The Fiscal Compact Treaty disempowers national parliaments and undermines trust between the peoples of Europe.

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The introduction of a common currency, the Euro, created severe economic interdependencies between its founding members: If budgetary deficits in one country explode, the remaining countries in the Euro zone ought to bail it out. The new Fiscal Compact Treaty imposes German budgetary discipline on the Euro countries. While these policies might be recommendable from an economic point of view, their imposition outside the national democratic process undermines European integration, argues **Anna Kocharov**.

In March, the Member States of the European Union (EU), excluding the United Kingdom and the Czech Republic, signed the Fiscal Compact Treaty (FCT), which committed the signatory states to introducing rules on budgetary deficits to their national constitutions.

The new Treaty breaks with one of the main principles of international and EU law: the principle of equality of states. The German Constitutional Court (the Bundesverfassungsgericht) in its Greek bailout judgment argued that under the German Constitution;

> *"the decision on revenue and expenditure of the public sector [must] remain in the hand of the German Bundestag as a fundamental part of the ability of a constitutional state to democratically shape itself. As elected representatives of the people, the Members of Parliament must remain in control of fundamental budget policy decisions in a system of intergovernmental governance as well."*

Yet, this is exactly what the signatory states will *not* do under the new Treaty: they agree to introduce into their national constitutions budgetary rules that do *not* result from national democratic deliberation. Germany itself has budgetary rules in its Constitution, but these rules are the product of its national political process, not an international obligation. This creates inconsistency between the position of Germany, where the logic of the Bundesverfassungsgericht seems to preclude ratification of the FCT, and the other signatory states, who are expected to forego the right of their peoples to determine the content of national Constitutions. Is Germany "more equal" than the other Member States?

A recurring issue of European integration that underlies the FCT is the problem of trust between the peoples of Europe. At the dawn of the European Communities, it was a matter of trust between states in each other's intentions to preserve peace; this trust was promoted through the creation of economic interdependence. Deepening economic integration and the creation of the Euro increased not only interdependence with regards the production factors – goods, capital, services and workers – but also the likelihood that national economic governance would affect the financial stability of other Member States. All Euro-states need to have balanced budgets if the currency is to remain stable; however, it was assumed that the national governments would preserve budgetary discipline without any need for enforcement. What kind of a government would lead its country into default?

The Euro crisis illustrated weaknesses of a system based on trust alone and undermined the trust of the peoples of Europe in each other's national governance. Yet, the solution offered to foster trust in the Eurozone risks compromising the legitimacy of the Union in the eyes of both the "doubting" and the "doubted". On the one hand, for countries such as Germany, the FCT does not offer a mechanism to prevent crises in the future because, as an international treaty, it is less enforceable than European Union law, while in substance it adds little to the Union's pre-existing "Six-Pack" rules. On the other hand, for countries such as Greece, the treaty interferes with the national sovereignty and self-determination of peoples, who in 2006 were already concerned over “the supremacy, and even imperialism, of the “strong” countries” such as Germany (Eurobarometer). The fact that the signatory states of the FCT provided for its entry into force with only 12 national ratifications evidences the anticipated reluctance of their peoples to accept budgetary rules imposed from the outside. For these reasons, the new Treaty may prove damaging for the trust of citizens in both European and national governance.

The problem of legitimacy is not new for the EU. It is connected to the fact that the European Union, and the European Communities from which it evolved, were not designed to withstand such a strong degree of interdependence. It is a Union of sovereign states, in which democratic legitimacy is firmly grounded in the national level: the Treaties are ratified unanimously by all the peoples of Europe; members of the European Parliament are elected on national (and not European) level; national governments represent their peoples in the Council. In this construction, interference with the national democratic process undermines the legitimacy of the Union itself. Yet, with the expansion of the EU into the new policy fields, the Euro being one of them, decisions taken by national governments produce externalities for the citizens of other Member States, the peoples who remain outside the national democratic system. Economic governance in Italy affects people in Germany, yet the latter are not represented in the Italian political process and thus are unable to influence the decisions that affect them.

Within the internal market, the European Court of Justice has developed a way to balance these limitations. Individuals who are not represented in the national political process yet are affected by it (for instance, EU migrant workers) can enforce their EU-law rights directly against the state. This mechanism of direct individual enforcement places a check on state action in situations of “Community dimension” or externalities of national governance, thus adding to the political legitimacy of the Union by policing state action more effectively than sanctions. The Euro crisis illustrates that the “Community dimension” of national governance has grown far beyond free movement of people, capital, goods and services in the internal market. It is now state debt that “crosses the internal borders”.

Paradoxically, despite the obvious cross-border effects of poor national governance in ever integrating Europe, the right of EU citizens to good governance is only applicable for the Union but not as a whole for Member States. Principles of EU law such as legal certainty, coherence, access to review, obligation to state reasons or proportionality apply to Member States only when Union action is involved. This piecemeal approach leaves out situations where regulatory competence remains with the Member States, yet national action produces effects beyond national borders.

Uniting the various rights under a single EU fundamental right to “good governance” that would be applicable to all national acts (similar to e.g. non-discrimination on the grounds of age, sex or nationality) would contribute to greater convergence of national systems and cultures of governance and foster mutual trust. In essence, the FCT makes a first step in this direction by applying to Member States one of the good governance rules contained in the Union Treaties: the balanced-budget rule of Article 310 of the TFEU, until now applicable to the Union itself but not to national budgets. Extending this approach to other Treaty provisions would not only raise the trust of European peoples in each other’s governments but also answer their hopes for Europe as promoter and guarantor of better governance at all levels.

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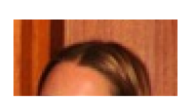

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