THE TREATY OF STABILITY, COORDINATION AND GOVERNANCE IN THE ECONOMIC AND MONETARY UNION - UNDER THE ASPECT OF ENFORCEMENT AND SANCTIONING ABILITY

[a]LUDWIG DIESS

Vysoká škola technická a ekonomická v Českých Budějovicích, Okružní 517/10, České Budějovice 37001 Czech Republic
email: [a]ludwig_diess@yahoo.com

Abstract: The article deals with the regulations of the Fiscal Stability Treaty to control budget deficits within the European Union. It deals critically with the sanction and implementations options, also with regard to non- compliance of the so-called Maastricht criteria, the already existing European Stability and Growth Pact, and the takeover into national law.
The possible sanctions which are part of the Pact at the present time appear vague and unrealistic formulated so that an effective implementation can hardly be assumed.

Keywords: Fiscal Compact, European Union, stability criteria, budget deficits, national debt

1 Introduction

The Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, also referred to as Fiscal Compact, Fiscal Stability Treaty or TSCG was signed on 2 March 2012 by all Member States of the European Union, except the Czech Republic and the United Kingdom. On 1 January 2013 the TSCG entered into force for all states which ratified it until this day. In countries where the ratification process will take longer, the Treaty will enter into force on the first day of the month which follows the the ratification.

2 Stricter rules?

The two most important rules of the EU fiscal pact are intended to be - briefly summarised - stricter rules on the budget discipline:

The national debt must be reduced to less than 60% of the gross domestic product (GDP). This percentage must be achieved through an annual reduction of one-twentieth of the overlying amount. The structural deficit, should not be higher than 0.5% of GDP if the debt level is above 60% GDP or else it shall be less than 1,0%. Another definition is that the “general budget deficit” must be less than 3,0% of the GDP.

It seems, that we have heard these rules already some years ago.

These goals are not really new. A look at the history of the Euro and the European Union shows that there were already a number of requirements for fiscal discipline, which were ignored by almost all Member States, without any consequences, but on the contrary led to a reduction of existing regulations.

In 1996 by the ECOFIN Council (Council of Economic and Finance Ministers) was in Dublin (hereinafter referred to as the Maastricht rules) of the "European Stability and Growth Pact", and also established as Article 104 of the EC Treaty to the European treaty. This includes a commitment to a total debt of not more than 60% of gross domestic product and an annual budget deficit of not more than 3% of the GDP.

The signatory States commit themselves to the rapid implementation of this medium-term objectives. But with the reservation that the respective country-specific sustainable risks in the implementation will be taken into consideration and this assessment lies with the EU Commission. Naturally, these criteria are not clearly defined.

"The Contracting Parties shall ensure rapid convergence towards their respective medium-term objective. The time frame for such convergence will be proposed by the Commission taking into consideration country-specific sustainability risks." (European Council 2012)

The possibility of a deviation from the objectives of the TSCG under extraordinary circumstances ("exceptional circumstances") is sets out the following letter c).

„The Contracting Parties may temporarily deviate from their medium-term objective or the adjustment path towards it only in exceptional circumstances as defined in paragraph 3.“ (European Council 2012)

These extraordinary circumstances are defined as follows in point 3 of article 3:

""Exceptional circumstances" refer to the case of an unusual event outside the control of the Contracting Party concerned which has a major impact on the financial position of the general government or to periods of severe economic downturn as defined in the revised Stability and Growth Pact, provided that the temporary deviation of the Contracting Party concerned does not endanger fiscal sustainability in the medium term." (European Council 2012)

Here, the Treaty allows some room for manoeuvring. The criteria of the TSCG can be overridden in times of economic difficulties or an economic downturn, if the temporary deviations unsustainable endanger the finances of the State concerned. So deficits may rise during hard economic times.

Now, however, especially in times of signing the contract, most participating countries are in a (banking, monetary, economic) crisis.

So these are the "loopholes" that are called for by critics of the pact and, this leads to their opinion to call the treaty an “absurdity”.

2 Possible Sanctions

So what is new? More or less nothing, it seems. Maybe it is, that in the future there should be stronger consequences for deficit violations? Let us have a look. The Euro convergence criteria (also known as the Maastricht criteria) also had harsh penalties for breaches of these criteria: If in three consecutive years the deficit is above these criterias, the country has to make a non-interest bearing deposit at the EU, which, can be up to 0.5 percent of the nominal GDP of the country depending on the level of deficit (in the year 2004 this would have been a total amount of approximately EUR 10 billion for Germany). If the deficit should be continuing also for the next two years, this deposit is transformed into a fine and divided among the States, which have maintained the proposed budgetary discipline. The fine was never applied. This seemed at first to be clear and strict guidelines. But the problem lies with the institutions and people acting. The European Council decides whether and what sanctions will be taken. This, the European Council, is formed by the governments of the EU Member States and would simultaneously have to decide on sanctions against them. Naturally, it is these governments that are responsible for the national debt. This meant that all violations have remained without consequences. Not least also because the largest and strongest economies, Germany and France, were also so-called deficit sinners. Rather than enforce existing regulations, these were suspendet after pressure from France and Germany (2003), and as a result the rules were softened and made dependent on undefined criteria (2005).

Rules and conventions only then make sense if they can be sanctioned also. Otherwise they are not worth the paper they are written on. What sanctions does the fiscal pact have?

Article 8 of the Pact governs the process of sanctions. The jurisdiction of the signatory States submit to is the European Court of Justice. Should the Commission come to the conclusion

that one of the parties has violated the contract, or the anchoring of the "debt brake" in national law, one or more other countries can bring the matter before the European Court and demand the imposition of financial sanctions. The European Commission on the other hand, receives no private right of action.

Article 8 Paragraph 1. „The European Commission is invited to present in due time to the Contracting Parties a report on the provisions adopted by each of them in compliance with Article 3(2). If the European Commission, after having given the Contracting Party concerned the opportunity to submit its observations, concludes in its report that a Contracting Party has failed to comply with Article 3(2), the matter will be brought to the Court of Justice of the European Union by one or more of the Contracting Parties. Where a Contracting Party considers, independently of the Commission's report, that another Contracting Party has failed to comply with Article 3 (2), it may also bring the matter to the Court of Justice. In both cases, the judgment of the Court of Justice shall be binding on the parties in the procedure, which shall take the necessary measures to comply with the judgment within a period to be decided by the Court." (European Council 2012)

The European Court of Justice can impose if it grants the lawsuit, a penalty up to 0.1% of the gross domestic product of the defendant State:

Article 8 Paragraph 2. "If, on the basis of its own assessment or of an assessment by the European Commission, a Contracting Party considers that another Contracting Party has not taken the necessary measures to comply with the judgment of the Court of Justice referred to in paragraph 1, it may bring the case before the Court of Justice and request the imposition of financial sanctions following criteria established by the Commission in the framework of Article 260 of the Treaty on the Functioning of the European Union. If the Court finds that the Contracting Party concerned has not complied with its judgment, it may impose on it a lump sum or a penalty payment appropriate in the circumstances and that shall not exceed 0,1 % of its gross domestic product. The amounts imposed on a Contracting Party whose currency is the Euro shall be payable to the European Stability Mechanism. In other cases, payments shall be made to the general budget of the European Union." (European Council 2012)

This means that only Governments may sue each other. But not the EU Commission may bring - as requested by Angela Merkel - legal proceedings going. Never, in the history of the EU, a Member State has filed a lawsuit against another State. A situation that is inconceivable in the European politics and diplomacy and could lead to serious intergovernmental disagreements.

Furthermore, there is a doubt by lawyers at the possible jurisdiction of the European Court of Justice. Because the sanctions are not EU law, but a pure inter-State Treaty of a part of the EU Member States, and vary from article 126 of the Treaty of Lisbon, the fiscal pact would have to be signed by all 27 EU Member States, so that any sanctions imposed by the European Court of Justice, are really binding and enforceable. Otherwise the fiscal pact would not automatically take precedence over national law, and it would be easy for the defendant and convicted Government, not to implement a judgment of the European Court of Justice.

3 Conclusion and discussion

The TSCG is undoubtedly an ambitious project for the recovery of the budgets of EU Member States. But will it redeem what the policy promises of the new Treaty? Well balanced budgets, less national debt and more stability for the common currency? So far, hardly a state has complied with the Maastricht criteria. Due to the lack of sanction mechanisms it could occur that not many states will be impressed and fear sanctions. We have seen that ruels were not followed.

It is also crucial question whether the Member States due to the economic circumstances have a chance to meet them (eg Cyprus, Greece, Portugal, Spain).

As always with such agreements, this is dependent on the trading parties and their behavior in the situation. The TSCG provides guidelines and goals, but whose fulfillment is dependent on the will and the possibilities of the individual Member States. Of course there are certain mechanisms designed to ensure compliance. However, whether these are ever used is highly questionable because of past experiences with the already long existing Maastricht criteria and associated sanctions, or their abrogation by the most powerful states of the EU. Especially in the current situation, as in many countries of the European Union there are Especially in the current situation, as the support for the Euro drops rapidly in the population and in most countries of the EU have been held heated discussions over a disintegration of the euro-zone up to an exit from the Euro.

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