A European Ministry of Finance? Charting and testing the national constitutional limits to EU fiscal integration
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VII Deconstructing EU fiscal integration proposals

1 Introduction

Following the outlined functional approach, the subsequent section organizes the identified EU fiscal integration proposals into the four core substantive elements of EU fiscal integration developed by this research, which will subsequently serve as framework to structure and to conduct the detailed comparative compatibility assessment.[1] As established, these are the creation of a Eurozone budgetary capacity (2.), the introduction of new EU revenue sources to finance increased financial needs at the EU-level (3.), the establishment of an 'EU Ministry of Finance' – or more generally additional administrative or executive capacities at EU-level (4.) – as well as finally the enhanced EU supervision over national budgeting and fiscal decision-making (5.).

Within each substantive element, the proposed concrete ideas will be tentatively organized based on the envisaged extent of EU fiscal integration following the established linear distinction between 'cooperation'[2] and 'integration'[3] approaches.

2 Creating a Eurozone fiscal capacity

The creation of a Eurozone fiscal capacity – which covers a range of design options varying from the creation of new EU fiscal emergency funds to the initiation of a full-fledged EMU budget to conduct fiscal and economic policy[4] – appears to constitute the most comprehensively discussed reform component

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1 For this organization into substantive elements, cf. as well: Ruffert, 'The Future of the European Economic and Monetary Union – Issues of Constitutional Law' 48.

2 For the original concept, 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* 164; Steinbach, 'Insurance-Type Cooperation Mechanisms Under EU Law' 20; Hinarejos, 'Fiscal Federalism in the European Union: Evolution and Future Choices for EMU ' 1635-1636.

3 For the original concept, 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* 164; Steinbach, 'Insurance-Type Cooperation Mechanisms Under EU Law' 20; Hinarejos, 'Fiscal Federalism in the European Union: Evolution and Future Choices for EMU ' 1634-1635.

4 Cf. for example: Alessandro D'Alfonso and Andrej Stuchlik, *A fiscal capacity for the euro area?* (European Parliament 2016) 9-10.

of EU fiscal integration. The centrality of this component in the assessed proposals can be explained by two interrelated considerations. First, it appears that the design of the fiscal capacity necessarily determines the overall nature of EMU cooperation. Notably, the more fiscal powers Member States decide to attribute to the EU, the more the EU is replacing national fiscal decisions by supranational political decision-making. Thus, additional Eurozone fiscal capacities could equip the EU with the power to determine fiscal policy decisions, thereby directing national policy decisions in this area. Given the close link between the budget and national democracy as well as policy-making, the allocation of such fiscal capacities would shift the current power balance between both levels towards greater EU influence and in doing so modify the nature of EMU cooperation – and even EU integration as a whole. And second, the design of the fiscal capacity impacts all other substantive elements, too – including the required amount of revenue to finance it or the necessary EU institutional framework to administer it. Taken together, this suggests that the design of the fiscal capacity is not only a reform question of structural importance, but it is also of central interest to the political and the national constitutional discourse given its possible implications for the future of EU cooperation altogether.

As to the specific design of a possible Eurozone fiscal capacity, the various proposals distinguish between two general options. The first option is to equip the Eurozone with an additional – possibly large – budget that could operate as preventive tool to strive for economic cohesion across the Euroarea (2.1.).[5] In the alternative – or in addition – Member States could decide to establish additional emergency instruments in order to better support Member States impacted by asymmetric economic shocks (2.2.).[6]

2.1 Eurozone-budget

Following the highlighted *integration approach* various reform proposals envisage the creation of a genuine Eurozone-budget.[7] Such a budget would

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5 Lionello, *The Pursuit of Stability of the Euro Area as a Whole – The Reform of the European Economic Union and Perspectives of Fiscal Integration* 172.

6 Craig and Markakis, 'EMU Reform' 1420; Lionello, *The Pursuit of Stability of the Euro Area as a Whole – The Reform of the European Economic Union and Perspectives of Fiscal Integration* 165.

7 As envisaged by the EU Five Presidents' Report, the Meseberg Declaration, and the BICC, cf. Juncker and others, *The Five Presidents' Report: Completing Europe's Economic and Monetary Union* 15; Meeting, *Erklärung von Meseberg – Das Versprechen Europas für Sicherheit und Wohlstand erneuern*; 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); Eurogroup, *Term Sheet on the Budgetary Instrument for Convergence and Competitiveness*; Summit, *Statement of the Euro Summit, 14 December 2018 (EURO 503/18)*; As well as the Bruegel-proposal, cf. Marzinotto,

operate on a continuous basis in parallel with or even integrated into[8] the regular EU budget. According to most proposals, this budget would function as a preventive tool, geared towards stabilizing the Euro by fostering the economic convergence and competitiveness across the Member States.[9] This function corresponds to the fundamental requirements for optimum currency areas under Mundell's economic theory.[10] The main objectives of the budget is to foster the economic and structural development of the Eurozone as well as social cohesion.

The Commission's BICC would, for example, fund 'reforms in product and labor markets, education, tax reforms, the development of capital markets, reforms to improve the business environment as well as investment in human capital and public administration reforms.'[11] According to the Commission's evaluation, these national reforms are likely to foster economic convergence by equally targeting broader EU objectives.[12] Similarly, the European Parliament advocated that a fiscal capacity should 'support growth and social cohesion addressing imbalances, structural divergences and financial emergencies which

Sapir and Wolff, 'What Kind of Fiscal Union? (2011)' 5, 7; Although it is interesting to note that the initial proposition in the Four Presidents Report spoke about a 'fiscal capacity' whereas the Five Presidents' Report speaks of a 'fiscal function', which might hint at the difficulty of introducing a full budget, i.e. fiscal capacity, given national opposition, cf. on the proposals and the wording: Fabbrini, 'Fiscal Capacity' 114-115.

8 As proposed by the BICC, cf. 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); 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; Dermine, 'The Commission's December Package 18 Months Later' 11-12; Fabbrini, 'Fiscal Capacity' 122-124.

9 Lionello, *The Pursuit of Stability of the Euro Area as a Whole – The Reform of the European Economic Union and Perspectives of Fiscal Integration* 184-185; As emphasized as well by the BICC, cf. 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) Recitals 1 and 2; Cf. as well: Fabbrini, 'Fiscal Capacity' 122-124.

10 Tuori and Tuori, *The Eurozone Crisis – A Constitutional Analysis* 77; Jager and Hafner, 'The Optimum Currency Area Theory and the EMU – An Assessment in the Context of the Eurozone Crisis' 316; Eichengreen, *European Monetary Unification : Theory, Practice, and Analysis* 51-52.

11 European 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 – A Modern Budget for a Union That Protects, Empowers and Defends The Multi-annual Financial Framework for 2021-2027 (COM (2018) 321)* (European Commission 2018) 10.

12 Lionello, *The Pursuit of Stability of the Euro Area as a Whole – The Reform of the European Economic Union and Perspectives of Fiscal Integration* 180-181.

are directly connected to the monetary union.'[13] Thus, the envisaged Eurozone-budget would pursue both economic as well as social objectives by allocating funds across the Member States guided by the general objective to achieve convergence within the Eurozone.[14]

The Commission substantiated that such a Eurozone-budget would target in particular national reforms that increase the competitiveness of the national economy and that equally have a positive 'spill-over effect' for other Eurozone economies.[15] When considering the required size of the Eurozone-budget, the different proposals suggest a minimum budget of around 1-3% of the Eurozone-GDP to be fully effective.[16] In light of this considerable financial volume and the potentially wide discretion enjoyed by the EU when allocating the available funds, various proposals equally envision enhanced democratic legitimacy at the supranational level by, for example, including national parliaments in the decision-making process.[17]

Finally, the proposals consider different legal bases to establish the budget. Based on previous instruments, a Eurozone-budget intended to fund structural reforms could possibly be based on Article 175 (3) TFEU.[18] Other proposals suggest the possible use of Article 136 (1) TFEU,[19] the initiation of a budgetary

13 European Parliament Resolution of 20 November 2012 with Recommendations to the Commission on the Report of the Presidents of the European Council, the European Commission, the European Central Bank and the Eurogroup 'Towards a Genuine Economic and Monetary Union' (2012/2151(INI)) (2012) para 11; Cf. as well: Fabbrini, 'Fiscal Capacity' 119.

14 Craig and Markakis, 'EMU Reform' 1415, 1418; 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.

15 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 – A Modern Budget for a Union That Protects, Empowers and Defends The Multiannual Financial Framework for 2021-2027 (COM (2018) 321)* 10.

16 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; Bara and others, 'A contribution to the work on the strengthening of the euro area' 8; Also pointed out by the Commission, cf. 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)* 52.

17 Especially in light of the importance of budgetary decisions for the democratic process, 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* 222; Fabbrini, 'Fiscal Capacity' 131; Puntscher Riekmann 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.

18 As highlighted, this constitutes the legal basis for Regulation 2015/1072, under which *inter alia* strategic investments are financed.

19 Lionello, *The Pursuit of Stability of the Euro Area as a Whole – The Reform of the European Economic Union and Perspectives of Fiscal Integration* 205-206.

capacity following enhanced cooperation[20] or even an intergovernmental solution. In addition, Treaty-based solutions would likely be tied to the EU's own resources decision in the sense of Article 311 TFEU to generate the required revenue. In the alternative, Member States could equally decide to allocate additional competences to the EU-level and establish a specific framework including the creation of new legal bases for the envisaged Eurozone-budget, which would, however, require Treaty amendment.

2.2 Emergency budgetary instruments

An additional idea to complement – or instead of – a permanent, preventive Eurozone budgetary capacity advocated by some proposals is the introduction of a temporary budgetary instrument connected to a specific purpose, such as to stabilize public investments in times of asymmetric shocks[21] or to support Member States in the payment of unemployment benefits in economic downturns to free fiscal space for investments.[22] The latter could replace the recently enacted Support to mitigate Unemployment Risks in an Emergency (SURE) scheme, under which the EU issues on a temporary basis loans to the Member States.[23] These temporary instruments are envisaged as emergency mechanisms and follow a more *coordination approach*, given that EU intervention remains only secondary to the primary competence of the Member States.[24]

The underlying idea of such emergency instruments is that Member States tend to cut public investment in case of economic shocks, which renders the domestic recovery process lengthy and which has adverse consequences for the entire Eurozone. Hence, financing public investments at a fixed level in case of economic downturn could break the vicious circle and speed up

20 Ibid 205; Fabbrini, *Economic Governance in Europe: Comparative Paradoxes and Constitutional Challenges* 169.

21 Juncker and others, *The Five Presidents' Report: Completing Europe's Economic and Monetary Union* 15; Cf. as well: Craig and Markakis, 'EMU Reform' 1426; Fabbrini, 'Fiscal Capacity' 115; Comments, 'Editorial Comments – Tinkering with Economic and Monetary Union' 6.

22 Commission, *Reflection Paper on the Deepening of the Economic and Monetary Union* 26; Cf. as well: Craig and Markakis, 'EMU Reform' 1426.

23 Cf. the final regulation: Commission, 'SURE – Supporting Member States to Help Protect People in Work and Jobs'; And the initial proposal: Proposal for a Council Regulation on the Establishment of a European Instrument for Temporary Support to Mitigate Unemployment Risks in an Emergency (SURE) Following the COVID-19 Outbreak – COM(2020) 139 final – 2020/0057(NLE); Cf. as well: László Andor, 'SURE – EU Capacity for Stabilising Employment and Incomes in the Pandemic' (2020) 55 Intereconomics – Review of European Economic Policy 139, 139.

24 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; Hinarejos, 'Fiscal Federalism in the European Union: Evolution and Future Choices for EMU ' 1634-1635.

national – and EU – recovery efforts.[25] Similarly, exploding unemployment costs during economic shocks puts pressure on public finances. Through temporary support in the financing of unemployment costs important national fiscal space could be freed to guarantee that public investments are maintained despite the economic downturn.[26] Hence, both proposed instruments would operate on a demand-basis and they are mainly intended to smoothen the consequences of an economic shock, thereby preventing economic distress in the Eurozone. Contrary to the proposed Eurozone-budget, such emergency instruments would neither have the intention nor the ability to finance national structural reforms. Instead, they support a speedier recovery after asymmetric shocks within the Eurozone and tame potential contagious effects within the Euroarea.

According to the considered proposals, the possible legal bases for establishing temporary budgetary instruments are Article 175 (3) TFEU, which is employed for the proposed Recovery and Resilience Facility under Next Generation EU.[27] Similarly, more limited budgetary instruments, such as the proposed Investment Stabilization Fund, could be based on Article 175 (3) TFEU,[28] or as well on Article 122 (2) TFEU.[29] In both cases, the precise modalities, the funding eligibility and the procedural steps would be established within a secondary act, which has to be adopted following the ordinary legislative procedure.

An additional, intermediate proposal that combines the idea of a Eurozone-budget and of emergency instruments was submitted by Jörg Bibow. Bibow proposed the introduction of an automatic investment budget to stabilize Eurozone investments in the long run. According to this proposal, Member States would initially agree on the annual volume of Eurozone investments and a desired growth rate. Subsequently, the investment budget runs 'automatically' without being subject to political discussions.[30] The required budget would be funded by common debt, which are intended to be invested in a shared EU future. The fund would thus operate on a permanent basis and require the pre-determination of major political decisions by national parliaments to guarantee the 'automatic' functioning of the budget

25 Commission, *Reflection Paper on the Deepening of the Economic and Monetary Union* 25; Cf. as well: Craig and Markakis, 'EMU Reform' 1426; Fabbrini, 'Fiscal Capacity' 118.
26 Commission, *Reflection Paper on the Deepening of the Economic and Monetary Union* 25; Cf. as well: Craig and Markakis, 'EMU Reform' 1426.
27 Commission Proposal for a Regulation of the European Parliament and of the Council establishing a Recovery and Resilience Facility (COM (2020) 408).
28 Which was, for example, also employed as legal basis to adopt Regulation 2015/1072 on the European Fund for Strategic Investments, the European Investment Advisory Hub and the European Investment Project Portal and amending Regulations (EU) No 1291/2013 and (EU) No 1316/2013, cf. Fabbrini, 'Fiscal Capacity' 126-127.
29 Which constitutes the legal basis for the EFSM, cf. Council Regulation 407/2010 establishing a European Financial Stabilisation Mechanism.
30 Bibow, 'Making the Euro Viable: The Euro Treasury Plan' 4.

subsequently as well as the commitment of considerable funds to finance Member States' public investment through such EU-based scheme.[31] Obviously, this would result in greater supranational powers albeit in a very limited framework, as the proposal would deliberately not involve the conferral of political discretion on spending to the EU-level. Instead, Member States would set the investment rate at a fixed level and it would subsequently operate in an automatic fashion.[32] Bibow pointed out that such an automatized investment stabilization budget would ensure that structural investments are secured over time, which could enhance economic performance and convergence. Automatized investments would similarly escape the debate on democratic legitimacy, as such a budget would run on 'auto-pilot'.[33] Yet, it can be submitted that this 'auto-pilot' would ultimately not render its function less democratically contentious, as national parliaments would effectively be stripped of their prerogatives to determine how national funds are allocated.

2.3 Interim conclusion on increased fiscal capacity

When comparing the different proposals, two core design options can be distinguished that are located at opposite ends of the conceptual scale between *integration* and *coordination approaches* to EU fiscal integration.

Accordingly, Member States could either agree to create a full-fledged Eurozone-budget which could stimulate economic convergence by financing structural reforms on a permanent basis. It would operate as preventive instrument aiming to make the Eurozone more robust and economic shocks less likely. In its most comprehensive form, such budget would entail the conferral of budgetary discretion to the EU-level, including a degree of political discretion on how the available funding is spent.

Or, Member States could follow a *coordination approach* and introduce emergency instruments that could stabilize public investments to ensure a speedy recovery from economic shocks. These proposals would follow the existing Treaty-logic and complement the current framework, most notably the ESM. Between these two extreme points, intermediate proposals can emerge that combine various elements of both approaches. Examples of such intermediate solutions are the BICC proposal, which is highly limited in volume and scope, as well as the Bibow proposal, which aims at automatic investment rates.

Taken together, this suggests that Member States are able to allocate different functions or objectives to the proposed fiscal capacity, which provides

31 Ibid 4.
32 Ibid 4.
33 Ibid 4.

a degree of flexibility when confronted with the various national constitutional concerns, which will be reflected in the subsequent compatibility assessment.

3 Funding options for fiscal integration

As indicated, the design of any EU fiscal capacity ultimately determines the EU's financial needs. Notably, a permanent Eurozone-budget through which the EU allocates grants would require a stable, reliable revenue stream. In contrast, the proposed emergency instruments would depend to a lesser extent on continuous revenue and could operate under, for example, the ESM financing structure which combines a small amount of paid-in capital with a larger amount of callable capital.[34]

Hence, in order to determine possible funding sources (3.2.), it appears essential to tentatively establish in a preliminary step the financing need of a Eurozone-budget or an emergency instrument (3.1.).

3.1 The required funding

It was already pointed out that the proposals aiming at creating a permanent Eurozone-budget envisage a minimum size of 1-3% of the Eurozone-GDP to be fully effective.[35] Based on data from 2019, this commitment would translate into an annual Eurozone budget of around € 115 to € 343 billion.[36] This would constitute a significant increase of the EU's fiscal capacities as can be seen in comparison to the EU's regular budget. Notably, the MFF for the period of 2021 to 2027 has a volume of € 1.074 billion[37] whereas the envisaged Eurozone-budget would amount to an additional € 805 billion to up to € 2.401 billion in the same timeframe. Comparing these absolute numbers, it suggests a major increase in the EU's financial capacity would be required and it remains questionable whether Member States would agree to allocate these additional financial means to the EU. This reluctance was reflected in the BICC which was

34 On the ESM financing structure, cf. Tuori and Tuori, *The Eurozone Crisis – A Constitutional Analysis* 95; Lastra and Louis, 'European Economic and Monetary Union: History, Trends, and Prospects' 104.

35 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; Bara and others, 'A contribution to the work on the strengthening of the euro area' 8.

36 According to World Bank, the Euroarea GDP was around €11.430 billion, cf. The World Bank, 'GDP (current US$) – Euro area' (*The World Bank*, 2020) <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?end=2019&locations=XC&start=2006&view=chart> accessed 20 December 2020; Other proposals envisaged an annual budget of €90 billion based on data from 2011, cf. Marzinotto, Sapir and Wolff, 'What Kind of Fiscal Union? (2011)' 7.

37 Council, *Conclusions Special Meeting of the European Council (17, 18, 19, 20 and 21 July 2020) – EUCO 10/20* 7.

projected to have a size of only € 25 billion for the period of 2021 to 2027.[38] Obviously, this constitutes only a fraction of the seemingly required financial firepower and indicates the limited political willingness across the Eurozone to establish a significant EU budget. Although one could submit that establishing such a budget in the first place, even with limited financial means, could be a stepping stone towards a more substantial Eurozone-budget as argued by *Lionello*,[39] it remains questionable whether the apparent political deadlock towards establishing more substantial financial EU means can be overcome.[40]

Different to a permanently operating Eurozone-budget, the proposed specialized temporary budgetary instruments would only be triggered in case of asymmetric economic shocks.[41] Therefore, their financing needs and funding structures are different to the ones of a permanent budget. Concretely, the Commission proposed that the envisaged European Investment Stabilization Function could operate through back-to-back loans guaranteed by the EU budget.[42] According to the Commission, such European Investment Stabilization Function could provide loans of up to € 30 billion between 2021 and 2027.[43] Given that these € 30 billion would be guaranteed through the existing EU budget no direct additional financial commitments would arise for the Member States. However, it seems questionable whether the Function is equipped to support larger Member States. The German share of public investments in the federal budget in 2019, for example, by itself already amounted

38 Cf. the European Commission's proposal on the MFF: 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 – A Modern Budget for a Union That Protects, Empowers and Defends The Multiannual Financial Framework for 2021-2027 (COM (2018) 321)* 10; 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* 217; Fabbrini, 'Fiscal Capacity' 118.

39 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.

40 Cf. for example: Schoeller, 'Preventing the Eurozone Budget: Issue Replacement and Small State Influence in EMU' 11-12; Although the divide is seemingly not so much across Member States, but rather across political groupings, cf. Ruffert, 'The Future of the European Economic and Monetary Union – Issues of Constitutional Law' 46.

41 Craig and Markakis, 'EMU Reform' 1426; Fabbrini, 'Fiscal Capacity' 115; Comments, 'Editorial Comments – Tinkering with Economic and Monetary Union' 6.

42 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 – A Modern Budget for a Union That Protects, Empowers and Defends The Multiannual Financial Framework for 2021-2027 (COM (2018) 321)* 11; Cf. as well: Craig and Markakis, 'EMU Reform' 1426.

43 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 – A Modern Budget for a Union That Protects, Empowers and Defends The Multiannual Financial Framework for 2021-2027 (COM (2018) 321)* 11; Cf. as well: Craig and Markakis, 'EMU Reform' 1427; Fabbrini, 'Fiscal Capacity' 118.

to almost € 39 billion in a single year,[44] which would clearly overburden the envisaged scheme. Therefore, it has to be questioned whether the proposed funding is sufficient to stabilize the Euro.[45] In addition, the Commission also proposed to support Member States through an interest rate subsidy in order to free fiscal space in the national budget, which could be financed by contributions of all Eurozone Member States.[46]

Taken together, this illustrates that the initiation of a Eurozone-budget would require a considerable financial commitment from the Member States. A budget of up to 3% GDP for the Eurozone alone triples the budgetary capacities available at EU-level and presupposes a stable revenue stream. In contrast, the proposed emergency tools would largely operate on a loan-basis, which implies, or presupposes, that the EU financial commitment is paid back by the recipient Member State. The other Member States would then mostly guarantee the loans, for example, by increased own resources ceilings, and therefore carry the risk of default.

3.2 Funding sources

If a budgetary capacity is created, the next question of course is how it could be concretely funded. To that end several options are currently discussed, which include the establishment of new, genuine EU own resources, the possibility of introducing genuine EU taxation, increased contributions by the Member States, the allocation of additional funds by the Member States as externally assigned revenues, as well as EU debts or joint liabilities.[47] These options will be considered below both as to their legal design and their potential maximum financing ability.

The outline differentiates between Treaty-based solutions (3.2.1.) and options beyond the existing Treaty-framework (3.2.2.).

44 German Federal Ministry of Finance, *Bundeshaushalt 2019* (German Government 2019) 18.

45 Lionello, *The Pursuit of Stability of the Euro Area as a Whole – The Reform of the European Economic Union and Perspectives of Fiscal Integration* 217.

46 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 – A Modern Budget for a Union That Protects, Empowers and Defends The Multiannual Financial Framework for 2021-2027 (COM (2018) 321)* 11; Cf. as well: Craig and Markakis, 'EMU Reform' 1426.

47 For a comprehensive overview, 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* 183-184; Ruffert, 'The Future of the European Economic and Monetary Union – Issues of Constitutional Law' 49-51.

3.2.1 *Treaty-based funding sources*

According to various proposals, a first possibility is to increase the EU's own resources in order to finance a budgetary capacity for the Eurozone. This could be achieved by increasing the own-resources ceilings established by the Council Decision on the system of own resources[48] established under Article 311 (3) TFEU as well as a specific outline of the use of the additional funding in Council Regulation 1311/2013 laying down the multiannual financial framework[49] based on Article 312 (2) TFEU. In light of the current composition of the EU's own resources, such an increase would presumably lead to higher contributions of the Member States in order to 'top up' the difference between the own resource ceiling and the resources generated from other sources, including the traditional own resources and the VAT-based component as established in Article 2 (1) Council Regulation 2014/335.[50] This suggests that, based on the existing EU budgetary framework, any additional EU means would likely have to be financed through higher contribution of the Member States.

When negotiating a new Council Decision on the system of the EU's own resources, the higher national contributions could be limited to Eurozone Member States by either setting two sets of own resource ceilings distinguishing between Eurozone and non-Eurozone Member States, or by otherwise allocating specific rebates to the non-Eurozone Member States in order to secure the required unanimous support.[51] Yet, such higher national contributions would reinforce the political debate on 'just return' for the Member States.[52] In the alternative, Member States could establish a new source of traditional own resources, for example, by introducing a financial transaction

48 Cf. Council Decision 2014/335; Cf. as well: Ruffert, 'The Future of the European Economic and Monetary Union – Issues of Constitutional Law' 51; European Union, *European Union Public Finance* (Publications Office of the European Union 2014) 130-132.

49 Cf. Council Regulation 1311/2013 which establishes the MFF from 2014-2020 and lays down the general budgetary planning of the EU; Cf. as well: Richard Crowe, 'The European Budgetary Galaxy' (2017) 13 European Constitutional Law Review 428, 437; Union, *European Union Public Finance* 132.

50 Union, *European Union Public Finance* 132; Identified as less favorable option given the political tensions that might arise, as national contributions are seen as a 'zero-sum game', cf. Monti and others, *Future Financing of the EU – Final report and recommendations of the High Level Group on Own Resources December 2016* 68.

51 As prescribed by Article 311 (3) TFEU; Also, the currently existing rebate-system indicates that Member States are generally able to agree on a reduction of the financial commitment for some Member States, cf. Articles 2 (4) (2) and 4 Council Decision 2014/335.

52 Ruffert, 'The Future of the European Economic and Monetary Union – Issues of Constitutional Law' 50; Alcidi and Gros, 'Next Generation EU: A Large Common Response to the COVID-19 Crisis' 203; Fabbrini, 'Fiscal Capacity' 129; Crowe, 'The European Budgetary Galaxy' 433; Cf. as well: Monti and others, *Future Financing of the EU – Final report and recommendations of the High Level Group on Own Resources December 2016* 68.

tax and allocating the revenue to the scheme of own resources.[53] Hence, the Member States would establish the tax at the national level, levy it and then attribute it to the EU based on Article 311 TFEU. Following the model of the traditional own resources, such revenue is not introduced into the national budgetary process but instead transferred to the EU, which limits the involvement of national parliaments.[54]

An alternative, which would also be based on the current framework, could be to agree on additional national contributions that are not directly injected into the EU's budget as own resources but rather as targeted externally assigned revenue in the sense of Article 21 Financial Regulation (No. 966/2012).[55] Such externally assigned revenues are independent from the EU budget adopted according to Article 314 TFEU and rather constitute a commitment of the Member State to fund a specific EU activity.[56] Given their voluntary character, Member States could commit in an intergovernmental agreement to the payment of externally assigned revenue and thereby render the inflow of financial resources more predictable.[57]

Further options are EU borrowing and EU debts as recently exemplified by Next Generation EU. Following the European Council's conclusions, the Commission would borrow money on the financial markets and issue EU debts on behalf of the EU, which are subsequently serviced by either the re-payment of the loans by the recipient Member States, possible interest rate gains or, as a final option, through increased contributions by the Member States under the own resources system guaranteed by higher national ceilings.[58] However, the EU's borrowing power is strictly confined by the mandate spelled out in both the European Council Conclusions and subsequently in the amended Own Resources Decision, which both require a unanimous support and even national approval.[59] This implies that the EU cannot engage autonomously in

53 Lionello, *The Pursuit of Stability of the Euro Area as a Whole – The Reform of the European Economic Union and Perspectives of Fiscal Integration* 205; Which would nevertheless only offer limited additional resources of an estimated €10 to €15 billion, cf. Monti and others, *Future Financing of the EU – Final report and recommendations of the High Level Group on Own Resources December 2016* 68.

54 Crowe, 'The European Budgetary Galaxy' 431; Based on Article 311 TFEU, Member States can assign revenue generated from EU levies to the EU as, for example, the case with the sugar levy, cf. on the system: Siegfried Magiera, 'Art. 311 AEUV – Eigenmittel der EU' in Eberhard Grabitz, Meinhard Hilf and Martin Nettesheim (eds), *Das Recht der Europäischen Union – Kommentar* (70th edn, C.H. Beck 2020) paras 16-17.

55 Crowe, 'The European Budgetary Galaxy' 441; Cf. as well: Fabbrini, 'Fiscal Capacity' 127-128.

56 Crowe, 'The European Budgetary Galaxy' 441.

57 Ibid 441; Cf. as well: Fabbrini, 'Fiscal Capacity' 127-128.

58 Council, *Conclusions Special Meeting of the European Council (17, 18, 19, 20 and 21 July 2020) – EUCO 10/20* 2-3.

59 Cf. for the adoption of the European Council conclusions unanimity applies as established in Article 16 (4) TEU and for the adoption of the EU own resources decision Article 311 (3) TFEU prescribes unanimity in the Council; Cf. as well: Lionello, *The Pursuit of Stability*

such borrowing activities, as the principle of equilibrium of budgeting requires that any possible EU liability is guaranteed, for example, by the mentioned increased own resources ceiling.[60]

All three funding options have in common that they crucially and continuously depend on national (parliamentary) approval. Notably, the own resources decision is traditionally amended with the MFF-Regulation every seven years.[61] Hence, Member States can alter their financial commitments, which renders the revenue inflow uncertain in the longer run. This is particularly the case in case the budgetary capacity requires direct contributions of Member States, as these are financed through the general budget of the Member States. At the same time, given the flexible character of these Treaty-based funding options, their funding potential is relatively big as long as Member States reach a (political) agreement on committing a sizeable amount of money.

3.2.2 Extending the current Treaty-framework

In addition, the proposals also suggest the creation of more autonomous revenue streams for the EU which would extend the currently available Treaty-framework. One suggestion is to equip the EU directly with a (limited) taxation competence.[62] Accordingly, the EU would be able to determine the level of taxation in a specific area, possibly in relation to the activities of the EU. Different to proposals building on the existing own resources framework, as for example put forward by the Monti-Report following which Member States would be in charge of enacting a tax and would then transfer the revenue generated from that tax to the EU-level,[63] equipping the EU with a genuine taxation power would entail that the tax and the modalities attached to it are determined by the EU autonomously. In the first place this would, however, require EU Treaty-change, as the current Treaties do not grant the EU the power to tax and it would subsequently trigger serious democratic concerns, as the power to tax traditionally presupposes a high degree of democratic legit-

of the Euro Area as a Whole – The Reform of the European Economic Union and Perspectives of Fiscal Integration 205; Union, *European Union Public Finance* 131-132.

60 Council, *Conclusions Special Meeting of the European Council (17, 18, 19, 20 and 21 July 2020) – EUCO 10/20* 2-3; Union, *European Union Public Finance* 159-160, 282.

61 Union, *European Union Public Finance* 131-132.

62 Monti and others, *Future Financing of the EU – Final report and recommendations of the High Level Group on Own Resources December 2016* 68; Marzinotto, Sapir and Wolff, 'What Kind of Fiscal Union? (2011)' 5; Which would however require a shift of fiscal sovereignty, 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* 183-184.

63 Monti and others, *Future Financing of the EU – Final report and recommendations of the High Level Group on Own Resources December 2016* 68.

imacy.[64] As long as the EU lacks the required democratic capacity, allocating a genuine taxation power to the EU-level might trigger considerable national constitutional concerns, as will be assessed subsequently.[65] Yet, practically speaking, a genuine EU taxation power would make the revenue of the EU less dependent on the Member States – although the EU would certainly continue to depend on the national level to execute any EU taxation decision.

In addition, some proposals submit that the fiscal capacity could be financed through shared liabilities or EU debts, possibly in the shape of Eurobonds.[66] The underpinning idea is that the Member States would either directly or through the EU issue EU bonds which could partially finance the EU financial deficit. Given the beneficial credit rating of the EU, Member States would likely have to reserve less money for servicing the debts thereby freeing up fiscal space. This would entail that Member States jointly guarantee the entire or at least parts of the national debt, which arguably involves a liability risk for national budgets. Hence, Eurobonds would primarily facilitate the access to the financial markets for the Member States, without however generating direct revenue for the EU itself. Yet, the EU could also be empowered to issue Eurobonds to finance an EU budgetary capacity, ultimately resulting in EU debts. Regarding the issuing of EU debts, the current Treaties establish the principle of equilibrium or the principle of balance of payments in Article 310 (1) (3) TFEU, which requires that revenue and expenditure of the EU are balanced.[67] Although this suggests the potential incompatibility of EU debts with EU law, the EU developed a system under which the Commission can borrow money on the financial markets and subsequently lend it to other countries in order to achieve wider Union objectives. Examples are the Balance of Payments Facility, which grants financial assistance to Member States outside the Eurozone that experience difficulties in the balance of their current payments,[68] the European Financial Stabilization Mechanism (EFSM), which grants loans under strict conditions to Member States that are affected by extraordinary

64 Jussi Jaakkola, 'A Democratic Dilemma of European Power to Tax: Reconstructing the Symbiosis Between Taxation and Democracy Beyond the State?' (2019) 20 German Law Journal 660, 663; Fabbrini, 'Fiscal Capacity' 131; Under the current Treaties, the EU has no 'fiscal rights', 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* 202-203; Marzinotto, Sapir and Wolff, 'What Kind of Fiscal Union? (2011)' 5.

65 Lionello, *The Pursuit of Stability of the Euro Area as a Whole – The Reform of the European Economic Union and Perspectives of Fiscal Integration* 204.

66 Commission, *Green Paper on the Feasibility of Introducing Stability Bonds (COM (2011) 818)*; Cf. as well: Hild, Herz and Bauer, 'Structured Eurobonds: Limiting Liability and Distributing Profits' 252; Mayer and Heidfeld, 'Verfassungs- und europarechtliche Aspekte der Einführung von Eurobonds' 422-423; Hanno Beck and Dirk Wentzel, 'Eurobonds – Wunderwaffe oder Sprengsatz für die Europäische Union?' (2011) 91 Wirtschaftsdienst – Zeitschrift für Wirtschaftspolitik 717, 720-721.

67 Union, *European Union Public Finance* 159-160, 282.

68 Ibid 292-293.

circumstances in order to enhance their fiscal position,[69] or by providing budgetary guarantees to the European Investment Bank.[70] Hence, it illustrates that the EU is generally able to borrow money in order to loan it to different actors, including Member States of the Eurozone. However, the current Treaty-framework requires that the EU finances remain balanced in the long run, which suggests that EU debts would have to be adequately secured by corresponding guarantees.

3.2.3 Interim conclusion on possible funding sources

Comparing the different funding options, the most far-reaching proposals envisage a genuine EU taxation competence independent from direct Member States control, which would require Treaty-change and trigger major democratic concerns. On the other end of the spectrum, the proposed emergency instruments could operate based on EU borrowing which is guaranteed by the Member States, following the existing ESM-example. Given that these emergency instruments work on a loan-basis, the resulting debts would generally be re-paid by the beneficiary Member States. The collective of all Member States would, however, be liable in case of default, which involves financial risks for the domestic state budgets. Other financing proposals are designed based on the existing EU framework surrounding the EU's own resources system.

Taken together, the proposals identify a range of different financing schemes and funding options that could underpin the envisaged budgetary capacity or instruments. These raise a variety of constitutional concerns and face domestic legal hurdles as will be analyzed in broader detail in the following compatibility assessment.

3.3 Interim conclusion on funding options

Overall, the assessment reveals that the size of the budgetary instrument has to be designed in conjunction with the funding scheme. According to the evaluated proposals, a full-fledged Eurozone-budget would require a permanent revenue source at the EU-level whereas an emergency budgetary instrument could rely to a larger extent on national guarantees. Thereby, it appears likely that creating a more permanent budgetary structure with a permanent inflow of revenue will trigger greater constitutional concerns, as Member States will be required to wave their control over the respective financial means once

69 Ibid 293-294.
70 Ibid 285.

they are assigned to the EU-level.[71] At the same time, it appears possible to create greater EU financial capacities within the existing framework of own resources by either establishing new traditional own resources or by increasing the national own resources ceilings.

4 EU Ministry of Finance: Creating administrative-executive capacity

The third substantive idea is the creation of an EU Minister of Finance or EU Treasury to better coordinate the existing powers in a single institution.[72] The core idea is an alteration of the current institutional framework in order to establish a central EU authority in charge of fiscal decision-making. Despite the fact that the envisaged institutional modifications could increase the EU-impact in these areas as a result of centralizing them in a single actor, these reform plans are comparably less controversial as they focus on institutional reforms and a re-shuffling of already conferred responsibilities without necessarily requiring the transfer of additional substantive competences. Nevertheless, the proposed introduction of such EU Treasury and the required institutional alterations are likely to trigger national constitutional concerns albeit depending on the precise institutional role assigned to it.

Considering the concrete proposals, the EU Five Presidents' Report encouraged the creation of a Euroarea Treasury which is projected to facilitate joint fiscal decision-making amongst Eurozone Member States, without however altering the existing division of competences between the national and the EU-level.[73] This suggests that the Treasury would mainly perform a coordinating function. The initial proposal was further fleshed out in the Commission's Reflection Paper on the EMU, which confirmed the idea to bundle the existing EU budgetary, economic and fiscal competences within the pro-

71 Lionello, *The Pursuit of Stability of the Euro Area as a Whole – The Reform of the European Economic Union and Perspectives of Fiscal Integration* 208-209.

72 Commission, *Completing Europe's Economic and Monetary Union – A European Minister of Economy and Finance*; Commission, *Reflection Paper on the Deepening of the Economic and Monetary Union* 27; Juncker and others, *The Five Presidents' Report: Completing Europe's Economic and Monetary Union* 14, 18; Marzinotto, Sapir and Wolff, 'What Kind of Fiscal Union? (2011)' 5; 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; Ruffert, 'The Future of the European Economic and Monetary Union – Issues of Constitutional Law' 59-61; Fabbrini, 'Fiscal Capacity' 131.

73 Juncker and others, *The Five Presidents' Report: Completing Europe's Economic and Monetary Union* 14, 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; Ruffert, 'The Future of the European Economic and Monetary Union – Issues of Constitutional Law' 59-61; As equally pointed out by the *Monti*-Report, cf. Fabbrini, 'Fiscal Capacity' 116.

posed Euroarea- Treasury.[74] In a subsequent Communication,[75] the Commission specified that an EU Minister of Finance could be appointed as Vice-President of the Commission, as President of the Eurogroup and as chair of the envisaged European Monetary Fund.[76] According to the Commission, such a Minister could enhance the economic policy coordination, more effectively supervise the compliance with budgetary and fiscal benchmarks, overview the implementation of EU funding,[77] ensure global representation, as well as draft future fiscal policies for the Euroarea given the envisaged triple hatted institutional position.[78]

The Bruegel-proposal on reforming the EMU envisages an even stronger position for the EU Ministry of Finance, which should be elected by the European Parliament and the Council in Eurogroup formation.[79] To that end it was even proposed to create a Eurozone Assembly, which could, for example, consist for four-fifths of national parliamentarians of Eurozone Member States and for one-fifths of members of the European Parliament,[80] and which would continuously monitor EMU decision-making. The Bruegel-proposal furthermore envisaged that the Ministry could operate as a lender of last resort to illiquid but otherwise solvent Member States.[81] This presupposes a high degree of

74 Commission, *Reflection Paper on the Deepening of the Economic and Monetary Union* 28; Cf. as well: Comments, 'Editorial Comments – Tinkering with Economic and Monetary Union' 8; Pilz, 'Ein Schatzamt für die Eurozone? – Überlegungen zu den Vorschlägen des Europäischen Parlaments und der Kommission zu einer Reform der Wirtschaftsunion' 638.

75 Commission, *Completing Europe's Economic and Monetary Union – A European Minister of Economy and Finance*.

76 Commission, *Reflection Paper on the Deepening of the Economic and Monetary Union* 27; Cf. as well: Ruffert, 'The Future of the European Economic and Monetary Union – Issues of Constitutional Law' 61; Lionello, *The Pursuit of Stability of the Euro Area as a Whole – The Reform of the European Economic Union and Perspectives of Fiscal Integration* 189-190; Comments, 'Editorial Comments – Tinkering with Economic and Monetary Union' 8.

77 Pilz, 'Ein Schatzamt für die Eurozone? – Überlegungen zu den Vorschlägen des Europäischen Parlaments und der Kommission zu einer Reform der Wirtschaftsunion' 638.

78 Commission, *Reflection Paper on the Deepening of the Economic and Monetary Union* 27; 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* 189-190; Comments, 'Editorial Comments – Tinkering with Economic and Monetary Union' 8-9; Pilz, 'Ein Schatzamt für die Eurozone? – Überlegungen zu den Vorschlägen des Europäischen Parlaments und der Kommission zu einer Reform der Wirtschaftsunion' 638.

79 Marzinotto, Sapir and Wolff, 'What Kind of Fiscal Union? (2011)' 7; Echoed by other proposals that intend to enhance legitimacy of the final decisions, cf. Ruffert, 'The Future of the European Economic and Monetary Union – Issues of Constitutional Law' 59-60; Manifesto for the Democratization of Europe, *Draft Treaty on the Democratization of the Governance of the Euro Area ('T-Dem')* (2020) Article 4 (1).

80 Ruffert, 'The Future of the European Economic and Monetary Union – Issues of Constitutional Law' 59-60; Europe, *Draft Treaty on the Democratization of the Governance of the Euro Area ('T-Dem')* Article 4 (1); Which might, however, require Treaty-change, 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* 226.

81 Marzinotto, Sapir and Wolff, 'What Kind of Fiscal Union? (2011)' 5.

political authority and adequate fiscal abilities, which could be generated by the Ministry itself through an independent revenue power.[82] The authors submit that the Ministry would need an emergency taxing competences of about 2% GDP to cover potential losses resulting from loans granted to illiquid Eurozone Member States.[83] The proposal further advocates for a permanent, annual revenue of about 1% Eurozone-GDP, which could be employed to create a sufficient borrowing capacities at EU-level to assist bigger Eurozone Member States.[84] And finally, the Ministry would be granted the power to veto national budget plans that are in conflict with EU fiscal rules and that therefore endanger the stability of the Euroarea.[85]

Nevertheless, the submitted ideas on creating a Eurozone Ministry of Finance remain relatively vague, which could stem from the highlighted central importance of the fiscal capacity's design, which will determine the required institutional capacities as well. From that perspective, the design and the institutional role of the Ministry inherently depend on the characteristics of the fiscal capacity. Nevertheless, two central design elements for the EU Ministry are discussed in the various proposals. Notably, the institutional position the Ministry would occupy within the EU institutional framework and the institutional powers that could be assigned to it, which both trigger questions of EU law.

First, re-shuffling and re-organizing the existing institutional responsibilities to pool them in a central institutional actor arguably challenges the existing institutional balance established by the EU-Treaties. The envisaged EU Ministry could be entitled to exercise economic policies, supervise national budgeting, undertake fiscal decisions, chair decisions on financial assistance in the ESM[86] and potentially even administer an own budgetary capacity.[87] This illustrates that the EU Ministry would be a highly powerful institutional actor, which triggers legal concerns. In the first place, the current EU-Treaties do not establish a central institution such as the EU Ministry in charge of the Eurozone's EMU policies. Quite the contrary: even the existing, less far-reaching powers

82 Ibid 5.
83 Ibid 7.
84 Ibid 7.
85 Ibid 6.
86 See proposal of the Commission: Commission, *Reflection Paper on the Deepening of the Economic and Monetary Union* 28; 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* 188-189; Comments, 'Editorial Comments – Tinkering with Economic and Monetary Union' 8; Pilz, 'Ein Schatzamt für die Eurozone? – Überlegungen zu den Vorschlägen des Europäischen Parlaments und der Kommission zu einer Reform der Wirtschaftsunion' 638.
87 Lionello, *The Pursuit of Stability of the Euro Area as a Whole – The Reform of the European Economic Union and Perspectives of Fiscal Integration* 189; Pilz, 'Ein Schatzamt für die Eurozone? – Überlegungen zu den Vorschlägen des Europäischen Parlaments und der Kommission zu einer Reform der Wirtschaftsunion' 638; Possibly even with taxation powers: Marzinotto, Sapir and Wolff, 'What Kind of Fiscal Union? (2011)' 7.

are distributed across different actors.[88] A re-shuffling of the existing allocation of responsibilities would inevitably affect the institutional balance established by the EU-Treaties, which could only be altered by explicit Treaty-change. This conclusion is confirmed by a systematic reading of the Treaties, as the office of High Representative, which also wears a 'double hat' and has various institutional responsibilities and loyalties, is explicitly established.[89] When now creating a comparable double- or even triple-hatted position in EMU matters[90] it seems convincing to require an explicit recognition of the particular institutional position that the Minister would occupy.[91] Consequently, even the creation of the institutional position itself will likely already require Treaty amendments.

And then second, the question of whether additional competences would be assigned to the envisaged Minister or the Ministry of Finance. It has been proposed to transfer additional competences, for example regarding the administration of the previously outlined budgetary capacity to the Minister, which could improve accountability and transparency, in light of the currently existing overlapping and unclear responsibilities.[92] The Minister could be, for example, accountable to either the European Parliament or a special chamber consisting of national and EU parliamentarians,[93] which would, however, equally require explicit Treaty recognition. If no such Treaty-change is initiated, a possible EU Minister of Finance would mainly facilitate the existing processes without however being conferred real decision-making powers. This would essentially continue the status quo, without, however, altering the ultimate institutional responsibilities.

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88 Pilz, 'Ein Schatzamt für die Eurozone? – Überlegungen zu den Vorschlägen des Europäischen Parlaments und der Kommission zu einer Reform der Wirtschaftsunion' 641.

89 Cf. Article 18 TEU; Cf. as well: Ruffert, 'The Future of the European Economic and Monetary Union – Issues of Constitutional Law' 61.

90 Commission, *Reflection Paper on the Deepening of the Economic and Monetary Union* 27; Commission, *Completing Europe's Economic and Monetary Union – A European Minister of Economy and Finance*; Cf. as well: Ruffert, 'The Future of the European Economic and Monetary Union – Issues of Constitutional Law' 61; Lionello, *The Pursuit of Stability of the Euro Area as a Whole – The Reform of the European Economic Union and Perspectives of Fiscal Integration* 189-190; Comments, 'Editorial Comments – Tinkering with Economic and Monetary Union' 8; Pilz, 'Ein Schatzamt für die Eurozone? – Überlegungen zu den Vorschlägen des Europäischen Parlaments und der Kommission zu einer Reform der Wirtschaftsunion' 638.

91 Comments, 'Editorial Comments – Tinkering with Economic and Monetary Union' 9.

92 Lionello, *The Pursuit of Stability of the Euro Area as a Whole – The Reform of the European Economic Union and Perspectives of Fiscal Integration* 190; Craig and Markakis, 'EMU Reform' 1441; Marzinotto, Sapir and Wolff, 'What Kind of Fiscal Union? (2011)' 3.

93 Ruffert, 'The Future of the European Economic and Monetary Union – Issues of Constitutional Law' 61, 64; Lionello, *The Pursuit of Stability of the Euro Area as a Whole – The Reform of the European Economic Union and Perspectives of Fiscal Integration* 200; Or to both, the European Parliament and the Council, cf. Marzinotto, Sapir and Wolff, 'What Kind of Fiscal Union? (2011)' 5.

Overall, in case the Minister would be accorded additional (discretionary) competences, additional means of (national) control and supervision might be required. For example, by establishing a link with a parliamentary body, which could be either the European Parliament, a newly created chamber of national and EU parliamentarians, or directly with the national parliaments. Obviously, this would impact the entire institutional design of the EU and would therefore require a comprehensive Treaty-reform.[94] In addition, given that the Ministry would be located between the institutions, questions regarding the Minister's loyalty regarding other EU institutions as well as towards the Member States might be triggered, which should be explicitly clarified within the EU-Treaties.[95] Taken together this illustrates that the creation of this new institutional actor is of major relevance for the national constitutional debate, given that the Ministry might ultimately be empowered to take centralized fiscal decisions that impact national budgets, at least under the more ambitious integration proposals.

5 Enhanced supervision of national budgeting

Finally, various proposals envisage enhanced supervision of national budgeting to improve compliance with the existing EU fiscal rules, an area that became particularly relevant in the course of the Eurocrisis which triggered the enactment of various measures. The introduced measures include the European Semester, which streamlines budgetary processes across the Eurozone,[96] the Macroeconomic Imbalance Procedure, which functions as an early-warning system for emerging economic problems,[97] as well as the Fiscal Compact, which requires Member States to implement the balanced budget rule into their constitutional order.[98] The main goal of this tightened fiscal supervision was to restore fiscal discipline across the Member States, as the previous approach based on market control and ineffective political supervision under the Stability

94 Craig and Markakis, 'EMU Reform' 1441; Possibly in conjunction with a broadly consulting intergovernmental conference, cf. Marzinotto, Sapir and Wolff, 'What Kind of Fiscal Union? (2011)' 2, 7.

95 Comments, 'Editorial Comments – Tinkering with Economic and Monetary Union' 9.

96 Fabbrini, 'Fiscal Capacity' 111; Craig and de Búrca, *EU Law Text, Cases, and Materials* 737; Tuori and Tuori, *The Eurozone Crisis – A Constitutional Analysis* 108; Lastra and Louis, 'European Economic and Monetary Union: History, Trends, and Prospects' 121-122.

97 Fabbrini, 'Fiscal Capacity' 111; Craig and de Búrca, *EU Law Text, Cases, and Materials* 737; Tuori and Tuori, *The Eurozone Crisis – A Constitutional Analysis* 106-107; Marzinotto, Sapir and Wolff, 'What Kind of Fiscal Union? (2011)' 3.

98 Fabbrini, 'Fiscal Capacity' 111; Craig and de Búrca, *EU Law Text, Cases, and Materials* 737; Tuori and Tuori, *The Eurozone Crisis – A Constitutional Analysis* 109-110; Lastra and Louis, 'European Economic and Monetary Union: History, Trends, and Prospects' 124.

and Growth Pact could not prevent excessive national public debts.[99] Consequently, the EU increased its supervision to complement the insufficient control exercised by the financial markets. As these measures were adopted at the height of the Eurocrisis, many rules create overlapping responsibilities and duties.[100] Therefore, various reform proposals advanced ideas on how to make the existing framework more coherent and how to enhance effective EU supervision over national budgeting.

To that end, the Five Presidents' Report proposed an enhanced supervision of national budgeting in order to render the European Semester more effective and to guarantee fiscal discipline in the Euroarea.[101] Concretely, the Report envisaged the creation of domestic 'Competitiveness Authorities' that evaluate the national economic development, which is then incorporated in the Commission's assessment in the framework of the European Semester.[102] In addition, the Report called for a more vigorous Macroeconomic Imbalance Procedure to target adverse national developments that could endanger the stability of the Euroarea at an early stage as well as for a stronger focus on the domestic labor market and social performance across the Member States.[103] More specifically, building upon the already existing enhanced supervision of national budgeting in the European Semester, the Report proposed the creation of an advisory European Fiscal Board which could stimulate a wider public debate and improve the coordination of budgeting across the Member States.[104]

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99 Put differently, stronger incentives for fiscal discipline are required, 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* 162-163.

100 Craig and Markakis, 'EMU Reform' 1441; Lionello, *The Pursuit of Stability of the Euro Area as a Whole – The Reform of the European Economic Union and Perspectives of Fiscal Integration* 190; Marzinotto, Sapir and Wolff, 'What Kind of Fiscal Union? (2011)' 3.

101 Juncker and others, *The Five Presidents' Report: Completing Europe's Economic and Monetary Union* 8; And reiterated, cf. Commission, *Reflection Paper on the Deepening of the Economic and Monetary Union* 24; Cf. as well: Ruffert, 'The Future of the European Economic and Monetary Union – Issues of Constitutional Law' 55; Lionello, *The Pursuit of Stability of the Euro Area as a Whole – The Reform of the European Economic Union and Perspectives of Fiscal Integration* 165-166.

102 Juncker and others, *The Five Presidents' Report: Completing Europe's Economic and Monetary Union* 8; 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.

103 Juncker and others, *The Five Presidents' Report: Completing Europe's Economic and Monetary Union* 8.

104 Ibid 14; The European Fiscal Board was created in 2015 by a decision of the European Commission, cf. Commission Decision on Establishing an Independent Advisory European Fiscal Board (COM 2015/1937); Cf. as well: Frédéric Allemand, 'European Economic Constitution: From Soft to Hard Policy Coordination?' in Herwig C. H. Hofmann, Katerina Pantazatou and Giovanni Zaccaroni (eds), *The Metamorphosis of the European Economic Constitution* (Edward Elgar Publishing Limited 2019) 100; Pilz, 'Ein Schatzamt für die Eurozone? – Überlegungen zu den Vorschlägen des Europäischen Parlaments und der Kommission zu einer Reform der Wirtschaftsunion' 638.

An additional idea introduced by the Commission was that available EU funds should be increasingly linked with the country-specific recommendations of the European Semester,[105] an approach that was already partially adopted in the MFF 2014-2020. Hence, in order to maximize the benefits of EU supervision over national budgeting, a more integrated approach towards EU funding and the European Semester could be followed. This suggests that the Commission aims to make the existing framework more coherent and ensure that national parliaments have clear incentives to comply with the existing EU fiscal rules.

The previously mentioned Bruegel-proposal even went one step further and proposed to give the EU a genuine veto power against unsustainable budgetary planning in the Member States and against budgets that are in conflict with the commonly agreed fiscal rules.[106] At the same time it was submitted that the combination of market pressure exercised through the no-bailout clause and the requirements for national budgeting established in the Stability and Growth Pact should be paired with greater national responsibility to create ownership for the decisions within the Member States, following the approach of the Fiscal Compact.[107]

Taken together, the most far-reaching *integration* proposal envisages the allocation of a real EU blocking power to oppose national budgeting – as proposed by the Bruegel-proposal.[108] This would alter the existing framework and is different to initiating, for example, an Excessive Deficit Procedure, as the EU could effectively block national fiscal decisions.[109] Obviously, this has implications for national budgetary prerogatives, which are vested in the national parliaments, and would certainly require EU Treaty amendment. On a general level, it should be emphasized that increasing EU supervision over national budgeting, even without a veto power, limits national constitutional principles such as parliamentary responsibility for the state budget or democratic control over fiscal policy decisions.[110] Here, proposals that aim to

105 Commission, *Reflection Paper on the Deepening of the Economic and Monetary Union* 24-25; Marzinotto, Sapir and Wolff, 'What Kind of Fiscal Union? (2011)' 6.

106 Marzinotto, Sapir and Wolff, 'What Kind of Fiscal Union? (2011)' 6; 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* 170.

107 Ruffert, 'The Future of the European Economic and Monetary Union – Issues of Constitutional Law' 55; Craig and Markakis, 'EMU Reform' 1410.

108 Marzinotto, Sapir and Wolff, 'What Kind of Fiscal Union? (2011)' 6; 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; Which raises however legal-constitutional concerns, cf. Tuori and Tuori, *The Eurozone Crisis – A Constitutional Analysis* 255.

109 Lionello, *The Pursuit of Stability of the Euro Area as a Whole – The Reform of the European Economic Union and Perspectives of Fiscal Integration* 170; Marzinotto, Sapir and Wolff, 'What Kind of Fiscal Union? (2011)' 6.

110 Lionello, *The Pursuit of Stability of the Euro Area as a Whole – The Reform of the European Economic Union and Perspectives of Fiscal Integration* 200.

increase national ownership of the EU fiscal rules and thereby internalize the applicable framework into the national constitutional thinking, appear less invasive. These proposals follow a *coordination approach*, which aims to preserve national decision-making power by emphasizing the national commitment to EU fiscal rules and including these rules better into the national political process.

6 CONCLUSION: THE ENVISAGED EU FISCAL INTEGRATION

These four aspects constitute the core substantive points of discussion when it comes to EU fiscal integration proposals. As becomes obvious, particularly the introduction of a new fiscal capacity is widely and controversially debated. Overall, the proposed ideas for designing a budgetary tool, its funding sources, but also on the introduction of a Ministry of Finance and the enhanced supervision of national budgeting can be distinguished regarding the envisaged intensity of EU integration steps as well as the proposed degree of EU influence. These variations in the design of the substantive elements of EU fiscal integration steps can be evaluated based on a linear division between *integration* and *coordination approaches*.[111]

The previous assessment deconstructed various proposals regarding the mentioned four elements and organized them according to this linear distinction. This process revealed, in the first place, that a variety of different ideas are circulated, which provide a diverse framework for drafting EU fiscal integration steps in light of national constitutional concerns. It revealed at the same time that many of the proposals might not only trigger national constitutional concerns but equally EU law challenges, as EU Treaty amendments appear to be required particularly for the implementation of ideas that can be associated with *integration approaches* to EU fiscal integration steps.

In the following Chapter VIII, the compatibility of the deconstructed EU fiscal integration proposals with the charted national constitutional space is investigated following the previously adopted structure focusing on the four core substantive elements of EU fiscal integration. The overall research ambition is to identify an EU fiscal integration reform agenda that contributes to the stability of the Euro and that is yet compatible with the identified national constitutional framework.

111 Ibid 164; Steinbach, 'Insurance-Type Cooperation Mechanisms Under EU Law' 20; Hinarejos, 'Fiscal Federalism in the European Union: Evolution and Future Choices for EMU ' 1634-1636.