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MPIfG Discussion Paper 15/10

Empowered or Disempowered?
The Role of National Parliaments during the Reform of European Economic Governance

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Abstract

This paper investigates how the intergovernmental reform process of European economic governance affected national parliaments' oversight of this policy area. Which parliaments became disempowered and which managed to secure their formal powers – and why? The dependent variable of the study is operationalized as the presence or absence of "emergency legislation" allowing governments to accelerate the legislative process and minimize the risk of a default by constraining national parliaments' powers. The paper examines how national parliaments in all eurozone states were involved in approving the following measures: the EFSF (establishment and increase of budgetary capacity), the ESM, and the Fiscal Compact. The findings demonstrate that whereas northern European parliaments' powers were secured (or in some cases even fostered), southern European parliaments were disempowered due to the following factors: (i) domestic constitutional set-up permitting emergency legislation, (ii) national supreme or constitutional courts' consent to extensive application of emergency legislation, and (iii) international economic and political pressure on governments to prevent default of the legislative process. Due to significant power asymmetries, national parliaments remained *de jure* but not *de facto* equal in the exercise of their control powers at the EU level. As a consequence, both the disempowerment of particular parliaments and the asymmetry of powers among them has had a negative effect on the legitimacy of European economic governance.

Zusammenfassung

Das Discussion Paper untersucht, wie sich der zwischenstaatliche Prozess zur Reform der wirtschaftspolitischen Steuerung in der Europäischen Union auf die Aufsichtskompetenzen der nationalen Parlamente über diesen Politikbereich ausgewirkt hat. Welche Parlamente wurden entmachtet und welchen gelang es, ihre formellen Kompetenzen zu wahren – und warum? Bei dieser Untersuchung wird die abhängige Variable als das Vorhandensein oder Fehlen einer Möglichkeit zur „Notstandsgesetzgebung" operationalisiert, die es Regierungen erlaubt, das Gesetzgebungsverfahren zu beschleunigen und das Risiko des Scheiterns eines Gesetzentwurfs zu minimieren, indem sie die Kompetenzen der nationalen Parlamente einschränkt. Dieser Beitrag analysiert, wie die nationalen Parlamente aller Staaten des Euroraums eingebunden waren, um folgende Maßnahmen zu genehmigen: die Europäische Finanzstabilisierungsfazilität EFSF (Einrichtung und Aufstockung), den Europäischen Stabilitätsmechanismus ESM und den Europäischen Fiskalpakt. Die Ergebnisse zeigen, dass die Kompetenzen der Parlamente im nördlichen Europa gewahrt (und in einigen Fällen sogar gestärkt) wurden, wohingegen die Parlamente Südeuropas aufgrund der folgenden Faktoren entmachtet wurden: (i) nationale Verfassungsordnung, die eine Notstandsgesetzgebung erlaubt, (ii) nationale oberste Gerichte oder Verfassungsgerichte, die der extensiven Anwendung einer Notstandsgesetzgebung zustimmen, und (iii) internationaler wirtschaftlicher und politischer Druck auf Regierungen, um ein Scheitern eines Gesetzentwurfs im Gesetzgebungsverfahren zu vermeiden. Die nationalen Parlamente blieben bei der Ausübung ihrer Kontrollkompetenzen auf EU-Ebene zwar formalrechtlich einander gleichgestellt, faktisch waren sie es aufgrund erheblicher Machtasymmetrien jedoch nicht. Somit hatte sowohl die Entmachtung einzelner Parlamente als auch die Asymmetrie der Kompetenzen zwischen Parlamenten einen negativen Effekt auf die Legitimität der wirtschaftspolitischen Steuerung in der Europäischen Union.

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1 Introduction

> [P]arliament is a deliberative assembly … government and legislation are matters of reason and judgment, and not of inclination; and what sort of reason is that, in which the determination precedes the discussion; in which one set of men deliberate, and another decide; and where those who form the conclusion are perhaps three hundred miles distant from those who hear the arguments? (Burke 1774: 446–448)

Edmund Burke's "Speech to the Electors of Bristol" reads as a contemporary opinion picturing the weakness of democratic control in European economic governance. Indeed, in the eurozone, *those who deliberate* has became decoupled from *those who decide,* decision-making has not been preceded by deliberation, and decision-makers' autonomy has been constrained by external pressures. As a consequence, it has been widely acknowledged that the intergovernmental nature of economic reforms has deeply eroded the principle of representative democracy in the European Union (Crum 2013; Rittberger 2014). This paper is a contribution to the lively debate on the impact of the European financial crisis on national parliaments' oversight powers. The paper addresses the following questions: Which parliaments became disempowered and which managed to secure their formal powers? What domestic and international factors contributed to the (dis)empowerment of national parliaments? What consequences do the observed practices have on the quality of democratic control in European economic governance?

The paper examines how national parliaments in all eurozone states were involved in approving the following measures: the European Financial Stability Facility (EFSF), both its establishment and the increase of its budgetary capacity; the European Stability Mechanism (ESM); and the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union. The dependent variable of the study is operationalized as the presence or absence of so-called "emergency legislation" or "fast-track procedures" that allow governments to accelerate the legislative process and minimize the risk of a default by constraining national parliaments' powers. Fast-track procedures are applied in exceptional situations requiring rapid legal output. They shorten the legislative process and limit the involvement of national parliaments (for instance, it is a common practice in many states to accelerate the approval process by limiting the number of

I am particularly grateful to Patricio Galella and Athena Charalamboglou for their help in constructing the database. Without their assistance, it would not have been possible to cover all member states of the eurozone. Finally, I would like to thank Kathrin Auel, Cristina Fasone, Diane Fromage, and Martin Höpner for their valuable comments and suggestions.

parliamentary readings from three to one). Another manifestation of emergency legislation is a legislative merger. Mergers constitute legal packages comprising two or more bills submitted to a national parliament for discussion and vote. Parliaments only have one vote at their disposal in order to approve or reject the whole legal package.

In the empirical dimension, this paper systematically maps patterns of national parliaments' (dis)empowerment during the reform process of economic governance and demonstrates what domestic and international factors explain the variation. The findings demonstrate that whereas northern European parliaments' powers were secured (or in some cases even fostered), southern European parliaments became disempowered due to the following factors: (i) domestic constitutional set-up allowing implementation of fast-track measures, (ii) national supreme or constitutional courts' consent to extensive application of emergency legislation, and (iii) international economic and political pressure on governments in southern European states to prevent default in the approval process. Due to significant power asymmetries, national parliaments remained *de jure* but not *de facto* equal in the exercise of their control powers at the EU level. As a consequence, both the disempowerment of particular parliaments and the asymmetry of powers in the collective dimension has had a negative effect on the legitimacy of European economic governance.

This paper begins by briefly presenting the empirical database developed for this study and the anti-crisis measures it analyzes. It then presents the analytical framework focused on the role of national parliamentary oversight of European policy-making. The paper then defines emergency legislation and proceeds by presenting empirical evidence on the dominant patterns of national parliaments' (dis-)empowerment and the impact of domestic and international factors. In its concluding section, the paper discusses the empirical findings from a normative perspective.

2 The database

The empirical enquiry in this paper is based on a database covering various patterns of approval/ratification procedures of major anti-crisis measures introduced in the eurozone between 2009 and 2013 (see Table 1 in the Appendix for a summary). The database provides information on how specific anti-crisis measures were approved in all eurozone member states. The measures under examination here are: the European Financial Stability Facility (EFSF), both its establishment and the increase of its budgetary capacity; the European Stability Mechanism (ESM); and the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union. The database mapped the presence or absence of the following procedures accompanying the approval process of each anti-crisis measure: vote, plenary debate, merger and fast-track procedure. The

database also provides further information on the number of plenary debates, as well as legislative acts that were merged either for the debate or a vote. The information was obtained directly from national parliaments.[1]

The dependent variable of this study is defined as the application of emergency legislation in a given eurozone member state during the European financial crisis. This study aims to contribute to the literature with a systematic analysis of approvals of all major anti-crisis tools in all national parliaments of eurozone states. Although all the above mentioned measures belonged to the so-called "reform package," their content and legal status differ substantially. The EFSF and ESM established a bailout fund to provide financial support to eurozone member states who could no longer finance themselves on the markets (due to liquidity or solvency problems). While the EFSF was established as a temporary solution, the ESM became a permanent bailout fund. The Fiscal Compact is a stricter version of the previous Stability and Growth Pact. Member states bound by the treaty are required to introduce into domestic law a self-correcting mechanism that is supposed to guarantee that their national budgets are balanced. In particular, the general budget deficit should not exceed 3 percent of GDP, the structural deficit should be less than 1 percent of GDP, and the debt-to-GDP ratio should remain below 60 percent. In general, while the EFSF and the ESM deepened financial solidarity in European economic governance, the Fiscal Compact strengthened budgetary surveillance.

3 The role of parliamentary oversight in European policy-making

The literature traditionally stresses the following core functions of national parliaments: law-making, representation of citizens, and oversight (Blondel 1973). However, at the European level, national parliaments are limited in the exercise of these three functions (Maurer/Wessels 2001; O'Brennan/Raunio 2007). While in domestic politics national parliaments enjoy the right to propose, amend, pass or reject bills, at the European level their impact is far more restricted (Mayoral 2011). In particular, the Treaty has explicitly confirmed that the major functions of national parliaments in the European Union consist of, first, establishing a channel of accountability between the Council and national constituencies and second, controlling the decision-making process at the EU level (Articles 10 and 12 of the TEU; Dawson/de Witte 2013; de Witte 2009, 2010). Against this background, in the reform process of European economic governance the competences of national parliaments consisted of controlling national governments' actions in this policy area and approving (but not drafting or amending) the legislation.

1 The database was compiled by three researchers who covered particular states according to their personal language skills: Athena Charalamboglou (Greece), Patricio Galella (compilation of the database as well as general legal expertise), and Aleksandra Maatsch (design and compilation of the database).

This study aims at establishing in which states have national parliaments' formal oversight powers been restricted and why. Oversight in this study is broadly defined as "the review, monitoring and supervision of government and public agencies, including the implementation of policy and legislation" (Born et al. 2007: 9–10). Adaptation of a broader definition of oversight allows us to capture better how the period of European financial crisis affected parliamentary oversight practices *beyond* scrutiny of governments' work. According to Born the key functions of parliamentary oversight are

> to detect and prevent abuse … or unconstitutional conduct of government and public agencies, to hold government to account in respect of how taxpayers' money is used, to ensure that policies announced by the government and authorised by parliament are actually delivered and to improve the transparency of government operations. (Born et al. 2007: 9–10)

Forms of parliamentary oversight concern institutionalized activities through which national parliaments exercise their control, in particular: vote, plenary debate, written or oral questions and reports. We can differentiate between strictly and weakly formalized tools of oversight. The level of formalization can refer either to the very entitlement to use a given procedure or the frequency of its application. Voting and plenary debates are the two most powerful and most strictly formalized forms of parliamentary oversight. Both entitlement and the frequency with which these tools can be applied are strictly regulated by national secondary law. If national law requires a debate and a vote on a given measure, national parliaments are obliged to provide them. Plenary debates and voting are also procedurally formalized. For instance, the law specifies whether a given bill can be approved with a simple or a special majority. Furthermore, the law also stipulates the required number of plenary debates (usually distinguished as the first, second or third reading). If a national parliament is composed of two chambers, the order of plenary debates and voting is also strictly regulated.

During the European financial crisis, national and supranational executive institutions experienced an increase of power in European economic governance: the Council and national governments became the locus of decision-making (Hefftler et al. 2013, 2015). At the same time, the increase of power on the executive side was not accompanied with a corresponding increase of control powers by the European and national parliaments (Lord 2012). On the contrary, parliaments were hardly represented in that process: the European Parliament was basically excluded while national parliaments played only a consultative role (Fasone 2014a).

The distancing of parliaments from the reform process has been attributed to considerable time-pressure requiring prompt entry into force of the new legislation. Governments wanted to ensure that the measures agreed by them were also approved successfully at the domestic level. As a consequence, some governments turned to special fast-track procedures or merged the debated EU draft legislative acts in order to accelerate the legislative process but also to minimize the risk of a default. To what extent were national parliaments disempowered in the course of this process? There is

no agreement in the literature. Whereas some studies maintain that parliaments' powers suffered (Crum 2013; Lord 2012) others contradict – to some extent – the disempowerment thesis (Rittberger 2014; Fasone 2014b; Auel/Hoeing 2014; Benz 2013). For instance, Fasone (2014b) and Benz (2013) observed that rulings of national or supreme courts have actually fostered selected national parliaments' control functions. We can explain the lack of consensus by the following factors: first, most studies focus on a limited number of cases or analyze the impact of one institution (for example, courts) on parliamentary oversight practice. Second, other studies analyze how effective parliaments were in making use of their already formally limited competences.

In contrast to the existing studies, this analysis covers all member states of the eurozone. Furthermore, the analysis does not focus selectively on the impact of one institution but rather considers the impact of both domestic and international factors. For the sake of coherence, the study concentrates on parliaments' formal powers in the approval (ratification) of these legislative measures, but not their execution or management.[2]

Drawing on the literature, the study identifies the following factors that influence implementation of emergency legislation: domestic constitutional set-up, activity of supreme or constitutional courts, and international (political and economic) pressure on national governments. First, national constitutions usually stipulate, albeit in general terms, how and when emergency legislation can be employed. As a result, in some states national parliaments' powers can be more constrained than in others. Constitutional set-up delineates the breadth and depth of the application of emergency legislation. In the first dimension, the national constitutional framework usually stipulates in which policy areas emergency legislation should be avoided. The second dimension concerns the possible level of national parliaments' disempowerment in the legislative process. Exclusion of parliaments can involve a reduction in the number of plenary debates, but also the possibility of eliminating plenary debates or votes.

Second, constitutional and supreme courts decide whether a given application of emergency legislation is constitutional. However, as courts are embedded in a socio-political environment, their rulings can display different levels of independence. In particular, courts may be inclined to issue rulings supporting governments' preferences. Under these circumstances their interpretation of constitutional principles may not be entirely impartial. One indicator of courts' partiality can be a lack of coherence in their rulings over a short period of time. Third, due to international political or economic pressure ‚governments may be more likely to limit parliaments' powers. In particular, external pressure can mobilize governments to pursue measures to ensure successful ratification.

2 Regarding management of the European Stability Mechanism see Fasone (2014b).

4 Emergency legislation: Conceptualization

Emergency legislation is codified in all European states. The common feature of all special procedures is that they shorten the usual period required for approval/ratification of legislation and limit the role of national legislatures in the process. These procedures constitute a deviation from standard procedure as they allow governments to pass laws without or with only limited involvement of national parliaments. Furthermore, national legislation does not always explicitly label emergency legislation as a fast-track procedure. In many states, decree-laws fulfill the function of a fast-track procedure (see, for instance, Article 86 of the Spanish Constitution and Article 77 of the Italian Constitution). However, as these practices are exempted from any form of harmonization, there is a lot of variation among European states (for more details on practices regarding fast-track procedures see Cartabia/Lamarque/Tantarella 2011).

Fast-track procedures are not undemocratic in themselves; on the contrary, they are necessary in order to deal with unexpected, large-scale urgencies, such as the management of natural disasters or terrorist attacks. These situations usually require a rapid reaction which should not be slowed down by lengthy legislative procedures. Therefore, it is considered good practice not to apply fast-track procedures to deal with predictable or flagged issues. Some experts even claim that the law should not codify circumstances under which fast-track procedures apply because the nature of such events is indefinable (House of Lords 2009).

Nonetheless, in order to prevent abuse of fast-track procedures, most states usually stipulate when these procedures can be applied. For instance, the UK House of Lords in a report entitled "Fast-Track Legislation: Constitutional Implications and Safeguards" notes that in the United Kingdom fast-track procedures are frequently employed unnecessarily. These decisions were often attributed to governments' desire to demonstrate their commitment to the public:

> It was another example of the Government wanting to be seen to be doing something … that legislation was put through for the optics, not because it was a genuine security requirement. (House of Lords 2009: 20)

The House of Lords identified five principles that should underpin the application of fast-track procedures: (i) maintenance of effective parliamentary scrutiny, (ii) the need to produce "good law," (iii) the need to maintain consultations with stakeholders, (iv) respect for proportionality and appropriateness, and (v) maintenance of transparency in the legislative process (ibid: 8).

In general, it can be observed that emergency legislation can limit parliaments' powers in both a vertical and a horizontal dimension. Vertically, we can differentiate different *grades* of parliaments' disempowerment. For instance, this study considers the following criteria:

1. Was the usual number of plenary debates reduced?
2. Were plenary debates entirely limited?
3. Was voting eliminated as well?

First, application of a fast-track procedure can entirely eliminate national parliaments from the legislative process, meaning that parliaments neither vote on nor debate a given bill; second, a fast-track procedure can eliminate parliamentary debate entirely but retain voting; and third, emergency legislation can reduce the usual number of debates (for instance, from three to one reading) and retain voting. Emergency legislation can also limit parliaments' powers in a horizontal dimension. In particular, national law may stipulate in which policy areas emergency legislation can or cannot be applied.

Another type of practice limiting national parliaments' powers in a horizontal dimension is a legislative merger. Governments merge two – or more – bills and present them as a legal package for parliamentary discussion and vote. The practice of mergers varies across European states. In some states it is common to accompany budgetary debates with related issues; in other states mergers are not at all frequent. This practice not only accelerates the approval process but also increases the likelihood of the bill's approval. This is particularly the case if the major element of the merger is an important piece of legislation which is in any case widely supported by parliamentary parties. Under these circumstances MPs are more likely to vote in favor because they only have one vote in order to approve or reject the whole legal package. Finally, application of emergency legislation is highly case-specific. Even if governments are entitled to pursue a fast-track procedure in a particular case, they may not make use of that right.

5 Application of emergency legislation during the European financial crisis: Empirical evidence

Comparative empirical analysis clearly demonstrates one dominant tendency. Southern European parliaments' powers were more constrained than those of their northern European counterparts. The states that approved anti-crisis measures *without* employing any fast-track procedure or merger were: Belgium, Austria, Estonia, Finland, Germany, Ireland, Luxembourg, Slovakia, and Slovenia. With the exception of Ireland, all the states belong to the group of so-called creditors. The other group of states – which comprised Spain, France, Cyprus, Greece, Italy, Malta, Netherlands, and Portugal – approved European anti-crisis measures either with fast-track procedures or mergers. In the second group the outliers are France and the Netherlands.

The establishment of the European Financial Stability Facility (EFSF), as well as the increase of its budgetary capacity, required the unanimous approval of all eurozone member states. Although the EFSF constituted an intergovernmental agreement under

private law, the measure was usually approved with a ratification procedure, reserved otherwise only for international agreements. The states that approved the establishment of the EFSF with a standard parliamentary ratification procedure were: Belgium, Austria, Finland, Germany, Ireland, Luxemburg, Portugal, Slovakia, and Slovenia (see Table 1, Appendix). In Spain, the EFSF was approved via a fast-track procedure (decree-law) which envisaged a parliamentary vote but no plenary debate. In France, the EFSF was approved with a special procedure that reduced the number of readings to one. It was also incorporated into the budget bill and submitted to a parliamentary vote as a single package. In Cyprus and Malta, the EFSF was also introduced with a special procedure accelerating the approval process but without cancelling the voting procedure and parliamentary discussion. Estonia was not a member of the eurozone at that time and thus did not participate in the approval process. Greece approved the EFSF with a fast-track procedure (government decree) without consulting the parliament in any form (there was neither debate nor vote). In Italy the EFSF framework agreement was implemented through Decree-Law *(decreto-legge)* No. 78/2010 stipulating "Urgent measures on financial stability and economic competitiveness." As a consequence, there was neither a debate nor a vote accompanying the decree-law.[3]

Parliamentary involvement in the process of approving an increase in the budgetary capacity of the EFSF followed the same pattern across the analyzed states. As a result, it was predominantly creditor states that approved the increased budgetary capacity of the EFSF with a standard procedure: Belgium, Austria, Cyprus, Estonia, Finland, Germany, Ireland, Luxemburg, Slovakia, and Slovenia. The role of the relevant parliaments was limited in Spain, France, and Malta. In these states, parliaments voted on increasing the budgetary capacity of the EFSF, but the usual number of plenary debates was reduced. In Greece and in the Netherlands, national parliaments debated and voted on a merger: in Greece approval of the EFSF was combined with the law on a property tax and regulation of bank supervision, whereas in the Netherlands it was merged with the budgetary law. In Portugal, the parliament was not consulted in any form (government decree).

The Treaty Establishing the European Stability Mechanism has been ratified according to the standard procedure in the following states: Belgium, Austria, Cyprus, Estonia, Finland, Germany, Ireland, Luxemburg, Slovakia, and Slovenia. In the other states – namely Spain, France, Malta, Netherlands, and Portugal – the ESM treaty has been merged with the ratification of Article 136[3] TFEU. In France, the combined ratification of the ESM Treaty and Article 136[3] was subject to a fast-track procedure that provided for only one plenary debate. In Greece and Italy, national parliaments had to ratify a triple merger: the ESM Treaty, Article 136[3] and the Fiscal Compact.

3 According to procedure, the Italian parliament converted the decree into a law and then voted on its enactment.

The ratification procedures of the Fiscal Compact varied significantly across states. The practices observed differed with regard to the degree of national parliaments' involvement or influence. In a number of states, voting on particular anti-crisis measures was eliminated: in Cyprus (Fiscal Compact), Greece (EFSF-1), Italy (EFSF-1 and EFSF-2), the Netherlands (EFSF-1), and Portugal (EFSF-2). Plenary debate was entirely eliminated in the following states: Spain (EFSF-1 and EFSF-2), Cyprus (Fiscal Compact), Greece (EFSF-1), and the Netherlands (EFSF-2). In France the number of plenary debates was reduced from three to one (the EFSF-1, EFSF-2, ESM, and the Fiscal Compact).

Mergers have taken place in the following states: Spain (ESM and Article 136 TFEU), France (EFSF-1 was merged with the budget bill and the ESM Treaty was merged with Article 136 TFEU), Greece (EFSF-2 was merged with the law on a property tax and bank supervision, the ESM Treaty was merged with Article 136 TFEU, and the Fiscal Compact), Italy (Article 136 TFEU, ESM, Fiscal Compact), Malta (ESM merged with Article 136 TFEU), the Netherlands (EFSF-2 with the budgetary law, ESM with Article 136 TFEU), and Portugal (ESM and Article 136 TFEU).

Practices with regard to mergers differed significantly across the states under study. For instance, it was common practice to merge ratification of the ESM Treaty with the revision of Article 136[3] TFEU. Furthermore, the establishment of the EFSF or the increase of its budgetary capacity was merged in a couple of states with domestic budgetary measures. These two instances of mergers do not constitute extreme examples of limitations on national parliaments' powers. In both cases the components of the package were closely related to each other and interdependent. This is to say, financial guarantees provided within the EFSF framework have to be envisaged in the budget. However, other instances of mergers may appear more problematic. For instance in Greece, ratification of the ESM Treaty was merged with the revision of Article 136[3] and ratification of the Fiscal Compact. Furthermore, the balanced budget rule has also been introduced in the national constitution. Similarly in Italy, the ESM Treaty was merged with the revision of Article 136[3] and the Fiscal Compact. Although Italian MPs voted on each component of the package separately, the whole package was debated together, which raises concerns regarding the quality of parliamentary deliberation. In Greece, MPs only had one plenary debate and one vote to approve – or reject – the whole legislative package. A further concern is related to the time available for discussion. The qualitative analysis of parliamentary debates in Greece demonstrated that MPs devoted as much attention to procedural aspects as to the very content of the package (Maatsch 2016). On one hand, the finding demonstrates MPs' awareness of the problem, but on the other it implies that, due to procedural issues, debate on the content of the legislation was very limited.

The data demonstrate that, first, fast-track procedures and mergers were found in the same states. In other words, parliaments either approved anti-crisis measures with standard procedures or they deviated from that practice. Second, elimination of voting on a particular anti-crisis measure coincided with the elimination of debate. Parliaments in these states basically had no influence over the approval of a given measure. Third,

the participation of parliaments was limited most by a combination of fast-track procedures and mergers. In particular, in France the revision of Article 136[3] was merged with ratification of the ESM Treaty. These two measures were approved with a fast-track procedure that reduced the standard number of plenary debates from three to one. That may appear problematic in the French context because implementation of the balanced budget rule has been highly contested. In France, there was eventually insufficient support among the parliamentary parties to incorporate the balanced budget rule into the constitution. Other examples concern states that approved anti-crisis measures with either fast-track procedures or mergers. For instance, in Greece, Italy, and Spain the combination of fast-track procedures and mergers either prevented parliamentary debate (and sometimes even voting) or considerably affected the deliberation process by extending the agenda of the plenary debate.

7 What factors influenced the application of emergency legislation during the reform of European economic governance?

This study identifies four major factors that influenced application of emergency legislation in the member states of the eurozone. Explanatory factors identified at the national level are the domestic constitutional set-up and the attitude of national courts. At the international level the study identified two further factors: economic and political pressure to facilitate the approval process.

At the domestic level, application of fast-track procedures depends first on the generosity of the national constitutional set-up, and second on the attitude of national constitutional or supreme courts. The literature dealing with practices of emergency legislation before the outbreak of the European financial crisis demonstrates that European states differed mostly with regard to the grade of parliaments' exclusion from the legislative process (Cartabia/Lamarque/Tanzarella 2011; Coutts et al. 2015). For instance, whereas in some states emergency legislation makes it possible to limit the standard number of plenary debates, in other states plenary debates can be entirely eliminated. However, before the outbreak of the crisis there was little variation in the horizontal dimension; as a rule, fast-track procedures were applied in extraordinary situations, such as natural disasters or terrorist attacks. In central policy areas, such as employment, emergency legislation constituted a marginal share of standard legislative procedures.

National constitutional and supreme courts played an important role in regulating applications of fast-track procedures (Wendel 2013; Pernice 2014). Courts decide whether a particular application of emergency legislation is constitutional or not. As a result, courts enjoy the power to act against limitations of national parliaments' competences in the legislative process.

The most prominent example of national parliaments' empowerment can be found in Germany. The German Constitutional Court has issued four rulings on the institutional reform of European economic governance.[4] In the first ruling on the EFSF and the Economic Adjustment Programme for Greece of 9 July 2011 the Court declared that neither international treaty violates the Basic Law. However, it also stressed that the Bundestag cannot transfer its budgetary powers to other actors. As a consequence, each bailout or increase of budgetary capacity of the EFSF has to be approved by the German parliament *(Bundestag)*. In these respects, the Court's ruling precluded the approval of anti-crisis measures by means of special fast-track procedures that exclude national legislators. The second ruling – of 2 August 2012 – precluded the possibility of delegating powers belonging to the whole parliamentary plenum to a special parliamentary committee that is supposed to decide on urgent matters related to European economic governance. According to the Court, the Bundestag has to exercise its budgetary powers in their entirety. In the third ruling on the ESM and the Euro Plus Pact of 6 March 2012, the Court stated that the government is obliged to inform the German parliament as early as possible regarding all matters related to European economic governance. Finally, in the ruling on the ESM and the Fiscal Compact of 9 December 2012, the Court confirmed that neither the ESM nor the Fiscal Compact violate the constitution (see, for instance, the ruling of the German Constitutional Court of March 18, 2014, BVerfG, 2 BvR 1390/12). However, the parliament has to be consulted on each increase in the ESM budget and on new bailout decisions.

Although some other courts also defended the competences of their national parliaments, no other national parliament has enjoyed such a significant confirmation of its powers as the German *Bundestag* (Fasone 2014b). In Austria, for instance, the national parliament acquired the right to vote on every decision related to the ESM. The reform was introduced by a constitutional amendment. Furthermore, the French, Estonian, and Finnish parliaments were confirmed in their competence to approve all new financial assistance programs by voting.

Finally, the most prominent instances of national parliaments' disempowerment could be observed in southern Europe. For instance, in Portugal and Spain the constitutional courts marginalized parliaments vis-à-vis the executive (Fasone 2014b). In Spain the rulings were particularly controversial because they were based on a different reasoning than the prior rulings on royal decree-law applications from 1982 and 2007. In particular, the recent rulings dismissed the action of unconstitutionality against applications of fast-track procedures (royal decree-law) with regard to both European economic governance and national labor reforms introduced in 2012 (Coutts et al. 2014).

4 BVerfG, 7 September 2011; BVerfG, 28 February 2012; BVerfG, 30 June 2012; BVerfG, 12 September 2012.

Approval of anti-crisis measures in Spain illustrates very well what concerns can arise from extensive application of fast-track procedures. In the Spanish system we can differentiate ordinary laws from decree-laws. Royal decree-laws are envisaged for extremely urgent situations. The national parliament cannot amend the text of a decree-law unless it transforms it into a legislative scheme dealt with in accordance with the urgent procedure (Article 86 of the Spanish Constitution), which prolongs the procedure somewhat. According to the procedure, a decree-law becomes binding if it is voted by the parliament; a debate is not necessary. If the vote is affirmative, the decree-law becomes an ordinary law. As comparative studies have illustrated (Coutts et al. 2015), while in the pre-crisis period royal decree-laws were rarely applied, in the post-2009 period the royal decree-law has become the major tool for implementing EU legislation related to economic governance. Moreover, in 2012 the number of bills or EU draft legislative acts approved with the royal decree-laws was higher than the number of bills approved as ordinary laws. The predominance of the fast-track procedure generated a discussion on whether such an extensive application of royal decree-laws is justifiable. Among other things, critical voices pointed to the rulings of the Spanish Constitutional Court from 1982 and 2007 in which the Court stated explicitly that governments should not apply royal decree-laws for structural issues or policies.[5]

In other southern European states where numerous fast-track measures were applied, supreme or constitutional courts did not rule that their application is unconstitutional. As a result, national parliaments' powers were not actively defended.

In sum, most supreme or constitutional courts in the eurozone have not assumed an active role as parliaments' defenders. Particularly the position of southern European courts has contributed to diminishing the role of national parliaments in states that were most directly affected by the new legislative measures.

Finally, governments' decisions to limit parliaments' powers have also been influenced by international factors. The European financial crisis contributed to generating an asymmetry in the substantive equality of debtor states. According to Article 4(2) TEU, all member states and their self-governing institutions enjoy equal status:

> The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government.

However, although all EU member states enjoy equal status de jure, they are not automatically unrestricted in the exercise of their formal powers (Poiares Maduro 2012). Hence, the substantive equality of southern European states became restricted when they accepted bailout loans.

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5 Sentencia del Tribunal Constitucional 29/1982; Sentencia del Tribunal Constitucional 68/2007.

The peculiarity of the eurozone crisis is that two types of actors became entitled to decide on budgetary matters of debtor states: non-elected institutions (the International Monetary Fund and the European Central Bank[6]) and national political actors (governments and parliaments of other eurozone states). Before the monetary union was established, European states applying for a loan from the IMF also had to accept some conditionalities. However, the process was not politicized to the same extent. In the eurozone the establishment of the EFSF and the increase in its budgetary capacity depended on national governments' and parliaments' unanimous consent. As a consequence, a veto by one national parliament meant that eurozone states facing liquidity problems could not obtain a bailout.

In the economic dimension, exposure to external conditionality in national budgetary matters had a negative effect on national sovereign powers. National parliaments, responsible for tailoring national budgets, were most directly affected by restrictions in that area. Every bailout loan has been accompanied by the so-called Memorandum of Understanding (MoU) that stipulates the reforms that have to be undertaken by states under the program. Oversight of the Memorandum's implementation has been conducted by an external body, the so-called "Troika" composed of the European Commission, the European Central Bank and the International Monetary Fund. Furthermore, exposure to national conditionality also enabled foreign political institutions to review the national budgetary plans of bailout states. In a now famous example, the German Bundestag reviewed and debated the Irish budget before the Dáil (Irish parliament) had done so.

In the political dimension, the acquisition of bailout loans has also been conditioned on completing ratification of the Fiscal Compact and introducing the balanced budget rule into domestic legislation. That condition has also constrained national parliaments in exercising their powers: practically speaking, parliaments in bailout states could neither reject the Fiscal Compact nor delay the ratification process. Otherwise they risked losing financial aid. Against this background, governments in southern European states had a strong incentive to minimize the likelihood of failure to approve anti-crisis measures, for instance by limiting national parliaments' powers.

8 Conclusions

This paper has analyzed how the intergovernmental reform process of European economic governance affected oversight practices of national parliaments in this policy area. In particular, the analysis examines which national parliaments became disempowered in the process and which factors contributed to this. The analysis provides information on how all national parliaments in the eurozone were involved in the approval of the

6 To some extent also the European Commission.

following anti-crisis measures: the European Financial Stability Facility (EFSF) – both its establishment and the increase of its budgetary capacity – the European Stability Mechanism (ESM), and the Treaty on Stability, Coordination, and Governance in the Economic and Monetary Union.

Disempowerment of national parliaments manifested itself through extensive application of so-called emergency legislation. These procedures, codified in every democratic state, made it possible to accelerate the legislative process and reduce the risk of a failure to ratify by limiting national parliaments' involvement. Emergency legislation limits national parliaments' powers to a different extent: whereas in some states only the number of plenary debates is reduced, in other states plenary debates and voting can be eliminated entirely.

In the first step, the analysis maps in which states national parliaments' powers were limited – and to what extent. In the second step, the paper examines which domestic and international factors influenced application of emergency legislation. These factors were: domestic constitutional set-up, constitutional or supreme courts' activity, and international political and economic pressure.

The comparative analysis demonstrates that southern European states were far more disempowered than northern European states. Although all states envisage various forms of emergency legislation, these procedures were employed first and foremost in southern Europe. National constitutional and supreme courts played a very important role in that process. In southern Europe, courts issued rulings that supported national governments' extensive application of emergency legislation. For instance in Spain, acts approved with emergency procedures outnumbered acts approved with the standard procedure. Furthermore, emergency legislation has been extended to policy areas that initially were reformed only with standard procedures, such as public policy. No court in southern Europe declared these practices to be unconstitutional. In northern Europe, by contrast, many constitutional courts confirmed or fostered national parliaments' competences in European economic governance, the most prominent case being Germany. Finally, parliaments in southern European states we also disempowered due to international economic and political pressure. For instance, acquisition of bailout loans was conditioned on ratification of the Fiscal Compact.

From a normative perspective it can be argued that the legitimacy of European economic governance clearly suffered due to the disempowerment of national parliaments during the reform process. Not surprisingly, many scholars advocated fostering EMU's legitimacy by re-empowering national parliaments along the lines of the Lisbon process (Bellamy/Kröger 2014). However, the question remains whether re-empowerment of national parliaments would be sufficient to meet the normative requirements of democratic accountability in this policy area. The findings of this paper suggest a negative answer.

First, at the European level, national parliaments' role predominantly concerns control of governments' actions. It is the European Parliament, not national parliaments, that is involved by means of the ordinary legislative procedure in all subsequent stages of the law-making process. As a consequence, democratic accountability within European economic governance also depends on the European Parliament's formal competences and its de facto performance in the legislative process. If the formal powers of the European Parliament are limited – as was the case, for example, during the approval of the temporary bailout fund – the democratic accountability of economic governance is also negatively affected.

Second, the analysis demonstrates that national parliaments in the eurozone do not exercise equal oversight powers at the EU level. The discrepancies in parliaments' powers have their roots in national constitutional set-ups, but also in parliaments' relations with the executive or national courts. In particular, parliaments that enjoy stronger constitutional powers can conduct their oversight more efficiently. However, national parliaments' powers can be limited by governments and courts on a short-term basis. Furthermore, international pressure exerted on governments can also rapidly worsen the conditions for parliamentary oversight. As a consequence, if some parliaments are empowered and others disempowered, such asymmetry of control powers has a negative impact on the quality of democratic control in the EU. This is because some parliaments enjoy a privileged position in controlling decision-making at the EU level, whereas others remain disadvantaged in that process. Therefore, the condition for equality of national representative institutions guaranteed by the Treaty is fulfilled only *de jure* but not *de facto:* national parliaments are not equal in the exercise of their oversight competences at the EU level.

Therefore, the findings of this paper suggest that oversight of European policy-making should be actively fostered at three different levels: national parliaments and the European Parliament and possibly also at the transnational inter-parliamentary level (Cooper 2014). The newly established Interparliamentary Conference on Stability, Economic Coordination and Governance in the European Union provides an opportunity for national parliaments to exchange opinions and conduct collective oversight – and on equal footing – of current European economic matters. Further research should therefore concentrate on examining how effectively national parliaments use the available vertical and horizontal channels in their oversight practice. There is a clear need to conduct in-depth case-studies, particularly investigating practices of national parliaments that were classified as outliers in this comparative study.

Appendix

Table 1 Approvals of anti-crisis measures

Country	Anti-crisis measure	Vote	Debate	Merger	Fast-track procedure
Belgium	EFSF-1	yes	yes	no	no
	EFSF-2	yes	yes	no	no
	ESM	yes	yes	no	no
	Fiscal Compact	yes	yes	no	no
Spain	EFSF-1	yes	no	no	yes
	EFSF-2	yes	no	no	yes
	ESM	yes	yes	yes, with the decision to modify Art. 136 TFEU (balanced budget rule)	no
	Fiscal Compact	yes	yes (only one)	no	yes
France	EFSF-1	yes	yes (only one)	yes, with the budget bill	yes
	EFSF-2	yes	yes (only one)		yes
	ESM	yes	yes (only one)	yes, with Art. 136 TFEU	yes
	Fiscal Compact	yes	yes (only one)	no	yes
Austria	EFSF-1	yes	yes	no	no
	EFSF-2	yes	yes	no	no
	ESM	yes	yes	no	no
	FFiscal Compact	yes	yes	no	no
Cyprus	EFSF-1	yes	yes	no	yes
	EFSF-2	yes	yes (only one)	no	yes
	ESM	yes	yes	no	no
	Fiscal Compact	no, approved with a government decree	no	no	no
Estonia	EFSF-1	Estonia was not in the eurozone at that time and therefore not part of the EFSF at the beginning.			no
	EFSF-2	yes	yes	no	no
	ESM	yes	yes	no	no
	Fiscal Compact	yes	yes	no	no
Finland	EFSF-1	yes	yes	no	no
	EFSF-2	yes	yes	no	no
	ESM	yes	yes	no	no
	Fiscal Compact	yes	yes	yes	no
Germany	EFSF-1	yes	yes	no	no
	EFSF-2	yes	yes	no	no
	ESM	yes	yes	no	no
	Fiscal Compact	yes	yes	no	no

Country	Anti-crisis measure	Vote	Debate	Merger	Fast-track procedure
Greece	EFSF-1	no	no	no	yes
	EFSF-2	yes	yes	yes, law on property tax and regulation of bank supervision	no
	ESM	yes	yes	yes, with Art. 136[3] and the Fiscal Compact	no
	Fiscal Compact	yes	yes	yes, with Art. 136[3] and the Fiscal Compact	no
Ireland	EFSF-1	yes	yes	no	no
	EFSF-2	yes	yes	no	no
	ESM	yes	yes	no	no
	Fiscal Compact	debate, vote and referendum (60.29% in favor)	debate, vote and referendum (60.29% in favor)	no	no
Italy	EFSF-1	no, government decree	no	no	yes
	EFSF-2	no, government decree	no	no	yes
	ESM	yes, Art. 136[3]+ESM +Fiscal Compact	yes	yes	no
	Fiscal Compact	yes, Art. 136[3]+ESM +Fiscal Compact	yes	yes	no
Luxembourg	EFSF - 1	yes	yes	no	no
	EFSF - 2	yes	yes	no	no
	ESM	yes	yes	no	no
	Fiscal Compact	yes	yes	no	no
Malta	EFSF-1	yes	yes	no	yes
	EFSF-2	yes	yes	no	yes
	ESM	yes, with Art. 136[3] TFEU	yes	yes	no
	Fiscal Compact	debate and vote (debate on the six-pack and the two-pack)	yes	no	no
Netherlands	EFSF-1	no	yes	no	yes
	EFSF-2	yes, with budgetary law	yes	yes	yes
	ESM	yes, with Art. 136[3] TFEU	yes	yes	no
	Fiscal Compact	yes	yes	no	no
Portugal	EFSF-1	yes	yes	no	no
	EFSF-2	no (government decree)	no	no	yes
	ESM	yes	yes	yes, with Art. 136[3] TFEU	no
	Fiscal Compact	yes	yes	no	no
Slovakia	EFSF-1	yes	yes	no	no
	EFSF-2	yes	yes	no	no
	ESM	yes	yes	no	no
	Fiscal Compact	yes	yes	no	no
Slovenia	EFSF-1	yes	yes	no	no
	EFSF-2	yes	yes	no	no
	ESM	yes	yes	no	no
	Fiscal Compact	yes	yes	no	no

Source: Based on the author's original research.

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