Essays on Federalism and Regionalism 2

Stelio Mangiameli *Editor*

# The Consequences of the Crisis on European Integration and on the Member States

## The European Governance between Lisbon and Fiscal Compact

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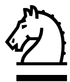
Stelio Mangiameli
Editor

# The Consequences of the Crisis on European Integration and on the Member States

## The European Governance between Lisbon and Fiscal Compact

With Contributions by

P. Bilancia · A. Brancasi · A. Cantaro · A. Ciancio ·
P. De Ioanna · E. Di Salvatore · S. Gabriele · A. Iacoviello ·
S. Mangiameli · A. Manzella



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# Preface

The volume entitled "The Consequences of the Crisis on European Integration and on the Member States" presents the contributions delivered at the Conference on "European Governance between Lisbon and Fiscal Compact", promoted by the Institute for the Study of Regionalism, Federalism and Self-Government "Massimo Severo Giannini" of the National Research Council.

The processing of these contributions, published by Springer, has considered the evolution of the institutional crisis of the European Union that has become even more prominent in recent months, during which the British referendum on Brexit was held, because of the difficulties encountered in bringing about a recovery of the economy of the Old Continent.

The various contributions take the move from the restrictions posed by the Lisbon Treaty, from the effects of macroeconomic monitoring and from the restraints produced by the Fiscal Compact, and they offer an analysis of the current situation of the European Union and of the effects of the measures adopted to manage the crisis, making reference also to how the citizens perceive Europe. Moreover, the articles offer thoughts about the European integration process and in particular about the effects that the policies adopted to face the crisis have had on the economic and financial sovereignty of the Member States.

The thorough examination of the situation of the EU between the Lisbon Treaty and the Fiscal Compact is characterized by an original multidisciplinary approach that offers the opportunity for an articulated reflection on the criticalities that affect the actions of both the European Institutions and the National Institutions.

Besides identifying the main critical elements that are causing the current stalemate in the European integration process and the growing dissent at the national level, the various contributions offer food for thought for tracing the next steps of the European journey in our globalized society.

The Italian observatory appears to be particularly well-positioned to prompt some thinking about the future of the European Union because Italy is one of the countries that has been most affected by the restrictive policies for curbing the crisis, in particular with reference to the definition of the national economic policy.

As is well known, the means for dealing with the crisis (Fiscal Compact, the Six Pack, and the Two Pack) have addressed essentially, if not exclusively, the need for stability and budget restraints, that at the present time they continue to be the focus of the actions of the European Institutions.

These measures have enabled the European Union, through the European Commission, to carry out a policy of tight surveillance, imposing on Member States the obligation to make cuts and implement financial stability programs, but they have not enabled the implementation of growth policies.

In summary, they have entailed a yielding of sovereignty by the States that has not been adequately offset by corrective actions in terms of participation in the decision-making process.

Consequently, the link between power and accountability has progressively deteriorated with the ensuing rising tide of the feeling of being run by a soul-less technocracy, far removed from the people and a widespread lack of confidence in the Union.

The articles show that European economic governance, entrusted to means that lie outside of the circuitry of the Treaties, has failed, and they point to the dangers of having strayed from the path towards a political union. A political union is needed to provide responses to the needs of the citizens through governance actions of a federal type on fundamental matters such as foreign affairs, common security, major economic choices and, in particular, immigration.

On the whole, albeit with different arguments, the articles all converge towards the issue of sovereignty as the Gordian Knot to be disentangled to recover a greater legitimation of the decision-making process.

The path that is suggested is a return to European constitutional law, hopefully in the direction of a federal Europe.

In a nutshell, the European Union needs to be reformed so it to go on existing: it needs to become more democratic and politically more significant than its underpinning Nation States.

If action is not taken readily, it will become increasingly difficult to stem the pressure and momentum of the political forces that are taking advantage of the discomfort of the people exhausted by the long-term effects of the policies adopted to react to the crisis, putting at great risk the very future of the integration process.

Rome, Italy Stelio Mangiameli
August 2016

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He was also General Secretary of the Presidency of the Council of Ministers in three governments.

# The Functioning of the European Union After the Lisbon Treaty and the Fiscal Compact

**Antonio Brancasi**

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## 1 Introduction

This paper focuses on the initiatives taken by the Union after the Lisbon Treaty to deal with the crisis. Such initiatives actually questioned some of the European economic governance principles, and in the least modified their terms of application, thus proving that they were inadequate for dealing with the situation at hand and that it was illusive to consider them as absolutely irrevocable.

Among the principles that experienced this fate there is the ‘no-bail out’ of Member States, and in any case the prohibition of granting financial aid,[1] and the principle of squaring the balance of the Union.

The prohibition to provide financial assistance derives from Arts. 122 and 125 of the TFEU. The former allows the Council to grant financial assistance to a Member State experiencing, or threatened by, severe financial problems, but then goes on to

[1] Chiti (2012) speaks of the transition from a “community of benefits” to a “community of risk” (p. 788).

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specify that such difficulties must derive from natural disasters or in any case from "exceptional occurrences beyond its control". Art. 125, instead, states that the Union shall not be liable for the commitments of Member States and adds that not even Member States that are not involved shall be liable for the commitments of other Member States. Even though opposing interpretations have been proposed,[2] recently confirmed by the Court of Justice,[3] Art. 125 was deemed to embody the 'no bailout clause' regarding States in difficulty and in any case the prohibition to provide financial assistance,[4] and, consistently with this interpretation, Art. 122 was construed as being an exception to this prohibition.[5]

Art. 310 of the TFEU lays down the principle according to which the revenue and expenditure shown in the budget of the European Union shall be in balance and requires that the Union shall not seek funding through loans from the marketplace.

Initially, on the occasion of the first intervention to help Greece, both principles remained intact,[6] because the financial aid was provided by Member States through bilateral and syndicated loans. Bilateral in the sense that the relationship was exclusively between the individual Member States and Greece as the borrowing State.[7] And the loans were syndicated because of the ties linking the lending States that provided the loans at the same conditions and for the role acknowledged to the Commission that organized and managed the loans. By the way, it is worth noting that these bail outs proved to be an excellent deal for the States that provided the loans because of the large difference between the interest paid on the funds they raised (around 2 %) and the interest rate on the loan facility (initially more than 4 % and then more than 5 %).[8]

Later there was another type of intervention which also complied with the two principles mentioned above. Namely the creation of a company under Luxembourg law by the States of the Eurozone, which was to last 3 years and have the aim of finding resources in the marketplace required to issue loans and provide guarantees to the participating States that were in difficulty.

The prohibition to provide financial assistance was instead questioned from within the European order by the establishment, with a regulation,[9] of the European Financial Stabilisation Mechanism (EFSM) that enables the Council, upon proposal of the Commission, to grant loans and open credit lines in favour of any Member State (including those not belonging to the Eurozone). To

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[2] Messina (2013), pp. 4 et seq.; Napolitano (2012), p. 463.

[3] Court of Justice 27 November 2012, C-370/12, Pringle, on which Chiti (2013b), pp. 148 et seq.; Napolitano (2012), pp. 468 et seq.

[4] Ruffert (2011).

[5] Chiti (2013a, b), p. 5 et seq.

[6] Napolitano (2010) and Brancasi (2010).

[7] It was however envisaged that, if the lending State incurred higher fund raising expenses, the difference would be covered by a reduction in the interest that the borrowing States were owed.

[8] Napolitano (2012), p. 462.

[9] Regulation no 407/2010 of the Council of 11 May 2010.

implement such interventions the Commission and the Beneficiary Member State are to sign a memorandum containing the economic policy conditions to be complied with to reinstate a healthy economic and financial situation and find loans in the marketplace and the Beneficiary State makes the commitment to comply with such conditions.

The legal basis of the rules establishing the EFSM was found in Art. 122 of the TFEU, with an interpretation of the provision that was generally believed to be far-fetched. Art. 122ì states that financial assistance can be provided for disasters beyond the control of the State receiving the assistance and is hence quite different from what the EFSM intended.[10] The objections raised by the establishment of the EFSM and in view of it being replaced by a permanent system for intervening in case of a crisis in the sovereign debt of a Member State, led to the introduction of a new paragraph to Art. 136 TFEU by means of the simplified revision procedure (Art. 48 EUT). According to the new paragraph, Member States, whose currency is the Euro, can establish a stability mechanism to protect the stability of the Euro zone as a whole, but it specifies that whatever the form of the financial assistance, it must always be subjected to compliance with rigorous conditions.

But, notwithstanding this, when the financial assistance system was turned into a permanent system, it was done outside the European order through an ad hoc Treaty among the States of the Eurozone.[11] This was the European Stability Mechanism (ESM)[12] under which financial assistance is granted in the form of loans, credit lines and purchase of public debt securities in the secondary and primary markets. These interventions are subject to conditions that are more rigorous than the EFSM, in that the beneficiary State must engage in a macroeconomic adjustment program and to this end a memorandum is entered into that is consistent with the economic policy coordination acts adopted by the Union under Art. 121. In the recitals of the Treaty it is stated that the financial assistance of the ESM is subject to ratification of the Fiscal Compact by the Member State asking for assistance.

It was decided to configure this instrument as an international institution that enhances the intergovernmental method, to limit the types of interventions possible. Indeed, the decision-making body of the ESM is made up of the Ministers of the Member States and the name given to it is significant: Council of Governors. Moreover, decisions are taken unanimously[13] and where a qualified majority is envisaged, the votes are weighted proportionately to the capital contributed by each Member State. The Board of Directors, being the executive body, reflects the intergovernmental structure: indeed, each Member State appoints a member of

[10]Messina (2013), p. 6.

[11]On the increased use of the intergovernmental method through international agreements among Member States, see Pinelli (2014); and Chiti (2012), pp. 786 et seq.

[12]On the ESM, Napolitano (2012), pp. 463 et seq.; Chiti (2013a, b), pp. 10 et seq.; Micossi and Peirce (2013), pp. 55 et seq. On the possibility of establishing the ESM within the European legal order, with recourse to reinforced cooperation, and on a different explanation as to why the international solution was preferred, see Messina (2013), pp. 7 et seq.

[13]On the negative consequences of this voting system, see Peroni (2011), p. 993.

the Council and a substitute. The Treaty assigns to the European Commission the task of examining the requests for assistance and the function of negotiating and signing the memorandum with the requesting State and enforcing compliance with it. The IMF and the ECB are involved in these activities, and, based on the arbitration clause, provided for by Art. 273 of the TFEU, jurisdiction for the settlement of disputes on the implementation of the Treaty is attributed to the Court of Justice of the European Union.

The intergovernmental nature of the ESM was even further emphasized by the intervention of the German constitutional tribunal that, to protect the prerogatives of the Bundestag, claimed that the German representative in the Council of Governors may vote in favour of granting financial assistance to other States only if the Bundestag has given its approval in the assembly or in the commission.[14] This creates a system where approval by one Member State (and why should this not apply to the other States?) is binding on the ESM's decisions as to whether it should intervene or not.

Also the other principle, namely achieving a balanced budget at EU level and the prohibition to incur debts, was questioned in the events reported above. The regulation establishing the ESMF entitled the Commission to raise funds by turning to the markets or financial institutions for loans on behalf of the Union (Art. 2, paragraph 1 (2)). For the balanced budget principle to be complied with formally, off-balance sheet management was envisaged for the accounting of those items. Also the ESM is entitled to borrow in the capital markets from banks, financial institutions or other persons or institutions (Art. 21), with the peculiarity that, in this case, the balanced budget principle is only surreptitiously bypassed because the budget of the EU is not directly affected by these transactions and the relevant debt is in the name of another body.

## 2 The Strategies Against the Crisis and the Principles of Monetary Policy

The need to face the crisis of the last few years has demanded that also the principles underlying the monetary policy be questioned. It is worth recalling that in this respect the Lisbon Treaty had not introduced any major innovations[15] because it had restricted itself to placing the ECB among the Institutions of the Union and to formally recognizing the distinction between ESCB and the Eurosystem.

The overall structure of the system was substantially the one defined in Mastricht: marked distinction between governance of the economy and governance of the currency; price stability being a top priority; structural independence of the

[14] Bonini (2012); Pinelli (2014); Chiti (2013a, b), pp. 12 et seq.

[15] Manzella (2008), pp. 278 et seq.

ECB; functional independence of actions concerning credit; influence of the Council on foreign transactions through exchange rate agreements or through the issuing of policies; elimination of the treasury in creating the monetary basis. It is this latter element that, after Lisbon, was most affected by the crisis.

In September 2012, the Steering Committee of the ECB decided to add to its monetary policy instruments, the Outright Monetary Transactions[16] in secondary markets for the purchase of sovereign bonds.[17] It is not at all new for the ECB to purchase Government bonds in the secondary markets.[18]

After all it is the purchase of public debt securities in the primary market that, together with the anticipazioni, constitutes the channel for creating money bases that is no longer allowed. Instead, when the securities are purchased in the secondary markets the money goes to the banks and is therefore an intervention on credit rather than on the treasury.

Indeed, the OMTs are quite different from the usual sovereign debt purchases in the secondary markets, both for binding and final purchases and for repurchase agreements; in many respects these differences contribute to making them similar to treasury interventions.[19]

(a) In the case of the OMTs, it is the ECB that restricts the scope of its intervention only to the purchase of sovereign debt securities and, it even establishes which Member State is involved; vice versa, the ordinary binding and final transactions or the repurchase agreements involve eligible assets, including also the sovereign debts of Member States, which is purchased if and to the extent that the banks decide to transfer this asset instead of other types of financial assets.
(b) All binding and final transactions involving sovereign debt produce the effect of supporting the price of the respective securities, but in the case of the OMTs this effect is precisely what the ECB intends to achieve and is not merely and simply an additional and indirect effect.

Finally, it is true that the OMTs have the purpose of funding banks and therefore are classified as credit instruments, but they do this, not to produce the monetary basis required to keep prices stable, but rather to support the price of the bonds of a specific sovereign debt, directly for those already issued but also indirectly for those yet to be issued; that is to say they play a function that is similar to treasury interventions.

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[16]BCE, *Bollettino mensile*, September 2012. On this type of intervention, see Napolitano and Perassi (2013), pp. 48 et seq.

[17]But prior to this there had already been the decision of the ECB of 14 May 2010 that established a programme for the securities markets (Securities Markets Programmes): see Napolitano and Perassi (2013), p. 44.

[18]The repurchase agreements can be made on eligible financial assets, namely those assets listed in an ad hoc list that includes also sovereign debts; also final purchases can be made of these assets through bilateral procedures not at regular intervals.

[19]These are the grounds on which the issue of conformity of the ECB's decision to perform OMTs with the Treaty was raised before the Court of Justice, see Olivito (2013); Bilancia (2014a), p. 7.

All this explains why, in announcing these transactions, the ECB repeatedly felt the need to justify them by demonstrating that they fully complied with its primary mission which is that of guaranteeing price stability and hence they are not in contrast with (EC) Regulation 3603/93 of the Council that prohibits measures that skirt around the prohibition to fund public administrations on a monetary basis.

The arguments used in this case are that such measures are absolutely necessary to fight against the obstacles set up against the transmission of monetary policy.[20]

The arguments of the ECB are absolutely convincing. But the fact remains that such transactions determine a broadening of the intervention instruments of the ECB, at least, with regard to a strict reading of the provisions of the Treaties. And this is so because the By-laws of the SEBS (Art. 2) specifies that the primary goal of price stability must be pursued by acting “in conformity with the principle of free competition in an open market economy”, this should probably rule out any intervention in the market to uphold the quotation of certain financial assets as opposed to others.

What is most interesting about this story is that the compelling arguments of the ECB demonstrate that it is not possible to guarantee price stability because it is not possible to remove the obstacles against the transmission of monetary policy, without, if necessary, intervening in sovereign debts with actions aimed at supporting their quotation. But the fact that this type of transaction may appear to be spontaneous with respect to the ECB’s instrument indicates, if anything, the inadequacy of the Treaties because they do not provide the ECB with full powers for it to pursue its mission.

## 3 The Conditions Imposed on Member States for the Purchase of Sovereign Debt

But there is even more. The ECB links the preannouncement of the purchase of sovereign debt bonds to the adoption, by the States involved, of a series of measures that concern not only their budget policy but even their economic policy tout court, and even institutional reforms. This is the backdrop of the letter by the two

[20]Obstacles because of three sets of factors. First of all the high yield of the sovereign debts of some States overshadows other financial assets in the marketplace that have to compete against such yields and that, because they are compelled to ensure similar yields, increase the funding costs of the banks. Secondly, the loss of value of the sovereign debt reduces the guarantees available to the banks to obtain liquidity, given the fact that on the interbanking market the relevant transactions are made by using public debt securities as collateral. Thirdly, the very loss of value of sovereign debt obviously determines a worsening of the financial conditions of the players, including the banks, that have those securities in their portfolios.

Presidents of the ECB (outgoing and incoming) to the Italian Government,[21] and the links that these actions by the ECB have with the MES.

(a) The letter of the two Presidents required the liberalization of local public services, reform of collective bargaining, revision of the rules on hiring and firing, reform of the public administration to improve its efficiency, elimination of some intermediate administrative levels like the Provinces.
(b) As to the links with the ESM, a necessary precondition for these transactions is that the recipient State defines and complies with a set of rigorous conditions within the ESM and that such programme envisages the purchase of public debt in the primary market: in the presence of these two conditions, the ECB has full discretion as to whether it will carry out the preannounced transactions.

All of these aspects of the story lead to the conclusion that to combat the obstacles against the transmission of monetary policy, it is not sufficient to purchase sovereign debt that generates these obstacles in the marketplace, but it is also necessary that such measures be accompanied by specific budget policies and structural reforms by the States that issue the bonds. Moving from this premise, the letter of the two Presidents expresses the idea that it would seem to be necessary to unify the two decision-making processes, monetary policy on the purchase of sovereign debt and the economic policy, tout court. According to this idea it would be necessary to go beyond the system delineated by the Treaties according to which the two decision-making processes should be distinct and separated, one belonging to the Council through multilateral surveillance (Art. 121 TFEU) and the other to the ECB. It is irrelevant, for the purposes of this paper, to note that underlying this view is the idea that the two decision-making processes should be brought together under the ECB.

From the same premise, the required link with the ESM, instead, would seem to confirm that the two decision-making processes should be kept separate, but it would also demonstrate the need to reverse the relation because economic policy decisions,[22] adopted to impose interventions in Member States, turn into the condition for the ECB to pursue its mission for cases where it is asked to purchase sovereign debt.[23]

This is confirmation that, in actual fact, things are going well beyond the By-laws of the ECB according to which monetary stability is its top priority and, subordinately, once it is ensured, all the other goals of the Union can be achieved, including economic policy goals.

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[21] On this circumstance, Boggero (2012); Olivito (2014). On the issue that this is not among the powers of the ECB, G On the issue that this is not among the powers of the ECB, Napolitano and Perassi (2013), pp. 46 et seq.

[22] According to the Court of Justice Pringle cit, the ESM is an instrument of economic policy.

[23] They suggest the ECB exercise self-restriction in its freedom of action, Napolitano and Perassi (2013), p. 51.

Indeed, there is a second explanation for the conditions imposed on States whose debt is purchased by the ECB, an explanation that is more likely even if it is very disquieting. It seems more realistic to assume that the imposition of budget policy and economic policy conditions on States whose bonds are to be purchased is required, on the one hand, by the need to overcome the opposition of some of the other States and, on the other, by the idea that ultimately it is a bail out that, as such, is to be accompanied by punishing measures or in any case dissuasive measures against any moral hazard. According to the former explanation, we end up acknowledging that the independence of the ECB, decided initially for its monetary policy decisions to be free from intergovernmental influence, is not at all feasible at least in situations of crisis because the link with the ESM demonstrates that instead there is no such independence, and instead there is dependence on institutions extraneous to the Union, underpinned—lo and behold—by intergovernmental influence.

The second explanation runs the risk of being anachronistic, if one considers that the crisis affecting the debt of some States (in particular Spain and Ireland) was caused precisely by the bailout by the banks,[24] that is to say by interventions without which the measures to be taken by the ECB would have had to be much more severe to ensure the transmission of monetary policy; furthermore, such interventions were made even more necessary also because of the insufficient surveillance on financial markets by the Union.

Ultimately it is safe to say that the crisis was dealt with using instruments that went beyond the European governance design but did not do it in the best of ways, because they strengthened intergovernmental involvement (???) and were driven by a pragmatism justified perhaps by the need for rapid action that did not allow them to design a new model considering the inadequacies revealed by the previous model.

## 4 Economic Policy Rules and Instruments in the Eurozone

Also with regard to economic policy, the Lisbon Treaty had inherited rules and intervention instruments from the past.[25] We need to go back to the Maastrich Treaty and to the economic convergence parameters established in view of the adoption of the Euro. The purpose of such parameters was to limit participation in the euro only and exclusively to the States whose economies presented some degrees of uniformity. This is quite understandable because by foregoing the

[24]Europe’s intervention would have merely “rescued the rescuer” (Napolitano (2012), p. 461.

[25]Furthermore, under the Lisbon Treaty Art. 121 (4) is amended following the fact that the Commission may address warnings to the Member State that as a result of its behaviour runs the risk of undermining the good functioning of the UEM; in addition the representative of the State in question cannot vote in the Council.

rebalancing function of the quotation of currencies,[26] the single currency would create a truly single market which would take on the characteristics of the individual national economies, and hence these characteristics would turn into negative externalities for the Member States with the best performances.[27]

This need for convergence was not restricted only to the moment when the euro was established and to the time when the various States decided to join it. It was self-evident that the prohibition on excessive budget deficits remained and was even toughened, so much so that the monitoring procedure of the States of the Eurozone envisages sanctions for non compliance. In this way, convergence started out as a condition and requirement to join the euro but then became the rule for Member States to equally share the overall debt; recourse by each State to the financial markets is bound to impact the interest rates of the entire zone and this has an impact on all the participating States.

For the other convergence parameters their efficacy was not extended throughout the Eurozone, but nevertheless the same needs that had led to setting them as conditions for joining the euro remained and were even enhanced. Of course, in this different context, these parameters presented themselves differently even though their content remained unchanged: the point was no longer to comply with the range of oscillation of the EMS, but to balance the budget without the rebalancing function of the exchange rate market; again the issue was to ensure that the single interest and inflation rate of the Eurozone was not to be the result of the levelling produced by the single currency, but the expression of a real homogeneity of the economies of the various countries. Conceived in this way, these profiles were in fact absorbed into the economic policy that remained in the purview of the Member States (Art. 2 (3) TFEU) but they engaged to "regard their economic policies as a matter of common concern" (Art. 121 (1) TFEU). In the Treaty there is the idea of a common economic policy, not because it is the competence of the Union but because it is the outcome of the coordination of national policies, and the solution is that it embodies the need for convergence that had originally been laid down as a condition to join the euro.

The instrument offered by the Treaty for this purpose is the mechanism of multilateral surveillance, as laid down in Art. 121 TFEU, which is implemented by the Commission, by the Council and by the European Council by laying down the outline of the economic policies of Member States.

In such a context, the important profiles are no longer only those considered originally by the convergence parameters, because alongside them there may be many others and, ultimately, all those relevant to an economic policy programme. Furthermore, the consideration of these profiles needs not be necessarily targeted to goals of mere convergence between Member States, almost as if the criticalities of

[26]For a discussion on the consequences of this effect, see Bilancia (2014a, b).

[27]Del Gatto (2012), p. 43 footnote 22 emphasizes how the lack of uniformity among the economies of the States of the Eurozone commands the adoption of monetary policy measures that are procyclical for some and countercyclical for others.

the entire European economy were not important just because they are common to all Member States.

It is also worth noting that the budget policy is treated differently by the Treaty from the way the economic policy is treated. In both cases these are spheres that are left to the competence of the Member States, but while the budget policy, as a result of the prohibition to run up excessive deficits, comes under negative limitations, furthermore defined by numerical rules, aimed at preventing that the choices made by some States may generate negative externalities for the others, in the case of economic policy the restraints and limitations are by tendency positive (States are intended to do this or that) and are not necessarily aimed at preventing negative externalities.

The failure of this system occurred immediately, as a result of the 1997 regulations,[28] which, by introducing the Stability and Growth Pact (SGP), focused attention entirely on the budget policy, starting a sort of "single thought" of the Union polarized on the size of sovereign debt and of public deficits. And besides coming under the limitations established by the prohibition of running excessive deficit and guaranteed by the ad hoc surveillance procedure, the budget policy became the content of the coordination of economic policies, nay the sole content of the latter,[29] and hence also the economic policy expresses only the budget policy and does so with the same terms as the prohibition on excessive deficits, that is to say with negative limitations and numerical rules.

Another step, it too prior to the Lisbon Treaty and it too a rupture of the original design, occurred in 2005 when, following the critical situation of the budgets of France and Germany, it was decided that the GSP was to be defined no longer in nominal terms but in structural terms:[30] since then, the net debt result, with a view to the GSP, must be "Corrected according to the economic cycle" and calculated net of the one-off measures. In my opinion, the consequences of this innovation are twofold which additionally has had the merit of avoiding the pro-cyclical effects of the GSP.

First of all, the rules to be complied with in applying the GSP were expanded and, through such rules, additional technical elements were introduced that were bound to start bargaining sessions between the Member States and the Commission, whose actual political terms inevitably remain hidden behind the merely technical nature of the issues. Indeed the issue is to establish when measures to increase or reduce revenues or expenses are to be considered as one-off; and most of all, the issue is to establish the recurrence of exceptional events and determine both the potential GDP of the State involved so as to identify the direction of the cycle and its size and the extent to which it could affect the national budget.

Secondly, the rules of Art. 126 TFEU (and of the relevant protocol on excessively high deficits) and those established based on Art. 121 TFEU (the GSP), are

[28]Regulations 1466/1997 and 1467/1997.

[29]Alla (2011).

[30]Regulations 1055/2055 and 1056/2005.

formulated in totally different terms: nominal in one case and structural in the other; hence, the recurring explanation according to which the corrective and penalizing function of the prohibition of excessively high deficits was compounded by the preventive function of the medium term of the GSP, conceals two distinct limitations that are different in content and not at all coherent with each other.

## 5 The Novelties Introduced by the Six Pack and the So-Called Two-Pack

Among the measures adopted to cope with the crisis there was the reconsideration of this system that the Lisbon Treaty had inherited from the past: this occurred at first with the regulations and the directive that are known as the Six Pack followed by the two regulations of the Two Pack. The most important novelties here are two, in my opinion.

The first concerns the way Art. 121 TFEU was to be implemented, namely the coordination of national policies that were to generate a common economic policy: indeed the fact that this coordination too should be limited to the budget policy is outgrown;

otherwise:

indeed coordination was no longer to be limited to the budget policy.[31] In this regard, the introduction of the European semester has entailed changes in both procedure and content.[32]

The semester begins with the definition (through a procedure that involves the Commission, the Council and the European Council) of a draft for the broad guidelines of the economic policies of the Member States (Art. 121 (2)) and of their employment policies (Art. 148 (2)). Therefore the Member States are to submit stability programmes (or convergence programmes for the States outside of the euro zone) and national reform programmes: the former concern the budget policy and define the relevant medium term objectives consistently with the GSP, while the latter should include in an overall approach, but separately from public finance issues, both the economic policy *tout court* and the guidelines on the labour market and employment development.

These programmes, and hence also the national reform programmes, are evaluated by the Council that, from recommendations by the Council, provides indications to the Member States about macrofinance and macrostructural policies; and if

[31]On the marginal importance previously acknowledged to the coordination of economic policy, so much so that the guidelines were issued by the Council only every three years Boggero (2012).

[32]On the calendar of obligations required by the European semester, Boggero (2012).

such indications are not complied with they may give rise to recommendations by the Commission so that specific measures be adopted,[33] or to a warning by the Commission in pursuance of Art. 121 (4).[34]

Moreover, under the powers attributed to the Union by Art. 121 TFEU, a system was set up, it too centred on the European semester, to cope with the problems related to the macroeconomic and macrofinance imbalances among Member States.[35] Indications are provided[36] on both internal indicators (public and private debt, trends in the real estate financial market, unemployment trends, etc) and external indicators (evolution of their external accounts, saving and investment balances, export market shares, etc.) that were to reveal any imbalances[37]; it would then be the Commission that would apply these indicators (alert mechanism)[38] and start an in-depth review[39] whose outcome would be a statement that there are imbalances and even excessive imbalances, with the consequence in the former case that the Council would address recommendations to the State involved and in the latter case, subject to approval by the Council, a corrective action plan would have to be drawn up by the State involved.[40]

All this is furthermore accompanied by penalties in the form of deposits and fines to be paid by the non-complying State.

In conclusion, the importance attached to national programmes, their envisaged content, that brings together the issues of economic policy and employment policy, and the importance attached to the macroeconomic imbalances, (always in the context of the application of Art. 121 TFEU), are all elements[41] that are meant, at

[33]See the Recommendation addressed to Italy on the 2014 national reform programme [Recommendation of 8 July 2014 (2014/C 247/11)].

[34]On the European semester, Alla (2011) according to whom it would establish a link "between the sustainability of public finance and growth measures" (p. 35). For a description of the unfolding of the first European semester, Boggero (2012); on the calendar of duties, Nugnes (2013).

[35]On the control of macroeconomic imbalances, Alla (2011).

[36]By the Commission.

[37]On all of these indicators, Servizio studi e Servizio bilancio della Camera dei deputati (2014).

[38]European Commission, *Alert Mechanism Report of November 2014*, Brussels 13 November 2013, COM (2013) 790 final.

[39]European Commission, *Results of in-depth reviews under Regulation (EU) No 1176/2011 on the prevention and correction of macroeconomic*, Brussels 5 March 2014, COM (2014) 150 final.

[40]It is worth noting that the Commission made the proposal to establish forms of financial assistance for States presenting macroeconomic imbalances by creating a fund, to which the States would contribute in proportion to their gross national income, and through agreements under which the beneficiary States would commit to making the necessary reforms to overcome the imbalances. Tufano and Pugliese (2014), pp. 328 et seq.

[41]Alla (2011) highlights the link between these new elements and the goals of the Europe 2020 Strategy [EU Commission, *Europe 2020. A Strategy for Smart, Sustainable and Inclusive Growth*, Brussels Com (2010)]. Europe 2020 sets out a vision to achieve high levels of employment (75 %), R&D spending at 3 % of GDP, low carbon economy cutting greenhouse gases by 20 % and decrease school dropouts to below.