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**Political and instrumental leadership in major EU reforms.**  
**The role and influence of the EU institutions in setting-up the Fiscal Compact**

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**Abstract (150 words)**

This paper analyses the role and influence of the EU institutions in major reform negotiations. We argue that one of the paradoxes of European Council dominated decision-making has been the enhanced dependence on EU institutions to translate broad priorities into actual reforms. We substantiate this claim by means of an in-depth process-tracing analysis of the 'Fiscal Compact'. The conventional wisdom is that the Fiscal Compact was a German dictate. Instead, we show that it resulted from a division of labour: political leadership by member states in the control room, and instrumental leadership by the institutions in the machine room. Such instrumental leadership is unjustly depicted as mere facilitation, with little impact on process and outcome. We juxtapose the Fiscal Compact to two similar cases of Germany-led EU reforms (the Euro-Plus-Pact and Contractual Arrangements) to reveal the leadership activities by the institutions and the fingerprints these left in the final outcome.

**Key words**

Treaty on Stability Coordination and Governance, Economic and Monetary Union, EU institutions, European integration, leadership.

**Introduction (900 words)**

The successive crises of the European Union (EU) have led to a vibrant debate about leadership, whether by particular individuals, member states or by the EU institutions (Becker et al., 2016; Nugent and Rhinard, 2016; Crespy and Menz, 2015). Media sources and scholarly evaluations have put a lot of emphasis on individual leaders and their (typically limited) ability to steer developments at the highest political level (what we will call 'the control room'). The primary focus has been on Germany (and its Chancellor), the European Commission (and its President) or the new European Council President (Bocquillon and Dobbels, 2014; Bulmer and Paterson, 2013; Peterson, 2015, Dinan, 2017, Tömmel, 2017).

Some scholars even linked the ‘mixed’ performance of the EU in dealing with successive crises to an absence of (effective) leadership (Hodson, 2013; Jones et al, 2016; Menz and Smith, 2014). The EU was portrayed as ‘failing forward’ or ‘kicking the can down the road’. Even the arguably most influential leader, German Chancellor Merkel, was generally portrayed as the person blocking, rather than creating effective solutions (‘Frau Nein’). On the side of the institutions, European Council President Van Rompuy seemingly played a marginal role, while Commission President Barroso was even less effective in his self-proclaimed role as ‘champion of the Community method’.

The enhanced presence of the European Council, and the implications of having a permanent president, have been extensively discussed, among others, by proponents of ‘new intergovernmentalism’ and ‘core state powers’ (Bickerton, Hodson and Puetter, 2015; Genschel and Jachtenfuchs, 2014; Peterson, 2015: 193). Intergovernmental coordination between the Heads of State and Government (HOSG) played a more prominent role in the crisis and post crisis years, in determining the course of EU decision-making. Some of the early literature spoke about ‘competition’ between the intergovernmental and the Community method and a ‘decline’ of the latter (Chang, 2013; Fabbrini, 2013). More recent studies rather framed it as a reorientation by the EU institutions, moving from classic entrepreneurship to surveillance and policy management (Becker et al, 2016; Nugent and Rhinard, 2016).

Yet, as we will argue, a somewhat overlooked implication of this European Council dominated decision-making is that it has also weakened the control of the member states. The informal and ‘isolated’ character of decision-making at the European Council level, paradoxically, created more instead of less dependence on EU institutions to translate the broad HOSG priorities into actual reforms. To be sure, we believe that high level *political* leadership is necessary for getting an issue, in our case a balanced budget rule, on the reform agenda. However, to translate such vague ideas into an actual legally binding reform requires *instrumental* leadership in the ‘machine room’. This instrumental leadership is typically supplied by multiple institutional actors (European Council (EC) president’s Cabinet, Commission, Council Secretariat), working in collaboration to supply drafting and process management tasks.

To substantiate our claim, we revisit three of the prime examples of member state, specifically German, political leadership in the Eurozone crisis: The Fiscal Compact, the Euro Plus Pact and the Contractual Arrangements. The latter two cases, in which reform measures turned out to be largely inconsequential or even failed to materialize, serve to show what happens when instrumental leadership is absent. Our main or 'positive' case is the Treaty on Stability, Coordination and Governance (TSCG), often referred to as the Fiscal Compact. The conventional wisdom is that the Fiscal Compact was a German dictate. In the words of close observer Peter Ludlow (2011: 34): 'This is what the German Chancellor wanted and this is by and large what she got'. Scholarly assessments, so far, have mainly focused on the proceedings at and around the December 2011 European Council Summit, thereby treating the proceedings from the Summit until the signing of the Treaty in March 2012 as the endgame or transposition phase (Degner and Leuffen, 2017; Schimmelfennig, 2015; Schoeller, 2017; Tsebelis and Hahm, 2014). Furthermore, these studies ignored the pre-negotiation stage, in which the Council Secretariat translated the initial idea for a balanced budget rule into actual treaty text, thereby laying out the tracks for the actual negotiations. Only Tsebelis and Hahm (2014) looked at the successive drafts of the Treaty that were leaked to the press, but they analysed these solely from the perspective of member states bargaining, and ignore drafting and process management by the institutions.

We contend that a detailed analysis of the pre-negotiation stage and the presumed 'endgame' is crucial for understanding the new role of EU institutions. This is what explains the smooth and straightforward process leading up to the final deal, which stands in strong contrast to what happened with the Euro Plus Pact and Contractual Arrangements.

We will proceed as follows. In the next section, we look at some of the dominant conceptualizations of leadership, which we believe are too 'heroic' in their ideas about what (institutional) leadership is and what it can accomplish. We start from the concept of entrepreneurial leadership, defined as the provision of all of the leadership tasks required to secure a binding reform (Young, 1991: 285), but we disaggregate these entrepreneurial tasks, making a distinction between the *type* of leadership and the *level* at which this type is displayed. The process tracing analysis of the Fiscal Compact reconstructs the leadership activities that were performed by different institutional actors and the fingerprints that these left in the documents. In the Conclusion, we use a controlled comparison with the Euro Plus

Pact and Contractual Arrangements to assess whether instrumental leadership is necessary for reforms.

### **Theory: entrepreneurial leadership ‘unpacked’ (1725 words)**

The concept of entrepreneurial leadership plays a pivotal role in many theoretical and historical analyses of major EU reforms. It was one of the types of leadership identified by Young (1991). Leadership is generally defined as the provision of tasks that help overcome collective action problems that can prevent parties from reaching a mutually acceptable, binding agreement (Young, 1991: 285; Tallberg, 2006: 17-39).<sup>1</sup> Young makes a distinction between a structural leader – who can use his/her structural position as bargaining leverage to reshape zones-of-possible agreement – an entrepreneurial leader – who provides leadership through negotiation skill and process management – and lastly an intellectual leader – who uses his/her ideas and expertise to shape the way in which parties frame and think about options, thereby also reshaping zones-of-possible agreement.

Within the context of the Eurozone crisis, Germany is the obvious, if not only, candidate for the role of structural leader. German dominance in the Eurozone stemmed from its economic strength and position as the principal creditor, which allowed it to have a disproportionate impact on setting the rules according to which the system behaves. Germany is sometimes portrayed as a rather ‘reluctant’, ‘embedded’, or ‘benign’ hegemon (Blyth and Matthijs, 2012; Bulmer and Paterson, 2013), which implies that we cannot simply equate German overall dominance with active leadership *during* the negotiations.<sup>2</sup>

There is also evidence suggesting that Germany acted as an intellectual leader. Scholars have argued that Germany’s doctrine of ordoliberalism became the dominant discourse for the larger part of the crisis (Matthijs, 2016; Schäfer, 2015). However, there is also ample reason to place this intellectual leadership with the ECB also, which used its enhanced status and credibility as leverage in the debates about EMU deepening (De Rynck, 2016). In many, but certainly not all, EMU reform debates Germany and the ECB acted as an intellectual tandem.

Lastly, entrepreneurial leadership refers to the leadership provided during the actual negotiations, by putting issues on the agenda, building political momentum, and shepherding an issue or dossier through the decision-making machinery (Young, 1991: 293; Tallberg, 2006). It is less obvious to place this type of active leadership with a particular member state, in our case Germany. First, there is less direct evidence that Germany actually played a steering role in the proceedings at the civil servant level. Second, in such complex multi-level

negotiations, it is unlikely that a single actor – either a member state or an institution - would be able to to ‘lead the way’ from initial idea to final treaty text. In managing EU reforms, effective leadership has often been *joint* leadership.

Yet, many conceptual and historical analyses of leadership still seem to take ‘heroic’ notions of individual leadership as their point of departure. In studies of European integration, leadership is often equated with supranational entrepreneurship, meaning the ability to act as the ‘engine’ or ‘motor’ that can drive the machinery forwards with a clear purpose towards a clearly defined goal, of the kind supposedly provided by the Delors Committee in the run-up to the Single European Act and the Treaty of Maastricht (Haas, 1958; Moravcsik, 1999). In the literature on institutional leadership this Delors type resonates with the concept of ‘transforming’ leadership (Burns, 1978: 20).

Over the years, the Delors type of leadership has become a somewhat unfortunate model of a power-hungry Commission ‘hard wired to pursue ever closer union’ (Peterson 2015: 187-188). Some have argued that there are in fact two Delors models, referring to the different role played by the institutions at the 1985 and at 1991 IGCs (REFERENCE REMOVED). In the run up to the 1985 IGC leading up to the Single European Act (SEA), the institutions – the European Commission, the Council Secretariat and the rotating Council Presidency) jointly acted as ‘facilitators of solutions’; sounding out governments, feedings leaders with detailed information on how things currently worked and fleshing out possible ways forward (Budden, 2002; Grant; 1994). In the 1991 IGC that negotiated Economic and Monetary Union and Political union, the Commission – and president Delors in particular – instead acted as a ‘political champion of Europe’, opting for high-profile advocacy and fighting for positions that were far outside what governments wanted (Dyson and Featherstone, 1999: 692, 702). As a result, the overall impact of the institutions on the course of the negotiations was more limited in 1991 than in 1985. In the end, Delors was grumbling publicly about the lack of progress and ambition in the negotiations (Beach, 2005, pp. 103-104).

In a similar way, the concept of transforming leadership is an unfortunate benchmark. The concept originally stems from Burns distinction between ‘transforming’ and ‘transactional’ leadership. In Burns’ original interpretation, transforming leadership raises the level of human conduct and ethical aspirations of both leader and led, and thus it has a transforming

effect on both' (Burns, 1978: 20). Transactional leadership, on the other hand, comes down to facilitating 'an exchange of valued things', in which there is no higher purpose and the preferences and motives of the parties remain unaffected (Burns, 1978: 19). In EU studies, transforming leadership has been redefined as 'moulding the course and shape of European integration', while transactional leadership basically refers to proper management of 'the daily stuff of politics' (Tömmel, 2013: 791; see also Ross and Jenson, 2017). It is safe to say that in the history of the EU, episodes of 'transforming' leadership are exceptional. As Hodson rightly notes, there is still considerable debate about whether such leadership has *ever* succeeded, even in the days of Jean Monnet or Jacques Delors (Hodson 2013: 301-302). It is clear that in the post-Maastricht era, the possibilities for providing such 'transforming' leadership have become even more limited. As the EU has moved into more sensitive and salient issue-areas, such as fiscal policy or economic governance, its member states have become even more wary of transferring competences (Bickerton, Hodson and Puetter, 2015: 703; Fabbrini, 2013: 1005; Genschel and Jachtenfuchs, 2014: 8). The institutions thus have to cope with a European Council providing instructions and having a veto over certain policy options (Bocquillon and Dobbels, 2014: 22).

This again shows that the concept of transforming leadership is too 'heroic' in terms of what it expects that leaders can do and accomplish even under exceptionally favourable circumstances, like in the run-up to the SEA (Ross and Jenson, 2017: 119-120). The concept of transactional leadership, on the other hand, is all too common. If institutional leadership essentially comes down to the facilitation of member states negotiations, we can safely categorize all leadership by the institutions as transactional. However, this then does not provide us with a meaningful metric for assessing institutional influence.

To arrive at a realistic metric, we suggest that we should *unpack* the concept of entrepreneurial leadership, taking into account the type of leadership and the level at which this type is displayed. In negotiating major EU reforms, there is a clear functional differentiation between the leadership functions that are required at specific levels of the negotiations. We make a distinction between the 'control room', which refers to the European Council (and Sherpa) level, and 'the machine room', which refers to the Council (in our case Eurogroup) and to the preparatory groups at the ambassadors and civil servants level.

In the control room, the leadership tasks required relate to agenda-setting, the provision of political momentum, and brokerage to ensure consensus on the final deal is reached. This type of leadership echoes the definition of *political leadership* given by authors such as Ross and Jenson (2017: 114-115) and Tömmel (2013: 797). At this level, national leaders are the ‘deciders in chief’ that set overall priorities and settle key points of contention in end game negotiations, where institutional actors like the European Council President are more neutral arbiters of agreement.

In the machine room, there is a strong demand for the provision of *drafting* to translate broad governmental priorities into actual texts, and for *process management* to avoid agenda cycling and lowest-common-denominator dynamics that can hinder parties from securing a mutually acceptable, binding reform (Tallberg, 2006: 37-39). We use the term *instrumental leadership* for the provision of the leadership tasks in the machine room. While major EU reforms, such as the Fiscal Compact, were *intergovernmental* negotiations that were held *outside* of the formal institutional machinery of daily EU policy-making, to avoid creating completely new negotiating fora, the existing machinery was still utilized. This means that EU institutions have strong comparative advantages in providing the necessary legal, process and substantive expertise. National governments either lack the expertise or would not be trusted by other actors to take over drafting and process management. Therefore, by default there is a large amount of more informal delegation of instrumental leadership tasks to EU institutional actors, in particular the Council Secretariat and Commission.

While many scholars would expect political leadership in the control room to have a significant impact, they tend to equate instrumental leadership with mere facilitation, that has little impact on the process and outcome (Moravcsik 1999: 370-374; Tömmel, 2013: 791). However, as demonstrated by principal-agent theories of leadership, even the provision of seemingly technical leadership can have significant impacts (Delreux and Adriaensen, 2017). For example, those holding the pen can subtly steer how a vaguely defined political preference is translated into actual text (Kroll, 2017). Process managers can mark out and thereby shape the course of negotiations (‘laying out the tracks’). We argue that political leadership in the control room *and* instrumental leadership in the machine room are both *necessary* for securing major EU reforms. Political leadership without instrumental leadership lacks traction, instrumental leadership without political leadership lacks purpose.

### **Methodological approach (550 words)**

The analyses assess the role and influence of the EU institutions in current major reform negotiations, focusing on instrumental leadership in the machine room. We utilize three cases in our design; all of which had political leadership by the German government present.<sup>3</sup> These three cases correspond with Germany's overall priorities as regards EMU reform: to strengthen fiscal discipline and to induce structural reforms that would increase the competitiveness of periphery countries (Crespy and Schmidt, 2014: 1093-1096; Bulmer and Paterson, 2013; Matthijs, 2016). Fiscal discipline held centre stage in the 2010 reform of the Stability and Growth Pact (SGP), by means of the so-called six pack. By early 2011, the talks continued, with the submission of a joint Franco-German letter to other EU leaders on 4 February 2011.<sup>4</sup> This letter set the stage for subsequent discussions on a Competitiveness – or Euro Plus - Pact (February-March 2011), a Fiscal Compact (October 2011 – March 2012) and Contractual Arrangements (October 2012 – December 2013). The Euro Plus Pact was subsequently adopted as a symbolic, non-binding agreement that was quickly forgotten, whereas Contractual Arrangements did not even reach the actual negotiation table.

Our analysis focuses on the positive case: the Fiscal Compact. We treat the Fiscal Compact as a 'pathway case' (Gerring, 2017: 105-106). We engage in a minimalist process-tracing analysis to evaluate the impact of instrumental leadership provided by EU institutions (Bennett and Checkel, 2014; Reykers and Beach, 2017). In minimalist process-tracing, the causal process is not unpacked into its component parts – instead what is important is that empirical manifestations of a process are made explicit in the form of 'diagnostic evidence' (Bennett and Checkel, 2014). In this article, we utilize two types of diagnostic evidence that can confirm the existence and impact of instrumental leadership. First, we assess what leadership *activities* were performed by EU institutional actors (Cabinet officials of the European Council President, Council Secretariat, ECB and Commission officials) in the machine room. Second, we identify the *fingerprints*, in the form of clear observable manifestations of these activities in the final outcome. This requires lowering the level of analytical abstraction by paying close attention to the formulation of texts. As we know from legal studies, the same broad priority can be translated into legal text in ways that completely change its actual meaning, for example ensuring the provision never works, making it

redundant, or subtly changing the focus of the provision from what was intended (e.g. Craig, 2012: 233; Peers, 2012: 414).

Regarding our sources, the analyses are based on first-hand observations of all primary documents (draft texts, proposals from governments). Moreover, the authors were personally involved in the decision-making and/or have held multiple rounds of conversations with other key participants from the member states and institutions. To avoid source capture, we have corroborated these insider recollections with evidence that is publicly available, where possible, along with detailed comparisons of the different drafts of the treaties and other documentary sources (Franco-German letters, existing and proposed EU legislation).

As a final step in our analyses, we provide a controlled comparison of the Fiscal Compact with two negative cases. To demonstrate causal necessity, the absence of the condition should result in the absence of the outcome. We will therefore discuss what elements of instrumental leadership were missing in the Euro Plus Pact and Contractual Arrangements and how this contributed to their demise.

### **Process tracing analysis: Instrumental leadership and the Fiscal Compact (3200)**

The Fiscal Compact was agreed at the EU Summit of 30 January and signed on 2 March 2012 by all EU member states except the Czech Republic and the United Kingdom. The main elements, reflected in Article 3.1. and 3.2, are that ‘the budgetary position of the general government of a Contracting Party shall be balanced or in surplus’ and that this shall be incorporated into national law ‘through provisions of binding force and permanent character, preferably constitutional’. The Fiscal Compact is seen as perhaps the most prominent example of Germany’s ability ‘to shape the terms of integration’ (Schimmelfennig, 2015: 187). However, when we look closer, there is evidence that while German political leadership ensured that we got a Fiscal Compact, the form it took was shaped by instrumental leadership in the machine room. In the following, we first uncover the instrumental activities of the institutional network, followed by an assessment of the effects that they had on the final outcome.

*Institutional activities (1850 words)*

The negotiations were triggered by a Franco-German letter to European Council President Van Rompuy on 17 August 2011 that expanded on many of the themes from the letter of 4 February, regarding Germany's overall priorities relating to fiscal discipline (balanced budget rule) and structural reforms, along with some French ideas about strengthened Eurozone governance.<sup>5</sup> Compared to the February letter, the August Franco-German letter was quite specific about defining the balanced budget rule as such. What was still unclear was *how* the balanced budget rule could be incorporated into EU law in a workable fashion, the *legal form* of its incorporation (e.g. using Article 48 EU to convene a major treaty revision), and whether *other aspects* of the Franco-German letter relating to strengthening measures for structural reforms and other priorities would be included in the reforms.

The Commission was not immediately on board with the idea. In the days after the October Euro Zone Summit, President Barroso instructed Director General, Marco Buti and his staff in DG Ecfm to come up with an alternative reform-package, the so-called 'two-pack'.<sup>6</sup> In contrast, European Council President Van Rompuy gave an informal mandate to several of his cabinet officials to work with the Council Secretariat legal service to explore the options for incorporating a balanced budget rule into EU law.<sup>7</sup> This was the start of the machine room process that led to the adoption of the binding Fiscal Compact in March 2012.

By November 2011, the Council Secretariat Legal Service had drafted an embryonic version of a Fiscal compact that focused on incorporating a balanced budget rule.<sup>8</sup> Initially, the legal base was article 126(14.2), which is a *passerelle* clause that allows the treaty protocol to be amended through a unanimous Council decision. Van Rompuy Cabinet officials informally floated the Secretariat draft with the member states, but the German government indicated that it preferred a stronger legal instrument that could not be reversed by a future Council decision. Instead, they preferred to use the ordinary revision procedure (Article 48 TEU).<sup>9</sup> Note that Germany was vetoing the legal form, but not the content of the draft. In fact, the Council Secretariat draft would set the stage for subsequent debates at the political level.

The proceedings at and around the European Council Summit of December 2011 have been extensively covered (Ludlow, 2011 10-13, 24-25). Seeing that the UK blocked the option of an ordinary reform of the Treaties, due to Cameron's request to add a protocol on financial services to protect British interests, the decision was taken by the other heads of state and

government to go for an intergovernmental agreement (IA). The decision to go for an IA was taken before midnight.

Suffice to say that this was not a particularly difficult summit. German political leadership resulted in a quick and relatively easy agreement to the Statement by the Euro Area heads of state or government (European Council, 2011). There were few member states – not even Italy – who dared to openly argue against the idea as such, out of fear for market punishment (Moschella, 2017). The Summit Statement of 9 December endorsed the core of the balanced budget rule in the November draft proposed by the Council Secretariat.<sup>10</sup> However, given the change in legal form to an international agreement, it was also clear that more articles would have to be drafted, although neither the Summit statement nor the December Franco-German letter provided much guidance.<sup>11</sup> One aspect was however mentioned in the statement – enforcement of the balanced budget rule. While a Protocol would automatically fall under existing enforcement procedures, it was not obvious how this would work for the IA. The Summit statement provided some political guidance on this issue, but their vague statement that ‘We recognise the jurisdiction of the Court of Justice to verify the transposition of this rule at national level’ did not indicate how it would work. The December Franco-German letter suggested enforcement by the Commission or Euro area member states, but little more. There was therefore a strong demand for the Council Secretariat to flesh out the modalities of how the Fiscal Compact could work in this and other issues.

The next step was to come up with a format and decide on the modalities for turning this political declaration into a full-fledged Treaty. This process started with a letter on 14 December 2011 from Uwe Corsepius, Secretary General of the Council, to the Coreper, in which he outlined the process, participants and deadlines. Due to the British reservations, discussed above, there was no established forum or format available. The Council Secretariat subsequently came up with an intricate division of labour. The negotiations would take place in an ad hoc working group, building on, *but outside of*, the structures of the Eurogroup Working Group. But the preparations would be done by the preparatory bodies of the Council. To ensure compatibility with the Treaties and secondary law of the Union, the Council Secretariat Legal Service was charged with drafting the first version of the agreement. The Legal Service copy-pasted verbatim the November draft into their first draft text of the Fiscal

Compact, but then fleshed out the modalities of enforcement and other issues in a first draft tabled on 19 December.

In the machine room, leadership would be provided by a core group of officials that bridged institutional boundaries. This inter-institutional network pivoted around several officials from the European Council president's cabinet (Odile Renaud-Basso, Jose Leandro), the Council Secretariat (Olaf Prüssmann) and Legal Service (Therese Blanchet, Alberto de Gregorio) and the EFC/EWG Secretariat (Pim Lescrauweat). In practice, the Secretariat of the Economic and Financial Committee (EFC) would act as the crucial node in the inter-institutional network. The EFC bridges institutional divides, located within but acting independently from the Commission, preparing the work of the Council-based Eurogroup Working Group (EWG) and staffed by Commission officials as well as member states representatives. While the Council Legal Service de-facto acted as the penholder, it was working in close collaboration with Commission officials within the EFC framework.

The Commission itself was represented by the Director General of DG Ecfm, Marco Buti and the head of the legal service, Luis Romero. The Commission initially played a rather modest role, but once revisions to the Secretariat draft started, the Commission provided a lot of written and oral input that ensured that the Fiscal Compact would be compatible with the revised SGP and other elements of the six- and coming two pack reforms. It was the role of the ECB, which was predominantly represented by Jörg Asmussen and Gabriel Glöckler, to try to strengthen the text, or at least to prevent "a substantial watering down...of the initial general agreement on an ambitious fiscal compact."<sup>12</sup> The overall lead was with Van Rompuy Cabinet officials, particularly Odile Renaud-Basso. Their main priority was to stay close to the draft of November and therefore they wanted to keep the discussions short and focused. Their strategy was to have a limited number of plenary meetings in the machine room, after which any open points would (have to) be taken up to the Eurogroup meeting of 23 January and otherwise the Sherpa meeting of 30 January that would prepare the European Council meeting.

Two things were noteworthy from the perspective of process management. First, all documents would be issued as room documents. Second, to avoid having to deal with all comments on a point-by-point basis, bracketed texts were not used:

We were dealing with people who were not so familiar with how treaty negotiations normally work. Moreover, everything needed to be done very quickly. From the side of the institutions, there was a quite strong steer on it, particularly from European Council President cabinet. They did not want lengthy discussions on every little detail, certainly not during the meetings. Basically, member states were asked to shut up, or take it higher up.<sup>13</sup>

The meetings of the ad hoc working group would be chaired by the President of the Euro Working Group (EWG), Georges Heinrich from Luxembourg. Three plenary meetings were held - on 20 December, 6 and 12 January - to discuss drafts and enable member states input. This rather condensed meeting format forced member states to focus on what they really cared about. On most issues, there would typically be only one or two dissenting views from member states. The plenary discussion then served to show to these 'laggards' that there was a clear majority in favour of the text provided by institutions.

The first meeting of the ad hoc working group on 20 December was used for general comments. The only substantive issue on the table was the participation of the non-euro area member states, to be addressed in Title I. The main message to the member states was the very tight timetable, which forced them to stick closely to the agreement reached by the Heads of State and Government, which had been based on the original Council Secretariat draft (see above). Therefore there was a strong need to rely on 'the pragmatic working methods of the EWG'.<sup>14</sup> The Chair was set to avoid the typical 'drafting exercises' that we know from regular Council or IGC meetings, in which participants would go over a draft text on a line-by-line basis multiple times. Instead, the member states were asked to provide written comments once to the Secretariat before 29 December, which would take these comments into account when writing a second draft. Germany's input certainly did not surpass that of others.<sup>15</sup> France, in fact, provided more input, particularly on what would become Title IV on economic policy coordination. However, these three Articles would remain rather weak overall, and mostly restated the importance of the existing macroeconomic imbalances procedures (MIP). In contrast, the Commission provided two rounds of input that was much more influential in shaping the text (see below).

The Chair planned time for an article-by-article discussion in the second meeting on 6 January.<sup>16</sup> The main part of the debate, unsurprisingly, was about Title III. The other Titles primarily required some fine-tuning for national consumption, for instance the explicit link between the ESM and the Fiscal Compact in the preamble, which came in the third draft, or the participation of the Euro ‘outs’ at the Eurozone Summits in Article 5.12.<sup>17</sup> On Title V about euro area governance, the major battles had already been fought in October 2011, leading to the so-called ‘ten commandments’ of euro area governance.<sup>18</sup> There were minor turf battles about whether the ECB president should be ‘invited’ or be considered as an integral part of the meeting, and the EP representatives unsuccessfully tried to procure a somewhat bigger role for their president. Finally, with regard to Title VI, the entering into force and incorporation into EU law, somewhat surprisingly, there was hardly any debate, also not about Article 6.16 the incorporation of the intergovernmental Treaty into EU legal framework.

In the third meeting of 12 January agreement was reached on most issues, paving the way for the final tweaks in the run-up to the European Council summit in February. On 19 January the Chair of the Working Group sent a letter to the member states, outlining the ‘open’ issues for the end-game.<sup>19</sup> The ministers endorsed the deals reached on the deficit (and not debt) criterion, the exclusion of the Euro Plus Pact and the EP President and the link between ESM and Fiscal Compact.<sup>20</sup> The Sherpas then rubber-stamped it in the run up to the to the Eurozone Summit of 30 January 2011, where it was showcased as one of the major steps of the overall strategy to fight the crisis.<sup>21</sup>

#### *Institutional fingerprints (1150 words)*

In the following, we discuss the effects of institutional leadership. The backbone is a systematic assessment of the fingerprints that were left by institutional involvement in the legal text. These assessments are based on interviews with participants and a comparison of the final document to the Franco-German letters of August and December 2011 and the Council Secretariat’s first draft of November 2011 and, secondly, a comparison of the final text to existing EU law. We categorized these effects as: ‘substantial’, ‘some’ or ‘few’ institutional fingerprints. A condensed overview of the fingerprints is provided in Table 1. A detailed documentation of the evidence and comparisons is provided in the supplementary appendices.

**Table 1 – the fingerprints of instrumental leadership by institutions**

<b>Overall legal form</b>	<p><u>Substantial institutional fingerprints</u></p> <p>Council Secretariat legal service proposed international agreement and utilization of Community institutions and resources in treaties made by member states.</p>
<b>Title I – Purpose and scope</b>	
<b>Article 1</b>	<p><u>Few institutional fingerprints</u></p> <p>Three pillars: balanced budget rule, strengthened coordination of economic policies, improved governance of euro area were key themes in August Franco-German letter.</p>
<b>Title II – Consistency and Relationship with Union law</b>	
<b>Article 2 (2)</b>	<p><u>Substantial institutional fingerprints</u></p> <p>Supremacy of EU law over provisions Treaty procured by Council Secretariat Legal Service.</p>
<b>Title III – Fiscal Compact</b>	
<b>Article 3(1a)</b>	<p><u>Few institutional fingerprints</u></p>
<b>Balanced budget rule</b>	<p>However, the text echoes the obligation in Article 126(1) TEU to avoid excessive deficit.</p>
<b>Article 3(1b)</b>	<p><u>Substantial institutional fingerprints</u></p>
<b>Convergence towards medium-term budgetary objective</b>	<p>Definition aligned with revised SGP. Commission in particular argues for use of existing institutions (i.o. new institutional framework) and convergence in framework of revised SGP to underline compatibility (and eventual redundancy).</p>
<b>Article 3(1c)</b>	<p><u>Substantial institutional fingerprints</u></p>
<b>Temporary deviations due to exceptional circumstances</b>	<p>Germany (and ECB) envisioned limited room for temporary deviations. Commission and Council Secretariat legal service extend exceptional circumstances clause and link it clearly to revised SGP (Regulation 1175/2011).</p>
<b>Article 3(1d)</b>	<p><u>Substantial institutional fingerprints</u></p>
<b>Deficit when debt is below 60% GDP</b>	<p>Council Secretariat first draft included ability for higher deficits when government debt is significantly below 60% GDP, something that was not mentioned in the August Franco-German letter, but resonated with regulation 1175/2011 (Art 2a, 5).</p>
<b>Article 3(1e)</b>	<p><u>Substantial institutional fingerprints</u></p>

<b>Automatic correction mechanism</b>	Automatic correction mechanism was not raised in the August Franco-German letter. The text was drafted by the Council Secretariat Legal Service to ensure compatibility with Directive 2011/85 (Art. 5).
<b>Article 3(2)</b>	<u>Some institutional fingerprints</u>
<b>Anchoring in national law</b>	Council Secretariat first draft echoed the August Franco-German letter, but was more specific about how it would work, referring to existing obligations (Directive 2011/85 Art. 5), Commission proposal for two pack (2011:821) and non-binding commitment in Euro Plus Pact.
<b>Article 3(3)</b>	<u>Some institutional fingerprints</u>
<b>Definitions</b>	Commission and Council Secretariat legal service prevent a more stringent definition of exceptional circumstances (i.o. the one used in revised SGP).
<b>Article 4</b>	<u>Few institutional fingerprints</u>
<b>Debt reduction</b>	Article 4 on debt reduction was originally proposed in the August Franco-German letter, although here the wording drew on existing obligations in the proposals for the revised SGP (Regulation 1177/2011, article 2)
<b>Article 5</b>	<u>Substantial institutional fingerprints</u>
<b>Budgetary and economic partnerships</b>	While August Franco-German letter included much language related to structural reforms, many things were excluded from Council Secretariat draft. Draft provides the link to excessive deficits, drawing upon existing legislation (1175/2011 and 1177/2011 and the Commission two-pack proposal (COM(2011)821). Commission proposes reference to 'European Union law'
<b>Article 7</b>	<u>Some institutional fingerprints</u>
<b>Compliance with Commission recommendations</b>	The August Franco-German letter was very vague about enforcement; Council Secretariat legal service proposal on supporting Commission recommendations on deficit (not on debt) already in first draft.
<b>Article 8</b>	<u>Substantial institutional fingerprints</u>
<b>Enforcement and non-compliance</b>	While Germany insisted on conferring the ability to bring non-compliance with article 3(2) to the ECJ to the Commission, the Commission showed that there was no provision in the treaties (Article 273 TFEU only refers to member states). Council Secretariat formulated a non-binding statement (annex) committing member states to act upon Commission report.
<b>Title IV - Economic Policy Coordination and Convergence</b>	
<b>Articles 9-11</b>	<u>Some institutional fingerprints</u>
<b>Structural reforms</b>	Council Secretariat quietly dropped Franco-German specific ideas to oblige member states to engage with particular areas of reform.
<b>Title V - Governance of the Euro area</b>	
<b>Articles 12-13</b>	<u>Few institutional fingerprints</u>

<b>Role of (president) Euro Summit and Eurogroup</b>	Large part of Franco-German agenda already adopted in October. Only exception is that Council Secretariat and Commission reduce the intended role of the Euro Summit in day to day economic governance of the Euro Area.
<b>Title VI -General and final provisions</b>	
<b>Article 14-16</b>	<u>Substantial institutional fingerprints</u>
<b>Incorporation into EU law</b>	Article 16 inserted solely based on an initiative from the Commission, which argued for using the Treaty of Prüm as a template for the incorporation of the treaty into EU law within a given time period (five years).
<b>Omitted issues</b>	
<b>N.a.</b>	<u>Substantial institutional fingerprints</u>
<b>Use structural and cohesion funds</b>	Council Secretariat quietly drop the Franco-German plan to use structural and cohesion funds to support structural reforms,

Instead of discussing all the individual fingerprints, we use them to make three points. First, by drafting and managing the revisions of draft texts, EU institutions *laid out the tracks* for the subsequent negotiations, setting the parameters for what was included and what issues were omitted, and the overall structure of the final deal. Second, institutional leadership ensured that, in spite of the ad-hoc intergovernmental set-up of the process, the final deal was compatible with, if not *almost* redundant in relation to, existing and proposed EU legislation. Third, by controlling the negotiation process, the institutions ensured that this limited scope and Communitarized deal was *shepherded through* the machine room negotiations without significant changes. As one of the participants put it:

The intergovernmental mode essentially served as the “surrogate mother”, while the DNA shows that this was very much a Community baby.<sup>22</sup>

First, by developing the initial draft, the Van Rompuy Cabinet officials and the Council Secretariat Legal Service were able to lay out the tracks for the coming negotiations. Instead of developing a parallel, ad hoc institutional framework as in the EFSF/ESM Treaties, the first Secretariat draft suggested using Community institutions in ways compatible with existing competences (see overall legal form). The officials also quietly decided which items in the Franco-German letter from August 2011 were dropped from the agenda, like the idea to oblige member states to engage with structural reforms or to use structural and cohesion funds to support such reforms. It is noteworthy in this regard that the *second* Franco-German letter, which came on the eve of the December European Council Summit and intended to

build political momentum for the balanced budget rule, more closely echoed the November draft on the balanced budget rule instead of the first Franco-German letter from August (see supplementary appendix 2). Even more interestingly, the second letter re-iterated several core German priorities (especially structural reforms), but these were again *not* taken up in subsequent Council Secretariat drafts. If Germany was on board with these omissions, why would they repeat their demands in the December letter?

Second, while it was formally an intergovernmental process, the institutions operated as forcefully and proactively as they would have in any regular Community process. Most of the changes in the draft texts brought the Fiscal Compact even more firmly into the fold of the Community, in particular with the revised SGP. There are plenty of fingerprints that could be mentioned here. For instance, the Secretariat ensured that EU law would always trump any obligations included in the Fiscal Compact (Article 2). The definitions of convergence towards ‘medium-term budgetary objectives’ (Article 3.1b) and ‘temporary deviations’ due to ‘exceptional circumstances’ (Article 3.1d & 3.3.) were aligned with the SGP. The automatic correction mechanism (Article 3.1e) and the budgetary and economic partnerships (Article 5) were equally aligned with existing legislation and the upcoming two-pack. On the issue of enforcement, the Commission and Council Secretariat withstood German pressure to confer the ability to bring non-compliance to the ECJ to the Commission, by showing that there was no basis for this in the Treaties (Article 273 TFEU). Overall, the Commission’s technical input of 3 and 6 January served to ensure the legal compatibility of the draft with existing EU law, which in effect watered down the novelty of the instrument. Instead of using tracked changes as the member state contributions did, the Commission notes contained fully revised articles, with legal and substantive justifications, which were subsequently taken over in the fourth draft. For instance, in the note of 6 January, the Commission explained how the automatic correction mechanism could be made ‘fully compatible with the Stability and Growth Pact provisions and in particular with the provisions on significant deviation in the preventive arm’.<sup>23</sup> Additionally, to ensure compatibility, if not redundancy, the Commission proposed a draft article that committed governments to incorporate the Fiscal Compact into EU law within five years, which was again adopted almost word-for-word in the final draft as Article 16.

Third, the institutional network was able to shepherd the draft through the machine room with little input from member states. We can assess the effectiveness of this 'shielding' process, by comparing the November and December 2011 drafts of the Secretariat to the subsequent drafts and to the final text (see supplementary appendix 1). Most noteworthy is the fact that there are very few major revisions. Already in the days after the December European Council Summit, representatives from the different institutions came together to decide that this would all be done in a few short meetings, with limited documentation (e.g. use of room documents, no bracketed text, no circulation of minutes). There were limited opportunities (and a narrow time frame) for member states to provide input and debate the issues. Most member states had provided input in the shape of minor tracked changes to the Secretariat's draft, practically all of which were ignored in the second draft text (see supplementary appendices 1 and 3). Most of the debate, in fact, took place between the drafters from the institutions, in the run-up to the three meetings, specifically between representatives from the ECB, Commission and the Cabinet of Van Rompuy.<sup>24</sup> Overall, the process was about ensuring compatibility, with the Conclusions of the HOSG, (role of the EC President cabinet and Council Secretariat and Legal Service) and with existing legal framework of the enhanced SGP (role of EFC Secretariat and Commission).

### **Conclusion: Comparative analysis (1100 words)**

The process tracing analysis revealed the leadership activities provided by the EU institutions in the negotiation of the Fiscal Compact. In the Conclusion, we compare the Fiscal Compact to the Euro Plus Pact and Contractual Arrangements, to assess what happens when instrumental leadership is missing. German political leadership was present in all three cases, so this controlled comparison serves to support our claim about the causal necessity of instrumental leadership.

All three initiatives stemmed from German ideas about enhancing fiscal discipline and inducing structural reforms, as reflected in the joint Franco-German letter to other EU leaders on the 4th of February, 2011.<sup>25</sup> The letter called a 'competiveness pact' to be achieved by introducing 'concrete commitments more than already decided' to be adopted at the national level. Implementation of these commitments was to be evaluated by the Commission, and the introduction of a sanctions mechanism was to be examined. On fiscal discipline, the letter called for an 'obligation for all member states to inscribe the debt alert mechanism into their

respective constitutions'. On structural reforms, the letter called for abolition of wage/salary indexation, reforms of the retirement age, common assessment basis for corporate income tax, and mutual recognition of diplomas and vocational qualifications.

The Commission was not opposed to these reform ideas in principle, but they were concerned that new commitments might clash with existing EU rules. This resulted in a rather strange reform debate, in which Commission president Barroso's continuously emphasized that, "no competences are being *withdrawn* from the institutions", while Chancellor Merkel kept stressing that no competences were being *transferred*.<sup>26</sup> While the EC President's cabinet and Council Secretariat were willing to provide some support, particularly in preparing for the Eurozone summit of 11 March 2011, the Commission did not warm up to the idea of more binding commitments at the national level.<sup>27</sup> In their view, the Pact only replicated what they were *already doing*, as part of the monitoring cycle of the European Semester.<sup>28</sup> This reticence then led Merkel to push the reforms through the European Council, attempting to provide the instrumental leadership required together with France.<sup>29</sup> The resulting Euro Plus Pact of 25 March 2011 was, not surprisingly, a non-binding declaration that would run for one year, after which it was dissolved into the European Semester.

The plan for Contractual Arrangements is another example of the limits of German (instead of Franco-German) political leadership. After the failed Euro Plus Pact, and the attempts to strengthen commitments to structural reform were not taken up in the fall of 2011 in the Fiscal Compact, Germany launched the idea of an explicit quid quo pro linking EU funds to structural reforms. When launched, many observers were led to believe that all Eurozone members would soon have to sign Brussels approved economic adjustment programs, like Greece and other program countries.<sup>30</sup> While this was undoubtedly a German idea, the European Council president did help to facilitate decision-making in the control room. President Van Rompuy even kept putting contracts on the agenda of European Councils (October and December 2012, June, October and December 2013). At the Sherpa level, Van Rompuy's deputy head of cabinet, Didier Seeuws was tasked with fleshing out the details (Ludlow, 2013: 12-13), with the European Council periodically endorsing their work.<sup>31</sup> There were passionate debates, particularly at the December 2013 European Council Summit, with the Sherpas standby to explain the details. The Conclusions manage to address 'contractual arrangements' eleven times. However, when the smoke had cleared, the mandate for reform

had not become more specific: 'further work will be pursued', and the presidents of the institutions were invited 'to report to the October 2014 European Council' on the issue.<sup>32</sup> By that time, the idea of contracts had been transformed into non-binding 'partnerships for growth, jobs and competitiveness'.

What was again missing was instrumental leadership in the machine room. The political level process was not connected to the grid (meaning the machine room). There would be a few EFC meetings in which the contracts were discussed, but there was no taskforce or working group charged with translating these ideas into an actual binding reform. Again, the Commission was not a fan of the idea, but like on the Euro Plus Pact, it was willing to provide some input, here in the shape of a Communication. The contracts were reframed into a 'convergence and competitiveness instrument (CCI)' that would induce member states to engage with necessary structural reforms and monitor their compliance.<sup>33</sup> These would become mandatory only for member states under an excessive imbalance procedure (EIP) and voluntary for all others. Furthermore, the Commission was keen to reduce its own role to engaging in a dialogue about reforms with national governments and parliaments.<sup>34</sup> This institutional strategy of non-engagement effectively came down to killing it softly.

Overall, this paper has sought to provide a more realistic metric for assessing institutional leadership activities and their effects. Many have reflected on 'the rise of European Council centered governance' and what this implies for the role of the EU institutions.<sup>35</sup> But current theorizing still clings to relatively heroic conceptions of leadership, and what it can accomplish, in the context of the Eurozone crisis, the refugee crisis or beyond. The EU system has always been characterized by interdependencies, also in the days of Delors. But these interdependencies have been brought to the forefront by recent crises. We briefly note some similarities in the role of the institutions on other major dossiers, like the EU Turkey Action Plan or the British re-negotiations, which were characterized by a similar lack of a pre-defined format. European Council dominated decision-making required empowerment of a select group of officials in the machine room that cooperated informally across institutional boundaries. Building upon political instructions from the control room, the institutional actors used their delegated powers to steer negotiations in the machine room, thereby also keeping the member states at arm's length (REFERENCES REMOVED). This brings us back to the paradox of European Council centered governance. Increased involvement from the

highest political level can enhance, rather than diminish, the influence of those who are asked to carry out their orders.

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<sup>1</sup> Leadership is thus not about the structural position of an actor (e.g. as a hegemon).

<sup>2</sup> To be sure, there were occasions at which Germany was fully prepared to act on its own; by issuing statements (often together with France) and taking the lead in the control room negotiations. But at other times, Germany tried to ensure backing from key institutional actors (the ECB, the Bundesbank and the European Council president) and let them take the lead in presenting initiatives and initiating public debate (Bulmer and Paterson, 2013: 1397).

<sup>3</sup> And where the underlying preferences of other governments in relation to these reforms were constant.

<sup>4</sup> Letter to EU 27 leaders. Reprinted in <https://www.politico.eu/article/merkel-sarkozy-outline-competitiveness-pact/>

<sup>5</sup> Letter to President Van Rompuy, 17-8-2011. A second Franco-German letter was sent on 7-12-2011.

<sup>6</sup> Author's interviews, Commission services, 24-3 & 27-8-2015.

<sup>7</sup> Author's interviews, Council legal service, Brussels, 26-09-2017.

<sup>8</sup> Author's interview, Council legal service, Telephone, 13-11-2018.

<sup>9</sup> Author's interviews, Council legal service, Brussels, 26-09-2017.

<sup>10</sup> Statement by the Euro Area Heads of State or Government: 4-5, Brussels 9 December 2011.

<sup>11</sup> See appendix 2.

<sup>12</sup> Letter by Jörg Asmussen to the Members of the EWG Ad-Hoc Working Group on the Fiscal Stability Union, 12 January 2012.

<sup>13</sup> Author's interviews, EFC and Commission, 26-9-2017

<sup>14</sup> Summing up letter of the Meeting of the Eurogroup Working Group Working Group on a Fiscal Stability Union, Letter from the Chair to the European Council President, 20 December 2011.

<sup>15</sup> The authors had access to documents that reflected the input from member states. Germany provided input on 28 December 2011 and 9 January 2012.

<sup>16</sup> Summing up letter of the Meeting of the Eurogroup Working Group Working Group on a Fiscal Stability Union, Letter from the Chair to the European Council President, 6 January 2012.

<sup>17</sup> Poland wanted to be invited to more operational Summits, but had to settle for being invited 'when appropriate and at least once a year'.

<sup>18</sup> Euro Summit Statement, Brussels 26-10-2011: 'Annex I ten measures to improve the governance of the euro area'.

<sup>19</sup> Letter by the Chairman of the Ad Hoc Working Group on a Fiscal Stability Union, 19 January 2012.

<sup>20</sup> 3141<sup>st</sup> Council meeting, Economic and Financial Affairs, Brussels, 23/24 January 2012 p. 15.

<sup>21</sup> 'Agreed lines of communication by euro area Member States'

<sup>22</sup> Author's interviews, Council legal service, Brussels, 26-09-2017.

<sup>23</sup> Commission intervention dated 6-1-2012 titled 'International Agreement on a Reinforced Fiscal Union'.

<sup>24</sup> This is based on indirect evidence, personal recollections from participants from the institutions and from member states.

<sup>25</sup> Letter to EU 27 leaders. Reprinted in <https://www.politico.eu/article/merkel-sarkozy-outline-competitiveness-pact/>

<sup>26</sup> *Agence Europe*, 05-02-2011 'EU Summit: Focus on economic governance and Franco-German axis'.

<sup>27</sup> *Agence Europe*, 03-03-2011 'Van Rompuy/Barroso version of the competitiveness pact'

<sup>28</sup> Author's interview, Commission Director General level, 27-6-2013.

<sup>29</sup> *Spiegel Online*, 31-01-2011. 'An Economic Government for the Euro Zone?'

<sup>30</sup> *Financial Times*, 02-10-2012, 'EU draft urges contracts for euro states'.

<sup>31</sup> *Agence Europe*, 5-12-2013. Annotated agenda of the Sherpa meeting. European Council Conclusions, Brussels 27/28 June 2013, Completing the Economic and Monetary Union: 14.

<sup>32</sup> European Council Conclusions, Brussels 19/20 December 2013, Economic and Monetary Union: 32-35

<sup>33</sup> 'The introduction of a Convergence and Competitiveness, Brussels 20-3-2013.

<sup>34</sup> Author's interviews, Commission services 25-3, 26-3, 27-6-2013.

<sup>35</sup> Author's interview, Peter Ludlow, 8-5-2018.

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## Appendix 1 – the fingerprints of instrumental leadership by institutions

This table provides a detailed overview of the fingerprints that were left by institutional involvement on the final text of the Fiscal Compact. These assessments are based on a comparison of the final document to the Franco-German letters of August and December 2011 and the Council Secretariat’s first draft of November 2011 and, secondly, a comparison of the final text to existing EU law. The table categorizes these effects as:

- Substantial institutional fingerprints
- Some institutional fingerprints
- Few institutional fingerprints.

<p><b>Overall legal form</b></p>	<p><u>Substantial institutional fingerprints</u></p> <p>European Council President Van Rompuy directed his cabinet to start working on how to incorporate a balanced budget rule into EU law. This led to an informal mandate to the Council Secretariat’s Legal Service, who working closely with officials from the cabinet and the Commission Legal Service drafted an embryonic version of a Fiscal Compact as a Council decision amending Protocol 12 (on the excessive deficit procedure) of the Treaties (author interview, Council legal service, Brussels, 26-09-2017). The draft amendment to Protocol 12 focused on the balanced budget rule (article 3 in the FC). The legal base was article 126(14.2), which is a <i>passerelle</i> clause that allows the protocol to be amended through a unanimous Council decision. In other words, this enables a change to EU primary law without resorting to the ordinary revision procedure (Article 48 EU). Van Rompuy Cabinet officials informally floated the Secretariat draft with the member states. The German government indicated that it preferred a stronger legal instrument that could not be reversed by a future Council decision, meaning that the ordinary revision procedure would have to be used (Ibid).</p> <p>After the British veto of this at the December European Council Summit, some member states wanted to create a new institutional framework, but this idea was shot down by Council Secretariat legal service. The Council Secretariat Legal Service proposed instead to use an intergovernmental agreement (IA) that would function in parallel with the EU Treaties, but that would use EU institutions. Discussions had been held shortly beforehand between officials in Council Secretariat and Commission legal services about the legality of an IA (Author interview, Council legal service, Brussels, 26-09-2017). Legal precedence for using EU institutions in treaties made by member states was found in two rulings by the ECJ from the 1990s (C-181, 248/91 and C-316/91). In these rulings, the ECJ stated that member states, when acting within their fields of competence, could engage in collective action that could utilize Community institutions and resources (for more, see Craig, 2012: 240).</p>
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	<p>During the Summit, European Council president Van Rompuy brokered a compromise on the final statement of the Euro Area heads of state and government, including the decision to go for an IA. Germany did not need a lot of convincing about this legal form because an IA was still regarded as superior to a Council decision that could be overturned.</p>
<b>Title I – Purpose and scope</b>	
<b>Article 1</b>	<p><u>Few institutional fingerprints</u></p> <p>Three pillars (balanced budget rule), strengthened coordination of economic policies, improved governance of euro area were key themes from August Franco-German letter. The reference to ‘economic pillar’ was inserted by the Legal Services to underline that the rules of the eurozone were not to be amended by the FC.</p>
<b>Title II – Consistency and Relationship with Union law</b>	
<b>Article 2</b>	<p><u>Substantial institutional fingerprints</u></p> <p>The issue of compatibility with EU law was not discussed in Franco-German letters, but instead was first found in draft produced by Council Secretariat Legal Service.</p> <p>German opposition to the supremacy clause in article 2(2) in the first draft led to removal of the text that stated ‘European Union law has precedence over provisions of this Treaty’, although the remaining text has equivalent legal effect (Peers, 2012: 409-10) (‘This Treaty shall apply insofar as it is compatible with the Treaties on which the European Union is founded and with European Union law. It shall not encroach upon the competence of the Union to act in the area of the economic union.’ (article 2(2))).</p>
<b>Title III – Fiscal Compact</b>	
<b>Article 3(1a)</b>	<p><u>Few institutional fingerprints</u></p>
<b>Balanced budget rule</b>	<p>While the balanced budget rule itself was a core German demand, the text ‘the budgetary position of the general government of a Contracting Party shall be balanced or in surplus’ echoes very clearly the existing obligation in Article 126(1) TEU to avoid excessive deficits.</p>
<b>Article 3(1b)</b>	<p><u>Substantial institutional fingerprints</u></p>
<b>Definition of and convergence towards medium-term budgetary objective</b>	<p>The August Franco-German letter did not include a definition of ‘balanced budget’, stating only that ‘The fiscal rule should <i>implement the objectives of the Stability and Growth Pact</i> and ensure that every Member State of the Euro Area achieves a <i>balanced budget as soon as possible</i>.’ [italics in original]. The draft change to Protocol 12 from November defined the rule, and was later cut-and-pasted directly into the first draft Fiscal Compact in December (author interview, Council legal service, telephone, 13-11-2018).</p>

The first draft text that defines the ‘balanced budget rule’ is clearly aligned with the revised SGP pact, although the final text included a time-frame to be proposed by the Commission for convergence that does not exist in the revised SGP. There was considerable debate about whether a new institutional framework would be created to ensure convergence – as some member states wanted – or whether existing institutions would be used. The institutions intervened, arguing for existing institutions to be used (author interviews, Council legal service, Commission and EFC Secretariat, Brussels, 26-09-2017). A key argument was made by the Commission, who stated that convergence would eventually take place within the revised SGP anyway, meaning that the provisions would be folded into the new SGP practices. The final text even included a clear follow-up reference to the revised SGP to underline compatibility (and eventual redundancy).

Final article 3(1b)

the rule under point (a) shall be deemed to be respected if the annual structural balance of the general government is at its country-specific medium-term objective, as defined in the revised Stability and Growth Pact, with a lower limit of a structural deficit of 0,5 % of the gross domestic product at market prices. The Contracting Parties shall ensure rapid convergence towards their respective medium-term objective. The time-frame for such convergence will be proposed by the European Commission taking into consideration country-specific sustainability risks. Progress towards, and respect of, the medium-term objective shall be evaluated on the basis of an overall assessment with the structural balance as a reference, including an analysis of expenditure net of discretionary revenue measures, in line with the revised Stability and Growth Pact

Regulation 1175/2011, article 2a

Each Member State shall have a differentiated medium- term objective for its budgetary position. These *country-specific medium-term budgetary objectives* may diverge from the requirement of a close to balance or in surplus position, while providing a *safety margin with respect to the 3 % of GDP government deficit ratio*. The medium-term budgetary objectives shall ensure the sustainability of public finances or a rapid progress towards such sustainability *while allowing room for budgetary manoeuvre*, considering in particular the need for public investment.

[There is more flexibility given here than in final Fiscal Compact – ‘*allowing room for budgetary manoeuvre*’ (Peers, 2012: 413)]

...Taking these factors into account, for participating Member States and for Member States that are participating in ERM2 the country-specific *medium-term budgetary objectives shall be specified within a defined range between -1 % of GDP and balance or surplus*, in cyclically adjusted terms, net of one-off and temporary measures.

	<p><u>Regulation 1175/2011, article 5</u></p> <p>The Council and the Commission, when assessing the adjustment path toward the medium-term budgetary objective, shall examine if the Member State concerned pursues an appropriate annual improvement of its cyclically-adjusted budget balance, net of one-off and other temporary measures, required to meet its medium-term budgetary objective, with <i>0,5% of GDP as a benchmark</i>.</p>
<p><b>Article 3(1c)</b></p> <p><b>Temporary deviations due to exceptional circumstances</b></p>	<p><u>Substantial institutional fingerprints</u></p> <p>The text on temporary deviations due to exceptional circumstances was intended by Germany (and the ECB) to be as limited as possible (author interview, EFC and Commission, 26-9-2017). However, the Commission and Council Secretariat Legal Services were concerned that this would clash with obligations under the revised SGP. After they intervened, by the fourth draft (19 January 2012), and after an intervention by the Secretariat Legal Service, a formulation was included that linked the definition clearly to the revised SGP.</p> <p>Article 3(3b), which defines exceptional circumstances, was then taken almost word-for-word from Regulation 1175/2011.</p> <p><u>Final article 3(3b)</u></p> <p>"exceptional circumstances" refers 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 set out 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.</p> <p><u>Regulation 1175/2011, article 5</u></p> <p>In the case of an <i>unusual event</i> outside the control of the Member State concerned which has a major impact on the financial position of the general government or in periods of severe economic downturn for the euro area or the Union as a whole, Member States may be allowed temporarily to depart from the adjustment path towards the medium-term budgetary objective referred to in the third subparagraph, provided that this does not endanger fiscal sustainability in the medium term.</p>
<p><b>Article 3(1d)</b></p> <p><b>Deficit when debt is below 60% GDP</b></p>	<p><u>Substantial institutional fingerprints</u></p> <p>The Secretariat first draft included the ability to have higher deficits (at most 1% of GDP) when government debt is significantly below 60% GDP – something that was not mentioned in the August Franco-German letter. The final text was made even more compatible with existing legislation.</p> <p><u>Final article 3(1d)</u></p> <p>Where the ratio of the general government debt to gross domestic product at market prices is significantly below 60 % and where risks in terms of long-term</p>

	<p>sustainability of public finances are low, the lower limit of the medium-term objective specified under point (b) can reach a structural deficit of at most 1,0 % of the gross domestic product at market prices</p> <p><u>Regulation 1175/2011, article 2a</u>  ...Taking these factors into account, for participating Member States and for Member States that are participating in ERM2 the country-specific medium-term budgetary objectives shall be specified within a defined range between -1 % of GDP and balance or surplus</p> <p><u>Regulation 1175/2011, article 5</u>  The Council and the Commission, when assessing the adjustment path toward the medium-term budgetary objective, shall examine if the Member State concerned pursues an appropriate annual improvement of its cyclically-adjusted budget balance, net of one-off and other temporary measures, required to meet its medium-term budgetary objective, with 0,5 % of GDP as a benchmark. For Member States faced with a debt level exceeding 60 % of GDP or with pronounced risks of overall debt sustainability, the Council and the Commission shall examine whether the annual improvement of the cyclically-adjusted budget balance, net of one-off and other temporary measures is higher than 0,5 % of GDP.</p>
<p><b>Article 3(1e)</b></p> <p><b>Automatic correction mechanism</b></p>	<p><u>Substantial institutional fingerprints</u></p> <p>The issue of an automatic correction mechanism was not raised in the August Franco-German letter. The text was drafted by the Council Secretariat Legal Service to ensure compatibility with EU law.</p> <p><u>Final article 3(1e)</u>  In the event of significant observed deviations from the <i>medium-term objective</i> or the adjustment path towards it, a <i>correction mechanism shall be triggered automatically</i>. The mechanism shall include the obligation of the Contracting Party concerned to implement measures to correct the deviations over a defined period of time.</p> <p>[some national obligations in Directive 2011/85 (see below)]  <u>Directive 2011/85, article 5 (date : 08.11.11)</u>  Each Member State shall have in place numerical fiscal rules which are specific to it and which effectively promote compliance with its obligations deriving from the TFEU in the area of budgetary policy over a multiannual horizon for the general government as a whole. Such rules shall promote in particular:  (a) compliance with the reference values on deficit and debt set in accordance with the TFEU;  (b) the adoption of a multiannual fiscal planning horizon, including adherence to the Member State's <i>medium-term budgetary objective</i>.</p>
<p><b>Article 3(2)</b></p>	<p><u>Some institutional fingerprints</u></p>

<p><b>Anchoring in national law</b></p>	<p>The first Secretariat draft echoed the August Franco-German letter, but was more specific about how it would work, and referred to existing obligations and non-binding commitments from the Euro Plus Pact.</p> <p><u>August Franco-German letter</u>  ...building on their commitments under the Euro Plus Pact, all Member States of the Euro Area will incorporate a <i>balanced budget fiscal rule</i> into their national legislation by summer 2012. As a rule, the balanced budget fiscal rule is made law as <i>part of member states' constitutions or by legislation of an equivalent level</i> in order to ensure the rule's stability and superiority over annual budgets.</p> <p><u>Article 3(2) in the Secretariat first draft</u>  The rules mentioned under paragraph 1 shall be introduced in <i>national binding provisions of a constitutional or equivalent nature</i>. The Contracting Parties shall in particular put in place a correction mechanism to be triggered <i>automatically</i> in the event of significant deviations from the reference value or the adjustment path towards it. This mechanism shall be defined at national level, on the basis of commonly agreed principles. It shall include the obligation of the Contracting Parties to present a programme to correct the deviations over a defined period of time. It shall fully respect responsibilities of national Parliaments.'</p> <p>There were two key issues in the actual negotiation of Article 3(2). First was the form of <i>incorporation into national law</i>. The first draft talked about transposition into 'national binding provisions of constitutional or equivalent nature', but member states such as Ireland raised country-specific concerns about introducing constitutional-level measures. Here there are conflicting accounts of whose fingerprints the final text actually reflects. In interviews experts from the Council Secretariat Legal Service claim to have provided the solution, inspired by phrasing from French constitutional law. However, the Commission had proposed in its two-pack proposal from 23<sup>rd</sup> November 2011 a phrasing that closely echoes the final draft (see below). Irrespective of whether the idea developed in parallel (i.e. the Council Secretariat did not look towards the Commission proposal for inspiration), the point remains that the phrasing originated within the institutional network.</p> <p>Another key issue was the <i>automatic correction mechanisms</i> included in Article 3(2) in the first draft. Here there was an obligation for member states to 'put in place a correction mechanism to be triggered automatically...defined at national level, on the basis of commonly agreed principles'. However, the formulation was vague and could have created conflict between a mechanism defined nationally and the national policies required to comply with the procedures of the revised SGP. As a result, the Commission tabled an issue note on the 6th of January - immediately after the Secretariat's second draft - in which the Commission proposed to make the automatic correction</p>
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mechanism 'fully compatible with the Stability and Growth Pact provisions, and in particular with the provisions on significant deviation in the preventive arm' (Commission intervention dated 06 January 2012. Titled 'International Agreement on a Reinforced Fiscal Union.'). The subsequent fourth draft text from the 10th of January included an explicit mention of the SGP, and ensured that the principles for the correction mechanism were based on a proposal by the Commission.

Final article 3(2)

*The rules set out in paragraph 1 shall take effect in the national law of the Contracting Parties at the latest one year after the entry into force of this Treaty through provisions of binding force and permanent character, preferably constitutional, or otherwise guaranteed to be fully respected and adhered to throughout the national budgetary processes.*

The Contracting Parties shall put in place at *national level the correction mechanism referred to in paragraph 1(e)* on the basis of common principles to be proposed by the European Commission, concerning in particular the nature, size and time-frame of the corrective action to be undertaken, also in the case of exceptional circumstances, and the role and independence of the institutions responsible at national level for monitoring compliance with the rules set out in paragraph 1. Such correction mechanism shall fully respect the prerogatives of national Parliaments.

[some obligations included in existing EU legislation and non-binding commitment in Euro Plus Pact (EUCO 10/11, p. 19)]

Directive 2011/85, article 5 (date : 08.11.11)

Each Member State shall have in place numerical fiscal rules which are specific to it and which effectively promote compliance with its obligations deriving from the TFEU in the area of budgetary policy over a multiannual horizon for the general government as a whole. Such rules shall promote in particular:

- (a) compliance with the reference values on deficit and debt set in accordance with the TFEU;
- (b) the adoption of a multiannual fiscal planning horizon, including adherence to the Member State's medium-term budgetary objective.

Proposal COM(2011) 821 final (date : 23.11.11)

[not adopted in same form in final regulation]

Article 4

Rules on the budgetary balance and independent national fiscal council

*1. Member States shall have in place numerical fiscal rules on the budget balance that implement in the national budgetary processes their medium-term budgetary objective as defined in Article 2a of Regulation (EC) No 1466/97.*

*Such rules shall cover the general government as a whole and be of binding, preferably constitutional, nature.*

<p><b>Article 3(3)</b></p> <p><b>Definitions</b></p>	<p><u>Some institutional fingerprints</u></p> <p>Commission and Council Secretariat legal service prevent a more stringent definition of exceptional circumstances (i.o. the one used in revised SGP).</p>
<p><b>Article 4</b></p> <p><b>Debt reduction</b></p>	<p><u>Little to no institutional fingerprints</u></p> <p>Article 4 on debt reduction was originally proposed in the August Franco-German letter, although here the wording drew very clearly on existing obligations in the proposals for the revised SGP.</p> <p><u>August Franco-German letter</u></p> <p>Therefore, it would ensure a sustained reduction of the <i>debt ratios</i> should they exceed the reference value (60% of GDP). In line with the revised Stability and Growth Pact, by the end of 2011, all member states of the Euro Area whose debt level exceeds the reference value must present an adjustment path for reducing their debt below the reference value and expose how to address the impact of ageing population on the long-term debt sustainability.</p> <p>In the first draft, member states should 'undertake' to reduce their debt if it exceeds 60% of GDP at an average rate of one twentieth per year. The ECB pushed strongly for a stronger obligation, succeeding in replacing 'undertake' with 'shall'. To underline that it imposed no new obligations, existing EU law was extensively referenced in the final draft.</p> <p>To ensure that it would not conflict with the revised SGP, the Council Secretariat proposed rephrasing in line with regulation 1177/2011, which came to be the final outcome.</p> <p><u>Final Article 4</u></p> <p>When the ratio of a Contracting Party's general government debt to gross domestic product exceeds the 60 % reference value referred to in Article 1 of the Protocol (No 12) on the excessive deficit procedure, annexed to the European Union Treaties, that Contracting Party shall reduce it at an average rate of one twentieth per year as a benchmark, as provided for in Article 2 of Council Regulation (EC) No 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure, as amended by Council Regulation (EU) No 1177/2011 of 8 November 2011. The existence of an excessive deficit due to the breach of the debt criterion will be decided in accordance with the procedure set out in Article 126 of the Treaty on the Functioning of the European Union.</p> <p><u>Regulation 1177/2011, article 2</u></p> <p>When it exceeds the reference value, the ratio of the government debt to gross domestic product (GDP) shall be considered sufficiently diminishing and approaching the reference value at a satisfactory pace in accordance with point (b) of Article 126(2) TFEU if the differential with respect to the reference value</p>

	<p>has decreased over the previous three years at an average rate of one twentieth per year as a benchmark, based on changes over the last three years for which the data is available.</p>
<p><b>Article 5</b></p> <p><b>Budgetary and economic partnerships</b></p>	<p><u>Substantial institutional fingerprints</u></p> <p>While the August Franco-German letter included much language related to structural reforms, it did not link them specifically to the need for reforms to reduce excessive deficits. Here the Secretariat draft drew on existing legislation (1175/2011 and 1177/2011 and the Commission two-pack proposal from November 2011 (COM(2011)821). More links to existing legislation were included in the final article, repeating existing obligations. Given that it was legally redundant, there was little debate on the issue (author interview, EFC and Commission, 26-9-2017). A Commission proposal to insert a reference to 'European Union law' from their 3<sup>rd</sup> and 6<sup>th</sup> January interventions was incorporated into the text.</p> <p><u>First Secretariat draft, Article 5</u></p> <p>The Contracting Parties that are subject to an excessive deficit procedure under the Union Treaties shall put in place a budgetary and economic partnership programme with binding value including a detailed description of the structural reforms necessary to ensure an effectively durable correction of their excessive deficits.</p> <p><u>Final Article 5(1)</u></p> <p>A Contracting Party that is <i>subject to an excessive deficit procedure</i> under the Treaties on which the European Union is founded shall put in place a <i>budgetary and economic partnership programme including a detailed description of the structural reforms</i> which must be put in place and implemented to ensure an effective and durable correction of its excessive deficit. The content and format of such programmes shall be defined in European Union law. Their <i>submission to the Council of the European Union and to the European Commission for endorsement and their monitoring</i> will take place within the context of the <i>existing surveillance procedures</i> under the Stability and Growth Pact.</p>
<p><b>Article 7</b></p> <p><b>Compliance with Commission recommendations</b></p>	<p><u>Some institutional fingerprints</u></p> <p>The August Franco-German letter was very vague about enforcement of the balanced budget rule, stating only that, '<i>...we will campaign for a commitment from governments and parliaments of all member states of the Euro Area to adapt their draft budgets in case of recommendations made in the European Semester.</i>'</p> <p>The first draft for Article 7 included a commitment by the Contracting Parties to support proposals or recommendations put forward by the Commission when a member state is recognised by the Commission to have breached the 3% ceiling in the EDP, unless there is a qualified majority opposing this.</p>

	<p>Both the Council and Commission were keen to ensure that the text respects the existing legal order, and further refinements made the text even more compatible with the revised SGP.</p> <p><u>Final Article 7</u></p> <p>While fully respecting the procedural requirements of the Treaties on which the European Union is founded, the Contracting Parties whose currency is the euro <i>commit to supporting the proposals or recommendations submitted by the European Commission</i> where it considers that a Member State of the European Union whose currency is the euro is in breach of the deficit criterion in the framework of an excessive deficit procedure. This obligation <i>shall not apply where it is established among the Contracting Parties whose currency is the euro that a qualified majority of them</i>, calculated by analogy with the relevant provisions of the Treaties on which the European Union is founded, without taking into account the position of the Contracting Party concerned, is <i>opposed to the decision</i> proposed or recommended.</p>
<p><b>Article 8</b></p> <p><b>Enforcement and non-compliance</b></p>	<p><u>Substantial institutional fingerprints</u></p> <p>There was considerable debate about whether the Commission could bring national non-compliance with article 3(2) to the ECJ. Here the Commission itself was hesitant on being tasked to enforce intergovernmental agreements, preferring to leave it to the Contracting Parties because it feared becoming a scapegoat in domestic debates if it had to bring governments before the ECJ. Other countries like Germany and the Netherlands insisted on conferring the ability on the Commission because they perceived (rightly) that member states are loath to bring cases against each other to the ECJ - making the enforcement mechanism not credible unless the Commission also could bring cases.</p> <p>Actors within the institutional network succeeded in raising doubts about the legality of granting enforcement powers to the Commission (author interviews, Council legal service, Brussels, 26-09-2017; EFC and Commission, 26-9-2017). While Article 273 TFEU states that the ECJ can be granted jurisdiction in disputes between member states, there is no provision in the Treaties for this to be given to the Commission. Additionally, Article 126(10) TFEU on excessive deficits explicitly precludes recourse to the normal enforcement procedures by either the Commission (Article 258 TFEU) or member states (Article 259 TFEU).</p> <p>The result was that the final text only allowed member states to bring cases. However, to allay fears about the lack of credibility of this enforcement procedure, the Secretariat formulated a non-binding signing statement that was attached as an annex to the minutes of the signing of the Fiscal Compact. In the statement, governments committed themselves to bring the matter to the ECJ if the Commission's report finds that a member state has not complied with Article 3(2). This is an example of a creative fix provided by the Secretariat that bridges the circle to enable compromise to be reached. While it is a non-binding commitment, attaching it to minutes of the signing by the</p>

	<p>European Council gives it a level of political weight that makes it more likely that matters would actually be brought to the ECJ in the future.</p> <p><u>Final article 8</u></p> <p>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 such 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 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 to the proceedings, which shall take the necessary measures to comply with the judgment within a period to be decided by the Court of Justice.</p> <p>2. Where, on the basis of its own assessment or that of 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 European Commission in the framework of Article 260 of the Treaty on the Functioning of the European Union. If the Court of Justice 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.</p>
<p><b>Title IV (Economic Policy Coordination and Convergence)</b></p>	<p><u>Some institutional fingerprints</u></p> <p>The issue of structural reforms was very prominent in the August Franco-German letter, and was intended to oblige all member states, and was very specific about particular areas of reform. These were quietly dropped in the Secretariat first drafts for Article 5 and Title IV (economic convergence), and both the draft and final articles were clearly intended to not create new obligations upon member states.</p> <p><u>August Franco-German letter</u></p> <p>...all member states of the Euro Area should confirm without delay their resolve to swiftly implement the European recommendations for <i>fiscal consolidation and structural reforms</i>, especially as regards labour market, competition in services and pensions policy, and adapt appropriately their draft budget...In line with the Euro Plus Pact, Euro Area <i>member states should take</i></p>

	<p><i>all the necessary measures to improve competitiveness, foster employment, ensure stability of the Euro Area as a whole and deepen economic integration. In particular, further progress should be made on <i>tax policy coordination</i> to support fiscal consolidation and economic growth. Member states should commit to finalize the negotiation on the Commission’s proposal on “a common consolidated corporate tax base” before the end of 2012. Euro Area member states should be ready to consider enhanced cooperation for further progress on tax coordination. Euro Area member states should enhance their cooperation to avoid harmful tax practices and fight against fraud and tax evasion.</i></p> <p>In contrast, the text drafted by the Secretariat in the title introduced non-binding promises to ‘undertake...all necessary actions’ to ensure enhanced convergence and competitiveness. No specific areas were mentioned – in comparison to the specifics related to areas like pensions and labour market reforms in the Franco-German letter. No mention was made to commitments to negotiate in corporate tax.</p>
<p><b>Title V (Governance of the Euro area)</b></p>	<p><u>Little to no institutional fingerprints</u></p> <p>Parts of the August Franco-German letter had already been adopted in the October Euro Area summit, including the introduction of regular meetings of the Euro Area heads of state and government.</p> <p><u>August Franco-German letter</u></p> <p>... regular meetings of the Euro Area heads of state and government: these meetings will be convened twice a year and when necessary in extraordinary session to act as the cornerstone of the enhanced economic governance of the Euro Area. They would in <i>particular check the proper implementation of the Stability and Growth Pact by Euro Area member states, discuss the problems facing individual member states of the Euro Area and take the requisite fundamental decisions on averting crisis</i>. These summits will also <i>assess the evolution of competitiveness</i> in the Euro Area and define the main orientations of the economic policy in the Euro Area to promote sustainable growth, foster competitiveness and prevent the build-up of imbalances.</p> <p>... the heads of state and government of the Euro Area should elect a chairman as a rule for a two-and-a-half year term. We expressed our wish that you could take on this job.</p> <p>... the Eurogroup of finance ministers should be reinforced.</p> <p>The first Secretariat draft of the title was basically unchanged throughout the negotiations, with the exception of reduction in the role of the Euro group. The December Franco-German letter had re-iterated the very specific list of items that the Euro Summit should deal with, in an attempt to shift the locus of power even more from the Community to intergovernmental pillars.</p>

	<p>However, the Commission in its written intervention from 3rd January openly wrote that the Fiscal Compact should ‘avoid language giving the impression that the Euro summit meetings is extended to encompass day-to-day governance of the euro area and the development or monitoring of legal rules which create duplication with tasks carried out at other levels’. Not surprisingly, the final text did not include specific areas to be discussed.</p>
<p><b>Title VI (General and final provisions)</b></p>	<p><u>Substantial institutional fingerprints</u></p> <p>The August Franco-German letter makes no reference to ratification or other general issues. Here the Secretariat had a free hand in proposing how the IA would be ratified in the first draft. Few modifications were made.</p> <p>However, an article was inserted solely based on an initiative from the Commission. The 3<sup>rd</sup> of January intervention by the Commission argued for using the Treaty of Prüm as a template for the incorporation of the treaty into EU law within a given time period (five years). The 6<sup>th</sup> of January Commission intervention provided draft text that was incorporated word-for-word into the final treaty.</p> <p><u>Commission proposed Article 14</u></p> <p>Within five years at most following the entry into force of this Treaty, on the basis of an assessment of the experience with its implementation, the necessary steps shall betaken, in compliance with the provisions of the Treaty on the European Union and the Treaty on the Functioning of the European Union, with the aim of incorporating the substance of this Treaty into the legal framework of the European Union.</p> <p>The final Article 16 only made a small insertion ‘Within five years, at most, of the...’.</p> <p>This article was very important because it underlined that the IA was not a set of extremely onerous new obligations, but instead was almost redundant in relation to the combination of existing EU law and the two-pack proposals.</p>
<p><b>Omitted issues</b></p> <p><b>Use of structural and cohesion funds</b></p>	<p><u>Substantial institutional fingerprints</u></p> <p>The August Franco-German letter had called for the use of structural and cohesion funds to support structural reforms, including raising the issue of conditionality. This issue was quietly dropped by the Council Secretariat during the fall of 2011.</p> <p><u>August Franco-German letter</u></p> <p>Structural and cohesion funds should be used to support essential reforms to enhance economic growth and competitiveness in the Euro Area.</p> <p>Macroeconomic conditionality of the Cohesion Fund should be extended to the structural funds. They should be targeted at improving competitiveness and reduction of imbalances in the member states receiving recommendations in</p>

	<p>the excessive imbalance procedure. In programme countries, the European Commission should automatically check to ensure that structural and cohesion funds provide the optimum support for the macroeconomic adjustment programme, and be involved in the selection and implementation of projects. Within the European Commission, the Commissioner for Economic and Financial Affairs should play a decisive role in this process. Funds not used by programme countries could be combined in a fund for growth and competitiveness administrated on the European level by the Commission. In the future, payments from structural and cohesion funds should be suspended in Euro Area countries not complying with recommendations under the excessive deficit procedure. These changes should be implemented in the new structural and cohesion funds' regulations to be proposed for the next multiannual financial framework.</p>
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Legislative sources referred to:

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 L 306/33.

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 L 306/1.

Regulation (EU) No 1175/2011 of the European Parliament and 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 L 306/12.

Council Directive 2011/85/EU of 8 November 2011 on requirements for budgetary frameworks of the Member States. OJ L 306/41.

COM(2011) 821 final. 2011/0386 (COD) 'Proposal for a Regulation of the European Parliament and of the Council 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.' Brussels, 23.11.2011

## Appendix 2 – Comparison of Franco-German letters and Council Secretariat first draft Fiscal Compact

	<p>Franco-German letter – 17 August 2011</p>	<p>Franco-German letter (December 7 2011)</p>	<p>Council Secretariat first draft (SN 4747/11, December 19, 2011) [November CS draft was a change to protocol 12 that focused on the balanced budget rule (article 3)]</p>
<p>Euro Area Governance</p>	<p>regular meetings of the Euro Area heads of state and government: these meetings will be convened twice a year and when necessary in extraordinary session to act as the cornerstone of the enhanced economic governance of the Euro Area. They would in <i>particular check the proper implementation of the Stability and Growth Pact by Euro Area member states, discuss the problems facing individual member states of the Euro Area and take the requisite fundamental decisions on averting crisis</i>. These summits will also <i>assess the evolution of competitiveness</i> in the Euro Area and define the main orientations of the economic policy in the Euro Area to promote sustainable growth, foster competitiveness and prevent the build-up of imbalances. [very specified issues mentioned]</p>	<p>Regular summits - at least twice a year - of the Euro area heads of State and Government with a permanent president. These summits will provide strategic orientations on the economic and fiscal policies in the euro area. The impact of our domestic economic and fiscal policies on the euro area should be considered as a matter of common interest, while safeguarding national responsibility...</p> <p>During the crisis, the Eurosummit should meet on a monthly basis: each meeting should focus on a precise agenda regarding governance and policies to foster growth, competitiveness and fiscal stability. Member States having signed the Euro Plus Pact will be invited to participate to the discussions on issues related to it.</p>	<p>Art 13</p> <p>1. The Heads of State or Government of the Contracting Parties whose currency is the euro, (hereinafter "the euro area Heads of State or Government") and the president of the European Commission shall meet informally in Euro Summit meetings. The President of the European Central Bank shall be invited to take part in such meetings. ...</p> <p>2. Euro Summit meetings shall take place, when necessary, and at least twice a year, to discuss questions related to the specific responsibilities those Member States share with regard to the single currency, <i>other issues concerning the governance of the euro area and the rules that apply to it, and in particular strategic orientations for the conduct of economic policies and for improved competitiveness and increased convergence in the euro area.</i></p> <p>3. Euro Summit meetings shall be prepared by the President of the Euro Summit, in close cooperation with the President of the European Commission, and by the Euro Group. The follow-up to the meetings shall be ensured in the same manner.</p>

			[not very specific regarding issues]
Appointment of chairman of Euro Summit	the heads of state and government of the Euro Area should elect a chairman as a rule for a two-and-a-half year term. We expressed our wish that you could take on this job.		Art 13 1. ...The President of the Euro Summit shall be appointed by the euro area Heads of State or Government by simple majority at the same time the European Council elects its President and for the same term of office.
Preparatory group (Eurogroup)	the Eurogroup of finance ministers should be reinforced. [strengthened preparation of Euro Area summit by intergovernmental pillar – not accepted]	A ministerial Eurogroup and a reinforced preparatory structure to prepare and implement the decisions taken by the summit and ensuring the current functioning. This framework will be fully consistent with the EU institutional architecture. We strongly reaffirm our willingness to fully associate the European Commission. The European Parliament and national Parliaments should also be involved in an adequate way.	[Not included in any drafts]
Compatibility with EU law	[The compatibility issue is not discussed in the Franco/German letters]	[The compatibility issue is not discussed in the Franco/German letters]	Article 2 1. This Agreement shall be applied by the Contracting Parties in conformity with the Treaties on which the European Union is founded, in particular Article 4(3) of the Treaty on European Union, and with European Union law.  2. The provisions of this Agreement shall apply insofar as they are compatible with the Treaties on which the Union is founded and with European Union law. They shall not encroach upon the competences of the Union to act in the area of the economic union. In accordance with the case law of the Court of Justice of the

			European Union, European Union law has precedence over the provisions of this Agreement. [compatibility became an issue after decision taken to use an International Agreement]
Incorporation of budget rule	...building on their commitments under the Euro Plus Pact, all Member States of the Euro Area will incorporate a <i>balanced budget fiscal rule</i> into their national legislation by summer 2012. As a rule, the balanced budget fiscal rule is made law as <i>part of member states' constitutions or by legislation of an equivalent level</i> in order to ensure the rule's stability and superiority over annual budgets.	...translating the objectives and requirements of the Stability and Growth Pact into national legislation at constitutional or equivalent level. ...the adoption by each euro area member state of rules on a <i>balanced budget translating the objectives and requirements of the Stability and Growth Pact into national legislation</i> at constitutional or equivalent level. A new legal provision should set minimum requirements for the national rules on balanced budgets.	Art 3 (2) The rules mentioned under paragraph 1 shall be introduced in <i>national binding provisions of a constitutional or equivalent nature</i> . The Contracting Parties shall in particular put in place a correction mechanism to be triggered <i>automatically</i> in the event of significant deviations from the reference value or the adjustment path towards it. This mechanism shall be defined at national level, on the basis of commonly agreed principles. It shall include the obligation of the Contracting Parties to present a programme to correct the deviations over a defined period of time. It shall fully respect responsibilities of national Parliaments. [more specified about how it will work]
Balanced budget rule	The fiscal rule should <i>implement the objectives of the Stability and Growth Pact</i> and ensure that every Member State of the Euro Area achieves a <i>balanced budget as soon as possible</i> . [no definition of 'balanced budget' included in letter]	To complement the preventive arm of the Stability and Growth Pact and in particular the goal to achieve a structurally balanced budget and ex-ante examination of draft budgets, a <i>new procedure should be established to correct breaches of the 3% deficit of GDP ceiling</i> . [echoes November CS draft]	Art 3 1a) Revenues and expenditures of the general government budgets shall be balanced or in surplus... 1b) The rule under point a) above shall be deemed to be respected if the annual structural deficit of the general government does not exceed a country-specific reference value, which ensures an adequate safety margin with respect to the 3% <i>reference value mentioned under Article 1 of the Protocol (No 12) on the excessive deficit procedure</i> ...The Contracting Parties shall ensure convergence towards their respective country-specific reference value. As a rule, the country

			specific reference value shall not exceed 0.5% of nominal GDP [copied from November CS draft protocol 12]
Debt ratio	Therefore, it would ensure a sustained reduction of the <i>debt ratios</i> should they exceed the reference value (60% of GDP). In line with the revised Stability and Growth Pact, by the end of 2011, all member states of the Euro Area whose debt level exceeds the reference value must present an adjustment path for reducing their debt below the reference value and expose how to address the impact of ageing population on the long-term debt sustainability	Building on the provisions for a numerical benchmark for debt reduction in the “six-pack” (1/20 rule), the procedure for debt reduction by Euro area Member States with a public debt of more than 60% of GDP needs to be enshrined in the new treaty provisions.	Art 3 1c) Where the debt level is significantly below the 60 % reference value mentioned under Article 1 of Protocol No 12, the country-specific reference value for the annual structural net deficit may take a higher value than specified under point b). [copied from November CS draft protocol 12]  Art 4 When the ratio of their government debt to gross domestic product exceeds the 60 % reference value mentioned under Article 1 of Protocol No 12, the Contracting Parties undertake to reduce it at an average rate of one twentieth per year as a benchmark. [note – CS proposed to rephrase in accordance with Regulation 1177/2011 – later drafts changed language to make it more compatible]
Structural reforms	all member states of the Euro Area should confirm without delay their resolve to swiftly implement the European recommendations for <i>fiscal consolidation and structural reforms</i> , especially as regards labour market, competition in services and pensions policy, and adapt appropriately their draft budget...  In line with the Euro Plus Pact, Euro Area <i>member states should take all the necessary measures to improve competitiveness</i> , foster employment, ensure stability of the Euro Area as a whole and deepen economic integration. In particular,	Commitment of national Parliaments to take into account recommendations adopted at the European level on the conduct of economic and budgetary policies. We need to foster growth through greater <i>competitiveness</i> as well as <i>greater convergence of economic policies</i> at least amongst Euro Area Member States.  To these aims, building on Article 136 and/or on enhanced cooperation, a <i>new common legal framework</i> , fully consistent with the internal market, should be established to	Article 9 Without prejudice to the economic policy coordination as defined in the Treaty on the Functioning of the European Union, the Contracting Parties undertake to <i>work jointly towards an economic policy fostering growth through enhanced convergence and competitiveness</i> and improving the functioning of the Economic and Monetary Union. To this aim, they will take all necessary actions, including through the Euro Plus Pact.  Article 10

	<p>further progress should be made on <i>tax policy coordination</i> to support fiscal consolidation and economic growth. Member states should commit to finalize the negotiation on the Commission's proposal on "a common consolidated corporate tax base" before the end of 2012. Euro Area member states should be ready to consider enhanced cooperation for further progress on tax coordination. Euro Area member states should enhance their cooperation to avoid harmful tax practices and fight against fraud and tax evasion.</p> <p>[Very specific areas mentioned]</p>	<p>allowing for faster progress in specific areas such as :</p> <ul style="list-style-type: none"> <li>* Financial regulation;</li> <li>* Labor markets;</li> <li>* Convergence and harmonization of corporate tax base and creation of a financial transaction tax;</li> <li>* Growth supporting policies and more efficient use of European funds in the euro area.</li> </ul> <p>[continued mention of specific areas]</p>	<p>While fully respecting the procedural requirements of the Union Treaties, the Contracting Parties undertake to <i>make recourse, whenever appropriate and necessary, to the enhanced cooperation on matters that are essential for the smooth functioning of the euro area</i>, without undermining the internal market.</p> <p>[echoes existing obligations]</p>
		<p>The obligation for the Member State to conclude with the Commission and approved by the Eurogroup by reversed qualified majority on behalf of the other Member States, a "<i>European Reform Partnership</i>" specifying the concerned Euro area Member States' <i>fiscal and structural policy measures to overcome its difficulties and assisting them in those efforts.</i></p>	<p>Article 5</p> <p>The Contracting Parties that are subject to an excessive deficit procedure under the Union Treaties shall put in place a <i>budgetary and economic partnership programme</i> with binding value including a detailed description of the structural reforms necessary to ensure an effectively durable correction of their excessive deficits. Such programmes shall be submitted to the European Commission and the Council.</p> <p>[echoes existing obligations]</p>
Use of structural and cohesion funds to support structural reforms	<p><i>Structural and cohesion funds</i> should be used to <i>support essential reforms to enhance economic growth and competitiveness</i> in the Euro Area. Macroeconomic conditionality of the Cohesion Fund should be extended to the structural funds. They should be targeted at improving competitiveness and reduction of imbalances in the member states receiving recommendations in the excessive imbalance procedure. In programme countries, the European Commission should</p>		<p>[not included]</p>

	<p>automatically check to ensure that structural and cohesion funds provide the optimum support for the macroeconomic adjustment programme, and be involved in the selection and implementation of projects. Within the European Commission, the Commissioner for Economic and Financial Affairs should play a decisive role in this process. Funds not used by programme countries could be combined in a fund for growth and competitiveness administrated on the European level by the Commission. In the future, payments from structural and cohesion funds should be suspended in Euro Area countries not complying with recommendations under the excessive deficit procedure. These changes should be implemented in the new structural and cohesion funds' regulations to be proposed for the next multiannual financial framework.</p>		
<p>Enforcement of incorporation of budget rule in national legislation</p>	<p>we will campaign for a <i>commitment from governments and parliaments of all member states of the Euro Area to adapt their draft budgets in case of recommendations made in the European Semester.</i>  [not specific – left to CS to figure out how it would work]</p>	<p>The European Court of Justice, on <i>request of the European Commission or a Euro area Member State</i>, should have the possibility to verify the transposition in the national legislation.  [Commission ability to bring case was never included in drafts despite strong German support and backing from Netherlands and other countries]</p>	<p>Art 8  Any Contracting Party which considers that another Contracting Party has failed to comply with Article 3(2) may bring the matter before the Court of Justice of the European Union. The judgment of the Court of Justice of the European Union 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 said Court. The implementation of the rules put in place by the Contracting Parties to comply with Article 3(2) will be subject to the review of the national Courts of the Contracting Parties.  [article became necessary once decision taken to use International Agreement, but Commission</p>

			ability to bring cases was not included despite strong insistence by Germany]
Enforcement of budget rule breach	[not included]	<p>As soon as a Member State is recognized to be in breach with the 3% ceiling by the European Commission, there should be automatic consequences unless the Eurogroup, acting by qualified majority, decides otherwise. Exceptional circumstances should be taken into account...</p> <p>A sequence of interventions of increasing intensity into Euro area Member States' rights should be allowed as a focused response to continued infringement. Steps and sanctions proposed or recommended by the Commission should be adopted by the Council unless a qualified majority of the Euro area Member States decides otherwise.</p>	<p>Art 7</p> <p>While fully respecting the procedural requirements of the Union Treaties, the Contracting Parties whose currency is the euro undertake to support proposals or recommendations put forward by the European Commission where a Member State whose currency is the euro is recognised by the European Commission to be in breach of the 3 % ceiling in the framework of an excessive deficit procedure, unless a qualified majority of them is of another view. A qualified majority shall be defined by analogy with Article 238(3)(a) TFEU and with Article 3 of Protocol N° 36 to the EU Treaties on transitional provisions and without taking into account the position of the Contracting Party concerned.</p> <p>[article included due to German insistence]</p>