

# *Behind the scenes of a two-stage game*

Dynamics between the European Commission and  
the Council in fiscal enforcement in the EU

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## **ABSTRACT**

*This study is about the role of the European Commission in enforcing the fiscal rules of the Stability and Growth Pact (SGP). The SGP was established in the 1990s with the purpose of maintaining fiscal responsibility among Member States. However, the SGP has been violated frequently, which raises questions about its enforcement. Although both the European Commission and the Council are responsible for the enforcement of the fiscal rules, this research takes a specific look at the role of the Commission, as this role remains underexposed. This research aims to shed light on the methods of the Commission with regard to how it acts upon the interests of the Council, by closely examining the excessive deficit procedure (EDP) for Portugal that took place between 2009 and 2017. The results of this study find that the Commission does take into account the Council's preferences, but that this does not very heavily impact the course of the EDP because of the rather weak position that the Council is in. Furthermore, conflicts between the Commission and the Council seldomly occur, as the preferences of both institutions are quite well aligned. These results contribute to understanding the enforcement of the SGP and therefore the policy outcomes that can be expected. It also serves as input for discussing the enforcement mechanism within the broader structure of European economic governance.*

## **FOREWORD**

Dear reader,

This thesis is the final achievement of my career as a student, at least for the foreseeable future. It is the result of a gradually developing interest for issues relating to European integration and governance, and the final outcome of a master's program dedicated to these same topics. From this place, I want to thank everybody at both Utrecht University and Masaryk University in Brno who have helped making this double-degree program possible. You contributed to a very enriching two years of my life. With regard to this thesis, I especially want to thank Alexander Hoppe, Oetze Deelstra and Vladan Hodulák for their guidance and supervision. You were very helpful and always encouraging. The same holds for the other people close to me who were willing to read my work and provide me with feedback. I also want to thank the respondents that I interviewed for giving me their time and information, without whom this research would not have been possible. Finally, I want to thank my classmates and friends who were in the same boat as me for their support, advice and encouragement.

I hope you can approve of the result.

All the best,

Erwin de Pagter

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## **INTRODUCTION**

### **The purpose of the Stability and Growth Pact**

Since the conception of the European Monetary Union (EMU) in the Maastricht Treaty of 1992, the single monetary policy of the EU has been complemented by attempts to govern the decentralized fiscal policies of the Member States (Kamps & Leiner-Killinger, 2019). For that purpose, the Stability and Growth Pact (SGP) was introduced in 1998. The policy guidelines in the pact were designed with the aim of ensuring that EU Member States follow sound fiscal policies, following the principle that “economic policies are a matter of shared concern for all Member States” (Hansen, 2015, p. 479). In general, the SGP is best known for its deficit and debt rules, as deficit levels may not exceed 3% of a Member State’s GDP whilst debt levels may not rise above 60% of GDP. This is laid down in Article 1 of Protocol 12 to the Treaty on the Functioning of the European Union (TFEU). However, at the moment that this research is conducted, these rules have been suspended in order to give Member States the budgetary freedom necessary to deal with the economic effects of the outbreak of the COVID-19 pandemic (Smith-Meyer, 2020). The Pact relies on the elements of prevention and deterrence and therefore exists of a preventive arm entailing budgetary surveillance, and a corrective arm, entailing the implementation of a so-called excessive deficit procedure (EDP) (Terziev, Bankov & Georgiev, 2018).

### **The problem of compliance**

Despite its seemingly clear rules and legitimate motives, the SGP has suffered a lot of criticism. It was not able to prevent the global financial crisis and subsequent sovereign debt crisis from happening (Baerg & Hallerberg, 2016; Terziev et al., 2018). One of the largest shortcomings may be that although breaches of the Pact are far from exceptional, no government was ever fined for non-compliance (Wijsman & Crombez, 2017). Therefore, this research looks into one specific variable affecting the performance of the SGP: enforcement. Research into European economic governance demonstrates that there is a strong lack of compliance, which raises questions about its enforcement (Hansen, 2015). Under the Pact, both the European Commission and the Council of the EU, are responsible for its enforcement, where the latter is deciding upon recommendations of the former. Although there has been enforcement to some extent, by installing excessive deficit procedures urging non-compliant Member States to decrease their spending, this has never led to concrete penalties through imposing fines. In the meantime, rules are violated frequently (Wijsman & Crombez, 2017). Moreover, the fact that the rules have currently been suspended as a result of the pandemic, though perhaps reasonable in itself, shows that enforcement of the SGP is far from absolute.

### **Understanding the compliance deficit**

In earlier research, scholars have come up with various explanations for the compliance deficit of the SGP. Many explanations focus on why individual Member States deviate from the rules in the first place, and how they subsequently get away with it. Economic need has been identified as an important reason for non-compliance, whilst ideology and voting power have been dismissed as main determinants (Hansen, 2015). At the same time, larger Member States are more likely to get away with breaching the rules, whilst also Eurosceptic sentiments in a

country can be used by governments to escape their responsibilities under the SGP (Baerg & Hallerberg, 2016). However, it seems that the existing literature pays more attention to those being regulated than those that regulate. At least, theories about enforcement and sanctioning are rather scarce, although not completely absent. Wijsman and Crombez (2017) have theorized that the European Commission can be regarded a lenient enforcer as it takes into account public opinion, whilst also pursuing an own political agenda. There is more research that pays attention to the role of the Commission in European economic governance, although this often relates to the design of fiscal surveillance policies rather than their execution. Such research has led to the conclusion that the recent changes in the framework of European economic governance have provided the Commission with more opportunities and powers, which are supposed to lead to increased politicization of processes and decisions (Bauer & Becker, 2014; Schön-Quinlivan & Scipioni, 2017).

More far-reaching research concerning the enforcing role of the Commission under the SGP comes from Van der Veer (2020). By analyzing multiple EDPs initiated against different Member States, he demonstrates that the enforcement of the SGP is a highly political process, and that “politicisation now directly affects the enforcement of the EU’s most rules-based and expertise driven surveillance schemes” (p. 127). He describes the Commission as a reputation-seeking actor that uses its discretion in enforcing the SGP to prevent reputational losses. The reputational threats faced by the Commission have increased since the post-crisis reforms of European economic governance, as the Commission now carries more responsibility and more easily finds itself in the position of scapegoat. Other research by Mariotto (2019) investigates the negotiation of enforcement decisions between the Commission and the Council under the preventive arm of the Pact, by comparing the texts of Commission recommendations and the subsequent Council decisions. She finds that, contrary to theoretical expectations, the Council in the majority of the situations strengthens the Commission recommendations rather than softening them. This does not take away the fact that especially larger countries can still form coalitions to soften recommendations, in order to avoid being penalized. Her findings only partly align with the findings of Baerg and Hallerberg, who found that Member States are able to undermine the “watchdog function” of the European Commission (Baerg & Hallerberg, 2016, p. 996).

### **Research puzzle**

The brief literature review above shows that the topic of SGP enforcement is not completely unexplored territory. We know quite some things about the incentives for Member States to breach the rules of the SGP and how they get away with it (Hansen, 2015; Baerg & Hallerberg, 2016). This also gives some insight in the decision-making about enforcement of the SGP in the Council, as there all Member States are gathered. Furthermore, we know that the Commission is more than a neutral arbiter, and is aware of its increasingly political nature (Bauer & Becker, 2016; Schön-Quinlivan & Marco Scipioni, 2017; Van der Veer, 2020). Building upon that, theory has provided us with some incentives for the Commission to be lenient (Wijsman & Crombez, 2017), whereas the reputation seeking incentive under the corrective arm of the pact has been confirmed by Van der Veer (2020). Other research has

shown how the Council acts upon Commission recommendations under the preventive arm of the pact (Mariotto, 2019).

Although Wijsman and Crombez and Van der Veer explain why the Commission may be lenient in enforcing the SGP, and Mariotto has demonstrated how Commission recommendations and Council decisions may differ from each other, this still does not offer much insight in the interaction between the Commission and the Council during the process. It may prove insightful to further investigate the role of the European Commission under the corrective arm of the Pact. At face value, one would expect the Commission to act as an independent enforcer, in its capacity of Guardian of the Treaties, and therefore not be very responsive to outside influences. At the same time, the competences that the Commission is entrusted with open the door to a great deal of politicization, something which they are well aware of at the Berlaymont offices. Moreover, the way the fiscal rules, especially after their recent revisions, were set up leave the Commission, and the Council as well, ample room for discretion (Schön-Quinlivan & Marco Scipioni, 2017; Kamps & Leiner-Killinger, 2019).

What then are the gaps in this knowledge that need to be filled? In a broad sense, disentangling influences between the various actors enforcing economic governance would still require some serious research (Bauer & Becker, 2014). Although it has already been confirmed that the Commission acts with discretion when enforcing the SGP, there is still much unclear about how this exactly happens. For example, does the Council approach the Commission to share its preferences, or does the Commission proactively seek to identify Council interests? And does the Commission follow a more or less fixed internal protocol when writing its recommendation in which looking out for Council interests is standard procedure, or does it just happen when it happens? How big is the role that Council preferences play in the Commission's considerations? And is the Commission merely responsive to the Council preferences or is there also some degree of congruence? By looking into these kinds of questions, this study can provide a further look behind the scenes in the enforcement of the SGP.

### **Research questions**

Therefore, this study aims to answer the following question:

***How does the Commission take into account the preferences of the Council when drafting its recommendations under the corrective arm of the SGP?***

It is thereby assumed that, although in theory the process of taking enforcement decisions consists of two distinct phases, where the Council acts upon the Commission's recommendations as it is laid down in Article 126 TFEU (see also Wijsman & Crombez, 2017; Terziev et al., 2018, Kamps & Leiner-Killinger, 2019), in reality the boundary between those phases is blurred. The image of a two-stage game that one can get from looking at the procedure from a technical angle may be a deceptive one. This is a credible assumption considering the existing research on the politicization of the process. This research must provide better insight into how this relationship between the Commission and the Council under the corrective arm



of the SGP works. The following sub-questions serve to provide some direction to the study and come to a properly demarcated conclusion:

1. Does the Commission proactively seek to include Council preferences when drafting its recommendations under the corrective arm of the SGP? And how?
2. How important are Council preferences for the Commission's considerations when enforcing the SGP?
3. Can any alignment of preferences of the Commission and the Council better be described as a case of responsiveness or as a case of congruence?

### **Relevance**

By focusing on the role of the Commission and its working methods, this research contributes to closing a gap in the literature, as much research into developments within the EMU has applied an intergovernmentalist focus (Schön-Quinlivan & Scipioni, 2017). Furthermore, this study can also build upon studies that have demonstrated different incentives for the Commission to act with discretion by showing how this actually happening. The existing studies investigate the differences between the different phases of decision-making in the enforcement procedure and are therefore more outcome oriented. This research aims to unveil what is going on in the meantime and is therefore more process oriented. In that sense, we are moving from 'what?' and 'why?' to 'how?'. Besides its scientific relevance, this research can hopefully add to the understanding of the enforcement of the SGP, both with regard to the rules and the enforcing actors. This may prove useful for policy purposes, assuming that effective enforcement is desirable for the survival of the European single market and monetary policy. It also has the potential to enhance the accountability of the enforcement procedure, as this study provides more insight in what is really happening. Apart from that, understanding how the enforcement process of the SGP works in practice can also contribute to making better predictions about policy outcomes (Hansen, 2015). The relevance of all this is underlined by the current circumstances in which the SGP is temporarily suspended, and debates about its fitness and potential reform are highly prevalent. The discussion in the final chapter will therefore also deal with this issue.

### **Structure and design**

This introduction has already given a brief overview of how the SGP works and what is known about its enforcement. The next chapter will provide a more in depth analysis of the Pact and how it is working out in practice, with a specific focus on the excessive deficit procedure. What follows is a theoretical framework in which a number of expectations are formulated based on two different theories: the principal-agent theory and the resource dependence theory. In the methodology chapter, the way that this research was conducted and methods for analysis are explained and the quality of the research is being answered for. In the results chapter, the most interesting and relevant findings that emerged from the research are discussed and analyzed, along the lines of the theoretical framework. The final chapters contain a conclusion and a discussion, in which the analysis of the findings is wrapped up and its wider implications are discussed.

## **THE STABILITY AND GROWTH PACT**

### **Conception and rationale**

The Stability and Growth Pact (SGP) was introduced in 1998 with the intention of coordinating fiscal matters in Europe. This followed the development of the single currency, as policy makers could not agree on centralizing fiscal policy, but recognized the need for commonly agreed fiscal rules (Beetsma & Larch, 2019). This need for central coordination was derived from the principle that economic policies are a shared concern for all Member States. It is assumed that fiscal policies through their impact on economic growth and inflation can affect the European single monetary policy. Within a monetary union, Member States are giving up their own monetary policy as an instrument to stabilize their economy due to asymmetric shocks. As Member States may be inclined to use fiscal policies instead, the SGP was created to ensure that individual Member States would maintain fiscal responsibility (Hansen, 2015).

For instance, if an individual country runs a high deficit or debt, this may be a reason for the European Central Bank to loosen its monetary policy, thereby affecting the entire monetary union through creating additional inflation. Ultimately, the untenable fiscal position of one Member State could leave other Member States with the choice of either a bail out or the risk of default (Hansen, 2015; Baerg & Hallerberg, 2016). Furthermore fiscal indiscipline in one country can raise demand and inflation in such a way that interest rates go up, the effects of which would also spill over to other members of the monetary union. Besides that, fiscal imbalances can also negatively affect the confidence in the monetary policy with regard to its ability to achieve price stability (Kamps & Leiner-Killinger, 2019). The bottom line is that there is no watershed between monetary and fiscal policies, and that centralizing the one at least requires coordinating the other.

The SGP functions to safeguard Article 126 TFEU, which states that Member States shall avoid excessive government deficits (Terziev et al., 2018). The SGP therefore is most well-known for its deficit and debt clauses. The deficit clause entails that a state's budget deficit must not exceed 3% of its GDP. The debt clause imposes a public debt ceiling of 60% of GDP (Hansen, 2015, Terziev et al., 2018). Scholars have argued that the conception of the SGP relies on two developments playing out at that time. First of all, ideas on the relationship between monetary and fiscal policy had evolved towards a broad consensus favouring fiscal discipline. Second, the asymmetric bargaining power of Germany has contributed a great deal to the adoption of the SGP. Because Germany had to give up its national currency, which was the strongest currency at the time, and brought to the table the credible threat of a veto by its hardliner central bank, the other countries were inclined to agree to the adoption of an instrument for guaranteeing fiscal discipline (Heipertz & Verdun, 2004).

Although the adoption of the SGP implied some consensus favouring fiscal discipline, this did not mean that all Member States shared the same idea of how the SGP should be viewed. Where the reference values for deficit and debt may have been designed as upper limits, there have been policy makers who rather considered them as a target value (Kamps & Leiner-Killinger, 2019). Moreover, already in the first years after the adoption of the SGP, countries started to

act as if its rules were not to be taken seriously, ultimately leading to a standoff between the European Commission and the Council in 2003 when the latter was not willing to sanction Germany and France for violating the rules (Beetsma & Larch, 2019; Heipertz & Verdun, 2004, Baerg & Hallerberg, 2016). Though this might seem irresponsible, one must also keep in mind that the values of the deficit and debt clauses from an economic perspective are not exactly watertight. The story goes that the deficit limit of 3% is not based on economic calculations, but rather on political considerations relying on observations what the right number felt like. Moreover, there is not even a clear link between both clauses, as it has been observed that achieving a 3% deficit and 60% debt at the same time requires nominal GDP growth of 5% whilst the average growth rate within the eurozone has long been hovering around 3% (Kamps & Leiner-Killinger, 2019). This may explain the serious compliance problems that the SGP has suffered from, as breaches of the Pact have been frequent and sanctions have been absent (Wijsman & Crombez, 2017). Before diving deeper into these specific problems, first the Pact itself will be described in more detail.

### **Legal framework and reforms**

Although the deficit and debt clauses may be the cornerstones of the SGP, there is a lot more to it when it comes to procedure. The Pact consists of a so-called preventive arm and a corrective arm. The preventive arm entails a country-specific budgetary objective that is to be followed. The corrective arm consists of the procedure to correct excessive deficits (Hansen, 2015). By adopting the SGP, the EU Member States “committed themselves to achieve a medium-term budgetary objective of close to balance or in surplus, and to fulfill a corrective budgetary program in case they spend more than they make” (Terziev et al., 2018, p. 54).

The SGP in its original form could be considered as a simple and predictable set of rules. There were clear criteria for deficit and debt, whilst Member States were expected to have balanced budget in the medium turn (Beetsma & Larch, 2019). Nevertheless, the legal framework of the SGP has undergone some changes over the years. After the first years and the enforcement debacle in the cases of Germany and France, in which the European Court of Justice had to provide decisive clarity, Member States decided in 2005 that the Pact should allow more flexibility. However, being confronted with the turmoil of the global financial crisis a few years later, the EU now decided that it was time to reinforce the SGP, by amending existing laws and adopting new ones through the so-called Six Pack and the Two Pack (Terziev et al., 2018). The new laws have strengthened the Commission’s authority to scrutinize member state’s fiscal statistics, and have been described to constitute a police-patrol type of surveillance procedure (Savage & Howarth, 2018). Figure 1 gives a brief overview of the legal framework of the SGP, based on the work of Terziev et al. (2018).

<p><b>Regulation 1466/1997 (amended by Regulation 1175/2011) – in force: 1 July 1998; 13 December 2011</b></p> <p>Preventive arm of the SGP; from multilateral surveillance procedure to European Semester; after amending the Commission could independently issue warnings to Member States and give its opinion to the Council &gt; more opportunities to take the initiative</p>
<p><b>Regulation 1467/1997 (amended by Regulation 1177/2011) – in force: 1 January 1999; 13 December 2011</b></p> <p>Corrective arm of the SGP; Excessive Deficit Procedure: recommendations, measures and sanctions</p>
<p><b>Regulation 1173/2011 – in force: 13 December 2011</b></p> <p>Sanctions for enforcement under both the preventive and corrective arm; ranging from submitting deposits to fines of 0.2% GDP; move from QMV to reversed QMV &gt; decision adopted unless a qualified majority opposes it &gt; Commission recommendations have higher chance of succeeding</p>
<p><b>Directive 2011/85 – in force: 13 December 2011</b></p> <p>Provides harmonization of arrangements, rules and procedures that apply to national budgetary policies</p>
<p><b>Regulations 1176/2011 and 1174/2011 – both in force: 13 December 2011</b></p> <p>Rules for preventing and correcting the occurrence of macroeconomic imbalances; surveillance and enforcement works similarly to the preventive and corrective arm of the SGP; surveillance role for the Commission, which can also decide to reduce or cancel a sanction in case of exceptional economic circumstances</p>

*Table 1: Overview of the legal framework of the SGP. Source: Terziev et al. (2018).*

Beetsma and Larch (2019) conclude that the subsequent revisions of the SGP have demonstrated a couple of trends. First of all, the rules have developed towards giving priority to fiscal stabilization instead of debt sustainability regardless of the economic circumstances. As a result, they have become more suited to the possibility of contingencies emerging outside of a government's control. Second, when it comes to surveillance, the governance of the rules has developed from a light surveillance regime to an annual cycle for economic policy coordination. Third, with the enhanced surveillance, the role of the European Commission in the enforcement of the SGP has grown and has become more politicized. However, the procedure has also become less centralized, with a larger role for independent national institutions assessing national fiscal policies (Beetsma & Larch, 2019).

When we look to the role of the different institutions, we can indeed see some significant changes. Through the reforms, the role of the European Commission in the economic governance architecture has been strengthened, and even intergovernmental frameworks such as the European Stability Mechanism and the Fiscal Compact rely heavily on the Commission's involvement. The strengthened role of the Commission is mainly demonstrated by a wider monitoring regime and stronger opinions and recommendations, which have more chance of passing since the adoption of reversed qualified majority voting (Bauer & Becker, 2014). It has been argued that the increase of powers for the Commission also leads to more politicization

on its behalf (Schön-Quinlivan & Scipioni). The issue of politicization is discussed later in this chapter.

**Excessive deficit procedure (EDP)**

With regard to this study, a more detailed introduction of the excessive deficit procedure is required. The EDP is meant to bring states that are facing excess deficits back towards greater fiscal discipline, thereby combining supranational and intergovernmental governance elements. The Commission can make a recommendation to the Council to start an EDP if it concludes, from the macroeconomic data submitted to it by the Member States, that a member state is in breach of the criteria of the SGP (Langenohl, 2017). However, there are some grounds for exemption. For example, a breach may still be considered in compliance if it is exceptional, close or temporary. Member States may also submit relevant factors to be included in the assessment, but it depends on their specific fiscal situation whether these are really taken into account (Van der Veer, 2020). These grounds of exemption give both the Council and the Commission leeway in the severity of their responses to excessive deficits (Kamps & Leiner-Killinger, 2019)

The Council votes on the Commission recommendation. If it decides to open an EDP, both the Commission and the Council will substantiate their criticisms and directions for action, which are decided in a similar fashion. If a member state does not take adequate action, which again is to be determined by the Council upon Commission recommendation, sanctions can be imposed, eventually culminating in a fine of 0.2% of GDP (Langenohl, 2017). The latter has never happened, as was concluded before. Although the Council is the institution taking the final decisions, the Commission plays a crucial role, by making the assessment (Belke, 2016).

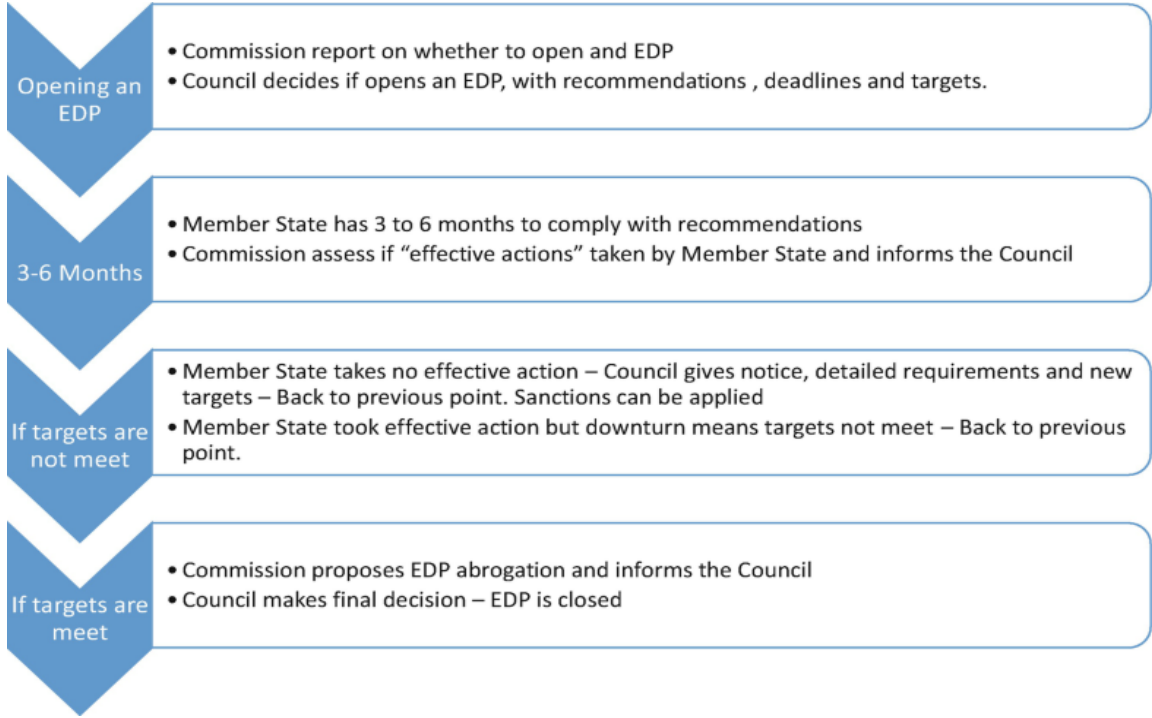


Figure 2: schematic overview of the excessive deficit procedure. Source: Sarmiento, 2019.

Figure 2 gives a schematic overview of the EDP and demonstrates the formal dynamic between the Commission and the Council. It clearly shows that each decision that the Council takes is preceded by a recommendation from the Commission.

**Compliance and enforcement problems**

Already a few years after its conception, the SGP was compared to a dog that would never bite. This followed the event of the Council suspending the EDP for Germany and France in 2003, who were in clear breach of the rules at the time (Heipertz & Verdun, 2004; Beetsma & Larch, 2019). This was not an exception. Although the rules of the SGP have been violated frequently, and EDPs have been installed, fines have never been imposed (Wijsman & Crombez, 2017). Moreover, Member States saw a chance to consolidate their debt levels and increase their deficits (Afflatet, 2017). Figures 3 and 4 show that both the aggregate deficit and debt levels in the EU have, not incidentally, breached the thresholds set in the SGP, although deficit levels have recovered quite well in the aftermath of the financial crisis. It follows that compliance and enforcement are not automatic, to say the least. Also the strengthened role of the European Commission in its capacity of guardian of the rules after the 2011 reforms has not led to stronger enforcement of these rules (Kamps & Leiner-Killinger, 2019).

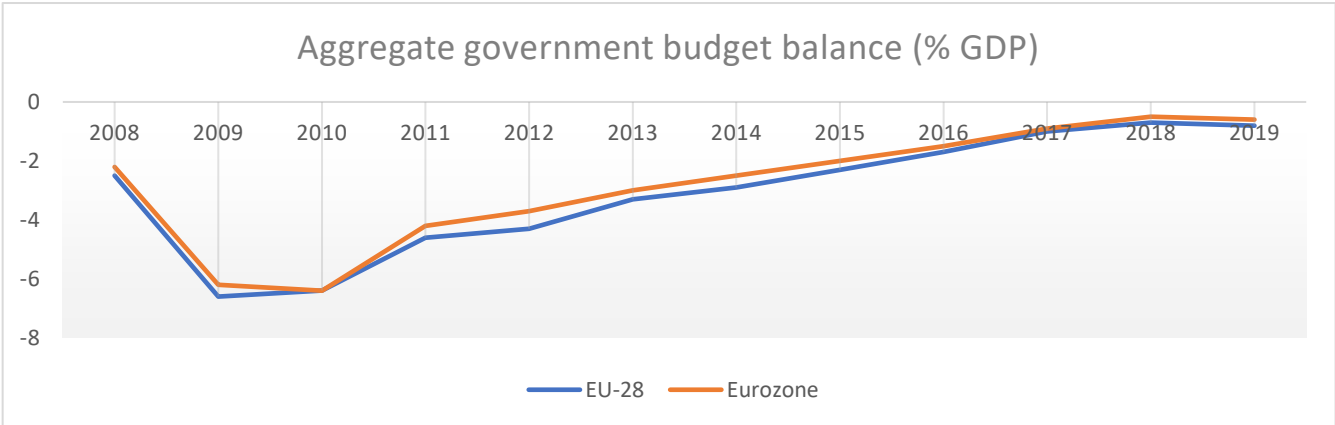


Figure 3: Aggregate government budget balance in the EU and the Eurozone between 2008 and 2019. Source: Eurostat data browser.

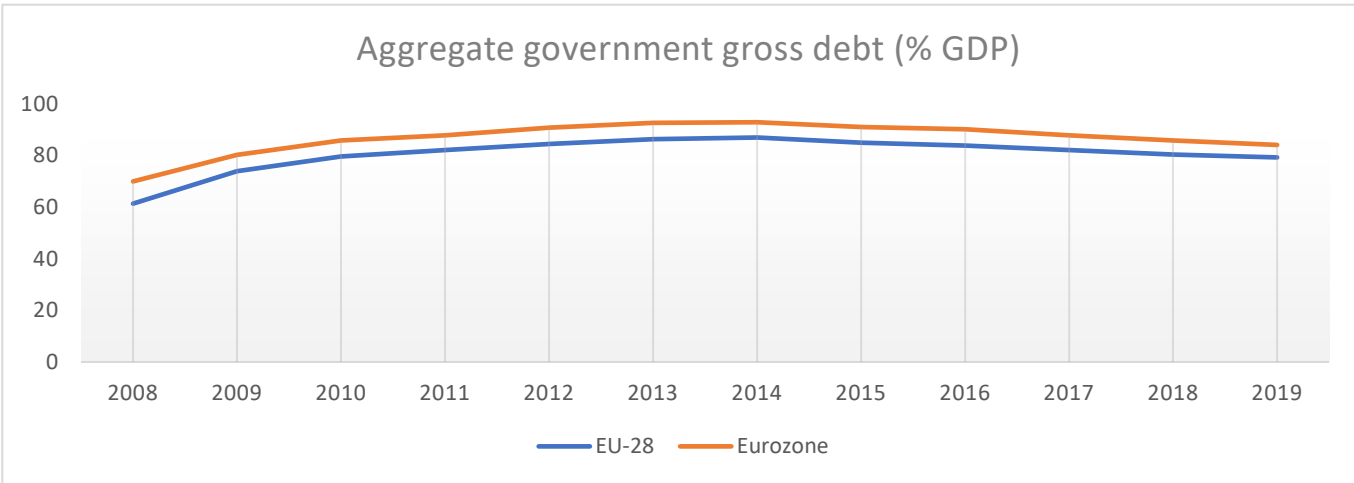


Figure 4: Aggregate government gross debt levels in the EU and the Eurozone between 2008 and 2019. Source: Eurostat data browser.

Reasons for insufficient enforcement following non-compliance vary. They include the inability to punish Member States, the forced deviation of the rules due to economic shocks and the ability of countries to circumvent the rules (Hansen, 2015). Besides that, the EU has been inconsequential regarding the no bail-out rule. It is assumed that a solid no bail-out rule incentivizes governments to adopt and respect fiscal discipline rules and is therefore also essential for the EU (Wyplosz, 2019). Another theory argues that there is a lack of ownership of the fiscal framework with both institutions. This has to do with the varying interpretations of these rules that has been described earlier. From the beginning, there has not been a deep consensus on the need and design of the fiscal framework. Rather, it was considered to be a price to pay for proceeding with monetary integration. From that perspective, the SGP would be considered a necessary evil and no institution would be willing to fully commit to it (Kamps & Leiner-Killinger, 2019). The next section explores how politicization plays a role in the compliance and enforcement of the SGP.

### **Politicization**

On a broad level, EU decision-making is no longer policy without politics. Politicization has been changing the realm of European governance along three dimensions: (1) Union policies have become more visible, (2) therefore triggered more polarization and contestation, and (3) the engagement with the EU and its policies has broadened beyond the usual elite actors. Because supranational actors feel the bottom-up pressure that comes from politicization, they need to find ways to respond to that (Bressanelli, Koop & Reh, 2020a). Politicization also plays an important role in the enforcement of the SGP, as it even directly affects the enforcement of the EU's most rules-based surveillance schemes (Van der Veer, 2020). The Council is a political institution that is not automatically inclined to following technical rules, as was already demonstrated by its decisions considering Germany and France in 2003 (Wyplosz, 2019). The political nature of the Council and the Member States may not be very surprising. In economic terms, a declining GDP, high unemployment and recent experiences with violating the rules increase the likelihood of non-compliance by Member States (Hansen, 2015). From a political point of view, studies have found that Member States are able to circumvent the rules and get away with it the larger they are, and the more Eurosceptic they are (Baerg & Hallerberg, 2016). Member States with an interest at amending the Commission's recommendations may also form coalitions in order to exercise more power in the decision-making process. It is important to mention here that the Council not only needs to approve the Commission's recommendations in order to implement the rules, but is also able to amend them. This means it can strengthen or weaken certain enforcement actions (Mariotto, 2019).

From the above, it seems that politicization only takes place once the recommendations for enforcement are discussed in the Council, giving the impression that the Commission is a neutral actor. This, however, is not true. The Commission plays several political roles in all the stages of the policy process, and earlier studies show that its technocratic nature does not preclude it from showing a willingness to adapt policy choices to changes in the political context of European integration (Nugent & Rhinard, 2019; Rauh, 2019). Domestic politicization is often taken as a starting point to explain these political motives of the EU.

Politicization of EU integration can translate in pressures that travel from the bottom up and ultimately reach the EU institutions (Bressanelli, Koop & Reh, 2020a).

Also within the enforcement of the SGP, the role of the Commission is politicized. Wijsman & Crombez (2017) have discovered two rationales for this politicization. First, the Commission takes into account public opinion when enforcing the SGP. This leads to leniency following unusual events or during Eurosceptic times. The underlying incentive is to prevent reputational losses. Second, the Commission could use its discretion in the enforcement process to forward its political agenda, by affecting national fiscal policies in such a way that particular expenditures are (dis)incentivized. This resonates with the notion that when faced with politicization, an institution can do two things: either restrain itself or capitalize on the pressure in order to advance certain substantive goals (Bressanelli, Koop & Reh, 2020b). Especially the rationale of reputation awareness is recurring in the literature. According to Van der Veer (2020), reputation-seeking behaviour by the Commission when enforcing the SGP is triggered by a number of conditions. There must be sufficient ambiguity regarding the fiscal conditions of the member state under surveillance, making the Commission vulnerable to criticism following its recommendations. On top of that, the EU in general must be a politicized topic in both the target member state and the usually disciplined Member States, posing the reputational threats of over-enforcement as well as under-enforcement. Finally, the Commission must enjoy discretion in its decision-making, allowing it to engage in reputation-seeking behaviour.

However, politicization does not necessarily have to lead to a lack of enforcement. It can also lead to a stricter application of the rules by the Commission when it faces the threat of reputation losses with Member States that favour fiscal discipline. This was demonstrated by the Commission opening excessive deficit procedures against the UK and Finland between 2008 and 2010 (Van der Veer, 2020). Moreover, Mariotto (2019) has demonstrated that the Council is more likely to strengthen Commission recommendations rather than weakening them. Especially under financial distress or fears of disintegration, the Council tries to avoid conflict with the Commission. This opposes the assumption that the Council's exclusive decision-making power would lead to a softening of the recommendations. On the other hand, there is the finding of Baerg & Hallerberg (2016) that Member States are very well able to soften Commission recommendations. Apart from the enforcement deficit, it has been clearly demonstrated that both the Council and the Commission act politically when enforcing the SGP. Where Mariotto and Baerg and Hallerberg have focused on the outcome of interinstitutional dynamics, this study aims to find out more about what these dynamics look like.

## **Conclusion**

The Stability and Growth Pact was adopted with the purpose of maintaining fiscal discipline among the Member States, given their interdependencies in the monetary union. Although the rules of the Pact seem quite straightforward at face value, subsequent reforms and especially the introduction of grounds for exemption have made the Pact more complex through the years. Moreover, the logic behind the rules is disputed, and compliance is far from guaranteed. Although enforcing the rules may seem simple in theory, the reality is that the enforcement process is heavily politicized, both on the side of the Council and of the Commission. The next



section will further elaborate on the role of the Commission in order to explain and predict certain behaviour based on existing theories.

## **THEORY**

What can one expect to find when looking into the dynamics between the European Commission and the Council when implementing the excessive deficit procedure? Although this specific part of their relationship has not yet been investigated much, the relationship between the Commission and the Member States, or the Council, or the European Council, has been discussed extensively. The aim of this chapter is to formulate expectations to the questions posed in the introduction by using existing theories on Commission-Council relations. The questions that are discussed have to do with whether the Commission proactively seeks the preferences of the Council, what importance it attaches to these preferences, and if any alignment of preferences can better be described as a matter of responsiveness or as a matter of congruence. With regard to the last question, a short introduction of the concepts responsiveness and congruence is necessary. Congruence can be defined as the overlap of the preferences of constituents and those of their representatives. Responsiveness can be defined as a causal relationship between those preferences: if the preferences of the constituents change, the preferences of their representatives change as a result. The differences between the two concepts is whether there is a causal relationship between the preferences of constituents and their representatives, or whether they intrinsically overlap (Beyer & Hänni, 2018). In the context of this study, these concepts apply to whether the Commission acts in a certain way because it shares the preferences of the Council (congruence), or because it changes its preferences according to those of the Council (responsiveness). Although the Commission and the Council are not in a representative-constituent relationship, the presumed anticipation on each other's preferences still renders this concept relevant for this study. It could say something about the incentives of the Commission for taking into account certain preferences or not. For example, a case of congruence would, at least in theory, be likely to occur when the Commission derives its preferences from its mandate given by the Council, which is to ensure adherence to fiscal standards. In this case, the preferences from both actors would overlap. In a case of responsiveness, the Commission could recommend a strict approach because a majority in the Council favours fiscal discipline, although it initially had reasons to be lenient with a certain member state.

### **The principal-agent theory**

One of the theories that has increasingly been applied to understand the institutional architecture of the European Union is the principal-agent theory. The theory rests on the assumption that one party, the principal, enters into an agreement with another party, the agent, to delegate to the latter the responsibility for carrying out a certain function or task on behalf of the former (Kassim & Menon, 2003). This delegation can happen for multiple reasons. In general, the principal can decide to delegate certain tasks to the agent because it helps to reduce transaction costs. Because the agent generally possesses more information or substantive information conducive to delivering the specific task, or because delegating a task to an agent helps to overcome collective action problems that the parties represented by the principal otherwise have to face (Delreux & Adriaensen, 2017). More specifically, when the principal is made up of multiple parties, the problem of incomplete contracting emerges. When the agreement that the parties aim to reach is long term and negotiating is difficult, it becomes harder for the

contracting parties to decide on all the details of the agreement and, moreover, ensure full compliance by all parties at all times (Doleys, 2000). It therefore becomes attractive for the contracting parties to create an agent that can further fill in the details of the agreement and is also in a position to adjudicate disputes. Other incentives for the principal to delegate are to improve the quality of policy, to overcome regulatory competition between the contracting parties, to displace responsibility for unpopular decisions or to resolve the problem of policy-making instability (Kassim & Menon, 2003; Delreux & Adriaensen, 2017). Although the agent is acting on the principal's behalf, the rationale behind the delegation is to make sure that the rules of the game do not change over time, because the agent relies on its own expert judgement instead of day-to-day instructions and is unresponsive to the principal's preferences (Maggetti & Papadopoulos, 2018). However, principal-agent relationships have their own complexities. For the principal, there is always the danger of agency loss, through a process that is called shirking (Doleys, 2000). Agents often have their own agendas and organizational imperatives. Moreover, they possess privileged asymmetric information (Savage & Howarth, 2018). An agent is shirking when it starts to use that information advantage opportunistically to gain autonomy and pursue its own goals. Principals try to prevent shirking by imposing contractual safeguards *ex ante* and monitoring and controlling the agent *ex post* (Bocquillon & Dobbels, 2014; Doleys, 2000).

The most formalized act of delegation within the European Union architecture is where the Member States delegate competences to the EU institutions (Delreux & Adriaensen, 2017). As the Member States do not have the temporal and administrative resources to draft legislation, they need a neutral agent with the knowledge and expertise to do so. From this perspective, the Commission can be described as the secretariat of the Council (Bocquillon & Dobbels, 2014, Bauer & Becker, 2014). However, evidence about the politicization of the Commission suggests that in practice, it is more than a neutral secretariat. This is something which also Bocquillon and Dobbels find in their study (2014) analyzing relationships between the European Council and the Commission in setting the Union's legislative agenda. Many studies employing the principal-agent theory have focused on the set up of the European Union's architecture in general (Kassim & Menon, 2003), or used it to describe the relationship between the Council and the Commission in the legislative process (Bocquillon & Dobbels, 2014). When it comes to economic governance, studies have applied the principal-agent theory to relations between the Council and individual Member States rather than to Council-Commission relations (Hodson, 2009). However, for this study it is more interesting to analyze how the theory could explain relations between the Council and the Commission when it comes to the enforcement of rules that all parties agreed upon.

When one tries to apply the principal-agent theory to Council-Commission relations under the corrective arm of the SGP, there are a number of expectations, assuming that the agent executes its task appropriately. First of all, one would not expect the Commission to proactively seek Council preferences, because it is supposed to be unresponsive to those, other than what the boundaries of their statutory mission prescribe (Maggetti & Papadopoulos, 2018). This statutory mission has been described in the previous chapter, and eventually refers back to safeguarding Article 126 TFEU, which serves to ensure that Member States maintain fiscal

responsibility and avoid excessive deficits. From the first expectation it follows that the Council preferences do not play an important role in the Commission's considerations, as first and foremost it is relying on its own expertise, which is probably derived from its information advantage provided by the European Semester. So, facts and figures about deficit and debt are leading in the Commission's considerations, regardless how these relate to current Council preferences. That would reverberate best the mandate that the Commission has been given. Finally, if a Commission's recommendation shows any awareness of the preferences of the Council, this would more likely be a matter of congruence than of responsiveness. Because the Commission acts on a mandate it has been given by the Council, and the Commission sticks to this mandate, one would assume their preferences favouring fiscal discipline to overlap. From this perspective, it would be more likely that the Commission's preferences coincide with those of the Council than there being a causal relationship between them. Hence, to summarize, the following hypotheses can be derived from the principal-agent theory:

*H1a: In its role as an agent, the Commission only relies on its mandate in drafting its recommendations under the excessive deficit procedure, and therefore does not proactively seek the current Council's preferences.*

*H1b: Because the Commission as an agent must not be responsive to Council preferences, it does not attach much importance to them.*

*H1c: Any alignment of preferences of the Commission and the Council is more likely be a result of congruence rather than responsiveness, assuming that both actors rely on the same mandate.*

This hypothesis might change if one accounts for the possibility of shirking by the agent. In that case, the Commission would capitalize on opportunities to pursue its own agenda. Earlier studies have shown that the Commission, when under pressure of bottom-up politicization, has two incentives to act: either to guarantee its bureaucratic and institutional survival, or to provide policy solutions that that matter for European citizens (Bressanelli et al., 2020b). These arguments can also provide a rationale for shirking by the Commission when drafting recommendations regarding the excessive deficit procedure. Instead of solely focusing on the application of the rules of the SGP, the Commission could either show lenience or strictness out of a desire to maintain confidence with individual Member States or Council majorities (for example by showing its competence to supporters of fiscal discipline), or out of a desire to provide the best solution to European citizens (for example by following the argument that austerity is not always the right solution in times of economic hardship). The resource dependence theory that will be discussed further down in this chapter also matches this line of reasoning, especially concerning the argument of institutional survival. For now, it leads to the following hypothesis:

*H1d: The Commission actively takes Council preferences into account and thereby deviates from its mandate, if that contributes to either its institutional survival or to the best policy solutions for European citizens.*

### **Complexities of the principal-agent theory**

The principal-agent theory is, given its prevalence in EU studies, a relevant framework to assess the dynamics between the Commission and the Council. Although this study will test the hypothesis that is introduced above, one can already argue in advance that the principal-agent theory has some additional complexities. First, it must be noted that the Council has a conflicted role here. On the one hand, it acts as the principal delegating the task of fiscal surveillance and recommendation to the Commission. On the other hand, it finds among its members those states that are subject to this same surveillance process. Savage and Howarth (2018) speak about an inverted principal-agent relationship, as rather than the principal monitoring the agent, the principals delegate the task of monitoring themselves to the agent. In other words, the Council is both principal and subject at the same time, although it must be noted that this submission only applies to its individual members and not to the Council in general. This makes it harder to interpret the dynamics between the Commission and the Council.

There is more reason to believe that the reality is more complex than the principal-agent theory in first instance would predict. This reason is the ambiguity of the principal's nature and role. One cannot simply assume that the principal that delegated the task of fiscal surveillance to the Commission is the same principal that has to deal with and act within these surveillance procedures. This ambiguity is caused by a couple of factors. The first one is the composition of the Council. The principal that decided to delegate the Commission with fiscal surveillance power, whether it was at the conception of the SGP or at its subsequent reforms, is not the same principal acting today. The Council is made up of the governments of the Member States, and these governments change from time to time. It is very well possible that Council members today have preferences that are diametrically opposed to those of their predecessors who (re)designed the SGP. This leads to the second factor: multitude. The principal in reality is the aggregation of multiple principals, the Member States. This is called a collective principal (Da Conceicao-Heldt, 2017). The variety that is inherent to the nature of the Council makes it difficult to consider it as a unitary actor that seeks to manage a single set of preferences in its relations with other actors. If the members of a collective principle lack unity, this is called principal drift (Sobol, 2016). Moreover, the time constraint makes that preferences of individual members can change, which also means that coalitions and majorities in the Council can change. For example, where France and Germany would both have preferred a looser interpretation of the rules in 2003, they opposed each other in the debate about how to approach the sovereign debt crisis that followed a decade later (De Jong, 2021). It has been argued that the larger the heterogeneity of the principal, the more room for discretion the agent enjoys (Da Conceicao-Heldt, 2017). If such a thing happens, can the Council still be seen as a consistent and unitary principal? The third factor that makes this rather difficult is the fact that circumstances are changing. To keep up with the example of France and Germany, current fiscal positions can make a difference for Member States' preferences regarding fiscal surveillance, and hence for the position they take in the Council. It was already mentioned that both economic and political circumstances can shape these preferences. Changing circumstances can also lead to mission creep, which means that the mandate that is delegated changes because new goals are added without a corresponding reduction in the old goals (Sobol, 2016). Because of this changing nature, one might expect problems of so-called antinomic

delegation, where the delegated mandate consists of conflicting or complex tasks that are hard to implement (Gutner, 2005). Also a concept such as shirking or agency loss is harder to define. What may be considered agency loss by one Member State, can be seen as proper task ownership by the other. The aim of these arguments is to explain that one should not understand the principal-agent relationship between the Council and the Commission as one between two unitary actors with single sets of preferences. One can already expect, based on these arguments about the nature of the Council, that reality is more complicated than that. The theory that is discussed in the next section also accounts for the ambiguous nature of the ambiguous nature of the Council as a political actor.

### **The resource dependence theory**

Moving on from principal-agent theory, another theory that may prove useful when analyzing the relationship between the European Commission and the Council is the resource dependence theory (RDT). This theory is based on the assumption that organizations are not autonomous, but are constrained by interdependencies with other organizations. As a result, an organization seeks to manage these interdependencies by trying to reduce the power of other organizations over them, whilst simultaneously attempting to increase its own power over other organizations. Therefore, to understand the behaviour of an organization, one must understand the external environment of that organization (Hillman, Withers & Collins, 2009). Bauer (2006) has applied this theory to the European Commission. He argues that within the EU political arena, the role of the Commission as developer of EU policies also depends on adequate policy implementation. It is therefore dependent on the implementation actions of the Member States. This relationship creates room for, perhaps unintended, politicization of European policy implementation, which may negatively affect the neutral, apolitical image of the Commission (Bauer, 2006).

This theory provides a basis to the claim that technocratic actors are not that insulated and unresponsive to their environment as is traditionally assumed. One of the explanations for the responsiveness of technocratic actors to their environment lies in the existence of institutional risk. Institutional risk can be defined as risks to the legitimacy of organizations that aim to manage societal risks and exist because regulators only have a limited impact on the societal risks they try to regulate. They include threats as delivery failure, budget overruns and loss of reputation (Rothstein, Huber & Gaskell, 2006). Technocratic actors that are sensitive to institutional risks, will prioritize mitigating the effects of such risks over mitigating the effects of societal risks (Van der Veer, 2020). Research into how regulators deal with institutional risks have found that actors are responsive to allegations of regulatory failure, public opposition, political intervention and media attention (Van der Veer & Haverland, 2018).

The theory also works the other way around, if one looks to how Member States try to manage their dependence on the EU and its supranational institutions. Research by Panke (2012) has shown that individual Member States do lobby the European Commission. The extent and effectiveness of this lobbying depends on the operational capacity and resources of states to do so and the gains a state may expect given its specific profile on a certain issue. Although larger states can more often found to be lobbying the Commission, this does not necessarily mean

they are more successful, because, according to Panke, there is a neutrality-norm in the European Commission (Panke, 2012). Based on these findings, one may expect that the Commission does not necessarily need to proactively seek the preferences of the Council, as Member States seek to influence the Commission themselves. The question, hence, is how the Commission deals with such efforts.

How do can these insights be applied to this study? Bauer (2006) has argued that the European Commission does not act autonomously from its environment, because it is also dependent on the Member States. For one, the Member States form the principals in the relationship. Moreover, they are also the ones to implement the policies or recommendations that are proposed by the European Commission. The Commission thus has an incentive not to alienate itself from the Member States, something which could likely happen because of the institutional risk it runs. One can therefore expect that the Commission does show responsiveness to the preferences of Member States. But what would it mean for the dynamics with the Council? First, there is a methodological dilemma that needs to be addressed. If one combines the principal-agent theory and the resource dependence theory, it could be argued that the Commission is faced with a dilemma. According to the principal-agent theory, the Commission would act according to its mandate given by the Council. According to the resource dependence theory, the Commission would respond to both individual Member States and the Council because it depends on all of them. This dual dependency can be conceptualized: the Commission depends on the Member States for the implementation of policies, but also for the legitimacy of the European project in general. For example, studies have shown that Euroscepticism is something that the Commission is particularly sensitive to (Baerg & Hallerberg, 2016; Bressanelli et al., 2020b). Simultaneously, the Commission depends on the Council for the formal endorsement of its proposals. For the effectiveness of its government, it is reliant on what a majority of the Council decides. Although the research question of this study speaks about the preferences of the Council, in reality it may be hard to disentangle those preferences from individual Member States' preferences as the Commission might be anticipating on both at the same time.

Building on the resource dependence theory, one could expect the Commission to proactively seek the preferences of the Council, but also of the individual Member States, because it is to some extent dependent on all of them. This would mean that the Commission would be sensitive for calls for more leniency or more strictness, as being unresponsive too such calls may be damaging to the relationship with actors that it depends on for its institutional legitimacy. Second, we could expect that these preferences play a large role in the Commissions considerations, although it remains to be seen who's preferences deserve the most attention. Following Panke (2012), all interests would be assigned the same weight because of the neutrality norm in the Commission. The cases of Germany and France in 2003 indicate that his is not necessarily true. In this regard, research by Van der Veer & Haverland (2018) may also prove insightful. The authors have shown that under the European Semester, the EU framework for economic and fiscal coordination, the Commission issues more recommendations to those countries in which public opinion on the EU is more polarized. Also, the recommendations to these countries do hardly advocate social investment. The authors of the study conclude that

when faced with the institutional risk that comes from domestic politicization of European integration, the Commission has a tendency to respond in a fashion of guardian of the markets (Van de Veer & Haverland, 2018). Apparently, under the preventive arm of the SGP, the Commission prefers appeasing supporters of fiscal discipline over the risk of being accused of overly intervening in domestic affairs. One could therefore argue that the Commission would attach more importance to preferences that insist on a proper execution of the rules, than preferences that advocate more leniency. The problem, again, is that the preferences of the Council most probably are not as unitary as this theory would lead us to believe. Finally, based on the resource dependence theory, one could again expect that any alignment between the Council's and the Commission's preferences would be a matter of responsiveness rather than congruence. This is based on the assumption that because of its dependencies, the Commission rather acts on the incentive of mitigating institutional risk than on its own policy convictions. This then leads to the following hypotheses:

*H2a: The Commission does proactively seek the preferences of the Council, because by being responsive to those it can manage its dependencies.*

*H2b: Council preferences play an important role in the Commission's considerations, especially those preferences that advocate a proper execution of the rules.*

*H2c: Any alignment between Commission and Council preferences is the result of responsiveness rather than congruence, because the Commission is incentivized to adapt its preferences according to its dependencies.*

### **Concluding remarks**

In conclusion, the resource dependence theory better accounts for the changing nature of the Council, its individual members and all or their preferences. Rather than looking at the Commission's mandate that was decided by the Council in the past, like the principal-agent theory does, the resource dependence theory accounts for current preferences, of the current Council and its members. Moreover, it gives reason to believe that the Commission actively seeks the preferences of the Council, attaches considerable importance to them, and does so following an incentive of being responsive rather than congruent. The politicization surrounding the implementation of the SGP that is described in the previous sector may play a large role. Politicization moves implementation from business as usual to a performance under pressure (Van der Veer & Haverland, 2018). Moreover, politicization may lead bureaucrats within the Commission to act more pragmatic, taking into account subsidiarity and legitimacy concerns (Bes, 2017). With increasing levels of politicization, the Commission might be stronger inclined to manage institutional risk, thereby closer looking at its resource dependencies, than managing societal risk, which would be ensuring proper application of the SGP following its mandate given by the Council (Van der Veer & Haverland, 2018). Based on these theoretical arguments, the second set of hypotheses have higher expectations of being confirmed.



## **METHODS**

### **Research design**

In contrast to other studies aiming to capture the dynamics between the Commission and the Council in the enforcement of the SGP, this study takes a qualitative approach. The studies of Baerg and Hallerberg (2016) and Mariotto (2019) both relied on text analysis in a statistical way, by measuring the degree of agreement and conflict between Commission recommendations and Council decisions. However, the aim of this study is different because its main focus is on what the dynamics look like instead of to what kind of results they lead. Therefore, qualitative research is the most appropriate approach to this study, as it is concerned with words more than numbers (Bryman, 2016). Moreover, an important aspect of qualitative research is to provide the explanation of outcomes in individual cases (Mahoney & Goertz, 2006). This study attempts to describe and explain the behaviour of the European Commission in the excessive deficit procedure, and uses an individual case as a reference point. Because words are more important than numbers, doing interviews is therefore one of the most appropriate options to collect the type of data that is required for formulating an answer to the research questions of this study. Furthermore, this study also looks at a number of policy documents relating to a certain excessive deficit procedure, which provide a very factual account of the course of such a procedure. These documents complement and verify the findings from the interviews.

### **Case study and selection**

The research for this study will be centered around the case of Portugal. The case study is a research design that allows the researcher to discuss certain concepts and claims through the study of a specific case. In other words, the study of a single unit contributes to the understanding of a larger class of more or less similar units (Gerring, 2004). Although the aim of this study is to describe the behaviour of the Commission in general, focusing on a specific case can lead to results that are beyond certain abstract concepts or claims. Although most EU Member States have been the subject of an EDP over the last 20 years, the case of Portugal deserves special attention. Portugal was in an EDP between 2009 and 2017. This is a very long period of time. This is the first reason for selecting this case. The expectation is that a longer lasting procedure gives more opportunities for providing information about the methods of the European Commission. A second feature making this an interesting case is the dynamic of this specific case. Where at that specific time many Member States had been in an EDP following the turmoil of the global financial crisis but were dismissed at some point, Portugal remained subject to the procedure as the Commission, and subsequently the Council, in 2016 decided that no effective action was taken (European Commission, 7 July 2016). Moreover, the Commission and the Council were on the verge of imposing a fine on Portugal. It does hardly happen that EDPs lead to the ultimate sanction. Although the fine was cancelled eventually, it shows that this case entails more than merely enhanced surveillance after an incidental breach of the deficit rules (Council of the EU, 9 August 2016). This case may not be the best example of standard procedure, in that it went a few steps further than the majority of EDPs that are opened. Still, there is reason to especially investigate this case because it is expected that these specific intricacies are more likely to provide a clear view on the subject of this study. In a medical

analogy: you can learn more about how the heart works through doing one heart surgery instead of repeatedly listening through a stethoscope. Validity concerns resulting from this approach will be discussed later in the chapter. Thirdly, despite its length, this case for the better part took place after the SGP reforms of 2011. This is important, as these reforms may have changed the dynamics between the Commission and the Council following the responsibilities assigned to each actor.

### **Data collection**

There are two essential methods for measuring interinstitutional dynamics, especially conflicts: expert survey and text analysis (Mariotto, 2019). In earlier studies into the interinstitutional dynamics and politicization of executing the SGP, both methods were used. Baerg and Hallerberg (2016) and Mariotto (2019) use text analysis to compare Commission recommendations with Council decision. Van der Veer in his research (2020) into politicization of the Commission under the SGP uses both text analysis and expert survey in a method that is called causal process tracing. Although causal process tracing would provide the fine-grained understanding of the Commission's behaviour that this research aims to achieve, it is very much focused on proving the existence of a causal mechanism (Van der Veer, 2020). Departing from that feature, this study aims to provide more insight into a mechanism, the politicization of a technocratic actor, the existence of which has already extensively been researched.

Nevertheless, the type of sources that the studies above have used have the potential to provide the information that is needed to formulate an answer on the research question of this study. That is why this study relies mostly on expert interviews, complemented by policy documents. Where expert interviews can provide specific pieces of information that cannot be distilled from accessible, formal policy documents, these documents can prove useful in providing the factual framework that can complement the findings of the interviews. Using both sources of data is a form of triangulation which makes it possible to cross-check certain findings (Bryman, 2016). For this research two types of data were used:

1. Expert interviews: I have interviewed a number of experts that have been involved in the procedures of the SGP. They include officials from the Commission and officials from the Member States. A number of these respondents were specifically involved in the EDP for Portugal that this research takes as a case study. Other respondents have been involved in the SGP in a more general sense, and were hence also able to provide valuable insights for this study. The data gathered from the interviews on how the processes under the excessive deficit procedure work in reality provide the main basis for the findings of this study. The interviews were semi-structured. This means that an interview guide was used but in the end the course of the dialogue is prevailing (Bryman, 2016). A list of the respondents can be found below. The respondents are numbered and will be referred to as such in the subsequent chapters. The interview questions can be found in Annex 1, although this list is not exhaustive because the interviews were semi-structured and follow-up questions were asked without preparation.

Respondent (R)	Title
R1	Diplomat, national representation
R2	European Commission official
R3	Portuguese official
R4	Portuguese official
R5	Diplomat, national representation
R6	European Commission official
R7	European Commission official
R8	European Commission official
R9	European Commission official

2. Policy documents: the formal documents tracing the course of each excessive deficit procedure (such as recommendations, decisions and working documents) are accessible through the website of the European Commission. I analyzed a number of these documents to get an overview of the excessive deficit procedure and to see if they offer any insight into the methods of the Commission when executing this procedure. The documents that were analyzed concern the excessive deficit procedure of Portugal that ran between 2009 and 2017 and include Commission recommendations and Council decisions at key moments of the procedure (e.g. the decision to open and abrogate the procedure, the decision that no effective action was taken and sanctions were considered appropriate);

### Codebook and operationalization

In order to analyze and categorize the data retrieved from the interviews, I composed a coding scheme that helped to organize the data in a way that facilitated the analysis. For composing this coding scheme, I took the concepts that were introduced in the previous chapter as a basis and formulated indicators to make them less abstract and more measurable. This has led to the following operationalization:

<i>Concept</i>	<i>Indicators</i>	<i>Examples</i>
<i>Principal-agent relations</i>	References to the legal procedure	<i>'The legislation allowed for reasoned requests to be made'</i>
	References to the mandate of the Commission	<i>'It is not in the Commission's mandate to move unilaterally'</i>
	The Commission acts unresponsive to outside interventions	<i>'The legal basis in the end is always the basis'</i>
	The Council tries to control the conduct of the Commission	<i>'The Council does not have a right of initiative but there are other ways for it to exert influence'</i>

<i>Resource dependence</i>	Interdependencies between the Commission and the Council	<i>'The Commission is very much bound to what the Council will and will not accept'</i>
	Interdependencies between the Commission and the Member States	<i>'The Commission also needs the Member States on other dossiers'</i>
	Risks that the Commission is exposed to	<i>'Deviating from the status quo may negatively affect the Commission's credibility'</i>
	Interests that the Commission might pursue	<i>'The Commission also has a green agenda, and a geopolitical agenda'</i>
<i>Politicization</i>	The Commission acts based on the treaties	<i>'The Commission opened up the sanctions procedure because those are the rules'</i>
	The Commission acts political	<i>'There is political guidance within the Commission itself'</i>
	Rationale for the Commission to act	<i>'What the Commission wants to achieve is compliance and ownership'</i>
	Opportunities for the Commission to use discretion	<i>'There are many budgetary rules, but some things leave room for interpretation'</i>
<i>Attitude of the Commission</i>	Internal process of drafting EDP recommendations within the Commission	<i>'First a draft note with different scenario's is being prepared'</i>
	Attitude towards the Council	<i>'The Commission is sensitive to the position that the Council is in'</i>
	Attitude towards single Member States	<i>'Of course the Commission is looking to the bigger countries'</i>
	Pro-activeness towards the Council	<i>'The Commission often speaks with the Member States'</i>
<i>Importance of preferences</i>	How the Commission weighs different preferences	<i>'The differences between budgetary responsibility and supporting economic growth are considered'</i>
	Biases of the Commission towards certain preferences	<i>'The Commission looks to Member States based on their voting power'</i>
	Possibility for the Commission to differentiate between preferences	<i>'If the Council would take a more extreme position, this would limit the room for discretion for the Commission'</i>

<i>Responsiveness</i>	Preferences of the Commission	<i>'There is a bias towards the status quo'</i>
	Preferences of the Council	<i>'The Council is divided between North and South'</i>
	Relation of actual Commission position to the above	<i>'The Commission has the power to pursue its own preferences'</i>
	Trade-off between Commission's own convictions and other factors influencing its decision	<i>'The Commission will not propose something that it does not support'</i>
<i>Congruence</i>	Overlapping rationale/incentives of Commission and Council	<i>'The Commission's proposal reflects the compromise in the Council'</i>

This operationalization was also used as a coding scheme. This means that each of the indicators forms a node in the coding program. In this way, the data from the interviews and the documents were categorized per concept and per indicator, which served the process of evaluation and interpretation.

### **Reliability and validity**

Reliability is concerned with the question whether a study and its results are repeatable (Bryman, 2016). The detailed display of the operationalization, the interview questions and the sources that are used do contribute to the transparency of this research for anybody who would wish to repeat it. A shortcoming is that the identities of the respondents that were interviewed cannot fully be disclosed, for reasons of secrecy. Furthermore, because the interviews were semi-structured, exactly replicating the interviews would not be feasible, the more because that what is observed and heard during the interviews is a product of the preferences of the researcher (Bryman, 2016).

Yet, by providing a coding scheme that is as specific as would be reasonably possible, this study aims to take responsibility for the analysis of the data. However, the coding of data retrieved from interviews will always remain subject to some extent of interpretation. I have applied a relatively broad approach by coding every piece of text that is related to a certain code, sometimes even to multiple codes, in order to make sure that no important information was missed. I believe that this is justified because the object of analysis is the substance of the text and its quantitative aspects. I am, for example, not counting how often a certain concept or claim is mentioned. The coding scheme therefore serves as a means to organize data, facilitating the analysis, rather than to become a dataset in its own way. This in my view allows a broader approach to the coding.

The validity of a study is established if its quality is being sound, just and well-founded (Whittemore, Chase & Mandle, 2001). There are multiple dimensions to validity, but not all are relevant to this study. For example, internal validity is concerned with the question whether the causal relationship that the research claims to prove is solid and not partly caused by other

variables than those being the subject of the study (Bryman, 2016). However, this study is not so much concerned with proving the existence of a certain causal mechanism, but rather with the question how the mechanism works in itself. Therefore, to argue the validity of this study, I will discuss the remaining dimensions of validity, which are measurement validity, external validity and inferential validity.

Measurement validity is concerned with the question whether the measures used in the research are fit to reflect the concepts they ought to denote (Bryman, 2016). For this study it means whether the coding scheme and the interview questions do reflect the concepts introduced in the theory, which in their turn relate to the research questions in the introduction. By organizing the interviews and the codes in the coding scheme per concept that is being discussed earlier, I have attempted to establish a clear link between the measures and the concepts. The examples that are mentioned for each code also are proof of that. Moreover, the theory justifies why and how certain concepts relate to the research questions of this study. Finally, one can see that these research questions almost literally come back in the list with interview questions. The clearly marked evolution from research questions to concepts to the operationalization and the interview questions must ensure that the measurement validity of this study is secured.

External validity relates to the quality of the results: are the results of the study also applicable when separated from the specific research context (Bryman, 2016)? In other words: the transferability of the results (Steinke, 2004). As I already discussed earlier in this chapter, the case of Portugal may not be representative for the average excessive deficit procedure. Yet, I believe that it is reasonable to assume that the intricacies of this case provide more information about the conduct of the European Commission, and therefore can paint a more reliable picture. Furthermore, the variety of respondents that I have interviewed ensures that not only one side of the coin is exposed. I spoke with both Commission officials and member state officials, to hear the story from both sides. Moreover, whilst a number of respondents were directly involved in the case of Portugal, I also spoke to some officials who were not necessarily involved in this case but could speak from a more general experience with the SGP and its enforcement. Therefore, we can safely assume that the results of this study are not merely confined to one specific case, despite this case being the dominant focus of this study.

Inferential validity requires a certain extent of congruence between the research itself and the conclusions drawn from it. This means that the conclusions that I draw must be warranted by the results of the research and the way by which these results were obtained. The appropriateness of the research design and the case selection have been discussed earlier in this chapter. Furthermore, the triangulation in the research design must facilitate the cross-checking of data and therefore the reliability of the conclusions drawn from it. Finally, to secure the inferential validity of this study, in the results chapter I have tried to base the claims that are discussed as much as possible on multiple sources, which means that these claims are validated by more than one respondent. This should also contribute to the validity of this study.

## **RESULTS**

This chapter presents an overview of the findings from the interviews and other supporting documents. It starts by describing the internal process of the effective deficit procedure (EDP) in the European Commission. Then there is a detailed overview of the course of the EDP for Portugal. Subsequently, the issue of politicization will be discussed extensively. The final, and largest, part of the chapter is devoted to describing the relationship between the Commission and the Council with regard to the EDP. This part is organized along the lines of the research questions and the theoretical framework.

### **Internal processes**

Before discussing the case of Portugal it is important to get some insight into how the internal processes with regard to the excessive deficit procedure work within the European Commission. These processes follow a certain rhythm, as they are embedded in the cyclical nature of EU fiscal surveillance. Member States need to submit their economic data and forecasts in spring. These data are first validated by the EU's statistical agency Eurostat and subsequently analyzed by the European Commission. This results in economic forecasts, on the basis of which the Directorate-General for Economic and Financial affairs (DG ECFIN) of the Commission can already determine which countries run the risk of not complying with the fiscal rules (R2). The fact that some countries are in breach of the rules often does not come as a surprise, but can rather be expected beforehand (R8). When those risk countries are identified, a rather technical process among the different departments within DG ECFIN is initiated, in which different policy alternatives for how to deal with the situation are considered (R2). In this process, the country desks take the initiative. Country desks deal with country specific questions and prepare draft documents, including recommendations for the EDP (R7). They usually know the fiscal situation in the specific country quite well (R8). The country desks are supported by the coordination unit within the DG. The role of this coordination unit is to make sure that there is a consistent application of the SGP, for example by providing the methodologies to adequately estimate the budgetary effects of certain measures (R8, R2). The coordination unit also works as a liaison between the country desks and the senior management within the Commission, including the Director-General and the different Cabinets (R9).

During its considerations, the Commission staff looks at the economic figures of the country concerned and the rules, but also at the precedents and the economic and political risks that are at play (R6). Besides the decision to open an EDP, the Commission staff is also already working out different scenarios for an adjustment procedure. This includes the duration of the procedure, the deadline for correction but also more specifically what the different opportunities for improvement are and what can reasonably be asked from a country. The Commission is supported by economic simulation models in this process (R8). Eventually, DG ECFIN comes up with one or more proposals for what may be the best way forward, which are submitted to the different cabinets of the Commissioners involved (R2, R8). This is where the more political part of the process begins. It is very important here to make a distinction between the technical and political level as the Commission staff does present the policy alternatives, but the politicians take the decision:

*“A decision is always taken by the politicians, not taken by the civil servants. Politicians decide, advisors advice.” (R6)*

There is a more technical part to the process, including the forecasts and the analysis, but there is also the part of political decision-making. The political character of the process is defined by the fact that in the end, the Commissioners’ cabinets offer political guidance in selecting a certain proposal, and the college of Commissioners takes the final decision about proposals within the EDP (R8, R5). This differs from forecasts that are presented by DG ECFIN without any noteworthy political interference (R5). The politicization of the process will further be discussed in one of the next sections. The proposals by DG ECFIN are discussed in different cabinets within the Commission and in the end the decision on which proposal to endorse is taken within the college of Commissioners (R2, R5).

In the early stages of the process, right before the Commission decides to propose that an excessive deficit procedure against a certain country must be opened, it asks for the opinion of the Council, represented by its Economic and Financial Committee, on this specific decision. If the Council gives its go ahead, the proposal will follow soon after that. This means that the Commission is already preparing its proposal and thinking about policy alternatives when the Council is being approached (R8). On a more general level, there are contacts with the Council and the Member States. These interactions are not necessarily linked to a specific excessive deficit procedure but happen on a regular and more or less continuous basis, through different channels. These can be bilateral contacts between the country desks within the Commission and specific Member States, or between the Commissioner and a finance minister, but also in multilateral fora like the Eurogroup and the Ecofin Council and their preparatory bodies such as the Economic and Financial Committee (R2, R6, R7, R8). In these interactions, the budgetary projections of the Commission are discussed and Member States can signal their positions if they deem it necessary (R8). The meaning of these interactions is to create a mutual understanding of the fiscal plans of the Member

### Internal process



*Figure 5: graphic representation of the internal process within the Commission.*



States and the procedures within the Commission (R9). It is important to underline that these interactions are a standard procedure, of which considerations regarding the enforcement of the SGP are apparently part. As a result, the Commission is very well aware of how Member States think, as it can “test the waters” (R6). This is also necessary, because with the 2011 reform the Commission has acquired significantly more power to take action. As a result, it has become very difficult for the Council to oppose the proposals of the European Commission once they have officially been submitted (R2, R3). This has created a political pressure on the Commission to make sure that anything it submits to the Council also has good chances of being accepted (R2). All these interactions are also a quest to establish consensus (R6). The Commission therefore has a good grasp on how Member States view certain situations and also the policy in general. It uses this knowledge in the implementation of the SGP (R2). More on this will be discussed in the final parts of this chapter. First, the case of Portugal shall be discussed.

### **Portugal in the excessive deficit procedure**

The excessive deficit procedure for Portugal was initiated by the European Commission in 2009, following budgetary forecasts predicting that the country would breach both the deficit and the debt rule in the next year. In its report, the Commission stated that the projected deficit could be considered exceptional as it resulted from the turmoil of the global financial crisis. However, with a planned deficit of 6.5% of GDP for the next year and projections for the years after that even going beyond this figure, the breach was not considered close or temporary, meaning that Portugal could not rely on the grounds of exemptions specified in the law. The European Commission therefore had to open the excessive deficit procedure (European Commission, 7 October 2009). This decision was enforced by the Council on 19 January 2010. (2010/88/EU). After affirming the existence of an excessive deficit, the Council initially set a deadline for the deficit to be corrected by 2013. However, in 2011 Portugal had to request the assistance of international lenders following increasing market pressure on its sovereign bonds. It received a loan package from the EU, the euro area and the IMF. This also meant that in 2012 the Council decided to extend the deadline by one year to 2014, and in 2013 once again for another year as the economic situation kept deteriorating (R7). Still, Portugal did not manage to correct its deficit by the 2015 deadline, partly because of an unexpected bank rescue in that same year (Council of the European Union, 9 August 2016; R7, R9).

The absence of improvement was not that strange, as at the time, many eurozone countries were in an EDP because of the financial crisis. This circumstance influenced the way that the process was handled and comprehended by everybody, and also explains the repeated extensions of the deadline, as the actions taken by Portugal were countered by further adverse economic events and the country ended up in a macro-economic assistance program (R3; R4; R7; Council of the European Union, 12 July 2016). The country did score sufficiently on structural adjustment efforts, but still was not able to comply with the nominal target (R9). After missing the 2015 deadline, the Commission in 2016 recommended to the Council to decide that no effective action was taken as the structural consolidation measures had proven insufficient (European Commission, 7 July 2016). The Council decided accordingly on 12 July 2016 (2016/1230). The decision that no effective action was taken opened the door for imposing sanctions on Portugal.

“And indeed there was [...] some discussion because Portugal was at that time trying to behave well, and indeed indicators pointed that in the end of 2016 or so, the country would be able to fulfill expectations in terms of public cuts. But even with that, the Commission decided to [...] to go to the following step of the procedure [...], in which it would be recognized [...] by the Council that no effective action was taken and so determining passing to the phase of possible sanctions.” (R3)

As the Commission was planning to do so, Portugal submitted a reasoned request in which it recalled the strong commitment it had shown to correct the excessive deficit through the structural reforms that were implemented. It reasoned that although the targets were not met, a strong adjustment was made and that it would not be fair to respond to such sacrifice with sanctions after all (European Commission, 27 July 2016; R4). Moreover, Portugal argued that the applications of sanctions would have a detrimental effect for the achievement of the budgetary targets set by the EU. Although the Commission denied that a potential fine would have such a detrimental effect, it

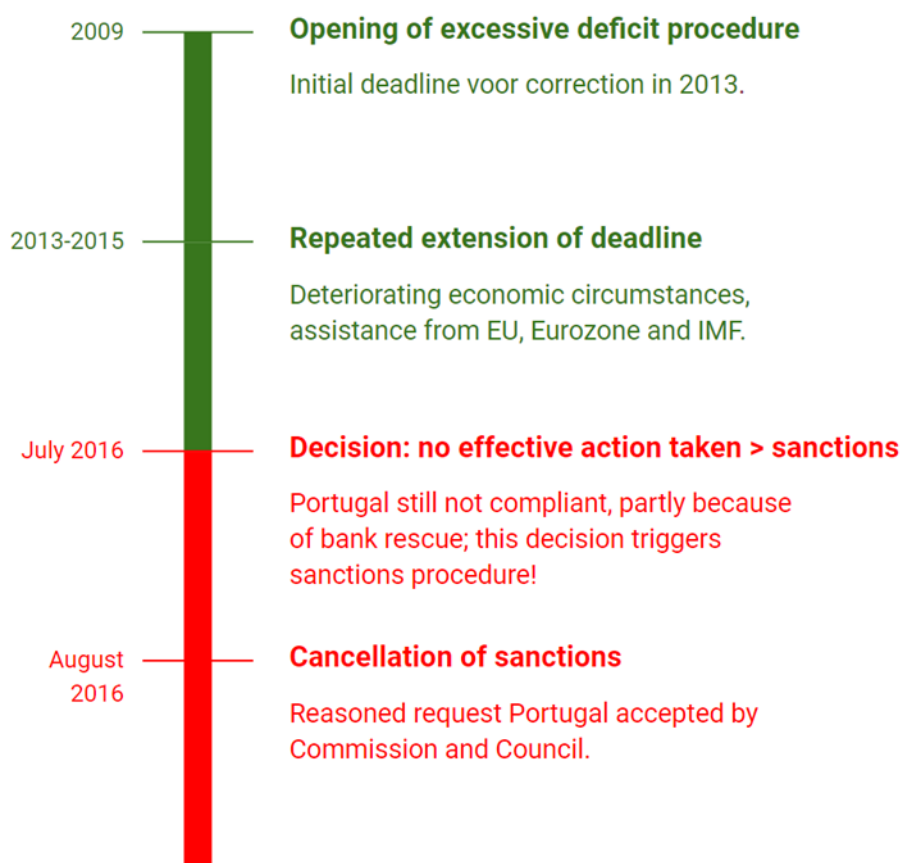


Figure 6: timeline of important moments in EDP Portugal

did recognize the commitment that Portugal had shown over the recent years. In the end, the Commission accepted Portugal’s reasoning and eventually recommended to cancel the fine (European Commission, 27 July 2016, R9). The Council adopted this recommendation (Council of the European Union, 9 August 2016). The decision that no effective action had been taken had also triggered a proposal to suspend European funding for Portugal. However, the decision on this proposal was delayed by the European Parliament, which had requested to open a structural dialogue with the Commission on this issue, beyond the point when effective action was taken and sanctions were not necessary anymore (R7, R9). In 2017, the Commission found that Portugal’s budgetary status was solid enough for the excessive deficit procedure to be abrogated, which eventually happened by a Council decision of 16 June 2017 (2017/1225).

What is peculiar about the final episode of this excessive deficit procedure, is that there were two parallel processes. Although Portugal was making significant adjustments and was on track for leaving the EDP, the Commission still proposed to impose sanctions (R3).

*“And so they opened up the sanction procedures [...]. So it was not only a matter of closing the EDP, it was also the matter of sanctions. So it was two processes in parallel.” (R4)*

Those sanctions related to the past performance of Portugal, when it was not meeting its targets, but by the time the Commission had decided that no effective action was taken and sanctions were on the table, the situation was not the same anymore. Despite Portugal’s reasoning that it had been making efforts and it was on the right track, the Commission stated that they had to open up the sanctions procedure because those were the rules (R4). Time was a relevant factor here, because when a sanction is taken at a certain point in time, those sanctions do not reflect the decisions of that country or its governments at the same moment (R6). The confusing nature of the timing of these sanctions supported Portugal’s argument that imposing sanctions would send the wrong signal to the people who had made sacrifices in order to achieve the necessary adjustment, as well as contradict the purposes of further economic improvement. Although compliance was not at the level it should have been, the adjustment already made needed to prove that Portugal was on the right track. In the end, the Commission was sensible to these arguments and hence the sanctions were cancelled (R4).

#### *Considerations of the Commission*

During the EDP, the Commission did use its discretion to take certain decisions. In 2016, Portugal delivered a draft budgetary plan to the Commission that the Commission could not directly approve of. Instead of rejecting it right away the Commission asked Portugal for further commitments. When Portugal did give those extra reassurances, the Commission decided not to reject the budgetary plan (R4).

*“So we had to present the DBP [draft budgetary plan], one of the options of the Commission was to simply send back the DBP, and to say this is not compliant [...]. They could have done that, of course that could have been within their scope of action. They could also, like they did, ask for additional clarifications. And that’s also within the rules. And that’s of course the preferable option.” (R4)*

The Commission did use its discretion to allow Portugal a second chance instead of rigidly rejecting the budgetary plans. Another point where the Commission used its discretion was when it eventually decided to cancel the sanctions that were initially proposed. This happened following a reasoned request from Portugal, which the Commission deemed to be reasonable enough to allow for a cancellation the sanctions. The Commission was sensible to the arguments that were made by Portugal, and took into account the fact that the country was already doing its best and that sanctions would not help to achieve the targets that were set. Because imposing sanctions would not make sense from an economic and political point of view, as it would also send a wrong message to the markets and worsen the country’s investment rating, the effects of this decision were also taken into consideration by the Commission. In the end, having the desired policy effect was the prevailing consideration (R4).

So why then did the Commission propose the sanctions in the first place? The adjustment efforts of Portugal had decreased over the years before, because the government anticipated that they

were going to meet the targets without pushing for adjustment. However, the bank rescue by the state in 2015 had such detrimental effects on Portugal's budget balance that the situation could not be considered corrected. In such a case, when both the actual adjustment and the efforts made are insufficient, the Commission is legally obliged to propose the decision that no effective action is taken. This decision more or less automatically leads to a proposal for sanctions under Article 126(9) TFEU, which states that as long as no effective action is taken, the Council can decide to apply sanctions (R7, R9).

These events shed a light on the behaviour of the Commission. On the one hand, the Commission did quite strictly adhere to the rules of the SGP by opening the procedure and eventually triggering the sanctions. On the other hand, there was also room for responsiveness to the requests made by Portugal. In the end, it was the dialogue that led to a cancellation of the sanctions.

*"[...] so they were not strict, they were following the rules and then of course the rules were interpreted, there was a debate, it was very tough, and in the end the result was fully participated by the Commission, by the Portuguese government, by the European Parliament, so okay, it was really a process [...]" R4*

#### *Dynamics between Portugal, the Commission and the Council during the Portuguese EDP*

In general, during the EDP for Portugal the Council was quite silent and its preferences were very much similar to those of the Commission (R7). There were the usual contacts between the Commission and the Council, as it was an issue that was in the common interest and the other Member States did want to know what was happening. There was also a dialogue with the European Parliament, which had asked to give an opinion on imposing the sanctions (R4, R9). With regard to the final part of the procedure including these proposed sanctions, Portugal was in a dialogue with both the Commission and several Member States, especially the bigger ones. The Portuguese government did need to explain why it was not able to meet the targets, as in the beginning some Member States did have their doubts. However, when everything was explained and put on balance, the final decision was unanimous (R4).

*"We talked with everyone and in the end the decision was unanimous because everyone understood the process [...], and so it was unanimous. There was no difficulty in the end. In the beginning? Maybe. Of course there were doubts [...] what was the adjustment, why didn't you meet the targets...everything was explained. The consequences of having fines were also explained. Of course you know, everything was put on balance. So in the end this was unanimous." (R4)*

Also, there were some countries that were not so much in favour of opening the sanctions procedure, but it was politically not feasible for them to oppose the Commission recommendation (R3). The Commission had also made clear that it had no alternatives for the decisions it took. The insufficient adjustment effort made by Portugal combined with the fact that the country still did not meet the nominal target also did not give the Commission very much choice than to decide that no effective action was taken by Portugal (R4). It was also

legally obliged to do so, and the decision to impose sanctions followed more or less automatically (R7, European Council, 9 August 2016). Because the figures were clear and the case was well argued by the Commission, it was clear that there were no alternatives and the Commission did not need to check with the Member States whether its proposals would fly. No problems from the Council's side were anticipated, and none did occur eventually (R7).

*“[There was not any particular anticipation on the Council because there was not much choice to propose something else, and no reactions from specific Member States were anticipated. This was confirmed by the Member States. Although nobody was happy to launch the sanctions procedure and it was quite delicate, there was not much choice. The Commission did not check beforehand with individual Member States, because there was no need for that, because the case was well argued and supported by the figures. Although there may be some critical voices, there is no reason for Member States to oppose it, even if some may not completely like it.]”* (R7)

However, this did not mean that the Commission did not pay attention to the opinions of other actors. It was already described that the Commission has the opportunity to be responsive to other interests. In the case of Portugal, the decision to open a procedure was inevitable, but after that decision was taken, a process starts in which several stakeholders, including the Council, were involved. This was also necessary because the Commission needed to justify what was and what was not happening (R4). How politics play a role in this will be discussed in the next section.

*“When they say: we have to open up the procedure, there you have no choice. Literally you can scream whatever you want, they have to open up the procedure. Then it's a process [...], they're not closed in their building doing stuff, no then it's a process of course [...] and everybody is involved basically.”* (R4)

### **Politicization**

There is a certain degree of politicization within the enforcement of the SGP, in the sense that politics are also taking place on the part of the Commission (R8). The belief that the Commission is a neutral or merely technocratic actor is an illusion (R6, R8). Merely the fact that the multiple Commissioners who decide on the EDP come from different political backgrounds leads to a need to compromise within the Commission itself, as Commissioners reason from different ideologies and need to find an agreement on that (R8). However, the extent of politicization is very much dependent on how much a certain case fuels a discussion (R2). Naturally, the process of the EDP is also very much legally led and relatively automatic (R9). Yet, the rules do not exist in a vacuum, but are applied in an economic and political context (R4, R6). Moreover, as already described above, decisions are by definition political because they are taken at the political level of the European Commission (R5, R6). This political character of the process also does not appear to be a matter of secrecy. The Commission fully recognizes that it is a political organization and that therefore it does take into account political considerations (R1, R6). There are multiple explanations for this politicization.

Firstly, although the political considerations are not part of the legislation, the legislation offers room for interpretation and maneuver for the Commission (R1, R2, R8). There can be different interpretations of how certain budgetary indicators are to be assessed, or what the estimated effect of a certain budgetary measure within an adjustment scenario will be (R8). Another example is that the law states that in an EDP, relevant factors must be taken into account. This makes the Commission feel inclined to listen to what Member States have to say (R2). This was also demonstrated in the case of Portugal when the Commission cancelled the sanctions following the reasoned request of the country. Also the fact that the Commission engaged in a dialogue with Portugal over its draft budgetary plan shows that there is room to be responsive and make judgment calls. The legislation is thus very flexible (R1, R2) and the Commission is very aware of the room that this creates and also uses this room to maneuver (R1, R5). In the end, every outcome is still within the boundaries of the legal framework (R2). In the case of Portugal, both the proposal and the cancellation of the fine were a consequence of applying the rules (R4). One could argue that the politicization of the process is not only caused by the Commission, because the legislative framework which also the Council approved actually forces them to make political choices in certain situations (R5, R6). Another reason why the process is political is because the consequences of the decisions have political effects, for example triggering sanctions and potential market reactions (R5). In the Portuguese perspective, sanctions would have had a devastating effect in economic terms (R4). For example, because these sanctions also had to do with suspending EU funding towards the country, which the European Parliament eventually also opposed to (R3).

*“So the sanction is about the country, but effectively is understood as a sanction vis à vis the government. And the government that would have to pay the fine, and is effectively given a political sanction because of that, may be the one that is already correcting the problems.”* (R6)

Furthermore, in the EU everything is related to everything. The Commission has a number of political agendas, which for example concern the green transition, investments or geopolitics. All those agendas are somehow related to the extent in which Member States are allowed to conduct certain fiscal policies (R5). To be successful with a certain agenda, the Commission may need the support of a country on a certain topic, which influences the way it treats that country on another topic (R6, R8). Bilateral relations between the Commission and the Member States are very important, and the Commission has no interest in alienating especially the bigger Member States from them (R5). It was also suggested that the Commission, as each bureaucratic organization, seeks to entrench or expand its role as an institution. It is therefore looking for more room for maneuver and finds that room in the flexibility of the rules of the SGP (R1). All this suggests that the interests of the Commission as an institution play a role as well.

*“And then at the highest level, actually, at the level of the President of the Commission, there is more of a political point of view: we also need the Member States for other dossiers, so, for example, you can take very tough action against Italy in terms of budgetary policy, but you also need Italy in other files.”* (R8)

Up till now, the flexibility of the rules, the political consequences of decisions and the wider institutional interests of the Commission have been identified as explanations why the enforcement of the SGP is politicized. The next question is what the main incentive of the Commission is when implementing an excessive deficit procedure. The main objective of the Commission seems to be the policy effect and whether countries will follow and internalize the Commission's recommendations (R2, R4). This means that not only the legislation is taken into account, but also the economic situation and other variables. In the end, decisions are taken with a view to what effect they bring about (R2). Another way to say it is that the goal is more important than the means. The sole objective of the Commission is not to open up excessive deficit procedures or to impose sanctions but that the policy it proposes does have the desired effect. That was also why the fine in the case of Portugal was eventually reduced to zero, because from an economical point of view it would not bring about the desired effect (R4, R6).

*“That was a clash. It was really a clash. Yes those are indeed the targets, but from an economical point of view, it does not make any sense, and from a political point of view [...] from the spirit of the rules, it doesn't make sense at all. And that was the view that in the end of course prevailed.”* (R4)

Furthermore, the application of the rules in a certain procedure does not stand on itself, as everything is related to everything. Therefore, the Commission always has to take into account the European interest in general, which also includes the public opinion of how certain decisions are perceived (R6). However, this does not mean that the process is completely output driven, as credibility is part of the equation as well. The Commission tries to maintain its credibility by consistently applying the legal framework (R2, R4). When designing scenarios for adjustment, the Commission also takes into account if a certain scenario is proportional to what is being asked from other countries, or what has been asked in the past (R8). Any deviation from the standing policy must therefore be very well substantiated and justified (R2). This means that the Commission cannot simply do whatever it pleases in order to reach a desired outcome, because with regard to its credibility a certain degree of consistency is required:

*“Equal treatment over time and across countries is very important.”* (R2)

However, one must be cautious to say that every decision that the Commission makes in this regard is based on one and the same incentive. The findings discussed above may apply in many cases, but it is also always dependent on the specific circumstances (R6). Furthermore, an important disclaimer is that the degree of politicization should not be overestimated. The process in most cases remains of a very technical nature, in which there is often not much need for political considerations. Therefore, with regard to headline deficits, one respondent said:

*“Either you have it, or you don't.”* (R9)

This demonstrates that although the existence of politicization has surely been confirmed, the process also remains very technical. Only when certain decisions lead to tense debate and cases can be considered extreme, political considerations do play a role (R2, R5). The most room for

discretion lies in the choice of which adjustment scenario to propose, or whether to impose sanctions, and even these are rather technical issues. Moreover, every judgment that is made is still within the rules (R9). However, these rules allow quite some room for variations, as was demonstrated above.

### **Relationship with the Council**

Of course the most important part of this research is dedicated to the dynamics between the Commission and the Council during the excessive deficit procedure. It was already discussed how the Commission and the Council interacted during the EDP for Portugal. How can this be explained from the theoretical perspectives that were introduced previously?

#### *Explanatory value of the principal-agent theory*

Earlier, this study discussed the principal-agent theory, in which the Commission is supposed to act according to its legal mandate that was once delegated to it by the Council. The case of Portugal demonstrates the Commission is very much looking at the policy effect and makes its own judgment calls in that regard. Multiple respondents that were interviewed did not see this theory working out in reality (R1, R5, R6).

*“But I think an interpretation of the Commission [...] being a secretariat of the Council [...] I think that will be a very thin, or a very narrow interpretation.” (R6)*

One reason is that, as was already discussed, the Commission too much has an agenda of its own to be described as an agent that merely follows an imposed mandate (R6). Furthermore, the principal-agent theory relies on the assumption that the Council tries to control the Commission. However, as the Council was quite silent during the EDP for Portugal, there was not a very strong sense of control. Also, the legislative framework offers so much flexibility that it becomes hard to identify something like a control mechanism for the Council (R5). What also makes it more complex to speak of a clearly demarcated principal-agent relationship is the fact that the SGP is constantly evolving, which makes it harder to define the mandate of the European Commission (R1, R2). With the last reform of the SGP, this mandate of the Commission became significantly wider and it is using that room for maneuver (R5).

At this point, it is also interesting to discuss the position of the Council. As it has been mentioned, with the 2011 reform of the SGP the Commission acquired more powers. One way through which this happened is that since then, the Council votes on the basis of reversed qualified majority. This means that the Council could only oppose a recommendation of the Commission if that decision is supported by a qualified majority of the Council. This has made it much more difficult for the Council to go in a different direction than the Commission proposed (R3, R5, R2). In the case of Portugal, this meant that there were indeed some countries that were not so much in favour of opening the sanctions procedure against Portugal but it was not feasible to turn that opinion into a Council decision (R3).



*“[...] of course I know that there were some countries that would be more in favour to, not even to open the sanctions procedure, because they would feel almost the same as Portugal, in political and economic terms, but they didn't speak really in the Council.” (R3)*

Opposition also comes at a cost for a member state, which very much relates to how a member state wants to be treated in the future (R1). It is not only the rules that more or less prevent this from happening. Opposition from the Council would also have detrimental effects for the credibility of the SGP. In this regard, the events of 2003 when the Council decided in spite of the Commission's recommendation to let France and Germany off the hook, were referred to more than once (R1, R3, R6). However, back then the rules were different and it was easier for the Council to oppose the Commission (R4).

Another reason that may impair the ability of the Council to do so is that in the view of those involved, the Council as a unitary actor does not really exist (R1, R8). The Council is not a collegial entity that speaks with one voice, but can better be compared with a Senate in which each member has its own opinion (R2, R6, R9). The Council position is a reflection of what a majority of members in the Council think. There can still be outliers, perhaps willing to oppose the Commission, but these are not powerful enough to overrule this majority (R1, R2). This ambiguity of the Council does affect the decision-making of the Commission. Because of the strong divisions in the Council, there is a need to compromise and this compromise generally overlaps quite well with the legal framework and with what the Commission is proposing (R2, R8, R9).

*“There are different opinions within the Council, and that we [the Commission] have more or less, I would say, a fairly large majority on our hand. And [there are] exceptions on both sides. But they are never sufficiently powerful to overplay the midfield actually.” (R2)*

However, there is no recent counterfactual what would happen if the Council would be unified in a direction opposite of that of the Commission, and how the Commission would anticipate on that.

The Council does need to compromise internally and the middle ground coincides with what the legal framework prescribes. Therefore, one could say that although the Council does not speak by one voice, the true voice of the Council as an institution is the legislation (R9).

*“The easiest consensus is along the rules.” (R9)*

This last finding resounds very well with the principal-agent theory, in which the mandate of the Commission is assumed to be the legislation that was decided upon in the past, rather than current ad hoc preferences. Building on this, the Commission is expected to act technocratic and unresponsive to any factors other than its own mandate. However, it remains hard to say that this is either true or untrue. It is not black and white, but rather grey (R4). In reality, the legal framework remains the basis for decisions to be taken. The way that this framework is applied depends on the economic circumstances (R2). In the case of Portugal, the Commission

made it clear that it had no alternative but to open up the sanctions procedure (R4). Moreover, the Commission is legally obliged to decide that no effective action is taken if the figures show that both the adjustment and the efforts made are insufficient. From such a decision, the proposal for sanctions follows automatically, this is a rather legal process (R7, European Council, 9 August 2016). Therefore, the Commission did very much stick to the rules during this procedure.

*“So they were basically applying the rules. We thought that they were being you know too rigid, yes indeed. But they were explaining no, it is part of the process. Even if in the end, like they did, they found that indeed you know there was no substantive reason for applying sanctions.”*  
(R4)

However, this does not mean they were taking a very strict or rigid stance. Because after this decision was taken, there was room for dialogue, in which the view that was put forward by Portugal eventually prevailed (R4). This dialogue can also be seen in the light of the legal perspective, as the legislation allows for the possibility of reasoned requests to be made by the member state concerned. If the arguments put forward are valid and well substantiated, the Commission also has a right to propose that the fine it initially proposed is reduced, which can eventually lead to a cancellation, as the case of Portugal demonstrates (R7, R9). Therefore, this is not a matter of black and white, as the Commission can both act technocratic, applying the rules, and responsive, engaging in dialogue with the member state concerned, at the same time. The necessary condition is that the rules allow for this, and this is another example of how the legal framework offers the flexibility that has been mentioned before. Yet, this does not automatically mean that the Commission also actively engages with the Council in such issues apart from the regular dialogues. Also, the Council was quite silent during the procedure of Portugal, as it usually is (R3).

#### *Explanatory value of the resource dependence theory*

Another theory that was introduced to predict what the dynamics between the Commission and Council would look like was the resource dependence theory, which expects that the Commission would be very responsive to the Council and the Member States as a result of certain interdependencies between the two actors. In the findings of this study, there are some elements that seem to confirm this theory. Maintaining good bilateral relations was mentioned as one of the interests of the Commission. Voting power plays a role in this, as the bigger Member States are naturally part of the dialogue (R4, R5, R6). In the case of Portugal, there were specific contacts between the Commission, Portugal and the bigger Member States (R3). The importance of these dynamics is underlined in another example one respondent gave of the case of Italy in 2018. During this EDP, which attracted a lot of attention, the larger Member States convened in the corridors of the G20 summit in Japan to discuss what the red lines of the Council would be. If things are getting political like that, the Commission needs to be very aware of that (R5). The necessity for the Commission to maintain good bilateral relations is not only limited to the SGP. Because in the EU everything is related to everything, the Commission must act consciously in its relationships with Member States because appeasing or affronting them may also have impact on results in other policy areas (R5, R6, R8).

*“We may need have the support of a country on one topic or another, and because of that we may need to be more or less stringent with a country on one topic or another.”(R6)*

This finding quite well captures the resource dependence theory, as it shows the cross-sectoral dependency of the Commission on the Member States. With regard to the excessive procedure itself, the Commission is also very much bound to what the Council will and will not accept (R5). The political feasibility of a proposal is therefore a factor of consideration, because the Commission is looking for results (R2). In other words, it would not make sense for the Commission to propose something that would not be accepted (R7, R9).

### **Attitude of the Commission towards the Council**

The case of Portugal does not reveal a very specific approach of the Commission towards the Council, but it does show that there were very regular interactions between all stakeholders, involving the Commission, Portugal, the Council and especially the bigger Member States. What can be learned about the Commission’s approach towards the Council when an EDP is implemented? As the first part of this study has extensively argued, the assumption one could get from studying the legal framework would be one of a two-stage process, in which two actors subsequently but separately take their decisions. This image needs some nuance. Although the two stages may seem separated on paper, in reality there are all kinds of processes going on in between. The Commission is actually looking to incorporate the preferences of the Council (R5).

*“If the Commission realizes that it has a specific view, and the Council has a different view [...] the Commission may decide to [...] affront them or not, but this is not because it’s a matter of agent or principal. It is a matter that these are political entities, each one of them has its political legitimacy and [...] in each choice [...] the political objectives [are] more important than just saying: ‘well I do this, you are voting against, I am fine’. No, there is always a continuous interaction and balancing of issues.” (R6)*

Because it has become very difficult for the Council to outvote the Commission, certain considerations that the Council might have already need to be integrated by the European Commission (R6). In other words, the Commission is sensitive to the fact that what it proposes most likely will happen:

*“Now if we effectively put something on the table in many areas of the SGP, it almost has to happen. We have indeed developed a sensitivity to that.” (R2)*

### *Proactiveness*

This may suggest that the Commission takes a very proactive stance towards the Council. However, that is not entirely the case:

*“I don’t think the Commissioner has a calculator in the hand counting the number of votes.” (R6)*

Rather than the Commission proactively seeking the opinion of the Council and the Member States, the interaction between these actors can better be described as a continuous dialogue. Earlier in this chapter, it was described through what ways these interactions take place. The fact that there often is not much divergence between the Commission and the Council is not because of very specific interactions, but rather because the Commission has gradually developed a good understanding of how the Council thinks (R2, R8, R9). This is something different than the Commission explicitly requesting the opinion of the Member States. Such targeted interactions generally do not happen and this also is not necessary because of these continuous dialogues (R2). The involvement of some specific Member States in the EDP for Portugal was seemingly more to have a dialogue with Portugal than with the Commission (R4). In general, the Commission has not much trouble finding out what the majority in the Council would be:

*“I think that in my experience we do not have to put in a lot of effort to know where the majority will be.” (R2)*

The Commission in general does not proactively seek the opinion of the Council, because it already knows. Also the fact that the debate within the Council has not changed very much over the last decades makes it easier for the Commission to know which positions are and are not acceptable (R8). In this regard, the fact that the Council is not really in a position to oppose the Commission, and conflicts between those two are generally absent, adds to the understanding that there is not a strong need for the Commission to have a very proactive attitude (R3, R9). It is therefore not standard procedure that the Commission engages with all Member States governments to hear everyone’s opinion before it takes a decision. The implementation of an excessive deficit procedure therefore cannot be compared with a legislative procedure which contains an extensive consultation phase (R8).

#### *Importance of Council preferences for the Commission*

Although the Commission does not need to be very pro-active towards the Council, it is very well aware of its positions and also pays a considerable amount of attention to it. It is hard to quantify this importance, but the most important finding is that for the Commission, it would not make sense to put something forward that would be outvoted (R6). Therefore, the preferences of the Council matter, because the Commission is very much inclined to find the middle ground and not take an extreme position. This means that its position is also determined by the scope of the different positions within the Council, thus limiting the Commission’s room for discretion (R8).

*“If the Commission believes something but realizes that in the Council there will be a very large number of countries different, well the Commission will think twice...” (R6)*

Furthermore, although the Commission clearly has its own view and opinion on a certain procedure, its mind is also influenced by the interactions it has with other actors, including the Council (R6). Instead of plotting the Commission and the Council against each other, one could also approach it from an angle in which the Commission acts as a consensus builder, trying to

build a compromise between the different positions in the Council as, once again, the Council is a very divided entity (R8). Because of this, despite the Commission needing to take into account the Council's preferences, it still maintains quite some room to make up its own mind (R5).

Yet, the importance of Council preferences must be nuanced by the finding that these preferences often do not very much change the course of the procedure. This has everything to do with the rather weak position of the Council, as was already explained (R9, R8).

*“So there are regular contacts with the Council, especially in the context of the technical preparatory committees, and the Commission does take into account different views, but these often do not provide gamechangers and do not really change the outcome of the process, although there can be discussions on rather technical points. The meaning of these interactions is also to create a mutual understanding of a Member State's fiscal plans and the Commissions procedures.”* (R9)

#### *Alignment of preferences*

The final issue that needs to be discussed is how the preferences of the Commission and the Council are aligned with each other. Is there a natural overlap, in other words congruence? Or does the Commission determine its position following the Council's preferences, which would suggest responsiveness? In the case of Portugal, the Council's preferences were very much similar to those of the Commission, because the case made by the Commission was well argued and supported by figures. Therefore, there was not any particular anticipation on the Council (R7). It has become clear that the Commission does know very well what the Council thinks, and also tries to steer towards the middle ground of different positions within the Council. This suggests a certain extent of responsiveness. However, the Council is quite divided and its position is therefore not unambiguous. This makes it harder to speak about congruence or responsiveness between the Commission and the Council. Yet, there are some findings worth mentioning in this regard.

The case of Portugal is not an exception in this regard. The Council usually is very quiet during these procedures and there have not been any important conflicts over the recent years. If there is any divergence of views, this is often about rather technical issues such as reporting requirements (R3, R7, R9). In general, the Council does not make many alterations to the Commission's proposals (R2, R8). This has everything to do with the fact that outvoting the Commission is hard because of the reversed qualified majority rule (R3, R5). Therefore, even if some Member States have different opinions, it is not worth the effort of going against the Commission proposal (R3). The more extreme forces are never powerful enough to overrule the majority in the middle (R2, R8). On top of that, Member States may be hesitant to do so based on the fact that they themselves are also subject to evaluation by the Commission (R1). This suggests that instead of the Commission being responsive to the Council, the Council is being responsive to the Commission.

However, when combining these findings, the image that occurs is one of a very fine-grained process of interaction and alignment that appears to be a two-way street. The processes in the case of Portugal were really described as a dialogue which cannot well be understood when one does not look at the entire procedure (R4). On the one hand the Commission's decision is limited by the scope of the positions within the Council, and therefore is responsive to the Council's preferences. After all, it would not make sense for the Commission to propose something that it knows the Council would not agree to, and if the Council would move towards a position that is more extreme than the middle ground that is usual, the Commission would most likely follow (R8). On the other hand, the limited extent to which opposition within the Council develops is also determined by the fact that the Council does not have the upper hand against the Commission. Also, because of this relative power of the Commission, it is easy for Member States to hide behind the Commission's position and not be forced to speak up (R8). Furthermore, because there is a continuous dialogue on these issues, it is very likely that Council positions are also shaped by the arguments put forward by the Commission. At the point when an EDP is opened, it already has a history of its own as budgetary projections have been discussed regularly, and Member States are able to communicate their opinion if they wish to do so (R8). What is more, is that all nationalities and most political denominations are represented within the European Commission, and that therefore any proposal it submits might also be a compromise that is already reflected in the Council for that reason (R5, R8). Therefore, it is very hard to disentangle who influences who.

Apart from the question who influences who, it must be emphasized that the majority in the Council, which the Commission aims to satisfy, coincides with the indications emerging from the legal framework of the SGP. In other words: there is a bias towards the status quo. The easiest way to find consensus is along the rules, as there is no other common ground than that (R9).

*“As long as the Commission implements the Treaties, there is agreement within the Council. [...] The outcomes are acceptable because they are in the rules.” (R9)*

Given the fact that conflict has mostly been absent in these issues and the legal framework remains key for both actors, it can be assumed that there is congruence in many instances. The case of Portugal demonstrates that objectively the number of alternatives is limited and hence so is the room for divergence. Apart from that, if there is responsiveness, it is not always clear to determine who is being responsive to who.

## CONCLUSION

The aim of this study was to answer the question how the European Commission takes into account the preferences of the Council when drafting its recommendations for the excessive deficit procedure. More in particular, the study sought to answer the questions how the Commission approaches the Council, how important the Council's preferences are for the Commission's recommendations, and if the eventual alignment of both actors' preferences is a result of congruence or responsiveness. The case of Portugal was taken as a starting point and based on the experiences in this case, the wider dynamics of the procedure were analyzed. Building on this analysis, as presented in the results chapter, the answers that this research has found to these questions and the hypotheses will be discussed below.

### **Attitude of the Commission towards the Council**

The Commission does not proactively seek to include Council preferences, because it does not need to. This is not to say that it is not important for the Commission to include these preferences, but generally it already knows very well what the Council's preferences are. However, it generally does not reach out to individual Member States to ask for their opinion on a specific EDP or decision that is to be made. The interactions between the Commission and the Council are embedded in a cycle of structural dialogues, which happen on different levels. The Commission regularly finds itself discussing budgetary issues with the Member States, either bilaterally or with the Council and its technical working groups. Because of these frequent interactions, the Commission is constantly aware how opinions in the Council are evolving. Remarkably, these opinions do not appear to evolve very fast, and the debate on these issues has not fundamentally changed over the last decade. Even if there are more extreme positions, these are never powerful enough to overrule the majority in the middle. The Commission is making sure its proposals are always in line with this stable majority. It is therefore not forced to take a very pro-active stance towards the Council. The case of Portugal demonstrated that the Commission did not need to anticipate any problems, which was eventually confirmed by the Council's approval.

**H1a:** *In its role as an agent, the Commission only relies on its mandate in drafting its recommendations under the excessive deficit procedure, and therefore does not proactively seek the current Council's preferences.*

**H2a:** *The Commission does proactively seek the preferences of the Council, because by being responsive to those it can manage its dependencies.*

The legal framework of the SGP which is the Commission's mandate remains a leading factor. However, this legal framework does offer room for discretion. The Commission uses this room for different reasons, including managing its dependencies on individual Member States in other policy areas. Therefore, H1a can be confirmed, with the remark that the Commission's mandate allows for room of discretion. So, relying on a mandate is not similar to conducting a purely technical exercise. H2a can only partly be confirmed, with regard to the part that the Commission is also trying to manage its dependencies during an EDP.

**H1d:** *The Commission actively takes Council preferences into account and thereby deviates from its mandate, if that contributes to either its institutional survival or to the best policy solutions for European citizens.*

The objectives of institutional survival and achieving the best policy solutions for European citizens were indeed confirmed by the findings of this study. However, in order to reach these objectives, the Commission does not necessarily need to deviate from its mandate. Therefore, H1d cannot be confirmed.

### **Importance of Council preferences for the Commission**

The Council's preferences are very important to the Commission when enforcing the SGP but at the same time, these preferences do not fundamentally impact or change the course of the Commission. It is important to note that because the Council is very divided and the predominant preferences always overlap with the Commission's mandate, the Commission is never forced to take an extreme position. H1b can therefore be rejected. H2b can be confirmed.

**H1b:** *Because the Commission as an agent must not be responsive to Council preferences, it does not attach much importance to them.*

**H2b:** *Council preferences play an important role in the Commission's considerations, especially those preferences that advocate a proper execution of the rules.*

If the findings of this research confirmed one thing, it is that the Commission is, logically, very dependent on the Council for its proposal to be accepted, and that it is therefore bound by what the Council is willing to accept and what not. This has to do with the fact that the Commission wants its policies to be effective. The goals are more important than the means, so a very principled approach that will not fly within the Council would therefore not make sense for the Commission. Another reason why the Council's preferences are important for the Commission is that the Commission for its overall policy agenda to be effective, it depends on the cooperation of the Member States. This surpasses the remits of the EDP or SGP for that matter. The Commission has multiple agendas, for example relating to green and digital transitions. The pursuit of success on these agendas may influence how the Commission approaches a member state within the context of the SGP. This is more about the bilateral relations between the Commission and the Member States rather than the relations between the Commission and the Council. However, because this research has found that the Council must be considered as an aggregate of individual Member States' opinions, this still is a relevant finding.

The paradox is that the Council's preferences, although important to the Commission, do not seem to alter the course of its decision-making. This can for one part be explained by the fact that in general, the Council's preferences remain relatively stable so it is easy for the Commission to anticipate on them. Furthermore, as the Council needs a qualified majority to overrule the Commission, deviating from the Commission's proposal is quite hard, which reduces the likelihood of conflicts. On top of that, the rationales of both institutions appear to



overlap quite well, which makes that the Commission's proposals almost naturally reflect the wishes of the Council quite well. This brings us to the third and last sub-question.

### **Congruence and responsiveness**

Congruence suggests a natural overlap of two actors' preferences, whilst responsiveness suggests that the preferences of one actor shape the ones of the other. The findings of this research suggest that congruence can be found within the legal framework of the SGP. In the end, the rules remain the main starting point for both the Commission and a majority of the Council. This legal framework, however, allows for various approaches and tailoring solutions to specific situations, as the case of Portugal has demonstrated. Therefore, as long as the Commission follows the Treaties, its proposals will be accepted, as the Council in majority shares the same preferences. This does not rule out the possibility that the views of the one are influenced by those of the other. However, because the contacts between both institutions take after a fine grained pattern of continuous interactions rather than specific negotiations, it remains very hard to disentangle who is influencing who, and who in the end is being responsive to whom. The findings suggest that this is a two-way street rather than the Commission being responsive to the Council all the time. However, this would require some further research. Because of the ambiguous nature of this responsiveness, and the broad character of the mandate, H1c deserves support rather than H2c.

**H1c:** *Any alignment of preferences of the Commission and the Council is more likely be a result of congruence rather than responsiveness, assuming that both actors rely on the same mandate.*

**H2c:** *Any alignment between Commission and Council preferences is the result of responsiveness rather than congruence, because the Commission is incentivized to adapt its preferences according to its dependencies.*

Congruence is therefore the status quo. However, if a different view would gain the support of the majority in the Council, the Commission would be forced to follow that, regardless of whether this view coincides with its own convictions. But once again, it is very unlikely that this will happen.

From all this, it can be concluded that the Commission does anticipate on Council preferences when enforcing the SGP, through continuous interactions with the Member States and the Council, that help it to find the right balance in its recommendations. However, the anticipation on the Council does not appear to be a decisive factor for the implementation of the corrective arm of the SGP, as long as the Commission and the Council overall share the same preferences.

### **Assessment from a theoretical perspective**

How do these conclusions fit in with the theories which this study was built upon? The principal-agent theory suggested a Commission that would be unresponsive to the Council as it would fully rely on its mandate (e.g. Maggetti & Papadopoulos, 2018). What can be said based on the findings of this study is that the Commission is not blind staring on the rules alone, but also looks at the circumstances and can show responsiveness in that regard. The resource

dependence theory suggested a Commission that would be responsive to the Council in an attempt to manage its own dependencies (e.g. Bauer, 2006). It is paradoxical that although the applicability of the principal-agent theory was explicitly denied in this research, the hypotheses that were formulated on the basis of this research appear to be partly true. The Commission is not very pro-active towards the Council and there is congruence between the Commission and the Council. Because both actors rely and remain committed to the same mandate, there is no need for a very pro-active stance by the Commission. However, this is not a given. If the Council would decide to pursue another path, the Commission would be forced to follow that direction. The chances of this happening are small, because the Council finds itself in a relatively weak position vis à vis the Commission as a result of the reversed qualified majority rule. This latter factor appears to play a bigger role than the commitment of both actors to the legal mandate. In other words, if the Council would be more united and in a stronger position against the Commission, it would be able to overturn the Commission's proposals and the events of the cases of France and Germany in 2003 could very likely repeat themselves.

The reasons why the principal-agent theory in the end does not appear to be appropriate to describe the dynamics between the Commission and the Council is first of all that the Council cannot be described as a unitary actor, even though its preferences appear to remain stable over time. It must be concluded that the complexities of the principal-agent theory that were already addressed in the theoretical framework, concerned with the question how to account for an ambiguous principal that is not the same over time, did only play a moderate role in the results of this study. That is to say, the changing nature of the Council over time was not really addressed by the respondents, but the division within the Council as principal itself did play a more important role. The fact that this division in the end leads to a compromise that does not easily change may actually reinforce the applicability of the principal-agent theory as the position of the principal can more easily be identified. Nevertheless, the fact that the Commission has its own agenda, which creates dependencies on Member States, makes it hard to see the relationship between the Commission and the Council as one between agent and principal.

With regard to the above, the resource dependence theory seems to be more applicable as the dependence of the Commission on the Council and the Member States was clearly confirmed by this research. However, there are two remarks to be made. First, it was previously made clear that the position of the Council vis à vis the Commission is not as strong as it used to be. As it is very hard for the Council to oppose the Commission, the dependence of the Commission on the Council for results needs to be put in perspective. Second, as the findings on the incentives and interests of the Commission demonstrated, the interdependencies between the Commission and the Member States are not the only thing that matters in the enforcement of the SGP. Matters such as a good policy effect, consistency and cohesion with other policy areas also play a significant role. Of course these also make for dependencies for the Commission, but they cannot only partly be linked to the relationship between the Council and the Commission. These findings also put in perspective the problem of dual dependency that was discussed in the theoretical framework. Although the dependencies of the Commission on individual Member States, beside the dependence on the Council, was clearly confirmed by this research, the

division within the Council also limits the impact of these dependencies. The explanatory value of the resource dependence theory must therefore not be overestimated.

Nevertheless, the dependence of the Commission on the Member States for success in multiple policy areas was confirmed by the results of this study. This does not automatically mean that the Commission needs to be very proactive towards the Council, other than expected, and it also does not by definition lead to responsiveness of the Commission. However, if the Council would have different preferences, the Commission would likely be confronted with its dependencies more and therefore be forced to be more proactive and responsive towards the Council. The applicability of the theories is not something that is enshrined in the nature of the decision-making process, as may have been the assumption. Rather, the appropriateness of one theory or the other stands or falls with the allocation of preferences within the Commission and the Council. These happen to have been overlapping for quite some time, making it look like a principal-agent relationship that actually is not there, and disguising the dependencies of the Commission on the Council and the Member States.

## DISCUSSION

### **Added value of this study**

How does this study and its conclusions contribute to the existing body of knowledge on the implementation of the Stability and Growth Pact? The broader aim of this study was to add to the existing knowledge on the behaviour and incentives of the Commission and the Council individually, by disentangling the influences between those two. In other words, moving from ‘what?’ and ‘why?’ to ‘how?’. The conclusion of this study must be that these influences are embedded in a fine grained web of interactions, which makes it hard to pin down who influences who at which point in the process. Yet, the more interesting finding is that although there are interactions and the Commission does anticipate on the Council’s preferences, the effect on the course of the procedure is rather limited. The finding that the preferences of the Commission and the Council are overlapping quite well may be surprising, given that earlier studies suggested a more antagonistic relationship between the two (Baerg & Hallerberg, 2016; Mariotto, 2019<sup>1</sup>). The results of this study more or less oppose the idea that the Commission and the Council are adversaries in a process where especially the Member States are trying to get support for their own interests. Existing studies have provided explanations why and how Member States may change the direction of a Commission recommendation, and more in general how the Council departs from these recommendations (Hansen, 2015; Baerg & Hallerberg, 2016; Mariotto, 2019; Van der Veer, 2020). However, the conclusion of this study must be that there is more unity between both actors within this policy field than may be assumed based on the existing studies. Moreover, the image that emerges from this study is one of a rather technical process, where political choices are made within the boundaries of the legal framework, but the standard procedure has a quite legal and automatic character. Suggestions that Member States are constantly bending the rules in their favour cannot be confirmed by the findings of this study.

Another issue that makes this study of added value is that it offers some insights in the procedures within the Commission. In this regard, the distinction between the analytical and the political level is an interesting finding. The rather objective observation that a member state is in breach of the rules is followed by drafting multiple adjustment scenarios based on what the economic situation is and what can be asked from a country. In this process, the specific knowledge of country desks is complemented by the broader view of the horizontal unit in order to ensure consistency, which is important for the credibility of the Commission. Yet, the choice which scenario to pursue is a political decision, which is made on the highest levels within the Commission. The conclusion following from this is that even processes that appear to be quite technical from the outset, such as designing scenarios for adjustment, inherently require political consideration as well. Nevertheless, with regard to politicization on a wider level, the conclusion must be that although these political considerations are present, the process predominantly remains a rather technical endeavor in order to reach the best policy outcome. The outcomes of this study do confirm earlier findings suggesting that policy effect and success on different policy agendas are important drivers of Commission behaviour in this process.

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<sup>1</sup> Although Mariotto (2019) also mentioned the reluctance of the Council to oppose the Commission.

However, high levels of politicization only occur in the most controversial cases but are not standard procedure.

Another aim of this study was to add to the understanding of the supposed enforcement deficit of the SGP. The finding that the preferences of the Commission and the Council overlap quite well does not add very much in the sense that it does not answer the question who needs to be blamed for the enforcement deficit. When speaking of the enforcement deficit itself, one finding that was not discussed with regard to the hypotheses may be of interest here. One respondent explained that the definition of sanctions matters in evaluating the enforcement of the SGP. From the outset, sanctions may be defined as a financial penalty or suspension of funding. However, the decisions taken within the EDP, starting with the decision to open one, may also have results that can be also be perceived as political sanctions. This has to do with the message that a public confirmation of non-compliance sends to a government, its electorate and the markets. This may already have political effects, and therefore, sanctions should not merely be defined as quantifiable penalties (R6).

This reasoning fits a softer image of enforcement that may be different than the one that this study was based on. Enforcement is not merely a matter of setting and enforcing predefined targets for success or failure, but rather a process in which every step of improvement or failure is weighed against the changing political and economic circumstances. This would also explain the course of events in the EDP for Portugal, with the repeated extensions of the deadline and the decision to cancel the financial sanctions after a reasoned request by Portugal that was indeed found to be reasonable. If one looks beyond a traditional definition of sanctions in the form of financial penalties, one could argue that even the existence of an EDP itself is already a sanction, as it comes with enhanced surveillance and it constrains the budgetary prerogatives of a national government.

From this angle, one could pose the question whether an enforcement deficit really exists. At least, this can not only be measured based on whether fines are imposed or not. Instead, the standard for success should rather be if Member States eventually manage to correct their deficits in a more or less timely and sustainable matter. Given the fact that at the time when this research was conducted, only one country is subject to an EDP, it could be argued that the enforcement of the SGP is going quite well. However, this is too easy a conclusion. The timely and sustainable correction of a deficit leaves much room for interpretation. Credibility issues play a role here. How to strike the right balance between tailoring procedures towards the best policy outcome and maintaining the deterring effect of the EDP? Blunt punishment is not the optimal solution, as budget deficits can also result from uncontrollable economic circumstances. At the same time, too much room for dialogue can also make adjustment paths more comfortable than they perhaps should be. This is an issue that will certainly be part of the debate about the upcoming reform of the SGP, as at the time of writing, the deficit and debt rules are temporarily suspended in order to give Member States the budgetary room to take all measures necessary to battle the economic effects of the Covid-19 pandemic.

What then can the conclusion of this study contribute to the debate on fiscal discipline and its enforcement? Of course this very much depends on what one's stance on fiscal discipline and European integration is. More in general, to advocates of a more flexible SGP with looser targets, the message is that the SGP already does offer the flexibility that allows tailored solutions. In that sense, the current enforcement practice is not relentless, but it seeks dialogue whilst applying the rules. The Commission is not an unresponsive, neutral arbiter in this, but engages in dialogue to find the best solution. Perhaps advocates of tougher fiscal discipline would find such a conclusion undesirable. Furthermore, the results of this study also provide an image of a Commission that is very powerful, and a Council that is weak and therefore more or less forced to follow Commission proposals. A downside of this may be that it does not stimulate internal debate and peer pressure amongst countries themselves (R8). Any revision of the SGP could assess if the current balance of power is the right one. Yet, the legal framework is still adhered to and there is no reason to believe that abuse of power on an institutional level is an urgent threat. After all, the reason to lay more power in the hands of the Commission was to avoid situations like the case of France and Germany in 2003, where the Council overruled the Commission. Under the current framework, these events are not likely to repeat themselves.

### **Shortcomings and further research**

This study has focused on the case of Portugal, which was because of its length and course of events, not the most average excessive deficit procedure. This could raise questions on the reliability of the results, as the case may not be completely representative. The results of the study show that in the case of Portugal, there was no conflict between the Commission and the Council and the Commission did not really need to proactively seek the preferences of the Council in order to submit a proposal that would be successful. The absence of conflict or negotiating with the Council in a case as politicized as the EDP for Portugal supports the argument that though the case itself not being representative, the results reliably say something about excessive deficit procedures in general. One would not expect a higher likelihood of conflict in cases that were less controversial or politicized. However, to confirm these results further research should look into cases that were not as politicized.

Another potential shortcoming of this study comes from the angle of relevance. This research was conducted at the time that the SGP was suspended as a result of the Covid-19 pandemic. It is highly likely that the suspension will also trigger a deeper reform of the Pact. Although this makes the research topic relevant for the moment, the predictive value of the study may decrease if the rules and their implementation are set to change in the near future. Therefore, future research could be devoted to the question whether the same conclusions apply in a changed regulatory environment. Finally, another avenue for further research was already mentioned: although this study has provided a valuable insight in the dynamics between the Commission and the Council, it still requires even closer scrutiny to find out how responsiveness works between those two actors, as this may work both ways.

**Concluding remarks**

The implementation of the excessive deficit procedure is not the two-stage game that the legal framework suggests it is. The Commission does take into account the Council's preferences, although this usually does not divert the course of the EDP. Political considerations and dependencies do play a role in the decision-making process within the Commission and yet, the technical nature of the process remains dominant. What is most striking is that the preferences of the Commission and the Council appear to be very much aligned with each other, and real conflict is generally absent. The fact that the Council is in an underdog position plays an important role in this. This contrasts much of the existing work on compliance and enforcement of the SGP, that suggests a more adversary relationship between the Commission and the Council. Whether the alignment of preferences is a good thing or a bad thing will certainly one of the questions to be answered by decision makers in a new round of SGP reform.

## ANNEX 1

### Interview questions

Based on the operationalization, I formulated the following interview questions. The interviews that I conduct are semi-structured, which means that this list of questions serves as a general guidance rather than a fixed format.

	<b>Concept Questions</b>
<i>Principal-agent relations</i>	<ul style="list-style-type: none"> <li>➤ How would you describe the relation between the Council and the Commission under the SGP?</li> <li>➤ The dynamic between the European Commission and the Council has been described as one where the Commission acts on behalf of the Council in a rather hierarchical fashion. Do you recognize this?</li> <li>➤ How would you describe the role of the Commission under the SGP?</li> </ul>
<i>Resource dependence</i>	<ul style="list-style-type: none"> <li>➤ What interest does the Commission have to take Council preferences into account?</li> <li>➤ What are the interdependencies between the Commission and the Council?</li> <li>➤ What are the interdependencies between the Commission and the Member States?</li> <li>➤ What risks does the Commission consider itself exposed to?</li> </ul>
<i>Politicization</i>	<ul style="list-style-type: none"> <li>➤ Would you describe the Commission's attitude in the process as neutral? Why or why not?</li> <li>➤ What would you say are the main incentives of the Commission during the EDP?</li> <li>➤ Would you say that during the EDP for Portugal, other factors than merely the fiscal rules were at play?</li> </ul>
<i>Attitude Commission towards the Council</i>	<ul style="list-style-type: none"> <li>➤ What does the internal process at the Commission look like when drafting a recommendation?</li> <li>➤ Does the Commission take a pro-active stance towards the Council?</li> </ul>
<i>Importance of preferences</i>	<ul style="list-style-type: none"> <li>➤ How important are the opinions and plans of the Council for the Commission?</li> <li>➤ Would you say the Commission was considerate towards Portugal's preferences?</li> </ul>



<i>Responsiveness</i>	➤ If there are different views between the Commission and the Council, how does the Commission respond to that?
<i>Congruence</i>	<ul style="list-style-type: none"> <li>➤ How would you describe the incentives of the Commission during the EDP?</li> <li>➤ How would you describe the incentives of the Council during the EDP?</li> <li>➤ Would you say that the Commission and the Council have the same rationale for acting during the EDP?</li> </ul>
<i>EDP Portugal</i>	➤ Could you describe the course of events of the EDP for Portugal?

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