

Department of Political Science – Master's Degree in International Relations Chair in Comparative International Politics

GERMANY'S INFLUENCE ON THE ECONOMIC AND MONETARY UNION FROM THE MAASTRICHT TREATY TO THE EUROZONE CRISIS: A PREDOMINANCE?

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List of abbreviations

Only abbreviations used more than one time are included.

BBankG	Gesetz über die Deutsche Bundesbank
	[Law on the German Bundesbank]
BVerfGG	Gesetz über das Bundesverfassungsgericht
	[Law on the Federal Constitutional Court]
CDU	Christian Democratic Union
CSR(s)	country-specific recommendation(s)
DM	Deutsche Mark
DM	[usually in English: Deutschmark]
ECB	European Central Bank
ECJ	European Court of Justice
EDP	excessive deficit procedure
EFSF	European Financial Stability Facility
EFSI	European Fund for Strategic Investments
EFSM	European Financial Stabilisation Mechanism
EMI	European Monetary Institute
EMS	European Monetary System
EMIS	Economic and Monetary Union
ERM	Exchange Rate Mechanism
ESCB	European System of Central Banks
ESCB	
	European Stability Mechanism
EP	European Parliament
EU	European Union
FCC	Federal Constitutional Court
GDP	gross domestic product
GG	Grundgesetz
D (E	[Basic Law]
IMF	5
LT	5
MoU	e
MS(s)	Member State(s)
MT	Maastricht Treaty
MTO(s)	•
OMT	Outright Monetary Transactions
QE	Quantitative Easing
QMV	qualified majority voting
RQMV	reverse qualified majority voting
SGP	Stability and Growth Pact
SME	Social market economy
SPD	Sozialdemokratische Partei Deutschlands
	[Social Democratic Party of Germany]
SRF	Single Resolution Fund
SRM	Single Resolution Mechanism
CCM	Single Supervisory Mechanism

SSM Single Supervisory Mechanism

- StabG Gesetz zur Förderung der Stabilität und des Wachstums der Wirtschaft [Law to Promote Economic Stability and Growth]
- TEC Treaty Establishing the European Community TEEC Treaty Establishing the European Economic Community
- TEU Treaty on European Union
- TFEU Treaty on the Functioning of the European Union

Introduction

Research questions and structure

This work aims to find an answer to the following research questions: firstly, whether Germany has influenced the Economic and Monetary Union (EMU) from the Maastricht Treaty (MT) to the Eurozone crisis; secondly, whether this influence has been so considerable that it has resulted in a German predominance.

The work is organised as follows. The introduction briefly recalls the original rationale of European integration with reference to the relationship between Germany and France.

Chapter 1 starts from the 1969 Werner Report, it describes the plans of the Delors Committee and it analyses how the 1992 MT regulates the EMU. It also explains the content of the Stability and Growth Pact (SGP) both in the first and in the 2005 revisited version.

Chapter 2 firstly examines the EMU in the Lisbon Treaty (LT), particularly the intergovernmental and the supranational institutions. The second part of the chapter deals with the measures taken to face the Eurozone crisis.

Depending on the composition and the powers, different institutions lead to different policy outcomes. The functioning of institutions is deeply influenced by specific principles of the policy regime in which these institutions operate. The focus of this work is on the principles on the basis of which the institutions work. Hence, I consider institutions as both independent and dependent variables. Independent, because they produce specific policies. Dependent, because they are the product of specific principles.

Chapter 3 traces the origin of the Freiburg School of ordoliberalism. The choice of ordoliberalism is due to the recurrent assertion of scholars, journalists and politicians that principles of this school of thought inspired both the EMU and the anti-crisis measures. A closer analysis of ordoliberalism is useful in order to develop a position in this debate. I look for the fundamental principles of ordoliberalism as the main exponent – Walter Eucken – has elaborated them. Chapter 3 also compares ordoliberalism with Social market economy (SME). It presents the two economic orders that characterized post-war Germany and identifies a common element between them.

Chapter 4 puts together the ordoliberal principles seen in chapter 3 and those principles that can be identified on the basis of the EMU' provisions and the anti-crisis measures. Comparing them enables me to assess whether Germany has influenced the EMU. Thus, I will give an answer to my first research question. I will then try to see whether this influence, if any, has been so significant that it has resulted in a predominant role of Germany in the set-up of the EMU.

Chapter 5 examines the causes that may have contributed to a German influence. Both national and European factors are considered. Then I will make a political assessment of Germany's influence on the EMU. This also leads me to investigate the possibility of Germany being a constructive hegemon in the EMU.

The conclusions summarize the main findings of the work and propose what should be done next in the EMU.

To start with, the following paragraph outlines the original rationale of the European project: to put an end to the hostility between France and Germany, and, more specifically, to prevent Germany from causing again a terrible world war.

The centrality of France and Germany to European integration

The hostility between France and Germany is deeply rooted in history. Without looking too much backwards, the Prussian victory in 1870-1871 against France, which ultimately favoured German unification, is a first example at stake. France won World War I as member of the Allied forces and was crucial in imposing harsh peace conditions on Germany at the Paris Peace Conference (1919) and, most notably, in the Treaty of Versailles. Two decades later, in 1940, Nazi Germany invaded and occupied France. At the end of World War II, in 1945, Germany was completely defeated and, soon afterwards, occupied by the US, the UK, the Soviet Union and France. Although it took a place among the victors, France had suffered heavy losses during the conflict. After almost six years of devastating war, not only Germany and France, but also the whole Europe was a heap of ruins.

It became clear that the economic recovery of Europe would have been possible only if an end was put to the hostility between France and Germany. But this was not at all something that could be taken for granted. The proponents of different projects of closer European integration shared the common view that the first step towards a European integration must be to assure that the future relationship between France and Germany would be peaceful. But how to create the condition for this?

In 1950, the then French foreign minister, Robert Schuman, proposed to pool the production of coal and steel of France and Germany under the control of an independent High Authority with the power to take binding decisions. By eliminating competition for the control of territories where coal and steel production had been used for the production of war material, a new conflict between France and Germany was considered to be "not merely unthinkable, but materially impossible", as stated by the Schuman Declaration. The European Coal and Steel Community (ECSC) was thus created as the first step of European integration and was opened to the participation of other European countries.

Clearly, the success of the ECSC is not to say that the long-lasting rivalry between France and Germany had come to a definitive end. The attitude of the two countries towards European integration was quite different. For Germany, participating in the European project was first of all a necessity for being readmitted as a sovereign State in the international community. For France, it was a means to rebuild its economy and to have the assurance to embed Germany in a structure that should prevent the latter from trying again to become hegemonic in Europe. Usually, the two countries advanced together along the road of European integration. If one of the two decided to stop, the whole integration stopped. This was true for example in 1954, when the French Parliament rejected the plan to create a European Defence Community with the participation of German military forces.

In March 1957, France and Germany, together with Italy, the Netherlands, Belgium and Luxembourg, were the founding members of the European Economic Community, signing the Treaty establishing the European Economic Community (TEEC) and the Treaty establishing the European Atomic Energy Community (EURATOM). It was the beginning of a progressive integration path, which was going to experience some rests but at the end always moved forward. Step by step, European countries got closer. However, crucial policies for national sovereignty, like foreign and security policy, were jealously preserved at national level. This is true to some extent even today, with some exceptions. Economic and monetary policy is one of these exceptions. Chapter 1 starts illustrating how European Member States (MSs) developed the idea of a common economic and monetary policy regime and the first steps towards it.

1. The Economic and Monetary Union (EMU): from the beginning to the Stability and Growth Pact

1.1. Introduction

Twelve years after the ratification of the Rome Treaties, the time was ripe to start thinking about a crucial step in European integration: to put in common economic and monetary policy. This is what the 1969 Werner Report did. Agreement on this step was reached more than twenty years later in Maastricht. Still, the first draft of an economic and monetary union was already made in 1969.

In 1989, the Delors Committee envisaged a more concrete plan. The Report could not foresee the significant changes that international policy would experience in the coming years. Regarding EMU, the end of the Cold War is important mainly because it led to German reunification. The latter was perceived as having the potential to change the balance of power that had been created in Europe since the end of World War II. A reunified Germany would become the most populous country in Europe. Especially France feared that it was not able to balance the German economic strength.

Consequently, it is possible to understand the EMU of the 1992 MT as an attempt to limit the impact of German reunification on the future of European integration. This explains why the EMU should reflect a compromise between the largest European countries, France and Germany. The following chapter will show this. I will see how the MT designed economic and monetary policy. The last paragraph will then move forward by looking at the SGP.

1.2. From the Werner Report to the Delors Committee

In December 1969, the heads of State and government meeting in The Hague decided that economic and monetary policy should be included in European integration. They established a Group, chaired by the then prime minister of Luxembourg, Pierre Werner, and consisting of experts in economic and monetary matters. It had the task of formulating proposals for how to create an economic and monetary union. On October 8, 1970, the Group submitted the "Report to the Council and the Commission on the realisation by stages of Economic and Monetary Union in the Community", better known as "Werner Report."¹

The Report points out that economic and monetary integration is not a completely new aspect of European integration, but rather the necessary consequence of what had been achieved so far, most notably the completion of the customs union and the definition of a common agricultural policy. Widespread economic disequilibria between MSs persisted in the absence of coordination of economic and monetary policy. This had the potential to negatively affect the forthcoming process of European integration. From an institutional point of view, the Report states that "the control of economic policy has become all the more difficult because the loss of autonomy at the national level has not been compensated by the inauguration of Community policies" (Werner Report, p. 8). Only through an effective economic and monetary union would it be possible to achieve the four freedoms (freedom of goods, services, people and capital) and to eliminate disequilibria between MSs.

According to the Report, a monetary union means first of all that: 1) national currencies are converted in a total and irreversible way; 2) there are no longer margins of fluctuations in exchange rates; 3) parity rates are fixed irrevocably; and 4) capital can move completely free. A single currency is not a strict requirement of a monetary union, but it can be an important psychological driver. From a political perspective, an economic and monetary union implies that decisions in these fields are taken at Community and no longer separately at national level. This must be accompanied by the creation of appropriate Community institutions.

Moreover, the Report calls for centralization of monetary policy and recognizes that sooner or later a political union must integrate the economic and monetary union. Only so can an economic and monetary union function well, the Report argues. Although it stresses the necessity for institutional reforms (i.e. amendments to the Treaties of Rome), the Report does not make proposals regarding economic policy, but simply considers it "essential that the centre of decision for economic policy should be in a position to take rapid and effective decisions" (*ibid.*, p. 13). Because of this, the related decision-making institutions will have to be "responsible to a European Parliament" (*ibid.*).

¹ Hereafter: "the Report."

Economic and monetary union should be realized through stages in the decade following the submitting of the Werner Report. During the first stage, which had to begin on January 1, 1971 and will last three years, three surveys among MSs, carried out at different times of the year, should reinforce coordination of economic policies. The Council, including the economic and financial ministers of the MSs and the competent members of the Commission, should have the main decisional role during the first stage. The Committee of Governors of the central banks of the MSs can express opinions and make recommendations to the Council and to the Commission. The first stage had no binding requirements as for the continuation of the process.

During the second stage, global economic guidelines should be developed and exchange rate fluctuations between Community currencies should be progressively reduced and eventually eliminated. The Report does not establish a precise timetable for the realization of the economic and monetary union by stages. It only points out that actions taken in the economic and monetary field will be interdependent and that progress in one field can be achieved only if this happens also in the other fields.

The Six founding members of the European Economic Community approved the content of the Werner Report in March 1971. However, some months later the Bretton Woods system² collapsed, causing heavy currency fluctuations and challenging the regime of irrevocably fixing rate envisaged by the Werner Report. The reaction of the European countries was to set up a regime with little margins of fluctuations against the dollar (the so-called "snake in the tunnel"). But because the dollar continued to be weak and economic policy approaches still differed significantly among MSs, several countries exited from the snake.

In 1979, the European Monetary System (EMS) was created: it provided for a regime of exchange rates that were fixed against the "European Currency Unit" (a weighted average of the participating currencies) but could be adjusted to some extent. However, in practice, the central currency against which the others were pegged was the German *Deutsche Mark* (DM).³

The 1986 Single European Act aimed to introduce the single market by the end of 1992. Faced with this important objective, the adoption of a common currency was not seen any

² It was centred on the fixed exchange rate of the major currencies against the dollar.

³ Usually, in English it is called "Deutschmark" (DM). From now on, I also call it like this.

more as a merely option (like in the Werner Report), but rather as a necessity without which the single market would not function in an optimal way. Transactions cost and fluctuations between currencies were a bar to the well functioning of the single market. The single market needed a single currency.

It is empirically proved (Feenstra 2014) that in the long run a country cannot have simultaneously free movement of capital, exchange rate stability and the ability to conduct its own monetary policy.⁴ Hence, it became clear that to preserve free movement of capital and to prevent exchange rate fluctuations a completely new institutional regime for economic and monetary policy was needed. The core elements of this regime had already been mentioned in the Werner Report. But it was only with the Committee chaired by Jacques Delors⁵ that the steps to reach it were proposed.

The Delors Committee⁶ submitted its report on April 17, 1989. In recalling that the EMS had favoured monetary stability and a general economic improvement, the Committee noted that "lack of sufficient convergence of fiscal⁷ policies as reflected in large and persistent budget deficits in certain countries has remained a source of tensions and has put a disproportionate burden on monetary policy" (Delors Report, p. 8). The envisaged completion of the single market can bring great opportunities for MSS, but it needs better coordination of economic policy. This is all the more true since, being the exchange rate fixed in an economic and monetary union, it does not give cause for concern because of its fluctuations. The other side of the coin is that adjustments of the exchange rate can no longer be used as a measure of economic policy.

The Committee defines monetary union "a currency area in which policies are managed" (*ibid.*, p. 14) through centralization of decision-making in a single institution at Community level. Unlike monetary policy, economic policy would remain under national sovereignty. Given that economic policy decisions could affect not only each MS individually, but also the single monetary policy, "such decisions would have to be placed within an agreed macroeconomic framework and be subject to binding procedures and rules" (*ibid.*, p. 14). Only in this way, states the Delors Report, is it possible to establish an economic union together with a monetary union.

⁴ This is what economists refer to as the impossible triangle (Feenstra 2014).

⁵ President of the European Commission from 1985 to 1995.

⁶ Composed of the president, two commissioners, the governors of the national central banks and three independent experts. Hereafter, I call the Delors Committee simply "the Committee".

Moreover, the Committee confirmed what the Werner Report had already noted, i.e. that a single currency is not a requirement for monetary union, but that it has an important psychological function in the progress towards a deeper integration. The main benefits would be the elimination of transactions costs between MSS' currencies, the avoidance of exchange rate uncertainties and an increased weight of the single currency with regard to other major currencies in the world (Delors Report 1989).

It is necessary to coordinate budgetary policies through binding rules because "an economic and monetary union could only operate on the basis of mutually consistent and sound behaviour by governments [...] in all member countries" (*ibid.*, p. 19). In addition, there is concern that without budgetary rules moral hazard could be stimulated: indeed, thanks to irrevocably fixed parity of currencies, foreign exchange markets do no longer (positively) incentivize MSs to correct macroeconomic disequilibria. Macroeconomic imbalances, mostly budgetary deficits, must be solved by MSs' economic policy, not by the monetary policy at Community level. Because of this, the Committee states that agreement should be reached on the maximum admissible budget deficit of each MS, "although [...] the situation of each [...] country might have to be taken into consideration" (*ibid.*, p. 20). MSs should not be permitted direct central bank credit and other forms of monetary financing.

The main innovation envisaged by the Committee is the European System of Central Banks (ESCB), an institution with the exclusive competence of monetary policy. It should include a European central bank and the national central banks. Price stability should be the primary objective of the ESCB; support to the general economic policy of the Community should be a secondary objective, provided that the primary one is maintained. The ESCB should formulate (through a European central bank) an implement (through the national central banks) monetary policy of the Community. Members of the ESCB should be politically independent and accountable to the European Parliament (EP) and the European Council.

The Council of economic and financial ministers (ECOFIN)⁸ should decide the general orientation of economic policy. Implementation had to be carried out by national governments and by the European Commission, taking account of the respective

⁸ From now on, I call it simply "the Council". If not otherwise specified, I mean the ECOFIN Council.

competences. For the first time, the possibility for the Commission to act against noncompliance by a MS was considered.

With respect to the steps towards economic and monetary union, the Committee stated that different stages are necessary but that the political commitment to the first of them should also entail the commitment to the following ones. The first stage should start "no later than 1 July 1990" (*ibid.*, p. 28) and it should point at greater economic convergence through better coordination of the relevant policies. The Committee clearly asserted that economic and monetary union could take place only with a new treaty that includes "transfer of responsibility for economic and monetary policy from Member States to the Community" (*ibid.*, p. 37). Indeed, such a transfer cannot be found in the Treaty of Rome, even as amended by the 1986 Single European Act.

Only after a new treaty has been set up can the second stage begin. The establishment of the ESCB should be the most relevant institutional innovation in this second stage. Eventually, the third and final stage should irrevocably fix exchange rates and attribute the full competences in monetary and economic policy to the Community institutions. During this stage, a common currency could be introduced.

In June 1989, the Madrid European Council decided to start the first stage towards economic and monetary union by July 1, 1990, as suggested by the Delors Committee. The Strasbourg European Council (December 1989) convened an intergovernmental conference to introduce the institutional innovations needed to achieve economic and monetary union. This conference led to the Treaty on European Union (TEU)⁹, adopted in Maastricht in December 1991 and signed on February 7, 1992. The TEU created the legal basis for the forthcoming EMU.

1.3 The link between German reunification and the EMU

The German reunification was officially completed on October 3, 1990 with the incorporation of the five Eastern *Länder*¹⁰ of the German Democratic Republic into the Federal Republic of Germany. Although European leaders recognized the reunification as

⁹ The TEU is usually known as "Maastricht Treaty" (Fabbrini 2015). The MT amended the TEEC (Laursen 2012) by replacing the term "European Economic Community" with "European Community" (TEU Art. G). The TEEC thus became the "Treaty Establishing the European Community" (TEC).

¹⁰ They were: Brandenburg, Mecklenburg-Vorpommern, Saxony, Saxony-Anhalt and Thuringia. When they became part of the Federal Republic, they regained their status of federal *Länder*. They had lost it in 1952, after the decision of the German Democratic Republic to establish a centralized political system.

an inevitable process, they looked at it with a mixture of mistrust and concern. Forty-five years after the end of World War II, the perspective of a predominant Germany in the core of Europe seemed to regain momentum (Germond 2012).

The threat did not come from Germany's military power or from the conduct of its foreign policy (Bulmer 2013). What political leaders in Europe feared was Germany's economic power, mostly represented by its outstanding export performance and its strong currency. Once reunified, Germany would become the most populous country in Europe, with approximately 79 million inhabitants.¹¹ Also the fact that the process of modernising East Germany would require a heavy tax burden going to the new *Länder* and would hence have the potential to weaken the German economy did not reassure the other European states (Bulmer 2010).

European MSs would fully accept the German reunification only if Germany gave up the DM and adopted a common currency together with them (Castronovo 2014). That is why since the beginning the EMU has not been merely an economic project, but the "political answer to German reunification" (Fabbrini 2015: 18). European leaders wanted to integrate Germany more deeply in the institutional framework of the European Community and assure that it would be committed to the integration process also in the future.

The dilemma that emerged at the intergovernmental conference negotiating the MT was how to organize the decision-making of the EMU. European integration had produced two decision-making regimes so far. The first is the Community or supranational regime, according to which the Commission has the monopoly of legislative proposal, the EP and the Council of the European Union adopt the legislative acts¹², and the Commission and national governments implement them. The European Court of Justice (ECJ) assures compliance with European law. In this regime, the supranational institutions (Commission and EP) share decision-making power with the intergovernmental institutions (Council and European Council¹³).

¹¹ See Statisches Bundesamt, *Bevölkerungsstand*. In 2014, the German population amounts to 81.1 million inhabitants. The country is still by far the most popolous country in Europe, followed by France with approximately 66 million inhabitants (see Eurostat (h)).

¹² This is the so-called ordinary legislative procedure, usually called codecision.

¹³ At the time of the MT, the European Council, representing the heads of State and government, was an informal institution. It officially became an institution of the EU with the LT.

The second decision-making regime is the intergovernmental one, which functions according to the pooling of decision-making power between the intergovernmental institutions. The main difference is the following: in the supranational regime, both supranational and intergovernmental institutions participate in decision-making; in the intergovernmental regime, only the intergovernmental institutions do. In both regimes, the intergovernmental institutions act through an institutionalized coordination of their governments (Fabbrini 2015).

Traditionally, economic and monetary policies are closely connected to the core of national sovereignty (sensitive policies). This implies that national governments are not easily willing to delegate them to supranational institutions. However, the heads of State and government had accepted the Delors Report also where it argues that "a single monetary policy cannot result from independent decisions and actions by different central banks" (Delors Report, p. 21). Given that MSs wanted to create an economic and monetary union, they had to give up sovereignty in monetary policy. By way of compensation, it was clear, as the same Delors Report had affirmed, that economic policy would essentially remain under the control of MSs without delegation to any supranational institution.

The MT structured the European policies around pillars and assigned a decision-making regime to each of them. The first pillar (single market policies) would continue to function according to the supranational regime, while the second (common foreign and security policy) and the third (police and judicial cooperation in criminal matters) pillar were intergovernmental.

Unlike the three pillars, in the case of the EMU it was impossible to choose simply between a supranational and an intergovernmental decision-making regime. The MT represented an economic compromise between different positions that Germany and France had regarding the design of the EMU. Germany wanted a politically independent central bank to control monetary policy and stressed the need to centralize fiscal and economic policies as a precondition for successful common monetary policy. France instead wanted to keep control of economic policy at national level (Fabbrini 2015).

The contraposition was between centralization (Germany) and decentralization (France). Hence, the EMU became a *sui generis* institutional regime within the EU, since it combines a supranational element in monetary policy (through the creation of a European central bank with the exclusive competence of monetary policy) and an intergovernmental element in economic policy (voluntary coordination in the Council).

However, in the MT Germany managed to embed the national discretion in economic policy requested by France in specific legal criteria regarding, among other things, government¹⁴ budget deficit¹⁵ and government debt¹⁶ (*ibid*.). Sanctions against MSs that do not abide by the macroeconomic and budgetary rules were introduced. As we will see more in detail in the next section, sanctioning a MS is a political decision that only the Council can take. This political element would prove to have negative implications on compliance with the established criteria.

1.4. The EMU in the Maastricht Treaty

1.4.1. Economic policy

The MT deals with economic and monetary policy in Title VI of the TEC.¹⁷ Chapter 1 of Title VI regulates the former. The Council sets up, by a qualified majority voting (QMV) on a recommendation from the Commission, a draft containing the general orientation of economic policy of the MSs. It reports it to the European Council and the latter formulates a conclusion. Then the Council, acting by a QMV, analyses this conclusion and formulates a recommendation regarding the general orientation of economic policy. As it becomes evident, the Commission is only involved at the beginning when it draws the initial recommendation. It is not included in the subsequent process leading to the decision on the general economic policy orientation. The EP is informed at the end of the process (TEC, Art. 103).

Afterwards, "the Council shall [...] monitor [...] the consistency of economic policies with the broad guidelines" (ibid.) it had developed and it should assess it regularly. If MSs' economic policies are not consistent with the guidelines, the Council "may, acting by a

¹⁴ "Government means general government" (Protocol on the excessive deficit procedure, Art. 2; the Protocol is attached to the MT), i.e. central, regional and local level of government, as well as "social security fund" (ibid.).

¹⁵ Following De Grauwe (2014: 209), "it consists of the primary budget deficit (G - T) and the interest payment on the government debt [...]." G is public expenditure; T is taxation. From now on, unless otherwise stated, I will simply call it "deficit".

¹⁶ As Art. 2 of the Protocol on the excessive deficit procedure states, "debt means total gross debt at nominal value outstanding at the end of the year and consolidated between and within the sectors of general government [...]". From now on, I call it "debt." ¹⁷ For the changes of treaty name introduced by the MT, see footnote 9.

qualified majority on a recommendation from the Commission, make the necessary recommendations to the Member State concerned" (TEC, Art. 103.4)¹⁸.

The European Central Bank (ECB) and the central banks of the MSs should neither grant facilities to Community or national institutions¹⁹ nor buy debt instruments directly from these institutions. In other words, to finance public debt of MSS by issuing money is prohibited (TEC, Art. 104). The Community shall not be liable for the commitments of national institutions. Similarly, a MSS shall not be liable for the commitments of another MSS (TEC, Art. 104b). This no-bailout clause establishes the responsibility of each MSS for its debt and excludes a mutualizing of the latter. Only when a MSS faces exceptional difficulties beyond its control can the Community give him financial assistance, but "under certain conditions" (TEC, Art. 103a).

Art. 104c TEC introduces the budgetary rules proposed by the Delors Report. First of all, "MSS shall avoid excessive government deficits" (Art. 104c.1). The Commission has the task of monitoring the budgetary situation of MSs and their compliance with budgetary discipline. But what does budgetary discipline mean? While the MT fixes the criteria that must be taken into consideration (deficit and debt), the "Protocol on the excessive deficit procedure", annexed to the Treaty²⁰, specifies the numerical value of these criteria.²¹ It establishes that:

• The ratio of the planned or actual deficit to gross domestic product (GDP) at market prices cannot exceed 3 %.

Ratio above 3 % may be accepted "unless either the ratio has declined substantially and continuously and reached a level that comes close to the reference value or, alternatively, the excess over the reference value is only exceptional and temporary and the ratio remains close to the reference value" (Art. 104c.2).

 the ratio of debt to GDP at market prices cannot exceed 60 %, "unless the ratio is sufficiently diminishing and approaching the reference value at a satisfactory pace" (*ibid.*).

¹⁸ Again, the EP is only kept informed of the result of the surveillance (TEC, Art. 103.4).

¹⁹ More specifically, "central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States" (TEC, Art. 104).

²⁰ According to TEU Art. 51, protocols attached to the European treaties have the same legal force as the treaties, i.e. they are primary law.

²¹ Following the wording of the TEC, hereafter I call these criteria of deficit and debt "deficit and debt criteria" in order to distinguish them from the convergence criteria. The deficit criterion belongs both to the deficit and debt criteria and to the convergence criteria.

A deficit that exceeds the reference value is considered excessive.

The Commission has to prepare a report on MSs that do not meet one or both criteria. It can address an opinion to the Council if it believes that a MS has or risks having an excessive deficit. According to TEC Art. 104c.6, "the Council shall, acting by a qualified majority [...], and having considered any observations which the Member State concerned may wish to make, decide [...] whether an excessive deficit exists". If the Council decides that the latter exists, it recommends²² the MS bringing the deficit within the reference values in a given period (Art. 104c.7). Should the MS not implement the recommendations, the Council can notify the former to take the measures it considers necessary in order to put an end to the excessive deficit (Art. 104c.9). If the MS still does not act, the Council can decide to apply one or more of the following sanctions (Art. 104c.11): 1) to require the MS to provide specific information "before issuing bonds and securities" (*ibid.*); 2) to "invite the European Investment Bank to reconsider its lending capacity towards the Member State concerned" (*ibid.*); and 3) to impose "a non-interest bearing deposit [...] until the excessive deficit has, in the view of the Council, been corrected" and to "impose fines of an appropriate size" (*ibid.*). To what the appropriate size amounts is not specified.

What has been described is called excessive deficit procedure (EDP). The EP plays a marginal role, since it shall only be informed of the Council's decision. Once the excessive deficit has been removed, the Council shall abrogate any decision taken against the MS in question. In the EDP, the Council has to decide "by a majority of two-thirds of the votes of its members [...] excluding the votes of the representative of the Member State concerned" (TEC Art. 104c.13).

1.4.2. Monetary policy

TEC chapter 2 regulates monetary policy.²³ The provisions mainly concern the institutional design of the ESCB and of the ECB.²⁴ The ESCB covers the ECB and the national central banks (TEC Art. 106.1). Its basic task is to "define and implement the monetary policy of

²² TEC Art. 104c.7 states that "these recommendations shall not be made public." They can be made public if the MSS does not implement the recommendations (Art. 104c.8).

²³ The TEC includes some provisions of the ESCB and of the ECB (e.g. on the objectives and the independence). The overall provisions can be found in the "Protocol on the Statute of the European Systems of Central Banks and of the European Central Bank" (hereafter, ESCB Protocol), attached to the TEC. Hence, in the following part I quote passages from both the TEC and the ESCB Protocol.

²⁴ The ECB was created on 1 January 1998 and has become operative since the first day of the third stage, i.e. since 1 January 1999.

the Community" (Art. 105.2).²⁵ The primary objective of the ECB shall be "to maintain price stability" (Art. 105). Provided that price stability is guaranteed, it can also "support the general economic policies²⁶ in the Community" (*ibid.*).

The ECB shall be politically independent. Political independence can be defined as "the ability of a central bank to select its policy objectives without influence from the government" (Alesina 1993: 153). Art. 107 states that "neither the ECB, nor a national central bank, nor any member of their decision-making bodies shall seek or take instructions from Community institutions or bodies, from any government of a Member State or from any other body." Community institutions and MSS' governments shall respect the independence of the ECB and of national central banks.

Although the TEC assigns price stability as primary objective to the ECB, it does not define what price stability really means. Provided that price stability is about the inflation rate, this is to say that it does not define a precise inflation rate. The ECB is free to provide its own definition of inflation.²⁷ The ESCB can choose among the "general economic policies in the Union", on condition that such choice does not go at the detriment of price stability. Hence, the ECB enjoys large freedom in giving content to its mandate, because the latter is not defined in a precise way.

The decision-making bodies of the ECB are the Governing Council and the Executive Board. The Governing Council is made up of the Executive Board of the ECB and of the Governors of national central banks. The Executive Board includes the President and the Vice-President of the ECB as well as four other members. It is appointed "by common accord of the governments of the Member States at the level of Heads of State or Government, on a recommendation from the Council after it has consulted the European Parliament and the Governing Council" (Art. 109a.2). They must have a great deal of knowledge and expertise in monetary or banking matters (*ibid*.).

²⁵ The ECB can adopt regulations, decisions, recommendations and opinions (ESCB Protocol, Art. 34.1). A regulation has general application, is binding in its entirety and directly applicable in all MSs. A decision is binding in its entirety for those to which it is addressed. Recommendations and opinions are not legally binding.

²⁶ They are: "harmonious and balanced development of national activities, sustainable and non-inflationary growth respecting the environment, a high degree of convergence of economic performance, a high level of employment and of social protection, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States" (TEC, Art. 2).

²⁷ Defined as "below, but close to, 2% over the medium term" (European Central Bank, "The definition of price stability").

Related to political independence is the provision establishing a term of office of eight years and not renewable for the members of the Governing Council (*ibid*.). This is considered to strengthen the degree of independence of the office holder. Without the possibility of being reconfirmed in their office, members of the ECB are more willing to act with a long-term perspective. They do not have an incentive to take short-term decisions only for the sake of a new appointment (Thiele 2014).

Also the provision of a single, primary objective is an indicator of political independence. If the ECB was able to choose among several objectives, attempts from politicians to influence monetary policy would be more likely. This is even truer if one thinks that price stability is not necessarily the primary objective of politicians. Faced with several objectives, especially during an economic crisis politicians usually do not pursue price stability, but tend to take measures that have an immediate impact (e.g. reduction in unemployment) and could favour their re-election (De Haan 2000).

Nevertheless, the MT recognizes the importance of the cooperation between the ECB and the other European institutions (ESCB Protocol, Art. 5.1). Indeed, the President of the Council and a member of the Commission can participate in meetings of the General Council, but without having the right to vote (Art. 46.2).²⁸ Not only shall the ECB be consulted on Community acts regarding monetary policy (Art. 4a), but it may also submit opinions on matters in its field of competence (*ibid.*, Art. 4b).

As far as accountability is concerned, the ECB "shall address an annual report on the activities of the ESCB and on the monetary policy of both the previous and current year to the European Parliament, the Council and the Commission, and also the European Council" (TEC, Art. 109b.3). The EP can debate this report. Moreover, the monetary policy Committees of the EP can ask questions to the president of the ECB and to the other members of the Executive Board. The ECB may decide to make public its decisions, recommendations and opinions (Art. 108a.2).

Although monetary policy falls within the exclusive competence of the ECB, the Council can decide (unanimously) to intervene in the foreign exchange market²⁹ and to set

²⁸ Also "the President of the ECB shall be invited to participate in Council meetings when the Council is discussing matters relating to the objectives and tasks of the ESCB" (ESCB Protocol, Art. 109b.2).

²⁹ "[...] on a recommendation from the ECB or from the Commission, and after consulting the ECB in an endeavour to reach a consensus consistent with the objective of price stability, after consulting the European Parliament [...]" (TEC, Art. 109.1).

up monetary arrangements with third countries³⁰ (by QMV). It can also define (by QMV) the position of the Community on EMU-related issues³¹ (Hix 2011).

The MT fixes stages for the completion of the EMU (TEC, Chapter 4). The first stage had already begun on July 1, 1990 and shall end on December 31, 1993. During this stage, MSs shall achieve free movement of capital. The second stage shall begin on January 1, 1994. The Council, acting on the basis of a report by the Commission, shall assess whether MSs' economic and monetary policy has converged, monitoring particularly price stability and sound public finances.

The following provisions shall apply beginning from the second stage: prohibition of credit facility and direct purchase of MSs' public debt by the ECB; the no-bailout clause, the deficit and debt criteria, the power of the Commission to monitor MSs.³² MSs shall start making their national central banks independent. The European Monetary Institute (EMI), a forerunner of the ECB, shall be created.³³ It shall prepare the transition towards a single monetary policy starting from the third stage.

The Commission and the EMI shall submit to the Council a general report on the progress and the current situation of each MS. The report shall "examine the achievement of a high degree of sustainable convergence" (Art. 109j.1) by assessing:

- Whether there is "a price performance that is sustainable and an average rate of inflation, observed over a period of one year before the examination, that does not exceed by more than 1.5 percentage points that of, at most, the three best performing MSS in terms of price stability."³⁴ (Protocol on the convergence criteria, Art. 1). This criterion can be referred to as "high degree of price stability" (TEC, Art. 109j.1).
- Whether there is a budgetary situation "without a deficit that is excessive" (*ibid.*), i.e. not higher than 3 % as for the ratio deficit/GDP, in which "at the time of the examination the Member State is not subject of a Council decision under [TEC] Art.

 ³⁰ "[...] on a recommendation from the Commission and after consulting the ECB [...]" (TEC, Art. 109.3).
 ³¹ See the previous footnote.

³² The Council can call on MSs with an excessive deficit to bring it back within the threshold, but it cannot yet issue sanctions (TEC, Art. 109e.3).

³³ Among other things, EMI shall "strengthen cooperation between the national central banks" (Art. 109f.2) and [...] "the coordination of the monetary policies of the Member States, with the aim of ensuring price stability" (*ibid*.).

³⁴ These so-called "convergence criteria" are defined in the "Protocol on the convergence criteria", attached to the MT.

104c.6) [...] that an excessive deficit exists" (Protocol on the convergence criteria, Art. 2). This criterion can be referred to as "sustainability of the government financial position" (TEC, Art. 109j.1).

- Whether the "Member State has respected the normal fluctuation margins provided for by the Exchange Rate Mechanism of the European Monetary System without severe tension for at least the last two years before the examination" (Protocol on the convergence critera, Art. 3), "without devaluing against the currency of any other Member State" (TEC, Art. 109j.1). This criterion can be referred to as "normal fluctuations provided for by the exchange-rate mechanism" (*ibid.*).
- Whether "over a period of one year before the examination, a Member State has had an average nominal long-term interest rate that does not exceed by more than 2 percentage points that of, at most, the three best performing Member States in terms of price stability" (Protocol on the convergence criteria, Art. 4). This indicator can be referred to as "durability of convergence" (TEC, Art. 109j.1).

The Council, by QMV on a recommendation from the Commission, can decide whether a MSS satisfies the "necessary conditions for the adoption of a single currency" (TEC, Art. 109j.2). Hence, the convergence criteria are the requirements for entering the third stage of the EMU. The Council communicates its decision to the heads of State or government. "The EP shall be consulted and forward its opinion" (*ibid*.) to the heads of State or government. The latter, "acting by a qualified majority and on the basis of the recommendations of the Council [...] confirm[s] which Member States fulfil the necessary conditions for the adoption of a single currency" (TEC, Art. 109j.4).

As I have shown, the procedure for a MSS' admission to the single currency is very similar to the EDP. The Commission makes a recommendation, the Council examines it and, in its turn, it makes a recommendation to the heads of State and government, which take the final decision. The latter is thus a political decision of an intergovernmental institution.

Stage three of the EMU started on January 1, 1999. The single currency, the euro, was introduced first as electronic means of payment and then, starting from January 1, 2002, in the form of coins and banknotes. Eleven MSs could immediately adopt the euro.³⁵ The

³⁵ Austria, Belgium, Finland, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Portugal and Spain.

ECB shall become operative and fully responsible for monetary policy (TEC, Art. 1091.1). As a result, the EMI shall be dissolved (*ibid.*, Art. 1091.2).

In principle, the third stage of the EMU should end when all MSs have adopted the euro.³⁶ During the second stage of the EMU, and also today, there are two groups of MSs that did not join the euro: those not fulfilling the convergence criteria, referred to as "Member States with a derogation" (TEC, Art. 109k), and the United Kingdom and Denmark, which do not participate in the third stage of the EMU and have an exemption. Today, 19 out of 27 MSs adopt the euro.³⁷

After having seen the institutional design of the EMU, it is possible to draw some conclusions. The EMU works through the combination of two decision-making regimes: a supranational, centralized regime for monetary policy (the ECB, to which MSs have transferred exclusive competence) and an intergovernmental regime for economic policy (MSs voluntarily coordinating in the Council).

Following Fabbrini (2015), the ECB is not a supranational, but rather a technocratic, non-majoritarian institution. Thatcher and Stone Sweet (2002: 2) define non-majoritarian institutions as "those governmental entities that (a) possess and exercise some grant of specialised public authority, separate from that of other institutions, but (b) are neither directly elected by the people, nor directly managed by elected officials." Hence, one can argue that the ECB is a non-majoritarian institution if it satisfies the two conditions (a) and (b).

Regarding point (a), the ECB has the task of defining and implementing monetary policy of the Union, conducting foreign operations, holding and managing the official foreign reserves of the MSs and promoting the smooth operation of payment systems. MSs voluntarily decided to transfer exclusive competence for monetary policy to the ECB. The latter shall enjoy political independence. Hence, point (a), which defines non-majoritarian institutions as governmental entities that possess and exercise some grant of specialised public authority, separate from that of other institutions, fits the ECB.

³⁶ This is consistent with what had been decided since the publication of the Delors Report, namely that the political commitment to the first stage entails the commitment to all three stages.

³⁷ Besides those listed in footnote 35, also: Cyprus, Estonia, Greece, Latvia, Lithuania, Malta, Slovakia and Slovenia.

Point (b) would be satisfied if the ECB was neither directly elected by the people nor directly managed by them. I have already seen that the European Council appoints the Executive Board. The governors of national central banks are elected according to the constitutional rules of each member state, usually following a governmental proposal. Therefore, the people, i.e. European citizens, do not directly elect the Governing Council. Point (b), which defines non-majoritarian institutions as governmental entities that are neither directly elected by the people nor directly managed by elected officials, fits the case of the ECB.

In sum, the ECB is a non-majoritarian institution. As a result, only apparently is the EMU made up of the supranational and the intergovernmental regime. Because the ECB is not a supranational institution and both the Commission and the EP (i.e. the supranational institutions) do not have a key role in the decision-making process, the EMU works according to an intergovernmental logic.

1.5. The Stability and Growth Pact

In 1995, the then German finance minister, Theo Waigel, proposed a pact in order to make MSs abide by the convergence criteria also after the entry into the third stage of the EMU (Thygesen 1999). Two years later, at the Amsterdam European Council, MSs agreed on a "Stability and Growth Pact" (SGP). France managed to maintain in the new Pact the requirement that the Council had do decide, by QMV, to issue fines for MSs overrunning the deficit and debt criteria. It also pushed for the creation of a "Euro Committee" made up of the finance Ministers of the Eurozone in order to deal with the single currency. Germany accepted the French requests but stressed the necessity not to undermine the political independence of the ECB (Hix 2011). The final agreement was reached on June 16, 1997 at the Amsterdam European Council. The SGP includes two Council resolutions and a European Council resolution (Artis 1999).

The SGP introduced four main elements (Thygesen 1999):

- MSs shall maintain an approximate balance or a small surplus on average over the business cycle, with a ratio of deficit/GDP of maximum 3 %;
- 2) MSs shall submit to the Commission annual stability programmes describing how they will achieve a sound fiscal budget in the medium term (so-called medium-term objectives, MTOs). The Commission can call on MSs to respect the budgetary obligation of point 1. After the Commission's assessment, the Council gives its opinion

and can address an early warning to the MSs concerned in order to prevent an excessive deficit. The Council can issue recommendations to the MSS in order to correct the deficit within a given time frame. This procedure, included in the regulation "on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies", is known as the "preventive arm" of the SGP (Fabbrini 2015).

- 3) The sanctions the Council can issue to MSs persisting with an excessive deficit are now quantified³⁸: they encompass a deposit up to "0.2 % of GDP for any transgression, plus 0.1 % for each percentage point in which the deficit exceeds 3 %; deposits will be capped at 0.5 % of GDP" (Thygesen 1999).
- 4) The early stage of the EDP shall cover maximum 1 year, preferably less. Regarding the issuing of sanctions, three cases depending on the deficit/GDP ratio can occur. Firstly, when the deficit is above 3 % but there has simultaneously been a decline of 2 % or more in GDP, there shall be no sanctions. Secondly, if the decline in GDP is between 0.75 % and 2 %, the Council shall discuss sanctions but retains full discretion in the final voting. Thirdly, in all other cases in which deficit is above 3 %, MSs commit themselves to impose sanctions without "using the discretion they formally have" (Thygesen 1999). The procedure described in point 3 and 4 is part of the second regulation "on speeding up and clarifying the implementation of the excessive deficit procedure", known as the "dissuasive arm" of the SGP (Fabbrini 2015).

But how dissuasive is this arm? Following Fabbrini (2015), voluntary coordination of economic policy in the Council entails the problem of how to implement decisions. Even if the Commission recommends sanctions, the latter are not issued automatically. The Council always has formal discretion in sanctions despite the commitment not to make use of it. Moreover, if MSs that are sanctioned refuse to pay the deposit and to remove the deficit, a problem of compliance arises.

In 2002, the interest rate set by the ECB was too high for the economic situation of Germany and France. Troubled with unemployment and no perspective of economic growth, both countries were unable to raise taxes and could not complete labour market reforms. They made their deficit/GDP ratio exceed 3 % (Hix 2011).

³⁸ The MT had not given content to the sanctions, simply providing for the authority of the Council to "require the MSS concerned to make a non-interest-bearing deposit of an appropriate size" or to "impose fines of an appropriate size" (Art. 104c.11).

According to the SGP, the Commission should have assessed the existence of an excessive deficit, thus starting the EDP. Indeed, the Commission firstly stated that France and Germany had not followed an early recommendation to reduce their deficit. Then it asked the Council to call on the two countries to reduce deficit within a given time, making the monetary sanctions more likely (Hodson 2010).

However, the Council could not find a qualified majority to start the EDP because France and Germany agreed to mutually protect themselves. Moreover, they gained support from a heterogeneous group, including both MSs traditionally considered to support budgetary discipline (Austria, Belgium, the Netherlands and Spain) and MSs which also had an excessive deficit (Italy and Portugal) (*ibid*.). The Commission applied to the ECJ against the Council's decision. In 2004, the ECJ ruled in favour of the Council.

This was a heavy loss of credibility for the SGP. Calls for reform materialized in 2005, when two amendments were introduced. Firstly, the Council has now more than one year time to issue non-binding recommendations for correcting deficits before he has to decide on monetary deposits and fines. Hence, political pressure on those MSs having an excessive deficit gains importance. At the same time, the likelihood to impose monetary sanctions decreases because the procedure takes longer. Secondly, specific MTOs³⁹ are introduced for each country (*ibid*.).

Despite the attempt to prevent the stalemate of 2003 and to differentiate the MTOs, the revised SGP did not solve the enforcement dilemma (Fabbrini 2015). Not only has the Council's political discretion not been limited, but it has somehow even been increased by making it less likely to arrive at a vote on sanctions. The deficit and debt criteria remain binding. Legal rules continue to constrain economic policy discretion, but a political institution has the power to decide whether to apply these rules or not.

³⁹ They are determined by taking into account "potential growth, general government debt and the cost of agein" (Commission 2015b: 4).

1.6. Conclusion

This chapter has seen the development of the EMU from the beginning until the revised SGP. It was the 1969 Werner Report that first envisaged the creation of an economic and monetary union through stages. The plan to introduce irrevocably fixed exchange rates proved to be unattainable, because the collapse of the Bretton Woods system in 1979 caused heavy currency fluctuations. European countries created an Exchange Rate Mechanism (ERM) with limited fluctuations. The Deutschmark became the centre currency.

In April 1989, the Delors Report stated that in order to have a monetary union coordination through binding legal rules for economic policy was needed. It presented the three stages towards completion of the EMU. Approved in June of the same year, the Report paved the way for the 1992 MT.

The EMU can also be understood as a political project to limit Germany's economic power after the country's reunification in 1990. The decision-making regime was supranational for monetary policy (ECB) and intergovernmental for economic policy (Council). This was the result of a compromise between centralization (requested by Germany) and decentralization (wanted by France). Legally binding criteria were introduced to limit discretion in economic policy. Since the ECB is a non-majoritarian rather than a supranational institution, EMU is for the most part an intergovernmental regime.

The MT regulated the EMU. I have shown the major provisions of the latter: the role of the Council and of the Commission, the no-bailout clause, the deficit and debt criteria, the EDP (for economic policy); price stability, political independence and the composition of the ECB (for monetary policy). The MT also includes the convergence criteria for entering the third stage of EMU (adoption of the euro). The Council decides by QMV whether a State fulfils these criteria.

In 1997, the SGP was adopted to ensure compliance with the convergence criteria also after the adoption of the euro. It confirmed the deficit and debt criteria and introduced MTOs that MSs must annually submit to the Commission. Within an EDP, the issuing of sanctions is hardly ever automatic. This problem of enforcement became evident in 2003, when France and Germany broke the rules but were able to find a majority in the Council voting against the EDP. In 2005, the SGP was revised but paradoxically it even increased discretion of the Council in the EDP.

2. The EMU from the Lisbon Treaty to the Eurozone crisis

2.1 Introduction

Besides the reform of the SGP in 2005, the EMU did not experience significant changes from 2002 to 2007. This could be due to the fact that the whole process of European integration somehow came to a standstill after referenda in France and the Netherlands rejected the Constitutional Treaty (2005).

In 2007, the LT was approved. It retained the main principles of the EMU enshrined in the MT and amended provisions regarding the role of certain institutions. Two years later, the financial crisis erupted from the United States and worsened turning into a sovereign debt crisis.

The situation became particularly tense in MSs with a high deficit and debt. Being unable to finance their expenditures, they need help. European MSs adopted measures aimed at restoring confidence of the markets in the ability to finance the debt. The following chapter describes the anti-crisis⁴⁰ measures and classifies them according to the legal order in which they were taken: within the European law or outside the European law. The legal order will have repercussions on the effect of these measures. Some measures were adopted outside European law (through an international treaty) but make use of European institutions to compel enforcement (e.g. Commission) and to ensure compliance (ECJ).

2.2 The EMU in the Lisbon Treaty

The LT was signed on December 13, 2007 and entered into force on December 1, 2009. It amended the MT but kept its original name of "Treaty on European Union" (TEU). The TEC was renamed "Treaty on the Functioning of the European Union" (TFEU).

With the LT, the European Council formally⁴¹ became a EU institution (TEU, Art. 13). It is made up of the heads of State and government, its President and the President of the

⁴⁰ I focus on measures taken by the political (supranational and intergovernmental) institutions. Hence, for the sake of brevity, I do not consider in detail measures taken by the ECB, e.g. the Outright Monetary Transactions (OMT) and the Quantitative Easing (QE). However, I mention them in chapter 5.

⁴¹ The European Council was established in 1974 at an informal institution (Fabbrini 2015).

Commission.⁴² It provides for the general political guidance of the Union without having legislative functions (Art. 15). Normally, the European Council takes decisions by consensus and its president is elected "for a term of two and a half years, renewable once" (*ibid.*).

As for the EMU, the LT maintained the MT's distinction between monetary policy assigned to the ECB and economic policy voluntarily coordinated within the Council, which shall adopt "broad guidelines" (TFEU, Art. 5). The Council, acting on a recommendation from the Commission, firstly drafts the broad guidelines for the economic policy of the MSs and of the Union.⁴³ It reports its guidelines to the European Council, which discusses them and formulates a conclusion. "On the basis of this conclusion, the Council shall adopt a recommendation setting out these broad guidelines" (Art. 121.2). At the end, the EP is informed of the recommendation.

All other economic provisions of the MT were confirmed:

- The ECB and the national central banks cannot grant credit facility to Unions and national institutions.
- The ECB and the national central banks cannot buy debt instruments directly from MSs.
- The no-bailout clause.
- The deficit and debt criteria.⁴⁴
- The Commission's power to monitor the economic situation of MSs.
- The EDP: the Council continues to have discretion in deciding whether an excessive deficit exists and in imposing sanctions. Such a decision is taken by QMV.⁴⁵

⁴² "The High Representative of the Union for Foreign Affairs and Security Policy shall take part" (TEU Art.
15) in the work of the European Council.

⁴³ The LT replaces the term "Community" with "Union".

⁴⁴ The deficit and debt criteria are included in the "Protocol No. 12 on the excessive deficit procedure", annexed to the LT.

⁴⁵ According to Art. 3 of the "Protocol No. 36 on transitional provisions" attached to the LT, until October 31, 2014, QMV for European Council's and Council's decisions means that "members' votes are weighted" (e.g. those of Germany, France, the United Kingdom and Italy are weighted 29, those of Estonia, Cyprus, Latvia and Luxembourg are weighted 4). Acts needing a previous recommendation from the Commission "shall be adopted if there are at least 255 votes in favour representing a majority of the members" (*ibid*.). Anti-crisis measures analysed in this work were adopted before October 31, 2014, usually on the basis of a Commission's recommendation. Hence, this provision on qualified majority (and on reversed qualified majority voting, RQMV) is relevant for my analysis.

Beginning from November 1, 2014, a qualified majority in the European Council and in the Council must include "at least 55% of the members of the Council representing the participating Member States, comprising at least 65% of the population of these States" (TEU, Art. 16.4). However, if a member of the Council wants to continue to apply the weighted qualified majority described above, the latter shall apply.

A novelty of the LT is the Euro Group⁴⁶, an informal meeting of the economic and financial ministers of the euro area MSs in order "to discuss questions related to the specific responsibilities they share with regard to the single currency" (Protocol No. 14 on the Euro Group, Art. 1). Also the Commission and the ECB take part. The economic and financial ministers of the euro area elect, by majority, the president of the Euro Group, who holds office for two and a half years (*ibid.*, Art. 2).

As Fabbrini (2015) points out, the EMU in the LT confirms the difference, introduced by the MT, between euro area countries, MSs not yet meeting the convergence criteria but willing to do it, and MSs that do not want to adopt the single currency (the UK and Denmark, for which the opt-out clause continued to be in force).

Being formally institutionalized, with the LT the European Council got more power of "political direction" (TEU, Art. 15) also regarding the EMU. Hence voluntary coordination of MSs on economic policy takes place, more intensively than in the past, in two intergovernmental institutions (Council and European Council). Although the European Council shall not exercise legislative functions, this situation resulted in a "confusion of powers" (Fabbrini 2015: 49), where there is no clear line between legislative and executive functions any more. This will have repercussions on the EMU, as the European crisis starting in 2009 will show.

2.3 The Eurozone crisis

In 2009, when the world was already experiencing a dramatic financial crisis, an additional crisis erupted in Europe due to the inability of some MSs – Greece, Portugal, Ireland, Spain and Cyprus – to honour their government debts. As it is evident, this European sovereign debt crisis (hereafter, Eurozone crisis) was particularly dramatic in those States that had run up a huge amount of debt. Since investors feared governments' inability to sustain the interests on the debt, these interest rates spreads for government bonds rose dramatically. In addition, in 2009 it came out that Greece had a much higher deficit and debt than indicated in official statistics.

There was a need for anti-crisis measures in order to free the affected countries from the financial markets' speculation in their default. The following section describes these measures. I classify them in two groups: anti-crisis measures adopted within the European

⁴⁶ Sometimes also written as "Eurogroup" (e.g. in the Six Pack).

legal order (in the form of a regulation, a directive or a decision) and anti-crisis measures adopted outside the EU law (through an intergovernmental treaty). As Chapter 5 will show, the distinction matters.

2.4. Anti-crisis measures inside the European law

2.4.1. European Financial Stabilisation Mechanism

At the Council meeting of May 9-10, 2010, a European Financial Stability Mechanism (EFSM) was established, thanks to which the Commission could lend money to MSs in difficulty relying on its ability to borrow money from the market with a EU budget guarantee. The legal basis is TFEU Art. 122.2.⁴⁷ Should a MS default on its debt, the common EU budget does the repayment. The lending is conditional on MSs facing or being threatened by severe financial disturbances due to events beyond their control. Besides direct loans, MSs can also receive the permission to draw up fonds up to a certain ceiling within a given period of time.

The Commission proposes the financial assistance and negotiates the macroeconomic adjustment conditions with the MS in question. The Council decides, by QMV, to authorize the assistance. The Commission has the task of monitoring MS' compliance with the macroeconomic adjustment conditions. Financial assistance through the EFSM was first given to Ireland and Portugal in 2011 and ended in 2014. In 2013, EFSM was replaced by a permanent institution with the same task (but with a different functioning), the European Stability Mechanism (ESM).⁴⁸

2.4.2. European Semester and Six Pack

In September 2010, a new procedure of *ex ante* coordination of fiscal and budgetary policies was introduced: the European Semester. It begins in November each year, when the Commission publishes policy guidelines for MSs for the following year (so-called "Annual Growth Survey") and an "Alert Mechanism Report" to eliminate macroeconomic imbalances.

⁴⁷ The article states that "when a Member State is in difficulties or is seriously threatened with severe difficulties caused by natural disasters or exceptional occurrences beyond its control, the Council, on a proposal from the Commission, may grant, under certain conditions, Union financial assistance to the Member State concerned. The President of the Council shall inform the European Parliament of the decision taken."

⁴⁸ See European Commission, "The European Financial Stabilisation Mechanism".

In March, the Council decides the guidelines for fiscal and structural policies and the Commission issues a report on the economic situation of MSs. Each MS informs the Commission on the fiscal and budgetary policies it wants to adopt and how it complies with the deficit and debt criteria. The Commission assesses MSs' plans and formulates country-specific recommendations (CSRs), discussed by the Council in June. After the latter has approved them, MSs include the CSRs in the budget plan for the following year.

As Fabbrini (2015) points out, following the worsening of the crisis the European Council met more and more often. It is thus not surprising that it shaped the following anticrisis measures. In 2011, five regulations and one directive (so-called "Six Pack") were approved:

1) Regulation (EU) No. 1173/2011 on the effective enforcement of budgetary surveillance in the euro area

It begins by stressing the need for more commonly agreed rules in order to keep under surveillance MSs' economic policies. More power should be given to the Commission and less discretion shall be left to the Council. The regulation introduces different sanctions for the preventive and the corrective arm of the SGP:

- Preventive arm: if a MS has not reacted to a Council's recommendation to correct the excessive deficit, the Commission can recommend to the Council that the MSS in question should "lodge with the Commission an interest-bearing deposit amounting to 0.2 % of its GDP in the precedent year" (Art. 4.1). If within 10 days the Council does not reject or amend the Commission's recommendation by RQMV, the latter is "deemed to be adopted" (Art. 4.2).
- Corrective arm: if the Council assesses that an excessive deficit exists, the Commission can recommend to the Council that the MS in question should "lodge with the Commission a *non* interest-bearing deposit amounting to 0.2 % of its GDP in the precedent year" (Art. 5.1; italics added). Also in this case, the Council can act through RQMV.

Should the MS not correct the excessive deficit, a similar procedure can lead to the imposition of fines of 0.2 % of the MS' GDP in the precedent year (Art. 6.1). On a recommendation by the Commission, the Council can also fine a MS that "intentionally or by serious negligence misrepresents deficit and debt data" (Art. 8.1). In connection with this, the Commission has extensive powers to examine the accounts of MSs (Art. 8.3). The ECJ can review the Council's decision to impose

fines (Art. 8.5). The EP can "invite the President of the Council, the Commission and, where appropriate, the President of the European Council or the President of the Eurogroup [...] to discuss decisions taken [...]" (Art. 3).

2) Regulation (EU) No. 1174/2011 on enforcement measures to correct excessive macroeconomic imbalances in the euro area

It deals with sanctions imposed by the Council. If a MS has not taken actions to correct its excessive deficit as recommended by the Council, the Council, acting on a recommendation by the Commission, can impose an interest-bearing deposits of 0.1 % of MS' GDP (Art. 3). It can also impose annual fines of the same size if, after two successive recommendations in the same imbalance procedure, it assesses that a MS has developed an insufficient corrective plan. RQMV by the Council applies (Art. 3.3). Like in the previous regulation, "only members of the Council representing Member States whose currency is the euro shall vote, [...] without taking into account the vote of the [...] Member State concerned" (Art. 5). Again, the EP can start an "economic dialogue" (Art. 6) with the other institutions on the decisions taken.

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

MSs shall have different MTOs and revise them every three years (Art. 2a). The Commission and the Council should better monitor *ex ante* and *ex post* convergence programs or stability laws (Fabbrini 2015). Moreover, "with a view to ensuring that the multilateral surveillance is based on sound and independent statistics, MSS shall ensure the professional independence of national statistical authorities [...]" (Art. 10a). The economic dialogue with the EP shall involve each stage of the European Semester.

4) Regulation (EU) No. 1176/2011 on the prevention and correction of macroeconomic imbalances

It establishes the procedure to be followed in case of imbalances.⁴⁹ The Commission publishes an annual report, based on specific economic indicators, in order to assess whether MSs have, or may be at risk of having, imbalances (so-called "alert mechanism", Art. 3). After the Council has discussed the report, the Commission shall

⁴⁹ Defined as "any trend given rise to macroeconomic developments which are adversely affecting, or have the potential adversely to affect, the proper functioning of the economy of a Member State or of the economic and monetary union, or of the Union as a whole" (Art. 2.1). Such imbalances are excessive if they "jeopardise or risk jeopardising the proper functioning of the economic and monetary union" (Art. 2.2).

due an "in-depth review" (Art. 5) of each MSs and inform the EP, the Council and the Euro Group (in case of a euro area MS) of the results. Should a MS have imbalances, the Council, acting on a recommendation by the Commission, can establish the existence of an excessive imbalance and recommend corrective measures.

The MSS shall submit its plan of corrective measures to the Council and to the Commission. Following a Commission's recommendation, the Council can endorse the measures or call on the MS to submit an alternative plan. In the former case, the Commission shall monitor the implementation of the plan, working closely together with the authorities of the MS. It can recommend to the Council that there is not compliance. Such recommendation is deemed adopted unless the Council rejects it by RQMV (Art. 10.4).

If the Council, on the basis of the Commission's report, considers that the MS has taken the corrective actions requested, the excessive balance procedure is firstly "held in abeyance" (Art. 10.5) and then closed. Also in this case, the competent committee of the EP may be involved through an "economic dialogue" (Art. 14).

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

It defines what a government debt which is "sufficiently diminishing and approaching the reference value at a satisfactory pace" (TFEU, Art. 126) means, namely that "the differential with respect to the reference value [60 %] has decreased over the previous three years at an average rate of one twentieth per year as a benchmark" (Art. 2.1a). If this is the case, there is compliance with the budgetary discipline. If this is not the case, the EDP may now be started also for the debt level.⁵⁰

Another important novelty is the fact that "the Council is, as a rule, expected to follow the recommendations and proposals of the Commission or explain its position publicly" (Art. 2a). New deadlines are established: a MS shall take effective action within six months from a Council recommendation and shall correct its excessive deficit within a year from its identification (Art. 4). It shall report to the Council and the Commission on discretionary measures taken or planned (Art. 4a).

Moreover, in an EDP "the decision of the Council [...] to impose sanctions shall be taken as a rule within 16 months" (Art. 7). When those sanctions are taken, also a fine shall, as a rule, be given, with a fixed component of 0.2 % of GDP and a variable

⁵⁰ See Economic and Financial Affairs, "Six-pack? Two-pack? Fiscal compact? A short guide to the new EU fiscal governance."

component. The Council can also increase sanctions if the MS in question has not brought its deficit back to the reference value.

6) Council Directive 2011/85/EU on requirements for budgetary frameworks of the Member States

It establishes "detailed rules concerning the characteristics of the budgetary frameworks"⁵¹ (Fabbrini 2015: 53).

The Six Pack came into force in December 2011.

2.4.3. Two Pack

In May 2013, two regulations (so-called "Two Pack") were adopted through the ordinary legislative procedure. They apply to euro area MSs only (Fabbrini 2015).

1) Regulation (EU) No. 473/2013 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

It introduces a timeline for monitoring budgetary policies. By October 15 of each year, MSs shall present to the Commission and to the Eurogroup a draft budgetary plan for the forthcoming year. The Commission assesses the plan at the latest by 30 November. The EP or the national parliaments can ask the Commission to present its opinion before them. MSs must adopt their budgets plans for the following year by December 31 (Fabbrini 2015). Moreover, should MSs want to issue debt, they shall report it *ex ante* to the Commission and to the Eurogroup.

If the Council assesses an excessive deficit, MSs shall present to the Commission the policy measures and structural reforms (so-called "economic partnership programme") to overcome the deficit. The aim of the economic partnership programme is thus to "identify and select a number of specific priorities aiming to enhance competitiveness and long-term growth and addressing structural weaknesses in the Member States concerned" (Art. 9.2). Both the Commission and the Council shall monitor implementation of the programme.

Moreover, if the Council decides that there is an excessive deficit, the Commission can request that the MSs concerned is subject to reporting requirements. In that case, the MSs shall "report regularly to the Commission [...] the budgetary impact of

⁵¹ According to this directive, "budgetary framework' means the set of arrangements, procedures, rules and institutions that underlie the conduct of budgetary policies of general government" (Art. 2).

discretionary measures taken on both the expenditure and the revenue side" (Art. 10.3). To involve the EP, an economic dialogue is established.

2. Regulation (EU) No. 472/2013 on the strengthening of economic and budgetary surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability

It develops a stricter surveillance mechanism for euro area MSs in financial difficulty. If a MS faces a threat to its financial stability that could spill over in the rest of the euro area, the Commission can put the state under enhanced surveillance (Art. 2). It can prolong this status every six months, should the period of financial difficulty persist. The enhanced surveillance applies automatically if the MS concerned gets financial assistance from other MSs, third countries, the EFSM, the ESM, the European Financial Stability Facility (EFSF) or from relevant financial institutions like the International Monetary Fund (IMF).

According to Art. 3, "a Member State subject to enhanced surveillance shall [...] adopt measures aimed at addressing the sources or potential sources of difficulties."⁵² The EP and the national parliament of the MSs concerned are informed. The MS in question shall cooperate with the Commission by providing information about its financial system and by carrying out stress tests to see how the system reacts to macroeconomic and financial shocks. The Commission shall "conduct review

missions in the Member State subject to enhanced surveillance to verify the progress made by that Member State" (Art. 3.5).

Should the Commission consider that the financial difficulty continues, the Council, by QMV on a proposal from the Commission, may recommend precautionary corrective measures or the preparation of a draft macroeconomic adjustment programme. The national parliament can exchange views with the Commission. The Council informs the EP of the content of its recommendation.

When a MS asks for financial assistance, the Commission examines whether its government debt is sustainable. The MS shall, in cooperation with the Commission, develop a draft macroeconomic adjustment programme with annual budgetary targets The aim is to have again normal access to financial markets. This programme is adopted by the Council, acting on QMV on a proposal from the Commission. The Commission monitors implementation of the programme, while the MSs in question

⁵² This shall happen "after consulting, and in cooperation with, the Commission, acting in liaison with the ECB [...] and, where appropriate, the IMF" (Art. 3).

cooperates by providing all relevant information. There is also the possibility for the Council to establish that the MS does not comply with the adjustment programme. In this case, there shall be technical assistance by the Commission.

As Art. 7.12 states, "the Council, acting on a recommendation from the Commission, shall [...] approve the main policy requirements which the ESM or the EFSF plans to include in the conditionality for its financial support" and the Commission shall sign a Memorandum of Understanding (MoU) on behalf of the ESM or the EFSF which is consistent with the Council decision.

The regulation also deals with the period after enhanced surveillance. Surveillance of the MS continues until 75 % of the assistance has been repaid. If the risk of financial instability or of fiscal sustainability persists, the Council, on a proposal by the Commission, may extend such post-programme surveillance, and recommend corrective measures to the MS. In both cases, the Commission's recommendation shall "be deemed to be adopted" (Art. 14) unless the Council applies RQMV.⁵³ Eventually, Art. 18 states that "the European Parliament may invite representatives of the Council and of the Commission to enter into a dialogue on the application of this Regulation."

2.4.4. Single Supervisory Mechanism: Single Resolution Mechanism

In June 2012, the presidents of the European Council, the Commission, the Euro Group and the ECB jointly published a report entitled "Towards a Genuine Economic and Monetary Union". Among other things, they underlined the necessity of setting up an integrated mechanism of bank supervision. According to the latter, European authorities should have the responsibility to supervise national banks and the ability to intervene in order to prevent them from failing. Moreover, the report wants to establish a European deposit insurance scheme that partially guarantees banking deposits should the banks failure and a European resolution scheme that protects taxpayer's funds in case of bankruptcy. A common resolution authority should control both the deposit insurance and the resolution scheme.

Hence, the so-called "banking union" was created with the aim to have a uniform standard of supervision of European banks. It includes three elements: a Single Supervisory Mechanism (SSM), a Single Resolution Mechanism (SRM) and a Single

⁵³ Only euro area MSs vote (Art. 15).

Resolution Fund (SRF). The SRF was instead created "outside the EU legal order, as a new intergovernmental treaty" (Fabbrini 2015: 59). This is why I examine the SRF together with the other intergovernmental treaties approved during the Eurozone crisis.

In the SSM, the ECB monitors the major European banks, while national supervisory authorities supervise the remaining ones. The ECB can intervene also in lower banks if the national supervisory authorities do not act effectively. The mechanism avoids supervisory fragmentation and systemic risk. The SSM was finally adopted through a regulation in October 2013. It entered into force on November 4, 2014. The legal basis is TFEU Art. 127.6, according to which "the Council [...] may [...] confer specific tasks upon the European Central Bank concerning policies relating to the prudential supervision of credit institutions [...]." Participation is binding for euro area countries and open to non-euro MSs. The Supervisory Board, composed of representatives of the ECB and of the national authorities from participating MSs, takes decisions related to supervision.

The SRM aims to centralize the resolution of banks. It applies to banks that belong to the SSM. Its main tasks are to assess the preconditions, the starting procedure and the tools of a bank resolution. The SRM's highest authority is the Single Resolution Board, which includes the executive director, one representative of the ECB, one of the Commission and one for each participating MS.

When the ECB decides that a bank is close to fail, the SRM has the power to place that bank under resolution, to determine the steps and to oversee the implementation of that resolution. The Supervisory Board proposes measures on its own and on ECB impulse. It can also adopt sanctions. National supervisory authorities implement the measures.

2.5. Anti-crisis measures adopted outside the European law

2.5.1. European Financial Stability Facility and Euro Plus Pact

The Council of May 9-10 also decided to establish the European Financial Stability Facility (EFSF), a private company regulated by Luxembourg law. In order to preserve the stability of the euro area, it should provide financial support to MSs facing financial difficulties beyond their control. The EFSF has a specific conditionality: MSs must sign a MoU with the Commission (the latter acts on behalf of the other euro area MSs) and assure "budgetary discipline and economic policy guidelines and their compliance with the terms of [... the] MoU" (EFSF Framework Agreement 2010: 2). The Euro Group Working Group⁵⁴ must approve and the Commission must sign the MoU.

In March 2011, euro area MSs adopted the Euro Plus Pact, an agreement to strengthen economic policy coordination and competitiveness. The Pact, which was joined also by some non-euro MSs⁵⁵, focuses on "actions where the competence lies with the Member States" (EUCO 2011: 14). Four common objectives are identified: to foster competitiveness, to foster employment, to contribute further to the sustainability of public finances and to reinforce financial stability. Generally speaking, the Pact leaves policy discretion to the MSs as for the measures to adopt. Nevertheless, it formulates some guidelines.

In order to foster competitiveness, the Euro Plus Pact calls on MSs to establish a directly proportional relationship between productivity and wages. Regarding employment, it states that a "well functioning labour market is key for the competitiveness of the euro area" (*ibid.*, p. 17). The sustainability of public finances should be guaranteed by fully implementing the SGP, with a focus on debt level sustainability.

A very relevant provision of fiscal discipline – which will be formulated in a more binding way in the 2012 Fiscal Compact – is the commitment to introduce the fiscal rules of the SGP into national legislation at all level of government (central, regional and local). Although MSs can choose the legislative act they prefer to do this, they shall assure "that it has a sufficiently strong binding and durable nature (e.g. constitution or framework law)" (*ibid.*, p. 19). Regarding the fourth objective – financial stability – the Pact states that MSs shall develop a specific national legislation for banking resolution including stress tests, coordinated at EU level, for banks.

The Euro Plus Pact is also concerned with a more effective economic policy coordination. Related to this, it stresses the need for consultations on tax policy with the aim to ameliorate the efficiency of tax revenue institutions. More generally, "Member States commit to consult their partners on each major economic reform having potential spill-over effects before its adoption" (*ibid.*, p. 14).

⁵⁴ The Euro Group Working Group has the task to provide assistance to the Euro Group and to its President. It encompasses representatives of the euro area MSs, of the Economic and Financial Committee, the Commission and the ECB (Euro Group Working Group).

⁵⁵Bulgaria, Denmark, Latvia (which adopted the euro on January 1, 2014), Poland and Romania.

From an institutional perspective, the Euro Plus Pact calls for a more influential role of the Commission in monitoring compliance with the political commitments taken. The task of assuring implementation continues be with the Council, while the Commission has the duty to publish periodic reports.

2.5.2. European Stability Mechanism

The EFSM and the EFSF were conceived as a quick response to the financial turmoil that was generated at the beginning of the Eurozone crisis. However, since these facilities would expire at a certain point, a stable fund was created to support MSs in financial difficulty.

To do this, at the European Council of March 25, 2011, the following provision was added to TFEU Art. 136: "the Member States whose currency is the euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the euro area as a whole. The granting of any required financial assistance under the mechanism will be made subject to strict conditionality" (De Witte 2011: 1). Hence, the ESM was created as a permanent financial institution to support MSs in difficulty. It supplemented the EFSM and the EFSF. The ESM is an intergovernmental organisation located in Luxembourg and regulated by public international law, not by European law. The ESM treaty was signed on March 2, 2012.

The main decision-making body of the ESM is the Board of Governors, made up of the ministers of finance of the euro area MSs, the European commissioner for economic and monetary affairs and the president of the ECB. The ministers of finance are voting members; the others are observers. The Board decides, by mutual agreement⁵⁶, on the granting, the terms and the conditions of financial assistance as well as on the lending capacity of the ESM. Votes within the Board are weighted according to the subscription that each MS has done to the capital of the ESM.

The ESM can help MSs in difficulty through loans or, exceptionally, by intervening in the debt primary markets. Its so-called "stability support" can be of short or medium term. In all cases, "strict conditionality" (EUCO 2011: 25), i.e. a "macro-economic adjustment

⁵⁶ It means "by unanimity of the Member States participating to the vote, i.e. abstensions do not prevent the decision from being adopted" (EUCO 2011: 21).

programme" (*ibid.*) and a "rigorous analysis of public debt sustainability⁵⁷" (*ibid.*) determines whether and to which extent assistance should be granted. MSs must request financial assistance in order to activate the whole procedure.

Following a request of the Board of Governors, the Commission and the IMF, in cooperation with the ECB, analyse the debt sustainability of MSs. If they conclude that there is need for financial assistance, they negotiate a macroeconomic adjustment programme with the MS in question. The Council must then approve this programme and the Commission must sign a MoU on behalf of the euro area MSs with the prior approval of the Board. The Board of Directors, which include one member for each euro-area MSs, approves the financial assistance agreement by qualified majority.

The Commission, the IMF and the ECB monitor compliance with the conditionality of the programme. While the Board of Governors decides whether to grant financial assistance, "the policy conditionality established under an enhanced surveillance or a macroeconomic adjustment programme should be consistent with the EU surveillance framework and must guarantee the respect of EU procedures" (EUCO 2011: 28). Hence, provisions of the intergovernmental ESM treaty coexist with provisions of European law.

This is true also for the dispute settlement mechanism: disputes between a euro area MSs and the ESM on the treaty are decided by the Board of Governors. The ECJ works as a sort of appeal court in case the MS should contest the decision of the Board of Governors. The importance of the ESM for the euro area is shown by the fact that "as a consequence of joining the euro-area, a Member State shall become a member of the ESM with full rights and obligations" (EUCO 2011: 24).

2.5.3. Fiscal Compact

At the European Council of December 9, 2011, MSs tried to agree on commitments to better implement the Euro Plus Pact (EUCO 2011). It was proposed to introduce an automatic mechanism of sanctions into the European treaties for countries breaching the convergence criteria. The UK opposed this, fearing that more stringent fiscal rules would have negative repercussions on the London financial district (Fabbrini 2015). Since amendments to the European treaties require unanimity of all MSs, it was decided to

⁵⁷ The European Council defines debt as "sustainable when a borrower is expected to be able to continue servicing its debts without an unrealistically large correction to its income and expenditure" (EUCO 2011: 29).

negotiate an intergovernmental treaty, the "Treaty on Stability, Coordination and Governance in the Economic and Monetary Union", commonly called "Fiscal Compact". On March 2, 2012, all MSs except the Czech Republic⁵⁸ and the UK signed it. It fully applies to the euro area MSs.

Art. 3 states that government deficit at the general level shall be balanced or in surplus, a requirement that is met "if the annual structural balance of the general government is at its country-specific medium-term objective as defined in the revised Stability and Growth Pact with a lower limit of a structural deficit of 0.5 % of the gross domestic product at market prices." The Commission shall propose a rapid time frame for convergence towards the respective MTO of each MS. Deviations from the MTO can happen only in exceptional circumstances.⁵⁹ MSs with a ratio of debt to GDP significantly below 60 % can reach a structural deficit of at most 1.0 %.

The contracting parties commit themselves to introduce the limits on deficit and debt in their national laws with a "binding force and permanent character, preferably constitutional" (Art. 3.2). They shall also introduce enshrine in national law an automatic correction mechanism in case of significant deviations from the MTO. Such a mechanism shall be established "on the basis of common principles to be proposed by the European Commission, concerning in particular the nature, the size and the time-frame of the corrective action [...] and the role and independence of the institutions responsible at national level for monitoring the observance of the rules" (*ibid*.).

While these provisions can be considered part of the preventive arm, Art. 4 establishes a corrective arm, stating that MSs with a debt over 60 % should reduce it an average of one twentieth per year as a benchmark. MSs in an EDP must submit programs of structural reforms to the Commission and to the Council. The latter shall both monitor implementation of the programme "within the context of the existing surveillance procedures of the Stability and Growth Pact" (Art. 5). Additionally, MSs "shall report *ex ante* on their public debt issuance plans to the European Commission and to the Council" (Art. 6).

⁵⁸ Eventually, the Czech Republic signed the Fiscal Compact in March 2014.

⁵⁹ Defined as an "unusual event outside the control of the Contracting Party concerned which has a major impact on the financial position of the general government or to periods of severe economic downturn as defined in the revised Stability and Growth Pact (Art. 3.3).

In order to assure compliance with its provisions, the agreement explicitly commits the parties to support the proposals and/or recommendations of the Commission in the framework of an EDP. Unlike the Six Pack, MSs commit themselves to support the Commission at each stage of the EDP.⁶⁰ However, this obligation is not in force if a qualified majority of the euro area MSs is against the decision proposed or recommended (Art. 7). When the Commission assesses that a party has not incorporated the provisions into national law and has not set up an automatic correction mechanism (Art. 3.2), one or more MSs can bring the matter before the ECJ. This can also happen if another MS considers that a party has not complied with Art. 3.2. In both cases, "the judgement of the Court of Justice shall be binding" (Art. 8).

According to this peer review mechanism, if a party believes that another party has not complied with the judgement of the ECJ, it may call for financial sanctions. Should the ECJ find that there has not been compliance, it can impose on the party in question "a lump sum or a penalty payment appropriate in the circumstances and that shall not exceed 0.1 % of its gross domestic product" (Art. 8.2).

The Fiscal Compact increases economic policy coordination compared to the Euro Plus Pact. It commits the parties to discuss *ex ante* and possibly coordinate, among them and with the EU institutions, all major economic policy reforms. The Euro Summit is established as a new informal institution in order to discuss any issue related to the governance of the euro area. It includes the heads of State or government of the euro area contracting parties, the president of the Commission and the president of the ECB (the latter as observer). It shall have its own president, elected "by simple majority at the same time the European Council elects its President and for the same term of office" (Art. 12). The president of the EUR Summit shall report to the EP about the results of each meeting, to which the president of the EP may be invited.

A novelty of the Fiscal Compact concerns it entry into force, which does not require unanimity of ratifications. It is sufficient that twelve contracting parties have ratified the treaty. If this happens, it becomes binding on the first day of the month following the twelfth ratification (Art. 14.2). Moreover, after five years from the entry into force of the

⁶⁰See Economic and Financial Affairs, "Six-pack? Two-pack? Fiscal compact? A short guide to the new EU fiscal governance."

Fiscal Compact, MSs shall try to introduce "the substance of this Treaty into the legal framework of the European Union" (Art. 16).

2.5.4. Single Supervisory Mechanism: Single Resolution Fund

The Single Resolution Fund (SRF) acts as a supporting tool of the SRM. It is mentioned in Reg. (EU) No 806/2014 that establishes the SRM. However, the regulation states that "the use of the Fund shall be contingent upon the entry into force of an agreement among the participating Member States [...] on transferring the funds raised at national level towards the fund [...]" (Art. 1). Hence, the SRF was made operative through an intergovernmental agreement. It has come into force in 2015.

The SRF aims to provide funds in order to enable banks in difficulty to continue to operate until their resolution, minimising taxpayers' burden and protecting depositors. It can also borrow from the market if the Single Resolution Board so decides. The SRF is made up of national funds that should be gradually mutualized into a common fund (Fabbrini 2015).

2.6. Conclusion

This chapter has analysed the changes the EMU has undergone with the LT and during the Eurozone crisis. The LT has kept the distinction between monetary policy assigned to the ECB and economic policy assigned to the Council. The MT's provisions regarding the EMU remained unchanged in the LT.

The LT created a new institution consisting of the economic and financial **ministers** of the euro area (Euro Group). Moreover, it made the European Council a formal institution of the EU with the task of deciding the political guidelines of the Union, but without legislative functions. Hence, two intergovernmental institutions coordinate economic policy. During the European crisis this resulted in confusion between legislative and executive powers, because the European Council came to decide the main anti-crisis measures.

I have classified these measures depending on whether they have been adopted within or without the European law. Chapter five will show the implications of the use of different legal orders. Among the most relevant novelties introduced by the anti-crisis measures, enforcement has become more automatic because a Commission's recommendation in the framework of an EDP is deemed adopted unless the Council amends or rejects it by RQMV. The Council is expected (but not obliged) to follow the recommendations and proposals of the Commission at each stage of the EDP. Moreover, sanctions should be taken as a rule within 16 months. However, despite the attempt to depoliticise sanctions, the Council can still use RQMV to change the Commission's initial recommendation regarding the existence of an excessive deficit. The EP continues to be only informed of the decisions.

MSs' constitutions or national laws must include a balanced budget and must establish an automatic correction mechanism in case of significant deviations from the MTO. If MSs have a debt higher than 60 %, they must reduce it at an average of one twentieth per year as a benchmark. In order to assure compliance, the Fiscal Compact provides for binding judgement by the ECJ. This treaty did not require unanimity of ratifications for its entry into force.

To sum up, from the LT to the Eurozone crisis the following main changes to the EMU took place:

- Stricter provisions of compliance with the deficit and debt criteria.
- Attempt to depoliticize the EDP: more powers to the Commission, less discretion of the Council.
- Introduction of budgetary discipline into national (constitutional) law.

The lowest common denominator of thes changes is a reduction in political discretion and a predominance of legal rules. This is the reason why the EMU and the anti-crisis measures have been labelled as reflecting ordoliberalism. But what does ordoliberalism mean? Does it play a predominant role in the EMU and in the anti-crisis measures? The following chapter is the first step in order to answer these questions.

3. Ordoliberalism and Social market economy

3.1 Introduction

Several scholars (e.g. Young 2012, Woodruff 2014 and Joerges 2015) and magazines (e.g. The Economist 2015) have argued that the anti-crisis measures described in the previous chapter reflect principles consistent with ordoliberalism. Other scholars (e.g. Fabbrini 2015) state that the whole EMU mirrors ordoliberalism. In both cases, ordoliberalism is said to be a German school of thought. From this stems the claim that Germany has significantly influenced the EMU since the MT and that it predominated during the Eurozone crisis.

This chapter aims at studying the main position of ordoliberalism. In the first part, it contextualizes the origins of the Freiburg School of ordoliberalism in the 1930s. Then it describes the fundamental and the constitutive principles of ordoliberalism on the basis of its main exponent, Walter Eucken, and its book "The Principles of Economic Policy"⁶¹ (*Grundsätze der Wirtschaftspolitik*). Eucken is my principal point of reference for ordoliberalism, because as an economist he seems to give the most useful perspective on the present work.⁶²

I will also point out the difference between ordoliberalism and other types of economic policy (laissez-faire liberalism, central planned economy, interventionism and neoliberalism).

The second part of the chapter compares ordoliberalism with SME, the economic order that Germany embraced after the end of World War II. I will show that this post-war order does not entirely match ordoliberalism. Indeed, it is a compromise between ordoliberalism and corporatism. Although since the end of the Weimar Republic ordoliberalism had developed in contrast to corporatism, I will look for a common element between them. This is to say that I will try to find the main distinguishing feature of SME.

⁶¹ English translation in Feld (2015: 2). The book was published posthumously in 1952. I refer to the edition of 2004. Hence, following Feld (2015), in the text I indicate the book with "1952/04".

⁶² Böhm and Großmann-Doerth were two jurists and give thus a different contribution to ordoliberal thinking than Eucken.

3.2 Ordoliberalism: the Freiburg School and Walter Eucken

3.2.1 Origins and historical context

In 1932, the economist Walter Eucken (1891-1950), professor of National Economy at the Albert Ludwig University of Freiburg, published an essay entitled "Structural changes of the state and the crisis of capitalism"⁶³ (*Staatliche Strukturwandlungen und die Krise des Kapitalismus*). According to him, the 1919-born Weimar Republic suffered political instability because economic actors made use of the State to be better off in the market and, at the same time, to seek protection from the market through State intervention. Eucken believed that such an interest-driven politicisation of the economy undermines free competition: political forces, influenced by economic actors, determine production and redistribution of resources. They pursue particularistic interests, not the overall well-being (Goldschmidt 2008).

What is needed, according to Eucken, is a strong State capable of freeing itself from the influence of interest groups. "Strong" in this sense means not being held hostage by economic actors. The State must establish legal rules for the proper functioning of the economy. These rules are the economic order⁶⁴ (*Wirtschaftsordnung*, Eucken 1952/04: 7) of a State.

Having set the rules, the State shall step aside and assure that the economic actors follow the rule. The State must define the economic order, but must not intervene in the economic process. The economic actors shall be free to operate in the economic process. This economic process is the free market economy. Hence, the economic order is on a higher level than the economic process⁶⁵ (*Wirtschaftsprozess*, Eucken 1952/04: 24). The rules of the economic order form the economic constitution (*Wirtschaftsverfassung*, Eucken 1952/04: 379). In their turn, these rules determine the functioning of the economic process. Such an approach, trying to develop an order for a liberal market economy, became known as ordoliberalism⁶⁶.

⁶³ English translation in Vanberg (2014: 3).

 ⁶⁴ I use the English translations of *Wirtschaftsordnung* (economic order), *Wirtschaftsprozess* (economic process) and *Wirtschaftsverfassung* (economic constitution) as provided by Vanberg 2004.
 ⁶⁵ See previous footnote.

⁶⁶ The term "ordoliberalism" was introduced only in 1950 by Hero Moeller in *The Ordo Yearbook of Economic and Social Order*, an academic journal founded by Eucken and Böhm in 1948. Another expression used is *Ordnungsökonomik* (Goldschmidt 2008: 1), translatable as ordering economics.

In order to better understand how ordoliberalism was born, it is useful to briefly examine the evolution of society beginning from the foundation of the German Empire in 1871 (Manow 2000). The latter's first chancellor, Otto von Bismarck (1815-1898), started to create an interventionist welfare State in order to strengthen the internal unity of the new empire. At the same time, he promoted repressive measures against Social Democratic and Catholic movements (so-called *Kulturkampf*).

An important element of the Bismarckian social legislation was the mandatory accident and health insurance for workers. Being initially organised by the public sector, the new insurance schemes were also organized privately: especially the health insurance was jointly administered by employers and workers. Thus, labour and capital were forced to organize their interests and gradually penetrated the welfare State. This was not only tolerated but also more and more supported by the State, which used the organized interest groups of workers and employers to cover administrative functions. Especially workers gained from the system because of their increased role in the administration of the insurance schemes (*ibid.*).

The only political movements that primarily aimed at representing the workers were, on the one side, the Social Democratic Party (SPD, *Sozialdemokratische Partei Deutschlands*) and the Free Unions, and, on the other side, the Catholic Centre party (*Zentrum*) and the Catholic worker movement. Hence, precisely the movements at which Bismarck's repression was targeted managed to become more and more politically influential. This situation went on after the end of World War I, when the *Zentrum* and the SPD were the most important members of the so-called "Weimar coalition" that supported the 1919-grounded Weimar Republic. The participation of members of both parties to the government in the years from 1928 to 1929 resulted in a further extension of the welfare system (*ibid.*).

Faced with a recession after the Great Depression of 1929, in 1932 the Papen government took a number of austerity measures through emergency decrees and against the majority of the Parliament. The criticism of a German industry which had lost competitiveness because of too much social costs imposed by political parties went hand in hand with a widespread distaste for parliamentary democracy, which had supposedly become hostage of interest groups (*ibid.*).

This is precisely the point where ordoliberalism steps in. The "weak" State of the Weimar Republic, too much influenced by political parties and called in disparaging terms party State (*Parteienstaat*), is what ordoliberalism criticised. For the ordoliberals, the crisis of the Weimar Republic was primarily a political, not an economic crisis. The members of the Freiburg School belonged to the Protestant well-educated middle class (*Bildungsbürgertum*). Since the beginning of the Weimar Republic, they had felt increasingly marginalized between the organised interests of workers and employers. Indeed, the Protestants had been unable to represent the interests of the groups that benefit from the welfare state. With their paternalistic and to some extent elitist approach to social policy, conceived as something that should start from "above", they did not manage to get significant support in the interest-based system of democratic representation. Thus, also their attempt to exercise a cultural and religious hegemony had failed (Manow 2001).

The Protestant middle class, especially the Freigurg School, started to criticize the welfare State because of its corporatist⁶⁷ character based on a "systematic interpenetration of the political and the economic system" (Manow 2000: 7). The Protestants argued that the Bismarckian welfare state, which they had strongly supported at the beginning, had turned out in favouring the Catholics and the Socialists. The latter had abused of the system by forcing the State to intervene in the economy with more and more resources for their interests. Hence, Protestant ordoliberals turned against interventionist social policy and wanted to establish an order that protects them from the unforeseeable consequences of continuous State intervention: an order that guarantees stability (*ibid.*).

To reach this aim, the ordoliberals seemed willing to accept also an authoritarian solution that would sacrifice democracy for order, provided that "authoritarian" meant "strong". This is shown by the use of expressions like "rabid or radical liberalism", or even "liberal interventionism" (*ibid*.). To some extent, the search for a strong State made the Freiburg School similar to the ideas of reactionary and conservative forces up to the point that "it indeed had become nearly impossible to draw a clear line between the former liberal bourgeois camp and the camp of the extreme authoritarian right" (Manow 2000: 9), the Nazis inclusive.⁶⁸

⁶⁷ Corporatism can be defined as the institutional concertation between the State and the interest groups, in which the latter thus influence political decisions (Czada 2000).

⁶⁸ Doubts about the Freiburg School's support to Nazism disappeared after the Night of Broken Glass (*Kristallnacht*) of November 9, 1938, when the ordoliberals founded the "Freiburger Konzil", an

Protestantism has a pessimistic image of human beings: each person has a sinful and a righteous side. That is why the ordoliberals, which were deeply Protestants, wanted to establish an order capable at the same time of neutralizing the sinful side and of guaranteeing the freedom of the righteous one. But how to limit the sinner side of man that leads him into temptation of dominating his neighbour and seeking to undermine his freedom? The ordoliberal answer was that the price mechanism and the competitive order could discipline the economic actors, but only if they both are removed from the realm of political discretion (Foucault 2004).

Since the beginning, the ordoliberal approach has been quite interdisciplinary. Eucken cooperated with Franz Böhm (1895-1977) and Hans Großmann-Doerth (1894-1944), two jurists oft the Freiburg University. The foundation of the so-called Freiburg School can be dated back to 1936, when the three scholars published the journal *Ordnung der Wirtschaft*⁶⁹ (Vanberg 2004). The introduction to this journal, entitled "Our Task"⁷⁰ (*Unsere Aufgabe*) and written together by Eucken, Böhm and Großmann-Doerth, can be considered the ordoliberal manifesto of the Freiburg School. The authors argue that law and economics have lost their leading role in society. Private interest groups, not competent lawyers and economists, take crucial decisions. This is dangerous because interest groups often consider their preferences as the overall benefit for society. Instead, economists and lawyers are the only ones capable of positively shaping politics and society because they are competent actors independent of specific interests (Goldschmidt 2008).

Eucken, Böhm and Großmann-Doerth opposed to the mainstream schools of thought of their time. Firstly, to historicism because of the latter's core assumption that science tends to change following different historical periods. Secondly, they argued that relativism had enabled powerful economic actors to manipulate law according to their interests because of the wrong assumption that society has no basic principles, not even in the field of law, but that everything is relative. Eventually, they criticized the belief that law and economics inevitably change with different historical periods (fatalism). They make the example of cartels, which in the last decade of the 19th century were seen as an inevitable fact. Because of this, no law was passed to face the problem (*ibid.*).

organization critical of the Hitler regime which wanted to develop a new order, based on the Protestant ethic, for post-war economy and society (Goldschmidt 2008). Moreover, as a member of the academic senate in those years, Eucken opposed the course that the rector, Martin Heidegger, gave to the Freiburg University.⁶⁹ Translatable with "Order of the Economy".

⁷⁰ The English translation of the German title is quoted in Vanberg (2004: 1).

The core concern of the founders of the Freiburg School is the assumption that law and economics have become relative disciplines the content of which tends to adapt to circumstances and mainstream opinions of a given period and/or of a given group. To react against this trend, Eucken, Böhm and Großmann-Doerth want to create an economic constitution based on scientific rationality (*ibid*.).

3.2.2 Fundamental principles of ordoliberalism

The starting point of ordoliberalism is the economic constitution (Wirtschaftsverfassung). The economic constitution provides the content of the economic order (Wirtschaftsordnung). This economic order includes the main principles on the functioning of the economic process (Wirtschaftsprozess). To set the economic order shall be the task of the State. The economic order is on a higher level than the economic process, since the former shapes the latter. General and particular laws regarding the economy, concerning – in Eucken's terminology – the economic process, should be adopted taking into account the economic constitution (Goldschmidt 2008).

The central notion of ordoliberalism is order (*Ordnung*, Eucken 1952/04: 372). Giving order means that the State set general rules of the game for the functioning of a market economy (the economic process). The State must intervene in the economic order and must refrain from intervening in the economic process (see figure 1). The reason for an order is the necessity to limit economic power, both from private and from public actors. The concept of order is firstly addressed to the economy, but it should be the basis for the more general order of a society.⁷¹ Indeed, as Eucken wrote, "we have to get used to the idea that solemn questions about the intellectual and spiritual existence of Man have to be combined with rather sober and mechanical issues of economic design" (Goldschmidt 2012: 6). Ordoliberalism is hence an interdisciplinary approach that besides economics deals with the whole structuring of society.

For ordoliberalism, the economic order should be based on perfect competition. Markets should be openly accessible thanks to perfect competition (Goldschmidt 2008). The ordoliberal idea of competition, however, is that both supply and demand face competition: it is not important to have a homogenous product in the classical sense of perfect competition (Kolev 2013). Since the ordoliberal economic order is a competitive

⁷¹ According to Eucken, the general (economic) order for the economy should be economically efficient and able to preserve individual dignity (*funktionsfähig und menschenwürdig*, Vanberg 2004: 7).

order (*Wettbewerbsordnung*, Eucken 1952/04: 245), the rules of the economic order should aim at protecting competition.

An order based on free competition should oppose the domination of single groups and of their interests. It is fundamental to prevent economic positions of power (both from private and from public actors) like monopolies⁷² and cartels⁷³, which are obstacles to competition. This is the main reason for an economic order (Goldschmidt 2008). Competition is connected to individual freedom.⁷⁴ Because of this, the rules of the economic order should promote individual freedom. But what type of competition do the ordoliberals mean? A competitive order should not aim at eliminating the competitors from the market (Eucken 1952/04). It should instead be based on achievements of the economic actors (*Leistungswettbewerb*, *ibid.*, p. 247), according to which actors become successful if they engage in favour of the other members of society. In this type of competition, the aim is to satisfy consumers (Goldschmidt 2008).

But how should the content of the economic constitution be like? Reporting the whole set of provisions that, according to the Freiburg School, should be included in the economic constitution, is not possible here and it would go beyond the scope of this work. It is instead useful to focus on the constitutive principles of the ordoliberal constitution, which are necessarily the basis for any other more detailed provision. This is what the following section does.

⁷² A monopoly is a form of market in which there is only one producer and supplier of a good that controls the whole supply side of that good (Gabler Wirtschaftslexikon 1992).

⁷³ A cartel is an agreement between or an association of enterprises that can influence the production and circulation of goods and services by limiting competition (*ibid*.).

⁷⁴ Nazism can be considered to have contributed to the stressing of freedom by the Freiburg School (Goldschmidt 2008).

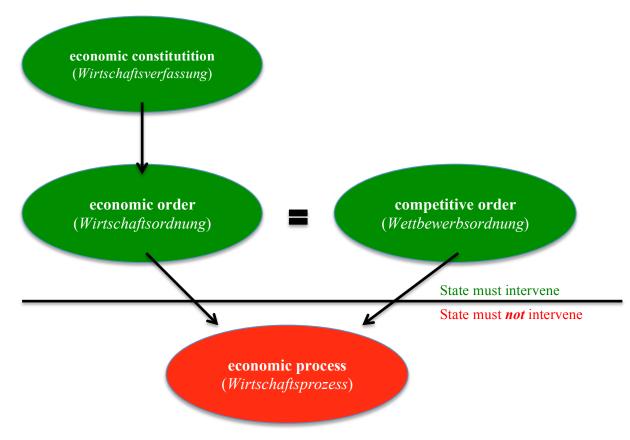


Figure 1. The ordoliberal difference between economic order and economic process

3.2.3 Constitutive principles of ordoliberalism

Eucken describes the constitutive ⁷⁵ principles (*konstituierende Prinzipien*, Eucken 1952/04: 254) of the ordoliberal economic constitution. As it became clear in the last paragraph, these are principles of the economic order. Eucken argues that the economic constitution should create a price system that makes perfect competition possible because prices reflect the scarcity of goods. This is his basic principle (*Grundprinzip*, *ibid*.). Six constitutive principles are at the basis of the economic constitution (see figure 2).

⁷⁵ After having developed the constitutive principles, Eucken describes the regulating principles (*regulierende Prinzipien*, Eucken 1952/04: 291) according to which the State should intervene in the economy in order to remove those elements that hinder the establishment of the competitive order. In the following part of the work, for reasons of space it is not possible to discuss the regulating principles. However, as Kolev (2013) argues, the constitutive principles have priority over the regulating ones, being the former more general.

Firstly, the principle of primacy of currency policy⁷⁶ (*Primat der Währungspolitik*, Eucken 1952/04: 255). According to Eucken, a competitive order is only possible if the value of the currency is stable. This has a stabilizing effect on the whole economy. Monetary policy should work automatically according to the price system: money supply should depend "on the change of commodity prices rather than the monetary authority's discretionary decision-making" (Feld 2015: 6). Interestingly, Eucken argues that the control of monetary policy should not be assigned to the central bank, because bankers could lack experience, they could have a weak stance towards interest groups and public opinion and, more generally, they could apply wrong theories. All this has the potential to increase the risk of central bankers abusing its powers and creating inflation through, for example, credit expansion, currency devaluation or a low interest policy (Eucken 1952/04).

Secondly, the principle of open markets (*offene Märkte*, Eucken 1952/04: 264). It is important to keep markets open for entry because having a close supply and a close demand hinders competition. Particularly dangerous are monopolies, because they give the right to carry out a certain activity only to a single enterprise. The only exception that admits monopoly is the central bank, which should have the exclusive capacity (i.e. the monopoly) to issue money. Eucken also points out that a threat to open markets comes from tariffs, which facilitate the establishment of monopolies through cartels of the industries protected by the tariffs. This second principle marks a difference with laissez-faire liberalism, namely that in the latter economic actors have the right to close the market if they have the power to do so (Eucken 1952/04).

Thirdly, the principle of private property (*Privateigentum*, Eucken 1952/04: 270). Eucken argues that the opposite situation, i.e. collective property of the means of production, does not lead to a competitive order for two reasons. Firstly, if the State owns the means of production, it is quite unlikely that it gives them to private producers. Secondly, even if this was the case, the State would give instructions to those to which it entrusts the means of production. But the State is generally unable to take decisions based on the right observation of market mechanisms. Only a producer that effectively has the property of its means would be able to take the correct decisions for operating into the

⁷⁶ See previous footnote. This also means that price stability has primacy over a policy aimed at reaching full employment or at reducing unemployment.

market.⁷⁷ It is important that private property is something economically efficient and socially useful (*"ökonomisch und sozial brauchbare[s] Instrument des Ordnungsaufbaues"*, *ibid.*, p. 273). This depends on the economic system: with monopolies, for example, private property becomes dangerous because producers could use their disproportionate power only to promote their interests and not the general benefit of society. In a competitive order, private property of the means of production instead implies on the one hand that producers, which own their means, have the freedom and the ability to produce for the benefit of all. On the other hand, it also makes sure that producers cannot limit the freedom and the capacity to produce of others at the expense of society. In sum, private property of the means of production is a prerequisite of a competitive order and, in turn, a competitive order is a prerequisite of an economically and socially good use of private property. In this sense, private property is also a prerequisite of freedom (Eucken 1952/04).

The fourth constitutive principle of the economic constitution is the freedom of contract (*Vertragsfreiheit*, Eucken 1952/04: 275). According to Eucken, freedom of contract works properly only in a competitive order and, thus, it requires the latter. On the contrary, monopolies undermine the freedom of contract because some actors are more powerful than others. Moreover, freedom of contract should not be used to create or to strengthen monopolies.

The fifth principle is liability (*Haftung*, Eucken 1952/04). According to this principle, who takes advantage of something, must also bear the costs (*Wer den Nutzen hat, muß auch den Schaden tragen*, Eucken 2004: 279). From this stems that who is responsible for an action, is also liable for it.⁷⁸ This principle is very important in a competitive order because it should encourage precaution in economic decisions, for example regarding investments.

There should be a direct link between those who decide something and the effects of their decisions. Eucken brings the example of the joint-stock companies (*Aktiengesellschaften*, Eucken 1952/04: 282): if a company has different shareholders but only the executive board takes decisions, the latter should be liable. If the executive board depends on the will of the larger shareholders, they should be liable. Eucken criticized the

⁷⁷ However, according to Eucken, State-owned enterprises do not necessarily hinder competition as long as the State does not modify market prices through subsidies to its enterprises.

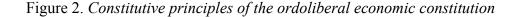
⁷⁸ The concept of liability (*Haftung*) must be distinguished from the concept of responsibility (*Verantwortung*). Liability is a responsibility in legal terms, while responsibility as *Verantwortung* indicates the fact of being accountable for something in non-legal terms.

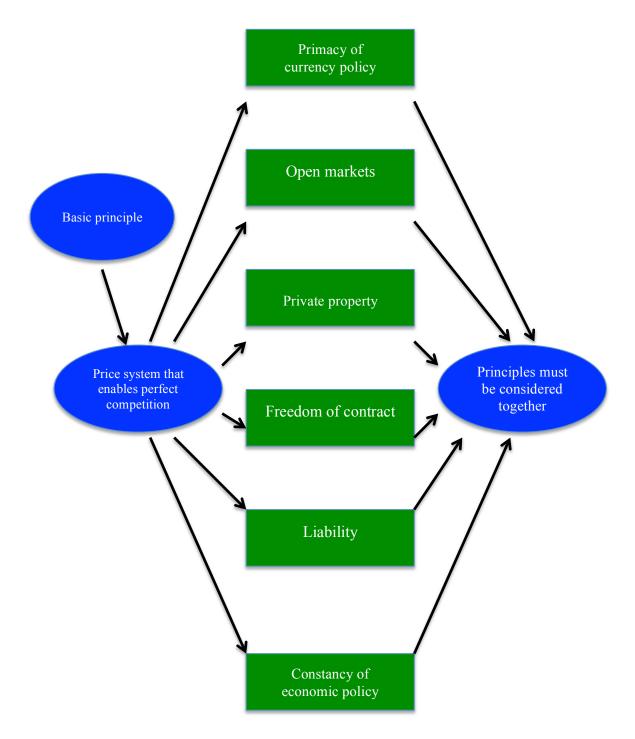
decoupling of control and liability that was widespread in Germany from 1936 to 1948, where central authorities took economic decisions but private companies, which should only execute them, were held liable for the effects. Companies with limited liability (in Germany, *Gesellschaft mit beschränkter Haftung, GmbH*) are similar to monopolies in that they foster the interests oft the enterprise and are against the common good of society. According to Eucken, *Haftung* is a requirement of the competitive order because it establishes a society based on freedom and personal responsibility. To limit the liability of economic actors fosters central planning systems and the rise of monopolies (Eucken 1952/04).

The sixth principle is the principle of "constancy of economic policy"⁷⁹ (*Konstanz der* Wirtschaftspolitik, Eucken 1952: 285). This is essential in order to make sure that an environment of confidence is created for investments. Since the expectation that economic policy changes continuously stimulates economic concentration (e.g. cartels), a constant economic policy is needed for the proper functioning of a competitive order.

Eventually, Eucken points out that the constitutive principles must be considered together as a unity (*Zusammengehörigkeit der konstituierenden Prinzipien*, Eucken 1952/04: 289). Only in this way is it possible to establish an economic constitution for a competitive order. Given the constitutive principles, how should monetary, economic and social policy be designed? The next section tries to explain it.

⁷⁹ English translation in Feld (2015: 14).





3.2.4. Monetary, economic and social policy according to ordoliberalism

I have already seen the ordoliberal concept of competition as *Leistungswettbewerb*. Competition policy (*Wettbewerbspolitik*) and monetary policy (*Währungspolitik*) are the real and the monetary part of the economic order respectively. Instead, economic policy (*Konjunkturpolitik*) and social policy (*Sozialpolitik*) are part of the economic process (Kolev 2013).

Regarding monetary policy, the political discretion to decide the quantity of money in circulation should be limited. This shall be achieved by preventing the State from being responsible for monetary instability and by assigning the exclusive competence for monetary policy to the central bank.

According to ordoliberalism, economic policy is something that depends on the circumstances and therefore no general theory can be formulated. Eucken opposes Keynesian economic policy because it represents a discretionary intervention in the economic process, which as a general rule should be avoided. An interventionist policy results in a price system that does not work properly like in a competitive order, since it does not represent the scarcity of goods. If the competitive order with its constitutive principles is well established, no further discretionary interventions are needed (Eucken 1952/04). Monetary policy has primacy over economic policy.

In the ordoliberal view, the framework of competition policy and monetary policy as parts of the general economic order balances the economic process and is able to absorb shocks⁸⁰ in an endogenous way. If the price system works correctly - i.e. prices and salaries are flexible and can increase and decrease - there is no need for the State to intervene in a Keynesian way.

Social policy is an important element of the ordoliberalism. This is shown by the fact that, as we have seen, the economic order must be dignified (Vanberg 2004). However, social policy should not be used to counterbalance the economic process based on free market. Social equality, for example, cannot be an economic objective for itself (Foucault 2004). There should be no trade-off between economic and other social objectives: they should all be connected together in the framework of the economic constitution (Goldscmidt 2008). Hence, if possible, social policy should be regulated by the competitive order, i.e. through the rules of the price system, without State intervention. This stems from the consideration that social inequality is due to the fact that there is not enough competition (Kolev 2013). In this sense, competition is a means for reaching social objectives (Goldschmidt 2008).

⁸⁰ There is a shock if exogenous factors, i.e. factors not foreseen within an economic model, cause a radical change to the parameters of that economic model and to its endogenous variables (Gabler 1992).

3.2.5. Main difference compared to laissez-faire liberalism, interventionism, central planned economy and neoliberalism

Ordoliberalism endorses free market and individual freedom, but at the same time it stresses the need for a strong State. It is useful to see the main differences between ordoliberalism and other schools of economic thought: laissez-faire liberalism, interventionism, central planned economy and neoliberalism (see table 1). Such differences are partially explained by Eucken.

Laissez-faire liberalism is an economic system dominated by free market economy, the functioning of which should not be influenced by the State. Using an ordoliberal terminology, the State must give free play to the economic process without intervening. It should not establish a specific economic order based on rules. The State shall limit itself to protecting individual freedom on the market and is not required to watch over the economic order. As long as freedom and rule of law are given, laissez-faire liberalism thinks that an economic order would establish itself freely and spontaneously (Eucken 1952/04). This also means that it is also not a duty of the State to put an end to private concentration of economic power (e.g. monopolies) or to social injustice (Gabler 1992). It is the main reason because, according to the Freiburg School, Laissez-faire is not an economically efficient and humanly dignified order. Manow (2000) identifies the core anti-liberal elements of ordoliberalism: distaste for pluralism and for balance of interests in the political process, trust in the steering of the State and emphasis on a general benefit in opposition to particular interests of economic actors. In addition to that, ordoliberalism also sees laissez-faire liberalism as an attempt to secularize society up to the point that it becomes void of religious values (ibid.).

On the basis of the degree up to which the State is allowed to intervene, Eucken introduces the other type of economic system besides laissez-faire liberalism: a system characterized by economic experiments (*Politik der Experimente*, Eucken 1952: 26). Such economic experiments resulted either in a central planned economy or in mixed economy. In the former, the State sets the order for the economy and intervenes in specific phases of it, i.e. it directly controls both the economic order and the economic process. It provides for no free market and no individual freedom.

In a mixed economy, economic actors can operate freely but the State intervenes in specific phases in the economic process. According to ordoliberalism, an interventionist

State becomes weak because, by entering continuously the economic process, it is more and more strongly influenced by private interests. It is thus unable to set a general economic order for the market. Eucken calls interventionism a policy of the middle course (*Politik der Mittelwege*, Kolev 2013: 25). Because it keeps free market but it intervenes in it, such a State undermines the stability of the price system (the most important element for the ordoliberals) and in the long run it results in a central planned economy.

Laissez-faire liberalism predominated in the 18th and 19th century Europe (Eucken 1952/04). However, after World War I it became increasingly discredited because, following Marx, it was accused to lead to imperialism and militarism. In this context, intellectuals with different cultural backgrounds, based in Vienna, London, Chicago and Freiburg, tried to develop a new kind of liberalism that preserves the key liberal concepts (freedom, competition and entrepreneurship), but tries to answer to the social question of an economy dominated by the market. This group of intellectuals called themselves "neoliberals" and met for the first time at the *Colloque Walter Lippmann*, a conference organized in Paris in 1938. It was there that the German socialist and economist Alexander Rüstow coined the term (Kolev 2013). Although they did not want to form a school, the common aim of the intellectuals meeting in Paris was to reform laissez-faire liberalism and to reject socialism.

Laissez-faire liberalism focuses on individual freedom in the market. The basis of free market is competition. Laissez-faire sees competition as a natural phenomenon that necessarily takes place as long as markets are free (Foucault 2004). In its original meaning of the 1930s, neoliberalism⁸¹ instead does not consider competition something that develops spontaneously. It thinks that "competition will only appear and generate its effects [...] when it is subject to a sequence of conditions which have to be carefully and artificially constructed" (Goldschmidt 2007: 10). A market based on free competition needs rules. The State should hence support the market by providing these rules. Only once competition has been regulated can it function automatically (Foucault 2004).

Neoliberalism recognizes that competition can be at risk when private actors gain economic power and try to escape the competitive mechanisms of the market. While

⁸¹ Today the term often has a negative meaning when it is used by those who oppose an order based on individual freedom (and globalization) and want to restore a socialist order based on equality (Prollius 2006).

laissez-faire, with its focus on freedom, accepts also monopolies if they result from the market, neoliberalism does not (Foucault 2004). Because of this, neoliberalism develops the idea that the State should protect competition from the market power that some economic actors could reach. The State should be strong. As we have seen, in Germany this idea took the name of ordoliberalism (Gabler 1992). This does not mean that neoliberalism and ordoliberalism are the same. However, it seems to be easier to distinguish laissez-faire from neoliberalism.

Neoliberalism calls for a stronger role of the State. Especially after World War II and the experience of Nazism, the State was quite discredited. But this was not the main problem for neoliberals. They knew that the State had shortcomings. The market does not. If the market does fail, it is the fault of the State which either intervenes too much or too less. The challenge for neoliberalism was hence to give again legitimacy to the State thanks to the market. Unlike laissez-faire, for neoliberalism free market should not set the limit of State's intervention, but it should be the guiding principle orienting State's action (Foucault 2004). As Goldschmidt (2007: 8) points out, neoliberals "want the market to have a regulatory effect on state action". The way the State acts should be consistent with market principles. In this sense, the State should support the market. It should create an economic order that guarantees freedom and watches over it. In this way the State can become legitimate again (Foucault 2004).

I have shown that, unlike laissez-faire, neoliberalism is an intervening liberalism (*ibid*.). The field of intervention is the economic order, not the economic process. In its original meaning, neoliberalism has many elements in common with ordoliberalism. Starting in the 1970s, the term "neoliberalism" came to have a more pro-market meaning and calls for a less active (if any) role of the State. I want to highlight the main differences between ordoliberalism and those positions that can be considered more neoliberal in a modern sense, namely that of Friedrich von Hayek (1899-1992). For the sake of brevity, but also for the aim of the present work, the main difference between ordoliberalism (Hayek) will be sketched out focusing on the role of the State. This is useful in a twofold way: firstly, because it should make clear the specificity of ordoliberalism and, secondly, it should pave the way for the transition from ordoliberalism to SME.

We have seen that the main concern of ordoliberalism is to prevent the formation of economic power wielded by private actors or by the State. Free market and rule of law are a necessary but not sufficient condition to limit economic power. The State must establish rules for the economic order and then act like a referee that monitors the game, i.e. the economic process (Kolev 2013). Its field of activity is thus clearly and precisely limited to an initial phase. State interventions in the economic process are justified only in exceptional cases: to restore competition if a concentration of power has occurred or to centralize an economic activity in a single firm by reason of efficiency (e.g. for natural monopolies in the supply of electricity or water).

Hayek is usually considered to be an exponent of a more modern form of neoliberalism rather than ordoliberalism. However, during his stay at Freiburg University (1962-1969), he shared the same view on the role of the State as the ordoliberals. Both Eucken and Hayek think that the State has a positive, not a minimal role: it must set rules, not only remove obstacles to free market like it in laissez-faire liberalism. Also Hayek stresses the difference between economic order and economic process. The State shall not intervene in a discretionary way. Moreover, both authors fear that interest groups dominate democracy. (Kolev 2013).

Afterwards, during the so-called third phase of its activity, Hayek develops a different position on the role of the State. Its main *topos* is not, like Eucken, economic power, but knowledge (*Wissen*) and how this knowledge is distributed in society (Kolev 2013). The basic knowledge in an economic process is the price as indicator of scarcity. The importance of the price system is a common element between Hayek and Eucken.

Knowledge is a fundamental part of the economic order, but the State cannot be able to "centralize" this knowledge, i.e. to set an economic order. According to Hayek, what dominates society is not the competitive order of Eucken, bust a spontaneous order. The latter means an order that stems freely from the actions of individuals. Such actions are coordinate through rules, but there is not an order perceived as such by individuals. There is only a spontaneous order in which the State must not intervene to set rules. Through cultural evolution society can learn from the patterns of its groups and is able to build its own framework of rules. The State cannot know precisely the rules of the economic order. Hence, instead of setting its own rules, the State should support the framework of rules spontaneously created by society (Kolev 2013).

Hayek's doubts about the ability of the State to set an order is also due to the fact that only economic actors have the necessary knowledge to understand the price system. Any attempt by the State to centralize knowledge and establish an order must be rejected as an arrogant attempt by the State to go beyond its means (*ibid*.). Freedom of society is more important for Hayek than for Eucken (Goldschmidt 2012), because the former thinks that only a free society can make the best use of knowledge (Kolev 2013). For the latter, freedom is something that the economic order must establish. Order comes before freedom. As Goldschmidt (2012: 10) notes, "for Hayek, [...] in line with the Anglo-Saxon tradition in general, a liberal society is first and foremost characterized by the possibility to exercise individual freedom." Eucken instead stresses the need to avoid concentration of economic power. Only an order that can prevent concentration of power can at the end establish freedom. Hence, for Hayek the State has to act less intensively than for Eucken, but it should also not completely abstain like in laissez-faire liberalism.

To sum up, Hayek represented rather something closer to a "pure" form of liberalism and was also very critical of SME because of its interventionist character. Hayek's liberal stance becomes clear in his idea of competition as a process of discovery (*Wettbewerb als Entdeckungsverfahren*), of the spontaneous market order and of the criticism of the welfare state (Prollius 2006). Following Goldschmidt (2012: 11), "Hayek believes that competition is more or less an economic natural state requiring a substantial absence of state intervention."

Together with Milton Friedman and the Chicago School, Hayek is often depicted as an exponent of the neoliberalism that started in the 1970s and was mainly applied by Ronald Reagan in the US and by Margaret Thatcher in the UK. This "modern" version of neoliberalism calls for a minimal State that abstains from intervening in the economy (both in the order and in the process). The main task of the State is be to protect individual freedom. Besides this, this neoliberalism pushes for liberalization, privatization and deregulation. The market is at the foreground. On the basis of this analysis, it can be said that, among the various theories that can be labelled neoliberal, ordoliberalism has mostly underlined the need for State that intervenes in the economic order.

economic policy	State intervention in the	
	economic order (Wirtschaftsordnung)	economic process (Wirtschaftsprozess)
laissez-faire liberalism	no	no
ordoliberalism	yes	no
interventionism	no	yes
central planned economy	yes	yes
neoliberalism	no	no

Table 1. Classification of economic policy according to State's intervention

3.3. Social market economy and ordoliberalism

The concept of Social⁸² market economy (SME, in German: Soziale Marktwirtschaft) was first used in 1947 by Alfred Müller-Armack (1901-78), the head of the Grundsatzabteilung⁸³ of the Ministry of Economy of the Federal Republic of Germany.⁸⁴ As Prollius (2013) notes, it is not always clear which authors belong to SME. This is also due to the fact that SME has important differences but also several similarities with respect to ordoliberalism (see table 2). SME was an attempt to move from the central planned economy of the Nazi period (1933-45) to a free market economy. Like ordoliberalism, it opposed laissez-faire liberalism, interventionism and central planned economy.

As we have seen, ordoliberalism argues that the State should generally abstain from intervening in the economic process. The only possible interventions are those aimed at reestablishing the economic order if this has been put at risk. Also SME agrees on the need for a State that sets a competitive economic order, but it is aware of the shortcomings of the order itself. For ordoliberalism, assuring a framework of competition is the best social policy. Hence, while economic policy for ordoliberalism requires only the State to set the economic order, for SME the State has to set the order but it has also to do social policy within the economic process. In order to benefit the whole society, free market needs a framework of legal rules that assure the respect of economic actors for fair competition.

⁸² Since he assigns great importance to the social needs that the State must address, Müller-Armack used to write the concept of "Social market economy" with capital "S" (Prollius 2006). As long as I present (Müller-Armack's) SME, I will follow this writing.

⁸³ As Joerges (2015: 5) points out, "[...] a very ordoliberal and, hence, hardly translatable term [...], a section of officials in the Ministry of Economic Affairs, which was entrusted with the task of elaborating the principles upon which policy making should be based." ⁸⁴ In 1955, he was the German representative in the negotiations leading to the Treaty of Rome and

influenced them in a free market-oriented way (Watrin 2008).

The market is essential to promote well-being, but the latter is not automatically spread to all social groups (Watrin 2008).

The market thus needs some corrective mechanism. Müller-Armack was aware of the risk that free market economy, already quite discredited in Germany, could be perceived as a system focused only on consumers and producers. He recognizes that a competitive order was a necessary but not sufficient condition for social progress. The State has to be more active on social policy in order to face inequalities (Watrin 2008). SME is thus an attempt to combine individual freedom and social justice through the instruments of a market economy. Müller-Armack thought that this was the way to achieve a "social peace" (*soziale Irenik*, Manow 2000: 11) between liberalism and socialism. In order to promote well-being, the market must be steered and corrected towards social aims. Unlike ordoliberalism, SME considers the market a means that, albeit indispensable, needs some correction also from within, i.e. in the economic process.

SME shares the ordoliberal vision on the competitive order and a stable monetary policy, but it stresses the need for a more active social policy. It is important, however, to prevent social actors like trade union to become too powerful and undermine the competitive order. Müller-Armack also refers to a better relationship between entrepreneurs and workers through the right to participate on certain decisions within the enterprise (Watrin 2008).

If Müller-Armack was the theorist, Ludwig Erhard (1897-1977), economic minister and then chancellor of the Federal Republic of Germany, became the first politician that tried to apply the principles of SME. He is considered to have given an important contribution to what is considered the German post-war economic miracle, known as *Wirtschaftswunder* (Commun 2004). However, on social policy Erhard shared the ordoliberal view that competition is the best social policy and that specific State interventions should be avoided (Prollius 2006).

His core idea of economic policy can be found in several speeches (e.g. Erhard 1957). Erhard thought that freedom and social security must be complementary: the freer the economy, the more able to reach social aims it is going to be. That he was influenced by Eucken's ordoliberalism becomes clear from its belief that economic policy must not be interventionist, but that it must limit itself to set a competitive economic order at the basis of which there should be a correct price mechanism. This is the reason why the State

should always fight against any factor that alters the price mechanism, like price controls, subsidies and also monopolies (*ibid*.). He can be considered "the most influential defender of ordo-liberal positions in the Adenauer era [1949-1963]" (Joerges 2015: 5).

The State has to watch over the economic order. Within this order, individuals are not only free, but also strongly encouraged to follow their creative will while at the same time being responsible for their action. Erhard knew that the interests of the economic actors are not necessarily consistent with the overall well-being of society. Interest groups continuously try to get support from the State to reach their objectives (Erhard 1957).

Since he considers the interference between the economy and the State harmful, Erhard is strictly against State intervention in the economy. He defines himself as minister of the economy, not as representative of specific interests. Being responsible for economic policy means to be constantly responsible for all citizens. Society is made up of different interests, but in a properly working economic system these interests should all be directed towards the general economic order and be realized only to the extent that they are compatible with this order. Not only should the State not accommodate specific interests, but also the economic actors should refrain from influencing the State. The State, not the economic actors, must do economic policy (*ibid.*).

According to Erhard, interventionism is problematic for two reasons: discretion makes it difficult to decide whether to intervene or not and in the long run makes the interventionists (welfare) State unsustainable; the economy is an interdependent system and one action has repercussions on different fields of the system. This is why interventionism risks undermining the economic order. The economic policy of the State should protect freedom by eliminating economic powers that want to restrict it. Since too much freedom cannot be used to limit the freedom of others, where there is concentration of economic power the State must intervene (*ibid*.).

Table 2 summarises the main differences between ordoliberalism as elaborated by the Freiburg School and SME as theorized by Müller-Armack. Both assign to the State the function of watching over the economic order. However, in the case of ordoliberalism, the State must limit itself to setting the order and must not intervene in the economic process. SME has a more flexible approach, being ready to intervene in order to do an active social policy. Since for Müller-Armack the State must act on social policy, *Ordnungspolitik*, i.e. "the role that government needs to play in providing and securing an adequate institutional

framework for a well-working market economy" (Vanberg 2012: 6), is not its only task like it is the case for the ordoliberals. The point of reference of political action is therefore not only consistency with the economic order, but also achievement of social aims. Both ordoliberalism and SME consider competition a constitutive element of the economic order and a means to spread well-being among society (although for Müller-Armack it is not sufficient for social policy).

	Ordoliberalism (Freiburg School)	Social market economy (Müller-Armack)
Role of the State	to protect individual freedom from private and State power	to reach social objectives (compromise between different <i>Weltanschauungen</i>)
Perspective	individualistic (bottom-up)	holistic (top-down)
Function of politics	rule-oriented; to set principles of the economic order	aim-oriented; it accepts discretion in economic policy decisions in order to adapt to different situations and social needs
The State as	keeper of the economic order (freedom and rule of law)	strongly active actor in social policy (paternalistic)
Policy instruments	<i>Ordnungspolitik</i> (it decides the economic order)	<i>Gesellschaftspolitik</i> (to set the economic order is only one task of the State: he has important tasks also on social policy)
Competition	universal principle for a balance of interests between economics and politics	instrument to increase material well-being
Point of reference for political action	Consistency with the general economic order	1. consistency with social policy aims; 2. consistency with the market through the price mechanism

Table 2. Comparison between ordoliberalism and Social market economy

Source: Prollius (2006: 61), free translation from German.

As we have seen, SME was an attempt to unify the logic of free market and the establishment of social security. However the State's activism in social policy formulated by Müller-Armack, which takes the form of redistribution of resources, is at odds with the ordoliberal view. The same can be said more generally for State interventions in the market. The result is that the whole competitive order – the pivot of ordoliberalism but also of SME – risks being undermined (Prollius 2006).

Erhard was convinced that SME would be successful if the majority of citizens accepted its principles (Erhard 1957). But how could it be that SME was more or less accepted as the new economic order of post-war Germany and is still today considered a success in the Federal Republic? To answer this question, it is necessary to resume the socio-religious contraposition sharpened at the end of the Weimar Republic.

3.4. Social market economy as a compromise between two orders

Müller-Armack hoped that his idea of SME would represent a social peace between liberalism and socialism. Given the harsh opposition of the Protestants towards the welfare State at the end of the Weimar Republic, this social peace had also to reconcile the relationship between the Protestants and the Catholics. In order to reach both aims, it was crucial to find a common answer to the question of "how modern capitalism should and could be embedded in a broader moral order (that is: an agreement on how to correct unacceptable market outcomes through welfare state intervention" (Manow 2000: 11).

This seemed to be all but an easy task, considering that after the end of World War II the Catholics aimed at re-establishing the Bismarkian welfare State from which they had benefited successfully almost since the beginning. Their ability to organise the interests of different groups, especially those of the working class, in the self-administration of the insurance schemes mirrored the importance of the subsidiarity principle in the Catholic doctrine (*ibid.*).

The Protestant ordoliberals had to accept that their call for an authoritarian solution to the crisis of the Weimar Republic had resulted in a dictatorial regime far beyond their call for a strong State. However, they continued to be against the re-establishment of the Bismarckian welfare State because they feared the State would be held again hostage by the interest groups. The Protestants were also aware of their inability to use the welfare system to get political support. But this was indeed coherent with their idea of an elitist and paternalistic social policy that deliberately wants to keep at a safe distance from the masses (*ibid.*).

Protestants wanted to develop their own new social doctrine epitomized by SME. Müller-Armack's aim was to rebuild the welfare State together with the Catholics. However, this "deliberate compromise struck between a 'Catholic' welfare state and a [Protestant] liberal market order" (*ibid.*, p. 11) failed. The ordoliberal idea of competition as the best social policy proved to be unsustainable and with the 1950's pension reform (1957) the corporatist Bismarckian welfare State was restored (Prollius 2006).

This does not mean that the Protestant ordoliberals lost their battle completely. Indeed, if on the one hand the welfare State was re-established, on the other hand mechanisms and institutions were set up that limited political discretion or even political influence. The new State in the SME was not authoritarian but in important domains it was strong, i.e. constrained in the discretion of its decision-making. If we recall the original positions of the Freiburg School, this can be seen as a victory for ordoliberalism.

From an institutional point of view, protecting the decision-making process from political influence can be reached through the creation of non-majoritarian institutions. In chapter 1, I have defined non-majoritarian institutions as "those governmental entities that (a) possess and exercise some grant of specialised public authority, separate from that of other institutions, but (b) are neither directly elected by the people, nor directly managed by elected officials". A prominent example in this case is the German central bank (*Bundesbank*). There are also other non-majoritarian institutions playing the role of veto players, like the Federal Constitutional Court (*Bundesverfassungsgericht*) or the Federal Cartel Office (*Bundeskartellamt*).

The restoration of the Bismarckian corporative welfare State also meant "long-term coordination between organized labor and capital [...] in which strong business associations, trade unions and other para-public organizations are used to coordinate the implementation of policies" (Manow 2000: 23). I will show some examples of how post-war Germany has tried to develop this coordination mechanism and the implication this can have.

As Manow (2000) notes, there is therefore not a single order in Germany's SME. On the one side we have an order that epitomizes the original ordoliberal concept of economic constitution: this order aims at constraining political discretion in decisions of economic and monetary policy. On the other side there is an order "primarily contracted between the social partners" (*ibid*.) and typical of the corporatist welfare State⁸⁵ which developed during the Bismarckian empire.

The two orders proved to reinforce themselves mutually. The "contracted economic order" (*ibid.*, p. 24) encouraged different interest groups to coordinate the implementation of policy decisions. Since in several domains, including the economic and monetary one, the decision-making capacity for policies is relatively constrained by the (ordoliberal) economic constitution, also the outcome of negotiations between interest groups is likely to be relatively constant and foreseeable. Furthermore, the fact that both types of actors – policy makers and officials in the realm of the economic constitution and interest groups in the realm of the contracted order – faces constraints on their actions results in an environment of mutual trust. The whole economic order was designed to be very stability-oriented.

3.5. Stability as the result of the compromise between the two orders

Despite Erhard's attempt to give the Federal Republic an ordoliberal economic order, it soon became clear that Germany would not follow only a single approach of economic policy. When the Constitutional Court had to assess the constitutionality of a law on investments (*Investitionshilfegesetz*, 1952) that introduced redistributive measures in favour of the raw material industry (Prollius 2006), it stated that "Germany's Basic Law is not legally committed to an order which relies exclusively on pro-competition regulation" (Joerges 2015: 7). The economic order must not necessarily be centred on competition like ordoliberalism suggested.

Consistent with ordoliberalism was the law establishing the German Bundesbank (1957), which made the central bank a non-majoritarian institution, independent of politics and committed to the overriding objective of price stability. The 1957 law against restraints of competition (*Gesetz gegen Wettbewerbsbeschränkungen*) marked a return to corporatism, because organised interest groups, especially large-scale industries, managed to become more influential in economic policy decisions. Moreover, the law is not consistent with ordoliberalism because it accepts too many exceptions to perfect competition (Prollius

⁸⁵ The pivots of this welfare state were parity of representation of organized capital and labour in the administration of the insurance, concentration of the benefits on the core workforce and the emphasis on status preservation (Manow 2000).

2006). Hence, the SME of the Federal Republic was not a concept full in line with the Protestant (ordoliberal) idea of welfare and social policy.

I have shown that SME was more pragmatic and less dogmatic than ordoliberalism. Already in the 1950s ordoliberal ideas were not central any more in Germany (Prollius 2006). Instead, the importance of competition and economic freedom influenced the origin of the European Economic Community (Joerges 2004). Germany soon reached a significant degree of internal stability due to the steady economic growth of the first post war decade (Prollius 2006). In 1965, Erhard used the term "formed society" (*formierte Gesellschaft, ibid.*, p. 129) to indicate a society in which different sectors – politics, economics, science and culture – are willing to cooperate in order to mediate their positions. He underlined the necessity of developing a mechanism able to mediate different interests like the competitive mechanism does in the market (*ibid.*). This is somehow what will happen, albeit in a different form, some years later.

The second half of the 1960s can be seen as the end of the SME as it was conceived by Müller-Armack and Erhard, i.e. in a way more similar to ordoliberalism. From that moment on there was a tendency towards Keynesianism⁸⁶, interventionism and coordination of the economy. As for social policy, a spread of the welfare State was to come. The Social Democratic government led by Karl Schiller adopted three laws that were considered a synthesis between ordoliberal and Keynesian positions (*ibid*.).

In 1967, the "Law to Promote Economic Stability and Growth"⁸⁷ (*Gesetz zur Förderung der Stabilität und des Wachstums der Wirtschaft*, StabG) was adopted. Influenced by the Keynesian idea of global steering of the economy (*Globalsteuerung*), the law was an attempt to promote growth through the joint action of different economic actors. According to Art. 1 of the law, the Federation and the *Länder* must aim at a general economic balance by contributing simultaneously to price stability, high employment, positive balance of trade and sustainable economic growth. To coordinate actions on the different levels of government, a Stability Council was established.

⁸⁶ Keynesianism argues that during a negative economic cycle demand must be strengthened through both an expansive monetary (low interest rates to stimulate investments) and fiscal policy (more government expenditures, also in the form of deficit spending). Possible drawbacks of this approach are too much State intervention in the economy and a higher inflation rate (Prollius 2006).

⁸⁷ English translation in Feld (2015: 8).

The novelty of the law is a meeting of representatives from the local authorities and the industrial sector, both representing employers (e.g. the Confederation of German industry) and workers (e.g. Confederation of German Trade Unions). They should exchange information and coordinate their action with a view to reaching the objectives of Art. 1 (Prollius 2006). The attempt of this "concerted action"⁸⁸ (*Konzertierte Aktion*, StabG, Art. 3) was to decide together in advance the main questions of economic policy in a framework that favours compromise and tries to overcome conflicts between interest groups⁸⁹ (Abelshauser 2004).

Related to the *Konzertierte Aktion* was the 1972 law introducing the right of works councils to participate in decisions regarding the economic process (Works Constitution Act, *Betriebsverfassungsgesetz*). In enterprises with more than 100 workers this included, among other things, the right to be informed of both the economic situation of the company and the investment budgets. The 1976 law on co-determination (*Mitbestimmungsgesetz*) gave works councils more rights to participate in the policy of the enterprise. Thanks to the law, workers gained equal representatives in the supervisory board of enterprises with more than 2000 employees (Prollius 2006).

These provisions just sketched out aimed at reinforcing the contracted order. It is beyond the scope of this work to assess the effectiveness of the measures just sketched out.⁹⁰ What is relevant for the analysis is the aim they pursue. They are a mechanism that provides incentives for different interest groups to try to overcome conflicts through compromises and the search for consensual decisions. Even if conflicting interests are not always solved, the attempt to put different actors on an equal footing stimulates an exchange of information, interests and claims. It helps to create an environment of mutual trust, also because the mechanism is institutionalised and the State acts as a moderator. But the State is relatively constraint in its activity due to the presence of many veto players: the non-majoritarian institutions of the economic order, especially the Bundesbank and the Federal Constitutional Court (FCC). Hence, if different actors coordinate certain policies,

⁸⁸ See previous footnote.

⁸⁹ One of the most importan objectives was to reach agreement on wages that are consistent with the supposed development of economic production (Abelshauser 2004).

⁹⁰ The *Konzertierte Aktion* lost momentum after the first years because the moves of the different actors were systematically anticipated by investors and the possibility of jointly steering the economy in the framework of a business cycle proved to be an illusion. Moreover, the members of these meetings, being representatives of their respective groups, did not always be willing to compromise. Eventually, the trade unions left the *Konzertierte Aktion* in 1977 (Prollius 2006)

"the content of these policies is relatively fixed given that the realm of political discretion is narrowed by many constraining factors" (Manow 2000: 24).

Thus, the result of the combination of the economic and the contracted order is a certain degree of predictability as regards the outcome of decisions. Both orders try to limit the effects of large discretion. Stability can be seen as the result of the institutional compromise between the ordoliberal economic order and the contracted order, which is "to a considerable degree based upon the Bismarckian welfare State" (*ibid.*). The latter point does not necessarily make it conflicting with ordoliberalism by reason of an institutionalised participation of different actors with different interests in economic policy decisions (Prollius 2006). That precisely the SPD introduced important elements of the contracted order is not very surprising if one remembers that the Social Democrats had been among the most beneficiaries from the Bismarckian welfare State. Post-war SME hence developed through the confluence between ordoliberalism and Social Democracy: the former represents the ordoliberal order, the latter the contracted order.

Indeed, the long-term perspective of an order negotiated between different interest groups seems also to be consistent with Eucken's principle of constancy of economic policy. As we have seen, this principle implies a framework in which decisions do not change continuously and radically. Economic actors have a set of information on which they can rely in the medium or long term. If the German post-war economic order was thus made up of two distinct orders – the ordoliberal and the contracted one – the lowest common denominator of them was a search for overall stability.

3.6. Conclusion

This chapter has analysed ordoliberalism and SME. Ordoliberalism was born in the 1930s as a response against the Weimar Republic, in which the State was too much influenced by economic actors. Walter Eucken, the main exponent of the Freiburg School of ordoliberalism, called for a strong State that should stay above partisan interests. This State should establish an economic constitution made up of legal rules that give order to the economy. It should not directly intervene in the economic process, i.e. in the free market. Its task should be to watch over the economic order. The economic order should be based on competition.

Ordoliberals belonged to the Protestant middle class. They argued that the welfare State of the Weimar Republic, firstly introduced in the Bismarckian empire, was too interventionist. This led to a weak State and to too powerful economic actors. Ordoliberalism hence wanted to set up an economic order that put an end to this situation and promoted individual freedom.

The economic constitution includes constitutive principles: the primacy of currency policy based on price stability, open markets, private property, freedom of contract, liability and constancy of economic policy. According to ordoliberalism, economic policy should not be interventionist because this would alter the price system representing the scarcity of goods. Social policy should be reached through a well-functioning competition. It should not be used to counterbalance the effects of the market.

Ordoliberalism is the German version of neoliberalism. The latter was born as an attempt to renew classical laissez-faire liberalism. In laissez-faire, the State limits itself to protect individual freedom. It does not intervene in the economic order or in the economic process. Central planned economy is an economic policy in which the State directly intervenes in both the order and the process. Interventionism foresees specific interventions in the economic process.

Unlike laissez-faire, both ordoliberalism and the neoliberalism of the origin think that competition is not a natural phenomenon: a "strong" State must regulate it. However, it is mostly the German ordoliberalism that stresses the need for a strong State. Anglo-Saxon neoliberalism, epitomized by Hayek, tends to not assign a very strong role to the State because the latter does not have the knowledge necessary to establish the economic order. Such an order is spontaneously created by society, it should not be set by the State. These positions are actually closer to laissez-faire liberalism.

The Anglo-Saxon stress for a less active State somehow paved the way for the minimal State that has developed in the U.S. since the 1970s, mostly inspired by Friedman. It is by reference to this approach that the term neoliberalism is mostly used today. According to this version of neoliberalism, the State should abstain from intervening in the economic order and in the economic process. It should promote liberalization, privatization and deregulation.

SME characterized post-war Germany. It was an attempt to combine individual freedom and social justice through the instruments of a market economy. SME shared the ordoliberal idea of competition and the role of the State in setting the economic order. However, for SME the State must occasionally intervene in the economic process in order to actively do social policy. SME's approach is thus more pragmatic, while ordoliberalism is more dogmatic.

SME represented a compromise between two economic orders: the ordoliberal order (non-majoritarian institutions acting as veto player) and the contracted order (which mirrors the corporative welfare State introduced by Bismarck). According to the contracted order, there are institutionalized frameworks in which different actors (e.g. representatives of labour and capital) coordinate their interests. This order was mainly developed in the 1970s by the SPD-led government of Schiller: the concerted action and the co-determination are two examples at stake. Because of this, SME can also be seen as a confluence between ordoliberalism and Social Democracy.

In the ordoliberal order, veto-players (e.g. the Bundesbank and the FCC) limit the discretion of policy makers. The contracted order is an attempt to incentive different groups, put on an equal footing, to overcome conflicts through compromises and consensual decisions. Since the State acts as a moderator, the mechanism is institutionalized. Both order establish an environment in which the outcome of decisions is rather predictable. Stability is thus the result of the compromise between the two orders.

4. Germany's influence on the EMU

4.1. Introduction

In chapter 1 and 2, I have shown the main principles according to which the EMU works. Chapter 3 has seen the main principles of ordoliberalism. This chapter compares the main principles (fundamental and constitutive) of ordoliberalism with those principles that can be identified on the basis of the EMU's provisions and the measures taken to face the Eurozone crisis.

Firstly, I assess whether the ordoliberal notion of economic constitution is similar to the economic constitution of the EMU. Secondly, I analyse the statutes of the German Bundesbank and of the ECB in order to see if they are similar. Thirdly, I try to see if Eucken's principle of liability can be found also in the EMU. Eventually, I examine the importance of sound public finances and competitiveness on the basis of a comparison between the 2009 German debt brake and the 2012 Fiscal Compact.

If there is a close similarity identity between ordoliberals and EMU's principles, I will be able to conclude that Germany has influenced the EMU from the MT to the Eurozone crisis. This should enable me to move a step further and assess whether this influence, if any, has been so significant that it has resulted in a German predominance in the EMU.

4.2. The economic constitution

In the EMU, MSs agreed to centralize monetary policy and to decentralize economic policy. They accepted to "regard their economic policies as a matter of common concern" (TEC, Art. 103), but they committed themselves only to voluntary coordinate such policies. Following a French request, in principle each State decides its economic policy autonomously. However, because of Germany's insistence, some provisions constrain the decision-making autonomy of MSs.

We can approach the EMU in the ordoliberal terms of am economic constitution made up of an economic order and an economic process. The legal provisions of the EMU set the economic order. MSs first incorporated these provisions in the MT and then in the following European treaties. In this economic order, MSs maintain control of the economic process (decisions on economic, fiscal and budgetary matters). The MT's decentralization of economic policy is thus constrained by the provisions of the economic order. The economic order of the EMU includes two elements: legal rules that constrain political discretion and provisions that watch over the compliance with these rules. This resembles the ordoliberal idea of the State that sets the rules for economic actors and has then the task of assuring that they are followed. Now I want to briefly distinguish the provisions of the EMU that constrain discretion (I call them constraining rules) in economic policy from those that watch over the (remaining) discretion (controlling rules). They can be both understood as rules of the economic order that have an impact of the economic process.

Among the constraining rules in the MT (and in the LT), we have: the deficit and debt criteria, the convergence criteria, consistency of MSs' economic policy with the broad guidelines established by the Council. The most significant constraint is that MSs have to avoid excessive deficits. If they have an excessive deficit, they are further limited since they have to put into practice the Council recommendation to put an end to the deficit. If they do not do it, they have to directly adopt the measures the Council considers opportune for deficit reduction. The SGP requires MSs to have an approximate balance or a small surplus on average over the business cycle, with a ratio of deficit/GDP of 3%. Moreover, they have to submit to the Commission annual stability programmes aimed at achieving the MTO.

The Eurozone crisis has been characterized by an increasing number of provisions limiting national discretion in economic policy. MSs asking the EFSF for financial assistance must make sure that their economic policy complies with the MoU they sign with the Commission. In the context of the European Semester, MSs must inform the Commission of fiscal and budgetary policies they want to adopt and how they comply with the deficit and debt criteria. Moreover, after the Council has approved the CSRs, each MS must include them into the budget plan for the following year.

The Six Pack further constrained the time each State has to carry out its economic policy. In case of imbalances, the State must submit corrective measures and reduce its debt yearly. It must take effective action within six months from a Council recommendation and correct its deficit within a year from the identification. Moreover, the State must report to the Council and to the Commission his discretionary measures taken or planned.

The Two Pack contains significant proposals that have become binding rules in the Fiscal Compact. The latter represents perhaps the most significant constraint on national economic policy discretion, especially if we consider the commitment to introduce the principle of balanced budget into national law, preferably in the constitution. Moreover, States in an EDP must put in place a budgetary and economic partnership programme with detailed structural reforms. Also the coordination is further strengthened, because all major economic policy reforms must be discussed in advance with the other MSs and with the European institutions. Additionally, MSs must report *ex ante* on debt issuance plans and must commit themselves to support the recommendations of the Commission in an EDP.

The "Report towards a genuine Economic and Monetary Union" proposes that MSs have to justify and receive prior approval of issuance of government debt beyond the level agreed in common. The SSM extends further constraints also to the banking sector by providing that the ECB can intervene in the less important national banks if national supervisory authorities do not act effectively.

Reg. No. 473/2013 of the Two Pack commits MSs to annually present to the Commission and to the Euro Group a draft budgetary plan for the forthcoming year. After the Commission has assed it, States have to adopt their budgets for the following year by December 31. In case of an excessive deficit, they must submit to the Commission the policy measures and the structural reforms (economic partnership programme) to overcome the deficit. If the Council finds that there is an excessive deficit, States are subject to reporting requirements and must show the budgetary impact of any discretionary measure.

Reg. No. 472/2013 constrains economic policy of MSs under an enhanced surveillance. These MSs must adopt specific measures aimed at addressing the (potential) source of difficulty. The Council can recommend to the MS in question corrective measures or ask it to prepare a draft macroeconomic adjustment programme. A similar programme with annual budgetary targets must be developed when MSs apply for financial assistance.

The other type of rules of the economic order, the controlling rules, usually involve the Commission and the Council. However, with the worsening of the Eurozone crisis also other actors became able to control MSs' compliance with the rules of the economic order.

In the MT, the Commission can address a recommendation to the Council, which monitors if the economic development of MSs is consistent with the broad economic policy guidelines. Moreover, the Commission monitors budgetary discipline and can start an EDP by reporting to the Council. The latter has to decide whether there is an excessive deficit.

In the SGP, the Commission first assesses whether there is an excessive deficit. It also evaluates the MTO of MSs. The Council can address early warning to a MS in order to prevent an excessive deficit. Regarding the possibility to issue sanctions, the Council has full discretion in the case in which the deficit is above 3 % and the decline of GDP is between 0.75 % and 2%. In the other cases, sanctions should in principle be imposed automatically, but at the end the Council formally retains its discretion.

In the reformed SGP, the Commission maintains the power to start an EDP and the Council decides on sanctions. It has now more than one-year time to issue non-binding recommendations in order to make MSs correct their deficits. This mechanism encourages pressure by the other MSs. For the first time, also MSs can somehow have a role in the control over the compliance with the rules.

The LT preserves the Commission's monopoly to initiate the EDP and the Council's discretion in issuing sanctions. In the EFSM, the Commission monitors compliance with the macroeconomic adjustment conditions that a MSs must meet to receive financial assistance. Similarly, in the EFSF the Commission assures compliance with the terms of the MoU it agrees with the MS asking for assistance.

The Six Pack is the first step in the direction of a more influential role of the Commission in watching over the rules of the economic order. According to Reg. No. 1173/2011, the Commission can recommend to the Council that a MS in an EDP pays a deposit. The recommendation is deemed approved unless the Council decides, within 10 days, to amend or reject it by RQMV. Moreover, the Commission has extensive powers to examine the accounts of MSs that misrepresented deficit and debt data. Also the ECJ plays a role in the control mechanism, since it can review a Council's decision to impose fines.

According to Reg. No. 1174/2011, on the basis of a recommendation by the Commission, the Council can impose not only interest-bearing deposits, but also annual fines of the same size. Again, the recommendation of the Commission shall deemed to be

approved unless the Council decides to reject it. The surveillance capacity of the Commission and the Council is further increased by the possibility – foreseen by Reg. No. 1175/2011 – to better monitor *ex ante* and *ex post* convergence programs or stability programs of the MSs.

The Commission publishes an annual report and assesses whether MSs have imbalances (Reg. No. 1176/2011). After the Council has discussed the report, the Commission does an in-dept review. The Council can establish the existence of imbalances. It endorses corrective measures of a MS or it submits an alternative plan. The Commission monitors the implementation of the alternative plan. When a MS has not taken a corrective plan, the Commission sets up a recommendation with new deadlines for corrective actions. Again, the Council can reject the recommendation by RQMV.

The last regulation of the Six Pack – Reg. No. 1177/2011 – states that the Council is expected to follow the proposal or recommendation of the Commission. Moreover, the decision of the Council to impose sanctions shall be taken as a rule within 16 months.

The Euro Plus Pact calls for a more influential role of the Commission in the monitoring of compliance with budgetary rules. In the ESM, three institutions (ECB, Commission and IMF) assess compliance with the macroeconomic adjustment programme. Disputes are decided by the Board of Governors of the ESM. However, the final controlling function is assigned to the ECJ operating as an appeal court.

The Fiscal Compact radically changes the role of the actors in charge with monitoring the economic order of the EMU. The Commission and the Council continue to monitor programs of structural reforms within the context of the existing surveillance procedure of the SGP. The Commission gains more power: MSS must support the Commission's proposals and recommendations at each stage of the EDP, unless a qualified majority of the Council opposed them.

The Commission monitors whether States have put budgetary rules into national (constitutional) law and whether they have provided for automatic corrective mechanisms. If the Commission or a MS assesses that another MS has not complied with the above mentioned duties and a State decides to bring the issue before the ECJ, the latter can intervene with a binding judgement. If a State considers that another State has not complied with such a judgement, it may ask the ECJ to issue sanctions and the Court can

do so. Hence, through the Fiscal Compact the ECJ and each MS started to play a central role in the control over EMU's economic order.

The Two Pack confirms the usual role of the Commission and the Council. If there is an excessive deficit, the Commission can request a MS to report the budgetary impacts of discretionary measures. The Commission can put a State under enhanced surveillance and can conduct in-depth review missions to verify progress made by that MS. Moreover, if a State asks for financial assistance, the Commission examines whether its debt is sustainable and monitors implementation of the macroeconomic adjustment programme. Eventually, an important supervisory role is given to the ECB in the framework of the SSM.

4.3. Comparison between the Bundesbank and the European Central Bank

In order to see whether the design of the ECB resembles that of the German central bank (*Bundesbank*), in the following section I compare the two legal texts that regulates them, i.e. the ESCB-Protocol and the "Law on German Bundesbank".

The 1949 German Basic Law (*Grundgesetz*, GG) refers to the Bundesbank in Art. 88: it states that the Federation builds up a bank for currency administration and emission of banknotes. This article has been later amended adding that the Bundesbank's duties and prerogatives can be transferred to the ECB, "which is independent and committed to the overriding goal of assuring price stability." (Art. 88)

The Bundesbank is regulated by the "Law on German Bundesbank" (*Gesetz über die Deutsche Bundesbank*, BBankG), which came into force on July 26, 1957. Article 3 states that today the Bundesbank is part of the ESCB and has a primary objective, i.e. to ensure price stability. However, this had been the case also in the original version of the law (Prollius 2006). Also the ECB has the primary objective of price stability. Hence, the statute of both banks provides explicitly for only one primary objective. The Bundesbank can support the general economic policy of the federal government, provided this is consistent with its primary objective as member of the ESCB (i.e. price stability). Similarly, the ECB can contribute to the general economic policy of the EU and to its objectives⁹¹ as long as this is "without prejudice to the objective of price stability" (ESCB Protocol, Art.

⁹¹ See TEU Art. 3.

2). In both cases, the secondary objective is not clearly specified and is made conditional on the compliance with the primary one.

Regarding the tasks, there is a considerable difference because since its establishment in 1999 the ECB has the exclusive competence for monetary policy, a prerogative that the national central banks, including the Bundesbank, have lost. However, the Bundesbank continues to hold and manage the official foreign reserves of Germany, a task shared with the ECB.

As far as the relationship with other institutions is concerned, the ECB has to be politically independent. This applies to the ECB as a whole but also to the single members of the decision-making body. Correspondingly, political institutions must not try to exercise any type of influence on the ECB, thus respecting its independence (ESCB Protocol, Art. 7). The latter is enhanced by the provision according to which, during their time of office, members of the ECB shall not practice any other profession (Art. 11).

Since political independence is a requirement of the whole ESCB, it has to apply also to the Bundesbank. However, Germany's central bank had not to introduce changes regarding political independence, since this status had been granted to the Bundesbank since the beginning. Art 12 BBankG, entitled "Relationship of the bank with the federal government", states that, in carrying out its tasks, the ECB is independent of instructions by the federal government (*von Weisungen der Bundesregierung unabhängig*).

Political independence does not mean that any form of cooperation between the central bank and other (political) institutions is excluded. This would be counterproductive. The Bundesbank must give advice to the government in matters of fundamental importance for monetary policy. More generally, it assists the executive when the latter asks for it. When it discusses important monetary issues, the government shall invite the president of the Bundesbank to take part (BBankG, Art. 13). Also in the European decision-making process the ECB shall be consulted "on any proposed Community act in its field of competence [and] by national authorities regarding any draft legislative provision in its field of community and to national institutions (*ibid*.).

In order to see whether an institution can be said to be really independent, albeit from a legal point of view, a closer look at the decision-makers and the way they are appointed is

essential. The Bundesbank is run by the Board of Governors (*Vorstand*), which includes the Bundesbank's president, the vice president, and four members: they must all be particularly competent in the monetary field (BBankG, Art. 7.2). The president of the Republic (*Bundespräsident*) appoints the members of the Board. By appointing the president, the vice president and one of the other four members, he acts on a proposal from the government. By appointing the other three members, he acts on a proposal from the *Bundesrat*⁹² in agreement with the government. The *Bundesrat* can intervene also in the appointment of the vice president by submitting a proposal to the government. Both the government and the *Bundesrat* must take into account the Board for their proposals (*ibid.*, par. 3).

The Governing Council and the Executive Board manage the ECB. As we have already seen, the former includes the governors of national central banks and the Executive Boards. The latter is made up of the ECB's president, its vice president and four other members, all of which must be selected "from among persons of recognized standing and professional experience in monetary or banking matters" (ESCB Protocol, Art. 11). As it becomes clear, the ECB's Executive Board is designed like the Bundesbank's Board (one president, one vice president, and four "technical" members). The Executive Board is appointed by the European Council, on a recommendation from the Council after having consulted the EP and the governors of national central banks (Art. 11.2). The Governing Council decides the guidelines for monetary policy, while the Executive Board is responsible for the current business of the ECB (Art. 11.6). Hence, as for its tasks, the Governing Council corresponds to the Bundesbank's Board.

The board decides by simple majority of the votes cast. In case of a tie, the president shall have the casting vote (BBankG, Art. 7.5). Similarly, in the Governing Council each member has a vote⁹³, but decisions are taken by simple majority of the members having a voting right: the quorum for voting is two thirds of the members having the right to vote. If

 $^{^{92}}$ In the German federal system, the Bundesrat is the chamber representing the member states of the federation (*Länder*). It participates in the legislative process of the federation and in matters concerning the EU. Its members belong to the governments of the *Länder* (GG, Artt. 50-51).

⁹³ Starting from January 1, 2015, an important change to the general principle "one member, one vote" has taken place for the governors of the national central banks. From that moment on, the governors are divided into two groups: group 1 (Germany, France, Italy, Spain and the Netherlands) and group 2 (all the others). Group 1 has four votes each month, i.e. each month one governor has no vote. Group 2 has eleven votes instead of fourteen each month, i.e. each month three governors have no vote. Instead, members of the Executive Council continue to have one vote per each every month. This new system has been motivated by the need to maintain the efficiency of the ECB.

a voting procedure finishes in a tie, the president has the casting vote. Additionally, "if the quorum is not met, the president may convene an extraordinary meeting at which decisions may be taken without regard to the quorum" (ESCB Protocol, Art. 10.2). Also the Executive Board decides by simple majority of the votes cast and each person has one vote. The president has the casting vote (Art. 11.5).

Members of the Bundesbank hold office for eight years, in exceptional cases also less, but not less than five (BBankG, Art. 7.3). There are no provisions regarding a second time of office or the possibility of being dismissed in advance. Members of the Executive Board of the ECB are appointed for eight years and a second time of office is not permitted. The governors of the national central banks must also stay in office at least for five years (ESCB Protocol, Art. 14.2). A member of the Executive Board can be removed from office only in two cases: when he "no longer fulfil the conditions required for the performance of his duties or if he has been guilty of serious misconduct" (Art. 11.4). In this case the Governing Council or the Executive Board can apply to the ECJ, which can remove the member in question from office. The same two cases can also lead to the early retirement of a governor's national central bank. The ECJ takes the decision, if the governor concerned or the Governing Council refers to it "on ground of infringement of this Treaty or of any rule of law relating to its application" (Art. 14.2).

How and by whom central bankers can be removed from office has a great influence on their independence. In this case, the maximum degree of independence is assured if bankers cannot be removed at all. The ESCB Protocol provides for a good deal of independence, because the conditions for an early removal are strict and explicitly enumerated. The final decisions lies with the ECJ, not with a political institution. The institution that appoints the members of the Executive Council – the European Council – cannot dismiss them.

Another important element of comparison is the possibility to do operations with public entities. The Bundesbank cannot open a credit or give loans to the federation, to the *Länder* or to other public entities (BBankG, Art. 20). Art. 21 of the ESCB Protocol states that "overdrafts or any other type of credit facility with the ECB or with the national central banks in favour of community institutions or bodies, central governments, regional local or public entities, other bodies governed by public law, or public undertakings of MSS shall

be prohibited, as shall the purchase directly from them by the ECB or national central banks of debt instruments."

The Bundesbank has to publish its yearly accounts. An economic expert, appointed by the government, shall control them. The report of this expert helps the Federal Court of Auditors (*Bundesrechnungshof*) to audit the accounts. The yearly account, the investment plan and the report of the expert shall be submitted to the ministry of Finance and to the Court of Auditors. Also the Parliament has to receive these documents. The Court of Auditors shall inform the Parliament of its auditing (BBankG, Art. 26). Regarding the reporting commitments, the ECB has to publish a report on the activity of the ESCB at least quarterly and a consolidated financial statement each week. Moreover, it "shall address an annual report [...] of both the previous and the current year to the European Parliament, the Council and the Commission, and also the European Council" (ESCB Protocol, Art. 15). Reports and statements must be freely available. Independent external auditors, recommended by the Governing Council and approved by the Council, shall examine books and accounts.

Regarding transparency, ESCB Protocol Art. 10.4 states that, although the meetings of the Governing Council are to be considered confidential, the latter can decide to make its decision public. Similar provisions cannot be found in the BBankG.

The BBankG does not provide for the possibility of the German Federal Court to review an act of the Bundesbank. This is instead possible for acts or omissions of the ECB, which can be open to review and interpretation by the ECJ "on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaties or of any rule of law relating to their application, or misuse of powers" (TFUE, Art. 263), if the claim is brought by a MS, the EP, the Council or the Commission. The ECJ can have the same jurisdiction also for actions brought by the ECB, if this is "for the purpose of protecting [the latter's] prerogatives" (*ibid*.).

A last comparison concerns the possibility to change the law of the two banks. The Bundesbank can be dissolved only by law (BBankG, Art. 44). The same applies for amendments to the BBankG. For the ECB the procedure is quite longer and more complex, since it requires a change of the two treaties (TEU and TFEU). This is possible only with unanimity of all MSs. Therefore, one could argue that the ECB is more independent than the Bundesbank.

Table 3 summarizes the comparison between the Bundesbank and the ECB. The two institutions show several similarities. The differences are due almost exclusively to the fact that the Bundesbank is the bank of a federal state, while the ECB is the bank of a union of states (Fabbrini 2015). This has repercussions mainly on the members and on the way in which they are appointed. On the basis of the comparison, it can be said that the ECB is designed on the model of the Bundesbank.

Of particular interest for the present analysis are three similarities: price stability as primary objective, political independence and the prohibition both to grant financial means to MSs and to purchase debt instruments on the primary market.

We have seen that price stability is the first constitutive principles of the ordoliberal competitive order developed by Eucken. The latter argues that price stability must be at the basis of such an order. It is what happens in the EMU. In this sense, the EMU has a fundamental element of ordoliberalism.

Eucken was instead critical of monetary decision-making assigned exclusively to an independent central bank, because he feared the bankers could be tempted to follow objectives different from price stability. As we have seen, the model he had in mind was that of money supply depending on the change of commodity prices. He preferred such an automatic mechanism for money supply to the discretion of central bankers. However, he did neither theorize the necessity for political independence as a prerequisite for price stability nor how to reach this independence. The choice to make the Bundesbank independent was made after the war (Prollius 2006).

The third feature – the prohibition to grant financial means and to purchase debt instruments of the MSs – is connected to the point I want to develop in the next section, namely liability. As we will see, in the EMU and also during the Eurozone crisis this concept has embraced both economic and monetary policy.

Table 3. Comparison between the Bundesbank and the European Central Bank

	Bundesbank	European Central Bank	
Hierarchy of objectives	yes	yes	
(primary, secondary)			
Primary objective	price stability	price stability	
Secondary objective	support general economic	support general economic	
	policy	policy	

Conditionality of the	consistent with price	consistent with price	
secondary objective	stability	stability	
Political independence	yes	ves	
Cooperation with the	yes, in its field of	yes, in its field of	
executive	competence	competence	
Possibility to submit	not specified	yes	
opinions to governmental	yes		
institutions			
Main decision-making	Board (Vorstand)	Governing Council	
body			
Composition of the main	president, vice president and	president, vice president,	
decision-making body	four other members	four other members	
		(Executive Council) and	
		governors of national	
		central banks	
Appointment of the main	president of the Republic on	European Council, on a	
decision-making body	proposal of the	recommendation of the	
	government/the Bundesrat	Council, after consultation	
		with the EP and with the	
		governors of national	
		central banks	
Majority for decisions	simple majority of the votes	simple majority of the	
	cast; no quorum; president	1 5 5	
	has casting vote	right; 2/3 quorum; president	
		has casting vote	
Time of office	eight years; removal or	eight years; removal only in	
	second appointment not	specific cases; second	
	specified	appointment not possible	
Operations with public	no credit facility or loans	no overdraft, credit facility,	
entities	-	or direct purchase of MS'	
		debts	
External auditing	yes	yes	
Transparency	no express provisions	partially (meetings are	
		confidential, but outcome	
		can be published)	
Judicial review	no	yes	
Amendments to the	by ordinary law	by amendment of the EU	
instituting law/dismissal		treaties, i.e. with unanimity	

4.4. Control and liability

We have seen in chapter 3 that a constitutive ordoliberal principle is that who takes advantage of something, must also bear the costs (liability principle). This is like to say that who is responsible for an action, is also liable for it (Eucken 2004).

Eucken analyses liability with regard to enterprises and joint-stock companies. His focus is on the relationship between liability and control (*Lenkungsbefugnis*, *ibid.*, p. 282).

The "control" of something means the ability to plan and to carry out the activities connected with it. The central point for Eucken is that employers must be liable for the decisions they take, provided they are the real decision-makers. Hence, if governments decide about the production level of enterprises (like in central planned economies), liability of the private employers (that obey the governments' orders) does not make sense because the employers are not the actors who really decide.

The rationale of the connection between control and liability is that it should foster prudent economic decisions. The perspective of benefitting from the advantages of an action (e.g. an industrial investment plan) is a great incentive for an economic actor. Similarly, if an economic actor knows that he ultimately bears the costs of their action, he would be careful in his decisions. In the first case, he has an incentive to act; in the second case, he has an incentive to act with prudence. Because of this, for Eucken liability is a precondition of freedom and self-responsibility (*ibid.*, p. 285).

Since liability must go hand in hand with control, when an actor gets more control, he must also get more liability. Liability cannot diminish if control rests the same. Ordoliberalism is against any decoupling of control from liability. According to Eucken, the only solution to such a decoupling – which in the long term becomes unbearable – is the strengthening of the liability, i.e. to bring liability back at a level that corresponds to control. The other possibility would be to centralize both control and liability at State level, thus freeing private actors from both of them. But this solution leads to a central planned economy with no recognition of private property (*ibid.*, p. 282).

To strengthen liability means to make possible also the extreme consequences of it. In the case of an enterprise, this means that in case of imprudent management it can also go bankrupt. For Eucken this outcome is consistent with the logic of a competitive order as a competition based on merits (*Leistungswettbewerb*): liability operates like a mechanism that selects the economic actors that "deserve" to stay in the market, while excluding the others (*ibid.*, p. 281).

To what extent is all this connected with the EMU? As I have shown, in the negotiations of the MT France had a preference for preserving national sovereignty in economic policy, while Germany wanted to centralize both economic and monetary policy at the Community level. At the end, for monetary policy the German insistence on a politically independent central bank prevailed. Economic policy instead "remained under

the control of each national government, coordinating with other national governments in the intergovernmental institutions [...]" (Fabbrini 2015: 45).

If we approach the EMU of the MT from the logic of control and liability (Feld 2015), we have the following scenario: for monetary policy, MSs have assigned both control and liability to the ECB. The ECB sets up the general guidelines for monetary policy, issues banknotes, fixes the interest rate etc.: it controls monetary policy. For acts or omissions the ECB can be held liable before the ECJ⁹⁴: it is liable for economic policy. Control and liability hence are at the same level.

Regarding economic policy, MSs only accepted to voluntary coordinate it between them, without any transfer of sovereignty to supranational institutions. They kept control of their economic policy. Consequently, from an ordoliberal point of view, they had also to be liable for their economic policy. Indeed, this is what happens. Like for monetary policy, control and liability were at the same level. The question was how to assure that this would always be the case.

On this point, a specific provision was included in the MT and confirmed by the LT: the no-bailout clause has precisely the aim to keep liability for and control of economic policy at the same level, i.e. at MS' level. If MSs maintain the control over their economic policy, only them, neither the Union nor other MSs can bear the costs of such economic policy. In extreme cases, this would mean that a MS can even default, just like in Eucken's case an enterprise could go bankrupt.

The equivalent for monetary policy are the provisions establishing that the ECB and national central banks cannot grant credit facility to political institutions and cannot purchase their debt instruments. MSs cannot finance their debts with an increase of money supply. The prohibition of the purchase of debt instruments on the primary market is consistent with the principle that each MS is liable for its own debt. If the ECB was allowed to buy debt instruments, it would become liable for the commitments of a MS. Control and liability would not be at the same level.

In sum, the MT and the LT both attempt to preserve the link between control and liability. This holds true also for exceptional financial assistance. In that case, even if the grant of financial assistance shifts liability away from control (some MSs pay for the debts

 $^{^{94}}$ See the previous section (§ 4.3)

of others), attempts are made to keep the link. These attempts take the form of conditionality. Indeed, TEC Art. 103a⁹⁵ states that "where a Member State is in difficulties or is seriously threatened with severe difficulties caused by exceptional occurrences beyond its control, the Council may [...] grant, *under certain conditions*⁹⁶, Community financial assistance to the Member State concerned."

The measures taken to face the Eurozone crisis display a similar logic. When MSs decided to set up the EFSM, they made the lending conditional on the fact that the countries concerned faced or were threatened by severe financial disturbances due to events beyond their control. Moreover, they had to agree with the Commission on macroeconomic adjustment conditions. For EFSF, the conditionality consists in signing a MoU with the Commission.

When the ESM replaced the EFSM and the EFSF, an amendment to TFEU Art 136 had to be introduced. The following part was added: "The Member States whose currency is the euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the euro area as a whole. The granting of any required financial assistance under the mechanism will be made subject to strict conditionality."97

But conditionality became part of EU law also with the Two Pack, more specifically with Reg. No. 472/2013. According to the regulation, when a MS asks for financial assistance, the Commission examines whether the level of government debt is sustainable. Then the MS must develop a draft macroeconomic adjustment programme with annual budgetary targets. Also the ECB's decision to purchase government bonds of MSs in difficulty on the secondary market (so-called Outright Monetary Transactions, OMT) was conditional on two facts: the country concerned had to be part of the EFSF or EFSM and it had to undertake an economic adjustment programme.

We have seen the reason why, according to Eucken, a separation of control and liability has negative effects in the case of an enterprise or a joint-stock company: it gives no incentive to act prudently and with awareness of the consequences. What are, then, the negative effects of such a separation on the EMU? Basically the same. As the German government and the Bundesbank had continued to say during the Eurozone crisis (see the

⁹⁵ The equivalent if TFEU Art. 122.
⁹⁶ Italics added.

⁹⁷ Italics added.

next chapter), if MSs are not liable for the negative effects of their economic policy, they are not encouraged to take decisions prudently and to do structural reforms, like ordoliberalism would encourage them to do. The no-bailout clause ensures MSs' liability and therefore makes the EMU in principle a union based on individual responsibility. To preserve such a responsibility union is the ultimate aim of keeping control and liability at the same level. If they were not at the same level, or if there was joint liability, the EMU would be a transfer union.

4.5. Sound public finances and competitiveness

In the LT, "sound public finances" is stated explicitly as a guiding principle with which the activities of the MSs and the Union shall comply (TFEU Art. 119.3). The other guiding principles, included in the same article, are stable prices, sound monetary conditions and a sustainable balance of payments. I have already shown that "stable prices" is a constitutive principle of ordoliberalism. During the Eurozone crisis, the objective of sound public finances was included in almost every measure taken. In this section I want to analyse a specific measure that Germany took before the crisis and compare it with a European measure.

But is sound public finances something important for the ordoliberal theory? Yes, but indirectly. If a State has a high debt level, this is going to bring pressure to bear on the central bank in order to finance the debt by increasing its money supply. However, this is very likely to increase inflation, thus undermining price stability. That is why sound public finances can be considered a pivot of a policy of stable currency (Weidmann 2013).

At the beginning of 2009, the Bundestag and the Bundesrat passed a constitutional amendment⁹⁸ to limit the debt of the Federation and the *Länder*: the *Schuldenbremse* (debt brake). Art. 109.3 of the Basic Law enshrines the principle of balanced budget in the constitution, stating that "the budgets of the Federation and the *Länder* shall in principle be balanced without revenue from credits."⁹⁹ The Federation can take revenue from credits up to a maximum of 0.35 %¹⁰⁰ of the nominal GDP – this means that its structural deficit must not exceed 0.35 % of GDP. The *Länder* cannot have any structural deficit at all (*ibid*.).

⁹⁸ Amendments to the Basic Law require a majority of 2/3 of the members of the Bundestag and of 2/3 of the votes of the Bundestat (GG, Art. 79.3).

⁹⁹ This is consistent with the MTO of sound fiscal policy set by the SGP.

¹⁰⁰ This threshold is below the 0.5 % of structural deficit of GDP at market prices as introduced by the 2005 SGP.

Exceptions to this provision are situations of natural disasters and "unusual emergency situations beyond governmental control and substantially harmful to the state's financial capacity (*ibid.*). GG Art. 115 states that "revenues and expenditures shall in principle be balanced without revenue from credit."

Unlike the other provisions of Artt. 109 and 115, which entered into force beginning from 2011, the 0.35 % limit on structural deficit applies for the first time in 2016. Instead, the general prohibition of the *Länder* to take revenues from credits (i.e. to have a structural deficit) applies in 2020. To avoid so-called "budgetary emergencies" (GG Art. 109a), a joint body, the Stability Council, shall supervise the budgetary management of the Federation and the *Länder*.

If the revenue from credits exceeds 0.35 % of GDP, the exceeding part has to be put on a control account. The negative balance of this control must stay below 1.5 % of GDP, otherwise it has to be bring back to its threshold by cyclical measures (Art. 115.2). Some *Länder* can obtain financial assistance in order to be able to reach their target of no structural deficit by 2020. A specific regime of yearly cuts, supervised by the Stability Council, and sanctions in case of non-compliance, is foreseen (Art. 143d). The Stability Council has the task of supervising and controlling budgetary management of the *Länder*. The latter have to cooperate by providing all the relevant information. Should there be budgetary emergencies, the Stability Council recommends "programs for taking care of budgetary emergencies" (Art. 109a).

The 2009 debt brake constitutional amendment displays two principles that we find also in the 2012 Fiscal Compact: firstly, the State's budget must be balanced and, secondly, the requirement of balance budget must be given particular legislative force by putting it in the constitution. Another similarity is the fact that, in case of "deviations from the mediumterm objective or the adjustment path towards it" (Fiscal Compact, Art. 3.1), an automatic corrective mechanism shall be activated. MSs are obliged to correct deviations over a defined period of time. The exceptional circumstances in which a deviation is possible are an "unusual event outside of the control of the Contracting Party concerned which has a major impact on the financial position of the general government or to periods of severe economic downturn" in the Fiscal Compact (Art. 3.3). Also this provision resembles that of the German debt brake. One last point concerns the importance that competitiveness and structural reforms have in the anti-crisis measures. I have shown the centrality of competition to the ordoliberal economic order. Unfortunately, it is not possible to assess here the influence that competition in an ordoliberal sense has had on the EU competition policy. Nevertheless, it is useful to briefly look at which role competitiveness has played in the EMU since the beginning and especially during the Eurozone crisis.

The MT states that economic and monetary policy must be conducted "in accordance with the principle of an open market with free competition" (TEC, Artt. 102a and 105), something confirmed by the LT (Artt. 119, 120, 127). I have shown that several measures taken during the Eurozone crisis stress the need to enhance competitiveness and to do structural reforms. The Euro Plus Pact, which was significantly also called "Pact for competitiveness", sets, among other things, the priority of fostering competitiveness. Moreover, it states that "fiscal consolidation efforts must be complemented by growth-enhancing structural reforms" (EUCO 2011: 2). Also the Six Pack underlines the necessity to promote "structural reforms, which have direct long-term positive budgetary effects" (Reg. 1175/2011, Art. 7).

The Fiscal Compact calls on MSs to approve "structural reforms which must be put in place and implemented to ensure an effective and durable correction of their excessive deficit" (Art. 5). The Two Pack specifies that structural reforms "are needed to ensure an effective and lasting correction of the excessive deficit" with the aim to reach "competitiveness and long-term sustainable growth" (Reg. 473/2013, Art. 9).

What emerges from these anti-crisis measures is that there has been a predominance of solutions focused on more competitiveness and effective structural reforms. These measures can thus be seen as measures trying to correct the economic order. They are "structural" in the sense that they address the whole order, not single aspects of the economic process. The rationale seems to be that long-term solutions must be preferred to measures having an immediate impact (e.g. increase of public expenditure). Because of this, they can be considered solutions consistent with the ordoliberal idea of intervening only in the economic order.

4.6. Conclusion

This chapter has compared the main principles that underpin the EMU with some of the constitutive ordoliberal principles. It has shown that there is a strong similarity between both types of principles. Moreover, I have seen that the ECB resembles the Bundesbank, especially as far as political independence is concerned. Table 4 summarizes the findings of the analysis. Elements on the same line of each of the two columns ("Germany's influence" and "EMU/Eurozone crisis") are to be considered as being correlated (e.g. "liability" in the column "Ordoliberalism" corresponds to "no-bailout clause" in the column "Principles").

Firstly, the ordoliberal notion of economic constitution as economic order separated from the economic process is consistent with the economic constitution of the EMU. The economic process is in principle left to each MSs, but legally binding rules of the economic order constraint it (constraing rules and controlling rules). Similarly, anti-crisis measures are characterized by an attempt to reinforce the economic order and to limit the economic process. The ordoliberal economic order is based on competition. Anti-crisis measures to strengthen competitiveness thus match with the ordoliberal stress on competition.

Secondly, the design of the ECB is very similar to that of the German Bundesbank. The priority to assure price stability is consistent with Eucken's principle of primacy of monetary policy and the requirement of the latter to assure stable prices. Political independence is another element that the ECB took from the Bundesbank. However, this element was not favoured by ordoliberalism. It developed in post-war Germany, especially after the conversion of mainstream economic thought to monetarism (see the next chapter).

Thirdly, the principle of liability is central to both ordoliberalism and the EMU. Each MS controls its economic policy and is liable for it. The no-bailout clause prevents the EU from being liable for MSs' debts. Control and liability are on the same level. Conditionality is an attempt to keep both at MSs' level.

Fourth, the need for sound public finances and budgetary discipline is indirectly connected to the requirement of price stability. Moreover, it is consistent with the ordoliberal principle of constancy of economic policy. We have seen that the EMU and the anti-crisis measures have put sound public finances in the foreground. The German constitutional debt brake has the same rationale as the 2012 Fiscal Compact.

Germany's influence		EMU/Eurozone crisis		
Ordoliberalism		Principles		
economic constitution		economic constitution		
economic order		constraining rules		
		controlling rules		
economic process		MS's discretion limited by		
		legal rules		
competitive order		competitiveness		
price stability	stability	price stability	stability	
	stability	sound public finances	stability	
liability		no-bailout clause		
constancy of economic		sound public finances		
policy		budgetary discipline		
Germany's post-war order		Institutions and measures		
Bundesbank		European Central Bank		
political independence		political independence		
constitutional debt brake		Fiscal Compact		
Germany's predominance				

Table 4. Summary of the main findings of the work

The common element between the two post-war economic orders – stability (see chapter 3) – is the core principle covering all the above-mentioned principles. Since the MT, the EMU has been designed as a community of stability: stability of monetary policy (ECB) and stability of economic policy (constraining and controlling rules). Measures taken during the Eurozone crisis have tried to give the EMU an even more stable design. The German post-war economic order and the EMU display the same core principle, i.e. stability. I can thus reach the following two conclusions:

- The main principles of the EMU fit the constitutive principles of ordoliberalism; the ECB mirrors the Bundesbank also with regard to political independence; and the constitutional debt brake has the same rationale of the Fiscal Compact;
- both the EMU and the German post-war economic order display the same core principle, i.e. stability.

Consequently, it can be said that Germany had influenced the EMU from the MT until the Eurozone crisis. This answers the first research question.

Chapter 1 and 2 have shown that the main principle of EMU (before and after the crisis) were the following: the economic constitution, the ECB as politically independent institution with the primary objective of assuring price stability, the no-bailout clause,

sound public finances and competitiveness. Stability is the principle covering them all. These principles are the core of the EMU. It could therefore be argued that they are constitutive principles of the EMU. If they are consistent with the ordoliberal constitutive principles, there is not simply consistency between *some* principles. The constitutive principles of ordoliberalism are consistent with the constitutive principles of the EMU. During the Eurozone crisis, these principles have been strengthened.

All constitutive principles of the EMU are consistent either with ordoliberal or with post-war Germany's principles. In addition, at the basis of both the EMU and the German post-war order there is stability. Because of this, one can argue that not only did Germany influence the EMU: this influence was so considerable that it resulted in a German predominance. Also the second research question has therefore found an answer.

The following chapter starts by identifying some causes that have favoured Germany's influence on the EMU and during the Eurozone crisis.

5. Causes and implications of Germany's influence on the EMU

5.1. Introduction

In the previous chapter, I have reached the following conclusions: Germany has significantly influenced the EMU. This influence has been so significant that it has resulted in a predominance.

This chapter firstly analyses some causes that might have favoured such influence. I identify two types of causes: the national and the European ones. Among the national causes, I consider the main positions of the FCC and of the Bundesbank beginning from 1992. Then I analyse the concerns of the political parties before the approval of the MT as well as the positions the parties took during the euro crisis. Finally, I draw attention to the economic performance of Germany and to the stability culture of the country.

Among the European causes, I will examine the asymmetrical relationship between European countries that has emerged since the MT and has become consolidated during the Eurozone crisis. This asymmetry is also connected to a decline in France's capacity to be a counterbalance to Germany and to a mutual distrust among MSs. Another important cause is the confusion of legal orders during the Eurozone crisis, i.e. measures taken within and outside the European law.

The last part of the chapter makes a political assessment of Germany's predominance in the EMU. This also raises the question whether Germany could be a constructive hegemon within EMU.

5.2. Domestic causes

5.2.1. The Federal Constitutional Court

The Federal Constitutional Court (FCC)¹⁰¹, regulated by a federal law of 1951 (Gesetz über das Bundesverfassungsgericht, BVerfGG), is the highest judicial authority in Germany. Against its sentences no appeal is possible. The Basic Law admits individual "constitutional complaints, which may be filed by any person alleging that one of his basic rights¹⁰² [...] has been infringed by public authority" (GG, Art. 93, paragraph 1, subparagraph 4a). The Court can also clarify doubts on whether a rule of international law is part of German law and on whether this rule sets rights and duties directly to the individual (BVerfGG, Art. 13.12). Being a powerful veto player, with its decisions it is able to significantly constraint political decisions (Manow 2000). This is indeed what the Court has done since the entry into force of the MT. I want to briefly recap the main positions of the Court regarding EMU.

In the judgement of October 12, 1993 (MT judgement), the Court states that Germany's participation to the EMU is consistent with the preservation of its democratic standards for two reasons: only limited powers are transferred to the EU and there is enough space for intervention of the Bundestag on the further development of the EMU (Herdegen 1994). National parliaments must keep this space for intervention, because they legitimize the transfer of powers to the EU. Since it is important that "living democracy is maintained in the Member States while integration proceeds" (MT judgement, p. 19), the German Parliament must preserve an influential role in the EU.

Relating to this, the Court recognizes that the ECB is independent of both national parliaments and the EP. This would in principle contrast with the faculty of citizens and national institutions to participate in decision-making (principle of democracy, GG Art. 79.3). However, the fact that the "responsibilities and powers [of the Bundesbank] may be transferred to the European Central Bank, which is independent and committed to the overriding goal of assuring price stability" (GG, Art. 88) is compatible with the principle of democracy, because the transfer occurs towards an institution that pursues only one primary objective. Only if the ECB complies with the strict convergence criteria and with

¹⁰¹ In German: *Bundesverfassungsgericht*.
¹⁰² Those included in GG, Artt. 1-19.

the requirements of independence and price stability¹⁰³ as primary objective can this transfer be democratically legitimate (MT judgement).

The Court seems thus willing to "suspend" the democratic principle for the ECB, because long-term oriented political independence is more able to guarantee the stability of the currency than short-term oriented political discretion (Deters 2014). As for economic policy, it sees legal rules that constraint discretion as the basis of EMU's legitimacy. Indeed, the German Act of Consent to the EMU is conditional upon the latter being a "community based on stability" [*Stabilitätsgemenischaft*]" (MT judgement, p. 26). Stability is thus "the basis and object" (*ibid.*, p. 29) of Germany's willingness to be part of the EMU. The implication of this reasoning is that if the EMU's stability-oriented character ceased, Germany would be ready to withdraw its membership (*ibid.*).

As Herdegen (1994) notes, "the law giving assent to the Maastricht Treaty fulfills the constitutional requirements as to parliamentary responsibility because the Treaty contains a sufficiently thigh corset of directives on monetary stability which ensure that the implementation of the Monetary Union remains a predictable process". Such predictability is assured by the fact the content and the strictness of the convergence criteria cannot be changed without the consent of the German parliament (MT judgement, p. 28).

On June 30, 2009, the Constitutional Court stated that the LT and the German Act of Consent were compatible with the Basic Law (LT judgement). Although in this judgement the FCC did not address specific issues relating to the EMU, it paraphrases one of the arguments of the complainants, namely that "the Stability Pact is alleged to be deprived of its substance due to the exemptions granted in the past. It would, therefore, no longer be possible to say that Germany consented to membership of the European Monetary Union" (LT judgement, p. 21). That German membership is based upon the respect of the stability criteria is also the opinion of the Court, as stated in the MT.

The LT judgement can be seen in continuity with the MT judgement also to the extent that the Court underlines the centrality of national parliaments in the integration process. Because of this, it states that the LT and the German Act of Consent are compatible with the Basic Law, but that the German Accompanying Law is not because it fails to recognize

¹⁰³ The FCC states that the positive correlation between central bank independence and price stability is "scientifically proven" (MT judgement, p. 31). According to the Court, by guaranteeing price stability the central bank provides also "the general economic basis for national budget policy and private planning and disposition, while maintaining economic liberty [...]" (*ibid*.).

sufficiently well the rights of the *Bundestag* and of the *Bundesrat*. The Court hence called on the parliament to develop a new Accompanying Law, something that finally happened.

In its decision of September 7, 2011, the Court addressed the compatibility of the first aid granted to Greece and the creation of the EFSM with the Basic Law (Greek Rescue Package judgement). What matters for the present analysis is not the fact that both the aid and the EFSM were declared compatible, but the statements the Court made on the EMU. The national budgetary power – the supposed loss of which was is the basis of the claimant's argument – belongs to the core of parliamentary sovereignty and must therefore always be guaranteed (Greek Rescue Package judgement, p. 24). According to the Court, the ESFM and the aid to Greece do not result in such a loss, because the measures have emergency character and are subject to conditionality. As such, they do not endanger the concept of the EMU as stability union and as basis and object of the German participation in it.

The Court explicitly states pivots of the stability union: the prohibition of direct purchase of public institutions' debt instruments, the no-bailout clause and the deficit and debt criteria. Since, according to the Court, these principles are essential to "safeguard constitutional requirements of democracy in European Union law" (*ibid.*, p. 25), it follows that "the acceptance of liability for decisions of other Member States [...] – by direct or indirect communitarisation of debts – is to be avoided" (*ibid.*). The core message is, hence, that the EMU must remain a stability community and must not become a liability community (*Haftungsgemeinschaft, ibid.*, p. 14) or a transfer union (*Transferunion, ibid.*).

In 2012, the FCC was asked to address the constitutional compatibility of the ESM and of the Fiscal Compact. It concluded that both were compatible, but that an active participation of the Bundestag and the Bundesrat were essential in order to preserve their budgetary autonomy: "the elected Members of the German *Bundestag* must retain control of fundamental budgetary decisions even in a system of intergovernmental governing" (ESM and Fiscal Compact judgement, p. 24; italics in the original version).

The judgement also gives the Court the possibility to re-mark the concept of stability community as the "permanent constitutional requirements" (*ibid.*, p. 25) of Germany's participation to the EMU. As already stated in the previous judgements, besides price stability and central bank independence, the prohibition of monetary financing by the ECB, the no-bailout clause and the stability criteria are the *sine qua non* for Germany. The ESM

is compatible with the Basic Law also because it is a special measure aimed at preserving the stability character of the Union. The strict conditionality makes sure that it does not mark the beginning of a transfer union (*ibid.*, p. 35).

In light of the judgements mentioned above, it is not surprising that the FCC is doubtful as to what the OMT programme launched by the ECB is compatible with the European treaties and, hence, also with German Law. That is why the Court for the first time decided to refer the case to the ECJ (Joerges 2015). Nevertheless, it points out that if the OMT programme, as alleged by the complainants, violated the prohibition of monetary financing of debt, this would affect the community of stability in a "structurally significant" (OMT-order, p. 16) the stability community and, by so doing, also Germany's participation in EMU.

An important point recalled by the Court is that the modification of the democracy principle stated in the MT judgment applies to the ECB only for the mandate of price stability and "cannot be transferred to other policy areas" (*ibid.*, p. 16). The Court states that the OMT programme can be compatible with European law if it adheres to the principle of conditionality established by EFSF and ESM. In particular, this requires that "the possibility of a debt cut must be excluded" (*ibid.*, p. 25). Moreover, the programme would violate the Basic Law if it comprised the assumption of liability for debts of MSs.

The four judgements and the final order considered have in common the fact that the FCC has never really hindered the process of further European integration. It has adopted a "yes, but" (Deters 2014: 215) strategy without obstructing Germany's participation in the EMU but by setting clear benchmarks regarding the compatibility of the European system with the Basic Law. This is relevant because, given the role that the "powerful constitutional court" (Manow 2000: 21) has, it significantly constrained the room of manoeuvre for Germany's political *elites* in Europe.

On the one hand, it clearly fixed the basis and object of Germany's participation in the EMU: the principle of the stability community with its implications are consistent with some of the constitutive principles of ordoliberalism. On the other hand, "by enhancing the veto conditions to the granting of bailouts, it has by contrast strengthened the German bargaining position vis-à-vis the recipient countries" (Deters 2014: 213). As I have shown, Germany has proved to be quite successful in using this strong bargaining position especially to influence the measures taken during the Eurozone crisis.

Besides the FCC, another non-majoritarian institution – the Bundesbank – has developed over time a clear position regarding the EMU. I will try to show it in the next section.

5.2.2. The Bundesbank

This section sketches the influence of the Bundesbank on the EMU and during the Eurozone crisis, in order to assess whether it complied with the ordoliberal principles that I have identified. The aim is to analyse if it contributed to make these principles central to the EMU.

I have shown that ordoliberalism argues in favour of a central bank committed to the overriding principle of monetary stability. It does not attach importance to political independence of the bank. The previous chapter has compared the Bundesbank with the ECB. The most relevant element they have in common is the commitment to price stability as primary objective and the requirement of political independence. Now I want to show how the Bundesbank managed to become a model for the design of the ECB. This seems to be connected mainly to the degree up to which the Bundesbank acted in compliance with its objective of assuring price stability.

In the first years after its creation, the Bundesbank followed different policy objectives, not only price stability. This was due to the predominance of Keynesianism since the 1960s. The latter's idea of economic policy mainly driven by the demand side influenced the Bundesbank, which kept interest rates low in order to stimulate investments and growth. Hence, price stability was not conceived as the primary objective of monetary policy (Feld 2015).

Because of an increasing level of inflation, in the 1970s the Keynesian approach was questioned and supplemented by monetarism. The latter, whose main contributors were Milton Friedman and Karl Brunner, criticises the real effects that a rise in monetary supply can have on production and employment. It argues that these short-term effects are once only and in the long-term lead to inflation (Gabler 1992). Monetarism states that there is no permanent trade-off between price stability and employment (Feld 2015) and that if

monetary authorities aim to reduce unemployment below its natural rate, they create the conditions for a systematic inflation¹⁰⁴ (De Grauwe 2014).

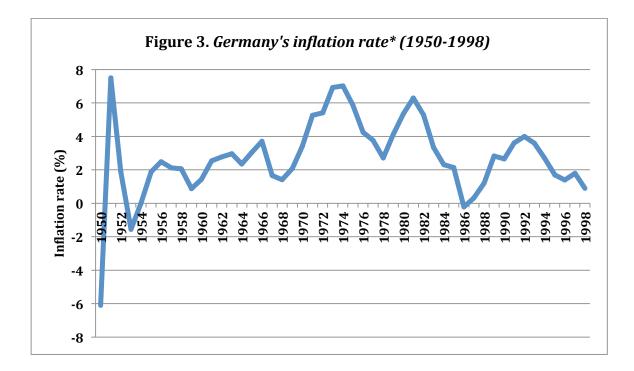
Monetary policy should bear responsibility only for price stability: its influence on employment and growth should be limited to guaranteeing price stability (Richter 1999). Inflation was precisely the reason why Keynesianism had come in for criticism. Thus, "when West Germany had to redesign its monetary policy approach after the end of the Bretton Woods system¹⁰⁵ in 1973, the Bundesbank accepted the monetarist prescription and chose monetary targeting as its modus operandi" (Feld 2015: 78).

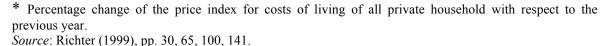
The question on how to guarantee a low level of inflation included also the relationship between the central bank and the government (De Grauwe 2014). Some studies published since the 1980s showed a negative correlation between central bank independence of the government and inflation rates (price stability): the more a central bank is able to take its decisions without any political interference, the more likely is the fact that it is able to establish a low inflation (Alesina 1993).

Besides the institutional design of the central bank, also the general attitude of the population towards inflation can play a role. Relating to this, it is not surprising that the hyperinflation of the Weimar Republic deeply affected the negative German stance against inflation (Hayo 1998). One could argue that the Bundesbank's increasing focus on keeping inflation low might generally have found consensus among the population. And indeed the "strong anti-inflationary preferences [...] were reflected in the conduct of monetary policy by the Bundesbank from 1958 until the arrival of the euro in 1999" (Feenstra 2014, see figure 3).

¹⁰⁴ Monetaism argues that it is indeed possible to lower the unemployment rate below its natural level, but only through structural policies (e.g. flexible labour market and labour taxes reduction) which it is not the duty of the central bank to carry out (De Grauwe 2014).

¹⁰⁵ The Bretton Woods sytem was centred on the U.S. dollar. Countries part of the system were pegged their currencies to the dollar; the dollar was pegged to gold. Indeed, one of the reasons for the collapse of the Bretton Woods system was the increasing number of devaluations of the dollar and the growing inflation in the U.S. (Feenstra 2014).





The German model of central bank was quite different from the Anglo-French model. In the latter, the central bank does not have a primary objective: price stability does not take priority over other objectives (e.g. maintenance of high employment). It is true that also in the German model the central bank can pursue other objectives different from price stability, but always provided that price stability is not endangered. The other main peculiarity of the Anglo-French model is that the minister of finance's has to approve monetary decisions¹⁰⁶ (De Grauwe 2014). The difference with regard to the German model is firm. Favoured by the perception that increasing inflation was the outcome of Keynesianism, "since the 1980s the monetarist model has become the prevailing one, especially among central bankers" (*ibid.*, p. 152).

It is important to consider the centrality of Germany in the (ERM)¹⁰⁷ created in 1979 to limit exchange rate volatility. Although in principle the currency exchange rate margins were fixed with regard to the European Currency Unit, the German DM was the centre currency of this system, i.e. the currency to which all the others were pegged¹⁰⁸ (Feenstra

¹⁰⁶ This is true, for example, also for New Zealand, where the government decides the inflation target. The model is also called "New Zealand model".

¹⁰⁷ The ERM was part of the European Monetary System (EMS).

¹⁰⁸ A pegged currency is a currency whose exchange rate has been fixed with regard to another currency.

2014). This was due especially to the ability of the DM to establish itself as a hard currency, i.e. a currency with a stable exchange rate in the medium and long term, a stable purchasing power and a low inflation rate. These features are closely connected to the credibility of a central bank, which is usually stronger the more politically independent the institution is. The fact that the DM was the centre currency had a twofold implication: the Bundesbank enjoyed a large degree of monetary autonomy and its decisions influenced the other European countries (*ibid.*).

This scenario shows that Germany had much to loose by entering into a monetary union. The Bundesbank would no longer have monetary autonomy and Germany was to enter in a union of states that did not put the same weight to price stability (e.g. France and Italy). However, precisely the fact that Germany was the actor that had the most to loose probably strengthened its bargaining position (Hosli 2011).

Moreover, one has to take into account the political objective that several leaders in Europe hoped to achieve with the EMU. The French President, Francois Mitterand, expressed this thought when he stated that "we may have the nuclear bomb, but the Germans have the deutsche mark" (*Der Spiegel* 2010). European leaders hoped to strongly embed Germany in the EU. But if Germany had become reunified, this would not be guaranteed. To limit possible German hegemonic temptations, the only possible assurance was Germany's participation in a monetary union with a new currency (Fabbrini 2015). The then German chancellor, Helmut Kohl, knew that reunification would European leaders would accept reunification only if Germany agreed to give up the DM and participated in EMU. However, for the above-mentioned reasons Germany was able to have a quite strong bargaining position as far as the design of the EMU was concerned.

The position of the Bundesbank in the first phase of the EMU was focused on the budgetary discipline of the participating countries. More specifically, it called for a strict application of the convergence criteria and was against any attempt to relax them (Richter 1999). The importance of the the EMU as stability community is underlined also by the Bundesbank's monthly bulletin of 1998, where the bank expresses concerns that the stability culture was not yet part of all MSs. It stressed the necessity to respect the convergence criteria and the independence of the central bank in order to give credibility to the common monetary architecture (Bundesbank 1998).

Generally, the position of the Bundesbank regarding the EMU has moved along some cornerstones. I will provide examples of some speeches of Bundesbank's presidents in order to show this position.

Karl Otto Pöhl, president of the Bundesbank from 1980 to 1991, was part of the Delors Committee. He had an important role in proposing the Bundesbank model for the ECB by stressing the importance of an independent central bank. He was then also co-author of the Statute of the ECB (Weidmann 2015).

Similarly, Axel Weber, who became president of the Bundesbank in 2004, states that legal rules in order to limit the indebtedness of the EMU's participants was unavoidable because of the bias towards debt accumulation that could arise from the fact of enjoying low interest rates (Weber 2006b). He admits that the ECB enjoys larger independence than the Bundesbank, because the Statute of the latter is included in an ordinary law that can be amended quite easily. On the contrary, reaching unanimity among all MSs in order to change the statute of the ECB seems much more complicated. However, Weber argues that the Bundesbank had never feared a radical change of its statute because of the widespread stability culture among the German citizens. They would not have accepted a central bank controlled by politics (*ibid*.).

Weber also points out that in a monetary union the independence of the central bank is a necessary, although not sufficient, precondition for price stability. Monetary policy must be complemented by sound budgetary policy. In a situation of unsound budget, a conflict between monetary and budgetary policy could arise. If a government has a high public debt, it would prefer to ease its debt through a higher inflation rate. This makes pressure on the central bank in order to do expansionary monetary policy. Hence, even if the bank is independent, it has more credibility in its anti-inflationary stance if it does not face pressures from the government because of an unsound budget (*ibid.*, p. 8).

A hard currency has not only an economic but also a social function, because it guarantees a stable purchasing power to the less well-to-do. Price stability is an objective that benefits a very large amount of population (Weber 2008). It is essential, Weber argues during the Eurozone crisis, to make sure that financial markets can trust again the budgets of MSs. An important part of the crisis is the lack of trust (*Vertrauenskrise*, ibid., p. 10). Financial markets did not want to rely any more on the ability of States to pay off their debts. Hence, since the root of this lack of trust is too much indebtedness, deficit and debt

must be reduced. Relating to this, the provisions of the SGP should be strengthened. According to Weber, the German debt brake is a good measure, especially because it applies not only to the Federation but also to the *Länder*. In order to restore trust in the financial markets and safeguard the stability of the euro area of a whole, he is in favour of aid programs that strictly adhere to the principle of exclusion of liability (*Haftungsausschlussprinzip*, *ibid.*, p. 12). These programs must be exceptional, limited in time and subject to strict conditionality (*ibid.*).

Another leitmotif of the Bundesbank during the Eurozone crisis was that structural reforms are essential for sustainable, non-inflationary growth and for more employment. Reforms must be put forward by politics: they cannot be driven by the ECB. Economic policy and, more specifically, wages policy became crucial in a monetary union where it is not possible to devaluate the currency. Prices must be made competitive through structural reforms. In order not to undermine the trust in the currency union, it is therefore essential to have a sound budget (Weber 2008b). Weber resigned as president of the Bundesbank – and hence also as member of the ECB Governing Council – in 2011, probably because he did not agree on the ECB's purchase of government bonds on the secondary market. (*Die Zeit* 2011).

The successor of Weber – Jens Weidmann – showed similar positions and expressed on several times the importance of the liability principle. Monetary union must remain a stability union (Weidmann 2014c). Liability is the central principle of the EMU's economic order (Weidmann *ibid.*, p. 6). In order to assure the stability of the EMU, it is essential to keep control and liability for economic policy on the same level. Since a centralization of both control and liability at the EU level, i.e. a fiscal union, is not feasible at the moment, because citizens and governments of the MSs do not want this, the only alternative is to strengthen the principle of own liability (Weidmann 2014b). Indeed, for Weidmann one of the reasons for the Eurozone crisis was that investors did not trust the no-bailout clause. Since thanks to the monetary union government bonds of the MSs had similar yields, investors did not differentiate between the real quality of the bonds. Hence, financial markets could not have the effect of imposing budgetary discipline to MSs.

The liability principle should apply both to States and to banks. This means that States and banks can ultimately also fail without endangering the whole euro area or the whole financial system respectively (Weidmann 2014b). In case of bankruptcy, shareholders and creditors who provided the loans should be liable, not the taxpayers. This should prevent banks from lending too much or lending without assessing the riskiness of the loans like in the past, where banks knew they would not have been liable and they hence did not take prudent decisions (Weidmann 2014a). Instead, "a functioning bank resolution regime with a credible bail-in of shareholders and creditors strengthens incentives for banks to carefully select and monitor the firms they lend money to" (Weidmann 2014e: 3). Relating to this, banks need a higher quantity of higher-quality own capital to protect themselves against potential losses when they lend money.

According to Weidmann (2014a), the SSM is crucial in order to break the link between banks and the State. It is important to make sure that unsound public finances do not have negative repercussions on the financial system. Weidmann strongly argues that while supervising banks the ECB should not give preferential treatment to government bonds. Usually, the ECB controls the budget of banks but does not assess government bonds according to their real riskiness. Instead, in order to strengthen the liability principle banks should be forced to assure such risky loans with own capital.

Weidmann also calls the Commission to ensure compliance with the provisions of the SGP and with the Fiscal Compact. This is the only way to make rules credible (*ibid*.). The rules are often too complex and leave too much discretion to the Commission. Thus, they risk being perceived as non binding (Weidmann 2014d).

Moreover, it is essential that the ECB continues to be independent and committed to price stability (Weidmann 2014b). The independence of the ECB cannot be used for objectives different from price stability, otherwise it has no legitimacy any more (*ibid*.). Monetary policy cannot solve the crisis and is not an alternative to structural reforms (Weidmann 2014d). Price stability is an essential precondition for economic growth and does not exclude it (Weidmann 2015a).

Weidmann has criticised the rescue packages and some ECB measures like the OMT programme and the QE because they weaken the liability principle by decoupling control (which rests on MSs' level) and liability (which has become partially joint) (Weidmann 2014c). These measures go beyond the mandate of the ECB (*ibid.*) and increase the risk of moral hazard. Strict conditionality is essential in the case of financial assistance because otherwise the EU would become a transfer union, which is politically non acceptable at the moment (Weidmann 2015c).

5.2.3. The political parties

This section gives an overview of the position that the main political parties in Germany had on the EMU at different stages.

The Bundestag adopted the "Law approving the Maastricht Treaty" on December 2, 1992 by an overwhelming majority: "543 out of 568 votes cast" (MT judgement, p. 6). The Bundesrat adopted it unanimously on December 18, 1992. Hence, two weeks later the law entered into force. Although the MT was approved by such a large majority, the Bundestag adopted a resolution on the EMU which sets some important caveats to the government.

Firstly, the Bundestag underlines that the EMU creates the basis for "a stable currency in the future, in particular by assuring the independence of the European Central Bank and the Agreement on Stability Criteria for the Participating Member States" (*ibid*.). The precise evaluation of and compliance with these criteria shall be the only point of reference upon which to decide whether a State is ready to adopt the euro. Secondly, a State must respect the criteria in the long term, also after it has adopted the euro. This is essential in order to make "the future European currency [...] as stable as the Deutsche Mark" (*ibid*.).

Finally, the Bundestag commits itself to "resist any attempts to weaken those stability criteria" (*ibid*.). The votes of the German government on the admission of a new MS to the third stage of the EMU must express the will of the Bundestag, which shall have the right to vote on the issue. The government must declare that it will respect the opinion of the Bundestag. A similar resolution was adopted also by the Bundestat (*ibid*.).

A look at the positions of the political parties sitting in the Bundestag in 1992 shows several common concerns (Deutscher Bundestag 2012). The then chancellor, Helmut Kohl, and its party CDU (*Christliche Demokratische Union*) emphasized that the new European currency had a stable foundation. Only those States willing to run a sound budgetary policy would be admitted to it. A success for Germany was considered the fact that the ECB became primarily committed to price stability and was politically independent. Members of the CDU noted that this was a response to great concerns among the German population. Also the exclusion of liability for other Member States was mentioned positively (*ibid*.).

The SPD commented positively on the deficit and debt criteria and on the involvement of the Bundestag in the control of both the European legislative process and the German government. The FDP (*Freie Demokratische Partei*, Free Democratic Party) underlined that price stability is enshrined in the German constitution and must therefore be guaranteed also in the new monetary union. There was not the risk that the convergence criteria could be circumvented by politics. Quite critical of the MT were the Greens (*Bündnis 90/Die Grünen*) and the Left (*PDS/Linke Liste*): they feared economic integration at the expense of democracy and the consequences of a too much predominant role of Germany.

The 1995 SGP was proposed by the then German Finance Minister, Theo Waigel. According to Waigel, it is an important step to make the euro a hard and stable currency. Only if the euro is stable will it be successful. Waigel points out that the SGP is not only requested by Germany, but useful for all Member States, especially the small ones (Bulletin 1997). He also says that Germany had originally proposed a MTO of 1 % as for the ratio deficit/GDP, but that other MSs had insisted on a MTO as balanced or surplus budget (*ibid.*, p. 4). Generally speaking, Waigel states that there had been large agreement on the content of the SGP, not only among MSs with a tradition of stability (*ibid.*, p. 5).

Dullien (2012) analyses the main positions of the German political parties regarding the Eurozone crisis. I will focus only on the parties currently represented at the Bundestag. The CDU – the party of chancellor Angela Merkel – argues that the Eurozone crisis is mainly due to structural problems of some MSs. The best way to come out of the crisis is to strengthen productivity and consolidate the budget. The party is "against mutualisation of debt [...], invoking the Maastricht Treaty's 'no-bailout' philosophy" (*ibid.*). In its 2007 approved party manifesto, there is written that an important part of the EU's efforts to reach economic growth and competitiveness must be an absolute independence of the ECB and a strict respect of the European SGP (*CDU-Grunsatzprogramm*, p. 104). The CDU's syster party – the Bavarian *Christliche-Soziale Union* (CSU) – has a similar, albeit firmer, position. They stand for a stability culture at all governmental level and for all parliamentary decisions. Budgetary policy must be sound and sustainable in order to have a strong and stable economy (*CSU-Grunsatzprogramm*, p. 35).

While being Keynesian in the 1960s and 1970s, the SPD took increasingly neoliberal positions in the 1990 and strongly supported the constitutional debt brake in 2009. It stresses European solidarity but at the same time agrees to financial assistance only on the basis of conditionality. Although "the party has [...] come out in favour of a stricter

Stability and Growth Pact" (Dullien 2012), it believes that growth and investment that do not come only from budget consolidation must be put forward.

The Greens are probably the party less influenced by the concerns about the EMU that other parties have. This became clear even at the time of the MT. The Greens support fiscal consolidation because debt is not sustainable in an economy which – according to them – should not be based exclusively on growth. They are in favour of the debt brake and the convergence criteria (*Bündnis 90/Die Grünen, Wahlprogramm 2013*, p. 85). That their stance is more pragmatic is also shown by a flexible approach regarding the role of the ECB. As at the time of the MT ratification, "they did not want to see the Eurozone dominated by German economic paradigms" (Dullien 2012).

Radically alternative is the position of the Left¹⁰⁹, which opposed austerity measures because it considers them neoliberal. They advocate that the ECB becomes a majoritarian institution not only devoted to price stability. Probably the Left is "the most New Keynesian" (*ibid.*) of the German political parties.

In 2013, a new party was born, the Alternative for Germany (*Alternative für Deutschland*, AfD), characterized by a strong Euroscepticism (*Die Zeit* 2013). They particularly criticise the ESM as having undermined the liability principle and having caused a democratic deficit. They want Germany to exit from the EMU (*AfD-Leitlinien 2014*). At the 2013 federal elections, the party did not overcome the 5 % election threshold. It is instead represented in the current EP.

Angela Merkel has been the German chancellor since 2005. Her position is thus likely to have played an important role during the Eurozone crisis. Merkel sees the heavy indebtedness, the high unemployment rate and the structural weaknesses of several MSs as the key problems of the current crisis. She argues that European MSs must find a balance between solidarity and self-responsibility. The no-bailout clause must be respected. Relating to this, the controlling institutions – especially the Commission – must receive support from the States in the exercise of their monitoring rights. Merkel also believes that structural reforms, e.g. more flexibility in the labour market, are essential to reach sustainable growth. She argues against Eurobonds, because they are possible only through

¹⁰⁹ This party was born in 2007 from a fusion between the "Party of Democratic Socialism [*Partei des Demokratischen Sozialismus*] – the successor to the former East German Communist party – and the Electoral Alternative for Labour and Social Justice [*Arbeit & soziale Gerechtigkeit – Die Wahlalternative*], a left-wing grouping led by former Social Democrat finance minister Oskar Lafontaine" (Dullien 2012: 7).

centralization of economic policy, something that is not achievable at the moment. In that case, the ECJ should be able to control national budgets.

I have shown that since the ratification of the MT there have been some common concerns among German parties. These concerns regarded especially the stability of the euro area, the liability principle and the commitment of all MSs to sound budgets. Especially in the case of the CDU (which has governed the longest time since the MT), the importance of these principles has been underlined also during the Eurozone crisis.

5.2.4. The economic performance

What has been defined by many scholars (for example, Abelshauser 2004) as the German economic miracle (*Wirtschaftswunder*), i.e. a long period of generally constant economic growth, came to an end with the 1973 oil crisis¹¹⁰ and the following stagflation. Following the collapse of the Bretton Woods system, the Bundesbank adopted a restrictive monetary policy and converted into a monetarist line with a focus on price stability (Prollius 2006).

After the second oil crisis in 1980-1982, a more positive phase came, characterized by economic growth of 2 %, which will then become 4 % at the end of the 1980s and even 5 % in 1990. Inflation was generally law and stable during this period. The new government led by Helmut Kohl, which took office in 1982, started a number of rather neoliberal measures: liberalizations, privatisation, budgets consolidation, cuts in public expenditure and flexibility of the labour market. He was actively supported by the Bundesbank, which continued to keep inflation law (*ibid.*). Although some of the mentioned measures were carried out only partially and several structural problems remained unsolved, GDP grew by 3.6 % at the end of the 1980s and by 5.7 % in 1990 (see figure). Also the financing deficit was reduced (*ibid.*, p. 213).

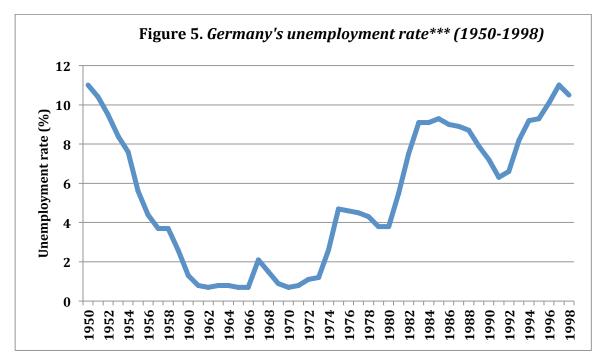
¹¹⁰ The crisis erupted when the Organization of Petroleum Exporting Countries (OPEC) limited the quantity of petroleum as a response of the US intervention at Israel's side in the Yom Kippur War (Prollius 2006).



** Percentage change of the GDP at market prices of 1991 with respect to the previous year. *Source*: Richter (1999), pp. 30, 65, 100, 141.

On October 3, 1990, German reunification took place with the incorporation of the Eastern *Länder* of the former German Democratic Republic into Western Germany. On Juli 2 of the same year the German monetary, economic and social union (*Währungs-, Wirtschafts- und Sozialunion*) between the Federal Republic and the German Democratic Republic was created with an exchange rate of 1:1. This decision was mainly politically motivated: the Bundesbank argued in favour of a different exchange rate. The reunification marked the begin of huge financial transfers to the Eastern *Länder*. Moreover, costs for social security benefits and health insurance increased steadily throughout Germany. Also because of this, public debt doubled within five years from 1989 to 1994 (*ibid.*).

At the turn of the new millennium, the whole German economic order seemed to be in crisis. High unemployment (see figure 5) and high public debt as well as a labour market too rigid to afford the forthcoming globalization were the main problems. The situation was worsened by the negative impact of the first years of the EMU. Indeed, since 1998 interest rates in Germany had been higher than in the rest of Europe, which had depressed investments and growth (Deeg 2006). This led *The Economist* to call the country "the sick man of the euro" (The Economist 1999).



^{***} Annual average. Source: Richter (1999), pp. 30, 65, 100, 141.

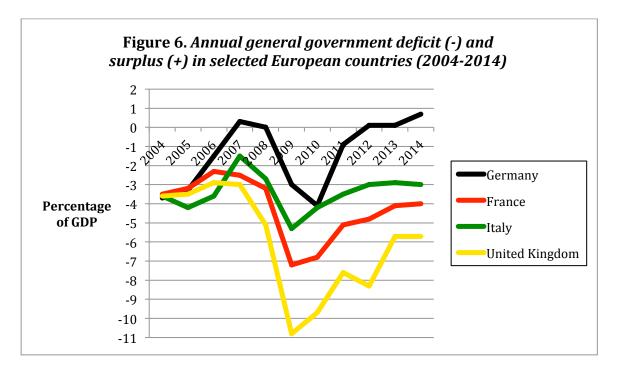
In 2002, the coalition of Socialdemocrats and Greens led by Gerhard Schroeder started a number of labor market reforms known as "Hartz reforms", elaborated by a Commission supervised by Peter Hartz (Dustmann 2014). The aim was twofold: firstly, to reform the financial system, dominated by banks, which on their turn had too close relationships with industrial corporations; secondly, to make the labour market less rigid (by limiting the power of trade unions) and more able to compete on the international markets. The relationship between firms and workers became more decentralized and adapted to the specific needs of each firm. The possibility of works councils and firm management to agree on conditions that differ from the agreements collectively negotiated at central level by the trade unions was introduced. In this more flexible system, firms could for example pay lower wages or reduce working hours. Although it was not a direct advantage for the worker, it nevertheless saved some of them from being dismissed. They worked less but did not loose their job (Deeg 2006).

In 2003, the government launched an even more ambitious reform programme, Agenda 2010, which aimed, among other things, at "reducing non-wage labor costs, boosting domestic demand and capital spending, assisting the unemployed find jobs more quickly, making labor markets more flexible (e.g. easing employment protection rules), and

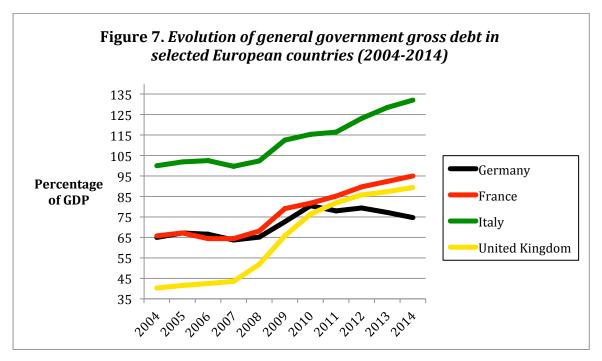
fostering innovation" (*ibid.*, p. 344). Although highly controversial, the main political parties agreed on the reforms.

Implementation of the reforms began in 2005. As it is well known, in 2003 Germany breached the 3 % ratio of deficit to GDP. The same happened also in the following three years (as well as in 2010), as figure 6 shows. In the period 2005-2008 and from 2012 onwards, the country managed to reduce its government debt (see figure 7). Starting from 2010, its deficit was close to zero, in the years 2012-2014 even above zero. Since 2009, Germany's unemployment rate is lower than the largest European countries, and it has since then continued to decline (see figure 8).

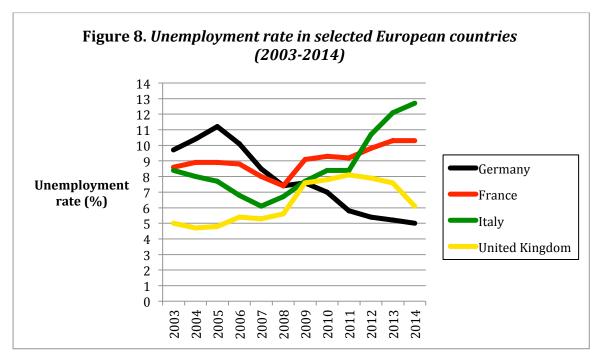
The data show that at the time the MT was signed Germany was in a relatively good economic situation, with a low inflation and a still growing GDP. Generally speaking, the inflation rate had continuously declined since 1980 and, after a break in the period 1988-1982, also starting from 1992 (see figure . Especially since 2009, Germany had managed to lower three indicators more than the other largest European MSs: deficit, debt and unemployment. It can thus be argued that Germany's economic performance at the two critical junctures (Fabbrini 2015) – the MT and the Eurozone crisis –has positively influenced its contracting power.



Source: Eurostat (b). Own reworking of the data.



Source: Eurostat (a). Own reworking of the data.



Source: Eurostat (c). Own reworking of the data.

5.2.5. The stability culture

In this chapter, I have shown the importance that different actors in Germany gave (give) to stability. The FCC, the Bundesbank, the majority of the Bundestag in 1992 and also the government of Angela Merkel during the Eurozone crisis all stressed the concept of the EU as stability Union (*Stabilitätsunion*).

The wide consensus on the importance of stability proves that in Germany there is quite a strong stability culture (*Stabilitätskultur*). The latter is defined as the general, deeprooted acceptance of currency stability in a society (Gabler 1992). This is not limited to price stability, but also to those measures aimed at having sound public finances.

Both in Maastricht and during the Eurozone crisis, the German government took a prostability stance largely approved by the country. Political parties debating the MT explicitly referred to concerns of the population about the stability of the future common currency. This was the reason why initially the Germans had reservations about the EMU.

The fact that all the main decision-making actors in Germany shared the stability culture has enabled the country to have a much stronger bargaining power when the EMU and anti crisis measures had to be developed.

5.3. European causes

5.3.1. Asymmetry

Asymmetry has been a constant element since the beginning of the European project. The founding members of the European Economic Community belonged to the three categories of small (Belgium, the Netherlands), medium (Italy, although its status has always varied between medium and large) and large states (France and Germany). Asymmetry has influenced the attitude of MSs towards integration. On the one hand, small States feared to be dominated by the large ones. On the other hand, the large states wanted to play a role consistent with their power. Since the problem sharpened together with the progressive enlargement of the EU, a compromise had to be found (Fabbrini 2015).

This compromise, which had to cover the representation of MSs in the European institutions, was enshrined in the Lt. In the EP, representation follows a criterion of degressive proportionality (TEU, Art. 14) which gives small MSs more seats than they

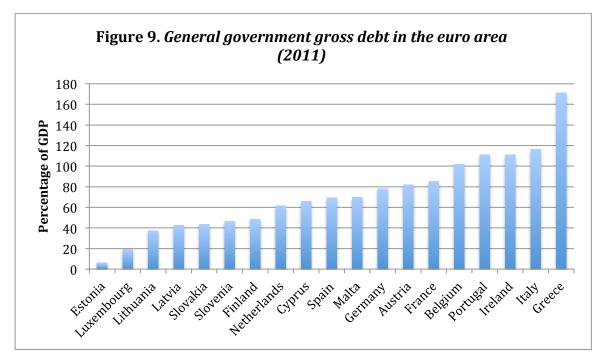
would have had on the basis of their population. In the Council, qualified majority was defined as "at least 55 % of the members of the Council, comprising at least fifteen of them and representing Member States comprising at least 65 % of the population of the Union"¹¹¹ (TEU, Art. 16.4). As for the Commission, the TEU stated that it should include "a number of members [...] corresponding to two thirds of the number of Member States, unless the European Council, acting unanimously, decides to alter this number" (Art. 7.5). Indeed, in 2013 it was decided to continue to have one commissioner for each MS (Fabbrini 2015).

Asymmetry certainly has influenced the process of European integration. One could argue that asymmetry has even deeper effects within a specific policy regime like the EMU, because there it concerns specific elements. I have shown that the DM was the centre currency in the ERM. This situation gave the Bundesbank a large degree of autonomy and resulted in a huge asymmetry. Since Germany managed to design European monetary policy like its national one, a certain degree of asymmetry, in principle, persisted also after the start of the EMU.

Economists have pointed out that the EMU is not an optimal currency area because MSs have too different economic structures and intra-state labour mobility is quite low (Feenstra 2014). Moreover, positive effects of the single currency, like elimination of exchange rate risks and reduced transaction costs, were asymmetrically distributed. Positive trade effects prevail in the so-called "D-Mark" Zone, including "those member states that had a long record of being in a 'hard', narrow-band ERM with Germany (Austria, Benelux, Denmark, France, and Germany)" (Dyson 2012: 1300).

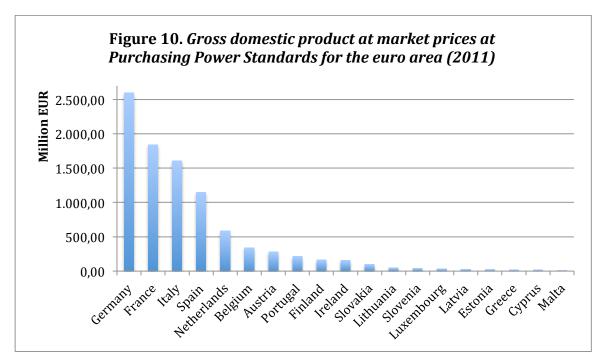
Hence, since the beginning the EMU fostered a certain core-versus-periphery logic. This worsened dramatically with the beginning of the Eurozone crisis, when markets began to question the sustainability of debt of some MSs. When financial assistance was granted to Greece, Ireland, Portugal and Spain, the dynamic richer versus poorer Member States was supplanted by a contraposition between debtors and creditors (see figure 9). The latter were clearly able to set the conditions. Even States that did not apply for assistance but had a very high debt – e.g. Italy – were put under pressure by the financial markets and were not able to propose anti-crisis measures.

¹¹¹ The article continues by stating that "a blocking minority must include at least four Council members, failing which the qualified majority shall deemed attained."

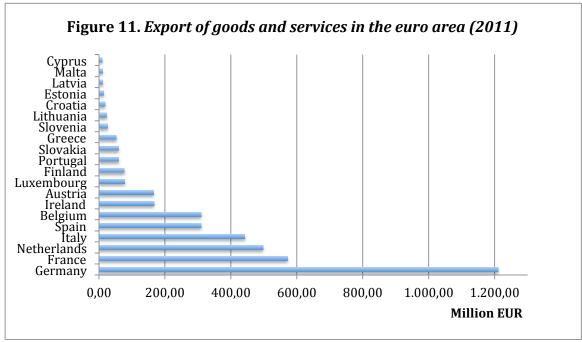


Source: Eurostat (d). Own reworking of the data.

A particular role among the creditors was played by Germany. Having more than 80 million inhabitants, it is by far the most populous country of the EU. 2011 was a year in which the crisis impacted in a particular dramatic way on several European countries, including Italy. It was also the year before important measures like the Fiscal Compact were taken. Hence, it could be useful to take a look at macroeconomic data for that year. As the graph shows, Germany's GDP in 2011 is clearly higher than that of France (see figure 10). Moreover, Germany's economy is very strong export-oriented: in the same year it exported twice as much as the second largest exporter, France (see figure 11).



Source: Eurostat (f). Own reworking of the data.





Thus, not only was the EMU responsible for some asymmetries inside the EU. During the Eurozone crisis, these asymmetries were further widened by the contraposition between creditors and debtors. In turn, there was an asymmetry also within the creditors, with Germany playing the undisputed leading role. This was possible also because of a changed relationship between Germany and France. The next section addresses this point.

5.3.2. Decline in France's balancing capacity

The relationship between France and Germany has shaped European integration in several ways. As Germond (2012: 607) argues, "the division of Germany had been a defining parameter of the post-war Franco-German relationship: it provided the basis for an asymmetrical balance of power [...], a key element of the successful reconciliation between the two former enemies and stability of the bilateral partnership [...]."

German reunification seemed to have the potential to change the relationship between the two countries. The French president Mitterrand wanted to make sure that Germany would have preserved its pro-European stance also after being reunified. The EMU would have to be designed according to the preferences of both countries. Although the analysis has shown a prevalence of German principles, the decentralization of economic policy mirrored the French position. However, the independent central bank and the convergence criteria were proposed by Germany. It can be argued that since the beginning the EMU has reflected more the preferences of Germany than that of France.

Howarth (1999) points out the reasons why France was against an independent central bank. Firstly, according to the French deep-rooted republican tradition, each institution which does politics in a wide sense must be controlled by democratic elected bodies. A central bank completely independent of politics is not conceivable. Secondly, economic and monetary policy should not be separated from each other. This also means that price stability should not be the primary objective of central bank. Thirdly, in order to have low inflation it is not necessary to have an independent central bank. The same can be achieved also by central banks that work closely together with politicians. Eventually, French elites thought that central bank independence had reinforced the German approach to monetary policy at European level. The French proposal of making the European Council decide, on the basis of a report of the Council, the broad guidelines of economic policy passed. The French idea of gouvernement économique was applied also to exchange rate policy, the control of which was assigned to the Council (Dyson 2012), although the latter had to act taking into account price stability (Howarth 1999). Hence, it seems that the final design of the EMU overall reflected positions not typically supported in France. It has also been argued that at the end Mitterrand "accept[ed] German demands in order to push ahead with EMU" (Howarth 1999) and in order to assure that Germany would have participated.

The 1997 SGP reflects another compromise between the two countries: Germany wanted to assure the persistence of stability within the euro area countries, while French insisted to include also provisions directly related to growth. Besides the name, the content of the Pact was more strongly influenced by Germany.

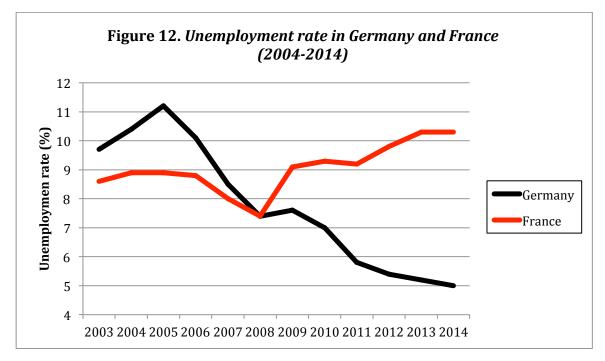
In 2003, both countries breached the convergence criteria. However, they agreed not to sanction themselves mutually and were able to prevent the Commission from starting the EDP (Hix 2011). When the Eurozone crisis erupted, "French and German governments [...] converged towards the shared view that only national governments, coordinating in the European Council and the ECOFIN Council, could face and resolve the Eurozone crisis" (Fabbrini 2015: 130).

The French president, Nicholas Sarkozy, and the German chancellor, Angela Merkel, often met informally before European Councils, something that used to happen also between Franco-German leaders in the past (Germond 2014). The predominance of intergovernmental institutions during the crisis was in line with the French traditional approach to European integration. However, if it is true that "France came to adopt the German economic paradigm, enshrined in the [...] 2011 ESM and the 2012 Fiscal Compact Treaty – Germany came to adopt the French political paradigm, accepting that decision-making power in the EU should be in the exclusive hands of the governments [...]" (Fabbrini 2015).

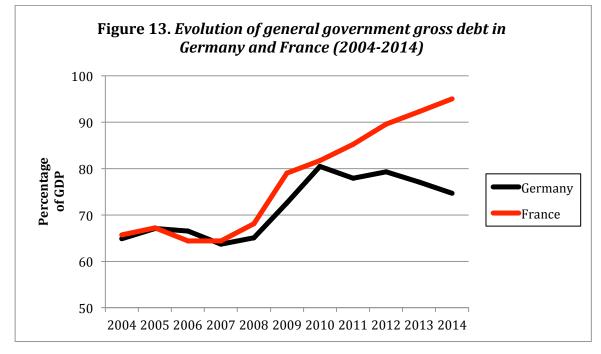
As I will show in the next chapter, adopting the French intergovernmental approach will prove to be not too difficult and even favourable for Germany. It was – and still is – probably more difficult for France to accept anti-crisis measures largely based on the German approach to the EMU. This seems all the more true if we consider the country's position in the wake of the MT. However, during the crisis financial markets represented an increasing threat to France. In November 2013, for example, the rating agency Standard and Poor's downgraded France's government bonds credit rating stating that "government reforms would not raise medium term prospects and because lower economic growth was constraining the government's ability to consolidate public finances" (France 24).

The dynamic of the Eurozone crisis seemed to suggest that the only way to appease financial markets were consolidation of public finances and structural reforms. If we take a look at some macroeconomic data over the past years (see figures 12, 13 and 14), the German economy seems more ready to continue on a general positive trend. One reason

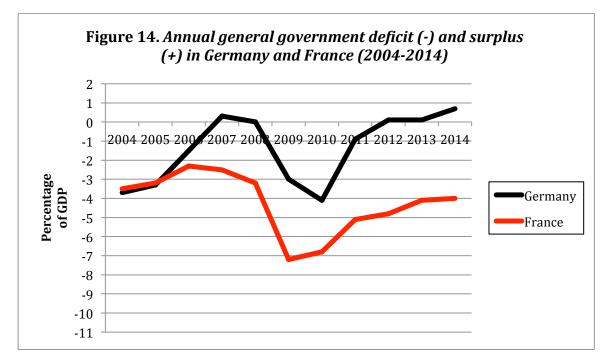
for this may also be that the German reforms started in 2003 started to show their effects precisely when the Eurozone crisis began. Since the beginning of the crisis, the German economy proved to be able to react better. Also in more recent times the general economic looks better than in France. Given that Germany managed to design the most important anti-crisis measures in a way consistent with its approach to the EMU, it is likely that the asymmetry in the relationship with France will become even deeper.



Source: Eurostat (c). Own reworking of the data.



Source: Eurostat (a). Own reworking of the data.



Source: Eurostat (b). Own reworking of the data.

5.3.3. Mutual mistrust

Economic and monetary policy traditionally belong to the core of national sovereignty. It is not surprising that a loss of sovereignty in them will be accepted only at certain conditions. The outcome is the result of complex negotiations: the EMU is an example at stake. In a system where some policies are centralized and others decentralized, decisions of one actor can affect the others. Because of this, some actors could not trust each other.

In the EMU, mutual mistrust has existed since the beginning. Germany believed that other MSs were not really committed to sound public finances and that they would try to relax the convergence criteria (Castronovo 2014). France saw central bank independence as a German attempt to preserve a strong influence on monetary policy (Howarth 1999).

The SGP reflects Germany's concern that MSs would have met the convergence criteria also after the entry into the EMU. However, the breach of the convergence criteria by France and Germany undermined the credibility of the SGP. It proved that large European countries could simply violate core provisions of EMU if they agreed to do so. The mistrust of less influential MSs was deep. Similarly, when in 2009 Greece turned out to have falsified its accounts, large MSs lost confidence in the efficacy of the EMU.

How deeply some MSs mistrust others can be seen in the strict conditionality applied to financial assistance. This is the result of a continuous fear of moral hazard. Mistrust also becomes evident in the Fiscal Compact, which provides for the possibility of a MS to bring a case before the ECJ when it considers that another MS has not abided by the core provisions of the treaty. The same treaty also states that MSs shall respect the recommendations of the Commission in the framework of the excessive deficit.

Mistrust thus characterizes not only intra-state, but also intra-institutional relationship (Commission-Council). From an ordoliberal perspective, such an environment was a breeding ground for further constraining the EMU's economic order and MS's discretion in the economic process.

5.2.4. Measures inside and outside the European law

One of the main differences between the EMU in the MT and its evolution during the Eurozone crisis is the legal order in which provisions were included.

The first legally binding provisions of the EMU were those of the MT. The convergence criteria and the ECB statute were included in protocols attached to the treaties. Thus, all the main provisions of the EMU were part of primary EU law. Being primary law meant that these provisions could hardly be changed: unanimity of MSs is required. The content of the SGP was first outlined in an agreement that the MSs reached at Dublin in 1996. It then became Community law in 1997.

The following table reports the main anti-crisis measures seen in chapter 2. They are classified according to their place within or outside European law.

Anti-crisis measures	
Inside EU law	Outside EU law
European Financial Stability Mechanism	European Financial Stability Facility
European Semester	Euro Plus Pact
Six Pack	European Stability Mechanism
Two Pack	Fiscal Compact
Single Supervisory Mechanism	Single Resolution Fund
Single Resolution Mechanism	

Table 5. Classification of anti-crisis measures according to their legal order

The decision to adopt measures inside or outside EU law had a political impact. As I have already mentioned, the intergovernmental institutions (especially the European Council) dominated during the Eurozone crisis. France traditionally preferred an intergovernmental approach to the EMU. The novelty was that Germany started to do the same, although it was at odds with the stance the country had to European integration (Laursen 2012).

The centrality of the intergovernmental institutions was justified by their supposed ability to quicker react to the crisis. Secondly, although both in the European Council and in the Council there is one representative for each MS, stronger MSs can exploit their bargaining power more effectively. This was the case for Germany: the country was economically in a more favourable situation than its traditional counterpart France. Moreover, Germany could present itself in a quite united position, since the majority of the Bundestag, the Bundesbank and the Constitutional Court had adopted a firm stance on stability.

Especially the European Council could play a central role because it moved beyond its function of setting the general political guidance of the Union. Although it should have no legislative functions (TEU, Art. 15), it shaped the content of many important anti-crisis measures. It could even be said that at the peak of the crisis it supplanted the Commission in the latter's role of proposing legislation. The intergovernmental dimensions was further differentiated between euro area and non-euro area MSs. This had already been the case in the LT, which had established the Euro Group as the informal meeting of the economic and financial ministers of the euro area. The Fiscal Compact combines the dimension of the heads of State/of government with the dimension of the euro area by creating the Euro Summit. It can be argued that the reduction in size of the intergovernmental institutions benefitted the position of the country with the strongest bargaining power, i.e. again Germany.

It is not surprising that more intergovernmentalism could lead to decisions adopted by international (intergovernmental) treaty rather than through the procedures of EU law. Such treaties were often presented as a more flexible way to react to a critical situation like the Eurozone crisis. They enable to overcome the veto dilemma (Fabbrini 2015). The Fiscal Compact is a case at point: since it was clear that the United Kingdom would not

have ratified it, the only solution was to push for an intergovernmental treaty. It proved to be successful.

The adoption of anti-crisis measures through intergovernmental treaties seems to exclude the supranational dimension. Actually, the EP was marginalized, but the Commission became a key actor with the function of solving the enforcement dilemma (Fabbrini 2015). Again, according to the Fiscal Compact, MSs have to respect the recommendations of the Commission at each stage of the excessive deficit procedure. By limiting MSs' discretion and by increasing the Commission's power, enforcement of rules was expected to increase.

Intergovernmental treaties were seen as an alternative to EU legislative acts. However, it does not mean that these two legal orders excluded themselves mutually. During the crisis, intergovernmental treaties used EU law to strengthen their provisions. The Fiscal Compact refers to the EDP and states that judgements of the ECJ on compliance with the main provisions of the treaty should be binding. Moreover, it aims to integrate the main provisions into EU law.

Sometimes provisions of intergovernmental treaties also activate automatically other provisions from EU law. For example, the enhanced surveillance of the Two Pack (EU law) applies automatically if the MS concerned gets financial assistance from the ESM (international law). The ESM even assigns to two different actors – one intergovernmental and one institutional – the settlement of disputes between a euro-area MS and the ESM. They will be decided by the Board of Governors, but the ECJ works as a sort of appeal court in case the MS contests the decision of the Board of Governors.

The measures seen in chapter 2 show that the European and the intergovernmental legal order mutually strengthened themselves. Building upon a pre-crisis EMU already dominated by core ordoliberal principles, the confusion between European and international legal order enabled Germany to root these principles even deeper. This was possible by a decision-making framework centred on more and more restricted groups (European Council, Council, Euro Group and Euro Summit). In these groups, decisions were taken quicker and the outcome was more consistent with the position of the stronger MSs. Compliance with the decision was assured also with the support of the ECJ. Thus, important anti-crisis measures strongly impacted on the EMU: they started as provisions of

international law, used EU law to widen their effects and in some cases they even penetrated the constitutions of MSs.

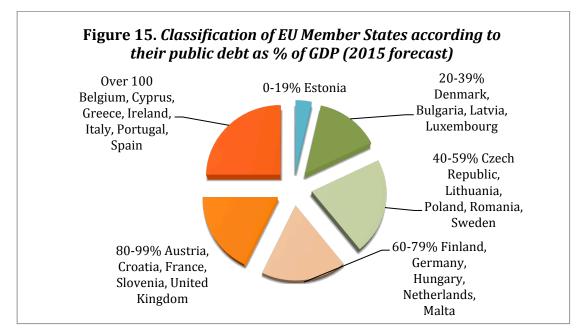
5.4. Implications of Germany's influence on the EMU

The EMU can be considered "one of the boldest experiments in the history of the international monetary system" (Feenstra 2014: 812). It was born as a political project (Fabbrini 2015) after the critical juncture of the end of the Cold War had taken place. Politically it was a great achievement: a group of States decided to completely delegate monetary policy and to pool economic policy. This meant a loss and a sharing of sovereignty respectively in two sensitive policies.

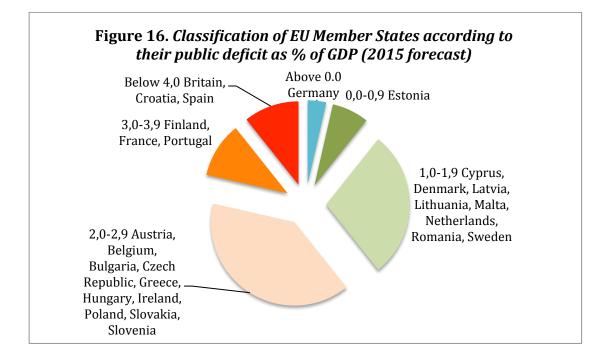
We have seen that the outcome of the MT was in favour of Germany. The EMU's focus on stability was beneficial to some European countries, including Italy, because it forced them to achieve budgetary discipline and to put an end to excessive public expenditure. In this sense, the EMU fostered responsible economic policy. The fact that the EMU was born as a political project but included important ordoliberal principles is something contradictory. Indeed, since the negotiations of the MT, Germany's approach had been apolitical: it wanted the EMU "to be shielded strictly from the influence of daily politics, and entrusted to the medium of law instead, and to a strictly politically independent institution" (Joerges 2015: 11). At national level, room for economic policy manoeuvre was given only within the deficit and debt criteria.

The German approach was not shared by all MSs, as we have seen in the case of France's tradition of *gouvernement économique*. Also the stability culture is a typically German element that has developed since the first years of the Federal Republic. Interestingly, how deep stability culture is rooted in Germany becomes evident also by taking a look at language: the same word, *Schuld*, means both fault and debt.

While the content of the EMU was predominantly characterized by legal rules, enforcement of these rules ultimately rests within the political realm. This heavy paradox resulted in a loss of credibility of the whole mechanism. The fact that Germany and France could breach the rules without sanctions fostered the believe that the EMU works according to the law of the jungle. One can argue that only a few European countries are able to respect the convergence criteria. This was true for the past and continues to be so also today¹¹² (see figure 15 and 16). It does not make sense to have rules that only a few can respect. The compliance problems will not cease unless rules are designed in such a strict way. Moreover, there is the risk that a strict enforcement of the current rules exacerbates the division between creditors and debtors, thus de facto paving the way for a two-speed Europe.



Source: The Economist (a). Own reworking of the data.

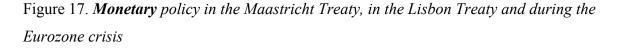


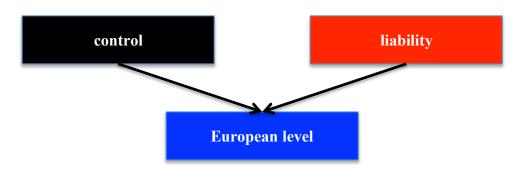
¹¹² As of January 2015, 11 MSs were in the EDP (European Commission 2015).

Source: The Economist (b). Own reworking of the data.

From an institutional perspective, the predominance of intergovernmental actors during the Eurozone crisis has been justified both by a "state of exception in which an unbound executive has come to power" (Joerges 2015: 19) and by a "governing by panic" (Woodruff 2014: 6) that required the ability to rapidly react to financial markets. The ordinary democratic procedure at European level was regarded as too slow. The EP was therefore excluded and often only informed of decisions already taken. However, national parliaments, especially the German Bundestag, took a quite active role by shaping the position of the government. The Eurozone crisis has enhanced the involvement of national parliaments. It is true that this is foreseen also in the LT, but not in the sense that it goes at the detriment of the EP.

The EU still faces several cleavages: MSs have a different size, a different degree up to which they consider EU institutions as legitimate and a different importance attached to national sovereignty, just to mention some of them (Fabbrini 2015). Also because of this, at Maastricht MSs were not ready to fully delegate also economic policy to the European level. Actually, Germany had requested centralization of both economic and monetary policy, but France opposed to it. From a perspective of control and liability, the MT and the LT established the following situation: for monetary policy, control and liability were transferred to the European level (see figure 17). This has been so also during the Eurozone crisis. For economic policy, control and liability remained at national level thanks to the no-bailout clause (see figure 18).





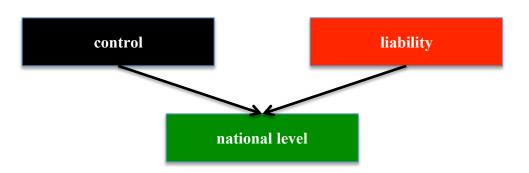
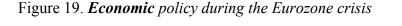


Figure 18. *Economic* policy in the Maastricht Treaty and in the Lisbon Treaty

Anti-crisis measures have introduced more constraints on economic policy. MSs that needed financial assistance had to apply measures required by creditors. This has resulted in an unprecedented reduction in economic policy discretion. Some MSs were forced to follow the recommendations of EU institutions. The control over their economic policy was in practice temporarily subordinated to the will of the creditors – both European institutions and other MSs.

Unlike some have argued (Weidmann 2013), financial assistance did not result in a complete transfer of liability from national level to the European level. Strict conditionality has assured that MSs in difficulty did pay the bill for their high deficit or debt. There has not been a debt cut. The Eurozone crisis led to a decoupling of control and liability: control *de facto* moved to actors different from the MSs in question; liability rested with these MSs (see figure 19).





I have shown that such a decoupling is against ordoliberal principles. But how to overcome this situation? Centralizing both control and liability at EU level would mean to create a fiscal union. However, MSs must be ready to transfer sovereignty in economic

policy to the EU. Currently, this scenario looks quite unlike, not only because of the several persisting cleavages between MSs. These cleavages are also the reason why a transfer union is not feasible.

Hence, the original situation must be restored: until a real fiscal union has been created, both control and liability must remain at national level. What has to be done in order to give more economic policy discretion to MSs is not easy to say. If MSs want to maintain control of economic policy in a Union in which monetary policy has been centralized, they must accept some form of coordination. This could also take the form of binding rules, provided they are designed in a way that does not constraint excessively the autonomy of each MS. Perhaps one could think about widening the existing convergence criteria or envisaging ways of more flexible compliance with the rules. The 2015 proposal by the Commission on "Making the best use of the flexibility within the existing rules of the Stability and Growth Pact" is a case at point. It proposed, for example, the possibility to start strategic investments for structural investments even if this leads to a temporary breach of the deficit and debt criteria. Starting a political and non dogmatic debate on the best use of the existing rules seems to be the first step to make the EMU more accepted and democratically legitimate.

5.5. Germany's future role in the EMU: a constructive hegemon?

This section examines whether Germany can play the role of a constructive hegemon within EMU. Following Clementi (2011), hegemony usually derives from military or economic sources. Already before reunification, Germany was "typically portrayed as an economic giant but political dwarf" (Bulmer 2013). Generally speaking, a predominant economic performance has been considered a sufficient condition to consider an actor a hegemon (Clementi 2011). I have shown the economic asymmetry between Germany and the second largest European country, France. Hence, as Fabbrini (2015: 148) points out, Germany "has sufficient economic power to be continuously tempted, if not required, to exercise the leadership role [...]."

The hegemon derives its status from a relative strength compared to other actors. He uses this strength to deliver public goods that benefit the actors with whom he has a relationship. The main public good that Germany had tried to export to the European level since the MT was stability. The economic strength and the public good it has effectively produced make Germany a "potential hegemon" (Bulmer 2013).

Resources and public goods are two necessary but not sufficient conditions for hegemony. Two others are missing. Firstly, as Lentner (2005: 74) notes, the latter "involves leadership of an alliance, not domination by coercion". Secondly, the hegemon must be accepted in its status by the actors towards whom hegemony is exercised (Bulmer 2013). In other words, hegemony requires legitimacy. Both elements are connected to the fact that within a hegemonic context the hegemon remains a *primus inter pares*, i.e. he has to respect the autonomy of the other actors (Lentner 2005).

We have seen that Germany ordoliberal principles were predominant in the design of the EMU and during the Eurozone crisis. Its main public good – stability – was accepted at Maastricht but has become contested during the Eurozone crisis. Since the predominance of ordoliberal principles has to some extent undermined the autonomy of certain MSs, there are no conditions for a legitimate hegemony based on stability as a public good.

As Clementi (2011) points out, the hegemon must have political institutions capable of making good use of its hegemonic resources for the benefits of the other actors. However, since the beginning Germany has conceived the EMU as an apolitical project. The country has been more a rule-settler than a constructive hegemon proposing a far-sighted political project.

At this point, the question arises whether Germany could be a hegemon if it were able to provide a public good different from stability and largely accepted by European MSs. This cannot be excluded with certainty, but several reasons suggest that a hegemonic Germany is in principle incompatible with European integration. It does not mean that a *de facto* German hegemony cannot take place: indeed, in EMU this situation has happened in the last years and it is probably going to stay so.

Firstly, European integration was born as an anti-hegemonic project. The aim was to guarantee the pacific cohabitation between European states and progressively advance towards deeper integration. Secondly, the anti-hegemonic was to a large extent conceived with regard to Germany. In order to avoid a resurgence of a German predominance in Europe, the country should be anchored to the integration project and constantly being balanced by France. Also more than 70 years after the end of World War II, any potential German hegemony comprehensibly raises the fear of the past.

If the European project was born as anti-hegemonic, it is true that this applies especially to one-State hegemony. It accepted a kind of "cooperative hegemony" (Bulmer 2013: 1393) between France and Germany. Today, France has lost its balancing power in the EMU. The relationship between the two countries has become increasingly asymmetrical. The gap in economic resources potentially paves the way for a German hegemony. Such an outcome would not be accepted by the other MSs, as already stated. This is all the more true with regard to the EMU, which was an attempt to assure that Germany would have preserved its pro-European stance also after reunification.

The last point concerns the question whether Germany really aspires to be a hegemon within the EMU. After the end of the Kohl era, a new elites that did not experience World War II took office. This had repercussions on the attitude towards European integration. The equation between German interests and European interests is not as undisputed as in the past. German political elites advanced national interests that were not necessarily consistent with European ones (Fabbrini 2015). It does not seem that Germany wants to bear more responsibilities than to be the inspirer and the defender of the EMU's constitutive principles. Since the MT, this stance has been adopted by the major institutions of the country (Parliament, Bundesbank and FCC). In this sense, ordoliberalism can be seen as a hindrance to a German hegemony in the EMU. It is not easy to say if the country has deliberately created this hindrance or if it wants to remove it.

5.6. Conclusion

This chapter has examined the causes that have contributed to the German influence on the EMU. I have first seen the positions of the two non-majoritarian institutions of the ordoliberal order (FCC and Bundesbank). They have both supported the constitutive principles of the EMU, especially stability and the no-bailout clause. Their position has considerably shaped Germany's role in the EMU.

Also the political parties focused mainly on the need to make the EMU a stability union: the deficit and debt criteria and the political independence of the ECB are the most relevant points at stake. After the approval of the MT, the German economy experienced a period of economic crisis. The country implemented a number of deep reforms and after 2009 it was able to achieve a good performance as far as unemployment, deficit and debt were concerned.

The national causes are certainly important in order to explain Germany's influence on the EMU. However, they were enhanced by a number of European causes that further contributed to Germany's influence. We have seen the growing asymmetry between MSs as well as between France and Germany. During the euro crisis, the confusion of legal orders favoured decisions in line with the interests of the stronger MSs.

The chapter has also seen that the main implications of Germany's influence on the EMU was that constraining legal rules became stricter. This led to a loss of decisionmaking capacity for several MSs. More precisely, a decoupling between control and liability (something not consistent with ordoliberalism) took place.

It seems quite unlikely that Germany could be accepted as a constructive hegemon in the EMU. European integration is a project that was born with a strong anti-hegemonic logic, especially with regard to Germany. The public good that the country exported to the EMU, stability, is not seen as fundamental by all MSs. As long as Germany does not turn its economic power into a political leadership, it will not be accepted as a constructive hegemon. However, one could argue that the country does not want to bear more responsibilities in the EMU. The conclusions make a brief proposal on what should be done next in the EMU. They also recap the main findings of the work.

Conclusions

This work has tried to answer the following research questions: 1) has Germany influenced the EMU from the MT to the Eurozone crisis? 2) has this influence been so considerable that it resulted in a predominance?

To answer these questions, I have analysed the main evolution of the EMU from the beginning until the euro crisis. The 1989 Delors Report proposed a concrete plan for the EMU. However, the end of the Cold War and the German reunification gave the whole project of economic and monetary integration a new rationale. The EMU became also a political project to limit the impact of German reunification. If Germany had surrender its powerful currency, MSs would have been assured that the country continued to be anchored to the EU.

It is hence not surprising that the 1992 MT that created the EMU was the result of a compromise between Germany and France, the second largest European country. France wanted to keep economic policy decentralized: MSs should continue to be responsible for their economic policy and voluntary coordinate it in the Council. Germany would have liked to centralize both economic and monetary policy at Community level. At the end, monetary policy was centralized and assigned to a politically independent institution, the ECB, primarily focused on price stability. In principle, the EMU has two decision-making regimes: intergovernmentalism for economic policy and supranationalism for monetary policy. However, the ECB is a non-majoritarian rather than a supranational institution. Because of this, the EMU is mainly driven by an intergovernmental logic. The other supranational institutions (EP and ECJ) play a marginal role in the EMU's decision-making process.

MSs thus decide their economic policy autonomously. Legal rules constrain it though: the convergence criteria (in order to adopt the euro) and the deficit and debt criteria (the breach of which opens the EDP). Several principles were enshrined in the EMU (and kept also in the LT). For economic policy, they were: the no-bailout clause, the ECB and the national central banks cannot grant credit facility to political institutions, purchase of MSs' debt by the ECB and the national central banks is forbidden. The original problem, unsolved also with the SGP, was that enforcement of these legal rules (EDP and convergence criteria) was assigned to a political institution (the Council).

Measures taken to face the euro crisis have been an attempt to make compliance with the rules more automatic. If it is true that the deficit and debt criteria became stricter, it is also true that the Council can still apply RQMV to reject the Commission's recommendation to start an EDP. The crisis has led to a further reduction in economic policy discretion. Legal rules have increased their effect, as shown for example by the commitment to introduce budgetary discipline in the constitution.

Precisely the predominance of legal rules over political discretion has brought the claim that the EMU and the anti-crisis measures were influenced by ordoliberalism. This in turn has led to the assertion that Germany significantly influenced the EMU and the anti-crisis measures. To develop a position in this debate, it has been necessary to analyse the core ideas of ordoliberalism.

Ordoliberalism was born in the 1930s among a group of economist and lawyers of the Freiburg University. The most notable exponent was Walter Eucken. Ordoliberalism criticized that the Weimar Republic was an interventionist and unstable State held hostage by economic actors. It called for a strong State able to stay above partisan interests. The State should adopt legal rules that give order to the economy (economic constitution). It should abstain from intervening directly in the economic process, i.e. in the free market based on competition. Economic actors can operate freely in the economic process, but they must respect the rules of the economic order. The State should watch over the compliance with these rules. Its field of intervention is the economic order, not the economic process.

The ordoliberal economic constitution includes constitutive principles, most importantly: primacy of monetary policy based on price stability, liability and constancy of economic policy. When ordoliberalism was born, the Weimar Republic still had the welfare system introduced at the beginning of the Bismarckian empire: the State was highly interventionist and, according to ordoliberalism, only focused on satisfying the requests of different economic actors. Particularly the Social Democratic and the Catholic movements managed to penetrate the welfare system by representing the interests of the workers. The ordoliberals, mostly middle-class Protestants, were not able to do the same and thus started to oppose the welfare State.

SME was the post-war economic order of Germany. It tried to combine individual freedom and social justice through the instruments of a market economy. This attempt was

ordoliberal to the extent that it underlined the need for a State that sets an economic order based on competition. However, the approach of SME was more pragmatic, since the State intervened in the economy, for example in order to do social policy. SME was made up of two different orders: the ordoliberal order, embodied by non-majoritarian institutions sheltered from politics, like the Bundesbank and the FCC, and the contracted order, in which different economic actors, put on an equal footing, try to compromise on the implementation of decisions of mutual interest. The State acts as moderator in this institutionalized framework. Concerted action and co-decision, introduced by the Social Democrat government starting from the 1960s, are two elements of the contracted order. Hence, SME can be seen not only as a compromise between the ordoliberal and the contracted order, but also as a confluence between ordoliberalism and Social Democracy. The lowest common denominator of both orders (ordoliberal and contracted) is the search for an overall stability.

This work has seen that a number of core principles regulate the EMU: the economic constitution, the political independence of the ECB and its overriding commitment to price stability, the no-bailout clause, sound public finances and competitiveness. They can be considered the constitutive principles of the EMU. The common element between them is stability, both for economic and for monetary policy. The analysis has shown that the EMU's constitutive principles are consistent with the constitutive principles of ordoliberalism. The statute of the ECB is very similar to that of the Bundesbank, especially regarding political independence. Because of this, the work concludes that Germany influenced the EMU from the MT to the Eurozone crisis. Since this influence covers constitutive principles of the EMU as well as the latter's main element, stability, it resulted in a German predominance.

But how was Germany able to shape the EMU according to its preferences? Chapter five has tried to find some causes. The two non-majoritarian institutions of the ordoliberal order (the FCC and the Bundesbank) have regularly supported precisely the constitutive principles of the EMU. The FCC has stated in several judgements that stability is the basis and object of Germany's participation in the EMU. The Bundesbank has followed a policy of low inflation more or less regularly since the 1970s and has often underlined the importance of the no-bailout clause. Before the approval of the MT, also the political parties have shown a concern for the compliance with the deficit and debt criteria as well as with the political independence of the ECB. The German finance minister proposed the SGP in 1995. Also in more recent years, the main parties (especially those which were part of the government) supported budgetary discipline and the independence of the ECB.

Also Germany's economic performance played a role in the country's influence on the EMU. I have shown that in the years immediately before the MT, especially in 1990, the country's GDP was growing and inflation relatively low. The reunification led to a steady increase of public expenditure. At the beginning of the new millennium, the German economy was facing problems of unemployment and high public debt. It was the Social Democratic government led by Schröder that started a number of reforms to modernize the labour market (Hartz reforms and Agenda 2010). Nevertheless, Germany violated the deficit criteria in 2003. In the following years, the country reduced three economic indicators: deficit, debt, and unemployment.

Some other causes favoured a German influence in the EMU. Firstly, an asymmetry between large and small MSs, that during the crisis turned into an asymmetry between creditors and debtors. Secondly, among the creditors Germany became economically more powerful than France, as a comparison of data on unemployment, debt and deficit show. The contraposition between creditors and debtors sharpened also due to a mutual distrust between them. The stronger MSs, particularly Germany, were able to exploit this mistrust to impose stricter rules on the EMU.

While the initial provisions of the EMU were included in the European treaties, during the Eurozone crisis measures were adopted both within and outside the European legal order (in the form of intergovernmental treaties). Intergovernmental institutions were the main decision-makers in the crisis. Supranational institutions (the Commission and the ECJ) were involved mainly to assure enforcement of and compliance with the decision taken by the intergovernmental institutions. The role of the EP was marginal. In order to overcome the veto dilemma, MSs adopted several intergovernmental treaties. Within the intergovernmental dimension, a further differentiation between euro area and non euro area MSs took place, as epitomized by the Euro Summit (heads of State and government of the euro area MSs). Some intergovernmental treaties (e.g. Fiscal Compact) establish the involvement of institutions (Commission) and procedure of EU law (EDP). Some others (e.g. ESM) automatically activate provisions of EU law (enhances surveillance). The confusion between European and international legal order, together with more restricted

decision-making institutions (Euro Group and Euro Summit) enabled Germany to reach an outcome more favourable to its preferences.

The implications of a German predominance on the EMU are problematic for three reasons. Firstly, the fact that the EMU was born as a political project but was centred on legal rules constraining political discretion is something contradictory. Secondly, despite the centrality of law, it was politics (the Council and the European Council) that ultimately decides the enforcement of this law. Thirdly, the euro crisis has dramatically reduced the decision-making capacity of some MSs. Liability for economic policy has instead rested with MSs: the financial assistance notwithstanding, the no-bailout clause has not been completely violated. Indeed, the strict conditionality attached to rescue packages made MSs pay the bill for their debts. Hence, during the crisis a decoupling of control and liability has taken place. This is against ordoliberalism. In a fiscal union, control of and liability for economic policy would be centralized at EU level. Since this is probably not going to happen in the next years, control and liability must be brought back at MSs' level.

The last point this work has covered is the possibility that Germany turns its predominance in EMU in a constructive hegemony. Hegemony must usually satisfy three necessary conditions: 1) the (potential) hegemon must have resources; 2) he must provide public goods; 3) hegemony means a leadership (not a predominance) accepted by those to whom it is exercised. Germany's economic strength and the public good it produced – stability – make the country a potential hegemon. Since we have seen that Germany predominated in the EMU and during the euro crisis, its acceptance as a hegemon seems unlikely.

This is due also to other reasons. Firstly, European integration in general, and the EMU more specifically, was born as an anti-hegemonic project. More precisely, it was born as a project that aimed at avoiding hegemony by a single State. As long as the integration path continued with a balanced relationship between France and Germany, a cooperative hegemony of these two MSs was tolerated, perhaps even welcomed. Yet I have shown that France is not able to countervail Germany any more, at least in the economic sphere. Secondly, the original anti-hegemonic character of the EU holds true especially with regard to Germany due to its past. Finally, one could argue that Germany does not really want to turn its economic power in a constructive hegemony. Indeed, in the period from the MT to the Eurozone crisis, the major institutions of the country have mainly acted as

keeper of EMU's "rules of the game". As long as it continues to do so, it would not be able to be the political leader of the EU.

In conclusion, it is possible to make a brief assessment of the German influence on the EMU. This assessment differs depending on whether we focus on a predominance of ordoliberal principles or of Germany's predominance in a broader sense. Firstly, a centrality of ordoliberal principles is problematic to the extent that it tends to make legal rules more important than political discretion. The respect for the EMU's rules and principles must not be an end in itself up to the point that it supplants the political debate. Hence, a closer involvement of the "genuine" political actor of the EU, the EP, would be desirable.

Secondly, the constaining rules of the EMU were almost always designed according to a "one-size-fits-all philosophy" (Joerges 2015: 12). However, as it has become clear time after time, MSs are for many reasons very different one from the other. Consequently, common rules must be designed in a way that, albeit within a unitary framework, takes care of these differences.

This is not to say that Germany's influence on the EMU has been a negative fact. It should be recognized that the country promoted a long-term framework for the EMU based on an economic growth that is both quantitative and qualitative. High competitiveness and the ability to export a huge amount of qualitative goods enabled Germany to have a remarkable economic performance. This growth was possible thanks to well-functioning institutions, i.e., using an ordoliberal terminology, to a sound economic order. What Germany has successfully tried to "export" to the EMU is the importance of a solid and reliable economic order as a precondition for a dynamic economic process.

Secondly, Germany's influence generally fostered a conscientious economic and monetary policy. This was indeed very useful for some European MSs that had mismanaged their public finances by carrying out short-term economic policies to accommodate the electorate of the time to the detriment of future generations. This holds true for example for high public debts accumulated over years. At the turn of the new millennium, Germany's economy was experiencing a recession. This was also the result of wrong economic policy decisions taken in the past. However, the country managed to implement a number of controversial reforms that in the short-term costed sweat and tears, but in the medium and long-term proved to reinforce the basis – the economic order – of its economic resurgence.

Hence, it must be recognized that Germany's influence on the EMU and the Eurozone crisis did not include neoliberal measures (Tietmeyer 2010): the country did not primarily call for liberalizations, privatizations and deregulations. On the contrary, it called for more rules that give order (to States and to financial markets). In a framework of highly unregulated financial markets, this approach seems to have a positive rationale. It is also consistent with the search for stability. That Germany's anti-crisis recipe was not neoliberal should not be surprising, since the whole SME is not a neoliberal project, as I have tried to show. It is not centred on the market, but it has important social mechanisms to reach a compromise between different interest groups. This is not to say that SME can be applied to the EU, because it is too much linked to the specific German institutional and historical experience (*ibid*.). What can be applied at European level are instead some core principles of SME, like competition and liability. This is what indeed has happened.

But what about the future of the EMU? The EMU should remain a stability union. Common rules and an institutional framework for economic policy coordination must be preserved. Even on sensitive policies like the economic one you cannot think in a purely national dimension. What is needed is a compromise that keeps the stability character of the EMU but at the same time enables MSs to design economic policy more according to their needs.

The plan of the new Juncker Commission, called "An Investment Plan for Europe", aims at allocating investments up to 315 billions for the period 2015-17 (Juncker Plan 2014). It should "strengthen the link between investment, structural reforms and fiscal responsibility" (Commission 2015: 3). In order to do this, a European Fund for Strategic Investments (EFSI) with an initial capacity of 21 billions should be established by the Commission and the European Investment Bank (EBI). This fund will stimulate public and private investments in the EU. It was approved by the European Council and by the EP. Also Germany supported it.

Moreover, the Commission has announced that it would adopt the existing rules of the SGP in a more flexible way. For example, if the initial contributions that MSs make to the EFSI let them temporarily exceed the deficit and debt criteria, this will not be taken into consideration in the preventive and in the corrective arm (EDP) of the SGP. The same

applies for structural reforms (structural reform clause) or to public investments "deemed to be equivalent to major structural reforms" (investment clause) (Commission 2015: 8).

These provisions introduce the possibility to use short-term political discretion if this is beneficial to the long-term economic outlook. The important element is that they "take better account of country-specific situations" (*ibid.*). Such an approach keeps the stability union but combines it with a stressing for the individual specificity of MSs. The fact that also Germany has endorsed the Juncker Plan may show that the country recognizes the need for integrating its predominantly long-term vision of the economic order with measures having a more immediate impact on the economic process.

It is necessary to recognize that MSs can stay together in a policy-making regime like the EMU even if they are different. The solution is not to go back in the integration process. The *acquis* of the EMU must be preserved, but an approach is needed that takes into account the difference between MSs. This seems to be the first step in order to move from a static legal-centred regime to a dynamic political governance. The EMU started as a bold political project: now it needs a bold political turning point.

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