



THE EVOLUTION OF LEGISLATIVE FRAMEWORK WITH IMPACT ON RAISING THE "FISCAL UNION"

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Abstract *The evolution of the legislative framework involves a permanent improvement of the previous measurements establishing, at the same time, certain "precise targets" upon which steps will be taken in conformity with the governing programs and strategies drawn up at the national level. In agreement with all these aspects, the paper below speaks about the main documents that certify the evolution of the European legislative framework, which was to produce a particular effect over the structure, nature, dimension and financial stability; in other words, to complete an "ambitious European project" named "Fiscal Union".*

Key words:

Fiscality, economic policies, economic governance

JEL Codes:

K40, K49

1. Introduction

Integration in the European Union and, implicitly, in the Euro Zone, became a permanent challenge because of the complexity of this process, of the politic, economic and/ or social potentials, where the common policies and objectives are the nucleus around which all the other elements necessary to exercise a strong influence over the economic and social environment gravitate.

Within this framework, specialists in the juridical and economic domain have formulated, in the course of time, but minimally at the beginning, a series of criteria that proved to be achieved and observed by each of the member states or in the process of adhering to this extremely complicated structure.

If evasively, at first, the legislative framework turned out to be more and more sound and complex, so that the Treaties, decisions as well as all the other sources deriving from the Community Law gradually started to reflect a superior phase in the transition towards a European building up.

2. The Unique European Act - a foundation to elaborating the Maastricht Treaty.

The modifications brought about in the domain of taxation, of the free circulation of persons, of the rights and interests conferred to the employees working in the space of the European Community or other regulations belonging to the external policy established by the Unique European Act were not enough to erect an internal market.

Therefore, in 1985, at the initiative of Jaques Delors - the President of the Commission - the White Book on the internal market was published; it was a new document by which measurements, the calendar and the dead line for the erection of the unique market were stipulated and, three years later, in June 1988, as a result of the Hanover Summit, in agreement with the Report drawn by the working group coordinated by Delors, the first directions were assigned towards the creation of an Economic and Monetary Union. It referred to "a three stages monetary unification and recommended the creation of a European system of central banks, as to build up a closer coordination among the monetary policies. It also emphasized the necessity of a full convergence of economies of the states who wanted to adhere to the Union"¹ These directions stipulated in the Delors Report will take, in February 7, 1992 a concrete juridical form in the text of the Maastricht Treaty that came into force a year later. From a monetary point of view, the annexed protocols of the Maastricht Treaty as well as in conformity with its provisions, the following aspects are included:

1. The Statute of the European System of Central Banks, with attributions regarding "the finalization and implementation of the monetary policy of the Community, the promotion of a good system of

¹ Coșea M. (2004). "Economy of the European Integration", Tribuna Economică Publishing House, Bucharest, 2004, p. 308

payment” as well as the management of the currency reserves of the Member States of the Community;²

2. The Statute of the European Monetary Institute, in art 4 paragraph 4.1 and in conformity with art. 109f(2) of the Treaty settles the responsibilities of this institution, as follows: to encourage the cooperation among Central National Banks and to monitor a good functioning of the European Monetary System, to consolidate the monetary policies of the member States with a view to ensure the steadiness of the prices or to supervise the evolution of the ECU and to create facilities for the use of the ECU;

3. The setting up the procedure for the excessive negative balance/ deficit, regulated in art 194c(2) of the Treaty, stipulates the obligation of the Commission to “monitor the evolution of the budgetary situation and the amount of the governmental debts of the member states with the aim to identifying the errors. In particular, it is stipulated that the observance of the budgetary discipline shall be examined” in agreement with the reference values of 3% of the GDP at the price of the market for the planned or real public deficit and of 60% of the GDP at the price of the market for the governmental debts, as mentioned in the Protocol on the Procedure for Excessive Deficit, annexed to the Treaty.

Within this context, the Governments of the Member States have the obligation to assure the budgetary procedure at the national level, so that the deficit of the public administrations could be maintained at the level settled in the basis of the two above mentioned criteria, as well as to make ready and transmit the Commission reports on the situation of the deficit and the situation of the amount of the public real and planned debts.

4. Settlement of the Convergence Criteria. In conformity with art.109j(1) of the Treaty, the Commission and the European Monetary Institute are obliged to draw and transmit the Council reports regarding the progresses achieved by the member states, as well their conformity with UEM (EMU) requirements.

At the same time, the reports shall mention the results of the examinations referring to: compatibility of the national legislations, Statute of the Central National Banks or achievement of a sustaining convergence. All these mean that each Member State shall fulfill the criteria on: price stability, national currency rate of exchange, long term debt reference, as well as sustainability of the governmental financial position.

Besides, the provisions included in the protocols are in full agreement with the fulfillment of the general objective of the Maastricht Treaty, described by the introduction of a future unique and achievable currency, by following three steps: liberalization of the circulation of capitals, which will start on January 1, 1990, followed by the period within which the economic policy of the Member States should become convergent since January 1, 1994; the last step would be marked by the creation of the unique currency and the creation of the European Central Bank on January 1, 1999.

This last stage involves the stability of the parity of the national currency - unique currency, and the monetary policy of the new Union will be achieved in the basis of the Euro currency, by closely supervising its stability.

This last stage entails the national currency-unique currency parity, and the monetary policy of the new Union will be accomplished without violating the principles of the market economy.

Therefore, by creating the Economic and Monetary Union - regulated, from the juridical point of view, by the European Union Treaty - the member States are obliged “to adopt an economic policy based on a close coordination, [...] on the clarification of their common objectives guided in conformity with the principle of an open market economy based on free competition.”³ Consequently, the activities developed by the Member States shall observe the following four “guiding principles: stable prices, sound public finance, monetary conditions and the sustainability of the balance of payments.”⁴

Finally, a last obligation - assumed by the Member States when concluding the Treaty, involves the observing of the fiscal-budgetary discipline. With this aim in view, Title VII “Norms regarding Competition, Taxation and Approximation of Legislations”, chapter 2 “Final Dispositions” stipulates aspects in conformity with which the Member States have no rights to fix and collect taxes for the products/ goods originating from the territory of other Member States, higher than those similar national goods or when the products are exported to the territory of other Member States, their reimbursement shall not exceed the quantum of the taxes fixed in conformity with the national legislation.

3. Considerations on the Implementation of the Stability and Growth Pact

In the context in which the states belonging to the Economic and Monetary Union renounce to the

²Official Journal of the European Communities „Information and Notice”, C191, Vol. 35, 29 July 1992, pg. 69, „Protocol on Statute of The European System of Central Bank and of The European Central Bank”, Chapter II, art. 3, alin. 3.1;

³Kees Raad, „Materials on International & EU Tax Law”, Vol II, Twelfth Edition, International Tax Center Leiden, 2012, pg. 2064 - „Treaty on the Functioning of European Union”, Title VIII „Economic and Monetary Policy”, Art. 119, alin. 1-3;

⁴Idem

instruments used in applying the national monetary policy - a situation becoming unique within the Union - as well as due to the obligation concerning the fulfillment of the convergence criteria established by the Treaty, price stability and economic growth turn out to be the main preoccupation.

Initially drafted to restrict the competence of the national governmental power to exercise inflationist pressures against the economic Community environment, the Stability and Growth Pact became, in fact, an inter-governmental agreement meant to create a fiscal framework based on a series of useful elements in fixing regulations and settling measures regarding the surveillance of the fiscal policy and of the budgetary positions, necessary to achieve the medium term objectives.

With this aim in view, the content of the agreement emphasizes two components:

1. The preventive component, meant to help the Member States to achieve a "budgetary position close to balance or over it, as to place the public debt on a sustainable trajectory and to evolve spaces for the adjustment of the stability of demand in the periods of poor economic activity",⁵ so that avoiding the unfavorable with consequential effects on sustainability of the public finance or of other activities developed in the Euro Zone could become possible.

2. The corrective component, takes the form of the excessive deficit procedure, an aspect that can be reduced to: states' compulsoriness to correct the excessive deficits and maintain them on the brink of 3% of the GDP, development of certain successive stages that imply strict surveillance regulations, as well as a series of sanctions/ penalties.

Consequently, this component "has the role to avoid errors in the budgetary policies, errors that could jeopardize the sustainability of the public finances and might become a potential menace to the EMU."⁶

The setting up of the excessive deficit procedure, materialized in conformity with the provisions of art.104(c) of the Maastricht Treaty, was improved by adopting, in 1996, the Stability and Growth Pact. The new elements introduced after the revision of the Pact (2005) were generally hinting at the problems of growing fiscal governance within the Union, by "consolidating the economic bases and the efficiency of the Pact [...] with a view to protect the viability of the public finance on a long term, to promote the growth

and to avoid the coming generations excessive constraints."⁷

Thus, the medium-term objective on the *adjustment of the structural balance* (of - 0,5% or in surplus) that was applied to the Member States, was modified by adding the possibility of deducing from the punctual measures those temporal measures depending on the periods of the economic cycle and, the deadlines settled for the running through the procedure concerning the excessive deficit, or correcting it, inclusively, have been extended and thus, given the possibility for some of these stages to be repeated.

Yet, the revision and correlation measures meant to offer a possibility for the budgetary policy to be manipulated to the aim of attaining the deficit target and assuring - in the shortest period of time - a sustainable situation/ position, did not appear to be sufficient enough, as its records registered a progressive deterioration the moment the economic and financial crisis was released, a fact that imposed the settlement of reforms related to the two components of the SGP (PSC).

4. General aspects on Plus Euro Pact and on the adoption of the "Fiscal Pact"

In the completion of the long disputed and criticized by the specialists in the domain of the Maastricht Treaty and of the Stability and Growth Pact, the economic policies of the Union have been thought in agreement with the main interest of restoring the growth and of avoiding the financial collapse, from the very beginning of the economic and financial crisis.

With end in view, the regulations of the Plus Euro Pact hinted especially the national fiscal policies, for which drastic rules have been introduced as: the States' guarantee that the juridical instrument used at the national level has a sustainable and compulsory character and, the assurance of a fiscal discipline, in agreement with the Conclusions of the Council of the European Union on the *Plus Euro Pact* of March 2011 presumes "the exact phrasing of a norm connected with the primary balance or of a norm connected with expenses". Within the same legal context the signatory states have the opportunity to appeal to a series of mechanisms regarding the observance of the obligations or, otherwise, a series of sanctions could be applied as it appears from the provisions of the Pact.

At the same time, with a view to achieve the coordination of all economic European policies the Pact

⁵Schuknecht L., Moutot Ph., Rother Ph., Stark J. (2011). „*The Stability and Growth Pact Crisis and Reform*”, Central European Bank, Occasional Paper Series, No. 129, September, p. 9

⁶European Commission, Informative note no. 82, "Laws Package on Economic Government in the European Union", 29.09.2010, p. 6

⁷ Official Journal of the European Union, Statute (CE) No. 1055/2005 of the Council of June 27, 2005 for the amendment of the Statute (CE) no. 1466/97 regarding the consolidation of the supervising budgetary positions and the supervision and coordination of economic policies, Annex nr. 1, p. 152

includes aspects connected with the covering of the essential domains involved in convergence and competitiveness, in economic domination and, last but not least in “a full observance of the integrity of the unique market.”⁸

As it can be easily seen from the brief presentation of the aspects included in the Plus Euro Pact, to create a framework for the fiscal domination/ governance, as well as a complex mechanism meant to correct the macroeconomic lacks of balance implies the adoption of some common norms able to eliminate the dangerous practices, fraud and tax dodging yet, able to strengthen the European and international coordination and cooperation.

An addition to the already legislative framework is the Treaty Stability, Coordination and Governance in the framework of the Economic and Monetary Union (TSCG) known under the name of “the Fiscal Pact”.

It contains a series of not at all negligible novelties in the context of the present day situation as, for instance the “consolidation of the economic pillar of the Economic and Monetary Union by adopting a set of rules that have the aim to promote the budgetary discipline by the agency of a budgetary pact [...]”.⁹ There exists of a “budgetary pact” that offers a guarantee for the application of the rules connected with budgetary position, annual structural balance, public debts and/ or medium/ long term objectives of the contracting parties.

At the same time, to guarantee the stability and the optimum functioning of the Euro zone means to observe the regulations referring to the maintenance of the budgetary balance. With this aim in view the Fiscal Pact has created a legal framework that the coordination and convergence of all economic policies in this area should be achieved.

As it can be seen from the text of the Fiscal Treaty, the vision of the European leaders is to achieve an Economic and Monetary Union by accomplishing the fiscal integration which means to observe the fiscal regulations, to adopt measures as to coordinate the economic policies and to apply sanctions in case of infringements; yet, it is completed by the necessary existence of a common budget made up by help of a consolidated fiscal-budgetary implementation at the

level of the European system - should it harmonious or unique.

Within this context, the Fiscal Pact “asks for strictness and responsibility of how the public money is spent”¹⁰; in such a way the limitations of deficits - by introducing this requirement - can be followed as stipulated in conformity with the TSCG (Treaty on Stability, Coordination and Governance) art. 3 paragraph 1, letter a): “the budgetary position of the public administration of the contracting party is balanced or in excess.”

Then when the budget excess procedure started, the states under this obligation shall set up the “budgetary and economic partnership, as well as the annual budgetary plans related to it,” in conformity with art 5, paragraph 2 of the TSCG.

In the same way, with a view to “improve the coordination of planning regarding their public debts”,¹¹ the states have the obligation to transmit ex-ante the two European Institutions (the European Commission and European Council) authorized to monitor this program, reports about the plans on diminishing the public debts.

In case the criteria of the procedure are infringed, financial sanctions shall be imposed in the form of “a payment of a contractual sum or of a comminatory sanction fit to the given situation, that cannot be higher than 0.01% of the GDP of the concerned contracting party”, as stipulated in art 8 paragraph 2 of the Treaty; the sums obtained in such a way are lodged, depending on the case, in the European Mechanism for Stability (for the Euro Zone states) or to the general budget of the European Union, respectively (for non-Euro states). From the point of the coordination of economic policies and convergence¹², the member States of the European Union have the obligation, by increasing the degree of convergence and compatibility, to observe their engagement in the domain of economic policies, so that the economic increase and the good UEM functioning to become an incontestable reality.

5. Conclusions

The process of the European erection, permanently being under the pressure of numerous internal and external factors, transmitted the national economies a fluctuating and vulnerable behaviour, a fact for which it was necessary a permanent creation and

⁸ See the Conclusions of the Council of the European Union, Attached Note, Bruxelles, April 20,2011, EUCO 10/1/11, REV 1, CO EUR 6, CONCL 3, Annex I “ the Euro Plus Pact for a closer cooperation of the economic policy for competitiveness and convergence”, pp. 13-15

⁹ The Treaty Stability, Coordination and Governance in the framework of the Economic and Monetary Union, Title I “Objective and Domains of Application Obiectiv și domenii de aplicare”, Art. 1, paragraph. 1, p. 9

¹⁰ Dăianu D. (coordinator), Kallai E. V., Lungu L. (2012). “Adoption of the Plus Euro Pact: implications over the Romanian fiscal policy”, European Institute in Romania, Studies of Strategies and Policies – SPOS 2011, Study no. 2, Bucharest, p. 17

¹¹ Idem, art. 6, p. 15

¹² Treaty on Stability, Coordination and Governance within the Economic and Monetary Union, Title IV “Coordination of Economic policies and Convergence.”, p. 17

implementation of new harmonious and well coordinated economic measures.

The adaptation of the Community legislation to the situation of the economic environment was - in the course of time - a real progress materialized in the dimensions of the existing risks but also in the potential ones that might have conducted to amplifying the economic lack of balance and to financial instability.

With this end in view, the texts of the documents include a series of norms particularly hinting at an approximation of the legislations of the Member States especially in the monetary and fiscal-budgetary domains and, in the competitive domain, as well. This is why, for this last domain the Community norms were drawn with a view to encourage the free competition, equally interdicting agreements, abuses or any other practices jeopardizing the trade.

From a monetary point of view, the measures are meant to create optimum monetary conditions able to assure the stability of the unique currency, limitation of sideslips and maintenance of the economic balance.

The decisions regarding the fiscal-budgetary policy were given more importance, as they had a special influence over the economic and social environment and because settling rules and surveillance measures over the national fiscal-budgetary policies or the budgetary position offered a climate of stability and budgetary prudence that could avoid asymmetrical impacts.

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