

REFORMING EUROPE

edited by Christophe Blot,
Olivier Rozenberg, Francesco Saraceno
and Imola Strehö

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REFORMING EUROPE?

WHEN ECONOMISTS, LAW SCHOLARS AND POLITICAL SCIENTISTS CARE ABOUT THE FUTURE OF THE EU

Christophe Blot¹, Olivier Rozenberg², Francesco Saraceno¹
and Imola Strehö³

Europe is in crisis and doubts emerge about the capacity of the European Union (EU) to overcome it. This crisis and those doubts share many similarities. They are severe, multidimensional and possibly durable. Understanding them and proposing a few modest solutions require adopting a comprehensive approach mixing the three dominant patterns of the EU: an economic market based on trade and solidarity, a set of constraining norms protected by judicial institutions and a political space under construction characterised by the interaction between a (weak) central core and (strong) domestic arenas.

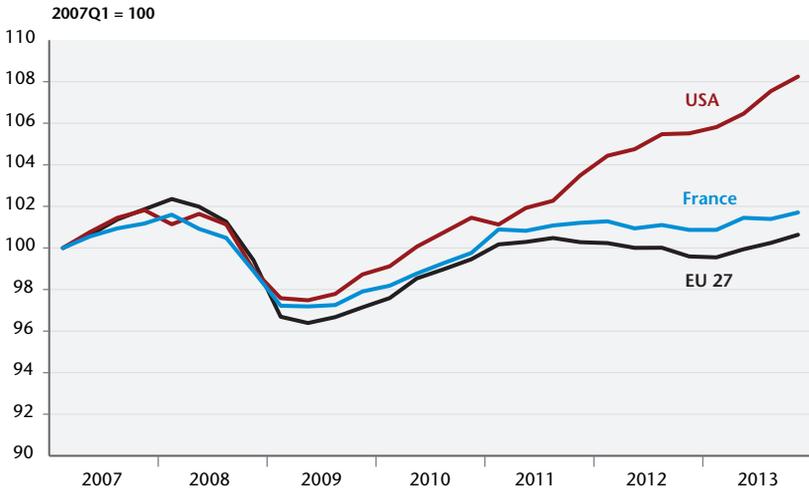
The impact and nature of what is usually labelled under the name of “crisis” can be differentiated for each of those three aspects. We do it through a few quantitative data over a recent period by comparing the EU to one of its members, France, and to the United States of America (US). At the economic level, figure 1 shows the decline of GDP in 2009 for the three areas. The slack was rude and, even if the worse seems to be behind us, growth rates obtained before the crisis have not been reached since, regarding the EU 27 as well as France alone – contrary to the US.

1. OFCE, Sciences Po.

2. Sciences Po, Centre d'études européennes.

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Figure 1. Real GDP



Source: Eurostat, INSEE and Bureau of Economic Analysis.

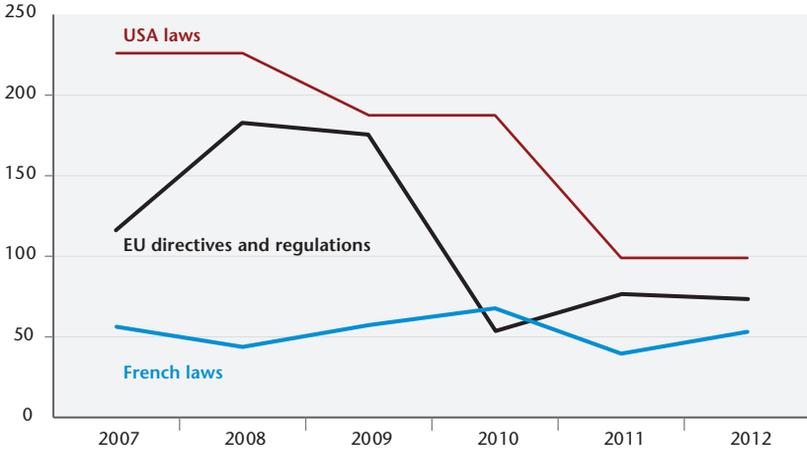
Regarding the second aspect, Figure 2 indicates that the number of directives and regulations adopted over the recent period tend to decline. This trend is seemingly not limited to Europe as the last US Congress has also been less productive than the previous ones. France, by contrast, is more stable. Researches still have to be done for explaining those complex evolutions. They may indicate that the difficulties of the EU are not limited to economic performances and affect, in one way or another, the capacity of the EU to regulate public policies.

The last aspect of our focus concentrates on the level of public support for the EU level of government. Data presented in Figure 3 depict a rather contradictory image in that respect. On the one hand, trust in the EU has declined severely with a loss of 26 points over seven years. The economic and financial crises have destroyed nearly half of the credit that the EU had patiently cumulated year after year. On the other hand, the average trust vis-à-vis the EU of the public opinions of the Twenty-Seven is still superior to the average trust of each domestic public opinion vis-à-vis their own government. The distance has diminished but there is still one. The only exception to that is the so-called honey-moon period after domestic elections but the French decline after the summer of 2012 shows that it does not last.

This rapid and partial overview highlights the multidimensional feature of the on-going EU crisis. As indicated by the comparison with the US or with member states, the EU is not the only level where the capacity to govern efficiently and with legitimacy is challenged. Yet,

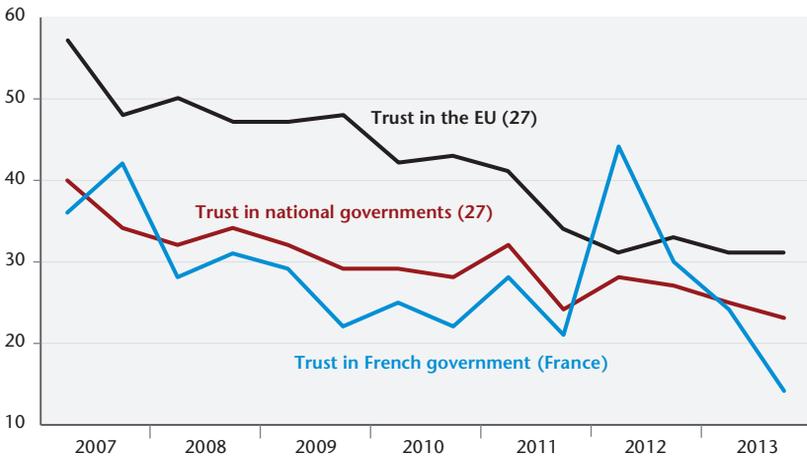
what may be more specific to the EU is this multidimensionality as economic results, law production and support rates are all matters of concerns.

Figure 2. Legislations passed



Sources: EU: EU Legislative Output 1999-2010 (05/06/2010) [database], Centre for Socio-political Data (CDSP, CNRS – Sciences Po) and Centre for EuropeanStudies (CEE, Sciences Po) [producers], Centre for Socio-politicalData [distributor]. France: French National Assembly (international agreements excluded). US: US Senate, data for 2007-2008, 2009-2010 and for 2011-2012 have been divided by two.

Figure 3. Trust in the EU and national governments



Sources: Eurobarometers Standard 67-80. The question was: "I would like to ask you a question about how much trust you have in certain institutions. For each of the following institutions, please tell me if you tend to trust it or tend not to trust it. The (nationality) government / The European Union".

Faced to those deep and probably unprecedented challenges, the debate leading to the European elections remains mostly hostage of two polar views. Either a sort of self-complacency, that prides itself of the fact that the crisis did not lead to a collapse of the single currency, and finds into this very fact a sort of validation of current European policies and of the institutions that accompany them. Or, at the other extreme, the view that the crisis, and the disruption that it brought especially to Eurozone peripheral countries, is an unavoidable effect of the European construction, that can only be addressed by rolling back on the European integration project.

A reformist approach

We subscribe to neither of these polar views. This volume, and the workshop that preceded it, were born from our deep dissatisfaction from the management of the crisis. We actually believe that the crisis exposes a number of flaws in European construction. European institutions failed to prevent growing imbalances, and were not adapted for managing the ensuing problems. There are a number of reasons, which emerge in many of the contributions to this volume, which lead to believe that the crisis could have been significantly less harsh, were it met with better policies and well-functioning institutions. For the same reasons, some of the institutional advances that were triggered by the crisis do not seem to address the structural flaws of the European construction. This is why we also believe that the self-congratulatory attitude of European leaders misplaced.

This does not mean that we adhere to the view that current policies are an intrinsic feature of the European construction, that therefore cannot be reformed. Mounting euro skeptic movements tend to convey the idea that there is no alternative to current policies, that are built into the European construction since its beginning. The pernicious effects of austerity and of crisis management would then leave no other option than a breaking of the single currency or even of the EU itself, as the debate on the possible British referendum of 2017 stands to show.

In January 2014 we held a workshop at Sciences Po in Paris on “Reforming Europe”, whose objective was to gather researchers unhappy with the current state of the debate on the EU, in particular within the perspective of the European Elections of May 2014. In organizing the workshop we felt it to be a duty, for intellectuals engaged in the public debate on European policies, to try to break the dualism between complacency and Euroskepticism. Exposing the

shortcomings of the European construction, the idiosyncrasies in the Union's decision making process, and the mistakes in the management of the crisis, needs not to challenge the whole concept of European construction.

While the crisis is financial and economic, it exposed flaws of the European governance that go well beyond the field of economics. This is why we have adopted an interdisciplinary approach, having political scientists, law scholars and economists, bring their own perspective, and the perspective of their discipline into an open debate.

This volume has the ambition to feed the discussion leading to the elections of May 25 (and possibly beyond). This is why we chose the format of short policy briefs, when possible aimed at providing specific policy prescriptions, rather than fully fledged academic contributions. Our objective is to reach a vast public of policy makers, candidates, political parties, unions, entrepreneurial associations, and citizens. The researchers who contributed to this volume share the view that reforming Europe is necessary and possible at the same time. But the reader will not find many other commonalities, and may even find contradictory recommendations. The objective of this project is not to provide a coherent set of solutions, that would require much more than a volume. Ideally, our contributions would serve as a basis and starting point for debates that will eventually lead to political choices.

It is noteworthy to underline that all the authors took great care while drafting their policy briefs to suggest at least some if not exclusively policy prescriptions that do not require treaty changes and can therefore be implemented without having to convey an IGC. Yet, it does not mean that changes in treaties would be excluded by principle. The reader may then also find a few propositions to this end.

The contributions of this volume are organized under three main themes. The first part deals with issues relating to democracy and citizenship, the second with European governance and the third with European public policies.

Democracy and European Citizenship

European Union is indeed not a nation state but it is nonetheless a political entity with its own institutions – not completely disconnected from national institutions –, defining its own rights, laws and rules. The exercise of democracy in the EU has then some very specific features that must be taken into account notably because the idea of citizenship is not well established as in the member states. This is why measuring regularly sentiment towards European construction is a

first and necessary step to understand democracy issues. In this respect, recent Eurobarometer surveys indicate that EU institutions suffer from a lack of confidence. But, **Bruno Cautrès** shows that Europe is not blamed per se and exit strategies from the euro area are not yet considered significantly. Surveys would rather indicate that Europe seems far from citizens. The issue of citizenship is then crucial. In EU, it often boils down to mobility issues. Even if it has been considered as a major success of European construction, **Anastasia Iliopoulou-Penot** reminds that progresses remain to be done. Migrants (inactive citizens, students and Roma population) have still significant difficulties. For **Selma Bendjaballah**, **Stéphanie Novak** and **Olivier Rozenberg**, the drop in the number of legislative decisions reflect the 'existential doubt' about EU institutions. They consequently stress that a better expression of political and institutional divides is needed. Beyond the number of legislative decisions, the duration of the decision-making process is another source of concern. This paralysis results from strategic behavior aimed to control the policy agenda. **Cesar Garcia Perez de Leon** recommends a number of reforms of the rules governing the use of time under co-decision. More generally, the method ruling EU functioning has evolved. The intergovernmental practices have gained momentum whereas the community method has been diluted. **Delphine Dero-Bugny** claims yet that Intergovernmental methods are often used for temporary periods, and are finally integrated by the Community method. There is then no opposition between the two approaches. They should be made complementary by rethinking the role of the European Council and integrating emergency procedures in order to be able to respond quickly in case of crisis. According to the great and charming **Imola Strehö**, European Institutions are now more open and transparent. To improve the trust in institutions, the European Parliament should pay attention to good administration, which is referred to in the primary law of the EU. To this end, the role of the European Ombudsman should notably be emphasized and the wide range of administrative assistance should be improved. Finally, **Antoine Bailieux** considers that a significant strain has been placed on the protection of fundamental rights. This is the consequence of the economic, social and identity crisis in the EU. It is then incumbent upon the European Parliament to ensure that fundamental rights continue to serve as a compass and frame of reference for EU policies.

European Governance

When considering a multidisciplinary approach, European governance is clearly central as it relates to institutions and implementation of economic policies in the EU. The contributions gathered in the second part all focus on these issues. The crisis has clearly highlight the need for an improvement of governance. It has actually been reinforced through “anti crisis” measures. The scope of economic surveillance has been enlarged. Fiscal rules have been strengthened and banking Union is under way. These recent developments have left aside the role European and national Parliaments, regarding notably the legislative process. **Laure Clément-Wilz** considers that increasing their role would then provide a clear legal basis for the new missions of the EU institutions and strengthen democratization. According to **Frédéric Allemand** and **Francesco Martucci**, this means avoiding the use of intergovernmental agreements, organizing a “euro area” committee within the European Parliament and holding an annual socio-economic convention to establish the broad thrust of EMU policies. Another key issue relates to the ability of national governments to coordinate their decisions on economic policies more efficiently. **Catherine Mathieu** and **Henri Sterdyniak** remind indeed the flaws of the current governance. They notably insist on the failure of existing rules and the lack of solidarity among member states. EMU is structurally heterogeneous and is diverging due to erroneous policy choices. Coordination is then the only way out of the crisis. The European governance should explicitly aims at providing growth, full-employment and reducing macroeconomic imbalances. The creation of a European tax would also be a significant step towards increased integration. To this end, the European Union needs to levy taxes for itself. The tax base should then be chosen with great care, in line with intended objectives, as emphasized by **Alexandre Maitrot de la Motte**. Besides, a better regulation of the financial system is needed. The banking union goes in that direction. But it suffers from severe shortcomings. On the one side, the ECB will be in charge of banking supervision. But, on the other side, the resolution fund will not be fully operational. Moreover, as stressed by **Jean-Paul Pollin**, regulation should not boil down to a banking union. Separation between commercial banking activities and investment activities would complement the banking union. In addition, the new task entrusted to the ECB raises coordination issues. **Christophe Blot**, **Jérôme Creel**, **Fabien Labondance** and **Paul Hubert** note that, de facto, the ECB will deal with a triple mandate (price stability, growth and financial stability) and they call for the set up *ex nihilo* of a supervisory body of

the ECB, responsible for discussing and analysing the relevance of the conduct of monetary policy under the broader objectives of the ECB.

Issues in European Public Policies

Finally, the debate preceding the European elections should trigger public debate on the key issues regarding public policies. Reforming institutions should not go without a large reflection on the policies of these institutions. This is the aim of the third part of the volume. Reducing inequalities should be made a top priority in the EU. **Francesco Saraceno** notably emphasizes that macroeconomic imbalances have been fuelled by inequalities. The crisis has in turn exacerbated the problem, especially in peripheral Eurozone countries. The struggle against inequalities is therefore strongly connected to governance issues. This is why fiscal policies and regulation need to be part of the effort to curb inequality. Another dimension of inequalities is related to gender inequalities. **Françoise Milewski** and **Réjane Sénac** present the ways in which European policy on equality have dealt with this issue through EU law on non-discrimination. Then, they take up the debates provoked by policy changes, both in regards to the aims and their implementation. The problem of inequalities necessarily refer to questions about the functioning of labour markets and social protection systems. With austerity measures, most European member states have engaged in structural reforms and have cut social spending. Competition has been strengthened in social services. In the labour market, **Gérard Cornilleau** develops the alternative between a liberal model of work sharing and a social model with unified social rights. Complete social unification may yet be hard to achieve so that social frontiers may be defined so as to allow both the mobility of workers and their effective social protection. **Bruno Palier** also considers that austerity measures and the structural reforms, which have followed, have destroyed social cohesion. Consequently, Europe must now put solidarity at the center of its policies and support countries to reinvest in social policies.

Investing in the future is also the key message carried by **Xavier Timbeau**. He calls for a green “new deal” to foster the transition to a low carbon economy. To this end, a public-private investment plan in the energy transition of the order of 2 points per year of European GDP is needed. Those investments would also certainly influence the industrial policies measures implemented at the European level. They would certainly need to be coordinated. Divergences among countries have increased. Both national and European policies should then be reconsidered. For **Jean-Luc Gaffard** and

Lionel Nesta, supply reforms would then consist in a properly designed industrial policy that would consist in establishing a framework aimed at supporting both competition and cooperation between the various players of innovation, and thus allowing firms' strategies to be successful. Public policies should also encompass immigration and asylum policies. **Marie-Laure Basilien-Gainche** claims that the current approach is based on a misdiagnosis and the mismanagement of this politically sensitive issue has unfortunately harmed the competitiveness and credibility of the EU and its Member States. Finally, EU has been recently engaged in the negotiation of numerous preferential trade and investment agreements. Starting from this, **Pierre Boulanger** and **Patrick Messerlin** analyse EU's trade policy and propose a distinction between a policy for a "near circle" (countries neighboring the EU), dominated by a goal of political stability, and a policy for a "broad circle" (countries with a level of development comparable to that of the EU), dominated by a goal of economic growth.

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A COLLAPSE IN TRUST IN THE EU? EUROPEANS' ATTITUDES TOWARDS EUROPE DURING THE GREAT RECESSION

Bruno Cautrès

Sciences Po-CEVIPOF, CNRS

The period of the “Great Recession” since 2008 has led to a downward trend in many indicators of support for European integration. From the point of view of the trust that Europeans have towards Europe (an important dimension of diffuse support for the EU), we can even speak of a deep crisis of trust in the European Union action, as recorded since 2008 in the opinions of Europeans. In some countries (like Greece), we even recorded a collapse of confidence. The analysis of two Eurobarometer studies, one at the beginning of the crisis and another in 2011, shows that if the collapse is certainly there, and not only on indicators of diffuse support towards EU integration, Europeans do not impute responsibility for the crisis to the EU only: Europeans perceive the crisis and the role of Europe in the crisis through the prism of their national experiences, in particular confidence in their governments and the perception of the economic situation of their country. Moreover, the crisis of trust in the EU does not entail ipso facto a serious crisis of confidence in the euro: we do not observe for euro a comparable collapse to that observed in terms of overall trust in the EU. Among euro-zone countries, evolutions are slightly declining but not very significantly; it is in countries that are outside the euro-zone or those who are candidates to enter in that the lower support for the euro can be observed.

The financial crisis that began in August 2007 in the United States and then spread in several European economies to become a sovereign debt crisis poses more than ever the question of the link between the action of the European Union and how people and citizens perceive it: the combination of financial bailouts of banks, fiscal policies programs and of lower tax revenues linked to the

decline in economic activity in general has resulted in a very significant deterioration of the budget situation and of the public debt ratios, as had never been seen before in peacetime.

In the 17 euro-zone countries, this situation has revealed that the public debts do not benefit from any institutional guarantee. As Patrick Artus (2012) has analyzed this very well, this situation strongly poses a real European dilemma and raises in a particularly crucial way the question of the democratic legitimacy of the European Union, “the choices seem *a priori* clear: on one side, the move towards a more integrated politico-economic system at the level of the euro-zone, on the other side, the national withdrawal, potentially until the breakup of the monetary union. Although since the beginning of the crisis, an in-between has become, since Member States have chosen to favor one mode of intergovernmental decision that apparently ensures national interests and weakens the institutions that guarantee the common interest, such as the Commission and the European Parliament. At the same time, the decisions taken under the pressure of the financial markets are going in the direction of ever greater fiscal solidarity and of strengthened supervision rules. This in-between is probably due to the paradoxical situation in Europe: the combination of the sudden experience of economic interdependence on the one hand, and on the other, strong differences that lead Member States to want to keep a veto right on EU decisions”.

According to Patrick Artus, this “policy of small steps, (through the implementation of ESM or through the strengthening the role of the European Central Bank) cannot provide a comprehensive response to “a well established systemic crisis,” neither a reply to the challenge of the democratic legitimacy of the European Union and the euro zone: “This is that deficit, i.e. the absence of a clear political leadership with a strong democratic legitimacy, which currently feed distrust among the seventeen members of the euro-zone. On the one hand, the Southern countries affected by the crisis count on the financial solidarity of their partners and protest against austerity policies they regard as being' imposed from outside. On the other, some Northern countries expect structural reforms of their neighbours, or even an independent oversight of national budgets, while their citizens whose assistance is sought

through solidarity policies, fear that they do create windfall effects and encourage laxity governments of other states”.

This analysis nicely summarizes the main aspects of the deep crisis of trust in the European Union that we see since 2008 in the opinions of European citizens. Before we analyze this trend few methodological precautions must be posed. First, any analysis of the evolution of public opinion must take the time dimension in consideration: the less favorable assessment that Europeans relate to European integration does not date from the current crisis. It dates from the early 1990s when the conjunction of the “post-1989 world” and public debates on the ratification of the Maastricht Treaty introduced in public opinion a series of questions about the limits, the scope and meaning of economic and political European integration. In addition, the indicators that measure the attitudes of European citizens *vis-à-vis* European integration have been the subject of lively debates in academic research literature: these researches reflect the question of the views of European citizens towards the EU in terms of “support”, a concept which itself is linked in the tradition of political analysis to the question of the democratic legitimacy of the EU. These researches make a distinction between the “diffuse support” and the “specific support”, a distinction coming from David Easton analysis who had suggested in the 1960s that any political system owed its stability to a “diffuse support” of citizens defined in terms of “feelings of trust or affection” while it was in the same time evaluated by the citizens in terms of functioning. This distinction is, in the literature on European citizens attitudes towards European integration, endorsed by a distinction which is almost isomorphic: the one made by Fritz Sharpf between support by the “inputs” and by the “outputs”: on the one hand political choices are legitimate if they reflect the will of the people expressed through the mechanisms of political participation or speaking up in civil society, on the other hand political choices are legitimate if they are finalized with respect to the collective good and the good functioning of the system.

These methodological considerations are important because, from the point of view of the analysis of the reactions of citizens towards the crisis and the European integration, and towards the EU in the crisis, we cannot avoid the question of whether the effects of the crisis are on “specific” or “diffuse” support levels: in

the original design of Easton, there is a compensation mechanism and communicating circuit between the two levels, diffuse support being in his words, a “reservoir of favorable attitudes” which can compensate for the loss of “specific” support when the political system does not “deliver” to its citizens. In this latter case, the crisis of trust that we see in the EU action does not question the commitment and the general support of Europeans towards the overall objectives of European integration and a significant leeway exist for the EU to create (or resuscitate...) the public demand for European public policies.

Table 1. The two forms of European citizens support towards EU

% for the EU27 members in 2009 and 2011

		EB71.1 (2009)		EB76.3 (2011)		
		%	% « dont' know »	%	% « dont' know »	
« Diffuse » support		In favor of a monetary union with only one currency, the euro	64	7	56	8
		Membership to EU is a « good thing »	53	4	–	–
		Trust in the European Union	50	11	39	10
		In favour of EU enlargement to other countries in the coming years	48	12	43	11
« Specific » support	(*) In favor of more decision taken at the EU-level to	Fight against terrorism	80	4	82	2
		Fight for environment protection	73	4	66	2
		Fight against unemployment	61	5	39	2
		Trust in the European Commission	47	22	40	20
		Positive image of EU	44	2	33	2
		Things are going in the good direction in the EU	36	11	23	9

Sources: Eurobarometer 71.3, June-July 2009; Eurobarometer 76.3, November 2011. Data have been analyzed by the author and weighted.

The table below compares some indicators of these two forms of support from two Eurobarometer surveys in 2009 and 2011, one survey at the beginning and the other one at middle of the crisis. Even limited to a few indicators, the comparison shows a clear fall in support for the EU and its actions whatever the “diffuse” or

“specific” support is considered. The economic crisis has had a very negative impact on the general or specific support to EU actions or institutions.

Other indicators from more recent or complementary to Eurobarometer surveys complete the picture. At the most general level of support for European integration (“diffuse” support), the spring 2012 Eurobarometer records (for the first time since the creation of this indicator) equality between positive and negative opinions about the functioning of democracy in the European Union. While in 2007 and until 2009, only 32% of Europeans declared themselves dissatisfied with the way EU functions, in 2012 the increase was 12 points at the same time that the number of satisfied went down by 10 points. At this very general and diffuse level of support for the EU, this decline is particularly striking. And dissatisfaction gains dramatically in Greece (from 40% in 2007 to 70% in 2012), but also in Spain (14% in 2007, 30% in 2009 and 52% in 2012), Italy and Portugal (37% in 2007, 39% in 2009, 66% in 2012). These countries, both exposed to the reality of the crisis and the conditionality of the aid to rescue their banking sector and restructuring of public debt, are more than any other the theatre of a real collapse of the trust in the EU. The image of the EU is of course also deteriorated not only for the overall European level (20% of Europeans in the Spring 2011 Eurobarometer have a negative image of the European Union against 15% in 2007), but also very deteriorated in the countries who were highly exposed to the crisis: the negative image of the European Union now brings 40% of Greeks (13% in 2007), 25% of Portuguese (12% in 2007) or 16% of Spanish (6% in 2007). While these evolutions are strongly or very strongly downward we can nevertheless observe that the negative image of the EU remains at levels below 50%.

These data are well summarized by the indicator of trust in European integration. Many researches have shown the link between political trust and support for the political system; political trust is an essential dimension of “diffuse” support”, one of the most synthetic indicators of this support. Declining trust in the EU since 2008 is first strong and widespread: there are only two countries among the 27 members of the EU in 2011 for which there is increasing trust in the EU compared to 2007: Sweden (+2 points) and Finland (+10 points), two countries whose levels of pro-EU

opinions are usually lower than for all countries and whose opinions were able to welcome the affirmation of budgetary rules at European level. But in all other countries, “large” or “small” European countries, regardless of the time of accession to the EU, net “contributors” or “recipients”, we are witnessing a particularly significant drop in trust (Armigeon and Ceka , 2014).

Nevertheless, these data do not allow to assign the responsibility for the collapse of support for European integration in the EU alone: Europeans perceive the crisis and the role of Europe in the crisis through the prism of the national experience they have had of it, in particular trust in their governments and the perception of the economic situation in their countries (Hobolt *et al.*, 2013). It is also the confidence in national governments and in particular the confidence in the ability of these governments to cope with the economic crisis that is involved.

But what about support for the euro? One might expect that the support for the euro experiencing a very important decline in trust: as Patrick Artus summarized in its analysis, the governance of the euro area is actually at the heart of issues of legitimacy and citizens support, including their “diffuse” dimensions. If the level of support for the euro has actually declined between 2008 and 2012, there has not been a comparable collapse to that observed in terms of the overall trust in the EU. In countries members of the euro-zone the evolutions are slightly declining but not are not very significant. And it is remarkable to see the small differences between the countries members of the euro-zone who are “debtors” (those exposed to austerity plans and constraints of the EU and the IMF) and those who are “creditors”. The collapse of support for the euro still exists elsewhere, but outside the euro-zone, in the countries that have chosen (such as the United Kingdom) not to join the euro-zone but also in countries which are candidate to join the euro-zone. A recent work by Sara Hobolt thus clearly shows that in the countries of the euro-zone, the majority of citizens still think that the European Union is more able to resolve the crisis than the national government (Hoblot , 2013).

Recommendations

The data presented here show that the opinions of European citizens towards European integration do not let themselves be grasped by simplistic opposition between “pro” and “anti” European. Multidimensionality of these opinions is the rule. More than during the “Maastricht years”, European citizens have questions at several levels on European integration: the debate can no longer be summarized in just splitting between supporters of national sovereignty and “integrationist”. European integration has, by its own dynamics, both homogenized and heterogenized the representations that Europeans have the European integration process. “What are the contributions of the EU vis-à-vis the actions of national governments? Where are the limits of European public policy, particularly in economic matters? Europe for whom or for whose benefit? Where are the boundaries?”, are just some of the questions that now oppose popular representations schemes of European integration. More recently, researchers have even suggested that it is more the growing “indifference” to Europe than opposition to European integration that characterizes the disoriented public opinion today (Duchesne *et al.*, 2013).

For all these reasons, it is particularly important that the main tool the researchers can access to analyze the dimensions of the opinions of Europeans toward European integration is shifted in a more “academic” direction. The Eurobarometer is a survey conducted and funded by the European Commission; if it does not ignore the links with the academic community, it is not fully an “academic” survey in the traditional sense of the term.

If Eurobarometer has contributed in a fundamental and irreplaceable way to the development of academic research and constitutes one of the largest databases available to researchers and the public, it sometimes lacks consistency in its questionnaires and indicators: if a good part of the indicators to distinguish the forms of “diffuse” and “specific” support are there, all are not there and are not there systematically. The result is a sometimes optimistic presentation of the Eurobarometer data in reports prepared by the services of the European Commission. More annoying is the often one-dimensional nature of the collected data: too many indicators measure the same dimension (favorable/unfavorable to European integration) and too little measure alternative dimensions: Europe

of the Left, Europe of the Right for example. Indeed, it is through the politicization of issues of European integration that citizens may give more meaning to European integration and could reduce the dissonance between the ideological compass used for issues of national politics and the absence of such ideological benchmarks that raise Europe in their minds (Hix and Bartolini, 2006; Belot *et al.*, 2013).

Finally, it seems increasingly clear that more qualitative and contextual observation devices should complement the range of available data: the micro-social and territorial contexts of production of political attitudes are, for European integration more than for any other object of analysis, fundamental to grasp.

CITIZENSHIP OF THE UNION, MOBILITY AND INTEGRATION IN THE EUROPEAN AREA

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While it is often heralded as one of the great successes of European integration, the mobility of EU citizens in Europe still experiences difficulties. These concern internal market actors such as migrant workers, including frontier workers. Their access to social rights in the host State is currently facing resistance that one might have thought overcome by now. Meanwhile, economically inactive citizens' right to residence is threatened by expulsion measures that are often taken in an automatic manner, when a citizen lacks adequate resources. More generally, we still witness efforts to prevent the long-term settlement of migrant citizens in the host State. In addition, special attention is paid to student mobility, which raises the issue of access to university studies and its financing. Finally, the treatment of the vulnerable Roma population is a problem with an inarguably European dimension that must be addressed without delay.

1. Introduction: access to citizenship of the Union and its importance for mobility

Malta's recent decision to put its national citizenship on sale, and consequently turn citizenship of the Union into a market good, has elicited strong reactions from European actors.¹ This decision, along with the existence of other national provisions (Cyprus, Austria, Belgium, Portugal) allowing third-country nationals to acquire national citizenship in return for substantial

1. See, for example, European Parliament Resolution of 16 January 2014 on EU citizenship for sale, 2013/2995 (RSP).

investments, should **reopen the debate on the relationship between citizenship of the Union and Member State nationalities**. Under article 20.1 TFEU, holding Member State nationality automatically confers citizenship of the Union. Since granting and withdrawing nationality lies within the field of States' reserved competence, the Union cannot define its subjects in an autonomous manner, which is paradoxical for a transnational political and social community. Yet, as European Commission Vice-President Viviane Reding highlighted, "awarding citizenship to a person gives this person rights vis-à-vis the 27 other Member States." Thus, given that a State's decision to grant its nationality produces transnational effects, this power should be exercised in accordance with Union law,² which includes a set of common values.

Both legally, in terms of the treaties, and conceptually, in the mind of the citizens themselves,³ citizenship of the Union is essentially associated with mobility. The latter takes shape through the right to move and reside freely, provided for in article 21.1 TFEU and implemented by directive 2004/38.⁴ The mobility of people throughout the European Union is crucial to forging a European identity and consciousness. While the European legal regime of mobility is a noteworthy achievement, there are still gaps to be filled and problems to be solved. The approval of the proposal "against mass immigration" (which is mainly intra-European) in the Swiss referendum held on 9 February 2014 illustrates the urgency of initiating an enlightened debate touching upon all of these issues.

2. Access to social rights for migrant workers, including frontier workers

The **free movement of workers**, which constitutes the foundation of citizenship of the Union and the most complete form of mobility of people, is currently **facing considerable resistance in**

2. See ECJ, 7 July 1992, *Micheletti*, C-369/90 and ECJ, 2 March 2010, *Rottmann*, C-135/08.

3. According to the responses of European citizens themselves to various surveys conducted by the European Commission, the Union essentially signifies the freedom to travel, study and work everywhere in Europe.

4. Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, OJEU L 158 of 30 April 2004, p. 77.

certain Member States. This resistance particularly (but not exclusively) focuses on the arrival of workers from central and eastern European countries that joined the Union in 2004 and 2007.⁵ It partly stems from the economic crisis: the constraints the crisis has placed on national budgets and the increase in unemployment. However, most worrisome is that reservations about European immigration are voiced not only by populist political parties (whose growing importance is itself a matter of concern), but also feature in the official discourse of national governments and legislators, in blatant disregard of European commitments. The best example is the debate in the United Kingdom about social advantages, especially family benefits paid to Polish workers. According to statements made by Prime Minister David Cameron in January 2014, it is “wrong” to pay child benefit to support migrant Polish workers’ family remaining in Poland. However, this issue should be considered to have long been definitively resolved. Under article 7.2 of Regulation 1612/1968,⁶ now replaced by article 7.2 of Regulation 492/2011,⁷ migrant workers have access to the same social (and tax) advantages as national workers.⁸ The measure’s rationale is hard to dispute: the idea is to recognise and reward the migrant worker’s contribution to the host country’s economy. Indeed, from the taxpayer’s perspective, by paying contributions and taxes migrant workers participate in the funding of the host country’s welfare state, from which they can therefore not be excluded. Yet current British reactions to the alleged “social tourism” of Polish workers sadly illustrates that **the free movement of workers is not sociologically recognised as a done deal; European and State actors must continuously renew their commitment to it. Public awareness campaigns should be held so that citizens might properly appreciate the (very often misun-**

5. See, most recently, the fears expressed in the political and journalistic circles of several Member States about the lifting, since 1 January 2014, of transitional measures for Romanian and Bulgarian workers.

6. Regulation 1612/68/EEC of the Council of 15 October 1968 on freedom of movement for workers within the Community, OJCE L 257 of 19 October 1968, p. 2.

7. Regulation 492/2011/EU of the European Parliament and Council of 5 April 2011 on freedom of movement for workers within the Union, OJEU L 141 of 27 May 2011, p. 1.

8. The Court of Justice provided a generous interpretation of this provision, which usefully completes Regulation 883/2004/EC of the European Parliament and Council of 29 April 2004 on the coordination of social security systems (OJEU L 166 of 30 April 2004, p.1), which replaced Regulation 1408/71/EC on the same subject. One of the cardinal principles of this instrument is the equal treatment of national and migrant workers.

derstood) contribution of migrant workers to the economic development of their country.⁹ More generally, civil society actors and academics should conduct comprehensive studies to evaluate national implementation of the European framework for the mobility of people¹⁰ and alert citizens and European actors of possible deviations in this area.¹¹

Furthermore, among migrant workers, **special attention should be paid to the category of frontier workers, who face particular and thorny difficulties**, which the Commission and European Parliament have long singled out.¹² A recent problem stemming from the case law of the Court of Justice is of special note. Indeed, while frontier workers should not be treated any differently from migrant workers in terms of access to social benefits, the Court of Justice recently approved national measures requiring frontier workers to demonstrate sufficient links with the State of employment.¹³ In its *Giersch* ruling, the Court held in a broad statement, that “the frontier worker is not always integrated in the Member State of employment in the same way as a worker who is resident in that State.”¹⁴ This situation justifies that the State of employment ask the frontier worker to demonstrate a connection beyond participation in the labour market¹⁵. To this end, the Court has accepted that student financial aid to the children of a frontier worker may be conditional on the parent having worked in Luxemburg “for a certain minimum period of time.”¹⁶ This solution considerably weakens the position of frontier workers, by

9. In this respect it is unfortunate that the British government is delaying the publication of an official report of the Home Office that debunks the theory of social tourism and shows all the benefits of European immigration for the British economy.

10. See, for example, the 2013 research report by J. Shaw, N. Miller & M. Fletcher, *Getting to grips with EU citizenship: understanding the friction between UK immigration law and EU free movement law*, <http://www.law.ed.ac.uk/overlap>.

11. See, for example, the editorial by N.N. Shuibhne, “Quicksand”, (2013) 38 *European Law Review*, p. 135.

12. See, already in the 1980s, the communication of the Commission to the Council, to the European Parliament and to Member States on the issue of frontier populations, COM/85/529 final, October 1985 and the European Parliament’s report on the problems of frontier workers in the Community of 21 October 1988, doc. A2-227/88.

13. ECJ, gr.ch., 18 July 2007, *Hartmann*, C-212/05; ECJ, gr.ch., 18 July 2007, *Geven*, C-213/05; ECJ, 11 September 2007, *Hendrix*, C-287/05; commentary on the three rulings by Ch. O’Brien, 45 (2008) *Common Market Law Review*, p. 499. ECJ, 20 June 2013, *Giersch*, C-20/12; comm. D. Martin, *Journal de Droit Européen*, September 2013, p. 270.

14. Point 65 of the *Giersch* ruling.

15. Even though this participation suffices, in principle, to attest to integration: see ECJ, 14 June 2012, *Commission/Netherlands*, C-542/09.

opening the way for the State of employment to impose additional conditions compared to other migrant workers for them to enjoy social advantages. This is questionable in the light of the traditional approach that solely focuses on the status of “worker”.

3. The expulsion of economically inactive citizens

Regarding **economically inactive European citizens**, it is important to note the very large increase since 2011, and particularly in 2013, in expulsions of European citizens (especially French nationals) from Belgium on grounds of lacking adequate means of support. It is true that directive 2004/38 provides that, in order to be able to reside in the host State between 3 months and 5 years,¹⁷ a citizen without any professional activity and the members of his/her family must have medical insurance and sufficient resources not to become an unreasonable burden on the social assistance system. Yet, codifying on this point the solution of the *Grzelczyk* ruling,¹⁸ the same directive specifies that the removal of a migrant citizen cannot be an *automatic* consequence of the migrant’s claim to social assistance.¹⁹ In such a case, national authorities must examine whether the claim stems from temporary difficulties and take into account the migrant citizen’s personal circumstances, the length of residence, and the amount of aid granted.²⁰ More generally, **national authorities must implement directive 2004/38 in the light of the requirements of citizenship, of fundamental rights, of the principle of proportionality, and (in the case of French nationals expelled from Belgium) of the reality of cross-border regions** that have contributed so much to European integration in everyday life.

16. Point 80 of the *Giersch* ruling. According to the Court, requiring a certain period of work can also prevent the risk of “student grant forum shopping” (ibid). A period of 5 years seems reasonable in this respect.

17. According to the graduated system established by directive 2004/38, residence of up to 3 months is not subject to any conditions besides possession of a valid passport or identity card. This right is maintained so long as the migrant does not become an unreasonable burden on the social assistance system of the host State. After five years of legal and continuous residence, the citizen of the Union and family members acquire the right to permanent residence, free of any economic constraint.

18. ECJ, 20 September 2001, *Grzelczyk*, C-184/99.

19. Article 14.3 and recital 16 of directive 2004/38.

20. Recital 16 of the directive 2004/38.

4. Barriers to the long-term settlement of migrant citizens in the host State

Moreover, **several barriers are frequently raised to the long-term settlement of migrant citizens in the host State, reflecting the will to “keep them out”**. Thus, despite a solid legislative and case-law *acquis* forbidding them, various restrictions on acquiring real estate²¹ and the levying of discriminatory local taxes or registration fees²² continue to exist. In the same spirit, national authorities tend to restrictively interpret the 5-year “legal residence” that is necessary to acquire the right of permanent residence (free of any economic condition and allowing for almost complete equal treatment with nationals).²³ Thus, residence under national humanitarian law,²⁴ or even under Union law, that does not fulfil the economic conditions of possession of sufficient resources and health insurance,²⁵ does not allow for the acquisition of the right of permanent residence. These solutions, which the Court of Justice has unfortunately validated, are regrettable because they ignore the reality of citizens’ integration into their living place. **Directive 2004/38 should be amended by the European legislator in order to allow, in view of acquiring the right of permanent residence, to take into account legal residence for a continuous period of 5 years in the host State *irrespective of its particular circumstances*.**

5. Access to university studies and the funding of student mobility

European integration is significantly advanced by **student mobility**. Indeed, education shared among several States is an important means of strengthening solidarity and tolerance, and is a factor driving the dissemination of culture throughout the Union. The increase in the financial package allocated to the

21. See the recent Flemish regulation making land purchases conditional on the existence a “sufficient link” between the purchaser and target district, condemned in: ECJ, 8 May 2013, *Libert and others*, C-197/11 and C-203/11; L.W. Gormley, “Keeping EU citizens out is wrong”, *Journal de droit européen*, 2013, p. 316.

22. See, for example, the Anvers authorities’ intention, announced in February 2013, to increase registration fees for non-nationals from 17 to 250 euros.

23. This is the key innovation of directive 2004/38, provided for in its article 16.

24. ECJ, gr.ch., 21 December 2011, *Szeja and Ziolkowski*, C-424 and 425/10.

25. ECJ, 8 May 2013, *Alarape*, C-529/11.

Erasmus programme, even while the 2014-2020 European budget decreased compared to the previous programming, sent an important political signal recognising student mobility as a European priority. Yet this mobility, which goes beyond the Erasmus framework, raises two important issues: the funding of studies and access to specific University courses.

— Regarding the first issue, since most migrant students cannot benefit from the host State's student maintenance aid provisions,²⁶ they are increasingly turning to their home State to secure the necessary funding. It would therefore behove States to provide portable grants and loans. States that already provide these, such as Germany, should ensure that the conditions of portability are not disproportionate and therefore ultimately restrictive of the free movement of students.²⁷ Eventually, **States should agree on a binding European instrument regulating the funding of student mobility**; this system would provide for the inter-State transfer and reimbursement of tuition costs in proportion to the professional career of those benefiting from it.²⁸

— Regarding the second issue, solutions should be found to the particular problem creating tensions in **Belgium and Austria**. These two countries have set **conditions that discriminate against EU students concerning access to medical and paramedical University studies**. These conditions aim to staunch the flow of French and German students who come to study (respectively) in Belgium and in Austria, and then return to practice their profession in their home State. The Belgian and Austrian governments pleaded before the Court of Justice²⁹ that this situation

26. Under article 24.2 of directive 2004/38, the host State is not obliged, prior to acquisition of the right of permanent residence (that is, before completing 5 years of legal and continuous residence), to grant maintenance aid for studies in the form of grants or loans, to persons other than workers, persons who retain such status and members of their families. Thus, students who arrive to a Member State cannot apply for maintenance aid for studies. However, they can benefit, on an equal footing with national students, from *aid linked to access to education*, such as aid that covers registration fees.

27. Several rulings of the Court of Justice deal with the restrictive conditions that several German Länder imposed on the portability of student funding : ECJ, gr.ch., 23 October 2007, *Morgan and Bucher*, C-11/06 and C-12/06; ECJ, 18 July 2013, *Prinz and Seeberger*, C-523/11 and C-585/11; ECJ, 24 October 2013, *Elrick*, C-275/12; ECJ, 24 October 2013, *Ingemar*, C-220/12.

28. For thought-provoking observations on this subject, see M. Gérard, "Le financement de la mobilité des étudiants 'Bologne'", *Revue économique*, 2010/3, p. 577.

29. ECJ, 7 July 2005, *Commission v. Austria*, C-147/03; ECJ, gr.ch., 13 April 2010, *Bressol*, C-73/08; comm. S. Garben, (2010) 47 *Common Market Law Review*, p. 1493

threatened the quality of their national education systems and represented a risk for public health given the shortage of doctors and veterinarians in certain parts of their territory. A solution balancing these legitimate concerns with the need to guarantee student rights should be reached through political dialogue, which could be promoted by European bodies.

6. The Roma, European citizens “unlike the others”

Finally, the greatest challenge facing citizenship of the Union nowadays is the situation of the **Roma, citizens “unlike the others”**. Victims of systemic discrimination, great poverty and racist violence in their home States, the Roma also face particularly hostile reactions in the host States. French Minister of the Interior Manuel Valls made telling statements in this regard on the “vocation” of the Roma to remain in, or return to, Romania, and on their “lack of vocation” to integrate into French society. Through both these statements and his actions, the Minister fell in line with the attitude of the previous French government. The dismantling of several Roma camps in the summer of 2010 and the expulsion of several hundred Roma of Romanian and Bulgarian nationality to their home State had led to a vigorous conflict with the European Commission in the fall of 2010.³⁰ This episode revealed that French authorities had failed to correctly implement several provisions of directive 2004/38, particularly those on substantive and procedural guarantees to which a citizen facing expulsion is entitled.³¹

The experience of exclusion that most often ensues when the Roma exercise their right of residence contrasts with the permanent requirement for inclusion, which is inherent to any citizenship, including citizenship of the Union. The application of directive 2004/38 alone cannot be an adequate response, because it was conceived for a type of mobility that has different characteristics; this directive does not take into account the particularities of the collective migration of members of a “disadvantaged and

30. For more on this entire issue, see our paper “‘Le temps des gitans’: à propos de la libre circulation des Roms dans l’Union”, *Europe*, January 2011, p. 5.

31. The application of European guarantees in the event of an expulsion of citizens of the Union has faced difficulties in several countries. With regard to Spain see N. Ferreira, “The EU free movement of persons from a Spanish perspective: exploring its evolution and derogations”, (2013) 19 *European Public Law*, p. 397.

vulnerable minority” that requires “special protection”.³² Consequently, it needs to be completed through **the adoption of legislative and other measures on the Roma in which both home States and host States bear responsibility**. Indeed, the situation of the Roma in Europe is a test case for the Union and its citizenship. The ability to guarantee the rights of the most vulnerable is proof of the effectiveness of European citizenship as a legal status protecting individuals.

7. Conclusion/recommendations

- Public awareness campaigns should be held so that citizens might properly appreciate the (very often misunderstood) contribution of migrant workers, including frontier workers, to the economic development of their country.
- European institutions should remain firm in the face of State attempts to roll back the legislative and case-law *acquis* on migrant workers’ (including frontier workers’) access to social rights in the host State.
- Directive 2004/38 must be implemented by national authorities in the light of the requirements of citizenship, of fundamental rights, and of the principle of proportionality. This directive should be amended by the European legislator in order to allow, in view of acquiring the right of permanent residence, to take into account legal residence for a continuous period of 5 years in the host State *irrespective of its particular circumstances*.
- A binding European instrument regulating the funding of student mobility should be adopted. This system could provide for the inter-State transfer and reimbursement of tuition costs in proportion to the professional career of those benefiting from it.
- Legislative and other measures promoting the social inclusion of the Roma, such that *both the home State and the host State bear responsibility*, should be adopted.

32. Terms used by the European Court of Human Rights in its Grand Chamber judgments of 13 November 2007, *D.H. and others v. Czech Republic*, req. n° 57325/00 and of 16 March 2010, *Orsus and others v. Croatia*, req. n° 15766/03.

HOW INSTITUTIONS DOUBT REFORMING THE LEGISLATIVE PROCEDURE OF THE EUROPEAN UNION

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This contribution endeavors to explain several dysfunctions in the European Union's legislative procedure: the drop in the number of legislative decisions, the high degree of consensus in the European Parliament, the opacity of the Council of Ministers, the generalisation of premature agreements in co-decision, and the granting of symbolic rights to national parliaments. These phenomena are interpreted as symptoms of the crisis of confidence afflicting different European institutions' ability to govern effectively and legitimately. To confront this existential doubt, we conclude by suggesting several mechanisms aimed at a better public awareness of intra- and inter-institutional conflicts.

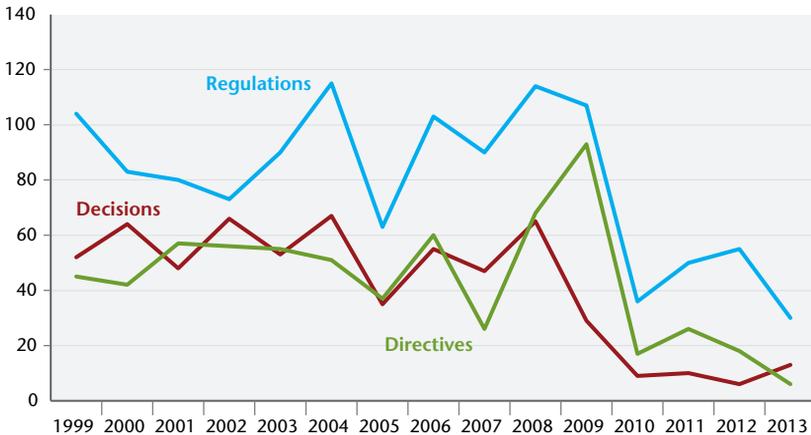
An original feature of the EU is the fact that its law is both constraining and extensively developed. Public action at the European level consists mostly in legislative output relying on the EU Treaties. This paper argues that the legislative process is marred with weaknesses that have triggered a decrease of legislative outputs and deteriorated the legislative process itself. These flaws originate in a phenomenon that one may designate as the “existential doubt” of EU institutions. The fact that the institutions have not found satisfying solutions to the economic crisis, the rise of populism, abstention during European elections and the

repeated rejections of EU treaties by popular referendums leads the institutions to have doubts over their legitimacy and capacity to act. This paper contends that because of a lack of self-confidence, the institutions do not legislate well – that is, their legislative outputs have dramatically lowered and they act in an opaque fashion and, at some stages, with improper haste. On the basis of this analysis, the paper puts forward several recommendations aiming at a better expression of political and institutional divides entailed by the negotiations of directives and regulations.

1. The European Union is less and less able to enact legislation

Since 2009, the proportion of definitive legislative acts adopted has decreased by a third (Figure 1).

Figure 1. Adopted definitive legislative acts (1999-2013)



Note: Decisions = Decisions from the Council; Directives = Directives from the European Parliament and the Council and/or Directives from the Council. For 2013, all the data are related to a period from January to October (included).

Source: CDSP and CEE, EU Legislative Output 1999-2010*.

* EU Legislative Output 1999-2010 (05/06/2010) [database], Centre for Socio-political Data (CDSP, CNRS - Sciences Po) and Centre for European Studies (CEE, Sciences Po) [producers], Centre for Socio-political Data [distributor]. All the data displayed in this article originate from this source except when another is mentioned.

This decrease is partly due to technical factors. Before the Lisbon Treaty, 24% of EU legislative activity dealt with agriculture and fisheries affairs (2002-2008). Now, following the enactment of the Treaty of Lisbon, these acts have lost their 'legislative' nature.

Besides, all the regulations, directives and decisions adopted without the European Parliament's participation are now considered as non-legislative acts (article 289).

Nevertheless, these technical factors alone cannot explain this one-third decrease. Some political explanations could also be proffered. First, the Better Regulation and Smart Regulation Programs implemented by the Commission as of 2000 are producing results. By reducing administrative costs and the number of impact assessments, these programs have certainly simplified EU law. They also have made legislative activity more hazardous.

Second, facing the Eurozone crisis since 2008, member states are increasingly reluctant to enact legislation. Whereas on average five acts were adopted per year at the request of national governments from 1999 to 2009, no single act has been adopted at the request of a member state since 2010. Lastly, year after year, the European Commission has made both internal and external consultation procedures more cumbersome in the stage preceding the adoption of proposals. This automatically leads to a decrease in the number of adopted acts.

It seems as though EU institutions, obsessed with the political agenda set by the economic crisis and the difficulty in facing it, have turned away from ordinary legislative activity. It has seemingly become more urgent to agree on deficit-control rules than to deepen the internal market or to regulate the CAP.

2. The European Parliament consistently seeks consensus

Despite the direct election of MEPs in 1979, consensus rules the European Parliament. Since 1979, three out of four MEPs have sided with the majority. To focus on the two major groups, the European People's Party (EPP) and European Socialist Party (ESP) MEPs vote in the same way 70% of the time (Table 1). This trend has been accelerating since 2004.

All policy fields are ruled by consensus, even those expected to be the most conflictive. From 2009 to 2014, when it comes to voting on employment and social affairs, the EPP and ESP MEPs agree 72% of the time.¹ Both organisational and institutional

1. Source: VoteWatch.

explanations might be considered to account for this trend. From an institutional point of view, O. Costa evokes a “raison d’institution” (Costa 2001). The search for consensus reveals MEPs’ effort to offset the decisional weakness of the EP. Consensus-seeking is a show of rational behaviour, in turn rewarded by an increase in formal powers.

Table 1. Proportion of EPP and ESP MEPs voting in the same way (1979-2014)

In %

1979-1984	1984-1989	1989-1994	1994-1999	1999-2004	2004-2009	2009-2014
61	68	71	69	65	70	73

Sources: Hix *et al.* 2007, p. 151 and, for 2007-2014: <http://www.votewatch.eu/en/epg-coalitions.html/#/0/0/2009-07-14/2014-07-14/11/9>

EP rules and regulations also lead to consensus. When a text is dealt with during a second reading in codecision, an absolute majority from MEPs is required. At a more organisational level, the management of parliamentary groups also explains the search for consensus: leaders of parliamentarian groups cannot foster the interests and career goals of their members. Leaders can promote neither the re-election of their colleagues nor their national careers. Hence MEPs can join concurrent parties coalitions without any risk for their own career.

Lastly, the daily tasks of committees drive MEPs to search for consensus. Two factors may be emphasised. First the technical content of committee discussions favours the negotiation of compromises. Furthermore, the most prestigious positions, such as rapporteurs or group coordinators, are allocated in committees to those MEPs most adept at building and maintaining consensus (Bendjaballah, 2011). These positions are, indeed, prized because they offer the most ambitious MEPs a representational role in inter-institutional negotiations.

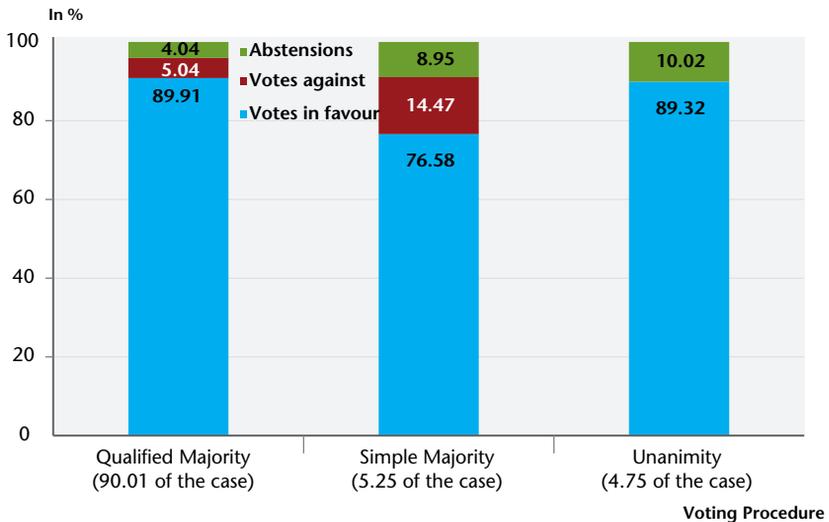
Finally, this obstinate search for consensus, whatever its source (rules and regulations, committees’ organisation, parliamentary group management), does not only reflect the aim to display strength and power to the Council. Is rooted above all MEPs’ insecurity concerning their own legitimacy (Rozenberg 2009). MEPs’ shared views that their institutions cannot afford a lasting division and has to prove its value amendment by amendment, explain that they vote in the same way most of the time. The uncertain

legitimacy derived from their election pushes MEPs to assert their position by participating in policies of compromise.

3. The Council of Ministers avoids displaying its divisions

Council members often argue that efficient negotiations require the ability to discuss behind closed doors. The Council avoids displaying its divisions. Firstly, votes are published only when legislative acts are adopted. When the Council does not find an agreement, the voting positions of ministers are not published. Furthermore, public votes sometimes differ from positions taken behind closed doors. When ministers are not satisfied with an adopted act, they tend to join the majority (Novak 2013). For this reason, public votes do not accurately reflect the real amount of dissent and give an overly consensual image of the Council: as shown by Figure 2, the average rate of opposition to adopted legislation is about 10%.

Figure 2. Voting behaviour in the Council in function of the voting rule (1995-2010)



Source: Van Aken, 2012, p.42.

Lastly, legislative proposals are mostly negotiated by diplomats and not by ministers. Diplomats are overall reluctant to voice disagreement, which facilitates the search for compromise but can be costly in terms of transparency. One should also note that the

search for compromise behind closed doors and through bilateral negotiations (between national representatives and the Presidency or the Commission) facilitates the adoption of ambiguous legislative texts that allow national administrations to interpret and implement them in their preferred fashion. If voting positions were made public during the negotiation process, it would become more difficult to adopt deliberately ambiguous laws (*cf.* Piris 2005).

These different factors entail that political debates and divides within the Council are not well known by the public. Moreover, they prevent one from identifying the responsibility of the different actors in the decision-making process. Since the beginning of the 1990s, the Council has adopted several transparency rules. However, the actors can avoid complying with these rules, for instance when they manage not to make public the position that they supported behind closed doors. Because their implementation is not controlled by an external actor, these rules poorly contribute to the improvement of the accountability of ministers.

Such opacity prevents journalists, national MEPs and citizens from being informed of the legislative debate. Once again, the fact that the Council has doubts over the legitimacy of the process fosters the tendency to hide conflicts – the high level of consensus being seen as a source of the legitimacy of law.

4. European institutions do not air their disagreements

The co-decision procedure now applicable in the majority of cases foresees the possibility for the Council and the Parliament to reach an agreement after several readings. In effect, bicameral systems have a ‘shuttle’ arrangement meant to progressively reduce divergences of opinion between institutions through negotiation, the revelation of the degree of their respective preferences, and quite simply, the desire to finish with disagreements. The system thus anticipates several readings. Yet, increasingly, the Council and the Parliament tend to agree after only one reading (Table 2).

The increased occurrence of agreements reached on the first reading does not mean that the EU legislates too hastily since, as César Garcia Perez de León explains in his contribution to this issue, its average time spent on the adoption of legislative acts is comparatively greater than in national democracies. The Council

and the Parliament can take their time in order to reach an agreement on the European Commission’s proposal; they tend, however, to do so in advance of the official decision-making system during formal or informal meetings and other ‘trilogues’ between institutional representatives (Costa *et al.* 2011).

Table 2. Agreements following the first reading during co-decision

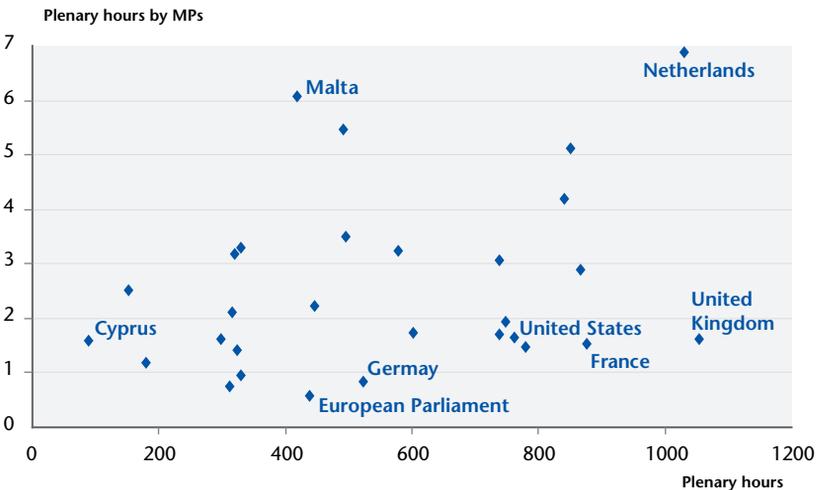
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
%	17	25	30	20	36	69	65	58	74	80	88	86	82	86
n	10	15	31	27	44	75	51	64	70	146	170	71	78	80

Note: 1999 = 1999-2000.

Source: CDSP and CEE, *EU Legislative Output 1999-2010*.

The prevalence of first-reading agreements is the product of the imperative to be legislatively productive (to agree as soon as possible, see Novak 2011, p. 51sq) combined with a practice of opacity (to hide conflict). This tendency evinces the will to demonstrate the system’s efficacy – a proof all the more necessary, it seems, since each actor is unsure of the credit he or she gets. However, the prematurity of agreements presents a problem to the institutional structure as a whole (since the gradual unveiling of

Figure 3. Duration of sessions in the lower chambers of various parliaments (European Parliament, national parliaments in the EU, American Congress), yearly averages for 2010-2012



Source: Observatory of National Parliaments after Lisbon (OPAL).

preferences is excluded) as well as to each of its components. The pluralist and deliberative European Parliament especially suffers from having to organise plenary sessions celebrating the validity of their compromises rather than tranquilly and forcefully acknowledging the diversity of viewpoints. The sluggishness of the exchanges explains in part the fact that such little time is devoted to in-session debates, as Figure 3 indicates.

5. National parliaments are offered collective participation procedures that are at best unrealistic, at worst dangerous

Doubts concerning the democratic legitimacy of the EU have led to suggestions for new procedures of collective participation in national parliaments, beyond their individual European activities. Two modes of association are planned: interparliamentary conferences and collective expression of opinions. Put to the test, these two methods seem to us at best unrealistic and at worst dangerous.

Interparliamentary conferences, whether they assemble the members of European affairs committees, specialists of the CFSP or, from 2013 on, of the budget, encounter the difficulty of inducing their members to agree, a challenge complicated by the MP's lack of authority to speak for his or her colleagues. As useful as they are for socialising or the exchange of good practices, these para-diplomatic meetings are not determinant; all the less so since the European Council's anxiety to create such organisations sometimes overrules the need to make them effective, as is the case for the budget conference, whose number of participants is not even set (Kreilinger 2013).

Another original solution: parliaments are invited since Lisbon to regulate compliance with the subsidiarity principle via Commission proposals. The so-called "early warning mechanism" proves, once again, quite ineffective as it imposes thresholds that are difficult to reach within several weeks and does not obligate the Commission to review its copy if the thresholds are attained. Since 2009, assemblies have enacted an average of a little more than one opinion per year. Only two yellow cards were issued in this way, the Commission upholding its proposal in the second case. This procedure, an institutional gimmick, is nonetheless potentially dangerous for three reasons. First, its functioning is highly uncer-

tain. Second, it implicitly places national parliaments in a position to block integration. Finally, it opens the way to unfortunate proposals that aim to accord red cards or individual opt-outs to the national parliaments.

6. A few recommendations

Agree to disagree in the European Parliament

MEPs must express their disagreements, at least at the start of the procedure. Special debates on floor could not only give birth to discordant voices, but also give them a better audience.

Two kinds of debates could be considered:

1. "Orientation debates", before committees look into the text. These debates already exist in many member states. According to this procedure, each group would present its formal position on the text. Therefore, the group as a whole, and not only the specialised members of the committee, would be involved. The conclusion of compromises would hence be more costly. It would be more difficult to conclude early agreements.
2. Special debates on minority reports, as it is the case for instance in the US Congress. MEPs could then submit a minority report divergent from the report of the responsible committee. Consensus-building would become harder.

Publicising political divides within the Council by providing national parliaments with an increased power to monitor the activities of the Council

In spite of an ambitious policy of transparency, diplomats and ministers have found ways to sidestep the transparency rules within the Council. The ECJ's recent decision to compel the Council Secretariat not to black out states' positions on the public minutes² could paradoxically entail an impoverishment of the minutes. Rather than creating new transparency rules, it would be more efficient to institute an external control that would compel ministers to reveal their positions during the negotiation process.

2. Case C-280/11P *Council of the European Union v Access Info Europe* [2013].

National parliaments, who control their governments and can vote for their dismissal (with the exception of Cyprus), could play such a role.

For this reason, it is necessary to provide them with the right to mandate their ministers – a right that already exists in a few member states. Previous experience shows that such reform would not lead to institute national parliaments as the actual decision-makers. The Danish parliament often orally consents to mandates prepared by the government. German ministers have the possibility of distancing themselves from their mandates when the negotiating process within the Council makes it necessary. However, if ministers' voting positions depended upon the explicit approval of their MPs, it would become more difficult for ministers to play double games and to register a public vote different from the negotiating position adopted by their representatives behind closed doors. When a minister must comply with the opinion of her parliament, she is more constrained to account for her position behind closed doors.

The correlation between negative votes and abstentions within the Council on the one hand, and, on the other hand, the degree of lower houses' formal competences in the field of European policy is about 0.28.³ It is slightly higher – 0.39 – when one considers the actual European activities of lower houses. In those member states in which parliaments are the most active in the field of European policies, ministers tend to approve of adopted laws less frequently (Hayes-Renshaw *et al.* 2006, p. 171). However, the low rate of negative votes (on average 1.2%) and abstention (1.5%)⁴ and the moderate level of the correlation show that ministers receiving mandates from their national parliaments would not necessarily be obstructionist. Some of the countries with a powerful parliament in the field of European policy have a comparatively low level of opposition, as shown by the cases of Finland and Lithuania.

3. Pearson's r for the period from 2010-2012, i.e. about 300 votes. The statistics do not include the UK because its opposition rate is much higher than other member states'. The data on votes are taken from www.votewatch.eu. The data on national parliaments are taken from: OPAL and (Auel *et al.*, forthcoming).

4. Even in countries with powerful parliaments in the field of European policy (6.1% of negative votes or abstentions for Germany, 5 % for Denmark).

In addition to the right to mandate their ministers, parliaments should systematically develop their capacity to control the legislative process before the meetings of the Council. Rather than furthering the tendency toward specialisation and bureaucratisation of parliamentary control on European activities, one should favour the core of political work: the oral exchange of points of view through the systematic public hearing of ministers before Council sessions. Parliaments' competences, motivation and audience would increase if they organised these hearings within their standing committees rather than within their committees for EU activities. Lastly, if standing committees were organised along the sectoral lines of the Council, the control by parliaments would be all the more efficient. The diminution of the number of ministries in Germany and Italy might open the possibility of a greater homogeneity between the Council, the ministries and the parliamentary committees.

A Council presidency more independent from member states

In the Council, the current system of rotating presidency is both short-term and endogenous, which contributes to the opacity of the Council and to the generalisation of early agreements with the EP. Presidencies want to pass as many laws as possible during their semester. Governments know that they preside over the EU only for a few months and fear retaliation from their peers if they do not play the game of opacity. Their working method increases the asymmetry of information, for instance when they multiply bilateral exchanges. The rotating presidency has advantages, but the institution of a supranational presidency more independent from member states, such as the presidency of the European Council, would partly reduce the strategy of opacity and contribute to avoiding systematic early agreements in codecision.⁵

5. We are grateful to César García Pérez de León and Valentin Kreiling for helpful comments.

References

- Auel K., O. Rozenberg, and A. Tacea, (forthcoming). "Fighting Back? And, if so, how? Measuring Parliamentary Strength and Activity in EU Affairs." In Claudia Heffttler, Christine Neuhold, Olivier Rozenberg, Julie Smith, (eds), *Palgrave Handbook on National Parliaments and the European Union*, Palgrave Macmillan: Basingstoke / Hampshire.
- Bendjaballah S., 2011. *La formation des consensus au Parlement européen et à la Chambre des représentants américaine*. PhD in Political Sciences, Paris, Centre for European Studies, Sciences Po.
- Costa O., 2001. *Le Parlement européen, Assemblée délibérante*. Bruxelles, Editions de l'Université de Bruxelles.
- Costa O., R. Dehousse, A. Trakalova, 2011. "Codecision and 'early agreements': An improvement or a subversion of the legislative procedure?" *Studies of the Fondation Notre Europe*, 84.
- Hayes Renshaw F., Van W. Aken, H. Wallace, 2006. "When and Why the EU Council of Ministers Votes Explicitly." *JCMS: Journal of Common Market Studies*, 44(1): 161–194.
- Hix S., A. Noury, G. Roland, 2007. *Democratic Politics in the European Parliament*. Cambridge, Cambridge University Press.
- Kreilinger V., 2013. "The New Inter-parliamentary Conference for Economic and Financial Governance." *Notre Europe Policy Paper*, Paris, 100.
- Novak S., 2013. "The Silence of Ministers: Consensus and Blame Avoidance in the Council of the European Union." *JCMS: Journal of Common Market Studies*, 51: 1091–1107.
- Novak S., 2011. *La Prise de décision au Conseil de l'union européenne*. Paris, Dalloz.
- Piris J.-C., 2005. "Union européenne : Comment rédiger une législation de qualité dans vingt langues et pour vingt-cinq État membres." *Revue du Droit Public*, 121(2): 475–491.
- Rozenberg O., 2009. "L'influence du Parlement européen et l'indifférence de ses électeurs : une corrélation fallacieuse ?" *Politique européenne*, 28 (2): 7–36.
- Van Aken W., 2012. "Voting in the Council of the European Union." *SIEPS Report, 2*, Stockholm.

GRIDLOCK DYNAMICS IN THE EU DECISION-MAKING PROCESS

RESTORING EFFICIENCY AND INTER-INSTITUTIONAL SYMMETRY THROUGH THE REFORM OF CO-DECISION RULES OF DEBATE

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The issue of the duration of the decision-making process has been a source of concern for practitioners and scholars of the EU for a long time. Indeed, while legislation is frequently adopted in the EU, the oft-lengthy negotiations required to pass significant legislation induce gridlock dynamics that put into question the efficiency of the legislative process. To speed up decision-making, the EU institutions increasingly resort to first-early agreements under co-decision. However, this practice has proved limited in curbing delay. Institutions are likely to negotiate early agreements in the shadow of the rules governing the time of debate for the entire co-decision procedure. This brief focuses on these rules to analyze the problem of legislative gridlock. The paper shows that legislative paralysis predominantly occurs as a consequence of the strategic behavior that coalitions in the Council follow with a view to control the policy agenda. In addition, the brief shows that such strategic behavior considerably limits the capacity of the EP to exercise meaningful review of legislation. To improve efficiency and restore inter-institutional balance, the paper recommends a number of reforms of the rules governing the use of time under co-decision.

The policy agenda of the European Union is increasingly challenged by the pressure to undertake important policy reforms. The current financial crisis has dramatically evidenced the need to establish a coherent internal market for financial services. New economic legislation will also be required to liberalize and coordinate national policies in services and energy sectors. The EU

equally needs to address new social regulations to cope with the recurrent instability of the employment and reforms in the education sector to promote competitiveness based on the use information-processing and communication technologies.

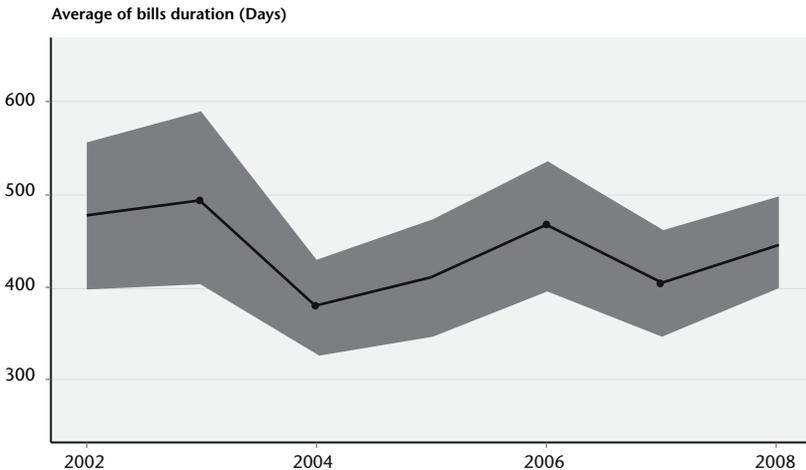
Yet, in the face of these challenges the EU is hampered by legislative gridlock. While the rate of adoption of legislation maintained a steady pace through the last decades, it has consistently decreased since the signature of the Lisbon Treaty. Legislative paralysis, however, has been a constant in the history of the EU. The crux of the gridlock problem, in reality, does not rests as much on the volume of legislation as on the slowness of the legislative process. Figure 1 shows the duration of 1.400 legislative acts in the EU adopted by the Council and the EP between January 2002 and December 2008.¹ The average length for the adoption of a bill is 442 days. To give a comparative perspective, contrast this performance with that of national legislatures. The average lifespan of bills in France and Ireland for the period 1982-2002, and for a total of 1.300 bills, is of 75 days. These two legislatures are characterized by weak institutional systems of legislative review. Yet, the EU does not fare well either when we consider strong legislatures. For Denmark, Germany and the Netherlands bills have an average lifespan of 105 days. In sum, the EU legislative process is conspicuously slow. More worryingly, it becomes increasingly slower for reformist non-technical bills that require agreements on a determined policy direction. In fact, controversial bills on new legislation may take 8 or 10 years to be adopted in the Legislative process.

How can we explain this paralysis? Traditional explanations of the duration of the EU legislative process have invariably point to the complexity of the decision-making process (Drüner 2008, König 2007, Golub 2007, Golub 2008, Golub and Steunenberg 2007). On the one hand, the increase in the use of Qualified Majority Voting (QMV) in the Council of the European Union (henceforth the Council), instead of unanimity, has tended to speed up legislation. On the other hand, however, the positive

1. Legislative production of the European Union 2002-2008 [database], the Centre for Socio-Political Data (CDSP) and the Centre for European Studies (CEE) of Sciences Po [producer], Centre for Socio-Political Data [distributor]. For more information see the OIE's website at <http://blogs.sciences-po.fr/recherche-observatory-european-institutions>.

effect of the decision rule on efficiency appears to be reversed by the increasing involvement of the EP in the co-decision procedure, now the Ordinary Legislative Procedure. The formal complexity of the EU inter-institutional decision-making has also been at the core of the political proposals aimed at increasing the efficiency EU polity. In this view, Lisbon lowered the Council quota of QMV by introducing a double-majority rule requiring 55 per cent of the votes of the member states and 60 percent of EU population. More strikingly, EU legislators have increasingly resorted to the informal practice of negotiating early agreements or trilogues in the first reading of the legislative process (Costa, Dehousse and Trakalová 2012). And yet, these efforts have clearly failed in curbing delay and avoiding stalemate in the legislative process. Certainly, agreements are now pervasively concluded in the first reading. In the last parliamentary terms, 72 and 77 per cent of the co-decision files, respectively, have been negotiated and adopted at this stage. However the total average duration of the process has not decreased accordingly.²

Figure 1. Average duration of bills in the EU



Note: The shaded region reports the standard deviation of the average bill duration.

Source: Own elaboration from the database of the Observatory of European Institutions (see note 1).

2. "Conciliations and Co-decision, Statistics on concluded co-decision procedures (by signature date)." EP website, http://www.europarl.europa.eu/code/about/statistics/_en.htm.

This brief shows that inter-institutional complexity has a limited effect on the gridlock. Contrary to the conventional wisdom, parliamentary involvement in the EU has, in fact, only a moderate influence on legislative delay. Instead, the predominant factor that explains legislative paralysis in the EU is the strategic behavior coalitions of governments in the Council follow with a view to control the policy agenda of the legislative process.

1. Co-decision rules of debate, strategic coalitions in the Council, and weakness of the EP

In reality, the expectation that informal early agreements would substitute the formal process in any consequential way contradicts elementary institutional strategic analysis. Simply put, as long as the formal rules governing the use of debating time in co-decision remain in place, legislators are likely to negotiate early deals in first stages of the procedure reasoning by backward induction, that is, anticipating the sequence of choices that would lead to the last stage of the procedure, even if this stage is never reached. A fortify, legislators are also likely to negotiate in the shadow of the formal balance of power mediating the last stage of the procedure.

The formal track of the co-decision procedure involves two stages or readings in which, upon a proposal of the Commission, the Council adopts a common position and the EP can introduce amendments to this position. If no agreement is reached in the second reading, a Conciliation Committee, comprising delegations of the 28 representatives of the Council and 28 representatives of the EP, is convened. The final decision requires the approval of a qualified majority of the Council delegation and a simple majority of the EP's. In the bicameral bargaining of the Conciliation stage, the mere difference on decision rules introduces a structural asymmetry between the Council and the EP. Under the assumption that both institutions prefer an agreement than the failure of negotiations (an assumption that should normally hold under the information-rich environment of the EU), the pivotal member of the Council will have a larger disagreement value than the pivotal member of the EP. As a consequence, the Council will be able to present a tighter compromise to the EP than the EP to the Council

(Franchino and Mariotto 2013). In addition, this asymmetry will be considerably reinforced when the majority in the Council is cohesive. Thus, if both institutions are in opposing sides of the political spectrum (and they are likely to be so if they get to Conciliation), a cohesive majority in the Council will increase the disagreement value of the pivotal member of the Council, hence forcing the EP to give further concessions (Garcia Perez de Leon 2011).

In this context, the rules governing the time of debate in co-decision have a double effect. They increase the likelihood that the Council delays the legislative process, and they reinforce the asymmetric balance of power that disfavors the EP.

Consider first that the Treaty of Lisbon does not institute any procedural time limit in the first reading. Once the proposal of the Commission is received, the EP can deliberate on its first amendments without any formal deadline. The Commission can modify its original proposal on the basis of the EP amendments. Concomitantly, the Council can also consider the proposal of the Commission without any time restriction in the first reading. In case the Council does not accept the amended version of the EP, it should deliver a common position, which the Commission cannot revise further. Once a decision reaches a second reading, time limits are set for both institutions, and a legislative negotiation can only last as much as 8 months and 24 weeks if it reaches the final Conciliation, with some qualified extensions considered in case of no-agreement.

Although these procedural rules for the use of time of debate for the EP and the Council appear to be fairly similar, there is a fundamental difference that brings a crucial strategic component in the behavior of governments in the Council, and which substantially reinforces the structural asymmetry between the two chambers. To see this, consider that once the elections to the EP define a composition of parties in the EP legislature, this composition remains constant through the five years of the legislative term. Thus, although deliberations to decide on amendments on any given bill, and at any given stage of the decisional process, can take considerable time in the plenary, once the MEPs form a simple majority to vote on amendments, this majority will not change. Indeed, absent any evident policy gain from waiting, it would be in the interest of the assembly to speed up the collective decision.

Contrast this state of affairs with the situation in the Council. Each time there is a domestic election leading to a government turnover in one of the member states of the EU, there is a change in the composition of the Council. Elections across Europe are very common. They take place several times a year. This means that the life of a bill in the EU usually covers several changes in the ideological composition of the Council. Constant changes in the ideological composition of the Council will create several sequential opportunities for governments to form majority coalitions with like-minded governments. As a consequence, governments will harbor incentives to control the timing of the agenda in order to obtain a coalitional deal close to their policy choice. Specifically, when a given preference composition of the Council allows governments to form an ideologically cohesive majority coalition, the opportunities of adopting an advantageous collective policy will give members of the coalition incentives to force a quick decision on the issue, so as to realize their payoffs immediately and save opportunity costs of leaving other issues of the agenda unaddressed. Conversely, when only a heterogeneous majority coalition with a large dispersion of preferences can form, the policy payoffs that members of the coalition may obtain from an immediate decision are diluted. Therefore, under conditions of preference heterogeneity, governments are likely to postpone the adoption of legislation and wait for better deals in the future.

Given these strategic incentives in the Council and the lack of them in the EP, we can draw two clear implications: First, electoral compositions of the Council in which heterogeneous or disperse majority coalitions form are likely to induce significant delays in the passage of legislation. Second, electoral compositions prompting the formation of a cohesive coalition in the Council tend to accelerate the adoption of a collective position by the Council at any stage of the legislative process, but will also curtail the capacity of the EP to introduce significant amendments.

The corroboration of these implications becomes clear when we examine the probability that bills are adopted in the EU legislative process during their lifespan, that is, their hazard rate.³ The Table shows how this probability is affected by coalitional heterogeneity in the Council, for the 108 different compositions of the Council configured between January 2002 and December 2008, and for

1.400 legislative acts, adopted through consultation and co-decision. We can observe first that coalition heterogeneity has a strong effect on legislative delay. Specifically, looking at the two first two covariates in the table, we can see that for the left-right dimension of conflict in the EU, a one-standard-deviation increase in coalition heterogeneity is linked to an 80 per cent decrease in the likelihood of adopting any given piece of legislation at any given period. The effect for the EU-related dimension of conflict is even stronger, with a decrease of the hazard of about 90 percent. To isolate the effect of coalitional behavior, I also integrate covariates for the polarization of the Council, that is, the heterogeneity of the institution in the absence of any coalitional bargaining (“left-right polarization” and “EU polarization”, in the table). The lesser magnitude of the polarization effect confirms the prevalence of coalitional bargaining as a decisional mechanism in the Council.

Table. Duration model of legislative activity in the EU

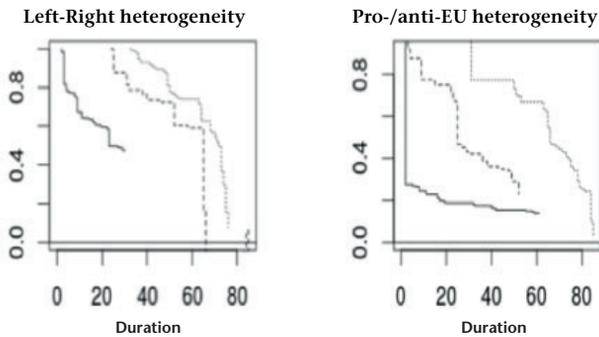
	coefficient (se)	exp (coefficient)
Left-Rightcoalition majority	-5.073 (1,205)	0.006
EU majority coalition	-2.342 (0,281)	0.096
Left-Right polarization	-1.141 (0,328)	0.320
Polarisation EU	-0.574 (0,059)	0.563
Co-decision	-0.501 (0,069)	0.606
Plus.readingsNombre de lectures	-0.339 (0,087)	0.713
Backlog	2.068 (0,451)	7.907
Left-Rightcoalition majority*ln(t)	0.863 (0,328)	2.369
Left-Right polarization*ln(t)	0.163 (0,100)	1.177
Backlog*ln(t)	-0.684 (0,135)	0.505
Rsquare	0.044	
Likelih.ratio test	730.8	
Wald test	476.9	
logrank test	630.1	

Source: Own elaboration from the database of the Observatory of European Institutions (see note 1).

3. These results are derived from an article by Garcia Perez de Leon and Grossman, currently under review. The interested reader may contact the authors for more detailed information at cesar.garciaperezdeleon@sciences-po.fr.

To gain a better sense of the coalitional effects on duration, Figure 2 shows survival functions for minimum, medium and maximum levels of coalitional heterogeneity for all the compositions of the Council considered. The vertical axis shows the proportion of bills that have not been adopted, while the horizontal axis shows the time elapsed since the introduction of the bills, as measured by successive periods of compositions of the Council. It is immediately apparent from the figure that minimum levels of coalition heterogeneity (solid line) are associated with quick adoption of legislation. For maximum levels of heterogeneity (dashed line), the probability that a bill survives is much greater, hence increasing the duration of the legislative process. In fact, most of these bills last for almost all the length of the period considered, tending to be adopted after 60 consecutive compositions of the Council or four years.

Figure 2. Cumulative survival functions



Source: Own elaboration from the database of the Observatory of European Institutions (see note 1).

Consider next the effect of parliamentary involvement in Table. The use of co-decision decreases the hazard rate by close to 40 percent. The comparison of this result with effect with the effects we find for coalitional bargaining shows that most of the legislative deliberation in the EU occurs in the Council, and confirms the asymmetric balance of power between the two legislative chambers. In particular, the estimated coefficients indicate a cumulative effect on delay of coalitional heterogeneity in the Council and the intervention of the EP. This suggests that parliamentary influence in the EU is likely in issues that were already controversial in the Council negotiations and comes at the cost of

increasing further the duration of the process. However, the weaker effect of parliamentary involvement on delay indicates that when a cohesive majority coalition forms in the Council, its members are likely to force the quick adoption of legislation, leaving the EP with little chance to introduce amendments. An additional covariate for inter-institutional complexity is the number of readings in co-decision. The magnitude of the effect of multiple readings is, as expected, not very strong. Reaching the second reading only decreases the probability of adoption by 23 per cent. Arguably, the considerable workload of the legislative institutions also tends to reduce the efficiency of the decisional process over time. However, the effect of legislative backlog does not prove to be significant.

Finally, we should further note that the capacity of ideological majority coalitions to delay the adoption of legislative bills wanes over time. The coefficient of the interaction of the covariate and the logarithmic function of time, $\ln(t)$, has a positive sign, suggesting that, as the negotiations last for several periods of bargaining, all governments in the Council become more concerned about opportunity costs and tend to speed up the adoption of legislation.

2. Reforming co-decision's rules of debate

Gridlock in the EU legislative process appears greatly influenced by the strategic behavior of coalitions of governments in the Council. As a consequence of this behavior, delays in the adoption of legislation in the EU are frequent. In addition, the strategic use of time in the Council clearly reinforces the current structural asymmetry between the Council and the EP. EU constitutional designers and legislators should address extant institutional failures by reforming the co-decision rules of debate in a way that takes into account the formal institutional structure already in place:

- The EU should establish *procedural time limits in the first reading of the co-decision procedure*, both for the Council and the EP. This measure would help to prevent strategic behavior in the Council, while keeping a realistic framework for negotiations. Given the current institutional context of the EU, the Rotating Presidency period of six months would

be an acceptable timetable for the first reading. Since countries holding the Rotating Presidency are mainly responsible to manage the co-decision files, this schedule would also give more coherence to the EU periodic legislative agenda.

- Discretion should be delegated to the Council President and the Commission President, acting conjointly, to establish an *Urgency Procedure* that restricts the timetable for legislative consideration of bills where expediency is required. Urgency bills would still be debated under open rule in the Council, so that there would be no restrictions as to who can amend the bill. The European Council has increasingly taken the role of addressing urgent matters. The proposed measure would translate this informal prerogative to the ordinary legislative process.
- *The rule of decision for the Council in the Conciliation Committee should be changed to Simple Majority.* Note that this recommendation is restricted to the stage of Conciliation. Its basic aim is to introduce symmetry of bargaining power in inter-institutional relations without for this changing the basis of quantitative voting in the Council for the whole decisional process.
- *The chairmanship of the EP's delegation in the Consultation Committee should be fixed to one of the vice-presidents of the EP.* This measure aims also at restoring inter-institutional symmetry. A permanent senior chair is expected to enhance the credibility of the EP delegation in Conciliation negotiations in proposing positions that are likely to be backed by the assembly. Additionally, this measure is likely enhance the public visibility of the EP as a powerful body, helping to direct electoral competition in EP elections toward issues related to EU public policy.⁴

4. I am grateful to Emiliano Grossman for his generous help in the configuration of the paper, and to Olivier Rozenberg for his insightful comments on the definite version of the text.

References

- Costa O., R. Dehousse and A. Trakalová, 2012. "Codecision and 'early agreements': An improvement or a subversion of the legislative procedure?" *Notre Europe. Studies and Research*, (84): 3.
- Drüner D., 2008. *Between Chaos and Sclerosis*. Saarbrücken, VDM Verlag Dr. Mueller e.K.
- Franchino F. and C. Mariotto, 2013. "Explaining negotiations in the conciliation committee." *European Union Politics*, 14(3) : 345–365.
- Garcia Perez de Leon C., 2011, "Coalition Formation and Agenda setting in EU, Environmental Policy after the Enlargement." *Les Cahiers européens de Sciences Po*, 13(5): 513–534.
- Golub J., 2007. "Survival analysis and European Union decision-making." *European Union Politics*, 8(2):155–179.
- Golub J., 2008. "The study of decision-making speed." *European Union Politics*, 9(1): 167–179.
- Golub J. and B. Steunenbergh, 2007. "How time affects EU decision-making." *European Union Politics*, 8(4): 555–566.
- König T., 2007. "Divergence or convergence? From ever-growing to ever-slowing European legislative decision-making." *European Journal of Political Research*, 46(3): 417–444.
- Martin L. and G. Vanberg, 2013. *Parliaments and Coalitions. The role of Legislative Institutions in Multiparty Governance*. Oxford University Press Oxford.

THE DILUTION OF THE COMMUNITY METHOD AND THE DIVERSIFICATION OF INTERGOVERNMENTAL PRACTICES

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The strengthening of the European Council and the multiplication of international agreements between the Member States seems to be undermining the Community method. However, the diversification of intergovernmental practices within the European Union need not lead to calling the Community method into question. Intergovernmental methods are often used for only a temporary period, after which the areas concerned generally wind up integrating the Community method. The Intergovernmental is thus not necessarily opposed to the Community. It may even strengthen the Community method. The development and diversification of intergovernmental methods does, however, reveal a need to bring the Community method up to date. This involves rethinking the role of the European Council and integrating emergency procedures in order to be able to respond quickly in case of a crisis.

Since European integration got underway, the Community method has demonstrated its efficiency and its capacity to adapt to changes in the Community and subsequently in the European Union. The current context, which has in particular seen a stronger role for the European Council and its President as well as the conclusion of international agreements between the Member States outside the EU and within the EU, seems to be challenging this method, which appeared unable to provide a quick response to the problems posed by the current crisis.

There is a debate today about the need to replace this method with a new method that would accord more prominence to inter-

governmental practices. In the context of a speech on 2 November 2010, German Chancellor Angela Merkel supported the introduction of a new method, the EU method, which would supersede the conventional opposition between Community method and inter-governmental method. This new method would imply, Merkel said, “coordinated action in a spirit of solidarity, each of us in the area for which we are responsible (that is to say, the institutions and Member States) but all working towards the same goal.”¹

The advantages of the Community method and its importance for European integration argue instead, in our opinion, for consideration of an updated Community method. Indeed, as will be shown, while the diversification of intergovernmental practices in recent years has helped to highlight certain limitations in the Community method, this should not lead to calling this method into question, given that the strengthening of intergovernmentalism seems to be closely related to the current context and does not necessarily reflect the Member states’ lack of confidence in the Community method.

1. Community method and intergovernmental method

The Community method was defined by the European Commission in its White Paper on European governance. According to the European Commission, “The Community method guarantees both the diversity and effectiveness of the Union. It ensures the fair treatment of all Member States from the largest to the smallest. It provides a means to arbitrate between different interests by passing them through two successive filters: the general interest at the level of the Commission; and democratic representation, European and national, at the level of the Council and European Parliament, together the Union’s legislature.”² The Community method is thus characterized by a number

1. Speech given on the occasion of the opening ceremony of the 61st academic year of the College of Europe in Bruges, 2 November 2010.

2. European Governance – A White Paper, /* COM/2001/0428 final */ [http://ec.europa.eu/dgs/communication/pdf/comm-initiatives/2001-european-governance-white-paper-com2001_0428_en.pdf] On the Community method: R. Dehousse, *The Community Method. Obstinate or Obsolete?*, London, Palgrave Macmillan, June 2011; *Séminaire sur la méthode communautaire* organized by Notre Europe and the Bureau des conseillers de politique européenne (BEPA). Brussels, 28 February 2012.

of elements: a monopoly on initiative that belongs to the Commission (representing the general European interest); the adoption of acts by the Council of the European Union, which usually decides by a qualified majority (representing the interests of the Member States), and by the Parliament (representing the interests of the citizens); and control exercised by the Court of Justice. This constitutes the common law method of European Union law,³ even though this has always coexisted with other procedures for adopting legislation within the Community and the European Union, which are sometimes also treated as the Community method, but understood here in a broad sense, insofar as they require the intervention of EU institutions but do not necessarily involve the Commission, the Council and the European Parliament and do not necessarily recognize a decisive role for the Commission.

The Community method has often been opposed to the intergovernmental method, which is a decision-making process that is based on the sovereign will of the Member States and involves their achieving a consensus on issues of common interest. Unlike the Community method, the intergovernmental method aims to reconcile the interests of the Member States only and so does not require them to consider the consequences of their decisions for the general European interest.

For a long time it was easy to make the distinction between the Community method and the intergovernmental method, since the Community method could be regarded as the method applicable under the Community treaties while the intergovernmental method was to be used only when acting outside these treaties. The Single European Act, which legally consecrated the existence of the European Council in the Treaty establishing the European Economic Community, and in particular the Maastricht Treaty, which created a European Union based on pillars and provided for the implementation of an intergovernmental method for the second and third pillars, led to blurring the distinction between the two methods by integrating intergovernmental practices within the European Union. The construction of a European Union in pillars can thus be explained by the mistrust of the

3. This is illustrated today by the ordinary legislative procedure.

Member States with regard to the Community method, since it reflects the desire of the members not to subject certain sensitive matters to this method.

The entry into force of the Lisbon Treaty should have led to strengthening the Community method, as the Treaty provides for a merger of the pillars,⁴ which in principle implies a generalization of the Community method to all areas covered by the Treaty on the Functioning of the European Union and by the Treaty on the European Union (TEU). But the onset of the crisis has led instead to the growth and diversification of intergovernmental practices, which seems to call into question the Community method.

2. The development and diversification of intergovernmental practices

The diversification of intergovernmental practices since the onset of the crisis has been reflected in two main ways. It was manifested first in the growing strength of institutions representing the Member States, and in particular the European Council and its President. It could then be seen in the multiplication of international agreements between the Member States on the basis of EU law or sometimes outside it.

The growing role of the European Council and its President: The European Council, as an initiating body, has long played an important role in European construction. But the Lisbon Treaty, which established its institutional capacity and gave it a permanent President, together with the specific context of the euro crisis, have significantly strengthened the role of this institution to the detriment of other institutions, particularly the European Commission. A certain number of decisions have been taken directly at the level of the Heads of States and Governments, and the European Council quickly emerged as the leading institution in resolving the European crisis.⁵ The importance taken on by the European Council seems to have relegated the European Commission to a secondary role and exposed a lack of confidence in it. Some of the

4. In reality the merger is only partial, as the domain of foreign policy and common security are still governed according to an intergovernmental method.

5. See on this aspect P. de Schoutheete, "Conseil européen et méthode communautaire," *Policy Paper*, no. 56, Notre Europe, July 2012.

studies and proposals that previously fell to the Commission have been transferred to the European Council.⁶ The role now held by the European Council has come to alter the function of the Commission with regard to initiatives. Today the Commission tends to follow the Council's conclusions, as it passes along the latter's formulations of legislative proposals.⁷ This perceived weakening of the European Commission also seems to be corroborated by the importance acquired by the European Parliament which, since the entry into force of the Lisbon Treaty, must now be considered as a genuine legislative and budgetary authority. The early conclusion of agreements between the European Parliament and the Council of the European Union also tends to weaken the prerogatives that the European Commission holds under its power of initiative.

Conclusion of international agreements between the Member States: The present context also reveals a drift towards the multiplication of international agreements between the Member States, sometimes in lieu of laws that should have been adopted within the European Union using the Community method.

The euro zone crisis that began in 2009 has led to the adoption of a number of very different types of legal acts that fall sometimes under the law of the European Union and at other times under international law. A number of agreements have thus been concluded by the Member States either based on European Union law or law lying outside the European Union.

The need to develop emergency financial solidarity mechanisms led the Member States to act initially outside the framework of the Treaties on the European Union. On 9 May 2010, at a special summit in Brussels of the Heads of State and Government of the euro zone, the members created the European Financial Stability Facility (EFSF), which became operational on 4 August 2010, following the ratification of its statutes by all the euro zone countries. The spread of the crisis to new Member States quickly led the euro zone countries to reach another international agreement, but this time on the basis of the law of the European Union area. The

6. J.-P. Jacqu , "Le nouveau discours de la m thod", *Tribune*, Notre Europe 2011.

7. P. de Schoutheete, "Conseil europ en et m thode communautaire", cited above, p. 8 and 42.

Member States, acting within the European Council, thus used the simplified revision procedure provided for in Article 48 paragraph 6 of the TEU to amend Article 136 of the Treaty on the Functioning of the European Union (TFEU), which provides that the Council may adopt specific measures with regard to Member States whose currency is the euro. They added a paragraph to this provision in virtue of which, “the Member States whose currency is the euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the euro area as a whole and stating that the granting of any required financial assistance under the mechanism will be made subject to strict conditionality”. On the basis of this provision, the 17 euro zone members then concluded the Treaty establishing the European Stability Mechanism, which was signed on 2 February 2012 and entered into force on 27 September 2012. This mechanism has replaced the European Financial Stability Facility.

Another international treaty was concluded between the Member States of the European Union, but this time outside the EU framework, in an effort to strengthen economic governance. The Treaty on Stability, Coordination and Governance in the Economic and Monetary Union was signed on 2 March 2012 between 25 Member States, the United Kingdom and the Czech Republic having refused to participate.

A new intergovernmental agreement should be agreed in 2014 on the Banking Union.⁸

The development of these international agreements concluded between the Member States within the EU framework or outside it reveals the limits of the Community method and more generally of the EU’s decision-making system. The creation of the European Financial Stability Facility outside the law of the European Union can thus be explained by the slowness of the European decision-making process, which is not always able to respond to crisis situations. The conclusion of the Treaty on Stability, Coordination and Governance is justified, in turn, by the inability to use the mechanisms set up by the treaties on the European Union. The Member States had originally wished to integrate the content of this agree-

8. This governmental agreement will concern the functioning of the single resolution fund.

ment into the Treaty on the Functioning of the European Union. But the refusal of the United Kingdom and the Czech Republic to participate prevented this, since it involved a revision of the Treaty on the Functioning of the European Union, which under Article 48 of the Treaty on the European Union requires the unanimous agreement of all the Member States.

While the growth in intergovernmental practices seen in recent years may raise concerns, it does not however seem to reflect the Member States' distrust in the Community method, but rather points to the need to consider how to bring the Community method up to date.

3. Calling into question the Community method?

Contrary to what one might initially think, the proliferation of international agreements concluded between the Member States, and more generally the diversification of intergovernmental practices that has been observed in recent years, does not necessarily lead to calling the Community method into question.

First, the use of intergovernmental methods is often temporary and the matters covered by these methods are generally intended subsequently to integrate the Community method. The construction of the European Union in pillars is a good illustration of this phenomenon. The areas initially contained in the third pillar, which originally focused on cooperation in the area of home affairs and justice, were progressively transferred into the Community pillar and are now integrated into the area of freedom, security and justice, which is governed by the Community method. Here the use of the intergovernmental method has ultimately allowed the application of the Community method. With the Maastricht Treaty, the Member States agreed to transfer their authority to the Union in the areas of home affairs and justice, but based on an intergovernmental method. Then they realized the need to apply the Community method to these matters. This awareness grew gradually. The Treaty of Amsterdam enacted a partial Communitization of the third pillar. It was not until the Treaty of Lisbon that the entire third pillar was transferred under the Treaty on the Functioning of the European Union into the area of freedom, security and justice. The same observation can be made with regard to the

emergency financial solidarity mechanisms set up since 2010. The euro zone members initially took action outside the institutional framework of the European Union to set up the European Financial Stability Facility. But the spread of the crisis led them to deal with the problem within the European Union by establishing the European Stability Mechanism, which shows that in the minds of the Member States the European Union mechanisms were more suitable. Under this same logic, the conclusion by the Member States of the Treaty on Stability, Coordination and Governance cannot be explained by a desire of the members to act outside the framework of the European Union, but rather because it was impossible, due to the refusal of the United Kingdom and the Czech Republic to participate in this project, to use the mechanisms provided by EU law, and in particular the revision procedure set out by Article 48 of the TEU, which presupposes the unanimity of the Member States. Furthermore, the content of this agreement is intended to be integrated into the legal framework of the European Union, as its Article 16 provides that, "Within five years, at most, of the date of entry into force of this Treaty, on the basis of an assessment of the experience with its implementation, the necessary steps shall be taken, in accordance with the Treaty on the European Union and the Treaty on the Functioning of the European Union, with the aim of incorporating the substance of this Treaty into the legal framework of the European Union."

Second, the use of intergovernmental methods can lead to strengthening the Community method by consolidating the role of the EU's institutions, which play a fundamental role within the framework of this method. The Treaty on Stability, Coordination and Governance and the Treaty establishing the European Stability Mechanism thus contain a number of provisions that lead to strengthening the role of the Commission and the Court of Justice. The Intergovernmental should therefore not necessarily be opposed to the Community, and may even strengthen it. However, the growth and diversification of intergovernmental methods does reveal a need to revise this method.

4. For an updated Community method

From the time the Community method was established by the ECSC Treaty in 1951, it has demonstrated its ability to adapt to the evolution of European integration. It has survived the gradual strengthening of the powers of the European Parliament, the enlargement of the European Union and the establishment of a differentiation within the European Union. By giving institutional recognition to the European Council, by strengthening the role of the European Parliament as well as national parliaments, and by creating a citizens' initiative, the Lisbon Treaty has called for new changes in the Community method. The diversification of intergovernmental methods in recent years has demonstrated that the Community method needs in particular to adapt to the European Council's new role and to be able to deal with emergencies.

The stronger role played by the European Council and its President, which seems to be leading to relegating the Commission to a secondary role, is revealing a problem of confidence in the Commission and its President that needs to be addressed. But it also demonstrates the need to integrate this new institution, which is composed of Heads of State and Government, but also the President of the Commission, into the framework of an updated Community method. The importance acquired by the European Council in recent years seems to be closely related to the economic nature of the crisis, which has led to putting the Heads of State and Government and the institution representing them into the foreground, as economic policy at the EU level is based primarily on the coordination of national policies. This poses the question of what role should be recognized for the European Council under the Community method once the crisis is over. The Lisbon Treaty regulates the role that the European Council should be required to play under the Community method since, under Article 15 of the Treaty on the European Union, the European Council "shall not exercise legislative functions."

The handling of emergencies also needs to be integrated into the Community method. The example of the Treaty establishing the European Solidarity Mechanism shows the value of providing the European Union with accelerated procedures, since it was by implementing the simplified revision procedure set out in Article 48 paragraph 6 of the Treaty on the European Union introduced by

the Lisbon Treaty that the euro zone was able to set up this mechanism so quickly.

The Community method thus needs to be maintained, but must once again adapt to the changing law of the European Union.

5. Conclusions

- The diversification of intergovernmental practices within the European Union does not necessarily lead to calling into question the Community method. The use of intergovernmental methods is often temporary and may, in some cases, lead to strengthening the Community method.
- This diversification does, however, reveal the need to update this method.
- The Community method has always shown its ability to adapt to the evolution of European integration. It must now adapt to the new role of the European Council and integrate the management of emergencies.

GOOD ADMINISTRATION IN THE EUROPEAN UNION

MOVING TOWARDS A CULTURE OF SERVICE FOR THE EUROPEAN INSTITUTIONS

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Paradoxically, trust in the European institutions is historically low at a time when the institutions are more open, transparent and keen to engage in discussion with European citizens than ever before. The primary law of the EU now explicitly refers to good administration both in the founding Treaties and in the Charter of Fundamental Rights (1). The importance of the European Ombudsman is also growing in the institutional framework (2); the European Code of Good Administrative Behavior provides a framework on how the EU institutions and civil servants should carry out their missions to the highest standards (3) and a wide range of administrative assistance is now in place in the EU (4). Despite all these developments, the European Parliament should continue to actively support the European Ombudsman. The European Parliament should also consider the policy recommendations enclosed in the present paper as we believe they would help to foster the EU-wide concern over good administration and allow the EU to regain the trust of the European citizens when it comes to their relations with its institutions.

According to the Spring 2013 Eurobarometer, 60% of Europeans do not trust the EU and its institutions. This figure has doubled over the past 6 years. The lack of trust is particularly worrying at a time when the European integration project is putting the European citizen at its centre. One could surely argue

1. I would like to thank Alfred Cummins for his help with the English version of this paper.

that trust in national institutions is equally low; however this parallel should not undermine an independent consideration and treatment of the European Citizens' perception of the EU institutions.

Trust in the European institutions is historically low at a time when the institutions are more open, transparent and keen to engage in discussion with European citizens than ever before. In recent years, the EU institutions have adopted internal guides for the attention of their civil servants, on how to carry out their tasks in full respect of good administration. As the European Ombudsman stressed, "good administration depends on creating and nourishing a culture of service to citizens. Mistakes are inevitable in any administration. But a culture of service makes it possible to acknowledge and put right mistakes when they occur."²

In order to achieve greater trust between the citizen and the European civil service, the European Ombudsman's role and work must remain central. However, more steps must also be taken to support the Ombudsman and supplement this work. We will outline some new and concrete policy actions, which could regain the trust of the European citizens and improve their relations with the EU institutions.

1. Good administration in the EU

The European integration project is increasingly concerned with its people (both natural and legal). Indeed, since the Maastricht Treaty was signed in 1992, the European Citizen became central to the EU. A dynamic and positive vision of the future of the EU is based on greater integration towards political union among Member States. Such an evolution means enhanced relations and more frequent interactions between the European Citizens, companies, residents and the European institutions themselves.

An important concern for all institutions (administration) is not only that their interlocutors are informed about their rights and possible actions but also that their relations respect the conditions of good administration. First, it is worth recalling, in brief

2. Declaration of the European Ombudsman, Nikiforos Diamandouros at the meeting with the College of Commissioners on 15 February 2011.

what good administration in the EU is. According to some scholars, there is a degree of uncertainty regarding the definition of good administration (Mendes, 2009).³ Good administration should connect different levels but is it a right, a principle, an objective or a standard (Mendes, 2009)?

Good administration can take different forms. For lawyers, the *right* to good administration is not to be confused with the *principle* of good administration. The right to good administration is a set of requirements aiming to protect the citizen in its relations with the administration. The principle of good administration is a specific requirement for the administration “to consider with care and impartiality all components of a given case according to the case law of the ECJ” (Azoulai, Clément-Wilz, 2014). Good administration as such refers to an ethic or particular behavior for institutions and their civil servants to adopt (Chevalier, 2014).

Good administration in the EU derives from the duties bestowed upon the European institutions in their relations with the European citizens. Before the ratification of the Lisbon Treaty, good administration had been a concern for the European institutions however each institution had its own way of dealing with it. Therefore a general and harmonious approach to good administration at EU level seemed like wishful thinking.

The situation changed in 2009. As soon as the Treaty of Lisbon entered into force, several references were included in primary EU law about the European administration in addition to good as well as maladministration. Article 226 TFEU mentions the possibility of setting up a temporary Committee of Inquiry to investigate alleged maladministration. The new article 298 TFEU, under section 2 on the “procedures for the adoption of acts and other provisions”, states that “in carrying out their missions, the institutions, the bodies, offices and agencies of the Union shall have support of an open, efficient and independent European administration”. Finally, a new title XXIV was put in the third part of the TFEU on administrative cooperation.

The Charter of Fundamental Rights of the EU, proclaimed in 2000, has been a legal source of the EU since 1 December 2009.

3. CFI, 12 November 2008, *Evropaïki Dynamiki v. Commission*, T-59/05.

Here, the right to good administration is mentioned as a fundamental right of the Union citizenship. The Charter is the first international agreement⁴ referring to good administration as a fundamental right (Soderman, 2005). According to article 41 of the Charter, the right to good administration should mean:

“...the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union. This right includes: the right of every person to be heard...; the right of every person to have access to his or her file...; the obligation of the administration to give reasons for its decisions; every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties... and [linguistic rights].” The Charter also includes the right to “any citizen of the Union, and any natural or legal person residing in a Member State” to refer to the European Ombudsman a case of maladministration (article 43).

We must be clear however, as other scholars have shown (Jacqué, 2011) that inclusion of good administration in EU primary law did not simply happen overnight with the Treaty of Lisbon. This has been a slow and progressive formalization to which the ECJ case law has contributed significantly. In addition, despite the progress made, this codification should not be considered as an end to itself. Good administration also has to be publicized, known to all persons and subsequently relied upon for interactions with the EU institutions.

A Special Eurobarometer⁵ shows that 72% of European citizens are not informed of the Charter of Fundamental Rights of the EU. In some countries, the citizens would know about the Charter but not about its content (see question 1 of the Special Eurobarometer).

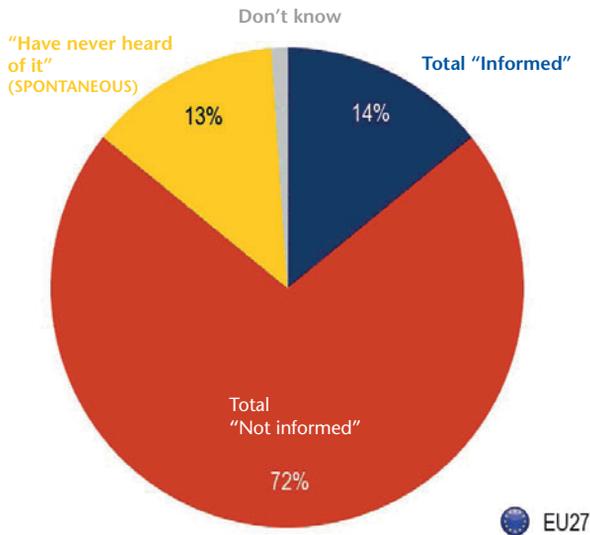
An important and systematic communication has to be made on the Charter of Fundamental Rights, the Citizens’ rights and the

4. Resolutions have been adopted by the Council of Europe but no agreement on good administration. Study n° 470/2008 Council of Europe, Commission of Venice, Assessment of « good governance » and « good administration », pt. 46.

5. Special Eurobarometer, done by TNS Opinion & Social on special request of the European Parliament and the European Ombudsman, 7 July 2011, The Ombudsman synthesis on the European Ombudsman and Citizens’ Rights <http://www.ombudsman.europa.eu/en/press/statistics.faces>

possible administrative actions open to them. As the European Ombudsman rightly points out “only citizens well informed about their rights and about who to turn in case of a problem can effectively exercise their rights.” Therefore, the Special Eurobarometer should act as an encouragement for the European Ombudsman to better inform the European citizens.

Figure 1. How informed do you feel you are about the Charter of Fundamental Rights of the Eu?



Source: Eurobarometer, 2011.

We strongly recommend the other institutions, bodies and agencies of the EU, especially the European Parliament and the Commission to echo the efforts of the European Ombudsman in communicating about the EU, its missions, the Citizens' rights and also about good administration. It is also vital that the European citizens know about the Charter of Fundamental Rights of the EU and its content.

2. The European Ombudsman: The guardian of good administration

The strongest and most active support for the formalization of good administration in EU primary law comes from the European Ombudsman. Among its missions, the European Ombudsman tries

to find appropriate solutions to the complaints against institution of the EU referred to it. It encourages transparency and defends a culture of service within the administration. Overall, the Ombudsman tries to build greater trust between the citizens and the institutions of the EU by facilitating and mediating dialogue between them and by encouraging the institutions to follow the highest standards when carrying out their tasks (Streho, 2014).

The European Ombudsman is seen as an important intermediary between the citizens and the institutions of the EU. The office contributes to fostering the rights of the former while advancing the democratic functioning of the EU. The right to file a complaint to the European Ombudsman came as a supplement to the other forms of protection of citizens' rights such as petition right,⁶ the right to send a complaint to the Commission or trigger judicial action (Perillo, 2005), or access to documents. The European Ombudsman is supposed to give a human face to the functioning of the European administration. Its existence is closely tied to the emergence of the notion of European citizenship (Streho, 2014).

The European Ombudsman has two main tasks within the EU⁷. Firstly, the office supervises and protects the citizens in their relations with the European administration and secondly, it promotes good administration within the latter. Some scholars point to the important role of the European Ombudsman in introducing moral considerations to the administration's day-to-day activities (Azoulai, Clément-Wilz, 2014).

Therefore, the European Ombudsman contributes very actively to establish good administration within the institutions, organs, agencies and bodies of the EU. The Ombudsman has regularly issued recommendations, critical opinions; own initiative inquiries, annual and special reports as well as the European Code of Good Administrative Behavior.⁸ The European Ombudsman has drafted

6. Petition right was formalized in the European Parliament resolution as early as 1977 but the Petition Committee of the Parliament was set up only ten years later, in 1987 and the legal foundation was given in 1993 in the Maastricht treaty.

7. As underlined by the CFI, 10 April 2002, Franck Lamberts v. European Ombudsman. T-209/00, ECR. p. II-2203, point 77.

8. Resolution of the European Parliament 6 September 2001 approving the European Code of Good Administrative Behavior <http://www.ombudsman.europa.eu/fr/resources/code.faces/en/3510/html.bookmark#/page/1>

the Code in the framework of an inquiry and presented it to the European Parliament as a special report.

A number of figures illustrate the quantitative importance of the European Ombudsman's work. Since 1995, the Ombudsman has replied to 36 000 complaints and has carried out 3800 inquiries.⁹ The office received 2442 complaints in 2012, though only 740 were in its competence and it has closed 390 inquiries.¹⁰ It is worth noting that year after year, complaints originate mainly from European citizens (85%) and other complaints are sent by companies, federations, foundations, NGOs (15%) (Tsadiras, 2006).

Our recommendation for the European Parliament would be to continue to actively and explicitly encourage the work of the European Ombudsman and to make sure the office's budget does not shrink. In our opinion, just like information and communication concerning the Charter of Fundamental Rights, it is especially important that European citizens are able to learn about the European Ombudsman and the position's functions.¹¹

3. Good administration embedded in the European Code for Good Administrative Behavior

An original and ambitious idea of the European Ombudsman was the drafting of the European Code of Good Administrative Behavior in 1999. The Code aimed "to improve the standards of good administration and the relations between the European administration and the public" by codifying "the general principles" in the field and by reminding "the procedural and substantial rights and obligations of EU law" (Mendes, 2009). The European Parliament adopted the Code in 2001 and henceforth it became the cornerstone for implementing good administration. The Code helps the citizens to understand their rights and to invoke them. The Code also promotes public interest in an open, efficient and independent European administration and increases the citizens' awareness as to the behavior they can expect from the European institutions (Streho, 2014).

9. Annual Report 2010.

10. Annual Report 2012.

11. Special Eurobarometer, 2011, *cf. supra*, question 4.

The introductory part of the Code refers to the principles of European administrative law as it derives from the ECJ case law and the legislation of the Member States. The Code has 27 articles, which list the principles the institutions have to respect in relation to the public. Legitimacy, equal treatment, proportionality, no misuse of power, impartiality and independence as well as objectivity, coherence, equity and courtesy are included in the Code. Lastly, the Code refers to the right to file a complaint to the European Ombudsman as stated in article 228 TFEU.¹²

The Code is not legally binding however. In front of the Convention drafting the Charter of Fundamental Rights, the European Ombudsman took the floor to defend the inclusion of good administration in the Charter. The Ombudsman also appealed for a legally binding and uniform code of good administration applicable to all European institutions in their interactions with the public. In practice, the Code drafted by the Ombudsman and then adopted by the European Parliament was not given legal value. The institutions have since adopted their own codes but these are less exhaustive and ambitious in general compared to the Code of the Ombudsman (Mendes, 2009). Another consequence of the lack of legal value of the Code is the multiplication of such codes within the EU (Chevalier, 2014).

Our recommendation would be to encourage the Commission to draft a Regulation on the basis of article 298 of the TFEU and the content of the Code. In the past, the Commission has refused to present such a draft (Mendes, 2009). However, the Code would benefit greatly from being given legal value as it would apply equally to all institutions of the EU, enhance the coherence of European administrative behavior and ensure greater legal certainty in relations between the institutions and the public. An alternative solution would be to pursue the EU administrative procedural codification¹³ and finalize the project under the form of an EU Regulation with article 298 TFEU as its legal basis.

12. Article 26 of the European Code of Good Administrative Behavior.

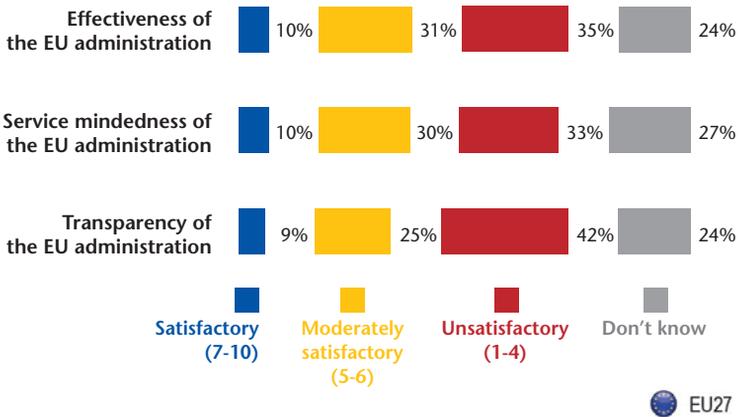
13. European Parliament Resolution, 15 January 2013 with recommendations to the Commission on a Law of Administrative Procedure in the EU <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0004+0+DOC+XML+V0//EN>

4. Perceptions and experience of good administration

The previous recommendations are fundamental to the continuation of efforts of the EU institutions, spanning several decades, to respect good administration in their everyday work. In addition to gaining wider trust among citizens it is important to change their perception of the European administration.

The Special Eurobarometer highlights the challenge faced by showing uncertainty among European citizens. Only around 10% of respondents consider that the European administration is efficient, transparent and that it comes across as service minded (see question 2 of the Special Eurobarometer).

Figure 2. Based on what you know and using a scale from 1 to 10, how would you judge the performance of the EU administration in each of the following areas? '1' means that the EU administration's performance in a specific area is "not at all satisfactory" and '10' means that its performance is "very satisfactory"



Source: Eurobarometer, 2011.

In our view, to improve this perception, European citizens have to be better informed about the existence, the role of the institutions, the European Ombudsman and also about the content of the Charter of Fundamental Rights of the EU. They should also be able to locate their interlocutors and the administrative procedure they need, without any difficulty. Indeed, an environment where the actors are informed and relations are fluid, practical and efficient will have a significant impact in the medium and long run on the perception of the citizens of the European administration by building solid and long lasting trust.

Competent European interlocutors for helping, assisting and advising citizens in the EU are numerous. In addition to the institutions and agencies, we have to mention the European Ombudsman, the European Network of National Ombudsmen, and the Petition Committee of the European Parliament, the Data Protection Officer and the European Consumers Center. Each interlocutor operates its own website where the functions and the missions are presented.

A great number of websites and web portals exist already to inform and guide the citizens and companies. The general information website of the EU, “*Europe Direct*”¹⁴ gives the option of information by phone or email about the functioning of the EU and helps the public to find specific interlocutors at the EU level. However, this website is not a tool to help to resolve any problem the public might encounter in the EU.

The SOLVIT¹⁵ network was launched by the European Commission in 2002 and is dedicated to solving problems brought to the attention of the network. The network’s motto is « solutions to problems with your EU rights” and its structure is composed of national centers,¹⁶ which receive the complaints of citizens or businesses for wrong application of EU law by a national administration. Support is then provided within 10 weeks to ensure correct application of EU law. The SOLVIT network is not an information center but a concrete tool to help citizens and businesses facing a problem of EU law within a national administration. Therefore, some Member States link their national web portal to SOLVIT.¹⁷

As of today, the most comprehensive website is “*Your Europe*”¹⁸ however it is mainly for those European citizens and their families that decide to move within the EU. A similar web portal called “*EU Go*”¹⁹ helps citizens and businesses to get information on how to establish themselves or how to provide services in another Member State. The web portal is useful as it is one point of contact for infor-

14. http://europa.eu/europedirect/index_en.htm

15. http://ec.europa.eu/solvit/index_en.htm

16. The national SOLVIT centers are part of each national administration. http://ec.europa.eu/solvit/contact/index_en.htm

17. In France, for example, the website of the administration has a link to SOLVIT <http://vosdroits.service-public.fr/particuliers/R35676.xhtml>

18. http://europa.eu/youreurope/citizens/index_en.htm

19. http://ec.europa.eu/internal_market/eu-go/index_en.htm

mation and enquiries about each Member States in most of the EU official languages. The portal was put in place with the assistance of the national administrations of Member States in the framework of the transposition of the Services Directive.²⁰

All of these web sites and portals are available from the official EU website “*Europa*”,²¹ however finding access to the above mentioned websites and web portals access is not always straight forward and user friendly. Since its creation, the official EU website has changed significantly. Although it now resembles the general website of a national administration, there is room for improvement, since it could still be more user-friendly for the general public.

Our recommendation would be to collect all the relevant information and help for the citizens and businesses found on the various web sites and portals of the EU and link it to a unique and user-friendly platform. Links for the administrative procedures, complaints and enquiries should also be included. This unique and general European administrative portal could be called “*my European Public Service*” and could either be a new EU homepage or be included in each of the existing general national administrative web portals of the Member States.²² The second option would enable the public to get used to navigating between national and European administrative procedures, helping to create what the authors call a European public space (Chevalier, 2014).

5. Conclusions et recommendations

All the recommendations contribute to reinforcing good administration in the EU one way or another. When combined, these could intensify the efforts of all EU actors to respect good administration, which would benefit all citizens, businesses and residents in the EU.

Good administration is of particular importance for those in direct contact with the EU institutions but as we have underlined,

20. Directive 2006/123/EC of the European Parliament and the Council of 12 December 2006 on services in the Internal Market, OJ L376, p. 36–68.

21. http://europa.eu/index_fr.htm

22. Like <http://www.service-public.fr/>;

<http://www.guichet.public.lu/home/fr/index.html>; <http://www.belgium.be/fr/> ...

these interactions will only become more frequent as the European integration project advances.

Therefore, it seems vital to consider the following recommendations to advance the cause of good administration in the EU and build wider trust among the institutions and the public:

1. Information and communication on the Charter of Fundamental Rights of the EU and in particular, the right to good administration.
2. Information about the role and function of the European Ombudsman and active support for the Ombudsman's actions.
3. Formalization the European Code of Good Administrative Behavior in a Regulation of the European Parliament and the Council to allow its uniform application to all institutions and civil servants. An alternative recommendation is to carry on with the EU administrative procedural codification and finalize the project under the form of an EU Regulation.
4. More efficient information and access to the European administrative procedures and rights for all citizens from a unique web portal "my European Public Service" which could either be in the form of a new EU homepage or be included in each of the existing general national administrative web portals of the Member States.

References

- Azoulai L. and L. Clément-Wilz, 2014. "La bonne administration." In *Traité de droit administratif européen*, Auby J-B. et Dutheil de la Rochère J., eds, 2014, 2^e ed., Bruylant, 651–678.
- Chevalier E., 2014. *Bonne administration et Union européenne*. Bruylant, 2014, 538p.
- Hofmann HCH., 2007. "Good administration in the EU law – a fundamental right?" *Bulletin des Droits de l'Homme*, (13): 44–52.
- Jacqué J., 2011. "Le droit à une bonne administration dans la charte des droits fondamentaux de l'Union européenne.", *RFAP*, (137–138): 79–83.
- Mendes J., 2009. "La bonne administration en droit communautaire et le Code européen de bonne conduite administrative." *RFAP*, (131): 555–571.

- Perillo E., 2005. "Le processus d'adoption du Statut du Médiateur européen." In *Le Médiateur européen. Origines, création, évolution*, Office des publications de l'UE, chapitre 4.
- Soderman J., 2005. "Les premières années du Médiateur européen." In *Le Médiateur européen. Origines, création, évolution*, Office des publications de l'UE, chapitre 5.
- Streho I., 2014. "Le médiateur européen." In *Traité de droit administratif européen*, Auby J-B. et Dutheil de la Rochère J., eds, 2^e ed., Bruylant, 285–300.
- Tsadiras A., 2006. "The Ombudsman." In P. Craig, *EU Administrative Law*, OUP, chapitre 22.

FUNDAMENTAL RIGHTS IN THE FACE OF THE CRISIS

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The economic, social and identity crisis that the European Union is currently experiencing has placed significant strain on the protection of fundamental rights. It is apparent that these rights have been marginalised on particularly burning issues such as: (1) the opt-out status of the United Kingdom, Poland and – potentially – the Czech Republic in relation to the Charter of Fundamental Rights; (2) the deepening of economic coordination and governance; (3) the negotiation of free trade agreements with Canada and the United States; and (4) the negotiation of Protocol no. 15 amending the European Convention on Human Rights. Against this unfavourable background, it is incumbent upon the European Parliament to ensure that fundamental rights continue to serve as a compass and frame of reference for EU policies.

The difficult period that the European Union is experiencing has placed a strain on the protection of fundamental rights. In a large number of member states the economic crisis has fostered the growth of political movements and parties with an authoritarian, nationalist or simply eurosceptic bent. These parties have for the most part not come to power, but they nonetheless indirectly influence the political agenda of their states and, in turn, the entire European Union.

This context of identity tension is hardly conducive to the flourishing of fundamental rights, which are sometimes cited as the symbol of a legal-technocratic Europe that imposes its diktats on the popular will (or the presumed popular will). More generally,

these rights often seem to be considered hindrances to the efficiency of public action in sensitive and pressing areas such as the economy and security.

This spirit of the time, inimical to fundamental rights, is expressed in a number of areas in the European Union's legal system. In an inevitably partial and selective way, this contribution identifies four especially topical and wide-ranging areas that the European Parliament will be hard-pressed to ignore during the 2014-2019 term: (1) the opt-out status of the United Kingdom, Poland and the Czech Republic in relation to the Charter of Fundamental Rights; (2) the deepening of economic coordination and governance; (3) the negotiation of free trade agreements with Canada and the United States; and (4) the signing of Protocol no. 15 amending the European Convention on Human Rights.

Each of these subjects is addressed in two steps: first a description, followed by an assessment and recommendations. The aim of this short contribution remains modest, however: the issues it highlights are already well known, its analysis of them is too quick, and some of the recommendations it offers will likely appear too vague or simplistic to be implemented. But the exercise will not be useless if it achieves at least one objective: convincing the representatives of the European peoples that, in these turbulent times, fundamental rights must now more than ever serve as a compass for public action.

1. The position of the United Kingdom, Poland and the Czech Republic in relation to the Charter of Fundamental Rights

1.1. Observations

During the negotiation of the Lisbon treaty, Poland, the United Kingdom and the Czech Republic sought to opt out of the Charter of Fundamental Rights of the European Union. These efforts have led, for the former two member states, to the ratification and entry into force of Protocol no. 30 on the application of the Charter of Fundamental Rights of the European Union to Poland and the United Kingdom. According to article 1 of this Protocol no. 30, "[t]he Charter does not extend the ability of the Court of Justice of the European Union, or any court or tribunal of Poland or of the

United Kingdom, to find that the laws, regulations or administrative provisions, practices or action of Poland or of the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it reaffirms.” In order to remove any ambiguity, it states “ (...) nothing in the Title IV of the Charter creates justiciable rights applicable to Poland or the United Kingdom except in so far as Poland or the United Kingdom has provided for such rights in its national law.”¹

Annex I to the conclusions of the European Council of 29 and 30 October 2009 includes a “protocol on the application of the Charter of Fundamental Rights on the European Union to the Czech Republic”, which in its first article states that Protocol n° 30 applies to the Czech Republic. This new Protocol, which in theory should have been ratified and entered into force at the same time as the Accession Treaty of Croatia, led to an uproar in the Czech senate² and European Parliament.³ The prospects of ratification of this Protocol in the near future are therefore dim.

In its *N.S.* ruling, the Court of Justice retained a narrow interpretation of the “special privileges” that Poland and the United Kingdom have secured, holding that article 1, § 1, of Protocol n° 30 “is not intended to exempt [these two states] from the duty to comply with the provisions of the Charter, or to prevent a court of one of those Member States from ensuring compliance with those provisions.”⁴

In contrast, the Court has not yet ruled on the scope of the second paragraph of the 1st article of the said Protocol, that denies Title IV (“Solidarity”) of the Charter the status as a source of “justiciable rights” except in so far as such rights are already provided for in national law.⁵ In its *Association de Médiation Sociale* ruling of

1. *O.J.*, 2007, C 306, p. 157.

2. See resolution n°330 of 6 October 2011 cited in European Parliament Resolution of 22 May 2013 (n.3 below).

3. European Parliament Resolution of 22 May 2013 on the draft protocol on the application of the Charter of Fundamental Rights of the European Union to the Czech Republic (article 48, § 3, of the Treaty on European Union) (00091/2011 – C7-0385/2011 – 2011/0817(NLE)).

4. C-411/10 and C-493/10 *N. S.*, 21 December 2011, not yet published in European Court Reports, para. 120.

5. In a ruling of 15 September 2011 (C-155/10 *Williams*, not yet published in European Court Reports), the Court nevertheless did not hesitate to invoke the Charter to establish the right to an annual leave in a case on a preliminary ruling by the British Supreme Court. However, it also true that this right was already enshrined in secondary legislation.

15 January 2014, the Court nonetheless confirmed the ungenerous interpretation advanced by British and Polish authorities by stating that article 27, which recognises workers' right to information and consultation within the undertaking – a part of the "Solidarity" title – "by itself does not suffice to confer on individuals a right which they may invoke as such" and can therefore not be invoked in a dispute between individuals for the purpose of dismissing a national measure contrary to that article.⁶

1.2. Assessment and recommendations

It is unfortunate that, for the first time in the history of European integration, the "sacred union" of member states on fundamental rights has broken. The exemption sought by three states in relation to an axiological pillar of the European Union – fundamental rights – is extremely worrying symbolically, politically and legally.

The European Parliament may at first glance appear powerless in this situation, which relates to an act of primary law – a Protocol – signed and ratified by member states. However, it can use its powers to indirectly quash the negative consequences of this dislocation of states' shared commitment to fundamental rights.

On the one hand, it must continue to strongly oppose the extension of the Protocol to the Czech Republic and to fight to prevent the British and Polish examples from "spreading like wildfire."

On the other hand (and most importantly), the Parliament must act in its capacity as EU co-legislator to ensure, through secondary law, respect for values that primary law seems unable to guarantee. Specifically, the Parliament should use its legislative powers⁷ to work for continuous improvement of the protection of rights covered in the "Solidarity" Title of the Charter.⁸

It would certainly be a sensitive task, but this long-term legislative undertaking appears to be the only way to rebuild a united front of states supporting fundamental rights. With this in mind, the European Parliament is invited to seriously consider the stand-

6. C-176/12, not yet published in European Court Reports, points 47 to 51.

7. Which is in no way incompatible with the fact that the Charter does not expand the EU's competences (art. 6, § 1^{er}, al. 2, of the Treaty on European Union).

still principle, which forbids the EU, in the absence of compelling reasons, to lower the level of protection of these rights (Hachez, 2008: no. 55 ff.; Misonne, 2011: 356-359). In other words the Parliament should systematically refuse any legislative change that would unjustifiably or disproportionately undermine the fulfillment of these fundamental rights.

2. The deepening of economic coordination and governance

2.1. Observations

The sovereign debt crisis led EU member states to carry out major reforms aiming to strengthen economic governance in the European Union, and especially the eurozone. These reforms have largely followed the classical intergovernmental path, resulting in the conclusion and entry into force of the treaty establishing the European Stability Mechanism (ESM) and of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (TSCG). Today they are largely anchored in the European Union's secondary law through the well-known "six-pack" and "two-pack."

Fundamental rights are only a small part of these reforms. In fact, the Court of Justice has recognised that the Charter of Fundamental Rights does not apply to the ESM because the latter does not formally come under the jurisdiction of EU law.⁹

The role of fundamental rights in economic governance thus appears to be limited to two elements. First, this governance is to "take into account article 28 of the Charter" and "accordingly, does not affect the right to negotiate, conclude or enforce collective agreements or to take collective action in accordance with national law and practice."¹⁰

8. These rights include workers' right to information and consultation within the undertaking (art. 27), the right of collective bargaining and action (art. 28), the right of access to placement services (art. 29), protection in the event of unjustified dismissal (art. 30), fair and just working conditions (art. 31), prohibition of child labour and protection of young people at work (art. 32), protection of family and professional life (art. 33), the right to social security and social assistance (art. 34), the right to a high level of human health protection (art. 35), the right to access services of general economic interest (art. 36), and the right to a high level of environmental protection (art. 37) and consumer protection (art. 38).

9. C-370/12 *Pringle*, 27 November 2012, not yet published in European Court Reports.

Second, the Commission has set up an “EU Justice Scoreboard”¹¹ to assess member state compliance with the right to an effective remedy as set out in Article 47 of the Charter. The scoreboard originated from the conviction that access to effective, independent and predictable justice is likely to increase investor confidence and thereby promote economic growth.

2.2. Assessment and recommendations

While there was clearly a need to deepen economic governance, one can only deplore that it occurred with indifference to, or even to the detriment of, fundamental rights. References to the right to collective bargaining in some of the “two-pack” and “six-pack” instruments should not delude us in this regard: the array of sanctions and rewards that the Commission and Council can use to enforce compliance with their recommendations threatens, in practice, to eliminate social partners’ room to maneuver. Meanwhile, the Commission’s scoreboard is questionable, to say the least, in the sense that it was created for the sole purpose of gauging a member state’s attractiveness for potential investors. Such an instrumental approach to fundamental rights seems very simplistic.

This underutilisation of fundamental rights has not gone unnoticed. The Portuguese Constitutional Court has already struck down austerity measures imposed by European institutions for failing to respect social rights.¹² In the same vein, the European Committee of Social Rights has ruled that certain measures adopted by Greek authorities under pressure from the Troika (European Commission, ECB, IMF) violate the European Social Charter.¹³

10. See Regulation 1176/2011 of 16 November 2011 on the prevention and correction of macroeconomic imbalances, *O.J.*, 2011, L 306, p. 25-32, art. 1, § 3 and art. 6, § 3; Regulation n° 472/2013 on the strengthening of economic and budgetary surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability, *O.J.*, 2013, L 140, p. 1., art. 1, § 4, and art. 6, § 1; Regulation n° 473/2013 on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the euro area, *O.J.*, 2013, L 140, p. 11, art. a, § 2.

11. COM (2013) 160 final.

12. See Decision 187/2013 of 5 April 2013; Decision 862/2013 of 19 December 2013.

13. See *GENOP-DEI and ADEDY v. Greece*, claim. n° 65/2011 and n° 66/2011, decisions of 12 May 2012; *GENOP-DEI et ADEDY v. Grèce*, claim n° 65-66/2011; *IKA-ETAM, POPS, ISAP and POS-DEI v. Greece*, claim n° 76-80/2012, decisions of 7 December 2012.

The odds are that such backfiring will grow in the near future and thereby feed the legitimacy and confidence crisis that currently bedevils the European Union.

The European Parliament cannot stand idly by in the face of these challenges. It must use its powers – and especially those granted through the “economic dialogue”¹⁴ – to force the Commission and Council to jettison their one-dimensional approach to their assessment of member states’ economic situation.

These states are held to fundamental rights obligations that they cannot – be it from a legal standpoint alone – sacrifice on the altar of economic governance. In a communication of 2 October 2013, the Commission thankfully committed to developing the social dimension of economic and monetary union.¹⁵ It is up to the Parliament to ensure that this declaration of intent is realised and strengthened.

3. Negotiation of free trade agreements with Canada and the United States

3.1. Observations

The European Union has – quietly – negotiated a free trade agreement with Canada. To date the content of this agreement, whose details are still being finalised, has not been revealed to the general public. But it appears that this agreement will include provisions on investments that can be invoked before arbitration courts. In particular, businesses investing in the European Union or Canada would be able to obtain redress in the event of an “indirect expropriation”, that is, a “substantial deprivation” of the attributes of property. Specifically, these clauses would also allow businesses to claim damages and interest for legislative changes infringing on their investments if these changes – driven, for example, by environmental, health or public safety concerns – appeared to be “manifestly excessive in light of their objective.”¹⁶

14. See. art. 15 of Regulation n° 473/2013 quoted above and article 3, § 9, and 18 of Regulation n°472/2013 quoted above.

15. COM(2013) 690 final.

16. This information comes from a Commission document entitled Investment Provisions in the EU-Canada free trade agreement (CETA), available at: http://trade.ec.europa.eu/doclib/docs/2013/november/tradoc_151918.pdf.

It is likely that the free trade agreement with the United States (the Transatlantic Trade and Investment Partnership (TTIP)) will feature the same type of clause. The Trade Commissioner is aware of the concerns that these provisions raise in the European population, and has decided to open a public consultation on this subject in March 2014.

3.2. Assessment and recommendations

The transatlantic free trade agreements have raised a number of public concerns, with some fearing that the removal of barriers to trade will lead to lower standards of protection for non-commercial interests (health, environment, etc.) in force today in the European Union.

It would behoove the Parliament to use its powers under article 2018 of the TFEU to oppose any clause in these agreements that might lead to a step backwards in the protection of fundamental rights, and in particular those included in Title IV of the Charter, such as the right to a high level of protection for human health, consumers and the environment.

Moreover, it is critical that the Parliament shed light on the content and reach of the investment clauses that are to be inserted into such agreements. In this connection it may be recalled that according to the Court of Justice's jurisprudence, "an economic operator cannot claim a right to property in a market share which he held at a given time, since such a market share constitutes only a momentary economic position, exposed to the risks of changing circumstances. Nor can the guarantees accorded by the right to property or by the general principle safeguarding the freedom to pursue a trade or profession be extended to protect mere commercial interests or opportunities, the uncertainties of which are part of the very essence of economic activity."¹⁷

In other terms, neither property rights not the right to freedom of economic activity¹⁸ can justify the insertion of a clause aiming to safeguard businesses from unpredictable legislative developments that might harm their investments. Conversely, the

17. C-120/06 and C-121/06 P *FIAMM v. Council and Commission*, 9 September 2008, *Rec.*, p. I-6513, point 185, and jurisprudence quoted.

18. See aff. 133 to 136/85 *Rau*, 21 May 1987, *Rec.*, p. 2289, pt. 19.

existence of such a clause – and its attendant legal threats – might dissuade states from pursuing reforms needed to safeguard the protection of “non-commercial” fundamental rights related to health, security or the environment. Finally, such clauses are all the more dangerous because they would be subject to private arbitration, under which they would likely take precedence over European standards to protect fundamental rights,

4. The signing of Protocol no. 15 amending the European Convention on Human Rights

4.1. Observations

On 24 June 2013, states parties to the Council of Europe concluded Protocol no. 15 to the European Convention on Human Rights. This Protocol will come into force once all the states parties to the Convention have ratified it.

This Protocol seems to be partly driven by a desire to limit the influence of the European Court of Human Rights’ jurisprudence over national policies. First, its preamble enshrines the principle of subsidiarity and the doctrine of the “national margin of appreciation.” Moreover, this Protocol places a four-month time limit – instead of the current six months – on filing a petition from the date of the final domestic decision.

On the basis of article 6, § 2, of the TEU, the European Union has negotiated an agreement to accede to the European Convention on Human Rights. This Protocol is currently under review by the Court of Justice.¹⁹

4.2. Assessment and recommendations

It is worrisome that some states parties to the Council of Europe are trying, via Protocol no. 15, to constrain the European Court of Human Rights’ scope for action. As nationalist and authoritarian movements are gaining traction in the aftermath of the crisis, it is more important than ever to save democracy from itself by entrusting the keys to an independent guardian above the political

19. Opinion 2/13, procedure currently pending before the Court.

fray. While the “margin of appreciation” technique and the subsidiarity principle are already used by the Strasbourg Court for the legitimate purpose of respecting the diversity and sovereignty of member states, these tools should not become a convenient shield for states trying to escape their international obligations.

Once the European Union becomes party to the European Convention on Human Rights it will also have to make a decision over the ratification of Protocol no. 15. At this point it is difficult to judge whether European Parliamentary opposition to EU accession to the Protocol would be politically possible and strategically advisable. However, the European Parliament has another option that would allow it to partially offset a possible weakening of the European Court of Human Rights’ oversight.

This option is nothing new. Called for by the Parliament itself,²⁰ and supported in the academic world (see Carrera, Guild, Hernanz, 2013), the solution would be to establish a system to monitor member state compliance with fundamental rights. This mechanism would allow for the continuous monitoring of each member state’s compliance with the Copenhagen criteria. It would be more efficient than the process referred to in article 7 of the TEU that provides for penalties against states which seriously and persistently breach EU values, but that is fraught with such serious consequences that it has never been used. At the same time, this mechanism could find a legal basis in this same article 7 of the TEU, as a preventative tool to anticipate and prevent the “clear risk of a serious breach” mentioned in article 7 of the TEU.

The European Parliament should therefore pursue this course with the help of the Commission and the European Union Agency for Fundamental Rights, which seems to naturally be best equipped to guide the implementation of such a “scoreboard for fundamental rights”.

20. See for example the European Parliament Resolution of 3 July 2013 on the situation of fundamental rights: standards and practices in Hungary, pts. 78-82.

5. Conclusion

It is proposed that the European Parliament:

1. systematically refuse any legislative change that might unjustifiably or disproportionately lower the level of protection of the social rights and principles described in Title IV of the Charter of Fundamental Rights;
2. encourage the Commission and the Council to integrate the protection of fundamental social rights in their assessment of the economic situation of member states in the context of the new economic governance;
3. oppose any clause in transatlantic free trade agreements (EU-Canada and EU-US) that either in terms of content (weakened protection of human health, consumers and the environment), or of procedure (insertion of investment clauses that would paralyse member state action) would threaten the protection of fundamental rights;
4. work towards the implementation of a “scoreboard” for fundamental rights that would continuously monitor each member state’s compliance with them.

References

- Carrera S., E. Guild, and N. Hernanz, 2013. “Rule of law or rule of thumb? A New Copenhagen Mechanism for the EU.” *CEPS Policy Brief* 303.
- Hachez I., 2008. *Le principe de standstill dans le droit des droits fondamentaux: une irréversibilité relative* [The standstill principle in fundamental rights law: a relative irreversibility], Sakkoulas – Bruylant – Nomos Verlag.
- Misonne D., 2011. *Droit européen de l’environnement et de la santé. L’ambition d’un niveau élevé de protection* [European environmental and health law. Aiming for a high level of protection], LGDJ – Anthémis.

EUROPEAN GOVERNANCE

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REFORMING EUROPE TRANSFORMATION OF EU COMPETENCE IN THE FIELD OF ECONOMICS WITH THE ANTI-CRISIS MEASURES

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The “anti-crisis measures” are undoubtedly strengthening the involvement of the EU and / or its institutions, even though *a priori* the area of competence is still the same: fiscal discipline on the one hand, and the coordination of economic policy on the other. This set of instruments embraces national fiscal and economic policies, but also involves greater control exercised by EU institutions over the States, and in particular the euro zone countries. Two types of coordination are thus being merged, one based on flexible multilateral surveillance between States overseen by the Council, and the other based on a more rigid supervision on the part of the Commission. The monitoring of broad economic policy guidelines by the Commission and the Council is more precise than in the past, especially with the new mechanism of quasi-automatic sanctions for the euro zone countries; and the recommendations made with regard to the coordination of economic policy now have a mandatory character for the euro zone countries, under Article 136 of the TFEU concerning measures specific to the euro zone countries. The conditionality of financial assistance is adding a little more pressure on the States. There is a need both to strengthen democratization generally by reinforcing the role of the European Parliament and the national parliaments as well as to provide a clear legal basis for the new missions of the EU institutions.

1. The new “anti-crisis” measures and EU competence: an introduction

1.1. The “anti-crisis” measures in the field of economics

The “anti-crisis” measures correspond to a large body of law adopted to fight the economic and financial crisis and limit the

problem of sovereign debt. These sometimes fall outside the scope of the Union (the Treaty establishing the European Stability Mechanism, hereinafter the ESM Treaty,¹ and the Treaty on Stability, Coordination and Governance, hereinafter the SCG Treaty²) and sometimes within it, through secondary legislation (“Six Pack”³ and “Two Pack”⁴) or new soft law instruments such as the Europe 2020 strategy.⁵ These new measures are changing the exercise of the competence of the Union, its institutions and the States in the field of economic policy.

1.2. EU competence in the field of economic policy

The category of competence that covers economic policy does not appear to be so obvious, despite the typology of competences drawn up since the Lisbon Treaty. Article 2, paragraph 3 of the Treaty on the Functioning of the European Union (hereinafter the FEU Treaty or simply TFEU) provides that, “The Member States shall coordinate their economic and employment policies within arrangements..., which the Union shall have competence to

1. Treaty establishing the European Stability Mechanism, 2 February 2012, signed by the 17 Member States of the euro zone, entered into force on 27 September 2012.

2. Treaty on Stability, Coordination and Governance, 2 March 2012, signed by 25 Member States (the 27 Member States minus the United Kingdom and Czech Republic), entered into force on 1 January 2013. Also called the “Fiscal Pact”.

3. EU Parl. and Cons., Reg. 1175/2011, 16 Nov. 2011, amending Regulation (EC) 1466/97 of the Council on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies, OJEU L 306, 23 Nov. 2011, p.12 and EU Cons., Reg. 1177/2011, 8 November 2011, modifying (EC) regulation 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure, OJEU L 306, 23 Nov. 2011, p.33; two regulations on macroeconomic surveillance (EU Parl. and Cons., Reg. 1176/2011, 16 Nov. 2011, on the prevention and correction of macroeconomic imbalances, OJEU L 306, 23 Nov. 2011, p. 25 and EU Parl. and Cons., Reg. 1174/2011, 16 Nov. 2011, establishing enforcement measures to correct excessive macroeconomic imbalances in the euro area, OJEU L 306, 23 Nov. 2011, p. 8). Also, EU Parl. and Cons., Reg. 1173/2011 on the effective enforcement of budgetary surveillance in the euro area, OJEU L 306, 23 Nov. 2011, p. 1 and EU Cons., Dir. 2011/85, 8 Nov. 2011, on requirements for budget frameworks of the Member States, OJEU L 306, 23 Nov. 2011, p. 41).

4. EU Parl. and Cons., Reg. 472/2013, 21 May 2013, on the strengthening of economic and budgetary surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability, OJEU L 140, 27 May 2013, p.1; EU Parl.-Cons., Reg. 473/2013, 21 May 2013, establishing common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficits of the Member States in the euro area, OJEU L 140, 27 May 2013, p. 11

5. Strategy approved by the European Council on 26 March 2010, upon a proposal by the Commission. This was a new strategy for growth and employment based on strengthened coordination of economic policy. See EU Cons., Recommendation 2010/410/EU, 13 July 2010, on broad economic policy guidelines of the Member States and of the Union, OJEU L 191, 23 July 2010.

provide.” Furthermore, economic policy is neither one of the shared competences (Article 4) nor among the so-called complementary competences (Article 6). It is found in a separate article, Article 5, TFEU, on economic policies, policies on employment and social policies, in which paragraph 1 states that, “The Member States shall coordinate their economic policies within the Union. To this end, the Council shall adopt measures, in particular broad guidelines for these policies.”

The third part of the Treaty is devoted to economic policy and to economic policy coordination by the Member States, with the support of the Council, which develops broad guidelines of the economic policies (BGEPS) (Article 121, TFEU), which may be specific to the Eurogroup (Article 136, TFEU). There are also clauses on solidarity between Member States or the Union in the case of hardship or exceptional events (Article 122, TFEU) as well as provisions on budgetary discipline, which are based on the prohibition on public financing (Articles 123-125 TFEU) and the control of excessive government deficits (Article 126, TFEU). The Stability and Growth Pact is ultimately a device for preventive multilateral surveillance⁶ combined with a sanctions procedure,⁷ so that the deficit does not exceed 3% of GDP and the debt 60% of GDP.

These arrangements do not much reflect the provisions of Articles 3 and 5 of the TFEU: the Union does not act solely in the framework of the BGEPS. Depending on the degree of involvement of the EU, this is a matter of national powers exercised as part of the Union, i.e. national competences framed by the Union, or of genuine complementary competences within the meaning of Article 6, TFEU. This is what was confirmed by the Court of Justice in the Pringle judgement.⁸

The way this coordination competence is exercised can cause its very nature to vary. The stronger the constraint of the Union, the

6. Governed by EU Cons., Reg. 1466/97, 7 July 1997, on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies, OJEU L 209, 2 August 1997 (amended by EU Cons., Reg. 1055/2005, 27 June 2005, OJEU L 174, 7 July 2005, p.1 then by Reg. 1175/2011, cited above).

7. Governed by EU Cons., Reg. 1467/97, aimed at speeding up and clarifying the implementation of the excessive deficit procedure, OJEU, L 209, 2 August 1997, amended by EU Cons., Reg. (EC) 1056/2005, 25 June 2005, OJEU L 174, 7 July 2005 then by Reg. 1177/2011, cited above. The entirety may be specific to the Eurogroup in virtue of Article 136 TFEU.

8. CJEU, 27 Nov. 2012, C-370/12, *Pringle*.

less we can speak of simple national competences coordinated within the Union.

More specifically, the way competence is exercised has evolved with the anti-crisis measures, whether this is within the framework of monitoring the broad guidelines of the economic policies, the prevention and correction of economic imbalances, or the new system of sanctions on States and controls over them when they receive financial assistance. The institutions are playing a new role, and an appropriate legal framework is critical to provide a better legal basis for these actions.

2. Surveillance of the broad economic policy guidelines

The European Semester, part of the “Six Pack”,⁹ aims to ensure closer coordination of economic policy¹⁰ through “the formulation, and the surveillance of the implementation, of the broad guidelines of the economic policies of the Member States and of the Union” and “the formulation, and the examination of the implementation, of the employment guidelines that must be taken into account by Member States”,¹¹ proposed by the Commission and adopted by the European Council at the beginning of the year. Upon presentation of national stability or convergence programmes, but also reforms and measures to make use of the Europe 2020 Strategy (smart, sustainable and inclusive growth, in areas such as employment, research, innovation, energy and social inclusion), the Commission shall proceed with an evaluation in May-June. If necessary, the Commission issues country-specific recommendations. The Council then considers the recommendations and the European Council approves them. The Member States thus receive policy guidance prior to finalizing their draft budget for the following year.

9. The European Semester was born out of an informal decision of the Ecofin Council meeting of 6 September 2010, which was itself based on the conclusions of the European Council meeting of June 2010. It has been functioning since 2011, even before the legal rules governing its implementation had been adopted. It is now integrated into Regulation 1466/97, cited above (as amended by Regulation 1175/2011, cited above) in Article 2 bis, par. 2.

10. On the early presentation of these new instruments, see *Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the Economic and Social Committee and the Committee of the Regions – Reinforcing economic policy coordination*, COM/2010/0250 final.

11. Reg. 1466/97, as amended by Reg. 1175/2011, cited above, Article 2 a. The Six Pack “establishes closer coordination and surveillance of the economic and budgetary policies conducted by the Member States and is intended to consolidate macroeconomic stability and the sustainability of public finances” (CJEU, 27 Nov. 2012, *Pringle*, cited above, pt 58).

For instance, with the adoption on 13 November 2013 of the Annual Growth Survey, the Commission launched the fourth European Semester of economic policy coordination for the year 2014. It renewed the focus on five priorities: pursuing differentiated, growth-friendly fiscal consolidation; restoring normal lending to the economy; promoting growth and competitiveness for today and tomorrow; tackling unemployment and the social consequences of the crisis; and modernizing the public administration.

In May 2013, based on the economic and social performance of each Member State, the Commission published the Communication “Moving Europe Beyond the Crisis”,¹² along with the proposed recommendations for each Member State. In the general formulation of key points for action, the Commission discusses the five priorities to be followed by the States, listed above, and made specific recommendations for each of the priorities. With regard to pursuing differentiated, growth-friendly fiscal consolidation, for example, it places particular emphasis on the need to reduce spending. It stressed that, “the structure of tax systems, and particularly the shifting of the tax base from labour to other sources, is an essential aspect of on-going reforms”. The Commission came out in favour of increases in the taxation of real estate and of “environmental taxes, for example by taxing sources of pollution and greenhouse gas emissions”. It recommended “increasing the minimum statutory retirement age in line with the increase in life expectancy, as well as phasing out early retirement schemes, in combination with efforts to sustain lifelong learning and the employment rate of older workers.” With regard to promoting competitiveness, the Commission recommended indexing wages to productivity.

This communication was accompanied by specific recommendations for each State, which are sent for the Council’s approval. With regard to France, it stated for example that, “Many professional service providers still face restrictions as regards their legal form and shareholding structure (e.g. restrictions on capital ownership for veterinarians and lawyers),”¹³ or that the market for notaries and taxis is too closed. It recommended among other

12. COM (2013) 350 final.

13. COM(2013) 360 final.

things “to bring the pension system into balance in a sustainable manner no later than 2020, for example by adapting indexation rules, further increasing the statutory retirement age and full-pension contribution period and reviewing special schemes, while avoiding an increase in employers' social contributions,” as well as “to increase the cost-effectiveness of healthcare expenditure, including in the areas of pharmaceutical spending”, and finally to “ensure that developments in the minimum wage are supportive of competitiveness and job creation, taking into account the existence of wage support schemes and social contribution exemptions.”

This increased pressure on the States must be accompanied by a strengthening of democratic control.

Recommendations

- To strengthen democratic control of the whole procedure by greater immediate involvement of the European Parliament and national parliaments through new practices.
- To strive to give greater legitimacy to the action of the Council and the Commission in the context of their new missions, if need be by amending the treaties.

3. The new system of sanctions affecting the euro zone members

Since the adoption of the “Six Pack” in 2011, the focus has been on debt reduction.¹⁴ Regulation 1176/2011 has a prevention component that establishes a mechanism for the control of excessive macroeconomic imbalances, based on an alert mechanism to “facilitate the early detection and monitoring of imbalances.”¹⁵

14. Dir. 2011/85, cited above, Whereas 18. Reg. 1466/97 as amended (by Reg. 1175/2011), cited above, Article 5(1) al. 2 and Whereas 18; see also the SCG Treaty, Articles 4 and 6.

15. Reg. 1176/2011, cited above, Article 3. The point is “to supplement the multilateral surveillance procedure referred to in paragraphs 3 and 4 of Article 121 TFEU with specific rules for the detection of macroeconomic imbalances, as well as the prevention and correction of excessive macroeconomic imbalances” (Ibid, Whereas 9). This regulation provides for an early alert mechanism. In addition, if the Commission considers that there are excessive imbalances in a Member State, it recommends that the State develops a corrective action plan and sets deadlines for the new measures. This recommendation is adopted by the Council. The Commission ensures throughout the year that the Member State actually proceeds to correct the noted imbalances (see Commission, Memo/13/318, 10 April 2013).

Regulation 1174/2011 provides a mechanism for progressive penalties: an interest-bearing deposit and then a fine.¹⁶

The preventive (multilateral surveillance with regards to the coordination of economic policy¹⁷) and corrective components (the procedure to avoid excessive deficits of the Member States¹⁸) of the Stability and Growth Pact are enhanced by an appropriate system of penalties provided for the euro zone members in Regulation 1173/2011 on the effective enforcement of budgetary surveillance in the euro area.¹⁹

As for the preventive arm, a new penalty was created, the interest-bearing deposit, which is applied when the Member State has not taken adequate steps to respond to the Council recommendations.²⁰ This is a quasi-automatic sanction, since the penalty recommended by the Commission is deemed adopted unless the Council opposes it by a qualified majority vote.²¹

These new penalties are extended in the corrective component of the Stability and Growth Pact, with the establishment of non-interest-bearing deposits, prior to the imposition of fines.²² Henceforth, the Council adopts the Commission's decision only by a reverse qualified majority, and no longer by a reverse majority.²³ This "Copernican revolution"²⁴ means that the penalties now have a semi-automatic character.

Alongside this are the new rules set out by the Two-Pack, which has been in force since 30 May 2013²⁵ and applies only to the

16. Reg. 1174/2011, cited above, Article 2.

17. Reg. 1466/97, cited above.

18. Reg. 1467/97, cited above.

19. Reg. 1173/2011, cited above..

20. Reg. 1173/2011, Article 4.

21. Reg. 1173/2011, cited above, Art. 4, paragraphs 1 and 2.

22. Reg. 1173/2011, cited above, Art. 5 and 6.

23. Reg. 1466/97 amended, cited above. Article 6, paragraph 2, al. 5; Reg. 1173/2011, cited above, Art. 6; Reg. 1174/2011, cited above, Article 3, paragraph 3; SCG Treaty, Article 3, paragraph 3.

24. N. de Sadeleer, "The new architecture of the European Economic Governance: A Leviathan or a Flat-Footed Colossus?", *Maastricht Journal of Comparative and EU Law*, 2012, pp. 354-383.

25. EU Parl.-Cons., Reg. 472/2013, 21 May 2013, on the strengthening of economic and budgetary surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability, OJEU L 140, 27 May 2013, p. 1 and EU Parl.-Cons., Reg. 473/2013, 21 May 2013, establishing common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficits of the Member States in the euro area, OJEU L 140, 27 May 2013, p. 11.

Member States of the euro zone.²⁶ All these States must henceforth submit a three-year budget plan in April of each year, and then in October a budget plan for the following year. In other words, the States' budget bills must be submitted to the Commission, which will examine them and issue an opinion on them by November 30th at the latest.²⁷

In the context of measures specific to the euro zone countries that are subject to an excessive deficit procedure, the Two-Pack “sets out provisions for enhanced monitoring of budgetary policies in the euro area and for ensuring that national budgets are consistent with the economic policy guidance issued in the context of the SGP and the European Semester for economic policy coordination...”.²⁸ It provides for the euro zone States to present an economic partnership programme.²⁹ This decision is taken by the Council, which rules on a qualified majority on a proposal by the Commission. These programmes are subject to a quarterly inspection and to strict conditions in case of financial assistance.

Recommendation

— To clarify the legal basis of these new penalties associated with the broad economic guidelines.

4. Controls on States receiving financial assistance

The controls are particularly tough on States receiving financial assistance:

As part of the Two-Pack, the macroeconomic adjustment programmes³⁰ drawn up by the Member States experiencing difficulties that could have “serious adverse effects” on the rest of the

26. Cf. F. Allemant and F. Martucci, “La nouvelle gouvernance de l’Union économique et monétaire”, CDE, 2012, p. 12 and 409.

27. Reg. 473/2013, cited above, Art. 7.

28. Reg. 473/2013, 21 May 2013, establishing common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficits of the Member States in the euro area, OJEU L 140, 27 May 2013, p. 11, Art. 1.

29. Reg. 473/2013, 21 May 2013, establishing common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficits of the Member States in the euro area, OJEU L 140, 27 May 2013, p. 11, Art. 9.

30. Reg. 472/2013, cited above, Art. 3 (“enhanced surveillance”).

euro zone are subject to quarterly financial inspections and must meet strict conditions if they receive financial assistance.³¹

Likewise, the ESM Treaty conditions the benefit of financing on signing the SCG Treaty.³² Furthermore, “the ESM may provide stability support to an ESM Member subject to strict conditionality, appropriate to the financial assistance instrument chosen. Such conditionality may range from a macro-economic adjustment programme to continuous respect of pre-established eligibility conditions.”³³ The ESM makes coordination at the European Union level more effective. It “shall thus constitute an impressive means for strengthening control by the Union and the euro zone Member States over a State’s economic policy.”³⁴

Recommendation

— To strengthen democratic control of this entire procedure by greater immediate involvement of the European Parliament and the national parliaments through new practices.

5. The new role of EU institutions in economic matters

The stronger control exercised over the States is necessarily being accompanied by a greater role for EU institutions, in particular the Commission and the Council.

Under the ESM Treaty, once the ESM has been activated by a decision of the Board of Governors, the Commission is given a mandate by the Board to negotiate, in liaison with the IMF and the European Central Bank, a macroeconomic adjustment programme with the State concerned, which is concretized in a memorandum

31. Reg. 472/2013, cited above, Art. 7. The regulation insists on “full consistency between the Union multilateral surveillance framework established by the Treaty on the Functioning of the European Union and the possible policy conditions attached to financial assistance” (Ibid., Whereas 3).

32. “[T]he granting of financial assistance in the framework of new programmes under the ESM will be conditional, as of 1 March 2013, on the ratification of the TSCG by the ESM Member concerned and, upon expiration of the transposition period referred to in Article 3(2) TSCG on compliance with the requirements of that article.” (ESM Treaty, Whereas 5).

33. ESM Treaty, cited above, Art. 12.

34. F. Martucci, “La solidarité intéressée dans la zone euro : les mécanismes de stabilité”, *Etudes européennes*, 3 Aug. 2012, p. 1-20 (available at www.etudes-europeennes.eu), 17.

of understanding. The Commission is then responsible for ensuring that the State fulfils the conditions set out in the programme. In this respect, the Court of Justice held that, “the Member States are entitled, in areas which do not fall under the exclusive competence of the Union, to entrust tasks to the institutions, outside the framework of the Union, ... provided that those tasks do not alter the essential character of the powers conferred on those institutions.”³⁵ This thus involves new missions, but not new allocated authority in the sense of the competences given to the Commission, which can already take similar action under the Stability and Growth Pact.

As for the Court of Justice, it has also seen its powers strengthened through two international treaties. The SCG Treaty provides that a Contracting Party can apply to the Court of Justice if it believes that another Party has not respected their obligations under the Treaty, in particular the transposition of the “golden rule” into a constitutional or equivalent text.³⁶ In case of failure to comply with the Court’s decision, a Contracting Party may bring an action for this failure [*“manquement sur manquement”*], which results in the payment of a fine or a lump sum.³⁷ It is also competent to consider any claims regarding decisions of the Board of Governors, the executive body of the ESM.³⁸

Recommendation

— To work to give greater legitimacy to the action of the Council and the Commission in the framework of their new missions, through new practices, and, where necessary, by amending the treaties.

6. Conclusion

The “anti-crisis” measures are undeniably strengthening the role of the Union and/or its institutions, whereas *a priori* the area of competence remains the same: fiscal discipline (Six Pack, Two

35. CJEU, 27 Nov. 2012, *Pringle*, cited above, pt 158.

36. SCG Treaty, cited above, Art. 8, par. 1.

37. SCG Treaty, cited above, Art. 8, par. 2.

38. ESM Treaty, cited above, Art. 37, par. 3.

Pack, SCG Treaty, European Semester), on the one hand, and coordination of economic policy on the other (Europe 2020 Strategy, European Semester, Six Pack).

The recent adoption of these various instruments reflects a new approach to economic issues: embracing both budget policy and national economic policy, it also involves greater control over the States, in particular the euro zone countries, by EU institutions. A comprehensive approach is now being taken that simultaneously covers excessive deficits, debt issues, macroeconomic imbalances and the lack of competitiveness.³⁹

Europe's more comprehensive approach to economic and fiscal policy is leading to a merger of two types of coordination: one based on a system of flexible multilateral surveillance between States, headed by the Council, and another based on stricter surveillance on the part of the Commission.

The surveillance of broad economic policy guidelines by the Commission and the Council is more precise than in the past.

With the new quasi-automatic mechanism of sanctions for the euro zone countries, the recommendations taken under Article 121, paragraph 4, TFEU (coordination of economic policy) are acquiring a mandatory character for the euro zone countries through the application of Article 136, TFEU (measures specific to the euro zone countries).

The conditionality of financial assistance is changing the nature of coordination between the EU Member States, i.e. the coordination ensured by the European Union in the field of economics.

EU institutions, including the Commission and the Court of Justice, are gaining power in a domain that previously tended to be left to the good political auspices of each State.

39. J.V. Louis, "La nouvelle 'gouvernance' économique de l'espace euro", in *Mélanges en l'honneur du Professeur Joël Molinier*, LGDJ, 2012, pp. 405-427, 411.

Principal recommendations

- To strengthen democratic control over the entire process by greater involvement of the European Parliament and the national parliaments.
- To clarify the legal basis for the new penalties associated with the broad economic guidelines.
- To work to give greater legitimacy to the action of the Council and the Commission in the framework of their new missions, through new practices, and where necessary by amending the treaties.

THE DEMOCRATIC LEGITIMACY OF EUROPEAN ECONOMIC GOVERNANCE

CHANGE IN THE ROLE OF PARLIAMENT

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The Treaty of Lisbon is often referred to as “the treaty of the parliaments”. But the Economic and Monetary Union reforms implemented in response to the financial and sovereign debt crises have further diminished the role of the European and national parliaments in the legislative process. In return, however, the parliaments have been given greater powers in the area of accountability. Strengthening the democratic principle within EMU requires a greater degree of involvement by the parliaments. This means avoiding the use of intergovernmental agreements, organising a “euro area. committee within the European Parliament and holding an annual socio-economic convention to establish the broad guidelines of EMU policies.

1. From the “treaty of parliaments” to the crisis of parliaments

On December 1st, 2009, Bundestag president Norbert Lammert presented his vision of Europe at the prestigious Humboldt University in Berlin, focusing on the Lisbon Treaty, which had entered into force that day. He claimed the treaty heralded a new era for European democracy and citizenship: it was the “treaty of parliaments” (Lammert, 2009). However, this assessment did not take into account the brewing crisis: several weeks before, Greek authorities had revealed a major statistical manipulation of their public

accounts. In the spring of 2010 the Euro-zone was engulfed in a sovereign debt crisis.

Markets do not operate on the same timetable as democracy. The crisis merited an increased and effective involvement of parliaments to help manage and resolve the crisis. The reality was very different. The urgency of the situation necessitated quick and technical action that did not lend itself to parliamentary debate. The crisis accentuated the polarization in Euro-zone governance. The European Central Bank (ECB) and national central banks of the Euro-zone the (Eurosystème) “govern” the euro, while the Ecofin Council and the ECB determine the euro’s interest rate. The European Council, Ecofin Council, Ecofin’s Euro-zone committee, Euro-zone summits, Eurogroup, Germany, the Franco-German partnership etc., govern the economic Union. While parliaments are not excluded from crisis management, they are limited to an observer’s role rather than being a player (Poptcheva, 2012). Granted, the European Parliament, together with the Council, adopted six of the eight texts reforming and strengthening the Stability and Growth Pact.¹ However, under pressure from the markets and successive Council presidencies, legislative procedures were closed at the end of the first reading, making way for the kind of informal agreements that are often denounced for their opacity and the power they grant to the Council in relation to the Parliament (Costa *et alii.*, 2011). The European Parliament was also not able to secure its involvement in the development of financial assistance provisions. At the national level, the new mechanisms for coordinating economic policies and budgetary surveillance introduced by the *Six-Pack* and the *Two-Pack* strengthened the role of government *vis-à-vis* parliament, whose budgetary function in particular was weakened. The relegation of parliament was even more pronounced for countries receiving financial assistance; their parliaments were in effect required to “ratify” programs negotiated between their finance ministries and international lenders without being able, in practice, to exercise their constitutionally recognized powers.

1. The *Six-Pack*, a legislative package including five regulations – adopted by the Council alone – and a directive (OJEU L 306 of 23 November 2011) and the *Two-Pack*, which includes two regulations (OJEU L 140 of 27 May 2013).

After five years of crisis, some believe the situation has become worrisome. National legitimacy has been deprived of instruments, while European instruments lack legitimacy (Scharpf, 2011; Fitoussi, 2012). What role should parliaments be given then? Parliaments in the plural since in the two-level constitutional system, both the European Parliament and national parliaments assume the parliamentary role (article 12 TEU, Protocol n° 1).

2. The democratic principle of European economic governance

Technicality, efficiency, confidentiality and independence are the principles known to shape the definition and practice of the Eurosystem's monetary policy in the Euro-zone. The economic Union has the peculiarity of determining how member states conduct their economic policies. States must treat their policies as an issue of common interest and coordinate them within the Council in line with the coordination and surveillance regime spelled out in the treaties (art. 121 and 126 TFEU) and secondary law (Stability and Growth Pact, *Six-Pack* and *Two-Pack*). These features were invoked during the negotiation of the Maastricht treaty (1991) to diminish the European Parliament's role, going against the trend in other political areas of the European Community (Community pillar). The three constitutional revisions made since then have only introduced marginal improvements. The European Parliament is only co-legislator in three of the twelve legislative procedures included in EMU (articles 121 § 6, 129 § 3 and 133 TFEU). For the remainder, that is, the adoption of the most sensitive issues, the European Parliament is consulted, and in some instances only informed. This parliamentary relegation is questionable on both political and legal grounds.

The European Union is founded on the value of democracy (article 2 TEU). Its functioning is founded on representative democracy based on a two-level system: citizens are directly represented at the Union level in the European Parliament; member states are represented in the European Council by their heads of state or government and in the Council by their governments, themselves democratically accountable either to their national parliaments or to their citizens (article 10 TUE).

Legally, the Court of Justice has recognized the “fundamental democratic principle that the people should take part in the exercise of power through the intermediary of a representative assembly” (ECJ, 1980, pt. 22). The democratic principle also implies that the power to adopt an EU measure that can alter the non-essential elements of an EU legislative act must be exercised by a European institution that is democratically accountable (ECJ, 2013, pt. 85). In an assessment of the United Kingdom’s implementation of Community law measures on European elections, the European Court of Human Rights opined on the existence of a “truly democratic political regime” in the EU (ECHR, pt. 48), which it has recognized to be *sui generis* in nature. As the part of the EU structure that best reflects efforts to ensure a “truly democratic political regime,” the European Parliament has a twofold responsibility. It is an integral part of the EU’s legislative process; and it is the principal instrument of democratic control and political responsibility in the European Union’s system.

EU economic and monetary policy is subject to the democratic principle, given that it is fully integrated in the EU legal system. The democratic principle is all the more necessary since economic governance is characterized by its institutional complexity and by the major economic, social and financial impacts of measures taken in this area on the eighteen Euro-zone member states, their economic operators and their 330 million European citizens. No supposedly democratic regime would survive long if representatives of the citizens were not involved in the adoption and oversight of public policy (Van Rompuy, 2012). In October 2012, the European Council stated that, “strong mechanisms for democratic legitimacy and accountability are necessary” (European Council, 2012; Ministers of foreign affairs, 2012). This will be no easy task and nothing indicates that the task is even at the top of the political agenda, but there is a distinction here between the means of expressing the democratic principle. The principle is not limited to the participation of representatives elected by the people in legislative processes. Representative institutions are intended more to submit governing bodies to the judgment of the governed. Accountability is also a democratic element of the representative link (Manin, 1995: 301). It is in this second area that developments will probably be most noteworthy.

3. Parliamentary relegation in decision-making

The relegation is twofold, affecting both the European Parliament and national parliaments. It is not likely to change.

3.1. *The relegation of the European Parliament*

In EMU, member states exercise their economic and budgetary policy powers within the EU coordination and surveillance framework. This coordination is above all a state matter; the European Parliament has limited involvement. The latter is informed after the fact of the Council's recommendation for the broad guidelines of the economic policies and the results of multilateral surveillance (article 121 § 2, §5, TFEU). It is consulted (simple opinion) on the provisions adopted by the Council to replace the protocol on the excessive deficit procedure (art. 126 § 14 TFEU). The treaties' weakening of the legislative function is compounded when member states act in concert to keep the European Parliament at arm's length by using instruments outside the EU framework, be it international public law treaties or soft law. Negotiations of the European stability mechanism and the Euro Plus Pact are a case in point. The Parliament was only able to secure the right to send no more than four observers (including one substitute) to the intergovernmental conference on the treaty on stability, coordination and governance (TSCG) and to present its position at the special February 18 ministerial meeting on the intergovernmental agreement creating a Single resolution fund.

When they are involved, European parliamentarians' influence on legislative or intergovernmental works is a real democratic gain in both form and content. Among other improvements, the European Parliament introduced in the *Six-Pack* the principle of a public debate with the Commission, the Council President, the European Council president, the Eurogroup president and relevant member states on sanctions taken in the context of budgetary and macroeconomic surveillance (economic dialog). The TSCG also includes several of the Parliament's recommendations, including the treaty's compatibility with EU law or the cooperation between the European and national parliaments (Fasone, 2012).

Maintaining significant democratic legitimacy in economic governance reforms assumes that the reforms are first and foremost

conducted within the EU framework and in line with the Community method. The conclusion of agreements among member states is only permissible if there is no legal basis for EU competence; it is then imperative that the European Parliament – as well as the Commission and if necessary the European Central Bank – assist in the negotiations as observers. The Council's decision to establish a single resolution on the basis of an intergovernmental agreement is highly questionable from this perspective. Furthermore, the TSCG's content should be implemented as quickly as possible, rather than be delayed by the maximum term of 5 years stipulated in its article 16. Its substantive obligations are already essentially set out in the *Two-Pack*, which came into force in May 2013. This reintegration will allow the European Parliament to fully exercise its oversight and information powers, which it derives from EU law.

In this context, how can parliamentary participation in the legislative process be strengthened?

The Lisbon treaty offers the option of using a special legislative procedure instead of the ordinary legislative procedure (art. 48 § 7 TEU). In the area of EMU, this bridging clause affects nine provisions, including aforementioned articles 121 § 2 and § 5, and 126, as well as articles 125 § 2 (specify definitions for the application of the prohibited referred to in articles 123 to 125 TFEU), 127 § 6 (confer specific tasks upon the ECB concerning policies on prudential supervision), 128 § 2 (measures to harmonize the denominations and technical specifications of all euro coins intended for circulation), 129 § 4 (review provisions of the Statute of the ESCB), 132 § 3 (ECB's power to impose financial penalties) and 134 § 3 (status of the economic and financial committee). However, it is unlikely the bridging clause will be implemented, given the numerous safeguards. The substitution of the procedures requires a unanimous decision from the European Council. Before making this decision, the European Council must inform national parliaments, which in turn have six months from the date of the transmission to oppose the initiative. The opposition of a single parliament can prevent the measure's adoption.

Regarding a revision of the treaties on the basis of article 48 § 6 TEU (simplified revision procedure for part three of the TFEU), or even article 48 § 2 TUE (ordinary revision procedure), the past twenty years have demonstrated that this would be a sensitive and

uncertain exercise. The conclusion of an inter-state agreement that just included member states in the Euro-zone (Goulard, 2014) would be permitted so long as this agreement did not ignore the competences of the Union, so long as it helped achieve the objectives of Community treaties, and if possible, so long as it respected the Community's institutional framework. Such strengthening of the Euro-zone's economic governance would in a way complete reforms adopted since 2010 by widening the gap between two systems of governance – one general and the other reserved for member states using the euro. Incidentally, this raises the question of the European Parliament's unitary dimension in a differentiated monetary Union. In other words, should there be a Euro-zone Parliament? In the aftermath of the crisis, the EU legislator fully deployed the potentialities of article 136 TFEU, which can serve as a basis to adopt provisions specific to the Euro-zone in order to strengthen the coordination of economic policies and budgetary discipline. Obviously, in the Council only the representatives of these states can vote for the measures affecting them. Eurogroup meetings are recognized by the Lisbon Treaty and have a stable presidency. And the TSCG has formalized the meetings of heads of state or government of the Euro-zone. Is this configuration transferable to the European Parliament? If the idea of a Euro-zone budget were to be proposed, its submission to a vote only by Euro-zone representatives seems to make sense (von Bogdandy *et alii.*, 2013). However, what may seem obvious is relative: such a perspective flies in the face of the principles of unity in the representation of citizens and of unity in the institutional framework, as well the status of European citizens,² and should therefore be rejected.

However, nothing precludes that some accommodation be reached in the Parliament to allow European MEPs from Euro-zone member states to tackle issues of common concern together. The commission on “economic and monetary affairs” (ECON) could create a subcommittee including Euro-zone members³ (Piris, 2012). During parliamentary debates on the assignment of ECB tasks regarding prudential supervision, it was proposed that the

2. Among other rights, citizenship grants each citizen the right the right to be a voter in a member state other than the one of which s/he is a national. How to treat the Danish member elected in Germany ?

Parliament create a permanent committee including members from states that are part of the Euro-zone: this committee's role would involve a hearing with the president of the ECB's surveillance committee and an examination of issues linked to the execution of surveillance tasks.⁴ A similar system could replace the one the Commission outlined in its legislative proposal establishing a single resolution mechanism: a committee including a reduced number of MEPs from the relevant parliamentary commission and selected by their colleagues to hold confidential discussions with the executive director of the single resolution council.⁵ In a complementary manner, just like the "Baltic Europe" intergroup that brings together MEPs from states surrounding the Baltic Sea, a "Euro-zone" group could be created at the parliamentary level, or just in a few parliamentary commissions ("economic and monetary affairs", "internal market" and "employment and social affairs").⁶ Legislative reports or initiatives focusing on the Euro-zone should also, in principle, be assigned to MEPs from a member state using the single currency... This rule is already unofficially followed in practice. For subjects that are likely to affect member states that are not part of the Euro-zone (competitiveness, for example), a co-rapporteur would be designated. A complementary logic would dictate that only the parliaments of Euro-zone member states should be able to monitor compliance with subsidiarity as stipulated in article 5 § 3 TEU and the protocol n° 2 for legislative measures based on article 136 TFEU. The parliaments of non-Eurozone member states currently have enough votes to request a review of a Euro-zone measure.⁷

3. Art. 190 of the European Parliament's rules of procedure. However, art. 186 of the rules of procedure require that its composition reflect "to the greatest extent possible the composition of the European Parliament." The notion of "to the greatest extent possible" should be interpreted loosely.

4. European Parliament, commission for economic and monetary affairs, amendment n°888 of Werner Langen to article 21 § 3 of draft regulation COM(2012)0511 (draft report of Marianne Thyssen), 30 October 2012, C7-0314/2012.

5. Art. 41 of the regulation proposed by the Parliament and the Council COM(2013) 250 final, 10 July 2013. The provision remained unchanged in the political agreement reached in the Council on 18 December 2013.

6. Art. 32 of the European Parliament's rules of procedure.

7. Each Parliament has two votes. The Parliaments of member states outside of the Eurozone have a total of twenty votes. The threshold required to trigger a review process for a legislative proposal presented by the Commission is one third of the total number of votes, that is, sixteen.

Furthermore, we believe that the rehabilitation of the European Parliament's legislative role must also be based on an improvement of its ability to negotiate with the Council. At the technical level, the ECON Commission should solicit external and multidisciplinary expertise on economic governance on a more regular basis, for instance through the systematic organisation of expert panels before any debate on a major legislative topic or proposal. A committee of MEPs elected by their colleagues for their recognized knowledge of monetary, economic or banking issues could be established within this commission for a term (or half a term), for the purpose of accompanying rapporteurs in their duties. With respect to procedure, the European Parliament should only enter informal negotiations with the Council on the basis of a clear mandate adopted by a commission with substantive expertise (a priori the ECON commission).

3.2. The relegation of national parliaments

In the aftermath of the crises, budgetary discipline was strengthened by the *Six-Pack* and the *Two-Pack*. While budgetary issues remain a national competence, the pressure placed by EU institutions (Commission, Council), bodies (Economic and financial committee) and groups (Eurogroup) grows the more the sustainability of a state's public finances becomes questionable. The noose tightens as the threat of default rises.

The *Six-Pack* has maintained this pressure within the framework established by articles 121 and 126 of TFEU, that is, essentially in the form of recommendations and, for the Euro-zone, decisions of formal notice and sanctions. The *Two-Pack* goes a step further: the two regulations of 21 May 2013 (n° 472/2013 et n° 473/2013) of the European Parliament and the Council were also adopted on the basis of article 136 TFEU – a provision allowing the Union to enforce budgetary discipline over Eurozone states alone. Thus the Union has strengthened its budgetary grip and has a tighter hold over member states and their authorities responsible for the budgetary procedure (Allemand and Martucci, 2012).

The EU framework is above all procedural: the *Six-Pack* directive sets a “common budgetary framework” and the *Two-Pack* provides for “common budgetary rules”. The framework is also substantive: the TSCG and the *Two-Pack* call for introducing “numerical budg-

etary rules” into national law (Martucci, 2013). The framework is more or less tight for member states depending on the powers that the Council and the Commission have over them. A state receiving financial assistance is subject to heightened surveillance that reduces the state's leeway, since the Union approves the macroeconomic adjustment programme on which the financial assistance is contingent. This is far removed from Maastricht's original philosophy, based on the idea that “the pooling of the monetary instrument implies that states are left with the other instruments of political economy” (Conseil d'analyse économique, 2000).

No wonder the Bundesverfassungsgericht now actively participates in the legal debate over EMU. The German constitutional court considers that the weakening of national parliaments' budgetary powers to the benefit of the Union runs afoul democratic principles (Bundesverfassungsgericht, 2011, 126). The European Parliament's involvement is not deemed sufficient compensation in terms of democratic legitimacy. Unlike national parliaments, “the European Parliament is not a representative body of a sovereign European people” (Bundesverfassungsgericht, 2009), according to the German constitutional court. In a two-level constitutional system, this can be interpreted as calling for a greater role for national parliaments, as constitutionally recognised by the Lisbon Treaty.

4. The promotion of parliament in accountability

The monetary Union includes parliamentary oversight that respects the independence of the ECB and NCBs in the Eurosystem. Indeed, the accountability mechanism should not be seen as implying that parliamentary assemblies can give “instructions” to the Eurosystem, as article 139 TFEU categorically prohibits. However, this mechanism is compatible with guidance of the decision-making process to infuse it with democratic legitimacy.

First, the European Parliament is consulted in the procedure to appoint members of the ECB's executive board (articles 283, paragraphe 2, second line, TFEU and 12.2, of the statutes). While its opinion is not binding, its effects are not negligible given that the candidates must appear before the Parliament's ECON commission. At the national level, under primary law, states determine the

nomination process for members of the decision-making bodies of their central banks; in practice, these nominations are made by executive powers (head of state or government) 75% of the time, and by parliaments only 11% of the time (Bank for International Settlements, 2009).

Next, the European Parliament cannot challenge the responsibility of ECB members in the same way it can with respect to the Commission. It can only push the ECB on its duty to be accountable under article 284 § 3 TFUE. Thus, the ECB presents the European Parliament with an annual report that the latter can critically discuss. In 2005, MEPs rejected the ECB's annual report (Parliament 2005) without eliciting any reaction whatsoever from the ECB, as the Parliament's rejection was not binding. On the basis of article 284, paragraph 3, line 2, TFEU, the ECB and the European Parliament set up a "monetary dialog" consisting of trimestrial appearances of the President or a member of the executive board in front of the ECON commission. These appearances are taken very seriously! This an opportunity for executive board members to explain monetary policy, and for MEPS to criticize it.

In most members states, national central banks must also be accountable to parliamentary bodies at various intervals of time (BIS, 2009). More innovative still are provisions stipulating that the ECB and Single Resolution Council (SRU) submit their report to the national parliaments of member states participating in the Banking Union. These parliaments can request that the ECB and SRU provide written responses to any observation or question they submit about prudential supervision missions. They also have the ability to invite the president or a member of the ECB's surveillance council to exchange views on the surveillance of the state's credit institutions in the presence of a member of the relevant national authority. The same is applicable to SRU's executive director.

In the wake of the crisis, parliaments increased their oversight of government – especially since their legislative involvement was constrained. The European Parliament established a special commission on the financial, economic and social crisis in 2009. At the national level, 109 plenary debates and 180 commission debates were organised across all the parliaments of the 27 member states between March 2011 and March 2012 (Heffler *et al.*, 2013).

This development should be furthered and strengthened. A framework agreement between the European Parliament on the one hand and the Council and European Council on the other should specify the practical details of how to exercise democratic responsibility in implementing the coordination and surveillance of economic policies. The agreement would also cover the relations between the Parliament and Eurogroup and the Euro-zone summit. Since the accountability is related to activities and subjects that are specific to the Euro-zone, this once again raises the question of whether a Euro-zone Parliament is needed. The aforementioned practical solutions would be able to address this issue.

5. Inter-parliamentary cooperation

The Lisbon Treaty recognizes that national parliaments actively contribute to the proper functioning of the Union. It invites the European and national parliaments to strengthen their cooperation (art. 12, f) TEU; protocole n°1 on the role of national parliaments in the Union, annexed to the treaties). The conference of specialised parliamentary committees (COSAC) is the designated forum for this cooperation. Meanwhile, the TSCG provides for the parliaments to create a conference bringing together the representatives of relevant commissions from the various parliaments to debate budgetary policies and other issues it covers (art. 13 TSCG). Thus, an inter-parliamentary Conference on economic and financial governance met for the first time in Vilnius on 16 and 17 October 2013. Its remit went beyond the TSCG framework to also include the implementation of the European Semester: this conference replaces the European parliamentary week organised by the European Parliament in January 2013 and January 2014. The conference includes representatives of the European Parliament's ECON commission and *all* member state parliaments. Yet article 13 of the TSCG limits parliamentary cooperation to the parliaments of participating member states. This contradiction is worth lifting.

Finally, we believe the materialisation of inter-parliamentary cooperation requires “unifying moments”. These could come in the form of a Union Convention that, like the Convention on the future of Europe, would bring together representatives of the European Parliament, national parliaments and perhaps socio-

economic organisations. This Convention could be held every five years following the European elections. It would seek to provide the broad strategic guidelines of political, economic, social, environmental and energy policies in the Union over the legislature's term.⁸ This convention would not be intended to supplant the European Parliament: it would be devoid of any legislative or constitutional power. Its authority would stem from the relevance of its proposals and the multiple political legitimacies that would participate in this endeavor. Like the Convention on fundamental rights or the Convention on the future of Europe, this body would not require any change to the treaties to be implemented. Community institutions could politically commit to take into account the conclusions adopted by the Convention in defining EU policies.

6. Principal recommendations

- Avoid using inter-state agreements to complete Euro-zone governance, or at the very least grant the European Parliament observer status during the negotiations;
- Integrate the content of the treaty on stability, coordination and governance into EU law before the 5-year term stipulated in its article 16;
- Articulate the content of the treaty on stability, coordination and governance with current EU law in force.
- At this time, focus on strengthening the European Parliament's legislative role through practical arrangements rather than through a revision of the treaties;
- Within the European Parliament's ECON commission, organise a committee or subcommittee composed of MEPs from Eurozone member states to (i) prepare and discuss legislative and non-legislative texts on the Eurozone; and (ii) oversee EU activities that exclusively focus on the Eurozone;
- Strengthen the European Parliament's external technical expertise on economic governance by systematically organ-

8. This corresponds to a moment of renewal for European economic strategy or its mid-term assessment. A tri-annual period could also be considered, following the timeline for the adoption of integrated guidelines.

ising expert hearings before any major debate on the Eurozone;

- Adopt a framework agreement between the European Parliament, the Council, the European Council, the Eurogroup and the Euro-zone summit to detail the practical ways of exercising democratic responsibility in EMU;
- Organise an EU socio-economic Convention every five years to define the EU's broad strategic guidelines.

References

- Accord interinstitutionnel, 2013. *Entre le Parlement européen et la BCE*, J.O.U.E.L 320 du 30 nov. 2013 2013/694/UE, 1.
- Allemand F. and F. Martucci, 2012. "La nouvelle gouvernance de l'Union économique et monétaire." *CDE*, 48(1): 17–99.
- Allemand F. and F. Martucci, 2012. "La nouvelle gouvernance de l'Union économique et monétaire." *CDE*, 48(2): 409–457.
- Banque des règlements internationaux, 2009. *Les enjeux de la gouvernance des banques centrales*. Rapport établi par le Groupe de gouvernance des banques centrales.
- BverfG, 2 BvR 987/10 "Euro Rescue Package", vom 7. 9. 2011, Absatz-Nr, 1–142.
- BVerfG, 2 BvE 2/08, "Lissabon Vertrag Urteil." vom 30.6. 2009, Absatz-Nr, 1–421.
- CEDH, 1999. Matthews c/ Royaume-Uni, req. n° 24833/94, Revue trim., *Droit européen*, 793.
- Conseil d'analyse économique, 2000. *Questions européennes*. Rapports de Pierre Jacquet et Jean Pisani-Ferry, Jacques Le Cacheux, Tony Atkinson et alii. La Documentation française.
- Conseil européen, 2012. *Conclusions*. EUCO 205/12.
- Costa O., R. Dehousse and A. Trakalová, 2011. "La codécision et les « accords précoces." *Notre Europe, Etudes et recherches*, 84.
- Cour de justice des Communautés européennes, 1980. *Roquette Frères c/ Conseil*, 138/79. 3333.
- Cour de justice des Communautés européennes, 1995. *Parlement c/ Conseil*, aff. C-65/93. 1–643.
- Cour de justice, 2013. *Royaume-Uni c/ Conseil et Parlement*, concl. Niilo Jääskinen, [En ligne] URL : <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62012CC0270:FR:HTML>

- Fasone C., 2012. "The Struggle of the European Parliament to participate in the New European Governance." Robert Schuman Centre for Advanced Studies, *EUI Working Paper* 2012/45.
- Fitoussi J.-P., 2012. "La marge de manœuvre des États. Des démocraties sans souveraineté?" *Pouvoirs*, 142.
- Goulard S. 2014. "Déclaration du groupe Eiffel." *Pour une communauté politique de l'euro*. Groupe Eiffel.
[En ligne] URL : <http://www.groupe-eiffel.eu>
- Hefftlar C., V. Kreiling, O. Rozenberg and W. Wessels, 2013. "National Parliaments : Their Emerging control over the European Council." *Notre Europe, Policy Paper*, 89.
- Jabko N., 2001. "Expertise et politique à l'âge de l'euro : la Banque centrale européenne sur le terrain de la démocratie." *RFSP*, 51(6): 903–931.
- Lammert N., 2009. "Europa der Bürger – Parlamentarische Perspektiven der Union nach dem Lissabon-Vertrag." Humboldt-Universität zu Berlin, *Europa Rede*.
- Manin B., 1995. *Principes du gouvernement représentatif*. Flammarion.
- Martucci F., 2003. "Le Rôle du parlement européen dans la quête de légitimité démocratique de la Banque centrale européenne : dialogue monétaire et accountability délibérative." *CDE*, 39(5-6): 549–595.
- Ministres des Affaires étrangères, 2012. *Rapport final du groupe de réflexion sur l'avenir de l'Union européenne des ministres des Affaires étrangères allemand, autrichien, belge, danois, espagnol, français, italien, néerlandais, polonais et portugais*.
- Parlement européen, 2005. *Rapport sur le rapport annuel 2004 de la BCE*, (2005/2048(INI)), Doc. PE A6- 0203/2005. Les autres rapports annuels ont été approuvés par les députés européens.
- Parlement européen, commission des affaires économiques et monétaires, 2012. *Amendement n°888 de Werner Langen à l'article 21 3 du projet de règlement COM(2012)0511* (projet de rapport de Marianne Thyssen), C7-0314.
- Piri J.-C., 2012. *The Future of Europe: towards a two-Speed EU?* University Press, Cambridge.
- Poptcheva E.-M., "Parliament's role in anti-crisis decision-making." Library of the European Parliament, *Library Briefing*, 120397, REV 1.
- Scharpf F., 2011. "Monetary Union, Fiscal Crisis and the Preemption of Democracy." Max-Planck Institut für Gesellschaftsforschung *Discussion Paper*, 11/11.
- Van Rompuy H., 2012. *Towards a Genuine Economic and Monetary Union*. Report by the of the European Council, Brussels.
[En ligne] URL: http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/134069.pdf

Von Bogdandy A. *et alii*. (Glienecker Gruppe), 2013. "Vers une Union de l'euro." *Die Zeit*. Trad. Notre Europe. [En ligne] URL : <http://www.notre-europe.eu/media/tribune11allemandsne-ijdoct2013.pdf>

IN SEARCH OF A BETTER GOVERNANCE IN THE EURO AREA

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The 2007 crisis highlighted the drawbacks of the euro area framework which were already there from the launch of the single currency. There cannot be a single currency between countries with different economic situations and independent economic policies. Euro area governance (no public debts guarantee by the ECB, arbitrary rules focusing on public finances only), was not satisfactory. EU institutions tried to impose a strategy (domestic policies constraints, public deficits cuts, liberal structural reforms) which failed. Before the crisis, imbalances had risen between Northern Member States (MS) and Southern MS, and became unsustainable with the crisis.

The Fiscal pact strengthened rules lacking economic rationale. Blind austerity policies led the euro area to fall in depression and undermined euro area cohesion. The procedures implemented strengthen economic policy surveillance between MS, without organising real domestic economic policy coordination. They allow for limited solidarity, at a very high price. Fiscal federalism projects cannot offset the loss of independence for domestic economic policies.

MS Public debts should become safe assets again, thanks to the ECB's guarantee. This requires implementing real economic coordination, which should target growth, full-employment and orderly reduction in imbalances between MS. Europe should reaffirm its specificity: a social model, a will to prepare for ecological transition. These are prerequisites for Europe to make progress.

1. A framework with original drawbacks

The rise in imbalances between MS from 1999 to 2007, and the 2007 crisis highlighted the drawbacks of the euro area framework. EU institutions and MS have been unable to implement a common

economic strategy, and not even a satisfactory economic policy coordination. The single currency suffers from six original sins:

— According to economic theory, there cannot be a single currency between countries with different economic situations and independent economic policies. The single currency entails introducing precise, well-defined and binding constraints, solidarity mechanisms or economic policy coordination. How to prevent otherwise the emergence and persistence of imbalances between some countries running large external deficits and some others running large surpluses?

— These mechanisms cannot consist in rigid numerical rules, lacking economic rationale, and enshrined in a Treaty. These mechanisms should be both soft (economic policies should be agreed between countries accounting for current domestic economic contexts) and binding (everyone must comply with decisions agreed in common). But how may governments with necessarily different interests and analyses agree on economic policy strategies? How to convince a country to modify its economic policy in order to meet common rules?

— There cannot be unconditional solidarity between countries with different and autonomous policies. For example, Northern countries may refuse to support Southern countries, blaming them for not having undertaken the necessary structural reforms, for having let imbalances grow and for being unable to meet their commitments. On the other hand, such solidarity is a prerequisite for the single currency to be guaranteed.

— According to the EU Constitution, the ECB is not entitled to finance directly governments (Article 123); financial solidarity between MS is forbidden (Article 125). Thus, each MS must borrow on financial markets without any guaranteed support from a central bank acting as a “lender of last resort”. This raises the risk that some MS may not be able to fulfil their commitments and may default. MS public debt is no longer a safe asset. Contrary to the US, the UK or Japan, euro area countries have lost monetary sovereignty. Financial markets started to realise this from mid-2009. After the Greek default, they requested excessive interest rates to countries in difficulty, which increased further the difficulties of the latter.

— Euro area MS are now under financial markets' surveillance and they do not control anymore their interest rates unlike Anglo-Saxon countries or Japan. But financial markets have no macroeconomic expertise, they are – and know that they are – self-fulfilling. However, Northern countries refuse a collective guarantee of MS public debts. They consider the discipline imposed by financial markets to be necessary. But disparity among interest rates is arbitrary and costly. In the long term, for instance, a country like Italy, with a 2 percentage points interest rates spread with France, would pay financial markets a premium of around 2.5% of GDP as a guarantee to an alleged default risk. The single currency notion disappears: a Spanish company does not borrow at the same interest rate as a German company.

— The Commission, the high EU and domestic administrations are currently dominated by a federal, liberal and technocratic ideology. According to this ideology, Europe should deprive democratic countries (subject to demagogic temptations) from their powers to move towards a liberal model: tax cuts, social and public spending cuts, structural reforms, market deregulation.

Before the crisis, imbalances rose between two groups of euro area countries implementing two instable macroeconomic strategies: Northern countries (Germany, Austria, Netherlands, Finland) were basing weak growth on competitiveness gains and huge external surpluses while strong growth in southern countries (Spain, Greece, Ireland) was driven by negative real interest rates below GDP growth, and was accompanied by housing bubbles and large current account deficits (see Deroose *et al.*, 2004, Mathieu and Sterdyniak, 2007). In 2007, the Netherlands and Germany ran current accounts surpluses larger than 8% of GDP, Portugal, Spain and Greece were running current account deficits larger than 8% of GDP. The economic policy framework introduced by the Maastricht Treaty, based on the single control of public deficits was unable to prevent the widening of these imbalances which became unsustainable under the effect of the crisis. The Commission pursued in vain countries in depression and not fulfilling the 3% of GDP limit for the government deficit (especially France and Germany in 2003-2006) without seeing that the danger was coming from countries with rapid growth, which were bringing

their public finances in balance at the price of high increases in private or external indebtedness.

The 2007-2009 crisis was a banking and financial crisis, caused by hazardous innovations, in a context of uncontrolled financial globalisation and liberalisation, of rising amounts of capital looking for liquid and high returns. Financial markets were greedy, blind, and instable. Financial globalisation allowed for a rise in imbalances which finally burst (Mathieu and Sterdyniak, 2009).

The crisis is not due to the rise in government debts and deficits. In 2007, the euro area deficit was amounting 0.6% of GDP only. However the crisis generated an unprecedented deterioration of public finances, due to the need to rescue banks, to stabilise output, and even more because of lower tax revenues resulting from lower output. Public finance deterioration was smaller for the euro area as a whole, where the deficit reached 6.2% of GDP in 2010, against 8.3% in Japan, 10% in the UK and 12.2% in the US. From 2007 to 2013 the debt-to-GDP ratio rose by 27 percentage points in the euro area, by 40 percentage points in the US, 51 in the UK, and 60 in Japan.

The euro area was unable to implement a coherent strategy to recover the 10 percentage points of output lost because of the crisis. Even worse, financial markets bet on the failure and euro area exit of several MS. Three countries were placed under the Troika's supervision (Greece, Portugal, Ireland). Two other countries (Spain, Italy) suffered from excessively high interest rates. The financial crisis developed into a sovereign debt crisis in the euro area.

The EU authorities and the MS did not respond sufficiently rapidly and strongly. They denied to guarantee public debts; they implemented limited solidarity only, and under strict conditionality. Under the Commission's pressure, financial markets' and rating agencies' fears, MS had no choice but implement restrictive policies, which in times of austerity undermines their output growth and their social model.

At the euro area level, fiscal consolidation measures amounted to 1.7% of GDP in 2011, 2.0% in 2012 and 1.1% in 2013. Under the Troika's pressure, Southern MS implemented even more drastic fiscal plans. This strategy brought the nascent recovery to an end (at the end of 2010, euro area GDP was 2.2% higher than at the end

of 2009). Euro area output declined the two following years. These fiscal contraction policies had a negative impact of around 8.0% of GDP for the euro area, but 16% for Spain and Portugal, 30% for Greece. Public debts-to-GDP ratios hardly declined due to the output fall.

In 2011-2013, global demand remained too weak in the euro area. Northern countries, with rooms for manoeuvre should have implemented expansionary policies to offset restrictive policies run in Southern countries. European investment programmes to help the industry to reorient current activities and develop innovative and green sectors should have been launched. Fiscal policy should not have been restrictive at the euro area level as long as the euro area economy was not moving sufficiently rapidly towards full-employment.

Can fiscal exit strategies ignore the causes of the crisis? The crisis is due to growth strategies based on downwards pressure on wages and social benefits. The fall in demand was offset by competitiveness gains in neo-mercantilist countries, by rising financial and real estate bubbles and households borrowing in Anglo-Saxon and Southern Europe countries. The failure of these two strategies has forced to use public deficits to support growth. Reducing public deficits requires the implementation of another growth strategy based on wages and social incomes distribution, on a new industrial policy geared towards an environmentally sustainable economy. Before the crisis, public finances also suffered from tax evasion and tax competition. Restoring public finances requires to combat tax evasion and tax havens, to raise taxes on multinational companies, on higher incomes and wealth.

2. Some federalism?

2.1. The fiscal Treaty

Even though the rise in deficits is a consequence and not the cause of the crisis, the Commission persists in saying that the crisis is due to fiscal indiscipline. The fiscal Treaty adopted on 2 March 2012 is supposed to eradicate this.

This Pact requests MS to bring their structural government deficit below 0.5% of GDP, according to a time frame proposed by the

Commission. But this figure has no economic rationale. Estimating structural balances is more than problematic, especially in the event of strong macroeconomic shocks. The Commission's estimates will have to be used, but these estimates are always revised, are always close to observed output, since the Commission considers that falls in productivity growth and capital stock in recessions are structural: thus, the under-estimation of the cyclical part of the deficit will require to implement counter-cyclical policies.

The structural deficit target can be lowered to 1% if debt stands below 60% of GDP. A country with GDP growing by 1.75% per year and inflation rising by 1.75% per year sees in theory its debt coming down to 28.6% of GDP. But nothing guarantees that the macroeconomic equilibrium may be ensured with *a priori* set values.

According to article 5, a country under an EDP will have to submit its budget and its structural reform programmes for approval to the Commission and the Council who will also exert surveillance on their implementation. This article is a new weapon to impose liberal reforms to MS populations. According to article 7, the Commission's proposals will be automatically adopted unless there is a qualified majority against them, the country concerned not voting. Thus, in practice, the Commission will always have the last word.

The Pact forbids discretionary fiscal policies, although the latter are needed to reach a satisfactory macroeconomic stabilisation. According to the Treaty, each country should take fiscal *consolidation* measures without accounting for the cyclical conditions and policies in other countries. Despite the 2008-2013 experience, the Treaty maintains the implicit assumption according to which restrictive fiscal policies have no impact on output. No real economic policy coordination is considered, i.e. an economic strategy using monetary policy, fiscal, taxation, social and wage policies, to bring MS closer to full employment and to reduce imbalances between MS.

2.2. Improving economic policy coordination

In 2011 a first 'European semester' was introduced, during which MS present their fiscal plans and structural programmes to the Commission and the European Council, who both give their

opinion before the vote in their national parliament in the second semester of the year. Such a process could be useful if the objective was to define an agreed economic strategy, but, in fact, this semester increases the pressure on each MS to implement austerity measures and liberal reforms. No agreed plans to reduce imbalances between MS or to support growth have been implemented in 2012, 2013 or 2014.

The Six-Pack allow the Commission to exert surveillance on the excessive macroeconomic imbalances in each country by following a scoreboard of relevant variables (competitiveness, external current account, public and private debts). A Macroeconomic Imbalance Procedure (MIP) has been introduced. So far the Commission does not recommend coordinated strategies to support growth or to reduce imbalances, but only signals each country what their problems are.

2.3. Some very conditional financial solidarity

The European Stability mechanism (ESM) launched in October 2012 introduces some degree of financial solidarity between the MS, but this solidarity is limited and has a very high price. Countries may benefit from the ESM if they have adopted the Fiscal pact and have fulfilled it. The ESM support will be conditional: a country needs to commit to fulfil a drastic fiscal adjustment programme imposed by the Troika, and will therefore lose all domestic fiscal autonomy and have to accept a long austerity period. The Greek example shows that this type of plan is not the way out of the crisis. The solidarity which is being implemented does not consist in donations but in loans. The ESM debt will be considered prior to private ones. Public bond issuance should involve a collective action clause, i.e. in case of default, stated by the Commission and the IMF, the country will be entitled to agree with creditors on a change in payment conditions, the agreement applying to all creditors if a majority agrees. Euro area government debts will become speculative as was the case for developing economies; the interest rate on public bonds will rise, be more volatile and less easy to control. Why build the euro area to reach such a situation?

On 6 September 2012, the ECB announced a purchasing bonds programme on the secondary markets, for short-term bonds (1-3 years), the so-called OMT (outright monetary transactions). In

putting no ceiling to its interventions, the ECB reassured markets on default risks in the concerned countries, on the risks of a euro area break-up. The ECB broke the spiral of self-fulfilling expectations and finally did not have to intervene. Lower interest rates can help to boost activity. Conversely, the ECB imposes its views on the economic strategy to be implemented, requests product and labour markets structural reforms, the full commitment to government balance targets despite the recession. Although the OMT was not used in practice, the simple fact that it exists was sufficient to reduce substantially interest rates spreads. In February 2014, the Karlsruhe Constitutional Court refereed the case of the OMT before the Court of Justice of the European Union, judging that it was not conform to the German constitution, which could oblige Germany to finance spending not being voted by the German Parliament. The euro area remains under the threat of financial markets defiance, following elections results or the appearance of economic, fiscal or banking imbalances. This is a house of cards rather than a solid edifice.

2.4. Towards a deep and genuine economic and monetary union?

In November 2012, the Commission suggested major steps towards federalism (European Commission, 2012):

- ‘All major economic and fiscal policy choices by a MS should be subject to deeper coordination, endorsement and surveillance process at the EU level’. The possibility of different economic or social strategies is forgotten or prohibited.
- The needs for strengthened fiscal discipline and for *ex ante* fiscal coordination are asserted. But, after the fiscal pact, what remains to be coordinated since all fiscal policies have to be run in autopilot mode?
- The EMU could be entitled to use a “convergence and competitiveness instrument”, within the balanced budget framework. A country could sign an agreement with the Commission, according to which it would implement structural reforms and would therefore get a financial reward from other MS. Can we imagine that a country would get subsidies in order to abolish its minimum wage, or its public pensions system?

- A common European Redemption Fund (ERF) could be introduced to amortise public debts, with strict conditionality, based on the German proposal (see Doluca *et al.*, 2012): each country would have to commit to reimburse each year a share of the public debt above 60% of GDP, so as to bring public debt below 60% of GDP in 25 years. In counterpart of this commitment, the share of the debt above 60% of GDP would be commonly guaranteed. But this project requires to implement even more fiscal contraction, and does not consider the impacts on output, debt, and deficits. It assumes that fiscal policy may be run in an automatic mode, and be entirely devoted to the debt reducing objective.
- The proposal to issue euro-bonds guaranteed by all MS or by the ECB has not been considered. Germany refuses to make unlimited and unconditional commitments to support other MS. But how to strengthen the euro area without such commitments?

Three questions remain:

1. Should EU institutions' powers be strengthened, as long as there is no guarantee that EU institutions could work more democratically, as long as the EU does not implement a growth strategy, as long as it remains focused on absurd public finance criteria, liberal structural reforms, and public expenditure cuts?
2. Can we imagine all major economic and social decisions being made at the EU level, by the Commission or the Council without accounting for national votes and debates?
3. Can we image a federal power able to account for domestic specificities in a Europe made of heterogeneous countries? Can we imagine a single policy implemented in different countries? Or different policies implemented through a central process?

Some consider that the euro area could introduce short-term stabilisation mechanisms managed by the European Commission (European Commission, 2013), but this is an illusion with the Commission underestimating output gaps and forbidding discretionary policies. Some suggest the unification of unemployment insurance systems, but national systems are often managed by social partners and are currently very diverse. The unification of

the systems would be likely to be made towards the bottom. A country having made efforts to reduce its unemployment rate will refuse to pay for high unemployment rates countries, and will blame the latter for not having undertaken the necessary reforms. Some (like Enderlein *et al.*, 2013) propose to base transfers between MS on output gap differentials, but they forget that output gaps are a vague concept, with a questionable and variable over time measurement. MS do not need fiscal federalism, but they need to recover the ability to run stabilisation fiscal policies.

Requesting that each country reaches a macroeconomic equilibrium with budgetary positions in balance implies that private sector savings have a counterpart in an external surplus (the German model). This requires that the rest of the world agrees to absorb European surpluses, and also that Southern MS increase their competitiveness. This implies a long stagnation period followed by an investment rebound. This scenario is unlikely if wage cuts depress output so much that profits do not improve, and investment remains depressed due to weak domestic demand. Austerity policies are more likely to depress permanently economic and social dynamism in those countries.

3. A new economic policy framework?

The euro area needs to choose between two frameworks: relying on markets to implement fiscal discipline or introducing measures to re-establish the unity of public debts. The first option has several drawbacks: maintaining interest rates spreads in Europe for an undefined time period, undermining the impact of fiscal policies and letting financial markets play an excessive role. The second option requires an issue to be settled first: according to which criteria and up to which level can a MS public debt be guaranteed by its partners? Several projects have not entirely made a choice between the two frameworks (see Gros and Mayer, 2010, Palley, 2011, De Grauwe, 2012, Schulmeister, 2013).

The simplest solution would consist in introducing a European debt agency (EDA), in charge of issuing a common debt for all euro area countries. This debt would be considered as safe by financial markets; it would be very liquid and could be issued at very low interest rates. But the EDA council would supervise domestic fiscal

policies and would be entitled to deny financing *too lax* countries, which would then have to issue bonds on markets. The EDA would strengthen the Stability Pact problems. What would be its assessment criteria? What would be the democratic and economic legitimacy of its Council? How would the EDA decide that a country runs an excessive deficit, if the country considers that such a deficit is necessary to support activity (like in Germany and France in 2002-2005) or to rescue banks? Would it implement rigid rules (a country would be entitled to loans from the EDA up to 60% of its GDP) or softer ones? The EDA would benefit neither virtuous countries (which have no difficulty to get financing) nor countries in difficulty, which the EDA would refuse to finance and which would have to sue domestic bonds, without any European guarantee, without any potential financing from the ECB, in other words risky assets, bearing a high interest rate. These countries would be dependent on financial markets. The EDA makes sense only if it can finance all public debts, but then what should be done against lax countries?

Delpla and von Weisäcker (2010) have suggested the introduction of a 'blue debt, collectively issued and guaranteed, with a ceiling at 60% of GDP'. Each MS would also be allowed to issue a red debt under its own responsibility, and hence at a high interest rate. This would be a strong disincentive to issue public debt above 60% of GDP. This proposal is almost similar to the EDA proposal and raises the same problems. The 60% level is arbitrary, and account neither for economic stabilisation needs, nor for the desire from financial institutions to own government debt. The 60% level is currently breached by 10 of the 12 original euro area MS (except Luxembourg and Finland). The gap between blue and red debts would allow financial markets to speculate in permanence.

3.1. The single currency's contradictions

The system which worked until 1999 lied on unity between the government, the central bank and commercial banks. The central bank is the lender of last resort for the government and banks. The government can issue unlimited public debt. This debt is considered as safe and hence benefits from as low as possible market interest rates. Of course this unity was undermined by the central bank independence, which could have generated conflicts

between the government (caring about supporting output or specific spending) and the central bank (caring about maintaining low inflation). These conflicts could have led public finances to become unsustainable (see, for instance, Sterdyniak *et al.*, 1994). But such situations did not occur before 2007. They did never question government solvency.

The introduction of the euro area led to a particularly difficult situation. On the one hand, countries need to run more active fiscal policies because they have lost control over their interest rates and exchange rates. It can also be added that, since 1973, the macroeconomic equilibrium has been requiring a certain level of public deficit and debt. Each country needs to run some equilibrium government deficits. The 2007 crisis strengthened this need. On the other hand, due to the single currency, current imbalances in one country affect the other countries of the area: excessive deficits (and surpluses) should be avoided. But how should they be defined? Last, the financial markets' weight makes it necessary for public debts to become safe assets again, while at the same time Northern countries deny to give unlimited guarantee to their partners.

Therefore the procedures implemented since 2010 should be reviewed and their aims should be modified, which implies institutional changes. Euro area countries should be able again to issue safe sovereign debt, at an interest rate controlled by the ECB. They should be able to run a public deficit in line with their macroeconomic stabilisation needs. Public debt mutual guarantee must be entire for countries accepting to submit their economic policies to a coordination process.

A coordination process needs to be organised between MS. Coordination should target GDP growth and full employment; it should account for all economic variables; countries should follow an economic policy strategy allowing to meet the inflation target (at least to remain within a target of around 2%), to meet an objective in terms of wage developments (in the medium-run real wages should grow in line with labour productivity), in the short-run adjustment processes should be implemented by countries where wages have risen too rapidly or too slowly; increases or cuts in social contributions may be used to facilitate the adjustment process; countries should announce and negotiate their current account balance targets; countries with high external surpluses

targets should agree to lower them or to finance industrial projects in Southern economies. The process should reach a unanimous agreement on a coordinated but differentiated strategy. Public deficits resulting from this process should be financed through debt issuance guaranteed by all euro area countries and by the ECB. The Treaty needs to maintain an effective process in the event where no agreement is reached. In that case, the new debt issued by countries outside the agreement would not be guaranteed, but such a case should never occur.

The EMS rules should be reviewed, the EMS should fully guarantee MS public debts, except in the case where MS depart from the commonly agreed policy. The EMS should have unlimited access to ECB refinancing.

In this context, the ECB could assign itself the objective of maintaining long-term interest rates at low levels, below euro area GDP growth. The euro area needs to recover the 10 percentage points of GDP lost because of the crisis. This would lead euro area MS public deficits and debts to be sustainable. Abandoning this objective means accepting mass unemployment in Europe. The EU institutions should elaborate a consistent exit crisis scenario, based on demand recovery, on households' consumption and public spending, on investments for the future, within the environmental transition process, and on coordinated decreases in today's imbalances.

Euro area's survival requires that the European project becomes popular again, therefore is a source of growth, social progress and solidarity. It is only within this framework that institutional progresses could be made.

References

- Delpla J. and J. von Weizsäcker, 2010. "The Blue Bond Proposal." *Bruegel Policy Brief*, May.
- De Grauwe P., 2012. "A fragile Eurozone in Search of a Better Governance." *The Economic and Social Review*, 43(1).
- Deroose S., S. Langedijk and W. Roeger, 2004. "Reviewing Adjustment Dynamics in EMU: From Overheating to Overcooling." *Economic Papers*, 198, European Commission.

- Doluca H., Malte H., Dominik R. and B. Weigert, 2012. "The European Redemption Pact: Implementation and Macroeconomic Effects.", *Intereconomics*, 47(4).
- Enderlein H., L. Guttenberg and J. Spiess, 2013. "Blueprint for a Cyclical Shock Insurance in the euro area." *Studies and Reports*, 100, Notre Europe – Institut Jacques Delors.
- European Commission, 2012. *A Blueprint for a Deep and Genuine Economic and Monetary Union. Launching a European debate*. COM (2012) 777/2.
- European Commission, 2013. *Paper on Automatic Stabilisers*. DG Employment, Social Affairs and Inclusion, 04 October.
- Gros D. and T. Mayer, 2010. "Towards a Euro(pean) Monetary Fund." *CEPS Policy Brief*, 202.
- Mathieu C. and H. Sterdyniak, 2007. "Comment expliquer les disparités économiques dans l'UEM?" *Revue de l'OFCE*, 102.
- Mathieu C. and H. Sterdyniak, 2009. "La globalisation financière en crise." *Revue de l'OFCE*, 110, July.
- Palley T., 2011. "Monetary Union Stability: The Need for a Government Banker and the Case for a European Public Finance Authority." *IMK Working Paper*, February.
- Schulmeister S., 2013. "The European Monetary Fund." *Revue de l'OFCE*, 127.
- Sterdyniak H., P. Villa and F. Capoen, 1994. "Indépendance des banques centrales, politiques monétaire et budgétaire : une approche stratégique." *Revue de l'OFCE*, 50, July.

A EUROPEAN TAX

LEGAL AND POLITICAL ISSUES

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A European tax does not yet exist. For this myth to become reality both legally and politically, the European Union would need to have taxing competence allowing it to levy taxes for itself; the taxpayers, over whom it would have taxing power, would be the citizens of the European Union and companies headquartered or economically active in the European Union. In return for this tax, whose necessity is a function of the expected degree of EU integration (internal market / federation), a European mechanism of democratic consent to the tax ought to be established. Furthermore, the tax base should be chosen with great care, in line with intended objectives (financial revenue / sense of political belonging of European taxpayers and the addition of a tax dimension to European citizenship).

The idea of creating a European tax is extremely controversial. Indeed, taxes are a mark and evidence of State sovereignty (Buisson 2002), and maybe even the ultimate mark and evidence of this sovereignty: taxation derives from supreme authority; it allows payees to finance their spending; and it requires exercising prerogatives of public power that fall outside the scope of common law. An etymological study of the term “fisc” and its derivatives is very telling in this regard: in ancient times, the Latin word *fiscus* referred, on the one hand, to the basket or bin where tax collectors placed their taking, and on the other, to the Emperor’s private treasury, which was filled with the proceeds of repression (fines and confiscations).

Even though it has since evolved, this initial understanding of taxation can explain why opponents of European integration oppose a European tax on principle, and why the development of European taxation is one of the prime targets of their fantasies and reservations. It also provides a means for understanding why member States are sometimes hostile to the idea of the European Union wielding a competing power to levy and collect taxes.

Yet the legitimacy of a European tax is also clear. Given the role it must play, the European Union has legitimate grounds for seeking financial autonomy and freedom from its financial dependence on the contributions that member States agree to allocate. The Union could undoubtedly achieve financial autonomy if it was able to freely levy a tax for its purposes. At the same time, the creation of a European tax that was accepted and paid by European taxpayers would help close the famous “democratic deficit” that is too often and incorrectly blamed on the European Union.

From a legal perspective this European tax could be defined traditionally, as a “monetary payment required of individuals via an authority, definitively and without consideration, to cover the public functions” (attributed to Jèze, as explained in Négrin 2008, p.139) of the EU. Accordingly, to qualify as a European tax, a levy would have to include five cumulative criteria.

The first criterion concerns the nature of the levy, which must be a monetary payment: since this characteristic does not raise any difficulties, there is no need to expand on it here. The second criterion requires that an authority collect this money: the creation of a European tax must therefore result from the exercise of a *European taxing competence*, that is, a taxing competence that the EU is able to wield freely. Thirdly, the competence must be exercised in relation to European taxpayers: as obvious as this statement may seem, a European tax assumes the presence of European “individuals” (physical persons or businesses) liable for a tax receivable by the European Union, which would accordingly have the power as a public authority to set and collect the tax (exercising *European taxing power*). Finally, fourthly and fifthly, to qualify as a European tax, the levy in question would have to be definitive and allocated to cover European public functions: to do so, it would suffice that the proceeds be applied to the EU budget.

In light of these criteria, one might wonder whether European taxes already exist or have existed. Several types of taxes could probably qualify, such as harmonized taxes or certain earmarked taxes, for example. But given that the most harmonized tax (the value-added tax) still shows disparities, and more importantly, that the European Union does not exercise any coercion over those liable for VAT (since those taxpayers remain national taxpayers), it cannot be labelled a European tax (absence of *European taxing power* and *European taxpayers*). Past or current taxes earmarked for the EU budget are also not “European taxes”, be it the “ECSC levy” (created on the basis of article 49 of the ECSC Treaty) or the tax on the salaries of Community staff (that has its origins in article 13 of Protocol n° 36 on privileges and immunities of the European Communities, adopted in 1965).¹ Indeed, these taxes were created by the States, which then allocated the proceeds to the ECSC or to the European Union, rather than by these organisations themselves (absence of *European taxing competence*). And so it appears that a European tax in the strict sense does not yet exist.²

In order to create one, the European Union would have to be able to freely levy taxes, and the *taxpayers* would be either citizens of the European Union or companies headquartered or economically active in the European Union. Thus, the question is the necessity of such a tax (1) and the conditions for its implementation (2). Some recommendations will finally be proposed (3).

1. Is a European tax necessary?

Within the current constitutional framework (internal market), the creation of a European tax in the broad sense of identical national taxes would seem to suffice (1.1). However, if the institutional framework evolved towards stronger federalism, the creation of a European tax in the strict sense would become critical (1.2).

1. This protocol was slightly modified by protocol n° 1 annexed to the Lisbon Treaty (See specifically, art. 1, 14), and became protocol n° 7. The tax it established is governed by regulation n° 260/68 of the Council of 29 February 1968 “laying down the conditions and procedure for applying the tax for the benefit of the European Communities”.

2. The harmonized or earmarked taxes that have been mentioned can, however, be characterized as broad “European taxes.” Likewise, the European Union collects custom duties: given their legal nature (custom duties as opposed to tax duties), they are not taxes in the strict sense of the term.

1.1. The need for European taxes in the broad sense in the internal market

The smooth operation of an internal market involves a level playing field for competition, that is, tax neutrality and standardization of taxes for which companies are liable. The internal market is indeed where European demand and supply meet: in this market tax disparities can only distort trade, since all other things being equal, the goods that are most heavily taxed are less competitive and less attractive for consumers (demand); similarly, in the absence of standardization, taxes weigh in companies' choice of where in the EU to set up (supply).

In the absence of European taxes in the broad sense – that is, taxes with identical bases, rates and methods of collection across all States – tax neutrality cannot be achieved. Granted, many tax obstacles to the smooth functioning of the internal market have already been eliminated, thanks to the prohibition of tax restrictions on the free movement of goods (Treaty on the Functioning of the European Union [TFEU] 2009, art. 30, 110, 111 & 112), the ban on tax barriers to the free movement of people, services and capital,³ and the control of State aid in the form of taxes (TFEU 2009, art. 107-109). In addition, national VAT and excise (tobacco, alcohol, energy products) tax laws have already been approximated.⁴ However, eliminating discrimination in each State does not translate into tax neutrality in the internal market. Moreover, while harmonisation has led to the reduction of some disparities, these remain significant. A uniformization of taxes on businesses is therefore necessary, even though the proceeds from these taxes would be collected by states rather than the Union.

The creation of European taxes in the broad sense also seems necessary because of difficulties resulting from the simultaneous application of different tax systems inside a common area. International operations may be subject to double taxation, which hamper trade, but which the Court of Justice refuses to condemn on the basis of the European freedoms of movement.⁵ Further-

3. Since the *Schumacker* decision of 14 February 1995 (ECJ, 14 February 1995, Case C-279/93, *Finanzamt Köln-Altstadt v. Roland Schumacker*, Rec., p. I-225), the Court of Justice controls laws applicable to direct taxation that hamper the freedoms of movement.

4. On the basis of article 113 of the Treaty on the Functioning of the European Union.

more, “companies must in the longer term be allowed a consolidated corporate tax base for their EU wide activities to avoid the current costly inefficiencies of [twenty-eight] separate sets of tax rules” (European Commission 2001, p. 20).⁶ This is why the European Commission has proposed establishing a consolidated tax base (CCCTB) to allow companies with cross-border and international activities to calculate their overall income according to a single set of rules, and to develop consolidated accounts for tax purposes. A “one-stop-shop” system would allow them to complete their tax returns, which would then be used to determine the taxable base for each company, and to allow the member States in which a company is active to tax a share of this base. The share would be determined by a specific formula based on three factors: fixed assets, labour and revenue (European Commission 2011A).

1.2. The need for a European tax in the strict sense from a federal perspective

If the European Union were to increasingly lean towards federalism, the creation of a European tax in the strict sense would become critical. Furthermore, the creation of this tax is a precondition to any further European integration. Contrary to taxes in the broad sense that were considered above, this tax would have to be created by the European Union and ideally be collected from individuals. This would involve the devolution of *taxing competence* and *taxing power* to the European Union (without this competence and power being exclusive), and hence the existence of *European taxpayers*. As a result, this tax would be able to address financial and political challenges.

The existence of a European tax would give the European Union clear financial autonomy and guaranteed resources. With taxpaying competence and power, the European Union would no longer be dependent on member States to finance its budget. While the Court of Justice has repeatedly ruled that “own

5. The Court believes that EU law does not contain any criterion for the distribution of taxing authority and that member states are not obliged to adapt their tax systems to those of the others (See in particular ECJ, 14 November 2006, Case C-513/04, *Kerckhaert and Morres*, Rec., p. I10967. - 12 February 2009, Case C-67/08, *Margarete Block v. Finanzamt Kaufbeuren*, Rec., p. I-883. - and 16 July 2009, Case C-128/08, *Jacques Damseaux*, Rec., p. I-6823).

6. These additional costs are linked to the need to know how several different tax systems function and to complete tax formalities in them.

resources” are resources that belong to the Union budget by nature and from the outset,⁷ the Union cannot raise any more revenue than member States agree to provide. In these circumstances, there is no doubt that so long as no taxing competence and no taxing power are given to European bodies, member States could always decide to withhold all resources from the EU budget, or to not pay their contributions.⁸ Even when it has a claim on member States, the European Union does not have a claim on national taxpayers: this underscores the difference between the notions of “tax” and “contribution.” A “tax” implies a mandatory and direct claim on taxpayers; when the funding is based on “contributions”, this claim only exists indirectly, *via* member States, and provided that they accept the contribution in principle.

In turn, the creation of a European tax would deepen European integration through the special relationship the tax would forge between the EU and European taxpayers-citizens. One of the implications of creating a European tax is tax citizenship, which has historically preceded political citizenship.

The creation of European tax common to all European taxpayers should therefore be considered, because it would strengthen European citizenship and Europeans’ sense of belonging in the EU, which the tax would fund.

2. What should be the conditions of a European tax?

In exchange for the devolution of taxing competence and power to the European Union that would allow for the creation of a European tax, a European mechanism of consent to the tax would have to be put in place (2.1). In addition, the taxable base would have to be determined in line with intended objectives (2.2).

7. The Court has asserted “Member States are merely to establish those resources and make them available to the Commission [...]. The role of Member States is limited to establishing the Communities’ own resources [...], and subsequently making them available to the Commission”: ECJ, 18 December 1986, Case 93/85, *Commission v. United Kingdom*, Rec., p. 4011, points 16-18.

8. In December 1978, France, Great Britain and Germany had refused to provide the “VAT proceeds” corresponding to the increase in the Community budget established by the European Parliament. This withholding ceased when an amending budget was adopted on 25 April 1979. A similar scenario unfolded in December 1980, involving France, Germany and Belgium.

2.1. The need for consent to the European tax

The right to impose a tax liability on taxpayers is the exclusive prerogative of the community or the authority that can consent to the tax. In a democratic society, consent to taxation is an essential *legal act* that allows the imposition of burdens on taxpayers.

The development of ties between the European Union and its taxpayers therefore depends on the establishment of a European mechanism of consent to the tax, in line with the idea that “taxes can only be legitimately established through the consent of the people or its representatives” (Rousseau 1755, p. 73).⁹ In other words, the establishment of European consent to taxation is a *legal necessity* in the event of deeper European tax integration, but it is also above all a *political necessity*, meeting a democratic requirement. The significance of this consent would therefore lie in its ability to achieve the feat of reducing the Union’s democratic deficit while imposing a duty on European taxpayers. Once again, this illustrates the paradox inherent to the very principle of consent to taxation, whereby taxpayers collectively consent to something that is imposed individually.

Seen as a key condition of legal taxation in many member States, the establishment of a European mechanism of consent to taxation would legitimise the European tax in the eyes of European citizens-taxpayers, especially if this consent was granted through a democratically elected body such as the European Parliament.¹⁰ Moreover, it would be worth expanding on Treaty provisions on European citizenship to include a tax dimension: this would allow for the citizen to be merged with the taxpayer, as often happens in democratic states. In fact, it would be dangerous not to do it, as demonstrated by several examples from the history of Western democracies (Great Britain, United States of America, Sweden or

9. Montesquieu adds that this consent must regularly be renewed (Montesquieu, *De l'Esprit des Lois*, 1758, Livre IX, chapitre VI, rééd. Librairie Firmin Didot Frères, 1845, p. 136).

10. Along these lines, see Frans Vanistendael, “No European Taxation without European representation”, *EC Tax Review*, 2000, n° 3, p. 143: “the first question is not a question for tax lawyers but for European constitutional lawyers. Suffice it to say that any European decision on tax matters should live up to the standards of the Magna Carta, now almost 800 years ago: “No European taxation without European Representation”. These standards are more than just the abolition of the unanimous voting rule. They require an active role for the representatives of the European taxpayers in the European Parliament”.

France): when a tax is not consented to, institutions are challenged and tax revolts can become political revolutions.

2.2. The need for an adequate tax base

Furthermore, the European tax base would need to be carefully selected to reflect the intended objectives. Several options could meet financial or political goals.

If the sole purpose of a European tax were to provide financial resources to the European Union, the ideal solution would be for the Union to create a tax similar to the tax on financial transactions, as initially considered by the European Commission. Following a communication dated 7 October 2010 (European Commission 2010), the Commission had indeed proposed that member states adopt a directive “on a common system of financial transaction tax and amending Directive 2008/7/EC” (European Commission 2011B). More specifically, the Commission had suggested that this tax be collected from transactions on financial instruments between financial institutions;¹¹ this would bring in around 54 billion euros per year to member states and the Union, for which the tax would be collected. In return, it would have been possible to reduce member State contributions to the EU budget¹² (European Commission 2012) and to fund new spending – in part to help fight the financial crisis and to pay down state debt.

If European taxation had a solely political objective, however, it would require imposing a direct tax on individuals residing in the European Union. Only this form of taxation could create a political link between the payee and the taxpayers, that is, between Europe and its citizens. Similarly, only a direct common tax – of which Europeans could take ownership, and which would play a part in their identity – is likely to create solidarity among Europeans.

Finally, if European taxation had both a political and financial objective, it could take the form of an indirect tax, such as the tax on plane tickets that was also considered at one point (European

11. It was proposed that share and bond trades be subject to a rate of 0.1%, and that derivative contracts be taxed at a rate of 0.01%.

12. According to the European Commission, the allocation of a third of the proceeds of such a tax to national budgets, and the remaining two thirds to the EU budget, would reduce the “GNI” contributions of member States by 50%.

Commission 2005), or an additional VAT tax.¹³ In contrast to a direct tax, this type of tax would have the advantage of being easier to collect and control. It would also be more profitable, because it would require less administration and would generate more revenue. That being said, while such a tax would be common to all Europeans, it would not directly link European taxpayers to the European Union: as a poorly identified component of the price of products, it would paradoxically go unnoticed.

In the end, the creation of a common tax to fund EU spending, levied on citizens and consented to by their representatives, would likely represent a major step forward in European integration. Like the common currency, it would probably be challenged. But just like the common currency, it would create links not only between the Union and its citizens, but also the citizens among themselves. In any case, the tax should not be an end in of itself, but rather a means to accomplish the European project.

3. Recommendations

— A deepening of European integration is not seriously conceivable without taxation. Tax harmonisation is often presented as an ideal, but should only be seen as one step in preparation for a European tax.

— From a legal perspective the creation of such a tax would imply that the European Union has taxing competence and taxing power over European taxpayers. In return, the latter should be able to consent to taxation through their representatives.

— If this tax had a solely financial objective, it could be an indirect tax (share of VAT revenue; or a tax on financial transactions). Conversely, if it had a political objective (strengthening the sense of belonging and the creation of a European tax citizenship), a direct tax on individuals would be more adequate.

13. Other indirect taxes might be considered, such as taxes on electronic communications: see the Committee on Finance, the General Economy and the Plan session of 3 May 2006 (11-hour session) devoted to the hearing of MEP Alain Lamassoure on the European Communities' own resources, record n° 62, pp. 2-9.

References

- Buisson, J 2002. "Impôt et souveraineté." *Archives de philosophie du droit*, 46: 25–31.
- European Commission 2012. *Communication* n° IP/12/300.
- European Commission 2011A. "Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)." *COM(2011) 121/4*
- European Commission 2011B. "Proposal for a Council Directive on a common system of financial transaction tax amending Directive 2008/7/EC." *COM(2011) 594*, final.
- European Commission 2010. "Taxation of the Financial Sector." *COM(2010) 549*, final.
- European Commission 2005. "A possible contribution based on airline tickets as a new source of financing development: technical reflections in the run up to the UN High Level Event." *SEC (2005) 1067*.
- European Commission 2001. "Towards an Internal Market without tax obstacles – A strategy for providing companies with a consolidated corporate tax base for their EU-wide activities." *COM(2001) 582*, final.
- Négrin O., 2008. "Une légende fiscale : la définition de l'impôt de Gaston Jèze." *RDP*, 1: 139.
- Rousseau, J.-J. 1755. "Discours sur l'économie politique." *Treaty on the Functioning of the European Union 2009*: 73.

BEYOND THE EUROPEAN BANKING UNION

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After briefly recalling the progress and especially the limits of European Banking Union, this paper seeks to describe and evaluate reforms to complete the new agreement. Two types of proposals are then discussed: strengthening banking regulation by engaging in the separation of activities and defining a macro-prudential policy at the Union. An alternative project would consist in reducing the share of intermediation in financing the European economy by increasing the size of the markets. But these views risk hitting the foundations of economic and social systems of continental Europe.

In light of the hopes aroused by the project for a European Banking Union (EBU), the compromise that was reached (yet to be validated) is cause for real disappointment. The goal was to reduce the fragmentation of the European financial space, which has been aggravated by the crisis, namely the divergence in financing conditions among EU member countries (especially in the euro zone). A single monetary policy cannot in fact accommodate such differences.

There have been lengthy explanations of the need to break the destabilizing spiral that has developed in different States between the weakness of their financial institutions and their public debt crisis. These are mutually sustaining: public finances are under pressure from the need to support troubled banks, while the deterioration in public debt is hitting the banks' balance sheets, suggesting that the possibilities for a bailout are problematic. To break out of this vicious circle, it was necessary to find ways to

clean up the zone's banking systems and establish procedures to resolve the critical cases in an orderly fashion, but it was necessary above all to establish a "safety net" at the EU level to reduce the interdependence between the costs of State financing and the costs of the banking systems. More ambitiously, this initiative was viewed by some as a first step towards a fiscal union, or at least towards greater European solidarity.

It must be acknowledged that broadly speaking the banking union plan respects the way that it was originally laid out. It is the content of the union's mechanisms and the concrete conditions for its implementation that have been emptied of their original principles and intentions:

— The single banking supervision mechanism (SSM) entrusted to the ECB will quickly be operational. This represents real progress insofar as it will help standardize practices in this field, where the ECB should be less complacent than the national authorities, who are more inclined to protect their financial institutions. It should be noted that the ECB's jurisdiction will cover only the largest banks, *i.e.* approximately 130 of the 6000 banks in the EU. For other banks, the ECB will only monitor the supervision of national supervisory authorities. Germany will thus continue to exercise oversight on its regional bank network, which, though smaller, plays a unique strategic role in financing the country's economy.

The ECB will proceed from early 2014 to conduct an audit (the Asset Quality Review, AQR). This work is intended to result in assessments (Fall 2014) that should then lead in 2015 to decisions on recapitalizing or even closing or decommissioning establishments. It is at this stage that the credibility of the supervisory mechanism will be decided. It will notably depend on how conclusions from the supervisor's observations and diagnoses on the situation of individual institutions will be drawn. This is precisely the purpose of the single resolution mechanism (SRM) which must also be in place to complete the SSM. It aims to unify both the decision-making procedures and the resolution process of troubled banks in the EBU.

— When a bank (under direct supervision of the ECB or with transnational activities) should be recapitalized, placed under administrative control or liquidated, the decision should be taken quickly (probably over a weekend) to avoid contagion. Two

options were considered on this issue. The decisions could have been taken at the supranational level or left at the national level. Negotiations have resulted in an unduly burdensome compromise. First, the ECB shall notify the failure of the establishment to the Single Resolution Board. The Board will adopt a bailout or liquidation decision in executive session (8 members) if not appealed to the resolution fund, or in plenary session (23 members) otherwise. The decision will then be submitted to the Commission for approval (the Council has the final say in case of disagreement) before transmission to the national authorities for execution. It would have been desirable to make the process easier and quicker.

— Regarding the resolution of troubled institutions, the Bank Recovery and Resolution Directive (DRRB), adopted for all European Union countries, states that losses will be primarily absorbed by shareholders and creditors in a predetermined order. Only holders of less than € 100.000 deposits and secured debt holders will be protected. With these exceptions, shareholders and creditors participate in the bail-in amounting to less than 8% of the assets of the bank under resolution. If this is not sufficient, a public fund resolution would intervene for a maximum of 5% of assets. The aim is to avoid as far as possible to draw upon the taxpayers, that is to say, upon the public finances of the State concerned.

For EBU countries, the emergency fund should take the form of a single resolution Fund (SRF) constituted by contributions from all banks of the EBU. This mutualisation process is supposed to break through the vicious circle between bank failures and sovereign debt crises. But in reality this fund will be operational very gradually for 8 years from 2016; it will therefore reach the desired size (€ 55 billion or 1% of deposits and 0.2% of bank liabilities EBU) in 2024. In addition, pooling will also be realized after several stages: 40% the first year, 60% the second, 70% in the third ... Then, in 2018, a country will only be able to get about € 15 billion beyond the amounts contributed by its own banks. In 2020 the shared resources will amount to 28 billion and this amount should be compared to the 40 billion that Spain has taken from the European Stability Mechanism (ESM) to recapitalize some of its banks. It is expected that the SRF will have the capacity to borrow, but here again European partners have disagreements on the joint-guarantees for these borrowings. Therefore, pooling will be purely

symbolic, which means that State intervention will remain necessary, thus failing to break the famous destabilizing spiral that the mechanism was supposed to neutralize. Note, moreover, that the Fund resolution will not even have begun when it will be necessary to draw the consequences of the ECB's AQR on whether to recapitalize or "resolve" a number of banks. But various estimates on the potential capital requirements, that would be needed starting from 2015, range from 50 billion to 300 billion euros.

If we add that pooling of national deposit guarantee systems was postponed *sine die*, it is clear that the construction of the EBU will not be the final step, or even a decisive one, towards the financial integration. It will weaken without really breaking the vicious circle between public debt and bank fragility, thanks to the single supervisory mechanism, and the "bail-in" from shareholders or creditors much more than to the set up of the Resolution funds, that was supposed to introduce a new solidarity, which is yet nearly non existing. If we want to progress in reducing the fragmentation of the European financial area, we will instead need to rely on a consolidation of banking regulation in its micro and macro dimensions. However, we should mention another idea, from different sources, was recently discussed: strengthening market's funding in Europe to circumvent the difficulties of financial intermediation (weak banking sector out of crisis). This view deserves to be discussed, because they seem to be naive and dangerous.

1. Completing banking regulation

In order for the Banking Union to achieve its goal of creating a more robust and homogeneous financial space, the supervisory mechanism clearly needs to enforce a set of coherent and effective rules. However, beyond the Basel III agreements, many questions need to be addressed in order to do this. Numerous examples could be mentioned (differences in calculating risk-weighted assets, the remuneration of trading operations, shadow banking etc.). But here we want to emphasize two points that merit special attention: first, the structural reform of the banking sector, and second, the institutional problem involved in the implementation of a macro-prudential policy.

1.1. The separation of banking activities

There are many arguments for making a division between universal banks' market activities on the one hand (financing and investment) and their traditional commercial banking activities (intermediation) on the other. The point is not to repeat these arguments here,¹ but rather to emphasize the complementarity that exists between separation and the EBU's constituent mechanisms.²

The issue of banks that are “too big and too complex” to fail was in no way settled by Basel III. The additional capital that is to be imposed on systemic banks is not at all sufficient to contain the consequences if this kind of establishment fails. Recall in this connection that of the 29 banks classified as systemic, 12 belong to the European Union and eight to the euro zone. If they are allowed to remain in this state, regardless of the recommendations of the Liikanen report (but also those of the OECD Secretariat and the measures taken in the UK following the Vickers report), the operation of the EBU would be affected in several ways:

— First, in a systemic crisis involving two or three systemic banks, with balances that can reach 1000 billion euros (BNP's is 2000 billion), the fund could, because of its size, intervene for at most 2% of the liabilities of the banks concerned (and not 5% as expected). Furthermore, the planned “bail-in” (8% of liabilities) would be difficult to implement without causing a major shock; this should give pause to the body or bodies responsible for reaching a decision on resolution. It should be acknowledged that this could happen only in the case of significant losses, of around 10% of assets, and / or in the event of a systemic crisis. But to be truly credible the system needs to be able to withstand such situations, even if they are fairly unlikely. It is clear that given the mammoth size of today's universal banks, this credibility cannot be guaranteed.

— On the other hand one could question whether it is possible or fair to share risks that vary so greatly in magnitude. All the banks will contribute to the resolution fund according to some of their characteristics and notably their risk profile. But the definition of such variables is very tricky and will be a source of conflicts

1. For a presentation of these arguments *cf.* for example J.-L. Gaffard and J.-P. Pollin (2013).

2. Besides, it's one of the objectives of the Barnier's proposal on structural reform of EU credit institutions (see European Commission, 2014a).

between different types of banks and between countries. For example, the systemic institutions are generally universal banks that are more dependent on short-term market financing and subject to market risks (the liquidity and volatility of asset prices) with extremely high values. In their case, the deposits (lower in proportion) are neither an indicator of risk nor a good indicator of size. What then is the sense of an insurance fund that groups medium-sized commercial banks together with universal banks that operate in numerous segments and countries? How functional will a European fund be that includes countries like France, which has a banking system where systemic institutions dominate, and others such as Germany that instead have a system composed mainly of medium-sized and small banks?

— Moreover, the feasibility and credibility of the resolution process depend on the ability to liquidate a defaulting bank in pieces. However, when the interweaving of activities is (deliberately?) complex and opaque, it is very difficult in practice to break these up. So dismantling the institution will then involve a loss in value that renders this costly, perhaps too costly to be acceptable. A clear separation between different types of activities thus helps to reduce the size of the regulated entities and to reduce the costs of bank resolution.

— In a somewhat different vein, within universal banks there are inevitably cross-subsidies that act as barriers to optimal pricing and fair competition. It is likely that before the crisis the high profitability of market activities led to under-pricing credit; it seems, however, that since the crisis the losses racked up by the financing and investment banks (or their lowered profitability) have been partly reflected in loans and other services for captive customers (SMEs, professionals and individuals) in retail banking. Nevertheless, the existence of integrated banks (commercial + investment and financing) poses problems very similar to those found in other commercial networks (transport, electricity, telecommunications). The issue of banks' access to services that they do not produce themselves (a commercial bank wishing to hedge or to enable its clients to do so) is posed in the same terms as in these other industries, and its solution should follow the same principle of third-party access to networks as have been adopted there. This is why it is so surprising that the European Commission, which has been

very, sometimes overly concerned with the application of this principle, especially in the case of rail transport and electricity, has until now never thought this might also concern the banking industry. How has it come to pass that the relatively timid separation of activities being proposed (Barnier project) is under fire, while the dismantling of integrated operators was imposed in certain network industries with no real opposition?

1.2. The relationships between micro and macroprudential policies

After a little thought and procrastination, the ECB has convinced itself that the single monetary policy could not be exercised without getting involved in cleaning up Europe's banking systems. Moreover, the central banks gained experience during the crisis of how useful it was to the proper performance of their mission to have microeconomic information about the state of the financial institutions.

Indeed, the crisis has also changed the conception of the goal of monetary policy. It is now considered necessary to add an objective of financial stability to the traditional objectives, and as a consequence to expand central banks' policy instruments. In addition to monetary regulation strictly speaking, this means adding macroprudential policy, whose mission is to monitor changes in the level and terms of financing, changes in asset prices, and so forth. But this seriously complicates the task of central banks, not only because they will have to coordinate the use of a broader range of instruments, but also because they will probably need to share (or at least coordinate) their new mission with other actors.

At the European level, a Systemic Risk Board (ESRB) exists since 2011, but its recommendations are not binding.³ So, the formulation and implementation of macroprudential policy still takes place mainly at the national level. And it turns out that the bodies that receive the opinions of the ESRB and are responsible for macroprudential policy differ in their status and competence from one country to another: in France, for example, the Board reports to the Ministry of the Economy, whereas it is connected to the

3. It is worth pointing out that the ESRB's authority covers not only the banking system but extends to the entire financial system (non-bank financial institutions, financial markets) of the members of the European Community.

central bank in the UK, and in Belgium and the Netherlands is simply integrated into the central bank.⁴ It could obviously be considered paradoxical that while the microprudential is currently shifting up to the supra-national level, the macroprudential remains within the competence of the Member States – especially since it is perfectly clear that the macro-financial imbalances in the euro zone arose much more out of growth in private sector debt in the countries of the periphery. It now seems clear that differentiated macroprudential policies managed at the European level would have made it possible to modulate the divergent effects of the single monetary policy and of uncontrolled capital flows. At the very least, these national policies need to be coordinated, including with the central bank.

Overall, the institutional arrangements intended to bring financial stability to Europe (and especially the euro zone) create interdependencies between monetary policy, the single supervisory mechanism (for the larger banks), the ESRB and the national authorities responsible for macroprudential supervision. This tangled and perplexing web leads to real scepticism about the possibilities of ensuring coordination between all these bodies. Obviously, things cannot remain like this, so it is necessary to consider either:

- giving the ECB responsibility for all macroprudential policy, which would reinforce its power, perhaps excessively, and would require in return reconsidering its independence;
- or reforming the ESRB by granting it real decision-making power.

2. The false solutions of disintermediation

In reality the fragmentation of the European financial area does not date from the crisis. As far back as March 2007, in its first report on financial integration in Europe, the ECB had already noted (on the basis of indicators of prices and quantities constructed for the occasion) that the equity markets and especially the banking markets were not very integrated.⁵

4. Cf. E. Nier et al. (2011).

5. Cf. ECB (2007).

The crisis simply added a little height to the obstacles to banking integration that were already in place eight or nine years after the launch of the euro. In its March 2007 report, the ECB regretted the insufficient presence of cross-border banks and of mergers and new banks of this type.

The ECB suggested making Europe's financial systems more integrated and more efficient by developing the capital markets, that is to say, through a shift towards the "Anglo-Saxon" model: a system dominated by markets rather than by intermediation.⁶ This position is highly debatable, but it is nevertheless re-surfacing today under fairly similar arguments: the disintermediation of financing would help to both minimize the adverse effects of the banks' weaknesses and more easily unify the European financial area.⁷ This could take the form of renewed securitization (in which case it would involve a banking disintermediation) or greater access to capital markets. In either case it would mainly affect SME-ETI financing, insofar as the disintermediation of large companies has already existed for a long time.⁸ This position is neither realistic nor desirable.

2.1. Stimulate the securitization of credit?

A desire to revive or rather to give a new impetus to securitization may seem to be a surprising and dangerous idea, given that it is well-known that it was a crucial ingredient in the crisis. However, there are various options for making this type of product more secure: reducing its complexity, improving transparency (by increasing the securities held by issuers), homogenizing securitized portfolios, etc. On the other hand, this kind of sale of credit is likely to improve the liquidity of the banks issuing these products, and perhaps their capital ratios as well, thereby reducing financing costs.⁹

6. Cf. J.-P. Pollin (2010).

7. This position is expressed in particular by B. Coeuré (2013), J. Viñals (2013), A. Sapir and G. Wolff (2013). It seems that this proposition also inspired the recent communication of the European Commission on the long term financing of European economy (see European Commission, 2014b).

8. We will not discuss here the securitization of mortgage loans since the crucial issue is to restart lending to business.

9. Also note that with the exception of the United Kingdom, the use of securitization is the practice in countries where the banking system is weak, i.e. the Netherlands (for 17.5%), Italy (12%) and Spain (11.5%).

However, if we stick to the securitization of SME-ETI loans, which are the most strategic, it is clear that the market is virtually nonexistent. For Europe as a whole, the volume issued in 2012 came to only 45 billion euros out of a stock of securitized loans of 158 billion.¹⁰ Furthermore, a large proportion of this volume (approximately 60-70%) was retained by the issuing banks to be used as collateral on the repo market, and especially for their refinancing with the ECB. By comparison, note that in this same year issues of securitized mortgages came to 224 billion euros and transactions 1000 billion.

The idea of reviving securitization is actually based on the assumption, probably a false one, that in the future new regulations will make it more difficult and more expensive for banks to finance SMEs. But there is no evidence for this. Nor is there any evidence that the return demanded by investors on securitized loans (after taking into account the price of the operation and the lack of market liquidity) is lower than the cost of bank financing. Banks today clearly prefer refinancing these loans by recourse to ECB funds or on the interbank market rather than through securitization. And when interest rates rise, it is likely that the inertia of the cost of bank financing, due in particular to the large scale of deposits, will increase the comparative advantage of intermediation.

The best way to facilitate SME-ETI financing is undoubtedly to make the banking system sound again. If it is necessary to go further to improve access to credit for certain businesses, this might be done by using special channels to encourage the refinancing of these loans with the central bank or by giving them public guarantees. But there is little evidence that securitization can help in this area.

2.2. Promoting the development of market financing

One way to overcome the weakness of the banking sector is to promote the use of direct financing. In support of such a shift in the European financial systems, it can be argued that the weight of bank assets in the euro zone is almost triple the level of GDP, while this weight in the United States is only 70%.

10. These figures are found in H. Kraemer-Eis *et al.* (2013).

But the idea that it might be possible to use a few incentives and/or regulatory adjustments to substitute market financing for intermediated financing and facilitate a recovery in financing and thus investment is very simplistic. This is because, first, in the euro zone the difficulties SMEs face in accessing credit affect only a few very countries that were hit hard by the crisis (Greece, Portugal, Italy and Spain), together with the Netherlands.¹¹ It is very doubtful that it would be possible in these countries to create or develop markets for these SMEs to obtain financing more easily and at a lower cost. Elsewhere the problem of access to credit is virtually non-existent. So it is difficult to see how shifting the financial system towards a “market-oriented” model would represent significant progress.

It is true that financing the capital of start-ups or young companies is a serious problem. But this is a very different issue since the activity of capital investment does not much concern the banks strictly speaking. It primarily involves the intermediation of “business angels”, specialized funds or spin-offs from large companies. And it must not be forgotten that equity markets are only marginally a source of capital. They serve, above all, to evaluate companies, to facilitate mergers and acquisitions and to ensure the liquidity of investments made by venture capital funds. This is undoubtedly important for the development of innovations, or at least some of them, but it has almost nothing to do with the motivations for the change suggested for Europe’s financial systems or the essential problem it poses.

From this point of view it is essential to understand that there are institutional complementarities between the structure of the financial systems and the economic and social systems in which they operate. A “market-oriented” system demands greater mobility in the allocation of production factors (and thus more job instability) and lower social protection (which is replaced by private insurance). An intermediated system, on the other hand,

11. Cf. on this point the ECB survey on access to credit for SMEs-ETIs in the euro zone (ECB, November 2013). For the zone as a whole, more than 70% of companies that requested a loan obtained it in whole or in large part. This rate is however on the order of 40% in Greece and the Netherlands, and a little over 60% in Spain and Italy. But it is on the order of 90% in Germany and Austria and 80% in France, Belgium, and Finland. All data is from between April and November 2013.

promotes lasting cooperation between firms and their employees, their suppliers, and so forth, as is illustrated by the well-known Mittelstand, which is often used as an example of an organization in which coordination is based to a large extent on non-market relationships. These dissimilar financial systems give rise to different kinds of models of innovation and development, but it is not possible to establish an *a priori* hierarchy between them in terms of efficiency.

What a paradox it would be if the construction of Europe's banking union were ultimately to lead to the negation of continental Europe's economic and social model.

References

- European Central Bank, 2007. *Financial Integration in Europe*.
- European Central Bank, 2013. *Survey on the Access of Small and Medium Sized Entreprises in the Euro Area*.
- Coeure B., 2013. *The Way Back to Financial Integration*, Discours à la Banque d'Espagne, Madrid.
- European Commission, 2014a. "Proposal for a Regulation of the European Parliament and of the Council on Structural Measures Improving the Resilience of EU Credit Institution." January 29.
- European Commission, 2014b. "Communication from the Commission to the European Parliament and the Council on Long Term Financing of the European Economy." March 27.
- Gaffard J.-L. and J.-P. Pollin, 2013. "Pourquoi faut-il séparer les activités bancaires?" *Note OFCE*, 36.
- Kraemer-Eis H., F. Lang and S. Guetadze, 2013. "European Small Business Finance Outlook." *Working Paper 18*, European Investment Fund.
- Nier E., J. Osinski, L. Jacome and P. Madrid, 2011. "Towards Effective Macroprudential Policy Frameworks: An Assessment of Stylised Institutional Model." *Working Paper 250*, Fonds monétaire international.
- Pollin J.-P., 2010. "L'eurosysteme et l'intégration financière européenne." *Revue d'Economie Politique*, 120(2): 303–334.
- Sapir A. and G. Wolff, 2013. "The Neglected Side of Banking Union : Reshaping Europe's Financial System." *Note Bruegel*.
- Viñals J., 2013. *Resuming Virtuous Financial Integration*, Discours au CFS, Francfort.

DEALING WITH THE ECB'S TRIPLE MANDATE?

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The prevailing consensus on the role of central banks has eroded. The pursuit of the goal of price stability only is now insufficient to ensure macroeconomic and financial stability. A new paradigm emerges in which central banks should ensure price stability, growth and financial stability. Recent institutional developments of the ECB go in this direction since it will be in charge of the micro-prudential supervision. In addition, the conduct of monetary policy in the euro area shows that the ECB also remained attentive to the evolution of economic growth. But if the ECB implements its triple mandate, the question of the proper relationship between these missions still arises. Coordination between the different actors in charge of monetary policy, financial regulation and fiscal policy is paramount and is lacking in the current architecture. Besides, certain practices should be clarified. The ECB has played a role as lender of last resort (towards banks and, to a lesser extent, towards governments) although this mission was not allocated to the ECB. Finally, in this new framework, the ECB suffers from a democratic illegitimacy, reinforced by the increasing role it plays in determining the macroeconomic and financial balance of the euro area. It seems important that the ECB is more explicit with regard to its different objectives and that it fulfils the conditions for close cooperation with the budgetary authorities and financial regulators. Finally, we call for the ex nihilo creation of a supervisory body of the ECB, which responsibility would be to discuss and analyze the relevance of the ECB monetary policy.

The financial crisis which began in 2007 initiated a debate on the role of central banks and monetary policy before, during and after the economic crisis. In particular, the consensus that had prevailed since the 1980s has cracked. It was based on four main features:

- Price stability is the primary objective (if not only) of central banks;
- Short-term monetary policy has real effects on growth;
- The financial stability can be borne by the central bank or delegated to another authority, but it remains that, according to the Tinbergen principle, these two objectives have to be achieved through the use of two independent instruments. The objective of price stability is achieved through changes in the central bank interest rate while financial stability is based on the control of credit institutions via a micro-prudential policy;
- Price stability leads to financial stability and to macroeconomic stability (around the potential of the economy).

This consensus is now being challenged. The crisis has shown that price stability was not sufficient to ensure financial stability¹ and could even be a vector of financial imbalances.² Hence one has questioned the role of central banks.³ Should they be concerned about financial stability and if so, what is the best instrument to achieve it? Several options can be considered. Central banks can integrate the objective of financial stability in the conduct of monetary policy (the so-called “leaning against the wind” policy). In addition to the micro-prudential regulation, central banks may implement macro-prudential policy. This differs from a micro-prudential approach in that it identifies and limits the sources of systemic risk.

Moreover, this question must take account of the macro-financial environment marked by high unemployment in the euro area and the increase in public debt. Monetary policy decisions have an impact on inflation but also on growth, employment, the dynamics of public and private debt and the level of risk in the financial system. This article aims at shedding light on these issues from a European perspective. If price stability remains the primary objective of the ECB, the Maastricht Treaty does not preclude other objectives, including growth and employment. Moreover, the

1. Already claimed by Borio & Lowe (2002) and White (2006).

2. Macroeconomic stability makes it possible for central banks to keep interest rate at a moderate and stable level, which leads the financial system to increase its level of leverage and vulnerability.

3. See Bethève *et al.* (2011).

implementation of a banking union explicitly devotes a new prerogative for the ECB: namely, financial stability. The ECB is thus now responsible for banking supervision (micro-prudential instrument). The link between the ECB, pursuing different objectives, and other institutions (national governments implementing fiscal policy and the European Systemic Risk Board managing systematic risk) must be clarified and we show that this link is still raising questions.

1. The ECB's *de facto* triple mandate

The ECB is *de facto* dealing with three mandates: price stability, growth (employment) and financial stability:

- Price stability has been enshrined in the Treaty (Article 127) as the main objective for monetary policy;
- The growth objective is relegated to second rank. The Treaty actually states that “without prejudice to the primary objective of price stability, the ESCB [European System of Central Banks] shall support the general policies in the Union”;
- The implementation of a banking union grants the ECB a role in financial regulation (Council Decision of the European Union of 15 October 2013). ECB will be in charge of banking supervision, micro-prudential policy, as part of a SSM (Single supervisory mechanism). Under the new system of supervision, the ECB will directly supervise “significant” credit institutions. It will assume these new responsibilities in Autumn 2014 and will work in close cooperation with national competent authorities.

Even if the treaty establishes a clear hierarchy among objectives, in practice, the ECB has been concerned with both changes in inflation and growth.⁴ An explicit dual mandate would probably be more appropriate. In the US case, Rosengren (2013) considers indeed that the dual mandate helps the Federal Reserve to better account for expansionary monetary policy in times of crisis, where unemployment is very high. In EMU putting equal weights on inflation and growth objectives would imply a revision of the

4. Castro (2011) has recently estimated Taylor rules over 1999:1 et 2007:12 and has found that the ECB has significantly reacted to inflation and output gap.

Treaty, which is a long procedure requiring unanimity of EMU members. Pragmatic views may then be privileged. Since the definition of price stability or optimal level of inflation is not clearly established,⁵ the ECB has already sufficient leeway to articulate its action appropriately according to the objectives of employment and inflation.

Moreover, the decisions of the ECB during the crisis have illustrated pragmatism from the ECB. It has notably met the liquidity needs of European banks, changing the operational framework when it was deemed necessary. The ECB has played a role as lender of last resort for banks, although this task is not included in its mandate. Larger defaults resulting from the liquidity crisis could then be avoided. The ECB created a very long term refinancing operation (VLTRO) by which it provided funds to credit institutions for a 3 years period. It was not only important to cover liquidity needs but also allowed banks to support sovereign debt market. Under the SMP (Securities Market Program), the ECB proceeded to purchases of public securities in the secondary market. This program and the OMT⁶ announcement (Outright Monetary Transactions), that has followed in September 2012, have illustrated the will of the ECB to tackle the sovereign debt crisis. It has shown that the ECB was able to avoid a narrow interpretation of its mandate and missions.⁷ This was notably justified by the need to restore the transmission channels of monetary policy, that had been impaired by the financial turmoils on sovereign debt markets (Cour-Thiman and Winkler, 2013). More recently, Mr. Draghi has adopted a forward guidance strategy, in which the central bank announces that it maintains its main interest rate at a level close to zero for an extended period. The aim is to drive expectations of interest rates, and thus enhance the transmission of monetary policy. This new communication breaks with past speeches ECB in which the ECB did not commit on future interest rate decisions.

5. See Billi & Kahn (2008), for example.

6. The ECB may buy unlimited amounts of sovereign bonds issued by countries which are under EFSF – ESM programs.

7. It should nevertheless be remind that these decisions have generated considerable debate, including the Board of Governors. J. Weidman, president of the Bundesbank, had notably made clear his opposition to the outright purchases of government securities.

In summary, although the mandate of the ECB is restrictive, its action reflects broader concerns. The ECB has focused on both inflation and growth. It has contributed to financial stability, as should do a lender of last resort. In addition, recent regulatory decisions will increase its powers giving the ECB the micro-prudential supervision of the banking system. The ECB therefore pursues three objectives.

2. A Work in progress

If the triple mandate proves to be right, the question of the proper relationship between these missions still arises. The tradeoff between inflation and growth is already duly integrated into the action of the ECB. Press releases routinely evoke the balance of risks between inflation and growth. In the current context of a deflation risk, the ECB could build on its forward-guidance strategy to make explicit a target for unemployment. This choice, made by the Bank of England (BoE) would clarify the communication strategy of the ECB since the stance of monetary policy would become contingent to a threshold on a direct observable variable (Bank of England, 2013). The action taken by the BoE indicates that such a decision is not inconsistent with an inflation target or a mandate focused on price stability.

Another tradeoff arises regarding the relationship between monetary policy and micro-prudential policy. It is common for central banks to be jointly responsible for the conduct of monetary policy and for banking supervision (Netherlands, Spain, United States in particular). Central banks have some expertise of banking monitoring since they collect information for their monetary policy operations. Given the link between the two objectives, a single institution in charge of these two objectives appears more effective to internalize interdependencies. Finally, to the extent that the ECB is the lender of last resort for banks, it is desirable that it has the necessary information and powers to meet liquidity needs.

Moreover, if the SSM provides the ECB with prerogatives in terms of micro-prudential policy, the implementation of macro-prudential policy amounts to a new institution: the ESRB (European Systemic Risk Board). This new tool is essential insofar as the supervision of financial institutions at the individual level is insuf-

ficient to manage the risks taken by the financial system as a whole. However, the ESRB is only a proposal body. The macro-prudential policy implementation, through restrictions on the loan-to-value ratio, is ultimately up to the Member States which shall notify and coordinate their decisions with the ECB. Because there is a strong complementarity between monetary policy and macro-prudential policy, it would have been more appropriate for this task to be handled by the ECB, especially as some regulatory tools, such as capital requirements, can be seen as part of both macro- and micro-prudential policies. Moreover, it is likely that with the macro-prudential tool, the ECB would have been able to reduce the asymmetries resulting from the implementation of a common monetary policy in a structurally heterogeneous area. Between 2001 and 2007, the ECB interest rate was probably too high for Germany and too low for Spain. The housing bubble in Spain (or Ireland) could have been avoided if appropriate restrictions on credit growth and loan-to-value ratios had been implemented. Similarly, the monetary authorities could have sounded the alarm about the hypertrophy of Irish or Cypriot banking systems.

Furthermore, the ECB will have to be transparent on the link it intends to do between its monetary policy and financial stability actions. The principle of strict separation of instruments is questioned in favour of a so-called integrated policy-mix in which the central bank may decide to use its conventional instrument (the interest rate) for financial risk considerations. To this end, the ECB might amend its second pillar about monitoring a monetary aggregate to assess risks to medium-term price stability. Its monetarist bias is no longer relevant given the downward trend in money velocity, and could be transformed to reflect a set of signals (credit growth, level of financial system leverage, debt of non-financial agents, real estate prices, etc.) about financial and monetary risks.

The question of the lender and buyer of last resort should be clarified. The ECB has played this role for banks while it was not specifically in charge of this mission. The question is even more acute for the sovereign debt market to the extent that governments are subject to liquidity risks (Buitert and Rahbari, 2012 or De Grauwe, 2011). Since illiquidity causes problems of macroeconomic, financial and social instability, it becomes justified to

guard against this risk through central bank intervention. The panic on sovereign debt markets has been a major threat for the euro area. De Grauwe (2012) points out that the fragility of the members of a monetary union is increased because its entities are in fact indebted in a currency they have no control over. The SMP implementation and the OMT announcement in the euro area or the BoE and Fed interventions have shown that this type of measures is essential for the effectiveness of monetary policy and to mitigate risks of financial instability. While the ECB has acted pragmatically, it remains that the doctrine on this issue must be stated. In the absence of further fiscal integration, the formalization of the role of lender and buyer of last resort attributed to the ECB, for both banks and governments, should be considered. Finally, it is crucial that future ECB monetary policies are not conditioned by the attitude or psychology of the central banker in charge, sometimes pragmatic, sometimes dogmatic, as uncertainty harms central bank credibility and the anchoring of expectations.⁸

De facto, central banks own and manage a large amount of public debt (Blommestein and Turner, 2012), a task that they already fulfilled in the past (Goodhart, 2010). The implementation of unconventional monetary policy reinforces the interactions between monetary and fiscal policies and raises the problematic of their coordination. But, nowadays, none of European institutions are in capacity to built such coordination. Decentralised fiscal policies increase the challenge to create it. Nevertheless this is crucial. Moreover, we have to raise the question of ECB's independence and its democratic accountability. The current architecture gives the ECB a very strong independence both in terms of means and objectives. An enlargement of ECB's missions to the financial sphere gives to the central bank an essential role in the determination of Eurozone's macroeconomic and financial equilibrium. The question of its democratic legitimacy (a debate already evoked by J. Stiglitz in 1998) becomes even more accurate. On this subject,

8. This personalization of monetary policy passes on to Bernanke *et al.* (2001) that despite a sort of *de facto* inflation targeting by the Federal Reserve, in particular under the mandate of A. Greenspan, it was important to establish a *de jure* inflation targeting: whatever the personality and charisma of the U.S. central banker, the implementation of her/his action in a clearly defined institutional framework would promote the credibility of the commitment to achieve the Fed's dual mandate.

three postures are supported. The first claims that with more responsibilities, central banks are even more subject to political pressures and they need additional protections to guarantee their action. This is the idea defended by the CIEPR (2011). In this case, ECB's independence has to be maintained and may be reinforced. At the opposite of this position, one can imagine that ECB's mandates along with the current macroeconomic and financial context plead for a re-examination of central banks' independence in order to insure a better democratic control. We can recall that independence is nor a historical constant (e.g. Forder, 1998), neither necessary to insure stability (e.g. Hayo, 1998). Finally, in the European perspective, a third way could be to protect ECB's independence in terms of means but to modify its independence in terms of objectives. Objectives of price stability, employment and financial stability could be decided regularly, coordinated and democratically controlled. In the US, this control is exerted by the congress. At the European level, the situation is more complex because the European Parliament gathered not only eurodeputies from Eurozone's countries. This institution has thus to be invented.

3. A subsidiary question: the exchange rate policy

ECB's actions in order to facilitate the recovery and to correct the imbalances could use exchange rate policy. The Maastricht Treaty gives to the European Council the power to formulate general orientations for exchange rate policy. But before that, a consensus has to be reached in the Eurogroup that requires homogenous preferences. And after, the ECB will accept these recommendations only if it doesn't undermine its primary objective. These institutional arrangements lead in fine to a capture (Cartapanis, 2006) or a "quiet hold-up" of the exchange rate policy by the ECB (Creel *et al.*, 2007). This issue is essential since there is currently an international currency war at the expense of the euro. A euro depreciation could be an efficient remedy to help stimulate growth, via more exports, and to alleviate deflation risks. Moreover, a decrease of the euro could have asymmetric rebalancing effects. Blot & Cochard (2008) estimate export price elasticity and suggest that a decrease of the European single currency could be first in favour of the Spanish exports and then help the French ones and lastly the German.⁹ An active exchange rate policy could

then be effective in reducing the heterogeneities into the Eurozone without envisaging a termination of the monetary union or competitive devaluations in each member states that only exacerbate deflation. In the short run, a consensus between governments is a chimera. Nevertheless, it is now recognized that the ECB's monetary policy is too restrictive given the macroeconomic context (Bénassy-Quéré *et al.*, 2014). A more expansionist monetary policy could allow a depreciation of the euro.

4. Conclusion and policy recommendations

We have emphasized that the ECB has actually followed three objectives. However, the articulation between these objectives needs clarification. To this end, we provide the following recommendations:

1. Without modification of existing treaties, it is important for the ECB to be more explicit on the different objectives. The priority given to the objective of price stability does not seem now to match the practice of monetary policy. The growth objective is essential, as well as financial stability. More transparency would make monetary policy more credible and more effective. It would help to prevent from future financial and banking crisis. Exchange rate policy should not be overlooked because it can redound to the reduction of macroeconomic imbalances in the euro area.
2. In the absence of such clarification, extensive independence of the ECB should be challenged to better match the international standards in this area. Central banks have rarely independence objective: for example, the Federal Reserve pursues an explicit dual mandate, while inflation targeting is institutionalized for the BoE. An explicit triple mandate could be imposed on the ECB, in charge of the governing Council to deal with the tradeoff between these objectives.
3. Yet, the difficulty to handle this tradeoff increases with the number of objectives. This difficulty is amplified in the current context of high public debt and where central banks

9. More recently, Héricourt *et al.* (2014) find however that the differences between the French and the German price elasticity are very small.

are actually dealing with management of public debt. The mandate of the ECB should explicitly mention the role of lender of last resort, the usual task of central banks, which would clarify the need for a closer coordination between governments and the ECB.

4. Rather than questioning the total independence of the ECB, which never get unanimity among the Member States, we call for the set up ex nihilo of a supervisory body of the ECB, responsible for discussing and analyzing the relevance of the conduct of monetary policy under the broader objectives of the ECB: price stability, growth, financial stability and sustainability of public finances.

References

- Bank of England, 2013. *Monetary policy trade-offs and forward guidance*.
- Bénassy-Quéré A., P.-O. Gourinchas, P. Martin et G. Plantin, 2014. "L'euro dans la guerre des monnaies." *Les notes du conseil d'analyse économique*.
- Bernanke B., T. Laubach, F. Mishkin and A. Posen, 2001. *Inflation Targeting: Lessons from the International Experience*, Princeton University Press.
- Betbèze J.-P., C. Bordes, J. Couppey-Soubeyran and D. Plihon, 2011. "Banques centrales et stabilité financière." *Rapport du Conseil d'Analyse Economique*, 96.
- Billi R. M. and G. A. Kahn, 2008. "What is the optimal inflation rate ?" *Federal Reserve Bank of Kansas City Economic Review*, Second Quarter, 5: 28.
- Blommestein H. J. and P. Turner, 2012. "Interactions between sovereign debt management and monetary policy under fiscal dominance and financial instability." *OECD Working Papers on Sovereign Borrowing and Public Debt management*, 3.
- Blot, C. and M. Cochard, 2008. "L'énigme des exportations revisitée : que faut-il retenir des données de panel?" *Revue de l'OFCE*, 106: 67-100.
- Borio C. and P. Lowe, 2002. "Asset prices, financial and monetary stability: exploring the nexus." *BIS Working Paper* 114.
- Buiter W. H. and E. Rahbari, 2012. "The ECB as lender of last resort for sovereigns in the euro area." *CEPR Discussion Paper*, 8974.
- Cartapanis A., 2006. « Pour une politique de change contra-cyclique de l'euro ». In *Le Cercle des Economistes, L'Europe et les États-Unis : au-delà des idées convenues*. Paris, Descartes and Cie.

- Castro V., 2011. "Can central banks' monetary policy be described by a linear (augmented) Taylor rule or by a nonlinear rule?" *Journal of Financial Stability*, 7(4): 228–246.
- Committee on International Economic Policy and Reform (CIEPR), 2011. *Rethinking Central Banking*, Report.
- Cour-Thimann P. and B. Winkler, 2013. "The ECB's non-standard monetary policy measures : the role of institutional factors and financial structure." *ECB Working Paper* 1528.
- Creel J., E. Laurent and J. Le Cacheux, 2007. "La politique de change de la zone euro ou le hold-up tranquille de la BCE." *Revue de l'OFCE*, 100: 7–30.
- De Grauwe P., 2011. "The European Central bank as a lender of last resort." *voxeu.org*.
- De Grauwe P., 2012. "The governance of a fragile Eurozone." *Australian Economic Review*, 45(3): 255–268.
- Forder J., 1998. Central bank independence-conceptual clarifications and interim assessment », *Oxford Economic Papers*, 50: 307–334.
- Goodhart C., 2010. "The changing role of central banks." *BIS Working Paper* 326.
- Hayo B., 1998. "Inflation culture, central bank independence and price stability." *European Journal of Political Economy*, 14: 241–263.
- Héricourt J., P. Martin and G. Orefice, 2014. "Les exportateurs français face à l'euro." *La Lettre du Cepii*, 340.
- Rosengren E. S., 2013, "Should full employment be a mandate for central banks?" *Remarks at the Federal Reserve Bank of Boston's 57th Economic Conference*.
- Stiglitz J., 1998. "Central banking in a democratic society." *De Economist*, 146(2): 199–226.
- Svensson L. E. O., 2010. "Inflation targeting." in *Handbook of Monetary Economics*, 3, edited by B. M. Friedman and F. H. Hahn.
- White W.R., 2006. "Is price stability enough?" *BIS Working Paper* 205.

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HIGH INEQUALITY AND ITS IMPACT ON THE ECONOMY: ISSUES AND SOLUTIONS¹

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This brief argues that increasing inequality had deep macroeconomic consequences as it contributed, in combination with credit institutions, to either stagnating aggregate demand or to increasing public and private debt. Inequality may also contribute, along with supply factors, to the drifting towards secular stagnation. Income distribution would then be one of the major determinants of the increasing global imbalances that made the world economy extremely fragile at the outset of the crisis. The crisis in turn exacerbated inequality, especially in peripheral Eurozone countries. The path towards sustainable future growth passes therefore for a reduction of inequality that, in particular in European countries, needs to be coordinated. Finally, if rent-seeking plays an important role in the past increase of inequality, then active fiscal policies and regulation need to be part of the effort to curb inequality.

1. Why the increase in inequality since the 1970s?

It is widely established that inequality increased substantially, both in developed and in emerging economies, starting from the late 1970s (IMF, 2007; OECD, 2008; Piketty and Saez, 2013; Piketty, 2013; Piketty *et al.*, 2011) In some countries, in particular in Europe and in the US, those who lost ground were the middle classes, while in others (e.g. China) were the very poor. But in all

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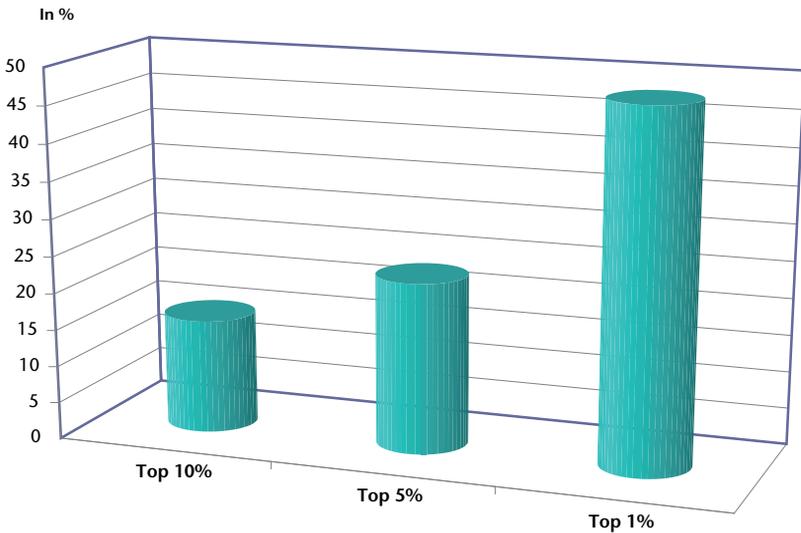
cases the redistribution has benefited mainly the rich and the very rich (the top one percent of the population, see Figure 1), giving birth to what Dew-Becker and Gordon (2005) defined the “Superstar Economy”.

In the past decades, the increase of inequality was mostly ignored by mainstream economists. This is explained by the revival of the neoclassical tradition, after the crisis of Keynesian economics in the 1970s. The neoclassical theory relies on the traditional textbook dichotomy between efficiency and fairness in the allocation of resources, which in turn is rooted in a fundamental tenet of the theory: the equality between productive factors’ remuneration and their marginal product. Productivity is an “objective” criterion for determining the efficient allocation of resources among participants to the economy. This has the very strong implication that the social desirability of such an allocation, its fairness, is not a concern for the economist. Sociologists and political scientists may of course prone redistribution on the basis of extra-economic concerns, like social stability, fairness, and the like. Economists only need to make sure that such redistribution does not introduce distortions, i.e. that it does not break the link between marginal productivity and factor’s income.

Within this traditional view, two related phenomena would help explain the increase of inequality. The first is the skill bias introduced by the recent waves of technological progress. The impact of the IT revolution was unequal, affecting the productivity of high-skilled workers more than that of those with no or little education (Katz and Autor, 1999; Rajan, 2010) Diverging wages would therefore reflect the widening productivity gap. The second phenomenon impacting wage inequality is globalization. Low-skilled workers entering the global labour market from emerging and developing economies lowered the average marginal productivity of labour, thus lowering its share of national income with respect to capital. Furthermore, the increase of competition in labour markets reduced the bargaining power of on unions and wage setters. Taken together, skill-biased technical progress and increased competition in global labour markets could explain increasing (wage) inequality as an unavoidable process that policy was not supposed to address, if not at the price of reduced efficiency and growth. The idea that the “tide lifts all boats” would

then serve as a justification for the impetuous growth of high and very high incomes that accompanied the two prosperous decades 1990s and 2000s. The traditional view also admits other drivers of inequality, for example imperfect financial markets that prevent liquidity constrained agents from investing in human capital. These, nevertheless, are easily dealt with, once structural reforms limit market imperfections.

Figure 1. Average change in income shares for different percentiles, 1980-2007



Note: Unweighted average of the following countries: SP, DK, NZ, FR, SW, NL, UK, IR, SG, SD, IT, JP, US.
Source: Author's calculation on data from the Piketty and Saez Top income database.

The financial crisis challenged the traditional view, among other things because in spite of the heavy hit taken by the financial sector, it disproportionately hit middle and low incomes (OFCE, IMK and ECLM, 2014; OECD, 2011). In particular, Galbraith (2012) and Stiglitz (2013) argue convincingly that much more than the “fundamentals”, like globalization and technological progress, what accounts for most of the increase of inequality in the past decades is the rise of predatory behavior. Precisely because the elites have been appropriating more than a fair share of national wealth, increasing inequality has been hampering well-being and distorting the economy. The rise of rent-seeking and predatory behaviour has coincided with the paramount role played by an increasingly deregulated financial sector, where the discon-

nect between wages and marginal productivity quickly became evident. Empirical evidence also seems to run counter the traditional view. Recent work (see e.g. Ostry *et al.*, 2014) shows that there is a robust negative correlation between inequality and growth and that, as a corollary, countries with some form of redistributive policies in place tend to grow faster.

Emphasizing rent-seeking (Gaffard and Saraceno, 2014) helps explain why the increase of income inequality in the past decades benefited the very top incomes (Piketty *et al.*, 2011);² more importantly, it also highlights the importance of policy choices. The economic power of the elites and the conservative revolution in politics mutually reinforced each other, leading to increasingly less progressive tax systems, and to a downsizing of the welfare state. (Creel and Saraceno, 2010; Hacker and Pierson, 2010). Rent-seeking and the excessive weight of finance in GDP seem more convincing than the traditional view in explaining the rise of the superstar economy.

2. The crisis, debt, and inequality

At the outset of crisis, in the summer of 2007, the world economy was in a situation of structural weakness, caused by the progressive accumulation of external imbalances. Some countries, most notably the United States and peripheral European countries had an excess of demand over domestic production, shown by increasingly important trade deficits. This deficit was financed by the excess savings that, with different causes, characterized other regions like East Asia, oil producing countries, and last but not least core European countries. These opposite imbalances compensated each other for almost two decades, resulting in an overall balance that the crisis showed to be fragile. Excessive debt of the deficit countries, be it public or private, suddenly became a burden that triggered a race to deleveraging and a generalized drop in spending.

Inequality has a large role to play in explaining the accumulation of debt (Charpe *et al.*, 2009; Cynamon and Fazzari, 2008; Fitoussi and Saraceno, 2010, 2011). The transfer of resources from the poor and the middle class to the wealthiest, i.e. from those who consume almost all of their income to those who have a high propensity to save, caused a reduction in the average propensity to

consume, and increased the global mass of savings. This had two effects, that both played a role in the current crisis. The first is a huge mass of liquidity that fuelled a series of speculative bubbles. High returns in finance, and its increasing weight in GDP triggered a vicious loop by which no real sector investment could compete with the yields offered by the financial sector. Resources were therefore diverted from productive uses of savings into financial assets whose value was artificially inflated. The tendency of advanced economies to jump from bubble to bubble can therefore be explained, among other things, by the increase of inequality (Fitoussi and Saraceno, 2011; Galbraith, 2012; Stiglitz, 2013).

The second effect of income redistribution towards the very rich, is a chronic tendency to depressed aggregate demand. At the IMF Fall 2013 annual meeting Larry Summers conjectured that advanced economies in the future will face a low, possibly negative, equilibrium interest rates, that may lead to a “new normal” made of hard choices between unstable, debt-driven growth, and a quasi-depressed economy. A number of factors, from aging and demographics to slowing technical progress, may support the conjecture that globally we may be facing permanently higher levels of savings and lower levels of investment, leading to negative natural rates of interest.

Summers’ conjecture has been widely discussed. Surprisingly, the focus was mostly on supply side factors; the long run tendency of the propensity to consume to decrease because of inequality was not mentioned in the discussion. And yet, redistribution, by compressing aggregate demand, may have contributed, along with demographics and slowing innovation, to the slow drifting of the global economy towards secular stagnation.

But how did inequality contribute to global imbalances, which we claim above are among the structural causes of the crisis?

3. From inequality to structural imbalances

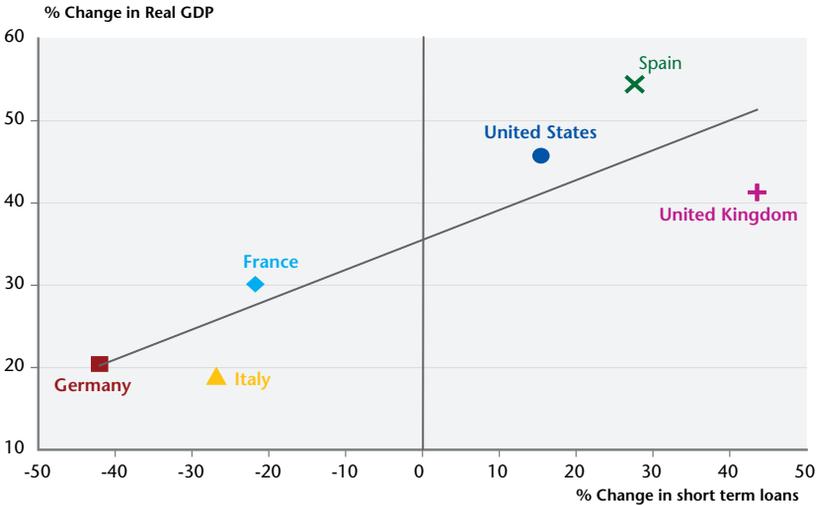
How could the same phenomenon, increased inequality and the resulting compression of aggregate demand, lead in some areas to excess savings, and in others to excess demand? The answer to this apparent paradox lies in the interaction of the trend in income distribution, common to all countries, with institutional differ-

ences, and the policy responses that have instead taken very different forms. In the US the reduction in income was offset by private borrowing favoured by a less regulated financial system, but also by a widespread perception of "end of history" which led to believe that all constraints the unlimited growth of some sectors (finance, real estate) had been permanently removed (Cynamon and Fazzari, 2008). Consequently, aggregate demand (consumption and investment) remained high, even if increasingly financed out of debt and not out of income. This did not happen in most of Europe, where stricter regulation of financial markets, and less accommodating monetary policies, made borrowing for households and firms more difficult. Fiscal policy was also generally more restrictive in European countries, constrained by the Maastricht Treaty and the Stability Pact, while the United States, where the welfare system and automatic stabilizers are less developed, fiscal policies had to be more active to reduce fluctuations of income (Creel and Saraceno, 2010).

Thus, the downwards pressure on aggregate demand, prompted by growing inequality in income distribution, was hidden in the U.S. (and to a lesser extent in peripheral European countries) by increasing private and public indebtedness (which led to strong but ultimately unsustainable growth); in Europe (mainly continental), higher costs of borrowing, and greater inertia of macroeconomic policy have prevented an adequate level of aggregate demand, and the result was a long period of soft growth. The U.S. growth was financed by European savings and in turn lifted the old continent with its imports, at least partially compensating insufficient domestic demand. The excess of savings in other areas (East Asia, oil producing countries) also helped to perpetuate this delicate balance, which nevertheless was sooner or later doomed to break.

While there is no hard evidence about the interaction of institutions and inequality in explaining different patterns of indebtedness and growth, we can look at some stylized facts. Figure 2, taken from Fitoussi and Saraceno, (2011), shows that countries where short term (consumption) loans increased more in the decade leading to the crisis, are the ones in which growth over the period 1995-2007 was more robust. This points to a growth rate driven by domestic consumption and debt, bound to be fragile.

Figure 2. Cumulate change in household short term loans vs change in real GDP, 1995-2007



Source: OECD.

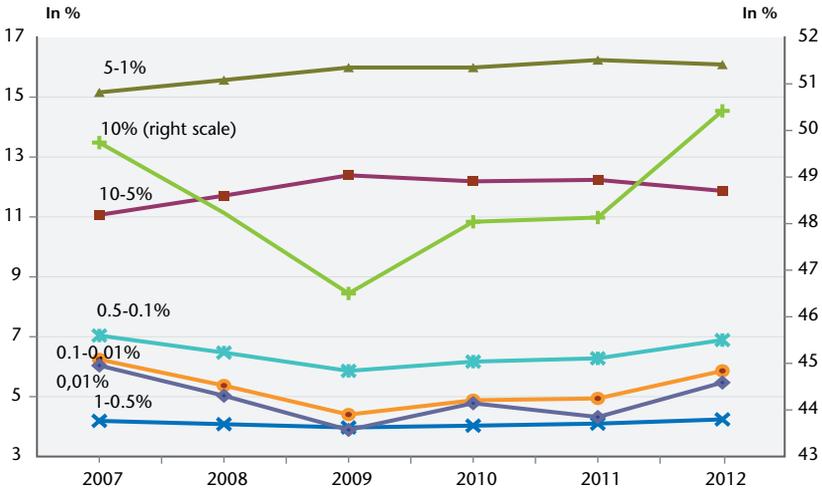
4. The impact of the crisis on inequality

If income inequality contributed to building imbalances and to an increasingly fragile economy, the ensuing crisis in turn exacerbated inequality. The financial crisis of 2007-2008 mainly hit asset prices, thus having a major impact on the richest layers of the income distribution. This was short-lived, nevertheless, as the prolonged recession, and the jobless recovery that followed, quickly restored, and further deepened the distance between the rich on one side and the middle and lower classes on the other (OECD, 2011). Piketty and Saez's Top Incomes Database unfortunately does not yet have data for 2012, except for a handful of countries. One of them is the United States, where it is clear that after the initial drop all top percentiles of the distribution recovered. As a consequence the income share of the top 10% is today one percentage point above its pre-crisis peak (Figure 3).

The impact of the crisis on income inequality is particularly evident in Europe, where the sovereign debt crisis was met with draconian austerity plans and painful supply side reforms. The consequence was a double-dip recession from which the Eurozone is barely recovering. While top incomes and profits are today at the

pre-crisis level, output is well below its peak, and the social fabric is seriously deteriorated. Unemployment and poverty hit in particular the weakest part of the population (OFCE, IMK and ECLM, 2014).

Figure 3. Evolution of top income shares including capital gains – United States



Source: Author's calculation on data from the Piketty and Saez Top income database.

5. What policies to reverse the trend?

High inequality may be becoming the new normal (Piketty, 2013). Furthermore, If Summers' secular stagnation conjecture is correct, the pattern that led to the crisis is bound to be repeated in the future, as different countries will react differently to declining potential growth. A durable rebalancing of the global economy can only happen if we manage to escape chronically depressed aggregate demand. This means that as long as domestic imbalances are not reabsorbed, both in surplus and in deficit countries, there is little hope for achieving structurally solid growth. It is also an illusion to think that a mere realignment of exchange rates (real or nominal) would solve the problem, which originates in domestic disequilibria. While increasing popular, the option of more or less orderly euexits would hardly allow contrasting the tendency towards secular stagnation of which inequality is one of the drivers.

On the other hand, in the current situation income distribution may turn out to be the easiest lever to pull in order to fight secular stagnation. Demographic factors, or innovation trends, are hard to govern and to orient. Inequality can instead be tackled by acting on multiple levels:

1. Increase the progressiveness of the tax system, in particular for high and very high incomes. This should happen in a coordinated way to avoid excessive high-skill workers mobility.
2. Renew the focus on the provision of public goods, particularly intangible ones such as education and health.
3. Strengthen the insurance role of the government. The trend towards reduced importance of automatic stabilization should be reversed.

These measures mostly pertain to the national level. Nevertheless some form of coordination, at least at the European level, would be necessary to avoid tax competition, wage deflation, and social dumping, the modern versions of beggar thy neighbor policies. The reduction of income and consumption inequality would stabilize the economic cycle and reduce aggregate savings. This would allow for growth rates that may be less remarkable than in the past, but certainly more sustainable and equitable.

Three specific proposals, aired in the past few months, should become concrete legislative acts in the next European Parliament legislature:

1. A European Unemployment subsidy, to be adopted alongside existing national ones. While not flawless, a good starting point, could be the Commission proposal of October 2nd, 2013 (European Commission, 2013). This would introduce solidarity among Member countries, contribute to fight macroeconomic divergence, and help dampen inequality.
2. Introduce a European minimum wage (OFCE, IMK et ECLM, 2014), to sustain labour income and make tax competition harder.
3. Introduce a European corporate tax, also a way to limit tax competition, and possibly a way to finance an enhanced European budget (see Jacques Le Cacheux or Maitrot de la Motte in this issue).

It is important to stress in conclusion that rethinking the role of tax policies is unavoidable. Efforts on capacity building, like on-job training and education, are always useful; but, if as Galbraith and Stiglitz argue the main cause of inequality is rent-seeking behavior, then curbing this through appropriate active fiscal policies becomes paramount. This also means that in Europe, prior to the implementation of specific economic measures we need a change in the political culture that dominated the European construction since the Maastricht Treaty.

References

- Charpe, M. *et al.*, 2009. "Overconsumption, Credit Rationing and Bailout Monetary Policy: A Minskyan Perspective." *European Journal of Economics and Economic Policies* 6: 247–70.
- Creel, J. et F. Saraceno, 2010. "The Crisis, Automatic Stabilisation, and the Stability Pact." *Revista de Economía Y Estadística* XLVIII (1): 75–104.
- Cynamon, B.Z. et S. M. Fazzari, 2008. "Household Debt in the Consumer Age: Source of Growth--Risk of Collapse." *Capitalism and Society* 3.
- Dew-Becker, I. et R. J. Gordon, 2005. "Where Did the Productivity Growth Go? Inflation Dynamics and the Distribution of Income." *Brookings Papers on Economic Activity* 2005: 67–150.
- European Commission, 2013. "Strengthening the Social Dimension of the Economic and Monetary Union." *Communication from the Commission to the European Parliament and the Council* COM-690 (October 2nd).
- Fitoussi, J.-P. et F. Saraceno, 2010. "Europe: How Deep Is a Crisis? Policy Responses and Structural Factors behind Diverging Performances." *Journal of Globalization and Development* 1 (1).
- Fitoussi, J.-P. et F. Saraceno, 2011. "Inequality, the Crisis and After." *Rivista Di Politica Economica* (1): 9–28.
- Gaffard, J.-L. and F. Saraceno, 2014. "Répartition, Croissance et Crise." *Économie et Management* (à paraître).
- Galbraith, J. K., 2012. *Inequality and Instability: A Study of the World Economy Just Before the Great Crisis*.
- Hacker, J. et P. Pierson, 2010. *Winner-Take-All Politics: How Washington Made the Rich Richer and Turned Its Back on the Middle Class*. New York: Simon & Schuster.
- IMF, 2007. *World Economic Outlook - Globalization and Inequality*.

- Katz, L.F. et D. Autor, 1999. "Changes in the Wage Structure and Earnings Inequality BT - Handbook of Labor Economics." *Handbook of Labor Economics*. Elsevier Science.
- OECD, 2008. *Growing Unequal?: Income Distribution and Poverty in OECD Countries Distribution*.
- OECD, 2011. *Divided we Stand: Why Inequality Keeps Rising OECD Publications*.
- OFCE, IMK et ECLM, 2014. « From austerity to stagnation: how to avoid the deflation trap », The independent Annual Growth Survey 2014, *Revue de l'OFCE, Macroeconomic outlook, Special Issue*. (<http://www.ofce.sciences-po.fr/pdf/revue/si2014/si2014.pdf>).
- Ostry, J.D. *et al.*, 2014. "Redistribution, Inequality, and Growth." *IMF Staff Discussion Notes* 2014/02.
- Piketty, T. *et al.*, 2011. "Top Incomes in the Long Run of History." *Journal of Economic Literature* 49: 3–71.
- Piketty, T., 2013. *Le Capital Au XXI^e Siècle*. Seuil.
- Piketty, T. and E. Saez, 2013. "Top Incomes and the Great Recession: Recent Evolutions and Policy Implications." *IMF Economic Review* (61): 456–78.
- Rajan, R., 2010. *Fault Lines: How Hidden Fractures Still Threaten the World Economy*. Princeton University Press.
- Stiglitz, J. E., 2013. *The Price of Inequality: How Today's Divided Society Endangers Our Future*. Norton.

GENDER EQUALITY

A EUROPEAN CHALLENGE AT THE CROSSROADS OF ECONOMICS, LAW AND POLITICS

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Europe is seen as the engine of public policy on gender equality, particularly through Member States' implementation of EU law into national law. Straddling legislative components and soft law instruments (such as a cross-cutting approach and promoting "best practices"), EU gender equality policies represent a vantage point for analyzing the Europeanization process. We shall begin by discussing the specificity of national situations before analyzing the transnational dimension of the EU law on non-discrimination. We shall then look at European equality policies by looking at current debate including: issues surrounding the European employment Strategy, connections between hard law and soft law, gender equality and Europeanization.

In affirming the "principle of equal pay, without discrimination based on sex", Article 119 of the Treaty of Rome embodies the founding dimension of gender equality in the European project. In this way, EU texts – from the Common Market to the internal market, and then to integration – place gender equality at the crossroads of economics, law and politics.

After highlighting how diverse the situation is in different countries, we will present the ways in which European policy on equality addresses this through EU law on non-discrimination. We then take up the debates provoked by policy changes, both in regards to the aims (supporting growth, demographic targets, the

struggle against exclusion, principles of justice, etc.) and their implementation (between the non-binding open method of coordination and the binding legal corpus, as well as between roadmaps and charters on the one hand and directives on the other).

1. Gender inequality in Europe

Inequalities between women and men take multiple forms, whether in the area of employment, political representation, reconciliation, the private sphere (in particular the sharing of household and parental tasks), violence, contraception and abortion laws, etc.

1.1. A wide range of differences among countries

To take just two examples, the employment rate of women ranges from 45.2% in Greece to 76.8% in Sweden (an average of 62.4% in the EU27), and the rate of part-time work ranges from 2.5% in Bulgaria to 76.9% in the Netherlands (an average of 32.1% in the EU27). The employment rate in terms of full-time equivalent is fluctuating between 42% in Malta and 69% in Sweden (an average of 53% in the UE27). The gender gap in employment rates (of all durations) varies from 1.5 points in Lithuania, to 32.2 points in Malta (an average of 12.2 points in the EU27).¹

The rate of women's participation in government is 54% in Sweden but only 7% in Slovakia; in the national parliaments, it varies between 43% in Sweden and 16% in Greece (with an average of 24.7%).²

These are only snapshots, but the figures do demonstrate nonetheless the size of the gap in the situation among different countries.

1.2. National "compromises"

Discrepancies among countries are the result of a number of factors based on different gender arrangements (Dauphin, 2011; Letablier, 2009):

1. 2012 data, 20-64 years, source: Eurostat.

2. 2012 data, source: Eurostat.

- the historical consensuses that has shaped the extent to which women have been integrated into the labour market including both full or part-time forms;
- a welfare state regime;
- “models of articulation” between professional and private spheres, which determine the impact of parenthood on employment;
- work-share and flexible scheduling policies;
- social protection system (family or individual-based);
- social transformations of the family and of parenthood;
- national public policy, whether regarding coordination policies (childcare facilities for young children, school schedules, or parental leave plans and eligibility conditions for family benefits), or the way in which countries provide the means to achieve the targets of the European employment Strategy, particularly the employment rate target;
- methods of adjusting employment during periods of economic crisis (adjustment in work time or in internal or external flexibility).

At the European level, the “reconciliation between professional, private and family life” has four segments (Math, 2013, 2009): parental leave, childcare facilities for very young children, independent women workers and assisting spouses, and maternity leave. As regards childcare facilities, in 2002 the European Council meeting in Barcelona established targets of 33% for children under the age of three and 90% for those over age three. The summations at the end of the first decade of 2000 demonstrate the discrepancies both among the various countries and in the prerogatives of countries, some of which do not feel bound by simple recommendations. In the 2010 Directive of the European Council on parental leave, which is formally more binding, the question of pay is left vague, which is a significant limitation. The directive on maternity extended the length of leave (14 weeks). Thus between the minimum standard for maternity leave and the exclusive jurisdiction of States on childcare arrangements, the impact of European policies has been limited and inconsistent. The 2008 “reconciliation package” has done little to align the countries in this matter.

The analysis of the gendered division of social roles is thus an issue in the policy choice, whether economic (structural or

cyclical), family-related (in particular regarding reconciliation), fiscal, social, etc., from which the roles arise and which they reflect. How does the gendered dimension of public policy choices apply nationally and transnationally, especially within the EU (Jacquot, 2009, 2013)?

2. European equality policy

Europe is the engine for public policy on gender equality (Dominguez Alcon, Forest and Sénac, 2013; Kantola, 2010), in particular through Member States' application of EU law in their national law. The application of the primary law of the European treaties³ and of the 2000 Charter of Fundamental Rights is associated with the transposition of EU directives⁴ and with the impact of the jurisprudence of the European Court of Justice on national jurisprudence (Sénac-Slawinski, 2006). Europe also sets out the multiannual strategy, the aims of which range from the economic independence of women to the eradication of violence. However, in the absence of any binding means, these aims remain general and are not achieved.

2.1. Cross-cutting community legal and institutional framework

Pay inequality between male and female workers is the leading factor in the inequality of treatment among salaried workers that EU law addresses specifically, “through Article 119 in particular of the Treaty of Rome (which became the current Article 141), which the European Court of Justice held was directly applicable since 1971 (Defrenne judgement of 25 May 1971), but the sphere of which is limited to pay equality, with protection subsequently extended by the 1976 directive (76/207) to all recruitment, training and working conditions” (Bailly, 2004:83).

Since 1979 gender equality has been one of the values that the Council of Europe has the mission of protecting and promoting, as

3. Cf. in particular Article 1bis and Article 2 paragraph 3 of the European Union Treaty, as well as Article 8 of the consolidated version of the Treaty on the Functioning of the European Union.

4. Cf. in particular, Directive 75/117/CE of 10 February 1975 on equality of pay and Directive 2006/54/CE of the European Parliament and the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).

it is one of the guiding principles of its activities. This principle is laid out in the two main legal instruments of the Council of Europe: the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and the European Social Charter (1961).

The EU Charter of Fundamental Rights of 7 December 2000, as adapted on 12 December 2007 in Strasburg, has the same legal value as the treaties.⁵ It stipulates that “everyone is equal before the law” (Article 20), that “any discrimination based on sex shall be prohibited” (Article 21), and that “equality between men and women must be ensured in all areas, including employment, work and pay” (Article 23).

The 2007 Lisbon Treaty establishes gender equality as one of the common values and aims of the Member States of the Union (Article 1bis and 2).

The principle of non-discrimination in pay laid out in the fair competition framework, which was a condition of the Common Market and then of the single market, is thus now a general principle of non-discrimination. It is embodied institutionally by the fact that the equality policy, initially under the DG for Employment, is now the responsibility of the DG for Justice.

2.2. The three phases of the gender equality approach: from legal equality to positive action and to gender mainstreaming

The normative framework for measuring gender equality is clarified by a recommendation “on the promotion of positive action for women” (84/635/EEC) adopted by the Council of European Ministers on 13 December 1984. The reports set out by the European Commission in 1988 and 1995 regret that in the absence of any binding measures, positive action is at best a public policy instrument and not a legal pillar of equal opportunity. Article 19, the former Article 13 TEC, stipulates that “The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt the basic principles of Union incentive measures, excluding any harmonization of the laws and regulations of the Member States, to support action taken

5. Cf. Article 6 of the Treaty of Lisbon.

by the Member States” “in order to combat all forms of discrimination based on sex, race or ethnic origin, religion or beliefs, disabilities, age or sexual orientation.” Article 23 of the Charter of Fundamental Rights on gender equality states that “the principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex”.

Teresa Rees (2002) analyzes the EU legal non-discrimination framework by identifying three phases that are both chronological and theoretical: equality of treatment in the 1970s, giving way to positive actions in the 1980s and to gender mainstreaming in the 1990s. She associates equality before the law with a form of “tinkering” with what exists, while the adaptation of the rule of law to differences in the situation of each person through adopting specific measures is considered to be “tailoring”. Gender mainstreaming (Dauphin and Sénac-Slawinski, 2008) for its part is associated with transformation in so far as it is positioned above both isonomy and corrective equality. Indeed, it “should ideally make it possible to identify systems and structures at the origin of indirect discrimination and rethink them in order to find remedies” (Rees, 2002: 46–48).

Challenging any unequivocal or ideal definition, Judith Squires analyzes the scope and practical limits of this concept-method by offering three possible approaches: a new strategy to change public policy (transformation), a bureaucratic instrument to integrate gender (inclusion), and a process of adding it to the agenda (displacement). Her thinking emphasizes the need to reflect on gender inequality and discrimination in relation to other forms of discrimination.

2.3. Contributions of EU law: indirect discrimination and sharing the burden of proof

Pierre Bailly, senior judge at the Social Division of France’s Cour de Cassation, outlines four points regarding the main contributions of EU jurisprudence to French jurisprudence in the matter of equality between men and women workers: the method of verifying inequalities by introducing the concept of indirect discrimination; evidentiary rules to be applied; possible justifications of differential treatment; and the issue of “positive”

discrimination or action. The first two principles, which he defines as characterizing the approach to equality by EU law, express a common goal: to give full effect to the prohibition of discrimination between men and women workers by changing the rules of evidence. “After 1980 the EU judge ... has recourse to the notion of indirect discrimination: the application of an apparently neutral criterion, foreign to the sexual identity of the salaried employee and establishing differential treatment between workers, can in reality conceal discrimination towards persons of a particular sex. For instance, if a collective agreement denies part-time workers the benefit of an end-of-the-year bonus and if in reality it turns out that this category is primarily made up of women, it will be an example of indirect discrimination. (ECJ, 9 September 1999, *Krüger*, n° C 281/97)” (Bailly, 2004: 83). ECJ jurisprudence considers in fact that as soon as differential treatment statistically affects a majority of workers of the same sex, unjustified by objective facts, this represents indirect discrimination. It has ruled in particular that a difference in taking into consideration the seniority of the full- and part-time workers is discriminatory.⁶

In addition, EU Directive 97/80 of 15 December 1997 and EU jurisprudence⁷ impel the States to transpose the principle of sharing the burden of proof. “The main judgments of the Court have been about equality in pay. These include the *Danfoss*, *Enderby* and *Royal Copenhagen* cases, as well as the *Bilka* judgement” (Lanquetin, 1998: 688).

2.4. Multiannual strategy

The priority areas for action are defined in the roadmaps and the multiannual strategy. These reflect the changes in targets and priorities. The first one, dated 1 March 2006, sets out six areas for action for the 2006-2010 period:

- equal economic independence for women and men;
- reconciliation of professional, family and private life;
- equal representation in decision-making;
- eradication of all forms of gender-based violence and slavery;
- eliminating gender-based stereotypes in society;
- promoting gender equality outside the European Union.

6. EJC 7 February 1991, case C. 184/89 (*Nimz*), Rec. I, p. 91.

7. EJC 13 May 1986, *Bilka*, case 170/84; EJC, 27 October 1993, *Enderby*, case C-127/92.

A new strategy was elaborated in 2010 for the 2010-2015 period. It is now part of the Europe 2020 strategy. The priorities are similar, except that reconciliation disappeared from the six priority areas for action (although it is still covered by the instruments) and is replaced by equal pay.

Another sign of the times, the equality policy which throughout the 1970s and 80s was part of the free competition framework, was in 2006 included in the growth and employment programmes as well as those dealing with demographic changes. The Roadmap clarifies that not only is gender equality a fundamental right and a common value of the European Union, but also a necessary condition for attaining the EU's goals for growth, employment and social cohesion (EC, 2007): "The Pact demonstrates the Member States' determination to implement policies aimed at promoting the employment of women and guaranteeing a better balance between professional and private life in order to meet the challenges of demographic change. ...The ageing of the population, combined with declining birth rates, raises considerable challenges for our societies... It is clear that policies on gender equality will contribute significantly to meeting those challenges: on the one hand, by stimulating the employment of women, thus compensating for the forecast decline in the working population; and, on the other, by supporting the individual choices of women and men, including decisions on the number of children they wish to have."

The 2010 strategy highlights the contribution of gender equality "to economic growth and sustainable development" while "taking inspiration from the Charter's priorities and the experiences of the 2006 gender equality roadmap." Between the two, sustainable development has replaced the demographic challenges. Simply a change of language?

3. Some debates

3.1. The European employment Strategy: employment rate and/or job quality?

According to the Lisbon employment targets set in 2000, by 2010 for the 15-64 age group the rate of women's employment was to reach 60% and the overall rate 70%. Neither of these two targets

was achieved as a European average, as there was a step backward between 2008 and 2010 due to the crisis. In 2010, the rate was 5.9 points short of the goal for the overall employment rate and 1.8 point short of that for women.

The European employment Strategy set a goal for 2020 of 75%, for women, as for men, but this time for the 20 to 64 age group. Therefore it will be easier to achieve (if the Lisbon target for 2010 had been set for that age group, it would have been achieved for women).

The major remaining question, however, is that of the means to get there. If the rise in the employment rate is based on an increase in part-time and temporary jobs, it is not a guarantee of economic independence, which is after all the number one objective of the roadmaps. Worse, the appearance of new forms of inequality is another result. The Commission is vacillating from this point of view between an analysis of inequalities brought on by the fact that the part-time jobs are in the main held by women and the vagueness of recommendations on how to reach the employment rate objectives. Beyond that, there are still ambiguities regarding flexibility: flexibility is sometimes extolled as an instrument of employment policy (eliminate the rules that create rigidity), and at others times as an element of reconciliation policy (flexibility and scheduling arrangements for parents).

By neglecting the multiple forms of employment inequality, the targets established are not likely to reduce these inequalities. The question of job quality is thus vital.

3.2. “Best practices” and soft law against anti-discriminatory law?

As far as the legal framing is concerned, in the context of developing the EU’s anti-discriminatory law, promoting equality as soft law (charter, label) “without rights or obligations” (Junter and Sénac-Slawinski, 2010) reveals tensions between managerial norms and legal-political norms (Beveridge and Velluti, 2008). Thus it is essential to question the normative stakes of promoting gender equality through soft law, stripped of any binding dimension, which “is also inevitably a *fuzzy law* (Delmas-Marty, 1986, 2004). Formulated in terms of targets or recommendations, the law loses precision; not only do vague terms tend to multiply, such as “charter” or “partnership”, but formulations such as “principles”

or “standards” create an area of uncertainty and indeterminacy” (Delmas-Marty, 2004: 143–44).

3.3. Gender equality interrogates the Europeanization process

EU policies on gender equality provide a vantage point for analyzing the Europeanization process (Lombardo and Forest, 2012; Radaelli, 2003) at the intersection of three perspectives (Liebert, 2003): *institutional* (directives and ECJ decisions), *cognitive* (analysis of frames of reference, through which the “public problem” of gender equality is reformulated (Muller, 2005)); and *interactionist* (in relation to the creation of transnational voices representing “gender interests”).

Taking into account the multiple types of discrimination with an intersectional approach of discriminatory criteria is in particular a challenge for 21st century Europe (Squires, Skeje and Krizsan, 2012). Currently “the method of processing appeals cases seeks the motive behind the discrimination or the motive that appears the easiest to demonstrate, not the interactions” (Lanquetin, 2009: 103–4).

From a cognitive point of view, equality policies were first conceived to eliminate distortions in competition, but then have changed, without at the same time questioning the soundness of free competition. Between supporting growth (Wilkinson and Pickett, 2013) and anti-discriminatory principles, the justification of these policies in the name of social investment (Morel, Palier and Palme, 2012) interrogates the principle of justice at work (Sénac, 2012).

The decision level is also problematic: simple guidelines and principles of subsidiarity now allow some countries to implement regressive policies on gender equality, while all are facing budget cuts for social policies in this period of crisis. This environment makes a convergence of the different countries unlikely.

References

- Bailly P., 2004. "L'égalité des salariés en droit du travail." Rapport de la Cour de Cassation 2003, Paris, *La Documentation française*:: 23–32.
- Beveridge F. and S. Velluti, (eds.) 2008. *Gender and the Open Method of Coordination. Perspectives on Law, Governance and Equality in the EU*, Ashgate, Aldershot.
- Council of Europe, 2013. *Gender Equality Commission (GEC) – Gender Equality Strategy 2014-2017*, CM(2013)136 final, November 6.
- European Commission, 2006. *Roadmap for equality between women and men, 2006-2010*, COM(2006) 92 final, March.
- European Commission, 2007. *Report on Equality between Women and Men*, COM(2007) 49 final, February.
- Dauphin S., 2011. "Action publique et rapports de genre." dans F. Milewski et H. Périver (dir.), *Les discriminations entre les femmes et les hommes*, Paris, *Presses de Sciences Po*: 313–342.
- Dauphin S. et R. Sénac-Slawinski, (coord.) 2008. "Gender mainstreaming – De l'égalité des sexes à la diversité?" *Cahiers du genre*, 44.
- Delmas-Marty M., 2004. *Les forces imaginantes du droit – Le relatif et l'universel*, Paris, Seuil.
- Dominguez Alcon C., M. Forest and R. Sénac, 2013. *Qué políticas para qué igualdad. Debates sobre el género en las políticas públicas en Europa*, Valencia, Tirant humanidades.
- Jacquot S., 2013. "Les effets de l'eupéanisation dans le domaine social. Entre influence européenne et usages nationaux." *Politique européenne*, 40: 8–21.
- Jacquot S., 2009. "La fin d'une politique d'exception : l'émergence du *gender mainstreaming* et la normalisation de la politique communautaire d'égalité entre les femmes et les hommes." *Revue française de science politique*, 59(2): 247–277.
- Junter A. et R. Sénac-Slawinski, 2010. "La diversité : sans droit ni obligation." *Revue de l'OFCE*, 114: 167–195.
- Kantola J., 2010. *Gender and the European Union*, Basingstoke, Palgrave.
- Lanquetin M.-T., 1998. "Discriminations à raison du sexe – Commentaire de la directive 97/80 du 15 décembre 1997 relative à la charge de la preuve dans les cas de discrimination à raison du sexe." *Droit social*, (7/8): 688–695.
- Lanquetin M.-T., 2009. "Egalité, diversité et discriminations multiples." *Travail, genre et sociétés*, 21: 91–106.
- Letablier M.-T., 2009. "Régime d'État-Providence et conventions de genre en Europe." *Informations sociales*, 151: 102–109.
- Liebert U. (eds.), 2003. *Gendering Europeanization*, Bruxelles, Peter Lang.

- Lombardo E. and M. Forest, 2012. *The Europeanization of Gender Equality Policies. A Discursive-Sociological Approach*, Basingstoke, Palgrave Macmillan.
- Math A., 2013. "Union européenne. La directive maternité dans les limbes." *Chronique internationale de l'IRES*, 139.
- Math A., 2009. "Union européenne. Structure d'accueil pour les jeunes enfants et stratégie européenne pour l'emploi. Que reste-t-il des engagements de Barcelone?" *Chronique internationale de l'IRES*, 117.
- Morel N., B. Palier and J. Palme, 2012. *Towards a Social Investment Welfare State ?*, Basingstoke, Policy Press.
- Muller P., 2005. "Esquisse d'une théorie du changement dans l'action publique. Structures, acteurs et cadres cognitifs." *Revue française de science politique*, 55(1): 155–187.
- Radaelli C., (eds.) 2003. *The Politics of Europeanisation*, Oxford, Oxford University Press.
- Rees T., 2002. The Politics of "Mainstreaming" Gender Equality, in Breitenbach E., Brown A., MacKay F. (eds). *The Changing Politics of Gender Equality in Britain*, Basingstoke, Palgrave Macmillan.
- Sénac R., 2012. *L'invention de la diversité*, Paris, PUF.
- Sénac-Slawinski R., 2006. "L'égalité entre les femmes et les hommes dans l'emploi : réflexions sur l'évolution récente du droit français», *Droit & Société*, 62: 67–93.
- Squires J., H. Skeje and A. Krizsan, (dir.) 2012. *Institutionalizing Intersectionality*, Basingstoke, Palgrave Macmillan, Gender and Politics Series.

EUROPEAN(S) LABOR(S) MARKET(S)

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Since its foundation the European Union has experienced an increase in the dispersion of its welfare systems. The goal of a Social Union, completing the economic and monetary union, is increasingly out of reach. The absence of a jointly regulated labor market is a destabilizing factor that triggers social competition and wage deflation. To avoid the risks associated with such a situation it is necessary to agree on policies aimed at returning to full employment and to choose between “neo-liberal” or “social” work sharing. The absence of short-term prospects for a complete social harmonization requires the acceptance of jointly managed social boundaries that allow both the mobility and the effective protection of workers.

Employment policies and social protection have been excluded from the domain of Community policies in the name of subsidiarity. Member States are the sole responsible for the definition and implementation of social policies. In theory, only the Open Method of Coordination (OMC) is used to influence national policy and if possible make them more or less consistent and convergent.

But in practice the freedom of States on social protection is restricted by constraints stemming from other Community policies. Thus:

- The coordination of fiscal and economic policies imposes strong constraints on the financing of social protection, particularly during times of crisis. Governments face limits in the use they can make of social protection to stabilize economic activity. They are therefore encouraged (when

they are not ordered to do so by the Commission) to engage in social dumping.

- The free movement of persons, freedom of establishment, and competition laws, set constraints on subjecting workers to national law. Temporary work and the posting of workers from one country to another permit, to some extent, to circumvent labor law and choose where to pay social contributions.
- Competition policy and treaty interpretation by the European Court of Justice, set the limit of public intervention in matters of social insurance; for a health insurance or a pension plan to be sheltered from competition, they must meet a number of strict conditions: social object, compulsory membership, etc.
- Citizens' rights and the principle of non-discrimination impose obligations derived from treaties and not just from national laws (in terms of retirement age, for example, or family benefits that cannot be modulated by gender). In this area, as in the previous case, established law cases play a central role.

The issue of rationalization of Community constraints on labor law and social protection, beyond good practices recommendations, arises in a context of generalized crisis and strong heterogeneity of economic and labor markets performances. After a short analysis of the situation (§ 1), we present the two main options to overcome the crisis and return to full employment (§ 2). Finally we will examine possible broad lines of a long-term program of social convergence in Europe (§ 3).

1. Unemployment crisis, and European divides

Europe as a whole is in crisis, and its labor market is very unbalanced: the unemployment rate of the EU27 is 10.8% (January 2014) and in the euro area it raises to 12%. Overall, Europe is far from full employment. The causes of this crisis are well known: triggered by the recession of 2008/2009 due to the financial crisis, rising unemployment has not been halted by the economic policies whose primary purpose was, since 2011, to reduce public debt. Macroeconomic analyses of rising unemployment in Europe

point mainly to the crisis and the lack of effective response of economic policy; as a consequence, the priority for Europe should be to revise its macroeconomic doctrine (Blot, Creel and Timbeau, 2014 OFCE, IMK, ECLM, 2014). Issues specific to labor market functioning are of second order at best ; while it is certain that improving market smoothness, and bridging the gap between labor supply and demand would certainly contribute to improving the situation, specific employment and labor market policies will not by themselves bring back to full employment, most notably in the countries affected by mass unemployment.

Unemployment in Europe is both massive and widely dispersed. In December 2013, the unemployment rate was 27.5% in Greece and 5% in Austria. The difference between maximum and minimum is of nearly 23 points. By comparison, the United States unemployment rate in November 2013 was 7% with a maximum of 9% in Rhode Island and a minimum of 2.6% in North Dakota, a difference of 6.4 points. The variation coefficient¹ in unemployment in Europe and the United States were very different with a level of 51% in Europe (57% in the Eurozone) and 24% in the United States.

If we look at income dispersion between countries, it worsened over time, with the enlargement to eastern economies increasing remarkably de diversity of the European institutional space (Table 1).

The history of the European Union is characterized by a first phase of convergence ranging from 1958 to 1995 followed by a period of divergence initiated by the enlargement of the Union to the East (Table 1). Today, the income convergence in Europe is stalling and this is reason of concern for the future, because the very large differences created by enlargement continue to weigh on the building of solidarity among states with very heterogeneous levels of wealth and income.

Very large income and wage inequalities among countries are a defining European feature. They explain the difficulty of implementing common policies as they encourage the development of

1. The variation coefficient measures the dispersion of a variable as the ratio between the standard error and the average

social competition, the less wealthy having the tendency to use their wage advantage to gain competitiveness with respect to partner countries.

Table 1. Coefficients of variation of GDP per capita in Europe: from the founding members to the Europe of 27

In %	1958	1973	1986	1995	2004	2007	2011
UE 6	16	10	6,5	7	9	11	14
UE 9		13	13	8	14	16	14
UE 12			21	19	20	22	22
UE 15				17	18	19	20
UE 25					35	32	31
UE 27						36	35

EU6 : Germany + Belgium + France + Italy (+ Luxembourg) + Netherlands

EU9 = EU6 + Denmark + Ireland + UK

EU12 = EU9 + Greece + Spain + Portugal

EU15 = EU12 + Austria + Finland + Sweden

EU25 = EU15 + Cyprus + Estonia + Hungary + Latvia + Lithuania + Malta + Poland + Czech Republic + Slovakia + Slovenia

EU27 = EU25 + Bulgaria + Romania.

Source: Penn World Tables; Note: calculations do not take into account the Luxembourg.

Last, Europe is very heterogeneous in what concerns demography. On the one hand, Ireland, France, Britain, the Scandinavian countries, Belgium and the Netherlands have maintained fertility rates between 1.7 and 2 which allow a long-term stabilization of population. On the other, Germany, southern, and eastern European countries have very low fertility rates, below 1.5, that will lead to decreasing total population and workforce. These countries face very negative evolution of potential growth and of the ratio between active and inactive population. Migration between countries would likely homogenize the demographic outlook. But Europe remains a linguistic mosaic and this structurally limits mobility between EU states. This heterogeneity of demographic perspectives has a significant impact on long-term macroeconomic constraints facing each zone. Countries with low fertility rates must prepare for the future by saving to finance an increasing pension burden. Their debt is less sustainable in the long term and they must implement rigorous public spending policies. Countries with higher fertility rates must also prepare for the future, but their constraints are different: their main problem is to finance education for the future labor force, while they are less constrained by

long-term debt. Demographic differences also have short-and long-term labor market effects. Countries with low fertility rates have less potential for growth, while at the same time not needing it as much as high fertility countries ; the latter in addition also suffer more from negative macroeconomic shocks.

Europe's heterogeneity is a challenge for the harmonization of social policies. So far the Commission and all the political authorities in Europe have always argued that recommendations could be of general applicability. The very principle of the Open Method of Coordination (OMC), which is the main tool for social legislation, is built around the definition of "best practices" aimed at achieving universally applicable policies. It might be useful to revisit this assumption and examine all the consequences of strong heterogeneities of income, labor market and demographic, with the objective of designing policies that best fit the situation of each country. Labor market policies are a simple example showing that it is not possible to conduct the same policy in all countries: work incentives obviously do not play the same role in countries which are at full employment and in those that experience mass unemployment. Strict management of unemployment insurance may be justified in the former, while in the latter it may lead to impoverishing the unemployed.

2. The Main Options for Employment and Labor Market Policies

The wide dispersion of unemployment, and diverging demographic trends, have led some, especially in Germany, to suggest that migration between states could be a solution. Of course, mobility is useful for ensuring a better match between supply and demand for labor, in particular if growth gaps are significant. It should be encouraged, especially because exchanges between European citizens are useful in strengthening the solidarity across countries. However, free movement should not be turned into an obligation of mobility, which would risk causing the opposite effect of feeding nationalistic and anti-European sentiment. Labor mobility should furthermore be complemented by the effort of moving capital and production to regions where labor availability is larger. It would be important to put in place a coherent territo-

rial policy at the European level, going well beyond the mere financing of infrastructures. A precondition for this would be the definition of a European industrial policy, that in turn would require challenging the dogma of governments abstaining from intervention in the definition of industrial choices.² The debate on this issue is nonexistent.

Beyond macroeconomic policies, only labor market specific policies may ultimately be used to try to reduce unemployment. Especially when, for countries facing very high unemployment, it becomes evident that the absence of growth policies in Europe requires searching for national solutions. Employment policy deals with work sharing and with labor income. Blaming malfunctioning labor markets for the current level of unemployment in Europe is not very serious. Spain provides a good example of unemployment rooted in the problems of other markets, notably finance and housing. The Spanish unemployment rate was 7.9% in May 2007, it rose to 17.9% in May 2009 and it has reached over 26% in January 2014. This trend is rather a sign of extreme flexibility than of rigid labor markets.³ Explanations based on structural gaps between demand and supply of skills, or the sudden appearance of the unemployed's reluctance to react to incentives, obviously makes very little sense. Under these conditions, improving the functioning of labor markets, while making little harm, can only have a very marginal impact on unemployment.

Specific policies that may have an important impact all involve a very significant drop in wages and labor costs. In an open economy, this may be sought in order to gain competitiveness vis- -vis foreign competitors on external and domestic markets. It is obvious that this option, wage deflation to gain market shares is absolutely inappropriate to the situation in Europe: besides its non-cooperative features, at odds with the supposed solidarity of European countries, wage deflation cannot succeed if it is applied simultaneously in all countries (OFCE, IMK, ECLM, 2014). The

2. There are exceptions to the dogma. Localization of Airbus plants, for example, has been the subject of intense political bargaining. But the European Commission never intervened to put forward the European's general interest.

3. For an analysis of the reaction of labor markets to the crisis, see: Cochard Marion, G rard Cornilleau et Eric Heyer (2010).

only possible gain of competitiveness, with respect to the rest of the world, would be largely insufficient to compensate for the resulting decrease of domestic demand. It may even be offset by an overall appreciation of the euro if the lack of demand in the EU leads to a current account surplus vis-à-vis the rest of the world.

There are two solutions to enable labor and income sharing. The “neo-liberal” solution is to decrease the cost of labor, whether or not initiated by labor market flexibility. The “social” solution is the collective reduction of working time, some harmonization of social conditions, and wage coordination that avoid any temptation to rely on social dumping for the return to full employment.

The choice between the two solutions needs to be a political one. There is no “economic” supremacy of one or the other. Both options should be subject to debate, but the choice is often obscured by the discourse falsely assuming that “there is no other solution” than the neo-liberal one.

Work sharing can rely on lower overhead salaries (contributions borne by the business) that can be decided by the government in centralized countries or by bargaining in the most decentralized countries. This solution allows to manage the distributional effects of reduced benefits or social expenditure that must accompany the reduction in social contributions. This method is in between the neo-liberal and social method. But it can only be applied up to a certain extent, as is the case in France, because it quickly leads to possible reductions in benefits or to increases in other taxes acceptable.

Making labor markets more flexible is the preferred, and certainly the most effective way to lower wages in the long term. This is the method that has been used in Germany and is also applied, in a less systematic manner in France (less effectively, thanks to the existence of a minimum wage). The primary means for increasing flexibility is the reduction of protection for the unemployed to reduce their wage claims and demands of job stability. Increased flexibility thus requires slashing the generosity of unemployment insurance and the drastic reduction of legal restrictions on the employment contract. On this basis many unemployed are then forced to accept short-term employment, with unstable and low wages. Employment may increase due to the

reduction of relative labor and capital costs, but also because consumers are encouraged to shift towards sectors of the economy, especially services, whose earlier development was limited by the cost of labor. The end result may well be an increase of employment and lower wages, so that work and labor income sharing are attained. But this policy also leads to an increase of inequality and working poverty (see Francesco Saraceno in this issue). It has a social cost, with redistribution from the unskilled to the skilled, which in addition benefit from cheaper services provided by the unskilled workers forced to accept jobs at the limit of dignity. It is the task of the political debate to settle the question of whether the neo-liberal management of unemployment should be accepted or not.

The other option for job sharing is collective reduction of working time. It can be permanent as was the case in France during the transition to 35 hours working week. In this case there needs to be an assessment of the long term growth prospects of sectors that need to be supported, or on the contrary dismissed. In the case of work sharing by the market, we have seen that some service sectors were favored by increased flexibility. One can legitimately challenge the interest of creating such low-quality jobs, and prefer a collective and orderly reduction of working time. As an alternative, the collective reduction of working time can also be counter-cyclical and temporary. This is the solution put forward in Germany, which has also been applied, to a lower extent, in France and in other countries. Partial unemployment is the preferred means of this form of "social" sharing. Its limit is obviously the fact that it only applies to existing workers.

If we admit that there are multiple solutions to work-sharing, and that collective organization may be equally effective as sharing by the market, then it possible to discuss on the two methods and their combinations.

We must choose whether to focus on the market or on collective organization. Focus "market-sharing" means reducing the coverage of unemployment insurance, limit workers' rights, and avoid minimum wages. If "social" sharing is favored, it must instead have an explicit national wage policy with widely applied minimum wage and generous unemployment insurance. There also need to be an extensive system of partial unemployment to manage work sharing during the cycle; this latter feature could be

organized across the EU to maximize the stabilizing effect of the system in case of asymmetric shocks. In the long term it is the social and political debate that should choose the sectors to develop and elaborate guidelines on working time references.

Market and social work sharing are not totally exclusive. In practice, labor market institutions combine both methods. In France the weakened application of labor laws has allowed the massive development of part-time and short or very short duration jobs. But the effect of this liberalization has been limited by the existence of a minimum wage and relatively generous unemployment insurance. In Germany, work sharing was overwhelmingly initiated by the reduction of unemployment insurance in the context of no general minimum wage. But in this crisis it is “social” work sharing arrangements that have prevented a sharp rise in unemployment. The prospect of establishing a general minimum wage in Germany should bring it closer to the social sharing model. It would be useful to have a collective discussion about the desirable combination of liberal and social sharing allowing to put in place incentives to work when at full employment, to set the minimum acceptable wage in each European country, and to clarify the boundaries between decent work and undignified minijobs.

The problem is that without explicit discussion about these choices, countries that favor the neo-liberal work sharing will always have an advantage over their EU partners. In a world of pure competition, the lowest bidder in the social sphere will always win. With massive unemployment, unhindered markets will lead to sharp wage decreases that will either directly, or indirectly through cost decreases in non-tradable service sectors, allow to increase competitiveness with respect to countries that choose to keep labor protection. The broad lines of social choice work-sharing and income should be set collectively if we want to lift Europe out of a vicious circle of social competition that ultimately can only lead to dissolving the Union.

3. Social Europe in practice

Beyond the grand themes of economic and labor market policies adapted to the heterogeneous European countries’ situations, we must face many practical questions in order to make compat-

ible the free movement of persons, competition in markets for goods and services and free choice by each country about its social protection and labor market institutions.

Two approaches are possible depending on whether one wishes to maintain the full freedom of Member States in the definition and management of social protection or one opts for reducing such a freedom with the scope of progressing towards common institutions including social protection. The prospect of social harmonization, similar to what was done for the goods market, must be studied. But it goes without saying that this is a very long-term perspective and only limited progress is to be expected in the coming decade.⁴

The first option involves the precise definition of “social boundaries” to ensure States that their laws cannot be circumvented by opportunistic choices about the location of businesses and jobs. The domain of public social protection must be clearly defined, so that the European Court of Justice does not have to deliberate about the boundaries between public and private insurance, creating a legal uncertainty that hampers the freedom choice of States. The principle of free movement of persons could be strengthened by clarifying the mechanisms of detaching workers and strengthening the rights of citizens of the Union who successively work in different countries. For detached workers, in addition to issues of controlling the application of the rules, which are being resolved, the problem is the link with the country of origin’s social protection system. This rule allows direct competition with social workers in the country where the worker is detached, if the latter is a country that imposes higher social contributions.⁵ There are two options to avoid this competition: the first is to require the detached workers to pay social contributions in the destination country, with benefits computed proportionally to the time spent paying contributions to each

4. Europe realized the customs union and the complete unification of the goods market. The Eurozone has unified its currency... and yet the EU has not been able to establish a common tax base for corporate taxes. It also failed to unify indirect taxation. As a consequence, tax competition crowds out economic activity. It is clear that a social unification of Europe is much more complex and, if we want to undertake it, is a much longer term endeavor.

5. When a country finance social spending by general taxation, the social contribution rate is lower. It follows that even with identical coverage detaching a worker in a country with higher social contributions will be cheaper than directly hiring a worker in situ.

system Public or private systems of social insurances would have legally no right to impose a qualification period (particularly with regard to retirement). This solution would also clarify the situation of those working in different countries without being detached; for these workers it should actually be considered independently of the treatment of detached workers. A second option would be for the detached workers to maintain affiliation to the country of origin's social security system that would then receive the contributions from the destination country's system the paid contributions. If these were larger than normal, additional rights could be triggered. If these are lower, then the firm should cover the difference for its detached worker. Whatever the chosen solution, improving the transferability of contributions and rights would also be favorable to the mobility of workers

In Europe many systems coexist that for financing rely on taxes and contributions in a different way, which implement public social protection system, or mixed public and private systems with different coverage, which chose different levels of protection for the poor or for families. This explains the difficulty of harmonizing, and the postponement, since the beginning of the EU, of a social union. Some partial solutions have nevertheless been proposed, for unemployment benefits, whose countercyclical features are paramount.⁶

A common unemployment insurance scheme would subtract it from the domain of fiscal rules and allow using it more effectively as an automatic stabilizer after both a symmetric and or asymmetric shock. It is nevertheless impossible to endow the Commission with the management of the scheme, or even with the condition for the aid. Unemployment insurance systems are based on very different combinations of general means-tested benefits and direct benefits of the unemployment insurance scheme. Therefore, seemingly more generous countries in terms of direct unemployment benefits can in the end be as generous towards the unemployed as countries that use a mix of different benefits (Coquet, 2013). A Global regulation of unemployment

6. The proposal of a euro-wide unemployment insurance is old. It is found already in 1975 in the "Marjolin" Report (Commission of the European Communities (1975)). For a recent proposal, see for example: Henrik Enderlin, Luca Guttenberg Jann and Spiess (2013)

insurance is therefore illusory and very risky for the unemployed of countries that have opted for social regulation of the labor market. The only possibility is implementing a system of unconditional transfers in case of negative economic shocks. Being proportional to the magnitude of the shock, such a transfer system would help strengthening the automatic stabilization of the economy, which would benefit the whole Union. Such a mechanism would also strengthen solidarity among Member States of the Union. A precondition for it, on the other hand, would be that an agreement is reached on the broad guidelines for economic and social policies of the European Union. Europe has probably reached the point at which the method of small steps and gradual harmonization is no longer effective. Even small steps now involve an agreement on principles that is not limited to form. Referring to social Europe without specifying the content is no longer enough.

R f rences

- Blot C., J. Creel and X. Timbeau, 2014. "L'aust rit  maniaco-d pressive, parlons-en !" *Blog de l'Ofce*, 5 f vrier 2014 (<http://www.ofce.sciences-po.fr/blog/lausterite-maniaco-depressive/>)
- Cochard M., G. Cornilleau and  . Heyer, 2010. "Les march s du travail dans la crise." *Economie et statistique*, 438-440.
- Commission des communaut s europ ennes, 1975. Direction g n rale des affaires  conomiques et financi res, *Rapport du groupe de r flexion "Union  conomique et mon taire 1980."* II/675/3/74-F (http://www.cvce.eu/obj/le_rapport_marjolin_bruelles_mars_1975-fr-93d25b61-6148-453d-9fa7-9e220e874dc5.html)
- Coquet B., 2013. *L'assurance ch mage, Une politique malmen e*, L'Harmattan, Paris.
- Cornilleau G., 2012. "France-Allemagne : le grand  cart d mographique." *Blog de l'Ofce*, 28 sept. 2012 (<http://www.ofce.sciences-po.fr/blog/france-allemagne-le-grand-ecart-demographique/>)
- Enderlin H., L. Guttenberg and J. Spiess, 2013. "Une assurance contre les chocs conjoncturels dans la zone euro." *Notre Europe*, Institut Jacques Delors, *Etudes et rapports*, september.
- OFCE, IMK and ECLM, 2014. "From austerity to stagnation how to avoid the deflation trap, The independent Annual Growth Survey 2014.", *Revue de l'OFCE, Macroeconomic outlook, Special Issue*. (<http://www.ofce.sciences-po.fr/pdf/revue/si2014/si2014.pdf>).

FROM AUSTERITY TO SOCIAL INVESTMENT: EUROPE NEEDS TO SHOW THE WAY

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Since 2010, austerity measures are imposed in Europe to deal with the crisis of sovereign debt, and to reassure financial markets. The measures adopted by various European governments are mainly of three types: social protection reforms, privatization, freezing civil servants' wages and reducing their number. Cuts are planned in social spending, structural reforms are imposed: increase in the age of retirement, increased flexibility of the labour market, lower unemployment benefits to make work more attractive, hours of work required for recipient of assistance, increased competition in the area of health and social services. These policies lead to the destruction of the social cohesion of Southern and Eastern European countries, and ruin further the little solidarity between the peoples of Europe. Europe must lead the way tomorrow to conduct policies for the future, and to support countries in their efforts for social investment.

The measures adopted by governments in Europe, as well as European institutions' recommendations are mainly of three types: reform of social security, privatizations, freezing of salaries and reduction of the number of employees in the public sector. Social spending cuts are planned and structural reforms imposed: rise in retirement age, more flexibility of the labour market, reduction of unemployment benefits in order to make work more attractive, mandatory work for people receiving unemployment assistance, strengthened competition in health and social services.

1. Austerity plans hit social policies first

Social spending is at the front line of austerity plans. In addition to budget cuts, structural reforms are implemented (it is often a result of pressures coming from European institutions, joined by the International Monetary Fund and the European Central Bank in the case of Greece): increased labour market flexibility, augmentation of the retirement age, strengthened competition in services including health and social services.

In many countries, plans include the reduction of unemployment benefits and the assistance for the unemployed who reach the end of their benefits (Germany, Portugal, Romania and Denmark – before the change of government – Ireland, United Kingdom, Spain, Greece). The aim is to “make work pay” by reducing social benefits in a way that makes employment preferable to the situation of assistance, as if, in the current situation of economic stagnation, people were currently choosing to be unemployed!

Several countries also plan to reduce the possibility for unemployed to refuse a job proposition (Spain, United Kingdom). Many measures have been adopted in order to increase labour market flexibility, in particular for workers under open-ended contracts (Spain, Portugal, and Denmark). The unemployed are not the only ones concerned by the loss of benefits. Many countries are also planning reductions on government healthcare spending. These measures have been imposed on Greece, Ireland and Portugal as pre-conditions for the help they receive.

Austerity plans also provide for a more fundamental pension reform justified by the need to “reassure” financial markets and rating agencies. Plans include either to push back the age of retirement beyond the age of 65 in Ireland, Spain, the Czech Republic and Germany or to accelerate increases in retirement age already decided (United Kingdom). Spanish and Greek reforms also include the modification of the method for calculating pensions. The IMF and European aid package for Greece, Romania or Bulgaria was conditional on pension reform. In October 2011, pressure was also brought to bear on Italy to re-open procedures for a pension reform.

2. The mainstream economic analysis is wrong and inefficient

On the whole, these measures are not original, except for their scale and swiftness. They are directly inspired by an economic theory that became dominant during the 1980s. For this theory, social policies are conceived as a burden for the economy. It is said that they discourage investment and job creation and are accused of being too generous, discouraging thus the unemployed to search for a new job. Since we have been applying these ideas for the past thirty years we must think that they are still valid. However, is it the social protection system really responsible for the economic difficulties in Europe and for the current situation of over-indebtedness in some states?

For at least two decades, the strategy to return to growth and job creation is based on the freedom of the supply side of the economy, which is supposed to be constrained and inhibited by the expansion of the welfare state. A reduction in taxes and rigidity to restore profits was supposed to stimulate the growth of investment; this would lead to more job creation (it is the famous theorem of Helmut Schmidt, 1974).

Indeed, these policies restored profits and permitted the rich people to become richer but neither investment, nor employment were stimulated. A recent BIT study (*Making Markets work for jobs*, published in 2011) underlines that in developed countries, profits rose by 83% between 2000 and 2009; however, the level of investment stagnated during the same period. Increase in profits lead to dividend growth for the shareholders (from 29% of the profits in 2000 to 36% in 2009) and stimulated financial investments rather than productive investments (Financial investments of non financial companies rose from 81.2% of developed countries' GDP in 1996 to 132.2% in 2007).

The error was to believe that markets would be able to transform profits into productive investments. The huge incomes have been mainly used for speculation, while the middle class has had to borrow to maintain a certain standard of living. It is precisely this private debt, which provoked the financial crisis of 2007/2008.

Furthermore, companies' strategies to restore margin were, most of the time, against the idea of quality employment. In order to limit production costs, companies chose to restrict the number of

employees and to develop outsourcing and relocation. This led to the development of non-standard and temporary jobs. Overall, growth is not created by this strategy, and poor-quality, low-wage jobs are generated. Since these are frequently subsidized, the cost to the state is much more than the unemployment benefits. This strategy based on social dumping and on the impoverishment of employees and states, explains to a large extent the current budget problems faced by the states that chose to adopt it.

As indicated by the weak economic growth in 2011 and 2012 and by the 2013 forecasts, these policies do not allow the economy to recover. It is strange that we should continue implementing such policies, which have already failed and which are responsible for the current crisis. Instead, it would be preferable to build a new economic and social model based on the necessary investments for the future. Today, the countries, which are suffering most, are those which had not made the necessary investments in the past.

Instead of relying on the markets for delivering the necessary investment, we need to decide to collectively invest in innovative and sustainable economic activities, capable of stimulating the creation of high quality jobs. These investments also need to provide people with the qualifications necessary to succeed in a new economy driven by innovation and knowledge. It is necessary to invest in human capital, in early-years childcare, in education, in lifelong learning and in policies which reconcile professional and private life.

In February 2012, a timid start was made by the European Commission on that direction. It was proposed to Member States to adopt a “social investment package”. This package takes up ideas developed by numerous academics¹ (and some European countries, especially the Nordic countries). These ideas present social policies not as a cost for the economy but as an investment. We will develop on the policies that have to be implemented (and financed in part at the European level) in the remainder of this paper.

1. See Morel, Nathalie, Palier, Bruno, Palme, Joakim (eds) *Towards a Social Investment Welfare State ?*, Policy Press.

3. Employment quality

To abandon the current practice of cuts in social spending, we must first stop considering work as a cost that needs to be cut down, but think of it more as an asset to invest in. Investing in good working conditions does not lead to forced and exhausting productivity, but to productivity based on creativity, innovation and quality.

Investing in employment quality needs to become both a common goal and a normal corporate behaviour. This attitude concerns a whole package of social rights with a view to safeguarding career paths, access to training for those who work, even with non-standard contracts (fixed-term contracts, temporary employment, subsidized employment etc.), a workflow which makes the workplace compatible with family life, jobs that give a sense of satisfaction to the employees and allow everyone to be represented in the decision-making of the company. It is also necessary to guarantee for all those in work access to social security (currently, for example, women, as part-time workers and due to interruptions in their career, have usually less retirement benefits, compared to that of men).

A key element for the improvement of the quality of employment and production relates to professional qualifications. First, access to professional training should be guaranteed for everyone, but, more structurally, it is necessary to redirect public policy towards investment in human capital, from childhood to retirement. This will require providing high quality childcare, an equal system of education, an investment in youth, a better balance between working and family life for both women and men.

4. Lifelong learning for everyone

New information and communication technologies have increased the pace of change. Knowledge and know-how, all become quickly obsolete. In this context, the ability of permanently renewing the activities exposed to global competition is key for economic success. It is essential to transform companies into organizations that learn and change, and permit employees to be included in this constant evolution of skills.

Nowadays, the most dynamic and innovating economies in Europe are those which can improve working conditions for everyone, reduce the difference of wages, encourage “creative work” and autonomy, and develop the logic of learning inside their company.

In order to avoid labour market polarization between those increasing and renewing their skills, and those who do not, or even worse, whose skills are degraded during their career, it is critically important to develop a professional lifelong training policy for everyone.

Among the proposals for strengthening employment and inclusion of persons who are on the fringe of the labour market, some highlight the placement and the back-to-work policy, for any jobs, even for those which require less skills than those of the person; others insist on the necessity of subsidized lower-skilled jobs, by reducing social contributions on low wages; and most give a supplement to the salaries of poor workers. Focusing on quality employment and the strategy outlined in this paper, is based on the organization of professional transitions, access to lifelong job training, and support of mobility through high wages guarantee during training and employment search, without loss of social rights. It is under these conditions that professional and geographical mobility (every year, 1/3 of Danish workers are changing position or company) or the extension of the retirement age (official retirement was at the age of 63,8 in Sweden in 2008), are socially acceptable.

5. Improving education and care facilities for all the young children and investment in youth

Nowadays, the unemployment affects first, all those who are in lack of qualifications or those whose qualifications have become obsolete. How do we enable everybody to acquire the necessary skills for the current economy? Many things are actually determined during the very early ages. Cognitive capacities, communication and relational abilities, which are nowadays necessary for school and professional success, are acquired even before the age of compulsory schooling. Children who were born in privileged socio-economic backgrounds take advantage of many

opportunities for the growth and development of their capacities, something that is not the rule in disadvantaged backgrounds. Offering a chance to young people without exceptions presupposes an early childhood public service of high quality, easily accessible to everyone.

While we were prepared to support the emergence of the third age (retirement) and while we consider it important to prepare the support of the fourth age (dependence), the youth continue to be neglected by social policies. This particular period of life did not exist fifty years ago (where we used to pass directly from school to work or marriage); while it is a life-period when many things happen and many choices have to be made (for example to carry out studies, to begin a career, to find housing, to set-up a family, to have children), it is nonetheless neglected by public policies. All over Europe, young people are suffering most from the difficult economic situation. That is why it is essential to give a second chance to young people who left the school system, to focus on particular employment policies for access to a first job and to ensure a minimum wage for young people without any other resources. Europe could pride itself on promoting and financing a plan for youth to help young Europeans, which could be based on those first initiatives (youth package and youth guarantee).

6. Encourage equality between men and women

To encourage work for all under the best possible conditions also means thinking about professional equality between men and women. While young girls are more successful than boys in higher education, women have less satisfying careers than men (less-paid, more often in part-time jobs, less-responsibility). Women have to pay the professional price because they are the ones who interrupt or stop their careers to take care of children (and also of elderly dependent persons). Allowing women to get the career they want and which corresponds to their qualifications, requires the adoption of an egalitarian policy in the familial sphere, the deep restructuring of the parental leave system, in order to encourage households to better allocate childcare (a parental leave shorter but better paid, where the duration increases if it is shared between the parents).

The development of high-quality childcare services for younger children makes it possible to meet the new needs of both families and children, but it also creates stable, qualified and well-protected employment, contrary to the private provision of home care services (subsidized since long in France and in more and more countries), which are part-time jobs with low levels of qualification, low-paid and often marked by insecurity. This makes professional and family life compatible and so it encourages women to find employment that corresponds to what they want (obtaining financial autonomy), but also serves a double social need: reducing the risk of poverty for children (which is always lower in households where parents work, in particular for single parent families) and to increase employment rates.

7. Conclusion

These new policies have already proved their success at both levels, economic and social. At a time when many states suffocate by the debt and the imposed austerity measures, Europe could lead the way, not only by relying on its social investment package, but also with concrete financial actions: a plan of massive support for young Europeans (starting with the youth package and the youth guarantee recently adopted) and a proposal to stop recording as public expenditure, in the definition of Maastricht, the child-care expenditures and start considering them as an investment, in order to stimulate early childhood policy. That might be a start for the reconciliation of some European citizens with Europe, whose austerity policies do nothing but dig its own grave.

References

- IRES, 2010. "L'État social à l'épreuve de l'austérité." *Chronique internationale* 127.
- Morel N., B. Palier, et B. Palme, 2012. *Towards a Social Investment Welfare State ?*. Basingtoke, Policy Press.

A GREEN “NEW DEAL” TO BOOST EUROPE

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To exit the Great Recession and initiate the transition towards a low carbon economy, we propose a public-private investment plan in the energetic transition of about 2 points per year of European GDP. The key concept of this plan is the opportunity to reconsider the criteria for public finances using, as the goal of stability a concept of public debt net of created public assets (in percent of GDP), instead of gross public debt. An impartial body (eg the European Commission) could assess *ex post* and *ex ante* the value of investments, creating the incentives for coherent and effective public expenditure policies.

1. The Great Recession and the great emergency

It is common to multiply the gloomy warnings about climate change and its consequences for the future. The Copenhagen conference failed to impose a mechanism to replace and expand the Kyoto Protocol. The commitment of a large number of countries, including the United States and China, not to let average global temperature to increase by more than 2°C compared to preindustrial levels was not followed by radical action. Yearly emissions of per capita greenhouse gas emissions in developed countries have not been reduced, and no concrete mechanism seems to be able to make this happen. In particular, carbon taxes, and the price per ton of carbon are at very low levels. However, these levels of annual emissions (in Europe, about 12 Gt of CO₂ equivalent per year and per capita, including emissions generated in the manufacture and transportation of goods and services) are well beyond the earth's absorption capacity. Emissions' growth in emerging markets (both because of raising living standard and of

the relocation of global industries) adds to the still high emission level in developed countries and has led to a per capita emission level of more than 40 Gt CO₂ equivalent, whereas climate stability would require yearly emissions of 10 Gt.¹ Repeating a dramatic message ends up emptying it of its meaning, but one would have wished that, confronted with this policy inaction the “very serious persons” that Paul Krugman mocks would take the subject at heart when it became serious, and begun implement operating solutions. According to the IEA (International Energy Agency, 2011), given the climate emergency, and the depreciation rates of existing machinery or buildings, each year of delay in the adoption of the greenhouse gas emissions reduction path will increase the future cost of adoption since it will force early scrapping of the non “low carbon” equipment.

The 2008 economic and financial crisis, also called the Great Recession, also legs us another disaster, namely the state of our economies, particularly in Europe. The sovereign debt crisis has triggered an unprecedented austerity for fear of a sudden stop of public debt financing in Europe. The possibility for financial markets to arbitrate between 18 public debts, all issued in euros, has forced some countries, in greater difficulty than others, to quickly reduce their public deficit. As fiscal multipliers were very high – because of the state of the financial system, of deflation expectations, and of private agents’ deteriorated balance sheets – cutting spending or raising taxes did not reduce debt and deficit as much as it was hoped. The synchronization of restrictive fiscal policy amplified the problem. As a result, public deficits were reduced very little, leaving the original problem (convincing financial markets) even worse than before. The implicit pooling of public debt in the euro zone ended the downward spiral of the euro; but high unemployment persists, together with economies on the verge of deflation. Therefore, the implicit mutualization

1. Between 2000 and the date at which emissions are stabilized at 10 GteCO₂ is stabilized, 2000 GteCO₂ can be emitted. We can therefore continue to emit at current rates (which implies an effort of reduction by developed countries to compensate for the convergence of living standards and emissions of emerging countries) until 2050. Beyond that date we will need to emit around one ton of CO₂ equivalent per capita. (GIEC, 2007, International Energy Agency, 2011).

does not completely rule out the return of a sovereign debt crisis in the eurozone.

On the eve of the European elections of May 2014 and of the Parties climate conference of Paris in November and December 2015, all leverage available to engage on a path of significant greenhouse emissions reduction is an absolute imperative. Finding a way to make the goal of reducing greenhouse gas emissions compatible with exiting the crisis appears to be unavoidable. The purpose of this brief is to try to link these two issues so as to emerge from the pernicious logic that under the false pretext that we need not to leave debt to our children, fails to give them a habitable planet.

2. What the 2008 crisis leaves us

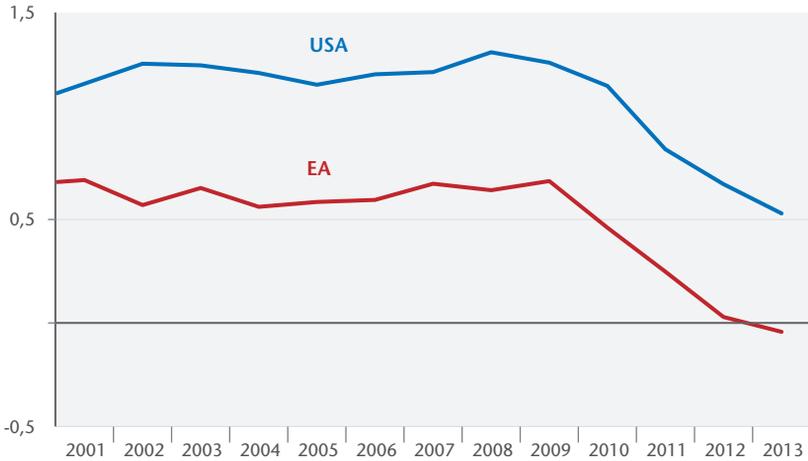
The reduction of economic activity and of public deficits had a considerable impact on public investment and residential investment in developed countries, particularly in the eurozone. Reducing investment does not generally result in the improvement of an agent’s balance sheet, since today’s foregone expenditure is largely offset by the need of compensating future investment. Cutting investment in physical assets may also result in crossing the “collapse threshold”, which will require higher investment in the future than what was currently saved. In the case of education, a cut in the flow of investment is irreversible, as generations who have received little or poor education do not return to school in the future. This is why intelligent budget rules allow a special treatment of investment, or correct the measure of public deficit with the change in value of net assets (public or global). A reduction in the gross deficit resulting in an equal deterioration of net assets, does not improve financial sustainability.

However, in the Great Recession, in many countries, both public investment and housing investment were cut. Figure 1 shows public investment as a percent of potential output as defined by the OECD (in this case the EO93 database of May 2013.² The OECD estimated slowdown in potential growth since

2. http://www.oecd-ilibrary.org/economics/data/oecd-economic-outlook-statistics-and-projections/oecd-economic-outlook-no-93_data-00655-en?isPartOf=/content/datacollection/eo-data-en

2007, justified by the medium-term impact of the crisis, is debatable and largely reduces the effect of cutting public investment. If we had retained and extended the 2007 OECD estimate of potential growth, then the reduction of the ratio appears more severe. Figure 1 shows that public investment was cut from 2010 and the years 2011 to 2013 saw this trend continue.

Figure 1. Public net investment in percentage of potential activity



Source: *Economic Outlook*, 93, May 2013.

Table 1 details the share of public investment reduction in the structural budget consolidation effort made between 2009 and 2013 and identifies the countries that have used the final public investment as a means of adjust their public finances. In most countries, public investment, measured relative to potential GDP, decreased. Part of this decrease results from the revision of potential GDP (in the Eurozone, potential GDP has been revised by 10%, so the investment to GDP ratio is decreased by 0.06% GDP), but, nevertheless, public investment did decrease, in some countries strongly. In the crisis countries the pre-crisis period was characterized by high public investment, but net investment is today clearly negative in crisis, the period before 2007 was very auspicious in terms of public investment but is now negative net investment in these countries. At the euro area level the reduction of public investment is 0.6 percent of GDP compared to 0.7 in the United States. A recovery of public investment is needed to offset

the depreciation that is in progress. This recovery should be colored of green.

Table 1. Share of structural effort imputed to the decline in net public investment

	USA	GBR	EUZ	DEU	FRA	ITA	ESP	NLD	PRT	IRL
% Structural effort given by investment	14	-9	17	6	10	23	46	10	29	9
Public investment,% potential GDP (1990-2007)	1.2	0.6	0.6	-0.1	0.8	0.6	2.0	0.9	1.7	2.6
Public investment,% potential GDP (2013)	0.5	0.9	0.0	-0.2	0.4	-0.2	-0.6	0.6	-0.6	0.5
OECD potential revision 2013-2007, in %	-7	-12	-13	-10	-10	-14	-22	-11	-16	-35

The first line reads as follows: For a budget restriction of 1 percentage point of GDP in the United States, public investment in the United States has been reduced by 0.14 percentage point of GDP compared to the average ratio of public investment to potential GDP in the years 1990-2007.

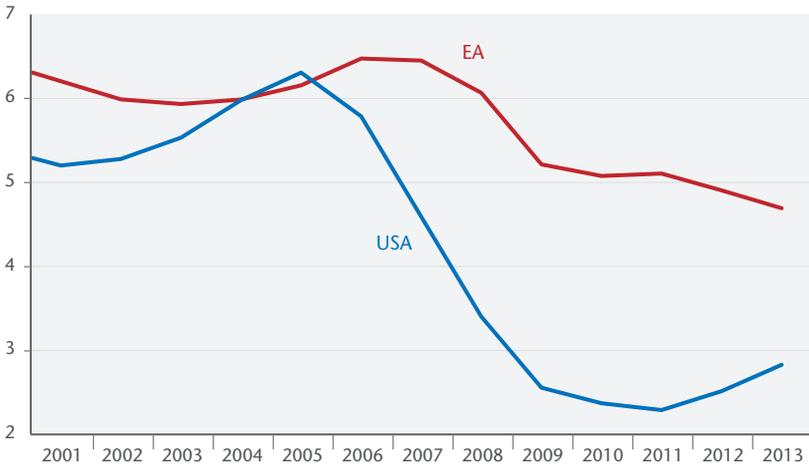
Sources: Economic Outlook, 93, author's calculations.

Housing investment has the same profile, as Figure 2 shows. At the euro zone level, nearly 2 percentage points of GDP of housing investment were lost (almost 2.5 percentage points in the USA). The fall in housing investment is related to the collapse of real estate markets, to real estate bubbles bursts in some countries (notably the United States and Spain) and to reduced bank loans to households. This decline followed a long period of stability (since 1990, gross investment in housing fluctuates at around 6 percentage points of GDP in the Eurozone and 5.5 in the United States; the real estate bubble has led to increased investment of 1 percentage point of GDP in the United States against a less than half a percentage point in the Eurozone). The correction is severe and investment today lags behind the needs implied by demographics and existing capital depreciation.

3. A “Green New Deal”

Supporting growth is a priority today. This must first and foremost rely on a public investment plan, reversing the trend described above, and supporting the also urgent energy transition. A second pillar should be a recovery of private investment in residential housing, needed to ensure sufficient housing, and to make the transition to an energy efficient housing stock. These two

Figure 2. Private residential investment as percentage of potential activity



Source: *Economic Outlook*, 93, May 2013.

pillars would allow to attain the double objective of exiting the crisis and reducing greenhouse gas emissions.

In the iAGS 2014 report (OFCE, 2013) we detail a public investment plan in energy transition. Table 2 gives an overview. This plan was put together drawing from materials such as white papers or *Roadmaps* published by the European Commission or the European Union. The iAGS 2014 report estimated the required investment surplus compared to a “*business as usual*” scenario. When investments in energy transition come in substitution of regular investments, there is no accounting of extra investment. The numbers in table 2 refer to extra investment over business as usual investment, and not, as usually, numbers generally presented as gross investment.

Such a package could increase investment in the euro area of an amount between 150 and 200 euro billions, i.e. between 1.4 and 2 percentage points of GDP, if we add to the energy transition a recovery of public investment towards the pre-crisis trends. Combined with fiscal multipliers still high (especially considering that investment would be made more than proportionally in countries in crisis), one would expect this package to boost the European economy for about 2 percentage points of GDP. Although insuffi-

cient to completely overcome the crisis, this stimulus would be a great step forward.

Table 2. Green New Deal

Billions of Euros per year

	Annual investment EA17	Annual investment EU28
"Low carbon" Transeuropean Transport Network (TEN-T)	50.7	80.00
European Integrated Electric networks	6.65	9.39
Renewable energy production	26.83	40.60
Buildings' thermal renovation	48.43	64.31
Total	132.61 (1.4% of GDP)	194.30 (1.5% of GDP)

Sources: iAGS Report 2014 from (EC, 2007, 2011a, 2011b, 2011c; ENTSO-E, 2012; EREC (European Renewable Energy Council), 2011, ETUC, 2013, "The EU climate and energy package – European Commission", nd).

4. Financed by public debt

The financing of such a package is the key to its impact on the economy. The proposal here is to primarily finance it through public debt. This idea may seem shocking when, at least at first sight, the sovereign debt crisis in the euro zone was due to excessive public debt. Yet the public investment implied by this package has a positive net worth since it allows preparing for the energy transition. This positive net value is computed on the basis of a widely studied implicit price for the ton of carbon depends. Given today's low sovereign interest rates, the target price needs not to be very high (less than 50 euros per tCO₂). The built infrastructures should target profitability. Various instruments can be used for this aim. The objective would to make explicit the price, so far implicit, of a ton of carbon, either through emissions rights trading or through a carbon tax. Standards, legal obligations or tax incentives may be other instruments to change incentives and behaviors.

In the case of buildings energy efficiency, financing is not necessarily public. To overcome blockages generally recognized that prevent positive net value investment to be realized, we propose *third party investors* schemes, in which specific agencies carry the debt related to investments and finance it through the realized energy savings. This can be combined with tax incentives. Even in this case, a price per ton of carbon helps to increase the profitability of investment. This debt would not be public, but

in order to reduce its cost (and hence to increase investment profitability), a public guaranteed can be designed, through large and regulated institutions.

5. Conclusion: how to control public investment?

The crisis was accompanied by a slowdown in investment at a moment in which, for a reasonable estimate of the implicit price of carbon reasonable, investment in the energy transition would be most needed and convenient. Low sovereigns rates in the euro area make financing this investment easy, and its sustainability is guaranteed by the accumulation of assets and unchanged net debt. The value of these assets will depend on the implicit price of carbon but explicit price changes may also be required as changes in behavior are likely to require strong price signals.

It remains that the proposal to increase debt may seem at odds with the current trend of public deficit reduction. The paradox is that fiscal rules in the EU focus on an irrelevant criterion, gross debt, instead of taking into account the correct measure, that is debt net of accumulated assets. Measuring the latter, however, requires an assessment of the value of these assets and the assessment can be problematic because it is based on a projection into the future, of the return of the investment, but also of the changes in behavior induced by policies changes. For instance building freight railway transportation infrastructure is easy. But the value of such infrastructures depends on the quality of connection opened, the density of the network and the matching with flows of freight. A well-designed infrastructure will only have value if it is used and if the transport by road turns out to be more expensive than transport by rail. This can be done through an environmental tax, higher tolls, a ban on road transit or subsidies to rail transport. But without at least one of these accompanying policies, the new infrastructure may fail to capture traffic and therefore have no value.

The risk is that to revive our economies, heavy investment is undertaken where it is easy to invest rather than where it is appropriate. A number of schemes to stimulate investment (whether residential or infrastructure) are done with this perspective, and then suffer from low profitability. The European Commission has a potentially important tool to overcome this flaw. Current fiscal

criteria are based on gross debt, and they give governments an incentive to reduce investment. If budget criteria were softened for investments with positive net worth, in an intelligent golden rule, the Commission could have a dialogue with European government on a project by project basis. In assessing *a posteriori*, the effectiveness of investment, both in itself and concerning accompanying policies, the European Commission could control the quality of investments, avoiding the pitfall of grandiose but inadequate constructions. This would be a new instrument of public finance management in Europe and a way out of the absurd public debt hunting, including when it originates in necessary investment.

Some concrete proposals to overcome the crisis and at the same time address the urgency of energy transitions could be:

- Revive European economies through a public and private investment plan of about 2 percentage points of GDP per year, broken down as follows:
 - Public investment in the transition to low carbon economy, of the order of one percentage point of GDP per year;
 - End of under-investment in existing infrastructure (around 0.5 percentage points of GDP);
 - Stimulus by various mechanisms of energy transition in the residential sector (around 0.5 percent of GDP).
- Partially finance the plan with public debt by amending the treaty provisions on stability and growth, so that governments need to target debt net of asset creation instead of gross debt. This goes along with proposals on introducing a golden rule;
- Support the investment plan with any tool that ensures its profitability (tax policies, emission rights, fiscal policies, taxation, subsidies or standards);
- Give a (trusted) third party the *ex ante* and *ex post* assessment of the value of public investment for the calculation of net debt to guarantee the policy coherence and effectiveness of proposed investments.

COMPETITION AND INNOVATION

A CHALLENGE FOR THE EUROPEAN UNION

Jean-Luc Gaffard and Lionel Nesta

OFCE-Sciences Po

Real divergences in economic performances that emerge between countries belonging to the Eurozone make it necessary to define an economic policy oriented towards a re-industrialization of some regions in Europe. In a world characterized by irreversibility of investment and imperfection of market information, supply-side reforms should consist in establishing a framework aimed at supporting both competition and cooperation between the various players of innovation, and thus allowing firm strategies to be successful. This requires reconsidering both national and European policies that are growth-enhancing, that is, industrial policy, competition policy, labour policy, regional policy, and banking policy. However, any change in the industrial landscape in Europe will only be possible if a new macroeconomic policy prevents the inappropriate destruction of productive capacities.

1. A dangerous problem

There is now a new and very dangerous problem in Europe: the increasing real divergence between European countries, particularly between France and Germany both in terms of industry development and in terms of trade balance, which feeds the obsession of competitiveness.

As a matter of fact, unit labour costs have increased in France relatively to what happened in Germany. This is a signal of an increasing competitiveness gap, during the last decade. But it would be a mistake to only focus on costs and prices while the main difference between the two countries lies in the nature of industrial organisation.

Germany is characterised by a dense and stable group of medium-sized firms (16,000 firms with between 500 and 5,000 employees). Production segments are outsourced to low-cost countries with highly qualified employees, so that real wage costs (taking into account the labour costs of countries in Eastern Europe) are about 20% lower than those of other countries in the euro area.

In France, large firms that are specialised in a specific area – aeronautics, energy, environment, luxury goods, etc. – perform exceptionally well on global markets. However, when these firms relocate some part of their business, it is to less-developed countries most often characterised by low wages and low skills. On the other hand, there are too few medium-sized firms (4,000 firms between 500 and 5,000 employees), and successful SMEs are rapidly sold and acquired by large firms, when they should instead be allowed to grow without losing their identity. The consequence is that firms belonging to large segments of industry are more sensitive to price competition.

During the 1990s, in manufacturing sector, the total firm turnover (entry plus exit rates) was about 3% in Germany, while it was around 11% in France. Moreover, firm exit outpaced firm entry in France, while Germany experienced a more balanced pattern. Entry and exit rates are positively correlated in Germany, while they are negatively correlated in France. This can be interpreted as meaning that the creative destruction process is predominant in Germany, while sector profit shock is predominant in France. However, another interpretation is possible: that in Germany market structures are relatively stabilised and investment behaviours are relatively well co-ordinated, while more turbulences persist in France, revealing a weaker degree of co-ordination within industries which affect firms' performance.

Given this gap, and according to the actual consensus, supply or structural reforms would be the only way to re-establish growth and full employment, and to favour real convergence among the European countries. These reforms would consist in promoting competition to diminish economic rents on both the goods and the labour markets. In France for example, dismantle the monopoly power of taxis aimed at overcoming the shortage of supply should allow increasing competition and reducing prices.

Opening on Sunday local stores and more generally introducing less rigidity in labour times would favour employment and growth. Indeed, although the reduction of abnormal economic rents is well grounded in several instances, dismantling entry barriers is not the sole means neither a simple means to promote industrial development.

2. Real coordination issues

Competition plays a central role in the co-ordination process, as it determines the way in which the relevant market information is being made available step-by-step, so that the required adjustments in productive capacity can actually take place.

But, rather than conceiving competition as a state of affairs, it is more appropriate to conceive it as a process, whereby new products are being introduced onto the markets, and incumbents are being challenged by potential and actual new players. Competition helps to make innovation process viable and to obtain the productivity gains deriving from it. In this light, it is not only aimed at equalising supply and demand in a given market and technological environment, but also has to adapt both structure and technology to the fresh opportunities created by expanding markets.

This is where argument about the real nature of the information process comes to rescue. Innovation requires both competitive and complementary investments. On the one hand, investment by a single firm will be profitable provided, first, that the volume of investment by rival does not exceed a critical threshold, and, secondly, that the volume of complementary investments reaches a minimum level. On the other hand, investments decisions are taken by entrepreneurs on the basis of expectations whose reliability depends on their being grounded on adequate market information that is not immediately available. As a consequence, entrepreneurs will have access to the market information they require only if there exists a variety of restraints to which their freedom of action is subject. These restraints feature as imperfections or frictions, which are in the nature of the competitive system.

In this context, policies to ameliorate industry performance should be aimed at improving market information to firms, creating a more stable environment, and should then help indus-

tries to converge towards a stable and efficient market structure. Obviously, governments do not have more accurate information than firms do about markets and technologies. But they have the devices that help firms to access information about market conditions, and thus in their efforts to innovate and grow.

3. Industrial policy

From this perspective, industrial policy, rather than being targeted at promoting specific sectors or technology, must be an array of horizontal interventions that concern the relations between firms, between firms and their employees, between firms and financial intermediaries, or between firms and public research institutions. This final option is preferable to any other since such intervention does not shield any particular firm or sector, but rather increases the quality of incentives, which are strongly dependent on conditions of co-ordination. Subsidies must not be devoted at supporting national champions or high tech sectors *per se*, but at encouraging cooperation between firms, including, of course, the firms that compete with each other.

Hence industrial policies should be horizontal. But instead of replicating or re-establishing the conditions of full (perfect) competition as required by those calling for supply-side reforms, they should be aimed at validating some restraints or monopolist practices that allow firms acquiring market information.

In other words, competition policy must consider the distortions that the growth process necessarily carries in and the necessity of having temporary market imperfections. Instead of targeting a mythic state of perfect competition, it must be aimed at enforcing the viability of the innovation process.

Connexions among firms can then be viewed as a necessary aspect of the production and the dissemination of knowledge in a market economy. In this perspective it is surely incorrect to call them imperfections: Schumpeter coined them as the natural features of an economic process driven by creative destruction.

Therefore policy-makers face a dilemma. On the one hand, contrived arrangements help firms to invest and innovate, thereby contributing to economic growth. On the other hand, it is some-

times in the nature of these arrangements to shelter inefficiency or extract undue profits. But it is another story to argue that all imperfections are against the public interest *per se*. It is then necessary to provide policy makers with guidelines by specifying the circumstances in which these practices may or may not be justified.

4. Labour market policy

The prevailing view in the literature and in most political circles is that the possibility of hiring and firing freely, and of offering wages at a freely-chosen level, is an incentive to invest and hence favours innovation and growth.

Yet the fundamental aspect of a thorough process of innovation is the creation of skills. It results from job tenure and, thereby, favours on-the-job training. Employment protection affects not only employment but also human capital accumulation, and hence productivity and welfare. Then, labour market policies, far from being oriented to the dismantlement of the welfare state, should promote labour market organisation and forms of bargaining between employers and employees that help with adjustment to technological and market changes. In France, it would be more appropriate to reinforce bargaining procedures between employers and employees, and to revise the working of internal labour markets rather than suppress them.

Therefore, the effect of employment security regulation and of the partial reforms recently carried out, which extend to the use of temporary contracts for newly-hired workers leaving employment protection unchanged for permanent workers, and hence make the labour market more flexible, have only favoured a segmentation of this market and the appearance of a new category of workers, namely the 'short-term' workers. This segmentation might even be an obstacle to workers' mobility and growth by preventing voluntary quits from 'solid' jobs.

5. Banking policy

Banking policy must be considered in relation to the problem of providing firms facing innovation processes with the required amount of liquidity, and the right distribution of this liquidity at

the right moment. In this light, financial institutions are important, not so much because they are associated with incentives schemes that are more or less appropriate in the sense of determining a higher or lower saving rate, a better or a worse resource allocation, but as for the capacity to smooth the fluctuations of outcome. Therefore the debate about the role and the functions of banks appears as essential.

When liquidity is needed to cover sunk costs associated with research and development investments, what is at stake is the ability of financial intermediaries to support firms along this path. As a matter of fact, relationship-banks offer continuation – lending at more favourable terms than transaction banks to innovative firms. This is why the regulation of the banking system is necessary. The separation between credit banks (or relationship-banks) and investment banks as proposed by European commission aims at ensuring that credit bank activities are not unduly influenced by a short-term oriented strategy associated with risky investment bank activities.

6. Regional policy

It goes without saying that industrial policies have a territorial dimension insofar as there are local learning processes. But, there is no evidence that local or regional governments are better informed than the national government, have a higher degree of competence, or are less easily captured by lobbyists. Competition between regional governments may prove inefficient if its main consequence is to promote the performance of a small number of regions at the detriment of all others. Such inequalities would be detrimental to real convergence and affect negatively global efficiency.

The conjecture can be made that the smaller the regions, the more wasteful competition between them will be. This might be so because small regions are more inclined to compete with each other by proposing generic advantages such as tax reductions or set-up subsidies, which reduce the sunk costs that firms have to bear and make setting-up more instable. Larger regions, on the other hand, would be more inclined to promote cooperation between firms within and outside its territory, and to pay subsidies aimed at sustaining large public programmes such as environ-

mental programmes. The issues to deal with are to build on critical mass, to allow diversification or differentiation among regions, and most of all, to facilitate adjustments to changes affecting technologies and preferences.

Clusters as well as technological competencies are the result of innovation rather than a precondition of it. Again, policy-makers face a dilemma, which concerns both the appropriate level of decision-making and the relevant geographical area of public intervention.

7. The European challenge

The main objective of any policy in Europe should be to re-establish the conditions of a convergence in real terms, which means re-establishing a balanced trade between the large European countries, and, thus, re-industrialising some parts of the euro-zone. This requires reconsidering both national and European policies that are growth-enhancing, that is, competition policy, labour policy, regional policy, but also industrial policy *stricto sensu*.

First of all, it would be worthwhile to abandon the idea that supply-side reforms making the factor markets – among which the labour market – more flexible in all countries would reinforce the competitiveness of each without damaging global demand and growth at the European level. Efforts by governments to reduce the cost of labour can only be bounded, for the target cannot be to reach a cost of labour similar to that of, say, Eastern European countries. More flexibility in the factor market may be worthwhile only when backed by strong public support. For example, it has been shown that liberalization in the energy markets has led to an upsurge in innovation in renewable energy only when strong policies supporting green innovation are being implemented. In the same vein, the search for increased flexibility in the labour market encouraging professional mobility should be accompanied by strong support to lifelong learning, among other things. More than securing employment, public policies should secure employability.

Therefore, in contrast with the common belief that competition demands no or low state intervention, industrial policy and competition policy might appear as complements in favouring innovation. Supply-side reforms should consist in establishing a

policy framework aimed at supporting *both* competition *and* cooperation between the various players of innovation processes. This is largely the case in Germany, but not in France and not at the European level. Therefore, other countries in Europe should take advantage of the German experience and revisit their national policies. At the same time, a new European initiative should take the form of large public programmes defined at appropriate geographic levels, that is, levels that permit avoiding the destructive competition between regions or countries, typically technological programmes in transversal fields such as energy production and distribution, transportation, health-related industries such as the pharmaceutical industry.

The main reason for developing such programmes is that they qualify as general purpose technologies, rather than being sector specific both in terms of activities, firms and countries, and they aim at improving market information for firms, creating a more stable environment, making it credible and relevant for these firms to invest.

It remains that changes in the industrial landscape in Europe will only be possible if a new macroeconomic policy is under way. Generalised austerity is now destroying large segments of the European industry. Although fiscal consolidation is a necessary part of a rebalancing strategy, it should be progressive, going hand to hand with structural reforms that correspond to a coherent variety of capitalism.

EUROPEAN IMMIGRATION AND ASYLUM POLICIES

THE NEED FOR A CHANGE OF APPROACH

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European immigration and asylum policies need to be reconsidered. Indeed, the current approach is based on a misdiagnosis: contrary to prevailing opinion, receiving third-country nationals is not only financially sustainable but also economically strategic. As a result, current measures have proven to be detrimental: the European union EU and its Member States have both deprived themselves of a means of responsible development and lost their standing in the protection of rights. In other words, the mismanagement of a politically sensitive issue has unfortunately harmed the competitiveness and credibility of the EU and its Member States.

Observations, comments, criticisms, proposals and recommendations on European immigration and asylum policies are in order as the European elections approach and as the follow-up to the Stockholm programme is being prepared.¹ The Tampere 1999,² Hague 2004,³ and Stockholm 2009⁴ Programmes set guidelines for European immigration and asylum policies that are both politically and legally challenging.

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1. See the answers to the consultation the Commission launched on 29 October 2013 on the *Debate on the future of Home Affairs policies: An open and safe Europe – what next?*, http://ec.europa.eu/dgs/home-affairs/what-is-new/public-consultation/2013/consulting_0027_en.htm
 2. Tampere European Council, 15 & 16 October 1999, Presidency Conclusions, points 13 to 17.
 3. Brussels European Council, 4 & 5 November 2004, Presidency Conclusions, points 14 to 20.
 4. Brussels European Council, 10 & 11 December 2009, Presidency Conclusions, points 25 to 33.

First, the current approach is politically awkward insofar as it results from a misdiagnosis that has led to wrong remedies, which have in turn caused new problems. The misdiagnosis comes from the idea that the reception of immigrants and asylum seekers is not financially sustainable in Europe because of the economic crisis and budgetary constraints. While four fifths of migration is South-South migration, many economic studies show that receiving migrants is an engine for growth, and some call for removing visa restrictions on migration in order to promote economic recovery in the South and North (OECD, 2013; Bodvarsson and Van den Berg, 2013). Such a misreading has impacted the choice of remedies. Methods that involve choosing, and actually reducing, legal immigration by strengthening external border controls – and externalising them if necessary – have led to unfortunate consequences: the latter notably include the wrongful refusal to recognise international protection, the worrisome growth in illegal immigration, the dangerous contribution to a nationalist and even xenophobic atmosphere, the increasing number of shipwreck victims, and the consolidation of human trafficking networks.⁵

The current approach is also legally problematic. Connecting immigration and asylum issues has simply allowed the fundamental right to asylum⁶ to be undermined by migration management imperatives (Julien-Laferrière *et ali.*, 2013; Belorgey, 2013). The need for a change of approach seems imperative and involves making a distinction between asylum and immigration, which pertain to different political dynamics and legal frameworks. The goal is to develop a new model for addressing asylum and immigration.

1. Rethinking the approach to granting asylum

While the asylum package (recast) that is supposed to create a Common European Asylum System CEAS is to be enforced, a crit-

5. Nils Muižnieks, Council of Europe Commissioner for Human Rights, “European Union border control policies undermine human rights”, CP, 06/11/2013.

6. The issue is not only a moral imperative affirmed at the international level by the 1948 Universal Declaration of Human Rights (Art. 14), but also a legal obligation under the 1951 Geneva Convention relating to the status of refugees along with the 1967 New York Protocol, the Charter of Fundamental Rights of the European Union (Art. 18) and indirectly the European Convention for the Protection of Human Rights and Fundamental Freedoms (Art. 3).

ical analysis of it calls for rethinking the approach the European Union has developed on asylum. Directive 2011/95/EU (the so-called Recast Qualification Directive) provisions that are clear, precise and unconditional, entered into force on 22 December 2013.⁷ For now, Member States have been working to reform their national asylum systems to ensure the transposition into national law of this text, as well as the recast Directives on Reception Conditions⁸ and Asylum Procedures.⁹ The application of the Dublin III Regulation 604/2013/EU started 1 January 2014;¹⁰ whereas Eurodac Regulation 603/2013/EU will start on 20 July 2011.¹¹ This is therefore a good time to ask whether the CEAS complies with obligations under the 1951 Geneva Convention: without requiring that States grant asylum to refugees, it imposes an obligation of *non-refoulement* to a country where their life or freedom might be threatened on one of the grounds listed in the Convention (art. 33-1), and an obligation to grant immunity from penalties for their illegal entry or stay (art. 31-1). Yet the difficulties asylum seekers experience in submitting an application for international protection – and even more so in being granted it – highlight the necessity to simplify access to international protection on the one hand, and guarantee protection to those who need it on the other.

1.1. The need to simplify access to protection

In order to guarantee the effectiveness of the fundamental right of asylum, two objectives must be formulated and pursued: first, the clarity of the procedures for determining the EU Member State that is responsible for examining the asylum applications lodged by a third country national should be enhanced; secondly, the

7. Directive 2011/95/EU of 13 December 2011 amending Directive 2004/83/EC of 29 April 2004 on standards for the qualification of third-country nationals as refugees or as persons who need temporary protection.

8. Directive 2013/33/EU of 26 June 2013 amending Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers in Member States.

9. Directive 2013/32/EU of 26 June 2013 amending Directive 2005/85/EC of 1st December 2005 on procedures for granting and withdrawing refugee status.

10. Regulation 604/2013/EU of 26 June 2013 amending Regulation 343/2003/EC of 18 February 2003 on determining the Member State responsible for examining an asylum application lodged by a third-country national, also known as Dublin II.

11. Regulation 603/2013/EU of 26 June 2013 amending Regulation Eurodac 2725/2000/EC of 11 December 2000 on the creation of a system for the registration and comparison of the fingerprints of asylum seekers; Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a massive influx of displaced persons.

reception conditions of asylum seekers should place greater emphasis on the principle of human dignity.

Under the Dublin II and now Dublin III Regulations, only one Member State is responsible for considering an asylum application presented by a third country national on the EU territory. It is thus assumed that all Member States process asylum applications in the same way. This is deleterious fiction that contributes to glaring inequalities in access to the right to asylum. The criteria used to determine which State is responsible for examining an asylum application tend to entrust to the State with which the asylum-seeker has family, administrative or material ties. Yet the responsibility for handling the application is most often entrusted to the State where the migrant first entered the EU. Access to international protection hence depends on the geographical origin, financial resources and migration paths of third-country nationals seeking asylum. This results in great discrepancy in the effectiveness of such a fundamental right; which is not compatible with international, European, national legal instruments of human rights protection.

Regarding the reception conditions, they harshly depend on the concerned EU Member States. In some of them (i.e. Greece, Bulgaria), the ECtHR has notably acknowledged inhuman and degrading treatments, as defined in Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.¹² Moreover, reception conditions are highly tricky as the almost systematic detention of asylum seekers, including vulnerable people, is admitted. While the Commission was pushing for a framework on detention during the negotiations on the Reception Conditions Directive and Dublin III Regulation, Member States imposed vague formulations granting them considerable leeway in their interpretation, assessment and action. To be sure, States cannot detain a person solely on the ground that s/he is requesting international protection. However, Member States can detain asylum seekers on a great number of loosely termed grounds. The situation of asylum seekers is thus in quite an odd manner finally similar to the one of illegally staying third country

12. ECH Court, 21 01 2011, *M.S.S. v. Belgium and Greece*, Req. n° 30696/09; CJEU, GC, 21/12 2011, *N.S. et alii.*, joined cases C-411/10 & C-493/10.

nationals. More importantly, it trivializes the deprivation of liberty that, besides, limits asylum seekers' access to the legal assistance needed to seek international protection and claim their corresponding rights (Basilien-Gainche, 2014).

1.2. The need to grant required international protection

In addition to the need to simplify access to international protection, there is a need to grant asylum to those who need it. The CEAS fails in doing so because it allows for many procedural exemptions and substantive limitations.

The recast Asylum Procedures Directive establishes common standards of safeguards and guarantees to access a fair and efficient asylum procedure. The procedures applicable for the examination of asylum applications have actually proven to be long. The new EU norms tend therefore to make them faster and firmer, even though such procedures may in practice last 21 months some asylum seekers are likely to spend in detention. However States sought and managed to drastically reduce the duration of asylum procedures when applications are deemed inadmissible or unfounded, in order not to better guarantee effective access to the right to asylum but to better limit public expenses. Two issues are worth mentioning (Julien-Laferrière *et ali.* 2013). First, numerous grounds allow the bypassing of normal and lengthy procedures, and some are in contradiction with the principles linked to the right to asylum (the principle whereby the asylum seeker does not need to have any document whatsoever to be able to exit a State's territory and enter the territory of another State to seek international protection). Second, such derogatory accelerated procedures allow States to swiftly remove asylum seekers. Admittedly, judicial remedies exist. However, effective protection against a decision of refusal of entry into the territory or access to normal procedures is particularly hindered by the lack of an automatic suspensive effect.¹³

This is the case when an asylum seeker is the national of a "safe country of origin." This notion is very awkward because Member States do not interpret it in the same way and some consider notable dangerous countries as safe (i.e. France regarded Ukraine as

13. Also see ECH Court, 2 02 2012, *I.M. v. France*, n° 9152/09.

a safe country of origin until April 2014). Moreover, it promotes a narrow view of international protection and of the right of asylum. If asylum seekers are unable to benefit from the conventional protection and so the refugee status, they might be granted EU subsidiary protection. Nevertheless these two forms of international protection are not equivalent: the former confers the right to a long-term residence permit whereas the latter only guarantees a temporary residence permit. While the number of asylum applications has risen (435 000 in 2013 versus 332 000 in 2012 and 302 000 in 2011), this increase needs to be assessed within a longer time frame (480 000 in 2001). The HCR has estimated that the number of asylum seekers has fallen by 42% over the past decade across industrialised countries.¹⁴ While 102 700 third country nationals received protection in 2012 in Europe, they only accounted for 25% of asylum seekers.¹⁵ Worldwide, the CEAS is the most developed harmonised regional asylum regime. Yet it is still largely conditioned by its implementation by Member States that view the right to asylum as an element of immigration management. This also needs to be reconsidered.

2. Renewing the approach to immigration management

Although not all migrants who come to Europe looking for a better life are asylum seekers, many of them are. This is the case of the Eritrean, Somali and Syrian migrants who venture onto the Mediterranean sea to escape the persecution stemming from the conflicts that plague their countries of origin. 20.000 of them have perished in the Mediterranean over the past 20 years, including 4 000 in the last two years. It can besides be argued that the situation of those shipwrecked at sea does not fall within the scope of migration policy, but rather the basic obligation to protect the right to live that is of particular importance in the Law of the Sea.¹⁶ Yet the reality of these shipwrecks highlights the harmful implications, to say the least, of the policies implemented by the European Union and its Members States to manage migration flows and

14. <http://www.unhcr.fr/522f2ad59.pdf>

15. Eurostat, "Decisions on asylum applications in the EU27", 96/2013 to 18/06/2013.

16. Labayle H., 2013. "Lampedusa: chronique de drames annoncés" [Lampedusa: chronicle of tragedies], <http://www.gdr-elsj.eu/2013/10/14/asile/lampedusa-chronique-de-drames-annonces/>

control EU external borders. Two aspects of the relevant policies should be reviewed in particular: it is necessary to question and evaluate the redefinition of the EU borders as they are relocated, extra-territorialised and de-territorialized.

2.1. The need to question the extra-territorialisation of borders

In order to secure Europe's borders, migration policies have focused on preventing the arrival of migrants by outsourcing border control to neighbouring States on the one hand, and by entrusting the Frontex agency with the coordination of surveillance operations on the other.

The EU and its States have transferred the responsibility for monitoring borders to neighbouring countries by prompting them to accept migration related provisions in some agreements, or to conclude readmission agreements, as a condition of development aid.¹⁷ In order to meet European requirements, neighbouring countries modify their norms and practices: they have employed ethnic profiling at border crossings, confiscation of travel documents, detention in centres funded by the EU, inhuman and degrading treatments, and practices of pushback of migrants to the desert. Moreover neighbouring States tend to prevent the departure of people suspected of wanting to apply for asylum in Europe, hence depriving them of the right to leave a country, including theirs (COE, 2013). This raises some concern about the credibility of EU discourses regarding human rights protection.

Frontex coordination of border surveillance operations brings up the issue, among other troubling ones, of the responsibility for the violation of rights committed during related operations. The aim of these being to locate, catch and redirect migrants to their country of departure or transit, interceptions can take place in international waters or in the territorial waters of third countries, in conjunction with police authorities of partner States under working agreements concluded and implemented by Frontex without any monitoring.¹⁸ The issue of shared responsibility is

17. Billet C., 2010. "EC Readmission Agreements: A Prime Instrument of the External Dimension of the EU's Fight against Irregular Immigration", *European Journal of Migration and Law*, 12/1, 45-79.

18. Own-initiative inquiry launched by the European Ombudsman on the compliance of Frontex with fundamental rights obligations, OI/5/2012/BEH-MHZ.

complex – the legislative gaps have not yet been filled by the case law of the Luxembourg Court.¹⁹ However, the Council of Europe has asserted its positions: the Strasbourg Court found Italy in violation of its extra-territorial human rights obligations under the ECHR, reminding the country of the implications of exercising its jurisdiction over a vessel flying its flag and receiving shipwreck victims on the high seas;²⁰ the Parliamentary Assembly has worked on the problem of *Lives Lost in the Mediterranean Sea* (doc. 12895 of 5 April 2012). Yet the responsibility that Frontex must bear raises the question of what to do with people who have been rescued, particularly where they should be disembarked. Here the denial of responsibility highlights the lack of solidarity between the Member States. Furthermore, Frontex is in charge of managing Eurosur, the European Border Surveillance System that has been running since December 2013 and includes all the personal databases involved in home affairs.

2.2. The need to assess the digitalization of borders

The extra-territorialisation of borders occurs through their digitalization: migrants' personal data are collected, consulted, and exploited throughout their journey.

The goal of the European Union and its Members is to create a digital grid over the space they wish to control by using databases, and to streamline cooperation between the authorities that use them through interoperability between these databases (*Visa Information System; Schengen Information System; European Electronic System of Travel Authorisation; Entry/Exit System; Register Traveller Programme; Eurodac system*). There are problems with the guarantees offered to migrants regarding the use of personal data thus collected and used. In particular, the new version of the Eurodac Regulation paves the way for national and European police authorities invoking fights against organised crime and terrorism to access this database of asylum-seeker fingerprints. This results in the assimilation of asylum seekers and migrants on the one hand, with criminals and terrorists on the other, thereby fostering a xenophobic atmosphere and encouraging a criminalizing approach,

19. CJEU, GC, 5 09 2012, *Parliament v. Council*, case C-355/10.

20. ECH Court, GC, 23 02 2012, *Hirsi Jamaa v. Italie*, Req. n° 27765/09.

which both break down integration processes and social cohesion in Europe.

Nevertheless using these new surveillance technologies comes at a cost. One is financial: the public funding of technological research and development programmes that support the activities of private sector operators, as well as the public expenses of purchasing systems developed by these private operators who market them (Bigo *et al.*, 2010). There is also a political cost, given that the surveillance operations are conducted by private operators, for instance when processing visa applications on behalf of consulates, or when airline companies check identity documents of their boarding passengers. For the time being, the efficiency of such expenditures, which have reached billions of euros, has not been questioned.

3. Conclusion

Reforming Europe involves questioning the model that European immigration and asylum policies are following, in order to unveil its disadvantages and contradictions. The idea is to profoundly change the way the EU and its Member States deal with such a sensitive issue.

A few recommendations:

1. Conduct quantified cost-benefit analyses of external border control policies by dividing total expenditures by the number of intercepted third-country nationals; by considering the social cost of the absence of a willingness to integrate foreign populations and to provide a welcome worthy of asylum seekers; by accounting for the foregone economic growth incurred by the closing of borders.
2. Reverse the conception and implementation of immigration and asylum policies by clearly distinguishing asylum rights from migration management; by understanding sovereignty as the power not only to refuse, but also to accept the entry of a third-country national; by defining guidelines no longer in terms of private operators' needs, but rather in terms of public authorities' ambitions; by considering immigration as

a driver of responsible development; and by asserting asylum as a fundamental right to which there may be no derogation.

Reference

- Basilien-Gainche M.-L., 2014. "Regard critique sur le Régime d'Asile Européen Commun." [Critical analysis of the Common European Asylum System], *Europe*, 2: 6–10.
- Belorgey J.-M., 2013. *Le droit d'asile*, LGDJ.
- Bigo D., Carrera S., Guild E. and Walkern R., 2010. *Europe's 21st Century Challenge: Delivering Liberty and Security*, Ashgate.
- Bodvarsson O. B. and Van den Berg H., 2013. *The Economics of Immigration*. Springer.
- Commissioner for Human Rights at the European Council, 2013. *The right to Leave a Country*, COE.
- Julien-Laferrière F., Preuss-Laussinotte S. and Pouly C., 2013. "Régime d'asile européen commun." [Common European Asylum System], *Dictionnaire permanent – Droit des étrangers [Permanent dictionary – rights of foreigners]*, 226–1.
- OECD, 2013. *International Migration Outlook*.

EUROPE'S TRADE POLICY BETWEEN THE SEARCH FOR POLITICAL STABILITY AND ECONOMIC GROWTH

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This paper situates the EU's trade policy in the much broader context of the integration of regional and international markets. While the WTO is arguably the best forum to negotiate quantifiable targets and to handle dispute settlement, its primacy in regulatory matters is less obvious. The EU is engaged in the negotiation of numerous preferential trade and investment agreements, with objectives that differ depending on the partner country or region. This article therefore proposes distinguishing between a policy for a “near circle” (countries neighbouring the EU), dominated by a goal of political stability, and a policy for a “broad circle” (countries with a level of development comparable to that of the EU), dominated by a goal of economic growth.

The European Union (EU) is the world's leading commercial player, in terms of both exports and imports. This supremacy is however crumbling rapidly with the emergence of new trading countries, in Asia in particular. The EU has opened its borders, and is continuing to do so. In 2014, the average Most Favoured Nation (MFN) tariff applied was 5.5%, with a rate reaching 14.8% in agriculture and high rates (over 10%) on a significant number of industrial products (WTO, 2013).²

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1. The opinions expressed in this article are the responsibility of the authors alone.
 2. It should be pointed out that this article does not deal with the access of the least developed countries to the European market, nor the preferences accorded to the developing countries.

The WTO has lost its role as a forum for negotiations, but not with regard to disputes. The Doha Round has stalled, perhaps for a long time. The reasons for this are to be found in the major geopolitical swing that is taking place between the United States, Europe and Asia-Pacific, and not in trade relations *per se*. The stall in the Doha process is one of the effects of this ongoing mutation, which is affecting a wide range of diverse issues, including climate change, water supplies and the struggle to promote growth in Africa.³ Free trade zones of an unprecedented size are being negotiated, such as the Trans-Atlantic Trade and Investment Partnership (TTIP), the Trans-Pacific Partnership (TPP), the EU-Japan agreement, the China-Japan-Korea agreement, and the Taiwan-mainland China agreement. These agreements pose a real systemic risk to the functioning of the international trading system due to their ability to fragment the global economy. These cross negotiations deserve special consideration with regard to the strategy of opening up the European market.

The EU has exclusive competence in trade and investment policy. Before starting negotiations over a preferential trade and investment agreement (PTIA), the Commission must first obtain permission from the Council, which decides on a qualified majority. To ratify an agreement, the European Parliament (simple majority) and the Council (qualified majority) vote on the agreements in their entirety. The unanimity of the Council is required in some cases, particularly for the ratification of provisions relating to intellectual property rights to certain services (audiovisual, education and health).

This article distinguishes between the EU's trade policy towards its neighbours (near circle) and policy towards its trading partners that are at a similar stage of development (broad circle). Indeed, signing a PTIA with countries in the broad circle is a unique way to boost European growth. This differentiation between near circle and broad circle policies will help to situate the EU's trade policy within a perspective of economic diplomacy based on differentiated gains: on the one hand, stability and peace in a regionally

3. A great deal of research has been devoted to the determinants of the marasm ensnaring the WTO. Messerlin (2012a) presents an overview of the international and domestic reasons.

integrated EU; and on the other, economic growth stimulated by targeted global integration.

1. Policy on the near circle: the argument of political stability

The EU's trade policy for its neighbourhood is a key element in its external activity. Based on full membership in the EU or on the conclusion of a comprehensive agreement, this near circle trade policy aims to promote peace and stability on the borders of the EU on the one hand and economic development through the expansion of the common market on the other. The political aspect corresponds to a short-term need, particularly in response to the recent crises on the southern and eastern borders of the EU. The economic criterion is reflected in the spread of European regulations in a space that is thus conducive to the flow of goods, services, people and capital.

The EU is composed of 28 members. The recent accession of Croatia is the result of a gradual process that started well before July 2013. Furthermore, this will encourage the faster economic integration of other Balkan countries so as to reduce trade distortions, mainly in Bosnia and Herzegovina and Serbia (Boulanger, Ferrari, Michalek Vinyes, 2013). Serbia is a candidate for EU membership, along with Iceland,⁴ Montenegro, the Former Yugoslav Republic of Macedonia, and Turkey. However, these countries are at different stages of integration, with the customs union between the EU and Turkey having entered into force in 1995⁵ while Serbia began accession negotiations only in January 2014. Potential candidates such as Albania, Bosnia-Herzegovina and Kosovo,⁶ for which accession negotiations have not yet been opened, are on a path for integration into the common market so as to benefit from a process of stabilization and association.

4. Iceland, a member of the European Free Trade Association (EFTA), like Liechtenstein, Norway and Sweden, has already entered into a process of integration into the European common market. Unlike the European Neighbourhood Policy, EU-EFTA relations are dictated by economic considerations, as with the broad circle policy with countries at a similar stage of development.

5. Andorra and Saint Marin also have a customs union with the EU.

6. "This designation is without prejudice to positions on its status and is in conformity with Resolution 1244 of the United Nations Security Council as well as with the opinion of the International Court of Justice on the Declaration of Independence of Kosovo".

The European Neighbourhood Policy (ENP), which groups the countries bordering the EU, is a tool of economic diplomacy of inestimable influence. The 16 countries in the European Neighbourhood Policy will bring together more than 330 million people in 2030, corresponding to two-thirds of the EU population.⁷ The neighbourhood policy is based on the negotiation of PTIA agreements that are called Deep and Comprehensive Free Trade Agreement (DCFTAs). Unlike existing agreements – association with the South, or partnership and cooperation with Eastern Europe – the scope of liberalization covered by a DCFTA goes well beyond simply reducing barriers or opening tariff quotas. It includes trade in services, government procurement, competition, intellectual property rights, and the protection of investments. It tends to integrate the ENP countries into the European single market gradually, as they adopt numerous technical standards and regulations (e.g. sanitary and phytosanitary measures) and develop enhanced cooperation.⁸ In order to cope in particular with the high cost of implementing European standards, the European Neighbourhood and Partnership Instrument (ENPI), which covers the 16 ENP countries and Russia, has a budget of about 15 billion euros for the period 2014-2020.

The ENP countries are characterized by 1) an asymmetric trade relationship with the EU, 2) a significant growth potential but requiring prior political stability, and 3) a mediocre regulatory system, aside from a few exceptions such as Georgia, whose Doing Business performance indicator outstrips that of some EU countries. The greater freedom of movement of goods and services should be accompanied by an increase in capital flows between partner countries and by transparency and predictability in the regulatory framework. Likewise, cooperation between countries should allow greater mobility of people. It is worth noting that the latter already exists and should be enhanced by the cooperation

7. The enlargement policy countries will represent some 20% of the EU's population in 2030, mainly due to the weight of Turkey, which will have a population of between 81 and 93 million by 2030 (UN Population and World Prospects, 2010 projections: <http://www.un.org/en/development/desa/population/>).

8. The Eastern Partnership, the Union for the Mediterranean and Black Sea Synergy are regional forums that help to strengthen cooperation projects that include public and private bodies.

provided for in the DCFTAs. The number of visas issued is a good indicator of mobility (Table 1).

Table 1. Europe's near circle policy

	EU total import.	EU total export.	GDP/capita	Doing Business ¹	Schengen Visas	DCFTA Negotiations
	2011 ln %	2011 ln %	2012 ln €	2014 rank	2012 1000s	As of 01/01/ 2014
EU	6.4 ²	7.8 ³	25,500	5-103		
Neighbourhood policy - South						
Algeria	52.1	50.8	4.405	153	280.4	
Egypt	29.1	30.7	2.360	128	120.9	Underway
Israel	34.6	27.7	24.969	35	11.3	
Jordan	20.6	4.7	3.815	119	34.7	Underway
Lebanon	36.1	11.9	8.110	111	85.5	
Morocco	48.3	57.5	2.380	87	322.1	Underway
Palestine	9.2*	1.7*	1.890	138	2.5	
Syria	25.3*	40.5*	2.114*	165	3.3	
Tunisia	57.5	76.4	3.334	51	110.1	Underway
Neighbourhood policy - East						
Armenia	26.0	46.0	2.364	37	35.8	Agreed
Azerbaijan	32.3	59.6	5.820	70	49.9	
Belorussia	18.9	38.9	5.204	63	693.4	
Georgia	29.0	26.5	2.700	8	59.4	Agreed
Moldova	43.5	48.9	1.662	78	48.6	Agreed
Ukraine	31.2	26.3	2.935	112	1 283.0	Underway
Enlargement policy						
<i>Adhesion negotiations in course</i>			Iceland, Montenegro, Macedonia, Serbia, Turkey			
<i>Potential candidate countries</i>			Albania, Bosnia-Herzegovina, Kosovo			

1. The higher a country's rank, the weaker its regulatory performance.

2. Exports from the EU towards the ENP countries as a % of total EU exports

3. Imports of the EU from ENP countries as a % of total EU imports.

* 2010.

Sources: European Commission (2013), Eurostat, Doing Business.

The benefits expected from integration depend on a significant reduction in non-tariff barriers. Modelling this shows that the aggregate GDP of Egypt, Morocco and Tunisia could increase by more than 10 billion euros in 2020 (2.7% of GDP) due to a DCFTA, compared with the status quo in trade matters. While the increase in European GDP is much less (6 billion), the gains from a stable

and transparent regulatory environment (conducive to investments), and especially the non-monetary gains (political stability), are not taken into account (Boulanger, Kavallari, Rau, Rutten, 2013). Finally, any trade openness leads to winners and losers, which should be targeted by public redistribution and adjustment policies, such as provisions of the CAP related to investments in human and physical capital or measures funded by the European Globalization Adjustment Fund helping people who have lost their jobs as a result of major structural changes in international trade.

In the short term, the economic integration of the near circle is first and foremost a political objective. For the broad circle, the objective is above all economic, and PTIA negotiations need to be guided by the search for growth.

2. Policy on the broad circle: the argument of economic growth

Any PTIA signed by the EU must be evaluated according to its ability to stimulate growth in Europe and to promote any reforms needed there. PTIAs that are unable to stimulate growth will not be of interest to Europe's top politicians (Heads of State or Government, Ministers of Finance). They will thus be left to the special interests, leading to only limited results while exacerbating the internal conflicts that any liberalization triggers, even a small-scale one.

This ability to stimulate growth requires that the partner of a PTIA should satisfy three conditions: 1) it must be sufficiently large compared to the huge European economy, 2) it must have a good "regulatory quality" compared to that of Europe, and 3) it must be well connected to the rest of the world. If the Doha round had succeeded in opening all the world's economies simultaneously on a non-discriminatory basis, Europe's businesses would have been able to find countries that meet these three conditions at any time. Liberalization based on a series of PTIA negotiations makes it necessary to determine which countries will be most likely to meet these three criteria, prior to launching negotiations.

The size criterion is based on a simple argument: the larger the size of the partner's markets, the more European firms can increase the economies of scale of their operations and the variety of their

products, and, as a consequence, the more the PTIA in question will help to change the relative prices of goods and services in Europe. This change in relative prices is the mechanism that enables Europe's consumers to find more varied and cheaper products and services. This size criterion has a crucial time dimension, because the EU is facing a pressing need for growth. The EU has little interest today in initiating negotiations with a partner that is too small to have an impact on the EU economy, even if this partner has a huge growth potential in the distant future. Being late in opening negotiations (once the partner has passed its peak size) has a considerable opportunity cost for Europe's growth.

The EU-Korea agreement could be considered a model. This recent agreement (signed in 2010) between two developed economies takes into account almost all the subjects that other PTIA negotiators need to address. In addition, there is good reason to believe that the provisions of the TPP will be close to those of the EU-Korea Economic Partnership Agreement (and Korea-USA). This observation stems from Korea's very peculiar positioning as a dual "platform" in terms of both investment and trade. The expected benefits of this agreement for trade are considerable, on the order of 50 billion euros (Table 2).

The level of average trade protection between the EU and the countries of the broad circle is low (European exports, however, may face weighted average protection on the order of 10% imposed by India and Mercosur). It is possible to approximate a PTIA's growth potential by calculating for each agreement an indicator for the expansion of the European market, defined as the ratio between the GDP of the EU's trading partner and the EU's GDP (Table 2). This ratio provides an order of magnitude of the potential economies of scale and the diversity of goods that the given PTIA will allow European companies, and based on that, its ability to stimulate Europe's growth. This indicator reflects how predominant the TTIP and the EU-Japan agreement are. However, an EU-Taiwan-China agreement would allow the European market to expand by 176% by 2030 (not shown in Table 2, as negotiations have not opened), with Taiwan acting as a "platform" for the Chinese market.

Table 2. Europe's broad circle policy

	Average weighted duty imposed by the EU ¹	Average weighted duty on exports from EU ¹	Doing Business ²	Expansion of the European market	Expansion of the European market	PTIA Impact on EU GDP ³	PTIA Impact on EU exports ³	PTIA Impact on EU ³
	2011 In %	2011 In %	2014 Rank	2010 % GDP	2030 % GDP	billion euros	billion euros	billion euros
Negotiations concluded – model agreement								
Korea	1.8	2.1	7	6.3	6.7	9.5	25.2	23.6
Negotiations underway								
USA	1.8	1.3	4	94.7	110.9	65.7	29.4	29.0
Japan	3.2	3.7	27	33.9	36.1	42.9	25.2	25.8
Mercosur	4.4	10.5	116*	15.5	28.3	21.5	13.7	14.2
Canada	1.6	2.8	19	9.7	10.3	10.1	14.6	6.0
ASEAN	2.3	2.9	120*	11.4	53.2	4.4	33.7	30.1
India	2.5	9.0	134	10.7	49.7	3.8	11.6	11.8
GCC	0.4	5.8	23*	5.8	11.6	—	—	—

1. Average of duty applied weighted by the flow of imports/exports.

2. The higher a country's rank, the weaker its regulatory performance.

3. Different methodology applied to the examination of each free-trade agreement (FTA); results to be taken with caution (particularly for the breakdown of the agricultural sector).

* Indonesia (ASEAN), Brazil (Mercosur), United Arab Emirates (Gulf Cooperation Council).

Sources: European Commission (2012), Messerlin (2012b), Doing Business.

The criterion of regulatory quality is also based on a simple argument: the better the partner's regulations, the more the EU is forced to improve its own regulations to provide European companies with the same regulatory quality that its partner offers its own businesses. High quality regulations have proven to be a powerful tool for changing the relative prices of goods and services. Regulatory quality is especially important for the forthcoming PTIAs, which will be dominated by regulatory issues, such as product standards, regulations shaping the market in services, intellectual property rights, etc. Once again this indicator shows the predominance of the TTIP and the EU-Japan agreement. The specific economic impact of these PTIAs has been assessed, with the effects on GDP, exports and European imports presented in Table 2. The cumulative benefit of the negotiations currently underway will come to 150 billion euros, two-thirds of this simply for the TTIP and EU-Japan agreement. Over the longer term the cumulative gain could rise to 250 billion euros (2% of EU GDP) and generate 2 million jobs in the EU (European Commission, 2012).

Finally, it is necessary to highlight the key role that a PTIA offers the EU in terms of connectivity, or the platform effect. Clearly, a country that already has a network with preferential economic agreements with other countries offers Europe's businesses new opportunities – whether these businesses sell their products in the partner country itself or invest in the partner in order to produce the goods it sells in the countries connected to it. In other words, the connectivity of the EU's partner may allow European companies to benefit immediately from the partner's network of preferential agreements to penetrate these third countries; for example, Korea provides a platform to the United States, Canada, the countries of Southeast Asia, Japan and China (ASEAN +3).

In short, with respect to economic size, regulatory quality and connectivity (three key criteria for a PTIA to be a source of growth), the European Commission's choices in 2006 were unfortunate (Global Europe). None of the countries targeted by the Commission (Brazil, India and Russia) meets the above conditions (and the serious reluctance of these countries to open their economies to international competition further reinforces the unfortunate nature of the Commission's choices). On the other hand, the United States and Japan do meet these conditions, hence the EU's "pivot" towards these countries in 2013.

The TTIP and the EU-Japan agreement offer the best support available to meet the EU's urgent need for growth, because these two countries are large enough, have a sufficiently high regulatory quality, and are well connected enough to have an impact on the European economy. Like Korea, Japan, with its preferential agreements in force or under negotiation, seems to be an essential "platform" for European companies that are seeking access to other Asian economies, without needing to wait for the conclusion of PTIAs between the EU and the latter.

3. Will the EU be reactive and creative?

This paper situates the EU's trade policy in the much broader context of the integration of regional and international markets. In addition to the urgent need for political stability on the EU's borders, there is also a manifest need for economic growth. In the short term, the goal for the near circle is above all political, while

the broad circle can meet the goal of economic growth. While the WTO is arguably the best forum to negotiate quantifiable targets (e.g. reductions in tariff protection, discipline in agricultural policy) and handle the settlement of disputes, its primacy in regulatory matters is less obvious. Negotiations over regulations clearly require a certain trust between the prospective parties to the agreement. Today, no country has confidence in its 158 WTO partners.

This brief overview of the targeted opening of the European market and those of its main partners calls for several recommendations.

- The EU's trade policy in its own neighbourhood is a key element of its external activity. It is an invaluable tool for influence and stability. Whether through full membership in the EU or the conclusion of a DCFTA, the trade policy for the near circle is oriented above all at a political objective of stability and peace, as for European construction more generally.
- The integration of the neighbourhood and the application of the Community *acquis* require financial support, such as the European Neighbourhood and Partnership Instrument. While the short-term objective is above all political, these agreements must spread European regulations to third countries while also promoting investment and labour mobility between the partner countries, meaning an increased flow of goods, services, people and capital.
- The trade policy for the broad circle must meet the EU's urgent need for growth. The TTIP and the EU-Japan agreement offer the best support available, for these two countries are large enough and have a sufficient regulatory quality to have an impact on Europe's economy. In the short term, the EU-Japan agreement is nevertheless less controversial than the TTIP (the subject of polemics over issues such as genetically modified organisms, audiovisual matters, and personal data). An EU-Japan preferential agreement would also provide an exceptional trade platform towards Asia and ensure against the discriminatory effects of a possible TPP.

References

- Boulanger P., Ferrari E., Michalek J., Vinyes C., 2013. "Analysis of the impact of Croatia's accession to the EU on the agri-food sectors. A focus on trade and agricultural policies." *JRC Scientific and Policy Report*, EUR 25835 EN.
- Boulanger P., Kavallari A., Rau M-L., Rutten M., 2013. *Trade openness and investment in North Africa*. International Agricultural Trade Research Consortium, IATRC Symposium, Seville.
- European Commission, 2013. *Implementation of the European Neighbourhood Policy in 2012*. Statistical Annex, Joint Staff Working Document, SWD(2013) 87 final, 20/03/2013, Brussels.
- European Commission, 2012. *External sources of growth - Progress report on EU trade and investment relationships with key economic partners*. Commission Staff Working Document, July, Brussels.
- Messerlin P., 2012a. "Keeping the WTO busy while the Doha Round is stuck." *Tribune VoxEU*. 29.07.2012. <http://www.voxeu.org/article/keeping-wto-busy-while-doha-round-stuck>
- Messerlin, P., 2012b. *The EU Preferential Trade Agreements: Defining Priorities for a Debt-Ridden, Growth-Starving EU*. Working Paper of the Groupe d'Économie Mondiale, January 12, Sciences Po, Paris.
- WTO, 2013. *Examen des politiques commerciales*. Rapport du Secrétariat – Union européenne, WT/TPR/S/284, May 28, Geneva.

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Europe is experiencing a threefold crisis with economic, institutional as well as political dimensions. The crisis is first economic as European countries have endured the most severe recession since World War Two. This recession exposed the weaknesses of European governance, i.e. of the macroeconomic policies but also of the EU institutions. A crisis of trust results from those events. Indeed, the difficulties to overcome the crisis have caused a drop in European citizens' support towards the EU. In this context, the on-going public debate is monopolized by the two extreme positions of self-satisfaction and Euroscepticism. The former has its roots in the fact that the reforms implemented during the crisis have enabled the euro and the EU to survive. At the opposite, the depth of the crisis has fed Eurosceptic views arguing in favour of restoring national currencies as well as the primacy of domestic norms. The contributions of this volume tend to reject both visions. Our ambition is indeed to feed the public debate by exploring different possibilities of reform for the EU. Given the multidimensional nature of the on-going crisis, a multidisciplinary approach is followed throughout this special issue in order to grasp the political, legal and economic aspects of the debate.

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