



Universiteit
Leiden
The Netherlands

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: [Licence 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).

PART II

Testing the charted national constitutional
space

Introduction

The Constitutional Feasibility of EU Fiscal Integration Proposals

The Eurocrisis painfully exposed the structural shortcomings in the design of the Euro. Although the precise root-causes of this crisis remain disputed,¹ it is widely acknowledged that fundamental reforms are required in order to stabilize the Euro in the long-run.² To that end, many proposals have already been submitted at EU, national, academic and civil-societal level. These proposals suggest a variety of EU reform steps,³ including further completing the Banking Union,⁴ the establishment of a Capitals Market Union,⁵ the initiation of a

-
- 1 Notably, focusing on the banking sector, the close relationship between public finances and the banking sector, cf. Lionello, *The Pursuit of Stability of the Euro Area as a Whole – The Reform of the European Economic Union and Perspectives of Fiscal Integration* 162; Or, when focusing on the EU legal framework, the lacking fiscal discipline and the weakened EU rules in that regard, cf. Craig and Markakis, 'EMU Reform' 1401; Lionello, *The Pursuit of Stability of the Euro Area as a Whole – The Reform of the European Economic Union and Perspectives of Fiscal Integration* 162; Ruffert, 'The Future of the European Economic and Monetary Union – Issues of Constitutional Law' 36; Or, when focusing on the economic dimension, for example the three economic trends identified as cause of the Eurocrisis, cf. Tuori and Tuori, *The Eurozone Crisis – A Constitutional Analysis* 61; Or finally, the asymmetric Treaty design of the EMU with exclusive monetary competences at the EU-level and only a coordination of economic policies, cf. Fabbrini, 'Fiscal Capacity' 107; As well as the lack in EMU fiscal (stabilization) capacities, cf. Benedicta Marzinotto, André Sapir and Guntram B. Wolff, 'What Kind of Fiscal Union? (2011)' Bruegel Policy Brief <<https://www.bruegel.org/2011/11/what-kind-of-fiscal-union/>> accessed 20 December 2020 2.
 - 2 Craig and Markakis, 'EMU Reform' 1404; Ruffert, 'The Future of the European Economic and Monetary Union – Issues of Constitutional Law' 34; Dawson, Enderlein and Joerges, 'Introduction: The Governance of the Transformation of Europe's Economic, Political, and Constitutional Constellation Since the Euro-Crisis' 3.
 - 3 Cf. on the made proposals, for example: Lionello, *The Pursuit of Stability of the Euro Area as a Whole – The Reform of the European Economic Union and Perspectives of Fiscal Integration* 163-165; Craig and Markakis, 'EMU Reform' 1400, 1446-1447; Ruffert, 'The Future of the European Economic and Monetary Union – Issues of Constitutional Law' 45-47; Fabbrini, 'Fiscal Capacity' 114-124.
 - 4 Cf. the official documents of the EU institutions on the creation of the Banking Union: Commission, *Reflection Paper on the Deepening of the Economic and Monetary Union* 19-20; Juncker and others, *The Five Presidents' Report: Completing Europe's Economic and Monetary Union* 4; European Commission, *Communication from the Commission to the European Parliament and the Council – A Roadmap Towards a Banking Union* (COM (2012) 510) (European Commission 2012).
 - 5 Commission, *Reflection Paper on the Deepening of the Economic and Monetary Union* 20-21; Cf. as well: Craig and Markakis, 'EMU Reform' 1434.

European Monetary Fund,⁶ or even the creation of Political Union.⁷ As substantiated in the Introductory Chapter, another widely discussed reform ambition is further EU fiscal integration.⁸ Although these EU fiscal integration steps appear to be a vital reform component to build a stable, resilient single currency, their design and the required degree of integration remain politically contested across the Member States.⁹

The apparent political controversy around EU fiscal integration coincides with an extensive legal-constitutional opposition that is formulated by national constitutional authorities. As revealed in PART I, national constitutional authorities appear to increasingly scrutinize EU measures that are linked to budgetary or fiscal policies,¹⁰ which could seriously restrict the constitutional

6 The initial proposals of the Commission: Commission Proposal for a Regulation of the European Parliament and of the Council on the establishment of a European Monetary Fund (COM (2017) 827); Commission, *Reflection Paper on the Deepening of the Economic and Monetary Union* 28; Cf. as well: Craig and Markakis, 'EMU Reform' 1407; Lionello, *The Pursuit of Stability of the Euro Area as a Whole – The Reform of the European Economic Union and Perspectives of Fiscal Integration* 176-178; Editorial Comments, 'Editorial Comments – Tinkering with Economic and Monetary Union' (2018) 55 *Common Market Law Review* 1, 3-4.

7 As proposed by the Five Presidents' Report, cf. Juncker and others, *The Five Presidents' Report: Completing Europe's Economic and Monetary Union* 4, 17; Cf. as well: Lionello, *The Pursuit of Stability of the Euro Area as a Whole – The Reform of the European Economic Union and Perspectives of Fiscal Integration* 226-227.

8 Commission, *Reflection Paper on the Deepening of the Economic and Monetary Union* 23-26; Juncker and others, *The Five Presidents' Report: Completing Europe's Economic and Monetary Union* 14-15; Cf. as well: Lionello, *The Pursuit of Stability of the Euro Area as a Whole – The Reform of the European Economic Union and Perspectives of Fiscal Integration* 201-202; Fabbrini, 'Fiscal Capacity' 114-115, 125; Van den Bogaert and Cuyvers, 'Of Carrots and Sticks – What Direction to Take for Economic and Monetary Union?' 133; Scharpf, 'The Costs of Non-Disintegration: The Case of the European Monetary Union' 37-39; Tortola, 'Coming Full Circle: The Euro Crisis, Integration Theory, and the Future of the EU' 131; Pisani-Ferry, 'Rebalancing the Governance of the Euro Area' 62; Maduro, 'Foreword: Fiscal Capacity and Constitutional Reform in the EMU' vi; Tuori and Tuori, *The Eurozone Crisis – A Constitutional Analysis* 255-256; Lastra and Louis, 'European Economic and Monetary Union: History, Trends, and Prospects' 123-124; Hinarejos, 'The Euro Area Crisis and Constitutional Limits to Fiscal Integration' 14.

9 Ruffert, 'The Future of the European Economic and Monetary Union – Issues of Constitutional Law' 65; Schoeller, 'Preventing the Eurozone Budget: Issue Replacement and Small State Influence in EMU' 11-12.

10 As established, most visible in the national *constitutional identity limits*, cf. Saiz Arnaiz and Alcobarro Llivina, 'Why Constitutional Identity Suddenly Matters: A Tale of Brave States, a Mighty Union and the Decline of Sovereignty' 3; Claes, 'National Identity: Trump Card or Up for Negotiation?' 110; Jacobsohn, 'The Formation of Constitutional Identities' 130; Wendel, 'Lisbon Before the Courts: Comparative Perspectives' 125-128; This contestation is particularly strong in Germany, where the Constitutional Court developed the concept of *overall budgetary responsibility* to address EU fiscal integration, cf. *Quantitative Easing (PSP)* *Final Judgment* para 104; *Final OMT-Judgment* para 212; *Financial Support for Greece and EFSF* para 120; Cf. as well: Calliess, '70 Jahre Grundgesetz und europäische Integration: 'Take back control' oder 'Mehr Demokratie wagen'?' 688.

feasibility of the proposed fiscal integration reform proposals. It appears to result in the dilemma fleshed out in the Introductory Chapter which constitutes the starting point of the research: EU fiscal integration is necessary to stabilize the Euro and yet constitutionally impossible to attain. In light of this apparent dilemma, the following assessment determines the compatibility of a broad selection of EU fiscal integration proposals with the previously charted national constitutional space.¹¹

To facilitate this compatibility assessment, the subsequent section first maps the most authoritative and representative fiscal integration proposals, which will provide a nuanced outline of possible design options for such integration steps. The research defines the ‘authority’ of the proposals based on the actor that submitted them as well as their reception within the political and academic debate. In light of this litmus test, the analysis firstly includes the various proposals submitted by the European Commission. This covers the 2015 EU Five Presidents’ Report, the follow-up in the White Paper on the future of Europe as well as the Reflection Paper on the deepening of the EMU both published in 2017, the Budgetary Instrument for Convergence and Competitiveness (BICC) circulated in 2019,¹² the recently approved recovery fund Next Generation EU,¹³ as well as an early proposal on Eurobonds from 2011.¹⁴ It should be emphasized once again that Next Generation EU does not

¹¹ Cf. the assessment in PART I.

¹² See the original proposal by the Commission: Commission Proposal for a Regulation of the European Parliament and of the Council on the Governance Framework for the Budgetary Instrument for Convergence and Competitiveness for the Euro Area (COM (2019) 354); Which was encouraged and supported by Council and European Council, cf. Eurogroup, *Term Sheet on the Budgetary Instrument for Convergence and Competitiveness* (Eurogroup 2019); Euro Summit, *Statement of the Euro Summit, 14 December 2018* (EURO 503/18) (General Secretariat of the Council 2018); Cf. as well: Lionello, *The Pursuit of Stability of the Euro Area as a Whole – The Reform of the European Economic Union and Perspectives of Fiscal Integration* 185–186; Schoeller, ‘Preventing the Eurozone Budget: Issue Replacement and Small State Influence in EMU’ 9–11; Paul Dermine, ‘The Commission’s December Package 18 Months Later’ (2019) Maastricht Law – Faculty of Law Working Paper series 7, 11–12.

¹³ As concluded by the European Council, cf. Council, *Conclusions Special Meeting of the European Council* (17, 18, 19, 20 and 21 July 2020) – EUCO 10/20; And as initially proposed by the European Commission, cf. Commission, *Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions – Europe’s moment: Repair and Prepare for the Next Generation* (COM (2020) 456).

¹⁴ The idea was proposed by the European Commission, cf. European Commission, *Green Paper on the Feasibility of Introducing Stability Bonds* (COM (2011) 818) (European Commission 2011); Subsequently considered in several publications, cf. Hans-Bernd Schäfer and Jochen Bigus, ‘Consequences of Different Eurobonds Proposals’ (2016) 12 *Review of Law & Economics* 523, 553; Alexandra Hild, Bernhard Herz and Christian Bauer, ‘Structured Eurobonds: Limiting Liability and Distributing Profits’ (2014) 52 *Journal of Common Market Studies* 250, 251; Franz C. Mayer and Christian Heidfeld, ‘Eurobonds, Schuldentilgungsfonds und Projektbonds – Eine dunkle Bedrohung?’ (2012) 45 *Zeitschrift für Rechtspolitik* 129, 129; Franz C. Mayer and Christian Heidfeld, ‘Verfassungs- und europarechtliche Aspekte der Einführung von Eurobonds’ (2012) 65 *Neue Juristische Wochenschrift* (NJW) 422, 422.

qualify as a reform of the single currency as such. Nevertheless, the design choices made in this proposal illustrate how a feasible Eurozone financial capacity might be devised. Taken together, these proposals constitute the most comprehensive and authoritative reform package for EU fiscal integration steps.

In addition to these Commission proposals, the assessment covers the Franco-German proposal on establishing a Eurozone-budget,¹⁵ as well as the proposal of France and Germany that led to the adoption of Next Generation EU.¹⁶ Moreover, various proposals on Eurobonds, the proposal on establishing an ‘automatic’ investment budget for the Euroarea¹⁷ and an early *Bruegel* proposal on the creation of a full-fledged Fiscal Union are included in the assessment.¹⁸ Finally, several academic publications that evaluate these proposals and introduce own ideas are incorporated to complement the assessment.¹⁹ Combined, the various proposals, displayed in chronological order in *Figure 17*, offer a comprehensive overview of authoritative and innovative design options currently available for potential deeper EU fiscal integration.

Given that a separate compatibility assessment of each proposal with the charted national constitutional space is not feasible, the research follows an expedient two-fold functional approach. In a first step, all proposals are dismantled and organized into four substantive *reform elements* or *components* building on a distinction introduced by *Ruffert*.²⁰ Notably, these four elements are the creation of a Eurozone fiscal capacity,²¹ the financing options of po-

15 Meeting, *Erklärung von Meseberg – Das Versprechen Europas für Sicherheit und Wohlstand erneuern*; Cf. as well: Lionello, *The Pursuit of Stability of the Euro Area as a Whole – The Reform of the European Economic Union and Perspectives of Fiscal Integration* 164; Fabbrini, ‘Fiscal Capacity’ 122.

16 Bundeskanzlerin, *Press Release 173/20: A French-German Initiative for the European Recovery from the Coronavirus Crisis*.

17 Bibow, ‘Making the Euro Viable: The Euro Treasury Plan’ 2-4.

18 Marzinotto, Sapir and Wolff, ‘What Kind of Fiscal Union? (2011)’.

19 For example, the following publications on EMU reforms and specifically EU fiscal integration steps: Lionello, *The Pursuit of Stability of the Euro Area as a Whole – The Reform of the European Economic Union and Perspectives of Fiscal Integration*; Craig and Markakis, ‘EMU Reform’; Ruffert, ‘The Future of the European Economic and Monetary Union – Issues of Constitutional Law’; Fabbrini, ‘Fiscal Capacity’; Tuori and Tuori, *The Eurozone Crisis – A Constitutional Analysis*.

20 As similarly identified in academic writing: Ruffert, ‘The Future of the European Economic and Monetary Union – Issues of Constitutional Law’ 48.

21 Commission, *Reflection Paper on the Deepening of the Economic and Monetary Union* 25-26; Juncker and others, *The Five Presidents’ Report: Completing Europe’s Economic and Monetary Union* 15; Cf. as well: Lionello, *The Pursuit of Stability of the Euro Area as a Whole – The Reform of the European Economic Union and Perspectives of Fiscal Integration* 180-182; Craig and Markakis, ‘EMU Reform’ 1420, 1422-1423; Ruffert, ‘The Future of the European Economic and Monetary Union – Issues of Constitutional Law’ 48-49; Fabbrini, ‘Fiscal Capacity’ 125; Tuori and Tuori, *The Eurozone Crisis – A Constitutional Analysis* 254.

tential additional EU expenditure,²² the establishment of institutional capacities, most prominently a Eurozone Minister of Finance,²³ and finally the strengthened EU supervision of national budgeting.²⁴

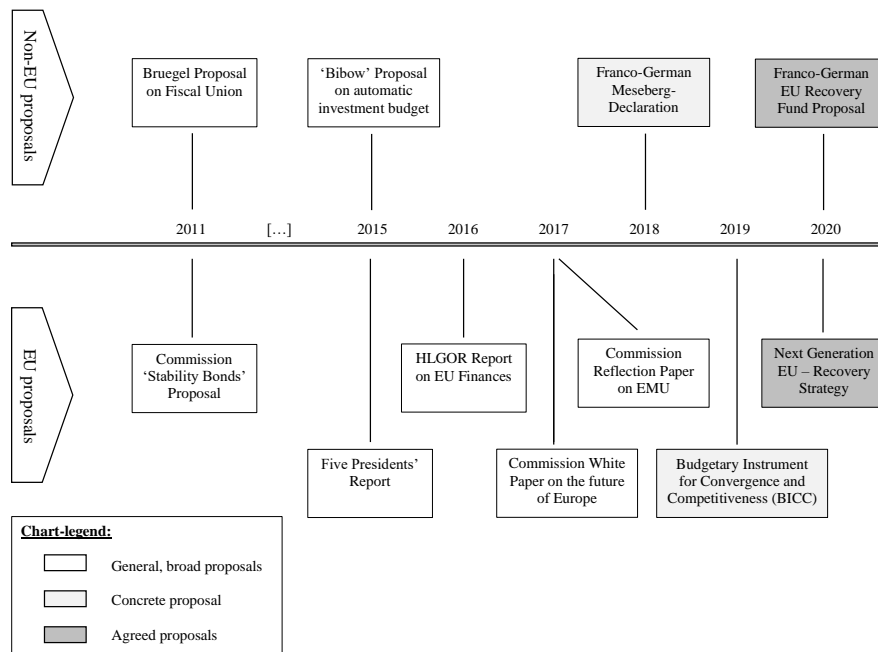


Figure 17: Chronological overview of assessed EU fiscal integration proposal

- 22 To generate up to 3% of national GDP in EU revenue, cf. Lionello, *The Pursuit of Stability of the Euro Area as a Whole – The Reform of the European Economic Union and Perspectives of Fiscal Integration* 182; Craig and Markakis, 'EMU Reform' 1423; Yves-Emmanuel Bara and others, 'A contribution to the work on the strengthening of the euro area' (2017) Trésor-Economics, 8; Also pointed out by the European Commission, cf. European Commission, *Commission Staff Working Document – Impact Assessment – Accompanying the Document for Proposal for a Regulation of the European Parliament and of the Council on the Establishment of a European Investment Stabilisation Function* (COM (2018) 297) (European Commission 2018) 52.
- 23 Commission, *Reflection Paper on the Deepening of the Economic and Monetary Union* 23-26; European Commission, *Completing Europe's Economic and Monetary Union – A European Minister of Economy and Finance* (European Commission 2017); Juncker and others, *The Five Presidents' Report: Completing Europe's Economic and Monetary Union* 18; Cf. as well: Lionello, *The Pursuit of Stability of the Euro Area as a Whole – The Reform of the European Economic Union and Perspectives of Fiscal Integration* 188-190; Craig and Markakis, 'EMU Reform' 1441-1442; Ruffert, 'The Future of the European Economic and Monetary Union – Issues of Constitutional Law' 61; Fabbrini, 'Fiscal Capacity' 131; Comments, 'Editorial Comments – Tinkering with Economic and Monetary Union' 8-9.
- 24 Commission, *Reflection Paper on the Deepening of the Economic and Monetary Union* 23-26; Juncker and others, *The Five Presidents' Report: Completing Europe's Economic and Monetary Union* 9; Cf. as well: Lionello, *The Pursuit of Stability of the Euro Area as a Whole – The Reform of the European Economic Union and Perspectives of Fiscal Integration* 169-170.

In a second step, the deconstructed proposals are subsequently differentiated based on the degree of *EU influence* or the intensity of *EU integration* that they envisage. The apparent differences in the proposed intensity of supranational cooperation reflect the academic distinction between ‘decentralized’ and ‘centralized’ approaches to EMU reforms. Following the strictest ‘decentralized approach’ as conceptualized by Lionello²⁵ or the ‘*surveillance model*’ as initially labelled by Hinarejos,²⁶ Member States retain control over fiscal decisions, no additional competences are conferred to the EU-level and the supranational level only has indirect influence by coordinating policy decisions. Relying on these academic concepts, the research labels proposals that aim to retain responsibility for budgetary and fiscal decisions at the national level, and thereby to preserve the current distribution of competences within the EMU, as *coordination approaches*. In contrast, proposals that follow a strict ‘centralized approach’²⁷ or the ‘*classic fiscal federalism model*’²⁸ aim to assign core budgetary and fiscal competences to the EU-level. This also implies greater administrative powers for EU institutions. The research labels these proposals, which entail the conferral of considerable extent of competences to the EU, as *integration approaches*.

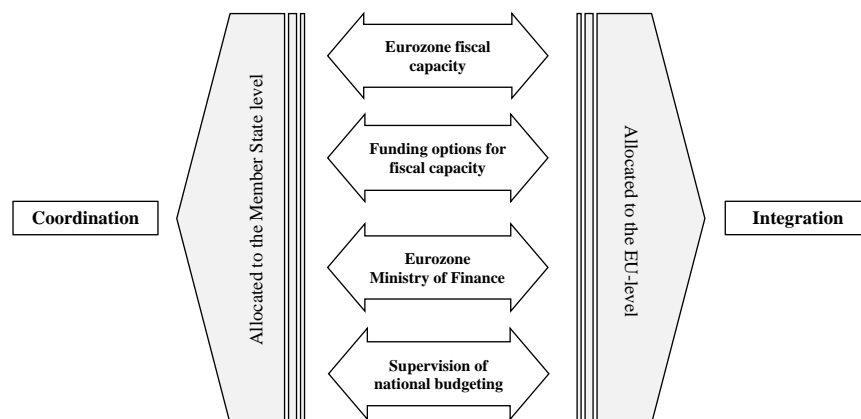


Figure 18: Visualization of two-fold functional approach employed to organize proposals

25 Lionello, *The Pursuit of Stability of the Euro Area as a Whole – The Reform of the European Economic Union and Perspectives of Fiscal Integration* 164.

26 Alicia Hinarejos, ‘Fiscal Federalism in the European Union: Evolution and Future Choices for EMU’ (2013) 50 *Common Market Law Review* 1621, 1634-1635; Cf. as well: Armin Steinbach, ‘Insurance-Type Cooperation Mechanisms Under EU Law’ (2017) 27 *Swiss Review of International and European Law* 19, 20.

27 Lionello, *The Pursuit of Stability of the Euro Area as a Whole – The Reform of the European Economic Union and Perspectives of Fiscal Integration* 164.

28 Steinbach, ‘Insurance-Type Cooperation Mechanisms Under EU Law’ 20; Hinarejos, ‘Fiscal Federalism in the European Union: Evolution and Future Choices for EMU’ 1635-1636.

The outlined two-fold functional approach deconstructs the identified EU fiscal integration proposals into the four core substantive elements that fiscal integration reform might entail as well as based on the degree of cooperation that they envision, distinguishing between a *coordination* and an *integration approach* (Chapter VII), as visualized in *Figure 18*. The adopted distinction allows to subsequently determine *what form* of EU fiscal integration is achievable within the charted national constitutional space – even beyond the directly assessed proposals (Chapter VIII).

The resulting overview of EU fiscal integration proposals established in Chapter VII provides a nuanced basis for the subsequent compatibility assessment of the possible integration steps in Chapter VIII in light of the previously charted national constitutional space. Within Chapter VIII, the assessment also explores whether the developed concept of *constitutional flexibility* could create additional constitutional space for EU fiscal integration in some of the analyzed Member States as well as whether fiscal integration proposals could be re-conceptualized to better fit the national constitutional concerns. The concluding section of Chapter VIII then unites all made observations and projects *what form* and *what degree* of EU fiscal integration is achievable within the existing national constitutional space, either with or without the use of potential mechanisms of flexibilization.

