



PhD-FHSE-2022-011
The Faculty of Humanities, Education and Social Sciences

DISSERTATION

Defence held on 01/04/2022 in Esch-sur-Alzette

to obtain the degree of

DOCTEUR DE L'UNIVERSITÉ DU LUXEMBOURG EN SCIENCES POLITIQUES

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AVOIDING THE INAPPROPRIATE: THE EUROPEAN COMMISSION AND SANCTIONS UNDER EU FISCAL POLICY COORDINATION

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Abstract

Since the beginning of the European Economic and Monetary Union, fiscal non-compliance has been subject to the potential imposition of sanctions. However, the extent to which punitive action should be automatic – rather than political – is a point of constant discussion among European Union decision-makers. The most recent reform of the Stability and Growth Pact, in the aftermath of the European Sovereign Debt Crisis, has attempted to make sanctions more automatic and has created the possibility to trigger them at earlier stages of the surveillance procedure. With this in mind, the reform has enhanced the powers and autonomy of the European Commission in the application of the new rules. Despite the reinforcement of punitive provisions, the Commission has so far refrained from proposing the imposition of sanctions. Against this background, this thesis aims to answer the question of how we can best explain that the European Commission does not propose financial sanctions because of Member State non-compliance with the Pact's fiscal objectives. The thesis draws upon four post-crisis cases in which sanctions for fiscal non-compliance might have been imposed – Belgium in 2013, France in 2015, Portugal and Spain in 2016, and Italy in 2018. The thesis uses theory-testing process-tracing methods and applies an adaptation of normative institutionalism that takes into account strategic actor behaviour. Based on this theoretical and methodological framework, it is argued that the *normative-strategic minimum enforcement* mechanism explains the Commission's behaviour. Given that the imposition of sanctions is perceived as inappropriate in the cases at hand, Commission actors strategically refrain from applying the enforcement provisions to their full extent.

Acknowledgements

The completion of this thesis is the result of a long process during which I was very lucky to be accompanied by a number of people whom I would like to thank. In particular, I am very grateful to my supervisor Professor David Howarth for his tremendous support and guidance along the way, for many interesting discussions, for always being available, and for his encouragement when it was most needed. I further would like to express my gratitude to Professor Anna-Lena Högenauer for her invaluable help and support, for her very constructive approach, and for leading me towards finding pragmatic solutions. I also would like to thank Professor Dermot Hodson for his very helpful comments and suggestions, for always giving me food for thought, and for encouraging me to look at the bigger picture. In addition, I am very grateful to Professor Sabine Saurugger and Professor Joachim Schild, who served as external examiners, for their valuable comments and feedback. Furthermore, I would like to thank Reinout van der Veer for his input during many discussions that have truly deepened my understanding of the topic. These past four years would not have been the same without my colleagues, to whom I express my gratitude for interesting discussions and for helpful feedback and comments during research seminars and beyond. I further would like to thank Max Bergmann for his great support. This research would not have been possible in this depth without the many experts that were willing to share their knowledge, insights and time, for which I am extremely grateful. In addition, I would like to thank the Secretariat of the Economic and Financial Committee for its incredible support. This research has been funded by the Fonds National de la Recherche, Luxembourg, for which I am also very thankful. Finally, I would like to express my deepest gratitude to my partner Magdalena for her overwhelming support, understanding, and encouragement, and to my daughter Paula for always lifting my spirits and being my greatest source of motivation.



Supported by the Fonds National de la Recherche, Luxembourg (11602257)

Table of Contents

List of Tables.....	i
List of Figures.....	i
List of Abbreviations	ii
1. Introduction.....	1
1.1 EU Fiscal Policy Coordination, Sanctions, and the Role of the Commission	1
1.2 Crisis-Related Reform of Fiscal Policy Coordination	2
1.3 Research Question, Argument, and Objectives	5
1.4 Theoretical Approach: Normative Institutionalism and Strategic Action	6
1.5 Theory-Testing Process-Tracing Methods	10
1.6 Case Selection and Generalisability	11
1.7 The Principal-Agent Model as an Alternative Theoretical Approach	12
1.8 Structure of the Thesis.....	14
2. Literature Review	16
2.1 Relevant Theories, the Commission, Sanctions, and Fiscal Policy Coordination	16
2.2 The Commission in its Institutional Context and the Implementation of the SGP	19
3. Background: The SGP, Sanctions, and the Role of the Commission.....	25
3.1 History of EU Fiscal Policy Coordination and Sanctions.....	25
3.2 The Sovereign Debt Crisis and the Reform of Fiscal Policy Coordination	31
3.3 Conclusion: The Changing Role of the Commission in the Application of the SGP	40
4. Theoretical Approach: Normative Institutionalism and Strategic Action.....	42
4.1 Normative Institutionalism	43
4.2 Opening of Theoretical Lens: Combining Strategic and Norm-Guided Action	52
5. Methodological Approach: Theory-Testing Process-Tracing	58
5.1 Process-Tracing Methods.....	58
5.2 Application of Process-Tracing Methods	68
5.3 Data Collection, Use, and Limitations	81
6. Belgium 2013	85
6.1 Belgium under the EDP and Legal Background.....	85
6.2 Analysis: Normative-Strategic Minimum Enforcement	88
6.3 Analysis: Principal-Agent Model	100
6.4 Conclusion.....	102

7. France 2015	105
7.1 France under the EDP and Legal Background	105
7.2 Analysis: Normative-Strategic Minimum Enforcement	107
7.3 Analysis: Principal-Agent Model	122
7.4 Conclusion	124
8. Portugal and Spain 2016.....	126
8.1 Portugal and Spain under the EDP and Legal Background	126
8.2 Analysis: Normative-Strategic Minimum Enforcement	128
8.3 Analysis: Principal-Agent Model	151
8.4 Conclusion	155
9. Italy 2018.....	158
9.1 Italy under the SGP and Legal Background	159
9.2 Analysis: Normative-Strategic Minimum Enforcement	160
9.3 Analysis: Principal-Agent Model	176
9.4 Conclusion	178
10. Conclusion	180
10.1 Main Findings: Normative-Strategic Minimum Enforcement.....	181
10.2 Findings from the Principal-Agent Model.....	184
10.3 Further Implications of the Findings	186
10.4 Concluding Remarks and Outlook.....	188
11. Bibliography.....	190
12. Appendix	217
12.1 List of Referenced Interviews	217
12.2 Indicative Interview Questionnaire.....	218
12.3 Evaluation of Observations.....	219

List of Tables

Table 1: Fingerprints and Empirical Certainty and Uniqueness.....	75
Table 2: Case Mapping.....	80
Table 3: Procedural Stages of Cases	81

List of Figures

Figure 1: Causal Mechanism - Normative-Strategic Minimum Enforcement.....	11
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List of Abbreviations

Art.	–	Article
BEPGs	–	Broad Economic Policy Guidelines
DBP	–	Draft Budgetary Plan
DG ECFIN	–	Directorate-General for Economic and Financial Affairs
DG REGIO	–	Directorate-General for Regional and Urban Policy
ECB	–	European Central Bank
ECOFIN	–	Economic and Financial Affairs Council
ECON	–	Committee on Economic and Monetary Affairs (European Parliament)
EDP	–	Excessive Deficit Procedure
EFB	–	European Fiscal Board
EFC	–	Economic and Financial Committee
EMU	–	Economic and Monetary Union
ESIF	–	European Structural and Investment Funds
EU	–	European Union
GDP	–	Gross Domestic Product
MEP	–	Member of the European Parliament
MIP	–	Macroeconomic Imbalance Procedure
MS	–	Member State
MTO	–	Medium-Term Budgetary Objective
pp	–	Percentage Point
REGI	–	Committee on Regional Development (European Parliament)
RQMV	–	Reverse Qualified Majority Voting
SGP	–	Stability and Growth Pact
TEC	–	Treaty establishing the European Community
TEU	–	Treaty on European Union
TFEU	–	Treaty on the Functioning of the European Union
UK	–	United Kingdom

1. Introduction

1.1 EU Fiscal Policy Coordination, Sanctions, and the Role of the Commission

With the inception of Economic and Monetary Union (EMU) with the Maastricht Treaty in 1992 and the decision to introduce the euro as common currency, European decision-makers have also introduced rules on the fiscal policies of Member States. The aim of the upper limits of debt and deficit levels – that is 60% and 3% of gross domestic product (GDP) – was the prevention of negative repercussions of national spending policies for all members of EMU (Schwarzer 2007). Sanctions for non-compliance were a part of the European Union's (EU) setting of fiscal surveillance from the beginning. With the adoption of the Stability and Growth Pact (SGP) in 1997, the sanctioning provisions that were already foreseen in the Maastricht Treaty were operationalised (Heipertz and Verdun 2010). The SGP comprises a preventive and a corrective arm – the Excessive Deficit Procedure (EDP) – with financial sanctions initially being possible only at the end of the latter (see Council of the European Union 1997b; European Union 1992). Sanctions were seen as an enforcement mechanism, which if actually triggered, would, however, have detrimental consequences for the EU's surveillance setting and for the Member State concerned by the measure. Therefore, several steps were foreseen to be taken before the ultimate imposition of sanctions (Heipertz and Verdun 2010), which should only occur in case of extreme situations (Hodson and Maher 2004).

Indeed, sanctions under the SGP for fiscal non-compliance have not been imposed so far (see European Fiscal Board 2019b). As argued by Drezner (2003), the threat of sanctions is likely to be more effective in achieving a certain objective than actually imposing them. The negative repercussions of imposing sanctions can indeed be manifold. Financial sanctions under the SGP can be economically counterproductive as they are imposed on countries that already are in fiscally strained situations (see Hodson and Maher 2004). Sanctions might also have politically counterproductive effects. If a government applies a certain policy under the threat of sanctions, despite high costs at the domestic level, it can harm public support for the enacted measure (Hodson and Maher 2004). Further, sanctions might lead to the 'rally-round-the-flag effect', meaning that the government in violation might gain additional public support due to the external sanction (Closa 2019: 700-701). In addition, if sanctions are imposed, the Member State government concerned might not be willing to cooperate anymore in the future (Closa 2019). However, the non-application of sanctioning provisions might undermine the effectiveness of the threat of sanctions (Hodson and Maher 2004).

In light of these considerations, the topic of financial sanctions is a recurrent and highly conflictual issue under EMU. This can be illustrated by the question of how automatic the imposition of sanctions should be, which was a central point of debate during the negotiations of the SGP. While France and other Member States favoured a political application of the Pact, Germany preferred automatic sanctions that – in line with the German stability-oriented culture – would have served as enforcement mechanism for the common debt and deficit limits (Heipertz and Verdun 2010). Eventually, sanctions were not made automatic (*Ibid.*). Despite the strict German position during the negotiation of the Pact, the Economic and Financial Affairs (ECOFIN) Council – including Germany – opposed applying the Pact’s enforcement provisions when both Germany – now under a new government – and France might eventually have faced sanctions in 2003 (Heipertz and Verdun 2010; see also Dehousse 2016; Hodson and Maher 2004). After this episode, the Pact was reformed for the first time in 2005. In line with the preferences of the French and German governments, the reform made certain provisions more flexible. This concerns for example the identification of exceptional situations and the extension of correction deadlines (see Heipertz and Verdun 2010).

The European Commission plays a central role in fiscal policy coordination and surveillance, with its position and competences being subject to conflict and considerable change since the inception of EMU. While the Commission was mainly seen as monitoring body initially (see European Fiscal Board 2018) – with enforcement being mainly in the hands of the Council (see Franchino and Mariotto 2020) – it gained further competences and increasing weight over time (see Bauer and Becker 2014; Dehousse 2016; Van Aken and Artige 2013). When in 2003, the Council opposed further steps under the Pact, the Commission brought the case before the Court. Thereby, it tried to defend its position as coordinating and enforcement body – or guardian – of the SGP (Hodson and Maher 2004). The ECOFIN Council, while not adopting the Commission’s recommendation on taking further action under the Pact against France and Germany, adopted conclusions without drawing upon a Commission recommendation. The Court ruled in 2004 that while under the SGP the Council has the right to not adopt a Commission recommendation and thereby put an EDP in abeyance, it cannot adopt acts without a Commission recommendation (*Ibid.*).

1.2 Crisis-Related Reform of Fiscal Policy Coordination

After having protected its central role, the European Sovereign Debt Crisis provided yet another impetus for the role of the Commission in the implementation of the Pact (see Bauer and Becker 2014; Dehousse 2016; Van Aken and Artige 2013). With a number of euro area Member States increasingly getting under pressure for their high debt levels from 2009 onwards (Blyth 2015; Hall 2012), European decision-makers

enacted a number of reforms of the setting of fiscal policy coordination. In line with the dominant narrative on what caused the crisis – namely the profligacy of southern European countries (Hall 2012; Matthijs 2016) – one central intention of the reform was to make the surveillance rules stricter (see European Council 2010; Verdun 2015).

With the Six-Pack, the Treaty on Stability, Coordination and Governance – in particular its Fiscal Compact – and the Two-Pack, reforms were adopted from 2011 to 2013 that reinforce monitoring, reporting, and punitive provisions. This includes that sanctions can now be introduced earlier in the procedure than was the case before (see Bauer and Becker 2014; de la Porte and Heins 2015). For example, sanctions in the form of deposits are now possible at the opening of an EDP – in case of ‘particularly serious non-compliance’, and fines of up to 0.2% of a country’s GDP can be imposed already before the last step of an EDP in case a country is found, in line with Art. 126(8) Treaty on the Functioning of the European Union (TFEU), not to have ‘taken effective action to correct its excessive deficit’ (European Union 2011a: Art. 5 and 6). The Commission can further ask a Member State to submit a revised Draft Budgetary Plan (DBP), in case the initial plan is found to be seriously non-compliant with a country’s fiscal requirements (European Union 2013a). In addition, by making spending under the European Structural and Investment Funds (ESIF) – and therefore under EU Cohesion Policy – dependent upon performance under the SGP, enforcement provisions were further strengthened (see Coman 2018; Viță 2017). As is the case for the above-mentioned fine, a suspension of funds also is triggered if a Member State’s non-effective action under the EDP is established (European Union 2013b: Art. 23(9)). Overall, the Commission saw its competences for enforcement and its discretion significantly strengthened (Bauer and Becker 2014; Dehousse 2016; Seikel 2016; see Van Aken and Artige 2013).

One crucial weakness of the fiscal surveillance setting in the pre-crisis period was the central role of the Member States in enforcing punitive provisions on their peers and their reluctance to do so (Dehousse 2016; Hodson and Maher 2004; see also Mabbett and Schelkle 2014). Based on the idea that limiting the role of the Council in the imposition of punitive measures and strengthening the Commission might lead to an increased automaticity in their enforcement, the logic of adopting Commission recommendations was reversed – that is recommendations are adopted if there is no qualified majority in the Council that rejects them (see European Council 2010; European Union 2011a). The increased automaticity (Van Aken and Artige 2013) and reinforcement of punitive provisions under the Pact suggests that the law-maker’s aim was to increase the credibility of the surveillance rules, thereby accepting to risk politically and economically detrimental repercussions, should the sanctions be triggered. However, the reform did not

solely make the rules stricter (see Mabbett and Schelkle 2014). While not retracting flexibility provisions introduced with the 2005 reform (Sacher 2021), even further flexibility provisions were introduced post-crisis, such as the general escape clause that allows Member States to deviate from their fiscal recommendations in a crisis situation (see European Commission 2020a).

While one intention of the reform was increasing automaticity in the implementation of enforcement provisions – by giving the Commission more autonomy – whether the Commission would actually use this power to propose strict measures under the Pact was not set in stone (see Mabbett and Schelkle 2014). Given that sanctions are still not automatic (see Dehousse 2016), the Commission might pursue other objectives than strict and technical rule application (see European Fiscal Board 2019b; Kelemen and Pavone 2022). Indeed, despite the overall reinforcement of punitive provisions, the experience with the implementation of the reformed rules has shown that the Commission has resorted to a flexible application of the surveillance framework (see Bekker 2016; Mabbett and Schelkle 2014; Schmidt 2016a; 2020; Vanheuverzwijn 2017), including in order to prevent punitive action (Schmidt 2020).

Shortly after the start of the post-crisis reform, and while euro area Member States were still experiencing the repercussions of the European Sovereign Debt Crisis, the Commission had to demonstrate how it would apply the reformed Pact. In late 2011, and just before the entry into force of the Six-Pack, the Belgian government experienced pressure from the Commission under President Barroso over its fiscal situation, being informed that it might face sanctions under the new provisions (European Commission 2012c). However, when in 2013, Belgium was found to not have complied with its fiscal recommendations, no sanctions were imposed (European Commission 2013b). When in 2015, France came under increasing political pressure for its fiscal stance and further steps – including sanctions – were discussed, the Commission under President Juncker opted for a moderate course of action and did not enact sanctions (see Dunlop and Radaelli 2016; Schmidt 2020). Similarly, although Portugal and Spain were facing a financial fine under the SGP and the suspension of their Structural and Investment Funds for not meeting their fiscal objectives, both punitive measures were in the end not carried out (see Coman 2018; Mérand 2021a; 2021b; Sacher 2019; Schmidt 2020). Even when, in 2018, the Italian populist government engaged in a highly confrontational course against the European Commission, no sanctions – although possible at this stage – were imposed (see Mérand 2021b; van der Veer 2022). The application of the SGP has entered into a new phase with the COVID-19 crisis. Following Europe-wide lockdowns and a significant economic downturn with major implications for public finances, the European Commission triggered the Pact's

general escape clause, which largely put on hold the Member States' requirements under the SGP (see Council of the European Union 2020; European Commission 2020a).

1.3 Research Question, Argument, and Objectives

In light of the strengthened role of the European Commission in the application of reinforced punitive fiscal surveillance provisions and the occurrence of situations of non-compliance in which sanctions could have been imposed, it seems puzzling that the Commission has not initiated the imposition of financial sanctions. While the post-crisis reform of the framework mostly aimed at stricter and more automatic rule application, the Commission appears to do exactly the opposite – that is applying a flexible reading and avoiding sanctions. In light of this puzzle, this thesis aims at answering the question of how we can best explain that the European Commission does not propose financial sanctions because of Member State non-compliance with the Pact's fiscal objectives.

In order to provide an answer to the research question, this thesis will draw upon a theoretical framework that is based on an adaptation of normative institutionalism and apply theory-testing process-tracing methods. The argument made is that the normative-strategic minimum enforcement mechanism provides an answer to the research question. When facing a Member State's potential or actual considerable non-compliance with its fiscal recommendations, the Commission clearly points out behaviour that is in conflict with the norm of cooperation. It then fosters cooperative behaviour and expects the delivery of additional fiscal measures. In case further measures are announced or adopted, the Commission ultimately avoids the imposition of sanctions. The Commission interprets its role as reliable supervisor in that it should aim at defending and sustaining the norm of cooperation and at the improvement of the fiscal situation. Imposing sanctions, however, might go against this goal. The Commission acts strategically in pursuing, sustaining and fulfilling its normative objectives. Enacting the enforcement provisions to a minimum and not resorting to the imposition of sanctions serves the purpose of acting in line with its normative objective of sustaining the cooperative setting of fiscal policy coordination. The Commission thus acts strategically in avoiding sanctions that are perceived as inappropriate.

The research objective of this thesis is twofold. The first objective is to contribute an analysis of the Commission's behaviour in its reinforced role regarding the SGP to the literature on EU economic governance. The second objective is to provide an institutionalist and moderately constructivist

explanation of how sanctioning provisions under the setting of fiscal policy coordination are used and why they have not been applied so far.¹

1.4 Theoretical Approach: Normative Institutionalism and Strategic Action

The theoretical approach that this study will rely on is based on normative institutionalism. Normative institutionalism argues that action is rule-driven, given that institutional rules reflect which kind of behaviour is appropriate. Actors have to interpret institutional rules and are expected to act in line with what they perceive as appropriate in a given situation in light of their role and obligations (March and Olsen 1989; 2011). This logic of action – the logic of appropriateness – can be differentiated from action based on cost-benefit calculations in the pursuit of personal interests – the logic of consequentialism (Saurugger 2014). Although normative institutionalism takes into account rational and strategic action, its role is not clear and implicit at times (see Saurugger 2017). Additionally, the distinction between norm-based and strategy-based logics of action has been criticised for hiding the interdependence between these two logics (Jenson and Mérand 2010; see also Saurugger 2017). Actor-centred constructivists and scholars engaging in related approaches have attempted to bridge the gap between norm-based and strategy-based approaches (see Saurugger 2014; 2017), partly by adopting a more sociological perspective (see Jenson and Mérand 2010). Considering strategic action and rational thinking in the deployment and pursuit of ideational resources and constructed objectives (see Jabko 2006; McNamara 2006; Mérand 2021a; Saurugger 2014; 2017; Woll and Jacquot 2010) allows for an opening of the logic of appropriateness towards a more strategic perspective on actor behaviour (see Saurugger 2017).

In line with these considerations, it is assumed here that norm-guided and rational-strategic logics of action are interdependent and can be combined under the analytical concept of the logic of appropriateness: actors act strategically when they pursue their objectives that are shaped by the normative-institutional setting they are acting in. Accordingly, the main hypothesis of this thesis is the following:

¹ Parts of this thesis have been published in the form of two research articles: Sacher (2019) and Sacher (2021). The approach of this thesis resembles Sacher (2021) in its research question and objectives, theoretical and methodological approach, empirical data used, and three of four case studies (Belgium, France and Spain and Portugal, without Italy). Arguments and structure might therefore be similar. The case of France has been covered in my Master thesis on the European Semester submitted in 2015 at the College of Europe in Bruges. Research for Sacher (2019) is mainly used in the case study on Spain and Portugal. Parts of the material regarding the case studies of Spain, Portugal, and Italy have been presented in the paper 'Sanctions and the SGP: The European Commission between Punishment and Pacification', co-written with Reinout van der Veer and presented at the ECPR General Conference 2019. The material used in this thesis is my own.

H.1: The Commission, when confronted with a situation in which it could impose a sanction, interprets its objectives in light of its perceived role and obligations. In pursuing its normative objectives, the Commission acts strategically.

It is, however, necessary to complement these assumptions with findings from the relevant literature and other sources, in order to be able to articulate expectations about which norms and role perceptions are in play, how these norms are interpreted, and how this shapes the actions of the Commission – or in other words, how the logic of appropriateness operates.

It has been shown that the European Commission has indeed reinterpreted the setting of fiscal policy surveillance (Mérand 2021b; 2021a; Schmidt 2016a; 2020; Vanheuverzwijn 2017). This is in line with the assumption of normative institutionalism that actors need to make sense of institutional rules and norms by interpreting them. The ambiguity of the rules resides in the possibility to apply either a strict and austerity-oriented reading of the regulatory framework, or a flexible, expansionary-oriented reading (Sacher 2021). The reform of voting rules, rather than leading to an automaticity of strict rule application under the SGP, led to the Commission largely taking over the Council's role of political decision-making body, with the distinction between the tasks of delivering technical assessment and taking political decisions getting fuzzy (European Fiscal Board 2019b; see also Mérand 2021a). This also means that rather than potentially following a strict and somehow technical application of enforcement rules under the SGP and leaving the final, political decision to the Council, wider political goals and considerations are likely to play a role in the Commission's decisions under the SGP (see European Fiscal Board 2019b; Mérand 2021a). This development further shows that the Commission can choose not to act in line with its role as 'guardian of the Treaties' (European Fiscal Board 2019b: 87) that strictly applies the given rules (see *Ibid.*). In a similar vein, Kelemen and Pavone (2022) argue that with regard to infringement procedures, the Commission has chosen to not fully apply the legal provisions, thereby harming its role as 'guardian of the Treaties' in order to gain Member State backing and maintain its role as 'engine of integration' (*Ibid.*: 30). This suggests that the Commission can and might have to choose between conflicting functions and provisions in order to achieve certain objectives.

While the roles of guardian of the treaty and engine of integration are not applied here, it is assumed that all Commission actors agree to and aim at the fulfilment of two central norms – that is the Commission's role as *reliable supervisor* and the *norm of cooperation*. The role as *reliable supervisor* can be derived from the common denominator of two – depending on an actor's causal ideas – potentially opposing treaty-based objectives and provisions. First, the principle of 'sound public finances' (European Union 2012c: Art.

119(3)), and the Commission's monitoring and sanctioning function. Second, the Commission being required to respect the overarching goals of the EU, including 'balanced economic growth' (European Union 2012a: Art. 3). Despite the potential conflict between the two objectives, both aim at economic stability, and thus Commission actors are assumed to adhere to the Commission's role as *reliable supervisor* that aims at fulfilling this goal. Whether this is via strict or lenient application, is subject to interpretation. Closely related is the *norm of cooperation*. According to the Treaty, 'Member States shall regard their economic policies as a matter of common concern and shall coordinate them within the Council' (European Union 2012c: 121). Although fiscal policies can be coordinated at the EU level, Member States need to implement fiscal policies at the domestic level. Ultimately, the EU cannot implement measures at the national level but relies on Member State cooperation (see Closa 2019). The norm of cooperation is therefore deemed a central component of the surveillance setting. Again, in line with the logic of appropriateness, how these norms and roles can be achieved or fulfilled is subject to the interpretation of Commission actors.

Findings from the literature suggest that the Commission is leaning towards a flexible rule application in its implementation of the SGP (see Bekker 2016; Coman 2018; Mabbett and Schelkle 2014; Mérand 2021b; 2021a; Miró 2020; Schmidt 2016a; 2020), also to prevent sanctions (see Schmidt 2020). Commission officials have further shifted their views on fiscal governance after the crisis, away from an austerity-oriented view that was preponderant in the crisis period towards a more flexible and politicised perspective on fiscal governance that acknowledges the growth-supporting and stabilising function of fiscal policies (Miró 2020). While under President Barroso, the flexible interpretation and application of the Pact had not been publically acknowledged, this changed under President Juncker (Schmidt 2016a; 2020). As argued by Closa (2019), the Commission – in the area of rule of law – prefers to find solutions by way of cooperation rather than by making use of punitive measures that risks cooperation with the Member State concerned in the future. Commission actors might be particularly hesitant to trigger punitive action under EMU, as sanctions for fiscal non-compliance might be economically counterproductive, given that the countries concerned by the measures might already be under economic pressure (see Hodson and Maher 2004). However, being perceived as too lenient does not seem to correspond to the Commission's objectives either, as it might have negative repercussions on the credibility of the Commission in its monitoring role (see Vanheuverzwijn 2017; see also van der Veer and Haverland 2018).

Building upon these findings and on the presented adaptation of normative institutionalism, three sub-hypotheses to H.1 will be tested in this thesis. The hypotheses reflect the logic of appropriateness and the assumptions regarding strategic action, which provide an explanation of how institutional norms shape actor behaviour: norms and rules are interpreted in light of a given situation, and actors act in line with what they think is appropriate given their role and obligations. Actors are expected to act strategically in order to achieve, fulfil, or sustain their normative objectives.

H.1.1: Potential or actual considerable non-compliance with the fiscal objectives is creating a conflict with the norm of cooperation. The Commission's role as reliable supervisor is interpreted in a way that it contains the obligation to defend the norm of cooperation. By stating the breach, it shows that it acts upon non-compliance. This action, while representing action in line with its obligations, further reflects the Commission's strategic behaviour that aims at fulfilling its normative objective.

H.1.2: When having detected and signalled a Member State's conflict with the norm of cooperation, the Commission interprets its role as reliable supervisor in the sense that it should fulfil and sustain the norm of cooperation in line with the goal-orientation of the setting. This is done by fostering the dialogue and further fiscal effort in order to improve the fiscal situation. Fostering cooperation is deemed more in line with the Commission's obligations than the enforcement of punitive measures. In acting towards its objectives, the Commission is expected to act strategically.

H.1.3: Given further effort by the Member State concerned, the norm of cooperation and the Commission's obligation to sustain this norm are deemed fulfilled. In addition, imposing sanctions might entail other negative repercussions that go against the Commission's role as reliable supervisor. Sanctions are accordingly not in line with the perceived obligations of the Commission in the situation at hand – and are therefore deemed inappropriate. In order to avoid their imposition, the Commission is expected to engage in strategic action.

In order to test these expectations, this thesis will apply theory-testing process-tracing methods. Accordingly, these three hypotheses represent the parts of the causal mechanism that is assumed to explain the non-imposition of sanctions in the studied cases. This mechanism is entitled normative-strategic minimum enforcement. In the following section, the application of process-tracing methods will be presented.

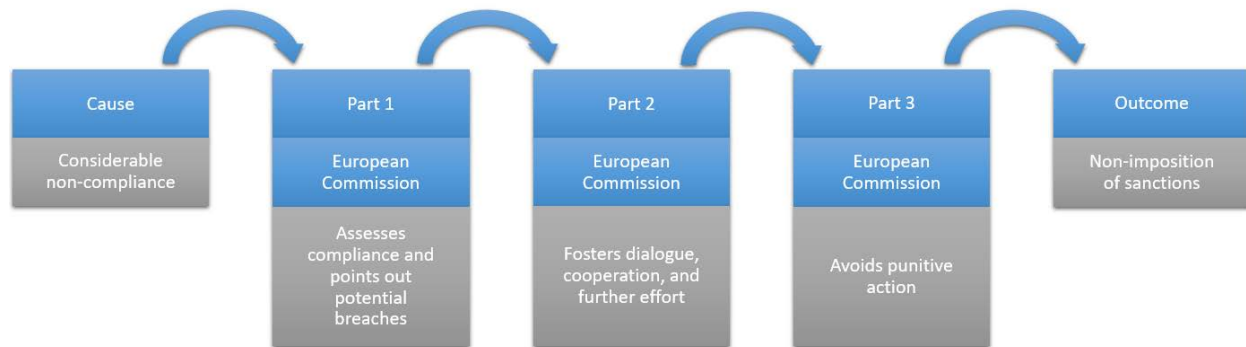
1.5 Theory-Testing Process-Tracing Methods

While the adaptation of normative institutionalism provides an analytical basis for this thesis, whether the theoretical assumptions hold in the case studies will be examined using theory-testing process-tracing methods (see Beach and Pedersen 2019). Process-tracing is a method that allows for drawing within-case inferences about a causal mechanism that connects a cause X to an outcome Y (Beach and Pedersen 2019; see also Bennett and Checkel 2015; Blatter and Haverland 2012; Fontaine 2020). Causal mechanisms are the central concept in this method, as they aim at explaining how a certain outcome occurs. Mechanisms consist 'of entities that engage in activities' and thereby transmit 'causal forces' (Beach and Pedersen 2019: 38-39). Hypothesising a causal mechanism means translating our theoretical assumptions into a mechanism. Testing our assumptions is therefore done by testing the functioning of our mechanism. Accordingly, if we find that the mechanism functions as we have expected, we can infer that our hypothesis is confirmed (Beach and Pedersen 2019).

Although process-tracing is mainly a within-case method, there is a cross-case dimension to it (see Beach and Pedersen 2016; 2019; Fontaine 2020). First, by mapping cases that share cause, outcome, and contextual conditions, a population of similar cases can be established in which our hypothesised causal mechanism can theoretically be present. Second, by conducting in-depth analyses of these cases, we can find out whether the mechanism is present in the selected cases, and whether it functions despite potential divergence in certain contextual conditions. Thereby, we can determine to which cases we can generalise our findings about our causal mechanism (Beach and Pedersen 2016; 2019).

The hypotheses presented above, which are based on the theoretical approach and on the literature on the European Commission and fiscal policy coordination, are translated into a causal mechanism in line with process-tracing methods. The mechanism of normative-strategic minimum enforcement is expected to link the cause X – the considerable non-compliance with the fiscal recommendations – and the outcome Y – the non-imposition of sanctions. The mechanism consists of three parts that reflect the three sub-hypotheses presented above – the Commission assessing compliance and pointing out potential or actual breaches, the Commission fostering dialogue, cooperation, and further effort, and the Commission avoiding punitive action. Figure 1 depicts the mechanism in its entirety.

Figure 1: Causal Mechanism - Normative-Strategic Minimum Enforcement



In order to test the validity of the assumptions, this thesis relies on a broad empirical basis of different sources. First, 30 expert interviews with representatives of the European Commission at both service level and political level, with Council officials, and with Member State representatives from Permanent Representations and Finance Ministries were conducted. Second, the analysis is based on a broad review of official documents from the Commission, the Economic and Financial Committee (EFC), and the Council. Third, the news coverage regarding the cases was extensively researched. The validity of the evidence used for the analysis based on the main theoretical approach was evaluated in line with process-tracing methods (see Beach and Pedersen 2019) and is presented in detail in Appendix 12.3.

1.6 Case Selection and Generalisability

The analysis will focus on four cases in which sanctions could potentially have been imposed. In terms of process-tracing methods, these cases represent *typical cases* that share cause, contextual conditions, and outcome (see Beach and Pedersen 2016; 2019). The selected cases are the four cases mentioned above – namely Belgium in 2013, France in 2015, Spain and Portugal in 2016, and Italy in 2018. In 2013, the Commission and the Council found that Belgium had taken no effective action to correct its excessive deficit (Council of the European Union 2013a; European Commission 2013c). In line with the new rules, the Commission could therefore have triggered the imposition of a fine. However, ultimately no fine was proposed. In the case of France in 2015, the Commission might have come to the conclusion that the government had not taken effective action. This could then have led to the imposition of a fine. However, the Commission did not establish this finding (see European Commission 2015e). In 2016, it was found that both Spain and Portugal had not taken effective action (Council of the European Union 2016a; 2016b). Accordingly, they were facing both a financial fine and the suspension of their structural funds. Nevertheless, no sanctions were imposed. Italy in 2018 was facing the potential opening of an EDP

(European Commission 2018f) and might have been sanctioned upon entering the corrective arm of the Pact. Ultimately, no EDP was opened (see Mérand 2021b), and accordingly no sanctions were imposed.

The cases share the same cause, which is the Member State's considerable non-compliance with its fiscal objectives. In all the cases, the sanctions were not imposed, although this would have been possible. In addition, the cases share the following contextual conditions: euro area membership, occurrence post-crisis, Member State cooperation, and the presence of the norm of cooperation and the normative role of the Commission as reliable supervisor. They differ in the following conditions: size, crisis situation, and support of the Commission's decision by most other Member States. If it can be shown that the mechanism occurred in all the cases and functioned as expected, we can conclude that our theoretical assumptions and our hypotheses are valid. Furthermore, given that all cases differ in certain contextual conditions, we can extend the boundaries of generalisability of the findings to all cases that are similar to the ones selected (see Beach and Pedersen 2019).

1.7 The Principal-Agent Model as an Alternative Theoretical Approach

The theoretical approach based on normative institutionalism offers an explanation of Commission behaviour from an angle that focuses on institutional norms, with a strong focus on the Commission. Although Member States – other than the ones concerned by the Commission's actions – and their behaviour form part of the wider setting in which the Commission acts, they do not play a central role in this approach. Similarly, while the applied adaptation of normative institutionalism takes into account strategic and rational actor behaviour, it does so in combination with a normative logic of action. In light of this focus, rational choice institutionalism in general and a principal-agent model in particular can serve as a basis for spelling out alternative hypotheses to the main explanation that focus precisely on rational actor behaviour and the role of Member States.²

In line with basic assumptions of the other new institutionalisms, the rational choice version assumes that 'institutions matter' (Saurugger 2014: 79). In contrast to the normative and sociological versions, actor behaviour can be explained by their stable preferences and strategic pursuit of preference maximisation (see Schmidt 2010: 49). Within EU studies, this fixed interest of supranational actors can be competence maximisation or the promotion of European integration in general (Pollack 2003). The principal-agent model is a rational choice institutionalist approach (Saurugger 2014). It assumes that Member States

² The presentation of the principal-agent model and the development of hypotheses is based on the application of this approach in my Master thesis submitted in 2015 at the College of Europe in Bruges.

rationality delegate power to supranational institutions in order to give credibility to their commitments (Pollack 2003). Delegation of power also decreases ‘the uncertainty linked to the imperfect division of power between competing European actors’, it ‘helps to reduce transaction costs involved in the decision-making process’ and Member States can ‘benefit [...] from the expertise of supranational actors’ (Saurugger 2014: 83). Member States know that once the supranational institution has been delegated a certain power, it might develop interests of its own and might act against the preferences of the Member States (see Delreux and Adriaensen 2017; Pollack 2003; Saurugger 2014). If the agent is acting against the preferences of the principal, one speaks of ‘agency losses’ (Pollack 2003: 19). These can take the form of ‘slippage’ that ‘occurs when constraints or incentives provided by the principals induce the agent to behave in ways systematically different from those preferred by the principals’, or of ‘shirking’, which happens more often and ‘occurs when an agent pursues preferences of its own rather than, or to the detriment of, the preferences of the principals’ (*Ibid.*: 19). In order to prevent these agency losses, principals introduce control mechanisms that would allow them – if needed – to prevent the agent to act against their interests (see Pollack 2003; Saurugger 2014). If preferences of supranational agents diverge from those of the principals, the approach tries to assess the conditions that allow agents to impose their preferences (Pollack 2003). It is argued that the capacity of a supranational agent to ‘move policy outcomes towards its own ideal point’ – or the agent’s ‘discretion’ – depends on the control that Member States have at their disposal (Pollack 2003: 46).

The principal-agent model is a framework that is often applied for the analysis of decisions and dynamics under EMU (Chang 2013; de la Porte 2011; Hodson 2009; Savage and Howarth 2018; Savage and Verdun 2016). In most of these studies, Member States play a central role, as the analysis either focuses on them delegating surveillance competences to the supranational level (Chang 2013), on the ECOFIN Council delegating responsibility for implementation to the Member States (Hodson 2009), or on Member State control of the Commission in its surveillance tasks (Savage and Howarth 2018). The principal-agent model would approach the puzzle of why the Commission has not triggered sanctions from the angle of the relationship between the Commission and Member States. In line with Savage and Howarth (2018) and Savage and Verdun (2016), Member States are seen here as principals that have delegated supervisory and enforcement competences to the Commission, which is therefore supposed to act as agent of the Member States. National governments can in this context be conceptualised as ‘multiple principals’ (Savage and Howarth 2018: 214) or in the ECOFIN constellation as ‘collective principal’ (Hodson 2009: 458), although they may have diverging preferences (see Hodson 2009; Pollack 2003). Given our focus on the Commission as agent that might develop its own preferences, and the Member States as principal that

may or may not control the agent, we can articulate the following hypotheses regarding the non-imposition of sanctions:

H.2: Given weak Member State control over the Commission, the Commission can shape Member State policies in the direction of fiscal consolidation and can thereby avoid the imposition of sanctions.

H.3: Given weak Member State control over the Commission, the Commission develops preferences of its own and does not impose sanctions against the preferences of the Member States that are in favour of sanctions.

H.4: Given strong Member State control over the Commission, the Commission acts as agent of the Member States and does not impose sanctions, which are not in the principal's interest.

The advantage of this approach is that it provides a clear analytical grid in terms of the relationship between the Commission and Member States and the assumption of fixed preferences. This allows for clearly detecting the potential impact of inter-institutional dynamics on the outcome. However, the conceptualisation of the inter-institutional relationship and the understanding of actor preferences also represents the limits and potential weaknesses of the approach. For example, preferences might change and might not solely reflect benefit maximisation (see Woll and Jacquot 2010). In addition, the focus on the relation between the Commission and Member States might lay too much emphasis on potential conflict and obscure the possibility of common objectives (see Vanheuverzwijn 2017). Nevertheless, the assumptions drawn from the principal-agent model will be tested in a concise manner for each case, which will be presented in a dedicated section of the case-study chapters.

1.8 Structure of the Thesis

This thesis is structured as follows. After this introduction, Chapter 2 will present the academic literature on the Commission, the role of sanctions in the wider literature as well as EU and economic governance-specific literature, research on EU fiscal policy coordination, and literature that applies the main theoretical approach of this study. A special emphasis will be put on the role of the Commission in the institutional setting of economic governance and on its role and behaviour in the application of the Pact. Chapter 3 will provide historical, political, and legislative background information regarding the Commission and sanctions under the SGP. It will cover the beginning and rationale of fiscal policy coordination in the EU, the experiences with the application of the Pact, and the changes of the institutional setting and of the role of the Commission as a result of the European Sovereign Debt Crisis.

In Chapter 4, the theoretical approach of this thesis will be explained. Building upon normative institutionalism, the analytical scope of the approach will be widened by taking into account strategic actor behaviour. This approach provides the basis for the hypotheses and analysis of this thesis. Chapter 5 is dedicated to the methodological approach of the study. Theory-testing process-tracing methods serve as a tool to test the assumptions. The causal mechanism that reflects the main hypotheses in line with process-tracing methods is developed, and the application of the method is explained. Further, the case selection and the use of empirical data are presented. In the subsequent analytical part – Chapters 6-9 – the hypothesised mechanism will be tested in the selected cases. The cases will be presented in the following order: Belgium 2013, France 2015, Spain and Portugal 2016, Italy 2018. Chapter 10 concludes this thesis with a summary of the findings. Further, the implications of the results for the wider research area will be discussed.

2. Literature Review

This chapter aims at providing an overview of the academic literature in the research area and of the application of the theoretical approach of this thesis. This review is split in two, going from more general topics in the first part, to more specific literature in the second part. Accordingly, this review will first present scholarly work that applies normative institutionalism and related approaches, key topics in the literature on the European Commission, the role of sanctions in the wider literature as well as in the literature on EU economic governance, and the literature on EU fiscal policy coordination. Second, the review will go into more detail on mostly more recent literature concerning the Commission in the institutional setting of economic governance and fiscal policy coordination and its role and behaviour in the application of the Pact.

2.1 Relevant Theories, the Commission, Sanctions, and Fiscal Policy Coordination

In this section, the application of relevant theories, the wider literature on the Commission, wider and more specific literature on the role of sanctions, and the general literature on EU fiscal policy coordination will be presented. Certain key topics that concern the Commission and the application of the Pact that are included in this overview will be discussed in more detail in Section 2.2.

2.1.1 Application of Related Theoretical Approaches

Normative institutionalism in the field of EU studies has only been applied explicitly in a few contributions in the area of EU foreign policy, focusing on the behaviour of Member States (Schimmelfennig and Thomas 2009; 2011; Thomas 2009; Thomas 2011). Bátorá (2005) draws upon the 'logic of appropriateness in the sense of March and Olsen' in the area of EU Diplomacy (*Ibid*: 46). Cini (1996) has studied the Commission's internal functioning through the lens of what is described as new institutionalism. Furthermore, the closely related approach of sociological institutionalism, for example, has been applied to focus on decision-making within the Commission (From 2002). Related sociological approaches are also widespread in the area of EU studies, such as in the area of EU migration policy (Guiraudon 2003), the Commission's internal decision-making regarding wine and pharmaceuticals (Smith 2014), but also concerning the Commission's internal political behaviour in the area of fiscal policy coordination (Mérand 2021a). The related approach of actor-centred constructivism has also been applied in the area of EMU (Howarth and Rommerskirchen 2013; Matthijs 2016; Zeitlin and Vanhercke 2018), with Quaglia and Howarth (2018) explicitly focusing on the Commission's strategic behaviour in the area of capital markets.

2.1.2 Central Topics in the Literature on the European Commission

The literature on the European Commission has focused on a variety of topics. A research area that has attracted much attention is that of institutional change and reform within the Commission (Bauer 2008; Cini 2004; 2008; 2016; Ege *et al.* 2018; Kassim 2008) – a topic that has also been approached in the area of economic governance (Savage and Verdun 2016). Similarly, the topic of leadership is approached in the wider literature (Chang and Monar 2013; Cini and Šuplata 2017) as well as in the area of economic governance (Howarth 2008; Smeets and Beach 2020). A closely related research area is that of Commission entrepreneurship (Laffan 1997; Maltby 2013), which is very present in research on EMU (Copeland and James 2014; Crespy and Menz 2015; Hodson 2013; Schön-Quinlivan and Scipioni 2017; Zeilinger 2021). The Commission has also been approached in its function as policy manager (Chang and Monar 2013; Laffan 1997), including in the area of EMU (Bauer and Becker 2014). An intensive debate regarding the Commission's changing role, function, and power within the supranational institutional setting has also been held in the literature (see Bauer and Becker 2014; 2016; Bickerton *et al.* 2015a; Bickerton *et al.* 2015b; da Conceição-Heldt 2016; Dehousse 2016; Hodson 2013; Nugent and Rhinard 2016; Schön-Quinlivan and Scipioni 2017; Warren *et al.* 2017). The details and relevance of this debate for this thesis will be discussed in detail below. The debate partly builds upon the cleavage between intergovernmentalist approaches that see Member States as the decisive actors in EU integration (see Hoffmann 1966; Moravcsik 1998), and neo-functionalist or supranationalist approaches that grant autonomy and weight to supranational bodies, such as the Commission (see Haas 1958; Sweet and Sandholtz 1997; see also Schmidt 2016b).

As mentioned above, research on the functioning of the European Commission and internal decision-making has made use of new institutionalist and sociological institutionalist approaches. Using a new institutionalist analytical framework, Cini (1996) examines leadership within the Commission, its internal organisation, and the culture within this administrative body. Cini (2000) argues that the analytical focus on administrative culture is helpful in understanding the actions of the Commission, although it cannot serve as the sole explanatory factor. Smith (2014), focusing on decision-making within the Commission and applying an approach based on constructivist institutionalism and sociology, argues that there are three conditions for the Commission to propose policies that entail significant policy change – precise problematisation, programmatic instrumentation, and a commitment to sustained legitimisation strategies. From (2002), applying a sociological institutionalist framework in order to understand the Commission's decision-making in the area of competition policy, argues that the Directorate-General for Competition

pursues one central goal and develops different roles to fulfil its tasks at different steps in the process of decision-making.

As will be discussed in detail later on, research in the area of Commission decision-making has also focused on the area of fiscal and economic policy coordination (Mérand 2021a; van der Veer 2022; van der Veer and Haverland 2018). In addition, the literature on the European Commission has approached the question of what preferences and beliefs European Commission actors hold (Connolly and Kassim 2016; Ellinas and Suleiman 2011; Kassim *et al.* 2013; Miró 2020). While some findings indicate that high-ranking Commission officials are in favour of more integration (Ellinas and Suleiman 2011), Kassim *et al.* (2013) argue that Commission actors cannot be classified as generally favouring a federal Europe or more Commission competences. Here again, the question of Commission goals and preferences and their role for the study at hand will be discussed below.

2.1.3 Sanctions in the Wider and Economic Governance-Specific Literature

The topic of sanctions has been widely approached in the area of international relations (Allen 2005; Barber 1979; Drezner 2000; 2003; 2011; Hafner-Burton and Montgomery 2008; Nossal 1989). Accordingly, within the area of EU studies, the topic of sanctions has mainly focused on the policy area of external relations and trade (Giumelli 2019; Giumelli *et al.* 2021; Portela 2010; 2015; 2016). Portela (2015) finds that Member States have a preference for circumventing the application of EU level sanctions in the area of foreign policy instead of openly and politically opposing their adoption should they be against them. Tallberg (2002) argues that in the EU, in order to achieve Member State compliance, there is a coexistence of ‘monitoring, sanctions, capacity building, rule interpretation, and social pressure’, which would be ‘mutually reinforcing, demonstrating the merits of combining coercive and problem-solving strategies’ (*Ibid*: 614). Closa (2019) and Schlipphak and Treib (2017) have covered the topic of sanctions in the area of rule of law and democracy. Closa (2019) finds that the Commission favours dialogue over resorting to enforcement instruments. Schlipphak and Treib (2017) argue that interventions by the EU in the area of democracy may trigger the *rally-round-the-flag effect* and strengthen national governments instead of weakening them. This effect could be avoided if interventions involve national level actors, target the offenders instead of the entire Member State, and are founded on a transparent and neutral assessment of the issue at stake.

The literature on the SGP and economic governance has also approached the question of sanctions. In the context of the first reform of the SGP, Hodson and Maher (2004) argue that the soft law aspects of the

Pact – such as peer pressure and monitoring – are a fitting governance instrument. This is due to the uncertainty in the area of economic policy coordination and the Council’s discretion regarding the imposition of sanctions and its reluctance to resort to them. Furthermore, sanctions have been part of the analysis of the post-crisis application of the SGP (Coman 2018; Mérand 2021a; 2021b; Schmidt 2020; van der Veer 2022), which will be discussed in more detail below.

2.1.4 General Literature on EU Fiscal Policy Coordination

There is extensive literature on fiscal policy coordination and the SGP, covering a wide thematic and temporal scope, which ranges from the origins of the SGP (Heipertz and Verdun 2004; 2010; Schwarzer 2007), over its first reform (Heipertz and Verdun 2010; Hodson and Maher 2004; Saurugger and Terpan 2016; Schwarzer 2007), to the reform of the Pact in the wake of the Sovereign Debt Crisis (Chang 2013; Fabbri 2013; Franchino and Mariotto 2020; Ioannou *et al.* 2015; Niemann and Ioannou 2015; Saurugger and Terpan 2016; Smeets and Beach 2020; Verdun 2015). Research has furthermore focused on the functioning and effectiveness of the Pact (Baerg and Hallerberg 2016), its application and implementation before the 2011 reform (Heipertz and Verdun 2010; Hodson 2011), and on the application and implementation of the European Semester – the EU’s framework of economic policy coordination (Baerg and Hallerberg 2022; D’Erman *et al.* 2019; 2022; Dunlop and Radaelli 2016; Haas *et al.* 2020; Maricut and Puetter 2018; Mariotto 2022; Zeitlin and Vanhercke 2018).

2.2 The Commission in its Institutional Context and the Implementation of the SGP

The previous section has provided an overview of the application of the theoretical approaches that are relevant for this thesis, and of the literature regarding the Commission, sanctions and EU fiscal policy coordination. In this section, the literature regarding the Commission in the context of the EU’s institutional setting and regarding its application of the SGP will be presented in more detail.

2.2.1 Changing Institutional Setting and Role of the Commission

Questions about the changing institutional setting of EU economic governance, the development of decision-making and power relations, and the role of the European Commission have been subject to a wide range of academic studies since the aftermath of the European Debt Crisis. The most prominent academic debate that shed light on the changing role of supranational and intergovernmental actors during and after the crisis has taken place between proponents of the new intergovernmentalism and those of the new supranationalism. This debate revolved around the questions of who was driving

integration during the crisis and whether economic governance reforms are characterised by intergovernmental or supranational aspects (Schmidt 2016b; Verdun and Zeitlin 2018; see Bauer and Becker 2014; 2016; Bickerton *et al.* 2015a; 2015b; da Conceição-Heldt 2016; Dehousse 2016; Hodson 2013; Nugent and Rhinard 2016; Schön-Quinlivan and Scipioni 2017; Warren *et al.* 2017). According to the new intergovernmentalism, Member State representatives now play a more important role in legislation and are leading the process of European integration, at the expense of supranational institutions (Schmidt 2016b). Observing a ‘tendency towards deliberation and consensus-building’ as well as delegation of competences to ‘de novo bodies rather than traditional supranational institutions’ such as the Commission, the new intergovernmentalism argues that ‘the post-Maastricht period is characterized by’ a paradoxical ‘integration without supranationalisation’ (Bickerton *et al.* 2015: 705-706).

In contrast, the new supranationalism focuses on the enforcement powers of supranational actors and their role in policy design (Schmidt 2016b). According to proponents of this approach, despite the intergovernmental decision-making mode that led to institutional change, supranational institutions have been empowered, and the European Commission has been given an important role in enforcing the new rules that have been decided in response to the European Debt Crisis (Bauer and Becker 2014; Dehousse 2016). The gain of competences of supranational institutions is therefore seen in absolute terms (Bauer and Becker 2016). Furthermore, rather than acting as policy entrepreneur, the Commission would now act more as policy manager (Bauer and Becker 2014). It has further been argued that via its reinforced role in the management of economic governance, the Commission has the ability to shape policies in a different way than before (Becker *et al.* 2016). The assumptions of both approaches are, however, not fundamentally contradictory. The authors of the new intergovernmentalism have shown that intergovernmental actors have increased their activity during the initiation and decision of legislation, while the authors of the new supranationalism have shown that the influence of supranational technical actors has not been reduced (Schmidt 2016b).

The debate on the distribution of competences in the post-crisis economic governance setting is relevant for the potential power the respective actors and institutions can exercise in day-to-day decision-making under the setting. A number of authors find that the Commission has gained enforcement competences in economic governance as well as discretion in the application of fiscal and economic surveillance procedures (Bauer and Becker 2014; de la Porte and Heins 2015; Dehousse 2016). These new competences increase the Commission’s potential for acting autonomously (Niemann and Ioannou 2015). Especially the introduction of RQMV in fiscal surveillance enhances the Commission’s power and increases

its discretion in relation to the Council by giving more automaticity to its proposals (Van Aken and Artige 2013; see also Seikel 2016)

2.2.2 The Commission and the Implementation of the SGP

Research in the area of EU economic governance has also explicitly focused on the behaviour of the European Commission within the reformed setting of fiscal policy coordination. Recurring topics are the reinterpretation and reshaping of rules and how the manner in which rules are applied by the Commission can be explained. While the initial phase of the crisis has been characterised by coercive and ideational power exercised by national actors, from 2012-2016, supranational actors have employed ideational and institutional power, with the Commission making more use of control and discretion (Carstensen and Schmidt 2017). Research has further shown that the Commission and the ECOFIN Council have strengthened the EDP by enforcing compliance with the statistical requirements of the regulatory framework, as illustrated by the fine imposed on Spain for the Region of Valencia failing to communicate correct statistics (Savage and Howarth 2018). The Commission has further adapted its internal structures in order to meet the enhanced organisational demands it is subject to under the new rules (Savage and Verdun 2016).

However, and despite the alleged toughening of fiscal governance after the crisis, recommendations and decisions in the area of fiscal surveillance were characterised by flexible deadlines, which were justified by the economic circumstances in the respective Member States (Mabbett and Schelkle 2014). Furthermore, Member States challenged Commission recommendations and analyses issued under the European Semester and enjoyed flexibility with regard to the implementation of policies (Bekker 2016). In addition, the Commission showed flexibility in its country evaluations and permitted the extension of deadlines regarding deficit reduction (*Ibid.*). The increasingly flexible reinterpretation and application of fiscal surveillance rules by the Commission has initially been hidden by a discourse that concentrated on structural reforms and austerity (Schmidt 2016a; 2020), and the Juncker Commission has applied flexibility provisions in order to avoid sanctions, especially regarding Italy (Schmidt 2020). It has also been shown that the Commission has used its discretion and the uncertainties of the rules to shape the policy coordination process (Vanheuverzwijn 2017). However, Vanheuverzwijn (2017) also argues that the Commission might have an interest in not being perceived as being too lenient, as this might have negative implications for its credibility in the setting of fiscal and economic policy coordination. The debate on the existence and use of flexibility by the Commission also has great importance for the assessment of the power relations between the Commission and Member States. In this regard, the flexible application of

the rules of the SGP the Commission has engaged in can be regarded as an indication of its 'new discretionary power', with the Commission showing that it is using its 'new autonomy' (Seikel 2016: 1411). However, as Vanheuverzwijn (2017) suggests, it might well be conceivable that the Commission is supported in its actions by Member States 'or by a certain normative and ideational environment' (*Ibid.*: 28).

Notwithstanding whether the focus of analysis is on Commission entrepreneurship at the agenda-setting phase or on the implementation and enforcement of certain policies, a recurring question in the literature is what goals the Commission pursues in its actions and under which circumstances the Commission acts. For Pollack (2003), the Commission's interests can be competence maximisation or the fostering of further European integration. For Kassim *et al.* (2013) there is a preference for increased EU power among Commission officials, which is, however, not due to a general interest in power maximisation, but selective, and which can be explained by functionality, ideologies and values. In a similar vein, for Becker *et al.* (2016), the Commission can still function as 'engine of integration' in executing its management functions in the area of economic governance. However, Thomson and Dumont (2022) argue that the Commission may act in line with the position of the home country of the Commissioner in charge of the policy, despite generally being in favour of European integration. Hodson (2013) argues that the Commission can be politically partisan in its actions and therefore can have preferences that differ from the objective of pursuing more integration and increasing supranational power. The Commission under President Juncker had indeed announced that it would be 'more political' (Dinan 2016: 101) and was according to Peterson (2017) 'the most explicitly political Commission ever' (*Ibid.*: 364).

This links to the academic question, asking to what extent the Commission is resorting and receptive to political reflections and actions. As argued by Bauer and Ege (2012), the political level – that is the College of Commissioners – has become more reliant on Council and Parliament after the Kinnock reforms. While actors at the administrative level are sensible to political issues, they rather do not take 'political ideology'-driven initiatives (*Ibid.*: 419). Their action is rather guided by the question of what is feasible given the political environment (*Ibid.*). Miró (2020), however, argues that Commission officials working on economic governance have developed the view that fiscal policy-making should take into account its social and political repercussions. In a similar vein, van der Veer and Haverland (2018) and van der Veer (2022) argue that the Commission, in its management of the European Semester and application of the SGP, is receptive to politicisation in Member States. According to Mérand (2021a), the Commission is receptive to political

elements, such as national elections and public opinion, and can also act in line with political ideology and partisanship.

Closely related to these considerations, several studies present findings regarding what can explain the actions of the Commission and its use of discretion in the enforcement of fiscal and economic surveillance provisions. Coman (2018) asks why macroeconomic conditionalities have been introduced during the euro crisis and then were interpreted flexibly when their execution was at stake in the case of Spain and Portugal in 2016. It is argued that changing power relations and changing ideas can explain this changing approach over time (*Ibid.*). It is further argued by Dunlop and Radaelli (2016) that the agenda-setting function of the Commission in the context of the European Semester is constrained by national and intergovernmental actors, and that the Commission's actions depend on 'anticipated reactions', intending to avoid a rejection of its recommendations by the Council (*Ibid.*: 121). Furthermore, the Commission would choose to bargain with Member States if this might lead to finding a solution – such as in the case of France in 2014-2015 – but resorts to a hierarchical approach when there is a threat to its power.

Van der Veer and Haverland (2018) argue that the European Commission, in its implementation of the European Semester, is susceptible to politicisation at the national level and reacts to greater politicisation in Member States by trying to sustain its reputation as a strong regulator. Furthermore, Van der Veer (2022) shows that the Commission, seeking reputation, reacts to politicisation in Member States either by strong enforcement of the SGP or by appeasement. The former reaction targets audiences that are in favour of strict fiscal policies and is enabled by greater Council powers and low salience of the issue at hand. The latter targets the politicised audience of the country that is subject to the enforcement measure and is enabled by greater Commission enforcement power and high salience. In the case of Italy in 2018, where a sanction could have been imposed, domestic politicisation led to the non-opening of an EDP (*Ibid.*). Mérand (2021a) argues that the Commission, in its application of the SGP, engages in 'political work' (*Ibid.*: 16), acting in line with political ideologies and partisanship, and also taking into account other political elements, which led to a politicisation of the Pact. Commissioner Moscovici would have been able to pursue his preference for a lenient rule application – including in relation to the question of sanctions in the case of Spain and Portugal – because of an internal neutralisation of conservatives and social-democrats (*Ibid.*). *Political work* was also in play within the Commission in the case of Italy in 2018, where the Commission did not open an EDP given a potentially lengthy corrective procedure, an agreement with the Italian government, and the objective of equal treatment of Member States under the Pact (Mérand 2021b).

As we can see, there have been a number of recent publications on the question of how the Commission's lenient application of the Pact can be explained. There even have been publications that cover some of the cases this thesis focuses on (see Coman 2018; Dunlop and Radaelli 2016; Mérand 2021a; 2021b; Schmidt 2020; van der Veer 2022). However, there is no comprehensive study that explicitly focuses on the question of why the Commission – in the post-crisis period – avoids the imposition of financial sanctions under the SGP. Similarly, while sociological and ideational approaches have been applied in order to explain Commission behaviour regarding the application of the SGP (see Coman 2018; Dunlop and Radealli 2016; Mérand 2021a; Schmidt 2020), normative institutionalism has not been used. While Mérand (2021a) takes into account the interpretation of rules and strategic and political behaviour, a normative institutionalist-oriented framework as applied in this thesis, which – while also taking into account strategies – explicitly focuses on the interpretation of wider norms and the fulfilment of roles in the framework of the logic of appropriateness, shifts the focus of analysis and adds another layer to it.

3. Background: The SGP, Sanctions, and the Role of the Commission

The aim of this thesis is to understand the Commission's behaviour with regard to sanctioning provisions in relation to the SGP. In order to set the stage for the analysis, some background information on the research area and the most important developments will be provided. Starting with the rationale of fiscal coordination under EMU and the initial design of the setting, the application of the SGP and the events leading to its first reform in 2005 will subsequently be presented. After this, the focus will be on the European Sovereign Debt Crisis, the reform it set in motion, and the experience with the application of the reformed Pact. The role of the Commission and of sanctioning provisions under the setting will be central to the presentation of the events and the political and institutional developments.

3.1 History of EU Fiscal Policy Coordination and Sanctions

3.1.1 Rationale of Fiscal Policy Coordination

Fiscal policy coordination and surveillance has been an integral part of EMU since its inception with the Maastricht Treaty that has been signed in 1992. In order to prevent potential problems that might arise from the combination of integrated monetary policy and decentralised and national fiscal policies, rules regarding deficit limits and a framework for multilateral surveillance have been introduced (Schwarzer 2007). When Member States adopted the euro as a common currency, they renounced at the same time at the possibility of using monetary instruments at the national level to address economic developments. Therefore, countries would need to resort to others measures, such as fiscal interventions and wages as a means for adjustment. However, given that national fiscal policies and wages can have an impact on inflation, they might interfere with the European Central Bank's (ECB) goal of price stability (Hodson and Maher 2001). In addition, at the beginning of the common currency it was thought that the spending policies of one euro area member might have an impact on the interest rates of other euro area members (see Hodson and Maher 2001). Another consideration was that fiscal distress might require the ECB to purchase government bonds – which indeed happened – although this might again go against its goal of price stability and the Treaty's so-called no-bailout clause. It was therefore feared that negative repercussions of national policies could be externalised to the euro area level, reflecting problems of moral hazard (see Schwarzer 2007).

The design of EMU was influenced by the economic understanding of policy-makers at the time of the currency's creation (Hall 2012). Towards the end of the 1970's and at the start of the 1980's, a change in

economic beliefs among policy-makers led away from Keynesianism towards a view that was shaped by Monetarism (McNamara 2006; see also Schwarzer 2007; Hall 2012). While the former proclaimed a stabilising function of fiscal policy, the latter contradicted and further suggested that monetary policy would have ‘few lasting effects on the “real” economy’ (Hall 2012: 357). According to what is termed a ‘neoliberal policy consensus’ by McNamara (1998: 122; see also McNamara 2006), monetary expansion would lead to inflation instead of fostering employment and demand. Inflation would have a negative impact on growth by way of leading to uncertainty about the development of prices, rising interest rates, and the deterioration of the value of financial assets. Therefore, the main economic policy goal should be reaching price stability by controlling inflation (McNamara 2006), which according to monetarist theory can be done by avoiding countercyclical monetary and fiscal interventions (McNamara 1998). The policy consensus was made possible by three factors, which were the perception that Keynesianism failed as a response to ‘the first oil crisis’, the theory of monetarism as a suitable alternative paradigm, and Germany delivering an example of successful application of ‘a pragmatic version of monetarist policies’ (McNamara 2006: 809). The economic understanding of the new policy consensus is reflected in the institutional setting and orientation of EMU. First, by establishing a politically independent central bank with the main objective of pursuing price stability and the interdiction of bailing out or financing the debt of Member States. Second, by introducing numerical limits for the debt and deficits of Member States (McNamara 1998) rather than creating the possibility for fiscal policy coordination beyond the short-term (Hall 2012).

3.1.2 Fiscal Policy Coordination in the Maastricht Treaty and the SGP

Fiscal and economic policy coordination were not placed at the same footing in the Maastricht Treaty. While economic coordination can be described as *soft*, fiscal coordination is *hard* in comparison. The differentiation stems from the presence of ultimate sanctioning mechanisms for non-compliance under fiscal coordination and the absence thereof under economic coordination (see Hodson and Maher 2001). Economic policy coordination was initially mainly managed under the Broad Economic Policy Guidelines (BEPGs). Fiscal policy coordination consists of a preventive arm – relying on multilateral surveillance – and the EDP as the corrective arm that can be opened in case of a breach of the fiscal requirements (see Hodson and Maher 2001). The limits set for deficits and debts – 3% and 60% of a country’s GDP – were laid down in Protocol 12 ‘on the Excessive Deficit Procedure’ as an annex to the Treaty (European Union 1992). In case of non-compliance under the EDP, the Maastricht Treaty introduced the possibility to

impose financial sanctions (*Ibid.*). The SGP that was adopted in 1997,³ operationalised the preventive arm of the Pact (European Commission 2018h) and corrective action under the EDP, including the application of sanctions (Heipertz and Verdun 2010).

The proposal of the SGP can mainly be explained by Germany seeking to reinforce the stability orientation of EMU (Heipertz and Verdun 2010; see also Schwarzer 2007). Sanctions were seen as an instrument to enforce the fiscal rules, and policy-makers knew that their actual imposition would have detrimental effects for Member States and for the public perception of the governance framework. Accordingly, sanctions were only foreseen for the last of several procedural steps with a certain leeway in the application of the EDP. The degree to which the procedure should be automatic was, however, disputed (Heipertz and Verdun 2010). The German Finance Minister Waigel proposed the adoption of an intergovernmental treaty and the introduction of automatic sanctions. New rules outside of EU law would have allowed to circumvent the treaty – which laid down discretion with regard to sanctions – and thereby to introduce automatic punitive provisions. The call for automatic sanctions and a separate treaty, however, was opposed by France and other countries, and by the European Commission with the French Yves de Silguy acting as Commissioner for Economic and Financial Affairs (see *Ibid.*). Given strong opposition to the idea of a separate treaty, the Commission was asked to prepare a proposal under EU law. The compromise found on the issue was the adoption of a non-binding political commitment to the imposition of sanctions (*Ibid.*). As written in the Resolution of the European Council that forms part of the SGP: ‘The Council [...] is invited always to impose sanctions if a participating Member State fails to take the necessary steps to bring the excessive deficit situation to an end as recommended by the Council’ (European Council 1997: 2).

The EDP consists of different steps, which are laid down in Art. 126 TFEU.⁴ As a rule, government deficits should not exceed 3% of GDP and government debt should be contained under 60% of GDP. The exceptions to the rules on deficits being, however, a substantial and continuous decline of the deficit, and a ratio close to the reference value, or an excess that is exceptional, temporary, and close to 3%. Similarly, an excess in government debt over the reference value is deemed in compliance with budgetary discipline if it is ‘sufficiently diminishing and approaching the reference value at a satisfactory pace’ (European Union

³ The original SGP comprised three different documents: ‘Council Regulation (EC) No 1466/97, of 7 July 1997, on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies’; Council Regulation (EC) No 1467/97, of 7 July 1997, on speeding up and clarifying the implementation of the excessive deficit procedure’; ‘Resolution of the European Council of 17 June 1997 on the Stability and Growth Pact’

⁴ Former Art. 104c Treaty on European Union (TEU)

2012c: Art. 126(2)). In case a Member State is not fulfilling the criteria for budgetary discipline, the Commission is required to prepare a report, which it can also do if it sees 'a risk of an excessive deficit in a Member State' (*Ibid.*: Art. 126 (3)). In a next step, the EFC⁵ – a Council preparatory body – has to issue an opinion on the Commission's report (*Ibid.*: Art. 126 (4)). The Commission, if it judges that an excessive deficit exists in a Member State, or that it 'may occur', then is supposed to 'address an opinion to the Member State concerned' (*Ibid.*: Art. 126 (5)). The Council – upon a Commission proposal – decides 'whether an excessive deficit exists' (*Ibid.*: Art. 126 (6)). The existence of an excessive deficit then requires the Council – again upon a Commission recommendation – to address recommendations to the Member State that aim at 'bringing that situation to an end within a given period' (*Ibid.*: Art. 126 (7)). These recommendations can be made public in case the Council decides that the Member State has not taken 'effective action in response to its recommendations' (*Ibid.*: Art. 126 (8)). In a next step, the Council can take the decision 'to give notice to the Member State to take, within a specified time limit, measures for the deficit reduction' if a Member State 'persists in failing to put in practice the recommendation of the Council' (*Ibid.*: Art. 126 (9)). Should the Member State not comply with the measures laid down in the notice, financial sanctions or other – softer – measures can be imposed (*Ibid.*: Art. 126 (11)). Council action under the paragraphs '8, 9, 11 and 12' has to be based on Commission recommendations (*Ibid.*: Art. 126(13)). The Commission accordingly occupies a central role in the coordination and functioning of the EDP by monitoring compliance, providing technical assessments, and enacting enforcement steps, although with the final decisions being taken by the Council.

The sanctions under the initial SGP reflect those already present in the Maastricht Treaty and still present in the Treaty today. The imposition of financial sanctions was possible in case of a failure to comply with a Council notice under Art. 104c(9) TEU.⁶ These sanctions could take the form of a non-interest bearing deposit or of a fine (see European Union 1992: Art. 104c(11); 2012c: Art. 126(11)). The SGP clarified the application of this provision and the procedure to follow. It introduced a gradual approach towards the imposition of these sanctions. As written in the Treaty, they are not automatic, but the Council 'may decide to apply' them (European Union 2012c: Art. 126(11)). The first instrument should 'as a rule' be that of a non-interest bearing deposit of 0.2% of GDP, plus a component of 'one tenth of the difference between the deficit as a percentage of GDP in the preceding year and the reference value of 3% of GDP' (Council of the European Union 1997b: Art. 11-12). This variable part of the deposit could be added on an

⁵ Former Monetary Committee

⁶ Now Art. 126(9) TFEU

annual basis in case of continuing non-compliance. Single deposits should, however, not amount to more than 0.5% of GDP. Only if an excessive deficit has not been corrected after two years, the deposit is converted into a fine (*Ibid.*: Art. 12).

3.1.3 Experience with the Application of the SGP and First Reform 2005

The first experience with the application of the Pact revealed the political problems and tensions that the Pact's implementation would entail. Although not directly under the legal setting of the Pact – but under the BEPGs – the case of Ireland is a first example of this. In its 2001 budget, the Irish government was planning tax cuts and expenditure increases, although economic projections looked positive (Hodson 2011). The Council, on a Commission recommendation, adopted a recommendation to Ireland under Article 99(4) Treaty establishing the European Community – now 121(4) TFEU – asking for a revision of its expansionary fiscal course and pointing out the risk of an overheating economy (Council of the European Union 2001; see also Heipertz and Verdun 2010; Hodson 2011). However, the Council and the Commission's action met strong criticism by Irish politicians. The attempt to use peer pressure to enforce policy objectives in the area of economic policy coordination had not worked and backfired in this case (Heipertz and Verdun 2010; Hodson 2011; see also Hodson and Maher 2001; Schwarzer 2007). In 2002, the Commission recommended to the Council to adopt early warnings under the Pact's preventive arm against Germany and Portugal, as both countries were moving towards the deficit limit of 3% of GDP. However, confronted with a blocking minority in the Council, the Commission withdrew the recommendation. Instead, Germany and Portugal made non-binding budgetary commitments (Heipertz and Verdun 2010).

In 2003, EDPs were opened for both Germany and France. After rising tensions between the Commission and the two countries, the Commission decided to take further steps under the respective EDPs and proposed to the Council to take a decision under Article 104.8 – that is stating a lack of effective action – and under Article 104.9 – that is the Council giving notice to a country (see Heipertz and Verdun 2010). Although not immediately triggering sanctions under the rules at the time, these steps would have brought the countries closer to their imposition (see *Ibid.*). Nevertheless, the ECOFIN Council, in November 2003, did not adopt the Commission's recommendations, as these were opposed by a blocking minority (*Ibid.*). Instead, the Council, based on votes by Germany, France, Greece, Italy, Portugal, Luxembourg, Ireland, and Belgium, adopted conclusions that were not based on Commission recommendations, stating to hold the French and German EDPs in abeyance (*Ibid.*). The Commission, however, brought the case before the Court of Justice of the EU, seeking to protect its position as guardian

of the SGP and to restrain the Council's room for manoeuvre in the application of the Pact (Hodson and Maher 2004). The Court ruled in July 2004 that indeed, the Council cannot simply depart from the procedural rules in that the Council's decisions must be based upon a recommendation by the Commission. Nevertheless, the Court ruled that the Council is free to not adopt a Commission recommendation, whereby an EDP is effectively put in abeyance (Heipertz and Verdun 2010; Hodson and Maher 2004).

The Pact was reformed for the first time in 2005. While Germany and France expressed their preference for a more flexible Pact, smaller countries such as the Netherlands, Austria, and Finland were opposed to the idea of allowing more leniency. In the end, a compromise was found that – in general terms – clarified the available discretion under the Pact (Heipertz and Verdun 2010). Under the preventive arm, the principal changes were the introduction of a country-specific Medium-Term-Objective (MTO) – instead of the requirement for countries to be close to balance or in surplus – the requirement to improve the structural balance by 0.5% of GDP annually if the MTO has not been reached, and the possibility for structural reform to allow for a deviation from the fiscal objectives. Under the corrective arm, the main changes were the following. First, the reform made explicit what would be 'other relevant factors' that should be taken into account when the Commission prepares a report at the start of an EDP (Heipertz and Verdun 2010: 168). Second, while before the reform, excessive deficits were only deemed 'exceptional and temporary' in case of a 'severe economic downturn', with the change, negative growth or a period of low growth would suffice for making an excessive deficit exceptional (*Ibid.*). Finally, the reform also made the extension of deadlines more flexible. If, in response to an Article 104(7) recommendation or an Article 104(9) notice,⁷ 'effective action has been taken [...] and unexpected adverse economic events with major unfavourable consequences for government finances occur', a revised recommendation or notice can be adopted that can 'extend the deadline for the correction of the excessive deficit by one year' (Council of the European Union 2005: Art. 2 and 3; see also Heipertz and Verdun 2010).

Although a notice for Germany under Article 104(9) was blocked in 2003 by the Council, in 2006, the Commission again recommended a notice to Germany. This time, it was adopted by the Council. The acceptance of this step by the German government can be explained by the beneficial effect of supranational pressure to back the government's consolidation course at the domestic level and by the understanding that the notice would not lead to sanctions under the EDP (Heipertz and Verdun 2010).

⁷ Now Article 126(7) and (9) TFEU

3.2 The Sovereign Debt Crisis and the Reform of Fiscal Policy Coordination

The EU's framework of fiscal policy coordination and surveillance has been subject to a significant overhaul as a response to the European Sovereign Debt Crisis that hit the euro area in the aftermath of the global financial crisis (see Chang 2013). It was set in motion when the Greek government, in October 2009, declared that it would run a deficit of nearly 13% of GDP, rather than 6.5% as communicated earlier. As a consequence, interest rates considerably increased, and the Greek economy contracted. In face of potential contagion, Irish, Portuguese, Spanish, and Italian government bond yields increased as well (Blyth 2015). The reasons for the crisis were deeply rooted in asymmetries within the euro area. Just like before the start of EMU, northern European Member States kept on pursuing an export-led growth strategy, while mostly southern European Member States pursued a domestic demand-led growth strategy. This latter approach was encouraged by low interest rates due to membership in the monetary union and by a central monetary policy executed by the ECB that could not solely focus on high inflation in southern Member States without negatively affecting growth in northern countries. Export from the north also led to surpluses that were lent to states and economic actors in the south (Hall 2012). While the Greek situation can be traced back to domestic structural issues, such as lenient tax enforcement and a lack of coordination concerning the government's expenditure, the situation in Spain, Portugal, Italy, and Ireland was distinct from this. In Spain and Ireland, debt levels prior to the crisis were low. However, fed by cheap financing conditions, housing-bubbles built up, which eventually burst. The financial markets reacted to the fiscal burden this did or was feared to have entailed for Spain and Ireland. In the case of Portugal and Italy, the financial markets realised in the wake of contagion risk that the two countries' economies might face economic problems in the future due to their old-age population, low productivity, and low growth (Blyth 2015).

Despite these structural asymmetries and dynamics and the central role of private debt that contributed to the occurrence of the crisis and its magnitude, the dominant discourse of European policy-makers draw the picture of uncontrolled fiscal policy-making that led to high public debt levels (Blyth 2015; see also Hall 2012; Matthijs 2016; Matthijs and McNamara 2015). In line with this narrative, one major intention of the reform of the framework of fiscal policy coordination was to improve the implementation of the SGP by enhancing the role of the debt criterion, expanding sanctioning provisions, and making the implementation of the surveillance setting more effective by introducing new voting rules (see European Council 2010; Verdun 2015). However, the way the overall direction and intention of reform was presented in public (see European Council 2010) obscured to some extent that the SGP was not only made

stricter, and that the Commission still enjoys discretion in its implementation of the Pact and evaluation of fiscal performance (see Mabbett and Schelkle 2014). First, flexibility provisions that have been introduced with the first reform of the Pact in 2005 have not been revised or retracted. This concerns the definition of ‘exceptional economic circumstances’ and the possibility for the Council and the Commission to issue revised recommendations and notices under Art. 126(7) and (9) (Sacher 2021). Second, the reform has introduced even further flexibility provisions with the so-called general escape clause (see European Commission 2020a). Several reform packages and instruments were adopted from 2011 onwards. These include the Six-Pack, the Fiscal Compact – as part of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union – the Two-Pack, and the introduction of the European Semester and the so-called Macroeconomic Conditionalities. These changes will now be presented in detail.

3.3.1 The Six-Pack

The Six-Pack, which entered into force in December 2011, comprises one Directive and five Regulations that entail a reform of the SGP, but also introduce a new surveillance instrument – the Macroeconomic Imbalance Procedure (MIP) (see European Commission 2011a). Key changes of this SGP reform include the increased significance of the debt criterion (see Chang 2013; Holler and Reiss 2011), the change of voting rules, and the introduction and change of sanctioning provisions (see Bauer and Becker 2014).

Among the novelties this reform package entails is the operationalisation of the debt criterion for triggering an EDP (Holler and Reiss 2011). While before the reform, a public debt over 60% of GDP did not trigger an EDP in case it was ‘sufficiently diminishing’, the Six-Pack defines what is meant by this (*Ibid.*: 88). Namely, ‘if the differential with respect to the reference value has decreased over the previous three years at an average rate of one twentieth per year as a benchmark’ (Council of the European Union 2011; Art. 1; see also Holler and Reiss 2011). Furthermore, the reform package has considerably changed the legal and institutional setting of the SGP with regard to sanctions. Not only was the imposition of sanctions made more automatic than before (Van Aken and Artige 2013), the reform package has also introduced new sanctioning provisions that might be triggered at earlier stages of surveillance (Bauer and Becker 2014). These new sanctioning provisions have been added to both the preventive and the corrective stage. Under the preventive arm, financial sanctions in the form of interest-bearing deposits can now be imposed for euro area countries (European Union 2011a: Art. 4). As for the corrective arm, sanctions might now be triggered already at the opening of an EDP – that is the Council deciding upon the existence of an excessive deficit – should a Member State be found to be in ‘particularly serious non-compliance with the budgetary policy obligations laid down in the SGP’ or if this country has already ‘lodged an interest-bearing

deposit' under the preventive arm (*Ibid.*: Art. 5(1)). In case these conditions are present, the Commission is supposed to 'recommend that the Council [...] require the Member State concerned to lodge with the Commission a non-interest-bearing deposit amounting to 0,2% of its GDP in the preceding year' (*Ibid.*: Art. 5(1)). This decision is subject to RQMV in the Council. However, the deposit can be cancelled or its amount can be reduced in case of 'exceptional economic circumstances or following a reasoned request by the Member State concerned' (*Ibid.*: Art. 5(4)).

In addition to the fines that were always foreseen as the ultimate step of an EDP, the Six-Pack enables Commission and Council to impose fines without being obliged to go until the very end of the procedure. Should a Member State be found by the Council – based on a Commission recommendation and in line with Article 126(8) – not to have 'taken effective action to correct its excessive deficit', the Commission is supposed to propose to the Council that it imposes a fine of '0,2% of the Member State's GDP in the preceding year' (*Ibid.*: Art. 6(1)). In the Council, this decision is again subject to RQMV. However – and just like for the non-interest-bearing deposit – the Commission can propose to the Council the cancellation of the fine or the reduction of its amount in case of 'exceptional economic circumstances or following a reasoned request by the Member State concerned' (*Ibid.*: Art. 6(4)). While what constitutes 'exceptional economic circumstances' is well defined,⁸ what constitutes a 'reasoned request' is not determined in the Regulation, and it is therefore entirely up to the Commission to judge what is sufficient for reducing or cancelling a fine (COM 2).

Providing further flexibility for the application of the Pact, under what is termed *general escape clause*, several articles are subsumed that allow Member States to temporarily deviate from the recommendations issued under the Pact in case of a crisis situation (see European Commission 2020a). For the corrective arm, the clause foresees that in case of a 'severe economic downturn for the euro area or the Union as a whole', Member States can receive revised Article 126(7) recommendations or Article 126(9) notices if 'this does not endanger fiscal sustainability in the medium term' (Council of the European Union 1997b: Art. 3(5) and 5(2); see also European Commission 2020a). As for the preventive arm, for both euro area Member States and non-members it is stated that 'in the case of an unusual event outside the control of the Member State concerned which has a major impact on the financial position of the

⁸ A deficit above three percent of GDP is deemed exceptional 'when resulting from an unusual event outside the control of the Member State concerned and with major impact on the financial position of the general government, or when resulting from a severe economic downturn' (Council of the European Union 1997b: Art. 2). In the case of the latter, the excess is deemed exceptional 'if the excess over the reference value results from a negative annual GDP volume growth rate or from an accumulated loss of output during a protracted period of very low annual GDP volume growth relative to its potential' (*Ibid.*; see also European Union 2011a: Art. 2(3))

general government or in periods of severe economic downturn for the euro area or the Union as a whole, Member States may be allowed temporarily to depart from the adjustment path towards the medium-term budgetary objective [...] provided that this does not endanger fiscal sustainability in the medium term' (Council of the European Union 1997a: Art. 5(1) and Art. 9(1); see also European Commission 2020a).

One aspect that considerably changed the rules of the game concerning the enforcement of punitive provisions was the adoption of RQMV (see Van Aken and Artige 2013). Under this voting rule, Commission recommendations are considered adopted unless the Council opposes them by a qualified majority (European Union 2011a). The aim and rationale of the introduction of RQMV was to 'ensure a higher degree of automaticity' (European Council 2010: 7) by limiting 'the role of the Council' 'when taking decisions on sanctions' (European Union 2011a: Recital 7). The underlying assumption of the reform is that the Council will not impose sanctions given the reluctance of Member States to punish their peers (see Dehousse 2016; Hodson and Maher 2004; Mabbett and Schelkle 2014). During the time of reform, the Commission was in favour of greater automaticity with regard to sanctions and included RQMV in its legislative proposal of the Six-Pack. While the German government was initially supporting automatic sanctions – as did the European Parliament, the Netherlands, and the United Kingdom (UK) –, the French government was against this measure – as was Italy. Although a deal was struck between France and Germany that did not foresee automaticity, the provision was ultimately adopted (Chang 2013). The Six-Pack introduced RQMV for interest bearing and non-interest bearing deposits (see European Union 2011a) and for the fine that is to be imposed in case of a country being found under Article 126(8) not to have 'taken effective action to correct its excessive deficit' (*Ibid.*: Art. 6). With the fiscal compact, RQMV is extended to all steps under the EDP. Furthermore, Commission recommendations directed at members of the euro area cannot be changed by the Council anymore (Van Aken and Artige 2013). The Commission, however, argues that the fiscal compact lays down a 'behavioural [...] commitment' 'rather than a legal' one (European Commission 2016n: 149).

RQMV increases the automaticity in the adoption of Commission recommendations by lowering the required majority for passing recommendations in the Council, which also enhances the discretion of the Commission in relation to the Council (Van Aken and Artige 2013). However, assuming that increasing the power of the Commission leads to stricter enforcement than under greater Council control implies that the Commission actually proposes strict recommendations under the Pact (Mabbett and Schelkle 2014). Indeed, as argued by the European Fiscal Board (2019b), rather than circumventing the implementation

problems caused by the Council by giving the Commission more power – and expecting it to use this near-automaticity to apply the reinforced surveillance rules in a strict manner – the Commission has actually become more political in that political considerations now take place within the Commission rather than within the Council (European Fiscal Board 2019b; see also Mérand 2021a).

3.3.2 The Fiscal Compact

Despite the adoption of the Six-Pack in 2011, a separate, intergovernmental treaty was signed in March 2012, which aimed at an enhancement of the provisions of the Six-Pack (see Chang 2013; European Union 2012b). This legal act, based on a Franco-German initiative (Smeets and Beach 2020) and adopted outside of the EU's legal framework, was signed by all EU Member States except for the UK and the Czech Republic (Chang 2013; see also European Union 2012b). Other than introducing the procedural changes to the EDP that were depicted above, one key provision of the fiscal compact – that is title three of the treaty – is that it requires participating Member States to adopt the provision to have a balanced budget or one in surplus – restricting the structural deficit to 0.5% of GDP – by way of national legislation (see Chang 2013; European Union 2012b). Further, it confers upon the Commission the task to monitor the implementation of this provision (Bauer and Becker 2014).

3.3.3 The Two-Pack

With the Two-Pack – two Regulations adopted by the European Parliament and the Council, and having entered into force in May 2013 – additional provisions for the reinforcement of fiscal and economic surveillance were introduced (see European Commission 2013d). One crucial novelty of this reform package is the requirement for members of the euro area to submit DBPs on an annual basis to the Commission and the Eurogroup (see European Union 2013a; see also Bauer and Becker 2014;). The Commission is required to provide an assessment of these plans (European Union 2013a). The plans are supposed to be in line with policy recommendations Member States have received under the SGP and the wider surveillance setting of the European Semester (*Ibid.*). Should the Commission find that the submitted plan represents a case of 'particularly serious non-compliance with the budgetary policy obligations laid down in the SGP', it is required to ask the government concerned for a revised plan (*Ibid.*: Art. 7(2)). Before resorting to what can basically be seen as a public rejection of a Member State's budgetary planning, the Commission is supposed to consult the government concerned. The revised plan should then be subject to a new Commission opinion (*Ibid.*: Art. 7(2)). This surveillance instrument – by definition – intervenes even before national parliaments have adopted their countries' budgets (see

European Fiscal Board 2019b), implying that national budgets are prepared ‘in the shadow of EU surveillance’ (de la Porte and Heins 2015: 19). Furthermore, the Two-Pack has created the possibility for the Commission to issue so-called autonomous recommendations – that is without Council approval – directly to euro area Member States (see European Fiscal Board 2019b). The Commission is required to ‘address a recommendation to the Member State concerned’ if the country is at ‘risk of non-compliance with the deadline to correct the excessive deficit’ (European Union 2013a: Art. 11(2)). This provision further adds to the instruments at the disposal of the Commission to enforce the recommendations under the Pact.

3.3.4 The European Semester

Another novelty of the post-crisis setting of fiscal and economic policy coordination is that the different coordination instruments, such as the SGP, the DBPs, and the MIP, are brought in line under one framework and timeline – the European Semester (European Commission 2022f). Set in place already in 2010 (*ibid.*) it has been given a legal basis with the Six-Pack (European Union 2011b).

3.3.5 Macroeconomic Conditionalities

Part of the post-crisis reform was the strengthening of the EU’s ability to enforce fiscal compliance with the extension of the link between the SGP and Cohesion Policy – the so-called macroeconomic conditionalities (see Coman 2018; European Council 2010; Sacher 2019; Viță 2017). Although already before the reform, non-compliance under the SGP could trigger the suspension of funding under the Cohesion Fund, this instrument has been made applicable to funding under all ESI Funds (Viță 2017).⁹ This also means that all EU Member States can now be subject to this sanction, rather than just those Member States that qualify for funding under the Cohesion Fund (see Viță 2017) – that is countries with a comparatively low per capita gross national income (see European Commission 2022a). In addition, unlike all other financial sanctions under the Pact, the macroeconomic conditionalities apply to all Member States – with the exception of the UK – and not only to members of the euro area (see European Commission 2019c; European Union 2013b). The concrete link with fiscal surveillance is the following: should it be decided, in line with Article 126(8) or (11) TFEU that a Member State has not ‘taken effective action to correct its excessive deficit’ (European Union 2013b: Art. 23(9)), the Commission is required to

⁹ ESIF comprised the following funds from 2014-2020: 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 (European Union 2013b)

propose ‘to the Council to suspend part or all of the commitments or payments of the programmes of a Member State’ (*Ibid.*). The decision to suspend commitments is taken under RQMV and therefore adopted unless a majority of the Council blocks the Commission’s recommendation (*Ibid.*).

Unlike for the fines under the SGP that are also triggered by the establishment of non-effective action, the suspension cannot be cancelled based on flexibility provisions (see *Ibid.*). When the Commission determines the level and scope of the suspension, it, however, can take into account certain mitigating factors: ‘the scope and level of the suspension [...] shall be proportionate, respect the equality of treatment between Member States and take into account the economic and social circumstances of the Member State concerned, in particular the level of unemployment [...]’ (*Ibid.*: Art. 23(11)). The Regulation foresees that the suspension should be revoked in case the country’s ‘excessive deficit procedure is held in abeyance’, or ‘the decision on the existence of an excessive deficit’ has been abrogated (*Ibid.*: Art. 23(12)). This punitive provision has a comparatively high procedural automaticity, with the Commission playing a key role in its application (see Sacher 2019).

The introduction of macroeconomic conditionalities had been opposed by the European Parliament, acting as co-legislator during the negotiations with the Council of the 2014-2020 Funding Period (European Parliament 2013; see also Coman 2018). While Members of the European Parliament (MEPs) ended up accepting the instrument, mitigating provisions regarding the amount of suspensions were introduced, and the European Parliament was granted a participative role in the case of a suspension via a structured dialogue with the Commission (Sacher 2019). More concretely, it is foreseen in the Regulation that ‘the European Parliament may invite the Commission for a structured dialogue’ in which the Commission should inform the Parliament ‘of the ESI Funds and programmes which could be subject to a suspension of commitments and payments’ (European Union 2013b: Art. 23(15)). The Commission, in its proposal, ‘shall give due considerations to any elements arising from and opinions expressed through the structured dialogue’ (*Ibid.*: Art. 23 (9) and (15)). This gives the Parliament an active and formal role in the application of this particular suspension provision – an institutional feature that does not exist for the other sanctioning provisions under the Pact.¹⁰

¹⁰ While the setting governing macroeconomic conditionalities as described here was applicable over the period 2014 to 2020, and is therefore relevant for the case studies of this thesis, the provisions have been reformed for the new funding period 2021-2027 (see European Union 2021).

3.3.6 Non-Legislative Changes

The application of the Pact can, however, not be reduced to legal changes. The Commission has, over time, interpreted and reinterpreted the SGP (see Schmidt 2016a; 2020; Vanheuverzwijn 2017). One important initiative of the Juncker Commission in this regard was the publication of the Communication ‘Making the best use of the flexibility within the existing rules of the Stability and Growth Pact’ on 13 January 2015 (European Commission 2015b). This communication lays down how the Commission might use its ‘margin of interpretation’ in order to give consideration to investment, ‘structural reforms’, and ‘cyclical conditions’ in the implementation of the Pact (*Ibid.*: 4).

3.3.7 The Meaning of Sanctions

In all of these provisions and changes thereof, the question sometimes remains how an instrument must look like in order for it to be considered a sanction. What constitutes a sanction can be regarded from different angles. Legally speaking, when references are made to sanctions in the relevant legislation, these concern financial sanctions such as interest or non-interest bearing deposits and fines. Although not defined as a sanction, one can arguably add to this list the suspension of funding under the macroeconomic conditionalities, as this provision resembles deposits in its functioning. This is because deposits will in principle be retransferred to the government in violation of its objectives in case of compliance. At the same time, there are measures and instruments under the SGP that can be described as political, ‘soft’ (Hodson and Maher 2004: 807) or symbolic sanctions that mainly aim at the reputation of the recipient governments and at building up pressure on a country to correct its policies (see European Council 2010; Hodson and Maher 2004; Savage 2005). Examples for what might be perceived as a non-financial sanction by Member States or the public would be the rejection of a DBP, the issuance of an early warning, the issuance of a notice, the opening of an EDP, or the establishment of non-effective action (see Hodson and Maher 2004; Savage 2005).

3.3.8 Experience with the Application of the Pact during and after the Crisis

The immediate impact of the global financial crisis on the application of the SGP was the extensive opening of EDPs in 2009 and in 2010, so that by 2010, nearly all EU Member States were subject to an EDP (see European Commission 2022b). Instead of declaring the deficits as ‘exceptional’ and thereby avoiding the opening of EDPs, a choice was made by the Commission and Member States to apply the provisions of the Pact, albeit while making use of the flexibility it offers (Heipertz and Verdun 2010: 188). This choice can be explained by Member State governments being interested in formally continuing the application of the

Pact and by the view among fiscal experts that the SGP would still be the right framework for addressing the situation (*Ibid.*).

While the reform of the SGP in the wake of the Sovereign Debt Crisis has mainly aimed at strengthening the Pact's enforcement, the application of the Pact since the crisis has overall not mirrored this intention (see Mabbett and Schelkle 2014; Schmidt 2016a; 2020). Rather than following the 'disciplinarian interpretation of the Pact', the Commission's aim was to avoid 'pro-cyclical retrenchment' (Mabbett and Schelkle 2014: 3, 14-15). As 'economic output performance' worsened, the Commission increasingly resorted to 'exceptions and flexible adjustments for non-programme countries' (Schmidt 2016a: 1044). The contrast between reform intentions and application is further highlighted by the fact that the Commission – and ultimately the Council – have not imposed sanctions upon any euro area Member State for not complying with its fiscal recommendations. However, the Commission potentially could have proposed sanctions in a number of post-crisis situations. As presented in the introduction, this was the case for Belgium, France, Spain, Portugal, and Italy.

Notwithstanding these events, there were three cases of financial sanctioning that are worth mentioning in this context. However, they concern, in the first case, a non-euro area Member State under the pre-crisis legal setting and in the second and third case, sanctioning that was not related to non-compliance with the fiscal recommendations. The first case concerns Hungary. As explained above, before the generalisation of macroeconomic conditionalities to most Member States and all ESI Funds, conditionalities already existed for recipients under the Cohesion Fund. In 2012, in reaction to Hungary failing to take effective action in order to reach a deficit below the 3% reference value, the Commission proposed to the Council to suspend commitments for 2013 under the Cohesion Fund worth € 495 184 000 (European Commission 2012a). However, before taking effect, the Council concluded that Hungary had taken adequate measures and the suspension was lifted (Council of the European Union 2012a).

The second and third cases of sanctioning concern Spain and Austria. In contrast to the overall tendency of a rather lenient rule application in the post-crisis period, one particular punitive provision has actually been applied. With the Six-Pack, a provision has been introduced that foresees a fine for the misrepresentation of fiscal data. The Council – upon a Commission recommendation – 'may decide to impose a fine on a Member State that intentionally or by serious negligence misrepresents deficit and debt data relevant for the application of Articles 121 or 126 TFEU, or for the application of the Protocol on the excessive deficit procedure' (European Union 2011a: Art. 8(1)). This fine can reach up to 0.2% of GDP of the country concerned (*Ibid.*). This provision has been triggered twice. First, in 2015 for the Spanish

region of Valencia (Council of the European Union 2015b; Savage and Howarth 2018) and second, in 2018 for the Austrian region of Salzburg (Council of the European Union 2018). In both cases, the Council – upon a Commission recommendation – decided to impose fines – €26.82 million for Austria (*Ibid.*) and €18.93 million for Spain (Council of the European Union 2015b). Although this provision is not as automatic or mandatory as other sanctioning provisions, the Commission and the Council actually went as far as imposing fines in the two cases. As to the question of why sanctions were imposed here and not in the above-mentioned cases of fiscal non-compliance, there is one major difference between the two provisions that might provide an answer. This is the very technical nature of the fine for the misrepresentation of fiscal data. First, this might make the evidence of serious misrepresentation and accordingly the necessity to propose a fine clear to the Commission. Second, it might make it harder for the Council to find political arguments against the fine (COM 1). In addition, the reputational consequences of the fine might have been limited, as the misconduct could be isolated to the body in charge of data and statistics and further attributed to a specific region instead of putting the central government in the spotlight (*Ibid.*). Furthermore, the fine for Spain might have created a precedent, which made the imposition of the fine in the case of Austria easier (*Ibid.*; see also Savage and Howarth 2008).

3.3 Conclusion: The Changing Role of the Commission in the Application of the SGP

The presentation of the history of the SGP and the experience with its application shows that the role of the Commission in the implementation of the Pact changed significantly over time. Under the Maastricht Treaty and the initial SGP, the Commission was mainly acting as coordinating body, while control over the procedure was clearly in the hands of the Council. The Commission was always in charge of monitoring, providing technical assessments, and enacting steps under the SGP. However, while the Commission has attempted to apply the Pact's provisions, the Council has stopped it at several occasions. This can be illustrated by the above-mentioned events concerning Germany, France, and Portugal. The Council therefore was the central body as regards the implementation and enforcement of the Pact's surveillance provisions before the crisis (see European Fiscal Board 2018; Franchino and Mariotto 2020). In the wake of the crisis, the Commission's role in the application and enforcement of the Pact was reinforced. In line with austerity-oriented demands of stricter policy enforcement, it has seen its competences being redefined and strengthened, resulting in more discretionary leeway and a potentially higher weight of its decisions and recommendations given RQMV. However, instead of using this power to strictly implement the reinforced rules that aim at budgetary discipline, it overall has applied the rules in a lenient and flexible manner. Given that this was not in line with the general intentions of decision-makers at the time of

reform, we are led back to the question of why the Commission has decided not to trigger the reinforced sanctioning provisions.

4. Theoretical Approach: Normative Institutionalism and Strategic Action

The aim of this study is to understand the European Commission's behaviour and decisions regarding sanctions under the EU's rules on fiscal policy coordination and surveillance. The Commission plays a central role within the application of the surveillance setting given its surveillance and enforcement competences and its reinforced role vis-à-vis the Council. The rules governing fiscal policy surveillance are ambiguous in that both a strict and austerity-oriented application and a flexible and more expansionary-oriented application are possible. Despite a strengthening of coercive and punitive provisions, the application of the rules since the post-crisis reform has been increasingly flexible. In addition, no sanctions for non-compliance with the fiscal recommendations under the SGP have ever been imposed. The governing rules are thus subject to significant interpretation by the actors applying them. Against this backdrop, it is argued here that the theoretical approach, which is apt to answer the research of why the Commission does not propose sanctions, needs to be able to accommodate the explanatory force of the following factors: the impact of norms and institutions on actor behaviour, the impact of actors upon the governing rules and their application, and strategic considerations that help actors define and pursue their objectives.

Based on these assumptions, this study is going to apply a theoretical approach based on normative institutionalism. This approach is adapted and its analytical scope is opened up, building upon criticism stemming mostly from sociology, and in line with certain assumptions of actor-centred constructivism. Normative institutionalism assumes that action is primarily rule-based, as actors follow what they deem appropriate in the context of their institutional environment (March and Olsen 2011). Cost-benefit calculations – or what is called a logic of consequentialism – although possible, is not given the same explanatory weight as action based on a logic of appropriateness (see March and Olsen 1989; 2011). The dichotomy between normative and rational logics of action has, however, been criticised for hiding the interdependence between social norms and strategic action (Jenson and Mérand 2010). It is argued here that normative institutionalism contains elements that allow for an opening of the logic of appropriateness to take into account strategic action (see Saurugger 2017). Actor-centred constructivism and related approaches provide elements that help us bridge the gap between strategy and norm-based action (see Jenson and Mérand 2010; McNamara 2006; Mérand 2021a; Saurugger 2017; Woll and Jacquot 2010). Based on these elements, and in line with normative institutionalism, it will be assumed here that

the actors' goals are shaped by their normative-institutional environment, and that their normative objectives are pursued and sustained strategically.¹¹

This chapter is structured as follows. First, the approach of normative institutionalism will be introduced. After presenting the criticism that is made of the theory, the approach of actor-centred constructivism and related approaches will be explored. In order to address the limits of normative institutionalism, certain assumptions of actor-centred constructivist approaches will be used to adapt the analytical lens of normative institutionalism. The aim of this adaptation is to bridge the gap between normative and strategic logics of action. Based on this, the overall theoretical hypothesis of this study will be developed and presented. To conclude, the problems and limitations of the theoretical approach will be discussed.

4.1 Normative Institutionalism

Normative institutionalism is an approach that is part of the new institutionalism in political science that emerged in the 1980s (see Peters 2019). While there are different versions of the new institutionalism, they all share the assumption that institutions play a central role in the explanation of political developments and decision-making (see Peters 2019; Saurugger 2017).

4.1.1 New Institutionalism

New institutionalism stems from a rejection of behavioralism in the social sciences that saw 'collective political and economic behavior as the aggregate consequence of individual choice', neglecting the role of institutions by seeing them as 'merely the sum of individual-level properties' (Powell and DiMaggio 1991: 2). In a similar vein, it has been argued by March and Olsen (1989) that since the 1950s, political science had been contextual, reductionist, utilitarian, instrumentalist, and functionalist. The new institutionalism also stands in opposition to the *old* institutionalism that preceded behavioralism in political science. Studies in line with the old institutionalism focused on 'administrative, legal, and political

¹¹ In my opening up of the theoretical approach of normative institutionalism, I orient myself on the structure and argumentation as used by Saurugger (2017). After presenting the logic of appropriateness, Saurugger (2017) presents the criticism of sociological institutionalism as expressed by sociological scholars that the distinction between norm-guided and strategic approaches are not compatible with sociological assumptions. Saurugger further claims that sociological institutionalism and the logic of appropriateness implicitly contain elements of rationality, strategy and power, which are made explicit by actor-centred constructivist approaches by bridging the gap between normative and rationalist approaches that explain actor behaviour. I diverge from Saurugger (2017) in that I refer to the logic of appropriateness as a part of normative institutionalism rather than of sociological institutionalism. Furthermore, I do not retain all the assumptions of the presented approaches that are argued by Saurugger (2017) to overcome the separation between the two logics of action, in particular those regarding power relations among actors and institutional change.

structures such as ministries, agencies, or governments' and 'their constitutions, organograms, and internal procedures' (Saurugger 2017: 2). But research was descriptive rather than offering explanations based on 'theoretical frameworks' (*Ibid.*; see also Powell and DiMaggio 1991: 2). While the new institutionalism assumes that institutions 'can act in their own right and develop their own action strategies, based on self-interest', the old institutionalism saw institutions merely as 'agents facilitating exchange between actors, or instruments to lower transaction costs' (Saurugger 2014: 80).

There are different categorisations of the variants of new institutionalism (see Hall and Taylor 1996; Jenson and Mérand 2010; Peters 2019; Saurugger 2014). While Hall and Taylor (1996) differentiate between sociological institutionalism, historical institutionalism, and rational-choice institutionalism (see also Jenson and Mérand 2010), Saurugger (2014) adds discursive institutionalism, and Peters (2019) adds normative, constructivist, and empirical institutionalism to this list. In the following, the normative, sociological, rational choice, historical, and discursive variants will briefly be presented.

Normative Institutionalism

Normative institutionalism assumes that institutional 'norms and values' play a crucial role in explaining actor behaviour (Peters 2019: 31). Actors are guided by rules of appropriate action that are present within an institution. The central concept that explains actor behaviour is the logic of appropriateness. It stipulates that actors act according to what they interpret as appropriate action in a particular situation in light of their position and role (see March and Olsen 1989; 2011). This concept is distinct from the logic of consequentialism, stipulating action according to cost-benefit calculations and aiming at the maximisation of the actor's preferences (Saurugger 2014). Although action is seen as rule-based, the ambiguity of rules that embody institutional values, and thereby appropriate behaviour, makes it necessary for actors to establish appropriate action by matching rules and situations, choosing from alternative behavioural rules (see March and Olsen 1989; 2011). The approach can also be interpreted as a form 'of role theory' in that an 'institution defines a set of behavioral expectations of the individuals who occupy positions within that institution, based on what is considered appropriate' (Peters 2019: 37).

March and Olsen, as the proponents of this approach, have contributed to the discussion on the new institutional theory that led to the emergence of the other new institutionalist variants (Peters 2019). Although normative institutionalism builds upon sociological analysis, it can be differentiated from sociological institutionalism by the focus on normative aspects by the former and the focus on cognitive aspects by the latter (see *Ibid.*).

Sociological Institutionalism

Sociological institutionalism has its roots in organisation sociology and focuses on cognitive aspects within institutional change and decision-making (Saurugger 2014). Institutions are assumed to 'evolve through cognitive processes linked to external events' that 'are interpreted by actors who are embedded in and thus influenced by collective and individual cognitive frameworks' (*Ibid.*: 95). One of the main concepts of the approach is isomorphism, which describes the replications of 'organizational models collectively sanctioned as appropriate and legitimate' (*Ibid.*: 94). In addition, the logic of appropriateness and the logic of consequentialism are key concepts within sociological institutionalism (*Ibid.*).

As the logic of appropriateness is shared as a key concept in both normative and sociological institutionalism, the boundaries between the two versions are somewhat fluid. The distinction between the two approaches can therefore be seen as 'subtle yet important' (Peters 2019: 151-152). Normative institutionalism too has its origins in sociology. In its focus on the role of institutional values for the explanation of behaviour, normative institutionalism stands in the tradition of sociologists such as Max Weber and Émile Durkheim (*Ibid.*). However, while 'March and Olsen tend to emphasize the normative basis of institutions', 'much of the sociological literature emphasizes the cognitive elements of organization theory', being 'more concerned with how the members of an institution perceive situations within their structure and the "frames" that they bring to bear on those situations in order to make decisions about them' (*Ibid.*: 151). While the cognitive perspective 'determines how the member of the institution interprets data from the environment', the normative approach determines 'what the appropriate behaviour would be in any situation' (*Ibid.*: 152). Although there is a difference between the approaches, they can be used in a complementary manner, as the cognitive perspective 'will affect the members of the organization as they receive inputs on which they make decisions', and the normative perspective 'may be more significant in explaining how decisions are made' (*Ibid.*). Despite these fine differences, both approaches stand in sharp contrast to another version of the new institutionalism – the rational choice variant.

Rational Choice Institutionalism

Rational choice institutionalism assumes that actors have 'fixed preferences' and 'calculate strategically to maximize their preferences' (Schmidt 2010: 49). For these rational actors, 'institutions represent the incentive structures that reduce the uncertainties resulting from the multiplicity of individual preferences and issues' (*Ibid.*). There are different versions and models of rational choice institutionalism. One that is often used in EU studies is the principal-agent approach, which has been presented in the introduction of

this thesis and will be used as an alternative theoretical approach to normative institutionalism in the analytical part of this study.

Historical Institutionalism

Historical Institutionalism builds upon the idea that action is historically contingent. The core concept is path dependency. It describes that initial decisions and policies shape future actions and decisions (Peters 2019; see Schmidt 2010). The reasons for actors staying on a certain path can be attributed to 'positive feedback' or to the creation of roles and interests by institutionalisation processes (Peters 2019: 89). Although rational motives for path dependency, such as cost-reduction, are sometimes discussed, the reasons can also be ideational or relying on habit (Peters 2019).

Discursive Institutionalism

Discursive institutionalism sees 'discourse not only as a set of ideas bringing new rules, values, and practices or as a resource used by entrepreneurial actors to produce and legitimate those ideas but also as the interactive processes by which such ideas are conveyed' (Schmidt 2010: 56). From a discursive institutionalist perspective, sociological institutionalism appears 'culturally deterministic where it emphasizes cultural routines and rituals to the exclusion of individual action that breaks out of the cultural norm, that is, rule-creating action' (*Ibid.*: 51). Discursive institutionalism aims at avoiding this determinism and therefore 'works best [...] at explaining the dynamics of change (but also continuity) through ideas and discursive interactions' (*Ibid.*: 60).

4.1.2 Basic Assumptions of Normative Institutionalism

In Normative¹² institutionalism, institutions describe 'a relatively stable collection of rules and practices, embedded in structures of *resources* that make action possible – organizational, financial and staff

¹² In this study, the following definitions apply:

'Norms' are accepted principles and standards that provide behavioural guidance (see *The Oxford English dictionary* 2022). They therefore represent rules of appropriateness as understood in normative institutionalism (see March and Olsen 1989; 2011). It is assumed here that norms can also describe the core principles of a certain behavioural role.

'Rules' are also principles that serve as guidelines for behaviour of institutional actors (see *The Oxford English dictionary* 2022). They convey 'codes of meaning', roles, identities, and values (March and Olsen 2011: 484), prescribe which action is appropriate (*Ibid.*), and are therefore the most central and encompassing concept of the approach. Although 'rules' refer to accepted rules of appropriateness (see March and Olsen 1989; 2011), this term can in certain contexts have a more narrow legal and procedural meaning and can refer to formal and informal instructions, provisions, rights, and obligations actors are confronted with. In the analytical part of this thesis, the

capabilities, and structures of *meaning* that explain and justify behavior – roles, identities and belongings, common purposes, and causal and normative beliefs’ (March and Olsen 2011: 480). In contrast to rational choice institutionalism, normative institutionalism does not take preferences as given and as exogenous to political processes. Preferences are socially constructed, they can change and impact the design of institutions, which can shape preferences in turn. In the same vein, institutions distribute resources and power, which can re-shape institutions. In line with constructivist thinking, normative institutionalism thus assumes a co-constitution of actors and structure (see March and Olsen 1989; Saurugger 2013; 2014). Accordingly, for normative institutionalists, preferences are endogenous to political processes and need to be explained by the theory (see March and Olsen 1989).

Alongside providing material resources, such as ‘financial and staff capabilities’, institutions create an environment that provides meaning to the actors concerned (March and Olsen 2011: 480). To go even further, political institutions, via their ‘rules and routines [...] define appropriate actions in terms of relations between roles and situations’ (March and Olsen 1989: 160). Given that rules prescribe appropriate behaviour to actors embodying a specific role in a specific situation, action in general is seen as rule-driven (see March and Olsen 2011).

Normative institutionalism pays particular attention to the construction of reality in which institutions play a key role: ‘Rules provide codes of meaning that facilitate interpretation of ambiguous worlds. They embody collective and individual roles, identities, rights, obligations, interests, values, world-views, and memory, thus constrain the allocation of attention, standards of evaluations, priorities, perceptions, and resources’ (March and Olsen 2011: 484). Thereby, rules reflect ‘institutionalized practices of a collectivity’ (*Ibid.*: 479) and appropriate behaviour. Actors see rules ‘as natural, rightful, expected, and legitimate’ and ‘seek to fulfil the obligations encapsulated in a role, an identity, a membership in a political community or group, and the ethos, practices, and expectations of its institutions’ and therefore follow the given rules (*Ibid.*: 478). This logic of action is called logic of appropriateness. Actors aim at ‘fulfilling the obligations of a role in a situation, and so of trying to determine the imperatives of holding a position’ (March and Olsen 1989: 160-61). In other words, actors will act in line with what they think is appropriate behaviour in a particular situation in light of their role and obligations (see March and Olsen 1989; 2011). The logic of appropriateness can be differentiated from what is termed logic of consequentialism, which describes action based on a cost-benefit analysis aiming at the maximisation of preferences (Saurugger 2014). While

word ‘rule’ is often used to describe the legal setting. However, this legal setting also conveys role expectations and behavioural guidelines that need to be interpreted.

according to the logic of consequentialism, actors wilfully pursue their preferences, behaviour following a logic of appropriateness – although intentional – is driven rather by ‘a conception of necessity’ and is therefore not seen as wilful (March and Olsen 1989: 160-161). This suggests that while choices are conscious, they ‘remain within the parameters established by the dominant institutional values’ (Peters 2019: 36).

4.1.3 Ambiguity of Rules, Interpretation, and Matching

Although action is predominantly rule-driven, this does not mean that rules equal actual behaviour (March and Olsen 1989; 2011). Often, there are alternative rules among which actors can choose. Rules can be ambiguous, and actors ‘have multiple identities’ (March and Olsen 1989: 24) that would prescribe conflicting instructions regarding appropriate action. Accordingly, ‘rules are translated into actual behavior through constructive interpretation and available resources’ (March and Olsen 2011: 483). Nevertheless, ‘in a polity with legitimate, stable, well-defined, and integrated institutions’, a ‘dominant institution’ can prescribe ‘action in an unambiguous way’ (March and Olsen 2011: 482). In such a situation, it is likely that there is an ‘almost automatic relation between rules and action’ (*Ibid.*). Although in a system, different institutions follow ‘different principles’, ‘each institution has some degree of autonomy and controls a specified action sphere’, and ‘the [...] constitution [...] gives clear principles of division of labor, maintains internal consistency among rules, prevents collisions between divergent institutional prescriptions, and makes the political order a coherent whole with predictable outcomes’ (*Ibid.*).

Rules, however, are ‘often ambiguous’, divisions of labour ‘sometimes break down’, and ‘individuals have multiple identities’ (March and Olsen 1989: 24). This lack of clarity and orientation might be explained by the assumption that ‘rules are constructed by a process that sometimes encourages ambiguity’ (*Ibid.*). Rules shape identities and roles, and accordingly the perception of appropriateness of a certain action in a given situation in light of the position occupied by an actor. However, if rules are ambiguous, actors might not be sure about their exact role and identity in a specific situation, and accordingly, about which action is appropriate. Actors aim at ‘fulfilling an identity through following appropriate rules’, and therefore, in situations shaped by ambiguity, actors need to match ‘a changing and ambiguous set of contingent rules to a changing and ambiguous set of situations’ (March and Olsen 2011: 482). By ‘fitting a rule to a situation’, and choosing from alternative rules, appropriateness is established (*Ibid.*: 483). In doing so, ‘rules and situations are related by criteria of similarity or difference through reasoning by analogy and metaphor’ (*Ibid.*; see also March and Olsen 1989). Language plays a crucial role in this process in which, by talking ‘about one situation as similar to or different from another’, actors ‘assign situations

to rules' (March and Olsen 2011: 483). Actors therefore need to choose among a variety of potentially conflictual and ambiguous rules that imply different roles, identities, and obligations and therefore appropriate action in light of a specific situation.

In order to match rules, situations and identities, actors may resort to role expectations, expert knowledge, intuition, or experience (*Ibid.*). Also, it is possible for actors to use 'higher-order rules [...] to differentiate between lower-order rules' (*Ibid.*: 483). In conflictual and ambiguous situations, the decision of which action is appropriate might even be taken following a logic of consequentialism: 'One possibility is that rules are followed but choice among rules and among alternative interpretations of rules is determined by a consequential logic. That is, we could imagine political actors treating alternative rules and interpretations as alternatives in a rational choice problem' (March and Olsen 1989: 25). This is, however, according to March and Olsen (1989), 'not the dominant procedure', as 'only a fraction of the relevant routines are evoked in a particular place at a particular time. Rules that are more familiar are more likely to be evoked, and so recently used or recently revised rules come to attention' (*Ibid.*: 25).

The potential ambiguity of rules and the necessity to choose among alternative rules when being confronted with a particular situation suggests that there might be disagreement over the correct interpretation of rules of appropriateness (see Peters 2019). Indeed, actors might have different values and perceive things differently. Therefore, there might also be a difference in the way norms are interpreted by individual actors within an institution. This might lead to changing institutional values over time and to a deviation from the values an institution was initially built upon. Change might occur based on learning and adaptation (*Ibid.*). However, change may also occur because new members with diverging values might join the institution (see *Ibid.*).

Just as 'rules and identities collide routinely', actors can 'disobey and challenge some rules because they adhere to other rules' (March and Olsen 2011: 484). However, according to Thomas (2009), normative institutionalism assumes that although Member State preferences diverge, their commitment towards the EU's policies and norms shapes decision-making in the EU. In the area of EU foreign policy and external relations, these norms would be 'joint action [...] including the support of the functionality and credibility of the EU as a global actor; and consistency and coherence in EU policy-making across time and issue-area' (*Ibid.*: 344). This means that although there might be conflicts, actors adhere to the central and rather abstract values and norms of an institution. In light of these assumptions, major institutional change is not a necessity, as rules, norms, and values are seen as broad guiding principles, and as actors can adapt to new situations without questioning the main values and rules the institution is built upon:

‘Rules, laws, identities, and institutions provide parameters for action rather than dictate a specific action, and sometimes actors show considerable ability to accommodate shifting circumstances by changing behavior without changing core rules and structures’ (March and Olsen 2011: 484).

4.1.4 Non-Exclusivity of Logic of Appropriateness and Consequentialism

Central values and norms play a key role in normative institutionalism. Nevertheless, the approach is not setting aside rational actor behaviour and provides thoughts on how norm-based and rational logics of action can be combined (see Saurugger 2017). Although the logic of appropriateness plays a dominant role in normative institutionalism, normative institutionalist authors do not exclude that behaviour can also follow a logic of consequentialism. The relation between these two logics of action within normative institutionalism is multidimensional and far from rigid and clearly determined. As seen above, if an actor is facing a situation in which – due to the ambiguity of the given rules – it is not clear which way of action is appropriate, appropriateness can be established following a logic of consequentialism. Resorting to ‘calculus’, however, ‘is not the dominant procedure’ (March and Olsen 1989: 25). This form of complementarity therefore implies the dominance of the logic of appropriateness over the logic of consequentialism. Nevertheless, normative institutionalist authors are open towards a more balanced relation between the two logics of action. March and Olsen (2011) explicitly indicate that the logic of consequentialism could prevail over the logic of appropriateness, just like the other way around: ‘The logic of appropriateness may be used subject to constraints of extreme consequences, or rules of appropriateness are seen as one of several constraints within which the logic of consequentiality operates’ (*Ibid.*: 492). This hierarchical relationship, which potentially goes in both directions, might have a situational dimension: ‘One version of the hierarchy notion is that one logic is used for major decisions and the other for refinements of those decisions, or one logic governs the behaviour of politically important actors and another the behaviour of less important actors’ (*Ibid.*).

In a similar vein, the dominance of the logic of appropriateness and the notion of rule-based action is put into context in normative institutionalist writings. It represents only one of several potential driving factors of actor behaviour, including rational cost-benefit calculations and cognitive factors that do not seem to be directly derived from the institutional environment: ‘Action is rule based, but only partly so. There is great diversity in human motivation and modes of action. Behavior is driven by habit, emotion, coercion, and calculated expected utility, as well as interpretation of internalized rules and principles’ (March and Olsen 2011: 490). Most importantly, by seeing action as intentional, although within the boundaries of what is deemed appropriate (see March and Olsen 1989; Peters 2019), normative

institutionalism displays its openness towards a combination of strategic and norm-guided action, and therefore of the two logics of action.

4.1.5 Criticism of Normative Institutionalism

Despite the openness of normative institutionalism towards a combination of the logic of appropriateness – representing rule-based action – and the logic of consequentialism – representing action based on rational cost-benefit calculations – the distinction as such between the two logics of action has been criticised (see Jenson and Mérand 2010; Saurugger 2017). Seen from a sociological perspective, the ‘analytical distinction between strategy and norms’ is not easily reconcilable with the assumption ‘that *any* strategy is socially embedded and, conversely, that norm creation or maintenance always involves some kind of strategic calculation’ (Jenson and Mérand 2010: 84). In a similar vein, as ‘actors are not generally capable of distinguishing what is profitable from what is right in a given social context’, ‘rational and normative behaviour are two sides of the same coin: rationality is socially constructed in the same way that norms have to be strategically deployed’ (*Ibid.*). Woll and Jacquot (2010) also argue that rationalism and constructivism do not necessarily stand in opposition to each other. The problem for constructivists is not the assumption of rationality, but the assumption of some rational choice approaches that preferences are given and unchanging (*Ibid.*). Accordingly, it is important to understand the construction of rationality and strategy: ‘focusing on the social context of intentional action reveals the constitution and effects of strategic behavior that would be obscured by a categorical opposition between different action motives’ (*Ibid.*: 111).

Studies that argue that ideas matter in some situations but not in others are rejected on similar grounds (see Jenson and Mérand 2010). This situational approach would lead to ‘a loss of the understanding that there is representational content to any action on the part of policy-makers and citizens but that, conversely, these involve power’ (*Ibid.*: 85). From a sociological perspective, one should therefore not ask ‘whether actors have objective interests or subjective ideas’, but rather ‘what do they perceive to be the right and the wrong way of pursuing their goals (strategy) in a given social interaction. In other words, which ideas do they hold about what their interests are?’ (*Ibid.*). Another, yet strongly related criticism refers to the lack of agency in the approach. Given the focus on the logic of appropriateness and institutions, normative institutionalism would not leave enough room for decisions and hence for agency (see Peters 2019).

4.2 Opening of Theoretical Lens: Combining Strategic and Norm-Guided Action

Within the approach of actor-centred constructivism and other related approaches, an attempt was made to bridge the gap between norm- and idea-based action, on the one hand, and strategic and rational action, on the other hand (see Saurugger 2014; 2017; see also Jenson and Mérand 2010). Thereby, the strategic action and rationality that is implicit in the normative institutionalist logic of appropriateness can be made more explicit, and the two logics can be combined (see Saurugger 2017).

4.2.1 Actor-Centred Constructivism and Related Approaches

Actor-centred constructivist authors have criticised the opposition between ‘interests and ideas’ in constructivism (Saurugger 2014: 156), and ‘that the strategic considerations of the actors involved had been largely ignored’ in sociological institutionalism (Saurugger 2017: 13). Consequently, authors of this approach address the critique towards ‘constructivist approaches [...] that power considerations are absent in constructivist perspectives’ (Saurugger 2014: 158).

Although actor-centred constructivism assumes ‘that the individual behavior of an actor is embedded in a structure of shared beliefs and standard operating procedures, they emphasize the importance of taking into account how specific actors use these procedures’ (Saurugger 2017: 13), ‘how specific actors apply these ideas for their own purposes, and which specific power constellations influence these actors’ ideas’ (Saurugger 2014: 156), in order to find out ‘how much belief structures count in policy outcomes’ (Saurugger 2017: 13). By taking into account strategic action, which is shaped by ideational factors, actor-centred constructivists overcome a strict separation ‘between the logic of appropriateness and the logic of consequentialism’ (Saurugger 2013: 901). The two logics rather ‘co-exist and influence the attitudes of actors in policy-making processes’ (*Ibid.*: 892).

The challenges that actors are confronted with do not lead them to ‘automatically come up with the “correct” or “best” answer’ (Saurugger 2014: 157). Rather, ‘problems must be interpreted in order to be solved’. Ideas are key to understand this process, as ‘different ideas lead to different interpretation of problems and the different framing of solutions’ (*Ibid.*). Although actors can act strategically, actor-centred constructivists do not neglect the role of institutions. ‘Ideas, world-views and norms’ are indeed ‘subject to the institutional conditions in which they are embedded’ (Saurugger 2014: 158). As argued by McNamara (2006), actors strategically follow their interests. But what they perceive as their interests is shaped by their social environment: ‘actors’ very identities and thus their definitions of self-interest, are constructed through social interactions, and embedded within specific cultural arenas [...]. Actors are

strategic and self-interested, but as humans, they cannot escape the process of interpreting and giving meaning to their environment [...]. Even the most cravenly self-interested action on the part of a political actor is mediated through social processes of understanding, and draws upon existing cultural repertoires and resources, both consciously and unconsciously' (*Ibid.*: 812).

Taking the combination between ideas and strategy very far, in strategic constructivism, ideas might be used in order to serve a wider goal, such as using the idea of a common market in order to achieve a unified Europe (Jabko 2006). Actors are assumed to be able 'to creatively exploit the polyvalence of ideas and the institutional tensions that these ideas create in pursuit of complex and multiple goals' (*Ibid.*: 40). Similarly, it can be argued that judicial actors' understanding of problems is shaped by a logic of appropriateness conveyed by the legal setting, and that political goals can be pursued by strategically using these normatively-shaped understandings (Saurugger 2017). For Jabko (2006), the institutional impact on the objectives actors pursue is very narrow as it would be 'impossible to demonstrate that the strategy of market integration directly stemmed from a single coherent and widely shared body of ideas' (*Ibid.*: 29-30). However, assuming that ideas can be vague and actively used to pursue a goal is valuable for making rational action under the logic of appropriateness more explicit.

A related theory to the broader approach of actor-centred constructivism is the 'usage of Europe' approach put forward by Woll and Jacquot (2010; see also Jacquot and Woll 2003). Applying a sociological approach to the research area of Europeanisation (Jacquot and Woll 2003), it assumes that actors are strategic and rational, but that their preferences are subject to social construction (see Woll and Jacquot 2010). The institutional setting needs 'to be interpreted and actors do not give automatic responses to political pressure: they can choose and learn and thus develop agency independent of structural conditions' (*Ibid.*: 116). The EU offers resources of material or ideational nature that national-level actors can use strategically in order to pursue their objectives (*Ibid.*). Although just like in strategic constructivism, ideas can be deployed and used strategically, the usage of Europe approach assumes that also institutions and legal or budgetary resources can be used by actors to pursue their socially constructed objectives (see *Ibid.*). Consequently, overcoming the strict distinction between norm-based and rational action does not necessarily imply the strategic use of ideas, but can be achieved by including the strategic use of institutional, budgetary, or legal resources in pursuing the fulfilment of a norm or normative expectation. Mérand (2021a) approaches the combination between norm-guided action and strategy from a sociological angle and formulates it in a way that reflects the combination between the logic of appropriateness and strategic and rational actor behaviour: 'Their practices were strategic in that

they were goal-oriented; but above all, they consisted in ways of being, thinking, speaking, and fighting that assumed there was a “right side”, and that ruled needed to bend accordingly’ (*Ibid.*: 17). Actors are therefore assumed to intentionally pursue an objective that they deem appropriate. Part of the strategic action is the use of rules as a means to achieve their objectives. This furthermore suggests that reinterpreting procedural rules under a certain normative vision is also a way of combining normative and strategic logics of action.

These approaches help us to overcome the strict separation between norm-guided and rational-strategic action by making certain implicit or less obvious assumptions of normative institutionalism explicit (see Saurugger 2017). At the same time, by allowing for more agency, the structuralist tendencies normative institutionalism displays are to a certain extent reduced. However, the approaches presented diverge in their ontological assumptions. This makes it necessary to determine to what extent the approaches can help us widening the analytical lens of normative institutionalism and which elements will not be considered for the purpose of this study:

Assuming that actors can act strategically, while the objectives they pursue are socially constructed, allows us to open up the logic of appropriateness towards one single logic of action and analytical framework that bridges the gap between ideational and rational action. Although implicit in March and Olsen’s writings (see Saurugger 2017), strategic action overall plays a distinct role and can mainly be found under the logic of consequentialism. In order to open up the approach, we assume that although objectives are shaped by a certain perception of the institutionalised rules of appropriateness, these objectives are pursued strategically, that is intentionally, consciously, and rationally within the boundaries of the institutional values. Thereby, normative expectations can be fulfilled and maintained. This combination of norm-based and strategic action reflects the sociological criticism of the logic of appropriateness: ‘*any strategy is socially embedded and, conversely, [...] norm creation or maintenance always involves some kind of strategic calculation*’ (Jenson and Mérand 2010: 84).

There remain, however, certain differences between the adapted normative institutionalist approach applied in this study and the other approaches discussed. While it is argued by McNamara (2006) that actors are self-interested, this general assumption will not be adopted here. Although acting strategically, actors are above all considered to act in line with the institutionalised rules of appropriateness. Similarly, while actors are assumed to develop agency when interpreting rules and in pursuing the goals they deem appropriate given their interpretation, agency is not supposed to be *completely* ‘independent of institutional conditions’ (Woll and Jacquot 2010). Also, cognitive maps are assumed here to mainly stem

from the institutional setting, although institutional actors can learn and adapt based on experience, and newcomers can bring in diverging values (see Peters 2019). In addition, although actor-centred constructivists open up the analysis towards power relations among actors (see Saurugger 2017), these concepts will not be applied here, as the focus of analysis will be upon the interaction between actors and institutionalised norms and the way these are fulfilled, and not explicitly on the way certain visions and ideas take over internally and how ideas interact with power relations. The approach applied in this study therefore represents a middle-way between norm-based institutionalism, on the one hand, and actor-centred constructivism and sociology, on the other hand, which work more freely with agency, cognitive maps, and aspects of power behind the use and impact of ideational resources.

To summarise, normative institutionalism allows us to understand actor behaviour and decision-making in light of the actors' institutional environment that is shaped by rules and norms. The logic of appropriateness is key to understand the process of rule following. Actors act according to what they interpret as appropriate in a particular situation given their role and obligations. Responding to criticism of the opposition between norm-based and rational-strategic action, and in line with certain assumptions of sociological and actor-centred constructivist authors, this study is going to adopt a theoretical approach that assumes a co-existence and interdependence of both normative and rationalist logics of action. While acknowledging the basic assumptions of normative institutionalism, the logic of appropriateness applied in this study is opened up towards strategic and rational action within the framework of the rules of appropriateness of an institution: Actors behave strategically when pursuing their objectives that are shaped by the actors' interpretation of their normative-institutional environment. This means that the interpretation of norms and rules can be adapted to a specific situation, and that norms can be fulfilled and sustained as a result of actors' strategic behaviour. This study will therefore take into account the normative-institutional embeddedness of strategic action and will examine its impact on decision-making processes and their outcomes.

4.2.2 Expectations based on Theoretical Approach and General Hypothesis

The rules governing fiscal policy surveillance and enforcement provide the normative framework under which Commission actors act. These rules are, however, ambiguous, with the Commission enjoying large discretion regarding evaluation and enforcement and the economic and political orientation of its decisions. Rules need to be interpreted, and in every situation of application, rules and situation need to be matched in order to establish appropriateness. The objectives of fiscal policy surveillance might enter into conflict with the wider objectives governing Commission action. Fiscal rules are therefore expected

to be subject to internal and external ambiguity. Accordingly, Commission actors are expected to interpret the rules, their role, and their obligations in each given situation. Given the actor's perception of appropriate objectives, they will pursue these objectives rationally and strategically. Based on these assumptions, we can articulate the following overarching hypothesis:

H.1: The Commission, when confronted with a situation in which it could impose a sanction, interprets its objectives in light of its perceived role and obligations. In pursuing its normative objectives, the Commission acts strategically.

The theory does not tell us which norms are in play, how they are interpreted, and therefore how they shape the Commission's behaviour. Consequently, in order to establish more concrete hypotheses, we will complement our assumptions using legal and institutional sources as well as findings from the academic literature. As the analysis will rely on theory-testing process-tracing methods, the sub-hypotheses will be presented in the framework of the method as presented in the next chapter. By providing the context of the explanatory mechanism, the hypotheses will reflect how the logic of appropriateness and strategic behaviour interact with normative conditions, and thus how they explain the outcome – the non-imposition of sanctions.

4.2.3 Problems and Limitations of the Theoretical Approach

Although the presented approach takes into account strategic action, norms and their interpretation play a key role in the explanatory framework. The core problem of the focus on ideational factors is that they are difficult to prove empirically (see Parsons 2002; see also Saurugger 2017). Parsons (2002) identifies two difficulties. First, it is not easy to differentiate between ideational factors that really shape behaviour and ideational factors that simply rationalize action that might be shaped by other considerations. Second, ideational research should be able to differentiate between 'ideational filter' and 'objective context' (*Ibid.*: 49). In order to address these problems, process-tracing methods can be applied, which can show that 'objective pressures impinging on certain decisions [...] did not fully determine a choice', and that therefore one has 'to interpret the beliefs that did' (*Ibid.*). In line with these problems and suggested solution, the process-tracing approach of this study will aim – as far as possible – at making the role of norms and their interpretation in relation to *objective* pressures visible.

The logic of appropriateness has further been criticised for being 'sufficiently vague', which would make it unfalsifiable (Peters 2019: 49). This criticism can indeed also be made of rational choice approaches (Peters 2019). Nevertheless, and again, by embedding the analysis that is based on the logic of

appropriateness in a process-tracing design, the specific assumptions of the hypotheses can be disconfirmed: should the predicted observations not be present, and should the mechanism not work as assumed, the hypotheses can be seen as rejected (see Beach and Pedersen 2019). The details on how the hypotheses are going to be tested will be presented in the next chapter. Further limitations of the theoretical approach, which relate to its capacity to explain the events of the case studies, will be presented and discussed in the conclusion.

5. Methodological Approach: Theory-Testing Process-Tracing

The aim of this study is to understand the European Commission's behaviour regarding sanctioning mechanisms in the area of fiscal policy coordination. Against this backdrop, this study will apply a theoretical framework based on normative institutionalism. The focus of the theoretical approach lies on the normative-institutional context, on the interpretation of setting and situation by the actors, and on the strategies actors pursue to achieve their normative objectives. The theoretical approach therefore applies a rather broad analytical lens, which includes a number of interacting explanatory factors. In addition, this study aims at explaining behaviour within complex decision-making processes. In order to best capture these dynamics and provide an explanation of why the Commission does not resort to sanctions, this study will apply process-tracing methods – a qualitative research method that aims at making within-case causal inferences (Beach and Pedersen 2019: 1; see also Bennett and Checkel 2015). As will be presented later on, process-tracing nevertheless has a cross-case dimension, which in our case is mainly concerned with the generalisation of findings (see Beach and Pedersen 2016; 2019). This thesis will draw upon a wide range of empirical data, such as expert interviews that were conducted for the purpose of this study. In addition, official documents and press coverage will be used in order to find out whether the underlying hypotheses of this study can be validated. This chapter is organised as follows. First, process-tracing methods will be presented in detail. Second, the way these are applied in this thesis is explained. Third, the process of data gathering and the use of empirical data in this study is described.

5.1 Process-Tracing Methods

Process-tracing is a case study-based method that seeks to find causal mechanisms that connect a cause or trigger X to an outcome Y (see Beach and Pedersen 2019; Blatter and Haverland 2012; Fontaine 2020). What one is tracing is not a story or a chain of events, but the causal mechanism and its parts (Beach and Pedersen 2019). This study aims at understanding that despite Member State non-compliance with their fiscal objectives under the SGP, the Commission decided not to impose financial sanctions. The aim of this study is therefore to theorise a causal mechanism that links these two conditions – non-compliance and non-imposition of sanctions – and to show with the help of evidence that this mechanism was present in the selected cases and therefore explains the outcome (see *Ibid.*).

This section will describe process-tracing methods as will be applied in this study. First, the core concept of *causal mechanism*, the functioning of the approach, and its underlying assumptions will be presented. The section will then continue with an explanation of theory-testing process-tracing. Subsequently, the

validity tests of the approach will be presented, followed by an explanation of the logic behind case selection. The section closes with an examination of the generalisability of findings and the use of and link to comparative methods. This section therefore serves as the basis for the subsequent section, in which the causal mechanism will be theorised. This will be done based on the adaptation of normative institutionalism and wider institutional and scholarly assumptions.

5.1.1 Causal Mechanisms and Basic Functioning of Approach

Process-tracing methods aim at unpacking the causal mechanism that links cause and outcome and at tracing the parts that the mechanism comprises (*Ibid.*). The parts consist of ‘entities that engage in activities’, with activities being ‘the manifestations of the causal power of the entities’ and accordingly transmitting ‘causal forces or power’ (*Ibid.*: 38-39). Taken together, causal mechanisms can be defined ‘as systems of interlocking parts that transmit powers or forces between a cause (or a set of causes) to an outcome’ (*Ibid.*: 38). A complete theorised causal mechanism should logically link the constituent parts so that no logical gaps are left between them. This can be termed ‘productive continuity’ (Beach and Pedersen 2019: 70; Machamer *et al.* 2000: 3). The causal mechanism in itself is not a cause, but is ‘triggered by causes’ (Beach and Pedersen 2019: 69). A cause can therefore be understood as ‘something that triggers a mechanism, meaning it is in a *productive* relationship with the outcome’ (*Ibid.*: 78), and accordingly takes on an active role.

Causes do not have to be conceptualised as sufficient or necessary for an outcome to occur. A cause X might also be ‘a contributing cause’ (Beach and Pedersen 2016: 14-15; see also Beach and Pedersen 2019). This ‘cause’ X can also be conceptualised as a ‘trigger’ (see Fontaine 2020). This wording suggests that it might not be solely X that determines an outcome. Rather, the outcome might have been caused by X in combination with ‘other relevant causal conditions’ (Beach and Pedersen 2016: 15). Contextual conditions, however, are not seen as active, but are conditions that enable or inhibit action. They are conceptualised as ‘all “relevant aspects of a setting (analytical, temporal, spatial, or institutional)” in which the analysis is embedded and that might have an impact on the constitutive parts of a mechanism’ (Falletti and Lynch 2009: 1152, as quoted in Beach and Pedersen 2019: 78).

When tracing a mechanism or examining whether it occurred and functioned as theorised (see Beach and Pedersen 2019), one studies ‘the traces that the activities associated with parts of the process leave within cases’ (*Ibid.*: 38). More concretely, one establishes ‘hypothetical empirical fingerprints that might have

been left by the operation of a mechanism' (*Ibid.*: 4). If these fingerprints can be empirically observed, they are called 'mechanistic evidence' (*Ibid.*).

5.1.2 Ontological and Epistemological Assumptions

Process-tracing, as a case-based research approach, applies a deterministic ontology. A probabilistic ontology assumes that causes increase or decrease the probability of an outcome, that there are aspects of randomness, and that therefore, science can only detect trends. In contrast, a deterministic ontology assumes that there is a reason for every outcome. Not being able to prove or find the reason for a certain outcome does not tell us that it happened without a cause (Beach and Pedersen 2019). This deterministic ontology, however, is not to be mistaken for a deterministic epistemology that would assume that one can gain complete certainty about a causal relationship. Rather, a probabilistic epistemology 'based on Bayesian logic' is applied in process-tracing, which assumes that one's knowledge can never be completely certain, but that our confidence in the validity of a causal explanation 'depends on the quality of the evidence produced' (*Ibid.*: 16).

The question whether one can detect causality in a single case study, or whether it is necessary to study a larger number of cases, is particularly important in process-tracing as a case-based approach. We can differentiate between an understanding of causality that builds upon regularity and one that builds upon the single occurrence of events (see Beach and Pedersen 2019). The regularity understanding of causality – or type causation – assumes that a relationship 'must occur more than once' in order 'to be causal' (*Ibid.*: 45). However, as 'we cannot make strong inferences about causal relationships solely based on patterns of constant conjunction [...] the regularity understanding is (almost) never used by itself but instead is coupled with either a counterfactual or mechanism-based understanding' (*Ibid.*: 46), which in the latter case means that 'mechanisms are regularly occurring phenomena' (*Ibid.*: 46-47). A contrasting view to the regularity understanding is to argue that 'claims about a causal relationship in a particular case can be made', which is termed singular causation or token causation (*Ibid.*: 46). One can either approach this understanding of causation from a counterfactual- or a mechanism-based point of view. While the former builds upon 'a hypothetical counterfactual case', the latter argues that 'singular causal mechanisms can apply only in a particular case' (*Ibid.*: 46-47). Mechanisms can therefore be studied both with a singular causation understanding or with a regularity understanding of causation. However, the underlying understanding needs to be in line with one's argumentation regarding the generalisability of the studied mechanism (*Ibid.*). Given that it is assumed in this study that the same mechanism can explain the outcome in similar cases, a mechanism-based regularity understanding will be applied here (see *Ibid.*).

Another important aspect is that in process-tracing, causal claims are asymmetric (Beach and Pedersen 2016; 2019). To explain this concept and give an example, claims about the necessity and the sufficiency of conditions for a certain outcome to occur are asymmetric. If one assumes that for the occurrence of Y, X is necessary, the absence of X means that Y cannot occur. If, however, X is present, no clear assumption is made about the occurrence of Y. Claims about sufficiency are also asymmetric, just the other way around. If one assumes that for Y to occur, X is sufficient, the presence of X tells us that Y will occur. If, however, X is not present, we do not know whether Y will occur (Goertz and Mahoney 2012). This understanding is based on set theory. It stipulates that a condition either is a member of a defined set and possesses the 'causally relevant attributes' associated with set-membership, or it is just not a member of the set (Beach and Pedersen 2019: 27).

In contrast to this understanding, symmetric causal claims assume a specific effect of both presence and absence of a particular cause and of 'different values of both causes and outcomes' (*Ibid.*: 25). Symmetric causal claims can be deterministic or probabilistic. While upon the presence of a particular value of a cause the former would predict the occurrence of a certain value of the outcome, the latter would predict a higher probability for the occurrence of a certain value of the outcome. Symmetric causal claims can only be made if we have evidence based on variation and if differences occur. Accordingly, the concepts used for determining causes and outcomes following this understanding usually take the form of 'variables' (*Ibid.*: 25-26), as opposed to 'conditions', which is the concept used in process-tracing (*Ibid.*: 55).

In process-tracing, claims are made about a 'mechanism triggered by a cause', which, however, does not tell us anything about the effects of the absence of a mechanism (*Ibid.*: 25-26). In line with set theory, only the positive pole of a concept is attributed causal powers, the negative pole – or everything that is not part of the concept – is not. As only the positive pole of our concept is theorised to trigger a certain mechanism, cases where the cause is absent are not relevant for the analysis (*Ibid.*). If for example, it is claimed that Member State non-compliance is causally linked to the non-imposition of sanctions, we do not claim that Member State compliance is causally linked to the imposition of sanctions. In addition, we only make claims about the causal mechanism in the first conjunction. Should the second conjunction occur, a different mechanism would be likely to connect the two events (see Beach and Pedersen 2016: 11; see also Beach and Pedersen 2019: 62).¹³ To put it differently, 'the model that explains presence is not the same as the model that explains absence' (Goertz and Mahoney 2012: 65). Furthermore, given the

¹³ Examples adapted from Beach and Pedersen (2016: 11)

assumption of equifinality at the mechanism level – that is a different mechanism might explain the same outcome (see Rohlfing 2014) – only in case one argues that a certain mechanism excludes that another mechanism explains the link between cause and outcome, it is necessary to provide alternatives for the explanation presented (Beach and Pedersen 2019; Beach and Smeets 2020; see also Rohlfing 2014).

5.1.3 Theory-Testing Process-Tracing

Process-tracing methods can be applied in four variants, which are ‘theory-testing, theory-building, theoretical-revision and explaining-outcome’ (Beach and Pedersen 2019: 9). Whereas the last of these variants is aiming at understanding the causal mechanism in a single case, the first three variants have a clear focus on theory (*Ibid.*). These different focal points of analysis have implications for the level of abstraction we apply. While in explaining outcome process-tracing, the case-specific conditions are of great significance, and therefore the level of detail is high, the theory-focused variants aim at a certain level of abstraction in order to allow for comparability and generalisation with regard to a limited number of similar cases (see *Ibid.*).

In the theory-testing variant of process-tracing, which will be applied here, the aim is to find out whether a ‘hypothesized causal mechanism is present in the case and worked as [...] theorized’ (*Ibid.*: 10). Based on theoretical assumptions and empirical material, the cause and the outcome need to be conceptualised, and a causal mechanism has to be formulated in detail that is expected to link cause and outcome in a continuous way, being explicit about how the entities, via their activities, are causally linked to the subsequent parts. The level of detail at which one has to develop and formulate one’s own causal mechanism depends upon the level of detail provided by the underlying theory (*Ibid.*). One then has to operationalise the theorised causal mechanism, which means that we spell out which ‘empirical fingerprints the activities associated with each of the parts of the mechanism should have left if they operate as theorized’ (*Ibid.*: 255). These assumptions about fingerprints are then examined in light of the collected empirical data to find out whether the ‘predicted evidence’ was found in the studied case for each part of the mechanism (*Ibid.*). If this is the case, the inference we can make is that the causal mechanism in its entirety was present as hypothesised (*Ibid.*). If we conclude that the mechanism was not present as expected, we can ‘explore whether alternative parts are operative in the process’, which, if it is not the case, might lead us to ‘conclude that no causal link existed in the case’ (*Ibid.*).

5.1.4 Validity Tests and ‘Proof’ of Functioning of Causal Mechanism

In the theory-testing variant of process-tracing, the aim is to assess whether a mechanism worked as predicted and thereby to confirm or disconfirm the underlying theoretical assumptions of our analysis (Beach and Pedersen 2019). Beach and Pedersen (2019) propose a two-stage approach for evaluating evidence, first, at the theoretical level and second, at the empirical level (*Ibid.*). While the first level addresses what certain potential manifestations of a mechanism can tell us about the presence of the theorised mechanism, the second level addresses the degree of confidence we can grant to the empirical observations associated with the expected manifestations that we find (see Beach and Pedersen 2019; Beach 2020).

When operationalising the theorised mechanism, we spell out which fingerprints we expect the activities of each part of the mechanism to have left if it worked as assumed (Beach and Pedersen 2019). This stage can be termed ‘theoretical level of evidence evaluation’ (*Ibid.*: 155). It includes a reflection about which ‘fingerprints we would have to find’ (*Ibid.*). This addresses the theoretical certainty of our propositions (*Ibid.*). A prediction is certain if it has to occur for our hypothesis to be true. Therefore, if we cannot observe the prediction, we can conclude that our hypothesis is false. However, the fact that the prediction occurs does not allow us to confirm our hypothesis (Van Evera 1997). In order to assess the theoretical uniqueness of our expected fingerprints, we have to establish ‘whether there are alternative explanations for finding a fingerprint’ (Beach and Pedersen 2019: 155). High uniqueness tells us that there is no other plausible explanation for the occurrence of a predicted fingerprint than the theorised activities of our part. Therefore, if we can confirm the occurrence of the prediction, we can confirm the presence of the part to a large extent (see Van Evera 1997: 31).

In order to structure the evaluation of theoretical certainty and uniqueness of the predictions, we can also make use of four tests that vary at the level of certainty or uniqueness of its corresponding predictions. The hoop test establishes predictions that are certain but not unique. If a hoop test is not passed, that is our prediction did not occur, we can assume that our hypothesis is disconfirmed. If a prediction passes the test, it does, however, not confirm our hypothesis (Van Evera 1997). We can also say that ‘passing a hoop test is necessary but not sufficient for confirming a hypothesis’ (Waldner 2015: 127). Although not offering certainty, a smoking-gun test establishes high uniqueness of its predictions. If a prediction passes the test, it confirms our hypothesis to a large extent. The prediction is therefore highly unique. However, if the prediction does not pass the test, we cannot conclude that our hypothesis is false. The prediction is therefore not certain (Van Evera 1997). This means that it ‘is [...] sufficient but not necessary for

confirming a hypothesis' to pass a smoking-gun test (Waldner 2015: 127). Doubly-decisive tests offer high uniqueness and high certainty. If a prediction passes the test, our theory is confirmed to a large extent. If the test is not passed, we can assume that our hypothesis is false. A straw-in-the-wind test is telling us very little, as the predictions involved are of low uniqueness and of low certainty. By themselves, these tests are not decisive but can 'weigh in the total balance of evidence' (Van Evera 1997: 32).

Evaluation at the theoretical level therefore focuses on our assumptions about what fingerprints a mechanism and its activities might have left and what absence and presence of this evidence means for the confirmation or disconfirmation of our hypothesised causal mechanism. Once this expected evidence – or fingerprints – is established, the second stage of evaluating evidence, as proposed by Beach and Pedersen (2019), takes place at the empirical level. Evaluation at this level focuses on 'the assessment of empirical observables and what finding or not finding them means in relation to whether we can confirm the existence or absence of the predicted mechanistic evidence' (*Ibid.*: 195). This means that we need to evaluate at this stage whether we have found or not found the evidence that we have conceptualised as significant for making inferences about the functioning of our hypothesised mechanism at the first stage. As is the case for the theoretical level, evaluation at the empirical level is conducted in terms of certainty and uniqueness (see *Ibid.*).

Empirical certainty is about our ability to state whether the fact that we did not find an observable means that the predicted mechanistic evidence is absent (*Ibid.*). If one is not able to find a piece of evidence as predicted during the operationalisation, the question is whether one had sufficient access to the empirical material in order to conclude that the predicted evidence was really not present. If this is the case, the empirical certainty with which one can disconfirm the presence of a predicted fingerprint is high. If, however, access to the empirical material was restricted, empirical certainty is low, and therefore, one is in theory not able to decide upon the existence of the predicted evidence (*Ibid.*). If a predicted fingerprint has actually been found in the empirical data, one has to evaluate its 'empirical uniqueness in terms of whether the observation enables us to confirm the existence of the proposition about mechanistic evidence' (*Ibid.*: 201). If we find that we can trust the observation (*Ibid.*) and 'can justify that the found observable actually means what we think in the given context', it is 'highly empirically unique', which means 'that we can confirm that we have found the predicted mechanistic evidence to a high degree' (*Ibid.*: 196).

Overall, the consequences of these assumptions are the following. If for example, we are certain that mechanistic evidence for a theoretically certain fingerprint is absent, we can disconfirm the hypothesised

part (*Ibid.*). If, however, we find an observation that is empirically unique, which corresponds to a hypothesized fingerprint we consider theoretically unique, we can confirm with high confidence that the theorised part was present (see *Ibid.*; Van Evera 1997).

5.1.5 Case Selection

The first step of case selection is the mapping of cases, taking into account the presence of the cause, the contextual or scope conditions, and the outcome. There are four types of cases that can be differentiated. Cases in which the cause, the contextual conditions, and the outcome are present are termed ‘typical’ (Beach and Pedersen 2016: 12). Deviant cases can either be those in which either cause or contextual conditions, or both are not present, although the outcome occurs, or those cases in which the outcome is not present but cause and contextual conditions are. Cases that are irrelevant for the analysis are those where neither the outcome nor the cause ‘and/or the scope conditions’ are present (*Ibid.*: 12-13). This is because the asymmetric nature of causal claims in process-tracing does not allow us to draw any inferences regarding the causal mechanism we are interested in from cases in which the positive poles of our concepts for cause and outcome are absent (Beach and Pedersen 2019).

Which cases we should select for our analysis depends on our research purpose. If the objective ‘is to make strong within-case inferences about whether X is linked with Y, and/or shedding light on how X is linked with Y, we trace mechanisms only in cases where they can in theory be present’, which only applies to ‘typical cases’ (Beach and Pedersen 2016: 14). This means that for theory-testing process-tracing, we should select these typical cases (Beach and Pedersen 2019).

5.1.6 Generalisability

Process-tracing is an approach that allows for drawing inferences about the causal mechanism that is operating in a particular case (*Ibid.*). Generalising findings to other cases is subject to important limitations. In order to be able to generalise our findings about a causal mechanism, our cases should be part of a population of typical cases in which the cause, the contextual conditions we know of, and the outcome are present (Beach and Pedersen 2016). However, because of potential mechanistic heterogeneity, this is not a sufficient requirement for being able to generalise findings about causal mechanisms (Beach and Pedersen 2019). Causal mechanisms are context sensitive, which means that contextual conditions can have an impact on the mechanism. Two different cases might share cause and outcome and therefore look homogeneous. However, they might be subject to mechanistic heterogeneity, meaning ‘that the same cause is linked to the same outcome through different processes’

(*Ibid.*: 78). Mechanistic heterogeneity can also mean that ‘the same cause triggers different processes, thereby resulting in different outcomes’ (*Ibid.*). While this latter form of mechanistic heterogeneity can be detected by carefully mapping the cases, the former can be a hidden barrier to generalisation (see *Ibid.*).

In order to generalise our findings, we need to show that the cases of our population of typical cases are mechanistically homogenous. If our goal is to provide a detailed explanation of our causal mechanism, including its context, we might not be able to generalise to a large group of cases. By raising the level of abstraction, we can extend mechanistic homogeneity and therefore increase our ability for generalisation to a greater number of cases. However, this comes at the cost of losing sight of the detailed mechanistic explanation that we might be interested in (see *Ibid.*).

Given that causal mechanisms are context sensitive, in order to be able to generalise our findings about a causal mechanism, the mechanism has to be traced ‘in more than one case [...] because otherwise we have no way of knowing what aspects of the found process are case-specific (nonsystematic) and what parts can be found in similar cases (systematic)’ (*Ibid.*: 103). In light of potential mechanistic heterogeneity, ‘even when we have found mechanisms that operate in a small number of cases using process-tracing, given the sensitivity of mechanisms to context, we should be averse to making any cross-case generalizing claims about similar mechanisms being present in other cases until we have tested whether it is reasonable to expect similar mechanisms to operate in the population’ (*Ibid.*: 104). These tests can be made by applying a ‘snowballing-outward strategy’ with which, ‘by comparing most similar cases and moving outward to more different cases, we can incrementally enlarge or restrict the boundaries of our generalizing inferences about mechanisms’ (*Ibid.*: 131).

First, we can focus on unknown contextual conditions. If we compare cases that share the contextual conditions we are aware of, and the same mechanism works in the two cases, we can infer that ‘unknown omitted conditions’ do not appear to be relevant for the functioning of the mechanism (*Ibid.*: 138). However, there is no possibility to be completely sure that there is mechanistic homogeneity. In a second step, we can focus on those omitted conditions that diverge among cases and were therefore ruled out for inclusion in the mechanism by comparative methods or a statistical approach. If we test the mechanism in cases that differ in these omitted conditions, and the mechanism works nevertheless, we can infer that the diverging conditions are not relevant for the functioning of the mechanism. Therefore, we can expand the scope of generalisability of mechanistic homogeneity to cases similar to the one tested – diverging on these known conditions (*Ibid.*). This means that if we check the mechanism in the typical

cases, which have still omitted conditions that differ, and the mechanism applies despite the differences in these omitted conditions, the mechanism is generalizable to all cases that are similar to those tested.

5.1.7 Comparison and Process-Tracing Methods

It will now be discussed, to what extent the case studies and their results can be compared, and to what extent comparative methods will provide an added value to this end. While comparative methods can be used in combination with process-tracing methods (see Beach and Pedersen 2019; Bennett and Checkel 2015; Blatter and Haverland 2012; Fontaine 2020), their usefulness and valued-added – in particular for theory-testing process-tracing – is subject to certain limitations (see Beach and Pedersen 2013; 2019; Beach 2020). In process-tracing, one is interested in the functioning of causal mechanisms. Comparative cross-case methods, such as Qualitative Comparative Analysis and most-similar or most-different system designs, however, can primarily serve as a tool to make inferences about the relation between causes, conditions, and outcomes, not about the existence of mechanisms and the impact of conditions on their functioning (see Beach 2020; Beach and Pedersen 2013).

Given the interest of process-tracing methods in within-case inferences and the operation of a theorised mechanism, the main non-within-case objective of the theory-testing variant is to find out whether the mechanism at hand also functions in other typical cases, or why it does not. The cross-case dimension in theory-testing process-tracing is therefore a question of generalisability of the findings regarding mechanisms, as depicted above (see Beach 2020; Beach and Pedersen 2016; 2019). In light of this focus, comparison of cases takes place prior to the analysis – during the mapping of cases – rather than during or after the analysis (Beach 2020). At this stage, comparative methods can be used (*Ibid.*; see also Beach and Pedersen 2016).

Nevertheless, the problem with comparative methods in combination with process-tracing is that they do not tell us much about the functioning of a mechanism (see Beach 2020; see Beach and Pedersen 2013). Qualitative Comparative Analysis or Mill's methods tell us that omitted conditions that are not shared by the cases are not relevant for the outcome and are ruled out as redundant (see Beach and Pedersen 2019). Therefore, one might assume that given the conjunction of conditions, the mechanism should apply in all typical cases that share cause, contextual conditions, and outcome (*Ibid.*). This would mean that in typical cases in which omitted conditions we know of differ, the mechanism still works, as these deviating conditions are ruled out by comparative approaches (see *Ibid.*). However, because of possible mechanistic heterogeneity, it might be that a difference in these conditions affects how the mechanism linking cause

and outcome looks like (*Ibid.*). This means that comparative methods might lead us to falsely assume that we can generalise where we cannot and are therefore not able to tell us how far we can generalise our mechanism (see Beach 2020; Beach and Pedersen 2019).

Comparative methods accordingly do not help us to generalise our findings on mechanisms, which, however, is what we are interested in (see Beach 2020; Beach and Pedersen 2019). Therefore, in order to generalise the findings, the most adapt strategy is the snowballing-outward strategy as described above. This means that it is necessary to actually test whether the causal mechanism functions in typical cases and thereby examine the extent to which we can generalise the mechanism to cases that are typical but differ in omitted conditions we are aware of (see Beach and Pedersen 2019).

5.1.8 Limitations of Methodological Approach

The role of comparative approaches for the method and other considerations described above point to some limitations of process-tracing methods. Although generalisations are possible with certain limitations, the approach is not well suited for large comparisons across cases (see Beach 2020). In addition, the set-theoretic foundations of process-tracing do not allow for symmetric generalisations at the level of cause and outcome, such as, if the cause occurs, the outcome occurs, and if the cause does not occur, the outcome does not occur (see Beach and Pedersen 2019). Furthermore, despite the general aim of the method of finding a causal link between a cause and an outcome, it is not possible to confirm (or disconfirm) a hypothesis with complete certainty. Rather, in line with Bayesian logic and a probabilistic epistemology, we can merely increase the confidence we hold in our assumptions by finding new evidence of high quality (*Ibid.*). Therefore, when the findings are evaluated in this study, rather than claiming that the hypotheses have been confirmed, it will be argued that the hypotheses can be *regarded* as confirmed.

5.2 Application of Process-Tracing Methods

The causal mechanism that links X and Y is the central concept in process-tracing. Testing a theory, and testing our assumptions made based on this theory, is done by translating the theoretical assumptions into a causal mechanism and testing whether the mechanism functioned as hypothesised in our selected – typical – cases that share cause, contextual conditions, and outcome. Accordingly, the causal mechanism will first be developed and then operationalised. Subsequently, the case selection will be presented.

5.2.1 The Causal Mechanism: Normative-Strategic Minimum Enforcement

The argument of this thesis is that the mechanism of normative-strategic minimum enforcement links non-compliance with fiscal objectives with non-imposition of financial sanctions. The mechanism of normative-strategic minimum enforcement stipulates that the Commission, when facing non-compliance with the fiscal objectives, points out this conflict with the norm of cooperation, fosters cooperative behaviour, and demands further fiscal effort. Given the delivery of commitments or measures, the Commission avoids the imposition of sanctions. Rather than resorting to punitive action, the Commission interprets its role as reliable supervisor in a way that it should defend and sustain the norm of cooperation and aim at the improvement of the fiscal situation. In pursuing, sustaining, and fulfilling these normative objectives, the Commission acts strategically. Accordingly, not enforcing the punitive provisions to their full extent serves the purpose of fulfilling and sustaining the Commission's normative objectives. In this section, the mechanism will be developed, its concepts will be defined, and the parts of the mechanism will be hypothesised. Subsequently, the mechanism will be operationalised. This means that the fingerprints that are expected to have been left by the mechanistic activities will be established and their significance for making inferences will be discussed. Furthermore, the manner in which empirical observations that correspond to our predictions will be evaluated is presented.

5.2.2 Establishing the Causal Mechanism

Starting from the puzzle that despite a reinforcement of the Commission's powers in the area of fiscal policy coordination, no financial sanctions for not complying with the fiscal policy recommendations under the SGP were ever imposed, a literature review of the state of research in the area has been conducted. Further, an adaptation of normative institutionalism has been presented that is argued to provide us with a framework for analysing and understanding the Commission's behaviour in the area at hand. The link between theory, literature review, and causal mechanism is the following: the normative institutionalist theory provides the grid for the assumptions of this thesis. In particular, the logic of appropriateness is the instrument that allows us to understand actor behaviour. Actors act in line with what they perceive as appropriate behaviour given the obligations of their role. To this end, they must interpret the normative-institutional setting in the context of a specific situation. To this was added a strategic dimension that claims that actors pursue and try to sustain the norms that they follow in a strategic manner. Normative institutionalism, however, does not tell us which norms impact actor behaviour and how these norms are interpreted. This information must be taken from institutional and legal sources as well as from the relevant academic literature.

The theoretical assumptions and the findings from the literature will now be translated into a causal mechanism in line with process-tracing methods. The starting point of the mechanism – the cause – was identified as Member State non-compliance with its fiscal objectives. The outcome of the mechanism is the non-imposition of sanctions. Building upon the theoretical assumptions, institutional information, and the findings from the literature, the key concepts of the mechanism and the relevant conditions will be established. In a second step, their interaction will be described. The aim is the conceptualisation of a mechanism that establishes a causal chain between cause and outcome.

5.2.3 Concepts and Conditions

Cause

The cause setting in motion the mechanism is the planned, potential, or actual considerable non-compliance of Member States with their fiscal objectives. This cause was identified as part of the puzzle that despite non-compliance, no sanctions are imposed. In order for the analysis to actually explain why no sanctions were imposed, it is important that only cases are selected in which the imposition of sanctions was actually possible. For this, it is not sufficient for a country to be under an EDP. Rather, the non-compliance with the fiscal objectives needs to be – or needs to be at risk to be – at such a level that sanctions might be legally and politically possible – and thus considerable. Given the complexity of the Commission’s methodology and therefore the difficult comparability of the fiscal performance, the case mapping has to rely on proxies for *considerable* non-compliance. These can be one or several of the following. One proxy can be that a step under the surveillance setting has been taken, might be taken, or is taken during the case, which makes further punitive action possible or its consideration necessary. Such a step can be the rejection of a DBP or the establishment of non-effective action. Another proxy might be that there was a public debate about the potential pursuit of further action that might lead to punitive action under the fiscal surveillance setting. The public announcement of a government that the objectives would not be reached or a Commission assessment that clearly shows that the objectives were not reached can also serve as proxies for considerable non-compliance. A Commission forecast, indicating that the objectives would be missed, can also be seen as a proxy, although it is less accurate and bears a greater risk for bias.

Outcome

The outcome we are focusing on is the non-imposition of financial sanctions. This outcome was also identified as part of the puzzle of the research topic. Sanctions are defined here as financial sanctions in

line with the relevant provisions presented in the background section of this study. Although certain actions taken by the Commission, such as the rejection of a DBP, could be regarded as symbolic sanctions, these are not part of the concept because the definition of what constitutes a symbolic sanction might not be shared by the actors, and therefore the outcome would be more difficult to determine.

Contextual Conditions

The contextual conditions that are expected to be relevant for the mechanism that links X and Y are the following: The first contextual condition identified is the membership in the euro area. Non-euro area Member States are not facing the same fines under the SGP as euro area member states (see European Union 2011a). The impact and meaning of sanctions for these states and the Commission's application of the surveillance procedure therefore is not the same. Accordingly, membership in the euro area is assumed to be relevant for the functioning of the mechanism. The occurrence of the case post-crisis and therefore after the start of post-crisis reform is the second contextual condition identified. The reason is that the legislative setting, the provisions regarding sanctions and the role of the Commission in the application of the rules changed considerably. Sanctions might be triggered earlier in the procedure and are potentially easier to impose. It is therefore assumed that the mechanism might not function in the same way in cases where sanctions are harder to impose. A third contextual condition is the general cooperative behaviour of the Member State concerned. It is assumed that for the mechanism to function, the Member State – in some form and moment or another – needs to signal during the events of the case that it is committed to cooperation.

In addition to these contextual conditions, further normative contextual conditions are assumed to play a central role in the mechanism, which are roles and norms that guide actor behaviour. The following two normative contextual conditions are expected to be relevant for the mechanism – the Commission's role as *reliable supervisor* and the *norm of cooperation*.

With regard to the role as *reliable supervisor*, we can make the following assumptions. The Commission plays the role of monitoring and enforcing body of fiscal policy surveillance, with its political weight and competences having been increased with the post-crisis reform (see Bauer and Becker 2014; Dehousse 2016; Seikel 2016; Van Aken and Artige 2013). The imposition of sanctions is, however, not an automaticity, as the rules give discretion to the Commission (see Bauer and Becker 2014; Dehousse 2016; Mabbett and Schelkle 2014; Seikel 2016; Van Aken and Artige 2013). One treaty-based key task of the Commission is to 'monitor the development of the budgetary situation and of the stock of government debt in the Member States with a view to identifying gross errors' (European Union 2012c: Art. 126(2)).

In this regard, the Commission can also propose sanctions for non-compliance. While Member States and the EU should act in compliance with the principle of ‘sound public finances’ (European Union 2012c: Art. 119(3)), the Commission is also supposed to be committed to the overarching goals of the EU, which include aiming at the ‘well-being of its peoples’, ‘balanced economic growth’, and ‘full-employment and social progress’ (European Union 2012a: Art. 3). While the common denominator of the two objectives set out in the treaties is the aim of economic stability – depending on actor’s ideas about economic policies, their functioning, impact, and political repercussions – these goals might potentially enter into conflict. For example, the imposition of a sanction might create further economic and fiscal distress to a country (see Hodson and Maher 2004), which would be in conflict with the goal of economic improvement. This also means that while flexible rule application can be justified by aiming at supporting growth (see Miró 2020; Schmidt 2016a), strict rule application might be justified by claiming that it serves the credibility of the Commission as monitoring body (see van der Veer and Haverland 2018; Vanheuverzwijn 2017). Although Commission actors might not agree on the best and correct rule application, might not give the same weight to certain institutional objectives, and might come to different interpretations of which actions lead to the outcome they aim at, they are expected to accept that the Commission should defend the general validity of the rules and act in the interest of sustaining EMU and fiscal policy surveillance as well as work towards the general goal of a sound economic situation. The common denominator that serves as norm can therefore be described as the Commission acting as *reliable supervisor*.

The setting of fiscal policy surveillance is based on the cooperative behaviour of the Member States, which is closely linked to the general goal of the EU of working towards economic growth and the people’s well-being. The TFEU proclaims that the ‘Member States shall regard their economic policies as a matter of common concern and shall coordinate them within the Council’ (European Union 2012c: Art. 121). The cooperative behaviour of Member States within the Council and with the Commission therefore is a crucial part of the functioning of EMU. While the Commission and the Council can recommend fiscal policy measures, they cannot implement them at the national level. Should a Member State not cooperate and implement the measures decided at the supranational level, the Commission can increase pressure, but beyond the imposition of sanctions, no means of coercion are available (see Closa 2019). The Commission is therefore expected to agree that Member States need to cooperate in order for the setting to work, and that therefore *cooperation* as a norm is central to the surveillance setting.

These norms are assumed to be linked in practice, with the Commission aiming at defending and sustaining the norm of cooperation as part of its role as reliable supervisor. Depending on the situation, these norms can be interpreted and linked differently. Such links could be created by the Commission using the threat of sanctions to foster cooperation (see Tallberg 2002) or by the Commission avoiding the imposition of sanctions in order not to risk cooperation in the future (see Closa 2019).

The contextual conditions do not play an active role but are enabling or inhibiting action. The link between the conditions and the parts of the mechanism is provided by the logic of appropriateness: the norms are present in the institutional setting, but actors have to interpret them in light of the situation at hand. They will act in line with their perception of what is appropriate in light of the obligations of their role. In line with the assumptions regarding strategic action, the actor's normative objectives are assumed to be pursued, sustained, or fulfilled strategically. This provides the principle for the entities' activities.

In order to develop an understanding of how these conditions might come into play, findings and indications from the literature are of relevance. If the Commission faces clear non-compliant behaviour, and sanctions are not immediately at stake, the Commission is expected to show that it is not lenient and that the rules are applied (see Vanheuverzwijn 2017). It thereby interprets its role as being required to defend the norm of cooperation. The Commission can then try to find a cooperative solution instead of harming cooperation by direct punitive action (see Closa 2019) and also to use looming sanctions as a leveraging instrument for achieving cooperation and compliance (see Drezner 2003; Tallberg 2002) in line with the economic goal-orientation of the setting. If, however, sanctions move closer, the Commission is expected to prefer a flexible and lenient approach (see Miró 2020) in order to avoid sanctions (see Schmidt 2020), as the actual imposition of sanctions might have negative consequences (see Hodson and Maher 2004). Thereby, the Commission fulfils the obligation of its role as reliable supervisor to sustain the cooperative setting of fiscal policy coordination. Based on these assumptions, the fully spelled out *normative-strategic minimum enforcement* mechanism that links X and Y is depicted in Figure 1 and spelled out in detail below. The three parts represent the three main hypotheses as presented in the introduction.

Cause: Considerable non-compliance with the fiscal objectives

The Member State concerned either plans to or has already not complied with the fiscal objectives it has been recommended to achieve under the fiscal surveillance setting.

Part 1 (H.1.1): The Commission assesses compliance and points out potential breaches

The Commission assesses the fiscal performance of Member States. In light of considerable non-compliance with the fiscal objectives, the Commission points out the breach. Potential or actual non-compliance with the fiscal objectives is creating a conflict with the norm of cooperation. The Commission's role as reliable supervisor is interpreted in a way that it contains the obligation to defend the norm of cooperation. By stating the breach, it shows that it acts upon non-compliance. This action, while representing action in line with its obligations, further reflects the Commission's strategic behaviour that aims at fulfilling its normative objective.

Part 2 (H.1.2): The Commission fosters dialogue, cooperation, and further effort

When having detected and signalled a Member State's conflict with the norm of cooperation, the Commission interprets its role as reliable supervisor in the sense that it should fulfil and sustain the norm of cooperation in line with the goal-orientation of the setting. This is done by fostering the dialogue and further fiscal effort, which aims at improving the fiscal situation. Fostering cooperation is deemed more in line with the Commission's obligations than the enforcement of punitive measures. In acting towards its objectives, the Commission is expected to act strategically. For example, it can make the avoidance of additional steps under the surveillance procedure conditional upon the delivery of further measures or apply the rules flexibly as a means to foster cooperation.

Part 3 (H.1.3): The Commission avoids punitive action

Given the Commission's openness towards dialogue and further effort by the Member State concerned, and the actual commitment to or delivery of measures, the norm of cooperation and the Commission's obligation to sustain this norm are deemed fulfilled. In addition, imposing sanctions might entail other negative repercussions that go against the Commission's role as reliable supervisor, such as triggering negative economic and fiscal consequences, threatening future cooperation and enforceability, and harming public support towards the Commission and the European project. Sanctions are accordingly not in line with the perceived obligations of the Commission in the situation at hand – and are therefore deemed inappropriate. In order to avoid their imposition, the Commission is expected to apply the rules flexibly, thereby engaging in strategic action.

Outcome: Non-imposition of sanctions

Given the Commission's flexible rule application, the imposition of financial sanctions is avoided.

5.2.4 Operationalisation: Expected Fingerprints, Observations, and Evaluation

Fingerprints and Evaluation

In order to make inferences about whether the parts of the mechanism and the mechanism as a whole were present, we have to establish fingerprints that we expect to have been left by the activities if the parts functioned as we have theorised. This is the operationalisation of the mechanism. At this stage – that is prior to the empirical analysis – the fingerprints need to be evaluated in terms of their theoretical certainty and uniqueness. Fingerprints – that is expected observations – can be established and conceptualised in the form of the tests described above. This way, the fingerprints' significance in terms of certainty and uniqueness can be determined. While theoretical certainty tells us whether the absence of a prediction disconfirms the functioning of a theorised part, theoretical uniqueness tells us whether the presence of a prediction confirms the functioning of a part. In Table 1, the fingerprints for each part will be presented and their certainty and uniqueness will be determined.

Table 1: Fingerprints and Empirical Certainty and Uniqueness

	Part 1	Part 2	Part 3
Entity	European Commission	European Commission	European Commission
Activity	Assesses compliance and points out potential breaches	Fosters dialogue, cooperation, and further effort	Avoids punitive action
Fingerprints	Interview data, official documents, or news coverage that show that Commission actors pointed out the situation of non-compliance given that they regarded the fiscal numbers and performance as clearly indicating a breach of the recommendations.	Interview data, official documents, or news coverage that show that the Commission fostered cooperation and dialogue and expected further effort that would lead to an improvement of the fiscal and economic situation.	Interview data, official documents, or news coverage that show that the Commission was of the opinion that imposing sanctions was not warranted in light of Member State cooperation and might have had negative consequences, and that it opted for a flexible rule application.

Evaluation			
Uniqueness	<p>These fingerprints are of elevated uniqueness. If they are present, it is very likely that the activity actually took place as was hypothesised in H.1.1. The fingerprints are very specific and close to the assumptions, increasing our confidence in them being valid. This entails that the Commission acts in line with its role as reliable supervisor that strategically defends the norm of cooperation.</p> <p>However, it is conceivable that the occurrence of the fingerprints can be explained by other theoretical assumptions.</p>	<p>These fingerprints are of moderate uniqueness. If they are present, it is likely that the activity actually took place as was hypothesised in H.1.2. The fingerprints are sufficiently specific to make the validity of the assumptions possible. This entails that the Commission acts in line with its role as reliable supervisor that, in line with the goal orientation of the setting, strategically aims at fulfilling and sustaining the norm of cooperation.</p> <p>However, it is conceivable that the occurrence of the fingerprints can be explained by other theoretical assumptions.</p>	<p>These fingerprints are of elevated uniqueness. If they are present, it is very likely that the activity actually took place as was hypothesised in H.1.3. The fingerprints are very specific and close to the assumptions, increasing our confidence in them being valid. This entails that the Commission strategically avoids the imposition of sanctions because the norm of cooperation is fulfilled and it would not be in line with its role as reliable supervisor.</p> <p>It is, however, conceivable that the occurrence of the fingerprints can be explained by other theoretical assumptions.</p>
Certainty	<p>These fingerprints are of high certainty. This means that if they are not found, it is unlikely that the theoretical explanation holds. The reason for this is that it is unlikely that the Commission does not indicate the reasons for its behaviour if it can claim that it is simply applying the rules.</p>	<p>These fingerprints are of high certainty. This means that if they are not found, it is unlikely that the theoretical explanation holds. This is the case because if the Commission fosters the dialogue because it wants to improve the situation, there should be evidence indicating this behaviour.</p>	<p>These fingerprints are of elevated certainty. This means that if they are not found, it is unlikely that the theoretical explanation holds. This is the case because if the Commission avoids sanctions because they are not deemed warranted and might have negative consequences, it is likely that it communicates this opinion, and that there are indications for a flexible rule application in order to avoid the sanctions.</p>

Corresponding validity tests	This test can be described as a combination of a hoop test – that means that the fingerprint needs to be found (high certainty) – and a moderately strong smoking-gun test – that means that the presence has elevated confirmatory power.	This test can be described as a combination of a hoop test – that means that the fingerprint needs to be found (high certainty) – and a moderate smoking-gun test – that means that the presence has moderate confirmatory power.	This test can be described as a combination of a hoop test – that means that the fingerprint needs to be found (high certainty) – and a moderately strong smoking-gun test – that means that the presence has elevated confirmatory power.
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Observations and Evaluation

At the theoretical level, expected evidence was established in the form of fingerprints. Subsequently, and as part of the analysis, the observations that correspond to these fingerprints need to be evaluated. We thereby aim to find out whether the empirical data either confirms or disconfirms the presence or absence of our expected evidence. While empirical certainty allows us to infer that an expected observation was not present, empirical uniqueness allows us to infer that an expected observation was actually present and can be treated as evidence. As a detailed evaluation of the observations would considerably hamper the readability of the analytical section of this study, the empirical observations will be evaluated in line with Beach and Pedersen (2019) in Appendix 12.3. Given that for each fingerprint, observations were actually found, only the empirical uniqueness of the observations will be assessed.

5.2.5 Case Mapping and Selection

In line with theory-testing process-tracing methods, typical cases that share cause, contextual conditions, and outcome will be selected. The aim is to find out whether the theorised causal mechanism is present in the selected cases that look homogenous, and therefore whether they really are mechanistically homogenous. In addition, by taking into account the conditions on which the cases differ, and which are not part of the mechanism, it will be possible to establish the boundaries of generalisability of the mechanism. That is, should the mechanism work in all the cases selected, the diverging contextual conditions do not hamper the functioning of the mechanism, and the findings can be generalised to all cases that are similar to the ones selected.

For the mapping of cases, the cause, outcome, and contextual conditions as presented above were considered. The mapping is the result of an in-depth research on SGP enforcement from the start of the crisis-related SGP reform in 2011 until 2019. For this period, all procedural steps were mapped that were taken under the Pact regarding euro area Member States. These include action under the preventive arm, the opening of EDPs, the establishment of non-effective action, the decision to give notice, and recommendations concerning the imposition of fines. Information for this mapping exercise stems from the Commission's documentation available online (see European Commission 2022e). From this angle, it was possible to detect events that occurred and following which sanctions might have been imposed, such as a decision that no effective action had been taken. However, based on this approach, it was not possible to detect all situations in which sanctions for a Member State might have ultimately been imposed and were considered by the relevant actors. For these cases, only where a public debate occurred, it was possible to detect the political possibility of a financial sanction. This concerns the cases of France in 2015 and Italy in 2018 as presented below. An extensive review of press coverage of SGP application was therefore conducted. Following this approach, however, does not allow for the detection of cases of potential or actual considerable non-compliance, whose follow-up was suppressed at an early stage. Given, however, that the Council is always involved in the surveillance of fiscal data, and that some members of the Council have always been supporting – at least publically – a stricter application of the Pact, it is unlikely that considerable non-compliance has not been made public in some form or the other. This can, however, not be excluded.

The mapping exercise revealed cases that share the cause – considerable non-compliance with the fiscal objectives – and further reflects the contextual conditions of euro area membership, post-crisis related reforms, and (ultimate) cooperation by Member States. The mapping according to normative contextual conditions was less straightforward. In order to argue that certain institutional norms were present in the cases before entering into an in-depth analysis of the cases, legislative documents and literature on fiscal policy coordination and on the European Commission were used. The two normative contextual conditions are the role of the Commission as *reliable supervisor* and the *norm of cooperation*. The presence of these norms has partly been explained by their roots in the Treaties. As the relevant provisions were in force since the beginning of EMU, we can assume that they were present in all cases of SGP application. In addition, the findings of the literature that have been used to argue for the presence of these normative conditions in the conceptualisation of the norms above is assumed to be indicative for the situation over the whole post-crisis period.

The mapping of cases according to these conditions provides us with a causally homogenous population of cases. Table 2 summarises the presence of conditions according to the described methodology. Only cases for which the relevant conditions were present – and therefore where we can expect the theorised mechanism to have occurred – were selected. In addition to these shared conditions, the table presents contextual conditions we are aware of and were revealed by the research process, but which are assumed to not play a role in the mechanism, given that they differ. These are the size of the Member States, the occurrence during a crisis situation, and the support of the non-sanction by other Member States. These conditions will be depicted in the case studies.

The cases that were selected are the following. Belgium 2013, France 2015, Spain and Portugal 2016, including the application of macroeconomic conditionalities, and Italy in 2018. Most cases concern events under the corrective arm of the Pact, with the exception of Italy. Belgium, Spain, and Portugal were found not to have taken corrective action in line with Art. 126(8) TFEU, which might have led to the imposition of a fine and in the case of Spain and Portugal, in addition, to the suspension of ESI Funds. However, no sanctions were imposed in these cases. France might have been found not to have taken effective action, but this step was not taken. As regards Italy, an EDP might have been opened, which could have been accompanied by Italy being required to lodge a non-interest bearing deposit (see European Union 2011a). No other post-crisis euro area case was identified in which the imposition of sanctions under the SGP was possible.

Table 2: Case Mapping

Conditions	Belgium 2013	France 2015	Spain and Portugal 2016	Spain and Portugal 2016 - Suspension of ESIF	Italy 2018
Post-crisis legal setting	+	+	+	+	+
Euro area Member States (MS)	+	+	+	+	+
Cause: Considerable non-compliance	+	+	+	+	+
Outcome: Non-imposition of sanctions	+	+	+	+	+
Role of reliable supervisor	+	+	+	+	+
Norm of cooperation	+	+	+	+	+
Cooperative MS	+	+	+	+	+
Omitted condition 1: Small MS	+	-	+/-	+/-	-
Omitted condition 2: Crisis situation	+	+/-	-	-	-
Omitted condition 3: Most MS against sanction	+	+	+	-	+

Table 3 presents the procedural steps that were taken in the selected cases. This background information is useful in order to gain a better understanding of the case studies. Although sanctions were imposed in none of the cases, the step at which the surveillance procedures stopped differs. This reflects a variation on the outcome – that is the non-imposition of sanctions. Therefore, the diverging application of procedural steps is of no added value to the generalisability of the causal mechanism in terms of omitted contextual conditions. However, it illustrates the level of abstraction of the causal mechanism – due to the broad conceptualisation of the outcome – that is able to take into account a variety of procedurally different cases. From this perspective, the causal mechanism in itself already presents a rather general explanatory tool to approach the application of sanctioning provisions under EU fiscal policy coordination.

Table 3: Procedural Stages of Cases

Case	Existence of Excessive Deficit	Commission Proposal to state non-effective action	Decision that no effective action has been taken	Formal sanction proposal	Proposal/ imposition of sanction
Spain 2016	Yes	Yes	Yes	Yes	No
Portugal 2016	Yes	Yes	Yes	Yes	No
Spain and Portugal 2016 - ESIF	Yes	Yes	Yes	No	-
Belgium 2013	Yes	Yes	Yes	No	-
France 2015	Yes	No	-	-	-
Italy 2018	No				-

5.3 Data Collection, Use, and Limitations

The analysis of this thesis draws upon a variety of empirical sources. In the context of the process-tracing method applied here, these sources are used as observations that aim at testing the presence of the causal

mechanism and its parts, which reflect the theoretical hypotheses that this thesis builds upon. The main sources are research interviews, official documents, and press coverage. These sources are triangulated, which describes the comparison of an observation with observations from sources that are independent from the source of the observation in question in order to assess its accuracy (Beach and Pedersen 2019). In the following, the different data sources will be presented and discussed.

5.3.1 Expert Interviews

For the purpose of this thesis, 30 semi-structured expert interviews have been conducted. Semi-structured interviews allow the interviewer to focus on salient issues that arise during an interview, instead of following a strict order of questions (Barbour 2008). The aim of the interviews was to gather information regarding the behaviour and considerations of decision-makers and factual information concerning the events and actions in the studied cases. Most interviews have therefore been conducted with current or former Commission officials both at the political and at the administrative level. Commission interviewees at the political level were members of Commissioner's cabinets. As regards the administrative level, interviews have been conducted with officials working or having worked at the Directorate-General for Economic and Financial Affairs (DG ECFIN) and at the Directorate-General for Regional and Urban Policy (DG REGIO). The latter was relevant for the case of the macroeconomic conditionalities regarding Spain and Portugal. In this context, one interview with an MEP has also been conducted. Furthermore, Interviews have been conducted with Council officials. As regards interview partners from the Member States, these were representatives working in Member States' Permanent Representations in Brussels and officials from national Finance Ministries. An indicative interview questionnaire that guided the semi-structured interviews with Commission officials can be found in Appendix 12.2. The interviews used for the analysis have been attributed a code and – with one exception – been anonymised. A list of the referenced interviews can be found in Appendix 12.1.

The main criterion for the selection of interview partners was their direct involvement or close proximity to decision-making or political and technical developments in the cases. Where justified, interview data is treated as primary data (see Beach and Pedersen 2019). Potential interview partners were identified mostly via organisational charts or other publically available information, for example from official websites. Sometimes, the relevant organisation was contacted by phone in order to ask for the contact of the person in charge of a specific topic. Potential interview partners were contacted via email. Some interview partners were identified and referred to by other interviewees during research interviews. Most interviews took place in person, only one was conducted on the phone. When permitted by interview

partners, the interview was recorded and subsequently transcribed. Otherwise, notes were taken by hand. Interviewees agreed to different levels of precision at which they could be situated. This concerns the position within their institution and in the case of national officials even for which Member State they work. Some interviewees did not agree at all upon the use of the gathered data, in which case the information is solely treated as background information. The first six interviews were conducted in 2018, with a focus on the application of the macroeconomic conditionalities regarding Spain and Portugal. Most interviews (19) were conducted from March 2019 to May 2019. Four interviews were conducted in September 2019. One additional interview was conducted in July 2021. Most interviews were done in Brussels, with Member State representatives being either interviewed there – mostly in Permanent Representations – in Berlin, or on the phone. Given that the focus of the analysis is on the Commission, most interviews were conducted with representatives of the European Commission (15), followed by interviews with representatives of Member States (12), representatives of the Council (2), and one MEP. Interviews with Member State representatives are used to validate and gather information on Member State behaviour and to cross-check information on Commission behaviour.

The empirical data gathered via interviews covers all the case studies. However, comparatively more data was gathered regarding the newer cases of Italy and especially Spain and Portugal. The reasons for this are twofold. First, it was easier to find officials being willing to conduct an interview that have worked on the more recent cases, with many officials having worked on the older cases now working on different issues and in different DGs and not being willing to participate in an interview. Second, those interview partners that had worked on the older cases, such as Belgium and France, were sometimes not able to recall the details of the events. In order to compensate for the comparative lack of interview data in the cases of Belgium and France, more official documents and press coverage are used to test the hypotheses.

While interview data can provide valuable insights into decision-making processes, they have to be handled with caution. It is possible that interviewees use the interview to draw a certain picture of themselves given political considerations. Therefore, it is important to check statements and interpretations using independent sources, such as newspaper articles or documents (Hildebrandt 2015). In addition, if some time has passed since the event in question, the interview partners' memory of events might be imperfect. However, here again, triangulation can enhance the reliability of the account (Beach and Pedersen 2019). In order to avoid a bias in the evidence, interviews should be conducted with actors 'from different sides', which is part of the 'triangulation across interviews' (Beach and Pedersen 2019: 215). Interview data can for example be seen as trustworthy if it opposes 'the motives we would expect

a given actor to have' (Beach and Pedersen 2019: 211). A discussion of the quality of data used in line with process-tracing methods can be found in Appendix 12.3.

5.3.2 Official Documents and Press Coverage

Besides interview data, the case studies are based on empirical data that stems from an extensive review of primary and secondary data sources. Primary data reviewed and used includes legislative documents, meeting minutes and summaries, meeting outcomes in written form, public statements, video sources, and press releases. Secondary data used is news coverage and information taken from the academic literature. Meeting minutes of the College of Commissioners are available publically on the Commission's website, as are legislative documents, press releases, and other publications (see European Commission 2022d). Available minutes and meeting outcomes from the Eurogroup and the EFC meetings, including the alternate composition, stem from a request for documents that was made for the purpose of this thesis. Some information contained in the non-publically available documents was rendered unreadable, however. All these documents were reviewed and information is used as evidence where possible. Information that is used includes statements and factual information concerning the decision-making process. As with interview data, caution is also required when working with this kind of data. When public statements are made, it is possible that the information contained is biased given an underlying strategy in the communication (Beach and Pedersen 2019). In general, minutes should be more trustworthy than public statements, as the former are normally only accessible a while after the events (see *Ibid.*). Although Commission minutes are accessible within weeks after the events, their publication is sufficiently delayed for not being picked up by the press and thereby creating an immediate public debate. This suggests that the bias is lower than in public statements. Minutes of the Council are only accessible upon request, which makes them a rather trustworthy source of evidence. Press coverage is mainly used as a source of factual information and public statements, while interpretations of events are not considered as evidence. In any case, given the risks regarding accuracy associated with these sources, and as depicted above, the use of data and observations as evidence will be subject to triangulation (see Beach and Pedersen 2019).

6. Belgium 2013

After having presented the theoretical and methodological approach, this chapter represents the first case study of this thesis. The reform of the rules of fiscal policy coordination in the wake of the European Sovereign Debt Crisis and their first application fell under the mandate of the Barroso II Commission that was in office from 2010 until 2014. Despite announcing that it would apply the newly introduced rules – including the reinforced sanctioning provisions – in a strict manner (European Commission 2012c), in 2013, Belgium was not fined for its fiscal non-compliance, although this would have been possible under the new rules.

The case of Belgium is relevant for this study for several reasons. First, and above all, this case represents a typical case in the sense of process-tracing methods. It allows us to test whether the theoretical assumptions encapsulated in the causal mechanism hold in practice. Second, if the assumptions hold true, we can generalise the findings of the mechanism to cases that are similar to the case of Belgium by way of divergence from other typical cases of the following contextual conditions: it represents a small Member State during a crisis situation and – unlike in one other case – the Member States supported the Commission's actions regarding sanctions – as will be discussed later on. Third, it represents one of the first cases of application of the fiscal surveillance rules that were introduced in the context of the post-crisis rule overhaul. Fourth, given the non-application of the reinforced rules, the Belgian case can potentially help us understand the Commission's reasons for refraining from imposing sanctions for a country's non-compliance with its fiscal policy recommendations, despite the establishment of non-compliance, which reflects the level of abstraction of the causal mechanism. Before turning to the analysis of the case, its legal and political background and a summary of the events under the case will be presented. After the presentation of the analysis based on the main theoretical framework, the case will be analysed from the perspective of the alternative theoretical approach of this study – a rational choice institutionalist principal-agent model. The chapter will conclude with a summary of the main findings and a discussion of their wider implications.

6.1 Belgium under the EDP and Legal Background

With the reform of the SGP, sanctioning provisions were reinforced in that finding that a country 'has not taken effective action to correct its excessive deficit' – as was the case for Belgium – requires the Commission to come up with a recommendation concerning financial sanctions (European Union 2011a: Art. 6(1)). This provision is, however, not automatic. The Commission can propose to the Council the

reduction or cancellation of the fine in case of exceptional economic circumstances or in case a reasoned request is submitted. Also, the Council can reject the Commission's recommendation to impose a fine. However, in order to do this, it needs to regroup a qualified majority. This voting rule – RQMV – creates a high threshold for the Council to oppose the Commission's intended actions. In the case of Belgium, the closeness to the introduction of the new rules brought another – a transitional – provision in play. As written in the recitals of Regulation (EU) No 1173/2011: 'In order to avoid the retroactive application of the sanctions under the corrective part of the SGP provided for in this Regulation, they should apply only in respect of the relevant recommendations and decisions to correct an excessive deficit adopted by the Council after entry into force of this Regulation' (European Union 2011a: Recital 21). While Belgium would have qualified for being exempted from punitive action given this transitory provision, the Commission, as will be shown, changed its view concerning the applicability of the new punitive provisions during the transition period over the analysed period, thereby putting in question the legal significance of this arrangement.

As was the case for most EU Member States, an EDP was opened for Belgium in 2009, when the financial crisis' impact on public finances became apparent. For 2009, the government deficit of Belgium was projected at 5.9% of GDP and therefore well above the 3% ceiling of the fiscal surveillance framework (Commission of the European Communities 2009a). As the planned deficit was not 'close to the reference value' of 3% and was not considered as temporary, the Council, upon a Commission recommendation, concluded that an excessive deficit existed (Council of the European Union 2010a). The Council gave the Belgian government time until 2012 to correct its excessive deficit (Council of the European Union 2009b).

The domestic situation in Belgium at the time of the events under analysis was shaped by a major governmental crisis. Between the general elections held in June 2010 and the formation of a coalition government in December 2011, Belgium was led by a caretaker government under the Christian Democrat Yves Leterme (Le Figaro 2011). While public debt stood at 96% of GDP in 2010, further fiscal pressure was created by support to the Dexia bank (Connor 2011) that was in need of financial assistance due to its exposure to government bonds (Neville 2012). In October 2011, the Belgian government, together with France and Luxembourg, committed to guarantees worth €90 billion and nationalised the Belgian branch of the financial group for a sum of €4 billion (Pignal 2011). The Belgian guarantees led Moody's – a rating agency – to downgrade the country's credit rating (Neville 2012). In this context, and in late November 2011, the coalition negotiators struck a deal on the Belgian budget over the years 2012, 2013, and 2014, aiming at a deficit of 2.8% in 2012 and at a balanced budget in 2015 (Mevel 2011; see also Chrisafis 2011).

A new coalition government was finally formed under Prime Minister Elio Di Rupo in early December 2011 (Connor 2011).

In November 2011, shortly before the Six-Pack would enter into force on 13 December, Olli Rehn, the Vice-President of the Commission for Economic and Monetary Affairs and the Euro, informed the Belgian government that it was at risk of missing its deadline for correcting its excessive deficit (European Commission 2012c). After Belgium committed to additional measures (European Commission 2012b), the Commission, in early 2012, concluded that no additional steps under the Belgian EDP were required at this stage (European Commission 2012c).

In May 2013, however, the Commission evaluated the Belgian fiscal situation again. This time, and in line with Article 126(8) TFEU, the Commission found that 'Belgium had not taken effective action in response to the Council recommendation' it had received in 2009 and did not correct its excessive deficit until 2012 as had been recommended (European Commission 2013c: 5).¹⁴ This assessment was subsequently confirmed by the Council (Council of the European Union 2013a). Based on this, and with the rule changes of the Six-Pack already in force, the Belgian government was facing the possibility of being imposed a fine of up to 0.2% of its GDP. However, the Commission neither officially recommended the imposition of sanctions, nor did it propose to the Council to cancel or reduce the fine. Instead, the Commission argued that it would not apply the new sanctioning provision for the fiscal behaviour of the Belgian government that took place before the Six-Pack had entered into force. Such an application would run counter to the principle of non-retroactivity of EU Law (European Commission 2013b). Notwithstanding the non-application of the new sanctioning provision, the Commission followed up upon the non-effective action by passing on to the next step of the EDP. Under Art. 126(9) TFEU, the Belgian government received a notice from the Council, upon a Commission recommendation, which shifted the deadline for the

¹⁴ 'Effective action' refers to the following, as laid down in the Code of Conduct of the SGP (2012 version): 'A Member State should be considered to have taken "effective action" if it has acted in compliance with the recommendation or notice, regarding both the implementation of the measures required therein and budgetary execution. The assessment should in particular take into account whether the Member State concerned has achieved the annual budgetary targets initially recommended by the Council and the underlying improvement in the cyclically adjusted balance net of one off and other temporary measures. In case the observed budget balance proves to be lower than recommended or if the improvement of the cyclically adjusted balance net of one off and other temporary measures falls significantly short of the adjustment underlying the target, a careful analysis of the reasons for the shortfall would be made. In particular, the analysis should take into account whether expenditure targets have been met and the planned discretionary measures on the revenue side have been implemented' (Council of the European Union 2012: 12).

correction of the deficit to 2013 and required the Belgian government to report on progress made on a quarterly basis (Council of the European Union 2013b).

6.2 Analysis: Normative-Strategic Minimum Enforcement

The case will be analysed in line with the theoretical and methodological approach of this study, as presented in the previous chapters. Based on an adaptation of normative institutionalism, and on expectations drawn from the literature review and institutional sources, the mechanism of normative-strategic minimum enforcement has been developed. This mechanism is assumed to link the cause – considerable non-compliance – with the outcome – the non-imposition of sanctions – and thereby provide an answer to the question of why the Commission refrains from imposing sanctions. It argues that when the Commission is confronted with a country's actual or potential considerable non-compliance, it clearly points out the behaviour that is in conflict with the norm of cooperation. Then, and in order to improve the fiscal situation, it fosters cooperative behaviour and demands additional measures. If these are delivered, the Commission avoids the imposition of sanctions. The Commission is acting in line with its interpretation of its role as reliable supervisor in defending and sustaining the norm of cooperation and the goal-orientation of the setting. The imposition of punitive measures is not in line with its perceived obligations. In pursuing its normative objectives, the Commission acts strategically.

This mechanism is based on process-tracing methods in its design and functioning and reflects the hypothesised assumptions based on the theoretical approach (H.1; H.1.1-H.1.3). The three sub-hypotheses are reflected by the respective parts of the mechanism. Accordingly, this analysis will test whether the mechanism was present in the near-sanctioning case of Belgium and thereby whether the theoretical assumptions hold in this case. For each of the three parts of the mechanism, the theoretical assumptions and expected empirical observations are presented, which should be found in case the assumptions hold. Subsequently, it is tested whether the expectations are confirmed by the empirical data. The evaluation of the observations that serve as evidence is presented in Appendix 12.3.

The cause that sets in motion the causal mechanism in this case is the considerable breach of the fiscal objectives by the Belgian government under its ongoing EDP and regarding its 2012 deadline for correcting its excessive deficit. This breach was first reflected by a risk of missing the fiscal objectives and second, by the actual non-compliance with the objectives. As initially forecast by the Commission (European Commission 2011b), the Belgian government indeed did ultimately not meet its 2012 correction deadline (European Commission 2013a).

6.2.1 Part 1: The Commission assesses Compliance and points out Potential Breaches

The cause – considerable non-compliance – sets in motion Part 1 of the mechanism, namely the Commission pointing out breaches with the fiscal objectives. The Commission assessed both in 2012 and in 2013 the fiscal performance of the Belgian government. In 2011 and in early 2012, the Commission informed the Belgian government by letter about its risk of failing to meet its consolidation objectives (European Commission 2012c; Pignal 2012). In early 2012 – after the Belgian government had announced additional consolidation measures (European Commission 2012b) – the Commission concluded that at this point, no further EDP steps were ‘needed’ (European Commission 2012c: 5). However, in a new assessment in 2013, the Commission concluded that Belgium had not taken effective action to correct its excessive deficit (European Commission 2013c).

Expectations in line with the Causal Mechanism

In line with the assumptions expressed in the causal mechanism of normative-strategic minimum enforcement, it is expected here that when facing behaviour that is in conflict with the norm of cooperation, the Commission acts in line with its role as reliable supervisor that defends the norm of cooperation. While pointing out the non-compliant behaviour corresponds to the Commission’s obligation, it also reflects strategic action in order to achieve its normative objective. If this holds true, we would expect to find interview data, official documents, or news coverage that show that Commission actors pointed out the situation of non-compliance given that they regarded the fiscal numbers and performance as clearly indicating a breach of the recommendations.

Evidence

In line with the expectations, the Commission’s assessment of the Belgian government’s performance under the Pact from 2011 to 2013 revealed first a risk of non-compliance and later the confirmation of non-compliance. In light of this situation, the Commission decisively signalled both the risk of non-compliance and the ultimate actual non-compliance. First, the events in 2011 and 2012, and subsequently, the events in 2013 will be analysed in this section.

In 2011, the Belgian caretaker government had not adopted its 2012 budget in time to be included in the European Commission’s 2011 autumn forecast. Although the government had announced that it was committed to reach a deficit of 2.8% of GDP in 2012, the measures to achieve this goal were not decided at this point. Accordingly, the Commission based its autumn forecast on a no-policy-change scenario and projected a deficit of 4.6% of GDP for 2012 and of 4.5% in 2013 (European Commission 2011b). In late

November 2011, however, the new government agreed on a budget for 2012. This agreement was announced on 27 November and submitted to the Belgian Parliament on 21 December 2011. The objective of reaching a deficit of 2.8% in 2012 was reiterated (European Commission 2013a: 6). Nevertheless, according to the Commission, 'the draft budget [...] would [...] have led to a deficit of around 3¼% of GDP' even 'without taking into account [...] the impact of the recent deterioration of the macroeconomic environment in the EU and Belgium specifically' (*Ibid.*: 9). The Commission informed the Belgian government in a letter in November 2011 that there was a risk it would not meet its correction deadline (European Commission 2012c), and again in early January 2012, stating that the draft budget would not suffice (Pignal 2012). This indicates that the Commission, in light of clear data indicating non-compliance and a conflict with the norm of cooperation, acted in line with its perceived obligation to defend this norm by stating non-compliance. Only after the Belgian government committed to a freeze of 0.35% of GDP in spending (European Commission 2012b), the Commission concluded that Belgium 'appears' to 'have taken effective action' and that at this stage, 'no further steps' under the EDP were 'needed' (European Commission 2012c: 5).

Contrary to this assessment in 2012, based on a new assessment in May 2013, the Commission came to the conclusion that the Belgian government's actions were not sufficient to correct the excessive deficit and to respond adequately to the Council's 2009 recommendation (European Commission 2013c). The Commission's new assessment suggests that the data clearly showed that the Belgian government had not taken effective action to reach its fiscal objectives. While the fiscal development turned out better than expected in 2009 and 2010, the objectives were not met from 2011 onwards. The general government deficit reached 5.6% of GDP in 2009, against a projection of 5.9%. In 2010, it fell to 3.8% of GDP, well under the target of 4.8% of GDP as communicated in the Belgian Stability Programme of January 2010. This was possible because of a GDP growth that was higher than initially expected (European Commission 2013a). In 2011, however, the fiscal effort was not sufficient to reach the target of 3.6% of GDP, with the deficit ending up at 3.7% of GDP, although GDP growth was higher than expected. The structural balance – that is the budgetary balance without one-off measures (European Commission 2018h) – even deteriorated by 0.1% of GDP. According to the Commission, the absence of 'structural improvement' in this year can partly be explained by the fact that between 2010 and 2011 Belgium was missing a completely operational federal government (European Commission 2013a: 9). However, given the economic situation, the Commission judged that 'Belgium failed to take advantage of the relatively favourable economic times to reduce its deficit' and concluded that the fiscal effort was 'entirely absent in 2011' (European Commission 2013c: 4-5). In 2012, while the Belgian government aimed at reaching a

deficit of 2.8% of GDP, the deficit ended up at 3.9% of GDP, and therefore considerably above the Belgian government's own objective. Reasons for this were the economic slowdown and the deficit of the local governmental level turning out higher than planned (European Commission 2013a). Another major factor that contributed to the comparatively high deficit in 2012 was the recapitalization of the Dexia Banking Group in late 2012. This measure added an amount equivalent to 0.8% of GDP to the government deficit. However, even when leaving aside this one-off intervention, the Belgian government – according to the Commission – would merely have reached a deficit of 3.2% of GDP and therefore still above the threshold (*Ibid.*: 10-11). Accordingly, the Commission concluded that Belgium had not taken effective action. The assessment of fiscal data by the Commission indicates that it saw the data as clearly showing a breach of the recommendations, suggesting a perceived conflict with the norm of cooperation, which required stating non-compliance.

In addition, interviewees have confirmed the technical nature of coming to the conclusion that no effective action had been taken, which suggests that the Commission has acted in line with the obligations of its role. According to a Commission official, the assessment of action based on the parameters of the Pact had shown that Belgium had not undertaken the action that was required, so that it was not possible for the Commission to come to the opposite conclusion (COM 1). Accordingly, Vice-President Rehn stated that the Commission 'had no other choice but to conclude that Belgium did not take sufficient action to correct its deficit by the deadline of 2012' (European Commission 2013b). In addition to the Commission's perception of the situation, the rather technical nature of this decision has been confirmed from Member State side. According to a Belgian government official, the step was technical, with the Commission deciding based on the actions taken by a country (MS 2). This indicates that the Commission acted in line with its role as reliable supervisor that in light of a conflict with the norm of cooperation points out the breach. This appropriate behaviour at the same time reflects the Commission's strategic action, aiming at achieving its objective of defending the norm of cooperation.

Conclusion

In its appraisal of the Belgian government's fiscal performance in 2011, the Commission found that Belgium was running the risk of not complying with its fiscal recommendations and signalled this to the Belgian government. After Belgium committed to additional measures, no further action was deemed warranted. However, when the Belgian fiscal performance was again assessed in 2013, the data clearly showed that the Belgian government had not taken effective action. This finding was made official by recommending to the Council to confirm it. In light of the clear data, the Commission stated that the

Belgian government was first, at risk to, and second, found to be acting in non-compliance with its fiscal objectives. This behaviour is in line with the Commission's role as reliable supervisor that – in light of a conflict with the norm of cooperation shaped by the inaction of the Belgian government – signals non-compliance with the fiscal targets and thereby defends the norm of cooperation. This signalling reflects the course of action that is deemed in line with its obligations – and therefore appropriate – by the Commission and further its strategic action, aiming at fulfilling the obligations of its role. The detection and signalling of the risk of non-compliance in the run-up of the 2012 assessment sets in motion the next part of the mechanism, namely the Commission fostering dialogue, cooperation, and further effort.

6.2.2 Part 2: The Commission fosters Dialogue, Cooperation, and Further Effort

This part is set in motion by the assessment of the Belgian fiscal performance in the context of its EDP and by the Commission signalling in 2011 that Belgium was risking to be found in non-compliance with its fiscal requirements. In the run-up of the looming Commission assessment of the Belgian fiscal performance in early 2012, the Commission announced that supplementary measures would be necessary for Belgium to avoid further steps under the EDP – potentially including sanctions – given that Belgium was at risk of missing its correction deadline (see European Commission 2012c).

Expectations in line with the Causal Mechanism

In line with the hypotheses set out in the causal mechanism, it is expected here that when facing the potential breach of the norm of cooperation it has signalled, the Commission fosters dialogue and cooperation. It further expects the Belgian government to undertake or commit to measures that would lead to an improvement of the fiscal situation. This behaviour would correspond to the Commission's role as reliable supervisor that aims at sustaining the norm of cooperation in line with the goal-orientation of the setting of fiscal policy coordination. In pursuing its normative objectives, the Commission is expected to act strategically. If this holds true, and this part functions as theorised, we would expect to find interview data, official documents, or news coverage that show that the Commission fostered cooperation and dialogue, and expected further effort by Belgium that would lead to the improvement of the fiscal and economic situation.

Evidence

In line with the expectations, given the risk of non-compliance the Commission detected, it made clear that it expected the Belgian government to undertake further measures that would prevent ultimate non-compliance. In order to prevent Belgium from deviating from its fiscal targets, the Commission further made the avoidance of sanctions conditional upon the delivery of supplementary measures.

On 11 November 2011, little over one month prior to the Six-Pack entering into force, Olli Rehn sent a letter to Member States for which a ‘timely and sustainable correction of the excessive deficit was considered to be at risk’ (European Commission 2012c: 3), with Belgium among them. They were informed that given the ‘imminent entry into force of the Six Pack’, they would possibly face sanctions, should they not adopt ‘corrective measures’ (*Ibid.*). Belgium was supposed to correct its excessive deficit by 2012. Based on its 2011 autumn forecast, the Commission, however, projected the Belgian deficit to reach ‘3.6% of GDP in 2011’, 4.6% in 2012, and 4.5% in 2013 (*Ibid.*: 5). In order for Belgium to prevent further steps under the EDP, the Commission expected the government to undertake additional fiscal measures representing more than 1.5% of GDP (European Commission 2011c). More concretely, in case of non-compliance with the fiscal requirements, the Commission announced that it would recommend to the Council to establish non-effective action according to Art. 126(8) TFEU, which – for euro area Member States – would have been followed by a Commission recommendation to the Council to give notice – based on Art. 126(9) TFEU – and a recommendation to the Council regarding the imposition of a fine, as required by the Six-Pack (*Ibid.*). This indicates that by demanding further effort, the Commission acted in line with the obligations of its role as reliable supervisor that aims at sustaining the norm of cooperation in terms of the goal of improving the fiscal situation.

At this stage, the legal reasoning of the Commission was that the ‘new rule’ requiring a Commission recommendation regarding a fine ‘applies to any euro-area Member State to which a Council decision under Article 126(8) of the Treaty is addressed after the entry into force of the Six Pack’ (European Commission 2012c: 2). At this point, the question of non-retroactivity of rule application apparently was of no concern, and the application of the transitional provision mentioned above was – at least publically – not considered. Rather, the Commission was of the opinion that ‘a strict application of the reinforced rules on fiscal discipline is decisive for the credibility of the euro as a stable and strong currency and an indispensable part of the resolution of the sovereign debt crisis’ (*Ibid.*), and that therefore the new provisions were supposed to be applied directly from the entry into force of the new Regulation onwards (see *Ibid.*). The announcement of this strict application of the new provision is well in line with the Barroso

II Commission's statement that it would 'apply the new tools provided by the legislative package rigorously from the beginning' (*ibid.*: 2). Although a strict interpretation of the rules prevailed, the direct aim of the Commission was not the imposition of sanctions but inciting further effort in line with the norm of cooperation and the goal-orientation of the setting. However, the threat of sanctions and the goal to sustain the threat's credibility arguably were seen as a core component of sustaining this norm.

In late 2011, the Belgian government submitted a draft budget for 2012 to the Belgian Parliament (*ibid.*). The measures announced in the draft budget, however, were not sufficient for the Commission to see Belgium on track to meet its targets (see European Commission 2012b). Therefore, Commissioner Rehn again sent a letter to the Belgian government in early January, asking for further budget cuts to avoid the looming escalation of the EDP (Pignal 2012). According to an interviewed Commission official, the Commission very concretely threatened Belgium with a fine, as Belgium did not agree on further consolidation measures after the initial attempt to find an agreement:

We had been trying to convince the Belgian government to find the necessary savings or to close the gap somehow. And they said no, not possible. And then we said, well unfortunately, then, within the new rules, we will have to propose you a fine. And so we prepared all the legal documents for the fine. And they were shown to the Belgian government: well look, we are serious, these are rules that you amongst other governments wanted to impose on yourselves just a few months ago and here they are, and now it's our job to apply them [...]. We are sorry, we know you are in a difficult situation [...] but this is how it needs to be. [...] So in the end [...] they found what [...] they had to find in order to close the gap. So the sanction never had to be enforced and we could take it back. (COM 6)

On 6 January, the Belgian government decided on additional measures to meet the fiscal target. More concretely, the government took the decision to freeze expenditures amounting to EUR 1.3 billion. In light of this, the Commission expected that the Belgian government would reach a deficit of 2.9% of GDP in 2012, which is below the deficit threshold of 3% (European Commission 2012b). At this stage, the Commission was of the opinion that Belgium had 'taken effective action towards a timely and sustainable correction of the excessive deficit', and therefore it considered 'that no further steps in the excessive deficit procedure of Belgium' were 'needed at present' (European Commission 2012c: 5). While the Commission's behaviour was aiming at the improvement of the fiscal situation and the prevention of

ultimate non-compliance – the Commission’s normative goal – the threat of potential sanctions can be regarded as a strategic instrument to reach this objective.

Subsequently, the Belgian government undertook further steps towards meeting its fiscal objectives. In March 2012, the government adopted consolidation measures representing around 0.3% of GDP as a result of a ‘budgetary monitoring exercise’ and in light of a downward revision of growth projections (European Commission 2013a: 10). Following negative ‘GDP growth in the second quarter’ of 2012 and ‘sluggish’ ‘growth in the second half of 2012’, the Belgian government undertook ‘additional spending reductions and a number of one-off measures in order to ensure the reduction of the deficit to 2.8% of GDP’ after a budget control in October 2012 (*Ibid.*). Despite these measures, and for reasons explained above, the Belgian deficit ended up at 3.9% of GDP in 2012 (*Ibid.*).

Conclusion

When the Six-Pack was about to enter into force, the Commission under President Barroso and Commissioner Rehn made clear that it would apply the new provisions in a strict way in order to defend the rules that govern the common currency. In accordance with this approach, it announced that the new rules would be applied directly – that is without transition period – and that Belgium might face sanctions, should it not comply with its fiscal objectives and adopt further measures to improve its fiscal position. In line with the assumptions of the theory and causal mechanism, this behaviour can be explained by the Commission acting in line with its role as reliable supervisor that, when facing a conflict with the norm of cooperation, aims at sustaining this norms in terms of the goal-orientation of the fiscal surveillance setting and accordingly expects Belgium to deliver further fiscal measures. This behaviour represents appropriate action by corresponding to the perceived obligations of its role. At the same time, in that the avoidance of sanctions was made conditional upon the delivery of further measures – or by using the threat of sanctions – the Commission acted strategically in pursuing the goal of sustaining the norm of cooperation. Although the measures taken by the Belgian government did not lead to Belgium meeting its fiscal targets and to correcting its excessive deficit by 2012, the exchange that has been fostered by the Commission and the Belgian government’s subsequent cooperative behaviour play a crucial role in Part 3 of the mechanism, namely the avoidance of punitive action.

6.2.3 Part 3: The Commission avoids Punitive Action

The Council’s confirmation of a country’s non-effective action – as described in Part 1 – requires the Commission according to the Six-Pack to recommend to the Council to impose a fine of up to 0.2% of the

country's GDP (European Union 2011a). While the Council confirmed the Commission's assessment regarding Belgium of May 2013, the Commission did not issue a sanctioning proposal. In light of the effort undertaken by the Belgian government, and given an uncertain legal situation, the Commission decided not to sanction Belgium.

Expectations in line with the Causal Mechanism

In line with the causal mechanism, it is expected here that the Commission has applied the surveillance rules flexibly, aiming at the avoidance of punitive action against the Belgian government. Given that the new Belgian government had undertaken measures to consolidate the public finances, the norm of cooperation and the Commission's obligation to sustain a cooperative setting are expected to be seen as fulfilled. In addition, imposing sanctions might entail other negative repercussions that go against the Commission's role as reliable supervisor. Sanctions are accordingly not perceived as appropriate. By opting for a flexible rule application in order to avoid the imposition of sanctions, the Commission is expected to behave strategically. If this holds true, we would expect to find interview data, official documents, or news coverage that show that the Commission was of the opinion that imposing sanctions was not warranted in light of Member State cooperation and might have had negative consequences, and that it opted for a flexible rule application.

Evidence

In line with the hypothesis, the Commission's decision not to propose sanctions can partly be explained by the overall cooperative behaviour of the Belgian government. Ultimately, what allowed for the circumvention of a fine was the flexible reading of the regulatory framework.

The Commission's view was that although the Belgian government did not fully comply with its fiscal recommendations, its budgetary policy did not reflect a questioning of the overall surveillance framework, as stated by an interviewed Commission official: 'So the idea was that Belgium [...] did not deserve [...] to be punished because [its] fiscal performance, all in all, in spite of not being in line, was not [...] in open conflict with the EU framework' (COM 1). In this context, the role of domestic politics, namely the lack of a fully operating government over a large period is crucial. Olli Rehn stated that although the government in place at the time of the decision had undertaken consolidation measures, over the whole time under evaluation, the fiscal effort had not been sufficient:

While the present government has stayed [on] the consolidation course, the average structural fiscal effort made over the last three years (namely 2010, 2011 and 2012) has

fallen short of the Council recommendation. We had no other choice but to conclude that [...] Belgium did not take sufficient action to correct its deficit by the deadline of 2012, since it missed both the nominal target and I have to underline, on average, the required structural effort. (European Commission 2013b)

However, according to Rehn, the insufficient action occurred at a time when there was only a caretaker government in place:

In 2012, last year, Belgium did achieve the required structural effort. [...] However, there was not enough structural fiscal effort in the years 2010-11 when there was no politically mandated government in this country. (*Ibid.*)

In line with this presentation, Olli Rehn highlighted that the actions and the cooperative behaviour of the government in power at the time of the decision were the main reason for the Commission not to propose sanctions:

Now, looking to the present and the future, we expect Belgium to deliver the budgetary consolidation in structural terms of 1% of GDP this year (2013) and 0.75% of GDP in 2014, leading towards a balanced budget, to which Belgium has committed and communicated to me yesterday by Prime Minister Di Rupo and Finance Minister Geens. We are also calling for a binding fiscal framework between the different levels of government in Belgium and between several reforms to boost Belgium's competitiveness, including on wage-setting mechanism. For these reasons and especially as the present and future policies of Belgium should ensure the sustainability of public finances, I see no case for financial sanctions at this point. (*Ibid.*)

This supports the hypothesis that punitive action was deemed inappropriate given that Belgium had cooperated by committing to further fiscal measures, and that thereby the obligation of the Commission to aim at the respect and functioning of the cooperative setting can be seen as fulfilled.

Notwithstanding the crucial role of cooperation, the European Commission's decision not to propose a fine for Belgium was also shaped by legal arguments and considerations. These considerations, first, contributed to the conclusion that fines were inappropriate, and second, provided a basis for strategic action in order to avoid the imposition of fines. In contrast to the reading of the new rules as applied in 2011 and as described above, in 2013, the Commission strongly legitimised its actions with the argument that an application of the sanctions in the case at hand would go against the principle of non-retroactivity

of EU law. As a reminder, the Council recommendation in relation to which the Belgian government was found in 2013 not to have sufficiently responded, was issued in December 2009. The Six-Pack, which introduced the new sanctioning provision, entered into force in December 2011 – that is two years later. According to a Commission interviewee, the legal service of the Commission argued

that, given that the non-effective action had at least in part occurred at a moment before the Six-Pack was in force [...], at the moment when the non-effective action had taken place, the Belgian authorities were not yet aware that eventually this would have caused a sanction. And that's why at that moment, it was deemed legally too uncertain to come up with such a proposal. (COM 2)

This legal opinion was accompanied by the advice 'that it could have been conceivable for Belgium to appeal against this decision, not least because the Court of Justice traditionally takes a very strong view about what legitimate expectations Member States can have' (COM 1). In line with the questioning of the legal firmness of coming up with a sanction proposal against Belgium, Commissioner Rehn stated that

as the six-pack legislation of reinforced economic governance entered into force only in mid-December 2011, imposing a fine for the years 2010 or 2011 could go against the principle of non-retroactivity which is essential in European law. In my view therefore, it would be neither fair nor legally sound to apply it retroactively to those years. (European Commission 2013b)

Consequently, the unclear legal situation entailed risks that might have gone against the role of the Commission as reliable supervisor. According to a Commission official, the imposition of fines, given the circumstances, 'could have led to for instance Belgium not paying the fine or holding a [...] discussion about was it warranted or not, potentially ending up at the court' (COM 2). Such a behaviour potentially 'could have undermined a little bit the credibility of the system if the first application would have been not a very strong one' (COM 2). This shows that the Commission was aware of the risks of the imposition of sanctions for Belgium for the overall credibility of the surveillance framework. Indeed, when facing the potential imposition of sanctions, the Belgian government allegedly threatened to take legal action against any such decision (Fontanella-Khan 2013). This underlines the risk that the Commission recommending sanctions might have seriously backfired, risking a deterioration of the credibility of the rules, which the Commission is supposed to defend. In a similar vein, the Commission's behaviour regarding Belgium can be linked to ongoing fiscal surveillance procedures of other Member States. In this

regard, the Commission's handling of the French EDP in 2013 is particularly relevant. At the time of the decision – that is May 2013 – it was assumed that the French government would receive a deadline extension of two-years for correcting its deficit (*Ibid.*). According to interviewed Commission officials, the Commission, in its application of the surveillance rules, aims at applying them consistently. This means that if the Commission is lenient with one country, it should be lenient with others as well (COM 3; COM 6). It is therefore possible that the lenient approach towards France has had an impact on the Commission's decision not to propose sanctions for Belgium (COM 6), as applying the rules inconsistently might also harm the credibility of the rules and would therefore go against the perceived obligations of the Commission as reliable supervisor.

While – as shown above – the imposition of sanctions might have stood on instable legal ground, this interpretation of the rules also shows that the Commission read and applied them flexibly in order to avoid the imposition of inappropriate sanctions. Although no clear and direct reference to the transitional provision foreseen in the Six-Pack was made in the public explanations of the Commission's decision, the Commission's reasoning is well in line with this provision. Precisely in order to prevent a retroactive application of the sanctioning provisions, these should only be triggered in relation to recommendations or decisions regarding the correction of the excessive deficit that were issued after the Six-Pack entered into force (see European Union 2011a). This suggests that non-effective action according to Art. 126(8) should only be subject to sanctions if it relates to non-action in response to a Council recommendation under Art. 126(7) that was issued after the entry into force of the Six-Pack. In the case of Belgium, the Council recommendation in play was issued well before this, namely in 2009. However, the legal value of this provision is unclear, as for the Court of Justice of the EU the recitals mainly serve as information to interpret the range of a legal act (see Jacqué 2012). Eventually, it would have been up to the Court to determine whether the provision would have had to be respected or not.

What can be argued, however, is that the Commission might have ignored the provision in its application if it had wanted to apply the rules in a strict way – that is not using this flexibility provision or apply the rules along its lines. This is supported by the way the Commission acted in late 2011 and early 2012. It argued, as shown above, that the rules of the Six-Pack regarding sanctions would apply directly after their entry into force and announced that Belgium would face sanctions should it not take further measures. The announced rule application in 2011 therefore clearly diverges from the interpretation of the rules in 2013. As stated by an interviewed Commission official: 'there was a legal argument, which like [...] most legal arguments, they clearly carry some weight. But ok, you could have argued the opposite' (COM 1).

This means that the Commission has resorted to a flexible rule interpretation with the aim of avoiding the imposition of sanctions.

Conclusion

In light of a conflict with the norm of cooperation, the Commission, in line with its role as reliable supervisor, has first defended cooperation by pointing out the breach (Part 1) and has subsequently tried to sustain this norm by fostering cooperation (Part 2). Ultimately, it ended up not imposing a fine. The Commission was confronted with the newly introduced legal requirement to propose sanctions. However, given that the Belgian government in power at the time of the decision had shown its willingness to cooperate by adopting measures and making commitments for the future, the obligation of the Commission to sustain a cooperative setting is deemed fulfilled. In light of the legally uncertain basis of the sanction, given the question of non-retroactivity, it was further felt that the imposition of a sanction could have led to a loss of credibility of the surveillance rules. This would have gone against the perceived obligations of the Commission in terms of its role as reliable supervisor. Therefore, the imposition of sanctions was not regarded as appropriate in the situation at hand. Changing its interpretation of the legal validity of imposing sanctions within a span of less than two years represents a flexible application of the setting and the strategic action undertaken by the Commission in order to achieve its normative objectives that are derived from acting in line with its obligations. At first, in 2011, the Commission argued – despite the existence of a transitory provision – that the Commission would apply the new punitive measures directly from the entry into force of the Six-Pack onwards. In this context, the pressure was used to incite further efforts by Belgium and thereby fulfil the normative obligations of the Commission. In 2013, however, the application of the fine was presented as legally unsound, which allowed the Commission to not resort to punitive action and thereby to avoid inappropriate sanctions. We can therefore regard the assumptions of the mechanism as confirmed that explain why eventually no sanctions were imposed despite fiscal non-compliance by the Belgian government. The wider implications of the findings will be discussed in the conclusion, after the analysis under the principal-agent model is presented.

6.3 Analysis: Principal-Agent Model

The analysis of this case under the normative institutionalist framework has put the focus on the actors' interpretation of the normative-institutional setting and the perceived obligations they are trying to fulfil, thereby providing an answer to the research question. The analysis based on a principal-agent framework will put the focus on the preferences of the Member States – acting as principal – and the Commission –

acting as agent of the Member States. Key questions are whether interests diverge, and which interests are translated into decisions by way of effective, or on the contrary, too weak control mechanisms.

First, we can ask whether the Commission was able to impose its preference for fiscal consolidation on the Belgian government and to thereby avoid the imposition of sanctions (H.2). Indeed, in 2011, the Commission threatened the Belgian government with the imposition of sanctions. As a result, further measures were adopted and sanctions avoided. In terms of the principal-agent model, this result can be explained by weak control mechanisms in the hands of the Belgian government, which on its own, and ultimately under RQMV, would have had little power to prevent sanctions. In 2013, however, the Belgian government was found in non-compliance, and despite this, the Commission did not impose sanctions. H.2. is therefore only partially applicable.

The preferences of the Commission appear to have changed over time, although over the timespan of the case, key Commission actors have stayed the same – President Barroso and Commissioner Rehn. Favouring a very strict application of the Pact in 2011 – despite the existence of a transitory provision – the interpretation of the setting was opposed to this prior reading in 2013. One might argue that the strict reading in 2011 was merely a way of creating pressure upon the Belgian government. However, the Commission might have taken the risk of being politically bound to this reading in case the Belgian government would not have delivered further measures, which suggests that the Commission's preference indeed changed over time. The question is therefore, did the Commission change its preference on its own account, or did Member State preferences or their behaviour lead the Commission to change its preference and actions.

As described above, the Belgian government, in 2013, allegedly threatened to take legal action in case it would be fined (Fontanella-Khan 2013), which illustrates its strong opposition towards this potential measure. As regards the position of other Member States, interview data revealed that the 'reaction was quite positive' towards Belgium (MS 2), implying that there was overall no intention within the Council to impose a fine on Belgium. Even the German government, whose position over the debt-crisis period can be summarised as favouring strict fiscal rules (see Chang 2013; Matthijs 2016), internally supported the Belgian government and spoke out against the imposition of a fine (MS 2). This picture was confirmed by a Commission interviewee that acknowledged political pressure from the German government on the Commission with the intention of avoiding a fine (COM 3). The preferences of the Commission and of the Member States have – at least predominantly and at least eventually – correlated in that sanctions were not wanted. H.3 that assumes that the Commission acts against Member States that are favouring

sanctions is therefore ruled out. H.4 could still apply – that is Member States do not want sanctions and have strong control over the Commission, which is why the Commission does not impose sanctions. Although pressure from the Member State side was confirmed, based on the information at hand, it is not possible to prove that Member State pressure was the main, or even a contributing factor to the Commission's decision not to impose sanctions. Although in 2011, the Commission threatened with the imposition of sanctions, no information is available regarding the question of whether in 2013 the Commission was strongly in favour of sanctions before the German government voiced its discontent with the imposition of a fine. To summarise, whether the Commission would have proposed a fine without Member State opposition to it is unknown. In any case, from a formal angle, the control mechanisms in the hands of the principals can be described as weak. RQMV makes it difficult for the Council to overturn the Commission's recommendations. Given weak control mechanisms in the hands of the principals, Commission behaviour cannot be explained by Member State preferences and actions. In light of this constellation, the principal-agent model does not offer an analytical grid to provide an answer to the question of why the Commission has refrained from proposing sanctions. Furthermore, evidence does not allow for concluding that the Commission purely followed the Council in its behaviour.

Rather than Member State pressure, it is possible that other factors contributed to or led the Commission to not proposing the imposition of a fine. The findings presented under of the normative institutionalist analysis speak in favour of this assumption. These underline the role of the delivery of further measures and other risks associated with the imposition of sanctions. The principal-agent model as such has proven unable to provide a valid alternative analytical grid in the case at hand. However, given the focus of the approach on the relation between the Commission and Member States and on their respective preferences, explanatory factors are highlighted by the approach that could complement a normative institutionalist explanation of the Commission's behaviour. If the Commission is against the imposition of sanctions, the fact that Member States share this preference might support the Commission in its approach and its perception of appropriate action. However, this does not mean that the Commission is solely following the preference of Member States or that their support is a prerequisite for Commission action.

6.4 Conclusion

This first case study has focused on the events concerning Belgium under its EDP from 2011 to 2013. The Commission was facing an unstable political and strained fiscal situation in Belgium, when the Six-Pack supposedly changed the political and legal toolbox that the Commission had at its disposal to address

fiscal non-compliance. However, the question of its applicability immediately after its entry into force created controversies and played a central role in the behaviour of the Commission vis-à-vis the Belgian government.

The analysis has shown that the normative-strategic minimum enforcement mechanism was present in the case at hand and worked as was operationalised. This means that the main and sub-hypotheses drawn from the normative institutionalist framework, which provide an answer to the question of why the Commission has refrained from sanctioning Belgium for not complying with its fiscal recommendations, can be regarded as confirmed (H.1; H.1.1.-H.1.3). The Commission, when facing the considerable risk of non-compliance with the fiscal objectives, reacts by clearly pointing out this conflict with the norm of cooperation, in line with its role as reliable supervisor. In a second step, it interprets its role as being required to sustain the cooperative and goal-oriented setting and therefore to expect the delivery of further measures. Finally, if a country has shown its willingness to cooperate, the norm of cooperation and the Commission's obligation to sustain this norm are deemed fulfilled. In addition, resorting to punitive action in the case at hand might go against the Commission's obligations by means of harming the credibility of the surveillance setting. Sanctions are therefore seen as an inappropriate measure. In all these steps, the Commission has shown that it acts strategically in order to achieve its normative objectives, be it by signalling a potential breach, by making the avoidance of punitive action conditional upon the delivery of further measures, or by resorting to a flexible interpretation of the legal setting in order to avoid inappropriate sanctions. The question of whether punitive action would already have been conceivable under the new rules was central in the events at hand and shows that the Commission adapted its interpretation of the rules in line with its goals. At first, the looming sanctions served as a threat to get Belgium back on its consolidation path. However, when sanctions were immediately looming, but were deemed going against the Commission's obligations, they were interpreted as legally unsound, which provided an exit door from the path to punishment.

Besides confirming the assumptions of the causal mechanism in this case, the findings also imply that the assumptions can be generalised to cases that are similar to the case of Belgium. Notwithstanding it representing a typical case, it differs on the conditions of country size, crisis situation, and Member State support of the measure. Indeed, Belgium is a small country, with the repercussions of the Sovereign Debt Crisis being present during the events at hand. In addition, and unlike in one other case study, Member States were against the imposition of sanctions, as was revealed by the analysis under the principal-agent model. This alternative model, while highlighting potentially relevant explanatory factors, has proven

unable to provide a sound theoretical answer to the research question. Given the constellation of weak Member State control over the Commission and a correlation of preferences, the approach cannot explain the Commission's behaviour regarding the imposition of sanctions.

7. France 2015

When Jean-Claude Juncker – then President of the European Commission – was asked in 2015 by reporters why France was not sanctioned for not complying with its fiscal objectives, his simple answer was ‘because it is France’ (Guarascio 2016b). As Jean-Claude Juncker is well known for his sense of humour, it is difficult to judge whether this statement can be taken as a valid explanation for the Commission’s application of the Pact. However, Jean-Claude Juncker’s nonchalant answer seemed to confirm the impression many observers of the Pact’s politics were holding, namely that the Commission and the Council would never hold a big Member State to account for breaching the Pact (see Kopits 2018). But what, if not France’s size and position, actually were the reasons for the Commission not to trigger a sanction?

This case is relevant for this thesis for several reasons. In terms of process-tracing methods, this case constitutes a typical case. Therefore, the analysis is supposed to reveal whether the assumptions of the normative-strategic minimum enforcement mechanism are valid and provide an explanation for the Commission’s behaviour. Should this be the case, we can also assume that the mechanism should work in cases that are similar to the case of France, which differs from other typical cases on the conditions of country size, crisis-situation, and Member State support of Commission action. In addition, in that in this case non-effective action was not stated and that therefore the procedure was not taken very far, the case reflects the level of abstraction of the mechanism that covers and potentially explains a broad scope of procedural events. Furthermore, this case is relevant as it represents the first major SGP-related decision of the Juncker Commission. Before turning to the analysis, the political and legal background and a summary of the events will be presented. After analysing the case from a normative institutionalist perspective, the alternative principal-agent analysis will be presented. Finally, the main findings will be summarised and their wider implications discussed.

7.1 France under the EDP and Legal Background

Just like most other Member States, France entered the corrective arm of the Pact in 2009, when the 2008 deficit was estimated at 3.4% of GDP and the 2009 deficit projected at 5.4% (Commission of the European Communities 2009b). The initial deadline for correcting its excessive deficit was set for October 2009 (Council of the European Union 2009c). Due to ‘unexpected adverse economic events’, the correction deadline, however, was extended until 2013 (Council of the European Union 2009d: 9). Yet in 2013, in light of a ‘substantial deterioration in the budgetary position resulting from the weaker overall position of the economy’, France was given another two years to correct its excessive deficit – that is until 2015

(Council of the European Union 2013d: 9). Taking over from the conservative Nicolas Sarkozy, the socialist François Hollande became President in 2012. In his electoral campaign, he strongly criticised the fiscal compact – that had just been signed – for its austerity orientation and announced a renegotiation of this intergovernmental treaty in case he became President. Although not opposed to fiscal discipline and a reduction of the French deficit, Hollande stressed the need for the EU to actively foster economic growth in order to make fiscal consolidation possible (Les Echos 2012). Under his Prime Minister Jean-Marc Ayrault, while first increasing the taxes for companies in order to finance fiscal consolidation, the economic strategy was soon changed and the financial weight upon companies was reduced (Piliu 2015). While the French public deficit stood at 5.6% in 2011, it improved to 3.3% in 2013 and slightly increased to 3.4% in 2015 (Insee 2022a). The public debt rose from 85% of GDP in 2010 to 96.7% in 2015 (Insee 2022b).

In 2015, the Commission evaluated the French government's fiscal performance in light of the Article 126(7) recommendation it had received in 2013. Although the 2015 deficit was projected to reach 4.1% of GDP, which is above the objective of 2.8%, this was said to be due to a 'weaker overall position of the economy relative to the one underlying the Council recommendation of 21 June 2013' (European Commission 2015e: 6). The Commission came up with an ambivalent assessment, stating that it could not conclude that France had not taken effective action (European Commission 2015a). In line with this conclusion, no sanctioning provisions were triggered for France and its EDP was not taken to the next level. Instead, France was granted a two-year extension for the correction of its excessive deficit (Council of the European Union 2015a). While not detecting non-effective action and escalating the EDP, or finding that France had complied with its fiscal obligations – which would have led to the EDP being held in abeyance – a third possible procedural path was taken at this stage – namely the adoption of a revised Article 126(7) recommendation (European Commission 2013e).

As in the case of Belgium, France was facing potential sanctions at the moment at hand because of the reinforced and more automatic provisions that were laid down in the Six-Pack. Namely, the requirement for the Commission to propose a fine, should it find – and should the Council confirm – that a euro area country 'has not taken effective action to correct its excessive deficit' (European Union 2011a: Art. 6(1)). The recommendation of a fine of up to 0.2% of the countries' GDP would have been subject to RQMV in the Council, making it difficult for the Council to reverse the Commission's recommendation. The Commission, however, could have proposed a reduction or cancellation of the fine in case of exceptional economic circumstances or in case of a reasoned request. In the case of the Council confirming non-

effective action, France might also have received a notice in accordance with Art. 126(9) TFEU (see European Commission 2013e). In 2015, and unlike in the case of Belgium, the provisions of the Two-Pack were applicable, meaning that France was required to submit an annual DBP to the Commission, and that the Commission could issue an autonomous recommendation to France in case of a 'risk of non-compliance with the deadline to correct the excessive deficit' (European Union 2013a: Art. 11(2)). Furthermore, France was potentially facing an additional punitive instrument – the so-called macroeconomic conditionalities. This provision links funding under the ESI Funds to compliance with the fiscal requirements under the SGP. The establishment of non-effective action would have triggered the Commission's obligation to propose the suspension of commitments or payments under these funds. However, in the case at hand, it did not come to the establishment of non-effective action. Accordingly, no sanctioning provisions were initiated against France.

The case of France represents the first major decision under the SGP of the Juncker Commission that took office in late 2014. As Commissioner for Economic and Financial Affairs, Pierre Moscovici – the former French Economy and Finance Minister under Hollande – was appointed. Valdis Dombrovskis became Vice-President for the Euro and Social Dialogue. President Juncker made clear early on that he wanted to lead a *political* Commission (see Dinan 2016; Peterson 2017; Schmidt 2016a; 2020). In line with this intention, the Commission issued a Communication on 'Making the best use of the flexibility within the existing rules of the Stability and Growth Pact' (European Commission 2015b) in January 2015 (see Schmidt 2020).

Although the political climax of the case of France can be situated in early 2015, the French fiscal situation has been intensively monitored and discussed prior to this situation. Indeed, the assessment of the French situation in early 2015 can be characterised as the temporary settlement of an ongoing development. Therefore, the analysis will take as its starting point the Commission's autonomous recommendation it has issued to the French government in March 2014, and in which it signalled 'a significant risk of non-compliance' (European Commission 2014b: 3). Subsequently, discussions continued around the submission of the French 2015 DBP in late 2014. These interactions initially took place under the Commission Barroso II, which gave way to the new Commission under President Juncker on 1 November 2014.

7.2 Analysis: Normative-Strategic Minimum Enforcement

As in the previous case study, the analysis will follow process-tracing methods in that the presence of the causal mechanism entitled normative-strategic minimum enforcement will be tested. The mechanism

expresses the theoretical assumptions of this study that explain why the Commission refrains from imposing sanctions. Therefore, if the mechanism is present, the hypotheses can be seen as confirmed. It is argued that, when confronted with a country's potential or actual non-compliance, the Commission is expected to clearly point out behaviour that is in conflict with the norm of cooperation. It then fosters cooperative behaviour in order to achieve an improvement of the fiscal situation. If additional measures are delivered, the imposition of sanctions is avoided by the Commission. The Commission acts in line with its role as reliable supervisor that sustains the norm of cooperation and the goal-orientation of the setting. Punitive measures are not perceived to be in line with the Commission's obligations. In pursuing, sustaining, and fulfilling the obligations of its role, the Commission acts strategically.

The cause that sets in motion the causal mechanism of normative-strategic minimum enforcement in this case is the considerable non-compliance by France with its fiscal objectives. This non-compliance is reflected first, by a risk of missing its deadline to correct its excessive deficit (European Commission 2014b), and second, by France publically announcing to diverge from its consolidation path (Carnegy 2014b).

7.2.1 Part 1: The Commission assesses Compliance and points out Potential Breaches

The cause sets in motion Part 1 of the mechanism, namely the Commission assessing the French government's fiscal performance and pointing out potential and actual breaches of the fiscal objectives. In March 2014, the Commission issued an autonomous recommendation to the French government, informing it that there was a 'significant risk' for the government not to comply with its fiscal targets for 2013 and 2014 (European Commission 2014b: 3). When, in addition, the French government announced in September 2014 that it would not meet its consolidation target for 2015 (Carnegy 2014b), the Commission publically stated that this revision of the fiscal targets did not correspond to the recommendations issued to France (*Ibid.*). Although France announced supplementary measures prior to the Commission's issuance of its opinion on the French DBP of October 2014, the Commission still expressed its view that there was a risk that France would not comply with its recommendations under the EDP (European Commission 2014a).

Expectations in line with the Causal Mechanism

In line with the hypotheses expressed in the causal mechanism, the following is expected. When being confronted with behaviour that is in conflict with the norm of cooperation, the Commission is assumed to act in line with its role as reliable supervisor that is supposed defend the norm of cooperation. Clearly

pointing out non-compliance, in addition to corresponding to its obligations, also reflects the strategic behaviour of the Commission in pursuing its normative goal. If this holds true, we would expect to find interview data, official documents, or news coverage that show that Commission actors pointed out the situation of non-compliance given that they regarded the fiscal numbers and performance as clearly indicating a breach of the recommendations.

Evidence

In line with the expectations, and in light of France being found at risk of missing its correction deadline (European Commission 2014b) and publically announcing that it was planning to deviate from its adjustment path (Carnegy 2014b; see also Dunlop and Radealli 2015), the Commission clearly pointed out the planned non-compliance with the agreed objectives.

In March 2014, the Commission issued an autonomous Commission recommendation to France, given the risk of France missing its deadline to correct its excessive deficit (European Commission 2014b). Still in 2013, the Commission came to the conclusion – based on a French report on effective action and the French DBP – that France was complying with its fiscal recommendations. However, the Commission's 2014 winter forecast projected a deficit of 4.2% of GDP for 2013 and of 4.0% for 2014, above the targets set at 3.9% of GDP for 2013 and 3.6% for 2014 (*Ibid.*). Accordingly, the Commission pointed out 'a significant risk of non-compliance with the recommended fiscal effort both in 2013 and 2014' (*Ibid.*: 3). Furthermore, the Commission stated that 'on the basis of current policy, the deficit is expected to remain significantly above the 3% of GDP reference value in 2015' (*Ibid.*: 2). The Commission accordingly made use of its new surveillance instrument and signalled to France that it was not on track with the agreed fiscal consolidation path.

As demanded by the Commission in its recommendation (*Ibid.*), the French government presented further measures in its Stability Programme of April 2014 (see République Française 2014). Nevertheless, in September 2014, the French finance minister Michel Sapin publically stated that France would not correct its excessive deficit in 2015. Instead, he announced a deficit of 4.4% of GDP in 2014 and of 4.3% in 2015 (Carnegy 2014b). This development was explained by 'the slow rate of economic growth and low inflation' (*Ibid.*). The correction of the excessive deficit – and therefore the threshold of 3% of GDP – would according to him only be reached in 2017 – that is two years later than foreseen (*Ibid.*). In a first reaction to the announcement of the French government, the Commission stated that 'the new targets were clearly outside its recommendations' (*Ibid.*) and therefore signalled that the announced actions of the French government would be a clear breach of the fiscal objectives. This indicates that the Commission

perceived the deviation as clear and acted in line with its obligation as reliable supervisor that points out conflicts with the norm of cooperation and thereby defends this norm.

In line with its announcement to deviate from the recommended consolidation path, the French government submitted a DBP to the Commission on 15 October that presented figures way beyond the initial targets. Although the 2013 Council recommendation set the deficit target of 3.6% of GDP for 2014 and of 2.8% of GDP for 2015, the French government expected its deficit to reach 4.4% and 4.3% of GDP respectively (European Commission 2014a). What is more, the Commission, in its opinion on the DBP, and based on its 2014 autumn forecast, expected the deficit to even reach 4.5% in 2015. The Commission also projected that the fiscal effort for 2014 and over 2013-2014 would not meet the recommended targets (*Ibid.*) and stated that ‘the information so far indicates that France has not taken effective action for 2014 at this stage’ (European Commission 2014d: 21). Even when taking into account supplementary planned measures to improve the 2015 structural balance that had been sent by the French government to the Commission on 27 October 2014, the Commission concluded that the DBP was ‘at risk of non-compliance with the provisions of the Stability and Growth Pact’ and that the ‘adjustment of the structural balance’ would not meet the recommendations (European Commission 2014a: 4). Instead of reaching a structural improvement of 0.8% in 2015, it was expected to stand at 0.3% of GDP (*Ibid.*). This shows that the planned deviation from the fiscal adjustment path was perceived as evident by the Commission and that it accordingly pointed out this risk of non-compliance in its assessment of the French DBP.

Conclusion

The Commission, in its monitoring of the French fiscal performance under the EDP, detected potential non-compliance. The French government even publically announced its planned deviation from the recommended fiscal adjustment path. Confronted with this, the Commission pointed out that France was clearly not acting in line with the recommendations it had received under the Pact. This behaviour can be explained by the hypothesis as expressed in the causal mechanism and based on a normative institutionalist approach. Being confronted with a behaviour that is in conflict with the norm of cooperation, the Commission acts in line with its obligation as reliable supervisor that signals non-compliance with the fiscal targets. The signalling reflects both appropriate action – given that it is in line with the Commission’s perceived obligations – and the Commission’s strategic behaviour, aiming at fulfilling the obligations that its role entails. In the next part, the analysis will focus on the Commission following up on the planned non-compliance by fostering dialogue and further effort.

7.2.2 Part 2: The Commission fosters Dialogue, Cooperation, and Further Effort

Given its assessment that indicates a high risk of fiscal non-compliance, the Commission follows up on this finding by fostering the dialogue with the French government and aiming at the improvement of the fiscal situation. When pointing out potential non-compliance, the Commission at the same time demands further measures. First, the Commission asked the French government in its 2014 autonomous recommendation to take steps to comply with the agreed fiscal objectives (European Commission 2014b). Also, when receiving the French DBP that reflected the public announcement by the French government to miss its correction deadline, the Commission asked the government to undertake further measures (European Commission 2014a). Again, in 2015 and prior to coming up with its assessment of the French fiscal situation, the Commission stated that it would expect the French government to make further effort (Libération 2015).

Expectations in line with the Causal Mechanism

In line with the causal mechanism, it is expected that when having signalled the conflict with the norm of cooperation, the Commission fosters the dialogue and asks for further measures to be delivered by the French government that would lead to the improvement of the fiscal situation. This behaviour would be in line with the role of the Commission as reliable supervisor that reacts to non-compliance and sustains the norm of cooperation in line with the goal-orientation of the surveillance setting. In pursuing its normative objectives, the Commission is expected to act strategically. If this holds true, we would expect to find interview data, official documents, or news coverage that show that the Commission fostered cooperation and dialogue and expected further effort by France that would lead to the improvement of the fiscal and economic situation.

Evidence

The evidence shows that given the serious risk that the French government would not comply with its fiscal recommendations under the Pact, the Commission opened up avenues for France to commit to further measures in line with its fiscal objectives, which is in line with the expectations.

As described in Part 1, the Commission issued an autonomous recommendation to the French government in March 2014. In this recommendation, the Commission signalled ‘a significant risk of non-compliance with the recommended fiscal effort both in 2013 and 2014’ (European Commission 2014b: 3). Indeed, this Two-Pack provision is supposed to serve as a tool to recommend the adoption of further measures to a Member State in order to prevent the correction deadline from being missed (see European

Union 2013a). In line with this intention, the Commission asked the French government to comply with its 2013 Council recommendation by taking ‘the necessary steps to ensure that the structural effort recommended by the Council is met’ (European Commission 2014b: 4). Indeed, in its 2014 Stability Programme, France presented measures in reply to the Commission’s autonomous recommendation. In total, France presented additional measures amounting to 4€ billion in order to improve the 2014 deficit. These concern savings in the area of health care and unemployment benefits. In addition, the French government announced a fixation of spending on social transfers for one year (République Française 2014). Furthermore, the French Stability Programme presented the plan to achieve savings worth €50 billion from 2015 to 2017. These savings should, however, be accompanied by the support of economic growth under the ‘pacte de responsabilité et de solidarité’ (*Ibid.*: 12-13). This plan – announced in January 2014 – contained a number of measures aiming at enhancing the purchasing power of low income households and at increasing the competitiveness of companies (Ministère de l’Économie, des Finances et de la Relance 2014).

The Commission, in a recommendation to the Council, stated in June 2014 that in light of the additional measures announced for 2014, and given ‘that the fiscal effort achieved in 2013 was higher than expected at the time of the Commission recommendation’, it considered that the French Stability Programme ‘broadly’ responded to the Commission’s recommendation of 5 March 2014 (European Commission 2014f: 4). However, the measures announced were not detailed enough for the Commission in order ‘to credibly ensure the correction of the excessive deficit situation by 2015’ (*Ibid.*). In addition, there would be a risk that the targets would not be met, given that parts of the announced measures would still have to be adopted and that the planning contained ‘very ambitious’ saving targets for 2015 (*Ibid.*). The Commission forecast that, over 2013 and 2014, France would miss its target for the fiscal effort by ‘0.2 pp of GDP’ (*Ibid.*). Accordingly, the Commission recommended to the Council to ask the French government to ‘reinforce the budgetary strategy, including by further specifying the underlying measures, for the year 2014 and beyond to ensure the correction of the excessive deficit in a sustainable manner by 2015’ (*Ibid.*). These recommendations were part of the Country-Specific Recommendations, which are central to the European Semester, the EU’s timeline and framework for economic and fiscal policy coordination. In this context, the Commission therefore made again clear that it was expecting France to undertake further measures in line with its fiscal objectives, indicating that the Commission was acting in line with its perceived obligation to sustain the norm of cooperation.

In line with the provisions of the Two-Pack, the French government was required to submit its 2015 DBP to the Commission on 15 October 2014. However, already in September 2014, Michel Sapin – the French Finance Minister – publically announced that France would not reach the three-percent threshold in 2015, but would need another two years – that is until 2017. While – as announced – the submitted DBP was not in line with the targets under the SGP, the French minister of economy Emmanuel Macron, at the time of the DBP submission, announced deregulation measures for several economic sectors (Carnegy 2014a). Nevertheless, the Commission reacted to the DBP, stating in a letter to the French government that its budget was at risk of non-compliance with the SGP (see Franceinfo 2014; Spiegel 2014). It asked for further information and the continuation of the dialogue between itself and the French government (Franceinfo 2014). On 27 October, and therefore just prior to the Commission's deadline to reject the French budget, the French government, in 'a letter to the Commission', 'presented a package of additional measures and updated estimates' that complemented its DBP (European Commission 2014a: 2).

This interaction between the Commission and the French government took place just before the new Commission under President Juncker was about to take office, namely on 1 November 2014. The departing Vice-President in charge of the procedure, Jyrki Katainen, stated on 28 October that 'after taking into account all of the further information and improvements communicated' by the Member States that were requested to provide further information, he could not 'immediately identify cases of "particularly serious non-compliance"' (European Commission 2014g). The incoming Commission would then be in charge of adopting opinions on the DBPs (*Ibid.*). A rejection of the DBP would have, however, not been possible for the new Commission, given the expiration of the two-week deadline for this step (see European Union 2013a). The adoption of the Commission's regular opinion on DBPs was due on 30 November (*Ibid.*). In this opinion, the new Commission via Commissioner Moscovici stated that the French DBP was 'at risk of non-compliance with the provisions of the Stability and Growth Pact' (European Commission 2014a: 4). Even when taking into account the additional measures that were presented in the letter sent on 27 October, 'the adjustment in the structural balance falls also short of the 2013 Recommendation' (*Ibid.*). In light of this, the Commission invited the French government 'to take the necessary measures within the national budgetary process to ensure that the 2015 budget will be compliant with the Stability and Growth Pact' (*Ibid.*), thereby leaving the door open for dialogue and cooperation.

Despite its negative opinion on the French DBP, the Commission announced that it would only assess 'its position vis-à-vis France's obligations under the SGP' in early 2015 and 'in light of the finalization of the

budget law and of the expected specifications of the structural reform programme' that had been announced by Manuel Valls in a letter from 21 November (European Commission 2014d: 21). The Commission accordingly delayed the decision on whether France had taken effective action until early 2015 (Emmott 2014; see also Libération 2015). According to Commissioner Moscovici, 'the Commission had opted to keep up the pressure on those governments by asking them to make commitments in the field of structural reforms and by leaving all options open for the final decision to be taken by the Commission in the spring' (European Commission 2014e: 34). In a similar vein, Valdis Dombrovskis stated that 'the Commission would monitor the evolving situation in the Member States concerned very closely with a view to deciding, on the basis of how much progress, if any, had been made by spring 2015, whether or not these procedures should be launched against them' (*Ibid.*). Effectively, this offered more time to the French government to show that it is working towards meeting its fiscal objectives (see Emmott 2014). Accordingly, the Commission resorted to a flexible application of the surveillance setting in order to allow for the delivery of further measures that might prevent ultimate non-compliance with the fiscal recommendations. At the same time, the intention of this measure was to foster this delivery by maintaining pressure and making the avoidance of further enforcement steps conditional upon further effort. This suggests that the Commission was acting strategically in order to sustain the norm of cooperation, thereby fulfilling the obligations of its role as reliable supervisor.

In early February 2015, and therefore shortly before the Commission would eventually come up with its assessment of the French fiscal situation – announced for 27 February – Commissioner Moscovici again made clear that the Commission was expecting the French government to deliver 'additional measures' (Libération 2015) in order to reduce its deficit. More concretely, given the Commission's projection of a fiscal effort of 0.3% of GDP for 2015, an additional effort of 0.2% would have been necessary to reach the target of 0.5% (see *Ibid.*). Instead of expecting a fiscal effort of 0.8% of GDP as recommended by the Council in 2013, the Commission adapted its expectations to the minimum fiscal effort of 0.5% of GDP (see European Commission 2015e). In light of the Commission's upcoming decision under the SGP, Commissioner Moscovici stated that there would be 'an effort to make' and that it would be 'around this and structural reforms that still need to be refined and developed over time' that discussions with the French government would continue (Libération 2015).¹⁵ Indeed, the French finance minister Michel Sapin announced in early February that the French government was committed to reduce its deficit by 0.5%, and that 'France is conscious of its responsibilities and will respect its commitments, in a trusting dialogue

¹⁵ Own translation

with the Commission' (*Ibid.*).¹⁶ In line with this announcement, Sapin wrote a letter to the Commission on 16 February 2015 in which he reiterated that France would reduce its deficit by 0.5% of GDP and take additional measures in order to reach this objective. He further stated: 'we will refine, in the coming weeks, our diagnostic regarding the perspectives for the 2015 public deficit in order to draw the consequences regarding potential complementary measures' (Le Guernigou 2015).¹⁷ In addition to confirming its budgetary objective for 2015, the French government also reaffirmed its structural reform agenda on 18 February, just prior to the issuance of the Commission's assessment (see European Commission 2015e). This reform agenda was first made public on 12 December 2014, presenting 'reform priorities until 2017' (*Ibid.*: 6).

The dialogue between the Commission and the French government over the period prior to the Commission's assessment in 2015 was described by a French government official interviewee as intense and taking place at all levels. The Commission even sent officials to Paris to discuss specific questions. According to the interviewee, the French government would have been very much interested in maintaining the dialogue and finding an agreement with the Commission. As stated further, both the Commission and the French government were accordingly interested in conducting a dialogue (MS 5).

Conclusion

When facing the concrete risk of France not complying with its recommendations under the EDP, the Commission made clear that it would expect further measures from the French government in order to alleviate this risk. This is in line with the theoretical expectations stated above. In light of the French government being in conflict with the norm of cooperation, the Commission acted in accordance with its role as reliable supervisor that is supposed to aim at sustaining the norm of cooperation in line with the goal-orientation of the setting. In pursuing its normative objective of cooperation, it acted strategically. This is reflected by postponing a verdict on the French fiscal situation – and thereby granting the government more time to act in compliance with its fiscal requirements – and by making the avoidance of further enforcement measures conditional upon cooperation. This behaviour played an important role in the Commission's final decision not to impose a fine – as will be analysed in Part 3 of this mechanism.

¹⁶ Own translation

¹⁷ Own translation

7.2.3 Part 3: The Commission avoids Punitive Action

Confronted with a risk of non-compliance by the French government, the Commission fostered dialogue and cooperation with the aim of improving the fiscal and economic situation. The incoming Juncker Commission even delayed its verdict that might have triggered sanctions. This allowed for an evaluation of the French fiscal performance at a later moment. When the Commission eventually assessed the French fiscal situation, it argued that, given unclear figures, it was not possible to conclude that France had not taken effective action (European Commission 2015e). Had it concluded that France had not taken effective action, sanctioning provisions would have been triggered. First, a recommendation concerning the SGP-based fine of up to 0.2% of the French GDP. Second, the suspension of structural funds. However, in light of the Commission's assessment, the deficit correction deadline was extended by another two years.

Expectations in line with the Causal Mechanism

In line with the causal mechanism, it is expected that, confronted with inconclusive data regarding the French fiscal effort, the Commission opted for a prudent approach, not triggering sanctioning provisions. This behaviour would be in line with the Commission's role as reliable supervisor that aims at sustaining the norm of cooperation. Given that the data indicated at least some effort, the norm of cooperation is expected to be seen as fulfilled. Additionally, imposing sanctions might entail other negative repercussions that would go against the Commission's role as reliable supervisor. Accordingly, sanctions are not perceived as appropriate. The Commission is expected to act strategically by using flexibility provisions in order to avoid sanctions. If this is true, we would expect to find interview data, official documents, or news coverage that show that the Commission was of the opinion that imposing sanctions was not warranted in light of Member State cooperation and might have had negative consequences, and that it opted for a flexible rule application.

Evidence

As predicted by the hypothesis, the avoidance of punitive action can be explained by France, despite deviating from its agreed adjustment path, being overall cooperative and willing to achieve the fiscal objectives. In light of ambivalent data, punitive action was avoided by the Commission resorting to a flexible application of the rules.

On 27 February 2015, the Commission issued an assessment of the French government's fiscal actions in light of the Article 126(7) recommendation the Council had issued in 2013. The assessment of the French fiscal situation and the question of whether there was effective action, was – according to a Commission

official interviewee – borderline. This can be explained by the complexity and difficult observability of the indicators the Commission is working with at the stage of surveillance at hand (COM 2). The assessment showed that, in 2013 and 2014, France had met neither its general government deficit target nor its structural deficit target. With regard to the headline deficit, it stood at 4.1% of GDP in 2013 and was forecast to reach 4.3% of GDP in 2014. This was higher than the respective targets of 3.9% and 3.6%. As for the structural balance, the Commission estimated that the change in the structural balance – or the fiscal effort – would stand at 1.0% of GDP in 2013 and at 0.4% of GDP in 2014 and therefore below the objectives of 1.3% and 0.8% of GDP. Given the finding that both targets had not been reached, a so-called *careful analysis* was deemed warranted by the Commission (European Commission 2015a). The bottom-up¹⁸ assessment indicated that France had made the fiscal effort demanded by the Council. However, ‘a shortfall of 0.2% of GDP compared to the recommendation’ was indicated by the top-down¹⁹ assessment (European Commission 2015a: 13). According to the Commission, the gap between the two measurements was ‘mostly due to the downward revision in inflation’ (*Ibid.*).

This assessment differed from the assessment undertaken by the Commission in November 2014. In this previous assessment, the careful analysis had indicated a shortfall of 0.5% of GDP under the top-down assessment and a shortfall of 0.1-0.2% of GDP under the bottom-up assessment, cumulated over 2013 and 2014 (see European Commission 2014c). Under the new assessment of February 2015, while the top-down assessment fell short by 0.2% of GDP in cumulated terms, the bottom-up assessment showed that France had met the required fiscal effort of 1% of GDP over 2013 and 2014 (European Commission 2015a). This means that delaying the assessment – as previously shown – and letting pass more time before issuing an assessment has actually allowed the Commission to come up with a more positive assessment of the French fiscal effort.

Although the Commission’s assessment of a Member State’s effective action is subject to a clear methodology, the Commission has a certain margin of manoeuvre in its assessment of the fiscal situation of a country. As argued by a Commission interviewee, ‘although you could read the figures in such a way to come to the conclusion that this [...] seems to be non-effective action, there were a number of factors [...] that authorized some doubt about this conclusion’ (COM 1). This means that given the borderline data

¹⁸ The ‘bottom-up measure’ refers to ‘the budgetary impact of the fiscal consolidation measures implemented’ (European Commission 2016n: 69)

¹⁹ The ‘top-down approach’ indicates ‘the change in the structural balance corrected for the differences in growth and revenue outturns with respect to the no-policy change scenario at the time of the recommendation’ (European Commission 2016n: 69)

and the contradicting results between the two assessment approaches, it was possible to either state that effective action had been taken – and thereby avoid potential sanctions – or, on the contrary, to come to the conclusion that this was not the case. Therefore, the final decision on how to interpret the findings and the surveillance rules was a political decision.

This political decision on whether or not France had taken effective action was reached in the context of a distinctive division within the College of Commissioners. It is indeed during this first major case of decision-making under the SGP of the Juncker Commission that a clear pattern emerged. This pattern consisted of Commissioner Moscovici promoting a more flexible application of the rules, Vice-President Dombrovskis advocating a stricter application, and President Juncker playing the role as arbiter between the two opposing camps (COM 3). Commissioner Moscovici, in a College meeting on 18 February, clearly opposed the option of imposing sanctions, stating ‘that the action taken by the Commission should not be punitive, but should encourage Member States to intensify and speed up their reforms and to carry out fiscal adjustments where necessary’ (European Commission 2015c: 29). After the final decision was taken, he further stated that the objective of the Commission was the encouragement of reforms, rather than the application of sanctions ‘willy-nilly’ (Barker and Chassany 2015). For Moscovici, ‘the Commission must be politically and technically credible and must therefore use expertise and the legal rules as the basis for taking the right political decisions’ (European Commission 2015d: 26). Vis-à-vis the Member States, ‘the Commission’s general approach must strike the right balance between encouragement and a demand for results’ (*Ibid.*: 26-27). In this context, he saw the European Semester as ‘an opportunity for the Commission to send messages to the Member States to correct their macroeconomic imbalances and budget deficits’ (*Ibid.*: 26). Since the beginning of his mandate, Commissioner Moscovici had made clear that his goal was not the imposition of sanctions, but the prevention thereof, as sanctions would always be a sign of failure for the country concerned (see Robert 2014) and for the entity that imposes it (Barker and Chassany 2015). Sanctions are therefore perceived by Moscovici as not being in line with the obligations of the Commission – that is the improvement of the fiscal situation via cooperation in line with the goal-orientation of the setting.

Vice-President Dombrovskis, however, had a distinctly different view upon the setting of fiscal surveillance and was of the opinion that ‘any relaxing of these rules or delay in applying them would risk undermining the procedure itself and the equity of this procedure, as well as the Commission’s power to apply it’ (European Commission 2015d: 26). Within the College of Commissioners, Valdis Dombrovskis and ‘a half-dozen other Commissioners’ were in favour of initiating sanctions against France. These included Vice-

President Katainen and Commissioner Vestager (Spiegel 2015b). As no compromise was reached between Moscovici and Dombrovskis, President Juncker stepped in and supported Moscovici. However, concessions were granted to Vice-President Dombrovskis. Instead of giving another three years to France to correct its excessive deficit (*Ibid.*), as had been discussed (see Honoré 2015), France was given two more years (Spiegel 2015b).

Despite the non-achievement of the fiscal targets, the assessment of effective action according to the Commission's methodology has shown that France had done at least some effort. Under the careful analysis, only the top-down assessment indicated non-compliance, and this, according to the Commission, due to lower inflation than foreseen. Although the Commission's final verdict might have ended up stating that no effective action had been taken, the French government arguably had made some effort, even if finally it was not sufficient to create a clearer picture. In this sense, Commissioner Moscovici argued that the Commission's decision was not 'a political gift offered to a big country', and that 'efforts have been made to avoid immediate sanctions' (Honoré 2015). However, the decision has also been seen in a long-term perspective regarding the improvement of the fiscal situation over time in that Moscovici further stated that 'at the same time, we are maintaining the pressure' (*Ibid.*).²⁰ This means that according to Moscovici, sanctions were not seen as warranted because France had made an effort – suggesting that the norm of cooperation was deemed fulfilled – and that furthermore, the imposition of sanctions would have deprived the Commission of a leveraging instrument to sustain goal-oriented behaviour under the Pact in the future.

In a situation of borderline and inconclusive fiscal data, a political decision was taken to avoid steps that would lead to the potential imposition of sanctions. Legally, this was made possible by a flexible interpretation and application of the surveillance setting. The flexible use of the rules reflects the ambiguity of the setting that can either be applied in a strict or in a lenient way. According to Vice-President Dombrovskis, 'on the basis of the analyses carried out, it was not possible to conclude beyond doubt that France had taken effective action' (European Commission 2015d: 21). Seen from this angle, the burden of proof falls on showing that effective action had been taken. However, in the Commission's final analysis the logic is reversed by stating that 'the information available does not allow to conclude that the recommended effort has not been delivered in 2013-2014' (European Commission 2015a: 13). Following the same logic, in the Commission recommendation to the Council it reads: 'Overall, in light of the above, the available evidence does not allow to conclude on no effective action' (European

²⁰ Own translation

Commission 2015e: 6). As illustrated by Vice-President Dombrovskis' reading, the opposite finding might have been possible. This means that the Commission, given its margin of manoeuvre, applied a reading that allowed for the avoidance of punitive steps. In other words, and according to a Commission interviewee, the Commission granted the benefit of the doubt to the French government (COM 1). This behaviour is well in line with the flexible and political approach of the Juncker Commission (see Schmidt 2020). As expressed by another Commission official interviewee, 'under this college, the bar of evidence required to step up a procedure is relatively high', and the case of 'France is an example of that' (COM 2).

Instead of applying a strict reading of the setting and triggering the next procedural step towards the imposition of sanctions, the College of Commissioners decided to give France more time and proposed to extend the deadline for the correction of its excessive deficit. The Commission thereby acted strategically to avoid the imposition of sanctions, which were not perceived as in line with its obligations and were accordingly seen as inappropriate. The extension of the correction deadline was legally possible under Regulation (EC) No 1467/97 Art. 3(5). The legal prerequisite for this step is that 'effective action has been taken' by a country 'and unexpected adverse economic events with major unfavourable consequences for government finances' occurred (European Commission 2015e: 4). The first requirement was met by the Commission's reading of the rules. Despite the double-negative wording of the assessment, it was de facto treated as effective action. With regard to the second requirement, the 'unexpected adverse economic events', the Commission argued that there was a 'considerable deterioration in the budgetary position resulting from the weaker overall position of the economy relative to the one underlying the Council recommendation of 21 June 2013' (European Commission 2015e: 6). According to the Commission, this 'suggests that a revised recommendation under Article 126(7) TFEU for France, setting a new deadline to correct the excessive deficit is justified' (*Ibid.*).

Not only was the Commission flexible in its final assessment, it also made use of a flexible reading of the rules with regard to the length of the deadline extension. The relevant article foresees an extension 'by one year as a rule', if the requirements mentioned above are met (Council of the European Union 1997b: Art. 3(5)). In a 2015 communication, the Commission laid down under which circumstances the extension of a deadline can be more than one year. Namely, 'the implementation of major structural reforms constitutes a key factor taken into account when considering instead a multiannual path for the correction of the excessive deficit' (European Commission 2015b: 13). In addition, the Commission stated that structural reforms can play a role for the length of the deadline extension already prior to their full implementation, 'provided that the Member State presents a dedicated structural reform plan, adopted

by the government and/or the national Parliament, containing detailed and verifiable information, as well as credible timelines for implementation and delivery' (*Ibid.*). This interpretation of the rules, taking into account reforms before their implementation, has been criticised by the Council's legal service (Spiegel 2015a). Nevertheless, the Commission argued that 'the information and commitments provided by the French authorities regarding structural reforms go in the right direction in the light of the requirements outlined in the' communication on flexibility (European Commission 2015e: 6). The Commission was of the opinion that an extension of only one year 'would be too demanding in the current weak economic environment'. In light of this, and in line with its rule interpretation, 'taking into account the structural reform plans announced by France and the still expected National Reform Programme', the Commission thought it 'adequate to extend the deadline for France to bring an end to its excessive deficit situation by two years' (*Ibid.*: 7). The Council adopted the Commission's recommendation subsequently in March 2015 (Council of the European Union 2015a). Accordingly, the Commission resorted to a flexible reading and application of the surveillance rules in order to first, avoid the imposition of sanctions, and second, to grant France more time for the correction of its excessive deficit than is the rule. This reflects action in line with the Commission's perceived normative objectives of cooperation and goal-orientation and further its strategic action to achieve these objectives.

Conclusion

Acting in line with its role as reliable supervisor, the Commission reacted to France being in conflict with the norm of cooperation by signalling the planned breach (Part 1). It then fostered cooperation and demanded further measures in order to sustain the norm of cooperation (Part 2). The assessment of the French fiscal performance in early 2015 might have led to punitive steps under the EDP. However, the fiscal data and the assessment of whether France had taken effective action in response to its 2013 Council recommendation were borderline and allowed the Commission to take a political decision regarding the steps to be taken. It opted for a prudent approach, using a twisted description of the fiscal situation that effectively allowed the Commission to avoid further punitive steps under the EDP. Instead, France was granted another two years to correct its excessive deficit. This behaviour can be explained by the dominant Commission actors' normative view of the surveillance setting and the role of the Commission therein. Given that France had delivered at least some measures, the norm of cooperation was fulfilled and sanctions were not deemed warranted. The Commission, as a reliable supervisor, should aim at sustaining the norm of cooperation in line with the goal-orientation of the setting. This includes promoting reform and the improvement of the fiscal and economic situation. Resorting to punishment goes against

the Commission's goals, as if they are imposed, the Commission has failed in its attempt to fulfil the obligations of its role. The flexible application of the rules reflects the strategy of the Commission to act in line with its normative goals – that is to avoid inappropriate punishment and to keep potential sanctions as leveraging instrument and thereby to be able to foster cooperation and compliance in the future. Overall, we can therefore regard the presence of the mechanism as confirmed. This mechanism explains why – despite non-compliance – the Commission refrains from imposing sanctions. The wider implications of the findings will be discussed in the conclusion, after the presentation of the analysis of this case under the principal-agent model.

7.3 Analysis: Principal-Agent Model

In contrast to the normative institutionalist explanation of Commission behaviour, a principal-agent model offers a rational choice institutionalist account of the events at hand. Rather than focusing on the norms in play, attention is given to the preferences of the actors and the control mechanisms with which the Member States could control the actions of the Commission. The Commission's general aim was to get France back on track with its fiscal consolidation path. Nevertheless, the College of Commissioners was split on the question of whether punitive action against France should be envisaged. The dominant view, however, was to focus on pushing France to undertake further measures rather than to impose sanctions. These would also have deprived the Commission of an important instrument to enforce compliance in the future.

The principal-agent model can in this case focus on two things. First, on the relationship between the Commission and France and on the question whether the Commission was able to pursue its preferences against those of the French government and to thereby prevent sanctions (H.2). Second, it can focus on the relation between the Commission and the multiple principals and the question of whether France should be sanctioned or not. Regarding the first aspect, it can be argued that the Commission was able to convince France to commit to further measures along the lines of its fiscal objectives, although the result did not correspond to the initial targets. In light of the French commitments, the Commission was able to avoid further steps that could eventually have led to punitive action. According to principal-agent theory, the agent is able to pursue its own preference in case of weak principal control. From a formal perspective, this is the case, as France alone would not have been able to prevent sanctions. Also, given RQMV, it would even have been difficult for the Council to oppose the Commission's recommendations. From this angle, the model can thus offer an explanation of the case and we can confirm H.2.

When focusing on the relation between the Commission and the multiple principals, the question is whether the Commission could pursue its own preferences due to weak Member State control, or whether the Commission was acting upon Member State pressure. Shortly after the French government's announcement in September 2014 that it would not meet its fiscal objectives, the German chancellor Merkel stated that it would now be 'important for everyone to fulfil their commitments and obligations in a credible way' (Carnegy and Politi 2014). Although publically the German government was cautiously critical of the French fiscal policy-making, evidence suggests that informally the German government's behaviour did not reflect this stance. Rather, Germany did not push for a strict application of the Pact given the long-term interests of the German government in a well-functioning cooperative relationship between the two (MS 3). Overall, evidence points towards the absence of clear demand for or interest in the imposition of sanctions among Member States (MS 4; MS 5).

The point that led to more criticism was the extension of the correction deadline for two years. Although a majority of Member States was in favour of the Commission recommendation (Economic and Financial Committee 2015), some Member States questioned the extension by two years instead of one and cautioned against granting too much flexibility in order to avoid negative repercussions upon the surveillance framework (MS 2). They further 'raised questions about consistency with the agreed effective action methodology' of the recommendation (Economic and Financial Committee 2015). During the discussions of the case, the perception of an unequal treatment between big and small Member States has played an important role, up until the political level. This is expressed in the conclusions of the Eurogroup of 9 March 2015: 'Finally, several Ministers cautioned against creating a perception of a double standard in terms of treatment of small versus large countries when it comes to fiscal discipline' (Eurogroup 2015: 2). We can therefore assume that the decision not to sanction France and to grant a two-year extension was seen highly critical by small euro area Member States.

Nevertheless, in the absence of a majority of Member States in favour of imposing sanctions, the Commission's majority position correlated with the position of most Member States. H.3. states that in the absence of strong control in the hands of the Member States, which are in favour of sanctions, the Commission can impose its preference and not trigger sanctions. This hypothesis does not hold, as Member States were not in favour of sanctions. H.4 states that given strong control and Member State's opposition to sanctions, the Commission does not impose them. Ultimately, the Commission's assessment of non-effective action would have had to be accepted by the Council. As postulated by the fiscal compact, RQMV would have applied, which implies weak Council control and the invalidity of the hypothesis. The

legal value of this provision is, however, debatable, suggesting that qualified majority voting could have been invoked (see European Commission 2016n), leaving Member States with strong control and pointing towards the validity of the hypothesis. However, there is no evidence that suggests that a majority of Commissioners was in favour of imposing sanctions and refrained from doing so due to Member State pressure, which suggests that H.4 cannot be confirmed. Nevertheless, by focusing on the relation between Member States and the Commission, it is possible to reveal that contrary to what one might assume, Germany – that publically might be perceived as a vivid supporter of strict fiscal policy-making – played a different role behind closed doors. The opposition between Commission and Member States that one might perceive at times, seems more complex and sometimes non-existent when looking at non-public action (see Vanheuverzwijn 2017).

7.4 Conclusion

The case of France represents the first major SGP-related decision of the Juncker Commission. Although France publically announced that it would not meet its fiscal requirements, the outcome was the same as in the case of Belgium, namely the absence of punitive measures. The analysis has shown that the normative-strategic minimum enforcement mechanism provides an explanation for the Commission's behaviour: When facing the risk of non-compliance, as highlighted by a forecast and by the French government's own announcement, the Commission, acting in line with its role as reliable supervisor, clearly signals this behaviour that is in conflict with the norm of cooperation and thereby defends this norm. Nevertheless, the comprehension of its role and obligations also requires that it fosters cooperative action in order to sustain the norm of cooperation in line with the goal-orientation of the setting. The borderline fiscal data led to a political decision by the College of Commissioners that took into account the overall cooperative behaviour of the French government and the perception that the non-imposition of sanctions corresponds to the role, obligations, and normative objectives of the Commission. Further steps under the French EDP were accordingly avoided. The Commission, in aiming at achieving its normatively shaped objectives, has acted strategically. This was done by clearly signalling non-compliance, by postponing its assessment and making the avoidance of punitive action conditional upon the delivery of further measures, and finally by resorting to a flexible application of the surveillance rules in order to avoid inappropriate sanctions.

The implications of these findings for the general analysis of this thesis is that the causal mechanism was present and that therefore the normative institutionalist main- and sub-hypotheses of this study can be seen as confirmed. Furthermore, this means that we can say that the case is mechanistically homogenous

with the case of Belgium. We can also generalise the assumptions to cases similar to the case of France, which is distinct to other typical cases by the divergence of certain conditions. France, unlike Belgium and Portugal, represents a big Member State. In addition, the repercussions of the Sovereign Debt Crisis, although potentially detectable in the weak growth figures, are less present than in the case of Belgium. Unlike in one other case, Member States were overall not in favour of imposing sanctions.

The analysis of the case through the lens of principal-agent theory has revealed the importance of Member States in the institutional setting of fiscal policy coordination and of the relationship between the Commission and the Member State concerned. The hypotheses of principal-agent theory could be confirmed when focusing on the policy preferences of the Commission and the French government. In being able to shape fiscal policies to a certain extent, and due to weak formal control mechanisms in the hands of France, the Commission was able to avoid further steps that might eventually have led to sanctions. However, the hypotheses of the model do not hold when focusing on the relation between the Commission and the other Member States, given an overall correlation of preferences and a lack of evidence that Member States changed the preference of the Commission.

8. Portugal and Spain 2016

In 2016, Portugal and Spain were very close to being sanctioned for non-compliance with their fiscal requirements. Both countries were strongly hit by the European Sovereign Debt Crisis (see Blyth 2015; Hall 2012) and entered financial assistance programmes (European Commission 2020b; European Stability Mechanism 2022). Despite terminating their programmes, Spain and Portugal came under intense scrutiny in the context of their respective EDPs. The Commission and the Council concluded in 2016 that both countries had failed to take effective action (Council of the European Union 2016b; 2016a; European Commission 2016i; 2016h), which could have led to the imposition of sanctions under the rules of the Six-Pack. In line with the requirements, the Commission issued recommendations for Council decisions to impose fines. However, in these recommendations, the Commission proposed to cancel the fines for the two Member States (European Commission 2016k; 2016j). In addition, although the Commission would have been required to propose the suspension of structural funds (see European Union 2013b), no such proposal was issued.

This case is relevant for this thesis for several reasons. First, in terms of process-tracing methods, it represents a typical case and allows us to test the assumptions of the mechanism and thereby of the underlying hypotheses. Second, if the mechanism is present, we can assume that the mechanism works in cases that are similar to the cases of Spain and Portugal, which differ from other typical cases in terms of country size, crisis situation, and Member State support of Commission action. Third, it represents a case in which the surveillance procedure was taken very far, but in which nevertheless no sanctions were imposed. It therefore reflects the level of abstraction of the mechanism and can potentially help us understand why the Commission refrained from the imposition of sanctions at the latest possible procedural stage. Before turning to the analysis of the case, its legal and political background will be presented. Subsequent to the main analysis under normative institutionalism, the case will be analysed from the angle of a rational choice institutionalist principal-agent model. The chapter concludes with a summary of the main findings and a discussion of their wider implications.

8.1 Portugal and Spain under the EDP and Legal Background

Portugal entered an EDP in early 2010, when its 2009 deficit was expected to end up at 5.9% of GDP and its 2009 debt level at 74.5% of GDP (Council of the European Union 2010b). Severely hit by the Sovereign Debt Crisis (see Blyth 2015; Hall 2012), Portugal entered a financial assistance programme in 2011 in an agreement with the European Commission, the ECB, and the International Monetary Fund. Under this

programme, a loan amounting to €78 billion was foreseen, although not all of it was disbursed in the end. Portugal exited the programme in June 2014 (European Commission 2020b). From 2011 to 2015, Portugal was governed by a pro-austerity government under the conservative Prime Minister Pedro Passos Coelho (The Economist 2015). The austerity measures undertaken by the government included cuts in salaries and pensions, a reduction of public services, and tax rises (Chrisafis 2015). The 2015 general election in Portugal was won by the Conservatives, who could, however, not win a majority. The minority government of the Conservatives was voted down shortly after its constitution and the Socialists under Antonio Costa formed a new minority government, supported by the Left Bloc, the Communists, and the Greens (The Guardian 2015). Although announcing ‘a socialist programme’ (*Ibid.*) and ending privatisations and extensive cuts (Tariq 2015), Prime Minister Costa committed to fiscal consolidation and to respecting the EU’s fiscal rules (The Guardian 2015).

An EDP was opened for Spain in 2009. While its debt reached only 39.5% of GDP in 2008, in 2009 it was projected to rise to 53% of GDP in 2010. Although the debt level remained under the 60% threshold, its 2009 deficit was projected at that time to reach 6.2% of GDP (Council of the European Union 2009a). As was the case for Portugal, Spain was also severely hit by the Sovereign Debt Crisis (see Blyth 2015; Hall 2012). In 2012, Spain entered an 18-months financial assistance programme managed by the European Stability Mechanism, aiming at the restructuring of Spanish banks. Of the €100 billion made available, only €41.3 billion were needed by Spain (European Stability Mechanism 2022). In December 2011, the conservative Mariano Rajoy became Prime Minister of Spain, announcing budget cuts to reduce the country’s deficit (Goodman 2011). After the general elections of December 2015, and in the absence of any party winning the majority, the elected parties were not able to form a government coalition. New elections were therefore organised in June 2016 (Borgen 2016). After the second election was also inconclusive, the Socialist Party abstained in the investiture vote in October 2016, allowing for the formation of a minority government under Mariano Rajoy (Jones 2016). Between the general election in December 2015 and the formation of the new government in 2016, Mariano Rajoy was heading a caretaker government (The Guardian 2016).

This case is more complex than the other case studies of this thesis, as in addition to facing fines under the reformed SGP, Spain and Portugal came very close to being the first euro area countries to see parts of their ESIF suspended under the macroeconomic conditionalities. Although being based on different legal sources and policy areas, the two sanctioning provisions that were applied in this case are triggered by the same procedural step – the Council decision confirming that both countries had not taken effective

action. Under the Six-Pack, and similar to the cases of Belgium and France, the decision on non-effective action by the Council – upon a recommendation by the Commission – triggers the requirement for the Commission to recommend to the Council the imposition of a fine. However, this fine can be entirely cancelled or its amount can be reduced given exceptional economic circumstances or the submission of a reasoned request. While ‘exceptional economic circumstances’ are defined, it is up to the Commission to decide upon the interpretation and the use of reasoned requests, which grants its considerable leeway for circumventing a fine.

While the SGP foresees these flexibility provisions to circumvent the fine even though non-effective action was clearly identified, the proposal to suspend ESI Funds cannot be stopped and should in theory follow automatically. The Commission therefore has a lot more leeway to avoid a sanction in the case of the SGP-based fine than in the case of the suspension of ESI Funds. However, the Commission enjoys some flexibility as to the amount and scope of the suspension. Also, and although the Regulation does not contain any provision that allows the Commission to avoid the suspension proposal, suspensions should be lifted in case an EDP is closed or put in abeyance.

Another specificity of the macroeconomic conditionalities is that, unlike for sanctioning provisions under the EDP, the Cohesion Policy-based provision foresees the involvement of the European Parliament in the form of a structured dialogue with the Commission. The Commission is supposed to take into account this exchange when proposing the suspension of funds. The final decision is, again, for the Council to take. However, RQMV also applies for the suspension of funding commitments. This grants the same weight and level of automaticity to the Commission’s recommendations for both sanctioning provisions. Although both provisions stem from different legal bases and policy areas – which implies the responsibility of different DGs and Commissioners – they are strongly connected by sharing the same procedural trigger.

8.2 Analysis: Normative-Strategic Minimum Enforcement

In line with process-tracing methods, the aim of this analysis is to trace the operation of the causal mechanism of normative-strategic minimum enforcement. Finding out that it was present would allow us to explain why no sanctions have been imposed against Spain and Portugal despite their non-compliance with the fiscal requirements. In line with our theoretical assumptions, the following is argued. Confronted with behaviour that is in conflict with the norm of cooperation, the Commission defends this norm by pointing out the non-compliant behaviour. It then fosters dialogue and demands further effort in an

attempt to sustain the norm of cooperation in line with the goal-orientation of the setting. In defending and sustaining cooperation, the Commission acts in line with its role as reliable supervisor. If further measures are delivered, the norm of cooperation is deemed fulfilled. The imposition of sanctions is not in line with the obligations of its role and is therefore avoided. In pursuing its normative objectives, the Commission is acting strategically.

Both countries' EDPs at the time of interest were largely treated jointly by the Commission and the Council. Therefore, they are analysed together here. Given the specificity of the case, which is the application of two sanctioning provisions – first, the SGP-based fine, and second, the potential suspension of ESI Funds – the structure is adapted accordingly. Both provisions are set in motion by the procedural decision of establishing non-effective action. This step is treated in Part 1 of the mechanism – the Commission pointing out breaches. After this part, the mechanism splits up and each sanctioning provision is treated separately. This means that while Part 1 concerns both sanctioning provisions, there will be one Part 2 and one Part 3 for each of the provisions. The analysis will start with the SGP-based fine and will then resume with the potential suspension of ESI Funds.

The cause, setting in motion the causal mechanism in this case, is the considerable non-compliance of both countries with their fiscal objectives under their respective EDPs. While the Spanish deadline for correcting its excessive deficit was set for 2016 (European Commission 2016i), Portugal was expected to achieve this goal by 2015 (European Commission 2016h). As for Spain, it missed its deficit targets in 2014 and 2015, and the Commission projected its 2016 deficit at 3.9%, above the recommended target of 2.8% and above the three-percent threshold marking an excessive deficit (European Commission 2016b). Portugal missed its deficit target in 2014 and reached a deficit of 4.4% in 2015 instead of 2.5% as recommended and therefore also did not bring its deficit under the 3% threshold within the deadline (European Commission 2016a).

8.2.1 Part 1: The Commission assesses Compliance and points out Breaches

The cause – considerable non-compliance with the fiscal objectives – sets in motion Part 1 of the mechanism – the Commission assessing compliance and pointing out non-compliance with the fiscal objectives. In 2016, the Commission assessed both countries' fiscal policies in light of the respective Council recommendations they had received in 2013. It came to the conclusion that both countries had failed to take effective action and recommended to the Council to confirm this finding (European Commission 2016i; 2016h).

Expectations in line with the Causal Mechanism

In line with the hypotheses expressed in the causal mechanism, it is expected that when being confronted with a fiscal performance that is in conflict with the norm of cooperation, the Commission acts in line with its role as reliable supervisor that signals this non-compliance. Clearly pointing out the breach, while corresponding to appropriate action, also reflects the Commission's strategic behaviour to achieve its normative objective – that is defending the norm of cooperation. If this holds true, we would expect to find interview data, official documents, or news coverage that show that Commission actors pointed out the situation of non-compliance given that they regarded the fiscal numbers and performance as clearly indicating a breach of the recommendations.

Evidence

The Commission's 2016 assessment of the Portuguese and Spanish fiscal situation revealed that both countries had not complied with their fiscal recommendations under their EDPs. In line with the expectations, given this clear breach of the fiscal objectives, the Commission signalled the non-compliance by triggering the next step under the EDP, namely the establishment of non-effective action under Art. 126(8) TFEU.

Despite the highly political consequences that establishing non-effective action was about to trigger, the Commission's assessment was seen as straightforward by interviewed Commission actors (COM 1; COM 2; COM 4; COM 5; COM 7). In this vein, one Commission official claimed that: 'we had the indicators, the figures, all the three measurements of whether they had taken effective action; the outcome was clear-cut because on every of those single measures, the deviation was relatively important. So the conclusion was easily reached' (COM 2). Similarly, it was argued that 'non-effective action is based on facts' and 'like an automatic decision based on the metrics' (COM 5), that it was a 'factual result' (COM 7), and that 'the result was reached because it is the outcome of our analyses' (COM 4). In this vein, even if the Commission would have wanted to resort to a flexible reading of the numbers, it would not have been possible, according to an interviewed Commission official: '[...] even say, giving the benefit of the doubt, even giving a generous reading of the figures, [...] no, there is no way, we cannot' (COM 1). According to the same interviewee, it even was 'virtually impossible to escape the conclusion of non-effective action' (COM 1). Accordingly, the numbers regarding the fiscal performance of Spain and Portugal were seen as clearly not in line with both countries' Council recommendations under the EDP, which suggests that the Commission reacting to this was perceived as an obligation.

In a similar vein, Vice-President Valdis Dombrovskis stated in a College meeting on 5 July 2016 that ‘Spain and Portugal had relaxed their budgetary efforts, either for electoral reasons or to reduce the pressure exerted by the markets during the financial assistance programme’, and that they ‘had utilised the margins resulting from increasing growth and falling interest rates to undertake expenditure rather than reduce their debt’ (European Commission 2016d: 31). In light of the fiscal data, it was reported from the same College meeting that Commissioner Moscovici ‘felt that it was [...] impossible to conclude that effective action had been taken towards either of the two benchmarks in the applied methodology, i.e. the headline target and the structural target, despite the fact that Spain and Portugal were in a relatively favourable economic situation, though admittedly still affected by the serious consequences of the financial, economic and social crisis’ (*Ibid.*: 34). This suggests that in light of a clear conflict with the norm of cooperation, the Commission acted out of a sentiment of obligation in order to defend the norm of cooperation in line with its role as reliable supervisor.

The claim that non-compliance was clear and that the Commission could therefore not have avoided stating the breach by finding non-effective action is mirrored in the Commission’s assessment of the fiscal performance of the Spanish and Portuguese governments. As for Spain, the Commission found that it had missed its 2013 deficit target of 6.5% of GDP by 0.4 percentage points (pp), but nevertheless considered that Spain had met the fiscal effort (European Commission 2016b). In 2014, however, the Spanish deficit ended up at 5.9%, above the target of 5.8%. Similarly, in 2015, the deficit stood at 5.1%, and Spain therefore missed the target of 4.2% by 0.9 pp. At the time the assessment was made, the deficit for 2016 was projected at 3.9%, compared to the recommended target of 2.8%. The fiscal effort over the period 2013-2015 amounted to 0.6% and was therefore below the recommended effort of 2.7%. When adjusting for ‘revisions in potential output growth and [...] revenue windfalls or shortfalls’, the cumulative effort was of -0.2% (European Commission 2016b: 13-14). As for 2016, both ‘the unadjusted and adjusted changes in the structural balance’ were projected at -0.2% (*Ibid.*). Based on the bottom-up method, the Commission concluded that Spain undertook ‘no effort over the 2013-2015 period’ and projected the same for 2016 (*Ibid.*). The Commission acknowledged that negative or low inflation throughout 2013-2015 rendered the ‘achievement of fiscal targets more difficult’. This negative development was, however, ‘largely offset by higher-than expected real GDP growth’ (European Commission 2016i: 4). In addition, the Commission deemed that the Spanish government did not use these ‘better-than-expected economic developments [...] to accelerate the deficit reduction’ (European Commission 2016b: 15) and that Spain even relaxed its fiscal policy (European Commission 2016i). Neither was the deficit target reached in 2015, nor was Spain ‘forecast to put an end to the excessive deficit in 2016’ (*Ibid.*: 5). The Commission was

further of the opinion that ‘the fiscal effort falls significantly short of what was recommended by the Council’ (*Ibid.*). It finally recommended to the Council to decide that ‘Spain has not taken effective action in response to the Council Recommendation of 21 June 2013’ (*Ibid.*: 6).

While Portugal achieved its deficit target in 2013 with an actual deficit of 4.8% of GDP compared to the recommended target of 5.5%, it did not meet its targets in both 2014 and 2015. Although the Council recommended that Portugal should reach a deficit of 4% in 2014 and of 2.5% in 2015, it ended up with deficits of 7.2% and 4.4% respectively, thereby missing its 2015 correction deadline. As for the change in the structural balance, Portugal missed the target of 0.6% of GDP improvement in 2013 by 0.1 pp, the 2014 target of 1.4% by 0.3 pp and the 2015 target of 0.5% by 1.1 pp. In cumulative terms, this means that over 2013-2015 the structural balance improved by 1.1% of GDP, compared to a recommended target of 2.5%. The ‘adjusted change in the structural balance’ over 2013-2015 ended up at -0.1% and therefore was 2.6 pp lower than the recommended change of 2.5% of GDP (European Commission 2016a: 13). Therefore, the cumulative adjusted change in the structural balance was lower than the non-adjusted measure that indicated a change of 1.1% of GDP (*Ibid.*).

The Commission stated that the Portuguese 2015 deficit can partly be explained by ‘the resolution of Banif’ (European Commission 2016h: 4) – a Portuguese bank – that added 1.4% of GDP to the Portuguese deficit (see *Ibid.*). However, if also the ‘deficit-reducing one-off operations’ are excluded in the calculation, ‘the deficit would still have been above the Treaty reference value’ (European Commission 2016a: 9). Similarly, the Commission argued that even if it had taken into account the change to the European System of National and Regional Accounts (ESA 2010) – which would have increased the calculated structural effort by 0.8% of GDP over 2013 to 2015 – and the ‘estimated yields from fight against tax fraud and evasion [...] as discretionary measures’ in its calculation of the adjusted change in the structural balance, Portugal would still have missed the target by ‘around 1 pp’ (European Commission 2016a: 13). The Commission considered that ‘windfall gains were not used to accelerate the deficit reduction and the volume of structural consolidation measures was not sufficient to reach the targets’ (European Commission 2016h: 4).

Overall, the Commission considered that under the ‘economic adjustment programme until 2014’, adjustment made by Portugal was ‘on track’, but that afterwards, ‘Portugal has not delivered the recommended fiscal effort’ (European Commission 2016a: 13). As Portugal failed to correct its excessive deficit within its 2015 deadline, and as its ‘fiscal effort falls significantly short of what was recommended by the Council’, the Commission recommended to the Council to decide that ‘Portugal has not taken

effective action in response to the Council Recommendation of 21 June 2013' (European Commission 2016h: 5). The Commission's assessment of the Spanish and Portuguese fiscal situation therefore further indicates that the Commission was of the opinion that non-compliance of Portugal and Spain with the Council recommendations was clear, and that it therefore decided to formally state the breach via recommending to the Council to confirm the non-effective action under Article 126(8) TFEU.

Another crucial aspect that supports the expectation that the Commission acted out of a sentiment of obligation to defend the norm of cooperation is that the decision was taken independently from the subsequent procedural steps and despite their potential negative repercussions. During the College meeting at which the Commission's decision on effective action was discussed, Vice-President Dombrovskis stated that 'at this stage, the imposition of fines or suspension of the structural funds was not up for discussion, although the question would arise soon' (European Commission 2016d: 31). Commissioner Moscovici also noted that the decision on fines and the suspension of structural funds would only be taken at a later stage. However, in order to 'avoid uncertainties that could cause market volatility', it would be 'important to dispel any doubts regarding the possibility of heavy fines that would hold back growth' in the Commission's communication of the issue (*Ibid.*: 33). This suggests that Commissioner Moscovici saw the looming sanctions as a potential threat to the improvement of the fiscal situation. Despite the clear awareness of the relevant Commission actors of the procedural consequences of their decision on effective action, it does not seem that these had an impact on their decision at hand. As stated by a Commission interviewee: 'I would say indeed, one is the quasi-automatic consequence of the other, but when we took the decision for instance to step up the EDP for [...] Spain or Portugal, that decision was taken independently from the sanction that followed based on that because [...] the non-effective action is governed by [...] a detailed set of rules in itself, which are difficult [...] to make depend on the subsequent sanction step' (COM 2).

Conclusion

The Commission's analysis has shown that Spain and Portugal had clearly not complied with their recommendations under the EDP. Key Commission actors, and especially Commissioner Moscovici, underline the procedural inevitability of stating non-effective action in this case. Despite the risk of triggering sanctions, non-effective action is stated. The use of flexibility provisions was not an option for the Commission at this stage, as the two countries clearly had not complied with their obligations under the Pact. In line with the theoretical approach, we can therefore argue that in light of a situation of clearly missed targets and therefore of a conflict with the norm of cooperation, the Commission decided to act

according to the perceived obligations of its role as reliable supervisor – that is signalling non-compliance. This measure, while representing appropriate behaviour, also reflects the Commission’s strategic action that aims at fulfilling its objective of defending the norm of cooperation.

Although non-effective action was established out of a sense of obligation and not with the aim of sanctioning Spain and Portugal, the confirmation of the Commission’s recommendation by the Council required further action from the Commission – namely and precisely considering the imposition of sanctions. Although the suspension of ESI Funds is subject to a more automatic procedural setting than the SGP-based fine, both provisions leave room for dialogue and cooperation. As Part 1 of the mechanism is at the basis of both sanctioning provisions, the causal mechanism will now be split in two. This means that first, the SGP-based fine, and second, the macroeconomic conditionalities will be analysed. In terms of the causal mechanism, this means that the following Parts 2 and 3 will focus on the SGP-based fine, and that the subsequent Parts 2 and 3 will focus on the macroeconomic conditionalities.

8.2.2 Part 2 on Fine: The Commission fosters Dialogue, Cooperation, and Further Effort

In light of considerable non-compliance by Spain and Portugal with their fiscal objectives that the Commission has detected and pointed out, the Commission fostered a dialogue and cooperation and demanded further fiscal effort. Although the Council’s confirmation of the Commission’s findings triggered the requirement for the Commission to consider the imposition of a fine, the procedure leaves room for discretion and dialogue before a sanctioning proposal is eventually issued. This is because the fine can be cancelled or lowered based on a reasoned request or exceptional economic circumstances. Indeed, both Spain and Portugal issued a reasoned request to the Commission in which past action and cooperation was highlighted and planned measures were announced (see European Commission 2016k; European Commission 2016j).

Expectations in line with the Causal Mechanism

In line with the hypotheses expressed in the causal mechanism, it is expected that when having pointed out the conflict with the norm of cooperation, the Commission fosters cooperation and dialogue and expects reform efforts that aim at the improvement of the fiscal situation in line with the respective recommendations under the EDP. This behaviour is expected to be shaped by the perception that the Commission as reliable supervisor should sustain the norm of cooperation in line with the goal-orientation of the setting. In pursuing and trying to sustain its normative objectives, the Commission is expected to act strategically. If this is true, we would expect to find interview data, official documents, or news

coverage that show that the Commission fostered cooperation and dialogue and expected further effort by Spain and Portugal that would lead to the improvement of the fiscal and economic situation.

Evidence

As expected, in light of the detected non-compliance with the fiscal recommendations, the Commission opened the door for cooperation and made clear that in order to lower the looming sanctions or even avoid them entirely, Spain and Portugal would have to deliver further measures along the lines of their fiscal objectives. The instrument that would allow the Commission to take into account the Spanish and Portuguese supplementary effort are so-called reasoned requests, which were indeed issued by both countries.

When in July 2016 the debate was still turning around the establishment of non-effective action, Commissioners internally stated that the question of fines would be discussed at a later stage (European Commission 2016d). Vice-President Dombrovskis made already clear then that the Commission would be open for a dialogue with the Member States concerned, and that further commitments might justify the limitation of the fines:

He explained that the Stability and Growth Pact provided for leeway that allowed these measures to be applied judiciously and that a dialogue with the Member States could accompany the process in order to avoid adverse effects. For example, although the failure to comply with the rules in the Stability and Growth Pact related to the past, the fines could be reduced considerably if the Member States in question made credible fiscal-policy commitments and brought in long-term structural reforms. (*Ibid.*: 32)

Vice-President Dombrovskis further stated that ‘the main objective of the Stability and Growth Pact was to encourage the implementation of responsible fiscal policies, in the interest of every Member State, the euro area and the EU as a whole’ (*Ibid.*: 31-32). For him, ‘the threat of sanctions was part of an incentive system of last resort that had never been actually used’ (*Ibid.*: 32), suggesting that the threat of sanctions should also be used in this case in order to foster fiscal consolidation. Commissioner Moscovici also opened the door for dialogue and cooperation and announced that further measures would be necessary to avoid the imposition of the fine: ‘It’s possible that these sanctions are equal to zero, on the condition that the Spanish and Portuguese governments give us the answers we’re expecting on how they will reduce their deficits’ (Reuters 2016). Further, Moscovici publically stated that the Commission would be ‘open for dialogue. The idea is that we are able to take on board the arguments that the ministers provide’

(Guarascio 2016a). Similarly, Dombrovskis argued that ‘there will be a possibility within this procedure for the countries to put forward motivated requests to reduce potential sanctions or probably even bring them down to zero’ (*Ibid.*). At this stage, the Commission was interested in dialogue and the delivery of further fiscal measures in order to achieve an improvement of the fiscal situation and made the avoidance of punitive measures conditional upon this. This suggests that the Commission as reliable supervisor was aiming at sustaining the norm of cooperation and – via announcing a conditionality – acted strategically to achieve this aim.

In legal terms, what would allow the Commission to reduce the fine – or even cancel it – are reasoned requests by the Member States concerned or exceptional economic circumstances. This means that dialogue and reform efforts can only shape the final outcome of the procedure if they are channelled through these legal provisions. Indeed, both Spain and Portugal submitted reasoned requests, asking for their respective fines to be put at zero (European Commission 2016j; 2016k). In these requests, further commitments were presented and past cooperative action was highlighted.

As for the Portuguese government, in its reasoned request submitted on 18 July 2016, it restated its ‘commitment [...] to correct the excessive deficit in 2016’ and if necessary to take ‘fiscal measures to correct any potential budget execution deviations’ (European Commission 2016j: 3). Also, Portugal committed to comply with its country-specific recommendation to undertake ‘a structural adjustment of at least 0.6% of GDP’ in its 2017 budget, as compared to 0.35% of GDP as announced in the 2017 Stability Programme (*Ibid.*: 4). Furthermore, Portugal committed to ‘structural reforms [...] including measures to stabilise the banking system’ (*Ibid.*). The Spanish government, in its reasoned request submitted on 13 July 2016, committed to further measures to reduce its deficit, namely ‘amendments to the corporate income tax law’, the ‘advancing of the date of closure of the central government’s fiscal year’, which ‘can help contain expenditure developments in the second half of 2016’, and ‘further measures against tax fraud’ (European Commission 2016k: 4). Spain further presented deficit-reducing measures that it had taken after the Commission recommendation of 9 March 2016. These consisted of requiring ‘12 regional governments to approve cuts in budget appropriations to ensure compliance with their deficit targets for 2016’ and approving ‘around 0.2% of GDP cuts to budgetary appropriations’ by the central government (*Ibid.*: 4). Both the Spanish and the Portuguese government further underlined the fiscal effort done in the past. As for Portugal, it pointed to the ‘substantial fiscal consolidation effort and the structural reforms implemented during the recent economic adjustment progress’ (European Commission 2016j: 3). In a similar vein, Spain argued that it had implemented reforms although the economic context was

challenging, and that it had made a ‘significant fiscal effort [...] in the wake of the crisis’ (European Commission 2016k: 3).

Conclusion

Given the Council decision establishing the countries’ failure to take effective action, the Commission was legally required to consider the imposition of sanctions. The looming sanctions can therefore be seen as a consequence of the establishment of non-effective action. However, rather than imposing sanctions based on past action – as would have been possible via a strict reading of the rules – the Commission fostered dialogue and cooperation and expected further fiscal measures in an attempt to improve the economic and fiscal situation. This behaviour is in line with the Commission’s role as reliable supervisor. In light of a conflict with the norm of cooperation, it aims at sustaining cooperation in line with the goal-oriented setting of the SGP. Making the avoidance of sanctions conditional upon further effort reflects the strategic action of the Commission in pursuing the goal of sustaining the norm of cooperation. The Member States responded to the Commission by submitting reasoned requests that presented past action and future commitments in order to show their willingness to cooperate and improve the fiscal situation. As will be visible in the next part, dialogue and cooperation in the form of committing to further measures allowed the Commission to avoid punitive action that was perceived as inappropriate.

8.2.3 Part 3 on Fine: The Commission avoids Punitive Action

This part is set in motion by the occurrence of cooperative action between the Commission and the Spanish and Portuguese governments. Confronted with the requirement to come up with proposals on sanctions, the Commission’s openness towards further measures and the Member State’s cooperative behaviour ultimately allowed the Commission to avoid the imposition of fines. The Council decision establishing non-effective action requires the Commission to come up with a recommendation regarding the imposition of a fine. If justified, the Commission, however, can propose to lower or to cancel the fine entirely. The Commission indeed followed these provisions and issued recommendations concerning the imposition of fines to the Council. Taking into account the reasoned requests that had been issued by both Portugal and Spain, the Commission recommended to the Council to cancel the fines for both countries (European Commission 2016k; 2016j). Despite the circumvention of the fines, both countries received an Article 126(9) Council notice, containing new deadlines for the correction of their deficits and reinforced reporting obligations. While Portugal was expected to correct the situation still in the same year – that is 2016 – Spain was given until 2018 (Council of the European Union 2017b; 2017a).

Expectations in line with the Causal Mechanism

It is expected that given that the two countries have shown their willingness to cooperate, the norm of cooperation and the obligation of the Commission to sustain a cooperative setting are seen as fulfilled. In addition, imposing sanctions is perceived as running counter to the Commission's role as reliable supervisor by triggering other negative consequences. Sanctions are therefore not seen as appropriate in the situation at hand. It is expected that in pursuing the avoidance of sanctions by applying the rules flexibly, the Commission acts strategically. If this holds true, we would expect to find the following fingerprints: interview data, official documents, or news coverage that show that the Commission was of the opinion that imposing sanctions was not warranted in light of Member State cooperation and might have had negative consequences, and that it opted for a flexible rule application.

Evidence

In line with the hypothesis, the Commission's ultimate avoidance of punitive action can be explained by the cooperative behaviour of Spain and Portugal. Although the Commission was split on the question of whether or not to impose a fine (see European Commission 2016e; see also Coman 2018), it made use of a flexibility provision in order to take into account the cooperative behaviour of both governments and thereby avoided the imposition of a fine (see European Commission 2016k; 2016j; see also Mérand 2021a).

At the moment that the Council officially confirmed the Commission's assessment stating non-effective action, the Commission was facing a situation in which it had to take a decision regarding the imposition of financial fines – a step that would have been unprecedented under the SGP. Formally, the Commission only had to make a recommendation to the Council on whether or not the EU should resort to punitive action for non-compliance under the fiscal rules. However, RQMV made the reversal of the Commission's recommendation rather difficult, thereby making it likely that the Commission's proposal would represent the final decision.

Commissioners were split on the question of whether to propose sanctions, which reflects different interpretations of the role of the Commission as reliable supervisor and its obligations in the case at hand. Those Commission actors that were of the opinion that the imposition of sanctions would have been warranted in the situation at hand saw the case of Spain and Portugal as a test case for the reformed setting. The imposition of sanctions would have been perceived as appropriate, as it would have sent the signal that the rules are applied, and that the Commission acts upon non-compliance. Sanctions therefore might have worked as a deterrent to other countries in order for them to stay on track of fiscal

consolidation. To achieve this objective, a symbolic fine would have been sufficient, which further – it was felt – would not have had too much impact on the Spanish and Portuguese economies (COM 7). Along those lines, Vice-President Dombrovskis suggested in a College meeting that a strict reading of the rules would have had a beneficial effect on the governing rules’ and the Commission’s credibility: he ‘highlighted the difficult choices on which the Commission had to give its view that day in order to take a balanced decision for Spain and Portugal, while at the same time ensuring the credibility of the institutions and mechanisms of economic and fiscal governance’ (European Commission 2016e: 26-27). He invited the College of Commissioners ‘to take into consideration the credibility of the institution as the guardian of EU law’ in its decision to either ‘impose a symbolic fine, decide on a higher fine, or cancel it, with the precedent that such a decision could set, the objective being to reach the most intelligent political solution, while complying with the rules in place’ (*Ibid.*: 27). These statements imply the view that only a strict reading would constitute an application of the rules in line with their alleged purpose, and that therefore only a strict application would grant credibility to the Commission and the institutional setting of fiscal surveillance. Although provisions that would allow for the cancellation of the fines are acknowledged, they are at this stage not a valid option for Vice-President Dombrovskis, due to their long-term implications of setting a precedent. In the end, Vice-President Dombrovskis spoke out in favour of imposing sanctions, although of a low amount: he ‘suggested therefore that the level of the fines should reflect the considerable efforts made by Spain and Portugal over the past six years and should therefore be well below 0.2% of their gross domestic product’ (European Commission 2016g: 36).

Commissioner Moscovici and other Commission officials had a distinctly different view upon the EU’s framework of fiscal surveillance and the use of punitive action than Vice-President Dombrovskis, which implies a different interpretation of the role of the Commission and the way to act in the situation at hand (see also Mérand 2021a). As stated by an interviewed Commission official, the imposition of sanctions was perceived as a failure for Commissioner Moscovici, as it would show that the Commission and the Member State concerned had not achieved their goals:

Moscovici said on the record many times that for him the imposition of sanctions is always a failure, as it shows that the dialogue has failed. It shows that we weren’t, the system wasn’t able to lead to an outcome where the Member State lived up to its commitments, and where an agreed outcome, agreed solutions, and a positive outcome could be reached. (COM 3)

In a similar vein, seen from the perspective that the most important objective is that the budgetary situation is improving, and that Member States are moving 'in the right direction', the credibility of the setting can be derived from the achievement of this goal (COM 4), as stated by an interviewed Commission official. This understanding stands in stark contrast to the view that the credibility of the setting stems from strict rule application and potentially from the imposition of sanctions.

Commissioner Moscovici was further of the opinion that the imposition of fines, even of a reduced amount, could have been counterproductive, both economically and politically. Economically, even a small fine might still have had an impact on the two countries: '[Moscovici] was sceptical about the impact of a symbolic fine, which would still mean tens or hundreds of millions of euros denied to the real economy, small and medium-sized enterprises, and citizens, and which would also be reflected in slower growth and job losses' (European Commission 2016e: 28-29). Seen from this perspective, and according to an interviewed Commission official, the imposition of a fine would have created an additional burden on countries that were already in a problematic financial situation (COM 2). In a similar vein, fines might have had a counterproductive effect as regards the financial markets: 'Perhaps also in terms of market stability, it may not be the best sign that we can give, it could give the impression that those countries are not doing well, it could add to market stress, and basically you could achieve the opposite of what you intended to achieve' (COM 2).

Politically, the imposition of fines might have had a negative impact on public opinion towards the European project. Commissioner Moscovici thought that in light of the effort done by Spain and Portugal since 2008, the effect of a fine might be 'that Spanish and Portuguese citizens would interpret this message as a criticism for not having made enough efforts, while the Union had played a large part in defining those efforts, in particular in the case of Portugal, and welcomed their effects' (European Commission 2016e: 28). Consequently, 'there was a risk that this might result in a loss of support for the European project in these Member States' (*Ibid.*: 28). Given the economic and social situation in the two countries, imposing a fine might also have had a negative impact on public opinion towards the European Commission in particular:

The political and the public perception of the Commission proposing a fine of up to 0.2% of GDP on countries that were emerging from that sort of economic backdrop and with that social backdrop still present as well as of course the wider situation in Europe, would simply have been impossible for people to understand. And so Commissioner Moscovici

was very much of the view that sanctions were neither desirable nor appropriate in that particular case (COM 3).

Notwithstanding the importance of these considerations, one major aspect regarding the Commission's assessment of appropriate action that is closely related to the fiscal effort undertaken by both Member States is the overall cooperative behaviour of Spain and Portugal. Commission actors were of the opinion that the two countries were cooperative and did not generally question the EU's fiscal framework and the fiscal objectives (COM 1; COM 2; COM 4; COM 5). This cooperative behaviour was crucial in the Commission's perception that a fine should not be imposed, as the statement of one interviewed Commission official shows: 'Spain and Portugal [...] did not deserve [...] to be punished because their fiscal performance, all in all, in spite of not being in line, was not [...] in open conflict with the EU framework' (COM 1). In this regard, an additional and crucial counterproductive effect – to those mentioned above – was feared, namely that by imposing a fine, the good cooperation between the Commission and the Member States concerned could have been jeopardized for the years to come (COM 2). Given that Spain and Portugal had made a fiscal effort, even if not as significant as recommended, the imposition of a fine was not deemed warranted. In addition to this point, there were several other considerations that indicated that the imposition of a fine would run counter to the goals of the Commission by threatening economic growth, public support for the EU and the Commission, and future cooperation with Spain and Portugal. This suggests that Commission actors that share this perspective were of the view that sanctions were not in line with the obligations of the Commission, as the norm of cooperation was deemed fulfilled and as sanctions would have risked the achievement of its normative goals by triggering other negative effects that would have been incompatible with its role as reliable supervisor.

When a decision on potential fines was taken in the College of Commissioners, Commissioner Moscovici was backed by 'a majority of Members' in proposing to cancel the fines (European Commission 2016e: 30). As a reason, it was stated that taking this decision would be 'reasonable, fair and politically astute given the considerable efforts made by Spain and Portugal since 2008 to substantially reduce their excessive deficits' (*Ibid.*). However, there was also 'broad support for counterbalancing the political choice to cancel the fines with a very clear explanation and warning to the effect that the Member States concerned must continue to do their utmost to improve their budgetary and economic performances and that although the fines were not being imposed at this stage they would be later on if the countries in question did not bring their excessive deficits down to the levels required in the time allowed' (*Ibid.*: 31-32). The non-imposition of sanctions can therefore not be seen as a blanket release from punitive

measures, but must also be seen in the context of surveillance over time and of the intention to keep up the threat of potential sanctions for achieving an improvement of the fiscal situation in both Member States in the future. According to the College meeting minutes, only a minority of Commissioners actually was in favour of the imposition of fines: there was ‘a call from some Members to impose a fine, even a symbolic one, rather than to cancel it’ (*Ibid.*: 32). Other than Vice-President Dombrovskis, the Members of the College that backed the call for sanctions were Vice-President Katainen, Commissioner Oettinger, and Commissioner Malmström (Berschens 2016; Valero 2016a). President Juncker spoke out against the imposition of fines (Valero 2016a).

The legal basis that in the end allowed the Commission to avoid the imposition of fines was the consideration of the reasoned requests both countries had submitted. In these requests – and as shown above – Spain and Portugal presented both past action undertaken and planned measures in line with their recommendations under the Pact. As mentioned above, what a reasoned request should contain in order for it to be justified is not defined. In the case of Spain, the Commission took into account – amongst other points – ‘the deficit-reducing commitments announced’ and also considered ‘the deep structural reforms undertaken by the Spanish government since 2012’ in order to justify the cancellation of the fine (European Commission 2016k: 5). In the case of Portugal, the Commission similarly considered the fiscal commitments put forward and ‘the fiscal adjustment undergone during the economic adjustment programme’ in order to propose cancelling the sanction (European Commission 2016j: 4). The Commission therefore used the flexibility of the rules to avoid the imposition of fines, which represents strategic action to achieve its normative objectives.

Conclusion

In light of considerable non-compliance, the Commission stated the breach by formally establishing non-effective action and thereby defended the norm of cooperation (Part 1). It then fostered a dialogue in order to sustain the cooperation and goal-orientation of the setting (Part 2). The avoidance of sanctions – the third and last part of the normative-strategic minimum enforcement mechanism – was set in motion by the cooperation between the Commission and Spain and Portugal. The cooperative behaviour of the Spanish and the Portuguese governments allowed for the avoidance of punitive action as it provided a substantial reason for the Commission not to impose sanctions. In terms of our theory, this means that given that the governments cooperated, the Commission’s obligation as reliable supervisor to sustain a cooperative setting is deemed fulfilled by the dominant Commission actors. In addition, the imposition of financial sanctions goes against the perceived obligations of the Commission and its role as reliable

supervisor, as it might have negative consequences for the economic and fiscal situation, risk cooperation with the Member States concerned in the future, and – given the economic and social situation of the countries shaped by the debt crisis – might risk public support for the European project and the European Commission. Therefore, in the situation at hand, and given the perceived obligations of the Commission, financial sanctions are not seen as appropriate. In order to avoid the sanctions, the Commission opts for a flexible reading and application of the rules. This reflects the strategic dimension of the Commission's behaviour in its attempt to sustain the norms that guide its actions. The assumptions of the mechanism, which explains why no sanctions are imposed, can accordingly be regarded as confirmed. The wider implications of the findings will be discussed in the conclusion of this chapter. The next section will turn to the analysis of the looming suspension of ESI Funds. As both procedures share cause and Part 1, the analysis will resume with Part 2 of the mechanism – the Commission fostering dialogue, cooperation, and further effort – while focusing on sanctions under Cohesion Policy.

8.2.4 Part 2 on ESIF: The Commission fosters Dialogue, Cooperation, and Further Effort

The suspension of ESI Funds under the so-called macroeconomic conditionalities is closely linked to the decision regarding the imposition of fines under the SGP as discussed above, as it is also triggered by the establishment of non-effective action. The main discussions regarding the suspension of funds, however, took place after the discussions regarding the fines – that is in autumn 2016. Facing a requirement to act, the Commission launched the sanctioning procedure that could eventually have led to the suspension of ESI Funds. Although the Regulation does not foresee any possibility to circumvent the suspension of funds – as is possible under the SGP-based fine – it can eventually be lifted in case of compliance with the Council recommendations under the EDP. Furthermore, there is room for discretion in what regards the level and scope of the suspension. In addition, under the structured dialogue, the European Parliament can be involved in the procedure, with the Commission being required to consider the exchange in its suspension proposal. Indeed, a structured dialogue between the Parliament and the Commission took place. In this context, two hearings were organised at the Parliament.

Expectations in line with the Causal Mechanism

It is expected that when having signalled the conflict with the norm of cooperation due to non-compliance with the fiscal objectives, the Commission interprets its role as reliable supervisor in the sense that it should sustain the norm of cooperation by seeking dialogue and reform efforts that aim at the improvement of the economic and fiscal situation. In the special case of the macroeconomic

conditionalities, the dialogue takes also place with and via the European Parliament. The Commission is expected to strategically pursue its normative objectives. If this applies, we would expect to find interview data, official documents, and news coverage that show that the Commission fostered cooperation and dialogue and expected further effort by Spain and Portugal that would lead to the improvement of the fiscal and economic situation.

Evidence

In light of an obligation to act, the Commission made clear that the suspension could not be avoided (see European Commission 2016g; see also Coman 2018). In accordance with the expectations, the suspension could, however, be lifted on the condition that Spain and Portugal were acting in line with their fiscal recommendations (see European Commission 2016g). Further, the Parliament was acknowledged its role in the procedure, and the possibility of taking into account mitigating factors was announced (see Handelsblatt 2016), thereby making the dialogue a key instrument in avoiding a too strong impact of the suspension.

Commission actors initially presented the looming suspension of structural funds as an automaticity, while at the same time opening avenues to lift the suspension if the countries cooperate and undertake further measures. On 20 July 2016 – at the time of the discussion of the SGP-based fine – Vice-President Dombrovskis announced that ‘there was no margin of discretion when it came to the suspension of structural funds, and a decision would have to be proposed at a later date, following talks with the European Parliament’ (European Commission 2016g: 36). This message was also conveyed in a press release: ‘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 2016m). However, Commission actors also discussed the possibility of lifting the suspension once Spain and Portugal had fulfilled their fiscal objectives. Jyrki Katainen, Vice-President for Jobs, Growth, Investment and Competitiveness, stated on 20 July 2016 that the ‘suspension of the structural funds was automatic under the excessive deficit procedure’, but ‘that only commitments for next year would be affected; funds already committed would not be concerned, and a suspension could always be lifted as soon as the Member States concerned implemented the Union’s recommendations’ (European Commission 2016g: 38). The prospect of the suspension being lifted once the two countries would attain the objectives of their ‘adjustment paths’, was similarly expressed by Vice-President Dombrovskis on 27 July 2016 (European Commission 2016e: 33). During the first hearing under the structured dialogue with the Parliament on 3 October, Vice-President Katainen and the Commissioner for Regional Policy, Corina Crețu,

accordingly announced that the suspension would be lifted as soon as Spain and Portugal had taken the demanded fiscal action (Valero 2016b). In particular, the Commission expected the two countries to comply with the notice the Council had issued to them on 8 August 2016 (European Parliament 2016a). This shows that the Commission was interested in cooperation and further measures that would lead to an improvement of the fiscal situation. At the same time, it made the mitigation of punitive action conditional upon the delivery of measures. This suggests that the Commission was aiming at sustaining the norm of cooperation in line with its role as reliable supervisor, and that it acted strategically in order to achieve this goal.

Indeed, in mid-October 2016, both Spain and Portugal submitted reports on their actions taken in order to achieve the objectives as laid down in the notice both countries had received on 8 August 2016 (European Commission 2016c) as well as their DBPs for 2017. The measures reported by Spain were in line with the announcements made in its reasoned request submitted in the context of the SGP-based fine. These are namely changes in relation to the corporate income tax and the calendar of the fiscal year (*Ibid.*). Portugal – also in line with its announcements in the reasoned request – reported on the freezing of €445 million ‘in intermediate consumption’, amounting to 0.25% of its GDP (*Ibid.*: 4). Spain and Portugal could thereby argue that they were acting in line with their fiscal requirements.

Notwithstanding the direct interaction with the Member States concerned, the Commission also fostered the dialogue with the Parliament during the preparation of its suspension proposal. Already when the macroeconomic conditionalities were discussed, the European Parliament was against extending this punitive instrument. However, mitigating factors regarding the suspension and a dialogue with the Parliament were introduced in the Regulation. Indeed, in July 2016, Vice-President Katainen, in a letter to the President of the Parliament, Martin Schulz, announced that the Commission would take into account ‘all available criteria’ in the determination of the ‘scope and level of the suspension’, and that it would include the Parliament in the procedure in order to come up with a ‘balanced proposal’ (Handelsblatt 2016).²¹ Commissioner Crețu also stated in front of the Parliament that the Commission would take into account relevant mitigating factors in order to lower the level of suspensions (European Parliament 2016a). The Commission therefore made clear that the dialogue with the Parliament could contribute to mitigating the impact of the suspension of funds. When Commissioner Crețu and Vice-President Katainen discussed the planned suspensions with the Regional Development (REGI) and the Economic and

²¹ Own translation

Monetary Affairs (ECON) committees, a majority of MEPs voiced their opposition to the planned punitive measure (European Parliament 2016c; Valero 2016b; see also Coman 2018). According to them, the suspension would be counterproductive as it would negatively affect the ‘most vulnerable’ Spanish and Portuguese ‘citizens and regions’ (European Parliament 2016c). Although most MEPs were strongly against the suspension, Eurosceptics, Liberals and some northern European members of the European People’s Party supported the suspension (Valero 2016b). Overall, the structured dialogue gave MEPs a possibility to express their discontent with the planned measure. Rather than focusing on how the suspension could be mitigated, MEPs expressed their general opposition to the suspension. Nevertheless, in line with its obligation to act in accordance with the norm of cooperation, the Commission also was able to make clear that it was seeking the dialogue with the aim of containing the potential negative impact of the suspension in line with the economic goal-orientation of the setting.

Conclusion

Confronted with a necessity to follow up on the non-effective action that required the Commission to trigger the suspension of ESI Funds, the Commission made clear that it would expect further effort by the Member States in order to lift the suspension of funds. Spain and Portugal indeed reported on measures undertaken in response to their respective Council notice. In addition, the Commission entered into a dialogue with the European Parliament with the aim of coming up with a suspension proposal that would take into account any relevant mitigating factors. This behaviour is in line with the Commission’s role as reliable supervisor that, when confronted with a conflict with the norm of cooperation, should aim at sustaining the norm of cooperation in line with the goal-orientation of the setting of fiscal surveillance. The Commission acted strategically in pursuing this normative objective by making the lifting of the suspensions conditional upon further effort and by taking into account mitigating factors that would reduce the negative impact of the suspension. As will be shown in Part 3 of the mechanism, dialogue and cooperation, including with the European Parliament, in the end played a crucial role in the avoidance of the suspension of structural funds.

8.2.5 Part 3 on ESIF: The Commission avoids Punitive Action

This last part of the mechanism regarding the macroeconomic conditionalities is set in motion by the openness of the Commission towards dialogue, the cooperation with the Parliament, and the cooperative behaviour of the Spanish and Portuguese governments. Confronted with the requirement to act, the Commission asked Spain and Portugal for further measures in line with the recommendations they had

received and opened up avenues for cooperation and dialogue, not only with Spain and Portugal, but also with and via the European Parliament. A decision on the suspension of structural funds had been deferred by the Commission until the end of the structured dialogue (European Commission 2016e: 27). Although the Regulation does not foresee the avoidance of the suspension, it allows for lifting the suspension if the EDP is held in abeyance or abrogated. Despite the requirement to come up with a suspension proposal, the Commission ultimately did not issue any such document. The structured dialogue took place, but before it came to an end (COM 8), and before the Commission had issued a suspension proposal, the Spanish and Portuguese EDPs were held in abeyance by the Commission because both countries were deemed acting in compliance with their fiscal objectives (see European Commission 2016c). The Commission accordingly argued that the reason which had required the suspension of funds did not exist anymore (European Commission 2016f). Ultimately, no funds were suspended.

Expectations in line with the Causal Mechanism

It is expected that in light of the measures taken by Spain and Portugal, the obligation of the Commission to sustain a cooperative setting is seen as fulfilled. Furthermore, the suspension of funds might have economic and political repercussions that would act against the role of the Commission as reliable supervisor. In the given situation, the imposition of sanctions is therefore not seen as appropriate. In applying the rules in a flexible manner in order to avoid the imposition of sanctions, the Commission is expected to strategically pursue its normative objectives. If this holds true, we would expect to find interview data, official documents, or news coverage that show that the Commission was of the opinion that imposing sanctions was not warranted in light of Member State cooperation and might have had negative consequences, and that it opted for a flexible rule application.

Evidence

In line with the expectations, the suspension of funds was not perceived as appropriate by key Commission actors given the effort done by the countries and other negative repercussions of potential punitive action. Ultimately, their imposition was avoided by the flexible interpretation of the procedural rules.

Strongly connected to the SGP-based fine discussed above, the discussions around the suspension of ESI Funds can be seen as similar to the first fine but also as having developed a distinct dynamic. This is due to the involvement of the European Parliament and the connection to the policy area of EU Cohesion Policy. With regard to the perception of appropriateness of the suspension, the aspect that funding is

concerned that aims at structural investment for regions, adds another layer to the debate on the impact of financial sanctions. The fact that the European Parliament was deeply involved in the decision-making process reinforces the importance of this aspect in the events at hand. As seen in Part 2, the Commission made the countries' delivery upon their fiscal recommendations a precondition for the lifting of the suspension. It thereby use the instrument as an additional leveraging instrument in the aftermath of the near-imposition of financial fines in July of the same year. Accordingly, there are two key players with apparently different intentions as regards the suspension of ESI Funds. The question, however, is whether the intentions of both bodies really were fundamentally different. Evidence strongly suggests that the two bodies actually played a game that led to a result that satisfied both institutions. The Commission – on the one hand – avoided the imposition of an inappropriate sanction despite an obligation to enforce it, and the Parliament – on the other hand – successfully defended structural funding.

When facing the legal obligation to come up with a proposal on the suspension of structural funds, the College of Commissioners showed a similar division as when dealing with the imposition of the SGP-based fine and therefore different interpretations of how the Commission should act in the situation at hand. Both Vice-President Dombrovskis and Vice-President Katainen – who this time was in charge of the procedure – were in favour of the suspension. The main reason for their position was to maintain the credibility of the conditionality provision (COM 8; COM 9). In line with the expectations stated above, Commissioner Crețu, however, was rather reserved with regard to the prospect of the suspension of funds due to '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' (COM 9). At the Parliament hearing in the framework of the structured dialogue, she accordingly stated 'not [being in a] comfortable position' given that the Commission was obliged to go forward with the suspension (European Parliament 2016a). In a similar vein, and as stated by an interviewed Commission official, the suspension would have been economically counterproductive as it would have deprived the countries of a major source of public investment (COM 9). It might furthermore have been politically counterproductive by fueling Eurosceptic sentiments across the EU (COM 8; COM 9).

According to an interviewed Commission official, the automaticity of the procedure and the obligation to propose a sanction, especially given the economic and social situation in the countries concerned, was perceived as a burden. In light of the structural effort done by both countries, the moment for the suspension of funds was not seen as adequate (COM 9). Similarly, another Commission official stated that within the Commission it was felt that the moment to suspend the funds was not right and that flexibility

in the application of the provision was lacking (COM 8). Accordingly, there was a conflict between the legal obligation to go forward with the suspension and the preference for avoiding this measure (COM 8). Despite the aversion towards punishing Spain and Portugal with the suspension of structural funds, the Commission's services had prepared the formal suspension proposal. Nevertheless, it was agreed that the flexibility provided by the procedure should be used (COM 8). Within the Commission, it was therefore felt that the suspension of funds was not warranted given the effort done, that it would be politically and economically counterproductive, and that the sanctioning provision was too rigid for taking into account the situation at hand. This indicates that the suspension of funds was felt to have gone against the perceived obligations and objectives of the Commission because of its negative effects, and given that the norm of cooperation was fulfilled.

The fact that, nevertheless, the Commission ultimately did not come up with a proposal concerning the suspension of ESI Funds can be explained by the procedural involvement of the Parliament and a flexible interpretation of the procedural rules in play. In line with the expectations, the evidence indicates strategic action by the Commission to achieve its goal of preventing inappropriate sanctions. Although a first hearing had taken place in the context of the structured dialogue, the Conference of Presidents of the European Parliament argued that additional information would be needed from the Commission before the Parliament could pronounce itself on the suspension (Valero 2016c). In addition, a second hearing at the Parliament was organised in which the economy minister of Spain Luis de Guindos and the finance minister of Portugal Mário Centeno answered questions of MEPs of the REGI and ECON Committees (European Parliament 2016b). The request for additional information and the organisation of another hearing, which further extended the structured dialogue between the Parliament and the Commission, reflects the European Parliament's strategy of formally prolonging the dialogue to give more time to both countries to comply with their fiscal requirements (MEP 1) and thus to avoid a suspension of funds (Valero 2016c).

The Commission has at least an indirect – but nevertheless strategic – role in the events to play. Unlike in the case of the SGP-based fine, there is no specific deadline the Commission has to respect with regard to the suspension of ESI Funds (European Commission 2016m). Nevertheless, as the Commission is supposed to 'give due consideration to any elements arising from and opinions expressed through the structured dialogue' with the Parliament (European Union 2013b: Art. 23(9)), one could argue that the Commission should wait with its suspension proposal until the structured dialogue is concluded. However, whether the Commission really is obliged to wait until the dialogue is officially declared as terminated by either

side, is not clearly established in the Regulation (see *Ibid.*). Within this legal grey area, the Commission decided that it would wait for the end of the dialogue to come up with a proposal on the suspension of funds (European Commission 2016e; 2016m). An interviewed Commission official stated that ‘nothing prevented the Commission not to wait for the Parliament [...], but it was convenient to uphold that we had to wait, which was a potential reading of the Regulation’ (COM 2).

The European Parliament arguably used the Commission’s rule interpretation as the basis for its strategy – it is likely that without the Commission’s commitment to issue its proposal only after the dialogue, the strategy to prolong it and give additional time to both countries to be found in compliance and thereby to avoid the suspension of funds would not have worked. As stated by an interviewed Commission official, ‘that was clearly some kind of institutional gimmickry or institutional play to exploit what perhaps was not the letter of the law, but apparently worked’, concluding that: ‘Dragging on, [...] it came from both sides, I think’ (COM 2). The behaviour of the Commission is well in line with the preferences of those Commission actors that did not perceive the suspension of funds as appropriate for economic and political reasons. Rather than the Commission proposing a suspension – although a reduced one – the institutional game that was played offered the Commission an easy way out of its dilemma: violating the clear legal obligation to impose a sanction and thereby risking to harm the credibility of the surveillance rules or resorting to punitive action despite the perceived inappropriateness of the measure due to its economic and political consequences.

In line with the Parliament’s strategy, before a proposal on the suspension of funds was issued, the Commission had decided to hold both the Spanish and the Portuguese EDP in abeyance. According to Vice-President Dombrovskis, the reason for the suspension of the funds was therefore not present anymore, and accordingly no proposals were made (European Commission 2016f). Similarly, Commissioner Moscovici argued that Spain and Portugal ‘had implemented the required measures, in line with their commitments, which was why the Commission was not proposing decisions to suspend the structural funds’ (*Ibid.*: 29). Indeed, the decision to hold the EDPs in abeyance was based on the Commission’s conclusion that Portugal had taken effective action in line with its 2016 Council notice and that Spain was ‘expected’ to achieve its 2016 deficit target – although there was still ‘a risk that the fiscal effort may fall somewhat short of the requirements’ (European Commission 2016c: 9). However, according to a Commission official, the conclusion that effective action in response to the Council notice meant that the legal basis for proposing the suspension was not present anymore, was – legally speaking – ‘debateable’ (COM 2). The Regulation indeed states that holding an EDP in abeyance should lead to

lifting the suspension. However, in order for a measure to be lifted, one could also argue that it has to be imposed first. This shows that, at this stage, the Commission – again – opted for a flexible reading and application of the rules that ultimately allowed for the non-proposal of a sanction, which indicates that it acted strategically to avoid a measure that was not in line with its perceived obligations in the given situation.

Conclusion

In light of Spain and Portugal being in conflict with the norm of cooperation, the Commission defended the norm of cooperation by stating non-effective action (Part 1). Subsequently, it fostered the dialogue with the two governments and with the European Parliament in an attempt to sustain the norm of cooperation in line with the goal-orientation of the setting (Part 2). MEPs that were involved in the procedure were strongly opposed to the suspension of funds. In addition, this measure was perceived by those Commission actors opposed to it as economically and politically counterproductive. The Commission and the European Parliament played an institutional game that led to an outcome that was beneficial for both institutions. The additional time that Spain and Portugal were granted by the extension of the structured dialogue allowed them to be found – based on new information – to have complied with their fiscal recommendations. This behaviour is in line with the presented hypothesis. Given that Spain and Portugal were found to have cooperated in line with their recommendations, the norm of cooperation and the obligation of the Commission to sustain this norm were deemed fulfilled. Therefore, and in addition to their potential negative political and economic consequences that go against the Commission's normative objectives, sanctions in the form of the suspension of funds were not perceived as appropriate, and flexibility provisions – including playing along with the Parliament – were applied strategically to avoid them. The assumptions of the mechanism, which explains why no sanctions were imposed despite fiscal non-compliance, can therefore be seen as confirmed. The findings regarding the mechanism and their implications will be discussed in detail in the conclusion, right after the presentation of the analysis under the principal-agent model.

8.3 Analysis: Principal-Agent Model

While the analysis of the case from a normative institutionalist angle has revealed the normative factors that shape the Commission's behaviour, the case can also be analysed from a rational choice institutionalist perspective. The principal-agent approach focuses on the interests of the Member States as principals and of the Commission as their agent. The analytical angle from which the model would

approach the research question – that is why does the Commission not propose sanctions for the non-compliance with the fiscal recommendations – focuses on the divergence of preferences among principal and agent and on effective agent control or the lack thereof. Two dimensions can be distinguished. First, the agent's ability to impose its policy preferences upon the principal concerned by the surveillance measures and thereby to avoid sanctions. Second, the collective or multiple principal's ability to control the behaviour of the Commission regarding the imposition of sanctions.

On the first dimension (H.2), we can argue that the Commission was able to push Spanish and Portuguese fiscal policies towards its point of preference, as illustrated by both countries' policy commitments. According to the model, this would be possible given weak Member State control. Although Spain and Portugal might just not have cooperated, they would in this case have faced sanctions, which would have been difficult for them to prevent. Control was therefore low. However, given that both countries had already been found in clear non-compliance with their fiscal targets, it is difficult to argue that the Commission had the power to impose its policy preferences. Principal-agent theory therefore does not really explain what we can observe.

On the second dimension, the control of the collective principal over the Commission, the preferences of both entities need to be established. As for the Commission, the overall and majority preference points towards an aversion towards the imposition of fines. This position was shared by a majority in the Council. In the EFC – a preparatory body of the Council – there was a majority in favour of the Commission's recommendation to cancel the fines, although some minority members of the committee were concerned about the effect of this decision on credibility and predictability of the Pact and questioned the justification for cancelling the fines (Economic and Financial Committee 2016c). Despite usually being perceived as an advocate of strict fiscal rule enforcement (see Eder 2016), it was reported that the German finance minister Wolfgang Schäuble had intervened before the College decision regarding sanctions and called Commissioners that were favouring the imposition of sanctions (Valero 2016a; see also Eder 2016). Rumour had it that a reason for this intervention was that Schäuble wanted to support the Spanish government that was of the same political family (see Eder 2016). Whether these points are more than speculation is difficult to say. Similarly, whether the intervention actually had an impact on the final decision of the Commission (see *Ibid.*) is not certain, as claiming that Germany changed the position of the Commission would actually have been very beneficial for the Commission in order to avoid being blamed for being too lenient.

Given a correlation of preferences regarding the SGP-based fine, the question is whether the principal-agent model can explain why the Commission has shared the position of the Council (H.4). The theory could only explain this via strong Member State control over the Commission. Formally, however, RQMV applied, which gave the Council a rather weak position to overrule the Commission. This means that from a formal point of view, principal-agent theory does not offer an explanation of the events at hand. Informally, control might be higher. From a rational choice angle, high informal control could be explained by a strong interest of the Commission to maximise its preferences by having the support of Member States. However, whether it is beneficial for the Commission to act in line with the internal or the external presentation of Member State preferences is not clear. Principal-agent theory thus does not provide a straightforward analytical grid for the observations.

As for the suspension of ESI Funds, the application of a principal-agent model is more complex, given that the procedure involved the Parliament. Nevertheless, the Council was formally involved in the procedure, as the suspension proposal would have had to be adopted by the Council, albeit by RQMV. Given that no proposal was issued, the Council, however, could not adopt any legal act in this case. Nevertheless, the test of principal-agent theory in this case will focus first on the relation between the Commission and Member States, before turning to the role of the European Parliament. The German government, unlike in the case of the fine, was in favour of going forward with the suspension (MS 6). Although based on the information available, it is not possible to find out whether there was a majority in the Council strongly in favour of executing the suspension, information from the EFC suggests that this is the case and indicates that the EFC was opposed to the way the Commission handled the procedure. The EFC furthermore tried to avoid too much delay that could lead to a circumvention of the effective application of the suspension provision. From the EFC meeting of 29-30 September 2016 it is reported that ‘several members expressed concern at the delays to the process and argued that once Spain and Portugal report on action taken it will be difficult to separate the suspension decision from the assessment of effective action’ (Economic and Financial Committee 2016b). The Council’s legal service, which was summoned on the issue, argued ‘that the effective implementation of the provisions of the regulation in 2017 would require the Commission to make its proposal by 30 November 2016’ (Economic and Financial Committee 2016a). Accordingly, the President of the EFC ‘concluded that the Commission proposals would be needed as soon as possible from a procedural perspective’ (*Ibid.*: 1). This shows that Member States were asking the Commission to come up with a suspension proposal in line with the procedure, which suggests that there was a majority of Member States in favour of actually executing the suspension. From this perspective, one can observe a rather clear divergence of preferences between agent and principals. Given that the

Member States could not shape the outcome in line with their preferences, the Commission as agent was able to impose its preference against the interests of the principals. Given weak formal control mechanisms in the hands of the Member States in the form of indirect adoption of a final proposal by RQMV, the outcome can be explained by principal-agent theory. The Commission was able to avoid a sanction against the interests of the principals due to weak control mechanisms (H.3).

In the case of the suspension of funds, the Council was, however, not the only relevant player, as the European Parliament played a central role in the procedure. Although the Parliament cannot be described as principal in the sense that it delegated powers to the agent, one can frame the relationship between the Commission and the Parliament in terms of the latter controlling the former. In order to explain the outcome from this angle, principal-agent theory would ask whether the Parliament was able to control the Commission and thereby prevent the suspension. Indeed, the Parliament's strategy to grant more time to Spain and Portugal was successful in that it prevented the ultimate suspension of funds. However, this strategy would not have worked without the Commission playing along. The question is thus, did the preferences of the two bodies simply correlate, or was the Parliament able to shape the outcome in line with its preferences. As argued above, there were strong reservations within the Commission regarding the suspension. Also, despite firmly presenting the Commission's obligation to act, Commission actors showed their willingness to mitigate the impact of the suspension and to lift it immediately once action has been taken. This points towards a correlation of preferences between the Parliament and the Commission, rather than at the Parliament's control over the Commission. This assumption is supported by the weak control mechanisms in the hands of the Parliament that has no formal word to say about the adoption of the final suspension proposal. The weak control mechanisms therefore cannot explain the Parliament's ability to shape the outcome. It might be conceivable that during the procedure, the Parliament was able to change the opinion of those Commission actors that were very much in favour of the suspension, as suggested by a Commission interviewee (COM 9). However, the argument of changing preferences is not easily reconcilable with the assumption of fixed preferences of rational choice institutionalism. Overall, and seen from this angle, the assumptions of principal-agent theory are not able to provide a clear explanation of the events at hand.

However, and again, rather than neglecting the role of Member States in the events at hand, a normative institutionalist perspective might be complemented by a principal-agent-based approach: if Member State – and MEP – preferences have an impact on the Commission's behaviour, then this might be because their opposition towards sanctions forms part of Commission actors' perception of the Commission's role.

If the Commission acts against Member States, then it also risks their cooperative behaviour and thereby the functioning of the surveillance setting. However, the case of the suspension of funds has shown that this does not mean that Member States being in favour of imposing sanctions has an effect on the Commission and its avoidance of sanctions. This means that while Member State support of non-sanctioning might contribute or confirm the Commission's assessment of appropriateness, Member State support of non-sanctioning is not a necessary condition for the Commission's avoidance of sanctions.

8.4 Conclusion

This case study has focused on a double-case and a double-sanctioning provision and therefore on a highly complex case of near-sanctioning. When in 2016, Spain and Portugal were found to be in non-compliance with their fiscal recommendations, they were facing fines under the SGP and the suspension of ESI Funds under the rules of Cohesion Policy. But why, despite the strengthened role of the Commission and the non-compliance of both countries, did the Commission refrain from proposing sanctions? The analysis has shown that the normative-strategic minimum enforcement mechanism provides an answer to this question. When facing non-compliance, the Commission signals this conflict with the norm of cooperation in line with its role as reliable supervisor and in order to defend the norm of cooperation. Non-effective action is established for both countries. Subsequently, and in light of a requirement to consider further steps, the Commission aims at sustaining and fostering cooperation in line with the goal-orientation of the setting by opening avenues for a dialogue that should lead to an improvement of the fiscal and economic situation. If additional measures are delivered, the norm of cooperation that the Commission is supposed to sustain is deemed fulfilled. Sanctions are therefore not deemed appropriate. In addition, financial sanctions might run counter to the Commission's obligations by threatening future cooperation, a deterioration of the economic and fiscal situation, and public support towards the EU and the Commission. The Commission acts strategically in pursuing and sustaining its normative objectives. This becomes apparent by the Commission signalling non-compliance, making the avoidance of punitive measures conditional upon the delivery of further measures, and resorting to a flexible reading of the surveillance setting in order to avoid sanctions. We can therefore confirm the presence and functioning of the causal mechanism in this case and for both sanctioning provisions in play. This means that the main and the sub-hypotheses drawn from the normative institutionalist approach of this study can be regarded as confirmed.

In addition, the case is mechanistically homogenous with the cases of Belgium and France. Furthermore, we can generalise our mechanistic assumptions to all cases that are similar to the cases of Spain and

Portugal. These are distinct to other typical cases by the size of the countries concerned, the crisis situation, and Member State support of Commission action. Indeed, while Spain represents a big Member State, Portugal is a small country. The crisis did, unlike in the previous cases and especially in the case of Belgium, not play a central role anymore. While Member States supported the Commission's non-sanctioning in the case of the fine, they were in favour of the suspension of funds. This latter observation represents an important exception among the selected cases.

The two sanctioning provisions that were triggered have their specificities. Spain and Portugal came very close to being sanctioned under both punitive instruments. As regards the fine, the Commission, in line with its obligation to act, issued a sanctioning proposal, which contained the recommendation to cancel the fine. Contrary to the case of Belgium, the transitory period was over, and the Commission was required to apply the provision. Nevertheless, it used the remaining flexibility of the setting in order to act in line with its perception of its role and obligations – that is avoiding an inappropriate fine. The suspension of funds is – contrary to the SGP-based fine – procedurally automatic. In case non-effective action is established by the Council, the Commission has, according to the Regulation, no choice but to execute the suspension. Still, the Commission's interpretation of the setting and the European Parliament's strategic behaviour allowed for the circumvention of this punitive provision. This discrepancy between legal and procedural automaticity of the provision and its non-application via a flexible rule interpretation highlights the sharp contrast between the post-crisis strengthening of the setting and the role of sanctions in practice (see Coman 2018).

Principal-agent theory could not explain the non-imposition of the SGP-based fine and was further not able to explain the non-suspension when focusing on the relation between the Commission and the Parliament. In addition, it could not show that the Commission was able to avoid the imposition of sanctions given its strong impact on Member State policies. However, the model does provide a theoretical explanation in the case of the suspension of ESI Funds. Due to weak control mechanisms in the hands of the Member States, and despite a preference among Member States to go ahead with the punitive measure, the Commission was able to avoid the suspension of funds. Somewhat paradoxically, the validity of the principal-agent-based hypothesis in this case shows that Member States do not necessarily play a role in the application of sanctioning provisions. It was therefore shown here that Member States being in favour of sanctions does not lead to the Commission imposing them. However, and just as in the two previous cases, a majority of Member States was indeed in favour of not sanctioning Spain and Portugal with regard to the fine. These findings imply two things. First, the Commission is not

necessarily acting as agent of the Member States. Second, the Commission, in most cases, is not alone in preferring the avoidance of sanctions.

9. Italy 2018

The case of Italy in 2018 is special for two reasons. First, the Italian populist government at the time publically and severely questioned the authority of the Commission in the surveillance of national fiscal policy-making (see Mischke 2018; Reuters 2018). Second, unlike in the other cases of this study, Italy was under the preventive arm of the Pact when the possibility of imposing sanctions occurred. The question at the time was whether a debt-based EDP should be opened (European Commission 2018f). This measure could have been accompanied by a financial sanction (see European Union 2011a). Ultimately, the Commission did not propose the opening of a debt-based EDP and accordingly no financial sanction was imposed.

Although no EDP was opened at this stage, the interactions concerning the Italian budget between the populist Italian government and the European Commission were not completely settled when an agreement was reached in December 2018. The opening of an EDP was again on the table in the course of 2019, but once more, an agreement was reached and no EDP was opened (European Commission 2019a). This case study will nevertheless focus on the first episode in 2018. The interactions in late 2018 represent a phase of high political tension and public confrontation that is deemed representative for the tensions and interactions between the Commission and the Italian government and the considerations of the Commission that led to the avoidance of a financial sanction.

The case is relevant for this thesis for several reasons. First, it represents a typical case in terms of process-tracing methods. If the functioning of the mechanism can be shown in this case, we can confirm the underlying hypotheses and further conclude that the case is mechanistically homogenous with the other typical cases. Second, if the mechanism is present, we can generalise the findings to cases that are similar to this case, which is distinct to other typical cases in terms of the size of the country, crisis situation, and support of the Commission's actions by Member States. Third, unlike all other case studies, this case is about the potential imposition of a financial sanction at the very beginning of an EDP. It therefore represents the wide procedural scope that the causal mechanism covers. This means that the case can potentially help us to understand why the Commission refrains from imposing sanctions at this early stage of the procedure. Before turning to the analysis of this case, its political and legal background will be presented. Subsequent to the analysis of the case from a normative institutionalist perspective, the alternative principal-agent analysis will be presented. This chapter will conclude with a summary of the main findings and a discussion of their wider implications.

9.1 Italy under the SGP and Legal Background

Severely hit by the European Sovereign Debt Crisis (see Blyth 2015; Hall 2012), Italy was under an EDP from 2009 until the closure of the procedure in 2013, when Italy had corrected its excessive deficit (Council of the European Union 2013c). From 2015 until 2018, the Commission had prepared an Article 126(3) report for Italy at least once per year (European Commission 2022c). In these, the Commission mainly assessed Italy's compliance with the debt criterion (see European Commission 2015f; 2016l; 2017; 2018g; 2018f). According to Commission information dating from May 2018, the Italian debt ratio changed from 131.6% of GDP in 2015, over 131.4% in 2016 and 131.2% in 2017, to projected 131.1% in 2018. The 'gap to the debt reduction benchmark' was found at 5.2% of GDP in 2016, 6.6% in 2017, and was projected at 6.6% in 2018 (European Commission 2018f). While in 2015 and 2016, the Commission – taking into account mitigating factors – came to the conclusion that Italy had complied with the debt criterion (European Commission 2015f; 2016l), it saw a breach of the criterion in 2017. It, however, delayed a decision on recommending the opening of an EDP until outturn data would be available and Italy could implement the commitments it had made in early 2017 (European Commission 2017). In May 2018, the Commission concluded that no EDP would be warranted, as Italy was considered to be in compliance with the debt criterion (European Commission 2018g). As will be shown in the in-depth case study below, the Commission's assessment changed later that year, after the Italian government's DBP was found to severely deviate from Italy's fiscal recommendations (European Commission 2018f).

From February 2014 to December 2016, the Prime Minister of Italy was the social-democrat Matteo Renzi (Politi *et al.* 2016). Subsequently, the social-democrat Paolo Gentiloni – the current Commissioner for Economy – served as Prime Minister (Kirchgaessner 2016). On 31 May 2018, Italian President Sergio Mattarella approved a government that consisted of the Five Star Movement and the right-winged League – two populist parties – headed by Prime Minister Giuseppe Conte. Luigi Di Maio, the leader of the anti-establishment Five Star Movement, and the leader of the League, Matteo Salvini, served as Vice-Premiers. Political Economy Professor Giovanni Tria became Finance Minister (Politi 2018). Prime Minister Conte, a Law University Professor, was chosen by the two parties in the absence of an agreement on which party should appoint the Prime Minister (Politi and Sanderson 2018). Both parties targeted the constraints of the EU's fiscal rules during their electoral campaign, although they did not aim at leaving the common currency anymore, as they had demanded before (*Ibid.*).

In 2018, Italy was under the preventive arm of the Pact. The aim of this arm is the avoidance of excessive deficits and debt levels. The main measurement is the MTO that Member States are supposed to reach

and stay at (European Commission 2018h). With the Two-Pack that had entered into force in 2013, surveillance of euro area Member State's budgets was reinforced. One key provision of the reform package is the requirement for euro area Member States to submit a draft budget for the subsequent year by 15 October (European Union 2013a). By 30 November, the Commission has to issue an opinion on the budget plans. If, 'after consulting with the Member State concerned', 'the Commission identifies particularly serious non-compliance with the budgetary policy obligations laid down in the SGP', the Commission is required to ask for a 'revised draft budgetary plan' (*Ibid.*: Art. 7(2)).

An EDP can be opened based on 'the deficit or the debt criterion' (European Commission 2018h: 69). If the Commission identifies a breach of one of the two, it produces an Art. 126(3) report that assesses whether the opening of an EDP is warranted. The EFC – in line with Article 126(4) TFEU – has to issue an opinion on the report. If, subsequently, the Commission concludes that an excessive deficit exists, it issues a proposal for a Council decision, establishing – in line with Article 126(6) – that an excessive deficit exists (*Ibid.*). The Six-Pack has introduced the possibility to impose sanctions right at the start of the corrective arm of the Pact. If at the opening of an EDP, the Commission finds 'particularly serious non-compliance with the budgetary policy obligations laid down in the SGP' of a euro area Member State, it is supposed to recommend to the Council the lodging of a 'non-interest bearing deposit' of up to 0.2% of GDP (European Union 2011a). The Commission's recommendation is subject to RQMV. As is the case with the SGP-based fine that may be imposed upon non-effective action, the non-interest-bearing deposit can be cancelled or its amount can be reduced if there are exceptional economic circumstances, or if a reasoned request is submitted. This means that although sanctions can be triggered at the opening of an EDP, they are not automatic.

9.2 Analysis: Normative-Strategic Minimum Enforcement

It will be argued here that the normative-strategic minimum enforcement mechanism provides an answer to the question of how we can best explain that the Commission has not opened an EDP and triggered sanctions in the case of Italy. The mechanism, reflecting the main and sub-hypotheses of this study, is argued to link the Italian government's considerable non-compliance to the non-imposition of sanctions. The mechanism consists of three parts. First, in light of considerable non-compliance, the Commission interprets its role as reliable supervisor in the sense that it should defend the norm of cooperation and clearly point out the breach. Second, in light of a detected breach, the role as reliable supervisor entails fostering the dialogue and the demand of further fiscal effort in order to sustain the norm of cooperation. Third, in light of the occurrence of cooperative behaviour, the norm of cooperation is deemed fulfilled

and the Commission avoids punitive action. In pursuing its normative objectives, the Commission is expected to act strategically. The aim of the analysis is to test the validity of this mechanism in the case at hand.

The cause that in this case triggers the normative-strategic minimum enforcement mechanism is the considerable non-compliance of the Italian government with its fiscal recommendations under the Pact. In line with publically rejecting the Commission's legitimacy as fiscal supervisor (Mischke 2018), the Italian government acknowledged that its 2019 budgetary planning would not be in compliance with its fiscal recommendations under the Pact (Tria 2018).

9.2.1 Part 1: The Commission assesses Compliance and points out Breaches

The Italian government's considerable non-compliance with the fiscal objectives triggered Part 1 of this mechanism, namely the Commission assessing compliance and pointing out breaches. In line with its confrontational course vis-à-vis the European Commission, the Italian government submitted its 2019 DBP on 16 October 2018 that strongly deviated from the agreed objectives (see European Commission 2018b). Subsequently, the Commission asked the Italian government for the submission of a revised DBP – the very first time a draft budget was rejected by the Commission (European Fiscal Board 2020). Eventually, the Commission made the case for opening a debt-based EDP for Italy (see European Commission 2018f).

Expectations in line with the Causal Mechanism

In line with the assumptions expressed in the causal mechanism, we expect that the Commission, when facing clear non-compliant behaviour – and therefore a conflict with or even a breach of the norm of cooperation – acts in line with its role as reliable supervisor that actively watches over fiscal compliance and points out breaches in order to defend the norm of cooperation. This action corresponds to the Commission's perception of appropriateness, but also reflects its strategic behaviour in pursuing its normative obligations. If this holds true, we would expect to find interview data, official documents, or news coverage that show that Commission actors pointed out non-compliance given that they regarded the fiscal numbers and performance as clearly indicating a breach of the recommendations.

Evidence

In line with the hypothesis stated above, the Commission was under the impression that the fiscal non-compliance of the Italian government was very clear. Accordingly, it signalled the breach by rejecting the

Italian budgetary plan (European Commission 2018d) and taking the first step towards opening an EDP for Italy (European Commission 2018f).

The Italian government under Prime Minister Giuseppe Conte was taking a highly confrontational stance vis-à-vis the European Commission and made clear that it was not aiming at complying with the EU's fiscal rules. Especially Vice-Premier Matteo Salvini of the Northern League was verbally attacking the European Commission and its representatives at several occasions, claiming that 'People like Juncker and Moscovici have ruined Europe and our country' (Reuters 2018). He further stated that

The EU has supported economic measures that have made Italy poor. That's why I don't care about the opinion that people like Juncker and Moscovici hold about the government and Italy. Let them say what they want, we will continue. (Kleine Zeitung 2018; Mischke 2018)²²

In line with this position, the Italian government, in late September 2018, agreed on a deficit of 2.4% of GDP for 2019, as opposed to a target of 0.8% (Barigazzi 2018) as had been presented in Italy's Stability Programme (European Commission 2018b). Although the economy minister Giovanni Tria was aiming for a deficit of 1.6%, pressure from the Five Star Movement and the Northern League led to the planning of a higher deficit (Zampano 2018). The Italian government informed the Commission on 4 October 2018 – and therefore prior to the submission of its DBP – that it was not planning to meet its fiscal targets as agreed on by the Council on 13 July 2018. For the years 2019 to 2021, the Italian government announced headline deficit targets of '2.4%, 2.1% and 1.8% of GDP' (European Commission 2018c). According to the Commission, the revised objectives would have meant 'a structural deterioration of 0.8% of GDP in 2019', as compared to an agreed improvement of 0.6% of GDP (*Ibid.*). In light of these announcements, the Commission declared that the 'revised budgetary targets appear prima facie to point to a significant deviation from the fiscal path recommended by the Council', which would be 'a source of serious concern' (*Ibid.*). This indicates that the Commission perceived the deviation as clear and therefore pointed out the breach.

In line with its earlier announcement, and despite the Commission's warning, the Italian government submitted a 2019 DBP on 16 October 2018 that deviated considerably from the agreed fiscal objectives (see European Commission 2018e; 2018b). In line with the rules of the Two-Pack, the Commission consulted the Italian government on its planned budget (see European Union 2013a). In a letter to

²² Translation mostly taken from Mischke (2018), adapted based on quote taken from Kleine Zeitung (2018)

Minister Tria, Valdis Dombrovskis and Pierre Moscovici were very clear about the amplitude and significance of the planned deviation: 'Both the fact that the DBP plans a fiscal expansion of close to 1% of GDP, while the Council has recommended a fiscal adjustment, and the size of the deviation (a gap of around 1.5% of GDP) are unprecedented in the history of the Stability and Growth Pact' (European Commission 2018e). According to the Commission, although the expenditure growth rate was recommended to increase by a maximum of 0.1%, the Italian DBP contained an expenditure growth of 2.7%. Also, although Italy was recommended to achieve an improvement of its structural balance of '0.6% of GDP in 2019', the DBP announced a deterioration of 0.8%, which, according to the Commission, 'points to a significant deviation from the' recommended 'structural improvement' (*Ibid.*). Furthermore, the Commission stated that the plan 'would not ensure compliance with the debt reduction benchmark', and pointed out that the 'Medium Term Budgetary Objective is not planned to be achieved by 2021' (*Ibid.*). The Commission expressed its concern that the plan could be a case of '*particularly serious non-compliance with the budgetary policy obligations laid down in the Stability and Growth Pact* as set out in Article 7(2) of Regulation (EU) No. 473/2013' (*Ibid.*), which would oblige the Commission to ask for a revised budget plan (see European Union 2013a; see also European Fiscal Board 2017). The Commission thus pointed out that the Italian government was clearly planning a considerable non-compliance with the fiscal objectives. This suggests that in light of a conflict or even breach of the norm of cooperation, the Commission acted in line with its perceived obligations as reliable supervisor in defending the norm of cooperation by signalling the breach.

The Italian minister Tria replied to this letter, but did not announce any changes to the 2019 budgetary plan (see Tria 2018). Rather, minister Tria acknowledged that the plan did 'not fulfil the rules of the Stability and Growth Pact', and justified the announced deviation by a low GDP, 'dramatic economic conditions' in 'the most disadvantaged sectors of the Italian society', and by the implementation of 'the economic and social program on which it obtained a confidence of the Italian Parliament' (*Ibid.*). In light of the Italian government not changing its budgetary plan for 2019, the Commission requested a revised DBP. The reason for this rejection is the non-respect of the fiscal objectives: 'Italy's current Draft Budgetary Plan respects neither the fiscal recommendation addressed to Italy by the Council nor Italy's own commitments' (European Commission 2018d). The Commission was of the opinion that 'Italy plans for 2019 a significant deviation from the recommended adjustment path towards the medium-term budgetary objective' (European Commission 2018b: 5). This would be due to 'the large projected deterioration in the structural balance and a growth rate of government expenditure, net of discretionary revenue measures and one-offs, well above the reference rate' (*Ibid.*). In addition, the Commission saw

the risk that ‘the projected fiscal expansion [...] also endangers a sizeable reduction in Italy’s still large debt-to-GDP ratio [...]’, and that ‘Italy is not projected to comply with the debt reduction benchmark either in 2018 or in 2019’ (*Ibid.*: 4-5). The Commission therefore concluded that Italy was planning ‘a particularly serious non-compliance with the recommendation addressed to Italy by the Council on 13 July 2018’ (*Ibid.*: 6). In line with the rules of the Two-Pack, Italy was given three weeks to submit a revised plan (European Commission 2018d). At the service level, the rejection of the DBP was seen as a clear-cut case:

The fact that you clearly announce that you want to deviate, that the size of the deviation is really big, based on your own plans, and the fact that the underlying macroeconomic assumptions were obviously not realistic, all of this together made a clear case for a particularly serious non-compliance. So at technical level, I would say that it was a no-brainer that we had to ask for resubmission. (COM 10)

One major reason for the very strong reaction of the Commission at this stage was the non-cooperative behaviour of the Italian government:

[...] the plan was wrong, and before we rejected the DBP, there is a process foreseen in the Regulation that first we need to send a letter. [...] And then also there, Italy replied, and contrary to what usually happens, they said our plan is perfect, we won’t touch it at all, and then we said ok, [...] if they would have been cooperative and would have moved towards our direction and made sure that at least the direction is no longer wrong, [...] then we would not reject. But if we see that there is a wrong direction and no willingness to move back into the right direction, we decide to reject. (COM 2)

The clear rejection of the Italian budget was not without its risks for the Commission. Indeed, a harsh Commission that rejects the choice of the Italian government might have been just what the populist government had hoped for in order to secure public support (see Mérand 2021b). However, not rejecting the budget would have meant giving the Italian government the deviant fiscal leeway they demanded (COM 7). The Commission was well aware of this dilemma but nevertheless, in this situation, interpreted the norm of reliable supervisor in the sense that it should defend the credibility of the rules (see also Mérand 2021b) and thereby the norm of cooperation, rather than avoid being blamed for implementing austerity-oriented policies:

It was absolutely in the mind of the College that Italy was a bit in a campaigning mode, trying to show that Brussels is to be blamed for everything, that they can’t even adopt

their own budget etc., so that we could be caught in the trap from where it would be very difficult to get out, a bit of a lose-lose game: they don't correct the budget and we take the blame for everything. But on balance, it was thought that it would be better in a lose-lose game to protect the credibility of the rules. I think that was a bit the guiding principle. (COM 10)

Following the norm of reliable supervisor that clearly signals non-compliance was perceived as appropriate, as not rejecting and not enforcing the rules in this situation would have meant not defending and sustaining the norm of cooperation and therefore not acting in line with the obligations of the Commission. In addition, not enforcing the rules might have led to losing the support of the other Member States (see van der Veer 2022) that play a crucial part in the functioning of the surveillance setting. Their peer-pressure would have been put at risk and the power of the Commission in enforcing the rules that relies on the Member States peer-pressure would as well have been lost:

[...] we have no binding sort of tools where we can send the army to a country because we don't like the budget. So the only power you have is the [...] cooperation of a country, the good cooperation spirit. It's the only peer-pressure, good cooperation. So if we didn't apply the rules, I think we would have lost the other Member States. It's a fine balance, but the idea is to protect the credibility of the rules, [...] and we have always insisted on our line to take on Italy, that this 0.6 % of adjustment that they have to do, they have endorsed themselves, even the new government [...]. These are commonly agreed rules because we think that we share a same currency and we need to have some kind of frame for budgetary policy. So if we as guardian of the rules are not able to enforce them, then you lose the rest of the troops, and then you lose your power because it just relies on peer pressure. (COM 10)

The Commission thus decided to defend the credibility of the rules in order to safeguard the setting of fiscal surveillance that is based on Member State cooperation and that the Commission feels obliged to defend. This setting might have been put at risk by a non-rejection of the Italian budgetary plan. At the same time as constituting appropriate action, the clear signalling of non-compliance by the rejection thus reflects the strategy of the Commission to achieve its normative objectives.

Following the rejection of its initial DBP, and in line with the provisions of the Two-Pack, the Italian government submitted a revised plan. However, according to the Commission, the changes to the plan

‘were very limited’ (European Commission 2018a: 2). The planned 2019 deficit target remained at 2.4% of GDP, just like in the first plan Italy had submitted (see European Commission 2018a; 2018b). As for 2018, the Commission concluded that there was ‘a risk of significant deviation from the adjustment path towards the medium-term budgetary objective’ (European Commission 2018a: 5). For 2019, the Commission even saw ‘a particularly serious non-compliance with the adjustment path’ (*Ibid.*). In addition, the Commission stated that ‘Italy is not projected to comply with the debt reduction benchmark in either 2018 or 2019’, both based on the DBP and on the Commission’s own economic forecast data (*Ibid.*: 6). While the DBP projected a slight decline in the debt-to-GDP ratio ‘from 131.2% of GDP in 2017 to [...] 127.3% in 2020’, the Commission expected a stable ratio of 131% in 2019 and 2020 (*Ibid.*: 6). Alongside these deviations in terms of fiscal planning, non-compliance with formal requirements was also detected. The Commission established a failure by the Italian government to comply with the Two-Pack requirement that demands that forecasts are ‘endorsed by an independent body’ (*Ibid.*: 2). The Italian body that took on this role - the Parliamentary Budget Office – did not approve the projections of the government given that they did not correspond to the available data (see *Ibid.*). Overall, the Commission came to the same conclusion on the revised plan as on the initial Italian DBP: ‘the Commission confirms the existence of a particularly serious non-compliance with the recommendation addressed to Italy by the Council on 13 July 2018’ (*Ibid.*: 7).

In May 2018, the Commission had still come to the conclusion – in an Art. 126(3) report – that Italy was in compliance with the debt criterion. However, the finding of ‘particularly serious non-compliance’ in its new assessment was considered ‘a material change in the relevant factors analysed by the Commission on 23 May 2018’ (*Ibid.*: 6). In light of these developments, the Commission prepared a new Art. 126(3) report (European Commission 2018f). This time, the Commission found that Italy had missed its debt reduction benchmark in 2017 by 6.6% of GDP, and was not expected to meet the benchmark in 2018 and 2019. In the absence of any explaining or mitigating ‘relevant factors’ regarding this deviation, the Commission concluded that ‘the analysis suggests that the debt criterion as defined in the Treaty and in Regulation (EC) No 1467/1997 should be considered as not complied with, and that a debt-based EDP is thus warranted’ (*Ibid.*: 21). In light of the clear non-compliance, the Commission took the first step towards opening an EDP for Italy.

Although some Commission actors saw the threat of opening an EDP as a means to put pressure on the Italian government, ‘the majority of the people here genuinely believed that we had to do something

because that was a natural consequence of rejecting the DBP' (COM 10). Accordingly, opening an EDP was perceived as an appropriate step for the Commission given the Italian behaviour:

[...] what is a bit odd, is that you sort of use your nuclear weapon, which is to reject the budget, and then the country says, sorry guys, but I figure it's a great budget, I chose to keep it, and then they resend the same, and then you say ok, fine, that's fine. So considering the high debt of Italy, we thought it cannot stop here. [...] So it was a bit of a natural step to say ok, you are not compliant with the preventive arm, you don't want to be compliant with the preventive arm, because we have asked you to correct, you don't want to correct. We have always said, as long as you are compliant with the preventive arm, you are fine on the debt side. You are no longer complying with the preventive arm, you are no longer complying on the debt side, so it was a natural step. (COM 10)

Given the clear unwillingness of the Italian government to comply with its fiscal objectives, the Commission argued for the opening of an EDP. It was perceived as a procedural and normative necessity in light of the obligations of the Commission. However, and besides using the threat of sanctions and aiming at fulfilling its normative obligations, there is another strategic element to the Commission's behaviour in this regard. While the Commission clearly expressed its refusal to accept the Italian deviation from the agreed adjustment path, interview evidence shows that the Commission paid attention to its communication in order not to create too much negative market reaction that could worsen the economic and fiscal situation. This does not mean that markets were not seen as a disciplining factor. The task was, however, to find 'the right balance' (COM 2; see also Mérand 2021b). This shows that while signalling the breach is in line with the obligations of the Commission, containing its potential negative repercussions reflects the Commission's strategic behaviour that aims at fulfilling its objective of economic goal-orientation.

Conclusion

The populist Italian government publically announced its plan to deviate from the agreed adjustment path. It was very clear in its confrontational course vis-à-vis the European Commission. Facing this clear deviant behaviour, the Commission pointed out the non-compliance and rejected the Italian budgetary plan. In addition, it took the first steps towards opening a debt-based EDP. A clear and harsh reaction by the Commission was in line with the interpretation of the Commission's normative role as reliable supervisor. In light of a major conflict with the norm of cooperation, it clearly pointed out the non-compliant behaviour and thereby defended the norm of cooperation. While clearly pointing out non-

compliance by rejecting the budget and taking steps towards an EDP is in line with the Commission's obligations and therefore appropriate, the Commission's behaviour contains aspects of strategic thinking that aims at fulfilling its normative objectives. More specifically, strategy can be detected in the Commission being aware that the signalling of non-compliance helps sustaining the wider functioning of the setting that is based on the norm of cooperation, and that while it is necessary due to its appropriateness, the signalling should be made cautiously in order to contain too strong market reactions that might prove counterproductive.

A harsh reaction and a rejection of the Italian DBP was deemed appropriate in light of the confrontational behaviour of the Italian government. The Commission accordingly triggered the path towards opening an EDP. At the same time, just as the Commission's role as reliable supervisor can proclaim a strong reaction to defend the norm of cooperation, this norm can also be sustained by fostering dialogue and making clear that further measures are expected in order to improve the fiscal situation, rather than by ultimately opening the corrective arm of the Pact. This will be shown in the next part.

9.2.2 Part 2: The Commission fosters Dialogue, Cooperation, and Further Effort

Facing Italy's non-compliant plans and rejecting them, the Commission concluded that the opening of an EDP would be warranted. However, before taking this step, the Commission tries to get Italy back on track towards compliance with the fiscal recommendations. The Commission repeatedly signals to the Italian government that it is open for dialogue and cooperation, but makes clear that it expects the Italian government to live up to its budgetary commitments (see European Commission 2018c).

Expectations in line with the Causal Mechanism

In line with the causal mechanism, it is expected that having signalled the considerable conflict with the norm of cooperation, the Commission tries to foster the dialogue and cooperation and expects Italy to commit to further measures that would lead to an improvement of the fiscal situation. This behaviour would be in line with the role of the Commission as reliable supervisor that aims at sustaining the norm of cooperation in line with the goal-orientation of fiscal surveillance. In pursuing its normative objectives, the Commission is expected to act strategically. The fingerprints that would show the functioning of this part would be interview data, official documents, or news coverage that show that the Commission fostered cooperation and dialogue and expected further effort by Italy that would lead to an improvement of the fiscal and economic situation.

Evidence

As hypothesised, the Commission kept on expressing its openness towards cooperation and dialogue in light of the Italian government's refusal to meet its fiscal recommendations. The Commission made clear that it expected Italy to engage in fiscal consolidation along the lines of the Pact. This behaviour started already prior to the submission of the Italian DBP. In reaction to the Italian government's announcement of 4 October that it would deviate from its agreed fiscal adjustment path, the Commission opened up avenues for cooperation and at the same time demanded further measures in order to avoid ultimate non-compliance with the fiscal objectives: 'We call on the Italian authorities to ensure that the Draft Budgetary Plan will be in compliance with the common fiscal rules and look forward to seeing the details of the measures it may contain. In the meantime, as in past years and months, we remain available for constructive dialogue' (*Ibid.*).

Despite the Commission's request for cooperation, and in line with the Italian government's prior announcement, the Italian government submitted a DBP on 16 October that according to the Commission 'would seem to point to a *particularly serious non-compliance with the budgetary policy obligations laid down in the Stability and Growth Pact*' (European Commission 2018e). Although the Italian government was clearly aware of its deviation from the agreed objectives (Tria 2018), the Commission followed the procedural rules and consulted the Italian government on its non-compliant budgetary planning. In line with the rules, the Commission expressed its openness towards holding a dialogue:

The European Commission seeks to continue a constructive dialogue with Italy in order to come to a final assessment. We would welcome your views by noon on Monday 22 October 2018 to allow the Commission to take them into account before it provides its formal Opinion on the DBP. Our services stand ready to assist your services in this process.
(European Commission 2018e)

As seen above, in the absence of the Italian government changing its planning, and in light of this obvious and planned non-compliance, the Commission decided to reject the Italian budget. First and foremost, this procedural provision is, however, about the Commission asking for a revised plan, and therefore about a demand for further commitments and measures to fulfil the fiscal policy recommendations. In line with the rules of the Two-Pack, the Commission gave the Italian government three weeks to come up with a revised plan (European Commission 2018d). Commissioner Moscovici, despite the clear political signal that the rejection represented, stressed that the Commission was interested in starting a dialogue: 'Let's give dialogue a chance. We made a clear and firm decision today but our door is open' (Brunsden *et*

al. 2018). Although the rejection was perceived by some Commission actors as a defeat of cooperation, this harsh act did explicitly not rule out that cooperation and dialogue should still take place:

Of course, it's a defeat of Europe, a defeat of the European spirit, and the spirit of cooperation. [...] The Commissioners always said we reject the budget, but nonetheless, we would like to have a constructive dialogue with Italy, we stand ready [...]. (COM 10)

After the first rejection, the Italian government did not loosen its confrontation and submitted a revised budgetary plan without offering substantial changes (European Commission 2018a). The Commission, at the same time as issuing once again a negative opinion on the budgetary plan, issued an Art. 126(3) report – which is the first step towards opening an EDP. Despite the ongoing confrontation and Italy moving closer and closer towards an EDP, Commissioner Moscovici made clear that he was not aiming at sanctioning Italy (Moscovici 2018). According to Moscovici, the Commission's aim would be 'to guarantee the stability of the Italian and the euro area economy' (*Ibid.*).²³ Accordingly, he expressed his openness towards holding a dialogue with the Italian government (*Ibid.*). Although not directly stating that the opening of the EDP could be circumvented by Italy moving, this conditionality is at least suggested (see also Smith-Meyer and Sciorilli Borrelli 2018). Commissioner Moscovici thus expressed his willingness to hold a dialogue with Italy in order to achieve an improvement of the economic and fiscal situation and out of a normative perception that the Commission should aim at economic stability and thus at the functioning of the fiscal surveillance framework. By expressing a conditionality upon the avoidance of corrective action, this behaviour can also be deemed strategic. Ultimately, the Italian confrontation and refusal to cooperate with the Commission came to an end, and negotiations between the Commission and the Italian government took place:

We have rejected so to speak the budget twice. So there, exchanges at technical level were limited. But then, for a number of reasons, the negotiations started and then the exchanges were very frequent, very smooth, it was very intensive, it was concentrated on three weeks in December [...], and we were really quite well organized on that side, but also on the Italian side, so that we were negotiating at the technical and then reporting back almost instantaneously to the political levels here and in Italy. (COM 10)

²³ Own translation

Although the opening of the EDP was very probable after the second DBP submission, the Italian government came back to the table and eventually committed to a number of changes in its budgetary planning:

It seemed that things were moving rather quickly towards an outcome where an EDP would be opened in January or February 2019, but then there intervened a period, between the G20 summit in Buenos Aires at the end of November and the middle of December, of very intense negotiations with the Italian authorities. They made a number of commitments to, first of all, revise their macro-outlook to something that was more credible and secondly, to delay the introduction of a number of measures to later in 2019 and also to delay a number of spending decisions to the following year. And they made a number of other changes to their budget [...]. (COM 3)

The openness towards cooperation and the urge to foster the dialogue went as far as to the involvement of the President of the Commission, Jean-Claude Juncker:

And there I think President Juncker has probably played a personal role in that story. He met with the Prime Minister Conte several times, and then the dynamic changed. I got convinced personally that we could have an agreement. And Conte also played the role of honest broker between the two big shots, Salvini and Di Maio. (COM 10)

It is well conceivable that increased market pressure played a role in changing the Italian government's behaviour and its openness towards cooperation and dialogue (see Meiler 2018; COM 3). The changes made to the Italian budget were the following. First, Italy changed its macroeconomic scenario, projecting a lower GDP growth, which, contrary to the previous scenario, was 'endorsed by the Italian national fiscal council' (European Fiscal Board 2019a: 35). Italy committed further to budgetary measures, mainly by delaying expenditure planned for 2019. The Italian government also requested 'flexibility under the unusual event clause', thereby reducing 'the required structural adjustment for 2019 by 0.2%' (*Ibid.*). Lastly, it 'announced a safeguard mechanism in the form of a freezing mechanism on expenditure in case budgetary slippages were to occur in the course of 2019' (*Ibid.*). With the changes, the planned general balance improved from -2.4 to -2.0% of GDP and the structural balance from -0.8% to -0.2% of GDP (*Ibid.*). When taking into account the unusual events clause, the structural balance came out at 0.0 % (European Commission 2019b; see European Fiscal Board 2019a).

Conclusion

In light of the Italian government's confrontational behaviour, the Commission clearly pointed out the planned non-compliance with the fiscal recommendations by rejecting the Italian budgetary planning. Following this, it made clear that it would be open for dialogue and cooperation, which should lead to Italy making adjustment efforts that lead to fiscal stability. This behaviour is in line with the assumptions of the causal mechanism. Facing Italian behaviour that is in conflict with the norm of cooperation, the Commission fosters a dialogue and expects the delivery of further measures in order to sustain the norm of cooperation in line with the goal-orientation of the setting of fiscal surveillance – which is the obligation of the Commission as reliable supervisor. Making the avoidance of further surveillance and potentially punitive steps conditional upon Italy engaging in a dialogue reflects the strategic behaviour of the Commission in order to achieve its normative goals. As will be shown in the next part, the Commission's openness for a dialogue and Italy changing its behaviour and adapting its budgetary planning played an important role in the Commission's decision not to open an EDP, which might have been accompanied by the requirement for Italy to lodge a non-interest bearing deposit.

9.2.3 Part 3: The Commission avoids Punitive Action

The opening of an EDP for Italy was on the table, given the openly confrontational and uncooperative behaviour of the populist Italian government. In light of the particularly serious non-compliance that was detected by the Commission, opening an EDP might have been accompanied by a financial sanction (European Union 2011a). However, the Italian government came back to the table and committed to a number of additional measures. Consequently, no EDP was opened and thus no sanctions were imposed. As will be argued, the fostering and occurrence of cooperation thus triggered this last part of the mechanism – the avoidance of sanctions.

Expectations in line with the Causal Mechanism

In line with the causal mechanism, it is expected that in light of Italy engaging in cooperation, the norm of cooperation and the Commission's obligation to sustain this norm are seen as fulfilled by the Commission. In addition, the imposition of sanctions might have other repercussions that would go against the Commission's obligations and objectives. Accordingly, the opening of an EDP and sanctions are not seen as appropriate. In applying the rules flexibly in order to avoid the imposition of sanctions, the Commission is expected to behave strategically. If these assumptions are true, we would expect to find interview data, official documents, or news coverage that show that the Commission was of the opinion that imposing

sanctions was not warranted in light of Member State cooperation and might have had negative consequences, and that it opted for a flexible rule application.

Evidence

As expected, the ultimate cooperative behaviour of the Italian government allowed for the non-opening of an EDP (see also Mérand 2021b). In order to avoid this step and potential sanctions, the Commission resorted to a flexible reading of the rules (see Schmidt 2020).

During the time of confrontation between the Italian government and the Commission, the latter, while maintaining a harsh stance, always expressed its openness towards dialogue and cooperation. The message therefore was clearly that Italy would not face punitive measures if it concedes to the Commission's demands. In line with this stance, the central reason for the Commission not to open an EDP was the change of attitude of the Italian government and its concessions in terms of budgetary planning (see also Mérand 2021b):

[...] the outcome of the dialogue between the Commission and the Italian authorities was that Italy made a number of commitments that reduced the gap basically by around 0.6% of GDP. [...] it was enough of a change for us to conclude that opening an EDP at that stage would no longer be a clear-cut case. (COM 3)

In this sense, the outcome of the dialogue and the measures announced were seen as a success of the Commission's actions and of cooperation:

They changed significantly. They put 10 billion more on the table. They changed their macroeconomic assumptions. From the point of view of the Commission, it's a big success. It's a success of cooperation. We had a Member State which was on a totally antagonist path, and where you [...] can do a lot of things, but none of this will work if they don't want to abide by anything even under [...] the corrective arm. Even if we sanction them, they will not comply, and so what? So you always need to create a bit of buying in. That's the only way. So from that perspective, I mean they came back to the table, we had meetings during the whole day, on many days, intensive dialogue etc. and then they change significantly. (COM 10)

Accordingly, opening an EDP and potentially moving towards the lodging of a deposit was seen as inappropriate because the Italian government acted in line with the norm of cooperation that the

Commission aims at sustaining. Although the agreement with the Italian government was not in line with the initial fiscal objectives, the Commission accepted what was delivered rather than receiving nothing (COM 10; see also Mérand 2021b). Following this logic, this reason for not opening an EDP can also be seen the other way around, that is an opening of an EDP might not have led to cooperation and the improvement of the situation: 'I think the opening of the EDP would not have made the trick at all. We would have antagonized them even more, I think' (COM 10). This therefore means that sanctions might further have put at risk the Commission's obligation to secure a cooperative and goal-oriented setting.

The outcome in this case is closely linked to the Commission's openness and willingness to cooperate, given that the objective of holding a dialogue and achieving an improvement of the figures was the main aim of the Commission, rather than the immediate resort to punitive action:

A decision was taken, namely that one wants to negotiate. This was also the strong desire of the President. And this you could also feel in the Eurogroup – also many national governments have encouraged us to do so. If the desire is to negotiate, then you have to negotiate as far as possible. And this is why we have negotiated until we had achieved a black zero regarding the debt level. (COM 7)

In this sense, this openness of the Commission, together with market pressure as a driving force, were seen as a prerequisite for the Italian cooperation and therefore for the avoidance of further steps by another interviewed Commission official: '[...] market pressure, together with the openness of the Commission to engage in a constructive dialogue with the Italian authorities, led to the outcome that we saw, which was some objectively quite significant changes to their plans, such that it became more of a borderline case, and so we left things on hold' (COM 3). In part, why the EDP and sanctions were avoided, also explains how they were avoided. By Italy committing to reducing its planned deficit, the Commission was able come to a different conclusion as regards further steps under the Italian EDP:

[...] the gap to projected compliance was significantly reduced, and we were able to conclude that they moved from being a case of particularly serious non-compliance to being a country in a similar situation to others in the autumn package of 2018, basically being at risk of significant deviation. So we concluded that a debt-based EDP was no longer warranted at that stage. (COM 3)

In order to change its conclusion, the Commission resorted to the use of flexibility provisions. More concretely, the Commission used the so-called 'unusual events clause' (European Fiscal Board 2019a: 35):

‘In the final agreement, we have granted to Italy quite a lot of flexibility to big programmes; to rebuild the roads and bridges in the aftermath of the collapse of the bridge in Genua and also to launch a big prevention programme against the risk of floods. So that is flexibility we preventively granted to them’ (COM 10; see also Mérand 2021b; European Fiscal Board 2019a). Although Italy was expected to achieve a structural adjustment of 0.6% of GDP in 2019, the agreement found in December 2018 translated into a structural effort of 0.0% of GDP (European Commission 2019b), which means neither an improvement nor a deterioration. This result, in addition, was only possible when accounting for the above-mentioned unusual events – an allowance amounting to 0.18% of GDP (European Commission 2019b; see also European Fiscal Board 2019a). The Commission, nevertheless, concluded that the budget did not represent a case of particularly serious non-compliance anymore but represented merely a risk of significant deviation (COM 3; European Commission 2019b; European Fiscal Board 2019a).

The Commission’s handling of the situation was criticised by Member States: ‘Several Members’ of the EFC questioned the Commission’s approach and analysis (Economic and Financial Committee 2019). Criticism was raised by the Dutch government, amongst other reasons, because the Commission did not use its own forecasts, but Italy’s projections to come to its decision not to open an EDP (Khan 2019). The European Fiscal Board (EFB) – the Commission’s advisory body on fiscal policies – also stated that ‘normally’, the Commission’s decisions are based ‘on its own assessment and forecast’ (European Fiscal Board 2019a: 36). Further Member State criticism focused on ‘the absence of a fully-fledged assessment of the revised DBP’ (*Ibid.*). The EFB further noticed that granting ‘flexibility under the unusual event clause on an ex ante basis, that is before the budgetary impact of the associated extraordinary expenditure [...] has materialised’ was ‘in contrast to standard practice, even though not against the SGP legislation’ (*Ibid.*). Also, the EFB considered it ‘unorthodox that the revision of the macroeconomic scenario by the Italian authorities has been accounted as one of the factors reducing the planned structural deterioration’ (*Ibid.*). In addition, the EFB stated that the 0.2% deterioration as part of the agreement would still represent ‘a significant deviation from the required adjustment path towards the MTO’, ‘even considering the unusual events clause’ (*Ibid.*). Overall, the Commission accordingly resorted to a flexible application of the rules in order to avoid the opening of an EDP at this stage (see Schmidt 2020).

Conclusion

In light of considerable confrontational behaviour, the Commission signalled the breach in order to defend the norm of cooperation (Part 1). Subsequently, it fostered the dialogue in order to sustain the norm of cooperation in line with the goal-orientation of the setting (Part 2). Ultimately, the Italian government

came back to the table to negotiate and finally changed its budgetary planning. Given the Italian commitments – even if far from the initial objectives – the Commission decided not to open an EDP that might have been accompanied by Italy being required to lodge a deposit. The Commission being willing to find an agreement was a prerequisite for the avoidance of sanctions. The Commission's behaviour can be explained by the Commission aiming at sustaining the norm of cooperation as part of its role as reliable supervisor. Given that the Italian government ultimately acted in line with the norm of cooperation, it was deemed fulfilled. Additionally, opening an EDP and potentially imposing sanctions might have harmed the cooperation with the Italian government rather than improving the situation. Accordingly, punitive measures were not regarded as appropriate in the situation at hand. In order to avoid the opening of an EDP and potential sanctions, the Commission resorted to a flexible application of the rules. This reflects the strategic behaviour of the Commission in aiming at achieving and acting in line with its normative objectives. We can therefore regard the assumptions of the mechanism, which explains why no sanctions were imposed despite fiscal non-compliance, as confirmed. The findings and their implications will be discussed in the conclusion of this chapter, after the presentation of the analysis under the principal-agent model.

9.3 Analysis: Principal-Agent Model

The analysis of the case under a rational choice institutionalist principal-agent model focuses on two aspects. First, on the Commission's ability to shape the final policy outcome and to thereby avoid sanctions. Second, on the ability of the collective principal – that is the Member States – to control the Commission as agent. On the first aspect (H.2), we can argue that Italy did change its fiscal policy planning in the direction of the Commission's preferences. However, the deviation is still considerable. In addition, whether it was the Commission that directly shaped the outcome, whether it did so indirectly by triggering market pressure, or whether market pressure would anyways have increased and pushed Italy towards changing its fiscal planning, is difficult to judge. While Italy has weak control over the Commission, as it effectively cannot stop the Commission from triggering punitive measures, the observations depicted above do not fit with the predictions of the principal-agent model.

Regarding the relation between the Commission and the other Member States, the question is whether the Commission was able to pursue its own preferences, given a lack of control mechanisms, or whether the collective principal was able to control the Commission's actions, given strong control mechanisms. The preference of the Commission can be summarised as follows. In light of the strong deviation by the Italian government, the Commission defended the functioning and credibility of the setting. Hence, Italy's

DBP was rejected. At the same time, the Commission was interested in keeping the door open. Accordingly, there was no general interest in sanctioning Italy. When the Commission was planning the rejection of the DBP – an instrument where Member States have no formal power – it informally consulted the big Member States, Germany and France, which were not opposed to this measure (COM 10). However, when the possibility of opening an EDP was discussed, Member States were concerned about negative market reactions that might have been triggered by this step. Although Member States supported the Commission's assessment, they asked the Commission to maintain the dialogue with the Italian government (COM 10; see also Economic and Financial Committee 2018; Eurogroup 2018). In line with this stance, most Member States, including Germany, accepted the compromise found and the non-opening of an EDP (MS 1; COM 11). The only Member State government that strongly and vocally favoured the opening of an EDP was that of the Netherlands (COM 3; Economic and Financial Committee 2019; see also van der Veer 2022), backed by some other northern European countries (COM 11). As described above, the Commission was criticised for its handling of the case and the way the non-opening of an EDP was justified (see Economic and Financial Committee 2019; European Fiscal Board 2019a; see also van der Veer 2022).

In the absence of a majority of Member States opposing the Commission's actions, we can assume that there was an overall correlation of preferences that consisted in clearly reacting upon non-compliance by rejecting the budget, maintaining the dialogue, and avoiding the ultimate opening of an EDP and the imposition of sanctions. While H.3 is ruled out in the absence of a majority of Member States in favour of sanctions, H.4 can still apply. The question is now whether the majority in the Council could impose its preferences upon the Commission, or whether the Commission pursued these preferences on its own. Interview data suggests that the decision to reject the Italian DBP was a decision in which the Council was not directly involved, but for which the big Member States were merely consulted (COM 10). Maintaining the dialogue after the rejection and an aversion to sanctions is well in line with the general approach of Commissioner Moscovici towards fiscal surveillance, as already shown in the cases of France, Spain, and Portugal, namely that the imposition of sanctions is a sign of failure of cooperation (Barker and Chassany 2015). It is therefore unlikely that the Member States had much impact on this approach. It might be that Member State opposition towards sanctions helped Commissioner Moscovici to secure a majority within the Commission. There is, however, no proof for this. In any case, the question is whether the control mechanisms in the hands of the Council were strong enough to have an impact on the Commission's actions. The opening of an EDP needs to be adopted by the Council. Although the treaty foresees the application of qualified majority voting (see European Union 2012c), the Fiscal Compact suggests that

RQMV applies, although this is debatable. The decision regarding a non-interest bearing deposit would clearly have been subject to RQMV (European Union 2011a). However, any such decision would only have been possible after the opening of an EDP. Assuming that a majority is required to adopt the Commission's proposals, overall control would be high, meaning that it is conceivable that the Commission followed the preference of the Council in its attempt to opt for a soft stance on Italy in order not to risk negative market reactions. However, the evidence presented above does not indicate that it was necessary for the Council to convince the Commission – and especially Commissioner Moscovici – of this. The principal-agent model accordingly does not fit with the observations regarding Commission preferences.

As in the previous case studies, the focus on Member States and their preferences and on the relation between the Commission and Member States adds another perspective to the case. It is particularly revealing that despite the considerable non-compliance and very confrontational course of the Italian government, most Member States were in favour of avoiding a too strong reaction, given that this might have worsened the situation even more. Even though the Italian government attacked the joint surveillance setting, sanctions were still seen as the very last resort. Rather than the Commission being seen as acting against Member States in the Council – or the other way around – this antagonism is far from being clear (see Vanheuverzwijn 2017). The Commission and Member States can have similar preferences, without Member States necessarily controlling the Commission. Member States form part of the surveillance setting the Commission is managing. As such, the Commission might have an interest in not acting against them. This does, however, not mean that the Commission necessarily does what the majority of Member States wants it to do. Rather, both the Commission and Member States might share the basic normative goal of maintaining the cooperative and goal-oriented functioning of the surveillance setting (see Vanheuverzwijn 2017). Strict rule enforcement and sanctions – at least for a majority or the dominant Commission and Member State actors – might be seen as potentially detrimental to this goal.

9.4 Conclusion

The case of Italy was shaped by a considerable confrontation between the Italian government and the European Commission. With the populist government blaming the EU and the Commission for the imposition of detrimental fiscal policies, it also made clear that it would not comply with the fiscal recommendations it had received from the Council. Although the Commission rejected the Italian DBP and announced that an EDP could be opened, it did not close the door and tried to foster a dialogue. Possibly because of increasing market pressure, the Italian government gave in eventually and changed its fiscal planning. Although still far from the initial objectives, the Commission concluded that the effort

done by Italy would be sufficient in order to avoid the opening of an EDP and thereby also punitive steps that would have been possible at this stage.

The findings confirm the assumptions of the causal mechanism of normative-strategic minimum enforcement. In light of considerable non-compliance by the Italian government, the Commission acts in line with its role as reliable supervisor that clearly states fiscal non-compliance and the conflict with the norm of cooperation. The deviant Italian DBP was accordingly rejected. In light of the identified breach, the Commission tried to sustain the norm of cooperation by fostering the dialogue. Eventually, the Italian government came back to the table and announced further measures. Given that the norm of cooperation was fulfilled, the imposition of sanctions was not appropriate anymore. In pursuing and sustaining its objectives, the Commission acted strategically, be it by signalling non-compliance, making the avoidance of further steps conditional upon the delivery of fiscal consolidation measures or by applying the rules flexibly in order to avoid sanctions. Given the confirmation of the functioning of the causal mechanism, we can regard the main and sub-hypotheses drawn from the normative institutionalist approach as confirmed. Furthermore, we can conclude that this case is mechanistically homogenous with all the previous cases studied in this thesis. Also, we can generalise our mechanism-related assumptions to all cases that are similar to this case, which is distinct to the typical cases studied by several conditions. First, unlike Belgium and Portugal, Italy is a big Member State. Second, the debt-crisis did not play a direct role anymore in the case at hand. Third, unlike in the case of the macroeconomic conditionalities concerning Spain and Portugal, Member States supported the Commission in its path of not opening an EDP.

The application of the principal-agent model in this case has produced ambiguous results. Although the theoretical hypotheses might fit under certain assumptions, the empirical observations indicate that Commission action is not directly linked to Member State preferences and their control over the Commission. Rather, the Commission's preferences correlate with those of the majority of Member States. Nevertheless, the focus on the relation between the Commission and Member States has proven yet again very revealing. Rather than acting against one another, the Commission and Member States appear to share the same normative objective of maintaining the functioning and goal-orientation of the surveillance framework. The strict imposition of fiscal consolidation measures, however, is mainly seen as potentially detrimental to the setting.

10. Conclusion

This thesis started from the identification of the puzzle that despite the strengthening of punitive measures under EU fiscal policy surveillance and the enhanced role of the Commission, it has so far refrained from triggering the imposition of financial sanctions. The goal of this thesis was therefore to find an answer to the question of how we can best explain that the European Commission does not propose financial sanctions because of Member State non-compliance with the Pact's fiscal objectives. Based on an adaptation of normative institutionalism that takes into account strategic actor behaviour and theory-testing process-tracing methods, an explanatory causal mechanism was developed – entitled normative-strategic minimum enforcement. It was argued that this mechanism links the cause – considerable non-compliance – with the outcome – the non-imposition of sanctions – via three parts and thereby provides an answer to the research question.

It was argued that the Commission aims at fulfilling its role as reliable supervisor by defending and sustaining the norm of cooperation that is crucial for the functioning of the surveillance setting. When facing considerable non-compliance by a Member State with its fiscal recommendations, the Commission reacts to this conflict with the norm of cooperation by pointing out the breach. This is in line with the Commission's obligation as reliable supervisor to defend the norm of cooperation. In light of the identification and signalling of the breach, the Commission interprets its role as reliable supervisor in the sense that it should foster a dialogue and demand further fiscal effort in order to sustain and fulfil the norm of cooperation and the corresponding goal-orientation of the setting. Given its openness towards a dialogue, and in case of the delivery of further measures and commitments, the Commission sees the norm of cooperation as fulfilled. In addition, sanctions might run counter to the goal of cooperation and goal-orientation by triggering detrimental political or economic reactions. Sanctions are thus not in line with the normative goals of the Commission and are therefore seen as inappropriate. In pursuing, sustaining, and fulfilling its normative objectives, the Commission acts strategically. Accordingly, it was expected that the Commission strategically avoids the application of enforcement provisions to their full extent because sanctions are not in line with the interpretation of its obligations and are therefore deemed inappropriate.

The explanatory causal mechanism was tested in four case studies in which the imposition of sanctions was procedurally possible. These are the cases of Belgium in 2013, France in 2015, Spain and Portugal in 2016, and Italy in 2018. The double case of Spain and Portugal also contained the application of the macroeconomic conditionalities as an additional sanctioning provision. While the case of Belgium

occurred under Commission President Barroso, all other cases took place under President Juncker. After having presented the main findings of the case studies from the angle of the adapted normative institutionalist framework, the findings from the alternative theoretical approach – the rational choice institutionalist principal-agent model – will be summarised. Afterwards, the wider implications of the findings will be discussed. This chapter, and therefore this thesis, will end with some concluding remarks and a brief outlook.

10.1 Main Findings: Normative-Strategic Minimum Enforcement

The analysis has shown that the normative-strategic minimum enforcement mechanism was present and has functioned as operationalised in all the case studies. Via its three parts, the mechanism reflected the main and the three sub-hypotheses that were drawn from the adapted normative institutionalist framework (H.1; H.1.1-H.1.3). Given that the mechanism was present as theorised, the hypotheses can be regarded as confirmed. Accordingly, the causal mechanism provides an answer to the question of why the Commission has not proposed sanctions in the cases at hand. We will now look at how the three parts functioned in the different case studies.

As for Part 1, the Commission was facing considerable non-compliance with the fiscal recommendations in all the studied cases. In the cases of France and Italy, this deviant behaviour was even publically announced and acknowledged by the governments concerned. In light of this clear situation, the Commission, in all the cases, pointed out this breach. The way this was done and the procedural stage at which it occurred differed. While in the cases of Belgium, Spain, and Portugal, the Commission formally established non-effective action in line with Art. 126(8), it signalled the non-compliance in recommendations, assessments, and public statements in the case of France and went as far as rejecting the budgetary planning in the case of Italy. Nevertheless, in all the cases, it could be shown that the Commission signalled the non-compliance given that it regarded the breach of the recommendations as clear. This behaviour is in line with the Commission's role as reliable supervisor that in light of a conflict with the norm of cooperation defends this norm by showing that it acts upon non-compliance. While pointing out the breach represents action that is in line with the obligations of the Commission in the situations at hand – and is therefore in line with the logic of appropriateness – it also reflects the Commission's strategic behaviour in aiming at defending the norm of cooperation.

Part 2 showed that in light of the identified and signalled breach, the Commission showed its interest in a dialogue and in an improvement of the fiscal situation in all the cases. In the case of Belgium, the

Commission made clear that, given the entry into force of the provisions of the Six-Pack, the Belgian government would have to commit to further measures in order to avoid further steps under its EDP. France, in light of its announcement that it would not comply with the fiscal adjustment path, was invited several times by the Commission to change its budgetary planning. The Commission opened the door for further measures to Spain and Portugal, although sanctions were immediately looming. As for Italy, despite significant confrontational action vis-à-vis the Commission, the latter made clear that it was interested in dialogue and cooperation, rather than in opening the corrective arm of the Pact and potentially impose sanctions. In all the cases, and as expected, the Commission therefore fostered a dialogue and made clear that it expected the Member States concerned to commit to further measures that would improve the fiscal situation. This behaviour is in line with the theoretical expectations of the causal mechanism. In light of detecting and signalling the breach, the Commission aims at fostering the dialogue with the Member State concerned with the aim of improving the fiscal situation. Rather than resorting to punitive action, the Commission aims at sustaining the cooperative and goal-oriented setting of fiscal surveillance, in line with its obligations as reliable supervisor. In order to fulfil its normative objectives of cooperation and goal-orientation, the Commission acted strategically. This is reflected by making the avoidance of further enforcement steps conditional upon the delivery of further measures, as happened in all the cases, or by postponing a decision regarding fiscal compliance, as in the case of France.

Part 3 showed that in light of the openness of the Commission towards cooperation that would lead to the improvement of the fiscal situation, and the actual delivery of further commitments or measures, the Commission refrains from imposing sanctions. In all the cases, the Member States concerned have committed to or undertaken measures after the Commission had made clear that it would expect further effort. Even the Italian government – despite its highly confrontational behaviour – came back to the table and committed to a change in its budgetary planning. Although Member States did not fulfil their initial objectives, in all the cases, the Commission was of the opinion that the effort undertaken or commitments made – even if not significant – were sufficient to avoid sanctions or further action that might lead to their imposition. Furthermore, it was feared that the imposition of sanctions might have counterproductive economic and fiscal repercussions, that they might pose a risk for future cooperation with Member States and deprive the Commission of future enforcement power, that they would deteriorate public support for the EU and the Commission, or that they might lead to a loss of credibility of the rules if executed on a weak legal basis. In order to prevent the imposition of sanctions, the Commission applied the rules flexibly in all the cases. Accordingly, it could be shown that as expected, the Commission was of the opinion that imposing sanctions was not warranted and that it therefore opted for a flexible rule

application. This finding is in line with the expectation that given the delivery of further measures by the Member States concerned, the dominant actors within the Commission are of the opinion that the norm of cooperation – and the Commission’s obligation and objective to sustain it – are deemed fulfilled. Imposing sanctions would therefore not be in line with the Commission’s interpretation of its obligations. Via its potential negative repercussions, imposing sanctions might further risk the achievement of the Commission’s aim of sustaining a cooperative and goal-oriented setting of fiscal policy coordination. In order to avoid the imposition of inappropriate sanctions – and thereby to sustain the norms that guide its behaviour – the Commission resorted to a flexible application of the rules. It thereby acted strategically.

We can therefore conclude that the Commission strategically refrains from applying punitive provisions to their full extent because the imposition of sanctions is not in line with the perceived obligations and objectives of its role as reliable supervisor – namely sustaining the norm of cooperation in line with the goal-orientation of the setting. The imposition of sanctions is therefore deemed inappropriate. In light of Member State non-compliance, the Commission points out the conflict with the norm of cooperation. It then aims at keeping up the dialogue with Member States. As long as Member States are committed to cooperation under the coordination framework, the norm of cooperation is deemed fulfilled. The imposition of sanctions would therefore not be in line with its obligations and would furthermore risk the achievement of its objective of sustaining cooperation and goal-orientation. This explains why the Commission does not impose sanctions because of Member State non-compliance with their fiscal objectives.

The theoretical approach has proven useful in providing an analytical grid that is capable of taking into account the complexity of the cases at hand and of channelling the explanation through the interpretation of normative conditions and their achievement. However, a limitation of the approach is reflected by the difficulty to accommodate the divergence of role interpretation among Commission actors. While the approach can show that the actors might have different ideas on how to best achieve and fulfil a certain normative and shared objective, and that institutional rules and provisions play a core role in their interpretation, why their interpretation differs could not be explained by the approach. In order to answer this question, the theoretical and analytical depth and focus would have to be expanded, which would imply covering a smaller number of case studies. Despite this limitation, the analysis was able to show how the central norms were interpreted in light of the different situations and how this shaped actor behaviour and the final outcome.

The analysis has shown that the hypothesised causal mechanism was present in the studied cases. The cases are typical in that they share the cause, outcome, and certain contextual conditions. Given that the proposed mechanism worked as hypothesised in these cases, we can conclude that they are mechanistically homogenous. The cases differed in certain contextual conditions that are not part of the mechanism. By finding that the mechanism worked despite the divergence in these contextual conditions, we can expand the generalisability of our mechanistic findings to cases that are similar to all the cases that we have studied. These differed with regard to the size of the countries, the occurrence at crisis or non-crisis times, and the support of the Commission by other Member States. This implies the following conclusions. First, big Member States are not the only countries that are spared from sanctions, as suggested by Juncker's statement with regard to France. Second, it is not only during crisis times that no sanctions are imposed, as might be conceivable, given their potential economic repercussions (see European Fiscal Board 2020). Indeed, they are also avoided when the economic situation is more favourable. Rather, the Commission under President Barroso, and just after the crisis-related reforms had been adopted, at least stated that the Commission would opt for a strict imposition of sanctions (see Schmidt 2020). Third, the Commission does not simply follow the position of a majority of Member States. This latter observation invites us to explore the findings of the analysis under the alternative theoretical approach of this thesis – the principal-agent model.

10.2 Findings from the Principal-Agent Model

The main theoretical approach of this thesis has focused on the role of norms and Commission actor's strategic behaviour in pursuing and sustaining their normative objectives. In contrast to this, a principal-agent model has been presented as an alternative theoretical approach. This model is based on the assumptions of rationality and fixed actor preference for benefit maximisation and focuses on the relation between the Commission and Member States. This rational choice institutionalist approach assumes that the Commission's ability to pursue and achieve its own preferences depends on the level of control mechanisms the Member States have at their disposal. Based on these assumptions, three hypotheses have been proposed. In the following, these hypotheses and the related findings will be presented.

The first hypothesis drawn from the principal-agent model (H.2) focuses on the relation between the Commission and the Member State concerned by the fiscal surveillance measures. It argues that in light of weak Member State control, the Commission can shape domestic fiscal policies and thereby avoid sanctions. In all the cases, it is possible to argue that the Commission was able to shape national fiscal policy planning, commitments, or measures at the time of the decision of not imposing sanctions. Member

States all committed to fiscal consolidation measures. Also, given that single Member States can hardly control the Commission's behaviour, the Commission's success in shaping policy outcomes could be explained by the assumptions of principal-agent theory. However, the fiscal measures undertaken and the results achieved were often far from the initial fiscal recommendations. In addition, whether it was actually the actions of the Commission that led the Member States concerned to adapt their policy planning, commit, or recommit to fiscal consolidation measures is difficult to say with certainty. Only in the cases of France and Belgium, and for the latter only partially, could the hypothesis be confirmed. Overall, the principal-agent model therefore does not provide a fully applicable analytical grid for the observations made.

The other two hypotheses derived from the principal-agent model focus on the relation between the Commission and the Member States in the Council, acting as principals. H.3 expresses the assumption that the Commission, in not imposing sanctions, pursues preferences of its own, with the Member States that favour sanctions being unable to control the Commission. H.4 states that the Commission, in not proposing sanctions, follows the preference of the dominant or the majority of Member States given their disposal of strong control over the Commission.

In most cases, the majority preference of Member States was the non-imposition of sanctions. As such, this preference correlated with the majority Commission opinion. In the absence of Member States favouring sanctions, H.3 could be ruled out. In one case, that is the application of the macroeconomic conditionalities in the case of Spain and Portugal, we could observe a divergence between Commission and Member State preferences. While the Commission overall and de facto favoured the non-suspension of ESI Funds, Member States were pushing the Commission to execute the suspension. Here, the Commission was pursuing its preferences against the preferences of the Member States. The principal-agent model would explain this behaviour by weak control mechanisms in the hands of the Member States. Formally, the control mechanisms were indeed weak, as the Commission's proposal would have been subject to RQMV in the Council. Therefore, the principal-agent model can explain the behaviour and outcome in this case – that is the Commission's ability to pursue its own preferences against those of the Member States.

In the absence of Member States being in favour of sanctions in the other cases, the principal-agent model could still explain the Commission following Member State preferences by strong control mechanisms at their disposal (H.4). However, given RQMV that applies for the imposition of sanctions, the control mechanisms in the hands of the principals can be seen as weak. Therefore, the model could not explain

the Commission's behaviour in the cases of Spain, Portugal, and Belgium. In the cases of France and Italy, the voting rules are debatable and strong control over the Commission might be conceivable. However, in both cases, there was no proof that Member States indeed changed the Commission's position. With the exception of the macroeconomic conditionalities in the case of Spain and Portugal, rather than observing an opposition between Commission and the Council, evidence suggests that the relationship between the two bodies can rather be characterised as consensual. This confirms Vanheuverzwijn (2017) in stating that the opposition between the two bodies is 'artificial' and a 'myth' (*Ibid.*: 28). However, this does not mean that the Commission merely acts in line with the majority of Member States, as shown by the case of the macroeconomic conditionalities.

As argued above, the two competing theories reflect different analytical focal points and ontological assumptions. However, rather than being seen as simply contradictory, they might be treated in a complementary way in order to provide a more comprehensive picture of the social reality. This might enhance our understanding of choices, decisions, and developments. As such, the focus on Member States can complement the normative institutionalist perspective. There are, however, important limitations to this. If a majority of Member States is against the imposition of sanctions, then this might contribute to or at least support and confirm the Commission's assessment that sanctions are inappropriate. This is because punitive action might threaten cooperation and thereby go against the Commission's objective of working towards a cooperative setting. If Member States are against sanctions, then by imposing them, the Commission might risk losing the support of the Member States. However, if Member States are in favour of sanctions, this does not lead to the Commission proposing them. This is because they still run counter to the Commission's objectives. Member State preferences can therefore play a role in some situations, but at least the support of sanctions among Member States has – based on our observations – no impact on the functioning of the proposed mechanism of normative-strategic minimum enforcement. This also shows that Member State opposition to sanctions is no necessary condition for the mechanism to occur.

10.3 Further Implications of the Findings

This thesis has shown, in line with Mabbett and Schelkle (2014), that the Commission is not obliged to apply the surveillance rules in a strict manner. In this vein, the findings of Kelemen and Pavone (2021) could be confirmed in that the Commission can choose between conflicting functions and provisions in order to achieve a certain goal. Indeed, similar to what has been described by Kelemen and Pavone (2021), the Commission prioritised lenient rule application over punishment in order to avoid perceived negative

repercussions for the functioning of the setting. However, despite the reluctance to enact sanctions, the Commission has used the threat of sanctions in order to bring about cooperation and compliance. This is in line with the arguments put forward by Drezner (2003) and Tallberg (2002).

The findings further indicate that in the area of sanctions, the Commission is not solely interested in not seeing its proposals rejected by the Council, in contrast to what is argued by Dunlop and Radealli (2016). Rather, the findings confirm the assumption that the Commission has been empowered by the reform (see Bauer and Becker 2014; Dehousse 2016) and has gained autonomy and discretion in relation to the Council (see Seikel 2016; van Aken 2013). Nevertheless, as suggested by Vanheuverzwijn (2017), there is not always an opposition between Commission and Member States. In most cases, and as further suggested by Vanheuverzwijn (2017), Member States were rather supporting the Commission's actions and seem to follow the same normative goal of sustaining the functioning of the cooperative and goal-oriented setting. The Commission further avoids unnecessary confrontation with deviant Member States, which confirms the findings of Closa (2019) in that the Commission prefers to find solutions by way of cooperation, rather than to resort to punishment. Overall, the Commission can be characterised as reluctant to apply the enforcement provisions. It only enacts steps that might lead to the imposition of sanctions if Member State deviation is very clear. In case of doubt, it does not seek escalation, as was shown with regard to France. In the same vein, the Commission does everything it can to avoid the imposition of ultimate sanctions should they be procedurally possible.

These findings warrant the question of whether the Commission has become more political (see Dinan 2016; European Fiscal Board 2019b; Peterson 2017). Given the ambiguity of the rules and the fact that most sanctions are still not automatic, actors need to make choices when applying the regulatory framework. The question therefore might not be whether the Commission acts in a technical or in a political manner (see European Fiscal Board 2018; 2019b), but whether it opts for a strict or for a lenient rule application, as both strictness and leniency to some extent reflect a certain political preference. From this perspective, the Commission might not have become more *political*, but might simply have changed its political position. However, the way that the Commission stretches the flexibility of the rules, such as in the case of the required suspension of ESI Funds for Spain and Portugal, can be argued to go beyond a *lenient* rule application. This case suggests that the Commission's political position trumps the mere interpretation and application of the surveillance setting. While this confirms the assumption that the Commission can be politically partisan, as argued by Hodson (2013) and Mérand (2021a), the avoidance of sanctions can also be seen as an attempt to maintain the functioning of the surveillance setting and

therefore to aim at the objective of European integration in a wider sense (see Becker et al. 2016; Kelemen and Pavone 2021; Thomson and Dumont 2022). Nevertheless, the Commission indeed is political in that it takes into account the social and political implications of its actions, which confirms the findings of Miró (2020). In a similar vein, rather than serving as technical surveillance body, political considerations take place within the Commission, which confirms the arguments of the European Fiscal Board (2019b) and Mérand (2021a).

Whether the Commission is now more receptive to its political environment than before, as suggested by the European Fiscal Board (2019b) and Mérand (2021a; see also Bauer and Ege 2012) is not directly answerable by the findings of the case studies. There are, however, some indications that point in this direction. First, given that the rules have become more complex, and now contain both more possibilities for strict enforcement and more flexibility provisions, it is likely that the Commission needs to make more choices, which necessarily will align with certain political considerations. Second, in the early days of the SGP, most Member States were opposed to a strict application of the rules. The Commission nevertheless pursued a strict application, as can be illustrated by the cases of France and Germany. In the post-crisis period, the Commission mainly pursued a lenient application with regard to sanctions, which overall was in line with most Member States' preferences. This suggests that the Commission has become more receptive to the overall political and economic perception that the imposition of sanctions might run counter to the objectives of the coordination setting. However, rather than the Commission being directly receptive to other bodies (see Bauer and Ege 2012) or controlled by them, the findings indicate that the preference for a lenient rule application is shared among the majority of actors within and outside of the Commission. From this perspective, the Commission can be deemed a political body that is receptive to political dynamics and developments in establishing its objectives and in pursuing them, and the findings suggest that this receptiveness has increased.

10.4 Concluding Remarks and Outlook

The Commission's role in the area of fiscal policy coordination and with regard to the imposition of sanctions has been reinforced with the latest reform of the setting. However, instead of opting for the imposition of sanctions, it has used its power to apply the rules flexibly. This thesis has shown that the imposition of sanctions for fiscal non-compliance is deemed incompatible with the Commission's objective of sustaining a cooperative setting of fiscal policy coordination given that, in the end, all Member States showed their willingness to make concessions. Despite the reinforcement of punitive provisions, the findings suggest that most actors within and outside the Commission still interpret them as measures

of very last resort. While it is debatable what degree of deviant behaviour would constitute a case for resorting to punitive action, the experience has shown that even when opposition to the common rules is fierce, there is no majority among Commission and Member State actors in favour of enacting harsh measures. While it is not sure yet, in what form the setting of fiscal policy coordination will be applied once the crisis-related derogation comes to an end, the question of sanctions will surely be back on the table. The EFB has suggested to replace financial sanctions with more incentivising provisions (European Fiscal Board 2020). However, as the experience with the macroeconomic conditionalities has shown, even punitive provisions that have a more incentivising character might be circumvented. In addition, it seems unlikely that fiscally stricter Member States will agree to any proposal that foresees to completely abolish direct financial sanctioning provisions. A compromise solution could consist of re-establishing the last resort character of sanctions that in any case shapes the application of the relevant provisions. Whatever form they will take in the future, the findings of this thesis suggest that sanctions for fiscal non-compliance are unlikely to ever be triggered by the Commission as long as Member States commit in principle to the common regulatory framework of fiscal policy coordination.

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12. Appendix

12.1 List of Referenced Interviews

- COM 1 – European Commission Official, 2 May 2019
- COM 2 – European Commission Official – DG ECFIN, 1 April 2019
- COM 3 – European Commission Official, 13 May 2019
- COM 4 – European Commission Official, 29 March 2019
- COM 5 – European Commission Official, 13 May 2019
- COM 6 – European Commission Official, 15 May 2019
- COM 7 – European Commission Official, 14 May 2019
- COM 8 – European Commission Official, 30 May 2018
- COM 9 – European Commission Official, 24 April 2018
- COM 10 – European Commission Official – DG ECFIN, 27 March 2019
- COM 11 – European Commission Official, 23 May 2019
- MS 1 – National Government Official, 9 September 2019
- MS 2 – Belgian Government Official, 9 May 2019
- MS 3 – German Government Official, 9 September 2019
- MS 4 – National Government Official, 10 April 2019
- MS 5 – French Government Official, 22 July 2021
- MS 6 – National Government Official, 30 May 2018
- MEP 1 – Lambert van Nistelrooij (MEP), 21 June 2018

12.2 Indicative Interview Questionnaire

Introductory questions:

- Could you briefly explain your role with regard to decisions under the SGP (and EDP)?
- Which actions/steps under the SGP do you consider as a sanction?
- How do you perceive the normative role of the Commission in fiscal surveillance?
- What is your opinion on the usefulness of financial sanctions?

Case-specific questions:

- Did you consider the different steps taken as useful/appropriate?
- What were the main considerations in these cases:
 - Political situation in Member States? Euroscepticism?
 - Economic situation? Reform efforts?
 - Considerations about the effectiveness/credibility of the procedure (in the long-term)?
 - Did you consider the reaction of financial markets?
 - Did you feel constrained by legal considerations?
 - Was there in this case a debate within the Commission/your unit about the need to apply the rules more rigidly versus the need to show political/strategic flexibility? How was it resolved?
 - What role did the perception and/or anticipation of the reaction of Council members/Member State representatives play? Was there direct Member State influence?
 - What role did past experiences/old decisions under the enforcement of the SGP play?
 - How to apply rules in the same way for every Member State? Did you consider other cases?
 - Are there any other preferences that you wanted to pursue in this situation? What else motivated your decision?
- What were the main conflict lines within the Commission services, within the College and between College and services?
- Which kinds of contacts took place? At what level? With which content?

General questions:

- In your view, which actors – institutions or Member States – are the most influential in determining the application and outcome of sanctioning procedures?
- Does the Commission tend to follow the Council? Or is the Commission free to decide on sanctions?
- What is the ideal: cooperation or supranational technical surveillance?
- What role do considerations of national sovereignty versus fiscal stability play?
- In which case could you imagine the imposition of sanctions/would sanctions be appropriate?

12.3 Evaluation of Observations

12.3.1 Belgium 2013

Part 1	The Commission assesses compliance and points out potential breaches	
Activities	The Commission assesses the fiscal performance of Member States. In light of considerable non-compliance with the fiscal objectives, the Commission points out the breach. Potential or actual non-compliance with the fiscal objectives is creating a conflict with the norm of cooperation. The Commission's role as reliable supervisor is interpreted in a way that it contains the obligation to defend the norm of cooperation. By stating the breach, it shows that it acts upon non-compliance. This action, while representing action in line with its obligations, further reflects the Commission's strategic behaviour that aims at fulfilling its normative objective.	
Expected fingerprints	Interview data, official documents, or news coverage that show that Commission actors pointed out the situation of non-compliance given that they regarded the fiscal numbers and performance as clearly indicating a breach of the recommendations.	
Source	Observations	Empirical Uniqueness²⁴
European Commission (2012b)	Commission 2012 assessment of budgetary planning.	The Commission's assessment was largely based on forecast data and is therefore subject to uncertainties. However, the Commission's assessment suggests that it could have estimated the Belgian deficit at a even higher level. It might also be that the Commission, at the time of the entry into force of the Six-Pack, wanted to demonstrate the strict application of the Pact. The observation is therefore of moderate uniqueness but indicates that the data pointed towards the risk of non-compliance and that given this finding, the Commission pointed out this situation.
European Commission (2013a; 2013c)	Commission 2013 assessment that Belgium did not take effective action.	The Commission's assessment of effective action is based on a methodology. The assessment has indicated that the data clearly showed that Belgium did not take effective action. This observation is of high uniqueness . The source is trustworthy and the Commission's methodology transparent. In the absence of unclear data, it is unlikely

²⁴ Empirical uniqueness is evaluated using the logic and mainly building upon examples presented in Beach and Pedersen (2019). This includes whether there is a link between observation and fingerprint, how trustworthy a source is, whether the source has political interests that might imply a bias, and whether a statement was made in a public or in a private context. Assumptions concerning interview data and political bias stated by Hildebrandt (2015) are also taken into account.

		that the Commission could have come up with an assessment stating non-effective action.
Interview COM 1	‘Now we’re discussing Belgium, Spain, and Portugal. Granted that, as I said, when it comes to the assessment of effective action according to the metrics of the pact, the country has generally not respected it. I mean there have been other cases, more borderline. [...] So these were cases in which it was felt, you cannot give the benefit of the doubt, reasoning within the parameters of the pact.’	This interview data is of high uniqueness . The source is trustworthy and the interview data corresponds to the logic of the fingerprint above, which means that the data was clear and that therefore non-effective action was established. This indicates that the Commission acted in line with its normative obligations.
European Commission (2013b)	‘We had no other choice but to conclude that that Belgium did not take sufficient action to correct its deficit by the deadline of 2012, since it missed both the nominal target and I have to underline, on average, the required structural effort.’	Commissioner Rehn publically stating that the data clearly showed non-compliance and that the Commission therefore came up with its conclusion is of moderate uniqueness . While it is unlikely that he would misrepresent the situation, given the transparency of the assessment, one might still assume that he had an interest in presenting the decision as technical.
Interview MS 2	‘I think that’s a technical decision. They simply look at what you have done or what you haven’t done’	This observation is of high uniqueness . It confirms the assumption that the decision was technical instead of political and that therefore the Commission acted in line with its normative obligations. Uniqueness is reinforced because the Belgian government might have an interest to claim that it complied but that the Commission acted politically. However, the source does not know for sure why the Commission acted the way it did.
Given the overall high level of empirical uniqueness, this part can be regarded as confirmed.		
Part 2	The Commission fosters dialogue, cooperation, and further effort	
Activities	When having detected and signalled a Member State’s conflict with the norm of cooperation, the Commission interprets its role as reliable supervisor in the sense that it should fulfil and sustain the norm of cooperation in line with the goal-orientation of the setting. This is done by fostering the dialogue and further fiscal effort, which aims at improving the fiscal situation. Fostering cooperation is deemed more in line with the Commission’s obligations than the enforcement of punitive measures. In acting towards its objectives, the Commission is expected to act strategically. For example, it can make the avoidance of additional steps under the surveillance procedure conditional upon the delivery of further measures or apply the rules flexibly as a means to foster cooperation.	

Expected fingerprints	Interview data, official documents, or news coverage that show that the Commission fostered cooperation and dialogue and expected further effort that would lead to an improvement of the fiscal and economic situation.	
Source	Observations	Empirical Uniqueness
European Commission (2012c)	Report on letter by the Commission demanding further measures, making avoidance of further steps conditional upon this.	This information is of high uniqueness , which points towards the accuracy of the Commission's demand for further measures. It is unlikely that the Commission would misrepresent its willingness to avoid punishment in case the Member State concerned complies.
Pignal (2012)	Report on letter by the Commission demanding further measures, making avoidance of further steps conditional upon this.	The same as above applies, although the information is indirect, reported by the press. However, there is no reason to not believe that a letter was sent.
Interview COM 6	'We had been trying to convince the Belgian government to find the necessary savings or to close the gap somehow. And they said no, not possible. And then we said, well unfortunately, then, within the new rules, we will have to propose you a fine. And so we prepared all the legal documents for the fine. And they were shown to the Belgian government: well look, we are serious, these are rules that you amongst other governments wanted to impose on yourselves just a few months ago and here they are, and now it's our job to apply them [...]. We are sorry, we know you are in a difficult situation [...] but this is how it needs to be. [...] So in the end [...] they found what [...] they had to find in order to close the gap. So the sanction never had to be enforced and we could take it back.'	This interview data indicates with high uniqueness that the Commission was very much interested in further fiscal effort by the Belgian government, which would prevent further enforcement steps. It is unlikely that the source would misrepresent the Commission's threat of sanction, as it was publically communicated at the time.
Given the overall high level of empirical uniqueness, this part can be regarded as confirmed.		
Part 3	The Commission avoids punitive action	
Activities	Given the Commission's openness towards dialogue and further effort by the Member State concerned, and the actual commitment to or delivery of measures, the norm of cooperation and the Commission's obligation to sustain this norm are deemed fulfilled. In addition, imposing sanctions might entail other negative repercussions that go against the Commission's role as reliable supervisor, such as triggering negative economic and fiscal consequences, threatening future cooperation and enforceability, and harming public support towards the Commission and the European project. Sanctions are accordingly not in line with the perceived	

	obligations of the Commission in the situation at hand – and are therefore deemed inappropriate. In order to avoid their imposition, the Commission is expected to apply the rules flexibly, thereby engaging in strategic action.	
Expected fingerprints	Interview data, official documents, or news coverage that show that the Commission was of the opinion that imposing sanctions was not warranted in light of Member State cooperation and might have had negative consequences, and that it opted for a flexible rule application.	
Source	Observations	Empirical Uniqueness
Interview COM 1	‘So the idea was that Belgium first, and Spain and Portugal later, did not deserve [...] to be punished because their fiscal performance, all in all, in spite of not being in line, was not let’s say, in open conflict with the EU framework.’	This interview data indicates with high uniqueness that punitive action was avoided because Belgium was overall cooperative. It is unlikely that the interviewee would have stated this in case it would not have played a role. One might assume that the Commission would rather have an interest in stating that Belgium was fully complying. Acknowledging this flexibility suggests that the statement is trustworthy.
European Commission (2013b)	‘While the present government has stayed [on] the consolidation course, the average structural fiscal effort made over the last three years (namely 2010, 2011 and 2012) has fallen short of the Council recommendation. We had no other choice but to conclude that [...] Belgium did not take sufficient action to correct its deficit by the deadline of 2012, since it missed both the nominal target and I have to underline, on average, the required structural effort. In 2012, last year, Belgium did achieve the required structural effort. [...] However, there was not enough structural fiscal effort in the years 2010-11 when there was no politically mandated government in this country. [...] Now, looking to the present and the future, we expect Belgium to deliver the budgetary consolidation in structural terms of 1% of GDP this year (2013) and 0.75% of GDP in 2014, leading towards a balanced budget, to which Belgium has committed and communicated to me yesterday by Prime Minister Di Rupo and Finance Minister Geens. We are also calling for a binding fiscal framework between the different levels of government in Belgium and between several reforms to boost Belgium's competitiveness, including on wage-setting mechanism. For these reasons and especially as the present and future policies of Belgium should ensure	This public statement is of moderate uniqueness . It indicates that the non-punitive action was taken because the Belgian government cooperated. Given that the statement was public, there might be a political strategy behind it, however.

	the sustainability of public finances, I see no case for financial sanctions at this point.'	
Interview COM 2	'What happened was that our legal service at that moment said that, given that the non-effective action had at least in part occurred at a moment before the Six-Pack was in force [...], at the moment when the non-effective action had taken place, the Belgian authorities were not yet aware that eventually this would have caused a sanction. And that's why at that moment, it was deemed legally too uncertain to come up with such a proposal.'	This interview data is of high uniqueness . It shows that there was a legal risk surrounding the imposition of a fine. Information is provided about the internal assessment of the measure, which is trustworthy.
Interview COM 1	'The legal advice that we received is that it could have been conceivable for Belgium to appeal against this decision, not least because the Court of Justice traditionally takes a very strong view about what legitimate expectations Member States can have.'	
European Commission (2013b)	'As the six-pack legislation of reinforced economic governance entered into force only in mid-December 2011, imposing a fine for the years 2010 or 2011 could go against the principle of non-retroactivity which is essential in European law. In my view therefore, it would be neither fair nor legally sound to apply it retroactively to those years.'	This public statement indicates that the legal questions were on the table and that the imposition of sanctions might have had negative repercussions. It is of moderate uniqueness .
Interview COM 2	'But it's true that it's not excluded that it could have led to for instance Belgium not paying the fine or holding a [...] discussion about was it warranted or not, potentially ending up at the court. And I think indeed it's true, that it could have undermined a little bit the credibility of the system if the first application would have been not a very strong one.'	Interview data of high uniqueness . It states that the imposition of sanctions based on a weak legal basis could have had negative repercussions.
Interview COM 3	'[...] we're conscious of the impact on other country cases when we take a decision [...]. And so of course, [...] if we take a particularly lenient approach to one, it has to be consistent between the two. Whenever we adopt a package of fiscal decisions there of course has to be a horizontal consistency for countries.'	Interview data of moderate uniqueness . It suggests that other cases might have had an impact on the Commission trying to avoid negative repercussions of the measures. No direct confirmation of the assumption.

Interview COM 6	'[...] if we are lenient on one country, then we are lenient on the others as well, I mean it will have to be [...] the same philosophy applying to everybody'	
Interview COM 1	'[...] Therefore, there was a legal argument, which like [...] most legal arguments, they clearly carry some weight, but ok, you could have argued the opposite.'	Interview data of high uniqueness . It indicates that the legal argument was only one factor, but that a political decision was taken and that the Commission applied the rules flexibly in order to prevent punitive action. This observation is highly unique also because one might expect that a Commission official would not acknowledge that the legal aspect was debatable.
Given the overall high level of empirical uniqueness, this part can be regarded as confirmed.		

12.3.2 France 2015

Part 1	The Commission assesses compliance and points out potential breaches	
Activities	The Commission assesses the fiscal performance of Member States. In light of considerable non-compliance with the fiscal objectives, the Commission points out the breach. Potential or actual non-compliance with the fiscal objectives is creating a conflict with the norm of cooperation. The Commission's role as reliable supervisor is interpreted in a way that it contains the obligation to defend the norm of cooperation. By stating the breach, it shows that it acts upon non-compliance. This action, while representing action in line with its obligations, further reflects the Commission's strategic behaviour that aims at fulfilling its normative objective.	
Expected fingerprints	Interview data, official documents, or news coverage that show that Commission actors pointed out the situation of non-compliance given that they regarded the fiscal numbers and performance as clearly indicating a breach of the recommendations.	
Source	Observations	Empirical Uniqueness
European Commission (2014b)	Commission finding that France was at risk of non-compliance.	The Commission's assessment relied on forecast data, which are subject to uncertainties. However, the divergence from the targets was rather clear, so that the observation can be attributed moderate uniqueness . It indicates that the Commission pointed out the situation because it perceived the risk of non-compliance as clear.
Carnegy (2014b)	French government publically announcing that it would not comply with its recommendations.	This observation indicates with moderate uniqueness that the Commission saw the planned non-compliance as clear, but does nevertheless support this claim.
	Commission public statement that 'the new targets were clearly outside its recommendations'.	This observation of high uniqueness indicates that the Commission signalled the breach because it was very clear. The link between the breach and the reaction is very direct, which indicates that the observation corresponds to the expected fingerprint.
European Commission (2014a; 2014d)	Commission assessing that the French fiscal planning was at risk of non-compliance.	This observation indicates with high uniqueness that the Commission stated the non-compliance in light of clear data. Especially in combination with the observation above (public statement of French government).
Given the overall high level of empirical uniqueness, this part can be regarded as confirmed.		

Part 2	The Commission fosters dialogue, cooperation, and further effort	
Activities	When having detected and signalled a Member State's conflict with the norm of cooperation, the Commission interprets its role as reliable supervisor in the sense that it should fulfil and sustain the norm of cooperation in line with the goal-orientation of the setting. This is done by fostering the dialogue and further fiscal effort, which aims at improving the fiscal situation. Fostering cooperation is deemed more in line with the Commission's obligations than the enforcement of punitive measures. In acting towards its objectives, the Commission is expected to act strategically. For example, it can make the avoidance of additional steps under the surveillance procedure conditional upon the delivery of further measures or apply the rules flexibly as a means to foster cooperation.	
Expected fingerprints	Interview data, official documents, or news coverage that show that the Commission fostered cooperation and dialogue and expected further effort that would lead to an improvement of the fiscal and economic situation.	
Source	Observations	Empirical Uniqueness
European Commission (2014b; 2014f)	Commission recommending France to take steps towards compliance.	This observation of high uniqueness indicates that the Commission saw compliance with the targets only reachable by further measures and accordingly opened up avenues for France to still comply by way of cooperation.
Franceinfo (2014) and Spiegel (2014)	Commission asking for further information and inviting for dialogue in light of the submission of the DBP by France that was not in line with the objectives.	The letter is not public. However, the sources are trustworthy. This observation is of high uniqueness . It shows that the Commission was open for a dialogue and cooperation that would lead to an improvement of the fiscal data.
European Commission (2014a)	New Commission asking France to take further measures.	This observation of high uniqueness indicates that the Commission was actually interested in France delivering further effort. It is unlikely that the Commission would publically state that further measures would be required, without actually being interested in this.
European Commission (2014e: 33-34)	Moscovici: 'The Commission had opted to keep up the pressure on those governments by asking them to make commitments in the field of structural reforms and by leaving all options open for the final decision to be taken by the Commission in the spring.' Dombrovskis: 'The Commission would monitor the evolving	Observation of high uniqueness . It indicates that the Commission was planning to make the avoidance of further enforcement steps conditional upon the delivery of further measures. Information trustworthy as stemming from Commission minutes.

	situation in the Member States concerned very closely with a view to deciding, on the basis of how much progress, if any, had been made by spring 2015, whether or not these procedures should be launched against them.'	
Libération (2015)	Commission publically stating that France would need to make additional effort, prior to final Commission assessment.	Observation of high uniqueness . It indicates that the Commission was interested in further effort. Given that the announcement was made just prior to the decision, the Commission would have taken the risk of 'losing' the battle by publically stating its demands. Therefore, this is a trustworthy indication that the Commission wanted cooperation and further effort.
Interview MS 5	Interviewee describing that an intensive dialogue took place between the Commission and the French government and that the Commission was interested in dialogue.	Observation of high uniqueness , the source is trustworthy, which indicates that the Commission was interested in an improvement of the fiscal situation by way of dialogue.
Given the overall high level of empirical uniqueness, this part can be regarded as confirmed.		
Part 3	The Commission avoids punitive action	
Activities	Given the Commission's openness towards dialogue and further effort by the Member State concerned, and the actual commitment to or delivery of measures, the norm of cooperation and the Commission's obligation to sustain this norm are deemed fulfilled. In addition, imposing sanctions might entail other negative repercussions that go against the Commission's role as reliable supervisor, such as triggering negative economic and fiscal consequences, threatening future cooperation and enforceability, and harming public support towards the Commission and the European project. Sanctions are accordingly not in line with the perceived obligations of the Commission in the situation at hand – and are therefore deemed inappropriate. In order to avoid their imposition, the Commission is expected to apply the rules flexibly, thereby engaging in strategic action.	
Expected fingerprints	Interview data, official documents, or news coverage that show that the Commission was of the opinion that imposing sanctions was not warranted in light of Member State cooperation and might have had negative consequences, and that it opted for a flexible rule application.	
Source	Observations	Empirical Uniqueness
Interview COM 2	'[...] was there effective action in the first place yes or no? And also there, I remember it was fairly borderline. The thing is that under the SGP, we work on the basis of	Observation of moderate uniqueness . It indicates that France might have complied with the fiscal data, and that it was not clear non-compliance. However, the interviewee

	indicators that are at this stage rather complex and not always observable.'	might have an interest to present the situation as more favourable for France and ultimately for the Commission.
European Commission (2015a)	Commission assessment of fiscal data, showing that fiscal performance was ambivalent.	The assessment of effective action is based on a transparent methodology, but certainly the Commission has flexibility when assessing the data. Overall, the observation is of moderate uniqueness . It indicates that the data was ambivalent.
Interview COM 1	'[...] although you could read the figures in such a way to come to the conclusion that this [...] seems to be non-effective action, there were a number of factors [...] that authorized some doubt about this conclusion.'	Observation of moderate uniqueness . It indicates that France might have complied with the fiscal data, and that it was not clear non-compliance. However, the interviewee might have an interest to present the situation as more favourable for France and ultimately for the Commission.
European Commission (2015c: 29)	Moscovici: '[...] the action taken by the Commission should not be punitive, but should encourage Member States to intensify and speed up their reforms and to carry out fiscal adjustments where necessary.'	Observations of high uniqueness , stemming from meeting minutes. It indicates that the Commission did not want to impose sanctions but would rather aim at the improvement of the fiscal situation, which could not be reached via punishment.
European Commission (2015d: 26-27).	Moscovici: '[...] the Commission must be politically and technically credible and must therefore use expertise and the legal rules as the basis for taking the right political decisions. [...] the European Semester was an opportunity for the Commission to send messages to the Member States to correct their macroeconomic imbalances and budget deficits. The Commission's general approach must strike the right balance between encouragement and a demand for results.'	
Honoré (2015)	<p>'This is not a political gift offered to a big country.'</p> <p>'Efforts have been made to avoid immediate sanctions, but at the same time, we are maintaining the pressure.'²⁵</p>	This observation is of moderate uniqueness . It indicates that sanctions were avoided at this stage because France had made an effort. Given that it is a public statement, it might contain an excuse for not having been stricter. However, it indicates that the Commission is interested in keeping up the pressure to foster further cooperation.
Interview COM 1	'There was the famous case of France in 2015, I believe, where the Commission basically resorted to a double negative: we	This observation is of high uniqueness . It indicates that the Commission resorted to a flexible reading of the rules, taking a political

²⁵ Own translation

	cannot establish that there is no effective action. Basically the Commission already gave the benefit of the doubt to the country concerned in this assessment.'	decision to avoid further enforcement steps, but given that it was likely that France had actually delivered. It is of high uniqueness because Commission actors might have an interest in representing their decision as clearly based on the rules, especially in this publically debated case.
Interview COM 2	'And it's true that under this college, the bar of evidence required to step up a procedure is relatively high. We don't want to let's say punish a Member State if we are not absolutely certain that indeed it is true that it has not delivered what it was required to deliver. [...] If you commit a murder, [...] the bar of evidence is put relatively high. We'll not put someone in jail, if you say, yeah he may have done it and it's actually quite likely, but yes just for safety reasons, let's put him in jail and let's see. I mean if it's wrong it's wrong. So the bar has been put rather high, and I think France is an example of that.'	This observation is of high uniqueness . It indicates that the Commission made use of flexibility to avoid further enforcement steps, also given that the fiscal situation was unclear. It is of high uniqueness as the source is trustworthy and it is unlikely that the interviewee would acknowledge the use of flexibility if it would not be the case.
Given the overall high level of empirical uniqueness, this part can be regarded as confirmed.		

12.3.3 Spain and Portugal 2016

Part 1	The Commission assesses compliance and points out potential breaches	
Activities	The Commission assesses the fiscal performance of Member States. In light of considerable non-compliance with the fiscal objectives, the Commission points out the breach. Potential or actual non-compliance with the fiscal objectives is creating a conflict with the norm of cooperation. The Commission's role as reliable supervisor is interpreted in a way that it contains the obligation to defend the norm of cooperation. By stating the breach, it shows that it acts upon non-compliance. This action, while representing action in line with its obligations, further reflects the Commission's strategic behaviour that aims at fulfilling its normative objective.	
Expected fingerprints	Interview data, official documents, or news coverage that show that Commission actors pointed out the situation of non-compliance given that they regarded the fiscal numbers and performance as clearly indicating a breach of the recommendations.	
Source	Observations	Empirical Uniqueness
Interview COM 1	<p>'[...] the conclusion was that Spain and Portugal, by a large margin, have not taken effective action. And this conclusion was reached according to the metrics, which is stated by the Pact, and further specified by the code of conduct [...]. Using these metrics, it was virtually impossible to escape the conclusion of non-effective action [...]. The countries were on their way to eventually correct, but they had not carried out the adjustment that was requested. This was not denied [...]. It was accepted that the Commission could not avoid reaching the conclusion that no effective action has been taken.'</p> <p>'[...] even say, giving the benefit of the doubt, even giving a generous reading of the figures, [...] no, there is no way, we cannot.'</p>	These interview observations are of high uniqueness . They all indicate that the assessment of non-effective action by Spain and Portugal was very clear and that therefore the Commission came to this conclusion. This very clearly corresponds to the expected fingerprints. Although the interviewees might have an interest in claiming that the decision was technical, interviewees all agreed on this assessment.
Interview COM 2	'I think the effective action, [...] I mean we had the indicators, the figures, all the three measurements of whether they had taken effective action; the outcome was clear-cut because on every of those single measures, the deviation was relatively important. So the conclusion was easily reached. And I don't think there was a debate, neither within the services, nor with the political level on that.'	

Interview COM 4	‘[...] but the establishment is simply an establishment. If you come to the conclusion that there was no effective-action, then this is primarily an establishment. [...] We have come up with this establishment because it is the result of our analyses.’	
Interview COM 5	‘We were obliged to, we could not [...] Non-effective action is based on facts, outturn of 2015. And according to all the metrics, we, they have elaborated a lot of indicators over the years. I mean, corrected structural balance, headline, bottom-up, top-down, and none of these [...] When none of those save you, then you know what awaits you. [...] It was like an automatic decision [...].’	
Interview COM 7	‘This is a factual result. [...] Absolutely, judging from the figures, very clear.’	
(European Commission 2016d: 31-34)	<p>Dombrovskis: ‘Spain and Portugal had relaxed their budgetary efforts, either for electoral reasons or to reduce the pressure exerted by the markets during the financial assistance programme. [...] Spain Portugal had utilised the margins resulting from increasing growth and falling interest rates to undertake expenditure rather than reduce their debt [...].’</p> <p>Moscovici: ‘[...] felt that it was [...] impossible to conclude that effective action had been taken towards either of the two benchmarks in the applied methodology, i.e. the headline target and the structural target, despite the fact that Spain and Portugal were in a relatively favourable economic situation, though admittedly still affected by the serious consequences of the financial, economic and social crisis.’</p>	These observations are of high uniqueness , stemming from meeting minutes. Both Commissioners clearly state that the finding of non-effective action was unavoidable.
European Commission (2016i; 2016b; 2016h; 2016a)	Commission assessments concluding on non-effective action.	The Commission’s assessment is based on a transparent methodology, although it has flexibility with regard to the assessment of fiscal performance. The data, however, very clearly presented the deviation from the fiscal targets, so that the observation can be seen as highly unique . It indicates that the Commission stated the deviation in light of the clear figures.

European Commission (2016d: 33)	Moscovici: '[...] he noted that if no decisions were taken at this stage on penalties and a freeze on European structural funds, it was important to dispel any doubts regarding the possibility of heavy fines that would hold back growth.'	This observation, stemming from meeting minutes, is moderately unique . It indicates that the decision on non-effective action was taken because the data was clear, as it was taken despite the possibility that sanctions might follow upon this step, which were not wanted by the source. It might nevertheless be conceivable, stating from this observation alone, that the decision was taken for other reasons.
Interview COM 2	'I would say indeed, one is the quasi-automatic consequence of the other, but when we took the decision for instance to step up the EDP for [...] Spain or Portugal, that decision was taken independently from the sanction that followed based on that because [...] the non-effective action is governed by [...] a detailed set of rules in itself, which are difficult [...] to make depend on the subsequent sanction step'	This interview observation is moderately unique . It shows that the decision on non-effective action was taken despite the looming sanction. However, the fact that different rules apply does not necessarily mean that the two decisions are not linked.
Given the overall high level of empirical uniqueness, this part can be regarded as confirmed.		
Part 2	The Commission fosters dialogue, cooperation, and further effort	
Activities	When having detected and signalled a Member State's conflict with the norm of cooperation, the Commission interprets its role as reliable supervisor in the sense that it should fulfil and sustain the norm of cooperation in line with the goal-orientation of the setting. This is done by fostering the dialogue and further fiscal effort, which aims at improving the fiscal situation. Fostering cooperation is deemed more in line with the Commission's obligations than the enforcement of punitive measures. In acting towards its objectives, the Commission is expected to act strategically. For example, it can make the avoidance of additional steps under the surveillance procedure conditional upon the delivery of further measures or apply the rules flexibly as a means to foster cooperation.	
Expected fingerprints	Interview data, official documents, or news coverage that show that the Commission fostered cooperation and dialogue and expected further effort that would lead to an improvement of the fiscal and economic situation.	
Source	Observations	Empirical Uniqueness
European Commission (2016d: 32)	'[...] a dialogue with the Member States could accompany the process in order to avoid adverse effects. For example, although the failure to comply with the rules in the Stability and Growth Pact related to the past, the fines could be reduced considerably if the Member States in question made	This observation is highly unique , stemming from meeting minutes. It indicates that the Commission would be open for a dialogue and that further enforcement measures could be avoided if further effort is made.

	credible fiscal-policy commitments and brought in long-term structural reforms.’ ‘[...] the threat of sanctions was part of an incentive system of last resort that had never been actually used.’	
Reuters (2016)	‘It’s possible that these sanctions are equal to zero, on the condition that the Spanish and Portuguese governments give us the answers we’re expecting on how they will reduce their deficits.’	These observations, stemming from public statements, are of high uniqueness . They indicate that the Commission was interested in further effort and that the sanctions might be lowered or even be cancelled should further measures be delivered. It is unlikely that the Commission would announce the possibility to lower the fine or avoid it should it not at least be open for this possibility.
Guarascio (2016a)	Moscovici: ‘We are open for dialogue. The idea is that we are able to take on board the arguments that the ministers provide.’ Dombrovskis: ‘[...] there will be a possibility within this procedure for the countries to put forward motivated requests to reduce potential sanctions or probably even bring them down to zero.’	
Given the overall high level of empirical uniqueness, this part can be regarded as confirmed.		
Part 3	The Commission avoids punitive action	
Activities	Given the Commission’s openness towards dialogue and further effort by the Member State concerned, and the actual commitment to or delivery of measures, the norm of cooperation and the Commission’s obligation to sustain this norm are deemed fulfilled. In addition, imposing sanctions might entail other negative repercussions that go against the Commission’s role as reliable supervisor, such as triggering negative economic and fiscal consequences, threatening future cooperation and enforceability, and harming public support towards the Commission and the European project. Sanctions are accordingly not in line with the perceived obligations of the Commission in the situation at hand – and are therefore deemed inappropriate. In order to avoid their imposition, the Commission is expected to apply the rules flexibly, thereby engaging in strategic action.	
Expected fingerprints	Interview data, official documents, or news coverage that show that the Commission was of the opinion that imposing sanctions was not warranted in light of Member State cooperation and might have had negative consequences, and that it opted for a flexible rule application.	
Source	Observations	Empirical Uniqueness
Interview COM 3	‘Moscovici said on the record many times that for him the imposition of sanctions is always a failure, as it shows that the dialogue has failed. It shows that we weren’t, the system wasn’t able to lead to an outcome where the Member State lived up to its commitments, and where an agreed	The interview observation is of moderate uniqueness . It shows that, in general, Commissioner Moscovici was not in favour of sanctions. It, however, suggests that this was also the case regarding Spain and Portugal, given the context.

	outcome, agreed solutions, and a positive outcome could be reached.'	
Interview COM 4	'[...] one is moving in the right direction, even though one is constantly in sight, but off the actual thresholds, but one is moving in the right direction. This is an aspect from which we would deduce credibility. [...] We are civil servants, it touches upon our honour to claim that we violate the SGP, do not apply it; we do apply it.'	This observation indicates that one goal of the Commission is the achievement of an improvement and not the imposition of sanctions as a means to an end. It shows with moderate uniqueness that sanctions were not warranted in the case at hand.
European Commission (2016e: 28-29).	'[Moscovici] was sceptical about the impact of a symbolic fine, which would still mean tens or hundreds of millions of euros denied to the real economy, small and medium-sized enterprises, and citizens, and which would also be reflected in slower growth and job losses.'	This observation stems from meeting minutes. It indicates that the sanctions would have had negative repercussions in the case at hand. It is of high uniqueness .
Interview COM 2	'We thought, it's not now the moment to impose [...] an additional burden on the fiscal position, they also had to deal with massive bank recapitalizations at that moment, in Portugal at least, which added to the debt. Perhaps also in terms of market stability, it may not be the best sign that we can give, it could give the impression that those countries are not doing well, it could add to market stress, and basically you could achieve the opposite of what you intended to achieve.'	This interview observation is highly unique . It indicates that it was felt that sanctions might have had negative repercussions. It clearly is linked to the case at hand.
European Commission (2016e: 28)	'If a financial penalty, even a symbolic one, were imposed on these countries, his fear was that Spanish and Portuguese citizens would interpret this message as a criticism for not having made enough efforts, while the Union had played a large part in defining those efforts, in particular in the case of Portugal, and welcomed their effects. He warned that there was a risk that this might result in a loss of support for the European project in these Member States.'	Stemming from meeting minutes, this observation is of high uniqueness . It indicates that the source was aware of negative repercussions of the imposition of sanctions.
Interview COM 3	'The political and the public perception of the Commission proposing a fine of up to 0.2% of GDP on countries that were emerging from that sort of economic backdrop and with that social backdrop still present as well as of course the wider situation in Europe, would simply have been	This interview data is of high uniqueness , it clearly gives the reasons of why sanctions in the case at hand were perceived as not warranted.

	impossible for people to understand. And so Commissioner Moscovici was very much of the view that sanctions were neither desirable nor appropriate in that particular case.'	
Interview COM 1	'Spain and Portugal [...] did not deserve [...] to be punished because their fiscal performance, all in all, in spite of not being in line, was not [...] in open conflict with the EU framework.'	These interview observations are of high uniqueness . They clearly link the cooperative behaviour of Spain and Portugal to the decision not to sanction them. Some interviewees acknowledge that even minimal delivery in spite of non-compliance is sufficient to avoid punitive action, which increases uniqueness as one might not expect this acknowledgement. The interview data further indicate with high uniqueness that other negative repercussions were feared.
Interview COM 2	'There was no intention to get off track fundamentally. The road that they travelled, even if too slow, was still planned to be ok. So the consideration was, if those countries are now anyway more or less committed to stay on the right track, it's not now the moment to get into a confrontational mode, which may basically run the risk of punishing for something that happened two-three years ago [...], over a period that was relatively long, since the start of the EDP. So to punish based on something that happened a relatively long time ago, and jeopardize by that the good cooperation and incentives to cooperate in the coming year, which was judged more important, that was the main consideration, if I remember well.'	
Interview COM 4	'[...] in this respect, the government has, at the time, very clearly shown its willingness to meet all the conditions. In such a situation, the question is of course whether it is really necessary to create an additional burden.'	
Interview COM 5	'The overall situation, also how the crisis management of the institutions was perceived among the public; you come and slap a heavy fine on Spain, which was a country that had done some reforms, that was growing. The deficit was at least coming down. The authorities were cooperating and not objecting against the fact that they need to consolidate their finances. Overall, I mean, everything lumped together, I think contributed to the decision [...].'	
European Commission (2016e: 30).	'[...] the support of a majority of Members for the proposal to issue a decision cancelling the fines, which was deemed reasonable, fair and politically astute given the considerable	This observation, stemming from a Commission meeting, is of high uniqueness . It indicates that the sanctions were not

	efforts made by Spain and Portugal since 2008 to substantially reduce their excessive deficits.'	perceived as warranted, given the cooperative behaviour of the two countries.
European Commission (2016e: 31-32).	'[...] broad support for counterbalancing the political choice to cancel the fines with a very clear explanation and warning to the effect that the Member States concerned must continue to do their utmost to improve their budgetary and economic performances and that although the fines were not being imposed at this stage they would be later on if the countries in question did not bring their excessive deficits down to the levels required in the time allowed.'	This observation, stemming from a Commission meeting, is of moderate uniqueness . It indicates that the decision not to sanction also contributes to the ability of the Commission to control public finances in the future. It only speaks indirectly to the expected observations.
European Commission (2016k: 5)	'In view of Spain's reasoned request and having regard of the previous points, notably the deep structural reforms undertaken by the Spanish government since 2012 and still in place [...], the deficit-reducing commitments announced by the Spanish caretaker government in its reasoned request, along with the consolidation measures put in place following the Commission Recommendation of 9 March 2016 regarding measures to be taken by Spain in order to ensure a timely correction of its excessive deficit, a cancellation of the fine of 0.2% of GDP is considered warranted.'	This observation is of high uniqueness . It clearly shows that the flexibility of the setting was used by taking into account mitigating factors for the cancellation of the fine.
European Commission (2016j: 4).	'In view of Portugal's reasoned request and having regard of the previous points, notably the fiscal adjustment undergone during the economic adjustment programme which was accompanied by a comprehensive set of structural reforms; the commitments (i) to adopt, when necessary, fiscal measures to correct any potential budget execution deviations in 2016, (ii) for an additional structural adjustment of 0.25% of GDP in 2017 compared with the adjustment of 0.35% of GDP laid out in the April 2016 Stability Programme, and (iii) for structural reforms in key areas in view of existing challenges including measures to stabilise the banking system, the reasons put forward by Portugal are considered to warrant a cancellation of the fine of 0.2% of GDP.'	
Given the overall high level of empirical uniqueness, this part can be regarded as confirmed.		

<u>Application of the Macroeconomic Conditionalities</u>		
<u>Part 2</u>	The Commission fosters dialogue, cooperation, and further effort	
Activities	When having detected and signalled a Member State's conflict with the norm of cooperation, the Commission interprets its role as reliable supervisor in the sense that it should fulfil and sustain the norm of cooperation in line with the goal-orientation of the setting. This is done by fostering the dialogue and further fiscal effort, which aims at improving the fiscal situation. Fostering cooperation is deemed more in line with the Commission's obligations than the enforcement of punitive measures. In acting towards its objectives, the Commission is expected to act strategically. For example, it can make the avoidance of additional steps under the surveillance procedure conditional upon the delivery of further measures or apply the rules flexibly as a means to foster cooperation.	
Expected fingerprints	Interview data, official documents, or news coverage that show that the Commission fostered cooperation and dialogue and expected further effort that would lead to an improvement of the fiscal and economic situation.	
Source	Observations	Empirical Uniqueness
European Commission (2016g: 38).	'Mr Katainen made the point that suspension of the structural funds was automatic under the excessive deficit procedure [...]. He pointed out that only commitments for next year would be affected; funds already committed would not be concerned, and a suspension could always be lifted as soon as the Member States concerned implemented the Union's recommendations.'	These observations, stemming from meeting minutes, clearly indicate the intention of the Commission to foster further effort by the countries concerned and that cooperation could lead to a mitigation of the sanction. It is of high uniqueness .
European Commission (2016e: 33)	'If the objectives set by these adjustment paths were attained, the suspension of the financial commitments relating to the Structural and Investment Funds could be lifted.'	
Valero (2016b) and European Parliament (2016a)	Public announcement that suspension would be lifted once Portugal and Spain would comply with their Council notices of 8 August.	These public statements clearly state that the Commission was interested in cooperation and further effort to improve the fiscal situation, and that this would contribute to lift the sanctions. It is of high uniqueness , as the Commission would have been publically accountable should it not lift the suspension in case of further effort.
Handelsblatt (2016) and European Parliament (2016a)	Statements by Katainen and Crețu that level and scope of suspension would be subject to	These public statements are of high uniqueness . They indicate that the Commission would seek the dialogue with

	mitigating factors and that the Parliament would be included in the process.	the Parliament. The Commission would be publically accountable to these promises, which indicates high uniqueness.
Given the overall high level of empirical uniqueness, this part can be regarded as confirmed.		
Part 3	The Commission avoids punitive action	
Activities	Given the Commission's openness towards dialogue and further effort by the Member State concerned, and the actual commitment to or delivery of measures, the norm of cooperation and the Commission's obligation to sustain this norm are deemed fulfilled. In addition, imposing sanctions might entail other negative repercussions that go against the Commission's role as reliable supervisor, such as triggering negative economic and fiscal consequences, threatening future cooperation and enforceability, and harming public support towards the Commission and the European project. Sanctions are accordingly not in line with the perceived obligations of the Commission in the situation at hand – and are therefore deemed inappropriate. In order to avoid their imposition, the Commission is expected to apply the rules flexibly, thereby engaging in strategic action.	
Expected fingerprints	Interview data, official documents, or news coverage that show that the Commission was of the opinion that imposing sanctions was not warranted in light of Member State cooperation and might have had negative consequences, and that it opted for a flexible rule application.	
Source	Observations	Empirical Uniqueness
Interview COM 9	'The Commissioner for Regional Policy, 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. And to send a signal to countries which are still today and two years ago even more under the scrutiny of the international financial investors and the rating operators, the price of the debt was very much a burden for both countries, and of course sending a signal like this would have been even worse. And even if the suspension would have not materialized because the countries would have changed their programme, the signal to the markets and the costs of the signal, not to mention the political costs, would have been quite damaging. So we didn't have major clashes like in other files where it is true that there were major disagreements. I think that they [Dombrovskis and Katainen] – it is a collegial decision – very quickly understood that they would be outvoted. But as a matter of	This interview observation is of high uniqueness . It indicates that, given the effort done by both countries, the suspension was not seen as warranted. It is conceivable that other reasons also contributed to the impression that sanctions were not warranted. However, a clear link between cooperation and non-sanctioning is established.

	principle, they expressed that they were more open to this idea.'	
European Parliament (2016a)	'I am not in a comfortable position right now, to say that we will have to suspend part of the commitments of this country for 2017, but this is how legislation goes. I am convinced, and I heard the two governments that said that on October 15 th they will come up with a report pointing to the important steps forwards toward the SGP.'	The observation, stemming from a public statement, is moderately unique . It indicates that the Commissioner was not in favour of sanctions. There might have been strategic thinking behind this statement, however.
Interview COM 9	<p>'The Spanish economy has been doing many reforms and cuts, and the message that we were giving was that the Commission proposed to suspend mostly the only source of investment, of public investment, because national public investment had dropped so much. That actually would be completely not only counterproductive economically speaking, but also politically speaking and a completely damaging move and gesture, which would have even worsened the opinion of the eurosceptic people of the EU.'</p> <p>'When the Spanish and Portuguese cases arose, we saw that the system was extremely complex. And it was also extremely difficult to put such a burden onto the European Commission. The burden was the automatism, so the political burden was that we were obliged by the Regulation to propose to the Council and the Parliament the suspension of payments. This is what the Regulation forced the Commission to do. The EDP is a very liquid status, you might end up in an EDP very quickly, or it might take lots of time, and you can buy time, and you can propose an amended budget, but you are still hanging there. What happened in the Portuguese and Spanish case is that it was completely not the good moment to propose it because those countries were just after the biggest restructuring.'</p>	These interview observations indicate with high uniqueness that sanctions were not perceived as warranted in the situation at hand, given cooperation and other negative repercussions of the suspension of funds. They clearly relate to the expected fingerprints.
Interview COM 8	<p>'2015: rising of euroscepticism, no intention of putting more oil on the fire, there are already reforms.'</p> <p>'There was a tension between the obligations from the Regulation and the political appetite.' 'Vision in the Commission that it</p>	

	<p>was not the right moment to impose the sanction and that the Commission would like to have more flexibility.’</p> <p>‘Had technical proposal ready prior to the Commission decision not to propose the suspension.’ ‘There was no big divide inside of the Commission. They had to apply the Regulation. But agreement that they should find what was the flexibility in the application. Then everyone acted according to its portfolio.’</p>	
Interview MEP 1	‘It was strategic to use the procedure to give more time to the Member States to come up with new figures. We took our time. That was the vision of the REGI committee.’	This interview observation indicates with moderate uniqueness that the Commission was using the flexibility of the procedure. It is nevertheless supporting this assumption.
Interview COM 2	<p>‘The Parliament basically told us, listen, for us, now there is effective action under the new EDP, so for us it seems fine, and then we said, yeah indeed, there is no legal basis anymore to propose that suspension because under the new EDP there is now effective action, which is true, but legally a little bit, let’s say, debateable. So that was clearly some kind of institutional gimmickry or institutional play to exploit what perhaps was not the letter of the law, but apparently worked.’</p> <p>‘Dragging on, I mean it came from both sides, I think. Nothing prevented the Commission not to wait for the Parliament, I think, but it was convenient to uphold that we had to wait, which was a potential reading of the Regulation.’</p>	This interview observation indicates with high uniqueness that the Commission was applying the rules flexibly, thereby preventing the suspension. It is highly unique because one might not expect a Commission interviewee to acknowledge that the Commission somewhat actively contributed to the outcome, but rather that the Parliament would be blamed for it.
European Commission (2016f; 2016c)	Commissioners stating that no funds were suspended because of the implementation of measures, given abeyance of EDPs.	These observations are moderately unique . They indicate that the suspension of funds was not carried out because of the effort done. There might be other reasons, stating solely from this observation. These observations, however, are a prerequisite for observing that the rules were applied flexibly in the sense of claiming that the suspension was not warranted anymore because of the abeyance of the EDP.
Given the overall high level of empirical uniqueness, this part can be regarded as confirmed.		

12.3.4 Italy 2018

<u>Part 1</u>	The Commission assesses compliance and points out potential breaches	
Activities	The Commission assesses the fiscal performance of Member States. In light of considerable non-compliance with the fiscal objectives, the Commission points out the breach. Potential or actual non-compliance with the fiscal objectives is creating a conflict with the norm of cooperation. The Commission's role as reliable supervisor is interpreted in a way that it contains the obligation to defend the norm of cooperation. By stating the breach, it shows that it acts upon non-compliance. This action, while representing action in line with its obligations, further reflects the Commission's strategic behaviour that aims at fulfilling its normative objective.	
Expected fingerprints	Interview data, official documents, or news coverage that show that Commission actors pointed out the situation of non-compliance given that they regarded the fiscal numbers and performance as clearly indicating a breach of the recommendations.	
Source	Observations	Empirical Uniqueness
Kleine Zeitung (2018) and Mischke (2018)	'The EU has supported economic measures that have made Italy poor. That's why I don't care about the opinion that people like Juncker and Moscovici hold about the government and Italy. Let them say what they want, we will continue.' (translation partly based on Mischke (2018))	This public statement indicates with moderate uniqueness that the Commission saw the fiscal non-compliance as clear and therefore signalled non-compliance. This is because the observation cannot be attributed to the Commission.
European Commission (2018c; 2018e; 2018d)	Commission stating in letters to the Italian government that announced figures would significantly deviate from recommendations.	These publically available statements are of high uniqueness . They indicate that the deviation was clear to the Commission. The identified deviation is very unlikely to be due to the margin of appreciation of the Commission.
European Commission (2018b)	Commission stating in assessment that Italian DBP was not in line with adjustment path.	
Interview COM 10	'The fact that you clearly announce that you want to deviate, that the size of the deviation is really big, based on your own plans, and the fact that the underlying macroeconomic assumptions were obviously not realistic, all of this together made a clear case for a particularly serious non-compliance. So at technical level, I would say that it was a no-brainer that we had to ask for resubmission.'	These interview observations make a clear link between the non-compliance that was perceived as clear and the Commission pointing out the breach. They therefore correspond to the expected fingerprints. They are therefore of high uniqueness .

Interview COM 2	<p>'[...] the plan was wrong, and before we rejected the DBP, there is a process foreseen in the Regulation that first we need to send a letter. [...] And then also there, Italy replied, and contrary to what usually happens, they said our plan is perfect, we won't touch it at all, and then we said ok, [...] if they would have been cooperative and would have moved towards our direction and made sure that at least the direction is no longer wrong, [...] then we would not reject. But if we see that there is a wrong direction and no willingness to move back into the right direction, we decided to reject.'</p>	
Interview COM 10	<p>'It was absolutely in the mind of the College that Italy was a bit in a campaigning mode, trying to show that Brussels is to be blamed for everything, that they can't even adopt their own budget etc., so that we could be caught in the trap from where it would be very difficult to get out, a bit of a lose-lose game: they don't correct the budget and we take the blame for everything. But on balance, it was thought that it would be better in a lose-lose game to protect the credibility of the rules. I think that was a bit the guiding principle.'</p>	
Interview COM 10	<p>'[...] we have no binding sort of tools where we can send the army to a country because we don't like the budget. So the only power you have is the [...] cooperation of a country, the good cooperation spirit. It's the only peer-pressure, good cooperation. So if we didn't apply the rules, I think we would have lost the other Member States. It's a fine balance, but the idea is to protect the credibility of the rules, I mean what we have agreed together and we have always insisted on our line to take on Italy, that this 0.6 % of adjustment that they have to do, they have endorsed themselves, even the new government, because it was endorsed in July and it was Conte being in the European Council. So it's really the basic of all the construction and these are commonly agreed rules because we think that we share a same currency and we need to have some kind of frame for budgetary policy. So if we as guardian of the rules are not able to enforce them, then you lose the rest of the troops,</p>	

	and then you lose your power because it just relies on peer pressure.'	
European Commission (2018a; 2018f)	Commission stating that revised DBP did not contain many changes, that there was still a great risk of non-compliance and that based on this, an EDP should be opened.	These observations, stemming from official documents, are of high uniqueness . They indicate that given the data, the Commission stated the breach by concluding that an EDP should be opened. The deviation is very significant and the Commission clearly acts upon this basis. The observations clearly correspond to the expected fingerprints.
Interview COM 10	<p>'[...] the majority of the people here genuinely believed that we had to do something because that was a natural consequence of rejecting the DBP.'</p> <p>'[...] what is a bit odd, is that you sort of use your nuclear weapon, which is to reject the budget, and then the country says, sorry guys, but I figure it's a great budget, I chose to keep it, and then they resend the same, and then you say ok, fine, that's fine. So considering the high debt of Italy, we thought it cannot stop here. [...] So it was a bit of a natural step to say ok, you are not compliant with the preventive arm, you don't want to be compliant with the preventive arm, because we have asked you to correct, you don't want to correct. We have always said, as long as you are compliant with the preventive arm, you are fine on the debt side, you are no longer complying with the preventive arm, you are no longer complying on the debt side, so it was a natural step.'</p>	This interview observation is of high uniqueness . It indicates that the Commission perceived the data as clear and therefore recommended the opening of an EDP. It clearly corresponds to the expected fingerprints by linking clear data to pointing out the breach.
Interview COM 2	'We were aware of the fact that this would have a market impact. I don't think it has influenced the decision itself. It has influenced the timing of the steps. For instance when we sent the letter to Italy, [...] the letter was handed over personally [...] during the day. We only put it on the website after the stock markets had closed [...]. I think we also, in our oral communication, have been as constructive and non-alarmist as possible. So that was a clear choice behind that not to fuel and further market reaction because, I mean the fact was indeed that markets could have disciplined Italy much more than we can, but it would have come at	This interview observation indicates with moderate uniqueness that the Commission recommended opening an EDP because the data was clear. It indicates that the Commission acted despite other negative consequences, however, and that the Commission had the objective of economic improvement in mind.

	<p>a huge cost for the Italian economy and we also didn't want that to happen in a way. So our reactions were always aimed at [...] limiting the market disciplining factor as much as possible, knowing that it would happen anyway. [...] When Moscovici or Dombrovskis gave a little bit of a message, it was rather with the impact to reduce the market pressure because the interest rates were already at a level that was no longer sustainable at that moment.'</p> <p>'I think it was a bit of a disciplining act. I mean, perhaps without it, there would not have been enough market pressure. So it was finding a bit the right balance [...].'</p>	
Given the overall high level of empirical uniqueness, this part can be regarded as confirmed.		
Part 2	The Commission fosters dialogue, cooperation, and further effort	
Activities	When having detected and signalled a Member State's conflict with the norm of cooperation, the Commission interprets its role as reliable supervisor in the sense that it should fulfil and sustain the norm of cooperation in line with the goal-orientation of the setting. This is done by fostering the dialogue and further fiscal effort, which aims at improving the fiscal situation. Fostering cooperation is deemed more in line with the Commission's obligations than the enforcement of punitive measures. In acting towards its objectives, the Commission is expected to act strategically. For example, it can make the avoidance of additional steps under the surveillance procedure conditional upon the delivery of further measures or apply the rules flexibly as a means to foster cooperation.	
Expected fingerprints	Interview data, official documents, or news coverage that show that the Commission fostered cooperation and dialogue and expected further effort that would lead to an improvement of the fiscal and economic situation.	
Source	Observations	Empirical Uniqueness
European Commission 2018c; 2018e)	Commission stating in letters that it was open for dialogue and that it expected the Italian government to change its budgetary planning.	This observation, stemming from publically available letters, is highly unique . It indicates that the Commission was actually interested in a dialogue and in the improvement of the fiscal data. Stating that a dialogue is wanted might have been just rhetoric, but at the same time, had the Commission wanted to stop cooperation and resort to punishment immediately, it is conceivable that it could have been more direct in its actions and less forthcoming. For example, it might not have consulted Italy prior to the submission of the DBP.

Brunsdon <i>et al.</i> (2018)	Commissioner Moscovici stating publicly that despite the rejection of the DBP, the Commission was interested in dialogue.	This observation indicates with high uniqueness that the Commission was interested in further effort. Again, should it have wanted to resort to punishment immediately, it is unlikely that it publicly states that it wants a dialogue.
Interview COM 10	‘Of course, it’s a defeat of Europe, a defeat of the European spirit, and the spirit of cooperation. [...] The Commissioners always said we reject the budget, but nonetheless, we would like to have a constructive dialogue with Italy, we stand ready [...]’	This observation indicates with moderate uniqueness that the Commission was interested in holding a dialogue. It clearly corresponds to the fingerprints, but it partly merely reflects what the Commissioner stated in public.
Moscovici (2018)	Commissioner Moscovici stating that he is not interested in punishment but in dialogue.	This observation is highly unique . It indicates that the Commission was interested in further effort. It is unlikely that the Commissioner would state this and not accept further measures should they be delivered in order to avoid further enforcement steps.
Interview COM 10	‘We have rejected so to speak the budget twice. So there, exchanges at technical level were limited. But then, for a number of reasons, the negotiations started and then the exchanges were very frequent, very smooth, it was very intensive, it was concentrated on three weeks in December, I would say, and we were really quite well organized on that side, but also on the Italian side, so that we were negotiating at the technical and then reporting back almost instantaneously to the political levels here and in Italy.’	These interview observations are of high uniqueness . They indicate that the Commission was interested in dialogue and further effort. The interviewees clearly describe that an exchange took place and that intensive negotiations were held.
Interview COM 3	‘It seemed that things were moving rather quickly towards an outcome where an EDP would be opened in January or February 2019, but then there intervened a period, between the G20 summit in Buenos Aires at the end of November and the middle of December, of very intense negotiations with the Italian authorities. They made a number of commitments to, first of all, revise their macro-outlook to something that was more credible and secondly, to delay the introduction of a number of measures to later in 2019 and also to delay a number of spending decisions to the following year. And they made a number of other changes to their budget [...]’	

Interview COM 10	‘And there I think President Juncker has probably played a personal role in that story. He met with the Prime Minister Conte several times, and then the dynamic changed. I got convinced personally that we could have an agreement. And Conte also played the role of honest broker between the two big shots, Salvini and Di Maio.’	
Given the overall high level of empirical uniqueness, this part can be regarded as confirmed.		
Part 3	The Commission avoids punitive action	
Activities	Given the Commission’s openness towards dialogue and further effort by the Member State concerned, and the actual commitment to or delivery of measures, the norm of cooperation and the Commission’s obligation to sustain this norm are deemed fulfilled. In addition, imposing sanctions might entail other negative repercussions that go against the Commission’s role as reliable supervisor, such as triggering negative economic and fiscal consequences, threatening future cooperation and enforceability, and harming public support towards the Commission and the European project. Sanctions are accordingly not in line with the perceived obligations of the Commission in the situation at hand – and are therefore deemed inappropriate. In order to avoid their imposition, the Commission is expected to apply the rules flexibly, thereby engaging in strategic action.	
Expected fingerprints	Interview data, official documents, or news coverage that show that the Commission was of the opinion that imposing sanctions was not warranted in light of Member State cooperation and might have had negative consequences, and that it opted for a flexible rule application.	
Source	Observations	Empirical Uniqueness
Interview COM 3	‘[...] the outcome of the dialogue between the Commission and the Italian authorities was that Italy made a number of commitments that reduced the gap basically by around 0.6% of GDP. [...] it was enough of a change for us to conclude that opening an EDP at that stage would no longer be a clear-cut case.’	This observation is of moderate uniqueness . It indicates that punitive action was not warranted in light of Member State cooperation. It might be conceivable, stating from this information, that other reasons contributed to the decision.
Interview COM 10	‘They changed significantly. They put 10 billion more on the table. They changed their macroeconomic assumptions. From the point of view of the Commission, it’s a big success. It’s a success of cooperation. We had a Member State which was on a totally antagonist path, and where you [...] can do a lot of things, but none of this will work if they don’t want to abide by anything even under an EDP, even under the corrective arm. Even if we sanction them, they will not	This observation indicates with high uniqueness that punitive action was not seen as warranted given the cooperation of the Italian government. It very clearly corresponds to the expected fingerprints. It might be conceivable that the effort done by Italy is overestimated. However, the same interviewee also claimed that the approach of the Commission was that getting something was better than getting nothing. (see below)

	comply, and so what? So you always need to create a bit of buying in. That's the only way. So from that perspective, I mean they came back to the table, we had meetings during the whole day, on many days, intensive dialogue etc. and then they change significantly.'	
Interview COM 10	Interviewee confirming that the approach of the Commission was that small changes to the budget were better than receiving nothing.	This interview observation is of moderate uniqueness . It indicates that sanctions were not warranted in light of the overall cooperative behaviour. It does not clearly link cooperation and not taking further steps, but the link is suggested.
	'I think the opening of the EDP would not have made the trick at all. We would have antagonized them even more, I think.'	This interview observation is of high uniqueness . It indicates that the Commission was aware of other negative consequences of taking further steps.
Interview COM 7	'A decision was taken, namely that one wants to negotiate. This was also the strong desire of the President. And this you could also feel in the Eurogroup – also many national governments have encouraged us to do so. If the desire is to negotiate, then you have to negotiate as far as possible. And this is why we have negotiated until we had achieved a black zero regarding the debt level.'	This interview observation indicates with moderate uniqueness that no further steps had been taken because of the cooperation that occurred. The link is not directly stated, but strongly suggested.
Interview COM 3	'[...] market pressure, together with the openness of the Commission to engage in a constructive dialogue with the Italian authorities, led to the outcome that we saw, which was some objectively quite significant changes to their plans, such that it became more of a borderline case, and so we left things on hold'	This observation indicates with moderate uniqueness that cooperation was a key factor in not taking further steps. However, it strongly suggests this, as the openness of the Commission and market pressure that led to further effort are seen as a prerequisite for not going towards punitive steps.
Interview COM 3	'[...] the gap to projected compliance was significantly reduced, and we were able to conclude that they moved from being a case of particularly serious non-compliance to being a country in a similar situation to others in the autumn package of 2018, basically being at risk of significant deviation. So we concluded that a debt-based EDP was no longer warranted at that stage.'	This observation indicates with moderate uniqueness that the Commission has resorted to a flexible application of the rules. It is, however, suggested.
Interview COM 10	'In the final agreement, we have granted to Italy quite a lot of flexibility to big	This observation indicates with high uniqueness that the Commission has

	programmes; to rebuild the roads and bridges in the aftermath of the collapse of the bridge in Genua and also to launch a big prevention programme against the risk of floods. So that is flexibility we preventively granted to them.'	resorted to a flexible application of the rules. It clearly corresponds to the expected fingerprints.
European Commission (2019b)	Commission assessment of the fiscal data, indicating that no particularly serious non-compliance was present anymore.	This observation is of high uniqueness . It indicates that the Commission has resorted to a flexible application of the rules. The Commission states that unusual events are taken into account.
Economic and Financial Committee (2019), Khan (2019) and European Fiscal Board (2019a)	Criticism by Member States and assessment of the EFB of the Commission's actions.	These observations are of high uniqueness . They indicate that the Commission has resorted to a flexible application of the rules. The actors might have an interest in claiming that the Commission is overly flexible. However, the points raised clearly relate to the procedural rules and are comprehensible, so that the criticism can be seen as valid.
Given the overall high level of empirical uniqueness, this part can be regarded as confirmed.		