term care, improving the efficiency of the tax system, using the available scope for increased and more efficient spending on education and research, completing the implementation of the constitutional balanced-budget rule at Länder level, reducing high taxes and social security contributions, especially for low-wage earners; and removing disincentives for second earners.

The Commission concluded its opinion on the 2014 German draft budgetary plan as follows:

Overall, based on the 2013 Autumn Forecast, the Commission is of the opinion that the Draft Budgetary Plan of Germany submitted on 15 October 2013 is compliant with the rules of the SGP. The Commission is also of the opinion that

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90 ibid., consideration no. 6.
91 ibid., consideration no. 6.
92 ibid., consideration no. 7.
93 ibid., consideration no. 8.
94 ibid., consideration no. 9.
95 ibid., consideration no. 10.
96 ibid., consideration no. 11.
97 ibid., consideration no. 12.
Germany has made no progress with regard to the structural part of the fiscal recommendations issued by the Council in the context of the 2013 European Semester and thus invites the authorities to accelerate progress.98

Overall, the Commission's opinion on the German draft budgetary plan was quite short (i.e. only three pages long) and did not go into too much detail. This can be readily explained by the fact that the Commission has very little time to scrutinize national budgets.99 The Commission's opinion primarily examined the prima facie compatibility of the draft budgetary plan with the SGP precepts (most notably in relation to public deficit figures, the volume of debt, and the medium-term budgetary objective) on the basis of the information provided by the German authorities. Moreover, the macroeconomic scenario and forecasts on which the budget was premised also featured quite prominently in the Commission's opinion, and their compatibility with the Commission's own forecast was thoroughly examined. In this connection, it is particularly noteworthy that the Commission highlighted the fact that the federal government's own macroeconomic forecast had not been endorsed by an independent body within the meaning of Regulation 473/2013. It is further worth highlighting the fact that the Commission noted at some length that the draft budget '[did] not address' many of the Council recommendations addressed to Germany in the context of the 2013 European Semester.

The Crisis-Hit Euro Area Countries: The Example of the Greek Bailout Terms

Apart from the economic restraints flowing from the revised EU economic governance framework, the crisis-hit Euro area Member States are experiencing a further loss of their fiscal and economic sovereignty through the conditionality attached to the financial assistance which was granted to them.100 The crisis-hit countries had to implement various reforms in return for financial assistance. In their case, the creditors possessed a much more credible 'enforcement mechanism.' The loans granted to the ailing Euro area Member States were disbursed in instalments, and the release of further instalments was made conditional upon verification by the creditors that the economic policy of the beneficiary country accorded with its macroeconomic adjustment programme.

A comprehensive elucidation of these far-reaching implications for national economic and social policy is only possible through recourse to the Memoranda of Understanding which were signed by the bailed-out countries. Space precludes

98 ibid., consideration no. 13.
99 Regulation 473/2013 (n. 12), Article 7(1).
100 See among others Kaarlo Tuori (n. 61) 39–40.
a detailed exegesis of all the Memoranda of Understanding which were signed by the crisis-hit Euro area (or non-Euro area) countries. Instead, we will be focusing on the Greek bailout terms. These have been described by one commentator as ‘the most drastic intervention in a Member State’s economic and social policy ever decided by the EU’. To be sure, the Greek authorities agreed to those terms, though one might want to argue that a state on the brink of bankruptcy has much less bargaining power than its creditors.

Save for these Memoranda of Understanding, we will not be examining any additional recommendations or opinions concerning Greece. This is for the following reasons. ‘To avoid duplication with measures set out in the Economic Adjustment Programme, there are no additional recommendations for Greece’. Moreover, ‘For the Member States that are subject to macroeconomic adjustment programmes and benefiting from financial assistance, the surveillance of their imbalances and monitoring of corrective measures will take place in the context of their programmes.’ Furthermore, as regards the common budgetary timeline which was established by Regulation 473/2013, it is noted that, ‘In order to avoid a multiplying of reporting requirements, Regulation 473/2013 explicitly makes exception for Member States subject to a macroeconomic adjustment programme.’

The first Greek Memorandum of Understanding

The first Greek Memorandum of Understanding was signed in 2010 and consisted of four documents: a letter sent from the Greek Minister of Finance and the Governor of the Bank of Greece to the President of the Eurogroup, the Commissioner for Economic and Monetary Affairs and the Euro, and the President of the ECB, through which Greece requested financial assistance from the Euro area Member States; a Memorandum of Economic and Financial Policies (MEFP), which outlined the economic and financial policies that the Greek government and the Bank of Greece would implement during the remainder of 2010 and in the period from 2011 to 2013; a Memorandum of Understanding on Specific Economic Policy Conditionality (MoU), which specified detailed economic policy measures that

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105 This can be found in European Commission, The Economic Adjustment Programme for Greece (European Economy Occasional Paper 61/2010, European Union 2010) 37–38. A ‘parallel request for financial assistance’ was sent to the International Monetary Fund.
106 Ibid., 37.
would serve as benchmarks for assessing policy performance in the context of the quarterly reviews under the financial assistance programme;\textsuperscript{107} and a Technical Memorandum of Understanding (TMU), which set out ‘the understandings regarding the definitions of the indicators subject to quantitative targets’ and described ‘the methods to be used in assessing the program performance and the information requirements to ensure adequate monitoring of the targets.’\textsuperscript{108}

The MEFP provided that the main objectives of the programme were ‘to correct fiscal and external imbalances and restore confidence’.\textsuperscript{109} These were seen to require ‘a major reorientation in the economy’, which would be achieved through the use of ‘all available fiscal, financial and structural policies.’\textsuperscript{110} These will now be examined in turn.

As regards fiscal policy, the MEFP provided that government expenditure should be cut by 7 per cent of GDP.\textsuperscript{111} This was to be achieved through the reduction of ‘wage and entitlement program costs’, as well as through ‘other reductions in government spending, including by replacing over time only 20 percent of retiring employees, and by consolidating municipalities and local councils.’\textsuperscript{112} Consequently, the MEFP had a bearing on public sector pay, social benefits, the public sector’s hiring policy, and even on the administrative division of Greece. Further cuts targeted ‘investment spending’ and ‘the organization of public administration.’\textsuperscript{113}

Moreover, according to the MEFP, government revenues should be increased by 4 per cent of GDP.\textsuperscript{114} This should be achieved through various tax increases, as well as ‘other measures to combat tax evasion’ and to improve ‘collection efficiency’.\textsuperscript{115}

What is more, the MEFP moved beyond ‘these direct fiscal steps for the budget’, and required that the Greek government ‘initiat[e] a series of important structural fiscal reforms’.\textsuperscript{116} Notably, the MEFP provided that the Greek government should undertake substantial pension reforms, which included a merger of the existing pension funds into three funds; an increase of the normal retirement age to 65 years; restrictions on early retirement; a reduction in the number of ‘heavy and arduous professions’ which are treated more favourably in this respect; and the introduction of a means-tested social pension for all citizens.\textsuperscript{117} Moreover, the Greek government should implement reforms in the health sector, which primarily concerned new accounting rules for hospitals, ‘improvements in pricing and

\textsuperscript{107} ibid., 37.
\textsuperscript{108} ibid., 85.
\textsuperscript{109} ibid., 40.
\textsuperscript{110} ibid., 40.
\textsuperscript{111} ibid., 43.
\textsuperscript{112} ibid., 43.
\textsuperscript{113} ibid., 43.
\textsuperscript{114} ibid., 43.
\textsuperscript{115} ibid., 43.
\textsuperscript{116} ibid., 44.
\textsuperscript{117} ibid., 44.
costing mechanisms’, and a merger of the health funds. The Greek government was further put under an obligation to reform tax administration, and the MEFP outlined a strategy to be followed by the revenue authority. This involved, inter alia, ‘collecting on the large stock of tax arrears’, ‘substantially improving enforcement operations’, as well as ‘developing and maintaining a comprehensive compliance risk management framework’. The MEFP even went as far as requiring the Greek government to ‘prosecut[e] the worst offenders’, thereby making inroads into Greek criminal law.

The ‘structural fiscal reforms’ provided for in the MEFP also required that the Greek government amend the country’s budgetary framework. The far-reaching reforms mandated by the MEFP were as follows:

[T]he government will introduce standardized commitment control procedures for all public entities to prevent the re-emergence of arrears; ensure that all budgets are prepared within a medium-term fiscal strategy for the general government and presented before the start of the fiscal year; introduce top-down budgeting with expenditure ceilings, a sufficient contingency reserve, and a medium-term expenditure framework for the State budget; require a supplementary budget for any overruns above this contingency provision; and amend the 1995 budget management law to give effect to the above. The government will continue to … make further improvements over the course of the program, including the creation of an independent fiscal agency attached to parliament.

As regards the financial sector, the government was required to establish ‘a fully independent Financial Stability Fund (FSF)’, which would provide equity support to ailing banks. The Greek government was also put under an obligation to reform insolvency law, most notably through the amendment of the ‘[c]orporate debt restructuring legislation’ and a new ‘personal debt restructuring law’. Other reforms concerned the arrangements for supervising banks.

As far as structural reforms (or ‘structural policies’) are concerned, the MEFP provided that:

These will enhance the flexibility and productive capacity of the economy, ensure that wage and price developments restore and then sustain international competitiveness, and progressively alter the economy’s structure towards a more investment and export-led growth model.

118 ibid., 44.
119 ibid., 44–45.
120 ibid., 44.
121 ibid., 45.
122 ibid., 47.
123 ibid., 47.
124 ibid., 47.
125 ibid., 48 (emphasis added).
Again, the MEFP set out in a very detailed manner the reforms to be implemented by Greece in return for financial assistance. Apart from the public sector and health care reforms outlined above, the MEFP provided for various far-reaching labour reforms. More specifically, the MEFP mandated that the Greek government effectuate changes in public procurement; make private sector wages ‘more flexible to allow cost moderation for an extended period of time’; ‘reform the legal framework for wage bargaining in the private sector’; adopt legislation on the minimum wage ‘in order to promote employment creation for groups at risk’; ‘extend probationary periods’; ‘recalibrate rules governing collective dismissals’; and ‘facilitate greater use of part-time work’.\footnote{ibid., 48.} Moreover, the MEFP provided for various reforms for the purposes of ‘improving the business environment and bolstering competitive markets’, most notably through cuts in ‘licensing and other costs for industry’, the opening-up of restricted professions, and the progressive liberalization of network industries, ‘especially in the transport and energy sector’.\footnote{ibid., 48–49 (emphasis added).} Other reforms concerned state enterprises (‘most notably in the railway and public transportation’), whose financial performance had to be improved.\footnote{ibid., 49.} The Greek government should also ‘review the role for divesting state assets, including of land owned by public enterprises or the government’.\footnote{ibid., 49 (emphasis added).}

The MEFP also included tables of quantitative performance criteria and structural benchmarks against which the Greek government’s progress in the implementation of the programme would be assessed.\footnote{ibid., 56–57.} Further, the annual impact of all the fiscal measures mandated by the programme was quantified.\footnote{ibid., 51–55.}

The Memorandum of Understanding on Specific Economic Policy Conditionality (MoU) provided that the disbursement of the financial assistance granted to Greece would be subject to ‘quarterly reviews of conditionality’, the detailed criteria for which were specified in the MoU.\footnote{ibid., 59.} Accordingly, the MoU set out the actions required on behalf of the Greek authorities for the successive reviews until the end of 2011 and a timetable for their completion. The level of detail is unprecedented. Space precludes a comprehensive elucidation of the various reforms posited in the MoU, which were grouped into fiscal and structural reforms. Suffice it to say for present purposes that the fiscal reforms required by the MoU for the first review of the programme were as follows:

- Increase in VAT rates, with a yield of at least EUR 1800 million for a full year (EUR 800 million in 2010);
• Increase in excises for fuel, tobacco and alcohol, with a yield of at least EUR 1050 million for a full year (EUR 450 million in 2010);
• Reduction in the public wage bill by reducing the Easter, summer and Christmas bonuses and allowances paid to civil servants, with net savings amounting to EUR 1500 million for a full year (EUR 1100 million in 2010);
• Elimination of the Easter, summer and Christmas bonuses paid to pensioners, while protecting those receiving lower pensions, with net savings amounting to EUR 1900 for a full year (EUR 1500 million in 2010);
• Cancel budgetary appropriations in the contingency reserve with the aim of saving EUR 700 million;
• Reduce the highest pensions with the aim of saving EUR 500 million for a full year (EUR 350 million in 2010);
• Abolish most of the budgetary appropriation for the solidarity allowance (except a part for poverty relief) with the aim of saving EUR 400 million;
• Reduce public investment by EUR 500 million compared to plans;
• Parliament adopts, as planned in the stability programme of January 2010, a Law introducing a progressive tax scale for all sources of income and a horizontally unified treatment of income generated from labour and assets;
• Parliament adopts, as planned in the stability programme of January 2010, a Law abrogating exemptions and autonomous taxation provisions in the tax system, including income from special allowances paid to civil servants. The law applies retroactively from January 1, 2010.133

The second Greek Memorandum of Understanding

The terms of the second Greek bailout were set out in the following four documents: a letter of intent dated 11 March 2012 which was sent by the Greek Prime Minister, the Greek Deputy Prime Minister, and the Governor of the Bank of Greece to the President of the Eurogroup, the Commission Vice-President for Economic and Monetary Affairs and the Euro, and the President of the ECB;134 a Memorandum of Economic and Financial Policies (MEFP), which ‘outline[d] the economic and financial policies that Greece [would] implement during the remainder of 2012 and in the period 2013-14’;135 a Memorandum of Understanding on Specific Economic Policy Conditionality (MoU), which ‘specifie[d] additional structural policies, and se[t] a precise time frame for their implementation’;136 and a Technical Memorandum of Understanding (TMU), which ‘se[t] out the understandings regarding the definitions of the indicators subject to quantitative targets

133 ibid., 59–60.
134 This can be found in European Commission, The Second Economic Adjustment Programme for Greece (European Economy Occasional Paper 94/2012, European Union 2012) 93–94. The letter was also ‘copied’ to the Managing Director of the International Monetary Fund.
135 ibid., 93.
136 ibid., 114.
(performance criteria and indicative targets), specified in the tables annexed to the Memorandum of Economic and Financial Policies’ and ‘describe[d] the methods to be used in assessing the program performance and the information requirements to ensure adequate monitoring of the targets’.\footnote{ibid., 173.}

Again, the MEFP contained very prescriptive policies. The Greek government undertook to implement various reforms, which were grouped into ‘economic policies’, ‘fiscal institutional reforms’, ‘financial sector policies’, ‘privatization’, and ‘structural reforms’. These will now be briefly examined in turn.

As regards economic reforms, the Greek government was required to achieve a general government primary surplus of 4.5 per cent of GDP by 2014.\footnote{ibid., 96.} This was to be achieved through \textit{public sector wage bill reductions}, namely, ‘reform of the public sector employee compensation’, ‘personnel reductions’, and ‘controls on hiring’.\footnote{ibid., 97.} In this connection, the MEFP further set out specific quantitative targets. For example, the Greek government ‘remain[ed] committed to reduce general government employment by at least 150,000 in the period 2011-15’ and to apply a 1:5 hiring-to-attrition ratio.\footnote{ibid., 97.}

Moreover, the Greek government undertook to implement far-reaching \textit{pension, health spending and social spending reforms.} These reforms were posited in great detail. For example, the Greek government was required to ‘reduce … supplementary pensions above €200 per month’, to ‘reduce by 12 percent the part for main pensions exceeding €1,300 a month’, and ‘to reduce public spending on outpatient pharmaceuticals from 1.9 to $1^{1/3}$ percent of GDP’.\footnote{ibid., 98.} The MEFP further provided for a ‘[r]estructuring of government operations’, primarily through ‘closing and downsizing general government units’, the outsourcing of government functions, and ‘the rationalization of defence spending (without compromising defense capabilities)’.\footnote{ibid., 98–99.}

Other economic reforms included \textit{tax reforms} (most notably, ‘the elimination of several tax exemptions and preferential regimes’) and \textit{revenue administration reforms}.\footnote{ibid., 99.} The latter reforms were set out in considerably more detail under the heading ‘Fiscal Institutional Reforms’.\footnote{ibid., 100–03.} The MEFP provided that ‘revenue administration … [would] need to be overhauled completely’.\footnote{ibid., 100.} To this end, it mandated a host of institutional reforms, most notably the setting-up of an internal affairs service for the purposes of fighting corruption; the establishment of a large taxpayer unit, a debt collection unit, and an audit department; and the appointment
of a Secretary General of the revenue administration. It should be further noted that the posited 'institutional reforms' made inroads into tax law and criminal law, mandating inter alia that the Greek government 'forego any tax amnesties', restrict the suspension of criminal prosecution[s] and asset freezing for tax debt and overdue social security contributions, and transmit 'complaint reports related to confirmed unpaid tax debts arising from an audit... to the prosecution services'.

The financial sector policies outlined in the MEFP primarily concerned bank recapitalization and resolution, and the oversight of the financial sector. Furthermore, the MEFP required that the Greek government 'accomplish a fundamental shift of public assets to private sector control', through '[t]ransferring assets in key sectors of the economy (such as ports, airports, motorways, energy, and real estate) to more productive uses'. The MEFP even went as far as listing some of the enterprises which should be privatized, and set the target for government proceeds at €50 billion.

Moreover, 'The government [would] formulate new policies regarding the use of assets (e.g. town planning, REITS) and set up new regulatory authorities and frameworks (e.g. for water, ports, airports, motorways). It is particularly noteworthy that this privatization process should be 'insulated from political pressures', through the setting-up of a Hellenic Republic Asset Development Fund, which would 'operate under a mandate to privatize assets at prevailing market conditions as soon as technologically feasible and in an open and transparent manner'.

Last, the MEFP mandated wide-ranging 'structural reforms' in relation to labour, product and service markets. The MEFP provided for 'a reduction in unit labor costs of about 15 percent during the program period'. As regards collective bargaining, 'all collective contracts should have a maximum duration of 3 years', and 'the grace period after a contract expires [was] reduced from six to three months'. Moreover, the MEFP provided for 'a freeze of "maturity" provided by law and/or collective agreements (referring to all automatic increases in wages dependent on time) until unemployment falls below 10%', and an 'elimination of unilateral recourse to arbitration, allowing requests for arbitration only if both parties consent'.

The Greek government further undertook to make various adjustments to wage labour costs, stating:

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146 ibid., 100–01.
147 ibid., 100–02.
148 ibid., 103–07.
149 ibid., 107 (emphasis added).
150 ibid., 108–09.
151 ibid., 109.
152 ibid., 109.
153 ibid., 109.
154 ibid., 109.
155 ibid., 110.
We will legislate: (i) an immediate realignment of the minimum wage level determined by the national general collective agreement by 22 percent at all levels based on seniority, marital status and daily/monthly wages; (ii) its freeze until the end of the program period; and (iii) a further 10 percent decline for youth, which will apply generally without any restrictive conditions (under the age of 25) . . . These measures will permit a decline in the gap in the level of the minimum wage relative to peers (Portugal, Central and Southeast Europe) . . . Together, with social partners, we will prepare by end-July 2012 a clear timetable for an overhaul of the national general collective agreement. This will bring Greece's minimum wage framework into line with that of comparator countries . . .

The product and service market reforms were set out in much less detail than the labour market reforms. Notably, they included the abolition of restrictions in 'highly restricted professions' — a recurring theme in Greek MoUs. The Greek government further committed 'to continue with improvements in Greece's business environment', most notably through 'fast-tracking investments, speeding up licensing procedures and facilitating electronic business registration'. Environmental licensing procedures, too, should be speeded up, and hence the MEFP made incursions into Greek environmental law.

'In support of efforts to improve the business climate, Greece further aimed at 'improving the efficiency of the judicial system'. The Greek government undertook to address the case backlog in the courts, to speed up case processing, to improve the performance and accountability of courts, and to reform the Code of Civil Procedure.

EU and national fiscal oversight
The discussion thus far has focused on the conditionality attached to the financial assistance which was granted to Greece. The focus now shifts to EU and independent national oversight of Greek fiscal and economic policy. EU oversight is comprised of the monitoring carried out by the Commission, in liaison with the European Central Bank (ECB) and the International Monetary Fund (IMF). These three institutions are often collectively referred to as 'the Troika' (now 'the Quadriga', which also includes the ESM). Independent national fiscal oversight is carried out, in the case of Greece, by the Parliamentary Budget Office and the recently established Fiscal Council. These will now be examined in turn.

156 ibid., 110.
157 ibid., 111.
158 ibid., 111.
159 ibid., 112.
160 ibid., 112 (emphasis added).
161 ibid., 112. For an overview of these reforms, see George Dellis, Η Διοικητική Δικαιοσύνη σε αναζήτηση ταχύτητας: Ανατρέποντας το μύθο της «ωραίας κοιμωμένης» (Nomiki Bibliothiki 2013) chs 3–4.
As regards EU oversight of Greek fiscal and economic policy, it will be recalled that financial assistance to Greece was disbursed in instalments, and that the release of further instalments was conditional upon verification by the representatives of the creditors that the economic policy of Greece accords with its adjustment programme. Accordingly, there was very rigorous assessment of the progress made by Greece with respect to its commitments. Further, there were regular surveillance missions to Greece for the purposes of on-site monitoring.

The last report on the progress made by Greece in relation to its second adjustment programme was based on the findings of a four-part joint Commission/ECB/IMF mission to Athens between 16-29 September 2013, 28 October-8 November 2013, 2-15 December 2013 and 24 February-17 March 2014. This gave rise to a staggering 304-page report which examined current macroeconomic, financial and fiscal developments and assessed compliance with programme conditionalities.

Though more optimistic and positive-sounding than previous reports on the Greek economy, this report did not stop short of identifying the risks and uncertainties that existed, in the Commission’s view, in relation to the implementation of the programme. Overall, the Commission noted that ‘very sizeable challenges’ remained ‘in many areas’. More specifically, the Commission highlighted the ‘uncertainties about the extent and speed of the economic recovery in 2014’, which were, in its opinion, ‘significant’. Further, in the Commission’s view, ‘improvements in the area of budget preparation’ and ‘very substantial improvements in public administration’ were still needed, in order to ‘bring Greece in line with best practices’. It is particularly noteworthy that the desired improvements were posited in considerable detail in the Commission’s report.

As regards health care reforms, the Commission identified ‘important challenges ahead’ which were again explained in great detail. Moreover, the Commission underlined the ‘clear need for further rationalisation of the social security system’ and the ‘substantial’ challenge that was facing the Greek authorities in relation to corruption. In addition, in the Commission’s view, it was ‘crucial’ to ensure that ‘a wide range of ambitious structural reforms’ would be implemented, in order to

163 Ibid., 1.
164 Ibid., 1.
165 Ibid., 1.
166 Ibid., 3.
167 Ibid., 3.
168 Ibid., 4.
169 Ibid., 4.
'quickly restore and promote growth and support employment.' These primarily concerned product and service markets. Furthermore, as regards judicial reform, the Commission noted that the stock of pending cases remained 'high' and outlined the measures proposed and/or implemented by the Greek government to address the issue.

Last, the Commission noted that implementation risks to the programme remained 'high'. The Commission's account of these risks is worth quoting in some length, because it is indicative of the substance and tone of such reports:

The macroeconomic recovery now seems to be more firmly established than it was expected in July 2013, but risks remain considerable, in particular in relation to perseverance in confronting vested interests. Sustained and determined reforms in the areas of product (goods and services) market, public administration and anti-corruption could clearly reduce costs for businesses and households and underpin a recovery in investment, while postponement of such reforms and incomplete implementation could perpetuate a heavy drag on the economy, making it difficult to achieve a substantial improvement in employment and productivity growth, and thus also a steady reduction of the debt-to-GDP ratio. Key reforms to revenue administration and the public administration are now beginning to bear fruit, but delays may jeopardise the generation of revenues which underpin the fiscal projections. Progress on the privatisation programme may be more significant if the heightened investor interest results in stronger participation and higher proceeds, but could also be delayed by the persistence of the significant hurdles and administrative inefficiencies still in place. Further labour market reforms would be important to complete the move towards a modern regulatory framework which is essential to attract substantial new foreign direct investment flows, but sensitivities in this area make progress in this area difficult. Finally, a lack of progress by authorities and banks in working out NPLs, cleaning and strengthening bank balance sheets with the help of private investors and management, and in improving the payment culture, could severely undermine the ability of banks to supply more credit and support strong, sustainable economic and employment growth.

Apart from EU oversight over Greek fiscal and economic policy, there is also independent national fiscal oversight. This is carried out by the Budget Office of the Greek Parliament (or 'Parliamentary Budgetary Office'), which was created in 2010. The Budget Office 'enjoys full independence in the exercise of its

170 ibid., 5.
171 ibid., 6.
172 ibid., 6.
173 ibid., 6–7.
174 Parliament Regulations, Article 36A, inserted by Decision No 11561/05.08.2010 of the Plenary Session of the Greek Parliament (Government Gazette A’ 139/10.08.2010); Law No 3871/2010
duties" and is a member of the EU Network of Independent Fiscal Institutions. It monitors the execution of the budget; oversees the implementation of the fiscal policies and reforms approved by the Greek parliament (whether posited in statutory law or in the economic adjustment programme); and analyses and evaluates the budget data, the forecasts for public revenue and expenditure, and the sustainability of long-term budgetary figures. It further submits reports to parliamentary committees on the attainment of the fiscal targets pursued, as posited in the medium-term fiscal framework, on the macrofiscal scenario on which budgetary planning is premised, and on the overall alignment of national fiscal policy with Law No 3871/2010 (Government Gazette A’ 141/17.08.2010) on fiscal management and responsibility.

The Budget Office's report for the second quarter of 2014 covered roughly the same period as the Commission report examined above. The Budget Office sees its mission as one that facilitates informed decision-making by parliament and serves to 'inform the citizens'. Accordingly, it avoids being overly diplomatic and does not hesitate to heavily criticize the Greek government, the opposition, the Troika, and the economic elite in Greece. The Greek government bears the brunt of such criticism.

Far from sugar-coating the macroeconomic situation in Greece, this sixty-one-page report provided a long and detailed list of the uncertainties about the implementation of the adjustment programme. Though it did admit that the macroeconomic situation had improved in the last quarter of 2014, the Budget Office noted that recovery was still 'weak' despite the 'slowdown of recession', and highlighted the 'many uncertainties', which primarily concerned, in its opinion, 'non-performing loans', '[d]elays in the implementation of structural reforms', '[l]ack of investments', '[d]ifficulties of the fiscal consolidation', and the '[p]ublic debt'. The Budget Office further noted that, even without an assistance programme, the country would still be 'under supervision', because the Troika would

»Δημοσιονομική Διαχείριση και Ευθύνη» (fiscal management and responsibility) (Government Gazette A’ 141/17.08.2010).


177 Budget Office Regulations (n. 175), Article 2(1).

178 ibid., Article 2(2).


180 ibid., 4.

181 ibid., 5.

182 ibid., 5–6.
be ‘replaced by the financial markets’, and that the country might need to have recourse to the ESM for financing.\textsuperscript{183} It is probably needless to say that this was a taboo subject in Greece, primarily because the economy had been in a severe recession for eight years at that time. Nevertheless, the Budget Office was right to predict that Greece would have recourse to the ESM for another programme.

The report did not shy away from castigating ‘the absence of a minimum consensus among the major political parties in Greece’, which threatened, in the opinion of the Budget Office, ‘the continuity in key points of the economic and social policy’.\textsuperscript{184} Moreover, the Budget Office noted that the IMF’s public debt projections were ‘based on assumptions that may be defeated’, thereby openly questioning the sustainability of public finances, which was another taboo subject in political discourse in Greece (and, at that point in time, also in the EU).\textsuperscript{185} The Budget Office’s critique of the chosen trajectory of fiscal policy was more subtle. This had, in its opinion, procyclical effects (‘recessionary effects’).\textsuperscript{186} Even the Greek courts did not escape from the Budget Office’s critique, because they ‘vindicate[d] many of the applicants’ and hence ‘[were] likely to cause serious trouble to the successful execution of the State budget’.\textsuperscript{187}

As regards fiscal management, the Budget Office noted that ‘the elimination of tax evasion was not given the necessary attention’.\textsuperscript{188} In this connection, it noted the ‘weird behavior of some part of the economic elite’,\textsuperscript{189} which is another thorny issue in Greece. Moreover, the Budget Office’s report underlined the fact that several public entities showed ‘significant deviations from their objectives’.\textsuperscript{190} Furthermore, when commenting on the sensitivity analysis carried out in relation to several tax measures, the Budget Office noted that ‘in several issues (one of which is the “sensitivity analysis”, as well) developments occur[red] only under the influence of Troika’ and that ‘such measures did not even seem to be part of a coherent long-term plan’.\textsuperscript{191}

The report moved beyond an analysis of the budgetary figures and criticized both the insufficient implementation of the laws enacted by the Greek parliament and the country’s ‘major institutional problem’.\textsuperscript{192} It even went as far as arguing that ‘the opposition’s views should be based on international practices and the belief that the country [had] to remain a member State of the European Union and the

\textsuperscript{183} ibid., 6.
\textsuperscript{184} ibid., 6.
\textsuperscript{185} ibid., 6.
\textsuperscript{186} ibid., 7.
\textsuperscript{187} ibid., 7.
\textsuperscript{188} ibid., 7.
\textsuperscript{189} ibid., 7–8.
\textsuperscript{190} ibid., 8.
\textsuperscript{191} ibid., 8.
\textsuperscript{192} ibid., 9.
Eurozone', thereby openly criticizing at some length some of the views expressed in political discourse.\textsuperscript{193}

As regards structural reforms, the report noted, in line with the Commission's report examined above, that pension reform and the fight against corruption would 'continue to be a high priority in the future'.\textsuperscript{194} In the Budget Office's opinion, the implementation of the privatization plan lagged behind.\textsuperscript{195} Furthermore, the Budget Office vehemently criticized the authorities in charge of implementing the structural reforms agreed with the creditors and sometimes criticized even the reforms themselves. It noted that 'the institutional-organization infrastructure for privatizations' was 'rather incompetent' and argued that, 'In general, reforms implemented so far did not achieve their goal.'\textsuperscript{196} The low rate of implementation of the agreed reforms and the perceived gap between policy and practice did not go unnoticed either.\textsuperscript{197} Moreover, in a rather courageous statement, the Budget Office argued as follows:

However, even if the structural reforms had been implemented as scheduled, their positive impact on the domestic economy would be limited not only because of the huge public and private debt, but also due to other factors mentioned in the beginning of the text. Lack of confidence in the Greek economy, despite any occasional statements by economic agents, should not be ignored, either. An extraordinary effort is needed to overcome this confidence crisis, which is caused by clientilism and the ever changing policy framework. All these make potential investors rather concerned about the Greek economy ... and result in an unfair distribution of the burdens.\textsuperscript{198}

Overall, the findings of the Budget Office's report as to the uncertainties in the implementation of the economic adjustment programme largely (\textit{though not fully}) coincided with the ones of the Commission, albeit with one important caveat: the Commission never went as far as openly questioning the effectiveness of the reforms Greece had agreed with its creditors, not least because it formed part of the Troika. Measured on its substance and tone, the Budget Office's report was heavily critical of the government's actions in a number of areas. Again, this should be seen in the light of the Budget Office's interpretation of its own mission, part of which is, according to its own views, keeping the Greek citizens informed on economic developments.

\textsuperscript{193} ibid., 9–10.
\textsuperscript{194} ibid., 10.
\textsuperscript{195} ibid., 10.
\textsuperscript{196} ibid., 11.
\textsuperscript{197} ibid., 11.
\textsuperscript{198} ibid., 12.
It is further worth noting that the Greek legislator has recently established a Fiscal Council. This has the status of an independent administrative authority and is also a member of the EU Network of Independent Fiscal Institutions. The Fiscal Council became fully operational in November 2015 when its first Executive Board members were appointed. Its President and members of the Governing Council ‘enjoy personal and functional independence’. The Fiscal Council evaluates the macroeconomic forecasts on which the medium-term fiscal plan and the draft budget are based. Moreover, it monitors compliance with the numerical fiscal rules incorporating the medium-term budgetary objective and the TFUE reference values on public deficit and debt. Furthermore, it assesses whether the circumstances leading to the activation of the correction mechanism for cases of significant observed deviations from the medium-term budgetary objective or the adjustment path towards it have occurred. Where the correction mechanism has been activated, the Fiscal Council assesses whether the budgetary correction is proceeding in accordance with the national corrective plan. Last, the Fiscal Council assesses whether the circumstances which may allow, under the SGP, a temporary deviation from the medium-term budgetary objective or the adjustment path towards it have occurred or ceased to exist.

The third macroeconomic adjustment programme for Greece

The readers of this chapter are well familiar with the timeline of the latest Greek crisis. The fifth review of the second economic adjustment programme for Greece

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199 Law No 4270/2014 (Government Gazette Α’ 143/28.06.2014) on principles of fiscal management and oversight (incorporating Directive 2011/85/EU) and on public accounting and other provisions (‘Αρχές δημοσιονομικής διαχείρισης και εποπτείας (ενσωμάτωση της Οδηγίας 2011/85/ΕΕ)—δημόσιο λογιστικό και άλλες διατάξεις’). The provisions on the Fiscal Council have thus far been amended by Law No 4337/2015 on measures implementing the agreement on fiscal targets and structural reforms (‘Μέτρα για την εφαρμογή της συμφωνίας δημοσιονομικών στόχων και διαρθρωτικών μεταρρυθμίσεων’) (Government Gazette Α’ 129/17.10.2015), Article 10(4) and (13); Law No 4334/2015 on urgent measures concerning the negotiations and the conclusion of an agreement with the European Stability Mechanism (‘Επείγουσες ρυθμίσεις για τη διαπραγμάτευση και σύναψη συμφωνίας με τον Ευρωπαϊκό Μηχανισμό Στήριξης (Ε.Μ.Σ.)’ (Government Gazette Α’ 80/16.07.2015), Article 1(22) (b); Law No 4336/2015 on pension reforms—ratifying the draft agreement on economic support from the European Stability Mechanism—and measures for implementing the financial assistance facility agreement (‘Συνταξιοδοτικές διατάξεις—Κύρωση του Σχεδίου Σύμβασης Οικονομικής Ενίσχυσης από τον Ευρωπαϊκό Μηχανισμό Σταθερότητας και ρυθμίσεις για την υλοποίηση της Συμφωνίας Χρηματοδότησης’) (Government Gazette Α’ 94/14.08.2015), Articles 2(2)(D.10) and 39(3); Law No 4337/2015 on measures to implement the agreement on fiscal targets and structural reforms (‘Μέτρα για την εφαρμογή της συμφωνίας δημοσιονομικών στόχων και διαρθρωτικών μεταρρυθμίσεων’) (Government Gazette Α’ 129/17.10.2015), Article 10(13).

200 Law No 4270/2014 (n. 199), Article 2(1).
201 EU Independent Fiscal Institutions (n. 176).
202 Law No 4270/2014 (n. 199), Article 2(3).
203 ibid., Article 2(4)(a).
204 ibid., Article 2(4)(b).
205 ibid., Article 2(4)(c)(aa) and (bb).
206 ibid., Article 2(4)(c)(cc).
207 ibid., Article 2(4)(c)(dd).
was never concluded, and the duration of the programme expired without the disbursement of the remaining funds. In summer 2015, Greece reached an agreement with its creditors on a third bailout programme. An MoU ‘detailing the economic reform measures and commitments associated with the financial assistance package’ was concluded between the European Commission (acting on behalf of the ESM), Greece, and the Bank of Greece. This was accompanied by a Financial Assistance Facility Agreement ‘setting out the relevant financial information related to the loan’.

The programme built on four ‘pillars’: ‘[r]estoring fiscal sustainability’; ‘[s]afeguarding financial stability’; ‘[g]rowth, competitiveness and investment’; and ‘[a] modern State and public administration’. The Government committed to consult and agree with the European Commission, the European Central Bank and the International Monetary Fund on all actions relevant for the achievement of the objectives of the Memorandum of Understanding before these [were] finalized and legally adopted. But these objectives were very broad, and the MoU covered almost all policy areas, apart from, say, sports, cultural affairs, and migration policy. Moreover, the MoU provided that, ‘The conditionality [would] be updated on a quarterly basis, taking into account the progress in reforms achieved over the previous quarter.’ In each review the specific policy measures and other instruments to achieve these broad objectives … [would] be fully specified in detail and timeline.

Overall, the reforms mandated by the third MoU were cast in the following form: Greece was either required to implement reform R by date D in the manner specified in the MoU; or was asked to draw a plan by date D in order to implement reform R by date D, so as to achieve the objectives set out in the MoU. In terms of substance, the Greek authorities were either asked to fully implement the existing legislation or previously agreed reforms; or to transpose and/or fully implement existing EU legislation; or to adopt legislation and/or other administrative acts in

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211 The third MoU (n. 209) 5.
212 Ibid., 4 (emphasis added).
213 This is not to say that these areas escape the grip of EU and/or international law more broadly.
214 The third MoU (n. 209) 4.
215 Ibid., 4.
order to comply with the terms of the new MoU; or to repeal legislation which was passed by the Greek parliament during the first half of 2015 without the prior consent of the Troika. Given the very tight deadlines set by the institutions in the MoU, there was provision for technical assistance for designing and implementing various reforms posited in the MoU.

The discussion above highlighted the level of detail of the provisions of the first two MoUs that were concluded with the Greek authorities. The third MoU, too, involved a very detailed policy prescription. Nevertheless, some of the features of the third economic adjustment programme stood out in this respect. Greece was put under an obligation to establish a new fund, in order ‘to manage valuable Greek assets; and to protect, create and ultimately maximize their value which it [would] monetize through privatisations and other means.’ This fund would be ‘managed by the Greek authorities under the supervision of the relevant European Institutions.’ Moreover, the MoU provided that, ‘The authorities [would] endorse the Asset Development plan approved by [the Hellenic Republic Asset Development Fund] on 30/07/2015,’ which ‘[was] attached to this Memorandum as annex and constitute[d] an integral part of this agreement.’ A List of Government Pending Actions aiming to ‘facilitate the privatization process and complete all needed Government actions to allow tenders to be successfully executed’ [was] also ‘attached to this Memorandum as an Annex and constitute[d] an integral part of this agreement.’

Another feature of this privatization programme that distinguished it from its predecessors was that: ‘the authorities [should] appoint an independent Task Force to identify options and prepare recommendations on the operational goals, structure and governance of the Fund to be created.’ ‘The mandate and composition of the Task Force would be drawn up by the authorities, in agreement with the European Institutions and in consultation with the Eurogroup.’ The target for government proceeds was again set at €50 billion, ‘of which EUR 25bn [would] be used for the repayment of the recapitalization of banks and other assets and 50% of every remaining euro (i.e. 50% of EUR 25bn) [would] be used for decreasing the debt to GDP ratio and the remaining 50% [would] be used for investments.’

A similar selection procedure as the one adumbrated above was also required by the MoU for the members of the Executive Board and the General Council of the

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216 ibid., 28.
219 The third MoU (n. 209) 28.
220 ibid., 28.
221 ibid., 28 (emphasis added).
222 ibid., 29.
Hellenic Financial Stability Fund, which is responsible for Greek banks. The third MoU required that the Greek government design a new procedure for their selection and appointment, ‘which [would] imply a greater role for the Institutions than in the past’. More specifically, ‘a Selection Panel [would] be set up, composed of six independent expert members, of which three appointed by the EU institutions—including the chairman with a casting vote in the event of a tie—, and three appointed by the authorities (two by the Ministry of Finance and one by the Bank of Greece).’ Moreover, ‘The Ministry of Finance, the Bank of Greece, the European Commission, the ECB and the ESM [would] each have an observer to the Selection Panel.’

Another novelty of the third programme for Greece was that it was accompanied by a social impact assessment. This was requested by President Juncker, in order ‘to feed the negotiation process from the Commission side, and to guide the follow-up and monitoring of [the MoU’s] implementation.’ It will be recalled that the Commission President had pledged to undertake social impact assessments for future support and reform programmes in his political guidelines for the new Commission.

However, the social impact assessment accompanying the third MoU counts as a missed opportunity. The twenty-five-page long document focuses almost exclusively on the socio-economic context in which the institutions reached an agreement on the third programme for Greece, and on the rationale behind the reforms posited in the MoU. Insofar as the expected impact of these reforms on the Greek economy is at issue at all, the social impact assessment focuses exclusively on their positive impact on the economy and the society at large. It is very hard to imagine that the ongoing implementation of such a comprehensive economic adjustment programme will have no negative impact whatsoever on the citizens. There is no analysis of such adverse effects on the Greek people or firms operating in Greece, and hence the social impact assessment largely counts as an attempt to ‘rebrand’ the Troika and the reforms agreed between Greece and its creditors.

**Conclusion**

The foregoing analysis has shed light on many important changes brought about in the EU economic and fiscal governance framework since the outbreak of the
Conclusion

Eurozone crisis. Our main focus in this chapter was on the bearing of these new legal instruments on national fiscal, economic, and social policy. There will be no attempt to summarize the preceding argument. It is nonetheless worth highlighting certain features that are of particular importance. They are distinct, albeit related.

First, we argued that the EU Member States are now subject to more stringent fiscal rules as a result of ‘six-pack’ legislation. The Euro area Member States are subject to further restraints flowing from ‘six-pack’ legislation, ‘two-pack’ legislation, and the Fiscal Compact. Moreover, the bailed-out states experienced a further loss of their economic sovereignty through the conditionality attached to the financial assistance granted to them. The rescue packages also had a bearing on the economic policy of lender states, in that the fiscal leeway left to them was de facto curtailed.

Second, one should not lose sight of the important changes brought about by these instruments in EU economic surveillance. These are of the utmost importance for the economic and budgetary policy of the Member States. Some of these changes concern all the EU Member States, whereas other rules only apply to Euro area Member States.

As regards EU-wide reforms, the Union co-legislators have taken steps to ensure that the broad economic policy and employment guidelines (Articles 121(2) and 148(2) TFEU) exert influence on national policy-making. This is achieved through the European Semester for economic policy coordination. Moreover, the scope of EU monitoring has been widened, thereby now covering general economic policy. This was the result of the new legislation on the prevention and correction of macroeconomic imbalances (Regulation 1176/2011). Furthermore, the ‘six-pack’ legislation on national budgetary frameworks (Directive 2011/85) makes inroads into the Member States’ substantive and procedural budgetary autonomy.

As regards Euro area Member States, the Union co-legislators have sought to step up the application of sanctions for breaches of the SGP. Notably, these serve to amplify obligations enshrined in Council recommendations, which are soft law instruments. Moreover, the Fiscal Compact makes inroads into national budgetary processes. This is achieved through the obligation to establish a ‘correction mechanism’ and the common principles governing these mechanisms. Furthermore, we argued that ‘two-pack’ legislation broadens economic surveillance beyond fiscal policy through the use of two instruments: enhanced surveillance (Regulation 472/2013); and economic partnership programmes (Regulation 473/2013). We further argued that the newly established common budgetary timeline and the obligation to submit a draft budgetary plan to the Commission and to the Eurogroup, which is enshrined in ‘two-pack’ legislation ( Regulation 473/2013), bring the cycle of domestic budgetary policy within the framework of EU monitoring.

Third, we argued that the Union institutions now possess the tools to closely monitor the economic, fiscal, and financial situation in an ailing Euro area Member
State and to request that it effectuate changes in its fiscal and economic policy. Consequently, other things being equal, the ‘Troika’ (or ‘Quadriga’) could be replaced by fully fledged EU monitoring. It might still be necessary to incorporate the TSCG and the ESM into EU law.\(^{229}\)

Fourth, it has been argued that the new EU economic rules have redistributive effects in European societies. This is exemplified by the SGP principles governing the adjustment path towards the medium-term budgetary objective, the Council recommendations addressed to Member States in the context of the European Semester, and macroeconomic adjustment programmes. Through the ‘back door’ of economic governance, the EU institutions and fellow Member States exert considerable influence on national economic and social policy and encroach on very sensitive areas of prima facie exclusive national competence. To be sure, these areas are important from the standpoint of economics. Be that as it may, there is a general sense that the EU powers in this area have increased over the last few years, without, as pointed out by Hinarejos, ‘the necessary awareness and debate’.\(^{230}\) Furthermore, it is by no means straightforward that the EU/Euro area institutions and bodies are—or should be—regarded as legitimate in performing these functions.

Fifth, we examined the rigorousness of EU and independent national economic oversight. We have shown that EU oversight of the German economy is relatively rigorous, and that the Union institutions do not ‘go easy’ on the German authorities. As regards Greece, we have seen that there was very close monitoring of the economic, fiscal, and financial situation in the country, as well as rigorous oversight of the progress Greece was making in relation to its economic adjustment programme. The surveillance missions carried out by the ‘Troika’ (or ‘Quadriga’) were complemented by independent national fiscal oversight, which is also quite rigorous. The difference is that national fiscal ‘watchdogs’ cannot withhold payments to Greece and hence their influence over national policy-making was more limited than that of the ‘Troika’.

Last, the third programme for Greece, which has now come to an end, serves to further corroborate the preceding argument. The Greek authorities were again put under very detailed obligations, which severely limited the available policy options in a large number of areas of national competence. To be sure, the Greek government could still influence the way these reforms were designed and implemented and/or renegotiate some of the commitments set out in the MoU.\(^{231}\)

\(^{229}\) This point will be further developed in Chapter 9.

\(^{230}\) Alicia Hinarejos (n. 18) 1640.

\(^{231}\) See the general clause to this effect in the third MoU (n. 209) 2, as well as more specific clauses for particular policy areas (see, e.g. ibid 14–15 on pension reforms).