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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

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

SECTION II

Micro-Comparative Assessment of Selected National Material Limits to EU Fiscal Integration

INTRODUCING THE MICRO-COMPARATIVE ASSESSMENT

The *macro-comparison* revealed that the feasibility of EU fiscal integration steps can be significantly constrained in rigid constitutional systems. These constraints stem from the substantive limits that rigid systems typically formulate against increasing EU cooperation. Obviously, these substantive limits restrict the constitutional space for EU integration.¹ This tendency is particularly pronounced in the German constitutional order. As substantiated in the previous analysis, the German *constitutional identity limit* does set an absolute restriction to possible EU integration ambitions.² Not even the constitution-amending legislator is competent to overcome this absolute restriction.³ Obviously, such absolute restriction reduces the German Parliament's discretion for engaging in EU fiscal integration steps. In case EU fiscal integration measures are found to be incompatible with the German *constitutional identity limit* they are not achievable under the current German Constitution.⁴ Therefore, the

1 Claes, 'National Identity: Trump Card or Up for Negotiation?' 116; Wendel, 'Lisbon Before the Courts: Comparative Perspectives' 131.

2 Calliess, 'Constitutional Identity in Germany – One for Three or Three in One?' 161-162; Wendel, 'Exceeding Judicial Competence in the Name of Democracy: The German Federal Constitutional Court's OMT Reference' 286; Voßkuhle, 'Verfassungsgerichtsbarkeit und europäische Integration' 27; Preuss, 'The Implications of 'Eternity Clauses': the German Experience' 440; Grawert, 'Homogenität, Identität, Souveränität – Positionen jurisdiktioneller Begriffsdogmatik' 197.

3 1 BvR 1170, 1174 and 1175/90 *Real Estate Reform I* [1991] (German Federal Constitutional Court) para 130-131; Cf. as well: Rademacher, 'Die "Verfassungsidentität" als Grenze der Kompetenzübertragung auf die Europäische Union?' 146; Herbst, 'Legale Abschaffung des Grundgesetzes nach Art. 146 GG?' 33; Schöbener, 'Das Verhältnis des EU-Rechts zum nationalen Recht der Bundesrepublik Deutschland' 892; Bogdandy and Schill, 'Die Achtung der nationalen Identität unter dem reformierten Unionsvertrag – Zur unionsrechtlichen Rolle nationalen Verfassungsrechts und zur Überwindung des absoluten Vorrangs' 715.

4 In light of Article 79 (3) Basic Law, cf. *Quantitative Easing (PSPP) Final Judgment* para 101; *OMT-reference* para 29; *Lisbon-judgment* para 216; Cf. as well: Calliess, 'Constitutional Identity in Germany – One for Three or Three in One?' 156-157; Rademacher, 'Die "Verfassungsidentität" als Grenze der Kompetenzübertragung auf die Europäische Union?' 146; Polzin, 'Constitutional Identity, Unconstitutional Amendments and the Idea of Constituent Power: The Development of the Doctrine of Constitutional Identity in German Constitutional Law' 430.

German example illustrates that EU fiscal integration does not only depend on national political-parliamentary support but equally on the compatibility with domestic constitutional limits and more specifically national *constitutional identity limits*.⁵

Furthermore, national *constitutional identity limits* appear to be the most likely constitutional obstacles when considering EU fiscal integration steps. Notably, as already demonstrated within the *macro-comparison* in relation to Finland and Germany, the proposed EU fiscal integration steps affect national fiscal and budgetary powers, which are traditionally perceived as core state competences and particularly important parliamentary prerogatives.⁶ EU fiscal integration could require the transfer of these important budgetary prerogatives to create fiscal capacities at the supranational level, further limitations on national fiscal policies, for example regarding social policy decisions, or possibly even the introduction of joint guarantees of all Eurozone Member States through Euro- or Corona-bonds. However, the integration steps this would require might be difficult to attain as budgetary and fiscal competences are characterized as essential for the national democratic-political process and as they are therefore generally covered by national *constitutional identity limits*.⁷ These *constitutional identity limits* appear to formulate uncompromising constitutional requirements, as apparent from the assessed German example.⁸

In light of the apparent severity of these constitutional limits, this Section focuses on *constitutional identity limits* which will likely apply to EU fiscal integration steps. Based on political and geographical relevance as well as overall constitutional importance, this assessment will focus on a sample of four *constitutional identity limits*, namely the German, French, Spanish and Polish limits. The assessment will determine in a comparative manner the constitutional implications of these four national *constitutional identity limits* for EU fiscal integration proposals. In order to allow for this comparison, the Section follows the previously established two-fold research design. In a first step, the four national *constitutional identity limits* will be analyzed separately (Chapter V). In a second step, the research findings on the four *constitutional identity limits* will be compared and contrasted (Chapter VI).

5 Saiz Arnaiz and Alcobarro Llivina, 'Why Constitutional Identity Suddenly Matters: A Tale of Brave States, a Mighty Union and the Decline of Sovereignty' 14-15.

6 Schneider, 'Exkurs: Die Rolle des Haushaltsausschusses des Bundestages bei Aufstellung und Vollzug des Haushalts – ein Praxisbericht' 295; Puntischer Riekman and Wydra, 'Representation in the European State of Emergency: Parliaments Against Governments?' 567; Baranger, 'The Apparition of Sovereignty' 61; Bonnie, 'The Constitutionality of Transfers of Sovereignty: the French Approach' 527.

7 Schyff, 'Exploring Member State and European Union Constitutional Identity' 228.

8 Wendel, 'Lisbon Before the Courts: Comparative Perspectives' 123.