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**The Shadow of the European Council:  
Understanding Legislation on Economic Governance**

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*Abstract*

This article analyses the role of the European Council in two key legislative packages on economic and budgetary coordination, the Six-Pack and the Two-Pack, which were negotiated under the ordinary legislative procedure. It assesses how and to what extent the key actor in the literature on the new intergovernmentalism – the European Council –

is able to curb the powers of the supranational institutions – the Commission and the European Parliament – in a policy area where the community method has been applied since the Treaty of Lisbon. It tracks the development of the legislative negotiations – from the stages preceding the Commission’s proposal to their conclusions, relying on official documents, press reports and 30 original interviews with key decision-makers. The strong role of the European Council both as an agenda-setter and in the legislative negotiations stands out, and suggests that the implications of new intergovernmentalism may well extend beyond intergovernmental decision-making processes.

### *Key words*

Economic and Monetary Union; European Council; Ordinary Legislative Procedure; New Intergovernmentalism; Six-Pack; Two-Pack.

### **Introduction**

“As a result of this trend towards ‘summitization’, the fixation with meetings at which the heads of state and government, in a clear breach of the spirit of the Treaties, take more and more decisions themselves and seek to put their stamp even on the fine print of legislation, the Community institutions are increasingly being marginalized”. This is how the President of the European Parliament (EP), Martin Schulz, portrayed decision-making in the European Union (EU).<sup>i</sup> The academic literature has captured a similar development and, especially but not exclusively, in the field of economic and financial policies, has described the European Council as “the political executive of the Union” (Fabbrini 2013, 1006). In

the “new” formulation of “intergovernmentalism”, the European Council is the “centre of political gravity” of the EU (Puetter 2014, Ch. 3).

As the financial and economic crisis broke out in 2009, the issue of reforming the Economic and Monetary Union (EMU) featured prominently in the EU agenda. In a context dominated by the Heads of State and government (hereafter, ‘the Heads’), the ‘intergovernmental’ method became the dominant mode of decision-making, while the ‘community’ method – where the Commission sets the agenda and the EP is on a par with the Council under the ordinary legislative procedure (OLP) – was marginalized. In the post-Maastricht era (Bickerton *et al.* 2015a) and, specifically, in the context of the Eurocrisis (Fabbrini 2013; 2015), the Heads have further institutionalized their coordination in Brussels. They have pooled their powers in the policy areas that are crucially linked to state sovereignty, rather than sharing sovereignty with supranational institutions. In doing so, they no longer limit their role to the definition of the broad political strategy for the Union, but they also engage directly with crucial legislative choices.

This article draws on the literature on the ‘new intergovernmentalism’ and, presenting an in-depth analysis of the reform of the EU economic governance, aims to make two main contributions. First, the new intergovernmentalism is generally presented as a decision-making mode alternative to the community method (Bickerton *et al.* 2015a). Yet, in one of the intergovernmental policy areas *par excellence* – macro-economic and budgetary coordination – the Treaty of Lisbon enhanced the role of

the EP to that of co-legislator (art. 121.6 TFEU), thus formally strengthening the community method. At present, however, the literature has only speculated on the impact of new intergovernmentalism on the community method and its institutions (i.e., Puetter 2014, 228-35). In this study, we argue that the European Council has a strong grip over the decision-making process, even when the OLP applies, at least, in budgetary policies.

Second, we speculate on the mechanisms through which the European Council is able to give direction and influence the development of the legislative negotiations between the Council and the EP. We take issue with one of the main controversies dividing new intergovernmentalism and its critics: namely, that the propositions advanced by the new intergovernmentalists are too general to be empirically tested (Bickerton *et al.* 2015b; Schimmelfenning, 2015). We specify the mechanisms through which the European Council influences the legislative process, from the stage of agenda-setting through to the unfolding of the negotiations. Our argument is that the European Council has both the institutional resources and political legitimacy to frame the policy agenda and constantly remind the co-legislators and the European Commission what its preferences and priorities are.

Our arguments are assessed on the cases of the Six-Pack and the Two-Pack, the two key legislative packages that reshaped, under OLP, the EU's economic governance as the economic and financial crisis hit the Union. We track the development of the legislative negotiations from the period

preceding the legislative proposal of the European Commission to the conclusion of the negotiations, keeping our analytical focus on the role of the European Council. The analysis is based on official documents of the institutions, articles in the specialized press and statements of politicians. Crucially, we complement the documentary evidence with 30 original interviews with key players from all of the EU institutions involved either in the design of the proposals or in the negotiations leading to their adoption.

The rest of this paper is organized as follows. Section two introduces the new intergovernmentalism and its implications for the EU political system. Section three presents the mechanisms through which the European Council is expected to influence the legislative process. Section four develops an analytical narrative on the unfolding of the negotiations of the Six-pack and the Two-pack. The concluding section discusses the main findings and their validity beyond the cases that are analysed here.

## **The Rise of New Intergovernmentalism**

When the financial crisis spread to Europe and markets started to demand increasingly higher interest rates from several European countries with high debts and/or deficits, the EU reacted in two main ways. First, it quickly established assistance mechanisms to help countries experiencing severe financing problems and created new rules to make the coordination of national economic/fiscal policies stricter. In this

process of (re)defining the EU's system of economic governance, the key actors were the intergovernmental institutions of the EU: the European Council, the Euro-summits, the ECOFIN Council and the Euro-group. As Fabbrini (2013, 1004) argues, the "extremely complex system of economic governance set up during the euro crisis" has been fundamentally "decided through and within the intergovernmental institutional framework".

Yet, these intergovernmental developments are seen as parts of larger trends in European integration. More specifically, the Maastricht Treaty is said to have formalized two different decision-making systems. On the one hand, the single market continues to be governed by the community method. On the other hand, as new policy areas (i.e., foreign policy, migration, financial cooperation) were added to the remit of the EU, they were largely directed by the intergovernmental institutions (Bickerton *et al.* 2015a). The "integration paradox" (Puetter 2014) consists in the recognition that integration is needed in key areas of state activity, but supranational institutions are granted a secondary, if not marginal, role. The Lisbon Treaty has institutionalized this dual decision-making logic for different policy regimes (Fabbrini 2015). As Schimmelfenning notes (2015, 6), the policies that best suit the integration dynamics that are described by the new intergovernmentalism are in "core state powers" (Genschel and Jachtenfuchs 2013) - that is, areas where integration entails high sovereignty and identity costs for the member states. This is the case of economic and budgetary cooperation, of which the European Council

quickly established itself as the '*gouvernement économique*' (Fabbrini 2013).

Nevertheless, the analytical distinction between the intergovernmental method (applied to 'new' policy areas) and the community method (used in 'traditional' domains) should not conceal that complex interactions between the two methods may exist in the different policy fields. Indeed, in the post-Maastricht period, which the new intergovernmentalists characterizes as a "new phase in European integration" (Bickerton *et al.* 2015a, 705), the successive waves of treaty revision have strengthened the legislative role of the EP in areas where it was previously only consulted. Most crucially here, the reform of the EU economic governance was also achieved through two legislative packages – the Six-Pack and the Two-Pack – which were negotiated through the OLP. With the Lisbon Treaty, the EP was given the possibility to contribute to shaping the rules of the game, adopting "detailed rules for the multilateral surveillance procedure" (art. 121(6); see Rittberger 2014) under the OLP.

Arguably, these latter cases provide the most stringent test for the new intergovernmentalism. To what extent are the supranational institutions able to use their powers within an otherwise intergovernmental policy regime? On the other hand, how is the European Council eventually able to curb the formal decision-making powers of the European Commission and the EP? The Six-Pack and the Two-Pack are generally presented as (partial) exceptions to the story of new intergovernmentalism, as they

“strengthened the supranational side of the EU” (Fabbrini 2013, 1016). However, “the extension of the ordinary legislative procedure in successive treaty revisions does not *eo ipso* signal more supranationalism” (Bickerton *et al.* 2015b, 733). Expounding on this insight, we argue that the supranational institutions failed to act according to the roles traditionally identified by the community method. We hypothesize that both institutions are significantly constrained by the activism of the European Council. The latter has both the institutional resources and political legitimacy to frame the policy agenda, thus entering into a domain that the treaties (art. 17 TEU) reserved to the European Commission. It also has the leverage to instruct or influence the actors that are directly involved in the negotiations, thus informally exceeding the letter of the Treaty of Lisbon: “the European Council shall not exercise legislative functions” (art. 15(1) TEU).

## **The Long Shadow of the European Council on the Legislative Process**

### *Agenda-setting*

From the establishment of the EC, the Heads (meeting in the European Council since the early 1970s) have set the general direction to the process of integration, taking landmark decisions on its future from treaty reform to enlargement (i.e., Bulmer and Wessels 1987). Yet, with the Treaty of Maastricht and the boost of the economic and financial crisis,

the direction given by the Heads became both more detailed in terms of policy content and more specific in defining time deadlines on legislation. The analysis of the Heads' meetings in the post-Maastricht period (1992-2013) shows that two-thirds of their agendas related to new areas of EU activity, mainly economic governance and foreign affairs. The frequency of their meetings increased: from three per year in the early 1990s, to seven or more since 2008, and reaching a peak of 11 in the apex of the crisis. The 'Conclusions' of the European Council became increasingly detailed, providing clear instructions to the other institutional actors involved in the legislative process (Puetter 2014, Ch. 3). While the legislative proposals of the Commission – which retains the formal right of initiative – are never taken in a vacuum, often being the product of intense dialogue with other institutions or actors (Princen 2007), the level of detail of the European Council's Conclusions, combined with the authority and legitimacy of its members, make it "difficult to do something else" (Puetter 2014, 73). The Commission has ample administrative resources to concretely prepare policy dossiers and give substance to political ideas. However, they would be pursued because a political decision had been previously made by the intergovernmental institutions and, particularly, the European Council. The Commission becomes a facilitator, a transmission belt or even an armed branch of the European Council's policy preferences, acting 'on behalf' of the Heads or as their agent in a principal-agent framework (Bauer and Becker 2014; Curtin 2012, 208-13).

Therefore, while, *de jure*, the division of labour between the European Council and the Commission is relatively straightforward – the former defining the general strategy for the EU’s action, the latter presenting the legislative proposals – this is not always the case in practice. Acting, in particular, in response to an international crisis or to an event of high public salience, the European Council is likely to directly call for EU action and mandate the European Commission with detailed ‘instructions’ (see Bocquillon and Dobbels 2014). The mandate may emerge from a common deliberation of the European Council, acting in collaboration to boost the legitimacy of its actions (Puetter 2012), or from the leading role of a directorate of member states, such as the Franco-German tandem, or Germany and its Northern allies (Fabbrini 2013; 2015). In any case, whatever the trigger, when the Heads set the agenda and establish the normative framework, the Commission can be expected to not only act strategically and “avoid putting forward proposals that stand little chance of success” (Bickerton *et al.* 2015a, 713) but also to follow suit the impulse and recommendations of the European Council.

### *Decision-making Process*

The European Council can also intervene *during* the policy-making process itself. On the one hand, the policy content of an issue – introduced in the policy process and framed by the Heads – can be considerably changed by the EU's co-legislators. On the other hand, the policy process can be considerably slowed down by the same institutions

(especially the EP), interfering with the objectives of the European Council. As a result, the Heads have vested interests in closely following the dossier during the policy-making process to make sure that both the *content* and the *timing* of the policy file are respected.

The Heads can change the structure of the negotiating game by threatening to adopt new rules or move to other decision-making settings – e.g., by going intergovernmental. During the Euro crisis, the European Council has certainly not shied away from using intergovernmental methods and new treaties based on international law (Schwarzer 2012). Indeed, the European Council is perfectly located within the institutional architecture to determine and/or modify the BATNAs (Best Alternative to a Negotiated Agreement) of the negotiating parties. A good BATNA increases the negotiating power, whereas limited or non-existent alternatives might lead one side to accept even unattractive demands. In the context of the OLP, the European Council can indicate its intention to end the talks and seek an intergovernmental treaty outside of the EU legal system, where the EP and the Commission would not have any say. This changes the situation, shifting the policy outcomes closer to the preferences of the European Council.

A different reading suggests that the rise of the European Council has a profound impact on how EU institutions (especially the two supranational ones) perceive their legislative responsibilities. The Heads are political actors who are highly visible and legitimated at the domestic level. The EU supranational actors might accept the greater activism of the

European Council and – in cases where this latter institution wants to take the lead – acknowledge its driving role, align with it and be (fairly) cooperative. Under its strong political leadership, the EP and the Commission in particular, would come to redefine their role in terms of responsibility and (self-) restraint – a *de facto* subordination to the strategies of the European Council (Ripoll Servent 2013; Werts 2008, 45-7).

The degree and forms of the European Council's involvement in the concrete EU legislative process might vary. It might be satisfied to act as a relatively distant supervisor, simply making sure that its objectives are met overall. On the other hand, the Heads may continuously interfere in the policy process by exerting constant pressure on the co-legislators and the Commission. Depending on the level of European Council's interference, we may have different understandings of how the new intergovernmentalism works.

a) *European Council and Commission*. We would expect the Commission to follow the desiderata of the European Council and side with the Council. Significantly, this would also apply when the eventual policy arrangements that are put forward by the EP go into the direction of the original Commission's proposal or aim at strengthening the Commission's powers. Thus, the traditional understanding of the Commission as a natural ally of the EP (Kreppel 1999) or as a supranational policy entrepreneur that is primarily interested with increasing its own powers, should be revisited. In this way, the hypothesis on the new

intergovernmentalism proposed by Bickerton *et al.* (2015a, 712) – “Supranational institutions are not hard-wired to seek ever-closer union” – finds an application to this stage of the EU's decision-making process. At the same time, the Commission's role as a mediator could be challenged by other more intergovernmental institutions such as the rotating Presidency or the President of the European Council.

b) *European Council and Council.* We would expect the European Council to act in many ways as the ‘principal’ of the Council: “the process changes from bottom-up—with the Council formations coming up with proposals to the European Council—to top-down” (cited in Puetter 2014, 149). The degree of the European Council’s intervention over the affairs of the Council can vary. The European Council might leave ample autonomy to the Council, once the direction of the legislative process has been set. On the other hand, the activity of the Council can be highly constrained. We would expect that the Heads closely instruct and shape the inner workings of the Council and substitute it in exerting pressure on the Commission and the EP. In-between these two situations, a variety of possibilities exist, including (implicit or explicit) forms of coordinated cooperation between the Council and the European Council.

c) *European Council and Parliament.* We would expect the European Council to put pressure on the Parliament in order to bring legislation closer to its preferences. One of the objectives of the European Council would be to operate in order to decrease the cohesion in the Parliament. Internal division in the Parliament has been shown to reduce its

bargaining success (Costello and Thomson 2013). As a result, national governments have all of the incentives to lobby members of the European Parliament (MEPs) – especially those who belong to their same national parties (Costello and Thomson 2014). In order to influence the workings of the EP, strategies include setting up (or hinting at) benefits for current MEPs for their career at the national level; threatening to go intergovernmental; or politically and normatively urging them to act responsibly and show institutional maturity (see above).

### **Legislating on Economic Governance**

In order to assess these arguments, this paper tracks the unfolding of the legislative negotiations for the Six-Pack and the Two-Pack from the period preceding the adoption of the proposal by the Commission to its conclusion with the agreement of the co-legislators, keeping its analytical focus on the strategy and behaviour of the European Council. By reconstructing the different phases of the negotiations and the positions of the different actors on the main issues, we are able to uncover the mechanisms at play and evaluate the implications of new intergovernmentalism in a ‘most difficult’ case, when the OLP applies. The narrative is based on official documents of the institutions, declarations of key actors and excerpts from the specialized EU-press.

Crucially, this documentation is backed by 30 original interviews with ‘key informants’ involved in the negotiations of the two packages. The

interviewees were selected from each institution – the Council, the Commission and the EP – in order to compare and contrast different narratives. Our sample includes both administrators and political advisors and members of the major political groups in the EP, administrators in the DG Economic and Financial Affairs of the Commission, in the Directorate on Economic and Financial Affairs or the Legal Services of the Council, and several financial advisors in the Permanent Representations (including two Presidencies). The semi-structured interviews were designed in an open-format and, given the sensitive information, were anonymized (see the Appendix).

### *The Six-Pack*

On 13<sup>th</sup> December 2011, five Regulations and one Directive – together known as Six-pack – entered into force. Four of the six texts in the package dealt with fiscal issues, including a reform of the Stability and Growth Pact (SGP), while two new regulations developed a system to respectively detect, address and eventually sanction macroeconomic imbalances in the EU.<sup>ii</sup>

In the wake of the crisis, the EU leaders agreed to reform and strengthen the EU economic governance structure. In February 2010, in a restricted meeting at the *Bibliothèque Solvay* in Brussels, the President of the European Council laid out a one page-outline with a framework for economic reforms for the coming years (Interview M). The decisions to be made were all strictly interrelated: plans to save Greece were connected

to the establishment of temporary/permanent financial stability mechanisms and the hardening of the fiscal rules to be applied to the member states (Interview A). One aspect concerned the strengthening of the SGP, the reduction of debt levels and the achievement of balanced budgets in the member states. In relation to this, the European Council urged the Commission to come out with policy proposals (Interview F) and established, under the chairmanship of its President Herman Van Rompuy, a Task Force with representatives of the then 27 member states, the Commission, the rotating presidency and the ECB, with the aim of presenting, before the end of the year, the measures needed to reach an “improved crisis resolution framework and better budgetary discipline” (European Council Conclusions, March 2010).

At this point, “the race started” between the Commission and the Task Force to produce reform plans: “there was an element of institutional competition. It was very clear that President Barroso wanted to show the [Commission's] right of initiative” (Interview M). The Commission explicitly accelerated its internal policy-process and presented its six legislative proposals on 29<sup>th</sup> September 2010, a few weeks before the Task Force delivered its final report. The two texts are highly similar. There has been wide speculation about the “unfriendly rivalry” (Interview H) between these two actors, both keen to strengthen their institutional power via agenda control (see also Laffan and Schlosser 2015, 2-3). On the one hand, some officials report that “people are aware that it was Van Rompuy that was first. It was not a cut and paste but [the

Commission] took a lot of elements” of the Task Force report (Interview L; also Interviews H and S). On the other hand, officials in the Commission replied that, due to its large and highly specialized administration, most of the ideas were originated in the Commission. In this perspective, the Task Force was not much more than an effective sounding board for the plans that the Commission had conceived (Interview G).

A few points can be clarified at this stage. First, if the Six-pack emerged out of the many discussions, documents and non-papers that the Commission had been producing in the previous years (Interviews A, F and L), these ideas became real pieces of legislation only because their overriding principles had been endorsed (even requested) by the highest political authorities at the beginning of 2010. The decisive factor was the political will of the Heads (Interviews G, H, L, S and W). Without their pressure, the Six-Pack “wouldn’t have happened of course” (Interview I). Second, even accepting the Commission's interpretation of the Task Force, the explicit and formal institutionalization of an intergovernmental body, which would give feedback on what states considered important or difficult to realize (Interview G and I), is highly revealing of the EU’s new modes of governance (and of the OLP), as well as of the member states' attempts to have a firm grip on the policy process. Third, the European Central Bank (ECB) also played an important role in the genesis of the Six-pack. Their guidelines and opinions were technically very precise and influential (Interview E, I and S; also O’Keeffe *et al.* 2015).

After the Commission submitted the proposals, the Six-pack was examined by the Council and the EP. The decision-making process was smooth in the Council. The disagreements were relatively few and minor: the ministers reached a common position in mid-March 2011, which did not deviate much from the Commission's proposals. The relatively uncontroversial and speedy process within the Council was due to several factors. First, the Euro crisis was both deepening and widening. The European Council, through specific indications contained in its Conclusions, exerted strong pressure on the legislators for a quick end of the policy process. In December 2010, it called for an acceleration of the work, so that the legislative proposals could be adopted by June 2011. In February 2011, it urged that, in March, the Council should reach a first agreement on the approach to the Six-Pack – which was then welcomed in the Conclusions of the 25<sup>th</sup> March, where the objective of reaching a final agreement by June was reiterated.

Second, the Commission proposals closely resembled the plans envisaged by the Task Force. For the Council officials, the report of the Task Force had become “the Bible” (Interview A). It was logical then that the Council would largely accept the Commission’s original blueprint. Finally, the political agreement within the Council was cemented by the deal that was struck in Deauville (18<sup>th</sup> October 2010) between Angela Merkel and Nicolas Sarkozy. Here, the French resistance, with the hardening of fiscal rules and more automatic sanctions, was overcome by the establishment

of a permanent rescue mechanism for financially stricken states (Interviews A and S).

In the EP, when the ECON Committee adopted the six reports on 19<sup>th</sup> April 2011, there was a clear left-right divide on the reform of the SGP, especially on the surveillance of budgetary positions and surveillance and coordination of economic policies (the ‘Wortmann-Kool report’). Despite the standard norms of consensus in the EP, only a small majority (EPP and ALDE) approved the report, with the opposition of the S&D and the Greens (see O’Keeffe *et al.* 2015).

Negotiations began at a very high pace (Interviews T and Y). In trilogues, the Commission was said to go beyond a more neutral role as a broker and, ultimately, side with the Council. Some MEPs complained that the Commission rejected amendments “that were largely supported by the EP without any clear mandate” (Interview C; Interviews N and T). Pressure to come to a quick agreement came from all sides, especially the Heads. For instance, Merkel and Sarkozy increased their pressure on the members of the EPP so that this group was ready to have the deal reached before summer (Interview P). Consensus was achieved on almost every point. As Rehn, Commissioner for Economic and Monetary Affairs, said to the EP and the Council in June: “You have agreed on 99.9% of the substance. I now ask both sides to go the last few centimetres to reach an agreement”.<sup>iii</sup>

However, despite the high similarity of the two legislators' positions, a few issues remained open and the EP rejected the final offer of the Council. Most significantly, the two institutions failed to find a common position on the scope of reverse qualified majority voting (RQMV).<sup>iv</sup> RQMV produces a transfer of power from the Council to the Commission because the former needs a qualified majority to block a decision by the latter (Bauer and Becker 2014, 220). The ALDE group, in particular, insisted on having RQMV in one more case in the preventive arm of the SGP,<sup>v</sup> and threatened to vote against the whole package, if unsuccessful (Interview P). On the other, the Council (and especially France) did not want to shift the decision-making balance towards the Commission any further.

Interestingly, the Commission, despite getting more powers from an extension of RQMV, did not support the EP position. Instead, it unequivocally sided with the Council (Interview P). In the words of Rehn, it was “absolutely crucial for the credibility of the European Union to conclude the package before the summer”.<sup>vi</sup> Under the pressure of the European Council, the Commission exhorted the EP to be responsible, insisting that ALDE would give up on RQMV (Interview AC). In the plenary in June, while rejecting the Council position, the EP only voted on the amendments, postponing the vote on the final legislative resolution and leaving open the possibility to conclude at first reading. With the utmost priority, the trilogues resumed and a compromise on RQMV was finally reached in mid-September. It was decided that, if a member state persists

in non-complying with the EU institutions' recommendations, the Commission's proposal would be adopted, unless a *simple* (rather than a *qualified*) majority of member states rejects it.<sup>vii</sup>

The vote in the EP was contested. In particular, the two files that reformed the SGP were approved with a tight majority consisting of the EPP and ALDE. Among other aspects, they stressed the need to "be responsible". As an interviewee put it, "you don't want to go into a second reading if the European Council is telling you that you need to finish the reading and every time you read the newspaper [the Heads] are telling you, 'move on, do something'" (Interview I).

The final output of the negotiations does not depart too much from the Commission proposals and Council position. Political groups in the EP were unable or unwilling to shape the substance of the package. The Six-pack introduces a series of measures aimed to produce more specific fiscal rules and to better enforce them. Initiatives designed to promote growth and employment, as well as the issuance of Eurobonds, were absent. A concrete achievement for the EP was the establishment of an 'Economic Dialogue' with the EU and national institutions. Nevertheless, the Economic Dialogue was essentially a symbolic arrangement and did not change the substance of the Six-pack in any meaningful way (Interviews A, H, I and U).

### *The Two-Pack*

The Two-pack consisted of two regulations: the first strengthened budgetary surveillance and ensured the correction of excessive deficit of the member states in the Euro area (the 'Ferreira report'). The second only concerned those member states in the Euro area experiencing or threatened with serious financial difficulties (the 'Gauzès report'). The two regulations aimed at complementing the Six-Pack and bringing elements of the intergovernmental Fiscal Compact under EU law.

The European Commission initiated legislation on 23<sup>rd</sup> November 2011 and the incoming Danish Presidency of the Council listed it among its top priorities. In the Conclusions of its meeting in December, the European Council made it very clear that it was urgent to conclude the negotiations: "We call on the Council and the EP to rapidly examine these regulations so that they will be in force by the next budgetary cycle".<sup>viii</sup> As for the case of the Six-Pack, there was a sense of urgency accompanying the start of the negotiations in late 2011 / early 2012, when the economic crisis was hitting the Southern members of the Eurozone hard.

The political weight of the European Council was needed to take authoritative decisions to effectively calm down the markets. While the Commission was putting forward its legislative proposals on the Two-Pack, the Heads were concluding the negotiations on the Fiscal Compact. In such a scenario, the Commission refused to be marginalized and reacted by producing the legislative proposals "at record speed" (Interview F). Ultimately, the Commission's effort was directed to make the wording of the Fiscal Compact compatible with the SGP and bring it

under the community method (Interviews F and H). The goal of the Commission was not to be sidelined in the new economic governance structure that was emerging, as driven by the crisis. To put it more forcefully, the Commission did not want to be “taken hostage or taken over by the intergovernmental track” (Interview G). Finally, the member states – and Germany, in particular – did not object to the empowerment of the Commission to have stricter rules of budgetary control in place (Interviews F and N). Other institutions were also closely involved in the redesign of economic governance: first of all, the ECB, whose endorsement was a strong push for the Fiscal Compact (Interviews S and Y).

In the ECOFIN Council, the Commission legislative proposals were not particularly controversial. This was partly because the legislative text reflected that of the Fiscal Compact (Interviews G, N and Z) and partly because of the very active stance of the Danish Presidency, acting under a European Council mandate, that an agreement should be reached by June (Interview Z).

By the end of February, the dossier had moved to the EP, where strong ideological divergences between its political groups emerged. The main dividing line was between the EPP supporting pro-austerity measures and the S&D favouring policies for growth and the mutualization of debt. There were essentially four key controversies between the political groups: on the provision for a redemption fund to part-mutualize public debt; on a road-map for EU-level bonds; on the creation of a growth

facility measure and on a more extensive remit of the regulation including macroeconomic coordination. Nonetheless, the reports, as amended by the Committee, were approved, despite the opposition and abstention in the committee vote of the S&D.

Due to these sharp ideological divisions, the EP postponed the start of the negotiations with the Council, first seeking a stronger mandate from the plenary in order to disallow the Council to exploit its internal divisions. At the same time, the EP kept the door open for an agreement at first reading, choosing (as in the Six-Pack) not to vote on the legislative resolution. In the plenary vote in June, an overwhelming majority of deputies from the EPP, S&D, ALDE and G-EFA groups voted in favour. Yet, the EPP Group also made clear that “setting up a [redemption] fund quickly [was] implausible”.<sup>ix</sup> Clearly, the compromise between the groups was based on shaky grounds.

After the plenary vote, the trilogues started and the pressure to quickly find an agreement began to mount. The EP amendments represented a significant departure from the Commission proposal, while the Council emphasized that its common position was the “starting position for the negotiations”.<sup>x</sup> Commissioner Rehn warned the MEPs, with the utmost clarity, that “as co-legislator, you have a choice: either to move forward in a timely way or to delay and create a legal grey area...no legal acrobatics would enable us to hide the fact that we had failed to live up to our political responsibilities”.<sup>xi</sup> The intergovernmental track was there to be exploited by the Council: “We are not in a vacuum that we can have our

institutional games here in Brussels. If we don't deliver then the governments will deliver without us" (Interview G).

By December 2012, 16 tripartite meetings with the co-legislators and the Commission had been held. As discussions unfolded, the agreement in the EP broke down, with the EPP siding with the Council and the Commission, the ALDE and S&D against. During the negotiations, the Commission was adamant in opposing the redemption fund on legal grounds and repeatedly stressed that the remit of the regulations was only budgetary coordination, rather than broader issues of economic coordination. Its position overlapped with that of the Council, for which the Redemption Fund was "a political non-starter" (Interview S and Interviews H and N). To prevent deadlock in the negotiations, the European Council also pressed for an early conclusion, inviting "the legislators to find an agreement with a view to adopting the 'Two-pack' by the end of 2012 at the latest."<sup>xii</sup>

Eventually, the ALDE switched its position, accepting the Commission's proposal to set up an expert group to assess the feasibility of a redemption fund, thus making a centre-right majority in the EP possible. In December 2012, the European Council urged its rapid adoption "following the decisive progress achieved"<sup>xiii</sup>, while Rehn reiterated the point that member states would push for an intergovernmental deal if discussions dragged for longer.<sup>xiv</sup> After 15 months, the agreement between the co-legislators was finally found in early 2013.

The output of the negotiations was a significant departure from the initial position of the EP: “They wanted to have the redemption fund, and then finally got a working group” (Interview V; Interviews H and P). The EP behaved “reasonably” and what was lost on the substance was partly compensated with “institutional rewards” such as the strengthening of the Economic Dialogue (Interviews N, H and I). Ultimately, it “recognized the political importance of this for the member states, and hasn’t made a war out of it either” (Interview S).

## **Conclusions**

By analysing the Six-pack and the Two-pack, this article has first identified and then tracked the modalities through which the Heads shape a policy dossier under OLP. Without the political will of the Heads, the very ideas contained in the two legislative packages would not surface. The decision to strengthen the SGP came from the very top and should be considered when looking at the wider picture of the political responses to the Euro crisis. In the case of the Six-pack, the European Council even established a Task Force, which influenced and competed with the proposals of the Commission.

The European Council was also actively involved during the policy process. This influenced both the speed of the policy process, as the Heads put pressures on the legislators to reach an agreement as quickly as possible, and the ways that the other institutions operate under the

OLP. The Commission constantly sided with the Council and also defended the latter's position when this went against an increase of its own powers, as in the negotiations over RQMV. However, inferring from these instances that the Commission has become a *de facto* agent of the European Council would overstretch the argument. First, the interviewees mentioned other examples, even in the EMU, where the Commission was more on the side of the EP (Interview L). Second, the Commission has an institutional interest in getting the file out, especially in cases, such as the Six-pack and the Two-pack, which considerably increases its own powers with respect to the *status quo* (Interviews F, N and T). Third, the Commission proposals and the Council's position were strikingly similar. As a Commission official said, "It's not so much the issue of pleasing the Council ... The text that came out of the negotiations with the Council was pretty close to the original proposal put forward by the Commission" (Interview F).<sup>xv</sup>

The relationship between the European Council and the Council is more subtle to read. Overall, they were on the same page, pushing legislation in the same direction. The Heads encroached in the legislative activities of the Council in a number of ways – dictating the agenda of its works, steering or patrolling the discussions in the Council and solving the impasses between institutions. However, there is not much evidence that the European Council systematically provides close directions at every stage of the legislative process. Overall, the Council and its bodies maintain the command of their legislative functions: the Heads were “not

really involved in the nitty-gritty of the negotiations. It was more ‘get it done quickly, as soon as possible’” (Interview I). In the EMU, the ministers of finance traditionally deplore the intervention of the European Council in their affairs and try everything they can to avoid it (Interview N).

The EP saw its legislative position limited. If it played almost no part in the agenda-setting of the two packages, the impact it had during the policy-process on their final outputs was minor. It took a back seat and operated in a 'responsible' way, *de facto* accepting that the legislation was predominantly cooked elsewhere. The Heads urged MEPs to approve the deals and respect the deadlines. Yet, this is a practice that they usually pursue in salient legislative dossiers and does not seem a peculiar feature of the Six-pack or the Two-pack. As to the threat of going intergovernmental, it is fair to say that it was never concrete, although it was in the mind of many participants. People in the EP felt that, if the parties did not reach an agreement, the (European) Council would secure stricter budgetary surveillance though intergovernmental means (Interviews P and S).

If the analysis of the Six-pack and the Two-pack provides considerable evidence that the European Council was able to substantively shape the legislative process, even in the OLP, three caveats apply. First, the Six-Pack and the Two-pack were negotiated in a moment of acute crisis, where the very existence of the Union was at stake. Whether the European Council will continue to shape, to such an extent, the policy process in a more ‘normal’ Union remains open to future assessment.

Indeed, serious threats to the survival of national political systems (e.g., wars or major economic crisis) similarly tend to empower the core executives, while ‘normal’ politics may resume when the crisis is over or becomes less existential (Owens and Pelizzo 2010, 1). Second, there is a significant exception to the intergovernmental story: the role of the ECB. The ECB offered valuable and influential advice in the elaboration of the policy content of the two packages. It had an important role in the Task Force and was regularly consulted throughout the various stages of the policy process (Interview S). Finally, if ideas matter in the EMU (e.g., McNamara 1999), the alliance between the European Council and the Commission in establishing stricter rules for fiscal and economic policies might not only be due to institutional developments (and the emergence of the European Council at the centre of the EU/EMU policy-making) but also, to shared economic beliefs among European elites.

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- i Schulz, Speech to the Parliamentary Assembly of the Council of Europe, 30.01.2014.
- ii While two of the dossiers were not formally under codecision, the six files were all negotiated together as a package (see Héritier et al. 2015, 64-66).
- iii Rehn, *Debate in the EP*, 22.06.2011.
- iv The EP had asked for an extension of RQMV in 15 additional cases throughout the package. Several amendments were dismissed on legal grounds, while the Council agreed to one more situation of RQMV in order to strike a deal with the EP before the summer.
- v See art. 6 of Regulation 1175/2011 (Wortmann-Kool’s report).
- vi Rehn, *Debate in the EP*, 22.06.2011.
- vii For the details on the different decision-making rules used in the reformed SGP, see European Commission 2012, 70-84.
- viii European Council, Conclusions, 09.12.2011.
- ix MEP Thyssen (on behalf of the EPP), debate in the EP plenary, 12.06.2012.
- x See debate in Council, 10.07.2012.
- xi Rehn, *ibidem*.
- xii European Council, Conclusions, 19.10.2012.
- xiii European Council, Conclusions, 14.12.2012
- xiv *EuroPolitics*, “Rehn on Debt Mutualization”, 14.01.2014.
- xv This is, obviously, not always the case. For instance, in the negotiations for a Financial Transaction Tax, the first proposal of the Commission was opposed by some members of the Council and had to be withdrawn.

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## **Appendix: list of Interviews**

Interview A – 25.03.15. Financial expert, Ministry of Economics and Finance, Rome.

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Interview B – 26.03.15. Financial expert, Ministry of Economics and Finance, Rome.

Interview C – 09.04.15. Senior Assistant to (shadow) rapporteur (G/EFA Group).

Interview D – 09.04.15. S&D Policy Advisor.

Interview E – 10-04-15. Financial Counsellor, Permanent Representation of Slovenia.

Interview F – 13.04.15. Director, European Commission.

Interview G – 13.04.15. Head of Cabinet, European Commission.

Interview H – 14.04.15. Senior administrator, economic policy, Council.

Interview I – 14.04.15. Senior administrator, economic policy, Council.

Interview J – 14.04.15. Financial Counsellor, Permanent Representation of Italy.

Interview K – 14.04.15. Financial Counsellor, Permanent Representation of Portugal.

Interview L – 15.04.15. Head of Unit and administrator, European Parliamentary Research Service.

Interview M – 15.04.15. Administrator, ECON Committee, European Parliament.

Interview N – 15.04.15. Financial Counsellor. Permanent Representation of the Netherlands.

Interview O – 15.04.15. Administrator, ECON Committee, European Parliament.

Interview P – 15.04.15. ALDE Policy Advisor.

Interview Q – 16.04.15. Administrators (joint interview), ECON Committee, European Parliament

Interview R – 16.04.15. Financial Counsellor. Permanent Representation of the Czech Republic.

Interview S – 16.04.15. Senior administrators (joint interview). Legal Service, Council.

Interview T – 16.04.15. Greens-EFA Policy Advisor.

Interview U – 16.04.15. ECR Policy Advisor.

Interview V – 30.05.15. Financial Counsellor. Permanent Representation of Cyprus.

Interview W – 15.07.15. Administrators (joint interview). Legal services of the European Parliament.

Interview X – 16.07.15. Senior MEP (EPP). ECON Committee.

Interview Y – 16.07.15. Administrator, CRIS Committee, European Parliament.

Interview Z – 16.07.15. Financial Counsellor. Permanent Representation of Ireland.

Interview AA – 16.07.15. Assistant S&D.

Interview AB – 17.07.15. MEP (S&D). ECON Committee.

Interview AC – 17.07.15. Assistant to (shadow) rapporteur (ALDE Group).

Interview AD – 17.09.15. Former President of the European Council.