INFORME

IMPACTS OF THE CRISIS ON FISCAL POLICY-MAKING IN THE FEDERAL REPUBLIC

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ABSTRACT
In many respects the political efforts in dealing with the 2008/2009 financial and economic crises and their follow-on effects are different from fiscal policy-making in "normal times". The past four years has seen the passage of a series of comprehensive packages of legislation by the German Bundestag and Bundesrat aimed at mitigating the impacts of the crises. In purely quantitive terms, the sheer number of extremely complex laws involving huge sums of money rapidly passed is indicative of admirable responsiveness and flexibility of the political system. From a qualitative standpoint, though, the massive interventions of the executive branch in the legislative process endanger the legitimacy and the sovereignty of the parliament and thus contributing to a loss of acceptance of "Fiscal democracy".

RESUMEN
En muchos aspectos, las políticas que fueron aprobadas para hacer frente a la crisis financiera y económica 2008/2009 y sus efectos son diferentes de las políticas fiscales en "tiempos normales". Los últimos cuatro años, el Bundestag y el Bundesrat han aprobado una serie de paquetes legislativos con el fin de atenuar los efectos de la crisis. En términos cuantitativos, el gran número de leyes con un importante impacto presupuestario que pasaron rápidamente el proceso legislativo revela la gran capacidad de respuesta y la flexibilidad del sistema político. Desde un punto de vista cualitativo, sin embargo, las intervenciones masivas del poder ejecutivo en el proceso legislativo, ponen en peligro la legitimidad y la soberanía del parlamento y contribuye así a la pérdida de confianza en la "democracia Fiscal".

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I. INTRODUCTION

In many respects the political efforts in dealing with the 2008/2009 financial and economic crises and their follow-on effects are markedly different from financial and budgetary policy-making in "normal times" (Scheller 2008). Contrary to the usual popular complaint about the protracted and laborious nature of federal decision-making processes by the *Bund* and the *Länder*, the past four years has seen the passage in record time of a series of comprehensive packages of legislation by the Bundestag and Bundesrat aimed at mitigating the effects of the financial and economic crises, particularly on the fiscal level. Such measures include the Financial-Market Stabilisation Act (FMStG), the two economic stimulus packages and the Act on Acceleration of Economic Growth along with financial assistance for Greece and Spain, the Act on the Adoption of Financial Guarantees within the Framework of a European Financial Stability Mechanism (*Gesetz zur Übernahme von Gewährleistungen im Rahmen eines europäischen Stabilisierungsmechanismus*) and the recent Act on the Implementation of the Fiscal Compact within the Federal Republic (*Gesetz zur innerstaatlichen Umsetzung des Fiskalvertrags*). Over and beyond the highly charged question of whether the state has any right to intervene and shape the course of economic affairs, the processes of governance itself offer themselves as a particularly suitable object for analysis from a political science standpoint. All the more because the total volume of finance with which these laws are credited (including all measures for reduced tax income and all credit and financial guarantee warranties) comes to around 900 billion Euro. Thus constitutes a major burden which future budgetary policy-makers will have to bear, both on the national and the *Länder* level.

It is the particular nature of these legislative processes together with their foreseeable long-term fiscal *and* institutional effects which throws the question of procedural legitimacy into stark relief. This paper is predicated on the notion that fiscal governance in the Federal Republic lacks a procedure for dealing with such crises. In the worst financial and economic crisis since the Great Depression, the marked "executive federalism" practiced in Germany has made all too apparent serious shortcomings in the legitimacy of legislative procedures due to a permanent overstretching of extant decision-making mechanisms. Even if the political salvage measures are often justified by saying that there is "no alternative" to such a pressing need to take economic action and that it is "absolutely essential", the mid and long-term effects still remain grave both for the legislature and the federal structure of the *Bund* and the *Länder*. Moreover, a comparison with other federal states such as the USA and Canada shows that a much greater involvement of parliamentary budget lawmakers and the administrations of the *Länder* in the various procedures would indeed have been feasible. Therefore, the second thesis advanced by this paper is that the aggregate of all these measures passed serves to promote a verticalisation of federal financial mechanisms which will not remain without effect on the financial policy-making and governance mechanisms.

For reasons of space no more than three examples of the legislative process can be examined in any depth in this paper. A number of crisis-conditioned idiosyncrasies of fiscal governance which have shaped parliamentary consultations on the Financial-Market Stabilisation Act and the first and second economic stimulus packages can also be traced in other legislative procedures – from the so-called Economic Growth Acceleration Act and the Second Financial Market Stabilisation Act to the recent assumption of loan guarantees for Greece within the framework of the EU and the establishment of a European Financial Stabilisation Mechanism (EFSM) and the European Stability Mechanism (ESM). This indicates that the mechanisms examined in this paper have already established themselves as part of the repertoire of new financial and budgetary governance forms, even though the acute and immediate effects of the crisis in the Federal Republic are now in abeyance, and – at least in certain sectors of the economy – the

crisis seems to be weathered for the moment. Accordingly, this paper will focus on the political and institutional decision-making processes and on the federal compromise mechanisms. It will also examine to what extent crisis-conditioned governance has created legitimacy dilemmas within the legislative procedures – especially with regard to a possible detriment of parliamentary budgetary lawmakers on both the federal and *Länder* level. The leading question of this analysis will be whether these dilemmas also serve to promote a further verticalisation of the fiscal relationship between the *Bund* and the *Länder*.

II. THE FINANCIAL-MARKET STABILISATION ACT

The first spike in the global financial and economic crisis was the insolvency of the American investment bank Lehman Brothers on 15 September 2008. Given the closely interwoven nature of international financial markets, the first shock waves of this crash were soon felt by European banks and real estate investors. In the Federal Republic, in late September 2008 the Hypo Real Estate (HRE) was the first bank to need an urgent injection of liquidity to ward off the immediate threat of insolvency. On 11 October 2008 the finance ministers of the G7 countries agreed on concerted action to support international financial markets. Consequently in the Federal Republic only three days later on 14 October 2008 the ruling coalition brought the Act on the Implementation of a Package of Measures to Stabilise the Financial Market (Financial-Market Stabilisation Act – *Finanzmarktstabilisierungsgesetz* FMStG) before the Bundestag. This was passed by the Bundestag and Bundesrat and announced in the Federal Law Gazette in just three days, entering into force on 18 October 2008. This law is an omnibus bill which consists of three articles:

- Act on the Establishment of a Financial-Market Stabilisation Fund (Financial-Market Stabilisation Fund Act – FMStFG)
- Act on the Acceleration and Simplification of the Acquisition of Shares and Risk Positions of Financial-Sector Enterprises by the Fund “Financial-Market Stabilisation Fund –FMS (Financial-Market Stabilisation Acceleration Act – FMStBG)
- Amendment of the Banking Act (*Kreditwesengesetz*)

The Financial-Market Stabilisation Fund was established “to stabilise the financial market by overcoming liquidity shortages and by creating the framework conditions for a strengthening of the capital base” of affected financial institutions. Paragraph 2 subsection 2 of the FMStFG made provisions for establishing the Fund as a special trust (*Sondervermögen*). This comprises a volume of 100 billion Euros and is separated from the government’s budget. The establishment of the Fund raised the debt of the Bund from 985 billion Euros in 2008 to 1.053 billion Euros in 2009 (and increased Germany’s sovereign debt at a single stroke from 1.577 to 1.694 billion Euros) (Bundesministerium der Finanzen 2009: 44; Statistisches Bundesamt 2010: 37 ff.). In specific terms it is a parliamentary credit authorisation to the tune of 70 billion Euros for the recapitalisation or acquisition of holdings and the take-over of problematic assets and risk positions pursuant to paragraph 6 and 8 of the FMStFG. The Fund was also empowered to grant “financial sector enterprises” guarantees to the amount of 400 billion Euros. In the event of an – even partial – take-up of such guarantees – an event which many actors considered as highly improbable – the Federal Ministry of Finance was “empowered to take up further loans of up to 20 billion Euros for the Fund” (paragraph 9 subsection 5 FMStFG).

As no other law does, the Financial-Market Stabilisation Act reveals the extent to which financial crisis management was clearly dominated by the executive (Hassel/Lütz 2010:

267). Evidence for this can be found not only in the actual passage of the Act but in its annexes and implementation. Given the rapidity of its passage, the complexity of its subject matter and the financial long-term effects it will entail, doubts may be raised as to whether full consideration has been given to the "constitutional right(s) of members of parliament which flow from their representative status as anchored in Article 38 paragraph 1, clause 2 of German Basic Law." Such rights include not merely the right to vote in the Deutsche Bundestag (...) but also the right to consult (...). And as the Federal Constitutional Court incontrovertibly ruled in another context, the basic requirement of any meaningful consultation is that members of parliament are given sufficient information about the subject of consultation" (BVerfG, 2 BvR 758/07). However, for reasons of time, open debate on the Financial-Market Stabilisation Act in the Bundestag only occurred during the first and second readings of the bill which were immediately followed by voting on the recommendations of the Budget Committee. The third reading of the bill was merely protocolled. The – at least partial – safeguarding of parliamentary information and control rights at various points of the newly created procedures of the Financial-Market Stabilisation Fund were first anchored in law by amendments proposed by the Budget Committee. For the administration of the Fund, the Committee also pressed for a totally new form of institution in the shape of the Financial-Market Stabilisation Agency (FMSA) – an institution under public law which according to paragraph 3 and 4 of the FMStFG should be established at the Deutsche Bundesbank[1] and supervised by a specially appointed parliamentary Steering Committee. This Steering Committee came under the jurisdiction of the Budget Committee and met in secret. In all other matters in the legislative process on the Financial-Market Stabilisation Act, the Bundestag unlike the Federal Ministry of Finance could only obtain the right to be informed on an ex-post basis.

The Financial-Market Stabilisation Act has founded an administrative structure for the realisation of its purposes which bears the unmistakable stamp of the executive and which receives its actual importance through the sheer volume of money with which the Fund is provided. At some 500 billion Euros, the total credits and guarantees making up the bailout scheme are almost twice as much as the government budget for 2008 with its target figures of 271.1 billion Euros on the income side (actual figure: 270.5 billion) and 283.2 billion Euros on the expenditure side (actual figure: 282.3 billion). As the lion's share of the obligations arising from the Fund are to be borne by the *Bund* – which already suffers from financial shortfalls in comparison to the *Länder* – we may confidently expect that the set-up of the Fund will result in some long-term verticalisation effects. This unique credit line authorisation is without any precedent in the history of parliamentary budgetary legislation in the Federal Republic. The *Bund* has not merely taken on board a tremendous financial power of disposition for the realisation of legislative purposes. Critically, it has also made itself dependent on obtaining additional resources for long-term financing and thus on negotiations with the *Länder*. Moreover, in the event of a new outbreak of the crisis – an event which is now no longer seen as improbable – the Fund has also created a precedent for a new kind of institutional structure which can be effortlessly resuscitated. This case occurred in 2012 when the *Bundestag* and the *Bundesrat* agreed upon the Third Financial-Market Stabilisation Act which restored the Fund from 1 January 2013 to the end of 2014. Even after the first expiry date for immediate Fund activities fixed at 31 December 2010, the Federal Agency for Financial-Market Stabilisation continued managing "the obligations and responsibilities arising from existing stabilisation measures and the controlling of the requirements associated with the measures."

1. German Central Bank, (nota del editor)

The executive stamp of the Financial-Market Stabilisation Act is particularly discernible in the strong position accorded to the Federal Ministry of Finance (BMF). The Act gives the Ministry sole rights of decision on basic measures for the stabilisation of the financial market. Only when " insofar as general principles, matters of *particular importance* as well as decisions on *substantial* obligations in accordance with an ordinance issued on section 10 of this Act are involved, an inter-ministerial committee (Steering Committee) shall decide on a proposal made by the Financial Stabilisation Agency" (§ 4 FMStFG – author's italics). Such loosely phrased formulations are indicative of the wide range of discretionary powers given to the executive. The Steering Committee cited in the Act is made up of one representative each from the Federal Chancellery, the Federal Ministry of Finance (who is also chair of the committee), the Federal Ministry of Justice, and the Federal Ministry of Economics and Technology. The *Länder* are limited to proposing one further member. § 3a subsection 3 of the Act stipulates that the Financial Market Stabilisation Agency (FMSA) – which was later renamed as the Federal Agency for Financial-Market Stabilisation (*Bundesanstalt für Finanzmarktstabilisierung*) – should be managed by a Management Committee comprising of three members who should be appointed from the banking sector. Such conspicuous involvement of the very branches which were largely responsible for causing and exacerbating the crisis in the first place appears to be characteristic of the way fiscal governance tackles the crisis – even if in the case of the FMSA only one member of the Management Committee had previously been an executive board member of a bank which fell into serious financial difficulties during the crisis.

Any possibility of the *Länder* exerting an influence on day-to-day administrative business or on the controlling of the Financial-Market Stabilisation Fund was largely ruled out as provision was made to explicitly waiver the obligation of the Bundesrat to give its consent before amendments to the ordinances could become law. However, quite apart from this, acting of their own accord the *Länder* had already moved to waiver calling on the Bundesrat expert committees in parliamentary consultations on the Financial-Market Stabilisation Act, preferring instead to pass the unamended version of the Bundestag immediately after voting on it. In the run-up to the parliamentary law-making procedure, they had also contested a ruling on distribution of costs for the remaining deficit of the Financial-Market Stabilisation Fund but their efforts met with no success. For – in line with the new Article 115 clause 5 of German Basic Law introduced as part of the Federalism Reform I – the Federal Government had enshrined in law distribution of the obligations remaining after 31 December 2009 in a relation of 65:35. All the *Länder* could reach through informal intervention was a capping of their share to be paid at 7.7 billion euros (§ 13 FMStFG). This controversy reveals a further characteristic of financial governance in times of crisis: again and again key decisions entailing major cost effects were pushed – not only for reasons of time – into the informal and pre-parliamentary arena.

The new institutional structure created through the Financial-Market Stabilisation Act is an instructive example of the dilemma of legislative procedures in which legislators found themselves entangled in the 2008/2008 financial and economic crisis. With insistence on the time factor and the sensitive nature of closely intermeshed global financial markets, key mechanisms of parliamentary quality assurance were rapidly disabled with no notable resistance on the part of the institutionalised veto positions in the German federal state. In justification of such moves, the rhetorical figures of the "lack of any alternative" and the "systemic dimension" of the financial market crisis were invoked continually and across all party lines. Not only this line of arguments is indicative of a "simplification strategy" (Klenk/Nullmeier 2010: 281). Moreover, both the particular budgetary construction chosen for the settlement of the Financial-Market Stabilisation Fund as a separate fund, and insistence that the authorisations for guarantees would not lead to immediate cost effects also crucially

served as rhetorical instruments to minimize the true dimensions of the obligations assumed. Special funds are in fact associated with a certain simplification of procedure in favour of the executive because they are managed separately from the federal budget. Thus, they elude control by parliamentary budget legislators. Nevertheless, such constructions curtail and restrict the basic principles of parliamentary openness and budgetary transparency. This is underscored by the complex interlockings and nested nature of the institutional structure administering the special fund. In many places the Financial-Market Stabilisation Act fails to give precise definition of how the Finance Ministry, the inter-ministerial Steering Committee, the FMSA Management Committee, parliamentary control committees and the Budget Committee should all interact and work together.

In terms of crisis-conditioned governance, the Financial-Market Stabilisation Act is also a prime case in point – along with various other laws passed during this time – as once in force it was adjusted with numerous hastily passed amendments. In March 2009, for instance, only five months after passage of the original bill, the CDU/CSU and SPD fractions in the Bundestag introduced a Supplementary Act to the Act for the Stabilisation of the Financial Market (*Finanzmarktstabilisierungsergänzungsgesetz* – FMStErgG). What made this bill so intriguing and controversial was that it was originally drafted by a private law firm. Commissioned by the Federal Ministry of Finance, this company has a remarkably close affinity to the financial sector actors affected by the laws.

The background to the bill was given by a further worsening of the Hypo Real Estate and the financial impasse of the Commerzbank. The intention of the law was to make appropriate amendments to corporate and expropriation legislation to enshrine the possibility of a temporary nationalisation of financial institutions as a measure of last resort. Here too, this extremely complex law was promulgated in a mere 17 days on 20 March 2009 immediately after its second reading in the Bundestag.

III. ECONOMIC STIMULUS PACKAGE I

Unlike other OECD countries – and especially the USA and Great Britain – Germany was slow to embrace cyclical stabilisation measures as a response to the financial and economic crisis (Wagschal/Jäkel 2010: 295). The CDU/CSU, the strongest fraction in the second Grand Coalition put up a fierce resistance to what they perceived as a "Keynesian" form of intervention. This position was strengthened through a view that the "real economy" of the Federal Republic was not so badly affected by the crisis as the economies of other countries. But the SPD also had its reservations. Former Finance minister Peer Steinbrück at first turned a deaf ear to calls for such reforms from his own party. Apart from the traditional controversy about "liberal supply-side policies" versus "demand-oriented stabilisation", it was above all difficulties in forecasting the fiscal dimension of the crisis which nourished anxieties about the unforeseeable extent of expenditure the government might be required to undertake. A further reason for the initial reservations – not just of the *Bund* – came in the shape of the consultations on the reform of the basic norms of public debt which had started in 2006. The mechanisms for the restrictive limitation of public credit lines discussed in the Second Federalism Reform Commission and the changes they had wrought in political and public perceptions of the issue made uneasy bedfellows with calls for billions of euros to be pumped into the economy.

The hesitant attitude of the *Bund* to economic stabilisation measures was expressed in the late drafting of two packages of measures which taken together covered a whole bundle of single initiatives. On 7 October 2008, for instance, the Federal Cabinet adopted a "Package of Measures to Lower the Tax Burden, Stabilise Social Insurance

Expenditure and for Investment in the Family". This was followed on 5 November 2008 by a "Package of Measures to Secure Employment by Consolidating Economic Growth." A draft bill to this effect was agreed on by the Federal Cabinet on the same day and once more brought before the Bundestag by the ruling coalition of CDU/CSU and SPD. Just nine days after its first reading on 25 November 2008, the bill and the amendments proposed by the Finance and Budget Committees were passed by the Bundestag on 4 December 2008. On the next day the Bundesrat gave its consent to the new law. And on 21 December 2008 the act was published in the Federal Law Gazette. Thus it took a mere 46 days to set up the Economic Stimulus Package I with its total funding of 31.11 billion euros. The Act stated that the key reasoning behind it was to "preserve the trust of citizens and companies in the social market economy" (BT-Drucksache 16/10930). Direct investment formed less of an integral part of these two packages of measures going to make up the "Economic Stimulus Package" than a variety of tax-breaks and a lowering of social insurance contributions. The total of 15 individual measures constituted an extensive volume of tax relief.[2]

On top of this, improvements were made in the tax deduction of services of craftspeople, the income tax rate for "Minijobs" – including household-related services – was lowered by 20 percent, the tax on biodiesel was reduced by 3 cents per litre and a child bonus of 100 euros per child and school year ("School Needs Package") was introduced along with a heating costs bonus for people receiving social benefits (so-called Hartz-IV).

Even if the ruling coalition in its justification of the law underscored that it fitted effortlessly into the overall strategy of the *Bund* and should be viewed in its overall context, the sheer variety and disparity of the measures adopted, their temporary nature and the very short time accorded to the whole legislative procedure awoke a certain scepticism as to whether coherent long-term goals were really being pursued and not just short-term measures in response to the crisis (Klenk/Nullmeier 2010: 281). For the various individual measures were not just for the benefit of various demographic groups. More to the point, they were also a way of satisfying the diverging interests of the three coalition partners and various government departments – especially as a good part of the measures promulgated with the Economic Stimulus Package I had already been agreed on in the Coalition Agreement of 2005 but had not yet at that time been passed into law.

In terms of fiscal governance, the parliamentary process for the passage of Economic Stimulus Package I displays certain special characteristics. Special consideration, for instance, was given to the strategic point of time at which the draft bill should be presented to parliament. Even though there is nothing unusual about this, the Package of Measures to Secure Employment through Consolidation of Economic Growth was an initiative of the Federal Government and yet the ruling parties brought the bill before parliament on the very same day that the Cabinet had agreed on the draft version. This move enabled them to circumvent the right of the Bundesrat, enshrined in Article 76

2. The core elements are (actual figures in brackets):
- Full tax accountability for all actual expenditure on contributions for private and statutory health and nursing care insurance for all taxpayers and their spouses and children from 2010 (approx. 7.82 billion euros),
- Reduction of the contribution rate of unemployment insurance on 1 January 2009 from 3.3 to 3.0 percent – with addition of a further temporary reduction lowering this rate from 3.0 to 2.8 percent for the period 1 January 2009 to 30 June 2010 (approx. 7.2 billion euros),
- Reintroduction of the possibility of a degressive write-off of moveable economic assets to the amount of 25 percent and not exceeding 2.5 times linear depreciation for wear-and-tear for 2009 and 2010 (approx. 6.27 billion euros),
- Increase in the monthly child benefit allowance for the first and second child by 10 euros to 164 euros, by 16 euros to 170 euros for the third child and to 195 euros for the fourth child onwards. At the same time the tax-free child allowance was increased by nearly 200 euros to 3,864 euros (approx. 4.42 billion euros),
- A temporary suspension of motor vehicle tax limited to one year for vehicles complying with specific European standards (approx. 0.57 billion euros).

Clause 2 of German Basic Law to comment on bills submitted by the Federal Government, within a period of six weeks. At the same time it also relieved the Government of any obligation to submit it to a hearing by the *Länder* and the Associations of Local Authorities. As the bill represented a total burden of 6.63 billion euros in lost tax revenues for the *Länder* and 5.23 billion euros for the municipalities in the period 2009-2013, the advantages such a time-saving circumvention strategy held for the Federal Government are plain to see (BT-Drucksache 16/10930). Thus it is even more astonishing that the *Länder* did not insist on due process before the Bundesrat with participation of expert committees. Moreover, they also waivered the right to what is known as "political passage" and the conduct of a conciliation procedure (Laufer/Münch 1995: 61) – even though Bavaria, Brandenburg, Mecklenburg-West Pomerania and Rhineland-Palatinate had first introduced motions to this effect. The upshot was that the Bundesrat accepted the unamended draft bill on 5 December 2008 – just one day after its passage through parliament. Accordingly, this shortening of due parliamentary procedure is yet another example of creeping informalisation where spurious reasons of lack of time are invoked to truncate parliamentary transparency and expert scrutiny. A public hearing by experts – as is usual in practically all legislative procedures for financial and fiscal matters – and consultation with the dedicated administrations of the *Länder* simply did not take place. Furthermore, the parliamentary process for the Economic Stimulus Package I was held in the very same week as the extremely time-consuming and complex consultations on the Federal Budget 2009 were on the parliamentary agenda. To accommodate both processes, the time for public plenary debate had to be further shortened which lead in turn to a heated debate on parliamentary rules of procedure in which the opposition criticised the curtailing of their speaking time.

IV. ECONOMIC STIMULUS PACKAGE II

During the parliamentary debates on Economic Stimulus Package I calls had already been made for a further stimulus package. A worsening of the crisis of the American carmaker General Motors which occurred at this time played a significant role in these debates as it held direct repercussions for various factory sites of its German subsidiary Opel. Against this background it was once more the ruling coalition of CDU/CSU and SPD who brought a draft bill, the "Act on Securing Employment and Stability in Germany" (*Gesetz zur Sicherung von Beschäftigung und Stabilität in Deutschland*) before the Bundestag on 27 January 2009 – just one month after Economic Stimulus Package I had entered into force. This was rushed through parliamentary legislative procedure in a mere 20 days with the first and second readings before the Bundestag and consultations in the Bundesrat taking an astonishingly short seven days. The Economic Stimulus Package II also consisted of 15 individual measures with a total financial volume of 49.89 billion euros. In contrast to its predecessor, this time the focus was more on direct investments and less on measures for tax relief.[3]

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3. Its core elements included:
- Establishment of a further special fund, the "Investment and Amortisation Fund" (ITFG), whose specific goals and requirements are regulated in detail in the Act on the Implementation of Investment in the Future. Single investment measures are targeted at future investment in municipalities and *Länder* (of up to 10 billion euros) and federal-owned infrastructure such as motorways and the energy-saving refurbishment of buildings. In aggregate, the special fund comprises of 16.9 billion euros and also includes various other small-scale programmes.
- Introduction of an environmental bonus more widely known under its popular name of "*Abwrackprämie*" (cash for clunkers) and designed to provide a short-term incentive for buying a new fuel efficient car (1.5 billion euros)
- Raising of the basic level of tax-free income in two stages by 170 euros per stage to 8,004 euros and lowering of the minimum tax rate from 15 to 14 percent (8.94 billion euros),
- Lowering of the health insurance contribution rate from 1 July 2009 by 0.6 percentage points (approx. 9.5 billion euros).

The programme also envisaged a variety of other measures of smaller compass. These included provision of funding and credit lines for the development of fuel-cell and hydrogen-technology-based vehicle motors, and for the promotion of research in the small and medium-sized enterprise sector as well as one-off payment of a 100 euro child bonus for parents eligible for child benefits, an increase of benefit rates paid for children from socially disadvantaged families, adjustment of the motor vehicle tax from 1 July 2009 in favour of low CO_2 exhaust emissions and a variety of policy measures for the employment market – in particular the simplification of short-time work (*Kurzarbeit*).

Even more than the regulations of its predecessor, the individual measures of the Economic Stimulus Package II stand in mutual contradiction to one another and signal a retreat from decisions taken in the years before. Even if the sustainability of the measures undertaken was insistently invoked as their overarching strategic objective, the Act itself could hardly conceal that it was primarily designed to achieve rapid passage into law with minimum bureaucratic effort and to give a short-term stimulus to the economy. While, for instance, the Investment in the Future Act was mainly targeted at the energy-saving refurbishment of buildings – and thus was designed to play a role in reducing environmentally harmful CO_2 emissions – the *Abwrackprämie* granted for replacement of the old car, curiously enough was not linked to any regulation of the specific standard of pollutant emissions in the new car. Then again, in the discussions on the financial assistance given by the *Bund* to the *Länder* and municipalities within the framework of the Investment in the Future Act, the "ban on cooperation" introduced in the Federalism Reform I and strictly prohibiting any form of cooperation between the *Bund* and the *Länder* in the education sector, suddenly proved to be nothing less than a boomerang. The remedy here was a fresh amendment to Article 104b of German Basic Law undertaken in May 2009 even though the article had been already been amended in 2006.

It is not merely the situation-driven willingness of lawmakers to make short-term changes to the Constitution that throws a striking light on the financial and budgetary governance efforts in times of crisis. The particular way in which the *Bundesrat* was involved in the legislative procedures for Economic Stimulus Package II is a further case in point. As they did not do in the other legislative processes discussed here, the Finance and Economic Committee of the Bundesrat presented short, approving recommendations for the Act to Secure Employment and Stability in Germany. However, the recommendations proposed are a particularly compelling example of the verticalisation tendencies highlighted in this paper. While the motion proposing these recommendations began by recommending that the Bundesrat give its consent – probably as a result of the time pressure the Federal Government had succeeded in building up – its second paragraph explicitly stated that "Nevertheless, the law promulgated by the Deutsche Bundestag presents some requirements which the Bundesrat believes should be corrected at the first available opportunity" (BR-Drucksache 120/1/09). The Bundesrat's misgivings referred on the one hand to the call for "additional requirements in investment" given in paragraph 3a subsection 2 of the Investment in the Future Act. The Bundesrat held that there was no guarantee as to whether such investment requirements could actually be fulfilled by the *Länder* in the way proposed by the Government as an audit of the "investment activity of all of a *Land's* municipalities and local authorities" could not be carried out for a variety of reasons, the major one being the right of local authorities to autonomy. Yet behind this line of argument lay the conflict of goals – "ban on cooperation" versus "stabilisation of the economy through financial aid from the *Bund*" – with its roots in the newly amended Article 104b Clause 2 of German Basic Law. Moreover, the *Länder* were seemingly well aware of the looming verticalisation expressed by the implementation of Economic Stimulus Package II as the resolution formulated stated:

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"Furthermore, the Bundesrat notes that the right of audit of the Federal Audit Office (*Bundesrechnungshof*) as formulated in section 6a of the Investment in the Future Act exceeds both the Federation's limits of jurisdiction as confirmed by the Constitutional Court and usual practice in comparable instances. The financial assistance proffered by the *Bund* will be fully administered by the relevant authorities of each *Land* acting on their own authority. This is subject to parliamentary control and the control of the respective audit court of each *Land*. Consequently parliamentary control of the Bundestag and control by the Federal Audit Office was only effective up to the point in time when the funds were handed over to the *Länder* (as the Federal Constitutional Court ruled in BVerfGE 39, 96)".

This resolution – the weakest parliamentary instrument without any legal binding power – is an example of the dilemma confronting the *Länder*. In spite of the Bundesrat's expectation "that both § 3a subsection 2 and § 6a of the Investment in the Future Act will be corrected in this sense at the first available opportunity", implementation of the Economic Stimulus Package lay mainly in the hands of the Federal Ministry of Finance. The proposals called for by the *Länder* were not even touched on or enshrined in law by some other means. However, the *Länder* governments of Baden-Württemberg, Bavaria, North-Rhine Westphalia, Saarland, Saxony and Hamburg did indeed submit an action to the Federal Constitutional Court requesting that it undertake a judicial review of the constitutionality of the law's statutes. The Court declared § 6a subsections 1 and 3, and 4 of the Investment in the Future null and void because incompatible with German Basic Law (BVerfG, 2 BvF 1/09 dated 07.09.2010).

V. SUMMARY AND OUTLOOK

Taken as a whole, the efforts of fiscal governance over the past four years since the outbreak of the global financial and economic crisis in the Federal Republic present some highly ambivalent results. In purely quantitative terms, the sheer number of extremely complex laws involving huge sums of money rapidly passed one after the other in what were mainly highly truncated parliamentary proceedings is indicative of admirable responsiveness and flexibility of the political system. Furthermore, the way in which Germany appears to have dealt much more quickly with the crisis-conditioned effects of recession than other OECD countries, and the large number of obligations assumed in connection with the measures for stabilisation of the financial market and economy would also seem to bear out this hypothesis. Even so, from a qualitative standpoint, a much more differentiated account of the lawmakers' activities needs to be taken, because their balance sheet is also an expression of a highly pronounced executive federalism in the Federal Republic which has received a significant new impetus – in spite of simultaneous attempts to reform the federal system and strengthen the autonomy of the *Länder*.

One indication of this is the speed at which the majority of laws over the past four years have sailed through parliamentary legislative procedures. While statutes that do not require the consent of the Bundesrat (*Einspruchsgesetze*) normally take an average of 201 days to pass through parliament and statutes requiring consent from the Bundesrat (*Zustimmungsgesetze*) take an average of 217 days from their introduction to their passage into law, the statutes examined in this paper took an average of a mere 17 days (Burkhart/Manow 2006). That mere quantity and speed are no actual guarantors of quality is shown in the poor workmanship of the laws under examination. The unbroken stream of ex post amendments which this type of standards-setting requires was also one of the reasons for the lack of transparency in various simultaneous negotiation processes which were already rendered difficult enough by the sheer complexity of the subject matter they had to deal with. To which we may add

the inconsistencies shown in the laws here examined, their incompatibility with applicable law and their lack of long-term strategic goals (Klenk/Nullmeier 2010: 281; Streeck/Mertens 2010). Such shortcomings have no doubt served to further fuel the loss of credibility and trust parliamentary lawmakers feel towards the executive and judiciary. The longer the crisis continues, the more legitimacy and public acceptance will suffer with each new invocation of the mantra of "quasi emergency" conditions as justification for legislative behaviour (Spindler 2008: 2268).

Yet the behaviour of the *Länder* during negotiations on Economic Stimulus Package II is equally an expression of a paradigm-shift in their own understanding of the role they play in terms of their Basic Law anchored right of consultation during parliamentary legislative proceedings. Their action in giving their consent to a law while at the same time requiring its revision by the *Bund* can either be interpreted as a failure to make full use of their autonomous rights or as a *de facto* loss of influence. It would appear that a shift of axis has taken place in the power relations between the *Bund* and the *Länder*. When considering this, it is important to remember that fiscal, tax and budgetary policies are the central planks of national policy-making, and that distribution of available public resources always gives valuable insights into the power relations between federal partners. This makes the unmistakable new emphasis apparent in the choice of fiscal governance mechanisms made during the financial and economic crisis so momentous – especially when, as history shows, once made such decisions on distribution funding are extremely difficult to reverse (and especially so when they involve such huge amounts of money as the laws examined in this paper do) (Woisin 2008; Scheller 2005: 102). This background too gives grounds to speak of the advancement of fiscal verticalisation in the German federal state.

However, the financial and economic crisis also occasioned shifts in the triangle formed by the legislative, executive and judiciary. The dominance of the executive and the verticalisation of finance streams – which even in fiscally untroubled times is always a latent danger given the "drawing power of the biggest budget" but which in the crisis with its shockwaves from the outside has been excessively instrumentalised and exploited – have weakened the legislative particularly in terms of its ability to conduct lawmaking and other parliamentary procedures (Popitz 1927: 346 ff.; Andel 1998: 195; Korioth 1997: 188). Yet the Bundestag and Bundesrat have also played their own good part in undermining its authority. And not only that: the manner in which the Federal Government acted during the crisis has also served to strengthen lack of trust between the legislative and the executive. Since the financial and economic crisis, criticism of the Federal Government's blatant disregard for parliamentary rights of information and control has significantly increased across all parties and agendas. In times when a worldwide crisis is perceived by large swathes of the population as an unspecified threat, the fundamental principle of transparency in parliamentary affairs takes on a particular importance. Not without reason did the Federal Constitutional Court rule that, according to Article 42 Paragraph 1 Sentence 1 of German Basic Law, this was "a substantial element of democratic parliamentarianism. It enables the citizen to take note of its control function and thus serves the effective responsibility owed by parliament to the voter (…)" (BVerfG, 2 BvR 758/07 dated 08.12.2009).

At the end of the day with its crisis management organised around attaining short-term goals and its pruning of the ways and means of parliamentary influence back to a bare minimum, the executive has founded a fundamental dilemma whose repercussions in the mid or long-term will come back to haunt it. For the state which at the zenith of the last crisis could present itself so forcefully because it was perceived by many observers as a "monolithic entity" and the sole remaining instance that could come to the rescue of struggling financial actors, will increasingly fragment, through the self-immolation of its own fundamental principles of parliamentary legitimation, into individual institutions

and single actors all acting on their own accord. This will bring about a furthering weakening of its own position as a collective actor vis-à-vis the already sufficiently flexible and nimble actors of the international network of financial markets. The involvement of private sector actors in what was originally the sovereign provenance of parliament and government as happened in the case of the Supplementary Act to the Financial-Market Stabilisation Act and the Economic Fund of Germany which formed a part of the Economic Stimulus Package II offer cogent evidence of such a tendency. Furthermore, the weakened ability of the legislative to assert itself vis-à-vis the executive will also lead to a further strengthening of the role of the judiciary. It may then be expected that the path to preservation or restoration of federal rights to autonomy will increasingly involve a detour through the Federal Constitutional Court. One telling example of this is the action for a judicial review of the powers of audit of the Federal Audit Office brought before the Constitutional Court by the *Länder* with respect to the Investment in the Future Act. “Fiscal democracy” (Streeck) does not merely suffer under the weight of the exorbitant obligations taken on during the financial and economic crisis, and which in the mid or short term will place huge curbs on the legislative powers of parliamentary budget lawmakers (Streeck/Mertens 2010: 4 ff.). Much more critically, it is interventions in the legislative process itself which are undermining the legitimacy of the sovereignty of parliament and thus contributing to its loss of acceptance.

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