

European Governance
in times of uncertainty

Gouvernance Européenne
en temps incertains

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Liber Amicorum

Constantine A. Stephanou

European Governance in times of uncertainty

Gouvernance Européenne en temps incertains

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Abstract: This collection of essays in honour of Professor Constantine A. Stephanou offers a forum for debating the nature and dynamics, limits and possibilities of European governance in times of uncertainty, focusing on the conditions which shape a European 'polity' confronted with emerging challenges. The volume provides for an interdisciplinary guide to developing a more profound understanding of European governance, bringing together a team of experts with their own distinctive perspectives on what arguably constitutes a uniquely observed form of 'polity' in the history of international organization, whose study increasingly calls for reflective, intersecting and evolutionary lenses.

Ce recueil d'essais en l'honneur du professeur Constantin A. Stephanou offre un forum pour débattre de la nature et de la dynamique, des limites et des possibilités de la gouvernance européenne en période d'incertitude, en examinant les conditions qui façonnent une politeia européenne confrontée à des défis émergents. Ce volume fournit un guide interdisciplinaire pour développer une compréhension approfondie de la gouvernance européenne, rassemblant une équipe d'experts ayant chacun sa propre perspective sur ce qui constitue sans doute une politeia unique dans l'histoire de l'organisation internationale, dont l'étude nécessite de plus en plus des regards réfléchissants, croisés et évolutifs.

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Constantine A. Stephanou

European Governance in times of uncertainty

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Prologue

EN

Constantine A. Stephanou is a dear colleague and friend. It is a privilege to us to present this volume to the wider public in honour of his distinctive contribution to academia.

Son of a diplomat, Constantine was born European. After studying in Athens and Geneva and for almost four decades, he dedicated himself to teaching and to research with the view to advancing social scientific knowledge, most notably in the field of European integration studies. He has formed generations of EU scholars and practitioners both in Greece and abroad. Other than in his “mother” University, the Panteion University of Athens where he served from 1982 to 2016, and the innumerable invitations here and there, he has extensively taught in Universities in France (Nice, Grenoble, Bordeaux, Paris II), at the Global Studies Institute of the University of Geneva and at the Law School of the European University Cyprus.

Perhaps what distinguishes his work most evidently is his capacity to combine insights from law and governance, politics and policy. He has been one of the founders of interdisciplinary approaches to law, as he has the capacity to “get the facts straight”, but to also discuss their legal and political causation and implications. Especially his long-standing and widely acknowledged contribution to the study of the ‘European polity’ opens new intellectual paths to the theoretical and empirical investigation of one of the most advanced exercises in legal and political codetermination. His multifocal account of Europe’s internal and external dynamics, treaty reforms and policy and polity shapes has marked its impact on integration’s *acquis académique*.

Constantine has been very active in “spreading the word” of EU integration: he has served as the Greek coordinator of the *Rencontres franco-helléniques de droit communautaire* which took place annually from 1985 to 1995, then as a founding member and iterative President of the Greek branch of the European Community Studies Association (ECSA-Greece = EPEES), then also as Vice-president of ECSA-Europe and ECSA-World. Having gained the first Jean Monnet Chair in European Law at a Greek university, he promoted the establishment of the first master’s degree in International and European Studies, which he supervised from 1994 to 2004. He was

then appointed Director of the Institute of International Relations (IDIS) affiliated to Panteion University (2005-7). Following a joint proposal with Professor Christos Gortsos, the Senate of Panteion University approved in 2010 the establishment of a research center named European Center of Economic and Financial Law (ECEFIL) of which Constantine became the director until his retirement in 2016.

It has not been difficult to find friends for a *liber amicorum* for Constantine and we wish to express our wholehearted thanks to the contributors of this volume. It has been an honour, and an education too, to host their chapters; as it has also been equally rewarding to have this volume published by Nomiki Bibliothiki with particular thanks to Theodore Stigkas. We also wish to warmly thank Athina Papadatou for her valuable assistance.

We wish to express our profound sadness for the loss of Emeritus Professor George D. Demopoulos whose academic ethos and scientific contribution have marked their distinctive imprint on academia.

Let us conclude by saying that this honorary volume is but a small expression of our profound appreciation of Constantine's intellect and academic ethos. We wholeheartedly wish him to continue with the same intensity to enrich our insights on European integration; all the more so, "in times of uncertainty".

FR

Constantin A. Stephanou est un cher collègue et ami. C'est un privilège pour nous de présenter ce volume au grand public pour honorer sa contribution si distincte au monde universitaire.

Fils de diplomate, Constantine est né européen. Après des études à Athènes et à Genève et pendant près de quatre décennies, il s'est consacré à l'enseignement et à la recherche en vue de faire progresser les connaissances en sciences sociales, notamment dans le domaine des études sur l'intégration européenne. Il a formé des générations d'universitaires et de praticiens de l'UE en Grèce et à l'étranger. Outre son université "mère", l'Université Panteion des Sciences Sociales et Politiques d'Athènes, où il a enseigné entre 1982 et 2016, et les innombrables invitations ici et là, il a régulièrement enseigné dans des universités Françaises (Nice, Grenoble, Bordeaux, Paris II), à l'Institut des études globales de l'Université de Genève et à la Faculté de droit de l'Université européenne de Chypre.

Ce qui distingue le travail de Constantin est sa capacité de raisonner conjointement en termes de droit et de gouvernance, de politique et des politiques. Il est l'un des

fondateurs des approches interdisciplinaires du droit, car tout en se basant sur des faits et règles concrets il ne peut s'empêcher de discuter de leur causalité et de leurs implications juridiques et politiques. En particulier, sa contribution, largement reconnue de longue date, à l'étude de la "politeia européenne" ouvre de nouvelles voies intellectuelles à l'enquête théorique et empirique de l'un des exercices les plus avancés de codétermination juridique et politique. Son exposé multifocal des dynamiques internes et externes de l'Europe, des réformes des traités et des politiques et des formes politiques a marqué son impact sur l'acquis académique de l'intégration.

Constantin a été très actif pour "transmettre la bonne parole" de l'intégration européenne: il a été coordinateur grec des Rencontres franco-helléniques de droit communautaire qui ont eu lieu chaque année de 1985 à 1995, puis membre fondateur et président de la branche grecque de l'Association des études de la Communauté européenne (ECSA-Grèce), puis également vice-président de l'ECSA-Europe et de l'ECSA-World. Ayant obtenu la première chaire Jean Monnet de droit européen dans une université hellénique, il a mis en place le premier master en études internationales et européennes, qu'il a dirigé de 1994 à 2004. Il a ensuite été nommé directeur de l'Institut des relations internationales (IDIS) affilié à l'Université Panteion (2005-7). À la suite d'une proposition conjointe avec le professeur Christos Gortsos, le Sénat de l'Université Panteion a approuvé en 2010 la création d'un centre de recherche nommé Centre européen de droit économique et financier (ECEFIL), dont Constantin est devenu le directeur jusqu'à sa retraite en 2016.

Il n'a pas été difficile de trouver des amis pour un *liber amicorum* pour Constantin et nous tenons à exprimer nos sincères remerciements aux contributeurs de ce volume. Ce fut un honneur, et aussi un enrichissement, d'accueillir leurs chapitres; il a également été gratifiant de publier ce volume chez Nomiki Bibliothiki avec tous nos remerciements à Theodore Stigkas. On aimerait également remercier cordialement Athina Papadatou pour son aide précieuse.

Nous tenons à exprimer notre profonde tristesse pour la perte du professeur émérite Georges D. Demopoulos dont l'éthique académique et la contribution scientifique ont marqué leur empreinte distinctive sur le milieu universitaire.

En définitive, ce volume honorifique n'est qu'une modeste expression de notre profond respect pour l'intellect et l'éthique académique de Constantin. Nous lui souhaitons de tout cœur de continuer avec la même intensité d'enrichir nos perspectives sur l'intégration européenne; ce d'autant que l'Europe ne cesse de traverser une "période d'incertitude" après l'autre.

The editors/Le comité éditorial

CONSTANTINE A. STEPHANOU

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History and Dynamics

An intertemporal comparison of democracies: Ancient Athens, modern Greece and the EU

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1. Introduction

In the present essay we undertake an intertemporal comparison between three states, that of ancient Athens. In Classical times and two modern ones, Greece and the European Union, focusing on four criteria. The criteria are *isonomia*, (equality before the law) *isegoria* (the right to propose policy measures), *isokrateia* (all positions of the state open to all citizens without restriction) and *logodosia*, (procedural accountability).

As we will make clear, the concept of democracy which we use goes beyond the criterion of general elections that are held at regular intervals. Elections, for example, were held in 1936 and 1938 in Germany, but few, we hope, would characterize Nazi Germany as a democracy. Elections were held in June 2018 in Turkey, but most would not describe modern Turkey, still under “special” (martial) law, as a full democracy. Elections were held in Hungary and Poland, but the EU has grave misgivings as to the state of democracy in these countries (especially after their attempt against freedom of the press and the independence of the courts) threatening Hungary and Poland with the use (for the first time ever) of article 7 of the Lisbon Treaty. This, if adopted (by unanimity) leads to the loss of the right of vote of a country in the Council’s of Ministers.

What we also hope to make clear is that the concept of democracy in ancient Greece and some modern states is different from that practiced in other countries. So, the first issue is, what is a democracy? Abraham Lincoln

provided an answer in his famed *Gettysburg Address*¹ as “government from the people, by the people, for the people”. The “from” is interpreted as the election, by the citizens, of their representatives to form a government. The “for” is interpreted as being for the benefit, or welfare of the people, which, however, raises certain problems: The first of these concerns the definition of this benefit which raises an array of further issues, such as: Can we aggregate individual preferences in order to construct an “artificial” social welfare function, which governments should strive to maximize?²

Do governments really try to maximize a social welfare function (assuming it exists) or do they follow their own preferences? This is the well-known principal agent problem, where the agent, in this case, the government, follows his own agenda for personal benefit, opens the possibility for corruption, etc. and not the “instructions” or will of the principal benefit, in this case the citizens-voters. But even if we leave these problems aside for the moment, what does the phrase “by the people” mean? Does “by” imply a transfer of power from the people to their representatives in Parliament, in such a way that the representatives become the people? This could be a justification of representative democracy. As we will see, ancient democrats, and some modern ones, would reject it as unacceptable.

Our essay is organized as follows: In the next section we illustrate briefly the institutional set up of the three cases. Then, we apply the criteria and proceed to an analysis of the degree of democratization, followed by our conclusions and proposals for the two modern cases.

2. Ancient Athens, modern Greece and the EU

Ancient Athens

Cleisthenes introduced direct democracy in Athens in 510-507 BCE, which was gradually expanded by the reforms of Ephialtes and culminated in the improvements of Pericles, under whom all Athenian citizens had the same rights, independent of wealth or any other criterion. They could elect and be elected by lot for all positions of the state’s administration and the courts, except for those requiring “specialist” knowledge, such as the *ten strategoi* (generals) and the *tamiai* (finance ministers) during the second half of the 4th century. They could also introduce proposals to the supreme decision-making body, the *Ecclesia* (Assembly), which met at least 40 days per year³ and decided on all issues concerning war, peace, treaties, and financial matters. Examples of such decisions are Themistocles’ Naval

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1. To commemorate the North’s dead at the battle of Gettysburg, 1-3 July 1863, the turning point of the American civil war.
 2. Numerous political scientists and economists have tried to give an answer to this issue, such as James M. Buchanan.
 3. There exists a vast literature on the Athenian democracy. See among others, M. H. Hansen, “*The Athenian democracy in the age of Demosthenes*”. Bristol Classical Press, London 1999 and E. Cohen, Princeton University Press, 2000.

Decree of 483/2 BCE⁴ and monetary issues (e.g. Nicophon's Decree of 376/5 BCE regarding the circulation of parallel currencies (to Athenian currency)⁵ and taking out loans in case of need from the treasuries of the gods, etc.⁶.

The *Boule of 500* (Council) was a preparatory body that set the agenda for the Assembly's meetings, and 50 members out of the 500 each month (the Athenian calendar had ten months, corresponding to the ten Athenian tribes) functioned as the «government» of Athens in a rotating basis with the rest of 50 members of each tribe. This is an important correction to be made! They also had some administrative and supervisory functions, as for example, meeting foreign ambassadors, providing for the introduction of *stelai* (inscribed stones) with various Decrees that were displayed in public view in the *Agora* (marketplace), in an early manifestation of "open government". The popular courts (*Heliaia*) consisted of 6,000 jury members who were chosen by lot and sat in smaller bodies judging every kind of dispute except homicides cases which were judged by the *Areios Pagos*, a pre-existing aristocratic body of justice.

The Athenian democracy was not static, but evolutionary, both in the sense of its continuously adopting Laws and Decrees by the Assembly, but also in introducing, during the 4th century, a system of checks and balances, the most important being *graphe paramonon*, under which all new proposals had to be examined *ex-ante* so as to make sure that they were not "anti-constitutional"^{7, 8}.

Modern Greece

Like almost all modern states, Greece has had a constitution since 1844, which has been amended often. Greece is a purely representative democracy with a President as its nominal head (but with few real responsibilities), a prime minister as head of government, a Parliament and an "independent" judiciary, with the two Supreme Courts, the *Areios Pagos* and the Supreme Administration Court. However, it has no Constitutional Court as exists in other democracies such as the USA, Germany, France, etc. As a member of the European

4. N. Kyriazis & M. Zouboulakis, "Democracy, sea power and institutional change: an economic analysis of the Athenian naval law", *European Journal of Law and Economics*, 17: 2004, pp.117-132.

5. D. Engen, "Ancient greenbacks, Athenian owls, the law of Nicophon, and the Greek economy", *Historia*, 54(4): 2005, pp. 359-381.

6. L.J. Samons, "Empire of the owl: Athenian imperial finance. (Historia Einzelschriften)". Stuttgart: Franz Steiner Verlag, 2000.

7. P. Fröhlich (2013), "Governmental checks and balances", in Beck H. (ed.), MA Malden, A Companion to Ancient Greek Government (p. 252-266), Willey-Blackwell.

8. Athens did not have a written constitution. The *graphe* provided that a new proposal would not infringe against existing laws. It was a precedent, for example, to the competence of the French *Conseil Constitutionnel*, to which we will refer later on.

Union and Economic and Monetary Union, Greece must follow common European policies, such as the monetary policy set by the European Central Bank, etc.⁹

The European Union (EU)

The European Union was introduced in 1957 by the Treaty of Rome and was known at that time as the European Common Market. It has undergone many changes, culminating in today's EU of 27 members (after Brexit) and the Economic and Monetary Union (EMU) of 19 members. One issue is how to characterize the EU. The term European Union would indicate, in analogy to other Unions both older and modern, (e.g., the USA, Bundesrepublik Deutschland, the United Provinces as the Dutch Republic, etc.) that it is a federation, which in fact it is not (or, not yet according to the optimistic European federalists). One main difference with other unions-federations, is that there exists no European Constitution, and thus, no European citizenship as such.¹⁰

The institutional set up of the EU also reflects this ambiguity since it is a mixture of European level institutions like the European Commission (EC), the European Parliament (EP), the European Central Bank (ECB), the European Court(s) of Justice, and intergovernmental bodies like the Council of Ministers, the COREPER (a permanent body of ambassadors that set mainly the agenda for the Council's meetings etc., somewhat similar to the Athenian *Boule*) and the Summits, consisting of heads of states and government. In fact, it is difficult to answer simple questions put by outsiders (or even Europeans) such as: "*Which is the government of the EU?*", "*Which is the law-making body?*"

The answer to the first question is that the "EU government" is diffuse, at least between the Commission, the Councils of Ministers and the Summit. A related question, "who is the President of the EU?" does not have a clear-cut answer, because there are many: The President of the Commission, who changes every six months, the Chairman of the Summit, and the President of the European Council, Omit Donald Tusk. As to the law-making body, the answer "the European Parliament" would be partly wrong, since in law-making the Council of Ministers and the Parliament are both involved, in ways which are obscure for the majority of non-expert citizens. For example, how many citizens know and understand the procedure of budget setting? (with the various steps starting from the European Council (EC), to the European Parliament, the Council again, and then to the EP).

The institutional set up is also more convoluted than that of true federations which usually have a federal government (with a president or a prime minister as the real executive head), usually two law-giving bodies, a House of Representatives and Senate, a Federal Court and

9. We examine the institutional setting of Greece in more detail in the next section concerning the application of the four criteria.

10. Although EU citizens have European type passports, they are issued by the individual member states (German, Dutch, Portuguese etc.), there is not just one "supranational" European passport. Americans, for example, have a single American passport and not Californian, New Yorker or Louisianan ones.

Federal Bank. The EU has Summits, Councils of Ministers, Commission, EP, Eurogroup, ECB and European Court(s) of Justice. It has no European Finance Minister, but has a Minister of Foreign Affairs, who, to increase verbal confusion, is called the *High Representative of the European Union for Foreign Affairs and Security Policy*. In practice he/she does not set foreign policy, which is mainly the responsibility of the heads of governments and states, and the Council of Ministers of Foreign Affairs.

But, apart from the complicated institutional set up, what differentiates the EU from real federations is the level of the EU budget compared to that of federations. It is about 1% of GDP, while that of the USA is about 20% and of Canada 15%. This means that not many policies can be implemented and financed at an EU level, as in true federations. Defense expenditure, which in true federations is about 2-3% of GDP and is a federal responsibility, is missing completely from the EU budget.

3. The democratization criteria

Athens

We use the following terms:

Isonomia, means equality before the law applied fully to all citizens without exception or any kind of qualification. Furthermore, the laws are promulgated by the citizens themselves through voting in the Assembly.

Isegoria, means the right to introduce proposals to be voted on by the Assembly by any citizen, and was the mainstay of democracy and applied fully.

Isokrateia, means that all political positions (including military and financial) are applied fully. All positions were open to any citizen, either by lot, or if they wished, for the few that required elections.

Logodosia, which we translate as procedural accountability, meant that all officials were fully accountable at the end of their term of office, usually of one year, and had to submit a full report of their activities. Furthermore, there were institutional procedures under which any citizen could accuse an office holder for not fulfilling his task properly, for abusing his position or for acting against the public good. The accused could defend himself either in front of the Assembly, or (depending on the type of accusation) in the courts. Even a citizen who was not an office holder, but who had introduced a proposal, could be accused if the proposal proved not to be beneficial to the state (against the public good) even if the Assembly had voted on it and adopted it. Acceptance by the Assembly did not absolve the proposer (called also “initiator”) of responsibility.

The most famous case illustrating this is the controversy between the orators Demosthenes and Aeschines, whose accusation of Demosthenes was based on the fact that his proposal to fight against the Macedonians and King Philip II, although it had been adopted by the Assembly, proved to be wrong and detrimental as it had led to defeat at the Battle of

Chaeronea in 338 BCE and the death of 1,000 Athenians. This led to the famous oration, *On the Crown*, by Demosthenes which is considered to be one of the masterpieces of oratory. Demosthenes won, but if he had lost, he would have faced heavy fines, possible banishment and even the death sentence.

A second possibility of procedural accounting used during the 5th century was *ostracism*, a kind of *ex-ante* safeguard against citizens who might become dangers to democracy. Under this, one citizen could be exiled as a cautionary measure, each year, for a period of ten years. Athenian direct democracy, especially through *isegoria* and *logodosia*, strove, in general successfully, to solve the principal-agent problem. Under *isegoria* and voting in the Assembly, the principal himself (the citizens) made the decisions and did not delegate them to representatives. Under *logodosia*, the agents were strictly controlled and faced strong penalties if the principal thought that they did not comply, or even if they were unsuccessful in fulfilling their instructions^{11, 12}. Thus, Athens, fulfilled fully all four democratization criteria.

Modern Greece

Equality before the law is guaranteed by the Greek constitution, but in fact, the Constitution itself violates it in one important aspect and this concerns the infamous article regarding the responsibility of the ministers and members of parliament who are given special treatment on various issues. In other words, a minister and a civil servant accused of the same crime, for example, fraud, face different procedures and different periods of statute of limitations. It is almost as if this article was inspired by G. Orwell's *Animal Farm*; "*we are all equal, but some (in our case, ministers and members of parliament) are more equal*".

But there are also numerous other cases in which equality before the law is abused, as for example, with a recent law (4387/2016) concerning pension funds, under which, depending on when an individual retires, people who have worked for exactly the same period of time (years) and for the same remuneration, receive different pensions. Another case concerns interest rates charged by the state for those who have obligations to the state (about 8.5% which seems close to usury under today's rates of interest!)¹³ and a lower rate (about 6%) for obligations of the states towards citizens, such as payments to service providers etc. which are paid with a delay of as much as six months. So, the criterion of equality before the law is fulfilled only in part (some would say: in small part).

11. M.H. Hansen "*The Athenian democracy in the age of Demosthenes*". Bristol Classical Press, London 1999, pp. 220-221, Fröhlich, P. (2013), "*Governmental checks and balances*", in Beck H. (ed.), MA Malden, *A Companion to Ancient Greek Government* (p. 261), Willey-Blackwell.
12. A famous and probably innocent victim of the strong accountability was General Thucydides, the historian, who failed, although probably not due to his own mistakes or incompetence, to relieve Amphipolis. He was banished and thus had time to write his history.
13. The interest rate for loans to Greece by the ESM are 1%, and on average for the entire debt (of about 338 billion euro, November 2018) 2%. Greece would face interest rates of 4-5% for its bonds in the open market.

In modern democracies *isegoria* is practiced with popular proposals which lead, under specific conditions¹⁴, to obligatory referendums with binding results, e.g. as in ancient democracies, to laws. Thus, popular initiatives (proposals) from bottom up is a form of citizens participation in decision making. States that have an institutional set up of this kind, (like Switzerland, Uruguay, New Zealand, the USA and Germany at the state and *Länder* level etc.) thus practice direct democracy, "government by the people". Greece does not have such provisions, so this criterion is not fulfilled at all.

Isokrateia means that all political positions are open to all citizens. This criterion is fulfilled only in part since some, but not all, positions are open to all citizens. Any citizen has the right to be a candidate for Parliament, but the office of the President of the Republic is not open to all, because the President is not elected by the citizens, but by the members of Parliament. This means that the individual elected reflects the preference of the party or parties that have a majority in Parliament.¹⁵ And, of course, ancient Greek democrats would be astonished at the proliferation (not only in Greece) of bodies of "technical experts", that regulate various activities, without being elected and without control, like the President of the Central Bank, the Radio and Television Board, the National Energy Board and many others. Thus, this criterion is also fulfilled only in part.

Procedural accounting, one of the pillars of ancient democracy, is either non-existent or tuned down in modern democracies. Politicians, administrators etc. do not publish accounts to justify to citizens their actions (and expenditures) during their period of office. The only type of "punishment" they face is that of not being re-elected if citizens feel that they have not fulfilled their pre-election promises. Some states (and states in federations like the USA) have a form of procedural accounting, the *recall* procedure, under which an official may be terminated before the end of his/her term of office, if he/she has lost the trust of his/her citizens-voters. The procedure is similar to that of popular proposals.

An issue related to accountability is who decides on the constitutionality of laws and who defines the "public good" or "public benefit". In cases of direct democracy, the answer is straight forward: The citizens themselves, by voting at the Assembly, or through popular initiatives that lead to referenda with binding results. In representative democracies, referenda "top down", after a decision by the government put decision making to the citizens. Some countries (Italy) use it often, other less so (France, Netherlands, Hungary, Greece, the UK, etc.) and others, at the federal level, not at all (USA, Germany).

Another way to define the constitutionality (or not) of a law, and thus in a wider sense, the public good, is through recourse to the courts, in countries that have Constitutional Courts, but in countries that do not, it is done through the lower levels of justice in a bottom-up

14. The condition being the gathering of a certain percentage of signatures, usually between 8-10%, of those who voted at the same level (city, state, federal) during the previous elections.

15. Since he/she has to achieve a two third majority (200 votes) during the first two rounds of voting, and 180 at the third, if he/she does not achieve it, the Parliament is dissolved prematurely and elections proclaimed. This is a built-in instability of the political system and led to premature elections in January 2015. There are strong voices in favor of the President being elected directly by citizens.

procedure, as in Greece. In order to make this clear, we illustrate briefly the procedure in Greece and France. In Greece, if an individual believes that a law is unconstitutional, in order to be able (justified) to bring it to court, he must prove that the law has caused him personal harm (financial or otherwise). This is a crucial difference from the definition of public good: In ancient democracies, any citizen could defend the “public good” as he understood it, by arguing that a law or decree was against it, without having to prove any personal damage. Any citizen could undertake the role of “defender of the public good” and thus, in a wide sense of democracy, against abuses. In modern Greece and in representative democracies, a citizen can defend only himself, not the general public good in the abstract, notwithstanding the last article of the Greek Constitution, which states that all Greeks must defend the Constitution and the country through their patriotism, etc. Without specific provisions as to how this may be done, this article is empty of substance. In fact, a citizen does not appeal to a court against a law he/she believes to be unconstitutional but against the consequences (to him/her) caused the law.

In a way, this is an indirect approval if the court deems that the person appealing is justified (in other words, that the law has proved harmful to him, in damaging property rights) then this is an indication that the law is unconstitutional. The procedure usually goes through the three levels of justice, reaching the two Supreme Courts, the Areios Pagos and the Supreme Administration Court known as, *Simvoulío tis Epikratias*. If there is disagreement in the voting of the two courts concerning the same law, then an *ad hoc* Supreme Court must decide. According to Law 345/76 this Special Court consists of the Presidents of the three courts (the third being the Court of Auditors), 4 members of Areios Pagos, 4 of the Supreme Court, and 2 university professors, elected by lot.

It goes without saying that this is a lengthy procedure that takes years. Once a law is found to have problems regarding its “constitutionality”, the government must change it, but again this does not happen automatically. It may take years, and in the meantime the administration must continue to enforce the (unconstitutional) law and citizens must continue to appeal.¹⁶ Of course, citizens have the right to appeal to the European Court of Human Rights in Strasbourg, whose rulings override (if contrary) any decisions of the Greek courts and thus become binding for the administration.

As a comparison, France has a Constitutional Court (*Conseil Constitutionnel de la République Française*) of nine members (as in the US Supreme Court) who are not necessarily career judges (as in the USA).¹⁷ They are appointed, three each by the President, the Parliament and the Senate for a nine-year term, thus surpassing the President’s term of office. The crucial difference

16. In 2014 the Supreme Administration Court ruled that the property tax, as imposed on the nominal values of 2008 (prior to the economic crisis; while real property values were much lower) was unconstitutional. The government introduced new (market) values in 2018, after four years.

17. Both in France and in the USA, members of the Supreme Court may be chosen outside of the courts, f.e., a university professor of law could be chosen.

is that the Court can examine a law *ex-ante*, before its promulgation. Either the President of the Republic, the presidents of the Parliament or Senate, or 60 members of Parliament, or 60 senators can send a law before its promulgation to the Conseil for it to examine the law as to its constitutionality. If the Conseil decides that it is unconstitutional, the law is withdrawn (is not promulgated).¹⁸ An improvement in the Greek system would be the *ex-ante* examination of laws etc. by the Supreme Administration Court. This would avoid delays and amendments to or abolishment of laws that have been found to be unconstitutional.¹⁹

The argument against individuals having the right of appeal against laws, without having to prove a personal interest or damage, but just as defenders of the public good (as in ancient democracies) is that this could lead to so many appeals that the judicial system could be “flooded” and made unfunctional. The procedural answer is, to follow here also a similar approach to the popular *initiatives*: A popular initiative that attracts a minimum specified level of signatures on a particular issue, would be sufficient for the appeal in court to be legal. This means that if a sufficiently large number of citizens think that a law is unconstitutional, the court should examine the case, without these citizens having to prove personal damage or abuse arising out of the law.

Under direct democracy and citizen *initiatives*, the public good is decided by the citizens. Through *initiatives*, they can fill gaps (wherever the administration has not acted) or force the administration to change its behavior (or laws). Two cases illustrate this: California’s Proposition 13 that imposed a limit to Californian property taxes²⁰, and the Swiss referendum on buy-back of gold the Swiss Central Bank had sold from its gold reserves. With regard to the four criteria, Greece scores badly: *Isegoria* and *logodosia* do not apply at all, and *isonomia* and *isokrateia* only in part.

A few additional issues make the democratic deficit of Greece even clearer. Capital controls have been imposed for three years in Greece (since July 2015), thus abolishing one of the four main economic freedoms of the EU: free circulation of goods, services, labor and capital. Under the memoranda agreements, taxes have increased many times. Greeks today are the most heavily taxed among all OECD countries, receiving in return (in the form of service and goods) less than in all other OECD countries.²¹ According to the memoranda, Greece must

18. Similarly, Article 61 of the French Constitution gives the right to the Conseil to examine *ex-ante* big investments. If the Conseil rules that they are correct (no legal flaws etc.) the investment goes forward and no one can interfere (administration, lawsuits etc.).

19. An “infamous” case that occurred recently (2017) was the law (4367/2016) that granted permits to private television chains. The law was found to be unconstitutional, leading at first, to the annulment of the results of the action for the television permits. The whole procedure regarding television rights lasted more than a year.

20. E.M.L. Economou, N. Kyriazis & T. Metaxas, “*Athenians, Californians and modern Greeks: A comparative analysis of choice under direct democratic procedures*”, *Homo Oeconomicus*, 34: 2017, pp. 47-65

21. Some have called this “tax piracy”. According to recent studies Greeks have to work on the average 198 days per year in order to pay taxes and pensions. Thus, Greeks have become modern “serfs” of the financial authorities and the EU, with the difference that medieval serfs worked about 60 to 100 days for their lords, not 198!

produce budget surpluses of 2,2% up to 2060, which restricts the freedom of economic policy and is recessionary. How democratic is it, to decide today for future generations, who are not yet born and do not vote?²²

Using different criteria and methodology, the *Economist's Intelligence Unit* reaches similar results: Greece scores 8,54 (out of 10) and is not included among the *Full Democracies*.²³ The situation is even worse according to the *Economic Freedom Indicators for 2018*, published by the Fraser Institute²⁴, where Greece occupies the 107th position, with an overall score of 6,46 (out of 10). In comparison, Greece's neighbouring EU members, Bulgaria and Italy, score as follows: Bulgaria scores 7,41 and is ranked 46th while Italy scores 7,27 and is ranked 54th. Botswana, a democratic African country ranks 44 and scores 7,43. The three best performers are the following: at the top is Hong Kong with a score of 8,97, second is Singapore at 8,84 and third is New Zealand at 8,49.

European Union

Concerning *isonomia*, equality before the law, the situation is again somewhat confused. Europeans are equal according to the laws of the European Union, but these laws cover only some aspects and activities. Since there is no European Constitution, and thus no European citizenship, political and human rights are not specified at the EU level. Thus, abuses of human rights (mainly, property rights) may fall under the jurisdiction of the European Court(s) in Luxembourg (as for example, taxation issues) but more often under the jurisdiction of the European Court of Human Rights at Strasbourg which is not an EU institution but one of the European Council.

Isokrateia, equality of political opportunity, applies only in part, since out of all political positions of the EU, only the EP is open (in theory at least) to all Europeans. All other posts are filled after intergovernmental negotiations and agreement. A European cannot be a candidate for President of the Commission, the Council, or for "foreign minister", etc. Regarding *isegoria*, there is no provision for popular *initiatives* leading to obligatory referenda with binding results. So, this criterion does not apply at all.²⁵

There are no provisions for procedural accountability at the European level. European office holders do not give regular accounts at the end of their term, although the European Accounting Office (*Cour de comptes*) oversees the correct execution of the budget against fraud, waste etc. but not concerning political decisions ("European public good"). It is not possible for European citizens to call European officials to account, as in ancient democracies,

22. This is a problem of an intertemporal (intergeneration) social function.

23. <http://www.eiu.com/home.aspx>

24. <https://www.fraserinstitute.org/sites/default/files/economic-freedom-of-the-world-2018.pdf>

25. The Lisbon Treaty provides for *initiatives* (condition: one million signatures) that lead to referenda but without binding results. A simple cost benefit analysis would show that the cost is high while the benefit (due to the non-binding result) is low, and this may explain why no European referenda have been held. See: <http://www.europarl.europa.eu/factsheets/en/sheet/149/european-citizens-initiative>

or modern democracies with *recall* procedures, such as Switzerland and in some American states. Out of the four criteria, two do not apply at all and the other two only in part. This is another validation of the well-known European democratic deficit.

4. Conclusions and proposals

The worrisome result concerning Greece and the EU is that Greece is one of the least democratic countries in the least democratic international association.²⁶ Subsequent to the preceding discussion, we propose the following:

For Greece:

To establish full equality before the law, the abuses mentioned in the previous section should be abolished.

For *isegoria*, procedures of direct democracy, popular initiatives and the *recall* procedure should be introduced at the next revision of the constitution.²⁷

For equality of political opportunity, all political posts, such as the President of the Democracy, should be open to all citizens and be filled through elections, even members of regulatory bodies should be open and chosen through elections.²⁸

For procedural accountability, provisions could be made at the next revision of the constitution obliging all office holders to give public accounts of their term of tenure, combined with *recall* in cases of perceived misconduct.

For the European Union:

The strengthening of equality before the law depends on the solidification of the EU itself. The situation regarding this criterion would be very different if the EU became a true federation, with a federal Constitution, federal citizenship with human and civil property rights arising out of these. To ensure the criterion of *isegoria*, a change of the treaties in future should amend the Treaty of Lisbon's provision for European *initiatives*, making their results legally binding. Lastly, to satisfy the criterion of *isokrateia*, the posts of the President of the Commission, the President of the Council, the President of the EU, the "foreign

26. We use the term "association" since the EU cannot be considered a federation.

27. This proposal has been introduced in the discussion by jurists and economists, such as Alevizatos, and our own Kyriazis and Economou (2016). "*Proposals for the revise of the Greek Constitution. An innovative constitution for Greece*", Foreign Affairs, the Hellenic Edition, Dec. 16 - Jan. 2017 (pp. 152-168) (in Greek). Retrieved at: <http://www.foreignaffairs.gr/articles/71111/loykas-g-katsonis/mia-matia-sto-neo-teyxos>, See, for example,; <http://www.kathimerini.gr/955451/article/epikairothta/politikh/apoyh-ana8ewrhsh-toy-syntagmatos-51-protas-eis-gia-ta-vasika>.

28. Under certain "guarantees of competence" required for each body, which could be examined by special committees appointed by the President of the Republic. In ancient democracies even for specialized posts (generals, finance ministers) there were no restrictions.

minister" and the "finance minister" (if introduced) should be open and filled by elections. In this way the EU democratic deficit would be substantially reduced.

But why is the issue of democracy (or more democracy) important at all? The argument in favor of more democracy is an aggregate of various elements, economic, political, psychological and moral-philosophical. Numerous econometric studies for different countries, such as those of Matsusaka²⁹, Voigt and Blume³⁰ and Blume and Voigt³¹, show the economic superiority (measured in growth rates and welfare) of countries (states, cantons, lander) practicing direct democracy. Politically, the crucial argument in favor of direct democracy is that democracy is a "unity", or, a "total" and not a "partial" value. In a democracy, citizens should have the final say in decision making. If one argues that citizens should be trusted to vote for parties and candidates, but not directly for issues which influence their lives, then they argue for a "partial", or, "limited" democracy, and, therefore, in favor of not solving or reducing the principal-agent problem. From this point of view, "by the people" has no validity.

Psychologically, participation of citizens in decision making, actively increases their satisfaction and self-esteem, giving them a sense of influencing their lives, and not just being subject to decisions taken by others for them. Lastly, a moral philosophical justification of direct democracy, arising out of consideration of the value of free citizens. One aspect of democracy is dignity, to treat people as adults who have the freedom of choice and can and must be trusted, and not as "children" who cannot. Under direct democracy, individuals become more active participants in procedures and decisions which concern them, thus internalizing costs and benefits and becoming more conscious of their rights and obligations.

Perhaps it is also time for at least some EU members states to take more steps towards further EU integration, which will require: a common Constitution, and common currency, the euro, to be adopted by more and more member-states over time. Another supplementary but crucial issue is that of common citizenship. This is a complex issue, but if adopted in the future, it will actually lead to a federal pan-European structure, meaning for example, elections of the members of the EP through European, as opposed to national candidates, supplemented by a second chamber, the European Senate, where every member state will send two "national senators", independent of population size, which will be more democratic, will exclude those unwilling to fulfill its democratic principles, and will be a pole of attraction for future members (as were most other ancient and current federations and the EU).

29. G.J. Matsusaka, "Direct democracy works", *The Journal of Economic Perspectives*, 19(2): 2005a, pp. 185-206, G.J. Matsusaka, "The eclipse of Legislatures: direct democracy in the 21st Century", *Public Choice*, 124: 2005b, pp. 157-177, G.J. Matsusaka, "A case study on direct democracy: have voter initiatives paralyzed the California budget?". The Council of State Governments, Ballot Propositions (2010). Retrieved at: [http://www.iandrinstitute.org/7 Matsusaka.pdf](http://www.iandrinstitute.org/7%20Matsusaka.pdf).
30. Voigt, S., & Blume, L. (2006), "The economic effects of direct democracy-a cross-country assessment", Social Science Research Network. Retrieved at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=908942.
31. Blume, L., & Voigt, S. (2010), "Institutional details matter-more economic effects of direct democracy", Social Science Research Network. Retrieved at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1639487

La saga des traités

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Le 29 juin 1985, à Milan, le Conseil européen décide de convoquer une conférence intergouvernementale (CIG) chargée d'apporter au Traité CEE des modifications concernant tant les objectifs que les institutions de la Communauté: lancée début septembre, la CIG accouche, début décembre à Luxembourg, de l'Acte unique européen (AUE). La révision de 1985 n'est toutefois que la première étape d'un processus de négociation des traités européens qui va durer quelque vingt-cinq ans et trouver sa conclusion avec l'entrée en vigueur du Traité de Lisbonne au 1er décembre 2009. A l'Acte unique vont faire suite les Traités de Maastricht, Amsterdam, Nice et Lisbonne, avec, entre ces deux derniers, l'intermède du Traité constitutionnel: cette enfilade de six Traités, en moyenne, un tous les quatre ans, a consolidé et approfondi les fondements de la construction européenne.

Comment expliquer cette succession de conférences intergouvernementales qui s'étend sur près de vingt-cinq ans? Quelle est la dynamique qui, un quart de siècle durant, remet chaque fois sur le métier le résultat du traité précédent, prenant l'allure de ces légendes scandinaves appelées *saga*, qui déroulent une série d'épisodes dont chacun des dénouements est provisoire?

L'entrée en vigueur au 1^{er} décembre 2009 du Traité de Lisbonne marque le point d'orgue de ce processus. Vingt-cinq ans de CIG successives ont provoqué un fort sentiment de fatigue institutionnelle. En matière de révision des traités, l'on ne fera pas mieux ni plus avant longtemps. Reste que l'Union qui sort de cette *saga* s'est considérablement fortifiée. A travers l'accroissement de ses compétences, le renforcement de ses institutions et son expansion quasi-continentale, elle dispose d'un éventail de capacités et d'une envergure géographique sans commune mesure avec l'acquis d'avant 1985. A cet égard, et même si toute périodisation est quelque peu artificielle, les années 1985-

2010 représentent bien un moment particulier, une phase spécifique, bref un deuxième âge de la construction européenne par rapport auquel il y a un avant et un après.

L'avant et l'après

L'avant? C'est le premier âge, celui des années cinquante, avec la déclaration Schuman et les Traités CECA, CEEA et CEE¹ c'est aussi celui des crises des années soixante, notamment entre la France gaulliste et ses partenaires, qui sont surmontées au sommet de La Haye en décembre 1969 par le triptyque "achèvement, approfondissement et élargissement". L'amorce d'une relance est confirmée au sommet de Paris d'octobre 1972, qui fixe pour 1980 le passage à l'union européenne et la réalisation de l'union économique et monétaire².

Cet échéancier sera rapidement différé: la décennie 1970 est celle du désordre monétaire international, des chocs pétroliers, de la stagnation et de l'inflation, du déclin des secteurs industriels traditionnels, sidérurgie en tête. En 1979 commence aussi l'exténueante négociation de plus quatre ans sur le "*money back*", la ristourne budgétaire réclamée par Margaret Thatcher. Confrontée à une accumulation des défis, la construction communautaire marque le pas. Elle évite le naufrage mais reporte les grandes avancées prévues pour 1980 à des jours meilleurs. Apparaît aussi une première vague d'eupéssimisme, surnommée "eurosclérose", qui instille le doute sur la poursuite de l'entreprise.

Il y eut donc un "avant" les années 1985-2010. Il y a déjà un "après". A peine l'encre du Traité de Lisbonne est-elle sèche qu'une série d'épreuves ébranle le nouvel édifice européen. Survient la crise de la dette souveraine, qui culmine à l'été 2015 avec l'évitement de justesse, d'un *Grex*; le *Brexit* suit de peu, qui va encombrer pour plus de quatre ans l'agenda de l'Union. A partir de 2014, la vague des migrations révèle l'inconsistance d'une politique commune d'immigration et d'asile et menace l'acquis de l'espace Schengen. Au plan de l'action extérieure, la détérioration des relations avec la Russie, après l'annexion de la Crimée, et le distanciellement des liens transatlantiques depuis l'entrée à la Maison blanche de Donald Trump, révisent à la baisse l'ambition européenne de jouer un rôle de premier plan sur la scène internationale.

Dans les eaux mouvantes de la décennie en cours, l'Union navigue à vue. C'est à traité constant et avec les capacités existantes qu'elle "improvise"³ les réponses aux nouveaux défis. Les débats de la décennie finissante manifestent les carences et limites d'une construction qui reste inachevée. Certes, une volonté de refondation et de renaissance, dont le président français E. Macron est le héraut, se fait à nouveau jour. En même temps,

1. Pour rappel, CECA: Communauté du charbon et de l'acier; CEEA: Communauté européenne de l'énergie atomique; CEE: Communauté économique européenne.
2. Le sommet de Paris des 19 et 20 octobre 1972 décide "de transformer avant la fin de de l'actuelle décennie l'ensemble des relations des Etats membres en une union européenne", sans préciser davantage en quoi consiste celle-ci. Il prévoit aussi ...pour janvier 1981 la réalisation de l'union économique et monétaire!
3. L'usage de terme est emprunté au livre de Luuk van Middelaar, *Quand l'Europe improvise, dix ans de crises politiques*, Gallimard, 2018, pour la traduction française.

une poussée “souveraino-populiste” milite pour le retour à une Europe des nations. Sans doute une nouvelle ère de réforme et de restructuration de l’ensemble européen finira-t-elle par advenir. Mais entre l’avant-AUE et l’après-Lisbonne, quelle a été, revenons-y, la dynamique historique de la *saga* des six traités? Quelle a été la trame de ce deuxième âge de la construction européenne? Plutôt qu’une analyse de contenu approfondie de chacun des traités, l’on mettra surtout en lumière la dynamique de leurs enchaînements, les ressorts de leur enfilade.

L’Acte unique européen (AUE)

Début des années 1980, il apparaît que l’objectif majeur du Traité CEE, l’instauration d’un marché commun, est loin d’être réalisé. L’union douanière a été mise en place dès juillet 1968 et la politique agricole commune a pris consistance dans la décennie 1960. Mais l’espace économique communautaire reste segmenté: de multiples obstacles non-tarifaires le cloisonnent; le rapprochement des législations n’avance guère et la libre circulation des personnes, des services et des capitaux piétine. L’on évoque les “coûts de la Non-Europe”. Le besoin d’un nouvel élan se fait pressant. Il s’amorce au milieu des années 1980.

En juin 1984, le Conseil européen de Fontainebleau désigne Jacques Delors président de future la Commission qui entrera en fonction en janvier 1985. Celui-ci choisit de faire de l’avènement d’un grand marché intérieur le levier d’une relance de la construction européenne⁴.

D’emblée, la nouvelle Commission s’attelle à la rédaction d’un “Libre blanc” sur le marché intérieur, catalogue de près de trois cents mesures législatives destinées à mettre en place pour fin 1992 un “espace économique sans frontières” (physiques, normatives et fiscales) – on l’appellera aussi marché unique –qui réalise la libre circulation des marchandises, des personnes, des services et des capitaux⁵. Remis le 14 juin 1985, le “Livre blanc” se trouver sur la table du Conseil européen réuni à Milan les 28 et 29 juin 1985. Il y voisine un autre document, le rapport du “comité ad hoc pour les questions institutionnelles”, appelé aussi comité Dooge⁶.

4. Avant d’entrer en fonction, le futur président de la Commission avait envisagé plusieurs thèmes de relance: les institutions, l’union économique et monétaire, la défense même, et le marché unique. Il se rendit compte que les trois premiers avaient une faible faisabilité politique; homme de centre-gauche mais de forte conviction pro-européenne, Delors comprend que c’est la réalisation du grand marché intérieur, objectif de nature néo-libérale, qui offre le meilleur levier pour relancer la construction européenne.

5. L’achèvement du marché intérieur, *Livre blanc de la Commission à l’intention du Conseil européen*, juin 1985, Luxembourg, Office des Publications officielles des Communautés européennes, 1985.

6. Ce “comité ad hoc” est chargé de faire des suggestions, y compris de nature institutionnelle, concernant l’amélioration du fonctionnement de la Communauté et de la coopération politique en matière de politique étrangère. Il fait suite au vote par le Parlement européen le 14 février 1984 d’un “projet de traité instituant l’union européenne”. Au plan juridique, celui-ci, souvent présenté comme le projet Spinelli, du nom de son principal promoteur, avait valeur d’une simple résolution non-contraignante. Mais il représentait un fait politique auquel le Conseil européen de Fontainebleau, en juin, voulut de donner suite tout en le recadrant. Aussi

Ce comité avait été chargé par le Conseil européen de juin 1984, le même qui avait désigné Delors à la présidence de la Commission, de faire des suggestions pour l'amélioration du fonctionnement de la "coopération européenne dans le domaine communautaire comme dans celui de la coopération politique." Remis fin mars 1985, son rapport préconise, lui aussi, la formation d'un "espace économique intérieur homogène" et se prononce pour l'inclusion des questions de sécurité dans le champ de la politique étrangère; il propose des modifications institutionnelles, dont l'extension du vote à majorité qualifiée au Conseil et la participation du Parlement européen au processus législatif. Il préconise enfin la convocation d'une conférence intergouvernementale qui ferait entrer ces réformes dans les traités: "la seule décision des chefs d'Etat et de gouvernement de convoquer cette conférence, conclut-il, aurait une valeur hautement symbolique et marquerait l'acte de fondation de l'Union européenne."⁷ Cette convocation devient l'enjeu crucial du Conseil européen qui se réunit à Milan les 28 et 29 juin 1985.

Margaret Thatcher est traditionnellement hostile au vote à la majorité qualifiée (VMQ) au Conseil. Elle estime donc qu'il n'y a pas lieu de l'étendre et s'oppose à une révision formelle des traités qui irait dans ce sens. En revanche, la présidence italienne -avec B. Craxi comme chef de gouvernement et G. Andreotti ministre des affaires étrangères- tient à la convocation de la CIG; F. Mitterrand et H. Kohl comme les dirigeants du Benelux y sont aussi favorables. Arguant de ce qu'il s'agit d'une simple question de procédure, B. Craxi procède au vote: six pour, trois contre (Royaume-Uni, Danemark, Grèce). M. Thatcher s'insurge: comment peut-on convoquer à la majorité simple une CIG dont le résultat requiert la ratification par tous les Etats membres? A quoi les tenants de la CIG répliquent que la procédure de révision du Traité (art. 236 CEE) ne prévoyant pas de disposition particulière pour la convocation de la CIG, celle-ci relève de l'art. 148: "le Conseil délibère à majorité simple sauf lorsque le Conseil en dispose autrement".... Telle est l'argumentation juridique qui sous-tend le vote du 29 juin⁸.

La CIG s'ouvre à Luxembourg le 9 septembre et s'y conclut les 2 et 3 décembre. Pour l'essentiel, le cours de la négociation consiste à réaliser trois types de *linkage* qui font la substance de l'Acte unique. La première liaison proportionne l'extension du vote à majorité qualifiée (VMQ) à la mise en œuvre du Livre blanc sur le marché intérieur. La mesure s'applique principalement au rapprochement des législations (art. 100 CEE) qui était freiné par l'exigence de l'unanimité. Le confinement de la réforme institutionnelle à l'établissement du marché intérieur lève les préventions de Mme Thatcher. Une deuxième liaison consiste à introduire le thème de la "cohésion économique et sociale" qui doit réduire les écarts de

met-il en place ce "comité ad hoc pour les questions institutionnelles" composé de représentants des chefs de gouvernement, aussi appelé comité Dooge, du nom de son président irlandais.

7. Comité ad hoc pour les questions institutionnelles, *Rapport au Conseil européen*, Bruxelles 29-30 mars 1985, Office des publications officielles des Communautés européennes.

8. Cette exégèse du recours à la majorité simple pour convoquer une CIG m'a été exposée par l'ambassadeur Paul Noterdaeme, alors représentant permanent de la Belgique, qui, m'a-t-il raconté, l'avait vérifiée, traité en main, dans la nuit du 28 au 29 juin et faite diffuser par la délégation belge.

développement entre les régions. Il s'agit d'une dimension de solidarité qui fait contrepois à l'objectif néo-libéral de l'espace sans frontières. Elle sera la matrice du développement des fonds structurels, qui absorbera progressivement plus d'un tiers du budget de l'Union.

Conjuguant réforme institutionnelle et marché intérieur, marché intérieur et cohésion économique et sociale, l'AUE inclut aussi la codification de la "coopération européenne en matière de politique étrangère. Celle-ci avait été entreprise de façon pragmatique et selon des procédures "ad hoc" dès le début des années 1970. La CIG avait pour mandat de configurer les contours d'une "politique étrangère et de sécurité"; elle se limite à donner forme juridique à la pratique existante, sans inclure la dimension militaire de la sécurité, autrement dit la défense. La codification de cette coopération, qui reste de nature intergouvernementale, ferait-elle l'objet d'un traité distinct, ou serait couplée aux amendements des traités communautaires? Pour signifier que les deux aspects doivent "contribuer ensemble à faire progresser concrètement l'Union européenne"⁹, on les réunit dans un seul et même texte: d'où l'appellation d'Acte unique européen (AUE). Celui-ci sera signé en deux temps, les 17 et 28 février 1986, le Danemark, l'Italie et la Grèce ayant quelque peu différé leur signature. L'entrée en vigueur survient le 1er juillet 1987.

Le moment de Maastricht

Même si elles furent d'abord sous-évaluées, les avancées de l'AUE étaient notables: marché intérieur et fonds structurels au nom de la cohésion économique et sociale restent aujourd'hui des fondamentaux de l'Union¹⁰. Les limites étaient aussi manifestes: à travers une procédure de "coopération", le Parlement n'avait obtenu qu'un ersatz de participation à la décision législative; les progrès en matière de politique étrangère et de sécurité restaient cosmétiques. Enfin, même si la définition en restait vague, l'on restait sous le seuil de ce qui devait devenir l'Union européenne. Quant au thème de l'union économique et monétaire, il demeurait hors sujet, quoique J. Delors, au grand dam de Mme Thatcher, ait pu glisser à l'art. 20 AUE que des modifications concernant la politique économique et monétaire passeraient par une CIG¹¹.

Précisément, une double dynamique, fonctionnelle et géopolitique, va bientôt jouer en faveur de la monnaie unique. Du point de vue fonctionnel, il apparaît que le futur espace économique sans frontières devrait être placé sous une coupole de stabilité monétaire: le marché unique appelle la monnaie unique. A plus court terme, celle-ci serait aussi requise pour contrer les manœuvres spéculatives qui ébranlent le Système monétaire européen(SME) créé en 1979: une monnaie unique désarmerait la spéculation qui joue les

9. Voir l'art. 1 de l'AUE.

10. Rappelons que l'AUE introduit aussi l'environnement et la recherche et développement (R+D) parmi les politiques de la CEE.

11. Le titre de cet article comporte un subterfuge: son titre: "coopération économique et monétaire" est accompagné d'une mention entre parenthèses: (Union économique et monétaire) qui suscite l'émotion dans la délégation britannique.

monnaies européennes les unes contre les autres¹². L'idée est notamment défendue par D. Genscher, le ministre allemand des étrangères; elle suscite de fortes réticences de la part de la Bundesbank.

Quoiqu'il en soit, en juin 1988, le Conseil européen de Hanovre, sous présidence allemande donc, charge un comité composé des gouverneurs des Banques centrales mais présidé par le président de la Commission, J. Delors, de faire des propositions concernant un processus menant à l'union économique et monétaire (UEM). Ce "comité Delors" remet son rapport en avril 1989. Il préconise la création d'une banque centrale agissant en toute indépendance, soustraite à l'emprise des gouvernements. L'objectif de la politique monétaire serait la stabilité des prix. La marche à l'UEM se ferait en trois étapes qui s'enchaînent de façon irréversible: la libre circulation serait suivie de la convergence des économies¹³, avant que la fixation irrévocable de parité ne fasse naître la monnaie unique. Conformément à l'art. 20 AUE, c'est une conférence intergouvernementale qui établirait les dispositions relatives aux phases 2 et 3. La convocation d'une CIG sur l'UEM devient un enjeu politique majeur de l'agenda européen.

La mutation politique qui s'amorce en Europe de l'Est -ébranlement des régimes socialistes et de l'Union soviétique elle-même- lie aussi la marche à l'UEM à un dessein géopolitique: il s'agit d'assurer l'ancrage dans la construction européenne d'une Allemagne destinée à se réunifier. La préoccupation est vive, surtout à Paris, de la voir se détourner de l'Europe occidentale et reprendre un rôle central dans la Mitteleuropa. Aussi l'abandon du Deutschemark au profit d'une monnaie unique devient-il le gage de l'engagement allemand dans la poursuite de l'intégration européenne. Telle est la réflexion stratégique qui prédomine à l'Élysée et qui pousse le président Mitterrand à demander la convocation d'une CIG sur l'union économique et monétaire. Celle-ci devient la priorité pour le second semestre 1989, où le Conseil est sous présidence française.

Si Paris veut que le semestre s'achève sur la convocation d'une CIG sur l'union économique et monétaire, le chancelier allemand est moins pressé. Il admet le principe du passage à la monnaie unique mais estime que l'union politique (UP) doit venir d'abord. Mesurant les résistances de l'opinion ouest-allemande face à l'abandon du DM, il veut éviter que ce thème n'interfère avec les élections législatives du 2 décembre 1990. Pour H. Kohl, le "UP zuerst" (d'abord) relève de la pédagogie politique: il doit convaincre ses concitoyens que l'UEM est la conséquence d'un degré élevé d'unité européenne.

La chute du Mur de Berlin dans la nuit du 9 au 10 novembre renforce les considérations géopolitiques françaises. La convocation de la CIG est bien à l'agenda du Conseil européen de Strasbourg des 8 et 9 décembre. "Cela fait vingt ans, depuis le rapport Werner, qu'on

12. Voir à cet égard: Philippe de Schoutheete, *"La création de l'euro"*, Académie royale de Belgique, coll. L'Académie en poche, 2016, p. 40.

13. Le comité Delors détermine les critères de convergence économique mais ne les chiffre pas, laissant cette tâche aux décideurs politiques.

prépare la monnaie unique, l'heure est venue de décider", insiste F. Mitterrand¹⁴: la CIG s'ouvrira avant la fin de l'année 1990, après les élections allemandes du 2 décembre. H. Kohl a renoncé au prérequis de l'union politique. Il obtient en contrepartie une déclaration de soutien au processus de libre autodétermination du peuple allemand qui "doit se situer" dans la perspective de l'intégration européenne". Convocation de la CIG sur l'UEM versus soutien à la réunification allemande, tel est le "troc de Strasbourg"¹⁵.

Mais Kohl reprend bientôt l'idée du parallélisme entre UEM et UP. En mars 1990, un *memorandum* belge plaide aussi pour l'évolution vers une union politique et l'Élysée se rallie à son tour à la position allemande. Le 19 avril, une lettre Kohl-Mitterrand propose de lier une CIG sur l'UP à celle sur l'UEM. Fin avril, à Dublin, le Conseil européen en accepte le principe; fin juin, survient la convocation officielle: les deux CIG s'ouvriront à Rome les 14 et 15 décembre: c'est le "*Junktim* de Dublin".

L'on sait déjà ce que seront les grandes lignes de la CIG sur l'UEM: elles ont été tracées dans le rapport du comité Delors. Mais qu'en est-il de l'union politique? La notion n'a pas d'acception précise, son contour est vague et Margaret Thatcher en brocarde volontiers l'obscurité¹⁶. Finalement, Kohl et Mitterrand tentent d'en déterminer la portée dans une lettre du 6 décembre 1990¹⁷. En substance, au plan matériel, l'UP recouvre le champ des politiques non-économiques au premier rang desquelles figurent la politique étrangère et de sécurité et la coopération dans les domaines de la justice et des affaires intérieures, mais d'autres matières -énergie, culture et éducation, santé- peuvent aussi s'y rattacher. Au plan institutionnel, il s'agit de renforcer l'efficacité de la prise de décision, avec l'extension du VQM au Conseil et l'affirmation du rôle dirigeant du Conseil européen. Quant à la légitimité démocratique, elle requiert un renforcement des pouvoirs du Parlement européen, en particulier son accès à la codécision législative, et l'instauration de droits de citoyenneté européenne. L'ensemble de ces éléments vont se retrouver dans le Traité de Maastricht et traduire sa dimension d'union politique.

Les travaux des deux CIG commencent à la mi-décembre 1990. Les 9 et 10 décembre 1991, à Maastricht, les chefs d'Etat et de gouvernement doivent conclure. Quels ont été les éléments saillants de la négociation? Comme l'écrit J. Quatremer, "...avant même l'ouverture formelle de la CIG le 15 décembre à Rome, l'architecture générale de l'UEM avec ses trois phases destinées à assurer la convergence économique, budgétaire, institutionnelle et monétaire des Européens est largement esquissée"¹⁸. Mais le chiffrage des critères de convergence

14. Propos rapportés par Philippe de Schoutheete, op. cit. , p. 73.

15. L'expression est de Hans Stark dans: Kolh, "*l'Allemagne et l'Europe, la politique d'intégration européenne de la République fédérale*", 1982-1998, Paris, L'Harmattan, 2004, p. 150.

16. Voir Margaret Thatcher, "*The Downing Street Years*", London, Harper Collins Publishers, paperback edition 1995, p. 762.

17. Pour un commentaire sur la notion d'union politique et sur la lettre Kohl-Mitterrand, voir: Christian Franck, "*Variations européennes sur l'union politique*" in: PierreD'Argent, David Renders et Marc Verdussen (sous la dir. de), "*Les visages de l'Etat, Liber amicorum*" Yves Lejeune, Bruylant, 2017, pp. 449-458.

18. Jean Quatremer, "*Il faut achever l'Euro*", Calmann-Lévy, 2019, p. 83.

et la fixation d'une date pour entrer dans la phase de la monnaie feront l'objet de vives tractations.

Concernant le niveau de déficit maximal, l'on tourne autour de 3 ou 4% de PIB, avant de se fixer, sur l'insistance de F. Mitterrand, sur 3%. Le déficit français est alors de 1,6%, mais six pays sont au-delà, dont l'Italie (11,1) et la Grèce (16,1). Pour le niveau d'endettement, l'on choisit 60%, mais Belges et Italiens, dont la dette est supérieure à 120%, obtiennent que le respect du critère soit évalué en termes tendanciels: on doit, non le rejoindre, mais s'en rapprocher. La date du passage à la monnaie unique est aussi débattue. Craignant qu'elle soit indéfiniment différée, France, Belgique et Italie insistent pour qu'une échéance soit fixée dans le traité. Ce sera en 1997 au plus tôt, et le 1er janvier 1999 au plus tard. Par ailleurs, et pour prévenir un veto britannique sur l'ensemble de l'UEM, l'on avait accordé d'emblée au Royaume-Uni *un opting out* quant à la participation à la troisième phase.

Sur l'union politique, sujet protéiforme, le parcours est plus sinueux. L'on introduit des matières non-économiques telles éducation, formation professionnelle, culture, santé publique dans les compétences de la CEE. N'étant plus exclusivement économique, celle-ci change d'appellation et devient la Communauté européenne (CE). Concernant la politique étrangère, le changement par rapport à l'AUE est que l'on définit les actes (actions communes, positions communes) de ce qui devient la "politique étrangère et de sécurité commune" (PESC). La principale innovation tient à la percée conceptuelle du terme "défense", autrement dit l'instrument militaire, qui fait explicitement partie de "l'ensemble des questions relatives à la sécurité". La problématique du franchissement des frontières externes de l'Union (visa, immigration, asile) fait l'objet d'une coopération, assez modeste, dans les domaines de la justice et des affaires intérieures (JAI).

Reste l'institutionnel. En la matière, le Parlement reçoit la codécision législative avec le Conseil, mais elle ne s'applique qu'à un nombre restreint de bases juridiques. Apparition également de droits de citoyenneté européenne, complémentaires de la citoyenneté nationale. Au final, l'architecture du Traité signé à Maastricht prend la forme d'un temple grec, avec trois piliers. Le premier reprend l'ensemble des dispositions des traités communautaires, y compris les articles relatifs à l'UEM; le deuxième et le troisième, de nature intergouvernementale, concernent la PESC et la coopération JAI. Les piliers sont surmontés d'un fronton, celui d'un cadre institutionnel unique: ce sont les mêmes institutions qui agissent, les procédures étant diverses en fonction des matières abordées.

Le Traité signé à Maastricht le 7 février 1992 et qui entre en vigueur au 1er novembre 1993 s'intitule: "Traité sur l'Union européenne" non: "Traité instituant l'Union européenne". C'est dire que l'ouvrage est inachevé et reste sur le métier. De fait, à la demande du chancelier Kohl, il comporte déjà une clause de rendez-vous pour 1996¹⁹.

19. Voir l'art. N.2 des dispositions finales du TUE (Maastricht).

Le rendez-vous d'Amsterdam

Le chancelier allemand n'était pas satisfait des résultats concernant l'UP. Déplorant la minceur des avancées concernant les pouvoirs du Parlement et l'extension du VMQ, qui aurait dû aussi s'appliquer à la PESG, Kohl menace de ne pas se rendre à Maastricht en décembre et fait savoir qu'il refusera l'UEM si l'UP reste "*only a castle in the air*"²⁰. Il surmonte son mécontentement en obtenant la convocation dès 1996 d'une nouvelle CIG sur les aspects d'UP. Celle-ci s'ouvrira à Turin le 29 mars 1996. Son agenda s'est construit en trois temps.

Parmi les principales questions déclarées révisables à Maastricht figurent l'extension de la codécision législative Parlement-Conseil et, en matière de défense, la reprise par l'Union européenne de l'Union de l'Europe occidentale (UEO) créée en 1954. Mais bientôt, les perspectives de l'élargissement à l'Autriche, la Suède et la Finlande, auxquelles font suite les demandes d'adhésion des pays d'Europe de l'Est, de Chypre, de Malte et de la Turquie, font prévoir, selon la formule du ministre français A. Lamassoure, une "révolution du nombre": l'adaptation des institutions à une Union de plus de vingt-cinq membres s'impose.

En juin 1994, le Conseil européen de Corfou fait de la réforme institutionnelle la deuxième composante de l'agenda 1996. Un an plus tard, celui de Cannes, se soucie de rapprocher l'Union des citoyens. Leurs préoccupations en matière d'emploi, d'environnement et de sécurité intérieure sont également mis à l'ordre du jour de la future CIG. Ouverte à Turin fin mars 1996, celle-ci conclut ses travaux à Amsterdam les 16 et 17 juin 1997. Le bilan comporte quelques avancées mais laisse un pesant reliquat institutionnel.

Le développement d'un "espace de liberté, sécurité et justice au sein duquel la libre circulation des personnes est assurée" constitue un notable renforcement de la modeste coopération JAI de Maastricht. La problématique du franchissement des frontières externes (visa, immigration et asile) se trouve incorporée dans les matières du TCE. Une politique de l'emploi, qui reste de compétence nationale mais inspirée par des lignes directrices européennes, y fait aussi son entrée²¹. Autre innovation: la "coopération renforcée" permet à un certain nombre d'Etats désireux d'agir ensemble d'instaurer entre eux "une coopération plus étroite"²².

Par rapport aux dispositions déclarées révisables à Maastricht, il faut noter l'extension de la codécision législative qui s'applique à trente-deux bases juridiques au lieu de quinze. En matière de PESG, l'on atténue la rigidité de l'unanimité en prévoyant une "abstention constructive" et la possibilité d'adopter à majorité qualifiée la mise en œuvre de stratégies communes convenues par le Conseil européen. Mais c'est l'apparition des "missions de Petersberg" qui est l'innovation la plus notable. En raison de leur neutralité, l'Irlande, l'Autriche, la Suède et la Finlande ne pouvaient accepter la reprise par l'UE des dispositions

20. Michael J. Baun, "*An Imperfect Union*", Westview Press, 1996, p. 97.

21. En fait, cette politique de l'emploi préfigure la Méthode ouverte de coordination (MOC) qui s'appliquera aux actions de la Stratégie de Lisbonne lancée en 2000.

22. Cette coopération renforcée est organisée à l'art. 43 TUE (Amsterdam).

de l'UEO, en particulier, de sa clause de légitime défense collective. Mais ces pays ne s'opposent pas à ce que l'Union mène des missions de sécurité internationales qui ne concernent pas la défense du territoire, telles "les missions humanitaires et d'évacuation, les missions de maintien de la paix et les missions de forces de combat pour la gestion des crises, y compris les missions de rétablissement de la paix"²³, qui vont figurer à l'art. 17 du Traité d'Amsterdam.

Censé approfondir la dimension d'union politique du Traité de Maastricht, le nouveau Traité ne touche pas aux dispositions relatives à l'UEM. Par contre, et dans la perspective des élargissements futurs, il aurait dû comporter des changements institutionnels concernant la taille de la Commission, la pondération des voix au Conseil et l'extension du VMQ au Conseil. Ces trois enjeux faisant l'objet de blocages croisés, ils deviennent les reliquats ou *left-overs* d'Amsterdam. Leur traitement est renvoyé à une CIG ultérieure qui devra "procéder à un réexamen complet des dispositions des traités relatives à la composition et au fonctionnement de institutions"²⁴. Signé le 2 octobre 1997, le Traité d'Amsterdam entre en vigueur au 1er mai 1999. Dès juin, le Conseil européen de Cologne fixe pour début 2000 le lancement de la nouvelle CIG qui devra rouvrir le chantier institutionnel.

Nice ou la nuit des longs couteaux

Le paradoxe de la CIG 2000 est qu'elle s'ouvre en mars dans un contexte de printemps constitutionnel mais qu'elle va s'achever en décembre dans une nuit des longs couteaux. Malgré le demi-échec d'Amsterdam, ou peut-être à cause de lui, l'on assiste à une floraison de discours en faveur d'un saut constitutionnel. Le plus remarqué est celui prononcé le 12 mai à Berlin par Joschka Fischer, ministre des affaires étrangères allemand, qui plaide pour "le passage de la confédération de l'Union à entière parlementarisation dans une Fédération européenne fondée sur un traité constitutionnel"²⁵. Reste qu'en marge de cette rhétorique constitutionnelle il faut en revenir aux reliquats d'Amsterdam et aux enjeux de pouvoir qu'ils comportent.

Sur la taille de la Commission, les "petits pays" se battent pour garder chacun leur commissaire; les "grands" consentent à perdre leur second commissaire pour autant qu'une pondération des voix au Conseil leur conserve, dans une Union élargie, un poids politique correspondant à leur poids démographique. Mais les petits et moyens Etats renâclent à laisser se creuser la différence d'avec les plus grands²⁶. Une difficulté supplémentaire survient

23. Il s'agit de missions non art. V que l'UEO avait définies en 1992 à Petersberg, d'où l'appellation de "missions de Petersberg".

24. Protocole 11 du Traité d'Amsterdam.

25. Outre J. Fischer, le président allemand J. Rau, le premier ministre belge G. Verhofstadt, et même J. Chirac, T. Blair et L. Jospin se lancent dans cette rhétorique constitutionnelle. L'ensemble de ces discours a été rassemblé dans un ouvrage: *le Nouveau débat sur l'Europe*, textes réunis et commentés par Hartmut Marhold, Nice, Presses d'Europe, 2002.

26. Depuis 1973, Allemagne, France, Royaume-Uni et Italie ont chacun dix voix, Belgique et Grèce, par exemple en ont cinq.

avec la volonté du nouveau chancelier allemand Gerhard Schröder de remettre en question la traditionnelle parité franco-allemande. En vertu de l'écart -82 millions contre 62- entre les populations des deux pays, Berlin veut obtenir une ou deux voix de plus que la France, ce que refuse le président Chirac.

Au Conseil européen de Nice, les pourparlers durent du jeudi 7 décembre au lundi 11 à 5h. du matin. Un compromis franco-allemand est finalement trouvé pour la répartition des voix: France et Allemagne passent chacune de 10 à 29 voix, mais l'Allemagne bénéficie en outre d'un "filet démographique"²⁷. Une fois surmonté le différend entre Berlin et Paris, reste le bras de fer entre les Pays-Bas et la Belgique. Les premiers (14 millions d'habitants) réclament une voix de plus que la seconde (10 millions). Mais les Belges prétendent au maintien de la parité avec leur voisin si celle-ci est conservée entre la France et l'Allemagne. Pressé d'en finir, le président Chirac offre 13 voix aux Pays-Bas et 12 à la Belgique, qui reçoit une compensation qu'elle n'avait pas demandée: toutes les réunions officielles du Conseil européen se tiendront désormais à Bruxelles... Sur la taille de la Commission, l'indétermination subsiste: le Traité de Nice se limite à prévoir que le nombre de commissaires sera inférieur au nombre d'Etats quand l'Union comptera vingt-sept membres. Moins de 27 commissaires donc, mais combien?

L'adaptation des institutions à la "révolution du nombre" reste inachevée. Tout au plus est-il établi que les futurs adhérents auront autant de sièges au Parlement et de voix au Conseil que les Etats membres de même poids démographique²⁸, ce qui permet au Conseil européen d'estimer que la CIG "a ouvert la voie à l'élargissement". A l'actif de la CIG, l'on peut aussi mettre l'extension du vote à majorité qualifiée: il gagne vingt-neuf nouvelles positions, mais il s'agit surtout de décisions relatives à des nominations, comme celles du président de la Commission ou du haut représentant pour la politique étrangère et de sécurité²⁹.

Entre les résultats laborieux de Nice et la rhétorique du printemps constitutionnel, l'écart est patent. Les dirigeants européens en sont conscients. Aussi adoptent-ils à la fin de leurs tractations sur la Côte d'Azur une déclaration relative à l'avenir de l'Union³⁰ qui annonce l'ouverture proche d'un nouveau débat. Le Traité de Nice est signé le 26 février 2001. Il entrera en vigueur le 1er février 2003. Mais entretemps, la *saga* des traités a été relancée. Mi-décembre 2001 -on est sous présidence belge- la déclaration de Laeken fait un inventaire des questions essentielles que soulève le développement de l'Union. Elle envisage l'adoption à terme d'un texte constitutionnel qui serait élaboré par une Convention composée de représentants des Etats, des parlements nationaux, du Parlement européen et de la Commission.

27. En cas de vote majoritaire, l'on peut demander à vérifier que la majorité requise des voix représente au moins 62 % de la population de l'Union, ce qui suppose souvent d'y inclure la population allemande.

28. Voir la Déclaration 20 relative à l'élargissement. Exemple: la Pologne, dont la population est similaire à celle de l'Espagne (40 millions), aura comme celle-ci 50 eurodéputés et 27 voix au Conseil; de même Lituanie et Irlande (4 millions chacune): 12 eurodéputés et 7 voix.

29. Fonction créée par le Traité d'Amsterdam.

30. Déclaration 23 relative à l'avenir de l'Union.

De Rome II à Lisbonne

Les travaux de la Convention commencent à Bruxelles le 28 février 2002 sous la présidence de V. Giscard d'Estaing. Ils s'y achèvent le 13 juin 2003 avec l'adoption par consensus du "projet de traité établissant une constitution pour l'Europe". Onze groupes de travail ont élaboré les rapports touchant à divers thèmes tels la subsidiarité, la personnalité juridique de l'Union, la gouvernance économique, la défense... Mais le débat sur l'architecture institutionnelle est réservé pour la fin. Il sera prédéterminé le 14 janvier 2003 par un accord franco-allemand. Le président Chirac voulait une présidence de longue durée à la tête du Conseil européen, le chancelier Schröder militait pour l'élection par le Parlement du président de la Commission. Les deux s'octroient réciproquement leur préférence. Présidence de longue durée du Conseil européen et élection du président de la Commission entrent dans le paquet institutionnel final, qui voit aussi le Parlement obtenir des pouvoirs législatifs et budgétaires quasiment égaux à ceux du Conseil.

Concernant le vote à majorité qualifiée au Conseil, l'on abandonne la repondération des voix si péniblement obtenue à Nice pour instaurer une double majorité: 50% du nombre des Etats, 60% de la population européenne; pour la Commission, la Convention propose un collège de quinze membres dotés d'un portefeuille et d'un droit vote, les autres commissaires étant sans portefeuille. Quant à la structure du futur traité constitutionnel, la Convention l'aménage en quatre parties, dont la deuxième reprend la Charte des droits fondamentaux adoptée en 2000. A noter le catalogue des compétences, voulu fortement par les Allemands, qui figure dans la 1ère partie³¹.

L'ensemble du projet est transmis le 18 juillet au gouvernement italien qui exerce la présidence semestrielle. Les Etats restant les maîtres des traités, c'est une CIG qui doit décider de la teneur finale du texte. Elle s'ouvre à Rome le 4 octobre 2003. Prenant le projet de la Convention comme une "bonne base" de travail, elle se conclut en juin 2004. Le Traité établissant une Constitution pour l'Europe est signé le 29 octobre au Capitole. C'est un "Rome II" en quelque sorte.

La CIG a conservé en grande partie le texte de la Convention. Elle modifie légèrement les modalités de la double majorité au Conseil: 55% du nombre des Etats et 65% de la population, au lieu de 50 et 60. Elle revient aussi sur la composition de la Commission: celle-ci comptera un nombre de membres "correspondant aux deux tiers du nombre d'Etats membres, à moins que le Conseil européen, statuant à l'unanimité, ne décide de modifier ce nombre"³².

La *saga* des traités ne s'achève pas pour autant le 29 octobre 2004. Les 29 mai et 1er juin 2005, par référendum, les peuples français (à 54,6%) et néerlandais (à 61,5%) rejettent le

31. Les art. I-12 à I-17 énumèrent les diverses catégories: compétences exclusives, partagées, de coordination des politiques économiques et de l'emploi, de politique étrangère et de sécurité commune, domaines des actions d'appui, de coordination ou de complément.

32. Art. 1-26, -6

traité constitutionnel. Au terme d'une période de réflexion qui va durer de juin 2005 à mars 2007, la sortie de crise survient avec la convocation en juin d'une CIG qui débouche sur le Traité de Lisbonne.

Le 25 mars 2007, l'on célèbre à Berlin le vingt-cinquième anniversaire des Traités de Rome³³. Le Conseil européen saisit l'occasion pour affirmer sa volonté "d'asseoir l'Union sur des bases communes renouvelées...". C'est le signal que l'on va sortir de l'impasse. N. Sarkozy, le nouveau président français, propose de reprendre dans un "mini-traité" les dispositions institutionnelles qui font consensus. L'on abandonnerait par contre le caractère constitutionnel du Traité d'octobre 2004, ce qui dispenserait de repasser par un référendum en France. La chancelière allemande est d'abord réticente à l'idée du "mini-traité". Elle n'accepte la suppression de la dimension constitutionnelle que si l'on garde la substance de ce qui a été acquis dans la Constitution. Finalement, le Conseil européen des 21 et 22 juin convoque une CIG chargée de rédiger un "traité modificatif" qui reprend une large part du traité constitutionnel mais n'a plus valeur de "Constitution".

Les travaux de cette CIG commencent le 13 juillet. Ils consistent principalement en un jeu de réécriture. L'on efface la symbolique constitutionnelle –drapeau, devise, hymne- et l'on retire la Charte des droits fondamentaux, qui conserve cependant valeur de traité. Le reste est repris, sous une forme remaniée, dans un nouveau Traité sur l'Union européenne, qui est signé à Lisbonne le 13 décembre 2007. Mais un ultime rebondissement retarde son entrée en vigueur. Le 12 juin 2008, les Irlandais disent "non" (53,4%) à la ratification. Pour surmonter ce refus, le Conseil européen s'efforce d'apaiser leurs griefs en matière de neutralité, de fiscalité des entreprises et du droit de la famille; il rétablit surtout le principe d'un commissaire par pays, sujet particulièrement sensible en *Eire*. L'option d'une Commission de taille réduite et écartée. Moyennant quoi, les Irlandais revotent le 2 octobre 2009; le "oui" l'emporte à 67,13%. Le 1er décembre, le traité de Lisbonne entre en vigueur. La "fatigue institutionnelle" est telle que le mot "fin" semble mis à la *saga*.

Le Conseil européen de décembre 2019 a toutefois approuvé l'idée d'une nouvelle "conférence sur l'avenir de l'Europe" qui devrait se dérouler sur deux ans à partir de mai 2020, impliquer les diverses institutions et tenir un vaste forum des citoyens sur les futures priorités pour l'Union. Il ne s'agit pas a priori d'une conférence intergouvernementale de révision du traité de Lisbonne. Mais l'exercice, suspendu par la crise du coronavirus, pourrait bien conduire à une telle révision, la première d'importance depuis 2007.

33. Pour rappel, les Traités CEE et CEEA furent signés le 25 mars 1957.

The European Union in the twenty-first century: an accretion of doubts

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The British Minister for Europe, Douglas Alexander, wrote in a paper on the future of Europe in 2005, that 'the debate must focus on concrete achievements on the issues about which the public cares. But Europe's leaders have to lead a debate which addresses Europeans' doubts about the EU in the 21st century'¹. This was a formula that had become fashionable in some member countries – the appeal for a kind of grand debate about what the publics wanted from Europe, whilst loading the rhetoric with doubts. In others such as Germany the tone was more confident and the government was prepared to give a lead. The German government was clear in its commitment to the European Constitution and the need to revive integration, but accepted that the public had to be persuaded². But in Britain Alexander wrote as if readers had to face the reality that national identity and nation states were the dominant entities. Depressingly it was not just that the nation state had to be secured, which was obvious, but that there could be no imaginative re-shaping of the context which could possibly lead to a rethinking of the essential character of the nation state.

After a period of pro-Europeanism in the immediate post-accession period a range of doubts were appearing in Central and Eastern Europe³. The governments had shifted from a Western European social market position to a more Anglo-Saxon one, and later to right wing populist ideologies. Most importantly the new majority was explicit in its dislike of any approach that smacked of federalism. There was no preparedness to take a flexible approach,

1. A. Douglas MP, "*Europe in a Global Age*", Foreign Policy Centre, October 2005, P17.

2. "*Coalition Agreement between the CDU, CSU and SPD*", Press and Information Office of the Federal Republic, 11, November 2005, p..121.

3. Kr. Mikulova, "*Post Europeanism' in Central Europe*", Center for European Policy Analysis, at <http://cepa.ncpa.org.>, 14th December, 2006.

and allowing contradictions and uncertainties, but a determination to make their opposition explicit.

The debate about the voting rules was an excellent illustration of the profound changes in the character of the European Union brought about by enlargement. The prospect of enlargement brought the realisation that an increase in membership could make it more likely that proposals would be blocked by a minority of members, or that an approving majority would steam-roller through unpopular decisions. The qualified majority rules were tinkered with in the Treaties of Amsterdam and Nice to find the right balance between a blocking minority and an approving majority, but in the proposed European Constitution a new formula was proposed: there was to be a double majority system requiring the approval of a simple majority of states which also possessed 60% of the EU's population. Because of the protests of the Poles and the Spanish this system was later modified to require the approval of 55% of the member states with two-thirds of the population⁴. The failure to get the constitution approved in the referenda in France and Holland in 2005 meant that the qualified majority rules as agreed in the formula of the Nice Treaty remained in operation. It was early days but the fear was that leaving it like this would make negotiations about Council legislation more complicated and protracted.

In the European Union of 15 the voting practice had been that of consensus. There were three possibilities: dissenting states could accept majority voting and go along with the majority because they did not care enough to act differently; discussion would continue until there was a general agreement, because it was clear that dissenting states would strongly object to being overruled; or a decision would be postponed until general agreement was possible. The overwhelming majority of decisions were taken on the basis of consensus and states were rarely outvoted on matters which they judged important. As Fiona Hayes-Renshaw commented after a detailed discussion of the formal voting arrangements: "But this obsession with numbers may be premature and rather academic"⁵. There was in other words a great difference between the actual procedures and the formal possibilities for voting.

Enlargement appeared to bring the prospect that this would change. The discussions about voting at the Constitutional convention and elsewhere seemed to assume that the new rules would be followed literally: that majorities would outvote minorities. The view appeared to be that the number of members and their range of interests and values in the new Europe required such an arrangement if anything was ever to be done. So there was the dilemma: before enlargement qualified majority voting served only to lubricate a consensus system; after enlargement majority voting was more often real because there was a lesser chance of consensus. This emerging dilemma sharpened anxiety about the loss of state sovereignty.

4. L. Tsoukalis, *"What kind of Europe?"*, Oxford University Press, 2005, pp.218-223.

5. F. Hayes-Renshaw, *"The Council of Ministers"*, in John Peterson and Michael Shackleton(Editors), *"The Institutions of the European Union"*, Oxford: Oxford University Press, 2002, especially p.58.

In the first years of the twenty first century the integration cause failed to attract any significant coalition of support because it seemed impossible to give it any specific economic or political content which would prove attractive across Europe⁶. What seemed to be happening was always merely finishing off an existing project, slowing a vessel that had reached its destination, and applying a brake on further movement. The prominent projects of the early twenty first century were mainly about completing the single market, and were embellished with declarations of the need to protect the nation state. Diplomacy among the member states was always strenuous but it had now acquired that quality which was first identified in the late 1970s and then called *lourdeur*, best translated as a kind of dull lack of expectation, and a weariness with the whole thing. Such attitudes permeated the political classes and seeped into the general publics.

This was different from the earlier periods of hesitation; in each earlier case there was a clear image of an attainable next step, even when the states were slow to act. The Single European Act centred on the completion of the common market, and attracted the interest of the attentive public, and the Maastricht Treaty had the European Monetary Union project at its core. Some were enthused, some were appalled, but the debate energised rather than enervated. The failed referenda in France and Holland in 2005 indicated that the proposed Constitution as an integration project had no appeal. But there was also a strong sense of *ennuie* – of being irritated by the boring complexity of the whole thing. If European integration was to recover its momentum there was a need for a new grand project to capture the imagination at least of the attentive publics.

The proposal for a European constitution failed to take on this character! Indeed one explanation of the failure to gain approval in France was the perception there that it was a dilution of what had been achieved. It had the character of a last act, a summation, rather than of a new start. The point could be put more strongly: a more integrated Europe was no longer a part of the vision of the future in the states that had previously made up the company of the willing. The loss was of course bound up with the political turbulence in Germany and France and the personal failures of two key political figures, namely Chirac and Schroder⁷. It was also related to the falling away of the key supporters of the core, especially Italy under Berlusconi, and Holland. The increasing hesitation about integration was marked by two linked weaknesses: there was no consensus about what the next steps should be, and the coalition of the willing lacked the will to impose on the reluctant, as had been the case when Mitterand and Kohl were in charge. Increasingly the weight of the reluctant members increased as the new members in Eastern Europe became more critical of European values, though not of European subsidies.

6. A point well illustrated by the Foreign and Commonwealth Office's report on the 2005 British Presidency of the EU: Prospects for the European Union in 2006 and retrospective of the UK's Presidency of the EU, July to December 2005, Cm 6735, January 2006.

7. R. Whitman, "No and After: options for Europe", *International Affairs*, Volume 81, Number 4, July 2005.

But one of the key themes of the Kohl -Mitterand period of integration had also been diluted: further integration had been pushed by them in order to anchor a united Germany more firmly in the European Union, then essentially a Western organization. After enlargement that framework was no longer as tight: even in the European Union Germany was now more free to pursue an expanded role as a Central European power, and the election as Chancellor of Angela Merkel, whose origins were in the German Democratic Republic, made this more likely. Enlargement represented a defeat for the Franco-German strategy linking German unification with a deepening of European integration. It made it more likely that Germany would redefine its geopolitical space so that it was centred less on France and Western Europe and more on central Europe, or Europe as a whole in an enlarged EU, and the world. Germany was emerging as a satisfied, and self-interested power at the heart of Europe, a fact which was itself a source of dissatisfaction elsewhere with the European Union.

There were also changes in the power configuration in Europe which made it more difficult for the cause of integration to get any purchase on political agendas. Integration had certainly been helped by the Cold War which encouraged the Germans and French to seek reconciliation and to reflect this in strong common frameworks. The US government was also likely in this context to approve of the strengthening of Western Europe as a partner in the anti-Soviet alliance. But after the ending of the Cold War this logic of power, which linked tight German-French relations with a positive view of integration from Washington, was fundamentally altered. The US government was less likely to see a united Europe as a positive, and therefore the cold war logic of the Franco-German alliance was less pressing: it was no longer necessary to push the close integration of France and Germany in order to ensure a maximum of anti-Soviet consolidation. Enlargement also meant that there were now a number of new members that favoured the strengthening of Atlantic links with the UK and the US ahead of any federalist project in the European Union.

Ivan Krastev pointed out that by 2017 the institutions of the European Union had come to represent a meritocratic neo-liberalism in the minds of European publics which led them to support authoritarian populist parties at home, whilst at the same time supporting the general idea of Europe. This had become particularly true of Central and Eastern Europe, where liberal democracy was judged to be incompatible with self-determination. Immigration pressures had reinforced the view that national majorities were now being betrayed by an alliance of liberal elites and the new minorities. Krastev explains these developments primarily as the result of excessive immigration. But the perception that high levels of immigration was an existential threat should be seen as resulting from the dogmatic application of neo-liberalism by Europe, the regional institutions and its leading state, Germany. The latter could tolerate high levels of immigration because it was richer, and less the victim of the policies of austerity, and could afford to be less illiberal. Immigration led to support for the populist AfD particularly in Eastern Germany where people believed they suffered from economic discrimination. Behind the effects of immigration were the effects of

austerity, which was in turn the consequence of hyperglobalization, and the enfeeblement of liberal democracy⁸.

The US administration was now much happier to reveal its dislike of integration in Western Europe. The Neo-conservatives argued for a new defence posture according to which the US would act preemptively and unilaterally in pursuit of its own interests. The US would seek military supremacy on the oceans, on land and in space. There was less need for what Donald Rumsfeld had called the Old Europe. After the victory of President Trump in 2016 US hostility to European integration became even more apparent. We were a long way from the Autumn of 1954 when US Secretary of State Dulles had threatened an *agonizing reappraisal* of US support for Europe if the French failed to ratify the proposal for a European Defence Community⁹. Now the US were concerned to prevent European moves towards a common defence, unless links with NATO and US leadership were assured, and to resist any development of European capacity to thwart US economic interests. Unipolarity was not merely a situation: it was a US Republican strategy.

Such difficulties for the cause of integration were of course underpinned by the greater diversity of political, social, and economic perspectives which came with enlargement. From the point of view of the governments in the core states this was a major disappointment. Their view of the proper relationship between welfare systems, society and the free market had been the dominant one, but now a preference for weaker welfare systems, freer markets and a more flexible – some would say exploitable – labour force, seemed to be in the ascendant. The traditional role of key democratic institutions, such as independent judiciaries, free press, and effective opposition parties, was also under threat, especially in Eastern Europe where a populist democratic dictatorship was recommended.

These changes and challenges to traditional western European arrangements came along when globalisation was also indicating to some the desirability of more neo-liberal economic arrangements. There had been a loss of the memory of war in Europe: the Second World War was now far enough away for the risks of returning to new conflicts within Europe to be underestimated. Up until the 1990s we were in the post Second World War world. It was only slowly realised that the new Russia under Putin had ambitions which threatened a new Cold War.

These changes meant that the recovery from the *lourdeur* of the early twenty first century was more difficult than it had been in the earlier phases of integration¹⁰. It could not be achieved by going forwards on the basis of what had been accomplished and required a radical change of course. Care had been taken to remove all the declarations of ambitious intent, as with the British insistence on excluding the idea of Economic and Monetary Union from

8. I. Krastev, *"After Europe"*, University of Pennsylvania Press, Philadelphia, 2017.

9. D. Lerner and R. Aron, *"France rejects EDC"*, Praeger, New York, 1957.

10. For a discussion of the earlier phases see P. Taylor, *"The European Union in the 1990s"*, Oxford University Press, 1996.

the Maastricht Treaty, and preventing any reference to a federal Europe from the abortive Constitutional Treaty and the later Lisbon Treaty. There was to be no fiscal federalism in an unrestricted Union Budget; there was to be no risk-taking with sovereignty in allocating new powers to Europe; there was to be a greater tolerance of local exceptionalism, and in many member states every effort was made to create a public mood which was hostile to any new beginning. Enlargement had strengthened the case for allowing the various states to adhere to those arrangements which suited them, and it was indeed the case that 'variable geometry' already existed¹¹. But this was not the point: it was both necessary to the enlarged European Union and likely to damage it.

At the time of writing in the summer-fall of 2019 three major problems were troubling the European Union, which were symptoms of the general malaise.

The malaise amounted to a sad reiteration of the traditional pathologies of the nation state, which some, including the present writer, had fondly imagined were in retreat. More than that: they were problems which brought the integration process squarely up against the cores of the nation state, and revealed the particular difficulties in going any further. They were highly political, highly sensitive, and most likely to attract nationalist opposition.

The problems with the Euro: towards fiscal and financial union?

This problem was met with a range of proposals which touched upon core economic and social functions of the state: the power of taxation, the control of money, the control of the budget. The European Union's difficulties with the Eurozone became serious after the global financial crisis of 2007-2008. Much has been written about the origins of these difficulties, starting with the view that it should not have been attempted in the first place, as the Eurozone area was not an optimum currency area, and the EU was not a political union. It was asserted that both of these conditions should apply for such an arrangement to succeed.

The difficulties can be reduced to two interrelated problems. First the states of southern Europe, and Ireland had been spending too much, particularly on welfare and workers, and, secondly, they were raising too little revenue, especially from taxation. The result of this was of course increasing government debt, and a consequent resort to borrowing in order to cover this debt by issuing government bonds. These were mainly bought by national banks. As members of the Eurozone they could not reduce the debt by allowing their currencies to devalue. As a result they greatly exceeded the level of government debt agreed in the Stability and Growth Pact as conditions for membership. The crisis came when there was a general realization that the governments could not repay the debt they owed the banks, and other holders of their bonds, and that the banks did not have enough trusted assets to cover what they owed.

11. Ch. Grant, "Variable Geometry", Prospect Magazine, July 2005.

The EU had reached a situation by 2019 at which a number of steps had been taken to attempt to break the vicious cycle. As a result of complex negotiations, and many false starts, an agenda which had to be followed in order to protect the monetary union from reasonable asymmetrical risks had been identified. This included movement along four trajectories:

1. The spreading of the risks of system failure more evenly between creditor and debtor states: an echo of the Keynes position on the IMF. This is reflected in the proposals to create Eurobonds, and to encourage more EU rather than national banks.
2. The strengthening of EU mechanisms for the supervision and support of EU financial institutions particularly banks. Closer monitoring, agreed data and accountancy standards, Eurobonds, common capital markets under EU supervision, were all a part of this trajectory.
3. The strengthening of EU mechanisms for coordinating economic policies in member states, so that a variety of economic indicators converged: e.g. interest rates, levels of personal and company taxation, levels of unemployment, levels of public spending. These did not need to be identical but levels of divergence needed to be reduced. These agreements had a central target: maintaining levels of deficit and debt at the level agreed in the Growth and Stability Pact, and the Fiscal Compact throughout the Eurozone.
4. The linking of the common capital market with a proactive ambitious investment policy to encourage a more even level of economic development across the European Union, in other words to move towards an optimum currency area. This was a challenge to dependence on the free market, and exposed a deep truth which had become increasingly obvious through the crisis: the bankruptcy of neo-liberalism in its various forms.. In the EU, even though labour had freedom of movement, its scale in practice was small. Greater attention to the development of worse off regions was therefore needed.

This in turn had the result of placing all members in the position of having to make a final choice: to exit the monetary union or to jump to a significantly higher level of integration for its survival. A classic response of those hesitant about such a jump was that it created a moral hazard: those who behaved badly would be encouraged to behave more badly because they were confident of being bailed out. There were three responses to that: first, the crisis which started in 2007-2008 was an extremely serious one yet, despite that, no member, even Greece, decided to leave. Second, the new measures for supervision and disclosure made it much less likely that bad behavior would not be detected at an early stage. The certainty of being found out would bring the malefactor squarely to the choice: be loyal or leave. And thirdly there was a realisation, even in Germany, that responsibility for correcting serious imbalances in the Eurozone had to be shared.

The adoption of these measures could not disguise the strains placed on the EU by the Eurozone crisis. The worst affected was Greece which had been pushed to accept a series of constraints on its spending imposed by the European authorities and the IMF, at the cost of major losses in incomes, pensions, and public services. The Irish and the Portuguese showed

signs of having come through the crisis, with fewer costs in terms of social upheaval. Spain appeared to be moving towards the comfort zone. Most importantly, however, attempts were made to put new arrangements in place at a time when neo-liberal economic theories were also increasingly challenged. These had been a major reason for the hard conditions imposed on the debtor states, particularly Greece. There was some evidence to suggest that Germany was now prepared to share a larger share of the costs of maintaining stability in the Eurozone in return for the acceptance by the others of the new arrangements. After 2017 the economies of the Eurozone showed some modest growth. But at the time of writing it remained unclear whether the new arrangements would work, and how far they would go unchallenged by the nationalist backlash. The background mood remained one of deep *ennuie*.

The EU Migration crisis

The influx of what were perceived as large numbers of foreigners seemed to challenge the idea of the nation state as the homeland. It re-awakened the ancient prejudice against the outsider. The crisis had three components:-

1. The very large numbers of refugees/migrants fleeing from wars and economic deprivation in the Middle East and Africa¹². There were 1.3 million asylum claims in the EU in 2015, with most made in Germany. The number was reduced somewhat in late 2016 -2017 after an agreement with Turkey to prevent migration from Syria. These population pressures certainly contributed to the development in Austria, the Czech Republic, Hungary, Poland and Germany of populist parties and politicians. The highest number of migrant claims in proportion to its population was, however, in Hungary, where 1,800 refugees for 100, 000 Hungarians claimed asylum in 2015. The next highest, in descending order, were in Sweden, Austria, Norway, Finland, Germany and Luxembourg. The average for the EU was 260. 292,540 migrants were offered asylum in 2015 out of a total of more than a million applications. In the period May- July 2017 the rate of immigration remained high at 156 000 despite falling by 64% compared with the same period of 2016.
2. The failures of EU policy in response to the pressures. Elements in this policy included: the pre-crisis agreement that obliged migrants to apply for asylum in the country of entry (The Dublin Agreement). As the Central and Eastern Mediterranean were the main routes to the EU the burden of receiving migrants fell very heavily on Italy and Greece, and in member states adjacent to their frontiers. In September 2015 EU governments agreed to accept a quota of immigrants from Italy and Greece, calculated roughly according to size and GNP, with Germany and France accepting the biggest share, but this system quickly became contentious. The central European countries, Poland, the Czech Republic, Slovakia and Hungary, took almost no refugees, in contravention of their obligations. The Balkan

12. Immigration Figures are in Eurostat: statistics explained, March 2019 at https://ec.europa.eu/eurostat/statistics-explained/index.php/migration_population-statistics.

route into Europe was virtually closed off by the building of fences along the southern borders of Hungary.

3. Another problem was that different conditions applied in the various member countries with regard to eligibility for the granting of asylum. There was no common EU policy on asylum. The EU's mechanisms for patrolling the external frontiers of its territory, known by the acronym Frontex, were also underdeveloped, and there was no effective border force to work in conjunction with the Schengen system. As a result a large number of immigrants were held in holding camps while the applications were dealt with, while a large number of illegal immigrants moved without visas between countries within the Schengen area. A significant number of migrants were able to enter the Schengen area illegally through the Balkans from Turkey.

There were two narratives about the problem of migration in the EU, a liberal one and a populist, xenophobic one. At the time of writing there was little evidence of any agreed liberal response, and in most member states there was increasing, and sometimes violent resistance to further immigration. The liberalism of the EU faced direct challenge from nationalist xenophobia.

The problems with Brexit

This problem raised a great uncertainty about the commitment of members to the Union. Suddenly what appeared to be fixed and embedded in the social and economic life of Europeans, seemed ephemeral, and not guaranteed. Though some states, and political leaders, resisted the uncertainty, Brexit created the fear that the question of the continued existence of the Union was on the table.

The referendum about Brexit was held on 23rd June 2016. Of the 72% of the electorate who voted, 48.1% opted to remain, 51.9% opted to leave. (c. 37% of the total electorate voted to leave) Scotland, Northern Ireland and the South East of England voted decisively in favour of remain, while the North East of England was the most decisively against. Overall England and Wales voted to leave. Article 50 of the Lisbon Treaty, on the arrangements when a member decides to leave, was triggered by the British government in March 2017. The article stipulated that leaving would be two years after this date, in March 2019, unless both sides agreed to a change, regardless of the negotiations. By the time of writing in summer/fall 2019, there had been little visible progress on the negotiations. The May government had found it impossible to find a majority in Parliament in support of the agreement it had negotiated with the EU. By late June 2019 a further postponement of Britain's departure, to October 31st 2019, had been agreed. But there was still no Brexit agreement.

The May government did its best to deny Parliament, where sovereignty lay, any role in approving the terms agreed with the EU. But the British Supreme Court decided that Parliament should approve any agreement reached with the EU. It was also pointed out that the terms of exit had not been specified during the referendum. The leave campaign claimed

that leaving would be easy, would lead to Britain deciding its own destiny, would create new opportunities to negotiate advantageous trade deals with the rest of the world, and save hugely on contributions to the EU budget. The negotiations revealed this was over-simple.

Interpreting the referendum as the final will of the people was an attempt to head off any further debate about the terms of exit, its costs, its meaning for the sovereignty of Parliament, and for the people. Brexit was a context in which forms of populism appeared in Britain.

What was to be the relationship between the City of London and EU banks and capital markets? How would the free movement of capital be affected? Would London banks and financial institutions require new forms of EU licensing when they were outside the EU? What kind of restrictions would be placed on immigration from EU member states into the UK? What conditions would apply to EU citizens in the UK and UK citizens in other EU countries? Would European citizenship survive, and what rights would be allowed to non-nationals from other EU countries? What level of tariffs/charges would be applied on goods and services to and from the EU if the UK left the common market and the customs union? How was the specification of goods to be agreed and checked at the borders.? What happened if there was a disagreement? Would the ECJ have jurisdiction or would WTO rules apply? (The damage resulting from disagreement could be considerable, especially as modern production methods depended on complex transnational/pan-European supply chains, and just-in time supply systems.)

These problems were particularly acute with regard to the border between Northern Ireland and the Republic of Ireland after Brexit. The EU could not allow a soft border for imports into the EU anywhere without putting at risk one of its major achievements: the common external tariff. But restoring a hard border would risk damaging the hard won political settlement between north and south.

At the time of writing it was becoming increasingly apparent that failure to agree a deal with the EU, and falling back on WTO rules, would be enormously costly for Britain, but much less so for the EU. The OECD had pointed this out. One reason was that 47% of British trade was with the EU and only 15% of EU trade was with Britain. The socially concerned in Britain argued that the less well off would bear the brunt of this economic cost. The fear was that further reductions in the incomes of the less well off, on top of the effects of austerity over 8 years since 2010, could lead to serious political instability. A new Prime Minister, Boris Johnson emerged in late July 2019, who announced that the country would leave on the 31st October 2019, “no ifs or buts”. There was to be Brexit regardless of the cost. In truth, however, the EU had a direct interest in making life as difficult as possible for the Brexiteers. If a good deal was permitted it was feared there could be a procession of states seeking exit.

Lessons and conclusions

The main conclusion must be that, in the wording of the first paragraph above, there is to be no imaginative re-shaping of the nation state in Europe for the foreseeable future.

The beginnings of the integration process in the 1950s was helped by several favourable factors. The social economic setting was helpful in that it was pluralist, contained a relatively small number of member states, the original Six, which were highly motivated by the need for economic recovery, and building a zone of peace in Europe after the war. Hence politicians could be led by technocratic pressures: the European Coal and Steel Community, and the European Economic Community were judged to be the best way to make the member states richer, but also peaceful. The process of integration coincided with the perceived need to reinforce the values of liberal democracies which had been betrayed by Nazi Germany and the Second World War. It followed the functionalist idea¹³ that economic integration would tie its participating states into an *ever closer union*, in which economic conditions would make war less likely, and popular values would develop which stressed the virtues of cooperation.

Regional integration, once started was clearly pushed along by the processes identified by the Neofunctionalists. *Spill-over* meant that, despite the appearance of cycles of disappointments and enthusiasm, achieving one level of integration created pressures to move to a higher level of integration. In the second decade of the twenty-first century the Eurozone crisis illustrated these pressures: problems with the monetary union in a situation of political diversity led to new efforts to achieve financial and fiscal union, which in turn created pressures on all states, including Germany, to accept that the costs of monetary integration had to be shared. Until the late 1990s and the first years of the twenty first century, it seemed that progress towards some kind of federal Europe would continue. The high point of this phase of integration – but also the beginning of a downturn - was probably the attempt to formulate and agree a European Constitution.

The slowing down of the process since can be attributed to a number of factors. One was the difficulty of maintaining, at the same time, the sovereignty of states, democracy in those states, and high levels of globalization. Rodric points out that it is impossible to obtain all three¹⁴. At the time of writing this problem had led to a compromise with liberal democracy in Central and Eastern Europe: populist, anti-liberal parties had gained control and politicians had asserted themselves against the European institutions, and against their own parliaments and legal systems, most clearly in Poland and Hungary. In Western Europe the same pressures were felt, but at the time of writing it seemed that they had been held at bay. They arose from what could be called a vicious cycle of forces, which included globalization and particularly the dominance of the ideas of free market capitalism, but also the appearance of increasing divergence within societies and states between meritocratic elites and citizens who felt they had been ignored and left behind. In the language of David

13. "The classic statement of the functionalist idea is that" by David Mitrany, A Working Peace System, contained in David Mitrany, The Functional Theory of Politics, Martin Robertson, 1975.

14. D. Rodric, "The Globalization Paradox", Oxford University Press, 2011, especially Chapter 9.

Goodhart the former were the citizens of *anywhere* and the latter citizens of *somewhere*¹⁵. These problems represented a simmering cauldron of possibilities until the appearance of the migration problem, caused by the wars in the Middle East and North Africa, which provided the catalyst of a more active anti-Europeanism.

In 2019 further European integration faced unprecedented difficulties. There were a few signs that the European Union as a regional international organization had been embedded in the social, political and social fabric of Europe¹⁶. But there were also indications of a return to more primitive forms of the nation state. First was the set of new arrangements to deal with the problems of monetary integration. Whether or not they succeeded remained to be seen, but they were there. Second was the return of the Eurozone to modest economic growth, ahead of that achieved in Britain. Third was the failure of right wing populist parties in West European States to achieve a major break-through. Holland and France had decisively rejected them in 2017. They achieved significant success in the old east German lander of Germany, but remained short of sufficient presence in the Bundestag to enter government. They had indeed come into government in Italy, Hungary and Poland, but it was striking that in all these countries membership of the EU was not an issue, and the difficulties with Brexit reminded them that leaving was unlikely to be rewarding. Fourth there were some signs that the policies of neo-liberalism, and austerity, had been discredited, and as a result the politics of member states would be greatly altered. Brexit, and the election of Donald Trump, brought home the consequences of ignoring the interests of the majority of citizens.

Sadly the European Union has been adversely affected by the adoption, to some extent, of an alien ideology which claimed to be a scientific theory but which in fact was based on the history and national prejudices of the USA. This alien ideology goes under the name of neoliberalism. It was the product of the Chicago School led by the economics ideologue Milton Friedman. Its close doctrinal relation in the USA was the Neo-conservatism broadcast by the likes of Paul Wolfowitz and Richard Perle, particularly during the administration of George W Bush, which advocated a new American supremacy, but it emerged more strongly under Donald Trump and the hawks with whom he surrounded himself.

It took the US to Trumpian populism, and in Europe it led to Brexit in the UK, and the domination in mass circulation newspapers, led by oligarch owners, such as the *Daily Mail* in Britain, of poisonous Euroscepticism.

If the EU is to survive there needs to be a return to European values, which are best represented in the ideas of social democracy. These are the values that shaped Europe's reputation for liberalism, good welfare standards and openness. It is what made Europe attractive to outsiders, and why it was constantly under pressure to expand. The answer to the question of what can be done to rescue Europe is, therefore, obvious: neoliberalism must

15. D. Goodhart, *"The Road to Somewhere: the populist revolt and the future of politics"*, Hurst and Company, London, 2017, especially Chapter 2.

16. *"The idea of embedded liberalism was developed"* by John Gerard Ruggie. See his *Constructing World Polity*, Routledge, London, 1998.

be rejected and the European values of social democracy reasserted. It remains the dominant ideology in Western Europe, in the original Six member states and in Scandinavia. These states need to form a new core of social democracies to protect the European achievement and promote the welfare of European citizens. This is the central strategy by which the European Union can survive.

Notes on a union of codetermined publics

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1. Pre-thoughts

What does it really mean and take for diverse people to form their own polity? How to grasp the dialectics of this composite condition? As Stephanou and Nicolakopoulou put it: 'European integration has been based on shared values embodied in fundamental principles, such as the long-standing principle of "unity in diversity"'. In the present-day EU, the need to promote integration, while also accommodating the socio-cultural diversity of member states, as well as the collective identities of various groups such as minorities and immigrants, constitutes a formidable challenge to policy-makers, implementing authorities and the courts of law'.¹ What follows, argues that the European Union (EU) may be taken as an advanced system of evolutionary ordered symbiosis among distinctive but constituent units: 'distinctive', in retaining their own constitutional qualities; 'constituent', in reaching higher levels of shared rule. This brings us to an image of the whole captured by the term 'organized synarchy':² a general system of coevolving units that escapes classical views of international authority/organization in the sense that the EU evolves alongside its component parts through norms and practices of extensive sovereignty-sharing and its 'polity' shape signals a departure from a

1. C. A. Stephanou and I. G. Nicolakopoulou, "Governing a Multicultural Europe: Policy Challenges and Responses", in L. L. Bekemans et al. (eds), "Intercultural Dialogue and Citizenship: Translating Values into Actions", Venice: Marsilio, 2007, p. 202.

2. See D. N. Chryssochoou, "Theorizing European Integration", 2nd edition, London and New York: Routledge, 2009, pp. 131-146.

cluster of horizontally coordinated polities to a synarchical-type association of codetermined publics.

Once there was optimism in and about Europe; at least a sense, even some sense of it. It was a time when Europe's projections towards a post-statist destination were on the ascend; a time when the EU seemed to have left behind conventional views of state-controlled politics as redundant, even irrelevant, to the emergence of a novel, promising and embracing polity setting capable of accommodating cultural, constitutional and civic variants of diversity through a 'constitutional treaty' that was meant to shape for good, and for good reasons, Europe's future; but such a projective image of a constitutional end-state as federalists had hoped for, failed to come about, although such an attempt had all the principal qualities of a high-stakes, potentially transformative constitution-making exercise. In sum, Van der Walt is right to note: 'Europeans have endeavoured, but not managed, to give themselves a federal constitution. They have, therefore, not established either a conclusive or an adequate legal foundation for the transfer of the essential governmental competences required for the establishment of a fully-fledged federal government. What was hailed in 2004/5 as Europe's "constitutional moment" passed without producing the federal constitution that it was supposed, or hoped, to produce. The rest is history'.³

2. Settings

If by 'polity' is meant an ordered public community based on an identifiable sense of 'demos-hood' among the members of the civic body, then civic belonging comes prior to any procedural or instrumental aspects of the polity. Here, 'demos' is taken both as a normative claim as well as a living condition, manifesting itself, albeit at times dialectically, in the experience of being part of an ordered political whole. The latter, the story goes, through its constitutive values -what make for any polity's essential 'constitution'-, cultivates bonds of civic attachment to a life commonly shared. It all amounts to a polity shaped by the ethics of a self-conscious citizenry that governs itself. But it also refers to a condition where 'demos' precedes 'cracy'. But as Tsatsos notes: 'The term did not precede -this would be unthinkable- the institutional occurrence, but the other way round, the term discursively and theoretically reflected the historical occurrence'.⁴ What, then, of a more instrumental 'story' of demos (formation), reflective of Tsatsos' historically grounded optic?

This brings us to the idea of demos coming (perhaps much) later into the picture; what comes first are public institutions that can foster support for a 'political association' which, in Weale's terms, 'has the ability to make rules that are treated as authoritative for the

3. J. van der Walt, "Introduction", in J. van der Walt and J. Ellsworth (eds), *Constitutional Sovereignty and Social Solidarity in Europe*, Baden Baden: Nomos, 2015, p. 9.

4. D. Th. Tsatsos, "The European Symptom: Towards a New Democratic Discourse", translated by N. Chrysoloras, Brussels: Bruylant, 2009, p. 48..

members of a collectivity'.⁵ In this second account, especially if the whole is made up of diverse publics as in many federal states, polity – the public architecture of ordered symbiosis or, as put by Tsatsos, 'the sum total of social rules that govern a society'⁶ – precedes demos and its collective propensity towards civic belonging. Yet, a polity requires a certain quality of its members; what Althusius calls 'symploites': 'co-workers who, by the bond of an associating and uniting agreement, communicate among themselves whatever is appropriate for the comfortable life of soul and body. In other words, they are participants or partners in a common life'.⁷ After all, 'politics' for Althusius 'is the art of associating (*consociandi*) men for the purpose of establishing, cultivating, and conserving social life among them. Whence it is called "symploitics". The subject matter of politics is therefore association (*consociatio*), in which the symploites pledge themselves each to the other, by explicit or tacit agreement, to mutual communication of whatever is useful and necessary for the harmonious existence of social life'.⁸ Carney notes: 'Symbiotic association involves something more than mere existence together ... Wherever there is symbiosis there is also communication, or the sharing of things, services, and right'.⁹

Living together in a polity, sharing its virtues, values and institutions, making it part of daily parlance and practice, embracing and engaging in its affairs, points to a state of osmosis comprising a mental/ideational and a procedural/working condition; both encouraging the collective civic body to reflect on the demands of a commonly shared life. This is also in line with Pettit's 'contestatory democracy' which, as he notes, 'will have to be deliberative, requiring that decisions are based on considerations of allegedly common concern'.¹⁰ As to the question of what makes for a viable demos, P. J. Taylor makes the point well when he writes, 'does the effective operation of a demos assume a dominant scale or focus of allegiance? The historical evidence suggests this to be the case'.¹¹ After all, the notion of 'polity' since the days Plato and Aristotle is about being part of a '*polis*'; it is about 'politics' itself which, as Heywood notes, 'literary means "what concerns the *polis*"'.¹²

As Weiler *et al.* put it with reference to the EU, 'an article of faith of European integration has been the aim of an ever closer union among the *peoples* of Europe. Demoi, then, rather

5. A. Weale, *"Democratic citizenship and the European Union"*, Manchester and New York: Manchester University Press, 2005, p. 51

6. Tsatsos, *"The European Symploity"*, p. 1.

7. J. Althusius, *Politica: "Abridged Translation of Politics Methodically Set Forth and Illustrated with Sacred and Profane Examples"*, edited and translated by F. S. Carney, Indianapolis, IN: Liberty Fund, 1995 [1603, 2nd edition, 1614], p. 19.

8. Ibid, p. 17.

9. F. S. Carney, *"Translator's Introduction"*, in Althusius, *Politica*, p. xv.

10. P. Pettit, *"Republicanism: A Theory of Freedom and Government"*, Oxford: Clarendon Press, 1997, p. 277.

11. P. J. Taylor, *"Relocating the demos?"*, in J. Anderson (ed.), *"Transnational Democracy: Political spaces and border crossings"*, London and New York: Routledge, 2002, pp. 238-239.

12. A. Heywood, *"Political Theory"*, 2nd edition, Basingstoke: Palgrave, 2004, p. 53.

than demos'.¹³ Or, in the words of Grimm: 'The European level of politics lacks a matching public'¹⁴. As put by Preuß: 'The EU may become the paradigm of a polity without a *demos*, based upon the solidarity of citizens who are able and willing to reflect on their otherness. It is a polity in word where people have become neighbours and still remain strangers which respect each other and accept mutual responsibilities'.¹⁵ Although a plural civic body may be said to exist, manifesting itself in many forms and shapes, it nevertheless falls short of the properties, or qualities, of a self-standing public celebrating the rewards of its civic union and unity too. Whether one wishes to call it a 'demos', and there are good reasons for not being refrained from invoking the concept, it still amounts to a diverse non-state citizenry within a polity largely determined by its component states whose sovereign authority may have now come to depart from idealized conceptions of self-rule, but which is still of continuing relevance to the politics of the larger unit.

But following Tsatsos' reasoning that 'demos' is 'a historically evolving concept' and that 'the derivation of power from the *demos* refers to every historical form of the *demos*, with no exceptions',¹⁶ one could argue that a shared sense of 'demos-hood' out of many distinctive but coevolving cultural, constitutional and civic traditions, affiliations and identities may be brought about, resting on a viable equilibrium among the forces of 'unity and diversity'. An EU demos may then be taken as a community of citizens capable of transferring their democratic claims and demands to, and via, the central institutions. It does not require a substantive reordering of pre-existing cultures, but rather a structured plurality of codetermined publics. As Castiglione asserts: 'It is arguably the very diversity of mutually balancing character of the various policy-making polities and regimes comprising the European Union that places it in a better position to represent the variety of rights, interests, and identities that characterize citizenship in modern societies. In this respect, European political identity needs to reflect the institutional plurality that characterizes political Europe'.¹⁷ Moreover, a possible evolution for the EU might be from what Bellamy terms 'an international association of democratic states' or 'a republican intergovernmentalist

13. J. H. H. Weiler et al., "European Democracy and its Critique", in J. Hayward (ed.), Special Issue: "The Crisis of Representation in Europe", *West European Politics*, 18(3), 1995, p. 5.

14. D. Grimm, "Treaty or constitution? The legal basis of the European Union after Maastricht", in E. O. Eriksen et al. (eds), "Developing a Constitution for Europe", London and New York: Routledge, 2004, p. 81

15. U. K. Preuß, "Revisiting the Rationale Behind the European Union – the Basis of European Narratives Today and Tomorrow", in van der Walt and Ellsworth (eds), "Constitutional Sovereignty and Social Solidarity in Europe", pp. 219-220.

16. Tsatsos, "The European Sympolity", p. 89.

17. D. Castiglione, "Political identity in a community of strangers", in J. T. Checkel and P. J. Katzenstein (eds), "European Identity", Cambridge: Cambridge University Press, 2009, p. 48.

arrangement'¹⁸ to a 'Republic of Europeans',¹⁹ whose democratic vitality draws from claims to 'civic unity in polycultural diversity'.²⁰

Linked to the above is how to move from a type of political association termed 'organized synarchy' - a politically structured plurality shared by codetermined publics- to what Lavdas calls, from an evolutionary prism, a 'transnational republic'²¹ or, to the kind of entity Dobson identifies as 'multipolity'²² and Tsatsos as 'sympolity'.²³ The discourse is also linked to the prospect of diverse but coevolving democratic publics engaging in a pluralist polity setting along the lines identified by Nicolaidis: a 'European "demoi-cracy" founded on the recognition of the persistent plurality of its component peoples but not reducible to a set of complex bargains among sovereign states' and 'predicated on the mutual recognition, confrontation and ever more demanding sharing of our respective and separate identities - not on their merger';²⁴ or, as noted by MacCormick, a 'lawfully constituted commonwealth', defining the latter as 'a group of people to whom can reasonably be imputed some consciousness that they have a "common weal", something which really is a common good, and who are able to envisage themselves or their political representatives and governing authorities realizing this or striving after it through some form of organized political structure, embodied in some common constitutional arrangements'.²⁵ MacCormick also notes: 'In this sense, both member states and the Union are commonwealths, one more intensive and localised, more strongly rooted in a sense of tradition and personal identity and loyalty, the other more extensive and broadly inclusive'.²⁶ Moreover, Taylor speaks of 'symbiosis' in 'that the state and the regional system were mutually supportive – each lived off the other';²⁷ as he writes elsewhere, 'each of the two levels had a degree of autonomy, and indeed their own politics, and had a *symbiotic*

18. R. Bellamy, "An Ever Closer Union Among the Peoples of Europe": Republican Intergovernmentalism and Democratic Representation within the EU", in R. Bellamy and S. Kröger (eds), Special Issue: "Representation and Democracy in the EU: Does one come at the expense of the other?", *Journal of European Integration*, 35(5), 2013, p. 507.

19. K. A. Lavdas and D. N. Chryssochoou, "A Republic of Europeans? Civic Potential in a Liberal Milieu", Cheltenham: Edward Elgar, 2011.

20. K. A. Lavdas, and D. N. Chryssochoou, "A Republic of Europeans: Civic Unity in Polycultural Diversity", in L. L. Bekemans et al. (eds), "Intercultural Dialogue and Citizenship: Translating Values into Actions", Venice: Marsilio, 2007, pp. 207-227.

21. K. A. Lavdas, "The European Union as a Transnational Republic? Consociational, Multicultural, and Post-Territorial Dimensions", in D. Edward and L. Bradshaw (eds), "Citizenship and Multiculturalism in Western Liberal Democracies", Lanham, MD: Lexington Books, 2017, pp. 137-158.

22. L. Dobson, "Constitutionalism and Citizenship in the European Union: A Normative Approach", *Constitutionalism Web-Papers*, 1, 2000, p. 15.

23. Tsatsos, "The European Sympolity".

24. K. Nicolaidis, "The New Constitution as European Demoi-cracy?", *Critical Review of International Social and Political Philosophy*, 7(1), 2004, pp. 76, 84, respectively.

25. N. MacCormick, "Democracy, Subsidiarity and Citizenship in the 'European Commonwealth'", *Law and Philosophy*, 16(4), 1997, pp. 342, 339, respectively.

26. *Ibid*, p. 339.

27. P. Taylor, "International Organization in the Modern World: The Regional and the Global Process", London: Pinter, 1993, p. 81.

relationship with each other. Each had become essential to the survival of the other ... in this arrangement states retained sovereignty within the transnational system'.²⁸

Although EU systemic growth may release pressures towards centralization, these do not in themselves make for a superior 'centre'; rather, they are an indication of states adjusting themselves to the collective terms of their association. This is key to acknowledging changes in (the exercise of) sovereignty without ascribing to its complete transmutation into a post-statist order; for all its late-modern predicaments, sovereignty cannot be convincingly detached from the member parts; rather, through, not despite the latter, the EU has been a polity-building exercise that enhances their collective capacity. For all the mutual concessions taken by states to meet the realities and deal with the antinomies of shared rule, they did not lose sight of their own autonomy. This is premised on the idea that their collective capacity to accommodate varying degrees of diversity has invited respect for their own integrities: codetermining issues of mutual interest makes sovereignty still valid but not equated to classical self-rule. Moreover, as Grimm notes: 'The EU has no constituent power. It owes its existence and legal foundations to the Member States. They possess the constituent power for the European Union. The Member States, to the contrary, constitute themselves. They possess the constituent power on their territory'²⁹.

As to the EU's treaty-based attributes, states retain control over the extension of powers to the 'centre' for all the profound impact of EU politics on their domestic orders. From Walker's account of 'constitutional pluralism', 'the only viable and the only acceptable ethic of political responsibility for the new configuration is one which is premised upon mutual recognition and interpenetration of constitutional sites located at different levels. This configuration, it is argued, should lead neither to a new unity or fixed hierarchy of constitutional authority nor, at the other extreme, to a fragmentation of authority such that the sense is lost of there being distinctive units of constitutional authority ...'.³⁰ Or, as Weiler writes on majority rule:

Normally in a democracy, we demand democratic discipline, that is, accepting the authority of the majority over the minority only within a polity which understands itself as being constituted of one people, however defined. A majority demanding obedience from a minority, which does not regard itself as belonging to the same people, is usually regarded as subjugation ... And yet, in the Community, we subject the European peoples to constitutional discipline even though the European polity is composed of distinct peoples. It is a remarkable insistence of civic tolerance to accept being bound by precepts articulated not by 'my people' but by a community composed of distinct political communities: a people, if you wish, of others. I compromise my

28. P. Taylor, *The European Union in the 1990s*, Oxford: Oxford University Press, 1996, p. 78.

29. D. Grimm, "Sovereignty in the European Union", in van der Walt and Ellsworth (eds), *Constitutional Sovereignty and Social Solidarity* in Europe, p. 51.

30. N. Walker, *Late Sovereignty in the European Union*, in N. Walker (ed.), *Sovereignty in Transition*, Oxford: Hart Publishing, 2003, p. 4.

self-determination in this fashion as an expression of this kind of internal –towards myself– and external –towards others– tolerance.³¹

3. Lenses

Defined as ‘organized synarchy’, whose working condition rests on codetermination, the EU ‘polity’ evolves alongside state orders and is called upon to reconcile the quest for ordered symbiosis with a larger –not necessarily higher– polity setting which allows the component state parts to retain their status as states in their own right. The synarchical approach yields insights into the general idea of a possible end-state that would assign new meaning to the ontology of the EU as an exercise in organized sovereignty-sharing. It also illustrates that normative theorizing about the EU does not follow a single path to interpreting the current state (or condition) of integration; the latter being constantly shaped by national and transnational dynamics, each offering different incentives for cooperative action. But the general system’s capacity to transcend the sovereign authority of the parts does not invalidate their innate need to retain their right to act, as Taylor notes, as ‘the ultimate guardians of the popular interest’.³² This also accords with the idea that, even though sovereignty is no longer as visible as it used to be, it has not ceased to exist; rather, it has discovered new ways of adjusting itself to the requirements of an advanced union of codetermined publics.

‘Organized synarchy’ makes us think of a polity, whereby reaching higher levels of collective ordered symbiosis does not require a process of regional state-building or a fully integrated polity. It projects a system of codetermination, whereby co-sovereign partners, far from invalidating their own cultures and structures, invest in a participative form of shared rule. As Aalbert put it: ‘To date, national state sovereignty has not disappeared to make way for a European sovereign state ... Yet, with the advance of institutional features way beyond the original design, and the development of a huge and extensive body of shared norms and commonly accepted rules and decision-making procedures, the EU is more than just a regime. It is at the very least a “saturated regime”, founded on the core institution of the “embedded *aquis communautaire*”’.³³ ‘Organized synarchy’ emanates as the basic principle around which a form of unity is being built as the expression not only of an advanced legal or institutional partnership among codetermined publics, but also of a bond shared among the parts within an extended but non-compact political space. As put by Preuß:

31. J. H. H. Weiler, “In defence of the status quo: Europe’s constitutional Sonderweg”, in J. H. H. Weiler and M. Wind (eds), *European Constitutionalism beyond the State*, Cambridge: Cambridge University Press, 2003, pp. 20-21.

32. P. Taylor, *International Organization in the Age of Globalization*, London: Continuum, 2003, p. 53.

33. T. E. Aalberts, “The Future of Sovereignty in Multilevel Governance Europe – A Constructivist Reading”, *Journal of Common Market Studies*, 42(1), 2004, p. 32, for the quote within he refers to T. Christiansen et al., ‘The Social Construction of Europe’, in T. Christiansen et al. (eds), Special Issue: “The Social Construction of Europe”, *Journal of European Public Policy*, 6(4), p. 539.

This is the first time in human history that sovereign states form a political community which not only established legal channels for their cooperation and the peaceful dealing of conflicts –this is, at least on paper, meanwhile the standard on the global level as well– but which has created an institutional realm in which different peoples form a political ‘We’ without giving up their or pressed to give up their differentness as peoples with their respective national histories, cultural traditions and particular mentalities ... they share a conjoint law which regulates important spheres of their everyday life and thus creates a quite peculiar ‘We’.³⁴

Europe’s synarchical condition resembles Althusius’ concept of ‘symbiotics’ as developed in his *Politica*.³⁵ In Hueglin’s words: ‘For Althusius, the ownership of sovereignty is shared by the narrower and wider political communities constituting the universal commonwealth. It is, in other words, a kind of co-sovereignty shared among partially autonomous collectivities consenting to its exercise on their behalf and within the general confines of this consent requirement. The only modern political system coming somewhat close to this notion of confederal sovereignty may be the European Union, the supranational powers of which ultimately rest on negotiated agreement...’.³⁶ As put by Taylor: ‘The EU’s arrangements were a unique way of managing a system of sovereign states, the like of which had not been seen before ... Membership in the European Project had always been sought in order to restore the nation states of Europe ... It was necessary to understand this to see that further integration need not lead to the creation of an overweening superstate’.³⁷ Notwithstanding the continuing relevance of its symbolic status, or that it has not been irretrievably ceded to a higher authority, sovereignty has now become all the more contested, dispersed, divisible and, crucially, shared.

This is far from a post-statist imaging of the EU but it is still a collective order beyond the exclusive control of states. The transition ‘from sovereignty to synarchy’ confirms states’ disposition to transcending some of their traditional attributes of sovereignty; most notably, the right to be involved in their partners’ affairs. This is Europe’s greatest cultural, rather than legal or institutional, achievement, keeping in mind Bellamy and Castiglione’s assertion that ‘a future multinational European polity could be a “Republic, if you can keep it”’³⁸ and Honohan’s view that, ‘[s]ince Europe is notoriously marked by diversity of nationality and views of history, interdependence of fate and future can come to be seen as the basis of

34. Preuß, “Revisiting the Rationale Behind the European Union”, in van der Walt and Ellsworth (eds) “Constitutional Sovereignty and Social Solidarity in Europe”, p. 218.

35. Althusius, “Politica”, p. 17.

36. T. O. Hueglin, “Early Modern Concepts for a Late Modern World: Althusius on Community and Federalism”, Waterloo, ON: Wilfrid Laurier University Press, 1999, p. 5.

37. P. Taylor, “The End of European Integration: Anti-Europeanism Examined”, London and New York: Routledge, 2008, p. 7.

38. R. Bellamy and D. Castiglione, “Democracy, Sovereignty and the Constitution of the European Union: The Republican Alternative to Liberalism”, in Z. Bańkowski and A. Scott (eds), “The European Union and its Order”, London: Blackwell, 2000, p. 190.

political community'.³⁹ As Castiglione writes: 'Nowadays, it is indeed less clear whether emotional and imaginary rootness of national patriotism is what is required to sustain political communities in the twenty-first century', to conclude that 'the solution may lie more in imagining how an interlocking political space may need interlocking systems of trust, solidarity, and allegiances—none of which may need to be absolute—than in the assumption that we can reproduce the absolute demands of national citizenship at a European level'.⁴⁰ Or, in the words of Preuß: 'The vision is, rather, the idea of solidarity grounded on the mutual recognition of otherness and the development of modes of cooperation and, yes, also of collectively binding decisions taken by "others" whose bindingness is rooted in institutional devices which encourage civic solidarity and the tolerance of for otherness'⁴¹.

4. Epilogue

Europe and the authority of its institutions have come a long way. But can Europeans form a 'people' in Bellamy's sense, as 'a group of persons who regard themselves as forming a political community that is capable of self-government',⁴² given that, as Castiglione writes, 'our destiny in a political community remains linked to that of others, with whom we live in an inclusive relationship of relative familiarity and identity and on whose solidarity we rely'?⁴³ As he phrases the question, 'in what sense can the European Union be a society of strangers (even more so than a nation-state would be) and at the same time a "political community"'?⁴⁴ Keeping Tsatsos' critique that '[t]he allusion to the "lack of a European demos" is, at the end of the day, a pathetic excuse that reveals a procrustean, arbitrary and a-historical reduction of the original unification phenomenon to the classical, that is to say statist, political discourse',⁴⁵ it all comes down to how Europeans think of themselves; how they value their polities in relation to a polity constituted by and out of many; how to inspire a vision of politics for diverse but fellow-citizens—'sympioetes' to recall Althusius⁴⁶—within a structured plurality that respects their diversity. This does not require a fully integrated identity or a shared view of an end state, but citizens making a polity of their own and in its own right that invites them to lead their lives as fellow-citizens.

39. I. Honohan, *"Civic Republicanism"*, London and New York: Routledge, 2002, p. 280.

40. Castiglione, *"Political identity in a community of strangers"*, in Checkel and Katzenstein (eds), *"European Identity"*, p. 51.

41. Preuß, *"Revisiting the Rationale Behind the European Union"*, in van der Walt and Ellsworth (eds) *"Constitutional Sovereignty and Social Solidarity in Europe"*, p. 219.

42. Bellamy, *"An Ever Closer Union Among the Peoples of Europe"*, p. 501.

43. Castiglione, *"Political identity in a community of strangers"*, in Checkel and Katzenstein (eds), *"European Identity"*, p. 49.

44. Ibid.

45. Tsatsos, *"The European Sympolity"*, p. 90.

46. Althusius, *"Politica"*, p. 19.

Great-power confederalism: European republicanism at a crossroads

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1. Reflecting on confederal politicality

A good place to begin this chapter is with the unashamedly hagiographical account of Switzerland from a study by Gabriel Bonnot de Mably (*De l'étude de l'histoire*), published in 1775:

"It is in Switzerland that the truest and most natural ideas of society have been preserved". It was here, he claimed, and here alone that it was still possible to practice the noble ideals of true politics, where 'no man should be sacrificed for another man', where property was inviolable and where the magistrates' authority was founded less on force and 'external decorations' than on their moral integrity and total dedication to the common good"¹.

Writing on the eve of the outbreak of the American Revolution and a few years before the French Revolution, Mably – a staunch defender of Roman republican principles – expressed a widely shared view of the Swiss republics as the last home of civic virtue and true liberty. And of their bonds – in the form of a loose confederation – as the most appropriate device for the preservation of both civic virtue and true liberty.

But what is 'true' liberty in this context? It is the sort of liberty that requires not merely the absence of actual coercion but the absence of conditions of domination and dependence. In other words, to enjoy liberty is not sufficient to be *de facto* free from coercion; it is necessary to be free from the possibility of being coerced: liberty should not be contrasted with coercion but with

1. B. Kapossy, *"Neo-Roman Republicanism and Commercial Society: The Example of Eighteenth-Century"* Berne, in M. van Gelderen and Q. Skinner, eds., *"Republicanism: A Shared European Heritage"*, Vol. II. Cambridge: Cambridge University Press, 2002, p. 228.

servitude². As Cicero famously declared in the *Philippics*, it is the sort of liberty that requires the straightforward rejection of a 'condition', the 'most miserable feature of which' is that, 'even if the master happens not to be oppressive, he can be so should he wish'³. In early modern republican thought, despite considerable variation, 'true liberty' was best attainable in the context of a confederal polity.

And what is a 'confederal' polity? Is it more than an early, archaic, or maybe transient form of arrangement in the process of federalization? There can be little doubt today that the conceptual distinction between a 'confederal' and a 'federal' system is clear. To quote from an eminent source, 'the difference between a confederation and a federation lies in the greater emphasis on the independence of the members in the first case, and on their unity of purpose and organization in the second'⁴. In other words, a 'confederation' denotes a political order with a weaker center than a federation, often dependent on the constituent units⁵.

In what follows, my aim is to discuss confederalism and confederal politicality as something much more than an archaic, transient or – worse – a stillborn system. I wish to provide an introductory sketch for the apparently persistent confederal features of the present and future forms of the evolving European polity. The interaction between new types of intergovernmentalism and confederal politics will be assessed in this context.

2. Confederalism and the political nation: the Swiss case

Why would Mably in 1775 consider the Swiss republics to be the last home of civic virtue and true liberty? After all, in just a few years revolutionary fervor would radicalize government and its sources of legitimacy, first in America, then in France.

At least in part, the early republican fascination with Switzerland was because the country was considered a paradigm of 'political' nationality. This assessment of Swiss politics and institutions continued well into the 19th century. When Acton praised the 'purely political nationality of Switzerland' in the context of British debates about liberty, nationalism, and the limits to national unity, he expressed – as Burgess reminds us – a 'belief in the futility of the idea that every nation should, by virtue of its self-definition, have its own independent state'⁶. Indeed, 'Canada, Belgium and Switzerland are national states only in the sense that

2. Ph. Pettit, *Republicanism: A Theory of Freedom and Government*. Oxford: Clarendon Press, 1997. Q. Skinner, *Liberty before Liberalism*. Cambridge: Cambridge University Press, 1988.

3. Q. Skinner, "Classical liberty and the coming of the English Civil War", in M. van Gelderen and Q. Skinner, eds., *Republicanism: A Shared European Heritage*, Vol. II. Cambridge: Cambridge University Press, 2002, p. 10.

4. R. Scruton, "Confederation", in *The Palgrave Macmillan Dictionary of Political Thought*, 3rd edition. London: Palgrave Macmillan, 2007, p. 126.

5. R. Watts, Federalism, "Federalism, Federal Political Systems, and Federations". *Annual Review of Political Science*, Vol. I, 1998, p. 121.

6. M. Burgess, *Comparative Federalism: Theory and practice*. London: Routledge, 2006, p. 106.

they are communities of political allegiance [...] not nation-states. And this applies also to some other contemporary federations, such as India⁷.

Forming a political nation

The road to the formation of a political nation successful in both domestic arrangements and foreign affairs was a difficult one. When, in 1291, three communities in Central Alps (Uri, Schwyz, and Unterwalden) united to defend their members against the Habsburgs, they formed the first nucleus of the Old Swiss Confederacy (still within the Holy Roman Empire). Between then and the mid-14th century, the three original communities were joined by two more cantons plus the city states of Lucerne, Zürich, and Bern. In this way the Confederation of eight states was formed. It was a system that persisted well into the 15th century and left its mark on the political culture of Switzerland. Even today, in Article 1 of the Federal Constitution of the Swiss Confederation, the city states and cantons of the original Confederation are listed first, followed by the cantons that joined the Confederation after the 15th century, in historical order. Today, Switzerland's 26 cantons are the federal components of the Swiss confederation.

The Swiss remained neutral during the War of the First Coalition against revolutionary France. Eventually Napoleon Bonaparte invaded, annexed and looted Switzerland in 1797-98, forcefully replacing the loose confederation with the more centralized, near-unitary structure of the short-lived *République helvétique* (1798-1803). From the prism of the present analysis, what is significant about this, first Swiss constitution was that it was, indeed, a constitution: not a treaty establishing a confederation but a constitution establishing a republic. The short-lived constitution was replaced by the Act of Mediation, which was in turn replaced by the Federal Treaty of 1815, which restored the Confederacy with a twist: individual cantons drew up cantonal constitutions, some of them introducing important participatory innovations. In this way, what had been 'essentially a Germanic unity was finally broken as a number of French-speaking territorial communities, together with Ticino, the only Italian-speaking area, were admitted to full canton status and re-established Switzerland as a loose confederation of 25 cantons based upon a treaty that guaranteed collective security by mutual assistance'⁸.

Federalism was formally introduced in 1848, as a system that bore the marks of the spirit of the Age as well as being the outcome of domestic power balances. After a brief internal conflict between Protestant liberals pushing for a centralized political center and the Catholic conservatives defending the old confederal order, most cantons sided with the idea of a federal constitution modeled in part on the U.S. Constitution. The new constitution, ratified by a vote of both the citizens and the cantons, established a range of civic liberties at federal level and made provisions to maintain cantonal autonomy to placate the Catholic minority. The constitution's amendment of 1874 established federal responsibility for defense, trade,

7. Ibid.

8. Ibid, p. 82.

and legal matters, as well as introducing direct democracy by popular referendum⁹. To this day, following the most recent constitutional amendment which introduced articles on fundamental rights (1999), cantonal autonomy and referendum democracy remain defining features of the Swiss polity.

The term “canton”, increasingly in use after the 15th century to denote the various communities (originally defined as Orte, Waldstätte, Stände) that formed the confederation, implied an equal status of free and independent entities within the confederation. Since Neuchâtel ceased to be a principality in 1848, all Swiss cantons have a republican form of government; most of them describe themselves as republics in their respective constitutions.

A political culture of mixed republican heritage

As the early modern Swiss republics left the world of apparent agrarian simplicity and stability, to embark on lives of commercial exposure, what would be the chances for maintaining and further cultivating their republican features? Many influential thinkers, including Montesquieu, famously regarded the possibilities for small commercial republics to be rather slim.

Switzerland proved otherwise. Deep-rooted traditions of neo-Roman republicanism provided a conceptual and ideational background against which (and in interaction with which) modern Swiss political culture evolved. When needed, the Swiss republics were able to manifest exceptional military skills, exemplified in the defeats inflicted between 1315 and 1388 on the Habsburgs, and culminating in the destruction of the powerful armies of Charles of Burgundy in three crucial battles (at Grandson, Murten, and Nancy) in 1476-1477. Even before the European powers recognized a form of Swiss neutrality (hence, indirectly, independence from the Empire for the Swiss Confederation) in 1648, a combination of strong participatory ethos and military prowess (an early, pre-French Revolution variant of the ‘citizen-soldier’ army) left its mark as a main feature of Swiss politicality. The idealization of the Swiss republics evident in Machiavelli’s writings, for example, owes much to the perception of military polities living an independent life and, when provoked, inflicting crushing defeats on the powerful armies of great powers.

Against this background, from mid-eighteenth century onwards, Swiss thinkers became engaged in lively debates on the possibilities opening on the road to reforming the early written and unwritten traditions of their city republics¹⁰. In this process, Geneva – Rousseau’s native city – was in fact not so typical of republican political thought and culture in many other cities and cantons. As Bela Kapossy argues,

9. R. Watts, *Comparing Federal Systems*, Second edition. Kingston, Ontario: Queen’s University, Institute of Intergovernmental Relations, 2006 and M. Burgess, *Comparative Federalism: Theory and practice*. London: Routledge, 2006.

10. B. Kapossy, “Neo-Roman Republicanism and Commercial Society: The Example of Eighteenth-Century Berne”, in M. van Gelderen and Q. Skinner, eds., *Republicanism: A Shared European Heritage*, Vol. II. Cambridge: Cambridge University Press, 2002, pp. 231-232.

"For most Swiss and foreign commentators Geneva was not the flag bearer of Swiss military republicanism but rather its opposite, namely a highly unstable commercial republic which managed to maintain its independence only because of the vital role that it played in the French deficit-based system of public finance. As an alternative to Rousseau in German-speaking countries, readers tended to concentrate on the ambitious and recognizably modern vision of how to accommodate the Swiss republics within the modern European world of commerce which could be found in the writings of the secretary of state of the Republic of Basle, Isaak Iselin. From the mid-1750s onwards Iselin rose to prominence [...] formulating a specifically Protestant theory of modern republicanism which spelled out the conditions needed for a market society to fulfil both the republican and Christian requirements of stability and distributive justice expected in a Swiss city-state. He concentrated his attacks on the protectionist policies of Basle's city guilds not only as economically disastrous but as anti-political and amoral"¹¹.

Kapossy goes on to explain that Iselin developed a view of republican liberty in a participatory commercial republic that exercised significant influence on German-speaking republicans, some of them considering him as a precursor of Kant. The combination of the traditions of Basle's commercial republicanism and Berne's military-aristocratic republicanism, argues Kapossy, constitute the essential cement in Swiss republicanism's claim to distinction in the context of the diverse republican heritage of Europe.

It is a heritage that does not necessarily identify with the anti-monarchical cause: it embraces a model of institutional participatory governance and the strong values associated with it, irrespective of whether a monarch or a president or indeed a collective form of leadership (such as a council) heads the state¹². Accordingly, several authors in early modern Europe adopted the terms 'republic' and 'republican' to denote a modality of participatory governance irrespective of whether the political system in question was monarchical in form¹³. Hence not just towns or cities could be viewed as republics, but even the whole 'republica Anglorum' was approached from the prism of citizenship, as in Edward Walshe's writings (1545) on the 'cytizens' who 'take paynes in the common wele of their countrey'¹⁴.

Summing up: external challenges and the formation of a political nation

In the Swiss case, confederalism evolved in response to external threats and challenges, but it was also the result of (a) an original nucleus of communities achieving increased numbers of followers over time, (b) the more powerful city states gradually playing key roles, occasionally leading to religious and other forms of conflict but ultimately being able to

11. Ibid, p. 232.

12. See inter alia, R. Scruton, "Republicanism", in *"The Palgrave Macmillan Dictionary of Political Thought"*, 3rd edition. London: Palgrave Macmillan, 2007, p. 594.

13. M. Peltonen, "Citizenship and Republicanism in Elizabethan England", in M. van Gelderen and Q. Skinner, eds., *"Republicanism: A Shared European Heritage"*, Vol. I. Cambridge: Cambridge University Press, 2002, pp. 85-106.

14. Ibid, p. 94.

survive as a system of shared power in a country with multiple cleavage lines, and (c) various forms of distinguished skills and activities – from providing mercenary armies at an early stage to providing banking services at a later stage – that helped consolidate independence and prosperity.

A major background factor has been the evolution of a vibrant as well as diverse political culture in which different republican themes interact and gradually shape a shared, Swiss view of government. In this sense, Swiss nationality is both political (the result of a process of identification with particular institutional features such as the constitution, cantonal autonomy, foreign neutrality, direct democracy with referenda, the citizen-army) and cultural, i.e., a function of shared folk heroes and traditions, a shared view of the 'other', significant symbolic milestones and standards, and so on. As David Miller has argued, in societies such as Switzerland, citizens have developed 'nested national identities': they identify, to varying degrees, with the nation as a whole, but also with one of its sub-units, which may also be characterized as a nation, while they may also feel part of larger cultural affiliations, such as German, French, or Italian¹⁵.

3. Groups, identities, and states

The EU's evolving institutional architecture has acquired – since the Lisbon Treaty entered into force in December 2009 – certain proto-federal characteristics. The new powers of the European Parliament can now impact decision-making in most policy areas and the ensuing tripartite decision structure (Commission - Council - European Parliament) begins to resemble the interactions between a proto-federal executive and a proto-federal bicameral legislature, the Council of Ministers still uncomfortable in its guise of an upper house in the making.

But despite its historic achievements, the EU possesses certain features that appear to hold it back in the foreseeable future: multiple fragmenting lines, persistent intergovernmentalism, rise of anti-European forces in several member states, perceived gaps in democratic legitimacy, and so on. Would an appropriately modified distillation of Swiss experience in a new, European formula serve as a compass for the EU's future direction? The answer to this query is a rather complicated one, involving both conceptual complexities and real-world conditions that change rapidly.

Fragmented polities have long been considered difficult to govern; in response to such received wisdom, several comparative studies in political science have explored the conditions in which countries with multiple cleavage lines were in fact able to find solutions that would ensure non-majoritarian governability while respecting minority identities and values¹⁶. The political systems of European states like Belgium, the Netherlands and

15. D. Miller, *"Republicanism, National Identity, and Europe"*, in C. Laboder and J. Maynor, *"Republicanism and Political Theory"*. Oxford: Blackwell, 2008, p. 144.

16. A. Lijphart, *"Democracy in Plural Societies: A Comparative Exploration"*. New Haven: Yale University Press, 1977.

Switzerland as well as certain non-European cases (such as Lebanon) have been examples of consociational rule. The politics of compromise become dominant as the lack of a thick layer of shared values and norms were compensated by the search for accommodation and problem solving at the elite level: the threat of fragmentation being constant, there is "the need to generate enthusiasm for stability precisely because of the continuing threat of fragmentation"¹⁷.

Turning to the EU, the term 'confederal consociation'¹⁸ was introduced as an attempt to build on Taylor's application of consociational theory to the Community system. It refers to a compound polity made up of distinctive constitutional units which are bound together in a consensual form of union, without either losing their sense of forming collective national identities, or resigning their individual sovereignty to a higher central authority.

True, some of the basic elements of consociation can be found in the EU: an elite cartel in the form of a managing coalition of states; a proportional representation of the state units to central decision-making; the retention of state competences in areas important to them; and a qualified right of mutual veto for the protection of dissenting interests. What qualifies the EU as a confederal rather than a federal consociation is that - until now - it is made up of equally sovereign demoi, that the publics of the plural polity are represented in their dealings with the center by democratic governments, and that decision-making authority is delegated to the separate segments as much as possible, while on issues of common interest, the decisions are made jointly by the segment¹⁹. This means that, as Paul Taylor and others have argued, consociationalism is about the capacity of states to exercise control over integration, not about the development of horizontal links among the member publics or the creation in Europe of a single community of common practices, norms, and standards²⁰.

Nested identities and civic polyculturalism

However, the lacunae in this approach are serious and can be traced in two areas. First, unlike consociationalism's institutionalized component parts, group politics in contemporary EU are much more complex in terms of the variety of identities, partial attachments, and nested nationalities. In fact, there are crucial aspects of Europe's social and political life that cannot be fully accounted for with the help of consociationalism. Ethnic, linguistic, religious communities, gender identities, life-style groups, new types of allegiance, all these create a set of multiple and often cross-cutting cleavages, introducing a new multicultural landscape in EU politics²¹.

17. P. Taylor, "A Conceptual Typology of International Organization", in A. J. R. Groom and P. Taylor (eds), *"Frameworks for International Co-operation"*, London: Pinter, 1990, p. 174.

18. D. Chrysoschoou, *"Democracy in the European Union"*. London: I. B. Tauris, 1998.

19. A. Lijphart "Democracy in Plural Societies: A Comparative Exploration". New Haven: Yale University Press., 1977.

20. For a detailed analysis see, D. Chrysoschoou, *"Theorizing European Integration"*, 2nd edition. London: Routledge, 2009.

21. C. Stephanou and I. Nikolakopoulou, *"Governing a Multicultural Europe: Policy Challenges and Responses"*, in L. Bekemans et al. (eds), *"Intercultural Dialogue and Citizenship"*. Venice: Marsilio, 2007, pp. 185-205.

Since the EU cannot motivate action by engaging with emotions and sentiments of community, European civiness calls for a different approach. The question is how to disentangle the issue of participation in the EU from the cultural and emotional dimensions of participation based on pre-existing affinity and confirmations of belonging²². The point is that 'some elements of the real and symbolic *res publica*, may sustain a degree of political motivation vis-à-vis the EU and its relevance for peoples' lives while also allowing for other and more intense forms of motivation and involvement at other levels of participation'²³. But given the lack of organic unity among the member *demos*, the republican challenge, in line with that of multiculturalism, is one of institutionalizing respect for difference and group rights, whilst sustaining 'a shared sense of the public good'²⁴. This is more likely to emerge through Pettit's (1997) third concept of freedom (freedom as non-domination), as it encourages a viewpoint which combines 'the recognition of the significance of the pluralism of cultural possibilities for meaningful choice and a framework based on a minimal set of shared political values'²⁵.

This approach – associating as it does the value of a liberal version of multiculturalism with its ability to enhance possibilities for meaningful choices, rather than uncritical commitment to inherited community values – aims to combine the recognition of the pluralism of cultural possibilities for access to meaningful choice and a framework based on a minimal set of civic values shared by individuals. The latter may possess a minimalist quality but is nonetheless crucial in that it helps avoid the traps of naïve relativism whilst focusing on arrangements and institutions that help citizens increase control over aspects of their own lives. Within this framework, a multitude of commitments may develop emotional engagement and enhance opportunities for meaningful choices. This would entail a condition of 'civic polyculturalism'²⁶ in which multiple allegiances co-exist in an expanded pluralist field, without denying the basic adherence to certain minimal shared political values.

The increased salience of multiple cleavage lines that transcend national boundaries needs to be conceptualized in novel ways. And, while there exists considerable analysis to rebut the claim that multiculturalism is dead, the real problem lies in the fragile mix of individual rights, cultural recognition and the acceptance of a certain limited set of transnational values: defending a liberal focus on individual rights needs to be accompanied by the cultivation of a transnational civic ethos at EU level informed by republican values²⁷.

22. K. Lavdas, "Republican Europe and Multicultural Citizenship". *Politics*, Vol. 21.1, 2001, pp. 1-11.

23. *Ibid*, p. 5.

24. R. Bellamy, "Liberalism and Pluralism: Towards a Politics of Compromise". London: Routledge, 1999, p. 160.

25. K. Lavdas, "Republican Europe and Multicultural Citizenship". *Politics*, Vol. 21.1, 2001, pp. 6.

26. K. Lavdas and D. Chrysoschoou, "A Republic of Europeans". Cheltenham, UK: Edward Elgar, 2011.

27. For a detailed analysis see, K. Lavdas, "The European Union as a Transnational Republic?" in David Tabachnick & Leah Bradshaw, eds. "Citizenship and Multiculturalism in Western Liberal Democracies". Lanham, MD, USA: Lexington Books, 2017.

4. Asymmetric intergovernmentalism on the increase

The second problem with consociationalism is its tendency to gloss over the fact that intergovernmentalism in the EU is not only persistent but appears to be increasingly asymmetric. The latter signifies a partially institutionalized modality whereby powerful member states strive to assume hegemonic positions while exercising some self-restraint (mainly due to the investment in the long-term horizon of cooperation)²⁸. In a nutshell, EU preferences are increasingly formed as a result of intergovernmental power calculations rather than uninhibited collective deliberation.

Let us get a grip on what this may or may not entail. Beyond the well-known, formal distinction between a *Staatenbund* (confederation of states) and a *Bundesstaat* (a federal state), today's EU is exploring - often in novel ways - arrangements that appear to combine elements of the political principles of federalism (guiding federal political systems) and persistent intergovernmentalism. In 1993, assessing the country's participation in the EU after Maastricht, Germany's *Bundesverfassungsgericht* coined (in its Maastricht-Urteil) the concept of a *Staatenverbund* to denote an intermediate arrangement. An arrangement in which member states retain constitutional sovereignty despite federal features acquired by the Union in areas such as monetary and economic union.

In this context, the EU is at the forefront of novel approaches to sovereignty. Indeed, sovereignty conceived not as an absolute status but as a bundle of attributes, powers and capacities²⁹ is better equipped to address this world of nested allegiances, shared policy capacities and asymmetric intergovernmentalism.

But the experience in recent decades, including recent experiences associated with the eurozone crisis after 2009 indicate that strategies in hard times are defined not just by the states, but by the most powerful among them. Often using auxiliary institutional structures, like the Eurogroup Working Group (EWG) which is a 'preparatory body' in name, it is the most powerful states and their permanent or occasional allies that determine process, content, and outcome.

Of course, familiar fragmentation has always threatened to disrupt the very fundamentals of the Union, i.e., the power-sharing arrangements upon which 'integration' has been built. As we noted in the discussion of consociationalism, fragmentation in plural societies marked by multiple and largely overlapping cleavage lines has led to the search for political accommodation through power sharing and longer-term institutional features that create incentives for maintaining a degree of unity. But the power-politics that came to the fore on a number of occasions (e.g., during the crisis surrounding the so-called 'Luxemburg Compromise' in the mid-1960s, the rift between states over the Yugoslavian wars in the

28. K. Lavdas, "Institutionalized Restraint as Policy: The EU and the Disintegration of Yugoslavia", in G. A. Kourvetaris (ed), "The New Balkans". New York: East European Monographs / Columbia University Press, 2002, pp. 150-172.

29. Ch. Brown and K. Ainley, "Understanding International Relations", Fourth edition. London: Palgrave Macmillan, 2009, p. 128.

1990s and the eurozone crisis after 2009) belong to a different category and point to a different direction for the Union.

Nobody seriously disputes that the eurozone crisis brought to the fore Germany's preference for maintaining its *ordo-liberal* principles over giving in to policies that would better express its long-standing pro-European commitment. It may be that, as Bulmer has argued, the domestic German political situation explains why *ordo-liberalism* has trumped pro-Europeanism. *Ordo-liberal* emphasis on stability culture has provided a valuable strategic resource for securing German objectives within the eurozone while satisfying the perceived requirements of domestic politics³⁰.

Whatever the explanation behind Berlin's policies in the crisis, the fact remains that austerity and 'stagnation by design'³¹ raised major issues about the Union's nature. On the one hand, following some initial improvisation, the formation of the ESM combined with bailout programs to assist the five eurozone states in need (Greece, Ireland, Portugal, Spain, Cyprus) appears to confirm a proto-federal sense of solidarity. Even in this context, there were serious shortcomings: in its 2017 special report on the European Commission's intervention in the Greek crisis, the European court of Auditors³² provides succinct and often critical insights into the saga of EU – Greek relations since 2009. For example, as the ECA notes, 'insufficient consideration [was] given to the administrative capacity to implement the reforms', and while 'financial reforms ensured short-term stability in the sector, [...] a number of structural weaknesses were not comprehensively addressed or were included late in the programme'³³.

On the other hand, the crisis that tarnished Europe and the eurozone after 2009 was largely portrayed by official discourse as the result of different national problem-stories, the role of the incomplete economic union was ignored and the debate over Eurobonds was quickly side-stepped. It is worth quoting Matthijs and McNamara³⁴:

"Of the multiple narratives EU policymakers could have chosen at the onset of the euro crisis, why did austerity and structural reform win out over other plausible cures for member states' problems? Arguably, sovereign debt pooling or more federalized economic governance would have been a solution to member states' national deficits and competitiveness woes. [...] Alternative views of the crisis could paint a functional picture of governance as the major issue, where a single currency disembedded from the standard historical institutions of nation-states would create serious problems no matter what the policies of the individual member states were [...] Instead, the theory effect that unfolded in the Eurozone crisis was situated squarely in the vision of *ordoliberalism* and *neoliberalism* that has illuminated the German public policy sphere

30. S. Bulmer, "Germany and the Eurozone Crisis: Between Hegemony and Domestic Politics". *West European Politics*, Vol. 37. 6, 2014, pp. 1244-1263.

31. I. Stiglitz, "The Euro: How a Common Currency Threatens the Future of Europe". New York: W.W. Norton, 2016.

32. European Court of Auditors, "Special Report: The Commission's intervention in the Greek financial crisis". Luxembourg: ECA, 2017.

33. Ibid, pp. 76-77.

34. M. Matthijs and Kathleen McNamara, "'The Euro Crisis' Theory Effect: Northern Saints, Southern Sinners, and the Demise of the Eurobond". *Journal of European Integration*, Vol. 37. 2, 2015, pp. 229-245.

throughout the postwar era: [...] national problems of fiscal profligacy and weak competitiveness were the source of the problem. Eurobonds stood no chance of being adopted, despite their functionality in addressing the euro's woes, given the ways in which the ideas about Northern saints and Southern sinners both served and structured the reality of the euro crisis."

It made sense, during the most difficult years of the eurozone crisis, between 2010-2015, to argue that the institutional system of the Union takes a backseat in periods of crisis and change when intergovernmental bargaining and decisions through both formal and informal channels assume a leading role. However, the increased salience of intergovernmentalism and the leading role of key governments now appear to be more than transient.

When Germany's Ursula von der Leyen succeeded Luxemburg's Jean-Claude Juncker in 2019, bypassing the Spitzenkandidaten process that France's Emmanuel Macron had deemed unnecessary, commentators focused - justifiably - on the aspect of gender: a woman would be at the helm of the Commission for the first time. Equally justified, however, would be a focus on nationality: a German assumed the leadership of the Commission for the first time since 1958, when Walter Hallstein, a distinguished academic and diplomat took on that responsibility as a symbolic expression of the country's integrated role in the West.

Great-power politics in the EU can bypass some of the cleavages or they can try to put them to use for their own purposes. Indeed, Germany in 2019 is a different, successful and powerful, member state. One does not need to endorse the analyses that approach European integration as the route by which Germany was able to restore its full sovereignty and economic pre-eminence in Europe and the transatlantic networks to realize that in the post-1980s era of finance-driven globalization, Germany is increasingly 'speaking for Europe', as its corporations have become nodal points in the communication structures through which the responses to the challenges facing the EU and the West at large are being shaped³⁵.

As the eurozone moved toward creating the banking union to shield the banking sector against future crises, there was criticism in Germany (which boasts a number of important regional banks working under special provisions) that neither the EU treaties cover the decision to grant the EBC supervisory powers over eurozone banks while nor the German constitution permits the government in Berlin to put taxpayer money into a common ECB fund. In a crucial ruling issued on July 30, 2019, the Bundesverfassungsgericht in Karlsruhe determined that the fact that the ECB shares oversight powers was "pivotal" because national regulators still retain 'broad authority'. On the fund, the Court considers there are 'questions' but it is constitutional if "the boundaries of the tasks and powers granted to the [fund's] board are strictly respected"³⁶. While the Court in effect rejected the challenges to the banking union, it also appears to have set limits by suggesting that substantial parts of oversight remain national and that any constitutional doubts can be addressed by employing

35. Van der Pijl, Kees, Holman, Otto and Raviv, Or., *"The resurgence of German capital in Europe: EU integration and the restructuring of Atlantic networks of interlocking directorates after 1991"*. *Review of International Political Economy*, Vol. 18.3, 2011, pp. 384-408.

36. W. Deutsche (2019), *"European banking union does not violate German constitution, court rules"*. <https://www.dw.com/en/european-banking-union-does-not-violate-german-constitution-court-rules/a-49797605>

a restrictive interpretation of the EU rules³⁷. As in the landmark Maastricht-Urteil, Karlsruhe appears to consistently endorse European Union realities while simultaneously defining national constitutional limits to their reach.

Within the EU, apart from the obvious features regarding GDP, export capacities, systematic surplus accumulation, population data, and so on, Germany has also been able in recent years to position its nationals in key positions at every level of the EU's institutional structure. France in 2019 is also a very different member state in comparison to the 1960s, even more so since Brexit leaves France in the role of the sole European power capable of power projection at world level in both conventional and nuclear aspects of defense. And, although Macron's presidential race and his election in 2017 boasted a strong European dimension, the policies advanced by Paris since 2017 possess an unmistakably national aura: how to make France great again, to paraphrase an American slogan so much hated in Europe.

5. Tentative conclusions on great-power confederalism

In an influential generalization, Watts³⁸ suggested that the more the degree of homogeneity in a society the greater the powers that have been allocated to the federal government; the more the degree of diversity the greater the powers that have been retained by the constituent units of government. In fact, things can be more complicated when it comes to (a) extremely diverse societies with multiple dividing lines (like India) or (b) emerging proto-federations in which state identities are well formed and consolidated and include one or more very powerful members that are becoming hegemonic – this, *grosso modo*, is the case of today's EU.

What does the increased influence of great-power strategies within the EU and in its international presence imply for the Union's evolving political system? At first glance it appears that the salience of what we labeled 'asymmetric intergovernmentalism' drastically erodes the Union's status as a political system, bringing back in familiar features of power politics.

When Switzerland, after a brief period of internal conflict, transformed its confederation into a federation in 1848, there were risks but no supreme internal power was on the rise to become hegemonic in the new union. Federalism is desirable so long as it buttresses an existing spirit of a political nation; it may prove problematic when the spirit is absent and federal institutions – such as a federal constitutional court exercising judicial activism with often unintended consequences³⁹ – push for further federalization.

37. Münchau, W. (2019), "Karlsruhe's master plan". *Eurointelligence*, July 31, 2019.

38. R. Watts. *Federalism, "Federalism, Federal Political Systems, and Federations"*. *Annual Review of Political Science*, 1998, Vol. I, p. 121, R. Watts, "Comparing Federal Systems", Second edition. Kingston, Ontario: Queen's University, Institute of Intergovernmental Relations 1999 and M. Burgess, *Comparative Federalism: Theory and practice*. London: Routledge, 2006.

39. M. Burgess. *Comparative Federalism: Theory and practice*. London: Routledge, 2006, p. 160.

By contrast, confederalism can work in the context of thin underlying shared values and ominous intergovernmental imbalances, working to improve conditions, encourage further common goals and gradually nurture a sense of European republican patriotism that could – in the future – be a substitute for the unattainable political nation.

The challenges, however, will be considerable. They can be grouped under two familiar categories: globalization and power politics. At the point of transition of many early modern republics from relatively compact, highly motivated, egalitarian polities into commercial, trading systems, republican thought registered the anxiety that newly trading republics would – in turn – degenerate into plutocratic oligarchies⁴⁰. The view that republican government would be unable to cope with the socially dislocating effects of modern economic relations was a point of fierce debate. It still is.

The longer-term emergence of a shared pride in the common civic values, a European republican patriotism, will also depend on the extent to which individuals recognize in the EU polity a degree of policy and political relevance. The synchronicity of severe challenges may result in a multifactor-induced breakdown of the Union's functioning as a result of the decomposition of its underlying consensus. We need to be reminded of the Aristotelian view that the middle classes support a good polity. As the middle classes struggle to survive as active actors in several member states, this is becoming a threat for both democracy and the EU. At the same time, migratory waves and the challenge of dealing with refugees play significant but various and often contradictory roles in this process. Respect for refugees, their dignity and their rights reinforces some of the reasons why a common European project may be worthy of support; on the other hand, the same stimuli bring out the worst in Europe's political cultures, leading to a backlash of extremisms, and they do so without appearing to contribute to the emergence of a 'we'-versus-'them' identity at European level.

Back to the future?

The precarious lives of small republics since the rise of modernity invited scholars to rethink the links and the relations between community, liberty, expansion, and economic success. Looking back and attempting to enlist the support of history, Adam Smith in his lectures at the University of Glasgow (1763) distinguished between "a defensive republic" (such as Athens) and "a conquering republic" (such as Rome). While the former declined as advanced sophistication shrank the numbers of available and committed soldier-citizens, the latter proved no less precarious due to the increased recourse to mercenary armies led by generals who paved the way to imperial autocracy⁴¹. If the perceived trade-off between empire and liberty became a 'republican dilemma'⁴² as the road to modern, commercial

40. B. Kapossy, *"Neo-Roman Republicanism and Commercial Society: The Example of Eighteenth-Century Berne"*, in M. van Gelderen and Q. Skinner, eds., *"Republicanism: A Shared European Heritage"*, Vol. II. Cambridge: Cambridge University Press, 2002, pp. 227-228.

41. D. Armitage, *"Empire and Liberty: A Republican Dilemma"*, in M. van Gelderen and Q. Skinner, eds., *"Republicanism: A Shared European Heritage"*, Vol. II. Cambridge: Cambridge University Press, 2002, pp. 44-45.

42. Ibid, pp. 29-46.

republics favored expansion and political detachment at the expense of participation and community allegiance, variations on the confederal formula appeared to offer a promising solution.

Indeed, as Daniel Deudney has argued, federal union as a political and institutional innovation permitted republics to attain the size and security previously available to empires, 'while at the same time preserving internal political liberty, popular sovereignty, and limited government'. In this context, 'security through federal union, not peace among democracies, has been the most important security fact for free polities over the last two centuries'⁴³.

Views on the obsolescence of great-power conflict in Europe are still dominant today; yet in the presence of a powerful security blanket in the form of NATO, it is difficult to assess just how genuine is the Europeans' move beyond power politics⁴⁴. The early months of the Yugoslav war laid bare the acute divergence of views between France, Germany, Italy, Greece, and the UK⁴⁵. Thankfully, the transatlantic ties prevailed. The relative loosening of these ties during the Trump administration in Washington, when the US begun to look like a less dependable ally, represents a serious test not just for NATO but for the integrity of the EU as well.

Simplistic views have been quick to conclude that both Brexit and the Trump administration will boost EU coherence. Yet as John Mearsheimer predicted back in 2001, both nationalism and statehood appear to be alive and well – even in Europe, even in the context of the EU⁴⁶. Apparently, the achievements of extreme interdependence and economic and monetary integration are here to stay – at least for a (stable?) nucleus of member states. However, the big picture that emerges at the end of 2019 is one of older-style, European-power cooperation through restraint in the context of an uneasy, confederal-type institutional framework. Republican peace prevails; on the other hand, a republican ethos that transcends national, class, and cultural divisions to nurture a new confederal politics is not yet in sight. A system of asymmetric intergovernmentalism structured around great-power politics exercised with self-restraint and through supranational institutions only partially detached from the Union's most powerful members: that will be the framework in which EU politics will be played for the foreseeable future.

43. D. Deudney, *Bounding Power: Republican Security Theory from the Polis to the Global Village*. Princeton: Princeton University Press, 2007, p. 270.

44. J. Mearsheimer, *The Tragedy of Great Power Politics*. New York: W.W. Norton, 2001, pp. 377-380-396.

45. K. Lavdas "Institutionalized Restraint as Policy: The EU and the Disintegration of Yugoslavia", in G. A. Kourvetaris (ed), *The New Balkans*. New York: East European Monographs / Columbia University Press, 2002, pp. 150-172.)

46. J. Mearsheimer, *The Tragedy of Great Power Politics*. New York: W.W. Norton, 2001, p. 366.

An unglamorous approach to European integration

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1. Introduction

Jean Monnet famously argued that we should not attempt to decide where European integration will lead us, taking instead small steps one at a time, especially in response to crises that call for urgent action. For a long time, it has worked. The European Union is a unique experiment. It brought a lasting peace to countries that had been fighting each other for centuries and it has delivered vast economic and social gains throughout the continent. It was always known that the method had drawbacks, and we owe to Professor Constantine Stephanou deep analyses of its implications for democratic legitimacy. Over the last decade, what was known as Europe's democratic deficit has become a major threat to the Union, which is set to lose one of its members, Great Britain. Frustration with the EU has become a launchpad for populists in every member country. My own view is that the method has largely ignored the principles of fiscal federalism¹. Indeed, if we do not specify what structure we want to build, its architecture is bound to be topsy turvy.

Of course, there is a good reason for the Monnet method. While he was clearly in favor of a federal United States of Europe, he knew full well that this was not acceptable to the majority of citizens and their governments. Yes, this is what he expected to achieve, step by step. Federalization by stealth did progress over many decades, but it was only a matter of time before people would realize what "an ever-deeper union" really meant. As they did, opposition grew and now the whole construction is under threat.

Unsurprisingly, there is much disagreement about how to respond to what is sometimes called a crisis situation. One view is that the best solution is to take another step, preferably a bold one, to show that European integration is alive and well. Another view is that this is not the time to consider a new treaty

1. Ch. Wyplosz, "The Centralization-Decentralization Issue", *European Economy Economic Papers* 14, European Commission, 2015.

because it would be rejected one way or another. In this view, the best that can be done is to undertake minimum repair and wait for better times for more ambitious reforms. In this paper, I use the principles of fiscal federalism² to try and escape this dichotomy. I assume that the end point is a full union, the United States of Europe, but that it won't be reachable for a couple of generations, or more. This means that the architecture must be compatible with a distant endpoint, that the steps can be spread over a long time but that they must form a coherent architecture.

2. Principles

Fiscal federalism principles, based on both theory and experimentation, provide a most useful guide to deciding which competences should be shared at the federal level and which ones should remain at the sub-federal – here national – level. It also provides important understanding about budgetary matters, including the way to establish fiscal discipline at the national level and how the common central bank ought to be structured. They can be applied to the special case of the EU, even if it is not a federation, because the reasoning broadly applies. In the quick overview that follows, the federal level corresponds to the EU and the sub-federal level represents the member states. Going further down, some European countries are federal, so that the analysis can be extended to three levels, even to four levels if we consider municipalities, but this aspect is not explicitly examined for the sake of simplicity.

Fiscal federalism: the level of decision

The choice whether a policy belongs to the federal or sub-federal level involves four considerations:

- Returns to scale: activities that are more efficient the larger their scale ought to be undertaken at the federal level. Examples are research, external trade, competition or defense.
- Externalities: when activities in one country strongly affects other countries, a common framework makes every one better off. Examples include transport networks, energy, the environment.
- Asymmetric information: activities that are tightly linked to local characteristics and are best understood at the local level should be decided at that level. Examples: schools, local transport, police.

2. R. Inman and R. Daniel, "Rethinking Federalism", *The Journal of Economic Perspectives* 11(4): 1997, 43-64. R. Boadway and S. Anwar Fiscal Federalism (2009): "Principles and Practice of Multiorder Governance", Cambridge: Cambridge University Press, 2009. W. Oates "On the Theory and Practice of Fiscal Decentralization", IFIR Working Paper No. 2006-05, 2006.

- Specific preferences: when different countries have different preferences over a number of policies, decisions ought to be made at the national level. Examples are social policies, provision of public services like health, consumer protection.

The two first criteria argue in favor of centralization at the federal level while the last two criteria call for local decision making. While these principles are reasonably obvious, some activities may check more than one box, sometimes leading to opposite conclusions. A good example concerns roadways. Roadways serve both long-distance traffic, with a strong externality, for which federal level planning is desirable, but they also serve local traffic, which must be built on the basis of a precise knowledge of how move, or wish to move, which is better known locally (asymmetric information). This is why the first category should be a federal undertaking while planning for the second category is better organized locally.

All contradictions cannot be so easily resolved, though. Consider, for instance, social policies like labor market regulations. This is a domain where historical traditions and practices deeply affect preferences. At the same time, labor market regulations affect the cost of production and therefore the competitiveness of firms. Within the single market, different regulations stand to distort competition, favoring countries with a preference for light regulation, and harming countries where preferences are tilted toward more protective arrangements. Europe has been grappling with this issue for a long time, with strong arguments on both sides of the debate. To make matters worse, the debate is deeply political. Employees' unions would like that the Europe mandates the adoption of regulations that best protect employees while employer's union emphasize the need to uphold competitiveness. This divide emerges at the government level where political ideologies color views.

The subsidiarity principle is meant to deal with ambiguous cases. The principle states that, in such cases, decision should remain at the national level. Legal scholars well know that this is a controversial principle while economists who study fiscal federalism tend to accept it, mostly arguing on the basis of safeguarding individual preferences³. This is why social policies remain a national prerogative in the EU, but also why this choice is regularly challenged.

Fiscal federalism: resources

A related issue concerns which level finances public spending and where taxes are levied. The general principle is that the spending authority should match the assignment of responsibility and taxes should be levied by the level where spending takes place. This seems obvious enough and usually in place in existing federations. It is clear, though, that this is not the case in the EU, an important issue taken up below.

Even so, the general principle is less straightforward than it seems. Consider, for instance, research. This domain is subject to strong returns to scale. Small countries are unlikely to have a pool of world class researchers in every field. In some fields, therefore, strictly

3. R. Musgrave, *"The Theory of Public Finance: A Study In Public Economy"*, McGraw-Hill, New York, 1959.

national research institutes are likely to be too small or to include less qualified researchers. In addition, in some fields, research requires very expensive equipment that can be justified only if they are made available to a sufficient number of researchers. It follows that the wider is the scale of the geographic area over which researchers are selected, the higher the quality of research institutions will be. The federal level is where research ought to be undertaken and therefore financed. At the same time, the presence of top-levels research centers has powerful effects in the areas where they are located, including university teaching and the development of commercial activities that need access to research teams; Silicon Valley is a good example. Why should all sub-federal units allow their citizens to be taxed to the same extent as taxpayers in those units where the research centers are located? Should not these units be competing to attract research centers and therefore finance them?

Even though some policies are allocated to the sub-federal level, the federal level may consider that some standards must be met throughout the federation. One reason is to avoid a race to the bottom as sub-federal units compete against each other to offer lower levels of taxation. Another reason is free riding as some sub-federal units undersupply services to some groups, in effect encouraging them to move to other units. Finally, there may be a political determination that all citizens must be provided with a minimum level of services, such as unemployment benefits or health provision. Quite often, this overlap between federal and sub-federal levels are accompanied by financial transfers to “oil the machine”. In addition, it is not rare to observe explicit income redistribution from the richer to the poorer sub-federal units (Australia, Canada, Germany and Switzerland are examples).

The resulting ‘vertical transfers’ undermine the principle that local taxes and responsibilities must be aligned. Research suggests that these transfers are difficult to design without providing unwanted incentives for political patronage and fiscal indiscipline at the sub-federal level⁴.

3. The state of play in Europe

European integration started as a reasonably simple economic undertaking (the coal and steel community first, then the Common Market) to become a deep, unique and complex arrangement that now affects many aspects of citizens’ lives, even though it remains far short of a federal system. Yet, there are a number of federal features in place, especially the common currency. However, over time, many of the steps taken were driven by opportunities rather by a consistent approach. The result is a combination of excellent institutions and of counterproductive features.

4. W. Oates, (2006) “*On the Theory and Practice of Fiscal Decentralization*”, IFIR Working Paper No. 2006-05. J. Rodden, Gunnar S. Eskeland, and Jennie Litvack, “*Fiscal Decentralization and the Challenge of Hard Budget Constraints*”, MIT Press, 2003.

Assignment of competences

The assignment of competences does not match the simple dichotomy between the European and national levels. As Table 1 shows there are five categories. Some competences are in the exclusive domain of the EU, others are shared with two sub-categories depending on whether the EU has developed or not its policies, other competences must be coordinated and, according to the subsidiarity principle, all the rest is a national competence (not detailed in the table). In a way, this complex assignment corresponds to the practical difficulties of weighing the four criteria indicated above. In reality, it often reflects disagreements among member states that result in negotiations that pay scant attention to.

The EU's exclusive competences in the first column of the table accord well with these principles. Three of them, customs union, competition and a common commercial policy are a natural consequence of the Single Market, itself justified by the existence of returns to scale and important externalities, with little asymmetric information and few differences in preferences (protectionism is a latent source of disagreement, but it runs against the central aim of the Single Market). The monetary union is a less clear-cut case and, indeed, it is the subject of continuing debates. Marine resource conservation is justified by obvious externalities but faces frequent challenges since it runs against vested interests at the national levels, which can be seen as asymmetric information but really represent protectionist sentiment.

The second column is a mixed bag. Most competences are in accord with the principles of fiscal federalism, but not all of them. Half of the Commission's budget – the other half is the Commission's own costs – are dedicated to the Cohesion Funds and to the Common Agricultural Policy. In the fiscal federalism literature, they are vertical transfers, money flowing from the center to sub-central units. That literature generally concludes that vertical transfers carry significant adverse effects. They often are politicized and inefficient, as well difficult to improve or phase out. Similarly, "certain social policies" and "certain public health policies" are not driven by the principles of fiscal federalism but by the perceived need of establishing minimum standards, which stands in conflict with asymmetric information and often sharply diverging national preferences.

All the items in the third column conflict with the argument of important returns to scale and, in principle, should be exclusive EU competences but, as noted above, some member states are keen to keep control of instruments that are seen as a source of national influence or prestige.

The fourth column is ambiguous as it calls for unspecified cooperation. An interesting case is foreign policy, which ticks all four criteria, for and against a shared preference. It is not surprising, therefore, that no firm conclusion has been reached. The result is a common Foreign Minister with very limited powers. It is charged of intervening on a case by case basis when there is a presumption that national preferences are weak, which is rarely the case. In this case, as in most others, it is the battleground between the supporters of a United States of Europe and those who prefer a Europe of Nations. These are cases where

politics trump the principles of fiscal federalism, if only because these principles provide little or no guidance.

Table 1. Assignment of competences in the EU

Exclusive	Shared		Support, coordinate or supplement
Customs union	Exclusive if EU has policy	Non-exclusive	Certain human health policies
Competition policy	Internal market	R&D policies	Industry
Eurozone monetary policy	Certain social policy	Outer space policies	Culture
Conservation of marine resources	Cohesion policy	Development cooperation	Tourism
Common commercial policy	Agriculture and fisheries	Humanitarian aid	Education and training
	Environment		Civil protection and disaster prevention
	Consumer protection		Administrative cooperation
	Transport		Coordination of economic, employment and social policies
	Energy		Common foreign, security and defence policies
	Old third pillar 'Area of freedom, security and justice'		
	Certain public health policies		

Source: European Commission

Budgetary matters

As is well known, at just above 1% of GDP, the EU budget is minimal. This is where the EU sharply differs from a true federation. On the other hand, according to the principles of fiscal federalism, the budget should be tightly linked to the assignment of competences. The main area of exclusive EU competence is the Single Market and associated functions (competition, external trade, consumer protection, etc.). The Single Market is an institutional arrangement which requires little spending beyond administrative enforcement and the negotiation of external trade agreements, which are financed within the EU budget. The expensive competences – education, health, social transfers, defense, justice – are all exercised at the national level. This is as should be.

Potential incongruities lie elsewhere. In principle, the EU should raise the income to carry out its expenses. This is not the case, the EU does not have its own resources. The Commission's revenues are provided by member states, not through direct taxation. However, direct taxation by the EU would require that taxes be voted upon by the EU Parliament, which would represent a transfer of sovereignty, and most member countries are unwilling to let their citizens be taxed by the EU. Here we may face a case of circular reasoning. Because the EU budget is small and any transfer of sovereignty is bound to be politically challenging, there is no point in challenging the *status quo*. But the *status quo* makes it impossible to envision a serious increase in costly EU competences. In the end, the *status quo* simply reflects that the EU is not a federation and, at this stage, there is no appetite to make a drastic move in this direction. The small steps of the Jean Monnet's method now stand in the way of his dream of a federal Europe. Viewed from the fiscal federalism perspective, however, there is no powerful reason to assign to the EU level the competences that would require a larger budget. European federalism is a political vision – with considerable political justification – but it is not grounded in economic logic.⁵

Juste retour

More problematic is the principle of *juste retour*, which means fair return. Member states carefully examine how much they pay into the EU budget (through a complex and opaque formula that combines a share of national VAT receipts and a proportion of national income, along with customs receipts and fines) and how much is spent by the budget in their countries. The *juste retour* principle asserts the resulting net balances should be roughly zero.

The arrangement was triggered by the British request for a rebate. Once this request was granted in 1984, other countries (Austria, Denmark, Germany, the Netherlands and Sweden) won similar "correction mechanisms". The justification is that the EU budget is designed to undertake policies that are more efficient at the federal level but that it should not be an invisible redistribution mechanism. This justification is highly controversial, for good reasons. First, as noted above, about half of the budget is dedicated to the Cohesion Funds and to the Common Agricultural Policy, both of which are entirely intended to be redistributive. Second, the fiscal federalism principles justification for common policies is the presence of externalities and returns to scale. While it may be the case that some countries benefit more than others from this collective value added – as indicated in the Monti Report⁶ – it is impossible to measure these effects, which benefit all. Anyway, given the size of the budget, the net balances can only be very small, which means that the political and administrative efforts dedicated to achieve *juste retour* are simply not worth the effort.

5. This does not mean in any way that the political logic is faulty. Previous integration steps were mostly driven by the political logic. This applies to the Common Market, and its successor the Single Market, but they were strongly supported by the economic logic. The common currency was driven first and foremost by political considerations and only weakly supported by economic logic.

6. High Level Group on Own Resources, "*Future Financing of the EU*", European Commission, 2016. (The Monti Report.)

Fiscal discipline

As exemplified by the Eurozone crisis, fiscal discipline is a huge externality among members of the monetary union. Enforcing fiscal discipline should be therefore a collective undertaking. There is no issue of fiscal discipline at the EU level since the Commission is not allowed to run a budget deficit. Again, this is logical. A public debt is guaranteed by the ability to raise taxes as needed. Absent a taxing capacity, the EU cannot become indebted. Fiscal discipline, therefore emerges at the national level. This observation has led to the Stability and Growth Pact. However, budgets are not designated as a shared competence, they remain firmly in the domain of national sovereignty. Both aspects are written into the Treaty of the Function of the EU (TFEU). The result is that the Treaty is internally inconsistent.

This inconsistency carries two implications. First, fiscal discipline is not achieved and the Stability and Growth Pact has failed repeatedly. Second, these failures have led to successive reforms of the pact, which has become extraordinarily complex and opaque. As a result, a highly technical issue has become deeply politicized. As long as the treaty's internal inconsistency is not recognized, fiscal discipline will not be achieved, opening up the risk of further Eurozone crises⁷.

4. Looking forward

What is not be done

For a long time, scholars of European integration have examined the technical aspects of what seemed like a never-ending process fulfilling the "ever closer union" envisioned in the Treaty of Rome. There were legal, economic and administrative issues that were new and exciting. Sadly, nowadays, political opposition to Europe is growing everywhere. Partly, this new situation relates to a global rise of nationalist sentiment, which is not specific to Europe but is more threatening in countries that have abandoned significant elements of sovereignty. Technical issues, therefore, seem to have become less important.

As a result, in the spirit of the Monnet method, supporters of European integration have produced a wide array of often bold proposals aimed at "proving" that the project is alive. The logic of these proposals is political. While the intentions are good, the consequences could be disastrous. They run against growing political hostility against existing sovereignty transfers, which is bound to be exacerbated by additional transfers. They also often ignore the principles of fiscal federalism, which means that the proposals stand to be at best ineffective and quite possibly counterproductive. Two examples can illustrate the risks.

At its December 2018 meeting, the European Council has agreed to envision a Eurozone budget. The terms of the decision are quite imprecise and the budget is announced of very small size. This is a classic European compromise between the proposal by the French

7. Ch. Wyplosz, *"Fiscal Discipline: From Theory to Practice"*, Independent Fiscal Institutions in the EU Fiscal Framework, European Fiscal Board, 2019, Brussels.

president, who called for a budget of “several percentage points of GDP”, managed by a Eurozone Finance Minister, and staunch opposition led by the Netherlands and other Northern countries. What would such a budget finance? Two main areas have been identified.

The first one is the provision of resources to countries temporarily undergoing a recession. The argument is that Eurozone countries are ill equipped to deal with recessions because they do not have their own monetary policies and their exchanges cannot depreciate as would be case otherwise. However, they have the fiscal policy instrument so that their governments can borrow in bad years and pay back in good years. The counter-argument is that some countries, saddled with very large debt, cannot actually borrow and are unlikely to pay back. This argument, which is unlikely to be correct, is disquieting as it is an admission that fiscal discipline is out of reach. Worse, as amply illustrated around the world, official lending to a country either encourages fiscal indiscipline or requires tough conditionality that erodes national sovereignty, as was the case in Greece, with considerable negative political implications. Furthermore, such assistance runs against the spirit, if not the letter, of the no-bailout clause (Art. 125 of the TFEU), thus creating an additional internal inconsistency.

The second proposed use of the Eurozone budget is to finance “convergence and competitiveness”. Presumably, this means investing in “the technologies of the future”. If so, this would be mutualizing, partially and on small scale, industrial policies. The effectiveness of industrial policy is highly controversial. It has been seriously curtailed in the EU as the result of the ban on state aids. It is not clear that the policy qualifies for returns to scale or as an externality. Even if returns to scale may exist, the *juste retour* principle implies that small amounts will be apportioned among member countries. At this stage, it seems that it is a political gesture without solid justification.

The second example is social and tax convergence. As described in Macron⁸, differences in social policies and in corporate taxation affect production costs and therefore competitiveness within the Single Market. The result is pressure on countries that offer a high level of social protection and that tax more heavily their firms, with a risk of a race to the bottom. In the language of fiscal federalism, social policies and corporate taxation represent an externality, which is one reason for adopting EU-wide levels. On the other hand, social policies and taxation in general result from deep domestic historical and political developments. In the language of fiscal federalism, they are subject to preference heterogeneities and to asymmetric information. This is a perfect case where no firm conclusion emerges, which calls for the application of the subsidiarity principle. Indeed, this has been the case so far. What it means, is that each country must trade off the ambitions of its social policies and the structure of its tax system against costs in terms of competitiveness. There is little evidence of a race to the bottom.

8. Macron, Emmanuel, “Initiative for Europe, A Sovereign, United, Democratic Europe”, 2017, Speech in Sorbonne, Presidency of France.

What is to be done

Dissatisfaction with the EU comes in two categories. First is the perception that 'Brussels' is a bureaucracy that issues rules that complicate people's lives. The list is virtually endless and highly varied. Examples include mundane items of consumer protection but also highly visible interference with sovereignty like the Stability and Growth Pact or labor mobility. Second, there is dissatisfaction with what the EU does not do or executes poorly. Examples of the first source of dissatisfaction include inequality, border protection or defense. And the second source includes the environment, the Common Agricultural Policy (CAP) and, more generally the power of lobbies that stunts protection of citizens.

The criticism is largely unfair. The EU can only act where it has been given power by member countries and most of what it does must be approved by governments. In addition, a time-honored practice is for governments to blame the EU for unpopular actions that they have quietly approved. Yet, cleaning up the situation ought to be at the top of the agenda. Section 3 identifies areas where this strategy could be applied.

First, the assignment of competences as shown in Table 1 is both too complex and opaque for the average, even the well-informed citizens. As argued there, it does not conform with the principles of federal federalism.

Second, the assignment process involves the *acquis communautaires*, according to which it is impossible to give back to member states a function previously attributed to the EU. The result is that assignment past mistakes cannot be corrected. For instance, the two main expenditures of the EU, the Cohesion Funds and the CAP are not efficient at what they try to achieve. Their aims do not clearly belong to the federal level and they are undermined by the *juste retour* principle. These resources could be redeployed usefully toward policies that ought to be assigned to the federal level, like border protection or research and higher education.

Third, it should be made clear that some functions cannot be undertaken at the federal level because of asymmetric information and heterogenous preferences. Regarding inequality, for instance, even though solidarity is enshrined in the Treaty, the experience is that there is entrenched hostility to any semblance of a transfer union. One can regret it, of course, but pretending otherwise exposes the EU to a serious loss of output legitimacy and absolves national governments from bearing full responsibility in these domains.

Fourth, the failures of the Stability and Growth Pact, combined with strict admonitions by the Commission, undermine output legitimacy. Fiscally disciplined countries rightly complain that the pact does not deliver, while undisciplined countries rightly resent attempts at restraining national sovereignty. As noted above, in this dimension the TFEU is internally inconsistent, which feeds irreconcilable grudges. Sooner or later, this inconsistency must be removed, one way or another.

Finally, the European institutions have evolved in various directions. The powers of the EU Parliament have been enhanced through co-determination but it is large body elected along

national lines, with the consequence that its decisions often follow national preferences. Anyway, most key decisions remain in the hands of national parliaments. The everlasting conflict between intergovernmentalism and the community method has led to the creation of a position of President of the Council whose functions overlap those of the President of the Commission. At the end of the day, both bow to pressure from the governments of the larger countries (or country). The European “Foreign Minister” is largely a misnomer because foreign affairs essentially remain a national prerogative. Additionally, it is well-known, the Commission Members are expected by their country’s governments to defend national interests, which is not what the treaties say. All in all, this constructive ambiguity may be seen as a clever way of dealing with the deep ambiguities of European integration. For the average citizen, though, it suggests that obscure games are being played by the Brussels elites with little attention paid to their personal interests. Obviously, there is no simple solution because of deep divergences about the ultimate aim of European integration. At the very least, the gradual complexification of the EU institutions should come to an end and be reversed as much as possible.

5. Conclusion

It is easy to outline the shortcomings of European integration. Yet, at the most fundamental level, it has delivered peace and prosperity. That is enough to call it an extraordinary success. It is deeply troubling therefore to see the mounting wave of Euroscepticism now underway.

As a unique experiment, it was always bound to move haltingly, with setbacks followed by new initiatives. With no model to look to, it had to be a trial-and-error process. A key weakness has been to focus on trying poorly-thought new initiatives and to ignore the errors. In the face of Euroscepticism, it would be wise to now take the time to correct the errors. This is far less glamorous than forging ahead with bold new projects but probably much more helpful, possibly even indispensable. This is why this paper has focused on the shortcomings and the errors. It suggests a method, fiscal federalism, which is rooted in a sizeable theoretical and empirical literature. It is not about reinventing the wheel but, rather, about drawing lessons. It is also about displaying some much-needed humility that accepts past mistakes at a time when the elites are often seen as arrogant and out of touch. Finally, it is about accepting that the Monnet method has outlived its usefulness, so that it is to simplify the construction and remove its ambiguities.

British and Swiss rejections of the new EU external governance

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Introduction

For the first time, the European Union (EU) is facing serious setbacks in its attempts to impose forms of external governance on European countries of its neighbourhood.

Previously, the EU had always succeeded in imposing on European third countries parts of the *acquis communautaire*, as well as institutional and legal control methods¹.

In exchange for the participation of those countries in certain EU policies, mainly their access to the Internal Market, the EU had prescribed them most of the rules of the game. This had certainly not gone smoothly because, in general, long and difficult periods of negotiation had been necessary. But methods of external governance had finally been found.

In 2018-2019, however, the world witnessed an unprecedented situation as the “deal” with the United Kingdom and the “institutional agreement” with Switzerland failed. This observation is all the more important as they are the EU’s two main economic partners on the European continent².

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1. S. Lavenex, “EU External Governance in ‘Wider Europe’”, *Journal of European Public Policy*, 2004, vol. 11, no 4, 2004, pp. 680-700.
 2. The EU-27’s two main trading partners are the United States and China. The United Kingdom and Switzerland follow. House of Commons Library, *Statistics on UK-EU Trade*, London, November 2018. <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7851> European Parliament, *The European Union and its Trade Partners*, Brussels, May 2019. <http://www.europarl.europa.eu/factsheets/en/sheet/160/l-union-europeenne-et-ses-partenaires-commerciaux>

The question is why the EU's external governance policy is no longer as successful as it once was (except for the rejection of the European Economic Area by a narrow majority of the Swiss people in 1992).

My starting point is that these two new modes of external governance that the EU wanted to impose on the United Kingdom and Switzerland have experienced serious difficulties due to increasing intransigence on the part of the EU.

This would result from two reasons that are generally put forward. The first is that the EU has become more intractable because it would feel more in a position of strength than it did a few years ago. At the time, it had only a dozen Member States and had competence only in essentially commercial areas. Today, however, the EU would feel more in a position of strength because of a larger membership and its increased power in a growing number of areas. This would explain its current hegemonic tendencies.

A second proposed interpretation is the exact opposite. This postulates that it is the fragility of the EU and its state of systemic crisis that explains its intolerance. Like a lion wounded by all its difficulties, it would feel much more tense than if it were in a more serene situation.

In order to verify my hypothesis that the EU has developed a new intransigence in its external governance, it is necessary to review, in a first part, the previous agreements it had concluded with European countries of its neighbourhood in order to check whether they were less harsh than those planned with the United Kingdom and Switzerland. These are three types of treaties:

The European Economic Area with Norway, Iceland and Liechtenstein; the association agreements with Ukraine, Moldova and Georgia; and the customs union with Turkey.

In a second part, I will analyse the modes of governance envisaged in the 2018 agreement (the "deal") with the United Kingdom, following the Brexit, which has been rejected three times by the British House of Commons. Finally, in a third section, I will examine the 2018 institutional agreement with Switzerland that the Federal Council does not want to endorse.

1. Main EU agreements with European third countries

Since the early 1990s, several non-EU European countries have developed very close links with the Union. Here is an overview of their main characteristics.

1.1. The European Economic Area agreement (EEA)

Norway, Iceland and Liechtenstein, countries of the European Free Trade Association (EFTA), have enjoyed full participation in the internal market since their accession to the EEA in 1994³.

3. Council of the European Union, "Agreement on the European Economic Area", *Official Journal of the European Communities*, L1, Volume 37, 3 January 1994. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:1994:001:TOC>.

No other third country has achieved this level of integration. This means in particular that the EEA/EFTA countries have abolished almost all non-tariff barriers with EU countries⁴.

It is necessary to recall that EFTA States had already abolished all their customs barriers on industrial products with the EU in the early 1970s through free trade agreements. However, they do not constitute a customs union.

Participation in the internal market is accompanied by many institutional obligations for EEA/EFTA countries that allow for some kind of external governance on the part of the EU. These three countries have accepted the principle of a "dynamic" adoption of EU internal market legislation in a complex multi-pillar institutional structure.

These three States have also set up a special supranational supervisory authority (the EFTA Surveillance Authority). In addition, a separate Court, called the "EFTA Court", has been set up to manage conflicts within the area⁵.

In case of divergence in the application of the rules between EFTA and the EC, the EEA Committees are responsible for finding a solution. If no solution has been found, a party may refer the case to the EU Court of Justice (CJEU) for a preliminary ruling binding on the parties. But the case cannot be referred to the EFTA Court.

Following a decision, if the parties have still not been able to reach an agreement, the injured party may resort to rebalancing measures. This means that the EU can adopt sanctions against the EFTA countries.

EEA/EFTA countries do not have a say in the relevant EU decision-making process. As a result, the EU maintains what can be described as a "hegemonic" relationship with the EEA/EFTA countries⁶.

1.2. DCFTAs with three countries of the European Neighbourhood Policy (ENP-3)

Ukraine, Georgia and Moldova, three European Neighbourhood Policy (ENP) countries, have concluded ambitious bilateral association agreements with the EU, bringing these countries closer to the EU both economically and politically⁷. Their agreements with the EU contain

4. Th. Blanchet, R. Piiponen and M. Westman-Clément, *"The Agreement on the European Economic Area (EEA). A Guide to the Free Movement of Goods and Competition Rules"*, New York, Oxford University Press, 1994, pp. 41-105. S. Gstöhl, *"Mapping the European Union's Neighbourhood Relations: The European Economic Area as a Prototype for the Integration of the EU Neighbours"*, in S. Gstöhl (ed.), *"The European Neighbourhood Policy in a Comparative Perspective: Models, Challenges, Lessons"*, Farnham, Ashgate, 2016, pp. 15-30.

5. S. Gstöhl *"EFTA and the European Economic Area or the Politics of Frustration"*, *Cooperation and Conflict*, 29(4), 1994, pp. 335.

6. H. Frederiksen & Ch. Franklin, *"Of Pragmatism and Principles: the EEA Agreement 20 Years on"*, *Common Market Law Review*, 52(3), 2015, p. 633.

7. M. Emerson *"The Essence of the Struggle"*, in Emerson, Michael, Cenusa, Denis, Kovziridze, Tamara and Movchan, Veronika. (eds), *"The Struggle for Good Governance in Eastern Europe"*, Brussels, Centre for European Policies Studies (CEPS), September, 2018, pp. 7-8.

broadly identical provisions, but, unlike the EFTA/EEA countries, each of these three states remains in a bilateral relationship with the EU⁸.

These association agreements allow these three countries to access important parts of the internal market through “deep and comprehensive free trade agreements” (DCFTAs). Access is granted on condition that they adopt a significant number of existing EU regulations and that they “approximate” their new legislation in a dynamic way⁹.

From a comparative perspective, the market access offered by DCFTAs is deep. It includes not only the abolition of tariffs, but also the gradual abolition of technical barriers to trade and it includes agriculture and intellectual property. Ambitious provisions on services are also included. However, this access does not include the sector of free movement of persons¹⁰.

These DCFTAs have therefore put in place mechanisms that provide for progressive and, above all, conditional access to the EU internal market. In other words, this access strictly depends on the continued approximation of the laws of these three countries and respect for European values¹⁰. The Commission has obtained the ability to monitor very carefully the implementation of new legislation in these three neighbouring states.

In the event of a dispute concerning the interpretation and application of the agreements, it is expected that a joint arbitration panel will rule. If this concerns EU law, which is almost always the case, this panel has to request an opinion from the Court of Justice of the European Union (CJEU) and this opinion is binding on the parties (Article 403 of the EU-Moldova Treaty).

1.3. Customs Union with Turkey

Turkey has developed a particular path of integration with the EU. In 1995, the Ankara Agreement created a customs union between the parties¹¹. This customs union is partial because agricultural products and services are not covered¹². It has had significant trade effects, allowing Turkey-EU trade in industrial products to become almost entirely free

8. Council of the European Union, “Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part”, *Official Journal of the European Union*, L 260, Volume 57, 30 August 2014.

9. G. Van der Loo, “The EU-Ukraine Association Agreement and Deep and Comprehensive Free Trade Area”, Leiden, Brill Nijhoff, 2016, pp. 28-48.

10. R. Schwok & C. Najy, “Switzerland’s Bilateral Approach to European Integration: a Model for Ukraine?”, in S. Gstöhl, (ed.), “The European Neighbourhood Policy in a Comparative Perspective: Models, Challenges, Lessons”, Farnham, Ashgate, 2016, pp. 135-37.

11. Council of the European Union, “Decision No 1/95 of the EC-Turkey Association Council of 22 December 1995 on implementing the final phase of the Customs Union”, *Official Journal of the European Communities*, L 35, Volume 39, 13 February 1996. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:1996:035:TOC> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2014:260:TOC>.

12. T. Szigetvari, “EU-Turkey Lessons: Customs Union and More... Or Less?”, in S. Gstöhl, (ed.) *The “European Neighbourhood Policy in a Comparative Perspective: Models, Challenges, Lessons”*, Farnham, Ashgate, 2016, p. 107..

of tariffs and quotas¹³. While the Customs Union Agreement is indeed far-reaching, it is important to note that it does not address most technical barriers to trade or other important issues such as public procurement or the free movement of persons¹⁴.

Compared to other third countries, Turkey is therefore in a particular situation: it is highly integrated in some areas and lagging behind in many others.

The EU-Turkey Customs Union has also had particular political effects. Under the Customs Union, Turkey is required to regularly adjust its tariffs and customs duties to bring them into line with those in force in the EU. In addition, the Turkish parliament and administration regularly incorporate a significant number of Community rules (customs regulations constitute an important part of Community law). At the same time, Turkey has virtually no voice in EU decision-making processes on customs issues¹⁵.

The EU has concluded many free trade agreements with countries such as Japan and Singapore. And Turkey has had to follow the EU's trade policy, including with countries that have not agreed to conclude parallel agreements with Turkey.

Several institutions have been created to ensure the smooth functioning of EU-Turkey agreement. Firstly, the Association Council, composed by representatives of the Turkish Government, the Council and the European Commission. It helps to shape and guide relations between Turkey and the EU. Secondly, the Association Committee brings together experts from the EU and Turkey to discuss various issues. It is composed of 8 subcommittees. Finally, most of the management of the customs union is carried out within the Joint Committee, whose function is to ensure legislative harmony.

It should be noted that there is no dispute settlement mechanism in bilateral trade and that the current mechanism is limited to disagreements over the duration of safeguard measures.

2. Failure of the deal negotiated with the United Kingdom (2018)

Following the June 2016 referendum on a UK withdrawal from the EU (Brexit), the UK government sought to find a way to prevent a hard Brexit.

In other words, its objective was to avoid restoring all customs, tax and technical controls between the United Kingdom and the EU-27 countries, particularly between the two Irelands.

13. H. Aytug & M. Kütüg, "Twenty Years of the EU-Turkey Customs Union: A Synthetic Control Method Analysis", *Journal of Common Market Studies*, 55(3), 2017, pp. 419-20.

14. H. Aytug & M. Kütüg, *Ibit*, 2017, p. 420. S. Togan "The EU-Turkey Customs Union: A Model for Future Euro-Med Integration", in R. Ayadi, M. Dabrowski and L. De Wulf (eds.) "Economic and Social Development of the Southern and Eastern Mediterranean Countries", New-York, Springer, 2014, p. 47.

15. C. Nas, "Turkey-EU Customs Union: Its Modernization and Potential for Turkey-EU Relations", *Insight Turkey*, 20(3), 2018, p. 50.

On 14 November 2018, an agreement was approved by the leaders of the remaining 27 EU countries and by the British government led by Prime Minister Theresa May. It is commonly referred to as the “deal”¹⁶.

However, it met with opposition from a majority of members of the British Parliament. On January 15, 2019, the House of Commons dramatically rejected it by 432 votes to 202, even though Theresa May was supposed to have a majority in Parliament. The deal was rejected again on March 12, 2019 and a third time on March 29, 2019. The content of the agreement provides for two transition periods: the first is specifically entitled “transition period” and the second is called “backstop”.

2.1. A first vassalizing transition period

According to the “deal”, there is a first transition period. It should give London and Brussels the time they need to negotiate a definitive agreement on their future relationship.

During this first transition period, the United Kingdom remains a member of the EU’s single market and customs union. In other words, customs, fiscal and technical controls at the borders between the EU-27 and the UK are not restored. London must also continue to apply EU legislation and make its usual contributions to the EU budget.

However, the United Kingdom is not represented in EU decision-making bodies because it is no longer a member of the EU. Governance between the EU-27 and the UK is provided by a Joint Committee composed of representatives of the EU-27 and the UK Government.

For the settlement of disputes, it is mentioned that disagreements shall be submitted to a panel of arbitrators. However, if the arbitrators were to decide a question of Community law when the dispute was settled, they should ask the ECJ to give a decision.

This first transition period was considered too vassalizing by the vast majority of British MEPs.

2.2. An ambiguous backstop

The deal also provides for a second transition period called a “backstop” (“safety net” or “last resort”). This would enter into force if no agreement was reached between Brussels and London before the end of the first transitional period.

The main objective of the backstop is to avoid a situation that would restore face-to-face controls between Southern Ireland and Northern Ireland on customs, taxation and technical barriers to trade in industrial and agricultural goods. Northern Ireland (although a British

16. European Commission, *“Draft Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, as agreed at negotiators’ level on 14 November 2018”*, Brussels, 2018. https://ec.europa.eu/commission/files/draft-agreement-withdrawal-united-kingdom-great-britain-and-northern-ireland-european-union-and-european-atomic-energy-community-agreed-negotiators-level-14-november-2018_en

territory) would thus remain in most of the EU's internal market, as well as in its customs union.

Northern Ireland would remain aligned with a set of rules that are linked to the EU's single market: goods legislation, health rules for veterinary controls (sanitary and phytosanitary regulations), rules on agricultural production/marketing, VAT and excise duties, as well as State aid rules.

The rest of the United Kingdom would remain in a single customs territory with the EU. This means that the United Kingdom would continue to align the tariffs and rules applicable to its customs territory with the Union's external tariffs and rules of origin. There would therefore be no customs duties, quotas or controls on rules of origin between the EU and the United Kingdom, except for fishery and aquaculture products.

The United Kingdom would not be able to apply a tariff lower than the EU Common Customs Tariff on imported goods in its customs territory.

The United Kingdom is also committed to apply EU State aid rules. The Commission would have standing before the courts of the United Kingdom and would be entitled to intervene when it considers it necessary. In the event of disagreement as to whether the United Kingdom is complying with these commitments, a dispute settlement mechanism by arbitration is provided for.

It is important to note that this backstop period cannot be unilaterally denounced by the United Kingdom (or by the EU-27). In other words, as long as the EU-27, and particularly the Republic of Ireland, consider that the draft final agreement governing their future relations did not satisfy them, the UK would remain locked in this backstop. Thus, this so-called transitional period could prove to be a definitive solution.

For the brexiteers, the whole deal is an unacceptable vassalisation because it leads to the continued imposition of EU law on the United Kingdom during the first transition period and, possibly, a part of that law during the backstop phase which could drag on.

For the "remainers", this "deal" is absurd because it keeps the United Kingdom *de facto* in the EU, but without being able to participate in decision-making bodies.

The two opposing sides thus joined forces to consider that this "deal" constitutes an unacceptable surrender to the external governance of the EU-27. The combination of these two oppositions explains the refusal of a majority of British MPs to support this "deal".

2.3. Boris Johnson and the refusal to remain in the EU system

After Boris Johnson became Prime Minister on 24 July 2019, the situation changed dramatically. In October 2019, a revised withdrawal agreement was negotiated by the British government and the European Commission. These amendments modify only about 5% of the Deal negotiated by Theresa May's government, but they change the perspective completely.

First, in the October 2019 agreement, the backstop on Northern Ireland is removed. Ulster must therefore remain within the EU Customs Union and Internal Market. A possible change in its status could no longer arise from negotiations between London and Brussels as in the Deal negotiated by Theresa May, but only from a vote in the Northern Ireland Parliament. Such a change is improbable, however, since the Catholic population is now a majority in Ulster. This Catholic population will want to maintain this new situation which brings Northern Ireland closer to the Republic of Ireland.

Second, unlike the Deal negotiated by Theresa May's government, the new agreement no longer provides for the United Kingdom to remain in the EU Customs Union. Thus, even if the final status negotiations launched in March 2020 were not to conclude with an agreement, the United Kingdom would be free of any commitment.

The final status of EU-UK relations will depend on negotiations which were delayed by the Coronavirus Crisis. London wants a trade agreement similar to that of the EU with Canada, but with additional sectors such as services, security and other areas. Boris Johnson therefore excludes leaving any jurisdiction to the Court of Justice of the European Union or the Commission.

For its part, the European Union has given up demanding that the United Kingdom remain deeply integrated into the Customs Union (Turkey model) or the Internal Market (European Economic Area or Swiss model). Brussels nevertheless is setting out its conditions. Firstly, with regard to the mutual recognition of standards, testing and certification, the EU does not want British industrial bodies to continue to be able to certify the conformity of British products with European standards. In the same vein, the EU also wants an agreement that binds the UK as closely as possible to the respect of the so-called "level playing field" rules. This means that Britain should adopt standards just as stringent as the EU for social and environmental protection, taxation and state aid. Consequently, Brussels considers that the settlement of any dispute relating to the interpretation of Community law could only be decided by the Court of Justice of the European Union.

3. Failure of the Institutional Agreement with Switzerland

The origin of this draft institutional agreement of November 2018 comes from the European Union's will to change its relations with Switzerland. Indeed, the EU considers that the bilateral agreements give Switzerland too many opportunities to distance itself from European law and the homogeneity of the Internal Market¹⁷.

The Federal Council would have preferred to maintain the current mechanism. Therefore, for years, the Swiss government has mainly practiced a policy of procrastination to try to gain as much time as possible.

17. S. Gstöhl, 2015: 855, R. Schwok, *"Suisse - Union européenne : L'adhésion impossible?"*, (2nd ed.) Lausanne, Presses Polytechniques et universitaires romandes, 2010, p. 69.

It should be recalled that the bilateral and sectoral agreements governing relations between Berne and Brussels are extremely simple and light in terms of governance¹⁸. With the exception of Schengen and air transport, they do not commit the Confederation to adopting the evolution of the *acquis* communautaire relevant to bilateral agreements. Nor do they provide for the possibility for a supranational body, such as the European Commission, to be able to verify that Switzerland is properly applying European law. And there is no legal mechanism for dispute settlement; it is only political, at the level of senior officials of both parties in joint committees¹⁹.

Finally, on December 2018, after ten years of discussions, including five years of effective negotiations and 32 rounds of meetings, the text of an “agreement facilitating bilateral relations between the EU and Switzerland” was published²⁰. This agreement was however not endorsed by the Federal Council.

The main points of the draft institutional agreement are as follows:

The scope of the agreement is limited to five areas: free movement of persons, land transport, air transport, technical barriers to trade and agriculture, as well as future market access agreements (e. g. electricity).

With regard to the implementation of these agreements by Switzerland, the EU would have liked them to be monitored by a supranational authority, either by the European Commission, by the EFTA Surveillance Authority or by a new mechanism. But the Confederation refused to do so. The compromise reached (Articles 6 and 7) allows Switzerland to continue to be responsible for the correct implementation of the agreements on its territory (two-pillar model). But the Commission can now monitor proper implementation by Switzerland of the agreements and initiate a dispute settlement procedure.

3.1. Dispute Settlement

The main friction point concerned the settlement of disputes (Article 10 and Protocol 3). Currently, in the event of disagreement between the EU and Switzerland, the case is referred to the Joint Committees composed by diplomats from the two sides. If they cannot agree, there is no legal mechanism to force them to do so. Switzerland would have liked to continue with this system, but the EU has demanded that the EU Court of Justice (CJEU) make binding decisions in order to avoid deception on the part of Swiss actors.

18. R. Schwok, *“Suisse - Union européenne: L’adhésion impossible?”*, (2nd ed.) Lausanne, Presses Polytechniques et universitaires romandes, 2010, p. 39

19. G. Vahl, *“Integration without Membership: Switzerland’s Bilateral Agreements with the European Union”*, Brussels, Centre for European Policy Studies, 2006, pp. 34-37.

20. DFAE, Direction des affaires européennes, *“Accord facilitant les relations bilatérales entre l’union européenne et la confédération suisse dans les parties du marché intérieur auxquelles la Suisse participe”*, Berne, 23 November 2018. https://www.dfae.admin.ch/dam/dea/fr/documents/abkommen/Accord-inst-Projet-de-texte_fr.pdf

The compromise found gives the appearance of a solution that would lean towards Switzerland with the creation of an arbitral tribunal. It is composed of an equal number of arbitrators appointed by Switzerland and the EU. The mechanism would thus be impartial. But in practice, if the dispute raises a question concerning the interpretation or application of EU law, which is almost always the case, the arbitral tribunal will have to refer the matter to the CJEU. Above all, the opinion of the latter shall be binding on the arbitral tribunal and the parties (art. 10.3 and art. 4.2)

If Switzerland decides not to implement this decision of the Arbitral Tribunal guided by the CJEU or if the EU considers the required measures to be non-compliant with the decision, it will have the right to take compensatory measures (retaliation). However, the Confederation has obtained that these measures must be proportional. If opinions differ on this matter, an Arbitral Tribunal may examine the proportionality of these measures at Switzerland's request.

The Swiss sovereignists noted above all that "foreign judges", those of the CJEU, would give opinions that would be binding. And they denigrated the competences attributed to the arbitral tribunal, which they assimilated to a *trompe-l'oeil*.

3.2. Dynamic adoption of EU law developments

The EU wanted Switzerland to commit itself to adopting almost automatically the evolution of the law that is relevant to bilateral agreements. However, the Federal Council would have preferred to keep the current static situation where the Confederation is not committed to adopt the evolution of the *acquis communautaire* relevant to bilateral agreements (except for Schengen and air transport). In practice, it almost always adopts them, but legally it is not bound to do so.

The compromise that has been found is that of "dynamic" adoption, even if the term is not explicitly used. This is neither the statism wanted by Berne nor the automatism advocated by Brussels. The advantage of the notion of "dynamic" over that of "automatic" is that Switzerland can decide on each individual adaptation in accordance with the decision-making procedures provided for in the Constitution. Thus, the possibility of a referendum is respected. However, if Switzerland is unable to adopt a development of EU law, the EU may initiate dispute settlement procedure which would not leave much room for manoeuvre to Switzerland (see above: Dispute settlement).

It should be noted that the EU has granted Switzerland one of its old demands, namely to be systematically consulted on the elaboration of relevant legal developments within the EU and thus to be able to express its concerns at an early stage ("decision shaping") or to participate in comitology. The Confederation was thus able to obtain the status of Norway, Iceland and Liechtenstein in the EEA.

3.3. The opposition of the Swiss left

The final blow to this institutional agreement came from the Swiss left, and particularly from the Socialist Party. The latter has strongly opposed certain parts of the agreement concerning posted workers, which this party considers to be a dramatic weakening of social protection in Switzerland. This actually only concerns details,²¹ but the Socialists insisted on this point because they fear that their popular electorate will leave them even more for the Swiss People's Party (SPP), the anti-EU populist party.

With this socialist defection, there is no longer a majority in favour of institutional agreement within the government (Federal Council) and the lower chamber of the parliament (National Council). Indeed, the centre-right, in principle in favour of the institutional agreement, finds itself in the minority if the Socialist Party and the sovereignist SPP join forces.

This rejection by Switzerland could lead to retaliation on the part of the EU, for example, a breakdown in negotiations on issues such as electricity, public health and food safety, as well as non-recognition of the equivalence of the Swiss stock exchange. This could also lead to the non-conclusion of an agreement on Switzerland's participation in the next EU research framework programme. Finally, this could undermine the agreement on technical barriers to trade and mutual recognition in conformity assessment (MRA).

4. Attempt to explain these failures of the EU

My starting point was that these two modes of external governance of the EU had experienced serious difficulties due to an increase in intransigence on the part of the EU, an intransigence that would have been reinforced over the years, either because of its growing strength or, on the contrary, because of its extreme vulnerability.

Yet the study of these two agreements with Switzerland and the United Kingdom leads me to develop a different analysis, namely that the EU has not become more demanding than in the previous decades.

First, an in-depth analysis of these two agreements does not establish that the EU has become particularly intractable. For example, it does not require Switzerland more than it did in the early 1990s with the European Economic Area. Indeed, already in this agreement, it was envisaged that Switzerland, like the other EFTA countries, should adopt the dynamic development of relevant EU law and that any dispute settlement concerning EU law should be subject to binding interpretation by the CJEU.

21. These three points of detail are:

1. Switzerland will no longer be able to require posted workers to register 8 days in advance, but only 4 days.
2. Switzerland will no longer be able to require a monetary guarantee for all posted workers, but only for those who have already been sanctioned.
3. Switzerland will no longer be able to control posted workers companies to a greater extent than companies employing persons residing in Switzerland.

Moreover, in the EEA, the control of the enforcement of the law in the EFTA/EEA countries is more stringent than in the renewed bilateral agreement negotiated in 2018. Indeed, the EEA has set up a supranational Supervisory Authority, composed only of nationals of EFTA countries, but which carries out serious and thorough monitoring work on the basis of EU law. Whereas in the new institutional agreement between Switzerland and the EU, only Swiss officials should have carried out this control.

The agreements with Eastern European neighbouring countries (DCFTA) also provide for much greater control of these countries by the European Commission than would be the case with Switzerland or the United Kingdom. Indeed, the Commission can at any time draft critical reports and establish lists of elements to be improved in order to ensure that Ukrainian, Moldovan and Georgian laws are getting closer to those of the EU and that they are applied in a compliant manner.

The case of the United Kingdom is very difficult to interpret and, above all, to insert into the traditional categories of the external governance of the EU. Admittedly, on the one hand, the deal at the end of 2018 created an extreme satellitization through external governance on the part of the EU which does not respect a minimum balance.

Indeed, during the first transition period, the United Kingdom should have adopted all the new EU legislation and case law in almost all areas without being able to participate in any EU institution, while continuing to contribute its share to the EU budget. But, on the other hand, it would have been only a transitional period that would not have been intended for the EU to exercise permanent governance over the United Kingdom.

In fact, this transitional period should rather be compared to the temporary phase that a candidate country for EU membership must go through, when it has to take up thousands of pages of the *acquis communautaire* and undergo constant checks by the Commission without participating in decision-making bodies.

The question of the backstop transition period is, however, different and poses far more serious problems in terms of satellitization, mainly in relation to Northern Ireland, but also in relation to the United Kingdom as a whole.

With regard to Northern Ireland, if the backstop phase were to continue over a long period of time, this would mean that this province would be economically dominated by the EU since it would remain largely in the EU's Internal Market and Customs Union without being able to participate in any EU decision-making and without being able to benefit from the safeguards available to the EFTA/EEA countries through joint committees, a supervisory authority and an independent Court of Justice.

For the United Kingdom, the situation would have been less devastating since it would remain only in certain aspects of the EU Customs Union and would have full sovereignty in all other areas.

However, this maintenance in a customs union is a mild form of external hegemony on the part of the EU since it prohibits London from concluding trade agreements with third

countries and obliges it to continue to follow EU customs and phytosanitary legislation without having real potential to influence EU decision-making.

This partial satellitization explains the reluctance of a majority of British MEPs to endorse the deal with the EU. This agreement actually offends both Brexiters and Remainers. The former are hurt because they cannot regain the full and complete sovereignty they had hoped for when leaving the EU. And the latter consider that keeping EU membership would give the United Kingdom more influence than this situation of dependence.

Yet, from a comparative point of view, this customs union resulting from the “backstop” is not fundamentally different from the one prevailing with Turkey, which goes back to a concept of the 1990s. Therefore, it cannot be said that the EU has become more intransigent in recent years.

Anyway, for the UK, after the changes in the deal obtained by Boris Johnson, the situation is now of a different order. Indeed, the United Kingdom no longer seems to want to remain in the EU system and Brussels has accepted this.

Now, back to our initial question, how can it be explained that these new modes of governance towards Switzerland and the United Kingdom meet so much opposition in these two countries? The answer therefore lies not in the legal content of these two draft agreements, as this study has just revealed, but in the economic and political capacities of these two States, or at least in the perception that large segments of their populations have of them.

Indeed, both Switzerland and the United Kingdom are in a better economic and political situation than Turkey, Ukraine, Moldova and Georgia at the time of the conclusion of their agreements with the EU. These much poorer countries, sometimes feeling threatened by their neighbours, had seen subordination to EU external governance as a way to strengthen their integration into the Western camp, to develop and modernise their economies, while receiving significant financial support. Of course, these circumstances are not found in the case of the United Kingdom and Switzerland, which do not need geostrategic support and which themselves have serious economic assets.

Even most EFTA countries (Austria, Finland, Sweden), at the time of the EEA negotiations in the early 1990s, did not feel in a strong position vis-à-vis the EU because they were concerned about the geostrategic upheavals associated with the end of the Cold War and were seeking to strengthen their foothold in the Western camp, while trying to modernise their economies.

Exodus: The conclusion of a member state's withdrawal from the EU and its legal consequences

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Introduction

From its inception, the European integration project sought to achieve an “ever closer union among the peoples of Europe”, namely a mission without an end date, but with an intense degree of teleology; always and above all, a mission steeped in its legal rules. Through the years, the continuous evolution of the EU rules made it unlikely, but also undesirable, that any Member State would decide to “jump ship”.

Nevertheless, the last decade has been marked by a series of severe, interrelated crises that have deeply impacted on European societies and created the picture of an unprepared and weak Union, incapable of addressing such problems. These crises have raised the question of whether the Member States actually benefit from their status as such, and, as a result, political and legal theory has focused, for the first time in the Union's history, on the Article 50 TEU process. Besides, it was not long before the main case-study into these matters appeared, i.e. the United Kingdom's triggering of the process of withdrawing from the EU.

This article is a contribution to the legal study of the last phase of the member state's withdrawal from the Union and its legal effects on three major law sectors, i.e. the disapplication of EU Law, the external relations of the withdrawing member state, and the EU citizenship. Thus, the article is focusing on that stage of the withdrawal process, which has drawn the least attention among the legal scholars so far.

I. The time point of the withdrawal

The point in time when a Member State's withdrawal process from the Union is completed is equally important—if not more so—with that of its initiation,

and has far-reaching implications in the legal, economic, social and political level. Therefore, its exact and straightforward determination serves as a necessary precondition not only for the smooth completion of the withdrawal process and the subsequent harmonious relations amongst all parties involved, but also for the protection of the interests and rights of private individuals.

The relevant provision is found in the third paragraph of Article 50 TEU, where the Member State's withdrawal coincides with the cease of the Treaties' application "to it". By taking into account various other provisions of primary EU law, where the term "Treaties" is mentioned¹, it can be safely concluded that the withdrawal of a Member State brings about the termination of application of the corpus of EU law to it—namely of primary and secondary EU law, as well as of international agreements concluded by the Union.

Therefore, Article 50(3) TEU sets two possible time points for the State's withdrawal and the subsequent completion of the corresponding process. None of the two is strictly defined since they are both contingent upon conditions, whilst certain points in the paragraph require further clarifications. However, it is worth noting that the reasoning behind the drafting of the third paragraph is perfectly clear.

I.i. Entry into force of the withdrawal agreement

The first possible time point of completion of the withdrawal process is the date of entry into force of the withdrawal agreement. As already mentioned, the withdrawal agreement is the subject-matter of negotiations and is concluded between the withdrawing Member State and the Union in accordance with Article 50(2) TEU and, supplementarily, with Article 218 TFEU.

As suggested by a combined reading of the second and third paragraphs of Article 50 TEU, but also provided for in Article 218 TFEU, during the conclusion of an international agreement, the Union and its contracting party define at will the time point of its entry into force². Although, as is the case with all international agreements, the withdrawal agreement produces its effects and becomes an integral part of EU law upon its entry into force and not merely upon the decision of its conclusion³, the adoption of the latter by the Council imposes upon the Member States, the EU institutions, and the withdrawing State—which continues to be a member of the Union—the obligation to refrain from actions or omissions that would in essence nullify the subject-matter and purpose of the withdrawal agreement⁴. Besides, this is an obligation that also arises from the principle of sincere cooperation⁵.

1. Such as Articles 258, 263 and 267 TFEU.

2. See B. De Witte, "Near-membership, partial membership and the EU Constitution", *European Law Review*, Vol. 41 (2016), p. 471.

3. See *inter alia* ECJ 181/73, judgment of 30.04.1974, *Haegemann / Belgian State*, ECLI:EU:C:1974:41, para. 5.

4. See also CFI T-115/94, judgment of 22.01.1997, *Opel Austria / Council*, ECLI:EU:T:1997:3.

5. Art. 4(3) TEU.

Although, in practice, this constitutes a rather unlikely scenario, the conclusion and entry into force of the withdrawal agreement—whose required content is only the arrangements for the withdrawal and not the future relationship between the State and the Union—could both take place before the lapse of the two-year period set out as the ultimate time limit for the withdrawal in the following phrase of Article 50(3) TEU. What happens, however, if the agreement is concluded within the two-year limit, but for whatever reason its entry into force is set after the completion of this period?

Given that from the third paragraph of Article 50 TEU it is clear that the effects of the withdrawal are produced upon the entry into force of the respective agreement, it should be accepted that, in the above case, the withdrawal process would indeed be completed before the entry into force of the withdrawal agreement—as a result, there would be a period during which the State is not a Member of the Union without an active withdrawal agreement—which, however, will not cease to exist and its subsequent entry into force will produce its normal effects. In any case, and in order to avoid such a period of uncertainty, it would be expected to take advantage of the possibility of the European Council unanimously deciding to extend the said period provided for in the examined provision.

I.ii. Two years after the notification

The second possible time point for the completion of the withdrawal process would be two years after the notification referred to in the second paragraph, namely the notification of the intention to withdraw from the EU addressed to the European Council, which initiates the respective process set out in Article 50 TEU.

The corresponding phrase of the third paragraph basically encapsulates an important part of the philosophy and the principles governing this provision, and it has shed light to many interpretative issues arising from its implementation. More specifically, the absolute freedom of the withdrawing State not to pursue or not to “be forced” into an undesirable withdrawal agreement, on the one hand, and, on the other hand, the need to protect both sides from a possible *mala fide* conduct or procrastination on the part of the other side during the negotiations, clearly follow from setting an ultimate time limit, whose lapse unconditionally brings about the withdrawal. Indeed, it is clear that the conclusion or even the attempt to negotiate the withdrawal agreement does not constitute a requirement of the withdrawal process, which is effected in any case and in a relatively short period considering the extent and complexity of its subject-matter.

Although in the third paragraph the two-year period is explicitly defined as the maximum duration of the withdrawal process, the same provision leaves the window open for an extension of this period, provided that the European Council adopts this decision by unanimity and in agreement with the withdrawing State concerned. Here, the strict requirement for unanimity may raise questions, since even a dissatisfied Head of State or Government of a Member State would be enough to derail the whole process by *vetoing* the

decision to extend the said period and, thus, bring about the completion of the withdrawal process without the conclusion of a respective agreement.

Although this authoritativeness is actually perplexing, it is worth making two points in support of these stipulated in the provision. Firstly, under Article 4(3) TEU, the Member States are also bound by the principle of sincere cooperation even during their participation in the European Council, making rather unlikely a rejection of the extension on the part of a single Member State that would cause chaos, especially when negotiations proceed successfully. Secondly, as already mentioned, the main purpose of Article 50 TEU is to protect the interests of the Union, of the remaining Member States and of private individuals; therefore, it is unsurprising that it puts forward strict decision-making rules that have such important consequences, as is also the case with other procedures that are critical for the future of the Union, such as the admission of a new Member State⁶, or the amendment of the Treaties⁷.

As regards the European Council's decision in and of itself, Article 50(4) TEU states the obvious; namely that the Head of State of the withdrawing State shall not participate in the discussion or in the adoption of the said decision. Moreover, the provision does not set out details on how long the extension could be and on whether this decision could be taken more than once. Starting with the second issue and given the concern of the European Union's Constitutional Legislature for the Union and especially private individuals—whose rights and interests are considerably affected by such a period of uncertainty—not to be entangled in a lengthy process with an unpredictable conclusion, it would be more reasonable to assume that the decision to extend the said period can only be taken once⁸. Still, the wording of the provision seems to allow multiple decisions. Regarding the first issue, on the basis of the same reasoning, the extension should be of reasonable duration—i.e. it should be decided only if negotiations proceed successfully and in the right direction—when the extension is actually needed in order for the process of the withdrawal agreement's conclusion to be completed, and only when its duration is such that satisfies this need. Besides, it should be reminded that the assignment of responsibility for such a decision to the European Council by the European Union's Constitutional Legislature is rarely found in the Treaties⁹. This indicates the vital importance attributed to it and, thus, the attentiveness and seriousness with which this decision should be adopted.

Lastly, the possibility of challenging the European Council's decision to extend the period pursuant to Article 50(3) TEU remains to be examined. Although the supreme political institution of the Union shall not exercise legislative functions¹⁰, nevertheless its acts are

6. Where Article 49 TEU requires unanimity in Council.

7. Where pursuant to Article 48(6) TEU (simplified revision procedure) the European Council shall act by unanimity.

8. Besides, the literal interpretation of the provision also leads to that conclusion, especially the term "[...] unless [...] decides" instead of "is deciding".

9. Article 50 TEU is the only case where the European Council takes a decision of this kind.

10. Article 15(1) TEU.

subject to the institution of action for annulment in case they produce legal effects *vis-à-vis* third parties¹¹. In this connection, the extension decision will undoubtedly have direct consequences on the rights and obligations of millions of citizens that stem from EU law, let alone the member states themselves; therefore, it can constitute the subject-matter of an action for annulment. However, the establishment of *locus standi* by private individuals in the action for annulment would be much more difficult, especially since they will be unable to prove that they are directly and individually affected by the said decision. Finally, it is difficult to conceive any ground for annulment, except, perhaps, in the case of infringement of an essential procedural requirement¹², which can be reviewed by the CJEU *ipso jure*¹³, given that, being an institution of a political nature, the European Council enjoys particularly broad discretionary power when assessing the necessity for an extension of the said period and its duration, which verges on judicial non-reviewability.

II. The withdrawal's legal consequences

All legal effects of a Member State's withdrawal from the Union, from which all economic, social and political consequences arise, are summarised in one main effect in Article 50(3) TEU; namely, the cease of EU law's application to that State. However, this effect can radically alter the future of the withdrawing State and the lives of its citizens, to the extent that it is not mitigated by the conclusion of an effective withdrawal agreement pursuant to Article 50(2) TEU*.

II.i. Cease of application of EU and EAEC law

The cease of application of the law of Treaties concerns the corpus of the rules of EU law and the law of the European Atomic Energy Community (hereinafter referred to as the "Euratom")¹⁴, which impose obligations and confer rights upon the withdrawing State and its citizens. Moreover, the formulation "to the withdrawing State", as regards the cease of application, is intentionally general, since it not only refers to private individuals within the territory of the State, but also to the functioning of its powers in all their manifestations, and to the rights and obligations of the State itself and of those having its citizenship wherever they are located; of private individuals who reside, conduct business, study, work or provide services within its territory; and, in general, of any State or private individual enjoying rights or being subject to duties arising from EU law, *vis-à-vis* that State. Furthermore, the above formulation also implies the cease of EU law's application in all overseas countries and

11. Article 263(1) TFEU.

* See also M. Perakis, "Exiting the European Union: Legal Procedure, Dimensions and Implications", Cambridge Scholars Publishing, 2019, p. 58 et seq.

12. If, for instance, the European Council's decision was not unanimous, or if withdrawing Member State also participated and voted in the discussions.

13. ECJ C-291/89, judgment of 07.05.1991, *Interhotel / Commission*, ECLI:EU:C:1991:189, para. 14.

14. According to Article 106(a) of the Euratom Treaty, Article 50 TEU also applies to Euratom.

territories having special relations with the withdrawing State, and the European territories for whose external relations the State is responsible.

Consequently, the State is no longer bound by the provisions of the Treaties and by the Protocols, Regulations, Directives and Decisions, as well as by the acts of EU institutions; all competences that have been transferred to the Union and its institutions, automatically return to the withdrawing State; private individuals residing within its territory no longer enjoy the four fundamental freedoms, nor can they invoke the rights established in the Charter of Fundamental Rights of the European Union. Although their contractual relationships remain intact, in cases where some contracts have been concluded in accordance with EU rules the State's withdrawal from the Union may constitute a fundamental change of circumstances resulting in some of them being amended and/or terminated.

Whilst the national legislation of the withdrawing State does not undergo any alteration, the provisions of the Treaties, the Regulations and Decisions having direct application cease to constitute applicable law, thus creating the necessity for the urgent and broad enactment of new rules¹⁵, in order to avoid leaving a huge legal lacuna, given that most legislative fields are governed by EU rules¹⁶. Any national legislation that transposes EU Directives in the national legal order is still valid, but it is no longer required to be interpreted pursuant to the Directive it incorporates, whereas the obligation of the withdrawing State to transpose pending Directives also ceases.

However, things are different when it comes to the financial commitments, which the withdrawing State has already undertaken towards the Union for the next period specified—if the latter extends beyond the exit—and, in particular, towards the Union's budget, the European Investment Bank (EIB), the European Development Fund (EDF), the European Central Bank (ECB), and other funds, institutions and organisations. These obligations are fully maintained, given that they were undertaken unconditionally when the State was a full member of the Union, and the liability for withdrawing from the EU falls entirely on itself. Indeed, in the case of Brexit, the Council required the United Kingdom to fully cover the specific costs related to the withdrawal process¹⁷, such as the relocation of the agencies or other Union bodies.

Furthermore, despite the fact that Article 50 TEU does not make any reference to the four EU fundamental freedoms of private individuals in the withdrawing State, it follows from the

15. Or the "conversion" of numerous EU rules into national ones by a legislative act, as was the case in the United Kingdom with the government bill entitled "*EU (Withdrawal) Bill 2017-2019*", which was introduced in 13.07.2017.

16. According to the website "*EUR-Lex*", it is estimated that from the United Kingdom's accession to the Union and up until 28.03.2017, more than 50,000 Regulations and Directives had been included in its legal order.

17. See Council Directives for the negotiation of an agreement with the United Kingdom of Great Britain and Northern Ireland setting out the arrangements for its withdrawal from the European Union (pt. 23 et seq). This requirement is more in the nature of a claim for compensation, which may perhaps be contrary both to the spirit of orderly withdrawal and harmonious future relationship arising from Article 50 TEU, and to the general principle of sincere cooperation under Article 4(3) TEU.

third paragraph that the corresponding rights shall cease to apply to that State's territory, since the law of Treaties from whence they arise ceases to apply after the withdrawal. Although the view expressed that the continuation of their protective effect could be based on the general principles of international law and the provisions of the VCLT on legal certainty, non-retroactivity, and legitimate expectations, it should be noted that, first of all, primary EU law (i.e. Article 50 TEU) prevails over these principles¹⁸, and, secondly, that the rules of the VCLT and the principles codified therein concern rights conferred upon States and not upon private individuals.

Finally, the cease of the Treaties' application to the withdrawing Member State also has consequences on the institutional and operational structure of the Union, for example on the configuration of its institutions, the official languages and the provisions listing its members and determining the scope of EU law's application. However, unlike the case of a new Member State's admission to the Union pursuant to Article 49 TEU—where the corresponding amendments of the Treaties are effected through the Act of Accession that constitutes primary EU law—, Article 50 TEU does not provide for the adoption of such an act during the process stipulated therein, whilst the withdrawal agreement does not constitute primary EU law but an international agreement concluded by the Union. From this difference it follows that, in order to make the requisite amendments to the Treaties¹⁹ after the completion of a State's withdrawal, the procedure of Article 48 TEU should be initiated, and, in particular, the ordinary and not the simplified revision procedure, given that the conditions for the application of the latter are not met²⁰.

II.ii. External relations of the withdrawing State

One of the most important consequences of a State's withdrawal from the EU is the gargantuan impact it has on its external relations with third countries. First of all, the withdrawn State is obliged to adopt its own customs code, develop a customs tariff, adopt trade protection legislation and create the authorities to apply these. Moreover, at this point, the overwhelming majority of international agreements linking EU Member States with third States and organisations constitutes either agreements of the Union itself, or mixed agreements where the contracting parties are the Union and its Member States on the one hand, and a third State on the other.

In the case of agreements where the Union is the sole contracting party, due to their subject-matter falling within its exclusive competence, these shall cease to be binding on the withdrawing Member State following its exit²¹, which should then renegotiate them.

18. ECJ C-402/415/05 P, judgment of 03.09.2008, *Kadi and Al Barakaat International Foundation / Council and Commission*, ECLI:EU:C:2008:461, paras 307-308.

19. As for instance in the case of Articles 52 TEU, 55 TEU and 355 TFEU.

20. See F. Fabbrini, "Brexit and EU Treaty Reform: A Window of Opportunity for Constitutional Change?," in "The Law and Politics of Brexit" (ed. Federico Fabbrini), Oxford University Press, 2017, p. 271.

21. Article 216 TFEU.

Indeed, international agreements constitute an integral part of EU law, which will no longer apply to the withdrawing State²². Furthermore, the sole contracting party²³ in these agreements is the Union, and the only reason that they are also binding on its Member States is Article 216(2) TFEU, which shall cease to apply to the withdrawing State.

On the contrary, questions arise as to the fate of mixed agreements, since the withdrawing State is also one of the contracting parties and, therefore, it could be argued that it continues to be bound by that part of the mixed agreement to which it has committed itself. However, also in this case, the most correct view is that at least the majority of these agreements shall cease to be binding on the withdrawing State, which would then have to renegotiate them for a variety of reasons.

More specifically, as Koutrakos²⁴ correctly observes, mixed agreements are of a special nature in that they are in essence bilateral agreements where the Union and its members constitute a single contracting party, without there being an independent tie between each Member State and the contracting State or international organisation²⁵. This peculiarity is several times reflected in the wording of the international agreement²⁶ and the inclusion of territorial application clauses therein²⁷. What is more, in the majority of mixed agreements the allocation of competences and their binding effect between the Union and the Member States is not explicitly and clearly expressed, since this pertains to the internal of the Union and is governed by EU law²⁸. Finally, in respect of all the Treaties which have a strong political objective of tying the non-EU party to the EU economy, principles and policies, such as those falling within the EU Neighbourhood Policy, a further participation of the withdrawing State would run contrary to their object and purpose²⁹.

As a consequence of all the above, in most cases of mixed agreements, the withdrawal of a State from the Union shall also sever its contractual link with the third State or international organisation³⁰, whilst in other cases the terms of the part of the agreement concerning the withdrawing Member State should be renegotiated. Similarly, it should be pointed out that although, following the withdrawal, an agreement of the former member of the Union with

22. See R. Wessel, "Consequences of Brexit for international agreements concluded by the EU and its Member States" *Common Market Law Review*, Vol. 55 (2018), p. 101 seq.

23. Article 216(2) TFEU.

24. See P. Koutrakos, "Negotiating International Trade Treaties after Brexit", *European Law Review*, Vol. 41 (2016), p. 475.

25. ECJ Opinion 1/94, opinion of 15.11.1994, *EU Membership to the WTO*, ECLI:EU:C:1994:384, para. 108.

26. See in this regard ECJ C-316/91, judgment of 02.03.1994, *Parliament / Council*, ECLI:EU:C:1994:76, para. 29.

27. For instance, Article 360 of the Trade Agreement between the EU and Central America (2012) explicitly states as its scope of application "[...] the territories in which the Treaty on the European Union and the Treaty on the Functioning of the European Union are applied".

28. See G. Van Der Lood and S. Blockmans, "The Impact of Brexit on the EU's International Agreements", *CEPS Commentary*, 15.07.2016, https://www.ceps.eu/publications/impact-brexit-eu%E2%80%99s-international-agreements#_ftnref6.

29. See G. Sacerdoti, "The Prospects: The UK Trade Regime with the EU and the World" in "The Law and Politics of Brexit" (ed. Federico Fabbrini), Oxford University Press, 2017, p. 82.

30. In the case of international organisations, such as the World Trade Organization, it also leads to loss of membership status (see P. Koutrakos, op. cit., p. 477).

a third State for the establishment between them of the same contractual relationship as the latter maintains with the Union³¹, is indeed possible, this will constitute a new international agreement and not an extension of the existing one.

Furthermore, a point worth making would be that the withdrawal of a Member State from the Union could, under certain conditions, constitute a fundamental change of circumstances in the sense of Article 62 VCLT for a contracting State or even for the Union itself, but not for the withdrawing Member State. Therefore, it would not be untenable to argue that the participation of an EU Member State, especially of a State amongst the politically and economically powerful ones³², was an essential basis of the consent to the Treaty by one of its parties, and that its withdrawal radically transforms the extent of obligations still to be performed under the Treaty by this party. In any case, this might be an argument for renegotiation of the Treaty.

Finally, as part of the above reasoning, it is noted that during the withdrawal process and before EU law ceases to apply in the withdrawing Member State, any attempts by the latter to “buy time”—by concluding or even negotiating international agreements with third States that are in contractual relationships with the Union—, in order to be prepared for the termination of the agreements effected upon the withdrawal, are not legally permitted³³. Indeed, according to the principles of good faith and sincere cooperation³⁴, the primacy of EU law, the provisions of the Treaties on the external competences of the Union³⁵, and well settled case law of the CJEU³⁶, the Member State can neither conclude, nor even negotiate³⁷ international agreements with third States or international organisations, in areas where the Union enjoys either exclusive competence, or in areas of shared competence, where the Union has already concluded or needs to conclude international agreements, or has enacted internal legislation³⁸. As a result, the withdrawing State, being a member of the Union up

31. Although difficult in practical terms, since in making agreements with the EU third countries demand and accept conditions that reflect the latter's size and influence. Thus, it would be difficult for a former Member State alone to impose the same terms.
32. In the case of the United Kingdom's withdrawal, for example, concerns have already been expressed that a) Singapore and Peru will seek to renegotiate their commercial agreements with the EU, and b) the US the “Open Sky Treaty”.
33. See A. Lazowski and R. A. Wessel, “*The External Dimension of Withdrawal from the European Union*”, *Revue des Affaires Européennes*, Vol. of 2016, 623.
34. Article 4(3) TEU.
35. Articles 2(1-2) and 3(2) TFEU.
36. See *inter alia* ECJ 22/70, judgment of 31.03.1971, *Commission / Council* (“ERTA” case), ECLI:EU:C:1971:32; ECJ Opinion 1/76, opinion of 26.04.1977, *Agreement on the establishment of a European Laying-up Fund for Inland Waterway Vessels*, ECLI:EU:C:1977:63; ECJ 3, 4, 6/76, judgment of 14.07.1976, *Cornelis Kramer and others*, ECLI:EU:C:1976:114; ECJ Opinion 2/91, opinion of 19.03.1993, *ILO Convention*, ECLI:EU:C:1993:106; ECJ C-466/98 to 469/98, C-471/98, C-472/98, C-475/98, C-476/98, judgment of 05.11.2002, *Commission / United Kingdom and others* (*Open Skies agreements*), ECLI:EU:C:2002:624; ECJ C-45/07, judgment of 12.02.2009, *Commission / Greece*, ECLI:EU:C:2009:81.
37. See, *inter alia*, CJEU C-246/07, judgment of 20.04.2010, *Commission / Sweden*, ECLI:EU:C:2010:203; ECJ C-45/07, judgment of 12.02.2009, *Commission / Greece*, ECLI:EU:C:2009:81. However, it should be made clear that the term “negotiations” does not cover informal contacts and talks, but the launching of official negotiations based on national regulatory frameworks.
38. For more see A. Lazowski and R. Wessel, *op. cit.*, p. 629 et seq.

until the conclusion of the withdrawal process, finds itself in a particularly unfavourable position since, not only is it unable to avoid the “rebooting” of its international relations that exist through the Union, but it is also unable to take any action to prepare for it and limit its consequences. However, although the above restriction clearly arises from the legal framework shaped by EU law, the possibility of showing leniency when faced with such initiatives on the part of the withdrawing State in the form of—for example—no proceedings being instituted before the CJEU³⁹ by the Commission or some other Member State, or by special authorisation given for the adoption of national measures in an area that falls within the exclusive competence of the Union⁴⁰, could not be ruled out (and, according to one view, they would even be incumbent upon the Union and its Member States⁴¹).

Based on what was argued in the present subchapter, the conclusion drawn would be that, in terms of its international relations, the State withdrawing from the Union resembles a newly founded State, which gained its independence by secession from a larger one⁴².

II.iii. Citizenship of the Union

Pursuant to Article 20 TFEU and Article 9 TEU, citizenship of the Union and the rights stemming therefrom are indiscriminately recognised to “every person holding the nationality of a Member State”; therefore, no special action is necessary to be taken for its conferment. In the foregoing provisions, it is stated that “citizenship of the Union shall be additional to and not replace national citizenship”⁴³. Following from the wording of the said Articles, the notion of “citizenship” according to EU law is not identical with that of international law, since it is subsequent to the national citizenship and establishes a special legal relationship between the Union and nationals of its Member States.

Furthermore, the strictly additional nature of EU citizenship, in relation with the national ones, is made clear from the way it is acquired. Given that EU citizenship constitutes a status following the acquisition and loss of national citizenship of the EU Member States, it essentially takes on a concomitant nature and is controlled—albeit with limitations—by the Member States themselves⁴⁴.

39. The Commission enjoys complete and unchecked discretion in deciding whether or not to commence an action for failure to fulfil obligations, and it's not even required to justify its decision. See ECJ C-70/99, judgment of 26.06.2001, *Commission / Portugal*, para. 17; and ECJ C-422/97 P, judgment of 17.07.1998, *Sereba / Commission*, para. 42.

40. Article 2(1) TFEU. See D. Meyer, “Legal Options of a Withdrawal from the Euro and the Reassignment of Monetary Sovereignty”, *European Business Law Review*, Vol. 25 (2014), p. 668.

41. See A. Lazowski, op. cit.

42. See G. Sacerdoti, op. cit., p. 83.

43. The former definition of Article 17 of the “Treaty establishing the European Community” (TEC) used the term “complementary”. The fact that it was changed to “additional” is ascribed to the legislature's will—following a relevant revision—to showcase the dynamic nature of this concept, which could lead to the addition of further rights for persons holding EU citizenship.

44. See ECJ C-192/99, judgment of 20.02.2001, *Kaur*, ECLI:EU:C:2001:106, para. 19; and ECJ C-369/90, judgment of 07.07.1992, *Micheletti and others / Delegación del Gobierno en Cantabria*, ECLI:EU:C:1992:295.

However, it is worth noting that, due to this complex relationship of interdependence⁴⁵ between EU and national citizenship, and well settled case law of the Court according to which “*Union citizenship is destined to be the fundamental status of nationals of the Member States*”⁴⁶, the power of a Member State to deprive its nationals of their national citizenship, having the legal effect of also losing their EU citizenship⁴⁷, is not absolute and unlimited⁴⁸ because of the consequences that this action entails on citizen rights, which are conferred upon them by EU law⁴⁹.

Therefore, the question arising from all the above is whether the nationals of the withdrawing Member State lose their EU citizenship after its withdrawal, or whether some “echo” of it remains. Based on the foregoing, the most reasonable answer seems to be that, being a status, EU citizenship and all rights stemming therefrom cease to apply forthwith following the completion of the withdrawal process, without developing any kind of “aftereffect”⁵⁰. The reason for this is twofold.

Firstly, the fact that EU citizenship is “additional” to national citizenship does not mean that it constitutes a legal effect thereof or that it directly stems from the latter, so that it can “survive” through it. On the contrary, EU citizenship remains a status of EU law—and, in fact, the fundamental status of the nationals of the Member States⁵¹—conferred by the Treaties. Therefore, the cease of EU law’s application that, according to Article 50(3) TEU, is effected upon the conclusion of the Member State’s withdrawal process, entails the loss not only of EU citizenship, but also of the corresponding rights of the withdrawing Member State’s nationals.

Secondly, even if it were considered an abrogation of EU citizenship following the actions of the Union and the withdrawing Member State⁵², and not a legal effect which, according to primary EU law, is brought about automatically upon withdrawal from the Union, the conditions laid down by the CJEU on the legality of EU citizenship’s abrogation are met,

45. See G. R. De Groot and N. Chun Luk, “Twenty Years of CJEU Jurisprudence on Citizenship”, *German Law Journal*, Vol. 15 (2014), p. 821.

46. ECJ C-184/99, judgment of 20.09.2001, *Grzelczyk*, ECLI:EU:C:2001:458, para. 31.

47. See also C. Closa, “Citizenship of the Union and Nationality of Member States”, *Common Market Law Review*, Vol. 32 (1995), p. 487 et seq.

48. Based on the case law of the Court, as it has developed over the years, the freedom of the Member States in this field is no longer absolute, since a Member State should now take account of the ramifications that depriving a person of EU citizenship and the rights it bestows, will have. See, *inter alia*, CJEU C-135/08, judgment of 02.03.2010, *Rottmann*, ECLI:EU:C:2010:104, para. 56; as well as CJEU C-34/09, judgment of 08.03.2011, *Ruiz Zambrano*, ECLI:EU:C:2011:124; CJEU C-165/14, judgment of 13.09.2016, *Rendón Marín*, ECLI:EU:C:2016:675; CJEU C-304/14, judgment of 13.09.2016, *CS*, ECLI:EU:C:2016:674.

49. For an extended analysis see P. Mindus, *European Citizenship after Brexit*, Palgrave, 2017.

50. See also D. Kochenov, “EU Citizenship and Withdrawals from the Union: How Inevitable is the Radical Downgrading of Rights?” in “*Secession from a Member State and Withdrawal from the EU*” (ed. Carlos Closa), Cambridge University Press, 2017, p. 258.

51. ECJ C-184/99, judgment of 20.09.2001, *Grzelczyk*, ECLI:EU:C:2001:458, para. 31; and CJEU C-34/09, judgment of 08.03.2011, *Ruiz Zambrano*, ECLI:EU:C:2011:124, para. 41.

52. This approach is flawed in law since Article 50 TEU is a provision of primary EU law, and thus lays down when the Treaties cease to apply to a State, just like Article 49 TEU specifies when EU law enters into force. Therefore, the validity of other provisions—including those on EU citizenship—depends on it.

given that such actions are justifiable on a solid legal basis, they lack retroactivity, and the principle of proportionality is observed.

As a result, the loss of EU citizenship suffered by the nationals of the withdrawing Member State shall not constitute a violation of the law and principles laid down in the Treaties, and particularly those of legal certainty and legitimate expectations.

The respected promulgated⁵³ opinion arguing that the bond between citizens and the Union—which already exists since the establishment of the European Communities and is currently protected through the institution of EU citizenship—is autonomous and should not be severed solely due to the withdrawal of a Member State, runs contrary to the letter and spirit of Article 50 TEU, but also to practical consequences. More specifically, although the assessment that the withdrawal of a Member State causes the involuntary and sudden abrogation of the EU citizenship of millions of citizens is legally correct, the reverse—namely the citizens of a withdrawing Member State retaining an inalienable right to free movement and residence within the Union—contravenes with and directly violates Articles 20 TFEU and 50 TEU. Furthermore, this would also give rise to an utterly absurd situation, in which the private individuals of the withdrawing State would have retained all the rights enjoyed prior to the withdrawal, but without their State being under the obligation to respect them and the national courts to safeguard them.

In any case, and regardless of the foregoing, the withdrawal agreement and/or the agreement on future relationships of the Union with the withdrawing State⁵⁴ may include special provisions on the rights stemming from EU citizenship, through which it would be possible for the State's nationals to retain even the corpus of such rights.

Conclusion

The simplicity of the withdrawal process and the non-stipulation of specific restrictive clauses on the withdrawal decision and its implementation, was the only reasonable choice for the drafters of Article 50 TEU, and the only one consistent with the purposes and spirit of European integration.

Indeed, although the law is undoubtedly the tool of the European integration project, the hand holding that tool is the said political will to engage in this course of action; this political will must be uncompromising, enduring and unbending so that the State accepts the voluntary restraints on itself in exchange for the strength gained through unity. When that political will weakens or utterly disappears—even temporarily—it is enough to cause major problems in the State's functioning and to create rifts in the integration project, in fact diffusing this weakness throughout the Union edifice.

Nevertheless, compared to the aforementioned simplicity and directness of the Article 50 process, the dramatic consequences in all fields of the state's existence cannot but leave the legal analyst speechless.

53. See C. Rieder, *"The Withdrawal Clause of the Lisbon Treaty in the Light of EU Citizenship: Between Disintegration and Integration"*, *Fordham International Law Journal*, Vol. 37 (2013), p. 164 et seq.

54. Which will be an international law agreement and not a Treaty provision.

EMU, asymmetric adjustments and reforms*

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“...make quantitative restrictions *compulsory* on any country having an adverse balance of payments so that it cannot overrun the constable.”

J.M.Keynes¹

1. Introduction

The main drawback of the Eurozone is the lack of an adequate adjustment mechanism to correct the observed payments imbalances among the member states. Such a mechanism of adjustment requires coordination of economic activities. *Coordination* of macroeconomic policies *means* that countries with a balance of payments deficit have to contract their economic activity, while countries experiencing a balance of payments surplus have to follow policies that stimulate their domestic demand. In this way, imbalances are corrected and the equilibrium in the currency area is restored. Otherwise (if the surplus countries insist on keeping their surpluses), the cost of adjustment will be born entirely by the deficit countries, and the net result will be a deflationary bias, leading to economic recession and unemployment.

The question then is, whether there is an *automatic* adjustment mechanism that corrects imbalances among the member states (and therefore renders any attempt to run a balance of payments surplus self-defeating) or, in the absence of such a mechanism, an *agreement* can be reached by the members of the union to *coordinate* their policies.

* An earlier version of this paper under the title, “*What is the best institutional framework for the Eurozone for it to function in an efficient manner?*”, appeared in the Jean Monnet Seminar “EU a la Carte?” (Malmo, Sweden, 19-21 June 2016).

1. Referred to by Moggridge (2005, p. 671).

We argue in this paper that automatic mechanisms of adjustment do not exist and that the inherent characteristic of the Eurozone is to transfer the burden of adjustment to the debtors.

The paper is organized, as follows. In the next section, we describe the experience of the functioning of the EMU's mechanisms; in the third section, we refer to the Keynes plan as solution to the EMU's problems; in the final section, we conclude.

2. Asymmetric adjustments

Europe's monetary union may be described as a group of countries sharing a common currency but without fiscal integration. The union members adopt a *decentralized mode* of behaviour, which means that each country's objective is to maximize its own utility, without considering the effects of its policy on the others. This behaviour is rational, provided that it is consistent with the preferences of these countries. Classical economists argued that (in a decentralized economic system), imbalances that may appear are corrected through the redistribution of the common currency. In fact, in a monetary union (as in any fixed exchange rate regime), money supply is endogenous (that is, it depends on the position of the balance of payments). Therefore, money flows from the countries experiencing a trade deficit to those experiencing a trade surplus. If we assume (as classical economists did) that the quantity theory of money holds, then prices will be reduced in the countries experiencing a trade deficit, and increase in those experiencing a trade surplus. The price reduction in the countries experiencing a trade deficit will stimulate their exports, while the opposite is true for the surplus countries. Eventually, the equilibrium in the balance of payments of the members of the currency area is restored. Thus, the process of adjustment is *symmetric* (all countries adjust) and the burden of adjustment is shared by all participants.

But as Keynes² has emphasized, "to suppose that there exists some smoothly functioning automatic mechanism of adjustment that preserves equilibrium if only we trust to methods of *laissez-faire* is a doctrinaire delusion which disregards the lessons of historical experience without having it the support of a sound theory." The process of adjustment, in any fixed exchange rate regime (like the Eurozone), is compulsory only for the debtor and optional for the creditor³. The creditor has the options of hoarding its surpluses (by compressing domestic spending) or adjusting, while the only option for the debtor is to deflate. And if the creditor refuses to adjust, then the burden of adjustment is transferred to the debtor. Hence, the adjustment is *asymmetric*.

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2. J.M. Keynes, "Activities 1940-44: Shaping the Post War World: The Clearing Union", in The Collected Writings of John Maynard Keynes, Vol. XXV, (ed. By D. Moggridge), Macmillan and Cambridge University Press, for the Royal Economic Society, 1980, pp. 21-22.
 3. J.M. Keynes, "Activities 1940-44: Shaping the Post War World: The Clearing Union", in The Collected Writings of John Maynard Keynes, Vol. XXV, (ed. By D. Moggridge), Macmillan and Cambridge University Press, 1980, for the Royal Economic Society.

Asymmetric adjustment is evident in the Eurozone^{4,5}. Surplus countries like Germany feel less pressure to adjust than their deficit counterparts. In fact, during the recent crisis severe austerity measures were imposed on the deficit countries of the union, while the creditors continued to follow policies aiming at balancing their budgets. The deficit countries have been forced to reduce their wages and prices (internal devaluation) without compensating wage and price increases (internal revaluation) by the surplus countries. The net result was a deflationary bias that explains the high level of unemployment in the South. And since deflation increases the real burden of the debt (both public and private), the result was to leave the heavily indebted nations of the euro area between a rock and a hard place⁶.

This situation is reminiscent of the Stackelberg game, with the surplus country acting as a leader and the deficit country as a follower⁷. In this game, the leader has to decide whether to defend its surplus in its current account or to adjust. The follower (the deficit country), informed of the leader's choice, chooses its own action from its set of actions. If the leader chooses to defend its surplus (as it usually happens), the options for the follower is either to deflate or to abandon the currency area. The first option open to the follower (remain in the union and deflate), may lead to sub-optimal results for the following reasons:

(i) Deflation redistributes real income from debtors to creditors. And if we assume that the marginal propensity to consume of the debtors is higher than that of the creditors then this redistribution leads to a decline in aggregate spending and, consequently, to a decline in aggregate demand, leading to a *backward sloping* aggregate demand curve⁸. In this case, supply side policies, popularly referred to as structural reforms, are counter-productive, as a number of authors have shown⁹. Furthermore, the long run favourable effects of the supply side policies (emphasized by Eggertsson *et. al.*, 2013) are questionable, because deflation renders debtors liquidity constrained, and therefore unable to optimize their inter-temporal consumption function.

4. It should be noted that asymmetric adjustment is not a new phenomenon. It was the problem that plagued the gold standard during the interwar period and contributed to its fall. During this period, United States and France accumulated gold without increasing their domestic money supply, as the "rules of the gold standard" required. Therefore, prices failed to increase in the gold receiving countries. The gold losing countries, in order to defend their gold reserves had to deflate. The result was a world- wide deflation that, eventually, led to the fall of the gold standard. Cassel, G., "*The Crisis of the World Monetary System*", Second Edition, Oxford at the Clarendon Press, 1932.

5. B. Eichengreen, "*Implications of the Euro's crisis for international monetary reform*", *Journal of Policy Modeling*, 34, 2012, 541-548.

6. B. Eichengreen (2012).

7. G.D. Demopoulos and N.A. Yannacopoulos, "*Why macroeconomic coordination may not be possible in a monetary union: A game theoretic approach*", *The Journal of Economic Asymmetries*, 13, 2016, 69-73.

8. J. Tobin (1980), "*Asset Accumulation and Economic Activity*", Yrjo Jahnsson Lectures, Oxford: Basil Blackwell.

9. G. Eggertsson, "*The paradox of toil*", *Federal Reserve Bank of New York, Staff Reports*, No 433, 2010. G. Eggertsson, A. Ferrero, and A. Raffo, "*Can structural reforms help Europe?*", *Board of the Governors of the Federal Reserve System, International Finance, Discussion Paper No 1092*, November, 2013. G.D. Demopoulos, and N.A. Yannacopoulos, "*Deflationary adjustment processes and the effectiveness of structural reforms in monetary unions*", *The Journal of Business and Economic Studies*, Vol. 21, No1-2, 2015, pp.1-13.

(ii) Deflation, though it may improve the conditions of the balance of trade, is likely to worsen the *terms of trade*, reducing further the welfare of the deficit country. However, there is another issue that needs consideration in this context. Heavily indebted members of the monetary union have to transfer large amounts of money to their creditors, in order to repay their debts. This *rebalancing problem* can and should be considered from the vantage point of view of the transfer problem, initiated by Keynes¹⁰ and Ohlin¹¹, in the context of German reparation payments after the First World War¹². The debtor in order to transfer money to the creditor, has to run a balance of payments surplus, i.e., to make its exports cheaper relative to its imports. This may worsen the debtor's *terms of trade*, adding an excess burden to the direct burden of the payment¹³. To this, one may add that a prolonged period of transfer of resources from debtors to creditors (as in the Eurozone today) "will run up to the lack of political legitimacy, much as it did in Germany after World War I"¹⁴.

(iii) Deflation may lead to liquidity crises. In fact, as De Grauwe¹⁵ and De Grauwe and Yuemei¹⁶ (2013) have emphasized, deflationary macroeconomic policies lead to recession and (through the operation of automatic stabilizers) to an increase in budget deficits. Increased budget deficits increase the *distrust* of the markets in the capacity of the government of the debtor country to service its debt triggering liquidity and solvency crises. This is because the members of the euro zone borrow in a currency, the supply of which do not control, and therefore they cannot guarantee bondholders that cash will be available at maturity.

3. Reforms

These inefficient outcomes may be removed if the members of the Eurozone agree on reforms that would preserve the advantages of a fixed exchange rate regime, while avoiding those features of the EMU that did the damage. Keynes' plan¹⁷ for an *International Clearing*

10. J.M. Keynes, "The German transfer problem", *Economic Journal*, 39, 1929, 1-7.

11. B. Ohlin, "The reparation problem: A discussion", *Economic Journal*, 39, 1929, 172-178.

12. G. Corsetti, P. Martin and P. Pesenti, "Current account rebalancing and international transfers (immaculate or not)", *Vox EU*, 31 January, 2013.

13. G.D. Demopoulos and N.A. Yannacopoulos, "The transfer problem, domestic deflation and unemployment in currency areas", *Working Paper Series 02-2019*. Athens University of Economics and Business, 2019.

14. P. De Grauwe, "The creditor nations rule in the eurozone", published in S. Tilford and P. Whyte (eds) "The Future of Europe's economy. Disaster or Deliverance?" Center for European Reform, 2013.

15. P. De Grauwe, "The governance of a fragile Eurozone", *CEPS Working Documents*, 2011. <http://www.ceps.eu/book/governance-fragile-eurozone>. P. De Grauwe, "Design failures in the eurozone: Can they be fixed?", LEQS paper No 57/ 2013, London School of Economics and Political Science, 2013. P. De Grauwe, "The creditor nations rule in the eurozone", published in S. Tilford and P. Whyte (eds) "The Future of Europe's economy. Disaster or Deliverance?" Center for European Reform, 2013.

16. P. De Grauwe and J. Yuemei, "Self-fulfilling crises in the Eurozone: An empirical test", *Journal in International Money and Finance*, 34, 2013, 15-36.

17. Keynes' plan was praised by the Cambridge economist D.H. Robertson. In a letter to Keynes, dated 27 November 1941, he wrote: "I sat up late last night reading your revised "proposals" with great excitement. – and a growing hope that the spirit of Burke and Adam Smith is on the earth again to prevent the affairs of a Great Empire

Union worked out in 1941¹⁸ meets this requirement. In accordance with the Keynes' plan, the member countries retained their national currencies. All international transactions of the member countries, giving rise to a surplus or deficits in the balance of payments, should be settled through "clearing accounts" held by the central banks of the member countries in an International Clearing Bank (ICB). Central banks of the member countries would buy and sell their national currencies against credits and debits with the ICB. These balances would be held in an international form of bank money, the "bancor". National currencies have a fixed but adjustable value relative to "bancor". Deficit countries are allowed to depreciate their national currency relative to "bancor"; they would be charged interest on excessive deficits. Surplus countries may revalue their national currencies in terms of the "bancor"; they will be charged rising rates of interest on surpluses above a certain limit. Thus, the *adjustment* of the balance of payments may take the form of capital movements, since the only way for the surplus country to avoid paying high interest rates to the union is to lend its surpluses to the deficit countries.

The question is, whether the members of the Eurozone can agree on this or on a *similar* plan, i.e., a plan that brings a simultaneous pressure to both creditors and debtors to adjust. Such an agreement seems unlikely today. In fact Germany, and the other surplus countries, may be unwilling to sacrifice their creditor's position for two reasons: *First*, in Germany the resolute rejection of demand management created a need to rely on net exports as a way to balance demand and supply¹⁹. *Second*, and more important, in a currency area, money supply is endogenous (it depends on position of the balance of payments). In an economy in which domestic money and the rate of interest are determined by the balance of payments, there is no orthodox means open to the authorities for countering domestic problems except by running an export surplus at the expense of their neighbours²⁰. Thus, the social strains from the asymmetric adjustment, that undermine the stability of the Eurozone, are expected to remain and its long run success cannot be guaranteed.

4. Concluding remarks

Asymmetric adjustment process is the result of the rational behaviour of the members of a currency area. It is rational because it is consistent with preferences of its members. This rational behaviour, however, leads to suboptimal results that may *destabilize* the currency area. These suboptimal results may be removed, if the members of the Eurozone agree on a

from being settled by the little minds of a gang of bank-clerks who have tasted blood (yes, I know this is unfair!)" (Keynes, 1980, p. 67).

18. J.M. Keynes, "*Activities 1940-44: Shaping the Post War World: The Clearing Union*", in The Collected Writings of John Maynard Keynes, Vol. XXV, (ed. By D. Moggridge), Macmillan and Cambridge University Press, for the Royal Economic Society, 1980. Skidelsky, R., Keynes, *The Return of the Master*, Allan Lane. Published by the Penguin Group, 2009, London.
19. M. Wolf, "*The Shifts and the Shocks*", Penguin Books, 2015, London.
20. J.M. Keynes, "*The General Theory of Employment interest and Money*", London Macmillan (Edition for the Royal Economic Society 1973; Reprinted 1977), 1936, pp. 348-349.

scheme that brings simultaneous pressure to both creditors and debtors to adjust. Since such an agreement seems unlikely under the present distribution of the political and economic power in the Eurozone, the suboptimal results of the asymmetric behaviour remain. At the same time, these suboptimal results destabilize the Eurozone, because the burden of adjustment levied on the debtors may be proven to be too high in terms of alternative objectives.

The eurozone at twenty and beyond: What else could go wrong?

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1. Introduction

I was a relatively young economist working for the United Nations with an interest in economic integration when I got an invitation from Professor Constantine Stephanou to come to the Summer Academy on European integration in Spetses in 1992. The grounds for the invitation was my book *International Economic Integration* that has just been published by Routledge (London). I accepted the invitation and subsequently spent memorable dozen summers with my family in a wonderful Greek summer environment. I met there many colleagues and students, as well as Greek government officials with whom I developed long-lasting friendship.

The Summer Academy (I was appointed later the Director of Studies) created an amazing academic environment for discussions among professors, government officials and students from all over the world in the exquisite island of Spetses. Classes were at the famous Anargyrios College where John Fowles taught English and got inspiration for his novel *The Magus*.

Most of the lecturers in the Summer Academy were in the area of law, politics and international relations. As an economist, I was an 'odd man out' there. Economists worry for their living. Few of them are extreme optimists. If one claims that the economic situation will be splendid, that everyone will be safely employed and well paid, that all will be rich, that person is not an economist. That person is either a politician (so may tell 'whatever'), or a paid

1. I am grateful to Christos Gortsos, Jovan Njegić and Marko Malović for their comments, assistance and suggestions. The views expressed are my own and do not necessarily reflect the position of the institutions for which I work. I am solely responsible for all errors and mistakes. Correspondence address: Miroslav Jovanović, Global Studies Institute, University of Geneva, Sciences II, 30 Quai Ernest-Ansermet, 1211 Geneva 4, Switzerland, (e-mail) miroslav.jovanovic@unige.ch;

consultant or a lobbyist or someone that needs to reduce the recreational consumption of cocaine.

Having a 'professional deformation' as an economist, I was looking at the forthcoming monetary union, the eurozone, with certain hesitation. It was reflected in my book (Jovanović, 1997), i.e. before the introduction of the euro. All others in the Academy were so enthusiastic about the euro, so that I was alone in the corner. My doubts about the creation and operation of the eurozone proved unsubstantiated. Looking through my purely economic spectacles on the eurozone proved me wrong. (I put aside the political determination of the European Union's [EU] elite to carry on with the project). The eurozone was created in 1999, but my reservations did not disappear. As an economist, I worried and still worry about the long-term sustainability of the eurozone. This chapter explains why.

Following this introduction, section 2 presents promises and deliveries regarding the eurozone. Section 3 explains how the eurozone troubles happened. Quantitative easing and the Cantillon effect are subjects of section 4. Considerations of the Troika and the Greek problem are found in sections 5 and 6, respectively. Search for the guilty parties is done in section 7. Necessary federal-type reforms are presented in section 9 which is followed by rather gloomy conclusions (section 9).

2. Eurozone: promises and deliveries

Monetary integration is the area where real and deep integration is tested. The eurozone, with the euro as the common currency, is the crown jewel in the European integration project. Even though the euro is the greatest of the EU's successes, it also represents its weakest link which is instead of integrating eurozone countries creating not only economic divisions, but also political rifts.

Following the reunification of Germany in 1990, France wanted to lock the 'robust' Germany into the European project for a long time to come. This was done through monetary integration. Starting in 1999, the process was technically based on a political compromise (Maastricht Treaty), rather than on a sound economic basis.²

The eurozone started out among 11 EU member states³ in 1999. The euro as the eurozone über-currency started circulation in 2002. It was the most ambitious project in Europe since the Bolshevik Revolution (1918). No currency has circulated in Europe so widely since the Roman Empire. The introduction of the euro in January 1999 was the biggest currency innovation since the introduction of the United States (US) dollar in 1792. In general, the conditions set for the eurozone were a political decision/compromise with little regard for the suggestions/conditions that came from economic theory.⁴ Not only economic theory, but

2. A survey of theory of monetary integration may be found in Jovanović (2015).

3. Austria, Belgium, Finland, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Portugal and Spain. Greece was allowed to join the eurozone in 2001.

4. The interested reader is invited to consult Praussello (2011) on this point.

also long experience suggests that for a successful and long-lasting monetary integration the group needs to have from the start at least:

- automatic stabilisers (including fiscal transfers),
- common federal-type budget,
- banking union (including deposit insurance),
- system for orderly default on public debt,
- dispute resolution mechanism and
- political union.

Unfortunately, politicians that created the eurozone defied those principles.

There were advance warnings being voiced about a possible train crash in the making well before the eurozone came into effect in 1999. As early as 1997 Jovanović (1997, p. 67-68) argued in favour of the postponement of the implementation of the eurozone as the conditions were not yet becoming for such a crucial integration step. At that time, the fiscal and banking union requisitioned for a single currency area were not in place. They still aren't. The same holds for automatic stabilisers. Harboured doubts about the premature adoption of the euro, 155 university professors of economics from Germany signed a declaration in 1998 for an orderly postponement of the implementation of the eurozone.⁵ The reasons pertained to the unsuitable economic conditions in Europe. It is hard for two economists to agree on anything; having a choir of 155 of them chanting with one voice is an extraordinary occurrence.

When the eurozone was created and the cherished German mark abandoned, the explicit and implicit promise made by the EU elite to the Germans and others in the eurozone was that the euro, a new *über*-currency would:

- be a 'glorified version' of the German mark;
- bring perpetual growth and prosperity to everyone, hence solidarity would be enhanced;
- be stable;
- mean that financially thrifty countries would not have to bail out prodigal ones; and
- mean that German taxpayers would not foot the bill for all of the above.

Were those promises honoured and delivered? Apart from stability of the euro on the international money market, there was nothing else that all users of the euro in the eurozone enjoyed. Many would trade that stability for economic growth. What the people have seen and experienced in the eurozone are as follows:

- the banking fiasco (2008),

5. W. Kusters et al., "German economics professors convinced 'orderly postponement' of euro essential", Financial Times, 9 February 1998.

- austerity (as devaluation is not possible),
- debt,
- the eurozone mess (2011),
- zero or anaemic growth,⁶
- tensions within the EU,
- uncertainty,
- high unemployment,
- rising poverty,
- public protests,
- gap between rich and poor EU countries that remains large,
- decline in public investments,
- deterioration in public services,⁷ and
- economic pain.

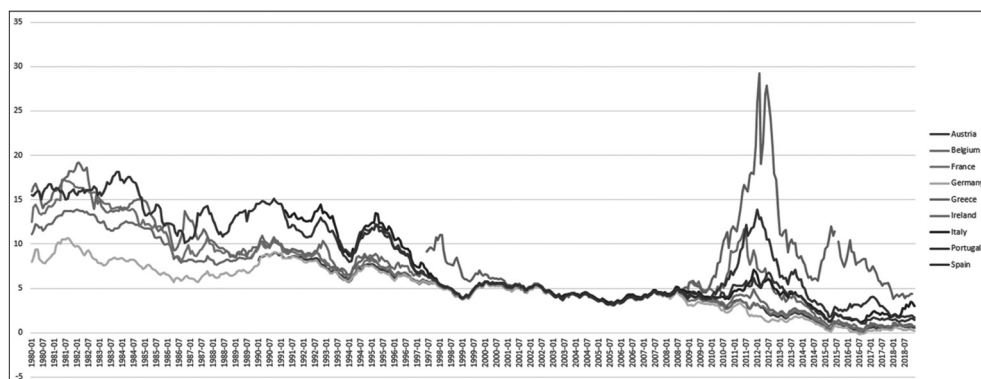
The eurozone, however, 'works well' only for Germany and, perhaps, the Netherlands and Austria, only.

3. How did it happen?

Figure 1 shows the great initial success of the eurozone during the years 2000-2007. Eurozone membership reduced risk related to government bonds between different countries, so there was almost no difference between the strong EU core and the comparatively weak EU periphery. They all converged to the low-risk German level. The peripheral countries had unprecedented access to cheap loans. They (and others) were exposed to the 'perpetual cheap money' illusion. Debt-financed consumption had little in common with economic fundamentals and growth. The assumption made by investors was that the Greek, Italian or other government bonds were almost perfect substitutes for the low-risk German ones. The crises revealed that this was not the case.

6. As the real economic growth in the EU was feeble, the EU changed in 2014 the statistical methodology used to calculate the GDP. The new methodology includes in the coverage illicit economic activities such as smuggling, drug trafficking and prostitution. Such an economic and statistical alchemy slightly increases the GDP, politicians may relax a bit and boost their confidence, however, few would feel richer because of such statistical makeup (B. Fox, 'Sex and drugs drive EU growth surge', EUobserver, 17 October 2014).

7. H. Smith, *"Desperate state" of Greek medical facilities blamed for death of UK tourist*, The Guardian, 12 September 2018.

Figure 1. European bond yields (10 year bonds, per cent) 1980-2018

Source: Eurostat (2019). Economy and finance - Interest rates - Government bond yields - 10 years maturity <http://ec.europa.eu/eurostat/data/database> (Accessed on 22 January 2019)

During the 'happy hours' (2000-2007) the EU countries which had a history of monetary indiscipline (high inflation and high rates of interest) borrowed a lot at a (low) rate that was not warranted by their respective national economic fundamentals. Those governments, their private sectors and households borrowed cheaply and excessively. The inevitable happened: over-borrowing and excessive optimism about the eurozone (super optimistic promises about the eurozone were oversold) were not matched with the economic realities of repaying loans. Collected taxes and earned wages were insufficient to repay loans. Countries entered into deep recession without the possibility to exit for a decade, two or three or more.

Considering such developments Mody (2018, p. 459) stated:

The inevitable adversity that would test the eurozone came as the global financial crisis in 2007 and then continued as multiple rolling eurozone banking and sovereign debt crises through to 2013. During these years, the euro caused the most damage in the weakest eurozone countries, widening existing income disparities between member nations. Without their own currencies to devalue, the southern countries struggled to recover from the repeated economic shocks. The crises left even France hobbled with high debt and youth unemployment problems familiar to the southern group of countries. In contrast, the strongest survived the best. The German economy came out virtually unscathed.

This created sharp tensions between the southern eurozone countries and Germany.

Is debt good or bad? The reply to the question on whether it is smart to buy something now for which one does not have cash, depends on circumstances, i.e. for what purpose one uses debt. If one wants to get a better job, then debt for training or education may be smart. However, if in a similar situation one prefers to take a loan to pay for a travel to Monaco to see the Formula 1 race or to go on a cruise in the Caribbean, well such a

choice may not probably be the best pick. The same logic applies to governments, especially for the countries in a precarious situation. Debt for infrastructure development that might contribute to economic growth may be superior to the same investments in an amusement or a gambling facility. Government debt to fight the existential threats such as the Nazis or similar menaces may be justified. Still, to go into public debt to bribe the population or to buy social peace (increase private consumption) is rather problematic.

The economies of countries in the eurozone periphery were poorly prepared to cope with such a flood of cheap loans. Irresponsible borrowing had a full counterpart in reckless lending across Europe. After 2007 the financial market reacted to the alteration in the perception of the national risk (the origin of the crises was not a speculative attack on the euro). National bond yields were returning towards their historical averages. The Roman god Bacchus may as well join the Greek god Dionysus and close shop and turn out the lights for a while. The party's over.

Big players such as Germany and France have also often broken and ignored eurozone rules. France, for instance, has been breaking the eurozone deficit rules (maximum 3 per cent of the GDP) on yearly basis since 2008 without sanctions. The pressure from the *gilets jaunes* (yellow vests) protesters⁸ will have the same effect on the budgetary situation in the near future. This is how the eurozone rules are 'applied' on big players. Another set of application of eurozone rules applies to other countries. For instance, in October 2018

Italy's coalition government, comprising the far-right Lega and the populist Five Star Movement (MS5), presented a draft budget that included many of the parties' electoral pledges, such as a basic income for the unemployed and the shelving of a previous proposal to raise the retirement age. The budget would have increased Italy's deficit to 2.4% of GDP, higher than that planned by the previous administration, but lower than the EU limit of 3%.

Nevertheless, in an unprecedented move, the European commission rejected the budget for breaking its fiscal rules. Rome's growth forecast, it insisted, is overoptimistic and the real deficit-to-GDP ratio would exceed 3%.

Italy was threatened with sanctions. Last week, the government in Rome caved in, drafting a new, more austere budget.⁹

The French President, Emmanuel Macron, an exponent of the financial industry, tried reforms and cut taxes that benefited corporations and the rich. To make up for the fall in public revenue, he increased taxes on fuel and tobacco. That was the last straw that initiated the yellow vest protest in France, first in the rural areas, then throughout the country in 2018 and beyond. The budget deficit would rise to over 3.2 per cent in 2019. This does not worry France as this country never paid real attention to this rule enshrined in the Stability and Growth Pact. This rule is for others in the eurozone, not for France.

8. *Gilets jaunes* are the contemporary reincarnation of the *sans-culottes* (without breeches) the late 18th century movement by the common people in France. They protested against poverty and many turned into militant proponents of the French Revolution.

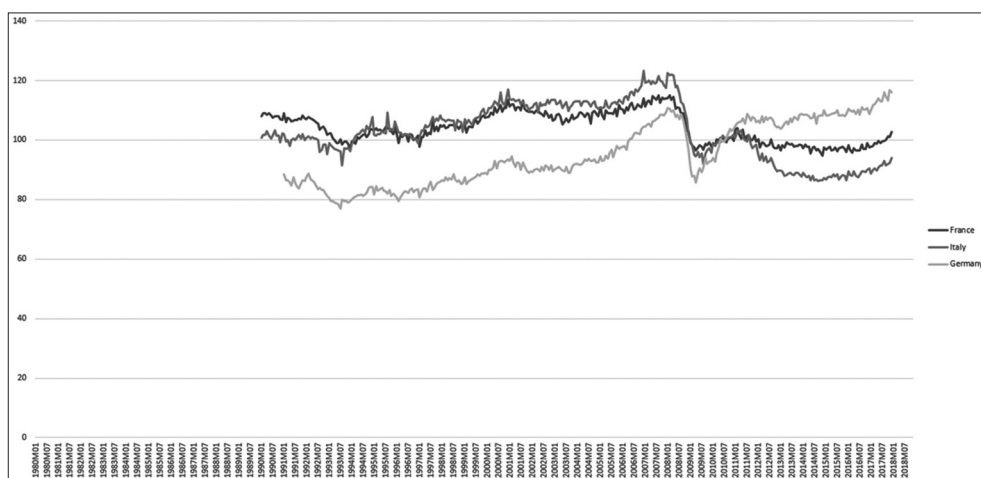
9. K. Malik, "Europe's merciless treatment of Italy only hardens popular resentment", The Observer, 16 October 2018.

The differential treatment of EU countries is evident. Hence, one should not be surprised that general public support for the EU is vividly abating. This is a fertile soil for extremists and anti-EU forces. For example,

The EU is an irreformable instrument for impoverishing the continental periphery and the working people of each country to the benefit of a predatory class whose wealth increases with every one of capitalism's succeeding crises.¹⁰

Free markets in the EU exist only for the poor and weak. Big corporations (banks included) often privatised governments and *socialised* their own business failures. The big are protected (socialism) and subsidised with enormous amounts of taxpayers' money. The Royal Bank of Scotland, for instance, got an injection of up to €111 billion of public money in 2009.¹¹ These are pure Marxist principles, but in reverse.

Figure 2. Industrial production index in Germany, France and Italy 1990-2018 (2000=100)



Source: Eurostat (2019). Industry, trade and services - Short-term business statistics - Industry - Production in industry <http://ec.europa.eu/eurostat/data/database> (Accessed on 22 January 2019)

The eurozone was the French idea. It was 'imposed' on Germany after the German reunification. France wanted to 'lock' Germany in the European project for a long time 'not to do something on its own'. France also wanted to reduce the economic gap between the two countries. However, one of the most worrying matter for France (and the eurozone) is the ever widening gap in industrial production with Germany (Figure 2). This may be the background for other economic cracks between these two countries. Instead of narrowing as intended, the gap is accentuated.

10. N. Wright, "Why communists back Brexit", The Guardian, 3 January 2019.

11. A. Willis, "EU approves largest state aid plan in union's history", EUobserver, 14 December 2009.

So far the eurozone works rather well only for Germany and, perhaps for the Netherlands and Austria, hence it would be a difficult job to convince Germany to change something of crucial importance in the euro system. Therefore, Germany would fight tooth and nail to preserve it. To be tough on France as chancellor Merkel was on Greece is a non-starter. France needs Germany in the eurozone to keep it enshrined in the EU (not to do something on its own). However, Germany is changing. Economic might, problems with immigration of Muslims and the appearance of the Alternative for Germany on the political scene from thin air would modify the German perception of the EU, alliances and the euro.

4. Quantitative easing and the Cantillon effect

One response to the eurozone crises, introduced by the influential banking cast, was the application of 'quantitative easing' (QE), i.e. purchase of predominantly government bonds by the European Central Bank (ECB). The idea behind QE and extremely low interest rates is to 'force' investors to invest in other more profitable ventures. It is suggested that the pumping of 'free' money into the economy would increase real estate prices and create the 'wealth effect'.¹² Investors would feel richer because of the increased value of their real estate and invest more in the economy and, therefore, boost it. Experience has proven that this idea is nonsense. When safe investment assets have very low rates of interest, this gives a signal that there is no recovery on the horizon. Why, then, invest? The eurozone countries need to cure their chronic disease: weak spending and low consumption. The deflationary bias needs to be cured by flexible public spending rules (over an economic cycle). Private and public expenditure is necessary, but the eurozone rules prevent that (cap on budget deficits).

Mario Draghi, the ECB President, said in 2012 that 'policy makers will do whatever is needed to preserve the euro'.¹³ Translated into plain language, this means that this bank will, among other things, buy bonds of troubled (bankrupt) eurozone countries in unlimited quantities. Hence, this is equal to an endless printing of banknotes to finance governments.

The QE strategy ('money for nothing') of the ECB was active in the period March 2015-December 2018 according to the following monthly schedule:

- €60 billion from March 2015 until March 2016
- €80 billion from April 2016 until March 2017
- €60 billion from April 2017 to December 2017
- €30 billion from January 2018 to September 2018
- €15 billion from October 2018 to December 2018

12. If rate of return on capital (r) is greater than the rate of economic growth (g) inequality increases. The winners in this game are persons that own real estate in popular and rich cities. For instance, in Vancouver, real estate owners 'were rewarded so handsomely last year that they made their owners about C\$25 billion, or about 30% more than the C\$19 billion the entire city population made in employment earnings the entire year' (T. Durden, 'Vancouver Homeowners Made More From Sitting On Their Assets Than The Entire City Did By Working', Zero Hedge, 4 June 2016).

13. J. Black and J. Randow, "Draghi says ECB will do what's needed to preserve euro", Bloomberg, 26 July 2012.

During the 1371 days of the QE the ECB pumped in the eurozone economy €2.600.000.000.000 (€7,614 per eurozone person). This is on average €1.896.425.966 per day. The hope was to create extra demand, to accelerate inflation, reduce the value of the euro (to increase exports) and to boost business confidence and economic growth. What was the result of this policy?

The ECB, headed by Draghi (a former Goldman Sachs fellow), pumped in the eurozone's financial system up to €80 billion a month. When QE was introduced, the expectation was that it would last only two years. The intention was to give a boost to consumption which would revive anaemic economic activity. That revival did not happen. Why? The bankers and the wealthy used that money to buy US government bonds (higher rate of interest) and invested in real estate in tax havens such as Monaco where they do not pay taxes. Money did not go to debtors, but to creditors; money did not go to workers through wages or welfare, to the people that would spend that money, that would buy goods, services and pay bills which would revive the economy. Instead of creating inflation, QE created deflation. Money stayed with the wealthy, i.e. banks which mostly kept it within its circle.

There will be no improvement in the eurozone as long as QE or other forms of money creation are directed towards speculative activity. Money needs to be directed towards production. The post Global Financial Crisis economy has temporarily been fixed, but the trust in the system has not been restored. Nonetheless, if the real growth does not return to the eurozone or if the situation in the economy worsens, there are hints from Draghi that QE would be restated.¹⁴

The tangible result of the QE was an increase in asset prices (real estate) while there were no signs of inflation. House prices are not included in the calculation of inflation. Why there was no inflation and a boost to the economic growth? Because this extra money did not trickle down to the men in the street through wages. There was not increase in wages and no extra demand. The QE money remained in the banking industry which benefited most from the QE. Rather than giving away trillions of euros to the banks (through QE) which do not invest further, a 'helicopter drop' of money from the ECB to each citizen in the eurozone - say €1000 or even five or ten times as much, in a few instalments - may be a superior economic policy choice. Citizens would spend those funds and this would contribute to inflation, production, employment and growth. Alternatively, governments may take that 'helicopter money' and increase public expenditure that would stimulate the expenditure in the private sector. QE was from bankers for the bankers (bailout), not for the people.

Greece was excluded from the ECB's QE because 'Greek government bonds did not meet the quality criteria required by the ECB in the framework of its QE programme'.¹⁵ Greece 'misbehaved' in the past, but the country was implementing draconian measures, hence this 'punishment' by the ECB should have ceased, but it did not.

14. C. Jones, "China stimulus measures would boost eurozone, says Draghi", Financial Times, 28 January 2019.

15. P. de Grauwe, "The ECB grants debt relief to all nations except Greece", VOX, 13 May 2016.

Richard Cantillon (1680-1734) an Irish-French-Dutch-English economist and a banker was one of the early writers about economics and banking. In his 1755 *Essai sur la Nature du Commerce en Général* (*Essay on the Nature of Trade in General*) (written in about 1730) he left a powerful and lasting message:

Then the King augments anew the coinage, settles the new ecu or ounce of silver of the new issue at 5 livres, begins with this new coinage to pay the troops and the pensions. The old coinage is demonetised and received at the Mint at a lower nominal value. The King profits by the difference (p. 67).

But all the sums of new coinage which come from the Mint do not restore the abundance of money in circulation. The amounts kept hoarded by individuals and those sent abroad greatly exceed the nominal increase on the coinage which comes from the Mint (p. 68).

This is to say that the first receiver of the new money profits most, i.e. more than the following ones. In the eurozone case, this is the banking industry which invests to an extent outside the eurozone and which often buys the US government bonds because of yields.

The Cantillon effect explains the uneven spread of the newly printed amount of money. The monetary expansion by a central bank does not spread evenly throughout an economy. The Austrian economist Friedrich August von Hayek compared this monetary expansion with a spoon of honey in a cup of tea. Honey sticks to the spoon well before it melts in hot water. The closer one is to the new money pumped into an economy, the higher the benefit.

One of the first lessons that students of economics learn during their 101 course is that artificially low prices of money stimulate bad investments, there is no interest-rate market filter that permits only profitable investment. To addict the economy, especially banks, to a strong economic drug (financial crack cocaine) such as QE and then withdrawing it may create a serious problem.

The choice for the public authorities is the following. What is worse for the country?

- A failure of a big bank or a company? or
- an economy with a burden of debt to help failed banks and companies (which prevents or slows down new and promising businesses)?

Regarding public assistance to bad and failed banks, Sir Walter Bagehot (1873, IV.4)¹⁶ left economists and policy makers with an instructive advice. Its value is strong and lasting, but the contemporary policy makers ignored this important lesson, just as they did with Cantillon's, to the detriment of taxpayers, gifted entrepreneurs and the promising future of the economy:

If the banks are bad, they will certainly continue bad and will probably become worse if the Government sustains and encourages them. The cardinal maxim is, that any aid to a present bad Bank is the surest mode of preventing the establishment of a future good Bank.

16. Walter Bagehot, "Lombard Street: A Description of the Money Market". London: Henry S. King and Co. https://www.econlib.org/library/Bagehot/bagLom.html?chapter_num=7#book-reader (accessed on 19 January 2019).

This means that evolutionary business selection (bankruptcies included) should take place in a market economy. During the Global Financial Crisis (2008) governments turned back at the market forces and the capitalist organisation of the society. They bailed out banks instead letting them go bust as free markets would demand. Capitalism is for private gains, but loses are socialised. This gave some support to Schumpeter's prediction that capitalism would be replaced by some sort of socialism.

5. The Troika

Many important things that relate the eurozone take place outside the cover of the EU treaties. From 1998 the Eurogroup refers to informal and unofficial meetings of the finance ministers of countries that officially take part in the eurozone. Hence, it escapes the legal coverage of the EU laws. Even though the Eurogroup's political decisions on austerity are important and harsh, they are legally illegal as this group does not exist in the EU law!

Created from 'thin air' and outside the EU legal structure in 2010, the 'Troika' is composed of the top brass from the International Monetary Fund (IMF), the ECB and the European Commission. It is a new institution that is not based on any international treaty or national constitution. It is unaccountable to any elected body, but it is the master of the economic survival of countries such as Greece. The presidents of the IMF and the ECB have no democratic mandate (people did not vote for them), while the democratic mandate of the President of the European Commission is rather meagre. The Troika is principally in solidarity with bankers, hence the democratically elected national representatives are subject to this unelected institution that was created from thin air. The Troika reviewed the Greek problem as an issue related to liquidity, while in fact, it was an issue of insolvency.

In spring 2010, as Greece wrangled with the IMF and the rest of Europe for what would turn out to be a €110 billion emergency loan, a revealing, chilling phrase slipped out. When Greece's then Prime Minister, George Papandreou, begged for easier borrowing terms, he was told by Angela Merkel that the deal had to hurt. According to a well-sourced report in *The Wall Street Journal*, the German Chancellor said: "We want to make sure nobody else will want this".¹⁷ In September 2012, Merkel pleaded in favour of '*une Europe forte et solidaire* [strong and united Europe]'.¹⁸ This is EU solidarity in the Teutonic manner. For the French, enthusiasm for 'solidarity' means something else: redistribution and protectionism.

6. The Greek problem

Greece is a country with an enormous debt and needs solidarity in the form of (generous) debt forgiveness as its foreign debt is so huge that it can never be repaid in full. In addition to the Marshall Plan, it should be recalled, Germany benefited in 1953 from foreign solidarity and debt relief in which Greece participated. The London Debt Agreement wrote off roughly a half of Germany's external debt, which was 'more than 280 per cent of the country's 1950

17. Editorial, "Greece's austerity: democracy tested to destruction", *The Guardian*, 8 November 2012.

18. P. Saint-Paul, "Merkel plaide pour une Europe solidaire", *Le Figaro*, 3 September 2012.

gross domestic product'¹⁹. Repayments of the rest were linked to revenues from exports.²⁰ This debt forgiveness was, at the time, as controversial as is the current discussion about the possible writing off of Greek debt. However, if there is a Greek debt forgiveness precedent, would others in this so poorly designed and operated eurozone request the same (moral hazard)? Would market confidence flop? Greece and the whole of the eurozone need growth, not never-ending austerity.

The eurozone as it is constructed does not have a problem: it is the problem itself. The eurozone architecture morphed into an economic torture chamber. It is like the Procrustean bed which forces conformity standards. Procrustes, a bully from ancient Attica, was either stretching people or hacking at their legs to make them fit onto an iron bed. The modern version of the Procrustean bed is represented in the eurozone's one-size-fits-all austerity policies, which have significantly slowed growth and made unemployment, especially among the young, a hideous long-term problem (compounded by an endless flow of economic migrants and refugees from the Middle East and Africa). Poverty and inequality have also risen sharply which creates serious social problems. A real rise in investment is rather anaemic. This does not provide grounds for vigorous growth and employment.

Table 1. Greece: GDP growth, deficit and debt 2001-2020

Year	Real GDP % change from previous year	General government financial balances Surplus (+) or deficit (-) as % of nominal GDP	General government gross financial liabilities % of nominal GDP
2001	3.6	-5.5	114.1
2002	4.0	-6.0	113.1
2003	5.8	-7.8	108.8
2004	4.7	-8.8	110.1
2005	0.8	-6.2	111.9
2006	5.6	-5.9	116.9
2007	3.2	-6.7	114.8
2008	-0.2	-10.2	119.0
2009	-4.3	-15.1	135.2
2010	-5.5	-11.2	129.1
2011	-9.2	-10.2	109.8
2012	-7.3	-8.8	165.9
2013	-3.1	-13.1	182.6
2014	0.7	-3.7	182.9
2015	-0.3	-7.3	182.7

19. J. Sfakianakis, "History shows why Germany should help Greece", Bloomberg View, 3 December 2012.

20. T. Guinnane, "A pragmatic approach to external debt: The write-down of Germany's debts in 1953", VOX, 13 August 2015.

Year	Real GDP % change from previous year	General government financial balances Surplus (+) or deficit (-) as % of nominal GDP	General government gross financial liabilities % of nominal GDP
2016	-0.2	0.5	188.2
2017	0.6	0.8	190.9
2018	0.5	0.3	187.6
2019	0.8	0.1	183.7
2020	0.9	0.3	179.2

Source: OECD Economic Outlook No. 99 (June 2016) and OECD Economic Outlook No. 104 (November 2018).

Table 1 presents the evolution of the Greek GDP, deficit and public debt from 2001 to 2020. The Greek economy shrank sharply in the period 2008-2013. The evolution of the deficit during the same period was even sharper. The EU, i.e. the German, remedy was to cut spending. However, debt as a share of the GDP almost doubled during the same period, not because expenditure increased, but because the Greek economy shrank. The medicine may have been worse than the disease. The Greek economy needs growth and the externally imposed economic instruments were wrong. Paul Krugman noted that 'Austerity probably shrinks the economy faster than it reduces debt, so that all the suffering serves no purpose. The landslide victory of the "no" side offers at least a chance for an escape from this trap.'²¹

What are the theoretical choices for Greece? Is it simply between the Grexit (Greek exit from the eurozone) or destructive austerity with no end in sight? The effect of the imposed austerity was that 'Wages have fallen by nearly 20% since 2010 with pensions and other welfare payments cut by 70% in the same period. The size of the public sector has been cut back by 26%.'²² A toxic mix of policies imposed by the Troika reduced public services and led to the collapse of the middle class. Unemployment reached 28 per cent and the young were disillusioned about their future in Greece.²³ So,

Up to 400,000, mostly aged between 20 and 30, have left in the past eight years...

So many doctors have left since 2010, the cash-strapped health service faces a shortfall of 8,000 doctors, said George Patoulis, president of the Athens medical association. "The country has lost more than 18,000 doctors, not only new graduates but established specialists."²⁴

21. P. Krugman, "Ending Greece's bleeding", The New York Times, 6 July 2015.

22. D. Boffey, "Eurozone agrees deal to bring Greece out of financial crisis", The Guardian, 22 June 2018.

23. While the lack of funds was a significant barrier for investment in the lagging EU regions in the past, a new important obstacle appeared in the EU peripheral countries: the lack of people. Emigration of the young, educated and the brightest is particularly strong from the Baltic states, Romania, Bulgaria, as well as from Poland and the Czech Republic from the time they joined the EU. For instance, Lithuania, a country of 2.8 million inhabitants in 2019, lost 1 million citizens through emigration since 1990 ('Lithuania hopes the next century is quieter than the last', The Economist, 15 February 2018).

24. K. Hope, "Graduate brain drain hinders Greek recovery", Financial Times, 17 August 2018. In addition, health-related services suffered (H. Smith, 'Desperate state of Greek medical facilities blamed for death of UK tourist',

If the euros from the ECB are not available, the Greeks will have to pay wages and pensions in certificates. Those IOU ('I owe you') paper certificates would evolve as a parallel currency that would eventually develop into a new drachma. It has become obvious, since the most recent debt crisis, that the expected eurozone economic benefits to Greece have vanished. A number of observers may agree with Krugman that 'The Greek exit from the euro is the best of bad options.'²⁵ The price to remain in the eurozone is dear.

The Greek government announced on 2 November 2011 that it would hold a referendum as soon as possible on the bailout programme in order to get a clear mandate by the people to stay in the eurozone. That announcement created 'shock, panic and anger' around the world, but especially in France and Germany. The French Prime Minister François Fillon said that 'France regretted the unilateral decision by Greece to hold a referendum'.²⁶ The fear was that a negative reply to the bailout programme would trigger sovereign, as well as bank failures that could wreck the eurozone. The Greek government withdrew, in a matter of days, the decision under foreign 'peer pressure' because of real fears that the result by the Greek people would be a no answer.

The Greeks voted on the Troika's plan and responded with a resolute 'NO' (62 per cent) on 5 July 2015. Does a clear NO vote in a national referendum in an EU country mean NO or does it mean something else? Jean Claude Juncker, a member of the Troika and the President of the European Commission, has a rather slender democratic mandate. He was appointed by the EU Presidents/Prime ministers through the political 'black box' and was passed on to the European Parliament for approval. Juncker 'ridiculed the Greek No vote as an unintelligible "circus"'.²⁷ Unelected politicians and the EU technocrats hate referendums. Public and democratic voting is not the way to do business in the EU! This was confirmed a week after the referendum when Greece caved in and accepted the Troika's draconian deal. Hence, it was all a circus. Do the eurozone countries need democratic decisions about crucial national issues or do they not? Once again, referendums may not be the ways to do the EU business. Is this a post-democratic EU?

The European elite are more and more afraid to verify democracy through referenda. Decisions are taken and implemented in the exclusive and closed elite-led political process. If things go wrong, the elite which rule over our lives blame Brussels. With this in mind, Ken Livingstone's (1987) book has a revealing title: *If Voting Changed Anything, They Would Abolish It*. Voting may not be the actual means how the EU integration business is done in reality. Whenever the policymakers consult the people on EU matters through the voting process and when they do not get the pre-set decision, they force the people to vote again and again (Denmark and Ireland) until they approve the decision that has already been

The Guardian, 12 September 2018). The problem is not common only in Greece, 'Around 30% of Romanian doctors have moved to richer European countries where they earn substantially more ... doctors in a poor country became taxi-drivers in a rich one' (Collier, 2018, p. 970).

25. P. Krugman, *"Ending Greece's bleeding"*, The New York Times, 6 July 2015.

26. Bulletin Quotodien Europe, *"News of Greek referendum stuns the world"*, 3 November 2011, p. 4.

27. M. Holehouse, *"I do not understand Greek referendum circus"*, The Telegraph, 7 July 2015.

taken. This type of management of EU affairs created a kind of democratic deficit which evolved into a democratic crisis.

Following the August 2018 deal, Greece exited the bailout programme, but it would be under 'enhanced surveillance'. Greece would start repaying its huge debt from 2032. Nobody knows where will be the country's economy, the eurozone and the EU at that time. This looks like kicking the can down the road. Still, 'Germany turns out to be a major beneficiary of Greece's debt crisis as it earned total of 2.9 billion euros since 2010.'²⁸

7. Who is responsible?

Bankers in Europe were lending to the 'prodigal' Greece in the full knowledge that the loans would not be repaid. Both sides violated basic banking principles:

- *Borrowers* should be careful about borrowing. Their duty is to pay back loans.
- *Creditors* must verify the creditworthiness of borrowers, their existing debt, assets and future stream of income. Creditors' moral duty is to lend diligently. If they do not do their homework on being careful in giving loans, well, then they deserve what transpires.

Although Greeks themselves have a sizeable share of responsibility for the trouble, others were also far from innocent. In fact, all types of sales (legal and illegal) to Greece were strongly encouraged both officially and covertly. Hence the blame should be shared. Foolish creditors always find reckless debtors. Here come just a few illuminating examples of illicit German sales to Greece.

The biggest corruption scandals in Greece involved German high-tech and defence firms. Ferrostaal, the German arms producer, was fined (€149 million) in 2011 for giving €62 million in bribes to the Greeks to buy (faulty) submarines at inflated prices.²⁹ Furthermore, in March 2012 the Greek government reached an out-of-court settlement with German company Siemens related to bribes. Siemens would pay a fine of €170 million for bribes to Greek state employees and ministers for the procurement of equipment.³⁰ In addition,

a Greek court has been provided with conclusive evidence that the largest tax avoider in the country is Hochtief, the giant German construction company that runs Athens airport. It has not paid VAT for twenty years, and owes 500 million euros in VAT arrears alone. Nor has it paid the contributions due to social security. Estimates suggest that Hochtief's total debt to the exchequer could top one billion euros.³¹

28. C. Stam, "Germany earned €2.9 billion from Greece's debt crisis", EurActiv, 21 June 2018.

29. 'Ferrostaal shareholders approve EUR149 million fine in bribery case', The Wall Street Journal, 14 October 2011; Pitelis (2012, p. 8). The EU countries sold Greece over €1 billion of arms during the first bailout deal in 2010. France was the biggest seller, but the pro-austerity advocates (Germany and the Netherlands) were also active. 'An aide to the then Greek leader, George Papandreou, who asked to remain anonymous, told the news agency: "No one is saying 'Buy our warships or we won't bail you out.' But the clear implication is that they will be more supportive if we do"' (A. Rettman, "EU figures show crisis-busting arms sales to Greece", *EUobserver*, 7 March 2012).

30. K. Hope, "Siemens to pay €170m to Greece over alleged bribery of officials", Financial Times, 9 March 2012.

31. T. Ali, "Diary", London Review of Books, 30 July 2015.

The Independent Evaluation Office of the IMF (2016) document revealed unprofessional and dirty work behind the scene by the IMF concerning financial crisis in Greece and other countries hit by the Global Financial Crisis. Here come just a few details. 'The IMF's policy on exceptional access to Fund resources, which mandates early Board involvement, was followed only in a perfunctory manner' (p. vii); 'the troika arrangement potentially subjected IMF staff's technical judgments to political pressure from an early stage' (p. viii); 'Some documents on sensitive issues were prepared outside the regular, established channels' (p. viii); 'written documentation on some sensitive matters, even with the help of generous staff resources, could not be located' (p. 5); 'A number of factors undermined the quality and effectiveness of surveillance. First, the analysis often lacked sufficient depth, rigor, or specificity.' (p. 22); 'failure to grasp fully the functioning of the single currency' (p. 25); 'A major downsizing of the IMF staff that took place during 2008–09 reflected this culture of complacency among the IMF's membership' (p. 27); and 'there was no clear demarcation of responsibilities between the IMF and its European partners, and their areas of competence overlapped considerably' (p. 41). Those quotations lead to three conclusions:

- The financial rescue strategy for Greece, Ireland and Portugal was not implemented in the coherent way, nor was based on proficient analysis.
- Excessive political pressure overturn economic facts and professional IMF's work.
- The IMF failed the standards of responsibility and transparency as are expected from public institutions.

To criticise Greece as the only culpable party in the financial catastrophe is unjustified. Responsibility is shared. However, it is easy and arrogant to blame the victim for its own trouble. In spite of the shared responsibility for crisis, the adjustment cost fell, i.e. was imposed on the Greek side only.

8. Reforms

The eurozone works well only for Germany and for very few others. This is because:

- all eurozone countries must have fully open domestic market for the German (and other EU produced goods and services) and
- no eurozone country may devalue to compete with the German (and other EU produced) goods and services.

For others, such as Greece, the eurozone was brutal.

Reforms of the eurozone are urgently needed as one is witnessing a slow motion train crash. Dark clouds, for instance, are looming over Italy. This country did not have real growth for 20 years. The population is disillusioned. Italy's debt is high (130 per cent of the GDP), the balance sheets of Italian banks have €128 billion of non-performing loans (loans in arrears of over 90 days),³² and the public infrastructure is in poor shape (the collapse of the bridge

32. B. Smid, B. Soedhuizen and T. Teulings, *"The transition to a banking union for the EMU"*, VOX, 10 September 2018.

in Genoa in 2018 with 43 fatalities is just one example of troubles). Eurozone deficit rules strictly limit public expenditure.

Eurozone-instigated cuts in public expenditure bite into Germany too. The defence budget is affected. For instance in 2014, 'A shocking example is the decrepit state of German military hardware. Of the Luftwaffe's 254 fighter planes, 150 cannot fly'.³³ The situation became even more serious in 2018. Eurofighters are state of the art combat aircrafts. Out of the 128 Luftwaffe's Eurofighters only four were combat ready.³⁴

A temporary means to bridge the crisis in the form of the European Financial Stability Facility was created in 2010 to assist Greece, Ireland and Portugal. This Facility, superseded by the European Stability Mechanism (ESM) (2012), has the financial 'firepower' of €500 billion. Eurozone ministers agreed in principle, but not in detail, at the end of 2018 to create a eurozone budget to fortify the ESM. There are ideas to transform of the ESM into a eurozone's version of the IMF. If the German position remains that it needs to be done through the Lisbon Treaty's change, then the chances that this would happen are very slim.

The 2018 proposals for a deeper eurozone integration by the French President Macron were based on strong federalist grounds (common budget to assist countries in economic troubles; European Finance Minister). The eurobonds are also a well-known federal idea (but for such bonds there must be a strong vision of a common future). Currency unions do not operate without some kind of risk sharing and political union. That vision was strongly criticised by 154 prominent German economists. There is a stark division in opinions on how to reform the eurozone. The Germans argued in favour of an orderly eurozone departure framework for insolvent countries.³⁵ Macron's federalist-type proposals were put aside even though

Germany seems to recognize the importance of a banking union for the functioning of a single currency, but, like St. Augustine, its response has been, "O Lord, make me pure, but not yet." Banking union apparently is a reform to be undertaken sometime in the future, never mind how much damage is done in the present.³⁶

The future of the fiscal and banking union is unclear. Germany and the Netherlands resist the pan-eurozone deposit insurance scheme, a vital part of the banking union, because of the fear that other countries failures would be foot by the German and Dutch taxpayers' money. As a temporary measure, Germany and a few other eurozone countries, may encourage the ECB to mutualise the Italian (even the French) debt. This would just postpone (not prevent) a possible eurozone breakup. If this mutualisation happens, the can will be just kicked down the road. Joseph Stiglitz thought that

33. W. Münchau, "Eurozone stagnation is a greater threat than debt", *Financial Times*, 20 October 2014.

34. J. Huggler and P. Foster, "Luftwaffe 'down to four' combat-ready Eurofighters out of 128, as pressure builds over weak defence spending", *The Telegraph*, 2 May 2018.

35. C. Jones and J. Brunsden, "German economists attack Macron vision for eurozone reform", *Financial Times*, 23 May 2018.

36. J. Stiglitz, "Can the Euro Be Saved?", *Project Syndicate*, 13 June 2018.

The central problem in a currency area is how to correct exchange-rate misalignments like the one now affecting Italy. Germany's answer is to put the burden on the weak countries already suffering from high unemployment and low growth rates. We know where this leads: more pain, more suffering, more unemployment, and even slower growth. Even if growth eventually recovers, GDP never reaches the level it would have attained had a more sensible strategy been pursued. The alternative is to shift more of the burden of adjustment on the strong countries, with higher wages and stronger demand supported by government investment programs.³⁷

France, under President Macron, introduced in 2018 neoliberal reforms which favoured big businesses. Reforms included tax cuts to big corporations; abolished progressive tax on capital gains; ended indexation of pensions; reduced housing benefits; and terminated liberty in the choice of university education by the state distribution of students based on their results at the end of secondary education. That was the reason for strong and lasting protests by the 'deplorable' big part of the French population (*gilets jaunes*). Social discontent has been brewing and the trigger for protests in 2018 and beyond was an increased tax on fuel.

Is exit or a dissolution of the eurozone a panacea? The consequences of the eurozone breakup would be substantial in the short term (Austria-Hungary, the Soviet Union or Yugoslavia), but if accompanied with active policy intervention, they would be manageable. 'The advantages over a five-year horizon would be substantial' (Bagnai et al., 2017, p. 533). The peaceful and orderly Czechoslovak dissolution may provide an inspiration.

9. Conclusions and policy implications

The euro is the crown jewel in the EU integration. No similar currency circulated throughout Europe since the times of the Roman Empire. Measured by adoption, expansion and official political support, the eurozone is a great success. However, there are other and more important measures of success. Growth (or the lack of it), transformation of the economy and democracy (Draconian 'ruling' of Greece by the Troika) are those yardsticks. At the same time, the euro is the EU's weakest link. It needs a substantial federal-type overhaul if it is to survive. Uncertainty about its future and the impact on the whole EU and beyond is paramount. There are contingency plans in the preparation for the eventual split of the EU.³⁸

In spite of great hopes and political support, the eurozone has been a failure. It failed to deliver growth and contributed to various discords. As for the eurozone architecture,

The euro was a system almost designed to fail. It took away governments' main adjustment mechanisms (interest and exchange rates); and, rather than creating new institutions to help

37. J. Stiglitz, "Can the Euro Be Saved?", Project Syndicate, 13 June 2018.

38. S. Khan, "Brexit: Macron warns Europe could split after Britain leaves EU and calls for unity", The Independent, 5 January 2018. J. Rankin, "Jean-Claude Juncker: EU is facing existential crisis", The Guardian, 13 September 2016. K. von Hammerstein, "Militärplaner halten Zerfall der EU für denkbar", Der Spiegel, 4 November 2017. P. Mason, "The Germans are making contingency plans for the collapse of Europe. Let's hope we are too", The Guardian, 6 November 2017.

countries cope with the diverse situations in which they find themselves, it imposed new strictures – often based on discredited economic and political theories – on deficits, debt, and even structural policies.³⁹

The initial diversity among the eurozone countries, both economic, institutional and behavioural were great and unfriendly with monetary integration. One-size-fits-all eurozone policies without the supporting institutions (federal budget, fiscal transfers to the ones in trouble [automatic stabilisers], banking union with a common insurance of deposits, fiscal rules, dispute resolution mechanism and political union) which economic theory and rich experience propose, had no great chances for success. Still, the EU patrician elite was apathetic to warnings by economists. If the eurozone wants to survive in the longer term those suggestions by economists need to be supplemented by the abandoning of the existing fiscal rules that choke growth and by changing ECB mandate to include fight against unemployment.

In spite of serious troubles the euro survived and it expanded its coverage. Still, the greatest eurozone success is that it has survived by now, although at a huge cost in terms of growth and employment in most participants. However, there is a big difference between surviving and surviving well. Inflation was low and under control, but many would change low inflation for real economic growth. There was a cost of eurozone paid by most participants (bar Germany): austerity, low or no real growth, divergence in living standards, crisis, unemployment and contempt of principles of representative democracy.

At the celebration of the 20th anniversary of the eurozone, Jean-Claude Juncker, the President of the European Commission, said

For 20 years, the euro has delivered prosperity and protection to our citizens. It has become a symbol of unity, sovereignty and stability, and we must ensure it continues.” Thus spoke Jean-Claude Juncker, president of the European Commission, in “celebration” this week of the 20th anniversary of the adoption in synthetic form of Europe’s single currency.⁴⁰

One may really admire his sense of humour. There were no celebrations by the general public. Anywhere.

Generally speaking, austerity policies in certain countries were not offset by expansionary policies in others. Hence, harsh austerity worsened the debt/GDP ratio and increased unemployment in the eurozone. Germany has current account surpluses, but many of these may be accumulated unserviceable claims. Would Germany be better off without such export surpluses? Incredibly harsh austerity packages and painful bailouts will be the rule of the game in the eurozone for many years to come. Strange and unsavoury politicians and movements are mushrooming in countries subjected to the draconian eurozone austerity measures. The reason this is taking place is that the EU elite and respectable politicians, refuse to admit that the imposed austerity measures are a tragic failure. The eurozone has

39. J. Stiglitz, “*Can the Euro Be Saved?*”, Project Syndicate, 13 June 2018.

40. J. Warner, “*The dismal euro will stagger on and condemn Europe to further disaster*”, The Telegraph, 3 January 2019.

turned out to be a dismal marriage. Would a painful divorce be preferable to agonising eurozone matrimony? A German proverb says: 'Better a horrible end, than horror without end.'⁴¹

The EU elite is either blind or deaf to sense the trouble in which the eurozone is. Silos mentality (one-size-fits-all policy) prevails in Brussels while people are stripped of democracy. The *gilets jaunes* did not emerge from trade unions or political parties. They emerged from the disenfranchised and deplorable part of the population. What remains to the people are yellow vests-type of movements and nationalism which may destroy the current euro and even the EU from within. Errors by the patrician elite are not admitted, while troubled vanity project is continued. Germany prospers, while most of the others are impoverished of funds and hopes. This is especially obvious at the EU's southern periphery.

The EU elite mind-set is entrenched in post-nationalism and post-Cold War view of the world. The central points of this new attitude are globalisation and liberal internationalism. National interests do not feature high. With such mentality, the EU is incapable of reform just as was the approach by the former Soviet Union. *For over a decade the EU countries do not seem to agree on much of anything of substance.*

The benefits of the eurozone, at least in the south, are controversial and in doubt. However, strong popular resistance to the replacement of the euro by national currencies is not obvious in that affected region. Many Greeks, Italians or Spaniards profited from low rates of interests during the eurozone 'happy hours' (2000-07). They acquired assets such as real estate and savings. They would not vote to get a new national currency which would devalue their assets by a half. The young, especially, unemployed have no such qualms. They could benefit from a fall in the prices of houses. If the eurozone continues unreformed, the EU (bar Germany) would be destined to have low growth, high unemployment and division between those that have and those that are different.

The breakup of the eurozone would normally provoke a huge devaluation (especially at the eurozone periphery), prices would drop for say Italian Fiats and Spanish Seats and the single EU market would be in jeopardy. Germany (or other country) would introduce customs posts to control the imports of cheap Fiats and Seats, so what would remain of the EU?

The new German eurozone template (strict rules and punishments) for the operation of the EU may provoke perpetual austerity (devaluation is impossible) and no growth, when growth actually may be the best way to remedy the situation. How does this square with other countries' visions of the EU? Spain or Greece, for instance, not to mention the views of many others? The austerity rules may easily provoke violence and extremism as one country imposes its rules on others. Suspicions are running high – the thrifty northern Protestants vs. the prodigal southern Catholics and the Orthodox; Britain vs. the Continent; everyone vs. the Germans. It is amazing how half a century of European integration has not managed to dissipate deep-seated mistrust and cultural conflicts. Jovanović (2012, p. 77) wrote:

41. 'Lieber ein Ende mit Schrecken, als ein Schrecken ohne Ende.'

During the Great Depression, Heinrich Brüning, the German Chancellor (1930-32), thought that a strong currency and a balanced budget were the ways out of crisis. Cruel austerity measures such as cuts in wages, pensions and social benefits followed. Over the years crises deepened. This led to what the reader of this article knows. Once the financial and the existential storm is over and the new EU architecture is in place based on the tough German template, a number of EU countries may not like or enjoy the EU that they live in. Many of them may find themselves in the slow-lane of European integration. The EU will not be the same again. It is turning into a multi-speed and multi-directional EU.

A currency needs to be organised around the economy in order to serve it, not the other way around as is currently the case with the euro. Automatic inter-country fiscal transfers are essential for the currency union to work. This federal instrument is absent in the eurozone.

The eurozone as we know it is almost finished. The new one is not yet emerging. However, the next (imminent) financial crisis will be the test of make it or break it. The triggers may be various and many. One may be the failure of the insolvent Deutsche Bank which is kept together by the scotch tape. Hard choices need to be made. What will come out of it is anybody's guess. Nonetheless, one thing is certain: the outcome will not be glorious.

Many believed that a common currency was unthinkable in Europe some four decades ago. It looked like a pie in the sky. Still, it happened. Many think that political and fiscal unions are impossible now. Political will and commitment (if they exist) may prove them wrong and may avoid turning Maastricht into Arnhem (air distance 127km). No matter how the eurozone crisis ends, it will not be happy. The final message from this chapter is that, in spite of gloom and doom, some hesitant optimism about the future of the reformed eurozone is justified, with an emphasis on 'hesitant', however, as time passes by, the federalist hopes evaporate.

Economic performance of the eurozone has been a great disappointment for most of the participating countries. The euro has been overvalued for most of its countries which hampered exports. The objective of the euro was to stimulate growth and provide certain stability. It became a dysfunctional currency that created troubles chaos and a currency with unhappy and uncertain future. Rather than fostering growth and certain economic convergence among the participating countries, the euro 'has fostered divergence among its member countries thus leading to the underperformance of the euro area and undermining its resilience to external shocks' (Bagnai et al., 2017, p. 524).

The eurozone was supposed to serve the Europeans and to provide them with a brighter economic future. Now, the Europeans are asked to serve and save the eurozone, i.e. to accept lower wages, higher taxes and reduction in social benefits (yellow vest protestors). Is this the promising way forward for the eurozone?

Paper currencies are not forever. The longest surviving ones and shining exceptions are the US dollar, the pound sterling and the Swiss franc. The dissolution of the euro would not be the end of the world. It would just return the EU where it was in 1992, hence one needs to prepare for the post-eurozone EU.

The effects of recent crisis on Eurozone

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Introduction¹

The crisis which hit in the mortgage market of the USA in 2007 has since spread to the world financial system. The crisis in the banking system climaxed in September 2008 and spread to Europe. Most economies experienced negative rates of growth, unemployment rose and remains high, a number of financial giants have closed or are having severe problems, private consumption and investment have shrunk because of uncertainty and asset devaluation. This crisis is different from previous ones, mainly because of its world-wide extent and because a vicious cycle links the problems in the financial sector to the deceleration of the real economy. The return to sustained growth presupposes, inter alia, a restructuring of corporate portfolios. It is therefore difficult to establish mechanisms for coordination and return to positive growth rates.

Although the collapse of markets and economies has been avoided in the year 2010, the credit risks as a result of excessive deficits remain at exceptionally high levels. The global financial crisis has shown fundamental weakness in the fiscal and monetary policies in the Eurozone. The sovereign debt crisis in the euro area and the real economy during the spring of 2010 has revealed that the monetary and fiscal policy framework of the European Monetary Union (EMU) is still incomplete. It quickly became obvious that the rules-based framework for fiscal policy created by the Excessive Deficit Procedure (EDP) and the Stability and Growth Pact (SGP) when the EURO was introduced was insufficient to prevent a debt crisis despite its emphasis on keeping public sector deficits low and strengthening forward-looking budgetary planning,

1. An earlier version of the first part of this paper was partly published in Baltas (2013).

because it did not include arrangements for appropriate means to prevent and correct imbalances.

The questions I will attempt to answer with respect to the current economic crisis and methods of management thereof, include, among others, the re-evaluation of free market economy:

- what measures have been taken by the European authorities to confront the debt crisis in the Eurozone and how are they working (or not working) out?
- what is the role of the European Central Bank?
- what kind of changes does the current crisis lead to in the legal and institutional basis of European integration?
- what kind of policy implications could be extracted between measures regarding austerity and growth?

A new European Economic Governance

Once the crisis broke out and financial turmoil went international, it became obvious that EMU did not have policy tools to manage and resolve the crisis. In the end, the European Union responded to the crisis first by agreeing on stabilization for Greece and then by creating the European Financial Stability Facility (EFSF) that relatively succeeded in calming the markets. However, these responses were developed in an ad-hoc manner and on a temporary basis only and do not provide a sufficient basis for dealing with any possible future debt crises in the euro area.

Several proposals have been put forward for how to improve the euro area's capacity to deal with problems of excessive public debts. In order to prevent sovereign crises, the European Commission (2010) has proposed a number of measures to strengthen the Excessive Deficit Procedure (EDP) and the Stability and Growth Pact (SGP). These proposals focus mainly on making the rules of the current framework more effective while enhancing their enforcement, by introducing stiffer and more automatic penalties for violating these rules² (Baltas, 2012). The European Central Bank (ECB) made proposals (2010) going in the same direction and, at the same time, has called for the creation of a crisis management fund for the euro area, which might cover some lender of last resort characteristics (Gianviti, et al., 2010). The European Council of 28-29 October 2010 stated that 'Heads of State or Government agree on the need for Member States to establish a permanent crisis mechanism to safeguard

2. In order to strengthen the SGP directives, the European Commission has provided for sanctions, even in the budget-planning phase, increasing those already existing in the corrective section. The countries that shift in a senseless and persistent way from the process of convergence toward the intermediate-term goals, without ensuring for correction in deviation, have to set up a non-interest bearing of 0.2% of their GDP. Greater automation in the application of sanctions is also provided for. The reform depicts that the corrective procedure for excessive deficits does not only deal with deficit limits that exceed 3% of GDP, but also allows for intervention for debt reduction, should the obligation of reaching the constraint of 60% of GDP not be fulfilled.

the financial stability of the euro area as a whole and invite the President of the European Council to undertake consultations with the members of the European Council on a limited treaty change required to that effect' (European Council, 2010). The German finance ministry proposed for coordinating the demands of bond holders in a sovereign debt crisis and imposing 'haircuts' on the face value of the debt of a government in financial distress. There have been several plans along similar lines, most notably by Gros and Mayer (2010) who proposed the creation of a European Monetary Fund (EMF) aimed at both improving crisis prevention and financing a mechanism for sovereign debt resolution.

The euro area needs a mechanism for dealing with sovereign debt crises in an effective and predictable way. Even the most sophisticated and most effectively enforced set of fiscal rules will not eliminate the possibility of future debt crises in the euro area.

Policymakers in Europe must now concentrate their action on at least three areas (Draghi, 2011):

First, they need to deliver the growth-friendly fiscal adjustments they have committed to implement.

Second, they need to focus on the structural reforms that Europe needs in order to boost potential growth; current problems in many countries stem as much from excessive debt as from the weak economic growth expected in the years ahead.

Third, they need to agree on a thorough reform of European economic governance. The crisis highlighted some major shortcomings. Fiscal rules and procedures have proved unable to deliver prudent policies: many member states entered the crisis with an already high public debt and insufficient margins of manoeuvre. Moreover, macroeconomic imbalances were not given an adequate role in the design of EMU governance: tensions hit not only countries with problems of public finances, but also those with a high external deficit, unbalanced growth and/or a highly indebted private sector. Finally, an appropriate framework to safeguard the financial stability of the euro area in crisis situations was missing altogether.

Reform proposals have been set out in all the three areas by the European Commission and the Task Force chaired by President Van Rompuy.

Concerning fiscal surveillance, the Report of the Task Force states that "the debt criterion ... should be made operational to be effectively applied". It is well known that, while the Maastricht Treaty requires countries with high public debt to reduce it '*at a satisfactory pace*', this provision has never been effectively implemented. The Report also envisages a wider range of sanctions, both financial and political, to be applied progressively, starting at an early stage in the budgetary surveillance process, in order to strengthen the incentives to comply with the rules in good times to avoid procyclicality effects. However, the procedures remain too lengthy and largely determined by discretionary decisions of the European Council.

With regard to the surveillance of macroeconomic imbalances, the Task Force proposes an alert mechanism, based on the analysis of macroeconomic and competitiveness

developments, and an enforcement mechanism that includes sanctions if a country in “excessive imbalance position” does not comply with the Council’s recommendations. As the crisis showed, macroeconomic imbalances may lead to unsustainable development and dangerous spillovers to other countries.³

A crisis management framework has to be designed so as to ensure appropriate incentives for countries applying for financial support and for private credit markets, in order to limit moral hazard. At the end of November 2010, the Euro group agreed on the main features of a crisis management framework aimed at safeguarding the financial stability of the euro area as a whole. In particular, it has (i) stressed that assistance will be based on a stringent programme of economic and fiscal adjustment and on a rigorous debt sustainability analysis; (ii) clarified that the mechanism does not represent an unconditional bailing out and that there is always a possibility that private creditors may incur losses if the country concerned does not succeed in implementing the necessary adjustment. In October 2011, during the European summit, the option of having the ECB “print more euros” was, formally at least, turned down by the chancellor of Germany; consequently, a grandiose plan was put on the table: an EFSF which would have the capacity to mobilize considerably less 1,000 billion euros. By establishing the EFSF and, from mid-2013, the European Stability Mechanism (ESM), will enable targeted intervention if indispensable to safeguard the stability of the euro area as a whole - always subject to adequate conditionality. Member States which benefit from the EFSF undertake considerable efforts to tackle the causes of the crisis - principally excessive public debt and a lack of competitiveness - effectively. On the occasion of the Special Summit of December 2011, markets were informed that the Greek case had to be considered very special and unique, giving up any future claim to involve private creditors in losses of possible restructuring. In March 2012 the voluntary restructuring of the debt turned into a total haircut of Greece for creditors exceeding 70% of the initial capital. All these uncertainties had the effect of raising the cost of saving Greece beyond measure, the burden of which was at the start entirely bearable due to the low debt size of that country with respect to the Eurozone GDP, and also to spread contagion not only to other peripheral countries such as Ireland and Portugal, but also to Italy, Spain and finally to France and Germany themselves, amplying the crisis in the whole euro area, which was in danger of not being able to survive.

The reformed Stability and Growth Pact, the new excessive imbalances procedure and the Euro Plus Pact will reinforce the economic and fiscal coordination and surveillance in the euro area and ensure that any deviation from the objectives set by these instruments are recognized and addressed at an early stage. This policy of prevention will be key to the medium- and long-term stability of the euro area.

All the Member States of the euro area have committed themselves to swiftly reducing their deficits, achieving balanced budgets in the medium term and implementing the structural

3. See, for example, Giavazzi and Spaventa (2010).

reforms required to enhance the competitiveness of their economies on a sustainable basis⁴. Namely:

1. Strengthening the governance of the Euro area

All the decisions taken in the last year are aimed at enhancing stability and fostering growth in all Members States. In order to support this process, the euro area needs to strengthen and streamline its institutional framework to reinforce the efficiency of its decision-making process and to promote the coherence of its institutions and procedures.

2. Enhanced surveillance and integration of budgetary and economic policy

The economic and monetary union needs to be based on an even closer coordination of national budgetary and economic policies.

It should be further enhanced through the following proposals:

- All Member States of the euro area will incorporate a balanced budget fiscal rule into their national or constitutional legislation. The fiscal rule should implement the objectives of the SGP and ensure that every Member State of the euro area achieves a balanced budget as soon as possible. Therefore, it would ensure a sustained reduction of the debt ratios in the case they exceed the reference value (60% of GDP). In line with the revised SGP, all Member States of the euro area whose debt level exceeds the reference value must present an adjustment path for reducing their debt below the reference value.
- All Member States of the euro area should confirm without delay their resolve to swiftly implement the European recommendations for fiscal consolidation and structural reforms, especially as regards labor-market, competition in services and pensions policy, and adapt appropriately their draft budget.
- In line with the Euro Plus Pact, euro area Member's States should take all the necessary measures to improve competitiveness, foster employment, ensure stability of the euro area as a whole and deepen economic integration. In particular, further progress should be made on tax policy coordination to support fiscal consolidation and economic growth.
- Structural and cohesion funds should be used to support essential reforms to enhance economic growth and competitiveness in the euro area. The European Commission should automatically check to ensure that structural and cohesion funds provide the optimum support for the macroeconomic adjustment programme and be involved in the selection and implementation of projects. In the future, payments from structural and cohesion funds should be suspended in euro area countries not complying with recommendations under the excessive deficit procedure.

The ECB is keen on strong budget rules and sanctions as a way to mitigate the potential for "moral hazard" that comes with large scale ECB bond buying, i.e. if given access to cheap

4. Baltas (2016)

credit from Frankfurt and relieved from market pressure, some governments may be less inclined to push for reform. The ECB is also concerned that, since many banks around the Euro zone are now largely dependent on ECB funding to stay afloat, once a government starts to receive large – scale funding, it may be very difficult to eventually disengage there of come of it.

3. The role of the European Central Bank⁵

The role of the ECB is one of the most important issues over recent weeks and months. As things stand the ECB should not, will not and cannot provide the unlimited financial sources to the Euro zone that financial markets seem to require. At best it could ease the pressure on illiquid states, but even this depends on the legal constraints on the ECB's defined role.

The decisions taken at the EU summit on 8 and 9 December 2011 are unlikely to supply adequate cover for the ECB to buy the hundreds of billions of government debt of the southern countries to fulfill this role. Through its government bond buying and liquidity provision to banks, the ECB's exposure to Greece, Ireland, Portugal, Italy and Spain has reached E706bn up from E444bn in the early summer. That is a E262bn, over a 50% increase, in only six months and shows how, contrary to popular belief, that ECB is already intervening quite heavily in the markets. It also highlights how the Euro zone continues to transfer risks away from private creditors to taxpayer – backed institutions. The ECB is likely to continue to keep interest rates low and continue to provide cheap credit to banks despite inflation fears in Germany.

Updated exposure of the ECB to Greece, Ireland, Portugal, Italy and Spain

ECB exposure (€m)	Greece	Ireland	Portugal	Italy	Spain	Total
Govt. Debt (SMP nominal)	60,000	18,000	20,000	135,717		233,717
Govt. Debt (SMP purchase price)	42,000	14,400	18,000	135,717		210,117
Bank Lending	77,758	102,940	45,539	153,200	116,211	495,648
Total	119,758	117,340	63,539	221,059	184,070	705,765

Source. ECB, National Central banks and Open Europe calculations

For Italy, Spain and Ireland the lending figures are for 31 November 2011, while the rest are for 31 October. All data is taken from the national central bank balance sheets.

The EU summit of 8 and 9 December 2011 failed to agree a robust regime of enforceable automatic sanctions for Euro zone countries that break the bloc's budget rules (3% deficit limit, 60% debt - to – GDP ratio and the new 0.5% structural deficit limit under the so-called "golden rule"). The ECB is keen on strong budget rules and sanctions as a way to mitigate the potential for "moral hazard" that comes with large scale ECB bond buying, i.e. if given access to cheap credit from Frankfurt and retrieved of market pressure, some governments may be

5. Open Europe (2011), "Briefing Note", 19 December.

less inclined to push for reform. The ECB is also concerned that, just as many banks around the Euro zone are now largely dependent on ECB funding to stay afloat, once a government starts to receive large-scale funding, it may be very difficult to come of it.

Moreover a whole range commentators and investors argue that the ECB will have to engage in easing the monetary policy (including the issuance of stability bonds) as the Bank of England and Federal Reserve bank have pursued. This is considered as one of the few remaining ways out of this crisis. However, there are some questions regarding the impact of quantitative easing monetary policy on economic growth in the Euro zone countries. Besides, for historical reasons Germany fears inflation will hit German savers the hardest, not simply because it is the strongest economy but due to the higher saving rate.

In sum, the ECB legal constraints, the fears of moral hazard, and the lack of clear strategy for the exit of crisis, were not tackled by the recent agreement. It, therefore, looks likely that the ECB will remain hesitant about greater intervention.

In September 2012, the ECB announced the new bond purchase programme. The ECB will buy sovereign bonds of one-to three year maturity, provided the issuing country has agreed to a fiscal adjustment programme with either the EFSF, or its successor, the European Stability Mechanism.

4. Policy implications between measures regarding austerity and growth

One great ambition of the founding fathers of the EU was that someday member-states would enjoy roughly comparable living standards. As all were expected to grow at about the same speed, no member-state would be left behind and those who entered with a handicap would be assisted to catch up. This benevolent idea became in turn the basis for the establishment of the so-called European structural funds, which were assigned the task to assist laggard member-states to streamline their economies so as to raise their growth rates. Unfortunately, the assistance from the structural funds and the other EU facilities proved ineffective in this regard and more recently the EU political leaders were forced to start thinking about an EU in which member-states would grow at their own speeds.

The IMF has been critical of the European leadership for cutting budgets too quickly resulting in adverse effects on growth. In a meeting (2012) of the G8 at Camp David, a strong endorsement was made in favour of a policy stressing a balance between austerity and growth. On the other hand, the advocates of austerity measures claim that cutting spending and balancing budgets produce confidence in the management of the public sector which in turn helps economic growth (Kondonassis, 2012). However, for many people, who have lost their jobs, or seen their standard of living reduced through austerity measures it is a huge problem.

Given that some European economies such as Spain and Greece continue to experience high unemployment, it is reasonable to assume that economic recovery is their priority. Austerity measures in the midst of recessions, as stated above, are the wrong policy. We have also

learned from the past that if private demand is weak, public demand can be an effective substitute. If recovery is pursued and attained, revenues are likely to rise and budget deficits would tend to decrease. At present it can be argued that what the USA and the European economies need is more emphasis on demand side economics and economic growth. Overall, a balanced policy has many merits.

The negative lessons from public sector adjustment show that for the situation to improve positive messages must be sent: employment adjustment should be based on competence and needs, wage adjustment should be progressive, reforms should be decided after social dialogue, social services and poverty reduction measures should be preserved, public sector adjustment should not call into question the role of the public sector, (especially in productive investments and for preserving the drivers of economic growth), a social safety floor should be established for the protection of the poor and most vulnerable and a long-term horizon should be adopted.