LEGAL IMPLICATIONS OF ECONOMIC GOVERNANCE FOR NATIONAL PARLIAMENTS

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Abstract

This paper explores how the post crisis EU economic and fiscal governance framework has marginalised national parliaments and compromised legislative autonomy, especially in the delivery of social welfare policy. This article argues that one potential consequence of this new regulatory and political landscape is that it creates scope for new form of democratic deficit to arise from the absence of effective accountability of EU economic and fiscal governance as well as undermining the Treaty principle of solidarity between Member States.

Key words: accountability; national parliaments; solidarity; economic governance; legitimacy

1. Introduction

European economic governance, which comprises a framework of multilateral coordination of national policies of both EU Member States and the Eurozone, is a complex structure that has been reformed numerous times. According to de Streel (2013, 337), the current framework rests on four pillars that combine 'soft' elements, for example socio-economic coordination to achieve economic convergence, as well as 'hard' ones which include surveillance of Member States' fiscal and macroeconomic imbalances which may have potential spill-over effects on other Member States, and, financial assistance to Member States experiencing serious financial instability. The objective of this governance framework is, according to the title of the 2012 Commission Communication, to create *Genuine Economic and Monetary Union* (COM 2012 777 final) that deepens economic integration.

Ruffert (2011, 1779) correctly identifies that the European debt crisis and its socio-economic consequences have brought governance issues to the fore, especially in relation to surveillance and assistance. While criticisms have focused on various parts of the governance framework, they can be grouped as relating to its effectiveness, for example the relevance of the rules and the effectiveness of the sanctions, and, to its ownership by Member States and their citizens. On this latter point, the issue is primarily one of democratic legitimacy and the EU's commitment to solidarity (European Parliament ECON Committee, 2014, 19-20). With respect to the question of solidarity, the challenge arising from a move towards deeper economic integration results from the economic divergence amongst, in particular, Eurozone members and the differing expectations of citizens across the Eurozone that EU policies can simultaneously secure fiscal stability while providing support to Member States facing socio-economic problems.

With the onset of the European debt crisis, the effectiveness of the Stability and Growth Pact was once again put into question and in response the Pact was reinforced in 2011 with the 'Six-pack', which enhanced the surveillance in the Excessive Deficit Procedure and introduced a framework of quasi-automatic sanction procedures, minimum requirements for budgetary planning and the Macroeconomic Imbalance Procedure. Furthermore, in 2013, the 'Two-Pack' legislation initiated two new regulations, which provide for a common budgetary timeline and common budgetary rules for Member States, as well as a system of enhanced economic and budgetary surveillance for those Member States that experience financial stability difficulties. This also covers Member States that receive financial assistance from the European Financial Stability Facility, the European Stability Mechanism, or international financial institutions such as the International Monetary Fund (IMF). The enhanced Stability and Growth Pact has become part of what has become known as the European Semester (Maatsch, 2016).

The European Semester is now at the core of EU economic governance and the pursuit of 'genuine economic and monetary union', but according to Lord it does 'intrude deeply in to the autonomy of national economic policy' (see Lord, 2017 elsewhere in this volume). The legislative, policy and procedural mechanisms of the European Semester, which are intended to not only manage the crisis, but also lay out the foundation for future economic governance, are therefore not without criticism. In particular, there are genuine questions concerning their impact on what can be described as 'fiscal sovereignty' in addition to the question of legitimacy (Fox, 2012).

This article explores how, in the aftermath of the EU economic and Eurozone crises and the remedial measures taken, national parliaments have compromised budgetary legislative autonomy and the delivery of socio-economic policies without the presence of commensurate procedures which can effectively scrutinise the EU's response and secure effective accountability of EU policies. This article argues that the consequences of this new regulatory landscape have the potential to undermine solidarity between Member States, the likely creation of a new democratic deficit at the national level, arising from the absence of effective accountability of EU economic governance to national parliaments, and, reduced efficacy of policy delivery to EU citizens.

2. Legitimacy challenges of 'genuine economic and monetary union'

The Commission's *Blueprint for a Deep and Genuine Economic and Monetary Union* emphasised that democratic legitimacy, which is a cornerstone of the *Blueprint* should be founded upon two basic principles. Firstly, that within the context of 'multilevel' governance systems, 'accountability should be at the level where the executive decision is taken, whilst taking due account of the level where the decision has an impact'. A presumptive inference that can be drawn from this is that national parliaments will not provide the necessary *direct* accountability and that they fall in to the category of representing the level where the decision has an impact of which 'due account' is taken. This obligation to take 'due account', though an important recognition of national parliaments, should not be considered to equate with a coherent process that secures effective national parliamentary control.

Secondly, the Commission acknowledged that by developing Economic and Monetary Union, as is the case with European integration generally, the level of democratic legitimacy always needs to remain commensurate with the degree of transfer of sovereignty from Member States to the European level. While this undoubtedly holds true for the powers on budgetary surveillance and economic policy as much as for EU rules on solidarity between Member States, the legitimacy gap has yet to be bridged and in this context the European Parliament cannot, within the overall regulatory framework, be considered to provide sufficient democratic legitimacy to the process. The House of Lords EU Affairs Committee summarised the legitimacy conundrum that exists within EU economic governance by recognising that 'further financial mutualisation requires commensurate political integration' (House Lords, 2014, 42). Lord (Lord, 2017) also identifies the EU's inability to tax, borrow and spend as also preventing further fiscal-coordination. What is therefore apparent from the House of Lords Report and the limited fiscal integration highlighted by Lord is that significant fiscal and budgetary powers remain exercised at the national level and which, at present, do not justify the transfer of primary accountability to the EU level to the extent suggested by the Commission's Blueprint. Arguably, the level at which taxation levels are set and spending priorities determined, which predominantly means the national level, should continue to exercise a significant role in the scrutiny of EU policy beyond that envisaged within the Blueprint.

The Commission argued in the Blueprint that, within the multi-level governance framework it is the European Parliament that primarily needs to ensure democratic accountability for any decisions taken at the EU level. The purpose of this would appear to reinforce the concept of 'institutional balance' (Dawson and De Witte, 2013 817 at 821) which is a key principle of EU governance and decision-making. However, institutional balance is an incomplete idea in the context of economic governance in which the European Parliament cannot be considered as a primary legislative or regulatory actor, nor does it sufficiently provide the necessary element of representative democracy which is required for the accountability to be meaningful and acceptable to EU citizens. For example, no substantive powers are included for the European Parliament, not only within the ESM Treaty, but, additionally, the Treaty on Stability, Coordination and Governance is silent on this point.

It would be disingenuous to the Commission to suggest that it does not consider legitimacy as an important value within the process of economic governance and that this does not also include some role for national parliaments. On the contrary, in the Blueprint the Commission explicitly acknowledges that the role of national parliaments would always remain crucial, partly in order to inject legitimacy of Member States' actions in the Council, and perhaps, more importantly, in terms of the conduct of national budgetary and economic policies. This would remain the case even if these were to be more closely coordinated by the EU. However, within the Blueprint it is clear from the Commission's analysis that EU economic governance is, in terms of delivery, primarily a 'top-down' process and one which harnesses the EU's institutional architecture to ensure effective delivery. The Commission's acknowledgement of the constitutional status of national parliaments within the EU's multi-level polity is further nuanced by the position that national parliamentary involvement is best served through cooperation with the European Parliament, but this too raises questions of representative legitimacy within economic governance especially in the light of national parliaments retaining responsibility for setting taxation policies and determining socio-economic priorities.

In the Blueprint, the Commission stressed that, in terms of securing legitimacy of economic governance, greater value is to be gained through co-operation between the European

Parliament and national parliaments to facilitate mutual understanding and common ownership for Economic and Monetary Union in a ‘multilevel’ governance system. Thus, the Commission did not see an exclusive or even a pre-eminent role for national parliaments in the oversight of EU economic governance and indeed could be described as sceptical of the value of horizontal inter-parliamentary cooperation as seen within the operation of Protocol 2, which considers it appropriate to ensure democratic legitimacy for EU legislative action. In an institutional context, the Commission was of the view that this would require a parliamentary assembly which was representatively composed and in which votes can be taken. The Commission stated that this ground was already occupied by the European Parliament, and, on that basis the European Parliament is the only EU parliamentary institution that should undertake formal oversight of economic governance (COM 2012 777 final, 35). Yet, this assertion fails to take fully into account the disengagement of EU citizens within the electoral process for the European Parliament, where turnout in the 2014 elections stood at 43%.

The Commission’s pursuit of ‘Genuine Economic and Monetary Union’ therefore raises important questions of democratic legitimacy, which are not sufficiently satisfied through the participation of the European Parliament. It is possible to identify two forms in which a democratic deficit has manifested itself and which has, hitherto, not been adequately addressed. Firstly, it is the lack of popular democratic consent to the austerity agenda which is being pursued within many EU Member States. The social consequences of this austerity, magnified by the challenges of simultaneously managing the migration crisis in, for example, Greece and Italy, has produced a political stand-off between creditor states such as Germany and those like Greece who have argued for increased acceptance of debt mutualisation as part of the EU’s economic governance and as a way of protecting solidarity. However, further steps towards debt mutualisation without the necessary democratic legitimacy, in the form of electoral approval, will prove equally politically unpopular.

The second problem is the increasing Imbalance between the power of supranational institutions such as the European Central Bank (ECB), the Commission, the Eurogroup and the 'Troika'. In particular, it is what Dawson (Dawson 2015, 976 at 984) considers to be the lack of effective democratic accountability of these technocratic bodies for which there is no existing institutional fix within the EU's institutional architecture that is of most concern. For example, it is insufficient to suggest that debates within the European Parliament in advance of the publication of the Commission's agenda and priorities ahead of the European Semester will come even close to filling the void created by this accountability deficit.

In consequence, the primary challenge for all national parliaments is how, if at all, they can adjust their operational capacity in response to the development of economic governance to, in the words of Jančić (Jančić, 2016 225 at 228), "take into account the repercussions that their own fiscal processes and decisions may have for other Member States and for the EU as a whole" and to "locate national interests in the light of the wider European backdrop and to act as parliaments of Member States rather than just as parliaments of nation-states". Going forward this integrationist interpretation of the activities of national parliaments offered by Jančić, who are uniformly pulling towards a 'common European good' is, in the short to medium, unlikely. In terms of economic governance, a shift towards less self-interest by nation states and more Europeanised behaviour with respect to economic governance remains questionable within the overall life-cycle of domestic parliamentary elections and it is debatable, whether a vision of parliamentarisation of economic governance that is not only effective, but also legitimate and representative is achievable without reform of the EU's institutional architecture.

To this extent, more coordination between national parliaments, or even between national parliaments and the European Parliament, should be considered as secondary and will not significantly improve either the delivery or the legitimacy of economic governance. In order for there to be improved legitimacy there is a need for the EU to address outstanding difficult decisions on the future substance and scope of EU economic integration and in particular this means determining how the principle of 'solidarity' between Member States is understood within the process of EU economic governance and which is largely shaped by the priorities which have arisen in a post crisis EU.

3. National parliaments and improved democratic legitimacy

The economic crisis has brought the subject of democratic legitimacy to the forefront of the debate on the future of Europe. It has had a major impact on the EU and its Member States, including non-Eurozone States, particularly with regard to the democratic legitimation by national parliaments of Commission, Council and European Central Bank measures to tackle the crisis. Furthermore, the crisis seems to have reinforced the two-tier nature of economic integration with respect to the Eurozone and non-Eurozone States, with many of the new rules and structures that deal with the crisis being more overtly Eurozone-specific. Though the Commission insisted on "a robust democratic framework" for the deepening of Economic and Monetary Union and on ensuring "optimal democratic accountability and governance" within the 2012 *Blueprint*, this has yet to become a reality.

While the European Parliament remains an engaged, albeit a peripheral actor within the framework of Economic and Monetary Union, it can bring some pressure to bear through its review of the Commission's priorities within the European Semester. However, this is insufficient to address the criticism of a lack of institutional balance within economic governance, compared to the ordinary legislative procedure, and that the process bypasses the need for popular consent. Moreover, the accountability vacuum within the EU's institutional architecture reinforces the need for improved legitimacy at the national level of EU economic governance. A key reason for the weak legitimacy at national level arises from the operating conditions of debtor state parliaments which have been severely constrained, to the point of challenging the very idea of representative democracy within those Member States. The reasons for this are various, but primarily it is the technocratic nature of the crisis management process from which the problems stem.

The reaction of individual parliaments to Europe's economic crisis has varied considerably and it is this asymmetry, which undermines the argument that improved horizontal coordination by national parliaments can substantially address the legitimacy deficit. The multifarious institutional responses of national parliaments indicates that parliaments continue to broadly address their own priorities and engage in EU affairs without significant changes to their modus operandi. Auel and Höing (2014 1184 at 1187) summarised that "overall, it seems the crisis has neither significantly increased nor limited the use of parliamentary instruments in EU matters. At least when it comes to their overall level of engagement, the crisis is mainly 'business as usual' for national parliaments. Parliaments showing high levels of activities in EU affairs also show high levels in crisis management – independent of the fact whether they adopted the common currency or had been hit significantly by the crisis." This analysis reflects one which has been noted on a number of occasions, for example Cygan (Cygan 2011 and 2013) and Raunio (Raunio, 2010) assert that when it comes to EU affairs, national parliaments have, in many instances, reached an absorption capacity that restricts them undertaking additional scrutiny activities, or at the very least from doing so systematically and effectively.

National parliaments are engaged in and debate EU economic governance and will inevitably continue to do so as part of the annual budgetary round in addition to utilising a range of different techniques that involves detailed inquiries by scrutiny committees or parliamentary debates in the chamber. However, unlike either subsidiarity monitoring under Protocol 2 or the process of Treaty reform the substance of economic governance remains remote from EU scrutiny committees notwithstanding that scrutiny of EU economic governance also includes scrutiny of the government within the European Council (Van den Brink, 2016, 15 at 21). Moreover, unlike with subsidiarity monitoring where national parliaments may collectively question a legislative proposal for infringement of the principle of subsidiarity, or with Treaty reform, where parliamentary approval for a proposed EU Treaty may be withheld, the scrutiny of economic governance does not offer the same structured opportunities to directly influence or oppose an outcome.

As already noted above the defining feature of the EU's economic regulatory framework, and the one that restricts involvement of national parliaments, is the centralising top-down control that is the hallmark of economic governance. Not only does this limit the effectiveness of national parliamentary scrutiny, it has also severely restricted the power of citizens to determine, through democratic processes, how taxes are raised and public money is spent, especially with respect to the delivery of universal public services such as welfare, healthcare and education.

EU economic governance undoubtedly remains a work in progress and one which focused, at least at the outset, on crisis management and improved budgetary surveillance, rather than reforming the institutional architecture. However, the transition out of crisis management to a coherent framework of EU economic governance, which adequately embraces not only legitimacy but also the principle of solidarity, is still some way off. It is the continued resistance by Member States to debt mutualisation and the regulatory and institutional framework that this would create, which will continue to hamper effective coordination between parliaments. From the perspective of national parliaments, debt mutualisation could provide a specific constant for national parliaments to monitor and encourage them to consider economic issues beyond just the national interest, but rather through the wider lens of the impact on overall EU integration as Jancic has suggested.

In order to secure objectives such as improved economic convergence or even debt mutualisation the EU must simultaneously examine how democratic legitimacy for economic governance can be improved and this will require the direct involvement of national parliaments. However, this is not straightforward and poses significant procedural and institutional difficulties. For example, with respect to scrutiny of the ECB it would appear that the only practical way in which the ECB could be held accountable was for the ECB President to appear before the ECON Committee of the European Parliament. The idea that the ECB President could, efficiently, appear before parliamentary scrutiny committees in 28 Member States cannot be considered as realistic alternative, a fact that edges national parliaments to the periphery of economic governance. On this analysis, what should be the role for national parliaments going forward? According to Wessels (Wessels, 2013 at 11) this should include a combination of expanding their focus beyond merely holding their own executive to account while simultaneously improving horizontal coordination between parliaments to help forge a 'Euro response'. However, as noted above, without an institutional framework to achieve this coordination, the propositions remain unlikely. To achieve improved coordination, the answer, according to Van de Brink (Van de Brink, 2016), may, at least in part, lie in the creation of effective procedural arrangements which provide for a mechanism through which national parliaments can guarantee their involvement and inject improved legitimacy. To this extent, the established experience of national parliaments through their horizontal coordination of subsidiarity monitoring under Protocol 2 of the Treaty may provide a basic model for this. Yet, it would be incorrect to simply suggest that such procedural cooperation between national parliaments will be sufficient to address continuing concerns of democratic legitimacy.

A noted above by Auel and Höing (Auel and Höing, 2014) the evidence indicates that national parliamentary cooperation in the field of economic governance has not developed to keep pace with the developments at the EU level. This is primarily because the priorities of the national parliaments remain heterogeneous. It is therefore not merely about the procedure; rather it is more a question of the substantive nature of this cooperation. To take Protocol 2 as an example, the task of national parliaments is according to Crum and Fossum (Crum and Fossum 2013, 1 at 7) quite focused and concerned with the fulfilment of a Treaty allocated task the purpose of which is to ensure the correct application of the subsidiarity principle. However, notwithstanding this single focused task of subsidiarity monitoring, the threshold under Protocol 2 has only been met on three occasions in seven years. Thus, in the context of monitoring economic governance, where decisions are not necessarily legislative in their form, and, with Member States being at different stages of the economic cycle and facing diverse socio-economic challenges, there would appear to be only limited scope for parliaments to effectively coordinate their responses.

Above all it is the consequences of EU economic governance that creates the real challenges for national parliaments and perpetuates ongoing concerns of legitimacy and accountability. The European Semester has limited budgetary sovereignty of Member States and includes the prior involvement of the Commission in national budget setting procedures. These consequences remain problematic for national parliaments and clearly have implications for the relationship between national parliaments and their citizens, which is beginning to indicate a growing schism that, if unchecked, could become an un-bridgeable democratic deficit. Taken together with the increased budgetary surveillance it is increasingly apparent why this has created parliamentary disquiet. Furthermore, the response through crisis management has, arguably, challenged the principles and values of EU integration and especially the principle of solidarity. This is seen nowhere more so than through the process under the ESM by which decisions to grant direct financial aid to one Member State, albeit under strict conditions, have been considered to adversely affect the interests of tax payers in another. This form of crisis management has injected an adversarial element in to EU economic governance and one that is likely to have long lasting consequences and undermine not only solidarity, but also the transition towards the genuine Economic and Monetary Union which the Commission seeks.

4. Solidarity and the legal scope of 'genuine economic and monetary union'

Post crisis economic governance is a mixture of legislation and practices that utilise both existing Treaty competences as well as inter-governmental arrangements which are outside the structures of the EU treaties. Crisis management required effective responses and initially the

EU focused on containment and prevention. However, the process for introducing the new arrangements was controversial, not least because the likely effects of the measures on the political and economic sovereignty of Member States raised specific questions of accountability and legitimacy. In particular, questions arose concerning the establishment of the ESM, its legitimacy, and the impact of the ESM upon Member States whose currency is the Euro (Koedooder, 2013, 111 at 112).

In Case *C-370/12* *Thomas Pringle* v. *Government of Ireland* [2012] ECR I-756 an Irish MP brought legal proceedings before the Irish High Court challenging both the validity of the European Council decision using Article 122 (2) TFEU to establish the ESM and the ESM Treaty itself. In addition to the substantive legal question, the case raised an important question of principle over the future of EU economic integration and especially the principle of solidarity between Member States and how this is applicable within the objectives of the ESM. To this extent, the Court was asked whether an agreement such as the ESM Treaty is in breach of the ‘no bail-out clause’ in Article 125 TFEU (the no bail-out rule).

On the question of the validity of using Article 122 (2) TFEU to establish the ESM, in dismissing the challenge, the European Court of Justice followed the trend of the constitutional challenges in national courts, including Germany and Estonia, which had had held that there were no legal obstacles to the structures put in place by EU Member States in their attempt to manage the crisis and to provide financial support to Eurozone states. Pringle had argued, inter alia, that the amendment of the Treaties ought to have been undertaken through the ordinary, and not the simplified revision procedure, and so the European Council decision was not validly adopted. As for the ESM Treaty, as well as arguing that it violated provisions of the Irish Constitution, Pringle alleged that it was substantively incompatible with economic policy provisions of the Treaty, used the institutions of the EU in a manner incompatible with their obligations under EU treaties, interfered with the allocation and division of competence in economic and monetary policy, violated the EU Charter of Fundamental Rights guarantees of effective judicial protection, and breached the principle of legal certainty and the duty of sincere cooperation.

With respect to the validity of the European Council Decision, the use of the simplified revision procedure under Article 48(6) TEU was, according to the court, justifiable subject to the conditions that it relates to Part III of the TFEU (relating to EU policies) and does not increase the competence of the union. As an amendment to Article 136 TFEU, the decision was formally an amendment to Part III, but it was contended that insofar as the measure impacted on the competence of the EU in economic and monetary policy it might also impact on Part I as well as potentially increasing the competences of the union. Much of the court's analysis focused on whether the European Council decision purported to give Member States competence in an area of monetary policy, which was within the exclusive competence of the EU. For the court, the ESM Treaty established a stabilisation mechanism, which 'complemented' existing structures of economic governance.

However, in establishing a parallel stabilisation mechanism, the court warned that the exercise of powers by Member States via the ESM Treaty could not disregard the obligations of Member States under EU law. For example, Article 13(3) ESM Treaty requires that any memorandum of understanding concluded with a state in receipt of stability support must be compatible with EU law including compliance with Article 125 TFEU. Thus, in allowing Member States to establish mechanisms outside of the structures of the EU Treaties, the court repeatedly emphasised the obligation on Member States to act in a manner consistent with EU law and the integrity of the internal market. As to the compatibility of the ESM Treaty itself with the obligations of Member States under EU law, the court addressed the contention made by the applicant that the ESM Treaty was in conflict with Article 125 TFEU. According to Craig (2013, 3 at 7), Article 125 TFEU inhibits the EU and the Member States from taking on the commitments of other Member States and, in effect, prohibits debt mutualisation. The applicant suggested that the ESM Treaty was either incompatible with Article 125 TFEU or an attempt to evade it. However, in response the court held that the objective of Article 125 TFEU is to ensure fiscal discipline by ensuring that states remain responsible for their own debts and the judgment reinforces the political position that debt-mutualisation is not an EU objective. In that regard, the stabilisation mechanism establishes new loans and lines of credit for which recipient states remain legally responsible. As such, the court concluded that there was no conflict with the provisions of Article 125 TFEU.

The court is clear that the wording of Article 125 TFEU, to the effect that neither the union nor a Member State are to 'be liable for … the commitments of another Member State' or 'assume [those commitments]', is not intended to prohibit either the union or the Member States from granting any form of financial assistance to another Member State. Specifically, this does not prohibit the granting of financial assistance by one or more Member States to a Member State which remains responsible for its commitments to its creditors, provided that the conditions attached to such assistance are such as to prompt that Member State to implement a sound budgetary policy. As regards the ESM Treaty, it is clear that the instruments for stability support of which the ESM may make use under Articles 14 to 18 of the ESM Treaty demonstrate that the ESM will not act as guarantor of the debts of the recipient Member State. The latter will remain responsible to its creditors for its financial commitments. Ultimately, the judgment reflects the court's consistent approach in its case law to maintaining the integrity of the internal market, which the court has consistently viewed as the core of EU economic integration. However, this economic integrity also requires the maintenance of solidarity between Member States, which in the context of the 'bail outs' was being severely tested (Koedooder, 2013, 111 at 139). The court bypasses this political discussion and considers only the legal compatibility of the EU arrangements with the functioning of the internal market. However, in her opinion, Advocate General Kokott acknowledges that, within the framework of economic governance, solidarity between Member States is potentially at risk without further EU intervention.

In the context of the principle of solidarity, Advocate General Kokott considered the scope of Article 125 TFEU and whether in her words ‘Article 125 TFEU was clearly designed at least to exclude the possibility of Member States relying on other Member States to pay their debts and to thereby ensure that they pursue a restrained budgetary policy.’ The Advocate General concluded that a broader interpretation of Article 125 TFEU would be incompatible with the concept of solidarity, as laid down at various points in the Treaties. For example, the parties to the EU Treaty are, in accordance with the preamble to that treaty, pursuing the desire ‘to deepen the solidarity between their peoples’. Under the third subparagraph of Article 3(3) TEU the union is to promote ‘economic, social and territorial cohesion, and solidarity among Member States’. In the chapter on economic policy, Article 122(1) TFEU refers explicitly to solidarity between Member States.

According to Advocate General Kokott there is a clear limit to the scope of Article 125 TFEU, but one which she considers to be compatible with the overall objective of maintaining solidarity between the Member States as defined within the Treaties. On this interpretation, it cannot be inferred from the concept of solidarity that there exists a duty to provide financial assistance of the kind that is to be provided by the ESM. An exclusionary teleological interpretation of Article 125 TFEU would also prohibit the Member States, for example, in the case of an emergency to prevent the serious economic and social effects associated with a State bankruptcy, from voluntarily providing mutual assistance. Emergency assistance to any third State would be permitted, while emergency assistance within the union would be banned. The Advocate General concluded that any such blanket prohibition for emergency assistance would call into question the very purpose and objective of a union and the principle of solidarity.

The judgments in Pringle may have dealt with the strict legal question of compatibility of the ESM with both EU law and national constitutions, but the questions of accountability and legitimacy of EU economic governance remain unresolved. Specifically, what does this new approach to economic governance, and in particular the new decision-making arrangements, mean for both the EU and national parliaments? Jančić (Jančić, 2016, 225 at 234) has argued that the EU fiscal crisis has created new channels of parliamentary involvement in EU economic governance, which have further ‘Europeanised’ their activities. He highlights the ‘approval’ of the European Semester and the reinforced scrutiny over the budgetary process. However, while this may be the case these changes only offer limited opportunities for effective national parliamentary control of policies and legislation, which are deemed necessary to address the economic crisis. Moreover, the argument of greater Europeanisation of national parliamentary activities does not, per se, necessarily indicate that national parliaments are at one on the issues or that the principle of solidarity remains fully intact. Yes, parliaments may be more engaged and more Europeanised, but they also remain accountable to their domestic electorate who have already signalled in several Member States their dissatisfaction with the austerity agenda and the process of EU economic governance.

Overall, the response to the economic crisis has led to the introduction and development, albeit slow, of some redistributive policies at the European level, but the EU is far off agreeing debt mutualisation and fiscal convergence as Lord identifies elsewhere in this volume (Lord, 2017 forthcoming). Thus, new issues of solidarity are raised, both between and inside the Member States, and the operation of the ESM is a key instrument here. For example, Borger (Borger, 2013) has identified the potential for further imbalances that could affect solidarity beyond inter-state relationships which are already evident from the EU’s responses, including maintaining the equilibrium between the state and the market, and between the public and private domain. This changing role of the state and especially its ability to deliver effective social welfare policies is a side effect of the crisis and where the EU response lacks sufficient impact and where the risk to solidarity is most evident.

5. Policy coordination within the European Semester

One consequence of the economic crisis has been the growth of socio-economic inequality across the EU, which undermines the principle of solidarity. The EU acknowledged the need for a revised approach to socio-economic governance primarily because traditional EU policies and governance procedures were unable to address the consequences. As already noted the EU has introduced a series of developments to its institutional architecture and procedures for economic and social governance. Central to these arrangements is the 'European Semester' of policy coordination. Through the European Semester, the Commission, the Council, and the European Council set priorities for the union in the Annual Growth Survey (AGS), review National Reform Programmes (NRPs) and issue Country-Specific Recommendations (CSRs) to Member States, backed up in some cases by the possibility of financial sanctions.

The unique and innovative feature of the regulatory regime that is the European Semester is that this brings together, within a single annual policy coordination cycle, a wide range of EU governance tools and sanctions, which are located in multifarious legal bases. This includes the Stability and Growth Pact, the Macroeconomic Imbalances Procedure, the ESM, the Europe 2020 Strategy and the Integrated Economic and Employment Policy Guidelines. This attempted shift to a coherent and triangulated policy process seeks to provide the EU institutions a more visible and intrusive role in scrutinising and guiding national economic, fiscal, and social policies, especially, but not just exclusively within the Eurozone.

Delivering socio-economic improvement in twenty-eight Member States undoubtedly requires an adaptation of Europeanisation techniques, which form part of the European Semester. This can be most clearly seen through strategies such as Europe 2020 and the Integrated Economic and Employment Policy Guidelines, which do not necessarily utilise traditional methods of governance. What is clear from the consequences of the economic crisis is that a 'one size fits all approach' is not appropriate to address the diverse socio-economic challenges across the Member States, necessitating the need for more ‘soft’ governance and policy coordination.

Following the initial emphasis of the European Semester on crisis management in 2011 and 2012, the European Semester has sought to provide a more balanced and integrated post-crisis response that addresses not just fiscal asymmetries, but also the social disparities that these asymmetries have in large part been responsible for (Zeitlin and Vanhercke, 2014, 65 at 69-70). At the centre of this response have been organizational and procedural developments that seek to reinvigorate the governance strategy known as the Open Method of Coordination (OMC) and which has reinforced the role of social and employment policy actors.

The move away from regulatory uniformity is especially clear with the Country Specific Recommendations, which are tailored to address a variety of issues including poverty reduction, healthcare, education and pension reform, all of which are key challenges that are direct consequences of the economic crisis (Caracciolo di Torella, forthcoming 2017). With respect to the social and employment actors, a number of developments have reinforced their role in the European Semester, which were driven primarily by the Employment, Social Policy, Health and Consumer Affairs Council (EPSCO) and its preparatory committees rather than the Commission. The first of these was the 2011 initiative by Member State representatives on the Social Protection Committee, subsequently endorsed by EPSCO, to ‘reinvigorate’ the Social OMC in the context of Europe 2020.

Within the European Semester the response to the social challenges that have been created by the economic crisis are a case of less ‘hard’ law and more collaborative coordination using ‘soft’ law. Central to this is the role of the Social Protection Committee, which has positioned itself as the key actor in the process of peer monitoring, reviewing and benchmarking procedures, which are the characteristics of the OMC. This seeks to create a more coherent and integrated social and economic policy, which is enveloped within the European Semester. However, the OMC has experienced mixed fortunes since its inception in 2001 in the guise of the Lisbon Process (Szyszczak 2006, Zeitlin and Vanhercke 2014) and the need to reinvigorate the OMC again,in order to deliver the desired objectives is tacit recognition that as a governance process the OMC has limitations with respect to policy delivery and citizen engagement. Coordination of economic and social policies within the European Semester tries to square a circle of budgetary discipline while simultaneously demonstrating that the EU is engaged and active in addressing the socio-economic challenges that have arisen. The residual problem from this conundrum, which has yet to be sufficiently addressed, is that in order to deliver this social agenda the Member States require it is not just policy goals and objectives that need to be set, but that this also requires the provision of sufficient resources. In the context of those Member States where the economic crisis has been most acute and social challenges are greatest, they are the very Member States where the resources are most limited. Moreover, it is not immediately clear how the EU necessarily ‘adds value’, in all instances, to policy delivery through this form of coordination (Caracciolo di Torella, forthcoming 2017).

Finally, from the perspective of national parliaments the shift towards increased policy coordination within the European Semester is not without challenge. This article has already outlined how they face difficulty with monitoring economic governance through the limited opportunities that are available. With respect to the OMC the problem of legitimacy continues (Barrett, 2017, 97 at 108) and this deficit arises, at least in large part, from what Armstrong (2011, 179 at 185) identifies as the limited involvement of national parliaments within the process of policy formulation. While the use of country specific targets and priorities set by the Social Protection Committee can be considered by national parliaments within their overall scrutiny activities of the European Semester, this should not be considered as a rigorous or coherent process. The use of quantitative and qualitative benchmarks and indicators and peer review procedures may be helpful and these mechanisms do provide some degree of accountability for decisions under the OMC. However, as the OMC is primarily concerned with policy coordination, the main scrutiny consequence for national parliaments is the absence of a structured legislative process that culminates in a 'hard' legislative proposal. Targets, however precise they are, can be more readily missed unlike legislative implementation deadlines, which carry with them the threat of enforcement action before the Court of Justice.

6. Concluding remarks

The EU is looking for comprehensive solutions to the economic crisis and the consequent long-term socio-economic problems it has created. High unemployment, social exclusion and poverty are evident in all EU Member States and in some, for example Greece, the problems are particularly acute. The European Semester seeks to provide a 'one stop shop' in terms of a coordinated and coherent EU response and the consideration of economic governance alongside social policy is a welcome step forward. However, the European Semester is by no means a silver bullet that coherently addresses socio-economic woes facing the EU and while questions of legitimacy continue these will undermine both the efficacy of these policies and the commitment to them by Member States.

As this article highlights, the issue for national parliaments is how they can become more influential actors in this process of economic governance that is characterised by the centralising top-down nature of the governance processed. If it is accepted that the exercise of fiscal sovereignty by national parliaments remains, at least for the moment, an elusive goal, the response should be that national parliaments, as clear stakeholders within economic governance, need to determine whether, collectively or individually, effective processes and procedures for scrutiny and engagement can be achieved and how they should go about achieving this.

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