

# A European Ministry of Finance? Charting and testing the national constitutional limits to EU fiscal integration Behre, F.

#### Citation

Behre, F. (2021, October 21). A European Ministry of Finance?: Charting and testing the national constitutional limits to EU fiscal integration. Meijers-reeks. Retrieved from https://hdl.handle.net/1887/3220830

Version: Publisher's Version

License: License agreement concerning inclusion of doctoral thesis in the

Institutional Repository of the University of Leiden

Downloaded from: https://hdl.handle.net/1887/3220830

**Note:** To cite this publication please use the final published version (if applicable).



## A European Ministry of Finance?

Charting and Testing the National Constitutional Limits to EU Fiscal Integration

#### **PROEFSCHRIFT**

ter verkrijging van de graad van doctor aan de Universiteit Leiden, op gezag van rector magnificus prof.dr.ir. H. Bijl, volgens besluit van het college voor promoties te verdedigen op donderdag 21 oktober 2021 klokke 16.15 uur

door

Frederik Behre

geboren te Hannover (Duitsland)

in 1991

Promotor: prof. dr. S.C.G. Van den Bogaert

Co-promotor: prof. dr. A. Cuyvers

Promotiecommissie: prof. dr. R.C. Tobler

prof. dr. M. Nettesheim (Tübingen University, Germany) prof. dr. T. Ojanen (Helsinki University, Finland) prof. B. Smulders (Vrije Universiteit Brussels, Belgium)

Omslagontwerp: Primo!Studio, Delft Opmaak binnenwerk: Anne-Marie Krens – Tekstbeeld – Oegstgeest

#### © 2021 F. Behre

Behoudens de in of krachtens de Auteurswet gestelde uitzonderingen mag niets uit deze uitgave worden verveelvoudigd, opgeslagen in een geautomatiseerd gegevensbestand, of openbaar gemaakt, in enige vorm of op enige wijze, hetzij elektronisch, mechanisch, door fotokopieën, opnamen of enige andere manier, zonder voorafgaande schriftelijke toestemming van de uitgever.

Voor zover het maken van reprografische verveelvoudigingen uit deze uitgave is toegestaan op grond van artikel 16h Auteurswet dient men de daarvoor wettelijk verschuldigde vergoedingen te voldoen aan de Stichting Reprorecht (Postbus 3051, 2130 KB Hoofddorp, www.reprorecht.nl). Voor het overnemen van (een) gedeelte(n) uit deze uitgave in bloemlezingen, readers en andere compilatiewerken (art. 16 Auteurswet) kan men zich wenden tot de Stichting PRO (Stichting Publicatie- en Reproductierechten Organisatie, Postbus 3060, 2130 KB Hoofddorp, www.stichting-pro.nl).

No part of this book may be reproduced in any form, by print, photoprint, microfilm or any other means without written permission from the publisher.

### Acknowledgments

Thanking people and acknowledging their support, contribution and inspiration in the writing of this thesis is a pleasant and an impossible task. I want to start by thanking everybody that was part of this process and take the opportunity to thank some people individually.

First and foremost, my supervisors Stefaan Van den Bogaert and Armin Cuyvers for their continuous support, for inspiring and motivating me. Your detailed and constructive feedback was vital for developing, refining and finishing this manuscript. To put it with a metaphor Stefaan often used: you helped me to get the "plane" into the air, to reach cruising altitude and to land it safely onto the tarmac. I am extremely grateful for your supervision.

Secondly, I want to thank the Meijers Institute and Graduate School for awarding my PhD-project with a Meijers research grant.

Thirdly, I would like to thank all members of the Reading Committee, Prof. Christa Tobler, Prof. Martin Nettesheim, Prof. Tuomas Ojanen and Prof. Ben Smulders. I feel extremely honored that you invested time and effort into reading my manuscript and want to thank you for your valuable comments.

Fourthly, I want to thank Prof. Juha Raitio, Prof. Tuomas Ojanen and Prof. Kaarlo Tuori for welcoming me to Helsinki University and for providing an excellent environment for fruitful discussion. I also want to thank Prof. Martin Nettesheim for engaging in an (online) conversation on parts of my research – and I hope to come to Tübingen soon.

Then, I want to thank Prof. Volker Epping from Hannover University who supported me in the beginning of my studies, recommended me to the *Studien-stiftung* and sparked my interest for (German) constitutional law.

Andrew Graham, Tracey Sowerby, Hartmut Mayer, Susanne Heinrich and all Europaeum Scholars, thank you for enriching my PhD-time with stimulating new perspectives on EU integration and enabling us to create *You&EU*. Andrew and Peggotty thank you for being so kind and inspiring.

I want to thank my close friends and paranymphs Barbora Budinská and Lukas Pajunk. Barbora, I enjoyed our countless discussions – and I am looking forward to continuing them, maybe in the Tatra Mountains. Lukas, thank you for being a steady friend for the past fifteen years. I have great memories of our time at school, at university, in Finland and of our travels. I am sure many more will follow.

A special thanks goes to the colleagues at the Europa Institute – Pauline, Petra, Micky, Daniel C., Daniel M., Vestert, Melanie, Elise, Eva, Veronika,

VI Acknowledgments

Maarten, Valentine, Richard, Carina, Alison, Rick, Luuk, Tom, Moritz, Ben and many more. You make the Europa Institute an enjoyable working environment. Thank you, Vicky, for all our inspiring talks and your critical questions on our many walks in Amsterdam West – and for being a caring friend. Thank you, Darinka, for your feedback on the comparative framework. Barbora, Ilektra, Jet and Norika, thank you for all emotional and intellectual "office" support. Thank you Kristel – you were a dear colleague and became a close friend. And thank you Jorrit for your continuous support.

To Alicja, thank you for being an amazing friend and for making sure this manuscript reads well. To Bassi, you were a great flat mate and I have the best memories of your visits to Leiden and Amsterdam. Thank you for being such a joyful friend. To Pia, Michael, Jill, Laura, Maarten, Marjolein, Martijn, Claudio, Daniele, Luca, Joost, Jessica, Tom, Santiago, Gioele, Kim, Valentina, Roberto, Helenard, Nele, Kerstin, Alex – you were a much-needed distraction from the research work.

To my family in Germany, my parents, my sister, my grandparents, aunts, uncles, cousins, I am extremely grateful for the many joyous moments with you. Mom and dad, thank you for all your love and support on the long journey from Kindergarten to completing this PhD. You taught me to be committed, to stay curious and to be gentle in everything I do. Thank you for being the best role models I can imagine. Anna-Lena, so many moments we shared together since our childhood and I am happy you were part of this important process. Thank you to you and Jörg for the wonderful moments we shared. And thank you to Beatriz, Mauricio, Sebastian, Laura and all the Ballens for welcoming me to your family and for bringing so much additional joy to my life.

To Simón, thank you for your love, support and for being with me. I cannot find words to express my gratitude for everything you do for me – including for all your important help in finishing this manuscript. You assisted me in creating the graphical input of this PhD, you critically questioned my ideas and you opened new perspectives on many of my research findings. You enrich my thinking process and you show me how to be more creative and flexible. Thank you for making me happy.

## Table of contents

| I     | Inti   | RODUCTION  | 1  |  |  |  |
|-------|--|--|----|--|--|--|
| 1     | Charting and testing the national constitutional limits to EU fiscal integration |  |    |  |  |  |
| 2     | Making the case for EU fiscal integration  |  |    |  |  |  |
| 3     | EU fiscal integration between a fiscal rock and a constitutional hard            |  |    |  |  |  |
| J     | plac   | <u> </u>   | 12 |  |  |  |
| 4     |  | earch question, methodology and structure of the research        | 17 |  |  |  |
| •     | 4.1  | Comparative research methodology                                 | 18 |  |  |  |
|       |  | 4.1.1 General distinction – on rigid and flexible constitutional |    |  |  |  |
|       |  | approaches   | 19 |  |  |  |
|       |  | 4.1.2 A two-tiered comparative approach                          | 24 |  |  |  |
|       |  | 4.1.2.1 Macro-comparison of constitutional systems               | 24 |  |  |  |
|       |  | 4.1.2.2 Micro-comparison of national constitutional              |    |  |  |  |
|       |  | identity limits  | 26 |  |  |  |
|       |  | 4.1.3 Resulting comparatively charted constitutional space for   |    |  |  |  |
|       |  | fiscal integration   | 31 |  |  |  |
|       | 4.2  | Constitutional flexibility as employed research tool             | 32 |  |  |  |
|       |  | 4.2.1 Constitutional consistency assessment                      | 33 |  |  |  |
|       |  | 4.2.2 National best practices                                    | 35 |  |  |  |
|       | 4.3  | Structure of the research  | 37 |  |  |  |
| 5     |  | structing a resilient Euro within the national constitutional    |    |  |  |  |
|       | fran   | nework   | 38 |  |  |  |
|       |  |  |    |  |  |  |
|       |  |  |    |  |  |  |
| PAF   | ΥΤ΄ I –  | CHARTING THE NATIONAL CONSTITUTIONAL SPACE                       | 41 |  |  |  |
| CEC   | TION   | I. Manage Commenting Assessment of Finland and Comment           | 40 |  |  |  |
| SEC   | HON  | I I: Macro-Comparative Assessment of Finland and Germany         | 43 |  |  |  |
| Intr  | ducii  | ng the macro-comparative assessment                              | 43 |  |  |  |
| 11111 | лииси  | ις της παυτο-υπιρατατίου ασσυσσημένα                             | T  |  |  |  |
| II    | MAG  | CRO-COMPARATIVE ASSESSMENT OF FINLAND                            | 47 |  |  |  |
| 1     | Finl   | and and EU integration   | 47 |  |  |  |
| 2     |  | oducing the Finnish Constitutional Order                         | 50 |  |  |  |
|       |  | Finnish constitutional reforms to accommodate EU cooperation     | 52 |  |  |  |
|       |  | The Finnish Constitutional Law Committee                         | 54 |  |  |  |
|       | 2.3  | Interim conclusion: Constitutional embracement of EU membership  | 58 |  |  |  |

VIII Table of contents

| 3 |                 | redural and institutional framework applicable to EU fiscal  |            |
|---|-----------------|--|------------|
|   |                 | gration  | 58         |
|   | 3.1             | Transferring budgetary and fiscal competences to the EU  | 58         |
|   |                 | 3.1.1 Preliminary step: Scope for EU cooperation   | 60         |
|   |                 | 3.1.2 Conferral of competences under Section 94 Finnish  | <i>(</i> 0 |
|   |                 | Constitution   | 60         |
|   |                 | 3.1.3 Constitutional amendments according to Section 73 Finnish Constitution   | 65         |
|   |                 |  | 65<br>65   |
|   |                 | 3.1.3.1 Fiscal integration via exceptive enactment?  | 66         |
|   |                 | 3.1.3.2 Fiscal integration via constitutional amendments? 3.1.4 Application of the framework during the Eurocrisis   | 68         |
|   |                 | **   | OC         |
|   |                 | 3.1.5 Interim conclusions: EU fiscal integration with  | 70         |
|   | 3.2             | parliamentary approval The Finnish model of national engagement in EU matters  | 71         |
|   | 3.2             | 3.2.1 Mandating the Finnish vote in the Council of Ministers   | 71         |
|   |                 | 3.2.1.1 The procedural steps   | 72         |
|   |                 | 3.2.1.1 The procedural steps  3.2.1.2 The effect of the parliamentary mandate – real   | 12         |
|   |                 | scrutiny?  | 74         |
|   |                 | 3.2.2 Section 97: Scrutinizing the Finnish vote in the European  | / 1        |
|   |                 | Council  | 75         |
|   |                 | 3.2.3 Conclusive appraisal and outlook: Exemplary parliamentary  | 70         |
|   |                 | involvement?   | 75         |
|   | 3.3             | Ex ante Constitutional review and ex post judicial scrutiny  | 76         |
|   | 3.4             | Applicable procedural and institutional framework to EU fiscal   | 70         |
|   | J. <del>1</del> | integration  | 77         |
| 4 | Sub             | stantive framework applicable to EU fiscal integration   | 78         |
| 1 | 4.1             | Finnish sovereignty: An evolutionary conception  | 79         |
|   | 1.1             | 4.1.1 The historic origin of Finnish sovereignty   | 80         |
|   |                 | 4.1.2 A new conception of Finnish sovereignty  | 82         |
|   |                 | 4.1.3 Application during the Eurocrisis and implications for EU  | 02         |
|   |                 | fiscal integration   | 86         |
|   | 4.2             | Finnish democracy  | 92         |
|   | 1.2             | 4.2.1 A normative core of Finnish democracy?   | 92         |
|   |                 | 4.2.2 Consequences for EU fiscal integration steps   | 94         |
|   | 4.3             | Section 94 (3) Finnish Constitution: A Finnish eternity clause?  | 94         |
|   | 4.4             | Conclusive appraisal: Substantive flexibility towards European   |            |
|   | 1.1             | fiscal integration   | 96         |
| 5 | Resi            | ulting constitutional space: The Finnish road to EU fiscal integration   | 97         |
| _ | 11001           | and the second s |            |
| Ш | MAG             | CRO-COMPARATIVE ASSESSMENT OF GERMANY  | 99         |
| 1 | Ger             | many and EU integration  | 99         |
| 2 |                 |  | 101        |
|   | 2.1             |  | 102        |
|   | 2.2             |  | 104        |
| 3 | Proc            | redural and institutional framework for EU cooperation   | 106        |
|   | 3.1             |  | 108        |
|   |                 |  | 109        |

| Table of contents | IX |
|-------------------|----|
|-------------------|----|

|   |      | 3.1.2 | Constit   | utional requirements for the conferral                 | 109 |
|---|------|-------|-----------|--|-----|
|   |      |       |           | ation of Article 23 (1) GG to EU fiscal integration    | 111 |
|   | 3.2  |       |           | of parliament in the exercise of conferred powers      | 112 |
|   | 3.3  |       |           | ent of the German Federal Council                      | 113 |
|   | 3.4  |       |           | l oversight: Proceedings before the                    |     |
|   |      |       |           | ıngsgericht  | 114 |
|   |      |       | -         | uals initiating constitutional proceedings             | 115 |
|   |      |       |           | Possible violation of individual constitutional rights | 116 |
|   |      |       |           | Application of subjective gravamen in EU matters       | 117 |
|   |      |       |           | Emerging constitutional double standard                | 119 |
|   |      | 3.4.2 |           | ional actors initiating constitutional proceedings     | 123 |
|   |      |       |           | Constitutional requirements for initiating inter-      |     |
|   |      |       |           | institutional proceedings                              | 123 |
|   |      |       | 3.4.2.2   | Application of adversarial nature of proceedings       |     |
|   |      |       |           | in EU matters  | 124 |
|   |      |       | 3.4.2.3   | Possible constitutional double standard                | 126 |
|   |      | 3.4.3 | An app    | arent procedural double standard                       | 127 |
|   | 3.5  |       |           | rocedural and institutional framework for EU fiscal    |     |
|   |      |       | ration    |  | 127 |
| 4 | Subs | _     |           | work applicable to EU fiscal integration               | 129 |
|   | 4.1  | Unde  | rpinning  | g mechanisms   | 129 |
|   |      | 4.1.1 | Eternity  | v clause   | 129 |
|   |      | 4.1.2 | The dif   | ferent limits employed by the German Constitutional    |     |
|   |      |       | Court     |  | 134 |
|   |      |       | 4.1.2.1   | Fundamental rights review                              | 135 |
|   |      |       | 4.1.2.2   | Ultra vires review                                     | 136 |
|   |      |       | 4.1.2.3   | Constitutional identity review                         | 138 |
|   |      |       | 4.1.2.4   | Overlap of ultra vires and identity review             | 138 |
|   |      | 4.1.3 | Guiding   | g concepts for constitutional jurisprudence on EU      |     |
|   |      |       | integrat  |  | 139 |
|   |      |       | 4.1.3.1   | EU law friendliness of the German Constitution         | 139 |
|   |      |       | 4.1.3.2   | Continuous institutional responsibility for EU         |     |
|   |      |       |           | integration  | 141 |
|   | 4.2  | Cons  | titutiona | l principles   | 142 |
|   |      | 4.2.1 | Democi    | racy   | 142 |
|   |      |       | 4.2.1.1   | Legitimizing subject ('Volkssouveränität')             | 144 |
|   |      |       |           | Elections as mechanism to determine representation     | 146 |
|   |      |       | 4.2.1.3   | Legitimizing object: Components allowing for a         |     |
|   |      |       |           | political process                                      | 147 |
|   |      |       | 4.2.1.4   | Delegation of public authority                         | 149 |
|   |      |       | 4.2.1.5   | Resulting challenge for EU (fiscal) integration        | 150 |
|   |      | 4.2.2 | Overall   | budgetary responsibility                               | 155 |
|   |      |       | 4.2.2.1   | Underpinning democracy-theoretical considerations      | 156 |
|   |      |       | 4.2.2.2   | Requirements of budgetary responsibility               | 158 |
|   |      |       | 4.2.2.3   | Application of these requirements by the               |     |
|   |      |       |           | Bundesverfassungsgericht                               | 162 |
|   |      |       |           |  |     |

X Table of contents

|        |        |          | <ul><li>4.2.2.4 Conclusion on overall budgetary responsibility</li><li>4.2.2.5 Possible double standard in conception of overall</li></ul> | 166 |
|--------|--------|----------|--|-----|
|        |        |          | budgetary responsibility   | 167 |
|        |        | 423      | German sovereignty   | 174 |
| 5<br>6 |        | ılting   | German constitutional space for EU fiscal integration steps l constitutional space by applying consistent constitutional                   | 176 |
| Ü      |        | dard     | teriorian opace by approprie   | 178 |
| IV     | Con    | IPARAT   | TIVE CONCLUSIONS ON FINLAND AND GERMANY  | 183 |
| 1      | Con    | nparin   | g Finland and Germany  | 183 |
| 2      |        |          | g national constitutional review   | 183 |
| 3      |        |          | g the national procedural framework for EU fiscal integration  | 186 |
| 4      |        |          | g the national substantive benchmark for EU fiscal integration   | 190 |
| 5      |        |          | mparative conclusion   | 194 |
| SEC    | TION   |          | icro-Comparative Assessment of Selected National Material Limits<br>EU Fiscal Integration  | 197 |
| Intro  | oducir | ig the i | nicro-comparative assessment   | 197 |
| V      | Mic    | ro-Co    | MPARATIVE ASSESSMENT OF FRENCH, GERMAN, POLISH AND   |     |
|        | SPA    | NISH L   | IMIT TO EU FISCAL INTEGRATION  | 199 |
| 1      | Intro  | oductio  | on   | 199 |
| 2      | The    | Frencl   | h constitutional approach to EU fiscal integration   | 199 |
|        | 2.1    |          | ifying the relevant French constitutional limits   | 202 |
|        |        |          | Relevant constitutional limits for EU primary law  | 205 |
|        |        |          | Relevant constitutional limits for EU secondary law  | 207 |
|        |        | 2.1.3    | Ambiguity of the term 'constitutional identity' in the French  |     |
|        |        |          | context  | 209 |
|        | 2.2    | Esser    | ntial conditions for the exercise of national sovereignty  | 211 |
|        |        | 2.2.1    | Institutional actor enforcing the limit  | 211 |
|        |        | 2.2.2    | Procedural framework – or how to trigger the limit   | 214 |
|        |        |          | Constitutional basis of the employed limit   | 216 |
|        |        | 2.2.4    | Substantive core protected by the limit  | 218 |
|        |        |          | <ul><li>2.2.4.1 The conception of the French sovereignty doctrine</li><li>2.2.4.2 Sovereignty as limit to EU integration:</li></ul>        | 218 |
|        |        |          | A competence-based approach 2.2.4.3 Interim conclusion – a substantive limit to EU   | 222 |
|        |        |          | fiscal integration?  | 227 |
|        |        | 2.2.5    | Longevity and absoluteness of the constitutional limit   | 228 |
|        | 2.3    |          | cularity of the French constitutional identity limit   | 229 |
|        |        | 2.3.1    |  | 230 |
|        |        |          | Substantive content covered by the French constitutional   |     |
|        |        |          | identity limit   | 233 |
|        |        | 2.3.3    | Interim conclusion: No immediate limit for EU fiscal   |     |
|        |        |          | integration  | 235 |
|        |        |          |  |     |

| Table of contents | XI |
|-------------------|----|
|                   |    |

|    | 2.4 Conclusion on the French constitutional identity limit                 | 236 |
|----|--|-----|
| 3  | The Spanish constitutional perspective – an emerging constitutional        |     |
|    | identity?  | 239 |
|    | 3.1 Identifying the core constitutional limit to EU fiscal integration in  |     |
|    | Spain  | 242 |
|    | 3.2 Spanish constitutional identity limit                                  | 245 |
|    | 3.2.1 Institutional actor enforcing the limit                              | 246 |
|    | 3.2.2 Procedural framework – or how to trigger the limit                   | 248 |
|    | 3.2.3 Constitutional basis of the employed limit                           | 250 |
|    | 3.2.4 Substantive core protected by the limit                              | 252 |
|    | 3.2.4.1 Protecting Spanish sovereignty and its statehood                   | 253 |
|    | 3.2.4.2 Protecting the hierarchical position of the Spanish                |     |
|    | Constitution   | 256 |
|    | 3.2.4.3 The Tribunal's concrete assessment                                 | 258 |
|    | 3.2.4.4 Interim conclusion on the Spanish substantive core                 | 259 |
|    | 3.2.5 Longevity and absoluteness of the constitutional limit               | 261 |
|    | 3.3 Conclusion   | 263 |
| 4  | The Polish perspective on EU fiscal integration                            | 266 |
|    | 4.1 Identifying the core constitutional limits to EU fiscal integration in |     |
|    | Poland   | 269 |
|    | 4.2 The Polish constitutional identity limit – protecting a sovereign      |     |
|    | Poland?  | 271 |
|    | 4.2.1 Institutional actor enforcing the limit                              | 272 |
|    | 4.2.2 Procedural framework – or how to trigger the limit                   | 273 |
|    | 4.2.3 Constitutional basis of the employed limit                           | 276 |
|    | 4.2.4 Substantive core protected by the limit                              | 277 |
|    | 4.2.4.1 Constitutional identity limit: general characteristics             | 278 |
|    | 4.2.4.2 Polish sovereignty   | 281 |
|    | 4.2.4.3 Interim conclusion   | 287 |
|    | 4.2.5 Longevity and absoluteness of the constitutional limit               | 289 |
|    | 4.3 The rule of law at risk in Poland: The independence of the             |     |
|    | Constitutional Tribunal  | 291 |
| _  | 4.4 Conclusion   | 295 |
| 5  | Research findings on German constitutional identity limit                  | 299 |
|    |  |     |
| VI | Comparing the different national constitutional identity limits            |     |
|    | AND THEIR IMPLICATIONS FOR EU FISCAL INTEGRATION PROPOSALS                 | 303 |
| 1  | Introducing the comparative evaluation                                     | 303 |
| 2  | What national constitutional space for EU fiscal integration?              | 303 |
| 3  | Institutional and procedural framework of national constitutional identity |     |
|    | limits   | 316 |
| 4  | Implications of the comparative findings for EU fiscal integration         | 319 |
|    |  |     |

XII Table of contents

| PAR   | T II - | - TEST  | ING TH   | IE CHARTED NATIONAL CONSTITUTIONAL SPACE                 | 321 |
|-------|--------|---------|--|--|-----|
| Intro | ductio | on: The | Constit  | utional Feasibility of EU Fiscal Integration Proposals   | 323 |
| VII   | DEC    | ONSTRI  | JCTING I   | EU FISCAL INTEGRATION PROPOSALS                          | 331 |
| 1     | Intro  | ductio  | าก   |  | 331 |
| 2     |        |         |  | ne fiscal capacity                                       | 331 |
| _     |        |         | zone-buc   |  | 332 |
|       |        |         |  |  | 335 |
|       |        |         | -  | udgetary instruments                                     |     |
| •     |        |         |  | usion on increased fiscal capacity                       | 337 |
| 3     |        |         |  | or fiscal integration                                    | 338 |
|       |        |         |  | funding  | 338 |
|       | 3.2    |         | ing sour   |  | 340 |
|       |        |         |  | based funding sources                                    | 340 |
|       |        |         |  | ing the current Treaty-framework                         | 343 |
|       |        |         |  | conclusion on possible funding sources                   | 345 |
|       | 3.3    |         |  | usion on funding options                                 | 345 |
| 4     |        |         |  | nance: Creating administrative-executive capacity        | 346 |
| 5     |        |         |  | sion of national budgeting                               | 350 |
| 6     | Con    | clusior | n: The er  | nvisaged EU fiscal integration                           | 353 |
| VIII  | CON    | STITUTI | ONAL CO  | OF EU FISCAL INTEGRATION PROPOSALS WITH NATIONAL ONCERNS | 355 |
| 1     |        | ductio  |  |  | 355 |
| 2     | Com    | •       | lity of fi   | scal integration with current national constitutional    | 356 |
|       | 2.1    |         | patibility of an EU fiscal capacity with national constitutional |  |     |
|       |        | space   | -  |  | 357 |
|       |        | -       |  | capacity or instrument based on the existing Treaty-     |     |
|       |        |         | framew   |  | 357 |
|       |        |         |  | Compatibility with the charted macro-comparative         |     |
|       |        |         |  | constitutional space                                     | 358 |
|       |        |         | 2.1.1.2  | Compatibility with the charted micro-comparative         |     |
|       |        |         |  | constitutional space                                     | 367 |
|       |        |         | 2.1.1.3  | Interim conclusion                                       | 371 |
|       |        | 2.1.2   |  | getary capacity or instrument introduced by EU           |     |
|       |        |         |  | amendment  | 372 |
|       |        |         | -  | Compatibility with the charted macro-comparative         |     |
|       |        |         |  | constitutional space                                     | 372 |
|       |        |         | 2.1.2.2  | Compatibility with the charted micro-comparative         | · - |
|       |        |         |  | constitutional space                                     | 378 |
|       |        |         | 2.1.2.3  | Interim conclusion                                       | 387 |
|       |        | 2.1.3   |  | sion on feasibility of EU budgetary capacity or          | -   |
|       |        |         | instrum  | , , , , ,  | 388 |
|       | 2.2    | Comp    |  | of funding options with national constitutional space    | 392 |
|       |        | 2.2.1   |  | icing new tax-based own resources for the EU             | 393 |

| Tabl | e of c | ontents |           |  | XIII |
|------|--------|---------|-----------|--|------|
|      |        | 2.2.2   | Genuir    | ne EU taxation competence                            | 398  |
|      |        |         | 2.2.2.1   | *  |      |
|      |        |         |           | constitutional space                                 | 399  |
|      |        |         | 2.2.2.2   | Compatibility with the charted micro-comparative     |      |
|      |        |         |           | constitutional space                                 | 403  |
|      |        |         | 2.2.2.3   | Interim conclusion                                   | 407  |
|      |        | 2.2.3   | EU deb    | ots and shared liabilities                           | 407  |
|      |        |         | 2.2.3.1   | Compatibility with the charted macro-                |      |
|      |        |         |           | comparative constitutional space                     | 408  |
|      |        |         | 2.2.3.2   | Compatibility with the charted micro-comparative     |      |
|      |        |         |           | constitutional space                                 | 414  |
|      |        |         | 2.2.3.3   | Interim conclusion                                   | 420  |
|      |        | 2.2.4   | Conclu    | sion – Altering constitutional appraisal of Eurozone |      |
|      |        |         |           | ary tool   | 422  |
|      | 2.3    | Com     |           | y of an EU Ministry of Finance with national         |      |
|      |        |         | itutional |  | 424  |
|      |        | 2.3.1   | Structu   | ral-institutional dimension of the proposed Eurozone |      |
|      |        |         | Ministr   |  | 425  |
|      |        |         | 2.3.1.1   | Compatibility with the charted macro-comparative     |      |
|      |        |         |           | constitutional space                                 | 425  |
|      |        |         | 2.3.1.2   | Compatibility with the charted micro-comparative     |      |
|      |        |         |           | constitutional space                                 | 430  |
|      |        |         | 2.3.1.3   | Interim conclusion                                   | 433  |
|      |        | 2.3.2   | Confer    | ring new competences to the Eurozone Ministry        | 433  |
|      |        |         |           | Compatibility with the charted macro-comparative     |      |
|      |        |         |           | constitutional space                                 | 434  |
|      |        |         | 2.3.2.2   | Compatibility with the charted micro-comparative     |      |
|      |        |         |           | constitutional space                                 | 437  |
|      |        |         | 2.3.2.3   | Interim conclusion                                   | 439  |
|      |        | 2.3.3   |           | sion on the creation of an EU Ministry of Finance    | 439  |
|      | 2.4    |         |           | y of tightened EU supervision with national          | 10,  |
|      |        |         | itutional | -  | 441  |
|      |        |         |           | tibility with the charted macro-comparative          |      |
|      |        | 2.1.1   |           | utional space  | 442  |
|      |        | 242     |           | atibility with the charted micro-comparative         | 112  |
|      |        | 2.1.2   |           | utional space  | 444  |
|      |        | 2 4 3   |           | ision on tightened EU fiscal supervision             | 445  |
|      | 2.5    |         |           | usion: Fiscal integration within the current         | 110  |
|      | 2.0    |         | itutional | · ·  | 447  |
| 3    | Con    |         |           | ough constitutional flexibility                      | 448  |
| ,    | 3.1    |         |           | onstitutional standard in Germany                    | 448  |
|      | 5.1    |         |           | German contributions to the EU budget                | 450  |
|      |        |         |           | ntribution of Germany                                | 451  |
|      |        |         |           |  | 431  |
|      |        | 5.1.3   |           | EU advantages and German interest in a functioning   | 150  |
|      |        | 211     | Euro      | on proceedings dimension of execute hardesteer-      | 452  |
|      |        | 3.1.4   |           | on procedural dimension of overall budgetary         | 450  |
|      |        | 215     | respons   | · · · · · · · · · · · · · · · · · · ·                | 453  |
|      |        | 5.1.5   | muerim    | conclusion on the German constitutional approach     | 454  |

| XIV | Table of contents |
|-----|-------------------|
|-----|-------------------|

| 4                            | <ul> <li>3.2 Best practice examples</li> <li>3.3 Re-conception of national approach and EU benefits</li> <li>3.4 Interim conclusion: EU integration as two-way street</li> <li>Final conclusions on the constitutional feasibility of EU fiscal integration</li> </ul> | 455<br>457<br>459<br>459 |  |  |  |
|------------------------------|--|--------------------------|--|--|--|
| IX                           | OVERALL CONCLUSIONS AND OUTLOOK  | 467                      |  |  |  |
| 1                            | Tackling the dilemma: Constitutional concerns and EU fiscal integration  | 467                      |  |  |  |
| 2<br>3<br>4                  | Charted comparative constitutional space for EU fiscal integration Constitutionally attainable EU fiscal integration steps Transforming national constitutional limits through <i>constitutional</i>   | 469<br>474               |  |  |  |
| -                            | flexibility  | 475                      |  |  |  |
|                              | 4.1 Consistent application of the national constitutional framework  | 476                      |  |  |  |
|                              | 4.2 Creating constitutional flexibility through domestic best practices  | 478                      |  |  |  |
|                              | 4.3 Immediate and indirect benefits of EU cooperation  | 481                      |  |  |  |
| 5<br>6                       | Transforming the design of fiscal integration proposals Outlook: EU cooperation as a national constitutional duty in the 21st  | 483                      |  |  |  |
|                              | century  | 485                      |  |  |  |
| Zus                          | AMMENFASSUNG (GERMAN SUMMARY)  | 489                      |  |  |  |
| SAMENVATTING (DUTCH SUMMARY) |  |                          |  |  |  |
| BIBLIOGRAPHY                 |  |                          |  |  |  |
| Cur                          | RICULUM VITAE  | 533                      |  |  |  |