

Research Proposal

**“How to reconcile European Economic Governance with the
Budgetary Autonomy of Parliaments?”
A Comparative Federal Response to the Euro Crisis**

Main field of research
Constitutional law, European law

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Aspired title
Doctor iuris (Dr.ⁱⁿ iur.)

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1 Summary of research proposal

The recent European financial and debt crisis has made clear how significantly the European Union (EU) economy is affected by the health of individual Member States' (MS) economies:¹ Excessive spending of one affects the economy of the whole.² Billions of Euros have been spent to limit the effects of the crisis. A need for more effective control over national spending was revealed, leading to a strengthening of EU control mechanisms.³

When creating the European Economic and Monetary Union (EMU), the MS remained competent over economic and fiscal policies.⁴ The national parliaments retained budgetary autonomy, often seen as a key element of a democratic state.⁵ Consequently, the past increase of EU controls over national debt entailed intrusions with domestic policies.

The crisis has seemingly left us with a choice between: giving "Brussels" the power to control national budgets in order to "protect" the Eurozone or to pay full respect to the national parliaments' budgetary autonomy, an option that may contribute to a next sovereign debt crisis. The proposed research suggests that a "middle way" has to be found. The main hypothesis is that federal comparative insights will help to strike a balance between: effective EU budgetary control and the need to respect national democracy.

A case study will compare how federal systems, including two EU MS (Austria and Germany) and one system outside of the EU framework (Switzerland), balance budgetary control with respect for state⁶ (Länder) autonomy. The core questions this study aims to answer are: How do federal states divide budgetary competences between the federation and the states? Is there a tendency to centralise or decentralise budgetary powers? What federal rules and mechanisms are in place to control state debt? Are they designed to respect state autonomy and if so, to what extent? And in a further step, how do the federal rules resemble or differ from EU surveillance mechanisms? Can federal insights help to design an effective EU budgetary control system that respects the national parliaments' budgetary autonomy?

Examining federal rules in a first step and comparing them with the EU system in a second step, will add valuable insights to the sensitive matter of budgetary control at the national, as well as at the supranational level.

¹ P. Craig and G. de Burca, *EU LAW. TEXT, CASES, AND MATERIALS* (5th edn, 2011) 707.

² M. Hallerberg, 'Fiscal federalism reforms in the European Union and the Greek crisis' (2011) 12 *European Union Politics* 127, 128.

³ L. Schuknecht, P. Moutot, P. Rother and J. Stark, 'The Stability and Growth Pact: Crisis and Reform' (2011) 129 *European Central Bank - Occasional Paper Series* 1, 4 and K. Armstrong, 'The New Governance of EU Fiscal Discipline' (2013) *European Law Review* 601, 601-602.

⁴ P. Craig and G. de Búrca, *EU law. Text, cases, and materials* (2015) 728.

⁵ Marek Antos, 'Fiscal Stability Rules in Cental European Constitutions', in M. Adams, F. Fabbrini and P. Larouche (eds.), *The constitutionalization of European budgetary constraints* (2014) 207 and Craig, Búrca *op cit* n 4 *supra* 721.

⁶ The term state is here used in a generic way.

2 Problem statement

The financial crisis has highlighted the unique nature of the EMU. With the creation of a single currency, defined by the European Central Bank, the monetary union was fully established.⁷ The case of the economic union is different, however. While the MS have to “coordinate their economic policies”,⁸ they retained authority over economic and fiscal policies.⁹ Thus, spending policy remained within the MS’ competences. As a result the EMU is a rather unique form of a monetary union, compromising one European monetary policy with various domestic economic policies.¹⁰

Notwithstanding this different treatment of monetary and economic policies, they are closely interconnected: As it has been demonstrated by the Euro crisis, excessive spending of one MS can affect the value of the single currency and the health of the Eurozone as a whole.¹¹ Early attempts recognised this close interdependence of the Eurozone members. An EU system of budgetary control was created.¹² It proved to be ineffective, however. In 2002-03 several MS accumulated high debts.¹³ The rules of the Stability and Growth Pact (SGP), in particular, were not taken seriously.¹⁴ From 2008 onwards the financial situation worsened. Notably for Greece, financial assistance had to be provided. The dependence on a single currency even forced the MS to bail-out financially distressed states to limit the effects of the crisis.¹⁵

Various factors contributed to the crisis. One of them was the unique nature of the EMU. Due to the economic and fiscal autonomy of the MS, excessive spending of single MS could not be prevented.¹⁶ The EU governance system over national spending failed.¹⁷ It was confronted with evermore criticism: As Van Rompuy stated in 2012: “the crisis has shown the need to strengthen [...] the EMU’s surveillance framework”.¹⁸ Reforms followed. A number of legislative acts aimed to limit national debt: E.g.: The ‘six-pack’¹⁹, ‘two-pack’²⁰ and the Treaty on Stability, Coordination and

⁷ Art 3(1)a) TFEU: “The Union shall have exclusive competence [...] in monetary policy for the Member States whose currency is the euro.”

⁸ Art 5(1) TFEU.

⁹ K. Tuori and K. Tuori, *The Eurozone crisis. A constitutional analysis* (2014) 31.

¹⁰ Art 119, Art 120 f. and 127 f. TFEU and M. D. Bordo, L. Jonung and A. Markiewicz, ‘A Fiscal Union for the Euro: Some Lessons from History’ (2013) 59 *CESifo Economic Studies* 449, 455.

¹¹ Craig, Búrca *op cit* n 4 *supra*, 728 and Council Regulation (EC) 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure [1997] OJ L209/6, Rec 8.

¹² Such as the multilateral surveillance procedure according to Art 121 TFEU and the excessive deficit procedure laid down in Art 126 TFEU. The Stability and Growth Pact (SGP) complemented the Treaty provisions.

¹³ France, Germany, Portugal and Italy: *ibid* 737.

¹⁴ Hallerberg *op cit* n 2 *supra* 137.

¹⁵ A. Hinarejos, *Euro area crisis in constitutional perspective* (Oxford, 2015) 13f.

¹⁶ M.P. Maduro, ‘A new governance for the European Union and the Euro.: Democracy and Justice’ (2012) 11 *EUI RSCAS PP* 111, 112.

¹⁷ M. Nettesheim, *Nettesheim Krisenbewältigung in der Euro-Zone als Entscheidungstrilemma* (Trier, 8.-9. Januar 2015).

¹⁸ H. van Rompuy, J. M. Barroso, J.-C. Juncker and M. Draghi, *Towards a Genuine Economic and Monetary Union* (5 December 2012) 17.

¹⁹ Regulation (EU) No 1173/2011 of the European Parliament and of the Council of 16 November 2011 on the effective enforcement of budgetary surveillance in the euro area OJ (2011) L 306/ 1; Regulation (EU) No 1174/2011 of the European Parliament and of the Council of 16 November 2011 on enforcement measures to correct excessive macroeconomic imbalances in the euro area OJ (2011) L 306/8 etc.

Governance in the Economic and Monetary Union (Fiscal Compact). The European Semester strengthened co-operation of economic policies.²¹ In addition, compliance with the austerity measures was defined as a precondition for financial support.²² This response to the crisis departed from former EU policy, not only in intensity, but also in form: Increasingly International law was used to fill the gaps EU law did not foresee (e.g.: the ESM and Fiscal Compact).²³ These changes all contributed to a fundamental strengthening of the EU's role in monitoring national debt.

This “multi-speed integration” led to evermore intrusions with domestic policies, in particular: with budgetary policies.²⁴ Arising from the constitutional traditions of the MS, national budgetary autonomy is considered as an essential part of parliamentary sovereignty.²⁵ Economic and fiscal competences are often seen as the foundations of state identity.²⁶ Therefore, the increase of EU controls caused a number of cases challenging the democratic legitimacy of EU and intergovernmental acts.²⁷ According to the German constitutional court national budgetary autonomy is a key element of a democratic state. The parliament shall “not transfer its budgetary responsibility to other actors”.²⁸ The MS have to remain “the master of their own budgets”.²⁹ This means: the past trend towards a centralisation of economic and fiscal powers on the EU level faces certain limitations from the constitutional law perspective.

Also from the EU law perspective, the possibilities to increase EU controls over national spending have been exhausted. The Union lacks the necessary competences.³⁰ A rather broad consensus within the MS can be observed, against a stronger EU role in managing national spending. Consequently, a treaty change is unlikely to happen in the near future.

So what ‘happens next for the EMU’? The creation of a “real” economic, monetary and fiscal union, even though supported by many, in politics as well as in academia (E.g.: Commission Blueprint; Van

²⁰ Regulation 472/2013 on the strengthening of economic and budgetary surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability, OJ (2013) L140/1 and Regulation 473/2013 on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the euro area, OJ (2013) L 140/11.

²¹ Maurice Adams, Federico Fabbrini, Pierre Larouche, ‘Introduction: The Constitutionalization of European Budgetary Constraints: Effectiveness and Legitimacy in Comparative Perspective’, in M. Adams, F. Fabbrini and P. Larouche (eds.), *The constitutionalization of European budgetary constraints* (2014), 1, 3 and 10.

²² *ibid* 4 and Francesco Costamagna, ‘The Impact of Stronger Economic Policy Co-ordination on the European Social Dimension: Issues of Legitimacy’, in M. Adams, F. Fabbrini and P. Larouche (eds.), *The constitutionalization of European budgetary constraints* (2014), 359.

²³ In particular, ESM Treaty and Fiscal compact in: M. Everson and C. Joerges, ‘Who is the Guardian for Constitutionalism in Europe after the Financial Crisis?’, 63 *LSE ‘Europe in Question’ Discussion Paper Series (LEQS)* (June 2013) 12.

²⁴ Hinarejos *op cit* n 15 *supra*, 13 and F. Fabbrini, ‘The Euro-Crisis and the Courts: Judicial Review and the Political Process in Comparative Perspective’ (2014) *Berkeley Journal of International Law* 64, 87.

²⁵ Eberhard Grabitz, Meinhard Hilf, Martin Nettesheim, ‘AEUV Art. 126 Vermeidung übermäßiger Defizite; Haushaltsdisziplin’, in *Das Recht der Europäischen Union*; Grabitz, Hilf, Nettesheim 5.

²⁶ Hinarejos *op cit* n 15 *supra* 156.

²⁷ In Estonia, France, Ireland, Austria, Poland, the Netherlands and Germany: See *ibid*, 148.

²⁸ BVerfG, 2 BvR 987/10 *Judgment of 07 September 2011* Rn. 1 and Ingolf Pernice, M. P. Maduro, J.-V. Louis, J. A. Emmanouilidis, B. De Witte, R. Dehousse, W. Wessels, J. H. H. Weiler, M. Kumm, A. Manzella, G. L. Tosato, V. A. Schmidt and I. Begg, *Challenges of multi-tier governance in the European Union. Effectiveness, efficiency and legitimacy*. Compendium of notes (2013) 20.

²⁹ BVerfGE 129, 124 179-180 and GFCC case 2 BvR 1390/12 of 12.09.2012 – ESM, para 197.

³⁰ Hinarejos *op cit* n 15 *supra* 155.

Rompuy Plan), appears to be difficult: not only due to the required treaty change, but also because such an extensive transfer of MS' competencies to Brussels faces national constitutional obstacles.

Another possible scenario for the EU is limiting its role in monitoring national policies. The EU could take a step back by keeping the level of control over national spending to a minimum. This would pay full respect to the national parliaments' budgetary autonomy. As the past has shown (ineffectiveness of the SGP), however, non-effective EU control mechanisms over national spending contribute to the accumulation of excessive national debt. This may lead to a next European financial and debt crisis.

The Euro crisis has left us with the challenge to harmonize two seemingly inconceivable requirements: Effective European supervision over national budgets and the national parliaments' competence over budgets and spending. This problem leads to the following research questions:

3 Research questions

How do federal systems control state spending? Can federal comparative insights help to design an effective European control system over national spending that respects the primary budgetary autonomy of national parliaments?

4 Specific aim and contribution to the field

This study suggests that a "middle way" has to be found between an outright transfer of national powers to the EU and unfettered MS' independence in their budgetary management. This research aims to contribute ideas to EU control mechanisms that harmonize both sides.

In order to find the right mix of control and autonomy this study develops a federal response.³¹ Federalism is thereby understood as a system of shared powers between the federation and its sub-national units.³² It is one of the major functions of federal constitutions to strike a balance between the "federation and its component entities".³³ Federal states have a long history of dividing and shifting competences,³⁴ particularly in the budgetary sector. According to the German doctrine, each federal unit is sovereign and enjoys certain autonomy in exercising allocated state powers.³⁵ The degree of autonomy varies among federal systems.

Considering the above taken definition of federalism, a federal approach might be best suited to address the challenges that have been with the EU since the crisis. Due to the unique form of the EMU, it lacks historical experience that could be relied on to create a fair balance between EU control

³¹ A. Cuyvers, *The EU as a confederal union of sovereign member peoples. Exploring the potential of American (con)federalism and popular sovereignty for a constitutional theory of the EU* (IS.I., op. 2013) 417 ff.

³² K. Lenaerts, 'Constitutionalism and the Many Faces of Federalism' 1990 *The American Journal of Comparative Law* 205 and according to the Austrian and German doctrine: M. Stelzer, *An introduction to Austrian constitutional law* (3rd edn, 2014) 41.

³³ Lenaerts *op cit* n 32 *supra* 235 and A. C. McLaughlin, *The foundations of American constitutionalism* (Union, N.J., 2002) 145-149.

³⁴ Lenaerts *op cit* n 32 *supra* 235.

³⁵ *ibid* 235 and 205-206.

over national policies and national democracy. Therefore, a comparative analysis of multi-level systems might be helpful.

The main hypotheses are: federal rules on state spending respect the primary budgetary autonomy of state parliaments. The current EU governance system over national spending is already exceeding the level of budgetary control in some federal systems such as Switzerland. By comparing different federal rules and mechanisms that share the function to control *state* spending, helpful insights will be found for an EU control system over *national* spending. A system that is both: effective while paying respect to the primary budgetary autonomy of the national parliaments.

This study falls within the field of comparative federalism (Bischof, 2015; Hueglin and Fenna, 2015; Burgess, 2006; Elazar, 2006; Watts, 1999) and fiscal federalism (Shah, 2007; Oates, 1972). The method of functionalism will be applied (Samuel, 2014; Ginsburg and Dixon, 2011, Jackson, 2010; Tushnet, 2006). Subsequently it deals with EU constitutionalism (Von Bogdandy and Bast, 2010) and EU (con)federalism (Cuyvers, 2013; Fabbrini, 2013; Vitzthum, 2000; Merten; 1999).

In these research fields it fills a gap, as comparing the federal systems of Austria, Germany and Switzerland has not yet been done with a specific focus on state spending. This study builds on former comparative studies between federal systems and the EU (in particular: Cuyvers, 2013; Burgess, 2009; Elazar, Church and Dardanelli, 2005; Börzel and Hosli, 2003; 1998) and recognises the potential that federal insights offer for addressing the goals and challenges of the European Union.³⁶

5 Comparative approach

The comparative study will be a *functional* one: federal rules in Austria, Germany and Switzerland will be compared that share the *function* to control state spending. This will include legal analysis of: constitutional provisions, legislation, inter-state treaties, case-law as well as parliamentary debates. To that end the federal findings will be compared to the EU system of budgetary control.

How the comparison will work

After introducing the conflict between EU budgetary control mechanisms and the national parliaments' budgetary autonomy in *Part I* of this study, *Part II* will focus on the federal comparison. The comparison will analyse the same elements country by country. It will take place in three steps:

The first section will introduce the federal structures in each system. Examining the division of power between the federation and the states will provide an essential background to understand the rules on state spending in their own federal context.

The second section will compare the allocation of financial competences between the federal units in Austria, Germany and Switzerland. In a first step an historical outline will be provided in order to understand the current situation and legal background in a second step. Particular attention will be paid to the division of tax competences, tax revenue sharing and equalisation transfers. Reference will be

³⁶ A. Cuyvers, 'The Confederal Comeback: Rediscovering the Confederal Form for a Transnational World' (2013) *European Law Journal* 1.

made to the states' role in negotiating the budget as well as the mechanisms and institutions available to settle conflicts between the federation and the states. This part of the research will illustrate the powers of the federal government *versus* the states in financial matters.

The third section is the main part of this research and will provide answers to the question on how state spending is monitored and sanctioned in Austria, Germany and Switzerland. In particular, the scope, functioning and intensity of federal control over the states in managing budgets will be examined.

At the end of *Part II*, the main findings will be analysed. The aim is to explore if and if so, how the rules are designed to respect the states' autonomy in budgetary management. The comparative conclusion will show that the level of federal control over state spending differs among the federal systems. While in some it is particularly high, in others the states enjoy a wide margin of discretion in managing debt.

Part III will subsequently compare the federal findings to the EU control system over national spending. This part of the study aims to identify and extrapolate similarities and differences between federal- and EU rules. This will illustrate whether the EU system lies beneath or already above the federal rules and practices to manage state spending and debt.

The last part of this research will offer an overall comparative conclusion. In addition, the potential of the federal findings for the EU system of budget control will be explored. Of course, one cannot apply the federal rules on the EU directly. This study suggests, however, that solutions may be found by extracting, combining and adapting rules and mechanisms from the federal national systems.³⁷

Why Austria, Germany, Switzerland and why comparing them to the EU?

The choice of Austria, Germany and Switzerland is based on substantial similarities, but also differences among them. All three states represent federal systems. Based on federal structures, they share a long history with the topic of dividing competences within multi-level structures. It has always been a sensitive balancing act. Historical events such as German unification had a great impact on the relationship between the federation and the states as well as on the relationship among the states. Looking at the factors that contributed to shifts of power from one side to the other may increase the value of the comparison for the EU.

In Austria, and to a certain extent also in Germany, a trend towards more centralisation, particularly when it comes to financial matters, can be observed. Still, cooperative elements, such as the use of inter-state treaties, play an essential role in the "fight" against excessive debt. Likewise, the EU has made use of intergovernmental treaties (Fiscal Compact) to enforce budgetary discipline. The content and form of inter-state treaties on the national level might provide some useful insights for similar treaties on the supranational level. In addition, Austria and Germany are both members to the

³⁷ Cuyvers *op cit* n 31 *supra* 712.

EU. Both have to implement EU rules. The methods they apply in regard to autonomy in managing the budgets differ, however.

Switzerland is “exotic” in many ways: The cantons enjoy more autonomy in exercising state powers. They hold most tax raising powers. State and municipality insolvency is a possible consequence of debt. Switzerland is not a member to the EU. Therefore, the methods to enforce budgetary discipline differ profoundly from the Austrian and German ones. However, similarities will also be shown. Taking one federal system as the “most different” country may help to identify some “close-to-universal “requirement”” for preventing state debt.³⁸ Switzerland has already been used as an example during the European integration process.³⁹ As this “confederal” system resembles the EU in many ways, it will provide helpful information as how to exercise control in a multi-level system.

The differences between the EU and the federal systems are deep. Nevertheless, the federal- as well as the supranational systems are faced with similar challenges when it comes to balancing powers between different players. Analysing the budgetary control mechanisms on the national as well as on the EU level may help to better understand the “current structure and functioning of the European system of multilevel governance”.⁴⁰ Comparing federal rules to the EU is nothing new. Comparative studies have already added valuable contributions to the EU debate on budgetary control: Federal rules in Germany and Switzerland have been used as an example for the creation of the “debt-break” rule of the Fiscal Compact.⁴¹ Furthermore, when faced with the dynamics of the European integration process, remaining open to constitutional comparison has always been a major driving force.⁴²

6 Delimitation

This research as it has been introduced so far faces several limitations. To name a few: dealing with complex, constitutional and political concepts such as federalism or democratic principles, in addition to comparing these systems in a second step. Federal norms and mechanisms can be understood very differently, depending on variations in legal history and theory.⁴³ This comparative study, however, does not claim to analyse federalism in general; it focusses on a concrete comparison of federal rules and mechanisms that serve the function to control spending. Any conclusions are therefore limited to this scope as well. In addition, the budgetary surveillance mechanisms at hand are

³⁸ M. V. Tushnet, *Advanced introduction to comparative constitutional law* 6.

³⁹ Cuyvers *op cit* n 36 *supra* 29 and T. A. Börzel and M. O. Hosli, ‘Brussels between Bern and Berlin: Comparative Federalism Meets the European Union’ (2003) *Governance* 179 and C. Church and P. Dardanelli, ‘The Dynamics of Confederalism and Federalism: Comparing Switzerland and the EU’ 2005 *Regional and Federal Studies* 163.

⁴⁰ Börzel, Hosli *op cit* n 39 *supra* 179.

⁴¹ M. Everson and C. Joerges, ‘Who is the Guardian for Constitutionalism in Europe after the Financial Crisis?’ (2013) *LEQS Paper* 12.

⁴² S. Schumann, ‘Grenzenlose Freiheit für den EuGH? Zur legitimierenden und bindenden Kraft wertender Rechtsvergleichung’ (2010) *Journal für Rechtspolitik* 240, 242 – 443.

⁴³ G. Samuel, *An introduction to comparative law theory and method* (2014) 6 and V. C. Jackson and M. V. Tushnet, *Comparative constitutional law* (New York, [St. Paul, Minn.], 2nd edn, 2006) 7 and V. C. Jackson, *Constitutional engagement in a transnational era* (2013) 227 ff.

complex and subject to frequent changes. It will be satisfactory to provide an overview and to illustrate general directions of development.

Of course one also has the “problem of comparability itself”.⁴⁴ Differences between the federal systems are striking, all the more when it comes to a comparison between federal systems and the EU: a union with an uncertain future, struggling to keep all parties together. Beside the complicated situation with the EU, also other federal systems might have been suited for a comparison. The study has a specific focus on Austria, Germany and Switzerland and it consequently limiting its potential to hold general conclusion on federal rules and practices.⁴⁵

To finish with a last limitation (even though more could be added): This study covers a cross-border topic as the legal aspects of budgetary systems are closely intertwined with economic and political aspects. All dimensions are closely connected: Constitutional law with economics, whereas the political side is often laid down in legal form.⁴⁶ All these limits affect the potential value of the proposed comparative research.

7 Relevance of the research

Despite the mentioned limitations, the scope and basis of this comparison is sufficient to yield useful and robust findings to contribute to the on-going debate on budgetary control. The comparative study of Austria, Germany and Switzerland itself already provides a useful contribution to the current debate. The federal insights will be useful to find solutions and opportunities for reforms in the national systems, contributing to the discussion on fiscal equalisation in Austria, for example.

To that end, the insights from the comparative study might challenge the EU system as a whole and provide suggestions on how it can be improved to meet future challenges in the budgetary sector. By examining the federal rules on budgetary control in a first step and comparing them with EU rules in a second step, a federal European model may be inspired that combines both: effective control and respect for national parliaments’ budgetary autonomy. Drawing insights from federal democracies instead of limiting them might help to address the euro crisis and limit the risk of similar crises in the future.

⁴⁴ A. Cuyvers, *The EU as a confederal union of sovereign member peoples. Exploring the potential of American (con)federalism and popular sovereignty for a constitutional theory of the EU* 26.

⁴⁵ *ibid* 29.

⁴⁶ P. P. Craig and G. de Búrca, *EU law. Text, cases, and materials* (Oxford, New York, 5th edn, 2011) 703.

8 Structure and outline

PART I – Implications of the Euro-Crisis on National Parliamentary Budgetary Autonomy

- 1. The EMU**
 - 1.1. Origins
 - 1.2. The Unique Design
 - 1.3. Reform Proposals
- 2. Euro-Crisis Law**
 - 2.1. Substantial Perspective
 - 2.2. Formal Perspective
 - 2.3. Constitutional Perspective
- 3. The National Parliaments' Budgetary Autonomy**
 - 3.1. Legal Foundations and Case Law
 - 3.2. Judicial Protection
 - 3.3. Limits to Further EMU Integration
- 4. What next?**

PART II – How to federal systems control state spending?

- 1. Fiscal Federalism**
 - 1.1. Historical Outline and Development
 - 1.2. Allocation of Competences
- 2. Budgetary Control Mechanisms**
 - 2.1. Substantive Perspective
 - 2.2. Formal Perspective
 - 2.3. Enforcement mechanisms
 - 2.4. Institutional set-up
 - 2.5. Consequences of state debt
- 3. Financial Assistance**
 - 3.1. Fiscal Equalisation Schemes
- 4. Comparative conclusion**

PART III – Federal insights for EU fiscal rules

- 1. Insights from the federal systems**
 - 1.1. Models
 - 1.2. Proposals
 - 1.3. Challenges
- 2. Concluding Remarks**

9 Research plan

January - April 2016	Conception phase Literature research and review and overview of existing theories and methodologies
April – December 2016	Part I – Limits to EU Economic and budgetary control
January – June 2017	Part II – The federal Comparison Federal structures and division of budgetary powers
June – November 2017	Part II – How do federal systems control spending?
November – April 2018	Part III – Comparison with EU fiscal rules and federal insights for the EU system of budgetary control
June 2018	Draft conclusion

10 Literature references

Adams, M.; Fabbrini F; Larouche, P. (2014) *The Constitutionalization of European Budgetary Constraints*, Modern Studies in European Law (Bloomsbury Publishing Plc).

Behnke, “Föderalismusreform in Deutschland, der Schweiz und Österreich“ in Blumenthal and Bröchler, *Föderalismusreform in Deutschland. Bilanz und Perspektiven im internationalen Vergleich*, 1st ed., (Wiesbaden, 2010).

Bessard, “Switzerland’s Reformed Fiscal Equalisation System“ Fraser Institut, Federalism and Fiscal Transfers (Oct 2013).

Bordo, Jonung and Markiewicz, ‘A Fiscal Union for the Euro: Some Lessons from History’ (2013) 59, 3 *CESifo Economic Studies*, 449 – 488.

Burgess, M. (2006). *Comparative Federalism in Theory and Practice* (New York, Routledge).

Craig, P. (2012). “The Stability, Coordination and Governance Treaty: Principle, Politics and Pragmatism”, *European Law Review*, 231.

Cuyvers, A. (2013a). “The confederal come-back: Rediscovering the confederal form for a transnational world 19 *European Law Journal*, 711-738.

Cuyvers, A. (2013b) *The EU as a Confederal Union of Sovereign Member Peoples , Exploring the potential of American (con)federalism and popular sovereignty for a constitutional theory of the EU*, (Diss. Leiden), (Zutphen: Wöhrmann).

Dawson, M. and De Witte, B. (2013) “Constitutional balance in the EU after the euro crisis”, 76 *Modern Law Review*, 817.

De Búrca, G. and Weiler, J.H.H. (2012), *The Worlds of European Constitutionalism* (Cambridge, Cambridge University Press).

Eichengreen, B. (2012). “European Monetary Integration with Benefit of Hindsight”, 50 *Journal of Common Market Studies*, 123-136.

Elazar, D.J. (1998). *Constitutionalizing Globalization: The Postmodern Revival of Confederal Arrangements* (Rowman & Littlefield 1998).

Elazar, D.J. (2006). *Exploring Federalism* (Tuscaloosa, University of Alabama Press).

Fabbrini, F. (2013) “The fiscal compact, the ‘golden rule’, and the paradox of European federalism”, 36 *Boston College International and Comparative Law Review*, 1.

Ginsburg, T. and Dixon, R. (2011). *Comparative Constitutional Law* (Cheltenham, Edward Elgar Publishing).

Goodspeed, T. J. (2002). “Bailouts in a Federation,” 9 *International Tax and Public Finance*, 409–421.

Hallerberg, M. (2011). “Fiscal federalism reforms in the European Union and the Greek crisis”, 12 *European Union Politics*, 127-142.

Hallerberg, M., Strauch, R. and Hagen, J. von. (2009). *Fiscal Governance in Europe* (Cambridge: Cambridge University Press).

Hinarejos, A. (2015) *The Euro area crisis in constitutional perspective* (Oxford University Press).

- Hinarejos, A. (2013). "Fiscal federalism in the European Union: Evolution and future choices for EMU" 50 *Common Market Law Review*, 1–22.
- Jackson, V. C. (2010). "Methodological Challenges in Comparative Constitutional Law" 28 *Penn State International Law Review*, 319.
- Kornai, J., E. Maskin and G. Roland. (2003). "Understanding the Soft Budget Constraint," 41 *Journal of Economic Literature*, 1095–1136.
- Korioth, "Die neuen Schuldenbegrenzungsregeln für Bund und Länder – symbolische Verfassungsänderung oder gelungene Schuldenbremse?“, *Perspektiven der Wirtschaftspolitik* (2010), Vol. 11(3).
- Lindseth, Peter L., *Power and Legitimacy: Reconciling Europe and the Nation-State* (Oxford University Press, 2010).
- Loubert, A. (2012), "Sovereign Debt Threatens the Union: The Genesis of a Federation" 8 *European Constitutional Law Review*, 442-455.
- Louis, J-V. (2004). "The Economic and Monetary Union: Law and Institutions", 41 *Common Market Law Review*, 1075.
- Lödl, „Schuldenbremse und Haushalts(verfassungs)recht“, *Jahrbuch Öffentliches Recht* (2013).
- Lödl, „Bundeshaushaltsrecht: Akteure, Kompetenzen, Prozesse“ in *Öffentliche Haushalte in Österreich* (Wien, 2010), 3rd ed.
- Maduro, De Witte and Kumm, "The democratic governance of the euro", *RSCAS / EUI Policy Paper* 2012/08.
- Maduro, P.M. De Witte, B, and Kumm, M. (2012) "The Euro Crisis and the Democratic Governance of the Euro: Legal and Political Issues of a Fiscal Crisis" in Maduro, De Witte and Kumm, "The democratic governance of the euro", *RSCAS / EUI Policy Paper* 2012/08.
- Menendez, A.J. (2013). "The existential crisis of the European Union", 14 *German Law Journal*, 453.
- Peers, S. (2012) "The Stability Treaty: Permanent Austerity or Gesture Politics?" *EuConst*, 404.
- Randall Henning, C. and Kessler, M. (2012) "Fiscal federalism: US history for architects of Europe's fiscal union", 6 *Bruegel Essay and Lecture Series* (2012).
- Reestman, J-H. (2013), "The Fiscal Compact: Europe's Not Always Able to Speak German. On the Dutch Implementing Act and the Hazardous Interpretation of the Implementation Duty in Article 3(2) Fiscal Compact", 9 *European Constitutional Law Review*, 480-500.
- Schütze, R. (2009). "On "Federal" Ground: the European Union as an (Inter)National Phenomenon", 46 *Common Market Law Review*, 1090.
- Schütze, R. (2012). *European Constitutional Law* (Cambridge, Cambridge University Press 2012).
- Stelzer, M. (2011) *The Constitution of the Republic of Austria: A Contextual Analysis* (Bloomsbury Publishing Plc).
- Sting, Anna, "The Eurozone Crisis: A Constitutional Analysis" (2015) 31(81) *Utrecht Journal of International and European Law* 97.
- Snyder, F. "EMU- Integration and differentiation: Metaphor for European Union", in Craig and De Búrca (Eds.), *The Evolution of EU Law*, 2nd ed. (Oxford, OUP).

Tuori, K. and Tuori K. (2014). *The Eurozone Crisis. A Constitutional Analysis* (Cambridge University Press).

Tushnet, M. (2006). “Comparative Constitutional Law”, in: M. Reimann and R. Zimmermann, *The Oxford Handbook of Comparative Law* (Oxford).

Von Bogdandy, A. and Bast, J. (eds) (2010). *Principles of European Constitutional Law* 2nd ed. (Oxford, Hart Publishing).

Watts, R.L. (1999). *Comparing Federal Systems* (McGill-Queens University Press 1999).

Weber, Albrecht ‘Die Europäische Union auf dem Weg zur Fiskalunion?’ *DVBl* 2012, 801.

Legislation, Treaties and EU Proposals

The ESM-Treaty (European Stability Mechanism), Brussels, February 2 2012 T/ESM 2012/en 1.

Euro Plus Pact (2011). Adopted at the European Council meeting of 24–25 March 2011 by the Heads of State or government of the euro area, plus Bulgaria, Denmark, Latvia, Lithuania, Poland, Romania, Available at <www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/120296.pdf>.

European Commission blueprint for a deep and genuine Economic and Monetary Union, 30 November 2012, COM(2012) 777 final.

Fiscal Compact (2012) (Treaty on Stability, Coordination and Governance in the EMU). Signed on 2 March 2012 by all EU Member States except UK and the Czech Republic, available at <www.european-council.europa.eu/eurozone-governance/treaty-on-stability>.

The Stability and Growth Pact, consisting of the following acts: Resolution of the European Council on the Stability and Growth Pact Amsterdam. 17 June 1997. (97/C 236/01); Council Regulation 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure OJ (1997) L 209/6 as amended by Regulation 1056/2005 of 27 June 2005 OJ (2005) L 174/5.

The ‘Six-Pack’: (EU) No 1173/2011 of the European Parliament and of the Council of 16 November 2011 on the effective enforcement of budgetary surveillance in the euro area OJ (2011) L 306/ 1; Regulation (EU) No 1174/2011 of the European Parliament and of the Council of 16 November 2011 on enforcement measures to correct excessive macroeconomic imbalances in the euro area OJ (2011) L 306/8; Regulation (EU) No 1175/2011 of the European Parliament and of the Council of 16 November 2011 amending Council Regulation (EC) No 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies, OJ (2011) L 306/12; Regulation (EU) No 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances OJ (2011) L 306/25; Council Regulation (EU) No 1177/2011 of 8 November 2011 amending Regulation (EC) No 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure, OJ (2011) L 306/33; Council Directive 2011/85/EU of 8 November 2011 on requirements for budgetary frameworks of the Member States OJ (2011) L 306/41.

The ‘Two-Pack’ consisting of the following acts: Regulation 472/2013 on the strengthening of economic and budgetary surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability, OJ (2013) L140/1; Regulation 473/2013 on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the euro area, OJ (2013) L 140/11.

Van Rompuy Plan, ‘Towards a Genuine Economic and Monetary Union’ 5 December 2012, Available at: <http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/134069.pdf>.