

The Europeanization of the Fiscal Compact: How the Fiscal Compact affected
the domestic fiscal frameworks in Germany, Spain and the Netherlands

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Introduction

Due to coronavirus sovereign deficits in the European Union (EU) and the rest of the world have reached new highs. According to European Commission estimations the average government deficit in the EU rises from almost balanced in 2019 to 8.5% GDP deficit in 2020.¹ On 23 March 2020 the European Council put a hold on all fiscal deficit limits, using the escape clauses in the European legislation.² During the European debt crisis, approximately 10 years ago, the average government deficit in the EU had reached 6.8%.³ Therefore European fiscal rules and fiscal governance were strengthened, as part of the necessary reform of the Economic and Monetary Union (EMU) that was needed to tackle the Euro crisis.

During this reform process several new measures were introduced, focussing on the banking sector, fiscal transfers and the strengthening of fiscal rules and fiscal governance.⁴ One of the reforms that strengthened fiscal rules and governance is an intergovernmental treaty called the Treaty on Stability, Coordination and Governance (TSCG) adopted on 2 March 2012.⁵ This treaty is also known as the Fiscal Compact. This is however only Title III of the TSCG and requires the signatory states to adopt a balanced budget rule in their domestic legislation ‘preferably’ on constitutional level. In addition the TSCG also requires the Member States to establish Independent Fiscal Institutions (IFIs), tasked with monitoring the implementation and enforcement of the new domestic fiscal rules.⁶ The Fiscal Compact thus sets out very precise minimum requirements for the balanced budget rule the member states have to implement into their national systems.⁷

According to scholars Thomas Beukers, Bruno de Witte and Claire Kilpatrick the EU crisis measures, such as the Fiscal Compact, are implemented very differently by Member

¹European Commission, ‘European Economic Forecast’, *Institutional Paper* 125 (2020) 1-165. https://ec.europa.eu/info/sites/info/files/economy-finance/ip125_en.pdf

²European Council, *Press Release: Report on the comprehensive economic policy response to the COVID-19 pandemic* (9 April 2020) <https://www.consilium.europa.eu/en/press/press-releases/2020/04/09/report-on-the-comprehensive-economic-policy-response-to-the-covid-19-pandemic/> <Accessed 26-06-2020>.

³ Eurostat, ‘Provision of deficit and debt data for 2009’, *Newsrelease Euro indicators* 55 (2010). <https://ec.europa.eu/eurostat/documents/2995521/5046142/2-22042010-BP-EN.PDF/0ff48307-d545-4fd6-8281-a621cbda385d>.

⁴ Marco Buti and Nicolas Carnot, ‘The EMU debt crisis: early lessons and reforms’, *Journal of Common Market Studies* 50:6 (2012) 906-909.

⁵ *Treaty on Stability Coordination and Governance in the Economic and Monetary Union* (Brussels 2012). https://www.consilium.europa.eu/media/20399/st00tscg26_en12.pdf

⁶ Buti and Carnot, ‘The EMU debt crisis’, 907-908.

⁷ Steve Peers, ‘The Stability Treaty: Permanent Austerity or Gesture Politics?’, *European constitutional law review* 8:3 (2012) 441; Peter Craig, ‘The Stability, Coordination and Governance Treaty: Principle, Politics and Pragmatism’, *European Law Review* 37:3 (2012) 231–48.

States on domestic level.⁸ The puzzle is thus why the Fiscal Compact is implemented so differently by the signatory states, while the Fiscal Compact sets very clear minimal requirements for the fiscal rules and IFIs that need to be established.

The literature offers several explanations for the variety in degree of change between the Member States. According to the Europeanization approach this can be explained by the ‘degree of misfit’ or ‘goodness of fit’ between the already existing domestic institutional structures and the EU measures. If the degree of misfit is small it is easier for a Member State to implement a policy and less change on domestic level is needed. If the goodness of fit is large more change on domestic level is needed.⁹

According to Europeanization scholars Member States also try to influence the degree of misfit by influencing policy-making at the European level. By ‘uploading’ their preferences and domestic policies to the domestic level, Member States increase the goodness of fit and lower the implementation costs. The closer the outcome of an EU policy is to domestic preferences or existing domestic structures, the easier it is for Member States to implement a policy.¹⁰ According to many scholars Germany the Fiscal Compact is the result of a successful attempt by Germany to upload the existing German fiscal structures to the EU level and that the constitutional debt brake that Germany had since 2009 served as an example for the Fiscal Compact.¹¹

However the degree of misfit is not the only explanation for the way Member States implement the Fiscal Compact and that explains the variation in the degree of change between Member States. There are also other ‘mediating factors’ that influence the implementation and

⁸ Thomas Beukers, Bruno de Witte and Claire Kilpatrick (ed.), ‘Constitutional Change through Euro-Crisis Law: taking Stock, New Perspectives and Looking Ahead’, in: Idem, *Constitutional Change through Euro-Crisis Law* (Cambridge 2017) 16.

⁹ Tanja Börzel, ‘Europeanization: How the European Union Interacts with Its Member States’, in Simon Bulmer and Christian Lequesne (eds), *The Member States of the European Union* (Oxford 2005) 50-51; Frank Wendler, ‘Debating the European Debt Crisis: Government leadership, party ideology and supranational integration as focal points of parliamentary debates in Austria, Germany and the United Kingdom’, *American Consortium on European Union Studies (ACES) Cases* no. 3 (2012) 4-5.

¹⁰ Tanja Börzel, ‘Pace-setting, foot-dragging and fence-sitting: Member State responses to Europeanization’, *Journal of Common Market Studies* 40:2 (2002) 193-194; Kenneth Dyson, ‘Economic Policy’, in: Paolo Graziano and Maarten P. Vink (eds.), *Europeanization: New Research Agendas* (London 2007) 291-292.

¹¹ Achim Truger and Henner Will, ‘The German “debt brake”: a shining example for European fiscal policy?’, *Revue de l’OFCE* 127:1 (2013) 156-157; Jan-Herman Reestman, ‘The Fiscal Compact: Europe’s not always able to speak German’, *European Constitutional Law Review* 9 (2013) 480-500; Alexander Thiele, ‘The ‘German Way’ of Curbing Public Debt: The Constitutional Debt Brake and the Fiscal Compact – Why Germany has to Work on its Language Skills’, *European Constitutional Law Review* 11:1 (2015) 30-54; LB & JHR, ‘Editorial: The Fiscal Compact and the European Constitutions: “Europe Speaking German”’, *EuConst* 8 (2012) 1-7; Derek Beach, ‘The Fiscal Compact, Euro-reforms and the Challenge for the Euro-outs’, in N. Hvidt and H. Mouritzen (eds), *Danish Foreign Policy Yearbook* (Copenhagen 2013) 113; Magnus G. Schoeller, ‘Explaining Political Leadership: Germany’s Role in Shaping the Fiscal Compact’, *Global Policy* 6:3 (2015) 262.

degree of change on domestic level.¹² This thesis used Europeanization literature, Compliance literature and Historical Institutionalism to identify the mediating factors, such as the logic of appropriateness, path dependency, veto-players, cost-benefit factors.

This thesis will try to contribute to the larger puzzle in the literature by answering the following main question: To what extent did the introduction of the Fiscal Compact foster legal and institutional change in the Member States and how can the variety in the degree of change between Member States be explained?

To answer this question we will compare three countries: Germany, the Netherlands and Spain. As mentioned above Germany already had a debt brake since 2009, it would thus be expected that the degree of misfit and thus the degree of change in Germany is very small. The Netherlands have a very different fiscal framework than Germany and no constitutional debt brake in place. It would thus be expected that the Netherlands have a higher degree of change than Germany. According to the literature during a crisis it is easier to change the status quo.¹³ Since Spain was hit harder during the crisis it can be expected that Spain has the highest degree of change.

This Thesis will try to answer the main question based on three sub-questions: What was the ‘degree of fit’ between the existing domestic fiscal frameworks and the Fiscal Compact? How did the Member States implement the Fiscal Compact and to what extent did this lead to legal and institutional change on the domestic level? To what extent can the variation in degree of change between Member States be explained by mediating factors?

This thesis will proceed as follows. First the literature review is conducted and the methodology is explained. Then an overview of the European fiscal framework is provided. After this the analysis will try to provide answers to the three sub-questions.

Literature review

This literature review will examine what explanations the literature has to offer to explain the variation in degree of change between countries and brings the Europeanization approach together with other important literature such as compliance, veto-player, historical institutionalism and path-dependency literature.

Compliance theory tries to explain the (non)compliance of Member States with EU law. Even though the TSCG is not EU Law as such, but an intergovernmental treaty, it can be

¹² Dyson, ‘Economic Policy’, 291-292; James Caporaso, ‘The three Worlds of Regional Integration Theory’, in: Paolo Graziano and Maarten P. Vink (eds.), *Europeanization: New Research Agendas* (London 2007) 27-29.

¹³ Ringa Raudla, Sebastian Bur and Kati Keel, ‘The Effects of Crises and European Fiscal Governance Reforms on the Budgetary Processes of Member States’, *Journal of Common Market Studies* 58:3 (2020) 744.

argued that it is an EU measure, since it also makes use of existing EU structures and institutions as the European Commission and the European Court of Justice.¹⁴

Historical Institutionalism assumes that political outcomes are influenced by the already existing institutional structures.¹⁵ This is based on the idea that the political and institutional status-quo is hard to change, because the costs of changing existing policy structures are always higher than when keeping the status quo.¹⁶ This also relates to the idea of path dependence that assumes that once a certain policy path has been taken it is hard to change to another policy path.¹⁷

As mentioned in the introduction Europeanization is about the interaction between the Member State and EU level and looks at how the levels of governance influence each other. To avoid misconception it is important here to mention that Europeanization is not the same as convergence, harmonization or political integration.¹⁸ More like the opposite, Europeanization tries to explain why EU measures have such a different impact in each Member State. In comparison with other theoretical strands Europeanization is about the interaction between the two levels of governance, while intergovernmentalism is about the power of Member States and the impact they have on the EU and institutionalism is about the power of supranational institutions and the influence they have on the European Union and the Member States.¹⁹

According to Europeanization theory the degree of domestic change depends on pressures for change caused by institutional or policy misfit. On the one hand the ‘degree of misfit’ or ‘goodness of fit’ between a Member States existing policy structures and the measure introduced at the EU level puts pressure on the Member State to reform. The higher the degree of misfit is the higher the pressure to reform and the higher the degree of change.²⁰

On the other hand it is also important that an EU measure fits the domestic political, legal and cultural traditions.²¹ Otherwise the implementation might be too difficult and lead to

¹⁴ Jonas Tallberg, ‘Paths to compliance: enforcement, management, and the European Union’ *International Organization* 56:3 (2002) 609-615.

¹⁵ Amy Verdun, ‘A historical institutionalist explanation of the EU's responses to the euro area financial crisis’, *Journal of European Public Policy* 22:2 (2015) 222.

¹⁶ Paul Pierson, ‘Increasing returns, path dependence, and the study of politics’, *American Political Science Review* 94:2 (2000) 252.

¹⁷ Idem.

¹⁸ Graziano, Paolo R. and Vink, Maarten P., ‘Europeanization: Concept, Theory, and Methods’, in: Simon Bulmer and Christian Lequesne (eds), *The Member States of the European Union* (Oxford 2013) 37.

¹⁹ Börzel, ‘Europeanization’, 47.

²⁰ Idem, 50-51; Wendler, ‘Debating the European Debt Crisis’ 4-5.

²¹ Egert Juuse, Ringa Raudla, Aleksandrs Cepilovs and Olga Mikheeva, ‘The Europeanization of financial regulation and supervision on the Baltic-Nordic axis: the perspective of national bureaucracies’, *Journal of Baltic Studies* 50:4 (2019) 409-433.

resistance of domestic actors.²² Thus the implementation of an EU measure on domestic level is also influenced by what domestic actors perceive as appropriate or legitimate. This is called the ‘logic of appropriateness’.²³

The logic of appropriateness builds on the normative power of law, which is also acknowledged by compliance literature. For compliance with EU law it is necessary that EU is *perceived* as legitimate law by domestic actors.²⁴ It is thus very important for compliance that supranational law and rules are ‘internalised in the domestic legal systems and political actors perceive certain aspects of EU law as a legitimate form of law.’²⁵ Compliance theory thus also explains why internalisation of fiscal rules is so important for compliance with those rules, since they have owned nationally and be perceived as legit.

The logic of appropriateness is also strongly influenced by the constitutional tradition. According to Violata Ruiz Almendral the incorporation of fiscal rules into the domestic legal systems is not enough to be effective. Fiscal rules also need to fit the political culture and traditions. How the fiscal rules will be implemented into the national legislation thus depends on the existing institutional and political culture and the flexibility of the constitution to accept new concepts.²⁶ The concept of constitutional fiscal rules was only common in the legal system of a few Member States, before the Euro crisis.²⁷ Some countries do not even have written constitutions, while others have incorporated the entire budgetary process into their constitutions, like Germany and Spain.²⁸ Almendral assumes that the impact of the new European fiscal rules on the domestic constitutions and fiscal frameworks is relatively small.²⁹

It is here also important to mention the difference between monistic and dualistic legal traditions regarding the relationship between domestic and international law. A dualistic system is based on the idea that national and international law belong to two different legal orders. This means that international law in itself is not a legitimate source of law in a dualistic country, but needs to be implemented into the domestic legal system. A monistic

²² Raudla et al., ‘The Effects of Crises’, 744.

²³ Tanja Börzel and Diana Panke, ‘Europeanization’, in: Michelle Cini and Nieves Pérez-solórzano Borragán, *Europeanization Fifth edition* (Oxford 2016) 115.

²⁴ Derek Beach, ‘Why governments comply: an integrative compliance model that bridges the gap between instrumental and normative models of compliance’, *Journal of European Public Policy* 12:1(2005) 113-115.

²⁵ Idem, 123.

²⁵ Idem, 124.

²⁶ Violata Ruiz Almendral, ‘The European Fiscal Consolidation Legal Framework: Its Impact on National Fiscal Constitutions and Parliamentary Democracy’, in: Thomas Beukers, Bruno de Witte and Claire Kilpatrick (ed.), *Constitutional Change Through Euro-Crisis Law* (Cambridge, 2017) 39-40.

²⁷ Idem, 32.

²⁸ Idem, 50.

²⁹ Idem, 65-66.

system is based on the idea that international and national law are part of one and the same legal order. This means that once an international treaty is ratified it is automatically a legitimate source of law, without implementation being needed.³⁰

Germany has a monistic legal tradition, since international law needs to be implemented.³¹ Spanish legal system is between a monistic and dualistic system. International treaties become a legitimate source of law after their ratification and publication in the Official Gazette of the State. However the Spanish constitution is primary to international law.³² The Netherlands have a monistic legal tradition based on unwritten constitutional law. In case of a conflict between Dutch acts of parliament and international treaties, the international treaties prevail.³³

Mediating factors

According to Europeanization scholars the degree of misfit is an important condition for change at domestic level. However it is not sufficient to explain the variety of change, since the degree of change can be influenced by other mediating factors.³⁴ According to James Caporaso *'every domestic structural condition that affects the impact of European integration can be conceptualized as a mediating factor.'*³⁵ One of the most important mediating factors according to Europeanization literature, Compliance literature and Historical Institutionalism are veto-points and veto-players.³⁶

George Tsebelis defines veto-players as *'individuals or collective actors whose agreement is necessary for a change of the status quo'*.³⁷ The outcome of the policy-making process is thus a mixture of the preferences of the veto-players and the already existing institutions. Tsebelis identifies constitutional veto-players, such as the government and the parliament and partisan veto-players such as the political parties.³⁸

³⁰ Michael Potacs, 'Das Verhältnis zwischen der EU und ihren Mitgliedstaaten im Lichte traditioneller Modelle', *Zeitschrift für öffentliches Recht* 65:1 (2010) 120-125; Pavel Biriukov, 'The relationship between International, European and National Law in Spain', *Russian Journal of Comparative Law* 4:1 (2017) 14-15.

³¹ Potacs, 'Das Verhältnis', 134.

³² Biriukov, 'The relationship', 17-23.

³³ Reestman, 'The Fiscal Compact', 498-499.

³⁴ Caporaso, 'The three Worlds', 27-29.

³⁵ Idem, 30.

³⁶ Börzel and Panke, 'Europeanization', 114; Oliver Treib, 'Implementing and complying with EU governance outputs', *Living Reviews in European Governance* 9:1 (2014) 5-33; Rafal Riedel, 'Research Methodology of Europeanisation studies', in: Piotr Stanek and Krzysztof Wach (eds.), *Macro-, Meso-, and Microeconomic Dimensions of Europeanisation*, (Krakow 2016) 33-49; Wendler, 'Debating the European Debt Crisis', 4-5; Beach, 'Why governments comply', 119-123; Raudla et al., 'The Effects of Crises', 744; Mahoney and Thelen, 'A theory of gradual institutional change', 15.

³⁷ George Tsebelis, *Veto Players: How Political Institutions Work* (Princeton 2011) 19.

³⁸ Tsebelis, *Veto Players*, 2,17.

In the Fiscal Compact case the governments made the commitment to the Fiscal Compact on EU level themselves. It would thus be highly unlikely that the governments would act as veto-players against domestic legislation implementing the Fiscal Compact. However the governments made the legislative proposals for the transposition of the Fiscal Compact, thus the governments decided what the starting position looked like. This starting position in turn might be influenced by the degree of misfit and logic of appropriateness.

The constitutional courts have also been identified as potential veto-players, since they are tasked with reviewing the constitutionality of new legislation and can thus prevent policy change.³⁹ Other potential veto-players important for this thesis are decentral governments and other regional actors. According to several literatures the financial crisis and the EU reforms have sparked a shift towards centralisation in the Member States. It can be expected that this touches upon the authority of the regional governments and actors, who might in turn act as veto-players.⁴⁰

Whether regional actors are able to act as veto-players depends on the political system and the degree of decentralisation.⁴¹ In a federal system there are more veto-points and veto-players and regional actors might have the power veto legislation.⁴² It also depends on the number of veto-points or 'federal safeguards' of a state.⁴³ Germany is the most decentralised of the three countries, since it is a federal and decentralized country.⁴⁴ Germany has many federal safeguards of which the representation of the German Länder in the Bundesrat is a very important one. Here the Länder can amend and veto federal legislation. In addition the German Constitutional Court can settle conflicts between the two levels of Government.⁴⁵

In 1978 Spain was a fully centralised country, however over the years the Autonomous Communities have gained more and more autonomy and responsibilities. Therefore in legal form Spain is a unitary state, while in practice it is a federal state, such as Germany. In case of a conflict between the state and the Communities the central legislation prevails.⁴⁶ Spain's federal safeguards are weaker and more unbalanced. In theory the Communities are

³⁹ Sylvain Brouard and Christoph Hönnige, 'Constitutional courts as veto players: Lessons from the United States, France and Germany', *European Journal of Political Research* 56 (2017) 530-531.

⁴⁰ César Colino, 'Responses to the crisis and the Estado autonómico in Spain: governmental strategies and consequences on power relations and stability', *Universidad Autonoma de Madrid working paper* 148 (2013) 3-4; Raudl et al., 'The Effects of Crises', 751-752.

⁴¹ Colino, 'Responses to the crisis', 3-4.

⁴² Caporaso, 'The Three Worlds', 30-32.

⁴³ Johanna Schnabel, Christian Ruiz-Palmero and Dietmar Braun, 'Coordination of Fiscal Consolidation in Federal States', Paper for the ECPR General Conference (2016).

⁴⁴ Arend Lijphart, *Patterns of Democracy* (New Haven 2012) 178.

⁴⁵ Schnabel et al., 'Coordination', 9.

⁴⁶ Violeta Ruiz Almendral, 'Sharing Taxes and Sharing the Deficit in Spanish Fiscal Federalism', *E-Journal of Tax Research* 10:1 (2012) 89-94.

represented in the Senate. In practice, however, less than 20% seats in the Senate are appointed by the Communities. The Spanish Court is often used by the Communities to protect their autonomy in case of a conflict with the central government.⁴⁷ Spain is thus classified as a semi-federal country.⁴⁸

The Netherlands are also categorized as a semi-federal country.⁴⁹ The Senate is chosen by the States-Provincial (Provinciale Staten), which in turn are chosen by the citizens of a Province. The Senate can however only veto and not amend legislation.⁵⁰ The decentralised governments are most of the time consulted regarding legislation that affects them. However correct implementation of EU measures is often hampered by lack of communication between the different levels of government.⁵¹ Based on these findings it is thus very likely that the Länder in Germany have the possibility to act as veto-players, while this is less likely in Spain and the Netherlands.

Whether parties are able to act as veto-players partly depends on whether the government is formed by a coalition or by a single dominant party. In a coalition government more parties and thus more veto-players can exert influence.⁵² Germany and Netherlands both have a coalition system.⁵³ Traditionally in Spain the government is formed by single party. However in 2020 Spain had its first coalition government in 80 years.⁵⁴ Therefore it can be expected that in Germany and the Netherlands more parties are able to act as veto-players, than in Spain.

Government efficiency and incentives

In addition to veto-players several of the literature mentions the importance of administrative capabilities and resources of a Member State for the way EU legislation is implemented by

⁴⁷ Idem.

⁴⁸ Lijphart, *Patterns of Democracy*, 178

⁴⁹ Idem.

⁵⁰ Hansko Broeksteeg, 'Het Bestaansrecht van de Eerste Kamer', *Ars Aequi* (2014) (912-916).

⁵¹ Huub Dijkstra, Paul den Hoed, Jan Willen Holtslag en Steven Schouten (eds.), *Het gezicht van de publieke zaak: Openbaar bestuur onder ogen* (Amsterdam 2009) 35.

⁵² Caporaso, 'The three Worlds', 30-32.

⁵³ Catherine Moury and Arco Timmermans, 'Inter-Party Conflict Management in Coalition Governments: Analyzing the Role of Coalition Agreements in Belgium, Germany, Italy and the Netherlands', *Politics and Governance* 1:2 (2013) 117-131.

⁵⁴ Sam Jones, 'Socialists and Podemos to rule together in Spanish coalition', *The Guardian* (7 January 2020) <https://www.theguardian.com/world/2020/jan/07/pedro-sanchez-spain-pm-government-vote-parliament>

the Member States.⁵⁵ According to Compliance literature a lack of resources makes it harder for a Member State to correctly implement EU legislation.⁵⁶

Compliance literature emphasises the importance of cost-benefit considerations of domestic actors for explaining (non-)compliance with EU measures.⁵⁷ According to Jonas Tallberg especially monitoring is important in this context. The supranational EU institutions, such as the European Commission and European Court of Justice, monitor the compliance of Member States and can provide negative incentives, like fines or positive incentives.⁵⁸

Hypothesis on the degree of change

The literature offers different ways to categorize or measure the degree of change. Tanja Börzel identified five categories, which are summarized in table 1. James Mahony and Kathleen Thelen have also identified types of institutional change. Two of these types of changes are displacement and layering. Displacement is when old rules are replaced by new rules and is close to Börzel’s displacement. This happens most often when there are very little or not so strong veto-players. Layering is when already existing rules are changed, for example by amending a law. New rules are thus ‘layered’ on top of already existing structures. Layering is close to Börzel’s absorption and accommodation. This is most likely in a case where there are strong veto-players.⁵⁹

As mentioned above Germany’s veto players, the Länder and the Parliament have the most potential to act as veto-players. Spain’s veto-players, the Communities and the Parliament are less likely to be able to act as veto-players. The Netherlands are in between. It is thus likely that Germany’s degree of change is close to absorption, accommodation and layering. The Spanish degree of change is most likely to be close to transformation and displacement, while the Netherlands are somewhere between Germany and Spain.

| | |
|--------------------------------------|---|
| Table 1: | |
| Degree of change⁶⁰ | |
| Inertia (lowest degree of change) | <ul style="list-style-type: none"> • Absence of change • Resistance |

⁵⁵ Treib, ‘Implementing and complying’, 5-33; Riedel, ‘Research Methodology’, 33-49; Juuse et al., ‘The Europeanization of financial regulation’, 412.
⁵⁶ Beach, ‘Why governments comply’, 119-123.
⁵⁷ Tallberg, ‘Paths to compliance’, 609-615.
⁵⁸ Idem.
⁵⁹ James Mahoney and Kathleen Thelen, ‘A theory of gradual institutional change’, in: Idem (ed.), *Explaining Institutional Change: Ambiguity, Agency and Power* (New York 2010) 15-18.
⁶⁰ Idem.

| | |
|---|--|
| | <ul style="list-style-type: none"> • Non-compliance |
| Retrenchment | <ul style="list-style-type: none"> • Resistance • But change is visible |
| Absorption/layering | <ul style="list-style-type: none"> • Incorporation of EU requirements into domestic institutions, • However no substantial change of existing structures or logic of political behaviour |
| Accommodation/layering | <ul style="list-style-type: none"> • Incorporation of new policies into existing institutions |
| Transformation/ displacement (highest degree of change) | <ul style="list-style-type: none"> • Replacing existing policies and institutions with new ones. |

Research Design

This thesis will use the Europeanization framework to answer the research question: To what extent did the introduction of the Fiscal Compact foster legal and institutional change in the Member States and how can the variety in the degree of change between Member States be explained?

The first part of the thesis will answer the following sub-question: What was the ‘degree of fit’ between the existing domestic fiscal frameworks and the Fiscal Compact? This first part will examine the already existing fiscal rules and IFI’s based on the European Commission Fiscal Rule database, European Commission Country Reports, OECD reports and domestic resources. Then these pre-existing fiscal frameworks will be compared to the Fiscal Compact to determine the degree of ‘misfit’ and the pressure for change in each Member State.

The second part of the thesis focusses on the following sub-question: How did the Member States implement the Fiscal Compact and to what extent did this lead to legal and institutional change on the domestic level?

In this section the change in fiscal rules, legal base of the fiscal rules and IFI’s will be analysed. For the purpose of this thesis only the legal implementation will be analysed and not how the new fiscal rules are enforced and interpreted or to what degree the IFIs are effective. The analysis is conducted using the European Commission Fiscal Rule database, European Commission Country Reports, OECD reports and domestic resources. To ‘measure’ the degree of change in each Member State the categorization developed by Tanja Börzel and James Mahony and Kathleen Thelen will be used.⁶¹

⁶¹ Börzel, ‘Europeanization’, 58-60; Mahoney and Thelen, ‘A theory’, 15-18.

The third part of the analysis will focus on the third sub-question: To what extent can the variation in degree of change between Member States be explained by mediating factors? Based on the above literature, this thesis will use, in addition to the degree of misfit, the following factors to explain the variety in the degree of change between the Member States: domestic veto-players, administrative capabilities and cost-benefit considerations.

In order to answer to what extent these factors were relevant for the variation in degree of change between Spain, Germany and the Netherlands various sources have been used. A very important source is the EMU choices project.⁶² Within this project interviews have been conducted to create EMU position dataset.⁶³ These interviews are conducted with officials of important ministries or other actors close to the decision-making process in the member States in order to code the importance of several actors for the formation of the national position regarding various EU reforms, including the Fiscal Compact.⁶⁴ The interviews indicate a lot about the importance of the domestic veto-players and external institutions, not only for the formation of the national position, but also in the general decision-making process, including the implementation of EU crisis measures.

The Cost-benefit factor is in this case the costs or incentives provided by the EU institutions and other external pressures, such as the EC, the ECJ, The European Central Bank and the financial market pressures.

As mentioned above domestic veto-players have a strong effect on the transposition of EU measures into domestic law. According to the literature there are several veto-players. This thesis will examine whether the parliament, the constitutional court and regional governments acted as veto-players. There are of course many other influential actors that might have influenced the implementation of the Fiscal Compact, such as social partners, business and other interest groups. However these are civil society actors that as such have no direct role in the domestic decision-making process, but need to go through the governmental or legal actors to exert influence.

Government efficiency is another important mediating factor. In order to examine the Government efficiency the World Bank 'worldwide governance indicators' database will be

⁶² Wasserfallen, Fabio, Dirk Leuffen, Zdenek Kudrna, Hanno Degner, 'Analysing European Union decision-making during the eurozone crisis with new data', *European Union Politics* 20:1 (2019) 3-27.

⁶³ Zdenek Kudrna et al., 'Three Worlds of Preference Formation in European Union Politics: Evidence from New Data on Eurozone Reforms', *EMU Choices Working Paper Series* (2018) 1-40.

⁶⁴ Kudrna et al., 'Codebook' for the EMU Formation Dataset: Interview summaries', *Horizon 2020 Project EMU Choices* (2018).

used.⁶⁵ This project includes a research data set on several indicators such as government effectiveness and regulatory quality. In this research government effectiveness includes *'perceptions of the efficiency of public services, the quality of the civil service and the degree of its independence from political pressures, the quality of policy formulation and implementation, and the credibility of the government's commitment to such policies'*. Regulatory quality includes *'perceptions of the ability of the government to formulate and implement sound policies and regulations that permit and promote private sector development'*.⁶⁶

The European fiscal framework

While this thesis focusses on the Fiscal Compact it is important to see it in the context of the fragmented European fiscal framework. The requirements the Fiscal Compact sets for the signatory states are not new. Since the end of the 1990's the Stability and Growth Pact and the 12th protocol regarding the Excessive Deficit Procedure attached to the EU treaties, required the EU Member States to limit their budgetary deficit to 3% of the GDP and limit their debts to 60% of the GDP. This was necessary to avoid that financial instability triggered by fiscal indiscipline in one Member State would spill over to another Member State.⁶⁷

The 3% budget rule in the 12th protocol refers to the actual annual budget. Regulation 1466/97, as part of the SGP, also introduced rules for the structural budget. The structural budget is *'the factual budget stripped of temporary measures and cyclical effects.'*⁶⁸ Article 2a of the regulation requires the member states of the Eurozone to have a medium-term budgetary objective (MTO) and sets the limit for the structural deficit on 1% of the GDP.⁶⁹

The problem however was that these fiscal rules were not enforced correctly on the domestic and European level.⁷⁰ Therefore the European debt crisis spurred a reform process and several new measures to improve fiscal sustainability and its enforcement were

⁶⁵ Daniel Kaufmann, Aart Kraay and Massimo Mastruzzi, 'The Worldwide Governance Indicators: A Summary of Methodology, Data and Analytical Issues', *World Bank Policy Research Working Paper* 5430 (2010).

⁶⁶ Kaufmann, Kraay and Mastruzzi, 'The Worldwide Governance Indicators'.

⁶⁷ Philip R. Lane, 'The European Union Sovereign Debt Crisis', *Journal of Economic Perspectives* 26:3 (2012) 49-50, 62-63.

⁶⁸ Reestman, 'The Fiscal Compact', 482.

⁶⁹ Reestman, 'The Fiscal Compact', 482.

⁷⁰ Barry Eichengreen, 'European Monetary Integration with Benefit of Hindsight', *Journal of Common Market Studies* 50:1 (2012) 128-129.

introduced. The reform of the fiscal framework happened in a very fragmented way, as is summarized in figure 1.⁷¹

Several provisions of the Fiscal Compact can also be found in other EMU reform legislation. For example in the Euro plus pact adopted in March 2011 it was already mentioned that the signatory states should incorporate the fiscal rules set out in the SGP into their domestic legislation. Here however the Member States had leeway on how to achieve this and to choose the legal instrument to implement these rules. The form of the rule, a balanced budget rule, expenditure rule or debt rule, was also up to the Member States to decide. However the domestic rules should have sustainable character.⁷²

Figure 1 Source: ECA

| | | Directive 2011/85 | Fiscal Compact | Regulation 473/2013 | 2017 draft Directive |
|--------------------------------|------------------------|-------------------|---|----------------------------|----------------------|
| National budgetary frameworks | Numerical fiscal rules | Green | Green | Red | Green |
| | Correction mechanism | Red | Yellow | Yellow | Green |
| | MTBF | Green | Red | Yellow | Yellow |
| | IFIs | Yellow | Yellow | Green | Green |
| | Budgetary procedures | Yellow | Red | Green | Red |
| Applicability to Member States | | 28* | 22 (including 19 euro-area Member States) | 19 euro-area Member States | - |

Focused on
 Only vaguely referred to
 No new requirements

Directive 2011/85, part of the ‘six-pack’ and in force since December 2011, also included provisions regarding domestic numerical rules and mentions domestic monitoring institutions.⁷³ The provisions regarding the IFI’s are further detailed in the ‘two-pack’, in particular Regulation 473/2013, in force since May 2013.⁷⁴ Regulation 1175/2011 amends the Regulation 1466/97 and sets the deficit ceiling for the structural deficit at 0.5% of GDP.

⁷¹ European Court of Auditors, ‘EU requirements for national budgetary frameworks: need to further strengthen them and to better monitor their application’, *Special Report no. 22 (2019)* https://www.eca.europa.eu/Lists/ECADocuments/SR19_22/SR_Fiscal_Stability_EN.pdf

⁷² Augustin Fuerea, ‘The European Mechanism for Financial Stability and the Euro-Plus Pact’ *Lex et Scientia* 19:1 (2012) 36-37.

⁷³ The Council, ‘Directive 2011/85/EU of 8 November 2011: On requirements for budgetary frameworks of the Member States’, *Official Journal of the European Union* (23 November 2011). https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2011.306.01.0041.01.ENG

⁷⁴ The European Parliament and the Council, ‘Regulation (EU) No 473/2013 of 21 May 2013: On common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the euro area’, *Official Journal of the European Union* (27 May 2013). <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0473&from=EN>; Lisa von Trapp et al., ‘Principles for independent fiscal institutions and case studies,’ *OECD Journal on Budgeting* 15:2 (2016) 1-272.

When the debt-to-GDP of a state is significantly below 60% the deficit ceiling can be extended to 1% of GDP.⁷⁵

Article 3 of the Fiscal Compact requires the contracting states to implement a balanced budget rule concerning the general government ‘preferably’ on constitutional level. In addition it sets the same deficit limits as Regulation 1175/2011. The Fiscal Compact also requires that the MTO, as defined by the SGP, has to be reached with ‘rapid convergence’ and requires the establishment of an automatic correction mechanism that will be triggered in the case of non-compliance with the deficit limits. In addition it is required to establish IFI’s tasked with monitoring compliance with the domestic rules. The contracting parties had until 1 January 2014 to implement this balanced budget rule and its criteria.⁷⁶

The aim of the Fiscal Compact is to improve the enforcement of the commitment the Member States made towards fiscal discipline, by requiring the Member States to transpose the European fiscal rules into their domestic legislation. The importance of the fiscal compact is thus of political and not legal nature and aims to increase the national ownership and political commitment to the fiscal rules. According to Merike Kukk and Karsten Stahr national ownership of fiscal rules is important for the effectiveness of the rules.⁷⁷

This thesis is focussed on the transposition of the numerical fiscal rules and the establishment of IFIs in domestic legislation, as is required by the Fiscal Compact. However the domestic Medium Term Budgetary Frameworks (MTBF) and budgetary procedures are also discussed to some extent, since they are important to gain insight in the different domestic fiscal frameworks. Figure 2 summarizes the timeline of the major EU legislation and

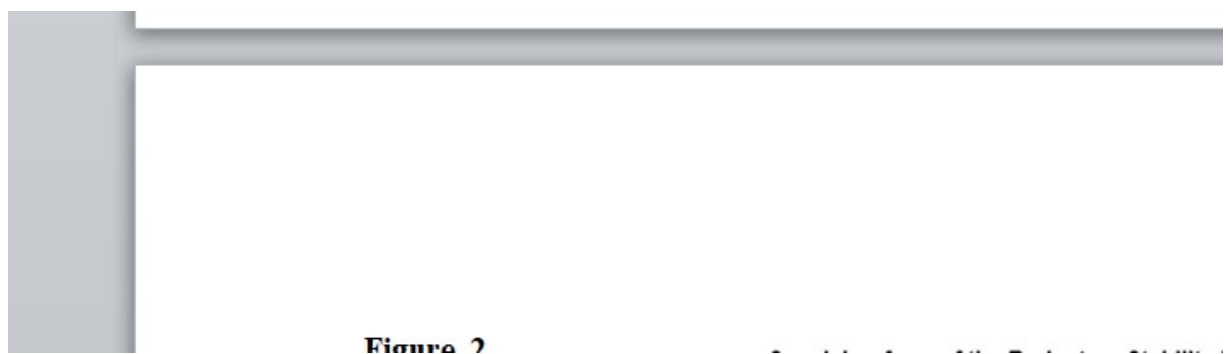


Figure 2

⁷⁵ The European Parliament and the Council, ‘Regulation (EU) No 1175/2011 of 16 November 2011 amending Council Regulation (EC) No 1466/97: On strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies’, *Official Journal of the European Union* (23 November 2011) https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2011.306.01.0012.01.ENG; Jan-Herman Reestman, ‘De ondoorgroendelijke systematiek van het wetsvoorstel HOF’, *Nederlands Juristenblad* 5 (2013) 241-245.

⁷⁶ *Treaty on Stability Coordination and Governance in the Economic and Monetary Union*; Peers, ‘The Stability Treaty’, 441; Craig, ‘The Stability, Coordination and Governance Treaty’, 231–48.

⁷⁷ Merike Kukk and Karsten Staehr, ‘Enhanced Fiscal Governance in the European Union: The Fiscal Compact’, *Baltic Journal of European Studies* 5:1 (2015) 80; Peers, ‘The Stability Treaty’, 441; Craig, ‘The Stability, Coordination and Governance Treaty’, 231–48; Almendral, ‘The European Fiscal Consolidation’, 27-67.

the domestic legislation implementing the Fiscal Compact. This thesis will now continue with the analysis of the domestic fiscal frameworks before reform of the EU fiscal framework.

1: The degree of misfit

The Netherlands

The Netherlands have an interesting fiscal tradition that is not based on constitutional balanced budget rules. Since 1994 the Dutch government has been conducting so called trend-based fiscal policy in order to get the government finances back in check after a period of deterioration of public finances.⁷⁸ An important characteristic of this policy is one main-decision-making moment based on independent economic forecasts.⁷⁹

These independent economic forecasts are provided at the start of each government term by the independent National Bureau for Economic Analysis (CPB). Based on this forecast the budgetary targets are set for the entire government term in a coalition agreement. In addition the Coalition Agreement includes the set real expenditure ceilings and tax levels and also organizes the distribution of the room for government expenditures among different ministries for the government term. Budgetary targets and fiscal rules are thus not set in law, but are based on strong political commitment.⁸⁰

Another important characteristic of the Dutch fiscal framework is that the expenditure and revenue side of the budget is divided. This means that unexpected windfalls or set-backs on either side have to be compensated within that side of the budget. In other words revenue windfalls cannot lead to increase in government spending, but are used to pay of government debt. At the same time unexpected revenue set-backs cannot be compensated with governmental spending cuts, but lead to increase of fiscal deficit. As a result fiscal policy is not sensitive to the economic business cycle and pro-cyclical fiscal policy is avoided.⁸¹

The expenditure ceilings in the Coalition Agreement are binding for the whole governmental term. The ceilings are set for 3 budgetary sectors: the ‘general’ government

⁷⁸ Ministerie van Financiën, *Evaluatie begrotingssystematiek 2007-2010. Bijlage bij het dertiende rapport Studiegroep Begrotingsruimte* (Den Haag 2010) 9-10; European Commission, ‘Fiscal Frameworks across Member States: Commission services country fiches from the 2011 EPC peer review’, European Economy Occasional Papers 91 (2012) Fiscal Governance in the Netherlands: 144. https://ec.europa.eu/economy_finance/publications/occasional_paper/2012/pdf/ocp91_en.pdf

⁷⁹ Ministerie van Financiën, *Evaluatie*, 9-10.

⁸⁰ European Commission, ‘Fiscal Frameworks’ 144; Ministerie van Financiën, *Evaluatie*, 9-10.

⁸¹ Ministerie van Financiën, *Evaluatie*, 9-10.

expenditures, social security expenditures and health care expenditures.⁸² At the revenue side of the budget automatic stabilisers are at work. However limits are set for the automatic stabilisers and the deficit. These limits are also set at the start of a term, but of course have to remain within the EU framework. In each Coalition Agreement a fiscal deficit trigger is included that triggers corrective action by the government. In 2007 for example the fiscal deficit trigger was sharpened from 2.5% GDP to 2% GDP.⁸³

Local governments are excluded from the fiscal framework since they receive most of their funding from the central government. However between 2003 and 2009 local governments have experienced rise fiscal deficits.⁸⁴

Institutions

As Mentioned the CPB provides the economic forecast and was established in 1947. It is attached to the Ministry of Economic Affairs, but operates autonomous. The CBP has a unique position and separates political and technical elements of macroeconomic policy.⁸⁵ The Council of State (Raad van State) gives advice on every Act of Parliament, including the annual budget. The Council of state has a lot of authority, even though the advice is not binding. During the year the government is monitored and held accountable by the Parliament for the implementation of the budget.⁸⁶

Conclusion

Before the crisis reform and the fiscal compact the Netherlands only had expenditure and revenue rules set in a coalition agreement at the start of each governmental term. This is thus based on political choice. The degree of misfit with the Fiscal Compact is quite large. The Netherlands did not have a balanced budget rule and fiscal rules are only part of the coalition agreement not part of the constitution. Independent economic forecasts are provided by the CPB, the Council of State gives advice on the annual budget and the Parliament monitors the implementation of the budget by the government. Based on the high degree of misfit it is expected that there is a high degree of change.

⁸² Idem, 10.

⁸³ Idem, 11-14.

⁸⁴ European Commission, 'Fiscal Frameworks', 147.

⁸⁵ Idem, 145-146.

⁸⁶ Monica Claes, 'The Netherlands, fact sheet on legal foundations for fiscal, economic, and monetary integration', *EMU Choices* (2019). <https://emuchoices.eu/wp-content/uploads/2016/08/NETHERLANDS.pdf>

Spain

Since 2002 the Spanish fiscal framework consists of balanced budget rules, which were introduced by the General Act on Budgetary Stability (LEP) and the Complementary Organic Act on Budgetary Stability (LOLEP).⁸⁷ The LEP requires the Communities to have a balanced budget and also requires corrective action by the Communities in case of non-compliance.⁸⁸ The LEP also holds local governments responsible for non-compliance with European rules. The LOLEP focuses on policy coordination between the central and Community level. This is very important considering the high degree of decentralisation.⁸⁹

In 2006 the LEP and LOLEP were reformed in order to deal with increasing fiscal decentralisation. The reformed LEP is based on fixed growth thresholds. When national economic growth is higher than 3%, the central and Community budgets have to be in surplus. When economic growth is between 2 and 3% GDP the budgets of central and Community governments are required to be balanced. In case of economic decline or growth lower than 2% the budgets are allowed to be in deficit. For the central government deficit is limited to 0.2% GDP, for the Community government 0.75% GDP and for the local government 0.05% GDP (1% GDP general government). However from these deficit ceilings investment up to 0.5% GDP for the general government expenses is excluded.⁹⁰ In addition a no bail-out clause was included, which meant that the central government could not bail-out the regional governments.⁹¹

The problem with these fiscal rules is that because investment is exempted from the rules, governments can run small deficits even in periods of economic growth. In addition, in periods of strong economic growth of 3% GDP regional governments are only required to have a small surplus, but not to build large buffers or significant decrease of debt. Therefore these rules provided a risk of pro-cyclical spending during economic upswing and restrict spending too much in times of recession when spending is needed.⁹²

Institutions

⁸⁷ European Commission, 'Fiscal Frameworks', 120.

⁸⁸ M. Delgado-Téllez, V.D. Lledó and J.J. Pérez, 'On the Determinants of Fiscal Non-compliance: an Empirical Analysis of Spain's Regions', IMF Working Papers 17:5 (2017) 12.

⁸⁹ European Commission, 'Fiscal Frameworks', 120-121.

⁹⁰ OECD, 'Spain', *OECD Economic Surveys* 1 (2007) 107; OECD, 'Spain', *OECD Economic Surveys* 19 (2010) 82.

⁹¹ Delgado-Téllez, Lledó and Pérez, 'On the Determinants of Fiscal Non-compliance' 12; European Commission, 'Fiscal Frameworks', 120.

⁹² OECD, 'Spain' (2010) 82-83.

The Central government has a major role monitoring the Communities through the Council for Fiscal and Financial Policy (CPFF). The CPFF coordinates the fiscal policy between the central and Community level. It was established in 1980 with the Organic Act on Financing (LOFCA).⁹³ The CPFF consists of representatives of the central and Community governments. However the central government holds 50% of the votes. In case of non-compliance the Community in question has to present a three year plan for corrective action, which needs to be approved by the CPFF.⁹⁴

The National Committee of Local Administrations (CNAL) is responsible for smooth coordination between the local and central level. It assesses and gives advice on the Central budget where the local administrations are concerned. It also advises the local administration regarding their finances.⁹⁵

The parliament supervises the government on implementing the budget that also needs to be approved by the parliament.⁹⁶ The independent Court of Audit (Tribunal se Cuentas) advises the Parliament regarding legislation and the budget and is also in charge of monitoring the Central government's finances.⁹⁷

Conclusion

Spain has a balanced budget rule for the central and Community level in place since 2002. However this rule has a statutory and not a constitutional legal base. In comparison with the Fiscal Compact the Spanish rules are very different from the Fiscal Compact. During an economic upswing a deficit of 0.5% GDP for investment is allowed for the general government. In case of slow economic growth or economic downfall a general government deficit of 1.5% GDP is allowed, which is thus higher than the 0.5% GDP allowed by the Fiscal Compact. The CPFF is the major institution monitoring the Community compliance with the Spanish rules, while the independent Court of Audit monitors the finances of the Central government. The Spanish degree of misfit is thus slightly lower than in the Netherlands, since Spain already has a balanced budget principle in statutory law.

Germany

⁹³ Commission, 'Fiscal Frameworks', 120.

⁹⁴ OECD, 'Spain' (2010) 82.

⁹⁵ European Commission, 'Fiscal Frameworks', 125-126.

⁹⁶ Maribel González Pascual, Joan Solanes Mullor and Aida Torres Pérez, 'Spain : fact sheet on legal foundations for fiscal, economic, and monetary integration', *EMU Choices* (2019). <https://emuchoices.eu/wp-content/uploads/2016/08/SPAIN.pdf>

⁹⁷ European Commission, 'Fiscal Frameworks', 125-126.

Germany has a long tradition of constitutional fiscal rules. Since 1969 article 115 of the constitution included a ‘golden rule’ for the federal and state level. This means that sovereign borrowing could not exceed expenditures in investment. However this rule proved ineffective to contain sovereign debt and deficits. Between 1969 and 2009 the German debt rose from 20% GDP to 70% GDP.⁹⁸

In 2009 the constitutional debt brake was introduced. This means that in principle the federal and Länder budgets need to be balanced. The rules apply for the cyclically adjusted budget. The Federal budget needs to be balanced by 2011.⁹⁹ According to article 109(3) of the constitution the federation is allowed to have a maximum deficit of 0.35% of GDP independent from the economic situation. This means that the federation and the Länder still have the room to conduct anti-cyclical policy.¹⁰⁰

As already mentioned the Fiscal Compact is often deemed to be based on the German debt brake. However there are several differences.¹⁰¹ The deficit ceiling in the Fiscal Compact includes all levels of governance, while the German debt brake 0.35% ceiling only applies to the federal government. The German debt brake requires the Länder to have a balanced budget by 2020, while the TSCG requires implementation by 2014. Thus in order to comply with the Fiscal Compact 0.5% GDP ceiling, all 16 Länder combined are only allowed a deficit of 0.15% of GDP. In addition the Fiscal Compact deficit ceiling also includes social insurance carriers and local communities, which is also not the case in the German debt brake. In order to comply with the Fiscal Compact coordination between the different levels of governance is needed.¹⁰²

Institutions

In 2009 the Stability Council was established in order to make sure that the debt-brake is enforced effectively. The stability Council has its constitutional base in article 109 of the Constitution. The Stabilitätsratgesetz (Stability Council Act) is the statute of the Stability Council and includes more details regarding procedures establishing rebalancing programmes in case of non-compliance.¹⁰³ The Stability Council replaced the Financial Planning Council and consists of the federal and Länder ministers of finance and economy.¹⁰⁴

⁹⁸ European Commission, ‘Fiscal Frameworks’, 104; Almendral, ‘Sharing Taxes’ 119

⁹⁹ European Commission, ‘Fiscal Frameworks’, 104.

¹⁰⁰ Thiele, ‘The ‘German Way’, 36- 37.

¹⁰¹ Idem, 47.

¹⁰² Idem.

¹⁰³ ‘Stabilitätsratgesetz vom 10 August 2009’, Bundesgesetzblatt I (2009) 2702.

¹⁰⁴ European Commission, ‘Fiscal Frameworks’, 104.

In addition there are several other independent institutions that have a role in the fiscal and budgetary process. Such as leading research institutes that provide macro-economic forecasts. One of the important leading institutions is the German Council of Economic Experts (sachverständigenrat) that provides independent economic forecasts and gives advice to the Federal Ministry of Finance.¹⁰⁵

Conclusion

Germany has a balanced budget rule since 2009 with a constitutional base. However there are a few differences between the German rules and the Fiscal Compact. Economic forecasts are provided by independent research institutes. The Stability Council is the main fiscal coordination platform between the Federal and Länder level and it monitors compliance with the German debt brake but is not independent from political influence. Germany thus has a lowest degree of misfit of the three countries. Therefore a low degree of change can be expected.

2. Implementation and degree of change

The Netherlands

The Law on the Sustainability of Public Finances (Wet Houdbare Overheidsfinanciën, Wet HOF) implements the Fiscal Compact into Dutch legislation.¹⁰⁶ In addition Article 2(1) Wet Hof obliges the Minister of Finance to conduct trend-based policy and thereby introduces the tradition of trend-based policy into the Dutch legislative system.¹⁰⁷ Article 2(3) states that when conducting the trend-based budgetary policy the Minister of Finance has to take into account the country-specific MTO for the structural budget and the European rules for the actual budget, meaning the 3% deficit rule of the 12th protocol.¹⁰⁸

The Fiscal Compact is thus implemented indirectly and the balanced budget rule is not specified, in order to avoid that the Wet HOF needs to be amended each time the EU rules change. However the reference to the country-specific MTO is based on the assumption that the Dutch country-specific MTO is within the 0.5% GDP limit of the Fiscal Compact. This is

¹⁰⁵ Idem, 109-113.

¹⁰⁶ 'Wet van 11 december 2013 inzake houdbare financiën van de collectieve sector (Wet houdbare overheidsfinanciën)', *Staatsblad van het Koninkrijk der Nederlanden* 531 (2013) 1-8.

¹⁰⁷ Reestman 'The Fiscal Compact', 483.

¹⁰⁸ Reestman, 'De ondoorgrondelijke systematiek', 241-245.

very likely to be the case, but is not required to be that way according to national law.¹⁰⁹ However, because of the Dutch monistic legal tradition the provisions of the TSCG are binding automatically in the Netherlands and thus set the upper deficit limit.¹¹⁰

The Wet HOF also requires the decentralised governments to run sustainable budgets. The deficits of the provinces and municipalities also contribute to the total government deficit, while only the central government is held accountable for noncompliance with the EU provisions. Article 3(1) requires all levels of government to provide an ‘equal contribution’ (gelijkwaardige inspanning) to make sure the EU rules are complied with.¹¹¹ A proposal for the share the decentralised governments need to contribute is made by the Minister of Finance after consulting the decentralised governments. Then the proposal is assessed and approved by the Parliament.¹¹²

In addition the Wet Hof makes it possible for the Central Government to pass on a potential sanction of the European Commission to the decentral governments. In that case the Minister of Finance, after consulting the decentralised governments and the Parliament, decides on the share of the fine for the decentral governments. The share needs to be based on the size of decentralised government and the amount of funding it receives from the central government.¹¹³

The independent fiscal institution

The Council of State is tasked with the role of independent monitoring institution. This is stated in the explanatory memorandum to the Wet HOF. The new tasks of the Council of State are thus not explained explicitly in the Wet HOF. Only that the Council of State has to give advice in the case of a correction plan. The Council of State also provides budgetary monitoring reports and assesses whether the budget complies with the EU rules. The Council of state already had to give advice on the budget, just as with any other ordinary act.¹¹⁴ The Council of State shares its mandate with the CPB. The assessments of the Council of State are based on the macro-economic forecast of the CPB.¹¹⁵

¹⁰⁹ Reestman ‘The Fiscal Compact’, 483.

¹¹⁰ Idem, 484-485; European Commission, ‘Country Annex 17: Netherlands’, *Report presented under Article 8 of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union Annex C(2017) 1201 final* (2017).

¹¹¹ Wytze van der Woude, ‘Houdbare overheidsfinanciën en gemeentelijke autonomie: Hoe Europese begrotingsnormen interbestuurlijke verhoudingen raken’, *Ars Aequi* 12 (2013) 918.

¹¹² Idem, 918.

¹¹³ Idem, 918.

¹¹⁴ Reestman, ‘The Fiscal Compact’, 485.

¹¹⁵ European Commission, ‘Country Annex 17 Netherlands’.

Conclusion

Based on the high degree of misfit the expectation was that the degree of change in the Dutch legal system would be large. The Wet Hof formalizes the trend-based fiscal policy tradition. It does however not explicitly include a balanced budget requirement and does not quantify the deficit limits in the Wet Hof. It thus builds on the already existing fiscal traditions. The Wet Hof does however holds decentralised government accountable for complying with the EU provisions. The role of the IFI was given on to already existing institution: The council of state. The degree of change is thus absorption, since the EU requirements are incorporated in Dutch legislation, however it does not change the fiscal policy structures in practice.

Spain

Spain is an interesting case. In the midst of the European reform process, Spain introduced a constitutional balanced budget amendment, which was approved by the Parliament on 2 September 2011, thus before it was required by the TSCG or the six-pack.¹¹⁶ The constitutional amendment is mentioned here and not in the first chapter, since despite the fact that the amendment was not driven by EU measures, the internal reform process was driven by the crisis. The amended article 135 of the constitution requires all levels of government to make budgetary policy based on the principle of budgetary stability. In addition it binds all levels of government to the structural deficit ceilings and debt ceiling set on EU level. The constitutional amendment also sets out what should be included in the organic law that will further implement the constitutional amendment.¹¹⁷

The organic law that further implements the constitutional amendment and the Fiscal Compact is a reform of the LEP, which was amended on 27 April 2012.¹¹⁸ It replaces all previous fiscal laws.¹¹⁹ The LEP includes a balanced budget rule, a debt rule and a revenue rule for the general government.¹²⁰ The balanced budget rule regarding the structural deficit is new, since the previous LEP focussed on the actual deficit. The Central and the Community governments are not allowed to run structural deficits, while the local governments and social

¹¹⁶ European Commission, 'Fiscal Framework', 121.

¹¹⁷ Almendral, 'Sharing Taxes', 117-118.

¹¹⁸ 'Ley Orgánica 2/2012, de 27 de abril, de Estabilidad Presupuestaria y Sostenibilidad Financiera', *Boletín Oficial del Estado* (2012).

¹¹⁹ Pablo Hernández de Cos and Javier J. Pérez, 'The New Budgetary Stability Law', *Bank of Spain Economic Bulletin* (2013) 13.

¹²⁰ Lvon Trapp, Lienert and Wehner, 'Principles for independent fiscal institutions' 214-215.

security funds are not allowed to run actual deficits at all.¹²¹ Only in the case of structural reforms the general government budget can deviate from the balanced budget requirement. However the deficit is limited to 0.4% of GDP.¹²² The LEP also sets a transition period until 2020. In that period the structural deficit needs to be reduced with at least 0.8% GDP each year. The public debt needs to be reduced below 60% GDP by 2020.¹²³

The Communities are also required to transpose the Central level reforms into their permanent legislation.¹²⁴ In the case that a Community government want to finance their deficits through the financial markets an adjustment plan needs to be submitted and approved by the central Ministry of Finance. In addition the Community government in question will be subject of enhanced monitoring.¹²⁵ The reformed LEP improved the transparency and access to information between the community and local governments and the Central government. It thus also improved the monitoring capabilities of the Ministry of Finance over the decentralised governments.¹²⁶ In addition the Central Government can pass on possible EU sanctions for non-compliance to the responsible Community ‘for the part attributable to it’.¹²⁷

The independent fiscal institution

The Independent Authority for Fiscal Responsibility (AIReF) was established in 14 November 2014 to fulfil the role of IFI. has become the Spanish IFI.¹²⁸ The AIReF has one of the broadest mandates in comparison with other EU IFI’s.¹²⁹ The AIReF has the task to ensure that all levels of government comply with the budgetary stability principle included in article 135 of the Spanish constitution is complied with, by monitoring the compliance with the BBR, the debt brake and the revenue rule.¹³⁰ The AIReF monitors all stages of the budgetary process and all levels of government. It monitors everything related to budgetary stability and provides independent assessment and economic forecasts, taking into account the

¹²¹ Hernández de Cos and Pérez, ‘The new Budgetary Stability Law’, 14.

¹²² Idem, 22-23.

¹²³ Idem, 22-24.

¹²⁴ Almendral, ‘Sharing Taxes’, 118.

¹²⁵ Hernández de Cos and Pérez, ‘The new Budgetary Stability Law’, 20-21.

¹²⁶ Idem, 15.

¹²⁷ Augusín Ruiz Robledo, ‘Spanish Autonomous Communities and EU policies’, *Perspectives on Federalism* 5:2 (2013) 40.

¹²⁸ von Trapp, Lienert and Wehner, ‘Principles’, 215.

¹²⁹ European Fiscal Board, *Annual Report* (2019) 39-42. https://ec.europa.eu/info/sites/info/files/2019-efb-annual-report_en.pdf

¹³⁰ von Trapp, Lienert and Wehner, ‘Principles’, 213.

provisions of the TSCG and EU legislation.¹³¹ The AIREF is attached to the Spanish Ministry of Finance, but operates independently.¹³²

Conclusion

The constitutional amendment enshrines the balanced budget requirement for all levels of government into the constitution for the first time. However the quantified deficit and debt limits are still set in organic law. In addition the reformed LEP tightens the deficit limits and leaves very little room for deficits compared to the previous rules. To fulfil the role of IFI the completely new AIREF was established, which fulfils all requirements set by the Fiscal Compact. The degree of change was thus somewhere between accommodation and transformation.

Germany

The budget is passed by the German Parliament in the form of a statute and the Parliament is bound by the Constitution. Therefore in order to correctly implement the Fiscal Compact the Constitution would have to be amended. However the German legislator implemented the Fiscal Compact by amending the already existing budgetary laws.¹³³ The Law for the Implementation of the Fiscal Compact amends the Budgetary Principles Act, the Stability Council Law and the Sanction Payment Distribution Law.¹³⁴ The latter now includes that possible sanctions from the EU for Germany are paid by the federal government until 2019, to give the Länder room to adapt their budgets to balanced budget requirement of the German debt brake.¹³⁵

There amended Budgetary Principles Act now states that the deficits of all governmental levels and social insurances are covered by the constitutional debt-brake. In addition the Budgetary Principle Act refers directly to the requirements set out in Article 3(2) TSCG.¹³⁶

¹³¹ Idem, 219-220.

¹³² European Commission, 'Country Annex 22: Spain', *Report presented under Article 8 of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union* C(2017) 1201 final. https://ec.europa.eu/info/sites/info/files/spain_-_country_annex_to_the_report_c20171201_2.pdf

¹³³ Thiele, 'The 'German Way' of Curbing Public Debt', 48-50.

¹³⁴ 'Gesetz zur innerstaatlichen Umsetzung des Fiskalvertrags', *Bundesgesetzblatt I* (2013) 2398.

¹³⁵ Deutscher Bundestag, 'Beschlussempfehlung und Bericht des Haushaltsausschusses zu dem Gesetzentwurf der Fraktionen der CDU/CSU und FDP Entwurf eines Gesetzes zur innerstaatlichen Umsetzung des Fiskalvertrags', *Drucksache 17/12222* (30-01-2013) <http://dipbt.bundestag.de/dip21/btd/17/122/1712222.pdf>

¹³⁶ Thiele, 'The 'German Way'', 48-50.

The Stability Council

In the German case the IFI tasked with monitoring compliance with the Fiscal Compact is the already existing Stability Council.¹³⁷ The Stability Council reviews twice a year whether requirements of the Fiscal Compact and the domestic debt brake can be complied with within the next four years. In case of potential non-compliance the Stability Council has to give advice on how compliance can be reached.¹³⁸ When monitoring compliance with the Fiscal Compact the Stability Council is assisted by an Independent Advisory Board, consisting of representatives of the Bundes Bank, Council of Economic Experts, academic research institutes and municipalities, while the Stability Council only consists of politicians.¹³⁹

Conclusion

Based on the low degree of misfit a low degree of change was expected. This proved to be the case, since the German fiscal framework did not change fundamentally. The constitution was not amended. Only the already existing budgetary laws were amended in order to make sure that all levels of government are covered by the debt-brake. In addition the already existing Stability Council was charged with the role of independent monitoring institution. Thus no new institutions or rules were introduced in Germany following the EU reforms. The German case does not really fit the categorization of degree of change. Absorption might come closest to describe the German case, since the already existing laws and institution were adapted to fit the requirements of the Fiscal Compact. However, instead ‘adaption’ might better describe the German degree of change.

3 Mediating factors

In this section impact of mediating factors on the degree of change in the Member States will be examined. First the administrative capabilities will be discussed. Then the veto-players and incentives will be discussed for each country.

Government efficiency and administrative capabilities

¹³⁷ Idem, 50-52.

¹³⁸ Idem, 50-52.

¹³⁹ European Commission, Country Annex Germany to the Report presented under Article 8 of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union Annex 9 C(2017) 1201 final (Brussels 22-02-2017) https://ec.europa.eu/info/sites/info/files/germany_-_country_annex_to_the_report_c20171201.pdf

The average of the World Bank governance index between 2011 and 2014 for the Netherlands, Spain and Germany are presented in table 2. The government effectiveness indicator and regulatory quality indicator can range from -2.5, the lowest score and 2.5, the highest score.¹⁴⁰

| Member State | Average of the government effectiveness indicator from 2011 to 2014. | Average of the regulatory quality indicator from 2011 to 2014 |
|--------------|--|---|
| Netherlands | 1.8 | 1.78 |
| Germany | 1.6 | 1.59. |
| Spain | 1.12 | 0.93 |

Based on this data it would be expected that the Netherlands are most efficient in implementing EU legislation, while Spain would be less efficient in implementing the Fiscal Compact. However as we have seen in the last chapters, the Spanish fiscal framework is much closer to the demands of in the reform legislation. It thus seems as if the government efficiency and administrative capabilities and resources are not as relevant as a mediating factor for the implementation of the Fiscal Compact as might be the case with the transposition of other EU legislation. In the Dutch case the government effectiveness that explains why degree of change is not higher, while the degree of misfit was large.

Veto-players and incentives

It is important here to mention that the veto-players and the incentives provided at EU level are related to each other. Therefore these two factors are discussed together. In addition all veto-players are also closely related, since the regional governments tried to influence the decision-making process through the parliament and the Courts, while the parties in the parliaments also used the Courts.

The Netherlands

The Wet HOF has a very large impact on the autonomy of the provinces and the municipalities. In addition in the initial proposal for the Wet Hof the power of the Central government was very large to decide on the ‘equal contribution’ and the share of a potential

¹⁴⁰ Kaufmann, Kraay and Mastruzzi, ‘The Worldwide Governance Indicators’.

fine in case of non-compliance by the decentralised governments, without consultation with the parliament or the decentralised governments. Therefore the proposal for the Wet HOF saw a lot of resistance from decentralised governments.¹⁴¹

The Union of Regional Water Authorities (UvW), the Association for Dutch Municipalities (VNG) and the Platform for Interprovincial Consultation (IPO) sent a letter to the government and offered their consult regarding the Wet Hof proposal. One of major concerns of the decentral governments was that the balanced budget requirement would seriously hamper important investments, for example in schools and infrastructure. In addition they strongly opposed the possibility for the central government to sanction decentral governments even when the central government is not sanctioned by the EU.¹⁴²

According to the VNG the municipalities already shared the austerity burden with the central government, since the decentral governments receive most of their funding from the central government and spending cuts at the central government already affected the funding of decentral governments. Therefore the decentral governments already deliver an ‘equal contribution’. In addition there should be a certain room for the municipalities to run deficits and instead an individual debt ceiling should be set for each municipality in order to avoid excessive spending, but not limit healthy investments.¹⁴³

This regional resistance was also represented in the Upper House of the Parliament and several amendments were made.¹⁴⁴ One of the amendments included specification that should be considered when deciding on the ‘equal contribution’, such as the debt level, the investment responsibility and the size of the decentral government. In addition all parties agreed that ‘equal contribution’ also requires an equal negotiation position for the decentral governments. Therefore the consultation process, that is conducted before the central government sets the level of the ‘equal contribution’, should be focussed on reaching a compromise with the decentral governments. This is important in order to give the decentralised governments the room to make by law required investments. In addition the Parliament has now a larger role in setting the ‘equal contribution’ level.¹⁴⁵

¹⁴¹ Van de Woude, ‘Houdbare Overheidsfinanciën’, 916-918.

¹⁴² Unie van Waterschappen, *Reactie wetsvoorstel Houdbare Overheidsfinanciën* (5 juni 2012) <https://zoek.officielebekendmakingen.nl/blg-185900>; Vereniging Nederlandse Gemeenten, *Consultatie wetontwerp HOF* (30 May 2012) <https://zoek.officielebekendmakingen.nl/blg-185903>; Interprovinciaal Overleg, *IPO-reactie op Wet Houdbare overheidsfinanciën* (30 May 2012) <https://zoek.officielebekendmakingen.nl/blg-185905>

¹⁴³ VNG, *Consultatie*.

¹⁴⁴ van der Woude, ‘Houdbare overheidsfinanciën’, 918-919.

¹⁴⁵ Tweede Kamer, *Overzicht van Stemmingen in de Tweede Kamer betreffende wetsvoorstel 33416*, 23 april 2013 <https://www.eerstekamer.nl/9370000/1/j9vkvfj6b325az/vj92hp39netg/f=y.pdf>

The provisions regarding the possibility to sanction decentral governments was also amended. The amendment included that an individual government can be sanctioned and not just the collective of decentral governments. However before a decentralised government can be sanctioned the Parliament and the other decentral governments need to be consulted.¹⁴⁶ The amended version of the Wet Hof was adopted on 23 April in the House of Representatives by the VVD, CDA, SGP, 50PLUS, D66 and PVDA.¹⁴⁷ In the Senate of the Parliament the largest government and opposition parties voted in favour of the proposal, while some smaller parties voted against.¹⁴⁸

In the Netherlands there is no constitutional court. According to Article 120 of the Constitution the judiciary is prohibited to conduct constitutional review. In the Netherlands the legislator itself decides whether an act is in line with the constitution. However, the Advisory Division of the Council of State advises the parliament on this issue.¹⁴⁹

Even though the Parliament and the decentralised governments were able to act as veto-players and changed the initial proposal of the Government, the amendments were mostly about watering down the power of the central government over the decentralised governments when deciding on their share of the potential sanctions and ‘equal contribution’. The veto-players were thus no mediating factor for explaining the small degree of change regarding the fiscal rules and IFI.

In the Dutch case the logic of appropriateness and path dependency is very important. The Dutch constitution is very hard to change and requires a two-third majority in both of the chamber of Parliament and needs to be voted on twice with elections between the two voting’s. Because of this constitutional tradition it would have been very hard to change the constitution before 2014.¹⁵⁰ The implementation of the Fiscal Compact builds on to the already existing fiscal traditions and can be better explained by historical institutionalism and path dependency. In addition due the monistic legal tradition the requirements of the Fiscal Compact were automatically binding in the Netherlands and the need for implementation was lower than in Spain and Germany.¹⁵¹

¹⁴⁶ Idem.

¹⁴⁷ Idem.

¹⁴⁸ Eerste Kamer, ‘Stemmingen’, 10 december 2013. <https://www.eerstekamer.nl/9370000/1/j9vkvfvj6b325az/vjgff8ticetk/f=y.pdf>

¹⁴⁹ Kudrna et al., ‘Codebook’, 92-93.

¹⁵⁰ Claes, ‘The Netherlands’; Jan-Herman Reestman, ‘The Fiscal Compact’, 480-500.

¹⁵¹ Reestman, ‘The Fiscal Compact’, 498-499.

Spain

For Spain incentives played a major role for the way the fiscal framework was changed. According to one of the interviewees in the EMU choices project the fiscal framework would not have looked the way it does now if it wasn't for the incentives and pressures provided by the financial markets, the Bank of Spain, the European Central Bank and Germany. "If there would have not been doubts about the credibility of Spain this measure (the constitutional debt brake) would have not been implemented."¹⁵²

The Bank of Spain was in favour of the constitutional debt brake and was very influential, together with the ECB.¹⁵³ On 5 August 2011 the President of the ECB, Jean-Claude Trichet and the governor of the Bank of Spain, Miguel Fernández Ordóñez sent a (at the time) secret letter to Prime-Minister José Luis Rodríguez Zapatero pressuring him for restructuring of the labour market and fiscal consolidation.¹⁵⁴ Even though there is no direct link between the letter and the ECB buying Spanish sovereign bonds, according to several interviewees and some of the literature there is a link. If Spain would agree to fulfil the conditions the ECB would start buying Spanish debt, even though there is of course no direct link in the letter.¹⁵⁵ The requirement for labour market reform would be 'political suicide' for Zapatero. Instead he came up with the idea for a constitutional debt brake to send a quick and clear message to the financial markets, the ECB and Germany, in order to avoid bail-out.¹⁵⁶

Even though Spain was pressured externally to make a commitment towards fiscal discipline, it was not required to introduce a constitutional debt brake.¹⁵⁷ This decision was taken by Zapatero and the minister of economy Elena Salgado. Before the proposal was announced to the public an agreement was made with Mariano Rajoy the leader of the largest opposition party, the PP, in order to get the necessary majority in Parliament.¹⁵⁸

A year earlier Rajoy had made a similar proposal. However at that time Zapatero and the PSOE had rejected the proposal, because at that time the need was not as pressing and it did not fit the PSOE preferences. Therefore the announcement for a constitutional debt brake

¹⁵² Kudrna et al., 'Codebook', 120

¹⁵³ Idem, 120.

¹⁵⁴ Jean-Claude Trichet and Miguel Fernández Ordóñez, *Letter to Prime Minister Zapatero* (5 August 2011). <https://www.ecb.europa.eu/pub/pdf/other/2011-08-05-letter-from-trichet-and-fernandez-ordonez-to-zapateroen.pdf>

¹⁵⁵ Matthias Matthijs, 'Integration at What Price? The Erosion of National Democracy in the Euro Periphery', *Government and Opposition* 52:2 (2017) 286; Emmanuele Pavolini, Margarita León, Ana M. Guillén and Ugo Ascoli, 'From austerity to permanent strain? The EU and welfare state reform in Italy and Spain', *Comparative European Politics* 13:1 (2015) 66.

¹⁵⁶ Kudrna et al., 'Codebook', 122-123.

¹⁵⁷ Idem, 119-120.

¹⁵⁸ Idem, 122-123.

amendment came as a surprise to all other parliamentary parties.¹⁵⁹ The other parties had thus little power, since the amendment was decided without them and there was not much room for debate. Since the reform happened so fast and over the summer hardly any actor, other than the government, and the two largest parties, was able to exert influence.¹⁶⁰

In the constitutional amendment it was also included that the actual quantified deficit limits will be included in an organic law. The content of the law was already agreed on between the PP and the PSOE at the time the constitutional amendment was voted on.¹⁶¹ However at that time the PSOE was the government party under Zapatero. When the reform for the LEP came to the table, the PP was the government party under Rajoy. The PSOE became the largest opposition party under Alfredo Pérez Rubalcaba, who was against the constitutional amendment.¹⁶² The PSOE voted against reform of the LEP in Parliament. However the law was passed anyway.¹⁶³

In Spain the Court plays an important role in deciding on conflicts regarding competences or authority between the central and community level. Almost every law concerning a conflict of power between the two levels of government is contested in the Constitutional Court.¹⁶⁴ The Spanish constitutional amendment and the 2012 reform of the LEP are no exception. The constitutional amendment was brought before court by a left wing parliamentary group. The constitutional court found however that the amendment was in line with the Constitution.¹⁶⁵ The new Stability Law was brought to the court by the government of the Canary Islands, since it would limit the Community's autonomy. However the Court declared the law constitutional, since it was needed to fulfil the obligations set by EU law.¹⁶⁶

In the Spanish case the high degree in change can be explained by the external pressures provided by the financial markets and the European Union institutions. In addition various potential veto-players such as parliamentary parties and the regional governments were not able to block the reform and act as veto-players.

¹⁵⁹ Almendral, 'Sharing Taxes', 117-119.

¹⁶⁰ Idem, 119.

¹⁶¹ Idem, 117-118.

¹⁶² Kudrna et al., 'Codebook', 119.

¹⁶³ Editorial El País, 'unstable stability in budgets', *El País* (13 April 2012) https://english.elpais.com/elpais/2012/04/13/inenglish/1334336513_750518.html; Dietmar Braun, Christian Ruiz-Palmero and Johanna Schnabel, *Consolidation Policies in federal States: Conflicts and solutions* (New York 2017).

¹⁶⁴ Almendral, 'Sharing Taxes', 96.

¹⁶⁵ Leticia Díez Sanchez, 'Spain: Dealing with Economic Emergency through Constitutional Reform and Limited Parliamentary Intervention', in: Thomas Beukers, Bruno de Witte and Claire Kilpatrick (ed.), *Constitutional Change Through Euro-Crisis Law* (Cambridge, 2017) 214; Tribunal Constitucional, 'Auto del Tribunal Constitucional 9/2012', *Boletín Oficial del Estado* 36 (11 February 2012).

¹⁶⁶ Sanchez, 'Spain', 215; Tribunal Constitucional, 'Sentencia del Tribunal Constitucional 215/2014', *Boletín Oficial del Estado* 29 (3 February 2015).

Germany

In the Bundestag there was relatively little resistance towards the Law for Implementation of the Fiscal compact and no amendments were made in the Bundestag. It was adopted with votes from the CDU/CSU and FDP (the government parties) and The Greens. The government parties emphasised the importance of setting a ‘good example’ for the other Member States.¹⁶⁷

The SPD and Die Linke voted against the reform. The SPD was not satisfied with the reform of the Stability Council, by attaching a new independent advisory board to it. Instead the SPD wanted to establish a new National Council for Budgetary and Financial policy that would be responsible for monitoring the fiscal rules in the Fiscal Compact, SGP and the German debt brake. The new council should be attached to the Parliament and should thus also strengthen the expertise of the Parliament regarding fiscal matters. This proposal was however only supported by The Greens and therefore rejected by the majority. For the SPD and the Greens the main problem was the independency of the Stability Council and the attached advisory board. According to them only three members of the advisory board are independent, the representatives of the Bundesbank, Sachverständigenrat and independent research institutions. In addition most Members are appointed by the Government.¹⁶⁸

When the TSCG needed to be ratified by the Bundesrat, the German government had made certain concessions to the Länder. However none are found in the law that needs to transpose the Fiscal Compact. Therefore in October 2012 the Bundesrat responded to the legislative proposal of the government and reminded them to uphold the concessions it had made. The main requests of the Länder were additional transfers and compensation payments for the Länder and municipalities.¹⁶⁹ The government however rejected the initial requests of the Bundesrat.¹⁷⁰ Therefore the Bundesrat rejected the proposal on 14 December 2012 during the first reading.¹⁷¹ In the end the government gave in to the concessions and the Bundesrat adopted the Law on 15 July 2013.

¹⁶⁷ Deutscher Bundestag, ‘Beschlussempfehlung und Bericht des Haushaltsausschusses zu dem Gesetzentwurf der Fraktionen der CDU/CSU und FDP Entwurf eines Gesetzes zur innerstaatlichen Umsetzung des Fiskalvertrags’, *Drucksache 17/12222* (30-01-2013). <http://dipbt.bundestag.de/dip21/btd/17/122/1712222.pdf>

¹⁶⁸ Idem 8-10.

¹⁶⁹ Bundesrat, ‘Antrag aller Länder: Entwurf eines Gesetzes zur innerstaatlichen Umsetzung des Fiskalvertrags’, *Drucksache 571/3/12* (11.10.12) <http://dipbt.bundestag.de/dip21/brd/2012/0571-3-12.pdf>

¹⁷⁰ Bundesregierung, ‘Gegenäußerung der Bundesregierung zu der Stellungnahme des Bundesrates’, *Drucksache 17/11011* (17.10.2012) <https://dip21.bundestag.de/dip21/btd/17/110/1711011.pdf>

¹⁷¹ Bundesrat, ‘Beschluss des Bundesrates: Gesetz zur innerstaatlichen Umsetzung des Fiskalvertrag’, *Drucksache 698/12* (14.12.12) <http://dipbt.bundestag.de/dip21/brd/2012/0698-12B.pdf>

In Germany the Constitutional Court (Bundesverfassungsgericht) is an important veto-player. It can be used by individuals to overturn a domestic or European legislation. According to one interviewee 'it loomed over every decision as an important veto-Player'.¹⁷² However, in the combined ruling regarding the ESM treaty and the TSCG the Court decided that both treaties and the Law for the Implementation of the Fiscal Compact were in line with the German Constitution. Thus the Court did not act as veto-player.¹⁷³

In the German case the degree of change could have been larger if more parties had agreed with the proposal of the SPD to create a new more independent new IFI. However according to the logic of appropriateness and path dependency it is easier to adapt an already existing institution to the EU requirements than to establish a completely new institution. The Länder were in the position to act as veto-players. However they did not block or change the reform of the rules or the IFI, but required more transfers from the federal level. The Constitutional Court also did not act as veto-player.

Conclusion

This thesis tried to explain why the Fiscal Compact changed the fiscal frameworks of Spain, Germany and the Netherlands in such a different degree and why the Fiscal Compact is implemented so differently by these Member States.

The degree of misfit between the Dutch fiscal framework and the fiscal compact was quite large since it only had expenditure and revenue rules set in a coalition agreement. Based on the degree of misfit it would be expected that there is a high degree of change in the Netherlands, such as transformation. However the degree of change in the Netherlands was closer to absorption, since the EU requirements are incorporated in Dutch legislation, but it did not change the fiscal policy structures in practice. The Wet Hof did, however, hold the decentralised government accountable for complying with the EU provisions. The mediating factors, such as veto-players, government efficiency and external incentives do not explain why the degree of change in the Netherlands is not larger. This could be better explained by the logic of appropriateness and path dependency.

The Spanish degree of misfit was slightly lower than in the Netherlands, since the Spanish fiscal framework was familiar with a balanced budget rule on the level of organic law. It also had an independent Court of Audit that monitored the finances of Central

¹⁷² Kudrna et al., 'Codebook', 81.

¹⁷³ Bundesverfassungsgericht, 'Urteil des Zweiten Senats vom 18 März 2014', 2 BvR 1390/12 Rn. 1-245 (2014).

Government. Spain had the highest degree of change of the three countries that falls between the categories of accommodation and transformation. This high degree in change was the result of high external pressures provided by the financial markets and the European Union institutions. In addition various potential veto-players such as parliamentary parties and the regional governments were not able to block the reform and act as veto-players.

In Germany the degree of misfit was, as expected quite low, since the requirements of the Fiscal Compact regarding the balanced budget rule were very close to the German debt brake. The Stability Council monitored the compliance with the debt brake, but was not as independent as required by the Fiscal Compact. Based on this a low degree of change was expected. This proved to be the case, since the German fiscal framework did not change fundamentally. The German case did not really fit the categorization degree of change. Even though absorption comes close, a better way to describe the German case is 'adaption'.

In Germany the parliament had the chance to act as a veto-player and change the way of implementation. However the Bundestag did not block or amend the fiscal implementation act. If the other parties had agreed with the SPD to create a more independent new IFI, the degree of change would have been larger. That the other parties did not agree, makes sense considering the logic of appropriateness and path dependency, since building onto a new institution is always easier than to create a new one.

One of the most important conclusions of this thesis is that misfit does not necessarily creates a pressure for change; misfit itself can also be a mediating factor. If an EU measure does not fit the domestic structures, it does not necessarily increase the pressure for change. Instead the EU measure can also be implemented in a way that fits the system. Thus the degree of misfit itself can be the reason that an EU measure is not implemented to its full potential. It is also important to consider that the above mentioned domestic changes might have also occurred without reform on the EU level, since the impact of an EU measure can never be completely isolated from other external or domestic pressures for change.

Bibliography

- Almendral, Violata Ruiz, 'The European Fiscal Consolidation Legal Framework: Its Impact on National Fiscal Constitutions and Parliamentary Democracy', in: Thomas Beukers, Bruno de Witte and Claire Kilpatrick (ed.), *Constitutional Change Through Euro-Crisis Law* (Cambridge, 2017) 27-67.
- Almendral, Violeta Ruiz, 'Sharing Taxes and Sharing the Deficit in Spanish Fiscal Federalism', *E-Journal of Tax Research* 10:1 (2012) 88-125.
- Beach, Derek, 'The Fiscal Compact, Euro-reforms and the Challenge for the Euro-outs', in: N. Hvidt and H. Mouritzen (ed), *Danish Foreign Policy Yearbook* (Copenhagen 2013) 113–133.
- Beach, Derek, 'Why governments comply: an integrative compliance model that bridges the gap between instrumental and normative models of compliance', *Journal of European Public Policy* 12:1 (2005) 113-142.
- Beukers, Thomas, Bruno de Witte and Claire Kilpatrick (ed.), 'Constitutional Change through Euro-Crisis Law: taking Stock, New Perspectives and Looking Ahead', in: Idem, *Constitutional Change through Euro-Crisis Law* (Cambridge 2017) 1-24.
- Biriukov, Pavel, 'The relationship between International, European and National Law in Spain', *Russian Journal of Comparative Law* 4:1 (2017) 14-25.
- Börzel, Tanja and Diana Panke, 'Europeanization', in: Michelle Cini and Nieves Pérez-solórzano Borragán, *Europeanization Fifth edition* (Oxford 2016) 110-121.
- Börzel, Tanja, 'Europeanization: How the European Union Interacts with Its Member States', in Simon Bulmer and Christian Lequesne (eds), *The Member States of the European Union* (Oxford 2005) 45-69.
- Börzel, Tanja, 'Pace-setting, foot-dragging and fence-sitting: Member State responses to Europeanization', *Journal of Common Market Studies* 40:2 (2002) 193–214.
- Braun, Dietmar, Christian Ruiz-Palmero and Johanna Schnabel, *Consolidation Policies in federal States: Conflicts and solutions* (New York 2017).
- Broeksteeg, Hansko, 'Het Bestaansrecht van de Eerste Kamer', *Ars Aequi* (2014) (912-916).
- Brouard, Sylvain and Christoph Hönnige, 'Constitutional courts as veto players: Lessons from the United States, France and Germany', *European Journal of Political Research* 56 (2017) 529-552.
- Bundesrat, 'Antrag aller Länder: Entwurf eines Gesetzes zur innerstaatlichen Umsetzung des Fiskalvertrags', *Drucksache* 571/3/12 (11.10.12) <http://dipbt.bundestag.de/dip21/brd/2012/0571-3-12.pdf>
- Bundesrat, 'Beschluss des Bundesrates: Gesetz zur innerstaatlichen Umsetzung des Fiskalvertrag', *Drucksache* 698/12 (14.12.12) <http://dipbt.bundestag.de/dip21/brd/2012/0698-12B.pdf>
- Bundesregierung, 'Gegenäußerung der Bundesregierung zu der Stellungnahme des Bundesrates', *Drucksache* 17/11011 (17.10.2012) <https://dip21.bundestag.de/dip21/btd/17/110/1711011.pdf>
- Bundesverfassungsgericht, 'Urteil des Zweiten Senats vom 18 März 2014', *2 BvR 1390/12 Rn. 1-245* (2014).

Buti, Marco and Nicolas Carnot, 'The EMU debt crisis: early lessons and reforms', *Journal of Common Market Studies* 50:6 (2012) 899-911.

Caporaso, James, 'The three Worlds of Regional Integration Theory', in: Paolo Graziano and Maarten P. Vink (eds.), *Europeanization: New Research Agendas* (London 2007) 27-29.

Claes, Monica, 'The Netherlands, fact sheet on legal foundations for fiscal, economic, and monetary integration', *EMU Choices* (2019).

<https://emuchoices.eu/wpcontent/uploads/2016/08/NETHERLANDS.pdf>

Colino, César, 'Responses to the crisis and the Estado autonómico in Spain: governmental strategies and consequences on power relations and stability', *Universidad Autonoma de Madrid working paper* 148 (2013). 1-24.

Craig, Peter, 'The Stability, Coordination and Governance Treaty: Principle, Politics and Pragmatism', *European Law Review* 37:3 (2012) 231-248.

Delgado-Téllez, M. , V.D. Lledó and J.J. Pérez, ' On the Determinants of Fiscal Non-compliance: an Empirical Analysis of Spain's Regions', *IMF Working Papers* 17:5 (2017) 1-33.

Deutscher Bundestag, 'Beschlussempfehlung und Bericht des Haushaltsausschusses zu dem Gesetzentwurf der Fraktionen der CDU/CSU und FDP Entwurf eines Gesetzes zur innerstaatlichen Umsetzung des Fiskalvertrags', *Drucksache 17/12222* (30-01-2013)
<http://dipbt.bundestag.de/dip21/btd/17/122/1712222.pdf>

Deutscher Bundestag, 'Beschlussempfehlung und Bericht des Haushaltsausschusses zu dem Gesetzentwurf der Fraktionen der CDU/CSU und FDP Entwurf eines Gesetzes zur innerstaatlichen Umsetzung des Fiskalvertrags', *Drucksache 17/12222* (30-01-2013).
<http://dipbt.bundestag.de/dip21/btd/17/122/1712222.pdf>

Díez Sanchez, Leticia, 'Spain: Dealing with Economic Emergency through Constitutional Reform and Limited Parliamentary Intervention', in: Thomas Beukers, Bruno de Witte and Claire Kilpatrick (ed.), *Constitutional Change Through Euro-Crisis Law* (Cambridge, 2017) 199-216.

Dijstelbloem, Huub, Paul den Hoed, Jan Willen Holtslag en Steven Schouten (eds.), *Het gezicht van de publieke zaak: Openbaar bestuur onder ogen* (Amsterdam 2009).

Dyson, Kenneth, 'Economic Policy', in: Paolo Graziano and Maarten P. Vink (eds.), *Europeanization: New Research Agendas* (London 2007) 281-294.

Editorial El País, 'unstable stability in budgets', *El País* (13 April 2012)
https://english.elpais.com/elpais/2012/04/13/inenglish/1334336513_750518.html;

Eerste Kamer, 'Stemmingen', 10 december 2013.
<https://www.eerstekamer.nl/9370000/1/j9vvkfvj6b325az/vjgff8ticetk/f=y.pdf>

Eichengreen, Barry, 'European Monetary Integration with Benefit of Hindsight', *Journal of Common Market Studies* 50:1 (2012) 123-136.

European Commission, 'Country Annex 17: Netherlands', *Report presented under Article 8 of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union Annex C*(2017) 1201 final (2017).

European Commission, 'Country Annex 22: Spain', *Report presented under Article 8 of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union C*(2017) 1201 final.
https://ec.europa.eu/info/sites/info/files/spain_-_country_annex_to_the_report_c20171201_2.pdf

European Commission, 'European Economic Forecast', *Institutional Paper* 125 (2020) 1-165. https://ec.europa.eu/info/sites/info/files/economy-finance/ip125_en.pdf

European Commission, 'Fiscal Frameworks across Member States: Commission services country fiches from the 2011 EPC peer review', *European Economy Occasional Papers* 91 (2012) 1-160. https://ec.europa.eu/economy_finance/publications/occasional_paper/2012/pdf/ocp91_en.pdf

European Commission, 'Fiscal Frameworks across Member States: Commission services country fiches from the 2011 EPC peer review', *European Economy Occasional Papers* 91 (2012) Fiscal Governance in the Netherlands: 144. https://ec.europa.eu/economy_finance/publications/occasional_paper/2012/pdf/ocp91_en.pdf

European Commission, Country Annex Germany to the Report presented under Article 8 of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union Annex 9 C(2017) 1201 final (Brussels 22-02-2017) https://ec.europa.eu/info/sites/info/files/germany_-_country_annex_to_the_report_c20171201.pdf

European Council, *Press Release: Report on the comprehensive economic policy response to the COVID-19 pandemic* (9 April 2020) <https://www.consilium.europa.eu/en/press/press-releases/2020/04/09/report-on-the-comprehensive-economic-policy-response-to-the-covid-19-pandemic/> <Accessed 26-06-2020>.

European Court of Auditors, 'EU requirements for national budgetary frameworks: need to further strengthen them and to better monitor their application', *Special Report no. 22 (2019)* https://www.eca.europa.eu/Lists/ECADocuments/SR19_22/SR_Fiscal_Stability_EN.pdf

European Fiscal Board, *Annual Report* (2019) 39-42. https://ec.europa.eu/info/sites/info/files/2019-efb-annual-report_en.pdf

Eurostat, 'Provision of deficit and debt data for 2009', *Newsrelease Euro indicators* 55 (2010). <https://ec.europa.eu/eurostat/documents/2995521/5046142/2-22042010-BP-EN.PDF/0ff48307-d545-4fd6-8281-a621cbda385d>.

Fuerea, Augustin, 'The European Mechanism for Financial Stability and the Euro-Plus Pact' *Lex et Scientia* 19:1 (2012) 32-40.

Graziano, Paolo R. and Vink, Maarten P., 'Europeanization: Concept, Theory, and Methods', in: Simon Bulmer and Christian Lequesne (eds), *The Member States of the European Union* (Oxford 2013) 31-54.

Hernández de Cos, Pablo and Javier J. Pérez, 'The New Budgetary Stability Law', *Bank of Spain Economic Bulletin* (2013) 13.

Interprovinciaal Overleg, *IPO-reactie op Wet Houdbare overheidsfinanciën (30 May 2012)* <https://zoek.officielebekendmakingen.nl/blg-185905>

Jones, Sam, 'Socialists and Podemos to rule together in Spanish coalition', *The Guardian* (7 January 2020) <https://www.theguardian.com/world/2020/jan/07/pedro-sanchez-spain-pm-government-vote-parliament>

Juuse, Egert, Ringa Raudla, Aleksandrs Cepilovs and Olga Mikheeva, 'The Europeanization of financial regulation and supervision on the Baltic-Nordic axis: the perspective of national bureaucracies', *Journal of Baltic Studies* 50:4 (2019) 409-433.

Kaufmann, Daniel, Aart Kraay and Massimo Mastruzzi, 'The Worldwide Governance Indicators: A Summary of Methodology, Data and Analytical Issues', *World Bank Policy Research Working Paper* 5430 (2010).

- Kudrna, Zdenek, Stefanie Bailer, Silvana Tarlea and Fabio Wasserfallen , ‘Codebook for the EMU Formation Dataset: Interview summaries’, *Horizon 2020 Project EMU Choices* (2018) 1-416.
- Kukk, Merike and Karsten Staehr, ‘Enhanced Fiscal Governance in the European Union: The Fiscal Compact’, *Baltic Journal of European Studies* 5:1 (2015) 73- 92.
- Lane, Philip R., ‘The European Union Sovereign Debt Crisis’, *Journal of Economic Perspectives* 26:3 (2012) 49-68.
- LB & JHR, ‘Editorial: The Fiscal Compact and the European Constitutions: “Europe Speaking German”’, *EuConst* 8 (2012) 1-7.
- Lijphart, Arend, *Patterns of Democracy* (New Haven 2012)
- Mahoney, James and Kathleen Thelen, ‘A theory of gradual institutional change’, in: Idem (ed.), *Explaining Institutional Change: Ambiguity, Agency and Power* (New York 2010) 1–27.
- Matthijs, Matthias, ‘Integration at What Price? The Erosion of National Democracy in the Euro Periphery’, *Government and Opposition* 52:2 (2017) 266-294.
- Ministerie van Financiën, *Evaluatie begrotingssystematiek 2007-2010. Bijlage bij het dertiende rapport Studiegroep Begrotingsruimte* (Den Haag 2010) 1-79.
- Moury, Catherine and Arco Timmermans, ‘Inter-Party Conflict Management in Coalition Governments: Analyzing the Role of Coalition Agreements in Belgium, Germany, Italy and the Netherlands’, *Politics and Governance* 1:2 (2013) 117-131.
- OECD, ‘Spain’, *OECD Economic Surveys* 1 (2007).
- OECD, ‘Spain’, *OECD Economic Surveys* 19 (2010).
- Pascual, Maribel González, Joan Solanes Mullor and Aida Torres Pérez, ‘Spain : fact sheet on legal foundations for fiscal, economic, and monetary integration’, *EMU Choices* (2019). <https://emuchoices.eu/wp-content/uploads/2016/08/SPAIN.pdf>
- Pavolini, Emmanuele, Margarita León, Ana M. Guillén and Ugo Ascoli, ‘From austerity to permanent strain? The EU and welfare state reform in Italy and Spain’, *Comparative European Politics* 13:1 (2015) 56-76.
- Peers, Steve, ‘The Stability Treaty: Permanent Austerity or Gesture Politics?’, *European constitutional law review* 8:3 (2012) 404-441.
- Pierson, Paul, ‘Increasing returns, path dependence, and the study of politics’, *American Political Science Review* 94:2 (2000) 251–67.
- Poorter, Jurgen de, ‘Constitutional Review in the Netherlands: A Joint Responsibility’, *Utrecht Law Review* 9:2 (2013) 89-105.
- Potacs, Michael, ‘Das Verhältnis zwischen der EU und ihren Mitgliedstaaten im Lichte traditioneller Modelle’, *Zeitschrift für öffentliches Recht* 65:1 (2010) 117-139.
- Quaglia, Lucia and Aneta Spendzharova, ‘Post-crisis reforms in banking: Regulators at the interface between domestic and international governance’, *Regulation and Governance* 11:4 (2017) 422-437.

- Raudla, Ringa, Sebastian Bur and Kati Keel, 'The Effects of Crises and European Fiscal Governance Reforms on the Budgetary Processes of Member States', *Journal of Common Market Studies* 58:3 (2020) 740-756.
- Reestman, Jan-Herman, 'The Fiscal Compact: Europe's not always able to speak German', *European Constitutional Law Review* 9 (2013) 480-500.
- Riedel, Rafal, 'Research Methodology of Europeanisation studies', in: Piotr Stanek and Krzysztof Wach (eds.), *Macro-, Meso-, and Microeconomic Dimensions of Europeanisation*, (Krakow 2016) 33-49;
- Robledo, Augustín Ruiz, 'Spanish Autonomous Communities and EU policies', *Perspectives on Federalism* 5:2 (2013) 29-50.
- Schnabel, Johanna, Christian Ruiz-Palmero and Dietmar Braun, 'Coordination of Fiscal Consolidation in Federal States', Paper for the ECPR General Conference (2016).
- Schoeller, Magnus G., 'Explaining Political Leadership: Germany's Role in Shaping the Fiscal Compact', *Global Policy* 6:3 (2015) 265-265
- Tallberg, Jonas., 'Paths to compliance: enforcement, management, and the European Union' *International Organization* 56:3 (2002) 609–643.
- Thiele, Alexander, 'The 'German Way' of Curbing Public Debt: The Constitutional Debt Brake and the Fiscal Compact – Why Germany has to Work on its Language Skills', *European Constitutional Law Review* 11:1 (2015) 30-54.
- Trapp, Lisa von, Ian Lienert and Joachim Wehner, 'Principles for independent fiscal institutions and case studies,' *OECD Journal on Budgeting* 15:2 (2016) 1-272.
- Treib, Oliver, 'Implementing and complying with EU governance outputs', *Living Reviews in European Governance* 9:1 (2014) 5-33.
- Trichet, Jean-Claude and Miguel Fernández Ordonez, *Letter to Prime Minister Zapatero* (5 August 2011). <https://www.ecb.europa.eu/pub/pdf/other/2011-08-05-letter-from-trichet-and-fernandez-ordonez-to-zapateroen.pdf>
- Truger, Achim and Henner Will, 'The German "debt brake": a shining example for European fiscal policy?', *Revue de l'OFCE* 127:1 (2013) 153-188.
- Tsebelis, George, *Veto Players: How Political Institutions Work* (Princeton 2011).
- Tweede Kamer, Overzicht van Stemmingen in de Tweede Kamer betreffende wetsvoorstel 33416, 23 april 2013 <https://www.eerstekamer.nl/9370000/1/j9vkvfvj6b325az/vj92hp39netg/f=y.pdf>
- Unie van Waterschappen, *Reactie wetsvoorstel Houdbare Overheidsfinanciën* (5 juni 2012) <https://zoek.officielebekendmakingen.nl/blg-185900>.
- Verdun, Amy, 'A historical institutionalist explanation of the EU's responses to the euro area financial crisis', *Journal of European Public Policy* 22:2 (2015) 219-237.
- Vereniging Nederlandse Gemeenten, *Consultatie wetontwerp HOF* (30 May 2012) <https://zoek.officielebekendmakingen.nl/blg-185903>.

Wasserfallen, Fabio, Dirk Leuffen, Zdenek Kudrna, Hanno Degner, 'Analysing European Union decision-making during the eurozone crisis with new data', *European Union Politics* 20:1 (2019) 3-23.

Wendler, Frank, 'Debating the European Debt Crisis: Government leadership, party ideology and supranational integration as focal points of parliamentary debates in Austria, Germany and the United Kingdom', *American Consortium on European Union Studies (ACES) Cases* no. 3 (2012) 1-33.

Woude, Wytze van der, 'Houdbare overheidsfinanciën en gemeentelijke autonomie: Hoe Europese begrotingsnormen interbestuurlijke verhoudingen raken', *Ars Aequi* 12 (2013) 918.