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

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IX | Overall Conclusions and Outlook

1 TACKLING THE DILEMMA: CONSTITUTIONAL CONCERNS AND EU FISCAL INTEGRATION

The COVID-19-crisis has amplified the urgency of stabilizing the Euro – an imperative that has been widely acknowledged since the eruption of the Eurocrisis.¹ The currently unfolding serious economic disruption and the predicted uneven recovery process across EU Member States might trigger a new, existential challenge for the single currency.² Ultimately, this crisis could leave the Eurozone politically and economically more divided than ever – various national and EU interventions were submitted to preempt the feared additional fragilities within the Eurozone. Notably, in anticipation of this grim prospect, the EU agreed on a € 750 billion recovery strategy which has at its core the Next Generation EU recovery fund.³ Its endorsement illustrates the political capability of committing additional substantial financial means to joint EU action – seemingly within the existing national constitutional framework.

While constituting a significant achievement, Next Generation EU only provides temporary relief and will require structural follow-up in order to lead to a lasting stabilization of the Eurozone. In addition, the negotiations that culminated in this recovery strategy forcefully displayed the inherent challenge in the current design of the EU finances, which awards final control exclusively to the Member States. Notably, the negotiations revealed that Member States were primarily driven by domestic political interests when debating the design of Next Generation EU instead of following a shared EU vision on how to most effectively remedy the unfolding economic disruption,⁴

1 Ruffert, 'The Future of the European Economic and Monetary Union – Issues of Constitutional Law' 33-34; Chalmers, Jachtenfuchs and Joerges, 'The Retransformation of Europe' 1; Ritterberger and Schimmelpfennig, 'Kontinuität und Divergenz. Die Eurokrise und die Entwicklung europäischer Integration in der Europaforschung' 389.

2 Partington, 'Inflation Collapses Around the World Amid Coronavirus Pandemic'; Posaner, 'Merkel Warns Against Trade Barriers in Face of Coronavirus Recession'.

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

4 Most visible from the negotiations on the overall volume, possible rebates as well as the grant-loan-ratio, cf. Khan and Peel, 'Frugal Four' Fight to Protect EU Budget Rebates'; Alcidi and Gros, 'Next Generation EU: A Large Common Response to the COVID-19 Crisis' 203.

which seems hardly surprising as the EU's recovery strategy is financed through national state budgets. The apparent shortcomings of the EU financing system, which incentivizes Member States to pursue domestic financial interests, has once again pushed the proposed EMU-reforms and fiscal integration steps into the limelight as a potential solution. The envisaged increase in EU supervision over national budgeting,⁵ the creation of an additional fiscal capacity at EU-level⁶ and the establishment of a Ministry of Finance⁷ could fundamentally transform the current EU financing as well as fiscal system thereby potentially making Eurozone decision-making with all its financial implications politically less contentious across Member States.

However, the structural reforms required to achieve a (politically) more resilient Euro face intensifying national constitutional opposition.⁸ The consequence appears to be the difficult dilemma from which this research departed and which suggests that EU fiscal integration is both indispensable to stabilize the Euro yet legally impossible to achieve in light of an increasing national constitutional resistance. The research dismantled this dilemma by investigating the legal-constitutional feasibility of EU fiscal integration steps.

Through a comparative evaluation of a sample of national constitutional concerns formulated against EU budgetary or fiscal integration proposals and the subsequent compatibility assessment of these proposals with the charted, de-constructed national constitutional space, this research could refute the absoluteness of this dilemma (2.). To that end, the research has demonstrated that the current legal framework allows for a certain level of fiscal integration

5 Commission, *Reflection Paper on the Deepening of the Economic and Monetary Union* 24; Juncker and others, *The Five Presidents' Report: Completing Europe's Economic and Monetary Union* 8; Marzinotto, Sapir and Wolff, 'What Kind of Fiscal Union? (2011)' 6; 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* 170.

6 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; Bibow, 'Making the Euro Viable: The Euro Treasury Plan' 4; Cf. as well: Craig and Markakis, 'EMU Reform' 1426; Fabbrini, 'Fiscal Capacity' 115; Comments, 'Editorial Comments – Tinkering with Economic and Monetary Union' 6.

7 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.

8 Claes, 'Luxembourg, Here We Come? Constitutional Courts and the Preliminary Reference Procedure' 1334; Wendel, 'Lisbon Before the Courts: Comparative Perspectives' 100; Schorkopf, 'The European Union As an Association of Sovereign States: Karlsruhe's Ruling on the Treaty of Lisbon' 1232.

that is, however, restricted by the requirement to preserve the central power of Member States in fiscal decision-making (3.).

Subsequently, the research introduced two transformative propositions that could create additional constitutional space in order to accommodate more far-reaching EU fiscal integration steps. According to the first proposition, national constitutional limits to EU fiscal integration proposals could be read to entail a degree of *constitutional flexibility*, which can be located and activated through specific methods and which can address the formulated constitutional concerns against a more fiscally integrated Eurozone in an effective manner (4.). According to the second proposition, EU fiscal integration proposals can defuse central national constitutional concerns by altering their narrative and by embracing national parliaments as central actors in the administration of the envisaged additional Eurozone fiscal capacities (5.). These propositions represent achievable transformative ideas that are rooted in the current legal-political discussion yet have the potential to contribute to reviving the seemingly deadlocked national constitutional debate on more far-reaching EU fiscal integration steps.

Finally, the resulting nuanced overview provides the opportunity to reflect more broadly on the future interaction between national constitutional law and EU integration in core state policy areas (6.).

2 CHARTED COMPARATIVE CONSTITUTIONAL SPACE FOR EU FISCAL INTEGRATION

Through a comprehensive comparative assessment, the research established that national constitutional concerns over EU budgetary and fiscal integration steps appear to surface in a range of constitutional systems regardless of their general approach to EU integration. Here, the research distinguished between more flexible⁹ as well as more rigid constitutional systems¹⁰ and subsequently assessed, based on two representative examples, the system's respective potential to accommodate EU fiscal integration. Interestingly, the core constitutional concerns under the more flexible Finnish and the more rigid German constitutional system seemingly coincided. Notably, the Finnish Constitutional Law Committee identified potential conflicts between the ambition to integrate budgetary or fiscal competences and Finnish sovereignty, parliamentary control

9 Heringa, *Constitutions Compared – An Introduction to Comparative Constitutional Law* 9; Grewe, 'Methods of Identification of National Constitutional Identity' 43; Dixon, 'Constitutional Amendment Rules: a Comparative Perspective' 102.

10 Heringa, *Constitutions Compared – An Introduction to Comparative Constitutional Law* 7-8; Dixon, 'Constitutional Amendment Rules: a Comparative Perspective' 102; Wendel, 'Lisbon Before the Courts: Comparative Perspectives' 123.

over the state budget as well as Finnish democracy.¹¹ Similarly, the German Constitutional Court established its *overall budgetary responsibility* limit based on the principle of democracy and the need for central parliamentary control over budgetary decisions.¹² When comparing both constitutional approaches, it can thus be substantiated that the normative constitutional basis employed by the national constitutional authorities when addressing EU budgetary and fiscal integration steps overlaps. This comparative conclusion can be confirmed by the research findings on the French, Polish and Spanish *constitutional identity limits*, which similarly protect budgetary and fiscal competences based on national sovereignty, democracy or parliamentary-related institutional arguments. Despite this apparent overlap in the underlying core constitutional concerns, the subsequent constitutional consequences and the adopted constitutional strategies to address these concerns vary significantly across the Member States, and this can be related back to the initial distinction between flexible and rigid constitutional systems.

Notably, in Finland, the constitutional concerns against EU fiscal integration steps appear to mainly result in procedural obstacles. In light of the constitutional relevance of EU fiscal integration steps, the Finnish Constitutional Law Committee will likely require that the Finnish Parliament approves the necessary conferral of powers by a qualified two-thirds majority according to Section 94 (2) (2) Finnish Constitution.¹³ In addition, the Committee will likely insist on comprehensive parliamentary involvement in the national preparation of EU secondary law based on Section 96 Finnish Constitution.¹⁴ However, the

11 *Commission's Draft EU Recovery Plan and MFF Planning* 18; Cf. as well: Leino-Sandberg, 'Who is ultra vires now? The EU's legal U-turn in interpreting Article 310 TFEU'; Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 458-459; Ojanen, 'The EU at the Finnish Constitutional Arena' 247.

12 *Quantitative Easing (PSPP) Final Judgment* para 104; *Final OMT-Judgment* para 212; Cf. as well: Calliess, '70 Jahre Grundgesetz und europäische Integration: 'Take back control' oder 'Mehr Demokratie wagen'?' 688; Pilz, 'Ein Schatzamt für die Eurozone? – Überlegungen zu den Vorschlägen des Europäischen Parlaments und der Kommission zu einer Reform der Wirtschaftsunion' 644; Calliess, 'Der Kampf um den Euro: Eine "Angelegenheit der Europäischen Union" zwischen Regierung, Parlament und Volk' 6-7; Herrmann, 'Die Bewältigung der Euro-Staatsschulden-Krise an den Grenzen des deutschen und europäischen Verfassungsrechts' 807-808.

13 *Commission's Draft EU Recovery Plan and MFF Planning* 12; *On the Establishment of a European Monetary Fund* 3-4; *Second Assessment Draft ESM-Treaty (II.)* 2; Cf. as well: Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 306-307; Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 458; Ojanen, 'The EU at the Finnish Constitutional Arena' 247.

14 Which corresponds to the Committee's approach during the Eurocrisis, cf. *Adoption of the EU Six-Pack Legislation*; Cf. as well: Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-

Committee refrained from imposing substantive limits to the parliamentary power to pursue EU integration steps in the past. The absence of substantive limitations to EU integration ambitions seems to derive from the Finnish model of constitutional review conducted by a parliamentary committee,¹⁵ the constitutional history of Finland¹⁶ as well as the strong focus on parliamentary sovereignty.¹⁷ Although the qualified majority threshold could render EU fiscal integration politically challenging, it appears that the Finnish constitutional order does not impose substantive legal-constitutional obstacles to such integration ambitions.

In contrast, the German Constitutional Court established its *overall budgetary responsibility* doctrine as an absolute limitation to the powers of the German legislator by invoking the German *eternity clause*.¹⁸ Based on this doctrine, the Court demands that central budgetary decisions remain permanently under the control of the German Parliament, which translates into procedural and substantive requirements for the conferral of fiscal competences to the EU-level. Procedurally, the Court insists that the conferral of fiscal powers is strictly limited in volume and is specific to the pursued objectives. For larger financial commitments, the Court requires that the German Parliament remains actively involved in its administration and that it retains the competence to determine how the available funding is distributed.¹⁹ Notably, it requires that EU commitments do not undermine German budgetary autonomy, which sets an abstract constitutional limit on the prospect of fiscal integration. Different to the Finnish constitutional approach, which allows for constitutional concerns

Making?’ 452; Husa, *The Constitution of Finland – A Contextual Analysis* 47; Ojanen, ‘The Impact of EU Membership on Finnish Constitutional Law’ 556.

15 Lavapuro, Ojanen and Scheinin, ‘Finland: Intermediate Constitutional Review in Finland: Promising in Theory, Problematic in Practice’ 219; Tuori, ‘§ 98: Verfassungsgerichtsbarkeit in Finnland’ 172 para 32; De Visser, *Constitutional Review in Europe – A Comparative Analysis* 26; Lavapuro, ‘Constitutional Review in Finland’ 132.

16 As established, historically the Finnish constitutional system relied on *exceptive enactments* which enable parliament to overcome substantive constitutional conflicts without amending the Finnish Constitution, which illustrates the historically-rooted flexibility; On exceptive enactments, cf. Lavapuro, Ojanen and Scheinin, ‘Finland: Intermediate Constitutional Review in Finland: Promising in Theory, Problematic in Practice’ 220; Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 307-308.

17 Ojanen, ‘The EU at the Finnish Constitutional Arena’ 254; Lavapuro, Ojanen and Scheinin, ‘Rights-Based Constitutionalism in Finland and the Development of Pluralist Constitutional Review’ 509; Suksi, ‘Finland’ 88.

18 *Quantitative Easing (PSPP) Final Judgment* paras 114-115; *Final OMT-Judgment* para 153; *Lisbon-judgment* para 230; Cf. as well: Rademacher, ‘Die “Verfassungsidentität” als Grenze der Kompetenzübertragung auf die Europäische Union?’ 144; Ohler, ‘Rechtliche Maßstäbe der Geldpolitik nach dem Gauweiler-Urteil des EuGH’ 1002.

19 *Quantitative Easing (PSPP) Reference* para 48; *Final OMT-Judgment* para 214; *ESM-Treaty and Fiscal Compact (interim relief)* para 107; Cf. as well: Reestman, ‘Legitimacy Through Adjudication: The ESM Treaty and the Fiscal Compact Before the National Courts’ 259; Simon, *Grenzen des Bundesverfassungsgerichts im europäischen Integrationsprozess* 297.

to be overcome by the legislator, the resulting German constitutional limit cannot be overcome by the legislator.²⁰

Comparing both constitutional approaches, this suggests that substantive constitutional limits, which are formulated as *constitutional identity* concerns in Germany, constitute the strictest material obstacles to EU fiscal integration. Based on this observation, the research investigated whether the absolute conception of the German *constitutional identity* limit is a particularity of the German constitutional order or whether *constitutional identity* limits in other EU Member States have a comparable limiting effect on the proposed EU fiscal integration steps.

Through the subsequent *micro-comparison* of the French, the Polish and the Spanish *constitutional identity limits* the research further substantiated the observed overlap of protected constitutional principles. Notably, all three assessed limits identified budgetary and fiscal competences as particularly important parliamentary prerogatives protected by national sovereignty and democracy.²¹ In addition, the research detected that the examined *constitutional identity limits* are mainly conceptualized as competence-centric limitations that exclude certain core state powers from the scope of supranational cooperation. The apparent underpinning assumption is that the conferral of budgetary and fiscal competences in itself can be sufficient to trigger *constitutional identity* concerns, given the traditional importance of these competences for national sovereignty and democracy.²² National authorities seem similarly concerned that the conferral of these competences could alter national political decision-making through a modification of EU cooperation in case discretionary, political

20 Rademacher, 'Die "Verfassungsidentität" als Grenze der Kompetenzübertragung auf die Europäische Union?' 146; Herbst, 'Legale Abschaffung des Grundgesetzes nach Art. 146 GG?' 33.

21 *On France: Fiscal Compact* para 21; Reestman, 'Legitimacy Through Adjudication: The ESM Treaty and the Fiscal Compact Before the National Courts' 265; Fabbrini, 'The Euro-Crisis and the Courts: Judicial Review and the Political Process in Comparative Perspective' 119-120; *On Spain*: Martín Y Pérez de Nanclares, 'Constitutional Identity in Spain – Commitment to European Integration Without Giving Up the Essence of the Constitution' 279; Bustos Gisbert, 'National Constitutional Identity in European Constitutionalism: Revisiting the Tale of the Emperor's New Clothes in Spain?' 77; Pérez Tremps, 'National Identity in Spanish Constitutional Court Case-Law' 270; *On Poland: Challenges Against Article 136 (3) TFEU and ESM-Treaty* Section 7.7.; Bainczyk, 'Folgen einer mangelnden Anpassung der polnischen Verfassung nach dem Vertrag von Lissabon im Lichte des Urteils des polnischen Verfassungsgerichtshofes zum Beschluss des Europäischen Rates zur Änderung von Art. 136 AEUV' 314.

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

powers are allocated to the EU.²³ However, despite these serious constitutional concerns, the research revealed that the French, Polish and Spanish *constitutional identity* limits can ultimately be overcome by the constitution-amending legislator,²⁴ this in contrast to the German *constitutional identity limit*. Nevertheless, the requirements imposed to enact constitutional amendments and the surrounding national practice reveal that the attainability of such a constitutional amendment is uncertain in Poland²⁵ and in Spain.²⁶ Hence, although the French, Polish and Spanish limits can be distinguished from the German *constitutional identity limit* based on their nature and general conception, the practical limiting effect of the Polish and Spanish *constitutional identity limit* is comparable to the German one given the seemingly low likelihood of successful constitutional amendments.

In addition, the evaluation of the national *constitutional identity limits* displayed the central position that national constitutional authorities occupy

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- 23 Germany: *Quantitative Easing (PSPP) Final Judgment* para 102; *ultra vires* review is based on the assumption that the EU has a limited mandate, cf. *OMT-reference* para 37; Lang, 'Ultra Vires Review of the ECB's Policy of Quantitative Easing: An Analysis of the German Constitutional Court's Preliminary Reference Order in the PSPP case.' 929; Wendel, 'Exceeding Judicial Competence in the Name of Democracy: The German Federal Constitutional Court's OMT Reference' 273-274; France: *Lisbon Treaty* para 8; Millet, 'Constitutional Identity in France – Vices and – Above All – Virtues' 140; Vranes, 'Constitutional Foundation of, and Limitations to, EU Integration in France' 539; Azoulai and Ronkes Agerbeek, '*Conseil constitutionnel* (French Constitutional Court), Decision No. 2004-505 DC of 19 November 2004, on the Treaty establishing a Constitution for Europe' 877; Spain: *Treaty Establishing a Constitution for Europe* Section II.2.; Castillo de la Torre, '*Tribunal Constitucional* (Spanish Constitutional Court), Opinion 1/2004 of 13 December 2004, on the Treaty establishing a Constitution for Europe' 1175; Poland: *Treaty of Lisbon* Sections III.2.2. and III.2.3.; Wróbel, 'Die Grenzen der europäischen Integration im Lichte jüngerer Entscheidungen des polnischen Verfassungsgerichts' 500.
- 24 France: *Compatibility of the Maastricht Treaty with the French Constitution After Constitutional Amendments ("Maastricht II")* para 19; Cf. as well: Baranger, 'The Language of Eternity: Judicial Review of the Amending Power in France (Or the Absence Thereof)' 402-403; Ziller, 'Sovereignty in France: Getting Rid of the Mal de Bodin' 272; Spain: *Catalan Independence Declaration* Section II. 7.; Cf. as well: Martín Y Pérez de Nanclares, 'Constitutional Identity in Spain – Commitment to European Integration Without Giving Up the Essence of the Constitution' 281; Ahumada Ruiz, 'The Spanish Constitutional Court' 636; Álvarez, 'Die spanische Dogmatik der Verfassungstreue – Geschichte einer fehlgeschlagenen Rezeption des deutschen Verfassungsdenkens' 442; Poland: Śledzińska-Simon and Ziółkowski, 'Constitutional Identity in Poland – Is the Emperor Putting on the Old Clothes of Sovereignty' 244; Brandt, 'Verfassungsrecht in Polen: Verfassungsbeschwerde und Rechtsprechung des polnischen Verfassungsgerichtshofes zu Fragen der EU-Mitgliedschaft' 139.
- 25 Cf. requirements in Article 235 (6) Polish Constitution; Cf. as well: Balczyk, 'Folgen einer mangelnden Anpassung der polnischen Verfassung nach dem Vertrag von Lissabon im Lichte des Urteils des polnischen Verfassungsgerichtshofes zum Beschluss des Europäischen Rates zur Änderung von Art. 136 AEUV' 321.
- 26 Solanes Mullor and Torres Pérez, 'The Constitution of Spain: The Challenges for the Constitutional Order Under European and Global Governance' 545-548; Bustos Gisbert, 'National Constitutional Identity in European Constitutionalism: Revisiting the Tale of the Emperor's New Clothes in Spain?' 85-86.

in determining the relationship between national constitutional law and EU integration steps. Strikingly, it is through the jurisprudence of the Constitutional Court that the German *eternity clause* could emerge as a strict limit to EU fiscal integration.²⁷ Similarly, the French, Polish and Spanish *constitutional identity limits* are primarily inventions of the national constitutional authorities.²⁸ This shows that EU integration is not only dependent on national parliaments and governments, but that in light of *national constitutional identity* reservations the attainability of EU integration increasingly depends on domestic constitutional authorities that adjudicate on the compatibility of EU integration with national constitutional law. Given the resulting pivotal position that national constitutional authorities occupy, the proper functioning of these authorities has to be of vital interest for the EU. Therefore, the highlighted adverse constitutional development in Poland, which affected the Polish Constitutional Tribunal,²⁹ triggers serious concerns regarding the continued reliability as well as the persistence of the established Polish jurisprudence – and with it concerns regarding the actual constitutional restrictions deriving from the Polish *constitutional identity limit* for EU fiscal integration steps. Aside from the Polish case, the important role of national constitutional authorities in determining the scope for EU integration steps appears to necessitate a high degree of attention at the EU-level to the national constitutional reasoning when devising EU integration.

3 CONSTITUTIONALLY ATTAINABLE EU FISCAL INTEGRATION STEPS

In the second part of the research, the conducted compatibility assessment revealed that the charted national constitutional space allows for the implementation of several proposed EU fiscal integration steps, provided that these

27 *Quantitative Easing (PSPP) Final Judgment* paras 114-115; *Final OMT-Judgment* para 153; Cf. as well: Rademacher, 'Die "Verfassungsidentität" als Grenze der Kompetenzübertragung auf die Europäische Union?' 144; Ohler, 'Rechtliche Maßstäbe der Geldpolitik nach dem Gauweiler-Urteil des EuGH' 1002.

28 *On France: Compatibility of the Maastricht Treaty with the French Constitution After Constitutional Amendments ("Maastricht II")* para 19; Cf. as well: Millet, 'Constitutional Identity in France – Vices and – Above All – Virtues' 150-151; Ziller, 'Sovereignty in France: Getting Rid of the Mal de Bodin' 272; *On Spain: Treaty Establishing a Constitution for Europe* Section II.2.; Cf. as well: Albert, *Constitutional Amendments: Making, Breaking, and Changing Constitutions* 192; Ferreres Comella, *The Constitution of Spain – A Contextual Analysis* 57; *And on Poland: Treaty of Lisbon* Section III 2.1.; Cf. as well: Śledzińska-Simon and Ziółkowski, 'Constitutional Identity in Poland – Is the Emperor Putting on the Old Clothes of Sovereignty' 244; Brandt, 'Verfassungsrecht in Polen: Verfassungsbeschwerde und Rechtsprechung des polnischen Verfassungsgerichtshofes zu Fragen der EU-Mitgliedschaft' 139.

29 Sadurski, *Poland's Constitutional Breakdown* 2-3, 206-207; Wyrzykowski, 'Experiencing the Unimaginable: the Collapse of the Rule of Law in Poland' 421; Wendel, 'Mutual Trust, Essence and Federalism – Between Consolidating and Fragmenting the Area of Freedom, Security and Justice After LM' 18.

are strictly limited in size, preserve the central control of national parliaments over budgetary and fiscal matters and ensure that core political decisions – that concern the collection and the distribution of money – remain at the national level. Based on these national constitutional requirements, it was concluded that the proposed allocation of new, tax-based ‘own resources’, the creation of an additional budgetary capacity under Article 311 TFEU, the establishment of further emergency instruments modeled on the ESM-structure, further supervisory tools with non-binding character and possibly even the creation of an EU Ministry of Finance are generally compatible with the charted national constitutional space and thus constitutionally attainable, albeit presumably requiring qualified parliamentary support in both Germany as well as Finland – and thus likely also in other EU Member States.

Overall, this suggests that decisive reform steps can be taken such as the initiation of a Eurozone-budget or the allocation of new revenue without triggering rigid constitutional opposition. Yet, it also appears that the resulting reform potential would be limited to the current EU-Treaties. In turn, this would not permit the type of long-term oriented innovations of the Eurozone which are deemed necessary by more far-reaching fiscal ‘integration’ proposals.³⁰ These more far-reaching fiscal integration proposals centrally aim at the conferral of discretionary competences to the EU-level to enable the Eurozone to take political decisions independently from continuous national parliamentary approval, which sits uneasily with the current conception of national democracy, national sovereignty and constitutionally secured national parliamentary prerogatives. Consequently, under a conventional *face-value* application of these national constitutional limits a fundamental alteration of the EMU remains highly precarious with possibly adverse implications for the viability of the Euro. Therefore, the research introduced two transformative propositions in order to ease the apparent conflict between ambitious EU fiscal integration reform needs and restricting national constitutional concerns.

4 TRANSFORMING NATIONAL CONSTITUTIONAL LIMITS THROUGH CONSTITUTIONAL FLEXIBILITY

The first transformative proposition relates to the increased flexibility of national constitutional concerns against far-reaching EU fiscal integration steps.

30 For example, the Five Presidents’ Report, cf. Juncker and others, *The Five Presidents’ Report: Completing Europe’s Economic and Monetary Union* 15; Or the Bruegel-proposal, cf. Marzinotto, Sapir and Wolff, ‘What Kind of Fiscal Union? (2011)’ 5, 7; 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; 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.

The research established that seemingly rigid national constitutional approaches might, on closer inspection and with sufficient judicial goodwill, contain a degree of *constitutional flexibility*. It was substantiated that this *constitutional flexibility* could enable national authorities to construe national constitutional approaches to EU integration in a more open but still effective manner, thereby potentially facilitating additional EU-level fiscal integration steps. Given that the German *constitutional identity limit* emerged as the most rigid substantive restriction to EU fiscal integration, the research employed three different methods to identify such *constitutional flexibility* within the German constitutional approach.

These methods include the consistent application of the constitutional framework (4.1.), the identification and application of domestic *best practices* (4.2.), as well as the increased focus on the added benefit of EU (fiscal) integration for the national constitutional order (4.3.). Although the research applied these methods in an exemplifying fashion to the German *constitutional identity limit*, the employed methods can be equally extended to other national constitutional systems in order to similarly locate and activate sources of *constitutional flexibility*.

4.1 Consistent application of the national constitutional framework

A first method employed by the research to generate *constitutional flexibility* within the German constitutional approach is the proposed consistent application of the applicable constitutional framework. The *micro-comparison* demonstrated the existence of an apparent constitutional double standard in the jurisprudence of the German Constitutional Court at the disadvantage of EU integration measures.

Notably, this double standard can be detected in the application of the established constitutional standing requirements, which makes it comparably easier to proceed against EU measures before the Constitutional Court.³¹ It can equally be detected in the application of the *eternity clause*, which is rarely employed *internally* and yet is a focal point in the constitutional assessment of EU-related matters. It was demonstrated that this practice undermines the *ultima ratio* function that the *eternity clause* traditionally has in the German constitutional order.³² And it can equally be identified in the conception of

31 Gärditz, 'Beyond Symbolism: Towards a Constitutional Actio Popularis in EU Affairs? A Commentary on the OMT Decision of the Federal Constitutional Court' 190-197; Klein and Sennekamp, 'Aktuelle Zulässigkeitsprobleme der Verfassungsbeschwerde' 949.

32 Möllers and Redcay, 'Das Bundesverfassungsgericht als europäischer Gesetzgeber oder als Motor der Union?' 425-426; Mayer, 'Rashomon in Karlsruhe: A Reflection on Democracy and Identity in the European Union' 763; Schorkopf, 'Case Nos. 2 BvE 2/08, 2 BvE 5/08, 2 BvR 1010/08, 2 BvR 1022/08, 2 BvR 1259/08, and 2 BvR 182/09 – 123 BVerfGE 267 (2009)' 263.

overall budgetary responsibility. Notably, the research established that the core premise of this important EU-related doctrine – namely that the German Parliament takes all central budgetary and fiscal decisions – can be challenged. The evaluation of the German state budget illustrated that most public spending is in fact determined by so-called long-term policy decisions.³³

In light of these three instances, the research proposed a three-stepped constitutional roadmap which is illustrated in Figure 24. This roadmap outlines how the adherence to a consistent interpretation of the applicable national constitutional framework could possibly reduce future conflicts between German constitutional law and EU (fiscal) integration steps.

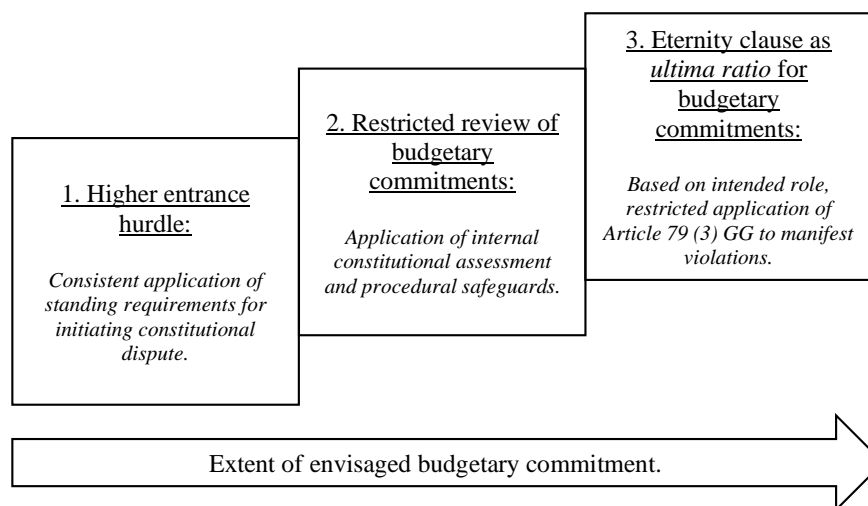


Figure 24: Roadmap to locate flexible constitutional space in Germany

The research explained that the proposed consistent application of the German constitutional framework comprises a constitutional imperative under the rule of law and legal certainty considerations,³⁴ and is also required in order to pay respect to the constitutionally enshrined division of powers and the constitutional duty to support European cooperation. And finally, the research pointed out that the consistent application of constitutional provisions appears

³³ Streeck and Mertens, 'An Index of Fiscal Democracy (2010)' 8.

³⁴ Kischel, 'Artikel 3 GG – Gleichheit vor dem Gesetz' para 83; Which is secured by employing accepted interpretation methods, cf. Schäfers, 'Einführung in die Methodik der Gesetzesauslegung' 886.

equally required under EU law itself as national authorities are required to engage in sincere cooperation with the EU and its institutions.³⁵

4.2 Creating constitutional flexibility through domestic best practices

Second, building on the observation that constitutional concerns against EU fiscal integration steps derive from similar underpinning constitutional principles, the comparative research allowed the identification of constructive *best practices* amongst the various strategies national constitutional systems and actors adopt to protect these overlapping constitutional concerns.

The research illustrated that such *best practices* can be partially identified in the more flexible Finnish constitutional approach to EU integration. These *best practice* examples include the Finnish parliamentary mandating system according to which the Finnish Parliament participates in the *ex ante* preparation of EU decisions in a comprehensive and constitutionally secured fashion that is politically respected.³⁶ These examples also include the constitutional review conducted by the Finnish Constitutional Law Committee which incorporates factual benefits stemming from EU cooperation into the constitutional assessment thereby resulting in a constructive conception of Finnish sovereignty,³⁷ which is employed in a comparable manner by the Polish Constitutional Tribunal.³⁸ The research demonstrated how these *best practice* examples could address and partly dispel German constitutional concerns raised based on *overall budgetary responsibility*.³⁹

35 As enshrined in Article 4 (3) TEU; Cf. as well: Christian Calliess and Anita Schnettger, 'The Protection of Constitutional Identity in a Europe of Multilevel Constitutionalism' in Christian Calliess and Gerhard Van der Schyff (eds), *Constitutional Identity in a Europe of Multilevel Constitutionalism* (Cambridge University Press 2019) 361.

36 *Adoption of the EU Six-Pack Legislation* 4-5; Cf. as well: Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 458; Ojanen, 'The Europeanization of Finnish Law' 169.

37 As highlighted, cf. Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 328-332; Ojanen, 'The Europeanization of Finnish Law – Observations on the Transformations of the Finnish Scene of Constitutionalism' 100.

38 *Challenges Against Article 136 (3) TFEU and ESM-Treaty* Section 6.4.2.; *Treaty of Lisbon* Section III.2.1.; Cf. as well: Granat and Granat, *The Constitution of Poland – A Contextual Analysis* 26; Czaputowicz, 'Sovereignty in Theories of European Integration and the Perspective of the Polish Constitutional Tribunal' 32.

39 On these concerns, cf. *Quantitative Easing (PSPP) Final Judgment* paras 226-227; *Quantitative Easing (PSPP) Reference* para 129; *Final OMT-Judgment* para 213; Cf. as well: Calliess, 'Constitutional Identity in Germany – One for Three or Three in One?' 164-165; Pilz, 'Ein Schatzamt für die Eurozone? – Überlegungen zu den Vorschlägen des Europäischen Parlaments und der Kommission zu einer Reform der Wirtschaftsunion' 643-644; Claes and Reestman, 'The Protection of National Constitutional Identity and the Limits of European Integration at

The exemplary involvement of the Finnish Parliament in EU decision-making and the Constitutional Law Committee's recognition of this constitutionally secured parliamentary participation could equally address the German procedural requirements under *overall budgetary responsibility*. Considering the Finnish example in broader detail, it appears that given the interplay of constitutional rules and the institutional acceptance of parliamentary involvement in preparing EU decisions, the Finnish Parliament evolved into a central domestic authority that can influence Council and European Council decision-making. The Finnish example further illustrates that such effective participation does not necessarily require a legally binding parliamentary vote⁴⁰ but that political mandates can work as effectively in guaranteeing parliamentary control over such EU decisions. Hence, even once competences are conferred to the EU-level, the Finnish Parliament retains vital influence on supranational decisions secured through the constitutional framework.

In light of this example, the German Constitutional Court could similarly embrace the opportunities stemming from Article 23 (3) GG by considering parliamentary involvement in EU decisions and by more consistently relying on the provision to establish not only parliamentary control over governmental action at EU-level, but to employ it as a forceful constitutional basis to provide the German Parliament with its own genuine role in EU matters. Put differently, instead of being an accessory to the government, parliament could obtain stronger and independent political influence on EU decisions, as exemplified in Finland. Concretely, the application of the Finnish *best practice* example could ease German constitutional concerns in relation to the required comprehensive parliamentary involvement at EU-level, prominently expressed in relation to the EFSF- and the ESM-Treaty.⁴¹ Instead of requiring specific procedural arrangements under the respective EU agreements, the Court could focus on the possibilities deriving from Article 23 (3) GG. For example, the required continuous parliamentary involvement under the ESM-Treaty to evaluate financial risks⁴² could be safeguarded by the proposed *best practice* use of parliamentary mandating systems. Parliament could then forward its views to the German Government, which might consider these politically binding – with the option of parliament to proceed against any divergence from its position either politically or constitutionally in front of the German Constitutional Court. The result would be an enhanced standing of the German

the Occasion of the *Gauweiler Case*' 927.

40 De Visser, *Constitutional Review in Europe – A Comparative Analysis* 27-28; Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 459-460; Ojanen, 'EU Law and the Response of the Constitutional Law Committee of the Finnish Parliament' 205.

41 *ESM-Treaty and Fiscal Compact (interim relief)* para 107; *Participation of Members of German Parliament in the EFSF* paras 109-111.

42 Nettesheim, 'Die "haushaltspolitische Gesamtverantwortung" in der Rechtsprechung des BVerfG' 23.

Parliament in EU matters and the consequential emerging of a political culture that protects this parliamentary involvement in EU matters, as apparent in Finland.

An additional advantage of the Finnish model is that the Grand Committee can communicate positions on behalf of parliament, after receiving the relevant views of other parliamentary committees.⁴³ If necessary, this allows for the speedy handling of EU affairs by the Finnish Parliament. This contrasts with the current German model, which prescribes that decisions with budgetary and fiscal implications have to be taken by the plenary given the overall importance of the affected competences as well as given the parliamentarians' right to equally participate in all relevant parliamentary affairs.⁴⁴ Yet, employing the available explicit constitutional option in Article 45 (2) GG to increasingly delegate EU matters to the responsibility of the European Committee could ensure the more efficient involvement of the German Parliament through faster decision-making. Such delegation is also democratically secured in two regards. First, the constitutional legislator included the possibility of delegating responsibilities in EU affairs to the European Committee. And second, the initial conferral of powers is ratified by the German Parliament. Therefore, an empowerment of the parliamentary committee seems less contentious and could secure speedy national parliamentary involvement in EU affairs. Overall, if the German Constitutional Court were to accept that the current system under Article 23 (3) GG could provide a workable route for parliamentary involvement in EU matters, this might also relax the substantive democracy concerns raised towards EU fiscal integration. It could allow for the emergence of a hybrid model of national parliamentary involvement in EU budgetary or fiscal decision-making through a specialized parliamentary committee.

An additional *best practice* element is the inclusion of factual benefits of supranational cooperation in the constitutional assessment of EU integration steps. According to the Finnish Constitutional Law Committee, EU integration steps do not only challenge Finnish sovereignty but they can factually increase sovereign competences through shared decision-making at EU-level.⁴⁵ Similarly, the Polish Constitutional Tribunal submitted that the 'modern' interpretation of national sovereignty warranted supranational cooperation in order to attain

43 Miller, 'Finnish Judges and the European Union: An American Perspective' 503; Ojanen, 'The Impact of EU Membership on Finnish Constitutional Law' 555.

44 *Participation of Members of German Parliament in the EFSF* paras 131, 136; Cf. as well: Bumke and Voßkuhle, *German Constitutional Law – Introduction, Cases, and Principles* paras 1634–1636.

45 Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 328–332; Ojanen, 'The EU at the Finnish Constitutional Arena' 245; Cf. in that regard as well: Dieter Grimm, Tobias Reinbacher and Mattias Wendel, 'European Constitutionalism and the German Basic Law' in Anneli Albi and Samo Bardutzky (eds), *National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law* (T.M.C. Asser Press 2019) 289–290.

national constitutional objectives.⁴⁶ Building on these examples, the research illustrated how the German Constitutional Court could potentially create additional flexibility under its substantive requirements of *overall budgetary responsibility* notably by filtering various factual benefits into the constitutional appraisal. A general readiness to follow this approach – albeit with a slight variation – could be detected in the German constitutional assessment of the ESM-Treaty where the Court concluded that not establishing the ESM would have resulted in hardly predictable financial risks.⁴⁷ Following the Finnish and Polish *best practice* examples, the inclusion of factual benefits could be further extended, as will be substantiated in broader detail in relation to the third method below.

4.3 Immediate and indirect benefits of EU cooperation

A final tool employed to locate and activate *constitutional flexibility* – applied within this research in an exemplary fashion to the German constitutional approach – is to better incorporate immediate and indirect benefits of EU cooperation into the national constitutional assessment of EU integration steps. Building on the various EU integration theories,⁴⁸ it can be ascertained that Member States pursue specific objectives when acceding to the EU. These may vary from mainly trade and economic considerations⁴⁹ to broader political and societal goals that states aim to attain through supranational institutions⁵⁰ depending on the underpinning integration theory.

Regardless of the specific national reasons for EU accession, these theories suggest that EU membership offers a range of incentives that may outbalance

46 *Challenges Against Article 136 (3) TFEU and ESM-Treaty* Section 6.4.2.; *Treaty of Lisbon* Section III.2.1.; Cf. as well: Granat and Granat, *The Constitution of Poland – A Contextual Analysis* 26; Czaputowicz, 'Sovereignty in Theories of European Integration and the Perspective of the Polish Constitutional Tribunal' 32; Wróbel, 'Die Grenzen der europäischen Integration im Lichte jüngerer Entscheidungen des polnischen Verfassungsgerichts' 498; Czapliński, 'Recent Constitutional Jurisprudence Concerning the European Union: Some Remarks on 2010 Judgments of the Polish Constitutional Court' 200.

47 *ESM-Treaty and Fiscal Compact (interim relief)* para 167.

48 For an overview, cf. Liesbet Hooghe and Gary Marks, 'Grand Theories of European Integration in the Twenty-First Century' (2019) 26 *Journal of European Public Policy* 1113, 1114-1118; Sergio Fabbrini, 'The Euro Crisis Through Two Paradigms: Interpreting the Transformation of the European Economic Governance' (2017) 18 *European Politics and Society* 318, 322-324; Craig and de Búrca, *EU Law Text, Cases, and Materials*.

49 Particularly within intergovernmentalism, cf. Hooghe and Marks, 'Grand Theories of European Integration in the Twenty-First Century' 1114; Fabbrini, 'The Euro Crisis Through Two Paradigms: Interpreting the Transformation of the European Economic Governance' 322-323.

50 For example, in neo-functionalism, cf. Hooghe and Marks, 'Grand Theories of European Integration in the Twenty-First Century' 1114; Fabbrini, 'The Euro Crisis Through Two Paradigms: Interpreting the Transformation of the European Economic Governance' 323-324.

the inherent costs that supranational integration brings with it.⁵¹ These incentives generally prevail after accession – for example, they are visible economically through permanent access to the internal market but are also apparent in the relative increase in national powers by pooling sovereign competences at the EU-level, thereby enhancing the national position in negotiating international trade agreements as the Union of 27 Member States.⁵² This suggests that the domestic reasons for accession to the EU and the anticipated benefits do not merely vanish once membership is achieved, but these reasons actually transform into continuous grounds of justification for membership. Although national constitutional systems signal their ability to consider the benefits stemming from EU integration, which can be detected from the EU law friendliness doctrines apparent in some Member States,⁵³ a comprehensive assessment of possible EU benefits resulting from a specific conferral appears not to be conducted. To that end, the research outlined examples of immediate and indirect benefits that EU integration steps appear to entail which could counter-balance national constitutional concerns.

Notably, as substantiated in Chapter VIII, this could entail that the constitutional appraisal not only focusses on the volume of a proposed financial commitment, but that it equally considers direct financial benefits stemming from such commitment. Here, the Commission's concept of 'operating budgetary balance' could provide useful guidance.⁵⁴ Following the current EU financing rules, Germany contributed a substantial € 25,8 billion to the EU budget in 2019. However, when including the direct return through EU funds into the equation, the operating budgetary balance indicated 'only' a minus of

51 With a comprehensive overview on costs-benefits analyses for the 2004 Enlargement, cf. Susan Senior Nello, 'EU Enlargement and Theories of Economic Integration' in Amy Verdun and Alfred Tovias (eds), *Mapping European Economic Integration* (Palgrave Macmillan UK 2013) 178-183.

52 Dieter Grimm, 'The Role of National Constitutions in a United Europe' in Dieter Grimm (ed), *Constitutionalism – Past, Present, and Future* (Oxford University Press 2016) 289-292; Specifically on the international impact of pooling sovereign powers at EU-level, cf. Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 334.

53 Germany: *Lisbon-judgment* para 225; *Honeywell-judgment* para 111; Cf. as well: Mayer and Walter, 'Die Europarechtsfreundlichkeit des BVerfG nach dem Honeywell-Beschluss' 539; Thym, 'Europäische Integration im Schatten souveräner Staatlichkeit – Anmerkungen zum Lissabon-Urteil des Bundesverfassungsgerichts' 559; France: Larik, 'Prêt-à-Ratifier: The CETA Decision of the French *Conseil constitutionnel* of 31 July 2017' 774-777; Ziller, 'European Union Law in the Jurisprudence of French Supreme Courts: Europe-Friendliness with a French Touch' 776; Poland: Górski, 'European Union Law Before National Judges: the Polish Experience. Adept Multicentric Vision or Creeping Hierarchical Practice' 132; Rideau, 'The Case-Law of the Polish, Hungarian and Czech Constitutional Courts on National Identity and the 'German Model'' 251; Kowalik-Bańczyk, 'Should We Polish It Up? The Polish Constitutional Tribunal and the Idea of Supremacy of EU Law' 1360.

54 Darvas, 'A New Look at Net Balances in the European Union's Next Multiannual Budget' 3.

€ 14,3 billion, which is significantly lower.⁵⁵ It thus revealed that the Member States' financial commitments towards the EU are not one-directional but that direct financial returns stem from them. Thus, when considering EU fiscal integration proposals, the German constitutional assessment should not merely focus on the financial commitment that is required but it should equally pay attention to the 'return' that flows back into Germany. Furthermore, these EU benefits might also occur indirectly. The research highlighted that the German GDP would be at least 0,5% lower without the Euro⁵⁶ and that Eurozone-membership thus increased fiscal decision-making space in Germany in that manner.

Ultimately, this suggests that EU integration in fiscal matters is not only reducing national fiscal decision-making abilities but that through the resulting cooperation additional fiscal space might be tapped that would otherwise not have been available to the Member States. Overall, this highlights that the current focus of the constitutional review based on a reduction of own competences is not sufficient to adequately reflect the impact that supranational cooperation has on the national constitutional order. Incorporating the outlined EU benefits would render the national constitutional assessment more balanced, thereby equally connecting to the highlighted EU integration theories which conceptualize incentives for countries to join the EU in the first place but which can serve as continuous justification after accession.

5 TRANSFORMING THE DESIGN OF FISCAL INTEGRATION PROPOSALS

The second transformative proposition relates to the conception of EU fiscal integration. The compatibility assessment of the proposed EU fiscal integration steps with the charted national constitutional space revealed that limited reforms appear constitutionally feasible, albeit largely building upon the currently existing EU Treaty-framework. In light of a proposed more flexible conception of national constitutional limits and the resulting additional national constitutional space, even more ambitious EU fiscal integration proposals could possibly be attainable. However, the proposed transformation largely depends on the receptiveness of national constitutional authorities. Therefore, the research introduced a second transformative proposition in order to trigger a re-conceptualization of EU fiscal integration proposals as well.

This proposition departs from the idea of connecting EU fiscal integration and particularly EU revenues with achievements that can be directly attributed to EU cooperation instead of relying on Member States' national contributions.⁵⁷ This proposition thus connects to the previous point of more compre-

⁵⁵ For the data, cf. Commission, *EU expenditure and revenue 2014-2020 (dataset)*.

⁵⁶ Petersen, Böhmer and Stein, 'How Germany Benefits from the Euro in Economic Terms (Policy Brief # 2013/01)' 6.

⁵⁷ Fabbrini, 'Fiscal Capacity' 129.

hensively incorporating EU benefits into the national constitutional appraisal of EU fiscal integration steps, thereby rendering such reform ambitions potentially less contentious. In essence, EU fiscal integration proposals are designed around the conferral of competences from the national to the EU-level. Notably, the creation of the proposed Eurozone budget is constructed as a limit of national competences for the sake of EU decision-making which requires the transfer of additional powers or funds from the Member States to the EU. In a comparable manner, the creation of an EU Ministry of Finance and increased budgetary supervision are construed as a limitation of national competences. Obviously, this design choice conflicts with the competence-centric conception of national *constitutional identity limits*, which aim to preserve core competences at the national level.

Therefore, the research proposed that EU fiscal integration steps could be devised from the perspective of the ‘added benefit’ that EU fiscal integration entails as well as the fiscal opportunities that might be created through EU fiscal cooperation. The underpinning idea is that the EU would be financed by or operate through revenue that it creates itself and subsequently employ this revenue to stabilize supranational cooperation in the long run. From a national constitutional perspective, such a design would address the concerns that the EU is limiting budgetary competences at the national level, as these competences would stem from the EU-level itself and would therefore not be under the direct control of the Member States in the first place. Consequently, it can be submitted that sourcing the financial advantages generated from the EU does not reduce the traditional budgetary competences enjoyed by national parliaments. In fact, these financial benefits are additional and complementary to the nationally generated financial benefits. It could even be added that as long as EU cooperation results in more fiscal benefits than it actually requires to sustain itself, EU fiscal integration steps could increase the available national fiscal decision-making space. From an EU perspective, the proposed design would provide the advantage that EU finances would be less dependent on national contributions.⁵⁸ Taken together, this second proposition would change the debate surrounding EU fiscal integration steps and steer the focus towards added benefits created by envisaged supranational integration, instead of centering around the reduction of national constitutional competences, which are protected by the outlined national *constitutional identity limits*.

However, determining these fiscal opportunities in a detailed manner – for example, in the case of Germany, the financial benefits resulting from low interest rate payments on state bonds or the advantages that result from the fact that the Euro developed into a stable and important global currency –

58 EU finances are dominated by ‘just return’ considerations, cf. 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; Crowe, ‘The European Budgetary Galaxy’ 433.

and translating them into EU fiscal integration steps would exceed the framework of this research. Given that EU cooperation traditionally entails the elimination of costs and a liberation of trade, these EU benefits might not yet constitute genuine sources of revenue for any administrative level. But, a comprehensive reflection on how actual EU achievements can be transformed into revenue sources could investigate this potential in detail and ultimately allow for a fresh perspective on EU fiscal integration proposals.

6 OUTLOOK: EU COOPERATION AS A NATIONAL CONSTITUTIONAL DUTY IN THE 21ST CENTURY

The research comprehensively demonstrated how these two innovative transformative propositions could help escape the apparent dilemma between EU fiscal integration ambitions and national constitutional concerns. It was consequently illustrated how outright substantive constitutional opposition against EU fiscal integration could be overcome by essentially embracing EU membership and including the resulting supranational benefits into the domestic constitutional assessment. Nevertheless, the research equally highlighted that budgetary and fiscal competence are considered across all examined constitutional orders as central parliamentary prerogatives connected to national sovereignty and democracy.⁵⁹

Therefore, EU fiscal integration triggers much wider constitutional questions of how national democracies and nation states can effectively function in an ever more integrated European Union which affects ever more core constitutional concerns. Thus, while the proposed transformative ideas might address the short-term need to create additional fiscal capacities at the EU-level in line with national constitutional requirements, a wider process of reflection is now required as to how such core national constitutional concerns can be accommodated in the design of EU integration in a constitutionally sound, effective and mutually-respectful way. Ultimately, this might require a paradigm shift in national constitutionalism, which would certainly exceed the limits of this brief concluding outlook. Yet, building on the observations made throughout the research, one conceptual and one institutional point of reflection will be submitted to contribute to such a wider constitutional reflection process.

On a conceptual level, it was shown how EU fiscal integration ambitions could trigger a broader re-conception process within national constitutional culture about the added benefits of EU cooperation for national constitutional values. It was illustrated that the EU legal order offers the supranational

59 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; Puntischer Riekmann and Wydra, 'Representation in the European State of Emergency: Parliaments Against Governments?' 567.

stabilization of constitutional principles, such as democracy and the rule of law. The immediate benefits can be witnessed in the EU interventions regarding Hungary and Poland.⁶⁰ Similarly, supranational cooperation enhances the protection of fundamental rights, boosts economic prosperity and contributes to objectives such as environmental protection or digitalization which are all of immediate national constitutional relevance. Therefore, EU cooperation is much more than an intrusion into the national constitutional space – it is in fact a means to accomplish constitutional goals and fulfil constitutional obligations in the globalized world of the 21st century where international priorities are no longer determined in Washington DC, Berlin, Paris or Rome but increasingly at tables in Beijing, New Delhi or Brasilia. In this new global setting, European cooperation can secure international influence that Member States alone could hardly exercise and it might enable Member States to defend national constitutional values at the global stage by integrating them into the supranational DNA, as apparent in Article 2 TEU. Against this background, it could be argued that EU cooperation no longer only signifies a constitutional opportunity for Member States but that it in fact transforms into a constitutional obligation in order to effectively protect constitutional principles in a globalized world. From that perspective EU cooperation can be seen as collective empowerment on the world stage and an opportunity for national constitutional orders to determine jointly how this cooperation can best protect shared national constitutional principles in a shifting global context.

On an institutional level, the research indicated that various national constitutional concerns relate to the conferral of politically important competences to the EU and the subsequent insufficient involvement of national parliaments in the administration of these competences. The research illustrated that the Finnish constitutional system of parliamentary involvement in EU matters and the surrounding institutional acceptance of this system might partly address these concerns. Yet, the debate on EU fiscal integration also offers the opportunity to re-think the institutional involvement of national parliaments in EU decision-making more generally, which was discussed in some proposals on fiscal integration that envisage the creation of a Eurozone assembly.⁶¹ These institutional reform ideas connect to earlier proposals that suggested the establishment of a *European Senate*.⁶² According to *van der Schyff*

60 Bojan Bugarië, 'The Populist Backlash Against Europe – Why Only Alternative Economic and Social Policies Can Stop the Rise of Populism in Europe' in Francesca Bignami (ed), *EU Law in Populist Times – Crises and Prospects* (Cambridge University Press 2020) 488-491; Sadurski, *Poland's Constitutional Breakdown* 2-3.

61 Ruffert, 'The Future of the European Economic and Monetary Union – Issues of Constitutional Law' 59-60.

62 Gerhard van der Schyff and Gert-Jan Leenknecht, 'The Case for a European Senate – A model for the representation of national parliaments in the European Union' (2007) 62 *Zeitschrift für öffentliches Recht (ZöR)* 237, 238; Or a *congress of parliaments*, cf. Philipp Kiiver, *The*

and Leenknecht such a *European Senate* could guarantee that national parliaments are better informed on EU policies, that they can subsequently play a more decisive role in policy-making at EU level and thereby equally better involve the citizens in EU decisions.⁶³ Building on these proposals, the research proposes the establishment of a *Eurozone Forum of National Parliamentary Delegates* as an initial institutional innovation for the Eurozone. This *Forum* would be exclusively composed of national parliamentary delegates and thus integrate the national parliamentary level better into EMU decision-making, which could address the identified concerns of national constitutional authorities regarding EU fiscal integration and the required degree of national parliamentary control over budgetary and fiscal decision-making. The *Forum* should tentatively consist of 5 *Delegates* per Member States, which are determined by the national parliaments themselves. The determined *Delegates* should equally be members of the national parliamentary EU Committees, in order to guarantee a high degree of EU expertise and to better integrate EU-level discussions into national parliamentary discussions – which are either prepared or even fully conducted by the respective national EU Committees. The specifics of how national *Delegates* are selected should be determined by national law – for example, within the *rules of procedures* of national parliaments. These *Eurozone Delegates* could come together in the proposed *Forum* to discuss the national parliamentary perspective on EU budgetary and fiscal matters in a supranational setting. Initially, this *Forum* could take an informal *ad hoc* format, following the example of the European Council which similarly only developed over time into a formal EU institution.⁶⁴

To preempt legal concerns regarding a possible interference with the EU's institutional structure, the *Forum* would not be assigned decision-making powers but instead operate in a coordinating capacity. The regular joint debates of the *Forum* would be integrated into the national parliamentary work and occur before the national parliament reaches a final decision on the matter. The decisions taken by the *Eurozone Forum* would be declaratory and not preempt national decision-making or replace national constitutional requirements. National parliaments are merely invited to take the deliberations of the *Eurozone Forum* – as presented by the national *Delegates* – into due account. Despite only operating on an informal basis and taking declaratory decisions, the creation of a *Eurozone Forum* could counter-balance the criticized dominance of national executive actors at EU-level and offer a comprehensive institutional framework – beyond the current *informal* exchange of views at COSAC gather-

National Parliaments in the European Union: A Critical View on EU Constitution-Building, vol 50 (European Monographs, Kluwer Law International 2006) 133-134.

63 Schyff and Leenknecht, 'The Case for a European Senate – A model for the representation of national parliaments in the European Union' 238.

64 Luuk Van Middelaar, *The Passage to Europe – How a Continent Became a Union* (Yale University Press 2013) 179-180.

ings – to supranationally align national parliamentary priorities within the Eurozone. It would equally offer national parliaments the opportunity to more effectively use their prerogatives under the EU-Treaties – for example by coordinating the initiation of the yellow and orange card procedure. In the long run, the proposed *Eurozone Forum* could be formally integrated into the EU's institutional framework and it might be assigned genuine decision-making powers. Ultimately, this would make national parliaments less dependent on national governments in EU matters and firmly integrate them into the EU's institutional structure.

As it stands, EU integration is a process of continuous amendments, challenges and transformation. Increasingly, this process conflicts with traditional characteristics of the national constitutional space, which can explain the emergence of national *constitutional identity limits* as a new type of constitutional defense mechanism. Through these limits, national constitutional authorities attempt to contain EU integration and preserve national constitutional structures in light of an ever-deepening integration. Although it was illustrated that national constitutional systems can be receptive towards the various benefits that stem from supranational cooperation, this receptiveness is increasingly limited as EU integration advances towards the core of national systems: their *constitutional identity*. EU fiscal integration ambitions squarely fit into this general trend, as they propose a shift of core constitutional and political competences from the national to the supranational level. Naturally, this proposed shift is met with national constitutional resistance displayed in the various constitutional proceedings in the Member States assessed within this research. Overcoming these national constitutional challenges against EU fiscal integration – but also against EU cooperation in core state areas generally – might require to initiate a new chapter in national and supranational constitutionalism. After all, EU integration and national constitutional law are not opponents but can and should be mutually reinforcing allies in a globalized world.