

Supplementary File I: Overview of Case-Specific Observations

The tables in this supplementary file provide an overview of the observations regarding the mechanism entitled “normative-strategic minimum enforcement” and its constituent parts for each of the case studies.

Contents

Case 1: Belgium 2013.....	2
Case 2: France 2015.....	4
Case 3: Spain and Portugal 2016	6
List of Interviews.....	9
References.....	9

Case 1: Belgium 2013

Part 1	Commission assesses fiscal performance within the boundaries of flexibility	Source
Activities	The Commission respects the limits of the flexibility of the SGP concerning the assessment of fiscal performance, fulfilling its role as surveillance body and Guardian of the Treaties. At the same time, the use of flexibility provisions seems warranted if the data on fiscal performance indicates a borderline case, as, in such a situation, punitive action is not perceived as appropriate.	
Expected fingerprints	The fingerprints that would confirm the functioning of this part are official documents, news coverage or interview data that show that the Commission saw the numbers as clear and accordingly respected the limits of the flexibility it possesses, or that it saw the numbers as unclear, which justified the use of relevant flexibility provisions.	
Observations	'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 that you cannot give the benefit of the doubt, reasoning within the parameters of the pact.'	Interview COM 1
	'Following the EDP notification of the 2012 general government deficit and its validation by the Commission (Eurostat), the 2012 deficit came out at 3.9% of GDP. This was partly due to the urgent need to recapitalize the banking group Dexia at the end of 2012, which had a negative impact of 0.8% of GDP on the government deficit. However, also without this operation the deadline would have been missed, with a deficit of 3.2% of GDP excluding the one-off negative impact of that operation. Moreover, the 2012 budget contained substantial deficit reducing one-off measures, estimated at around 0.4% of GDP.'	European Commission recommendation (European Commission, 2013a, p. 3-4)
	'I think that's a technical decision. They simply look at what you have done or what you haven't done.'	Interview MS 2
Part 2	Commission tries to avoid punitive action	
Activities	Financial sanctions are seen as inappropriate by the dominant Commission actors because they are not in line with their perception of the Commission's role in fiscal policy surveillance. Therefore, the Commission applies the rules in a way that does not lead to the imposition of sanctions and accordingly acts strategically in pursuing its objectives.	
Expected fingerprints	The fingerprints that would confirm the functioning of this part are documents, news coverage or interview data that indicate that the Commission believed that the imposition of sanctions would not have been appropriate and that it read and applied the rules flexibly.	
Observations	'[...] although the stepping up of the procedure happened following the adoption of the Six-Pack and therefore, we envisaged for the first time the possibility of the imposition of sanctions at an earlier stage of the Excessive Deficit Procedure, than initially foreseen by the treaty, the recommendation which Belgium had not complied with, had been issued before the entry into force of the Six-Pack. Therefore, there was a legal argument, which like [...] most legal arguments, they clearly carry some weight, but ok, you could have argued the opposite [...]. The legal advice that we received is that it could have been conceivable for Belgium to appeal against this decision, not least because	Interview COM 1

	the Court of Justice traditionally takes a very strong view about what legitimate expectations Member States can have.'	
	'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'.	Interview COM 2
	'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'	Press conference Olli Rehn (European Commission, 2013b)
	'But it's true that it's not excluded that it could have led to for instance Belgium not paying the fine, or hold 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 COM 2
	[...] 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 COM 3
	'[...] 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 6
	'So the idea was that Belgium first, and Spain and Portugal later, did not deserve, between quotes, to be punished because of their fiscal performance, all in all, in spite of not being in line, was not in open conflict with the EU framework.'	Interview COM 1
	'In Belgium's case he also explained the sound legal and political reasons for the decision not to impose a financial penalty for the country's inadequate fiscal efforts in 2010 and 2011. He mentioned in particular the domestic political situation marked by the absence of a fully operational government at that time, the fact that the legislation on stronger economic governance (the 'six pack') had not entered into force until December 2011 and, lastly, the undertakings on fiscal consolidation given by the present Belgian government.'	Minutes meeting College of Commissioners (European Commission, 2013c, p. 21-22)
	'In the case of Belgium, there were clearly political considerations, but there was also this legal consideration, should the Commission decide? This could be challenged on legal grounds.'	COM 1
	'But I can also imagine that, I mean in the end it's always a political decision. So in principle we could have done it.'	COM 2

Case 2: France 2015

Part 1	Commission assesses fiscal performance within the boundaries of flexibility	Source
Activities	The Commission respects the limits of the flexibility of the SGP concerning the assessment of fiscal performance, fulfilling its role as surveillance body and Guardian of the Treaties. At the same time, the use of flexibility provisions seems warranted if the data on fiscal performance indicates a borderline case, as, in such a situation, punitive action is not perceived as appropriate.	
Expected fingerprints	The fingerprints that would confirm the functioning of this part are official documents, news coverage or interview data that show that the Commission saw the numbers as clear and accordingly respected the limits of the flexibility it possesses, or that it saw the numbers as unclear, which justified the use of relevant flexibility provisions.	
Observations	'At the heart of the application of the Pact must be the principle of equal treatment of all Member States. The Pact is a rules-based system setting a framework shared and applied by all Member States, where the Commission proposes and the Council decides. Equal treatment, however, does not mean "one-size-fits-all" and must be combined with the economic assessment that is required by every situation. It is on purpose that the Pact envisages flexibility in the way its rules should be applied, both over time and across countries. It is also on purpose that some discretion is left, within the agreed rules, for the Commission and the Council to assess the soundness of public finances in the light of country-specific circumstances, in order to recommend the best course of action based on the latest developments and information.'	Commission Communication (European Commission, 2015a, p. 4)
	'The extent of the deadline, one or two years, was probably debatable, and then also 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 indicators that are at this stage rather complex and not always observable.'	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 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. [...] it's a little bit like, 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.'	Interview COM 2
	'There was the famous case of France in 2015, I believe, where the Commission basically resorted to a double negative: we 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.'	Interview COM 1
Part 2	Commission tries to avoid punitive action	
Activities	Financial sanctions are seen as inappropriate by the dominant Commission actors because they are not in line with their perception of the Commission's role in fiscal policy surveillance. Therefore, the Commission applies the rules in a way that does not lead to the imposition of sanctions and accordingly acts strategically in pursuing its objectives.	

Expected fingerprints	The fingerprints that would confirm the functioning of this part are documents, news coverage or interview data that indicate that the Commission believed that the imposition of sanctions would not have been appropriate and that it read and applied the rules flexibly.	
Observations	'That was the first big discussion that we had in this Commission about the application of the fiscal rules. And I think, you saw then the pattern emerge which then would remain the pattern for the remainder of this Commission up until now. Basically of Commissioner Moscovici advocating a more lenient or flexible approach, Dombrovskis pushing for a more rigid application of the rules and the President ultimately playing the arbiter [...].'	Interview COM 3
	'Mr DOMBROVSKIS explained that the documents examined that day gave an overview of the macroeconomic and budgetary situation of each Member State under the procedure set out by the rules. 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. He warned against such a risk and called for a balanced solution. Mr MOSCOVICI, for his part, considered that 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. He added that 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.'	Minutes meeting College of Commissioners (European Commission, 2015b, p. 26-27)
	'Facing questions over the seeming reluctance to penalise countries in breach of clear targets, Pierre Moscovici, the EU's economic chief and a former French finance minister, stressed that the aim was to encourage deep reform and not apply penalties "willy-nilly". He said: "We are stepping up the procedure [against France]. We have a firm position." France was told to reduce its structural deficit, the budget shortfall when cyclical economic effects are stripped out, another 0.2 per cent of GDP this year and Paris would be re-evaluated in three months. Mr Moscovici added that while fines remained a live option, "penalties are a failure" both for the country sanctioned and the body imposing the fine.'	(Chassany & Barker, 2015)
	'According to officials involved in the discussions, Mr Dombrovskis, who as vice-president for the euro is nominally in charge of Eurozone policy, advocated bringing sanctions against Paris during the commission's day-long debate last month. He was backed by about a half-dozen other commissioners with high-level economic portfolios, including Mr Katainen and Margrethe Vestager, the former Danish finance minister now in charge of EU antitrust policy, the officials said. But after Mr Dombrovskis and Mr Moscovici could not reach a compromise, Jean-Claude Juncker, the commission president, was forced to break the impasse, largely backing Mr Moscovici. As a concession to Mr Dombrovskis, Paris was given three months to adopt new economic reforms and two more years to hit the deficit target, instead of the three years recommended by commission forecasts.'	Newspaper article (Spiegel, 2015)
	'[...] we already had [an extension of the deadline], the first one was also two years, if I remember correctly, and then again two years. There was a question mark, whether this is really necessary. In the end, we nevertheless followed this recommendation.'	Interview MS 1

	'I said that ok, that I didn't quite understand the rules anymore, because it was quite clear that [...] the text reads: in principle one year. Then the Commission of course came up with their arguments, yes but it's in principle, it means that you can give more if you see that there is a positive evolution [...].'	Interview MS 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 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. [...] it's a little bit like, 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.' '[...] you need to approach it more from an individual country perspective, you don't want that country to complain to you later that eventually it got a sanction unwarrantedly.'	Interview COM 2

Case 3: Spain and Portugal 2016

Part 1	Commission assesses fiscal performance within the boundaries of flexibility	Source
Activities	The Commission respects the limits of the flexibility of the SGP concerning the assessment of fiscal performance, fulfilling its role as surveillance body and Guardian of the Treaties. At the same time, the use of flexibility provisions seems warranted if the data on fiscal performance indicates a borderline case, as, in such a situation, punitive action is not perceived as appropriate.	
Expected fingerprints	The fingerprints that would confirm the functioning of this part are official documents, news coverage or interview data that show that the Commission saw the numbers as clear and accordingly respected the limits of the flexibility it possesses, or that it saw the numbers as unclear, which justified the use of relevant flexibility provisions.	
Observations	'[...] 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.'	Interview COM 1
	'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 2
	'[...] 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 4

	<p>“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 [...].’</p>	Interview COM 7
	<p>‘This is a factual result. [...] Absolutely, judging from the figures, very clear.’</p>	Interview COM 5
Part 2	Commission tries to avoid punitive action	
Activities	Financial sanctions are seen as inappropriate by the dominant Commission actors because they are not in line with their perception of the Commission’s role in fiscal policy surveillance. Therefore, the Commission applies the rules in a way that does not lead to the imposition of sanctions and accordingly acts strategically in pursuing its objectives.	
Expected fingerprints	The fingerprints that would confirm the functioning of this part are documents, news coverage or interview data that indicate that the Commission believed that the imposition of sanctions would not have been appropriate and that it read and applied the rules flexibly.	
Observations	<p>‘And it would of course have been an option to say we give a signal that we apply the rules [...]. But then we limit this to 0.0X. This would not have strongly affected the Spanish and Portuguese economies, but would nevertheless have been a signal that there is an infringement, and that we act upon infringements.’</p> <p>‘[...] the Commission as Guardian of the Treaties, who else should apply the rules?’</p>	Interview COM 5
	<p>‘Within the services, there were different views on this. And those that were in favour of pushing for sanctions of 0.2% stated that this would be necessary for the credibility of the whole procedure’.</p>	Interview COM 4
	<p>‘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.’</p>	Interview COM 2
	<p>‘[...] they came relatively recently out of an adjustment programme. A lot of effort done. The track record overall was quite ok, because all our assessments under the programme had eventually been positive, measures have been taken, fiscal positions were improving, the economy was on the right track but still fragile. So overall, the policy direction was the right one. And that’s what we observed. And especially also, the track record was not bad I mean, even if not compliant with the letter of the recommendations, and also let’s say the commitments for the future were quite clearly ok whatever they put in their stability programmes, the budgets that were under development, that had been proposed were encouraging. 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.’</p>	Interview COM 2

	<p>'And I think the feeling [...] was also, Portugal had just emerged from a three-year adjustment program, Spain had had financial assistance, the financial sector program, but in particular [...], between 2011 and 13, had adopted some very significant austerity measures, fiscal consolidation measures, as well as pretty radical structural reforms, to the labour market, to the pension system [...]. 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.'</p>	Interview COM 3
	<p>'So the idea was that Belgium first, and Spain and Portugal later, did not deserve, between quotes, to be punished because of their fiscal performance, all in all, in spite of not being in line, was not in open conflict with the EU framework.'</p>	Interview COM 1
	<p>'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.'</p>	Interview COM 2
	<p>'[...] 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'.</p>	Interview COM 4
	<p>'The overall situation, also how the crisis management of the institutions were 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 [...].'</p>	Interview COM 7
	<p>'Third, he [Commissioner Moscovici] set out the interinstitutional political context to the decisions to be taken, with a broad European consensus in favour of cancelling the fines. He felt it wise not to take the risk of provoking unnecessary divisions.'</p>	Minutes meeting College of Commissioners (European Commission, 2016, p. 28)
	<p>'At the same time, a decision, which [...] I would not hesitate to qualify as a political decision, was taken [...] not to impose a sanction.'</p>	Interview COM 1

List of Interviews

MS 1: National Government Official 9.9.19
MS 2: National Government Official 9.5.19
COM 1: European Commission Official 2.5.19
COM 2: European Commission Official 1.4.19
COM 3: European Commission Official 13.5.19
COM 4: European Commission Official 29.3.19
COM 5: European Commission Official 14.5.19
COM 6: European Commission Official 15.5.19
COM 7: European Commission Official 13.5.19

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