Harmonising public sector accounting laws and regulations of the EU Member States: Powers and Competences

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Abstract

This paper analyses the powers and competences of the EU to standardise public sector accounting of the member states and to take other EU action in the field of public sector accounting. We argue that public sector accounting forms part of the administrative organisation of the member states which is not a core EU competence. EU actions which are like the EPSAS project aiming at increasing transparency and comparability therefore need to follow the rules set out for administrative matters in general. The study reveals on the one hand that EU actions are essentially limited to voluntary cooperation and influences of other policy areas. But on the other hand, that they do not need to be limited to the initiatives currently driven by Eurostat.

Points for practitioners

The future of the EPSAS project is uncertain. It is however very unlikely that it will take the shape of a top-down set of readymade EU accounting standards that will force public administrations to adjust their inner workings. Public sector accounting is not (yet) a (typical) European policy but simply a national one that the EU can support. The EU initiative can be considered an opportunity for collaboration and knowledge sharing on how to increase transparency of public sector accounting.

Keywords: EPSAS, public sector accounting, harmonization, administrative law, European Administrative Space

1. Introduction

The European Commission and particularly the statistical office of the European Union (Eurostat), are working on harmonising public sector accounting of the member states (MS) on a European level. Inspired by the International Public Sector Accounting Standards (IPSAS), the idea of the European Public Sector Accounting Standards (EPSAS) project is to increase transparency and comparability of public sector accounting (PSA) by developing one set of accounting standards that is applicable in all European Union Member States on all levels of government (European Commission, 2013b). IPSAS in their turn are a non-binding public sector version of the International Financial Reporting Standards (IFRS) developed for

businesses. They are based on the conviction that accrual accounting, which is a private businesses practice, provides the best model for convergence of national administrative organisations. They focus on financial reporting and do not cover any other phase of the budget management cycle. This stands in stark contrast to the current situation in most European countries where accounting systems are anchored in the constitution in the context of budget management. PSA is governed by administrative laws and regulations and the 'standard setter' is in fact the law maker or another governmental body. PSA in the European Union (EU) is a policy that has thus far been exclusively dealt with at MS level although partially inspired and influenced by international developments such as IPSAS (Gröpl, 2013; Brusca et al., 2016; López et al., 2002; Portal et al., 2012) or OECD initiatives (Moretti and Youngberry, 2018).

On EU level PSA is portrayed as a part of economic policy by setting it in the context of the MS obligations regarding their budgetary frameworks (European Commission, 2020; European Commission, 2017; Committee on Economic and Monetary Affairs, 2011; Economic and Financial Committee, 2014; Economic and Financial Committee, 2017). References are also made to the governance of IFRS which harmonise accounting for certain types of companies within the EU (European Commission, 2013b; European Commission, 2013a). The consequence is an implicit assumption that the EPSAS project can rely for its implementation on the same powers and competences as other EU initiatives on economic governance or the common market.

Since Eurostat launched a public consultation on the suitability of IPSAS for the MS (Eurostat, 2012) the idea of a European version of IPSAS received increased attention in academic literature. In a literature review Caruana et al. (2019) uncover the great variety of contributions on the development of EPSAS. The issues predominantly raised concern the

specific nature of PSA, the professions involved and a caution that EPSAS alone may not be enough to achieve transparency and comparability. In accounting literature, the EPSAS project itself is usually approached from a technical perspective, addressing the strengths and weaknesses of various aspects like the content (López et al., 2002; Oulasvirta and Bailey, 2016), its objective (Jones and Caruana, 2015; Mussari, 2014), the implementation (Manes Rossi et al., 2016), the governance structure and processes (Heald and Hodges, 2015; Oulasvirta, 2021) or the conditions within the individual MS (Brusca and Martínez, 2016; Nistor, 2017; Natalizi, 2020; Frintrup et al., 2020). The question of the powers and competences that the EU might or might actually not have in the field of PSA remains unanswered however, a shortfall which this paper intends to address.

The history of the EPSAS project so far also does not give the impression that policy makers consider the legal basis or the regulatory framework in general relevant factors. The Council is the EU institution that represents MS interests during the decision making processes of the EU. It repeatedly called on the Commission to respect national competences and refer to a clear legal basis for EPSAS (Economic and Financial Committee, 2014; Economic and Financial Committee, 2017). Equally the French Public Sector Accounting Standards Council (Calmel, 2014) and the German supreme court of auditors (Bundesrechnungshof, 2017) pointed out, that the Commission thus far has failed to make a clear statement about the legal basis for and procedural aspects of the introduction of EPSAS. The minutes of an EPSAS working group show that other MS representatives share a similar concern. *'Eurostat clarified that (…) the formal adoption procedure was the responsibility of other Commission services, such as the Secretariat General and the Legal Service'* (EPSAS Cell on Principles related to EPSAS Standards 2017).

We argue, that it is worth considering issues of legal basis, power and competences carefully

already during the development stage of the EPSAS project. For any EU action it needs to be clarified which competences are available to the EU institution in question. Especially so when the goal is to harmonise MS laws and regulations. Otherwise there is a risk that any proposal will not find the necessary voting majorities among the MS or that it will be challenged before the Court of Justice of the European Union after becoming EU law. If considered early on, insights about distribution of powers and legal bases can still have an influence on the aims, scope and content of the project and limitations can be accounted for. The aim of this paper is therefore to contribute to the existing body of literature with an analysis of the legal dimension of PSA standardisation in the EU. For even the very best technical solution can only be put into action if it has a basis in EU law. Two questions will be addressed in this paper: What are the powers and competences of the EU in the field of PSA; and how do they influence the EU's possibilities to become active as a regulator?

Heidbreder's (2011) modes of government are used as ideal-types to be able to analyse the legality of possible EU actions around PSA without knowing how exactly the EPSAS project will look like in the end. The results of this analysis can contribute to shifting the focus of discussions around PSA in the EU on measures and instruments that the EU institution actually have available under the current regulatory framework.

The remainder of this paper is organised the following way: First, the methodology will be explained (2.). Then European policy making and Europeanisation are introduced as theoretical background (3.). The next section describes ideal-type instruments and how they are operationalised for the legal analysis (4.). Then, the analysis is presented (5.) and followed by a discussion and concluding remarks (6.).

2. Methodology

The methodology used is a document analysis of accounting, policy design and European law

literature and publicly accessible documents and communications of EU and MS public institutions as well as a legal analysis of ideal-type instruments based on the EU Treaties as primary source of EU law and secondary EU law.

Very few authors (Calmel, 2014; Gröpl, 2014; Ohler, 2014) have looked at the regulatory framework of the European Union in the context of PSA. They have each tested a limited set of specific articles of the Treaties for their suitability to introduce one specific measure: imposing binding EPSAS through supranational EU law. They concluded that those articles do not, or only to a very limited extent provide a legal basis. Due to its nature, this is where a purely legal analysis reaches its limits. To be able to judge the legality of a measure, the measure itself needs to be sufficiently clearly defined. The final shape and form of the EPSAS project is yet to be decided. To narrow down the infinite possibilities for policy making, this paper works with ideal-type instruments (Heidbreder, 2011): Administrative Standards, Administrative Ordinances, Voluntary Cooperation and Policy Compliance. They represent groups of such specific measures sharing the characteristics which are relevant for the legal analysis. This allows to assess the EU's possibilities for becoming active as a regulator *ex ante*, that is without knowing how exactly the EPSAS project will look like in the end. The conclusions about legal basis are applicable to both the ideal types as well as concrete measures that share their relevant characteristics. For the analysis of the four ideal-type instruments, a pre-selection of possible relevant treaty provisions was made (see Table 1). Each of the provisions is analysed as potential legal basis for the ideal-type instruments and the results are applied to a sample of specific measures that occur repeatedly in communications of Eurostat and the Commission (Makaronidis, 2018; Eurostat, 2018b; Eurostat, 2018c; Shinn Straková and Leetmaa, 2019; Hayes and Leetmaa, 2020; pwc, 2020).

The starting point of the analysis is thus not a specific EU action like 'the EPSAS project' but European policy making in the policy area in which the measures are situated and the theories and rules which govern it. In the next section, a short introduction to these rules governing European policy making and Europeanisation as theoretical background will be given.

3. Theoretical Framework

European policy making has several important features which distinguish it from policy making on national level (Tömmel and Verdun, 2009). One of them concerns the notion that the EU is a supranational organisation, not a state. Most importantly it lacks sovereignty of a state. It cannot decide autonomously to become active as a regulator in any possible area. A sovereign state *a priori* has the choice among the full range of policy instruments for any given societal problem (de Vries, 2002). For the EU however, the Principle of Conferral (Art 5 [2] Treaty of European Union [TEU]) says that, in any action that an institution of the EU (like the Commission or the Council) wants to perform, it has to make use of the (limited) 'competences' that it has been given by the MS in the founding Treaties of the EU (TEU and Treaty on the Functioning of the European Union [TFEU]). Any competence that has not been conferred on the EU, remains with the MS. Accordingly, competences can vary greatly between different policy areas. It is therefore essential to determine first the policy area in which a measure is situated before statements about the competences can be made.

Another feature of European policy making is the absence of a clear hierarchical relationship between the EU and the MS which would allow the EU to impose laws and regulations in any policy area (Tömmel and Verdun, 2009) and powers are distributed between different levels: the supranational level, the national level, and in some cases also the regional and the local levels. The question of distribution of power in a multi-level governance context is an important aspect for the choice of an instrument for a specific policy (Kassim and Le Galès,

2010). It determines whether the EU can impose any measures on the MS in a policy area or not.

PSA forms part of the public law of the MS, more precisely their administrative law. According to the classification by Fromont (2017), PSA is part of the 'administrative organisation', as it is concerned with the inner workings of an administration without impacting the relationship between the administration and the citizens. The EU's competences in administrative matters (Art 197 TFEU) only allow the EU 'to support the efforts of the MS to improve their administrative capacity to implement EU law'. If the EU has limited competences in administrative matters, this is *a maiore ad minus* also the case for PSA as a specific part of administrative matters.

A top-down imposed set of ready-made accrual standards aiming towards harmonisation of public sector accounting in the EU is the only policy option that has been subjected to a legal analysis so far (Gröpl, 2014; Ohler, 2014). These authors have not found a solid legal base for the EPSAS project in such a form. If Eurostat is to continue working on enhancing transparency and comparability of PSA however, this does not have be the only option for EU action. Ideally, the means should follow the ends in policy design, not the other way around and only feasible options should be taken forward (Howlett, 2009).

From studies of Europeanisation, especially the literature on the *European Administrative Space* we learn however, that there is more than one way for the EU to impact public administrations and the way they function. Europeanisation research investigates 'the process whereby EU institutions and policies influence national institutions and policies' (Pollack, 2015: 38). The process of Europeanisation is not limited to the imposition of binding standards by a (legitimate) higher level power. It can also take place for example owing to the attractiveness of the norms in question (Olsen, 2003). The Governance approach has helped to

identify different forms or ‘modes’ of governance that states or the EU use to achieve their various objectives (e.g.Knill, 2001; Knill and Lenschow, 2005; Howlett, 2009; Wallace and Reh, 2015).

Heidbreder (2011) has developed a typology of four ‘Supranational instruments affecting domestic public administration’ to be able to categorise and describe EU action in administrative matters. These modes of governance are chosen for this analysis because the characteristics Heidbreder (2011) uses reflect the ones that matter for the research questions as they are concepts used in the description of a legal system: the distribution of powers between the EU and the MS and the competences in different policy areas. They are mutually exclusive, which makes them useful for an ex-ante analysis. Every measure suggested in the future in the context of the EPSAS project could be subjected to the same test.

4. Operationalisation of the research question using Heidbreder’s (2011) Modes of government

Heidbreder’s ideal-type instruments are derived from a matrix with two axis with two characteristics each, giving four options which each represent one instrument: (A) *Administrative Standards*, (B) *Administrative Ordinances*, (C) *Voluntary Cooperation*, and (D) *Policy Compliance*.

One axis distinguishes hierarchical from non-hierarchical instruments. This corresponds with a feature of European policy making (Tömmel and Verdun, 2009): the absence of a clear hierarchical relationship between the EU and the MS which is prescriptive and based on binding rules and sanctioning tools to enforce compliance in all instances. The distinction between institutional compliance and changing national opportunity structures and framing

domestic beliefs and expectations (Knill, 2001) or imposition and attractiveness (Olsen, 2003) are other ways to express the same notion of hierarchy.

The other axis captures the idea that a direct, explicit administrative policy is only one way of impacting MS public administrations. Another way is an indirect one through the exercise of competences in other, related EU policies. Heidbreder (2011) uses the criterion of implicit or explicit governance mode essence to express the difference between a measure being a means to an end or being an end in its own right. This reflects another feature of European policy making of Tömmel and Verdun (2009): the EU cannot become explicitly active in just any area as it lacks the sovereignty of a state. In areas where it lacks competence, the criterion allows to account for the possibility that obligations in other policy areas can have an implicit influence.

Some authors take a critical perspective on this phenomenon. Obinger et al. (2005) identify 'bypass mechanisms' which could provide for alternative approaches to circumvent such constellations where MS have kept competences in a policy area for themselves. The first bypass mechanism is a regulatory one where the higher level becomes active in related fields where it does have regulating powers and decision-making is not based on unanimity. The second is increased policy co-ordination between the MS. These two mechanisms overlap with and underline the relevance of Heidbreder's distinction between Policy Compliance and Voluntary Cooperation as non-hierarchical instruments.

5. Analysis

In the following section, the argumentation used and result of this analysis are presented and applied to a sample of specific measures that occur repeatedly in communications of Eurostat and the Commission. For the analysis, a pre-selection of possible relevant treaty provisions was made (see Table 1). Each of the provisions was analysed as potential legal basis for the

four ideal-type instruments: Administrative Standards, Administrative Ordinances, Voluntary Cooperation and Policy Compliance.

Table 2 summarises the results of the legal analysis for the four ideal-type instruments and for the sample measures that share their relevant characteristics. The Treaties do not provide a legal basis for instruments and measures with a χ; for the remaining, a specific legal basis is suggested as follows. The table shows that a legal basis could only be found Voluntary Cooperation and Policy Compliance in the area of statistics.

Table 2 Powers and competences for EU action in PSA (source: the authors, based on Heidbreder (2011))

	Explicit	Implicit
Hierarchical	χ **Administrative Standards (A):** χ Binding EPSAS and a Conceptual Framework χ Harmonized European Public Sector Accounting and General Purpose Financial Reporting Standards	χ **Administrative Ordinances (B):** χ Economic policy χ Statistics
Non-hierarchical	✓ **Voluntary Cooperation (C):** ✓ Recommended EPSAS and a Conceptual Framework ✓ Technical support ✓ Financial support ✓ Harmonized European Public Sector Accounting and General Purpose Financial Reporting Standards ✓ Promoting accrual accounting	**Policy Compliance (D):** χ Economic policy ✓ Statistics

A) Administrative Standards

Administrative Standards are explicit hierarchical instruments. The only existing manifestations of such Administrative Standards identified by Heidbreder (2011) are a number of administrative law principles which were introduced and developed further by the Court of Justice of the EU. In the context of enlargement they gained relevance as they were

used as a standard which applicant countries had to adhere to in order to qualify for membership. They aim to a large extent at protecting individuals from unjust action of public administrations. They are somewhat irrelevant here because unlike the typical European policy described by Tömmel and Verdun (2009) the EPSAS project is directed at the MS as final addressees or target group, not the participants of the markets, the citizens or the public.

Binding EPSAS or *harmonized European Public Sector Accounting and General Purpose Financial Reporting Standards on EU level* would necessarily aim at harmonising MS public sector accounting laws and regulations. Harmonisation in an EU law context implies the use of binding legal acts with hierarchical authority of the EU institutions to impose compliance (Olsen, 2003). Hence binding EPSAS and similar measures like binding introduction of the accruals principle need to be categorised as Administrative Standards and cannot be introduced by means of the existing regulatory framework. Instruments similar to the "accounting directive" (European Parliament and Council, 2013a) and its governance structures, which harmonise national accounting requirements for certain types of companies in line with the IFRS, would equally result in explicit hierarchical instruments. The accounting directive itself is based on the EU's extensive competences in the area of the Common Market.

B) Administrative Ordinances

Administrative Ordinances are manifestations of hierarchical powers within a specific sector or policy. They allow to prescribe standards to MS administrations on how to implement that specific policy. The limited policy areas where the Commission has such powers are explicitly mentioned in the Treaties and their intensity varies. Classic examples where the EU has a high level of competence for determining the administrative organisation of the MS are the Internal Market or Competition rules. Where the Treaties provide for such

competences, the limits of Art 197 TFEU are not applicable. Neither the Commission nor Eurostat seem to envisage Administrative Ordinances as an instrument for the EPSAS project, possibly because none of the related policy areas (Economic Policy or Statistics) contain any relevant obligation for the MS. Also the usefulness of sectoral implementation of EPSAS is doubtful because it would be somewhat detrimental to harmonisation even within MS. Sectoral standardisation could be imagined e.g. as standardising accounting for police forces but not for fire brigades simply because the former are mandated to execute European legislation and the latter are not.

C) Voluntary Cooperation

Voluntary Cooperation is the ideal-type instrument for explicit and non-hierarchical measures (Heidbreder, 2011). Art 197 TFEU provides a clear legal basis for such measures. It includes vertical cooperation between the MS and the EU as well as horizontal cooperation among the MS. Additionally, the Commission could adopt recommendations based on Art 295 TFEU and Art 17 (1) TEU to promote the general interest of the EU. Eurostat is already taking several initiatives to *promote accrual accounting*, *recommend EPSAS* or a *Conceptual Framework* without mandatory involvement of other EU institutions or the MS.

In 2015 Eurostat created a Working Group on EPSAS (Eurostat, 2018c) which has been split into cells, each working on a specific topic. One started drafting an *EPSAS Conceptual Framework.* As an informal body of experts, *'concerned with the development, introduction and operation of EPSAS'* there are no obvious legal obstacles to its creation and activities. However, any output of such a group raises concerns of democratic legitimation and governance (Maggetti and Trein, 2019). Those concerns have repeatedly been voiced by the participants of the public consultations concerning IPSAS and EPSAS and their respective

governance structures (European Commission, 2013b; Jones and Caruana, 2015; Eurostat, 2014).

Eurostat intends to couple EPSAS with the Structural Reform Support Service (SRSS) and indirectly fund this through the European Regional Development Fund (ERDF), the European Social Fund (ESF), and potentially the Cohesion Fund (CF) (Eurostat, 2018c) to provide *technical support*. The SRSS has several thematic objectives, 'enhancing institutional capacity of public authorities and stakeholders and efficient public administration' is one of them. It is worth bearing in mind that many MS with an established and functioning accounting capacity will not be eligible for funding under ERDF, ESF and CF because those funds in general do not support the changing of a running system. Also the scope of the measures that can be funded is mostly limited to those improving the capacity of administrating the funds themselves (European Commission, 2019).

The EU does not have genuine fiscal powers (Obinger et al., 2005). But it can use targeted *financial support* as incentive for voluntary cooperation on the level of individual administrations. Eurostat has already launched two rounds of project funding aimed at implementing accrual accounting on different levels of administration, the latest one in the beginning of 2018 (Eurostat, 2018a). Participation in such a funding scheme is completely voluntary but grant receivers naturally need to adhere to the conditions of funding agreements concluded with Eurostat.

D) Policy Compliance

Policy Compliance concerns measures that are non-hierarchical and implicitly influence a policy area. Heidbreder (2011) characterises the implicit effects that the implementation of other policy goals have on MS administrations as unintentional by-products. Considering the context in which the Commission and Eurostat are presenting the

EPSAS project, closer attention is paid in this paper to possible side-effects of compliance to obligations arising from the EU Economic Policy and Statistics.

MS are obliged to coordinate their *Economic Policies* but the Treaties do not provide for substantial legal obligations that all MS need to *comply with* (Garben, 2019). Without the need to comply, there can be no side-effects of compliance. To try and pursue an administrative policy via an instrument of Economic policy could be as harmful to the accountability and legitimacy of the EU as most measure taken in the wake of the economic crisis (Naert, 2016; Leontitsis and Ladi, 2018).

Jones and Caruana (2015) illustrate that the original objective of the EPSAS project is to improve budgetary surveillance over MS through more reliable *statistics*. Recent changes in the structure and institutional position of the EPSAS within Eurostat also indicate an intended closer connection of the EPSAS project to the European System of Accounts (ESA) (Shinn Straková and Leetmaa, 2019). The ESA Regulation (European Parliament and Council, 2013b) provides for a methodology on common standards, definitions, classifications and accounting rules for compiling accounts and tables on comparable bases. It makes an explicit distinction between statistics and accounting (Calmel, 2014). It creates the obligation for MS to have in place public accounting systems comprehensively and consistently covering all sub-sectors of general government. It refrains from specifying how this public accounting system needs to look like as long as it enables the MS to generate the required data and they fulfil the quality criteria. The provisions of the Regulation thus prescribe an output, not a procedure or the administrative organisation.

EPSAS or accrual accounting inspired measures aiming at the production of similar outputs, can rely on the MS administrative capacities for their implementation as long as they do remain within the realm of statistics. In the literature we can find several suggestions on how

this could be approached (Oulasvirta, 2014; Calmel, 2014; Jones and Caruana, 2015; Christiaens and Vanhee, 2017).

In line with Obinger et al. (2005) such an approach could be considered a bypass mechanism where the higher level becomes active in related fields where it does have regulating powers. To misquote Knill (2001): Statistics could have a less spectacular impact on public sector accounting than binding EPSAS but nonetheless a significant one.

6. Discussion and concluding remarks

By using ideal-type instruments (Heidbreder, 2011), the EPSAS project, whose final shape and form is yet to be decided, could be subjected to a legal analysis in this paper. The conclusions about legal basis are applicable to both the ideal types as well as concrete measures that share their relevant characteristics.

The regulatory framework as it stands does not allow the EU to enact explicit hierarchical measures, called *Administrative Standards*, hence it is not suitable for binding EPSAS or any other form of harmonisation under the accruals principle. Unless the Treaties are revised to confer hierarchical powers onto the EU, policy options are limited. The signing of an entirely new treaty for the EU only to attribute new or extend existing competences in PSA seems rather an unlikely prospect. Moreover the history of private sector accounting standardisation in the EU shows that extensive competences are no guarantee for instant standardisation. The accounting directive as we know it today is the result of a long and complex political process. It began in 1978 with a set of minimum standards for financial reporting that did not contain any reference to international standards (Van Hulle, 1992). At that time the EU had only nine MS.

It also seems unlikely that there would be consent among MS to allow the EU to interpret its

existing competences in the field of Economic Policy (Gröpl, 2014; Ohler, 2014) in a way to be able to use them for the introduction of EPSAS. Any single MS can make an end to such efforts by referring to the explicit exclusion of any harmonisation of administrative matters. The reluctance of several MS towards the entire EPSAS idea can be perceived throughout the two consultation processes (Eurostat, 2012; European Commission, 2020) and the proceedings of the various working groups of the EPSAS task force.

The most promising provision for EU policy making with alternative instruments is Art 197 TFEU on Administrative Cooperation. It provides a clear legal basis for *Voluntary Cooperation* and thus for any voluntary or recommended version of EPSAS or a Conceptual Framework. If however the Commission strives to develop the EPSAS based on informal expert groups, this still leaves important questions of democratic legitimacy and governance of the whole project (Dabbicco and Steccolini, 2019) unaddressed.

Considering the three rounds of financial support via project funding and that a connection to several funding instruments for technical support has been made, expert groups that Eurostat set up and a Conceptual Framework which is actually already being developed, an argument could be made that the Commission is trying to create a *fait accompli* on national level without a coherent plan for the project as a whole (Nitsche, 2018). In fact, several measures that Makaronidis (2018), the former head of the EPSAS Taskforce, called ‘options for evaluation’ had already been established. However, such rather small-scale and targeted measures like financial or technical support are at best able to contribute to more transparency in public sector financial reporting. But voluntary and selective application by and within MS are likely to have the effect of creating even more diversity, especially within MS. The same argument can be made for the development of EPSAS on a voluntary basis. Even if Eurostat changes its approach to a more bottom-up one (Oulasvirta, 2021) and develops high quality

standards based on an appropriate conceptual framework, the degree of consideration and implementation by the MS will vary according to the need they feel to make changes to their current system and previous reform efforts. The standards can have an impact on transparency within a country but can again hardly contribute to comparability

Measures designed around the creation of statistics and building on the existing ESA system appear to provide the most promising stepping stone when it comes to the indirect effects of *Policy Compliance*. The obligations in this area are based on an explicit hierarchical EU competence and the compliance with these obligations can force MS to adjust their administrative organisation. One aspect worth considering in this context is, that the ESA Regulation is legally binding for all MS. It would be a strong competition to any voluntary form of EPSAS because in case of conflict, the MS would always chose to apply ESA rules, not EPSAS (Jones and Caruana, 2015; Caruana, 2016). Thus the ESA regulation rather represents an additional obstacle for the EPSAS project as it underlines the limits of Voluntary Cooperation. Working within the frame of Statistics to increase transparency and comparability of PSA would avoid competition between two different systems. Additionally it would counter doubts about Eurostat being a legitimate body to lead the EPSAS project as it has explicit powers in the area of Statistics.

The argument brought forward in this paper that PSA forms part of the administrative organisation of the MS, not the Economic Policy, Statistics, the Internal Market or any other of the core EU competences means that the possibilities for the EU to become active as a regulator are very restricted. Administrative policy is not (yet) a (typical) European policy but simply a national one that the EU can support. The distribution of power and competences in favour of the national level make it unfeasible for the EU to pursue supranational harmonisation of MS public sector accounting laws and regulations under the accruals

principle. It also limits the choice of alternative instruments for the EPSAS project as part of an EU policy. Additionally there seems to be a discrepancy between the measures available to support transparency and measures aiming at increased comparability.

There are certainly several possible ways forward for the EPSAS project but if it is to be part of an emerging EU policy on public sector accounting, it will have to respect the rules of Administrative Cooperation set out by the EU Treaties. If transparency and comparability really are what the EU institutions are aiming to increase, the search for the appropriate tools to achieve this should not be limited to ongoing Eurostat initiatives. Future research should thus focus on instruments and measures that contribute to transparency and comparability without taking EPSAS as they are currently being developed as given or as the only option and without losing sight of the limitations that the regulatory framework poses on EU policy and law making.

In a Europeanization context, these considerations support a claim made by Olsen (2003), that any convergence within an European Administrative Space is more likely to be an artefact of other substantive policies than the result of a coherent European administrative policy. Naturally, this is a long way off from Eurostat's original ideas and ambitions for the EPSAS project. But it emphasises the relevance of considering questions of power distribution and competence in an early stage of the design and development of a project.

Tables

Table 1: Provisions of the EU Treaties considered as legal basis (source: own)

The choice of a legal basis needs to be based on objective criteria following ECJ case law (eg C-301/06 Ireland v EP and council 2009 ECR I-593 para 60)

Chapter/heading	**Article**
Principles	Art 5 (1) sentence 1 and para. 2 TEU, Art 5 (3) and (4) TEU and Protocol on the Application of the Principles of Subsidiarity and Proportionality
Increase or reduce competences of EU	Art 48 (2), (3), (4), (6) TEU
Approximation of laws	Art 114 TFEU
Economic policy	Art 120ff TFEU
Excessive debt	Art 126, Art 126 (14) 2 TFEU, Art 126 (14) 3 TFEU and Protocol 12 (2) or (3), Art 352 TFEU e contrario Art 289 (3) TFEU
Monetary policy	Art 127ff TFEU
Administrative cooperation	Art 197 TFEU
Delegated acts and implementing acts (Comitology)	Art 290, 291 (2) and (3) TFEU
Agencies	Various
Regulation, Directive and Decision	Art 288 TFEU
Recommendation	Art 17 (1) TEU and Art 292 4th sentence TFEU
Guidelines	Various
Publication	Art 2 (1) and 12 of Regulation 1049/2001
Communication; Endorsement	Various

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