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The EU's Economic Policy Architecture after Ratification of the Fiscal Stability Treaty

Jørgen Mortensen

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Under strong pressures from the emerging public debt crisis, the European Council meeting on 9 December 2011 discussed the incorporation of certain aspects of a reinforced Stability and Growth Pact (SGP) into the EU Treaties. Only the United Kingdom was openly opposed to the proposal, but its veto effectively blocked the incorporation of the reinforced SGP rules into the EU Treaties, as unanimous support from all member states is required to bring about treaty change. This gave rise to the adoption on 2 March 2012, by 25 member states (in addition to the UK, the Czech Republic opted out) of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (here shortened to Fiscal Stability Treaty). Once the requisite number of partners (12) had ratified it, the Fiscal Stability Treaty came into force in January 2013.

The provisions of the Treaty may be summarised as follows:

- The budgetary position of a "contracting party" must respect a country-specific medium-term objective as defined in the SGP with a lower limit of a "structural deficit" of 0.5% of GDP but with the time-frame fixed with due account of country-specific sustainability risks.
- The lower limit for the structural deficit may be increased to 1% once the public debt is lower than 60% of GDP.
- The speed of reduction of the deficit is fixed at one-twentieth of the gap between the actual deficit and the limit.
- In the case of failure on behalf of a contracting party to comply with the recommendation, a procedure may be launched with the Court of Justice of the European Union (CJEU), which can impose a sanction not exceeding 0.1% of its GDP.

The only really significant innovation contained in the Fiscal Stability Treaty is, in fact, to assign responsibility to the CJEU to decide whether a Member state should be sanctioned for having an excessive deficit.

In addition, however, the Treaty (in Article 8) stipulates that where, on the basis of the Commission's assessments, a country has failed to comply with its obligations, the "matter will be brought to the Court of Justice by one or more Contracting Parties". And where a

Jørgen Mortensen is Associate Senior Research Fellow at CEPS and a Fellow at CASE – Centre for Social and Economic Research, Warsaw. This Commentary draws on the author's recent Working Document No. 381, entitled "Economic Policy Coordination in the Economic and Monetary Union; From Maastricht via the SGP to the Fiscal Pact", August 2013, which offers an in-depth history of the sharing of competences for macroeconomic policy-making in the EU.

Contracting Party, even independently of the Commission's report, considers that another Contracting Party has failed to comply with the provisions, it may also bring the matter to the CJEU.

The inter-governmental nature of the Fiscal Stability Treaty is also made evident by the fact that the Commission, despite its important role in the preparation of reports and conclusions as regards the existence of an excessive deficit, is not as such entitled to bring a case before the Court of Justice. However, as regards the eurozone countries, Article 7 stipulates an "obligation" for the members to support the proposals or recommendations submitted by the European Commission where it considers that a eurozone member state is in breach of the deficit criterion in the excessive deficit procedure. This obligation, however, shall not apply if a qualified majority is opposed to the decision proposed or recommended.

Another issue, however, is the extent to which the Treaty, due to its inter-governmental nature, can be expected to entail a modification of the roles of the EU institutions and, notably, the role of the European Parliament. In this respect, Article 13 of the Treaty stipulates that the European Parliament and the national Parliaments of the "contracting parties" will together determine the organisation and promotion of a conference of representatives of the "relevant committees of the European Parliament and representatives of the relevant committees of national Parliaments in order to discuss budgetary policies and other issues covered by this Treaty".

What remains to be seen is, however, also the reality of legal procedures initiated when a "Contracting Party" actually makes use of the provisions in the Treaty and puts a case before the CJEU. At stake here is the interpretation by the Court of the provisions in Article 3 and, notably, how the Court will decide as regards the definition of the annual structural balance of the general government as being the "cyclically-adjusted balance net of one-off temporary measures" and even more the definition of "exceptional circumstances" in paragraph 3, point 'b'.

Under normal circumstances the Court cannot be expected to have the in-house expertise to arrive at an "independent" estimate of the structural budget balance of the country concerned and must therefore, at least initially, rely on the estimates of this balance prepared by the European Commission. However, the country brought before the Court, not least to avoid paying the penalty and the accompanying stigmatism, may argue that the Commission's estimates do not take full account of very "special circumstances".

In order to arrive at a balanced conclusion, the Court and the country concerned may therefore need to call in experts from outside and it cannot be excluded that, in the end, the Court's decision will not support the Commission's views or those of the Contracting Party having brought the case before the Court. To arrive at a purely judicial definition of a "structural budget balance" and "special circumstances" might thus create a rather unique precedent. Decisions concerning such a key economic variable are typically the subject of deep economic cleavages and heated academic and political debate, but at the end of the day they are usually left to the validation of economists and policy-makers. Due to the questionable feasibility of this procedure, therefore, one must conclude that this inter-governmental Treaty is unlikely to solve the fundamental problem of consistency between budgetary and monetary policy.