

The Division between Monetary and Fiscal Policy

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Introduction

Vielen Dank für die Einladung

1. Definition of 'monetary policy' versus 'fiscal policy': Treaty, case law
2. Legal issues and policy issues

Definition issues - 1

- neither monetary policy nor fiscal policy have been defined in the TFEU (or the TEU, for that matter)
- “economic policy” more or less defined in *Pringle*, but inconclusively because too limited
- indirect ‘definition’ by way of indication of the objectives and instruments
- inherent link between the two because of collateral requirements and market customs

Definition issues - 2

- ❑ ‘Economic policy’ in *Pringle* (para. 64):
“Articles 2(3) and 5(1) TFEU **restrict** the **role** of the Union in the area of economic policy **to** the adoption of **coordinating** measures”
- ❑ Criticism: ECJ ignores Article 122 (1) TFEU
- ❑ Criticism: Articles 119, 120 and 121 also relevant (merely mentioned in paras 51, 92)

Reminder: role of economic policy

- TFEU defines exclusive and shared competences
- Article 3 enumerates exclusive competences, among which: “(c) monetary policy for the Member States whose currency is the euro”
- Article 4 enumerates shared competences
 - Article 4 TFEU does not mention ‘economic policy’ but includes internal market, social policy, economic cohesion, consumer protection, energy (among others)
- Article 5 devoted to economic policy coordination as a(n implied) third category

Article 2 (3) TFEU

Part One – Principles

TITLE I

CATEGORIES AND AREAS OF UNION COMPETENCE

Article 2

(...)

3. The Member States shall coordinate their economic and employment policies within arrangements as determined by this Treaty, which the Union shall have competence to provide.

(...)

Article 5 TFEU

1. The Member States shall coordinate their economic policies within the Union. To this end, the Council shall adopt measures, in particular broad guidelines for these policies.

Specific provisions shall apply to those Member States whose currency is the euro.

2. The Union shall take measures to ensure coordination of the employment policies of the Member States, in particular by defining guidelines for these policies.
3. The Union may take initiatives to ensure coordination of Member States' social policies.

Article 122(1) TFEU

(ex Article 100(1) TEC)

1. Without prejudice to any other procedures provided for in the Treaties, **the Council**, on a proposal from the Commission, **may decide**, in a spirit of solidarity between Member States, **upon the measures appropriate to the economic situation**, in particular if severe difficulties arise in the supply of certain products, notably in the area of energy.

‘Conveniently forgotten’ competence, exercised in energy area only (strategic oil reserves), but applicable wider.

Article 122(2) TFEU

(ex Article 100(2) TEC)

2. Where a Member State is in difficulties or is seriously threatened with severe difficulties caused by natural disasters or exceptional occurrences beyond its control, the Council, on a proposal from the Commission, may grant, under certain conditions, Union financial assistance to the Member State concerned.

The President of the Council shall inform the European Parliament of the decision taken.

Article 119(1) TFEU

(ex Article 4(1) TEC)

1. For the purposes set out in Article 3 of the Treaty on European Union, **the activities of the Member States and the Union** shall include, as provided in the Treaties, the adoption of **an economic policy** which is **based on the close coordination of Member States' economic policies**, on the internal market and on the definition of common objectives, and conducted in accordance with the principle of an open market economy with free competition.

Article 120

(ex Article 98 TEC)

Member States shall conduct their economic policies with a view to contributing to the achievement of the objectives of the Union,

as defined in Article 3 of the Treaty on European Union, and in the context of the broad guidelines referred to in Article 121(2).

The Member States and the Union shall act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the principles set out in Article 119.

Principles set out in Article 119

3. These activities of the Member States and the Union shall entail compliance with the following guiding principles:
- stable prices,
 - sound public finances and monetary conditions and
 - a sustainable balance of payments.

Definition issues - 3

- ECJ defines 'monetary policy' on the basis of objectives rather than instruments
- Para. 53 *Pringle*: "(...) it must first be observed that the [TFEU], which contains no definition of monetary policy, refers, in its provisions relating to that policy, to the **objectives**, rather than to the **instruments**, of monetary policy."
- Primary objective of monetary policy: **price stability**, secondary objective: support of economic policies in the European Union

Definition issues - 4

- “As regards, first, the objective pursued by that mechanism, which is to safeguard the **stability of the euro area as a whole**, that is **clearly distinct** from the objective of **maintaining price stability**, which is the primary objective of the Union’s monetary policy. Even though the stability of the euro area may have repercussions on the stability of the currency used within that area, **an economic policy measure cannot be treated as equivalent to a monetary policy measure for the sole reason that it may have indirect effects on the stability of the euro.**” (para. 56 *Pringle*)

Definition issues - 5

Quoting the ECJ again (*Pringle*, paras 60, 64 and 160):

“ In the light of the objectives to be attained by the [ESM] the establishment of which is envisaged by Article 1 of Decision 2011/199, the instruments provided in order to achieve those objectives and the close link between that mechanism, the provisions of the [TFEU] relating to economic policy and the regulatory framework for strengthened economic governance of the Union, **it must be concluded that the establishment of [the ESM] falls within the area of economic policy.**”

“it must be observed that, since Articles 2(3) and 5(1) TFEU restrict the role of the Union in the area of economic policy to the adoption of coordinating measures, the provisions of the [TEU] and [TFEU] do not confer any specific power on the Union to establish a stability mechanism of the kind envisaged by Decision 2011/199 [amendment to TFEU on establishment ESM]”

“the activities of the ESM fall under economic policy”

Definition issues - 6

- Monetary policy: measures intended to maintain price stability

- *Pringle*, paras 53 and 54:

53 In that regard, it must first be observed that the [TFEU], which contains no definition of monetary policy, refers, in its provisions relating to that policy, to the objectives, rather than to the instruments, of monetary policy.

54 Under Articles 127(1) TFEU and 282(2) TFEU, the primary objective of the Union's monetary policy is to maintain price stability.

Definition issues - 7

- ❖ Alternative definition: on the basis of instruments
- ❖ ESCB Statute, Chapter 4 (Monetary functions and operations of the ESCB): accounts, open market and credit operations, minimum reserves, 'other instruments', etc.
- ❖ But: other instruments relevant, as well:
 - **Regulatory power** (Article 34, referring to 3.1, first indent [to define and implement the monetary policy of the Union], Articles 19.1 [minimum reserves], 22 [clearing and payment systems] or 25.2 [specific tasks in prudential supervision])
 - **Advisory competence**

Advisory competence - 1

- Article 127(4) TFEU / Article 4 ESCB Statute:
 - a) the ECB shall be consulted:
 - on any proposed Union act in its fields of competence;
 - by national authorities regarding any draft legislative provision in its fields of competence, but within the limits and under the conditions set out by the Council in accordance with the procedure laid down in Article 41;
 - (b) the ECB may submit opinions to the Union institutions, bodies, offices or agencies or to national authorities on matters in its fields of competence.
- Council Regulation 98/415/EC on the consultation of the ECB by national authorities on draft legislative provisions

Advisory competence - 2

- ❑ Extensive unsolicited advice by ECB on fiscal and structural policies of Member States
- ❑ Involvement in assessment of economic policy
- ❑ Notably vis-à-vis 'programme States': 'troika'
- ❑ Codified in Regulation 472/2013 ('two-pack'): 'enhanced surveillance' in respect of financial sector stability and sustainability of public debt



Introductory statement Willem F. Duisenberg 30 August 2001

“At this juncture, I should like to express concern about the impact that slower growth may have on the determination of the governments of some countries to adhere strictly to the Stability and Growth Pact in the context of their existing stability programmes. Under the present circumstances, the automatic stabilisers should only be allowed to work fully in those countries whose budget positions are close to balance or in surplus. Let me emphasise that a medium-term perspective is essential for the conduct of fiscal policies in all euro area countries. Short-term discretionary measures aimed at strengthening domestic demand risk having an unwelcome impact on the economy, not least on account of time lags. In addition, if such measures are not consistent with the Pact, they may undermine the credibility of the consolidation process. ”



Introductory statement Jean-Claude Trichet 6 November 2008

- “In the area of **fiscal policy**, medium-term challenges, such as population ageing, strongly underline the need for fiscal policy to focus on medium-term sustainability and thereby build confidence. Accordingly, and as recently confirmed by the ECOFIN Council and the European Council, the fiscal policy provisions of the Maastricht Treaty and the Stability and Growth Pact should continue to be applied fully. The fiscal rules are one of the indispensable pillars of EMU and the single currency, which must remain firmly in place so as not to undermine the confidence in fiscal sustainability. Finally, the current situation calls for ensuring the high quality and timeliness of statistical information on government interventions to ensure the transparent and accountable use of public funds.
- Turning to **structural policies**, the ongoing period of weak economic activity and high uncertainty about the economic outlook will require a significant degree of resilience from the euro area economy. The current situation should therefore be seen as a catalyst to foster the implementation of necessary domestic reforms so that countries may fully exploit the benefits offered by the enhancement of international trade and market integration, in line with the principle of an open market economy with free competition.”



Introductory statement

Mario Draghi

6 June 2013

“With regard to **fiscal consolidation** and **structural reforms**, the Governing Council welcomes the progress made and encourages governments to continue with determined efforts. It is essential that euro area countries do not unravel their efforts to reduce government budget deficits. The new European governance framework for fiscal and economic policies should be applied in a steadfast manner. In this respect, the Governing Council considers it very important that decisions by the EU Council to extend the time frame for the correction of excessive fiscal deficits should remain reserved for exceptional circumstances. At the same time, it is necessary to continue, where needed, to take legislative action or otherwise promptly implement structural reforms. Structural reforms should, in particular, target competitiveness and adjustment capacities in labour and product markets, thereby helping to generate employment opportunities in an environment of unacceptably high unemployment levels, especially among young workers, prevailing in several countries.

Combined action on the fiscal and structural front should mutually reinforce fiscal sustainability and economic growth potential and thereby foster sustainable job creation.”

Attuning attitudes - 1

✓ Mutual representation in decision-making bodies facilitates attunement between fiscal and monetary policies (Articles 284(1) and (2) TFEU):

1. The President of the Council and a Member of the Commission may participate, without having the right to vote, in meetings of the Governing Council of the European Central Bank.

The President of the Council may submit a motion for deliberation to the Governing Council of the European Central Bank.

2. The President of the European Central Bank shall be invited to participate in Council meetings when the Council is discussing matters relating to the objectives and tasks of the ESCB.

Attuning attitudes - 2

- ❑ ECB President should be invited to attend meetings of the European Commission, as well
- ❑ Strengthened position of the Commission (reversed QMV under 'six-pack', strengthened role of Olli Rehn, surveillance of budgetary data) **calls for this Treaty amendment...**
- ❑ Prior to Treaty amendment, constitutional practice may develop

Links between monetary and fiscal policies

- Instruments of monetary policy: collateral
- Collateral includes public debt
- Widening of the collateral requirements (Städter Case C-102/12 P on the eligibility of marketable debt instruments issued or guaranteed by the (P, IRL, GR) Government (*“Notenbankfähigkeit der von der griechischen, der irischen bzw. der portugiesischen Regierung begebenen oder garantierten marktfähigen Schuldtitel”*))

ECB announcement, 26 July 2012

“Within our mandate, the ECB is ready to do whatever it takes to preserve the euro. And believe me, it will be enough.”

ECB President Mario Draghi,
London, 26 July 2012

SMP and OMT

- Differences in programmes:
 - ❑ Strict conditionality of OMT versus SMP
 - ❑ Limited to short-end of yield curve (like monetary policy actions)
 - ❑ Transparency: publication of OMT interventions
 - ❑ OMT encompasses buying and selling
 - ❑ Ex ante unlimited, effectively limited
- OMT introduced to “eliminate unfounded fears regarding the reversibility of monetary union” and interference with the ECB’s monetary policy
 - maintaining monetary transmission mechanism
 - “the key interest rate had lost its key function” (of signalling monetary policy decisions and setting interest rate level in euro area, RS)
 - “a currency can only be stable if its continued existence is not in doubt”



Market discipline: excessive reliance



Pringle Case, para. 135:

“The prohibition laid down in Article 125 TFEU ensures that the **Member States remain subject to the logic of the market** when they enter into debt, since that ought to prompt them to maintain budgetary discipline. Compliance with such discipline contributes at Union level to the attainment of a higher objective, namely maintaining the financial stability of the monetary union.”

Financial markets did not discipline governments in the first decade of EMU (reminder: Franco-German obstruction of the Excessive Deficit Procedure/Stability & Growth Pact); then, they over-reacted and almost blew up the single currency instead of acting as a brake on fiscal excess.



Arguments before national court



- ❑ Arguments before national court by constituent elements of the Eurosystem
- ❑ Article 14.3 ESCB Statute: “The national central banks are an integral part of the ESCB and shall act in accordance with the guidelines and instructions of the ECB.”
- ❑ Two legal reasons to consider national courts not competent to sit in judgment on the ECB’s actions:
 - (1) this goes against the way the EU has been established and the order between the ECJ and national courts (supremacy of EU law; *Costa/ENEL* Case 6/64), and
 - (2) hearing arguments from different central banks in the Eurosystem goes against the independence which the Treaty grants the central banking system of Europe.

Concepts and a narrative

- ❑ Concepts used: ‘democracy’, ‘independence’, ‘political union’, ‘transfer union’, ‘sovereignty’, ‘State’ without exactly defined meaning
- ❑ What is the European Union? Federation, confederation, governance network, international organisation?
- ❑ What is more, the participants in the discussion attach different meanings to the same concept
- ❑ Plus: national divisions and prejudices (re-)surface
- ❑ There is no European media space
- ❑ There is no common narrative on Europe

Concepts and a narrative

- ✓ We need to make explicit our understanding of terms
- ✓ We need to rely less on concepts of a different age
 - Example: the use of 'country' as a fixed concept (IMF membership)
- ✓ We are in need of a common story (again)
- ✓ We should be aware of the influence of speech on our behaviour
 - Examples: the meaning of the word '*Schuld*' (debt and guilt), or the words used for spending less as a government (austerity, '*Sparmaßnahmen*')



Dr Christina Eckes, at: <http://acelg.blogactiv.eu/>

Dr Lorenzo Bini Smaghi, at:

<http://blogs.ft.com/the-a-list/2013/06/14/the-ecb-is-doing-the-right-thing/#axzz2Wau7MEPr>

Dr René Smits, at: <http://fd.nl/economie-politiek>

</columns/rene-smits/>

Germany's leading role: heart and mind

- Euro and Europe are more than a matter of money
- Calculating attitude is mistaken
- *“Das Bekenntnis zu Europa ist für uns nicht nur eine Frage der Vernunft, sondern auch eine Herzensangelegenheit”*
(Our commitment to Europe is not only a question of reason but also a matter for the heart - CDU document *Starkes Europa - Gute Zukunft für Deutschland* [A strong Europe - A good future for Germany])

<http://www.cdu.de/sites/default/files/media/dokumente/111114-beschluss-europa.pdf>