Constitutional Change through Euro-Crisis Law
Workshop on Friday and Saturday 18 October 2014
European University Institute

STATE-REGION DIMENSIONS OF EURO-CRISIS LAW

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1. Introduction

The sovereign debt crisis has been the single most formative event of the recent years for the political and constitutional orders of the 28 Member States and of the European Union as a whole. In order to respond to the enormous pressures coming from the financial markets, the EU and its Member States had not only to resort to their existing legal toolkit but also to amend it significantly. The extraordinary circumstances required extraordinary measures. Treaty amendments, constitutional amendments, signing of international treaties, use of emergency procedures are some of the measures that have been adopted in order to face the challenges that the sovereign debt crisis has been setting.

Those legal instruments that have been adopted at European or international level in reaction to the Eurozone crisis and their implementation at the national level have unsurprisingly also influenced the relations between central and regional governments. So, despite the conventional wisdom that suggests that the Union is 'blind' to the internal territorial and constitutional arrangements of its Member States,[1] Euro-crisis law has had an important impact on the constitutional balance of powers at national level. The present paper tries exactly to assess such impact on the State-Region relations.

It is structured as follows. The following section presents the constitutional entrenchment of the 'golden rule' of balanced budgets both for central and

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[1] See eg HP Ipsen, 'Als Bundesstaat in der Gemeinschaft', in E von Caemmerer, HJ Schlochauer and E Steindorff (eds), *Probleme des europäischen Rechts : Festschrift für Walter Hallstein*, 248.

regional governments in a number of multi-level constitutional orders. It traces how this idea of fiscal constitutionalism that has characterised the relations of the German *Bund* with the *Länder* has been transplanted to the constitutional orders of almost all Member States. Section three assesses the centralising effect of such rules of fiscal discipline by reference to the relevant constitutional amendments and the new intergovernmental bodies that have been created. The last section discusses the only possible exception to the re-centralising trend: the Scotland-UK relations in the post-referendum era and tries to understand its broader significance.

2. The 'Golden Rule': The migration of a constitutional idea

The migration of constitutional ideas across jurisdictions is one of the central features of contemporary constitutional practice.[2] Constitutional notions, procedures and techniques coming from abroad are transplanted in order to provide for 'alternative models of constitutional virtue' or 'a broader range of constitutional techniques in the search for the optimal means towards the realisation' of a given end.[3] Within the field of fiscal constitutionalism, there is a growing tendency within the European constitutional landscape that favours the introduction of the 'golden rule' of a balanced budget in every fiscal year. Such constitutionally entrenched rules of fiscal discipline have been created as a response to the current financial crisis.

The signing of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (hereafter Fiscal Compact)[4] underlines this growing trend. The overall objective of the Fiscal Compact is to reaffirm 'the need for governments to maintain sound and sustainable public finances and to prevent a general government deficit [from] becoming excessive […] [in order] to safeguard the stability the euro area as a whole.'[5] To achieve that, the Contracting Parties have to introduce in their legal orders an obligation to

[2] On the migration of constitutional ideas see in general S Choudhry (ed), *The Migration of Constitutional ideas* (Cambridge, Cambridge University Press, 2011).
[3] N Walker, 'The Migration of the Constitutional Ideas and the Migration of the Constitutional Idea: The Case of the EU' EUI Working Paper Law No. 2005/04, 1.
[4] Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, available at http://european-council.europa.eu/media/639235/st00tscg26_en12.pdf (hereafter TSCG).
[5] TSCG, Preamble, third recital.

respect the 'golden rule' of a balanced budget in every fiscal year.[6] They should do that 'through provisions of binding force and permanent character, preferably constitutional, or otherwise guaranteed to be fully respected and adhered to throughout the national budgetary processes.'[7] In fact, Article 3(1)(b) clarifies that the 'golden rule' is deemed to be respected if the 'annual structural balance of the general government' is 'with a lower limit of a structural deficit of 0.5% of [GDP] at market prices'. '[T]he Contracting parties may temporarily deviate from [the rule] in exceptional circumstances'[8] which include any 'unusual event outside the control of the Contracting Party concerned which has a major impact on the financial position of the general government or to periods of severe economic downturn.'[9] 'In the event of significant observed deviations from the medium-term objective or the adjustment path towards it', corrective mechanisms are automatically triggered.[10]

Arguably, the explicit requirement provided by the Fiscal Compact for constitutional amendments in the EU Member States is rather uncommon for the Union legal order. However, this does not mean that it is the Fiscal Compact that first included such provisions of fiscal discipline.[11] In fact, such requirements for balanced budgets have been enshrined in national constitutions even before the signing of the Fiscal Compact. More importantly for the purposes of the present paper, they were characterising not only the 'fiscal behaviour' of the relevant governments but also its relationship with the sub-state tier. In other words, in the same way that the Fiscal Compact provides that the Member States should respect the 'golden rule' of balanced budget in every fiscal year, there were rules within national constitutional orders that were requesting equivalent fiscal discipline not only from the central government but also from the sub-state tier. The clear forerunner in this field has been Germany. As we will see, the 'Second Reform of Federalism' (*Föderalismusreform II*) has served 'as a blueprint for

[6] TSCG, Art 3.
[7] TSCG, Art 3(2).
[8] TSCG, Art 3(1)(c).
[9] TSCG, Art 3(3)(b).
[10] TSCG, Art 3(1)(e).
[11] For an analysis of the 'golden rule' in the constitutional orders of Member States see among else, F Fabbrini, 'The Fiscal Compact, the 'Golden Rule,' and the Paradox of European Federalism' 36 *Boston College International and Comparative Law Review* (2013) 1 and G Delledonne, 'Financial Constitutions in the EU: From the Political to the Legal Constitution?' STALS Research paper n. 5/2012.

reform throughout Europe, both at the national and international level'.[12] In particular, both the above mentioned structure of the Fiscal Compact and the constitutional amendment of Article 135 of the Spanish Constitution follow very closely the German paradigm.

i. Germany

Germany introduced an early version of the 'golden rule' in the late 1960s. It was the first Grand Coalition in fact that amended the financial part (*Finanzverfassung*) of the Basic Law by passing the Law on Stability.[13] That version of the 'golden rule', as codified in the then Article 115(1) of the Basic Law, admitted public debt provided that most of the revenue obtained by means of borrowing would be used to finance investments.[14]

Notwithstanding being the forerunner in the constitutional entrenchment of fiscal discipline, the German Federal Constitutional Court cast some serious doubt about the effectiveness of that early version of the 'golden rule'. In a decision in 2007, it held that 'the normative programme of Article 115(1), second sentence, of the Basic Law has actually turned out not to work efficiently as a constitutional instrument of rational taxation and limitation of the state debt policy.'[15] More importantly, however, it was the financial instability of some *Länder*, including Berlin that applied for a budgetary emergency,[16] which convinced the German political elites to agree on the 'Second Reform of Federalism' that entailed the introduction of the modern 'golden rule', that has been so influential.

According to Article 109(3)[17] of the Basic Law, the *Bund* and the *Länder*

[12] *Ibid*., 8.
[13] Law on the Promotion of Stability and Economic Growth (*Gesetz zur Förderung der Stabilität und des Wachstums der Wirtschaft* of 8 June 1967)
[14] Art 115(1) of the German Basic Law provided that '[t]he borrowing of funds and the assumption of pledges guarantees or other commitments, as a result of which expenditure may be incurred in future fiscal years, shall require federal legislative authorization indicating, or permitting computation of the maximum amount involved. Revenue obtained by borrowing shall not exceed the total expenditures for investments provided for in the budget; exceptions shall be permissible only to avert a disturbance of the overall economic equilibrium. Details shall be regulated by federal legislation.'
[15] German Federal Constitutional Court, judgment of the Second Senate of 9 July 2007 (BVerfGE 119, 96, 142 f.)
[16] Delledonne, 'Financial Constitutions in the EU' (above n 11), 8.
[17] Article 109(3) of the German Basic Law reads: 'The budgets of the Federation and the *Länder* shall in principle be balanced without revenue from credits. The Federation and *Länder* may

must generally balance their budgets in terms of revenues and expenditures without net borrowing. And while with regard to 'the Federation, this principle is considered to be met if net borrowing does not, under "normal economic conditions" (ie. when the output gap is closed), exceed 0.35 % of GDP[, n]o such scope for structural net borrowing is foreseen for the *Länder* budgets.'[18] In fact, from 2020 onwards, structural deficits will not be permissible for the *Länder*.[19]

The 'Second Reform of Federalism', however, did not just enshrine a 'debt brake' provision (*Schuldenbremse*) to the German Basic Law. It also envisaged the creation of an enhanced mechanism for the better management of budgetary emergencies under Article 109a. To this effect, a Stability Council comprised of the federal finance minister, the federal economy minister and the finance ministers of the *Länder* was created to continuously supervise the budgetary management of the central and the sub-state level.[20] In other words, this Council that was created with the consent of the *Bundesrat* provides for a preventive system that is designed to avoid excessive fiscal indebtedness in the future.

ii. Austria

But it was not only Germany that had introduced rules of fiscal prudence before the signing of the Fiscal Compact. In the neighbouring Austria, the central government, the *Länder,* and the municipalities signed a Stability Pact in 2008. According to it, 'the *Länder* have to reach a fixed budgetary surplus, whereas the federation is allowed a fixed deficit and the municipalities at least a balanced

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introduce rules intended to take into account, symmetrically in times of upswing and downswing, the effects of market developments that deviate from normal conditions, as well as exceptions for natural disasters or unusual emergency situations beyond governmental control and substantially harmful to the state's financial capacity. For such exceptional regimes, a corresponding amortisation plan must be adopted. Details for the budget of the Federation shall be governed by Article 115 with the proviso that the first sentence shall be deemed to be satisfied if revenue from credits does not exceed 0.35 percent in relation to the nominal gross domestic product. The *Länder* themselves shall regulate details for the budgets within the framework of their constitutional powers, the proviso being that the first sentence shall only be deemed to be satisfied if no revenue from credits is admitted.'

[18] Federal Ministry of Finance – Economics Department, Public Finance and Economic Affairs Directorate, Deficit Rule Reform Team, 'Reforming the Constitutional Budget Rules in Germany', 4; available at http://www.kas.de/wf/doc/kas_21127-1522-4-30.pdf?101116013053.

[19] *Ibid*.

[20] German Basic Law, Art 109a(1).

budget.'[21] It is interesting to note that although the Pact was not formally forced upon them, since their consent was needed,[22] politically they were left with no other choice than accepting it. The reason being that unless they had accepted the pact, 'the federation would […] have reduced their revenues from federal shared taxes.'[23]

iii. Spain

If there is, however, one constitutional order that has been particularly influenced by how the 'Second Reform of Federalism' had enshrined the 'golden rule' before the signing of the Fiscal Compact, that would be the Spanish one. Given the financial turmoil undergone, it is perhaps the most interesting case of enacting a legal framework for curbing the public debt and the deficit before the Fiscal Compact was created.

Following widespread concerns about the unsustainably high cost of Spanish bond yields and the public finances of the State and the Autonomous Communities in general, Article 135 of the Spanish Constitution was amended on 27 September 2011 in order to introduce the rule of balanced budgets within the Spanish constitutional order. Until then, Article 134 which consisted of the fundamental provision in the Spanish 'financial Constitution' was mainly providing that the national executive was the central actor in budgetary processes and enhancing its pre-eminence vis-à-vis the legislature. However, the 2011 constitutional reform did not appear out of the blue. In fact, it built on an 'existing "internal stability pact" legal framework, a set of laws approved in 2011 and reformed in 2006[24].'[25] The primary objective of that set of laws had been the coordination of the deficit in a highly decentralized country.[26]

According to the amended Article 135(2) 'the State and the Self-governing Communities may not incur a structural deficit that exceeds the limits

[21] E Argullol i Murgadas and C Velasco Rico (eds), *Institutions and Powers In Decentralized Countries* (Barcelona, Col·lecció Institut d'Estudis Autonòmics, 2011), 657.
[22] The Stability Pact follows the types of treaty under Art 15a of the Austrian constitution.
[23] Argullol i Murgadas and Velasco Rico, *Institutions and Powers In Decentralized Countries* (above n 21), 657 referring to section 24(9) of the Financial Equalisation Act (*Finanzausgleichsgesetz*).
[24] The first Budgetary Stability Law was the 'Ley 18/2001, de 12 diciembre, General de Estabilidad Presupuestaria', modified in 2006 by the 'Ley 15/2006, de 26 de mayo'
[25] V Ruiz Almendral, 'The Spanish Legal Framework for Curbing the Public Debt and Framework' 9 *European Constitutional Law Review* (2013) 189, 190.
[26] *Ibid*.

established by the European Union for their Member States.' It is an organic law,[27] however that determines 'the maximum structural deficit the State and the Self-governing Communities may have, in relation to their gross domestic product'.[28] On 27 April 2012, Organic Law 2/2012, was approved to this end. [29]

As mentioned, the amendment of the constitutional provision *per se* was approved three months before the Fiscal Compact. It largely follows the German paradigm as provided for in Articles 109 and 115 of the Basic Law. On the other hand, the Organic law was approved five months after the snap election of November 2011 that gave an absolute majority to the jacobin *Partido Popular* and four months after the signing of the Fiscal Compact. Thus the influence of the European framework is noticeable. In fact, one commentator has said that the organic law mimics the European framework to the extent that 'it treats the Autonomous Communities as Member States (they may thus be "bailed out" and their budgets are closely monitored by the central government, which in its capacity resembles the Commission) and the Spanish Constitutional Court as the Court of Justice of the European Union.'[30] So, for instance in order the Autonomous Communities to take advantage of the 'Regional Liquidity Fund' (*Fondo de liquidez autonómica*) they have to comply with the 'budgetary measures or other economic or budgetary measures undertaken by the Ministry of the Treasury.'[31]

More importantly for the purposes of the current paper, Article 10(3) of the Law allows the central government to provide for any measure to ensure the full coordination of the budgetary policies of the Self-Governing Communities.[32] To this effect, the Fiscal and Financial Policy Council (*Consejo de Política Fiscal y Financiera*), an intergovernmental body, which is the rough counterpart of the German Stability Council plays a crucial role. The fiscal targets that are set by the

[27] According to Art 81 of the Spanish Constitution, 'Organic acts are those relating to the implementation of fundamental rights and public freedoms, those approving the Statutes of Autonomy and the general electoral system and other laws provided for in the Constitution'. They have to be approved by an absolute majority of the Parliament (176 deputies out of the 350).
[28] Spanish Constitution, Art 135(2).
[29] Ley orgánica 2/2012, de 27 de abril, de Estabilidad Presupuestaria y Sostenibilidad Financiera.
[30] Ruiz Almendral, 'The Spanish Legal Framework', (above n 25) 195.
[31] *Ibid*.
[32] *Ibid*., 196.

Organic Law entail a zero structural deficit[33] and a public dept that cannot surpass 60 per cent of the GDP.[34] The latter is compartmentalised into 44 per cent for the central government, 13 per cent for the sub-state level and 3 per cent for the local level. In the event that the Autonomous Communities do not respect those targets, Chapter IV provides for a system of sanctions. 'There is a prevention phase where measures may be proposed to subnational entities and a correction phase with the possibility of monetary sanctions.'[35]

iv. Italy

Unlike its German counterpart that has underlined that the earlier version of the 'golden rule' was largely ineffective,[36] the Italian Constitutional Court has been rather shy in voicing concerns over fiscal policy. In fact, it has accepted that the quest for a balanced budget should be seen as a political goal rather than a legal obligation. In a famous decision in 1966 it held that 'it is clearly possible [for the government] to… make debts in order to provide the means for future spending'.[37] So, it comes as no surprise that the constitutional entrenchment of the 'golden rule' took place after the signing of the Fiscal Compact during the Monti administration.

According to the amended Article 81, '[t]he State ensures the balances of state revenue and expenditure in its budget whilst taking account of the adverse and favorable phases of economic cycle.' Such obligation of a balanced budget is also extended to the Regions pursuant to Article 119. This Article provides for the obligation of the regional level to 'ensure compliance with the economic and financial constraints imposed under European Union law.' Regions 'may only contract loans to the purpose of financing investments, with the concomitant adoption of amortization plans and subject to the condition that budget balance is ensured for all authorities within each region taken as a whole' and with the exclusion of any guarantee issued by the State.[38] Finally, Constitutional Law n.

[33] Organic Law 2/2012, Art 11(2). The deficit may be increased to a maximum of -0,4 GDP if structural reforms with long term effects are undertaken.
[34] Organic Law 2/2012, Art 13.
[35] Ruiz Almendral, (above n 25) 197.
[36] See above n 12.
[37] Italian Constitutional Court, *sentenza* no. 1/1966.
[38] Italian Constitution, Art 119(6).

1/2012 which amended the aforementioned Articles 81 and 119 among else is 'autonomously the source of adoption of other [instruments of] "Euro-crisis law"'[39] including the establishment of 'an independent body [ie. a Fiscal Council] entrusted with analyzing and reviewing the performance of public finance and assessing compliance with budgetary rules'.

v. Belgium

In order to complete the picture it should be mentioned that even in the case of Belgium that only ratified the Fiscal Compact last April, and it has yet to introduce the 'golden rule' in its constitutional order, a similar provision exists. There, the Federal State can fix the limits of the budgetary deficit having in mind the shared goals in the Eurozone and the 'stability pact'.[40]

vi. Remarks

In this part of the paper I tried to show that the main constitutional characteristic of the State-region dimensions of Euro-crisis law has been the constitutional entrenchment of the 'golden rule' of balanced budgets both at the State and the sub-state level. It seems that it is not only central governments that should balance their budgets or achieve fiscal surpluses. The sub-state level – notwithstanding the level of fiscal autonomy it enjoys- has to follow the same rule. This is why all Member States with legislative regions to which I have referred have introduced one way or the other rules of fiscal discipline that apply to all levels of government either before or after the signing of the Fiscal Compact.

At the same time, I tried to trace the migration of the constitutional idea of 'balanced budgets' from the German constitutional order to the Fiscal Compact and from the Fiscal Compact to those constitutional orders that had not enshrined similar rules beforehand. It is really remarkable that a rule, which was part of the constitutional tradition of one Member State influenced the constitutional amendment of another one and ended as an integral part of the vast majority of the European legal orders through an international treaty.

[39] L Pierdominici, 'Constitutional Change through Euro-Crisis Law: Italy', available at http://eurocrisislaw.eui.eu/italy/.
[40] Argullol i Murgadas and Velasco Rico (above n 21), 657.

3. The (Re)centralising effect of the crisis

There is hardly any doubt that the sovereign debt crisis has provided for a very serious test of the efficiency and the effectiveness of the political and legal toolkit both of the Member States and the European Union as a whole. The EU and its Member States had to create a whole new set of political and legal instruments in order to cope with the pressure that the crisis was creating. At the EU level, treaty amendment,[41] enactment of secondary legislative instruments[42] and even the signing of international treaties[43] have created this new body of Euro-crisis law. At the national level, constitutional amendments,[44] enactment of special legislation,[45] use of emergency procedures,[46] creation of technocratic governments[47] are some of the techniques that have been used in order to deal with the sovereign debt crisis.

If there is one common characteristic of this very diverse otherwise list of instruments, procedures and techniques, it is probably the fact that they all try to enhance the power of the given executive in order to deal in a speedy manner with the pressure that the markets exercise. In that sense, it comes as no surprise that the new EU economic constitution including the Fiscal Compact is favouring a centralization of powers.[48] In a similar manner, the political and constitutional instruments that the Member States have used are pointing to a re-centralisation of powers of the sub-state level.

First, the curtailing of the fiscal autonomy of the sub-state level is evident in the constitutional amendments to which we referred in the previous section. Germany, Austria, Spain and Italy have opted for the constitutional entrenchment of the 'golden rule' of balanced budgets. More importantly for the purposes of the current paper they have extended it to the regional level. In

[41] See for example the amendment of Art 136(3) TFEU.
[42] See for example the 'Six-pack' which is a package of six legislative measures (five regulations and one directive) improving the Economic governance in the EU.
[43] See for the example Fiscal Compact
[44] See for example section 2 of the present paper.
[45] *Ibid*.
[46] See for example the use of the doctrine of necessity in the Greek legal order in N Skoutaris, 'On Sovereign Debt Crisis and Sovereignty: A constitutional law perspective on the Greek crisis' presented in the first Marie Curie Workshop in Liverpool University on 13.06.2014 [on file with the author].
[47] See for example, the Monti and the Papademos' administrations in Italy and Greece respectively.
[48] Ruiz Almendral, (above n 25) 201; Fabbrini, 'The Fiscal Compact' (above n 11).

other words, the legislative regions of those States are constitutionally obliged to achieve the budgetary goals that are set by the States. In almost all the occasions –notwithstanding the existence of transitional periods- the States have gone beyond the goal of budgetary stability established by the Union. In the case of Spain, a number of Autonomous Communities have aired their dissatisfaction with such regulation stating that it intensely undermines their spending autonomy.[49]

But it is not only the codification of the 'balanced budget' rule that could be understood as limiting the fiscal autonomy of those regions with legislative competences. In certain Member States the division of competences has been amended in order to make sure that the central government is responsible for the supervision of fiscal discipline. The prime example is Italy. Before the enactment of Constitutional Law n. 1/2012, which has amended Articles 81, 97, 117 and 119 of the Italian Constitution 'the harmonization of public budgets' was shared between the State and the Regions. Now, it is an exclusive competence of the central State.[50]

Second, the creation of councils for the continuous supervision of the budgetary management of the central and the sub-state level provides for another possible limit to the fiscal autonomy of the regional governments. The Fiscal and Financial Policy Council in Spain and the Stability Council in Germany are examples of such intergovernmental bodies. They have been created to provide for a preventive system that is designed to avoid excessive fiscal indebtedness in the future in all levels of the government. In that sense, they enjoy powers that allow them to influence the fiscal policy of the sub-state governments. For instance, at its third meeting in late May 2011, the German Stability Council determined the looming budgetary emergency in the four *Länder* of Berlin, Bremen, Saarland und Schleswig-Holstein. Consequently, those four states were asked to devise five-year restructuring programmes mapping

[49] See for example the formal complaint that the Autonomous Community of the Islas Canarias has filed before the Constitutional Court. Complaint No.557-2013 as published in the *Official Gazette*, 'Boletín Oficial del Estado' of 9 March 2013.
[50] Italian Constitution, Art 117.

out how they intended to eliminate their budget imbalances.[51] In other words, this body that comprises of the federal finance minister, the federal economy minister and the finance ministers of the *Länder* -much like the Troika- supervises whether the *Länder* follow the necessary political programme of fiscal discipline.

Third, another actor that may contribute to the re-centralisation of powers is the 'least dangerous branch', the judiciary. As we have already noted in the previous section, the German Federal Constitutional Court has not been shy in proclaiming that the early version of Article 115(1) was not able to secure the necessary fiscal responsibility. There is nothing that suggests that following the 'Second Reform of [German] Federalism', the Court will become less active in the field of fiscal constitutionalism. In fact, a commentator is of the opinion that given that 'the constitutional parameters of legitimacy look more precise than they used to be before 2009 – […] their justiciability should "have improved."'[52] Equally, in Spain, additional provision no 3 of the Organic Law 2/2012 clarifies that any provision that is in breach with the amended Article 135 may be challenged before the Court. Of course, those provisions should be read in light of the relevant rules of admissibility that apply both to the *Bundesverfassungsgericht* and the *Tribunal Constitucional*. Be that as it may, one has also to point out that constitutional conflicts between the two levels of government could be brought in front of both Courts. In other words, the central governments could judicially challenge the budgets of the sub-state tier. This trend of judicial review of the budgets is equally evident in Article 8 of the Fiscal Compact, which provides that if a Contracting Party does not comply with the 'golden rule' of balanced budget, the matter might be brought in front of the Court of Justice.

Last but certainly not least, the sharp cutbacks that are planned for the following years and the reduced financial allocations are definitely affecting the

[51] For more information, see in general http://www.dbresearch.com/PROD/DBR_INTERNET_EN-PROD/PROD0000000000278549/Stability+Council%3A+Financial+inspector+of+Germany%E2%80%99s+L%C3%A4nder.pdf.

[52] Delledonne, (above n 11), 16 referring to C Mayer, Greift die neue Schuldenbremse?, 136 *Archiv des öffentlichen Rechts* (2011), 266.

financial and political autonomy of all the levels of government.[53] What is special in the case of the regional level and somehow exacerbates the difficulties arising from the austerity is the strict limitations that the sub-state tier faces when it wants to ask for credit or take up loans. For instance, in Austria, although it is up to the legislative branch of the *Länder* to ask for credit, the federal government may object to such bill.[54] And even if the sub-state government sticks to its bill, a 'joint committee, consisting of representatives of both the National Assembly and the Federal Assembly, has to decide within a certain period whether the Federal Government's objection is to be maintained or not.'[55] In the cases of Italy and Spain, the amount of the credit should be devoted to investment expenditures and cannot exceed the 25% of the State income.[56] Finally, the Spanish regions have to obtain the prior authorization of the central government when the information provided by them shows that they have not been able to comply with the goal of budgetary stability.[57]

4. Driving on the left: the case of UK-Scotland post-referendum relations

In section 2, I have tried to present the main State-Region dimensions of the Euro-crisis law by reference to the constitutional entrenchment of substantial limitations to budgetary decisions. In the following section, I have tried to assess the re-centralising effect of the introduction of the 'golden rule' of the balanced budgets. And indeed, it seems that those constitutional innovations do not only entail the transformation of the economic constitutions of the Member States but also the curtailing of the spending autonomy of the sub-state tier.

It seems that the trend of re-centralisation is so powerful that it has even influenced the constitutional designing of a not yet existent multi-level constitutional order. Within the framework of the never-ending negotiations for the settlement of the Cyprus issue, one of the negotiating chapters relates with finance and in particular with the fiscal autonomy of the two constituent States

[53] S Bolgherini, 'Can Austerity Lead to Recentralisation? Italian Local Government during the Economic Crisis', *South European Society and Politics* (2014) 1, 16.
[54] Section 14 of The Financial Constitutional Act (*Finanz-Verfassungsgesetz*)
[55] Argullol i Murgadas and Velasco Rico (above n 21), 601.
[56] *Ibid*., 602-603.
[57] *Ibid*.

that will comprise of the future bi-zonal bi-communal federation. A standing request of the Turkish Cypriot community -whose goal has traditionally been to strengthen bi-zonality- has been the creation of two Central Banks. In the light of the major financial turmoil that the Republic of Cyprus has undergone, the Turkish Cypriot community has re-prioritised that demand. In addition, it seems that both communities are at least nominally willing to provide the future central government with those powers that would allow it to effectively and efficiently face a future sovereign debt crisis.[58]

Notwithstanding the widespread nature of this trend for re-centralisation that has even influenced the constitutional architecture of a future European State, there seems to be an exception: the UK-Scotland relations in the post-referendum era. It is worth reminding ourselves that the fiscal autonomy of Scotland has always been central to the debate on the constitutional status of the region. In fact, the 1997 referendum on Scottish devolution comprised of two questions rather than one. The first asked whether the Scottish electorate supported the creation of a Scottish parliament. The second asked whether the Scottish parliament should be granted the power to raise or lower income tax rates within a 3p band. And although, both answers were replied affirmatively, Holyrood never exercised the latter competence.

Be that as it may, a couple of days before the independence referendum on 18th September 2014, the leaders of the three Unionist parties, James Cameron for the Conservative, Ed Miliband for the Labour and Nick Clegg for the Liberal Democrats have pledged that 'extensive new powers for the parliament will be delivered by the process and to the timetable agreed and announced by our three parties'[59] if the Scots would reject independence. Those powers would include powers over areas such as income tax and social welfare. In fact, they have stated categorically that 'because […] of the powers of the Scottish Parliament to raise revenue […] the final say on how much is spent on the NHS will be a matter for the Scottish Parliament'.[60] According to the timetable, the detailed proposals on the new 'Home Rule Bill' will be published on October, the

[58] Interviews with Greek-Cypriot officials that participate in the negotiating team [on file with the author].
[59] On the pledge, see in general http://www.bbc.co.uk/news/uk-scotland-29443603.
[60] See in general http://www.bbc.co.uk/news/uk-scotland-scotland-politics-29252899

consultation on new powers will have been concluded by November, while the Draft Scotland Bill will be published by January and approved after the May 2015 elections.

Of course, the United Kingdom is neither part of the Eurozone nor a Signatory Party of the Fiscal Compact. In the light of how public debt is tightly controlled by the Treasury in Westminster and how the Barnett formula is working,[61] it is even questionable whether Scotland has been enjoying the level of fiscal autonomy that its counterparts in Germany, Spain or even Italy are. Having said that, one also has to take into account that the prospect of the Scottish secession has convinced the leaders of the three Unionist parties to promise a different constitutional relationship that entails the decentralisation of fiscal powers. This has happened although the UK Prime Minister has initially rejected the prospect of including the option of 'devo-max' in the referendum. Thus, one has to wonder whether the Catalan movement for independence will have similar results despite the recent re-centralisation of powers. In other words, the question is whether the re-awakening of claims for self-determination within a number of Member States could provide for a brake to the trend of re-centralisation of powers across Europe.

5. Conclusion

Undoubtedly, the sovereign debt crisis has had an enormous impact on the national legal and constitutional structures of the EU Member States. The governments had to create a number of political and legislative devices in order to respond to the enormous pressures that the financial markets have exercised. To this effect, a number of them had to redefine their relation with their sub-state level. The constitutional entrenchment of the 'golden rule' of balanced budgets both for the central and the regional governments may perhaps the most important development that has marked the State-Region dimensions of Euro-Crisis law. It is not important only because it constitutionally entrenched

[61] On the fiscal aspects of UK devolution, see in general A Trench, *Devolution and Power in the United Kingdom* (Manchester, Manchester University Press, 2007); J Aldridge, 'Financing devolution: 2008 and beyond' in A Trench (ed), *The State of the Nations* (Exeter, Imprint Academic, 2008) 147; I McLean, G Lodge and K Schmuecker, 'Social citizenship and intergovernmental finance' in SL Greer (ed) *In Devolution and Social Citizenship in the United Kingdom* (Bristol, Policy, 2009) 137.

substantial limitations to budgetary decisions but also because it had a re-centralising effect in their relation.

At the EU level it seems that only time will tell whether the long-term impact of the crisis would be a more unified Europe. Equally, at the Member State level, there is a question to be made whether this re-centralisation of powers might exacerbate the nationalist feelings that exist in a number of European countries. After all, a spectre might be haunting Europe-the spectre of nationalism…