

Avoiding the Inappropriate: The European Commission and Sanctions under the Stability and Growth Pact

Martin Sacher, September 2021

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Rules on fiscal policy surveillance and financial sanctions have been an integral part of Economic and Monetary Union (EMU) since its inception. These provisions have, however, always been a source of dispute. After a softening of the EU's budgetary surveillance framework in 2005, additional reforms were deemed necessary in the aftermath of the financial crisis and the subsequent sovereign debt crisis. Amongst others, this latest reform intended to limit the role of the Council concerning the imposition of sanctions (EU Regulation of 16 November 2011, 2011). The reform has indeed formally increased the Commission's power vis-à-vis the Council (Bauer & Becker, 2014; Dehousse, 2016; Seikel, 2016; Van Aken & Artige, 2013), without, however, discarding from the rulebook the flexibility provisions introduced in 2005.

While the application of the surveillance rules was never a purely technical exercise, the degree to which political considerations should interfere with technical surveillance is the source of recurrent debate. Similarly, the respective roles of the Council and Commission, as well as their relationship, are far from consensual and static. While at the beginning of EMU, the Commission was supposed to act as the technical supervisory authority, it has become clear under President Juncker that the Commission is willing to enforce the budgetary rules politically. This development continued under Commission President von der Leyen, under whom the fiscal requirements of the Stability and Growth Pact (SGP) were even temporarily suspended in the wake of the COVID-19 crisis. Despite the post-crisis reinforcement of coercive provisions, the Commission has indeed applied the SGP flexibly (Mabbett & Schelkle, 2014; Schmidt, 2016), and has not proposed sanctions based on the SGP for non-compliance with fiscal recommendations, although this would have been possible in several cases. The published article therefore asks how we can best explain why the Commission has so far refrained from proposing financial sanctions. The article draws upon an adaptation of normative institutionalism (see March & Olsen, 2011; Peters, 2019). It argues that while actor behavior follows a logic of appropriateness, actors act strategically to pursue their objectives. Applying minimalist process-tracing methods (see Beach & Pedersen, 2019), Commission behaviour is explained by a mechanism that is entitled *normative-strategic minimum enforcement*. It argues that because punitive action is not perceived as appropriate in the cases at hand, the Commission strategically refrains from applying existing enforcement provisions to their full extent. The published article draws upon three post-crisis cases in which the imposition of sanctions for fiscal non-compliance was possible. These are the cases of Belgium in 2013, France in 2015 and the double-case of Spain and Portugal in 2016.

The analysis of the published article shows that, when assessing member states' fiscal performance, the Commission acts within the boundaries of its flexibility. If the data clearly indicates non-compliance, the Commission states that no effective action has been taken. In line with its role as Guardian of the Treaties, it avoids showing too much leniency. If, however, the data on fiscal performance is less clear, it uses the flexibility of the SGP and avoids steps that might lead to punitive action. Even if based on its assessment of non-effective action, the Commission is immediately required to envisage sanctions, it applies the rules in a way that ultimately does not lead to the imposition of fines. Financial sanctions are seen as an inappropriate measure by the dominant Commission actors for several reasons. They are economically counterproductive, they might create conflict with member states that could damage the credibility of the overall surveillance framework and they would be difficult to justify vis-à-vis the European public. They accordingly go against the actors' self-image of the Commission as an institution

that should work towards a cooperative and growth-enhancing system of economic and fiscal policy coordination and surveillance. In a context of ambiguous rules, a strict reading of the rules is therefore set aside to the benefit of a flexible reading. This means that the Commission acts strategically in pursuing the objectives it deems appropriate.

Despite the reinforcement of coercive provisions under the SGP, there is no automaticity in their application. Cooperative behaviour and reform efforts—even if small—are sufficient for the Commission in order not to resort to punitive action. The idea of a cooperative relationship between the Commission and member states shapes the practice and the politics of the SGP and appears to trump considerations concerning the potential benefits that may result from imposing financial sanctions. Despite some hawkish voices within the Commission, most Commission actors seem less and less inclined to trigger financial sanctions under the SGP, thereby—at least indirectly—contesting the benefit and legitimacy of resorting to punitive measures. The European Fiscal Board, the Commission’s independent advisory body on the implementation of fiscal rules, goes so far as to call for abandoning financial sanctions given their difficult enforceability in the current political context. Instead, it calls for a move towards a more incentivizing framework (see European Fiscal Board, 2020). Surveillance under the SGP has been largely put on hold in the wake of the COVID-19 crisis and it is not yet clear when or if the EU will go back to applying the fiscal surveillance framework in its current form (see Fleming & Brunnsden, 2020). If the rules are not reformed and the current sanctioning provisions are maintained, they will most likely stay there, never to be applied (see European Fiscal Board, 2020), unless, perhaps, in the case of a member state’s fundamental, overt and continuous rejection of the EU’s fiscal surveillance framework.

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