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Macroeconomic Conditionalities: Using the Controversial Link between EU Cohesion Policy and Economic Governance

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Abstract

The reform of EU economic governance since the outbreak of the euro area crisis has not stopped at the borders of Economic and Monetary Union. With the introduction of macroeconomic conditionalities in all European Structural and Investment Funds (ESIF), EU cohesion policy is now closely linked to the Stability and Growth Pact. The European Commission is expected to propose the suspension of ESIF funding in case of non-compliance with the Excessive Deficit Procedure. This article focuses on Portugal and Spain, which were nearly sanctioned under the macroeconomic conditionalities in 2016. It will address the question of why the application of this sanctioning procedure was softened compared to the hardness of its legal provisions. Drawing on the 'usage of Europe' approach and on the concepts of hard and soft law, this article argues that the usage actors make of a procedure has an influence on its legal character at the enforcement stage. This article finds that the hard law character of the procedure was softened by the European Commission's flexible application of the provisions and by the European Parliament's strategic usage of the rules.

Keywords

EU cohesion policy; EU economic governance; Hard and soft law; Macroeconomic conditionalities; Stability and Growth Pact (SGP); Usage of Europe

Cohesion policy, as one of the EU's few redistributive policy fields, provides important financial resources to EU member states for investment in line with the EU's economic priorities. The institutional setting of EU economic governance has been subject to significant change since the outbreak of the euro area crisis that has not only reinforced the rules of fiscal and macroeconomic surveillance, coordination and enforcement, but has also linked the European Structural and Investment Funds¹ (ESIF) to the rules and objectives of fiscal and economic policy coordination. In the 2014-2020 funding period, several mechanisms are in place to link 'the effectiveness of ESI Funds to sound economic governance' (European Union 2013). The economic rationale behind the introduction of macroeconomic conditionalities was the supposed necessity of a sound fiscal framework for investment to be effective (European Commission 2011). The European Commission has been given considerable enforcement power in imposing this link between cohesion policy and economic governance. It can now request revisions to member states' Partnership Agreements when it is deemed necessary for supporting the implementation of a relevant Country-Specific Recommendation issued under the European Semester. More strikingly, the Commission has to propose to the Council the suspension of ESIF commitments or payments if a member state does not take effective action to correct its excessive deficit under the corrective arm of the Stability and Growth Pact (SGP) (European Union 2013). While macroeconomic conditionalities already existed for the Cohesion Fund, conditionality is now extended to all ESIF (Viță 2017). The extension of macroeconomic conditionalities was debated in the context of the negotiations of the 2014-2020 Multiannual Financial Framework, at the height of the euro area crisis. It has been subject to significant opposition, especially from the European Parliament (European Parliament 2013). The economic rationale of sanctioning non-

compliance with fiscal rules through the suspension of investment resources has been criticised on the grounds of its potentially counterproductive impact on the goal of cohesion, its de facto punishment of regions for the action of central governments (see Begg, Macchiarelli, Bachtler, Mendez, et al. 2014) and its potential pro-cyclical impact (see Huguenot-Noël, Hunter and Zuleeg 2017).

The application of the extended macroeconomic conditionalities was triggered for the first time in 2016. The Spanish and Portuguese governments, which were both under the corrective arm of the SGP (the Excessive Deficit Procedure (EDP)) since 2009, had failed to take corrective action to address their excessive deficits. The Council Decisions of 12 July 2016 that established this failure triggered the sanctioning procedure under the macroeconomic conditionalities, as well as a sanctioning procedure based on SGP legislation according to which the Commission is supposed to propose to the Council the imposition of a fine. This latter proposal can be circumvented if justified by exceptional economic circumstances (European Union 2011). The suspension of ESIF commitments or payments can, however, only be lifted if the EDP is held in abeyance or if the Council abrogates the decision on the existence of an excessive deficit. Exceptional economic circumstances cannot serve as a justification for avoiding a suspension proposal.

The Commission did not propose a fine for the two countries' non-compliance under SGP rules, taking into account their reasoned requests and exceptional economic circumstances (European Commission 2016a). Meanwhile, the proposal for a suspension of ESIF commitments was postponed until after a structured dialogue with the European Parliament had been held and the two countries had submitted their Draft Budgetary Plans (DBP) under the European Semester. Despite its mandatory character, the proposal for a suspension was not finally issued. The Commission took the decision to hold the EDP in abeyance after its assessment of the member states' reform plans, and the proposal for a suspension therefore became obsolete (European Commission 2016b). Given the Commission's legal obligation to propose a suspension, the application of the procedure seems to have been softened compared to the letter of its legal basis.

While a sanctioning procedure under Economic and Monetary Union (EMU) that did not lead to the imposition of sanctions is not exceptional in its outcome, the sanctioning procedure under the macroeconomic conditionalities is exceptional in its mandatory and quasi-automatic character. Therefore, it relates to the debate on the power of supranational actors under the institutional setting of post-crisis EMU. The academic debate on the impact of EU economic governance reforms upon the power relations between national and supranational actors points to increased surveillance and enforcement powers in the hands of the European Commission (Dehousse 2016, Chang 2013; Bauer and Becker 2014), with the Commission having greater margin of manoeuvre on rule interpretation and application (Schmidt 2016), but depending on the case applying the rules either in a flexible or in a rigid manner (Vanheuverzwijn 2017). The debate on the changing institutional setting and the potential enforcement of rules in economic governance has also been approached from a legal angle, pointing to an increased hardening of soft law governance procedures (Terpan 2015; Saurugger and Terpan 2016a; Hodson 2018). While this legal approach allows for a precise characterisation of the institutional setting, the legal character of governance procedures does not allow for any predictions as to how the actors apply the provisions in practice (Hodson 2018).

As argued by Vanheuverzwijn (2017), an analysis of power relations in the area of EU economic governance should go beyond formal competences and include the use and reinterpretation of incomplete rules. In a similar way, this article argues that when engaging in the debate on rule enforcement in EMU, and while avoiding to take preferences as given, it is crucial to take into account the use actors make of the reformed institutional setting. This allows us to understand the consequences of reform for the relation between actors. When it comes to the question of sanctions under EMU, some scholars link the enforcement of sanctions with the overall success of the surveillance tool (Gros and Alcidi 2015). However, others argue that the flexible application of the rules

can be taken as a sign of the Commission's discretionary power rather than as a weakness (Seikel 2016) and that the application of this flexibility is an indicator of the Commission's gain in power (Dehousse 2016). It is therefore difficult to draw conclusions as to the role of political actors and power relations from the provisions the actors have at their disposal, without analysing which preferences they pursue and in which way they use the provisions available to them.

This article therefore aims to answer the following question: Why was the application of the sanctioning procedure under the macroeconomic conditionalities with regard to Spain and Portugal softened compared to the hardness of its legal provisions? The analysis draws on aspects of the 'usage of Europe' approach in combination with the concepts of hard and soft law in order to show the consequences of strategic action for the application of the procedure and the enforcement of the rules. It is argued that the action of the European Commission with regard to Spain and Portugal reflected an internal tension between the use of the shadow of hierarchy and the preference for a soft enforcement. At the same time, the European Parliament opposed the suspension of ESIF commitments and strategically used the rules of the sanctioning procedure to soften its application.

THEORETICAL APPROACH AND METHODOLOGY

The 'usage of Europe' approach

In order to better understand the strategic action political actors engage in within the institutional setting of the sanctioning procedure under the macroeconomic conditionalities, this article draws on aspects of the 'usage of Europe' approach. This approach aims to bridge the gap between sociology and rational choice theory by studying 'the social construction of rational or strategic behavior' (Woll and Jacquot 2010: 111). Based on this approach, this article assumes that actors' preferences are not a given, but socially constructed. Hence, this article aims to demonstrate how the social construction of preferences and the usage of resources matter for macroeconomic conditionalities as a governance procedure. In this context, a rational choice approach, such as Principal-Agent theory that takes preferences as a given (see Pollack 2003) would not be appropriate for the purpose of this article. Additionally, sociological institutionalism, while enabling the analysis of the social construction of preferences (see Saurugger 2014), would not allow for a full understanding of the strategic usage of resources.

Usages are understood as 'practices and political interactions which adjust and redefine themselves by seizing the European Union as a set of opportunities, be they institutional, ideological, political or organisational' (Jacquot and Woll 2003: 4). The approach puts individual actors at the centre of analysis. It assumes that the institutional context is subject to interpretation by the actors and can be transformed by their actions. As stated above, while actors are seen as rational and strategic, their preferences are socially constructed (Woll and Jacquot 2010).

The three ideal types of usages are cognitive, strategic and legitimating usage. Cognitive usage occurs when usage is related to interpretation and understanding of political subjects. Ideas can accordingly be used as a mechanism to persuade other actors. The second type of usage is strategic usage that actors apply when trying to influence decisions or their room for manoeuvre while pursuing clearly defined goals. The third type of usage is legitimating usage that can be applied to justify political decisions. Unlike in actor-centred constructivism, the 'usage of Europe' approach does not focus on the strategic use of ideas only, but includes the usage of material elements such as institutions and budgetary and legal resources (see Woll and Jacquot 2010).

The 'usage of Europe' approach has been applied recently in the area of EU economic governance by a number of scholars. Using this approach, Eihmanis (2018) shows how the Latvian government

instrumentalised EU recommendations in order to achieve its own policy targets. Moreover, Zeitlin and Vanhercke (2018) draw on both the 'usage of Europe' approach and on actor-centred constructivism to demonstrate how social and employment actors have progressively socialised the European Semester.

The 'usage of Europe' approach stems from the Europeanisation literature that tries to explain the influence of European integration on national political systems (Jacquot and Woll 2003). The approach is part of a sociological turn within this research agenda that criticises the former dominant claim that change at the national level can best be explained by the degree of difference between EU policy proposals and existing national traditions. Rejecting this misfit model, it is argued that policy actors are more than mere mediating factors acting under institutional constraints. Even where no adaptive pressures prevail, the EU can provide material and cognitive resources that can be used strategically by national actors (Woll and Jacquot 2010). The approach has above all been used to understand how national level actors make strategic use of opportunities at the EU level to pursue domestic objectives. However, the approach also provides analytical value for the analysis of EU-level processes and can go beyond the focus on domestic considerations by explaining, for example, 'how actors situated at the intersection between national and supranational policy-making [...] may strategically exploit the ambiguities of European concepts, rules and procedures' (Zeitlin and Vanhercke 2018: 154). Usages of material and ideational resources can serve the interests of both national and supranational actors and, if applied, will similarly shape EU-level procedures as they can shape domestic practices. This approach therefore allows us to analyse how EU-level actors use the institutional setting in order to articulate and strategically pursue their interests. While studying the actors' usages, it will further be possible to shed light on their preferences.

Soft and hard law as a measure of potential enforcement

In this analysis, it is assumed that 'all policy processes leave open some room for manoeuvre and thus [require] the mediation of actors' and that 'it is not their a priori "degree of coercion" that matters, but the usages that are made of them, their concrete implementation and the meaning that actors attach to them' (Woll and Jacquot 2010: 118). The 'usage of Europe' approach therefore seems particularly adept to analyse how the legal coercion created through the macroeconomic conditionalities is applied in the case of Spain and Portugal. In order to analyse the consequences of the usages made by the actors, and therefore the actual coerciveness of the procedure, this article further draws on the concepts of hard and soft law. Terpan (2015), based on the concept of legalisation put forward by Abbott, Keohane, Moravcsik, Slaughter et al. (2000), distinguishes between hard and soft law according to two criteria: obligation and the enforcement of the obligation. The level of obligation is determined by the hardness or softness of the source and the content, assuming that imprecise rules lead to weaker obligations than detailed rules that offer less room for interpretation. With regard to enforcement, Terpan (2015) distinguishes between hard enforcement, soft enforcement and the absence of enforcement mechanisms. While hard enforcement is characterised by judicial control or very constraining non-judicial control that can take the form of a binding decision of a supranational institution, soft enforcement is characterised by procedures aiming at compliance that do not necessarily rely on coercion or constraint. Taken together, a norm that relies on hard obligation and hard enforcement can be characterised as hard law, while soft law can be characterised by different combinations of hard and soft obligation as well as hard and soft enforcement.

In the literature on EU fiscal and economic policy coordination, the hard and soft law approach has been used in order to identify the changing nature of coordination procedures (Terpan 2015), to define European integration and identify the increase thereof (Hodson 2018), and to analyse the political and economic role of soft and hard law components in the functioning of the SGP (Schelkle 2007; Hodson and Maher 2004). Additionally, this approach has served as a dependent variable in understanding the

direction of policy change during crises (Saurugger and Terpan 2016a) and as an independent variable in analysing member state non-compliance with EU norms (Saurugger and Terpan 2016b). Hodson (2018) considers that the concept of legalisation can also be used to analyse the effects of institutions at the implementation stage, in addition to the level of legalisation at the design stage. In line with this observation, this article argues that the hardness or softness of a procedure in terms of obligation and enforcement can also be used in order to analyse the actual application of a norm. It is further assumed that hard and soft law components of a procedure can be strategically supported or circumvented, thereby altering the character of the procedure either in the direction of hard or of soft law enforcement. In the present case, the threat of sanctions would represent the strategic support of a hard law component. This use of the shadow of hierarchy, or the threat of intervention by a hierarchical authority (Héritier and Lehmkuhl 2011), might induce member state compliance (Schelkle 2007; De la Porte and Heins 2016). On the contrary, it might be the preference of an actor to use procedural flexibility that allows for a softer enforcement. In this article, it is therefore assumed that provisions that allow for hard law enforcement might be in place. However, the application and the degree of coercion depends on the preferences of the actors and how they make use of the provisions.

In sum, this article draws on the ‘usage of Europe’ approach in order to show how actors shape the application of the procedure in terms of its hardness or softness. In the first section of the analysis, the macroeconomic conditionalities will be located on the soft-hard law boundary. This allows us to compare the application of the provisions with their potential application in terms of a harder or softer rule enforcement. The analysis starts with the enforcement preferences and subsequent actions of the European Commission and then focuses on the actions of the European Parliament. As the Council was formally not involved in the procedure, the analysis focuses on the Commission and the Parliament. As suggested by Saurugger (2016), process-tracing seems particularly adept for actor-centred sociological approaches and is therefore applied in this article. The analysis draws on legislation, official documents, press releases, video sources and press coverage. Additionally, for reasons of triangulation and in order to gain supplementary information on opinions, preferences and procedural steps, six semi-structured interviews were conducted. Two interviews were with Commission officials both at the DG and the Cabinet level, three with member state officials in Brussels and one with a Member of the European Parliament (MEP). Interviewees were identified via official websites, email and telephone enquiries as well as via referencing through interview partners.

PORTUGAL AND SPAIN UNDER THE THREAT OF ESIF SUSPENSION

The location of macroeconomic conditionalities on the soft-hard law boundary

In order to analyse the influence actors’ usages have on the application and therefore the enforcement character of the sanctioning procedure under the macroeconomic conditionalities, the procedure and its mechanisms first have to be situated on the boundary between soft and hard law. As depicted above, the two components of legal norms that have to be distinguished are obligation and enforcement (Terpan 2015). The macroeconomic conditionalities link access to ESIF to performance under the SGP; if a member state is found not to have taken corrective action under the EDP, the conditionalities apply. Therefore, the source and the content of the obligation emanate from the SGP. Both point to rather hard obligation, which is nevertheless softened by exceptions regarding deficit and debt limits (Terpan 2015).

With regard to the enforcement of the conditionalities, the SGP and the EDP no longer apply, but the rules exclusively emanate from the Common Provisions Regulation (CPR) that lays down the macroeconomic conditionalities in its Article 23. Enforcement of the procedure can be described as hard. As written in the CPR, the Commission ‘shall’ propose to the Council the suspension of ‘part or

all of the commitments or payments for the programmes of a Member State' if the Council decides 'that a Member State has not taken effective action to correct its excessive deficit' (European Union 2013). Therefore, there is a very clear obligation for the Commission to propose the suspension to the Council, which can only oppose the imposition of the suspension by reverse qualified majority voting. Unlike for the fine under SGP legislation, there is no possibility to cancel the suspension of ESIF commitments if justified by 'exceptional economic circumstances or following a reasoned request by the Member State concerned' (European Union 2011). The only circumstances foreseen by the CPR, under which the suspension can be lifted, are if the EDP is held in abeyance or if the Council decides to abrogate the decision establishing the existence of an excessive deficit.

While the Commission is obliged to propose the suspension, it enjoys flexibility and discretion as to the nature of the suspension and its amount. According to the CPR, a suspension should cover commitments. Payments can, however, also be suspended if there is significant non-compliance. Regarding the amount of a suspension, the Commission enjoys flexibility and discretion, as the 'scope and level of the suspension of commitments [...] shall be proportionate, respect the equality of treatment between Member States and take into account the economic and social circumstances of the Member States concerned' (European Union 2013: 351). Furthermore, the moment at which the suspension has to be proposed is not defined by the CPR.

The flexibility in the application of the sanctioning procedure also has an inter-institutional character. The CPR lays down the possibility for the European Parliament to 'invite the Commission for a structured dialogue' that in particular allows for the transmission of information on 'ESI Funds and programmes which could be subject to a suspension of commitments or payments' (European Union 2013: 352). When proposing the suspension, the Commission 'shall give due consideration to any elements arising from and opinions expressed through the structured dialogue' (European Union 2013: 350) with the European Parliament. As shown below, these provisions give, as shown below, some scope for interpretation to both the European Commission and the European Parliament.

Taken together, the procedure can be characterised by both a rather hard obligation and a rather hard enforcement component. There is, nevertheless, margin of manoeuvre that leaves room for interpretation and strategic action for both the Commission and the Parliament. This especially applies to the enforcement component that this analysis focuses upon. The provisions of the procedure therefore allow the actors to support either a hard or a soft application, and thereby, in the latter case, to soften the enforcement of the procedure. In the following section, the preferences and actions of the European Commission are analysed. Subsequently, the analysis focuses on the role of the European Parliament.

The European Commission between the use of hard law provisions and the softening of the application

At the beginning of the sanctioning procedure under the macroeconomic conditionalities, the Commission insisted on its mandatory character. This can be seen by the wording the European Commission used: 'The Council decision also legally obliges the Commission to propose a suspension of part of the commitments of EU Structural and Investment Funds for 2017' (European Commission 2016c). At that moment, the Commission did not indicate when it would issue the proposal to suspend funds. However, it initiated the structured dialogue with the European Parliament, that is foreseen by the CPR (European Commission 2016c). The first hearing under this dialogue took place on 3 October 2016. For the Commission, both the Vice-President for Jobs, Growth, Investment and Competitiveness, Jyrki Katainen and the Commissioner for Regional Policy, Corina Crețu responded to questions from members of the European Parliament's Committees on Regional Development (REGI) and on Economic and Monetary Affairs (ECON), which came together in a joint session. Both Commissioners insisted

during the hearing that the European Commission would be obliged to issue the suspension proposal and stated that the suspension would be lifted once Spain and Portugal comply with their fiscal obligations (European Parliament 2016a). This presentation of the procedure and the emphasis on the countries' obligation to address their excessive deficits can be characterised as a strategic usage of the potential suspension with the aim of enhancing or maintaining the reform pressure on the two member states. In terms of the soft-hard law divide, it clearly indicates the support of the hard law enforcement of the procedure that would translate into an effective shadow of hierarchy under which the member states would deliver on their obligations under the fiscal rules.

Nevertheless, despite the Commission's official stance that suggests an objective and technical application of the rules in accordance with its role as guardian of the treaties, the application of the procedure was not without controversy among Commissioners and Commission officials. According to one Commission official, 'Both Vice-Presidents Dombrovskis and Katainen were strongly in favour of the idea of suspending the commitment. Mainly as a matter of principle for the credibility of the whole macroeconomic conditionality mechanism'.² Commissioner Crețu had more reservations regarding the suspension because 'of all the explanations that were provided by Spain and Portugal, they were actually finishing their reforms or doing a big effort socially and economically speaking'.³ In the European Parliament, the Commissioner accordingly described the obligation of proposing the suspension as 'not comfortable' (European Parliament 2016a). She stated that she was convinced that the two member states would present 'important steps forward toward the SGP' in their DBPs and announced that the mitigating factors that could be used to propose a lower amount of commitments to be suspended, would be taken into account (European Parliament 2016a). Similarly, evidence suggests that the Commissioner for Economic and Monetary Affairs, Pierre Moscovici was against the ultimate suspension of the commitments, but in favour of having the macroeconomic conditionalities as a safeguard instrument.⁴ A suspension of investment funds may further have been perceived as unfavourable for the achievement of the Commission's economic policy and investment objectives as stipulated in the Europe 2020 Strategy and the 2016 Annual Growth Survey.

There is evidence that the attitude towards strict sanctioning within the Commission services changed after the introduction of macroeconomic conditionalities in 2013. According to one interviewed Commission official, the initial rationale that saw the suspension of funds as a safety mechanism for guaranteeing the efficiency of ESIF spending, was not considered at the time of the application of the procedure.⁵ Even before the application of this provision with regard to Spain and Portugal, the general attitude within the Commission was less favourable towards harsh sanctioning.⁶ This corresponds to the flexible approach on fiscal policy coordination that the Juncker Commission publicly communicated (European Commission 2015). Accordingly, there was a tension within the Commission services between the obligation to propose the suspension and the political preference not to do so. This reluctance can also be explained by rising Euroscepticism and the fear that the suspension of ESIF commitments would feed opposition to the EU.⁷ The automatism of the procedure was seen as a political burden. Given that Portugal and Spain had just undertaken major restructuring efforts, the moment for suspending funds was not perceived as adequate.⁸ The obligation to propose the suspension was, nevertheless, strongly felt by the Commission services and they accordingly prepared the suspension proposal. This further suggests that the Commission services, as with Katainen and Dombrovskis, were concerned with saving the credibility of the procedure for potential future applications. At the same time, there was an agreement that the flexibility the procedure offered should be used.⁹

Despite the rather negative attitude of the Commission services and relevant Commissioners towards the suspension of ESIF commitments, action under the procedure was informed by an understanding that the threat of sanctions could be used to incentivise member states to comply with their obligations under the EDP.¹⁰ Both the Portuguese and Spanish governments were indeed asked to

deliver upon their obligations. This can be illustrated by the Commission's request for updated DBPs from the two governments after their initial submission in October 2016. In the case of Spain, the Commission was of the opinion that the proposed fiscal measures were not sufficient (European Commission 2016d), and in the case of Portugal, the Commission asked for supplementary information on how compliance would be ensured (European Commission 2016e).

This also means that despite the flexible application of the procedure in terms of lowering the amount of commitments to be suspended, which tended towards softening the level of ultimate sanctioning, the harder shadow of hierarchy was strategically used to bring about policy change. As argued above, the Commission most likely sought to save the credibility of the procedure, as during its failed attempt in 2003 to move to the EDP's next step in the case of Germany and France, which had preceded the first reform of the SGP in 2005 (Heipertz and Verdun 2010). Similarly, in a 2012 application of macroeconomic conditionalities in their pre-2014 form, the Commission actually proposed the suspension of Cohesion Fund commitments for Hungary, which the Council lifted shortly after having adopted it (Council of the European Union 2012). According to the evidence presented, it is highly likely that the Commission also would have proposed the suspension in the case of Spain and Portugal in order to save the credibility of the procedure. However, this was prevented by the strategic action of MEPs, as will be shown in the next section.

Given that the Commission did not propose the suspension to the Council, member state representatives were formally not involved in the procedure.¹¹ Indeed, interview partners did not provide any evidence of an active or influential informal role of Council members. However, unlike in other governance procedures under EMU, the European Parliament played an important role during the application of the procedure via the structured dialogue.¹² The next section therefore focuses on the role and actions of the European Parliament during the structured dialogue it held with the European Commission.

The European Parliament: enhancing its role and softening enforcement

The European Parliament, which acted as co-legislator for the CPR, actively opposed the expansion of macroeconomic conditionalities (European Parliament 2013). The conditionalities in their current form are the result of a compromise among political groups and with the Council. Accordingly, the CPR foresees mitigating factors for the determination of the level of suspensions as well as the involvement of the European Parliament in the application of the conditionalities in the form of a structured dialogue.¹³ The structured dialogue, according to the CPR, mainly aims at informing the Parliament on which programmes could be suspended. The Commission is further not obliged to take into account the opinion of the Parliament (European Union 2013). Despite this rather narrow role for the European Parliament according to the Regulation, its involvement and impact has been significantly reinforced both by Commission action and the strategic usage that MEPs made of the provisions.

Early in the procedure, Commission Vice-President Katainen proposed to cooperate with the Parliament over the question of which parts of the funds should be suspended (Handelsblatt 2016). Already at the beginning of the procedure, the Commission stated that it had 'invited the European Parliament to hold a structured dialogue before presenting a proposal' (European Commission 2016c). The Commission therefore actively promoted the involvement of the Parliament in the procedure beyond the wording of the Regulation.

The European Parliament, in the context of the structured dialogue, had invited Vice-President Katainen and Commissioner Crețu for a hearing in a joint REGI and ECON committee meeting, which took place on 3 October 2016. A majority of MEPs spoke against the suspension of the funds, which reflected the strong opposition of the Parliament that was already present during the introduction of

the conditionalities. Despite the Commission's announcement that only commitments and not payments would be suspended (European Parliament 2016a), MEPs who were against the suspension took a hard stance. In particular, they made use of cognitive references based on the idea that the suspension of the commitments would have a negative economic impact on citizens and regions (European Parliament 2016b). Despite a majority of MEPs arguing against the suspension of funds, liberals, eurosceptics and some members of the European People's Party from northern European countries were in favour of the suspension of funding (Valero 2016).

Beyond the use of cognitive references that suggest that the suspension of ESIF commitments might lead to the opposite result of what the conditionalities were aiming for, that is a stable fiscal situation, the European Parliament also engaged in strategic usage of the provisions of the procedure. After the first hearing with representatives of the Commission, the European Parliament's Conference of Presidents decided to gather more information before the closure of the structured dialogue. Therefore, the Parliament invited the Portuguese Finance Minister Mário Centeno and the Spanish Economy Minister Luis de Guindos for a second hearing at the Parliament (European Parliament 2016c). The European Parliament therefore used the setting of the structured dialogue in order to extend its visibility beyond a dialogue between the Commission and the Parliament, as foreseen by the CPR, and created a direct link with the member state governments concerned. Consequently, both ministers benefited from the extended involvement of the Parliament in the procedure. They argued in a similar way as those MEPs who were against the suspension by referring to the potential negative consequences of this measure, and stated their willingness to commit to reforms in order to avoid the suspension of funds (European Parliament 2016c).

The organisation of a second hearing improved the visibility of the European Parliament in the procedure and provided a forum for the Spanish and Portuguese ministers to present their vision on the suspension of ESIF commitments. However, this second hearing also reflects the strategy of the Parliament to prolong the structured dialogue in order to prevent the suspension. As there was no 'legally binding deadline for the Commission to propose the suspension' (European Commission 2016c), the Commission enjoyed flexibility in this regard and decided to wait until the end of the structured dialogue with the Parliament before making a proposal.¹⁴ At the same time, the Commission was under time constraints, as the suspension would have had to be included in the 2017 annual budget to become effective. It therefore asked the Parliament to speed up the procedure.¹⁵ The strategy of the MEPs was, however, to extend the structured dialogue formally in order to give more time to the Spanish and Portuguese governments to comply with their obligations under the EDP and thereby to prevent the Commission from proposing the suspension.¹⁶ This means that the European Parliament engaged in strategic action that aimed at preventing the hard shadow of hierarchy in the form of the suspension from taking effect and therefore at moving the procedure towards soft enforcement.

The Parliament had introduced the structured dialogue during the negotiation of the CPR. The overall negative opinion of the Parliament regarding macroeconomic conditionalities had not changed since then. It could therefore use the dialogue according to the purpose of its creation, namely to prevent an automatic imposition of sanctions. It did so by using cognitive references against the suspension, giving the Spanish and Portuguese governments a stage to present their willingness to comply with their obligations under the SGP, and by strategically using time as a resource.

The Spanish government committed, upon the Commission's request, to revise its fiscal target in order to comply with the recommendations under the EDP (Spanish Government 2016). The Portuguese government, after a Commission request, delivered supplementary information on its DBP (Portuguese Government 2016). In line with the strategy of the European Parliament to give more time to Spain and Portugal to present new figures, both countries were found to be in compliance with the EDP (European Commission 2016f) before the structured dialogue was finished.¹⁷ The EDP was held in

abeyance, and therefore the obligation to propose the suspension was, according to the Commission, no longer present (European Commission 2016b).

CONCLUSION

This article aimed to explain why the application of macroeconomic conditionalities with regard to Portugal and Spain was softened despite the hard law character of the corresponding legal provisions. The analysis has shown that the Commission's role during the application can be characterised by a tension between the obligation to propose the suspension of ESIF commitments and the prevailing internal opinion that a suspension would not be appropriate in light of the economic situation in the countries concerned. This tension is reflected in the Commission's use of the threat of sanctions as an instrument to push Spain and Portugal to comply with their obligations under the EDP, while nevertheless opting for a soft and flexible approach concerning the amount of commitments to be suspended. MEPs engaged in strategic action that aimed to prevent the hard shadow of hierarchy in the form of the suspension from taking effect and thereby moved the procedure in the direction of soft enforcement. They did so by using the idea that the suspension of the funds would have a negative economic impact and by strategically using the resource of time. By prolonging the structured dialogue, the European Parliament gave more time for Portugal and Spain to present new figures. Ultimately, both countries were found to be in compliance with their fiscal obligations before the Commission could propose a suspension.

In conclusion, it can be shown that the mandatory and thus hard law character of the procedure was softened by the European Commission's flexible application of the provisions and by the European Parliament's strategic usage of the procedure. The application of macroeconomic conditionalities with regard to Portugal and Spain is therefore a good example of how strategic usage can shape the application of procedures in terms of their hardness or softness.

The experience with Portugal and Spain is likely to have long-term implications. The dilemma in which the Commission was caught is reflected in its reform proposal for the relevant provisions post-2020. If the proposed changes are adopted, they would create more leeway for the Commission by allowing the cancellation of an ESIF suspension based on exceptional economic circumstances or a reasoned request by the member state concerned (European Commission 2018). In line with its critical stance on macroeconomic conditionalities, the European Parliament, in a draft report on the Commission's proposal, does not touch upon the proposed introduction of these mitigating factors, and proposes to soften the procedure further by abolishing the possibility to suspend payments instead of commitments (European Parliament 2018). It remains, however, to be seen how member state governments will position themselves on the prospect of rendering the procedure less automatic.

The 'usage of Europe' approach offers useful tools to shed light on how EU-level actors use the sanctioning procedure under the macroeconomic conditionalities, their scope for discretion and interpretation, and on the rationale that links cohesion policy and fiscal policy coordination. The application of this theoretical framework has also shown that in order to understand the functioning of governance instruments such as the macroeconomic conditionalities, analysis should be actor-centred. It is precisely the actors' preferences and usages that play a significant role in the functioning of governance procedures. Therefore, a high level of detail can enhance our understanding of current institutional developments.

The question of whether the hard and soft law provisions had a direct influence on the actions of the Spanish and Portuguese governments is beyond the scope of this analysis and empirically difficult to prove. The short timeframe of the analysis and the single application of the procedure in its current

form further limits potential findings on the long-term impact of usages on preferences and subsequent applications. Nevertheless, the approach allows for an in-depth analysis of the application at hand and of the preferences of the main actors. Other than understanding the imposition of sanctions as the only governance tool of the procedure, the threat of potential sanctions has been used by the Commission with the aim of bringing about policy change. While it may seem contradictory that the Commission strategically uses the procedure while at the same time holding the opinion that sanctions are not the best course of action, this observation actually supports the idea that sanctions are generally supposed to be used in severe situations, and are mainly an instrument to induce policy change. Therefore, the usefulness of the SGP and the role of the Commission in policy enforcement should not be assessed based on the imposition of sanctions, but by considering the strategic use of the provisions of the procedure and the variety of goals that can be pursued using the threat of sanctions. The results of this analysis are of further relevance in light of the increasing reliance on conditionalities in wider EU governance, which might even link ESIF funding to respecting rule of law. However, even strong conditionality provisions are no guarantee for strict enforcement, as the effective character of the provisions will depend on their use by European and national actors.

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ENDNOTES

¹ The ESIF include the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund.

² Interview European Commission official 24 April 2018.

³ Interview European Commission official 24 April 2018.

⁴ Interview European Commission official 30 May 2018.

⁵ Interview European Commission official 30 May 2018.

⁶ Interview European Commission official 30 May 2018.

⁷ Interview European Commission official 30 May 2018.

⁸ Interview European Commission official 24 April 2018.

⁹ Interview European Commission official 30 May 2018.

¹⁰ Interview European Commission official 30 May 2018.

¹¹ Interview National Government official 30 May 2018.

¹² Interview Portuguese Government official in Brussels 23 April 2018.

¹³ Interview Lambert van Nistelrooij (MEP) 21 June 2018.

¹⁴ Interview European Commission official 30 May 2018.

¹⁵ Interview European Commission official 30 May 2018.

¹⁶ Interview Lambert van Nistelrooij (MEP) 21 June 2018.

¹⁷ Interview European Commission official 30 May 2018.

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