



Parliament's role in anti-crisis decision-making

SUMMARY *The EU's response to the financial and economic crisis has been characterised by the prominent role of the European Council. Moreover, a number of anti-crisis instruments have been adopted outside the EU framework in order to overcome political and legal hurdles and to speed up negotiations.*

The EP has played a very limited role in the development of agreements adopted outside the EU framework, but it does have some involvement in the implementation of these instruments, although usually merely through a right to being informed.

This minimal participation of the EP in anti-crisis decision-making is seen as a major shortcoming in the democratic legitimacy of European economic governance. While inter-parliamentary cooperation between the EP and national parliaments is regarded as a necessary tool in a multi-governance system, the EP is considered to be the most appropriate body to scrutinise decision-making at EU level.

Proposals aimed at ensuring greater involvement of the EP in economic-governance decisions include the creation of a new EP committee responsible for euro-area matters. A greater link between the EP election campaign and the policies of the Commission is also seen as a means to increase legitimacy.

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Background

Prominence of the European Council

The regulatory framework established to deal with the effects of the financial and economic crisis in the EU is increasingly fragmented. It is a mixture of instruments adopted by the EU institutions as well as intergovernmental treaties, binding acts and coordination measures, which address either all Member States (MS), just some or only those in the euro area. The adoption of many of these instruments was characterised by short negotiation periods as well as the need to overcome political blockages. This led to some being agreed outside the confines of the EU Treaties and, as a consequence, with limited European Parliament (EP) participation.

In this context, the euro crisis has also resulted in a shift of political weights in the EU, with the European Commission's agenda-setting power decreasing while the European Council has gained prominence in anti-crisis decision-making. This prominent role is seen by many as a consequence of the crisis, by nature, requiring political leadership rather than a technocratic approach.¹



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"One decision does not fit all"

In the course of the euro crisis, the heterogeneous interests within the EU and the difficulty in amending the EU Treaties has resulted in the rise of so-called "differentiated integration".

Differentiated or flexible integration – in which policies do not apply uniformly to all MS – was suggested in the early 1990s, as a means of resolving the ongoing debate on the choice between inter-governmentalism and supranationalism. Whereas some MS have pushed for deeper EU integration, others have preferred an 'à la carte' approach. Furthermore, EU enlargement provoked discussions on a 'two-speed or multi-speed Europe', as well as the idea of 'core Europe'.

Herman Van Rompuy, President of the European Council, underlined in 2010 that the "one-decision-fits-all" approach cannot be the only response to the challenges posed by the economic and financial crisis. He called for different patterns of European integration to be explored. And he [noted](#) that "often the choice is not between the Community method and the inter-governmental method, but between a coordinated European position and nothing at all." German Chancellor Angela Merkel spoke in this context about a new, "Union method" consisting of "coordinated action in a spirit of solidarity".²

It is widely claimed that the activist role of the European Council as well as the revival of differentiated integration in the responses to the crisis has reinforced the intergovernmental model of decision-making, and marginalised the EP in some cases.

Institutional challenges of differentiated integration (DI)

Institutional framework

Instances of DI range from sector-specific opt-outs to agreements involving certain MS (e.g. euro area) or even non-EU MS (e.g. the

Schengen area). Involvement of the EU institutions, and particularly the EP, in the adoption and implementation of DI depends on whether it takes place within or outside the EU framework.

Within the EU framework

DI within the confines of the Treaties is characterised by its integration into the EU institutional framework. The prime example of differentiated integration within the Treaties is Article 136 TFEU, which enables adoption of specific measures for the euro area MS. [Enhanced cooperation](#) is a flexible instrument allowing a group of MS to press ahead with measures in certain circumstances. Under enhanced cooperation the EP maintains the legislative powers it has under the relevant legal base. Whereas only participating MS may vote in the Council on decisions implementing enhanced cooperation, all MEPs are entitled to vote on them in the EP. Use of enhanced cooperation is envisaged, for example, for establishing a [Financial Transaction Tax](#).

Open method of coordination

The [open method of coordination](#) (OMC) results not in binding legislation but in soft law. It seeks to encourage and promote the implementation of best practices by the MS, in particular through peer pressure, in order to achieve greater convergence. The OMC has recently been applied as an instrument of economic coordination. In this field, with the Council supervising the process, there is little involvement for the other EU institutions and in particular the EP. Implementation of such coordination is therefore not fully integrated in the EU institutional framework.

Outside the EU framework

MS have resorted to intergovernmental treaties, either to overcome legal obstacles or when unanimous support from all MS was not available. As a general rule, EU institutions are not involved in inter-governmental agreements concluded between MS. However, recent instruments do allocate specific tasks to some EU

institutions, e.g. the Commission, the European Central Bank and the Court of Justice of the EU (CJEU), as well as establishing certain rights to information for the EP.³

Positions on DI

DI is often considered as a tool to overcome deadlock by allowing MS (and non-MS) to cooperate at different levels of integration, inside or outside the confines of the Treaties.⁴ It has been argued that it may be "better to make a step forward outside the Union instead of waiting indefinitely for a small step inside the EU".⁵

However, the Commission warns in its [Blueprint for a deep and genuine EMU](#) of 28 November against the excessive use of intergovernmental agreements in areas covered by the Treaties. It argues that this could result in a fragmentation of the legal framework and undermine the importance of EU law for the dynamics of integration. Many commentators also advocate a deeper EMU based on the institutional and legal framework of the Treaties, in order to secure a high level of democratic scrutiny through the EP, and to reduce the overall risk of a rupture between the participating and non-participating MS.⁶ According to the Commission, intergovernmental solutions should be applied only as an exceptional tool where Treaty change is necessary, and only until the Treaties have been amended.

Adoption and implementation of anti-crisis measures

Anti-crisis measures 2010-2012

The degree of involvement of the EP in the shaping and adoption of crisis-resolution measures adopted by the EU, as well as by the MS, depends on whether the instruments are within or outside the EU framework. However, the role of the EP in the implementation of those instruments remains rather marginal.

Euro Plus Pact

The [Euro Plus Pact](#) for economic policy coordination for competitiveness and convergence was agreed by 23 MS under OMC, and thus without formal EP participation. The Pact establishes links with the EU institutional framework, stating that it "will be discussed within the EU institutions" with the Commission preparing a report on the annual fiscal commitments of the MS and the EP playing "its full role in line with its competences". However, no active role is foreseen for the EP in the scrutiny of national implementing measures.⁷ The EP has expressed concern at the current arrangement and [called](#) for it to be more actively involved in the process.

Six-pack and European Semester

The six-pack consisting of five Regulations and a Directive⁸ reformed the economic surveillance regime introduced by the Maastricht Treaty. It was adopted under the "Community method" with the EP playing an important role in shaping the coordination process.⁹ The EP has been [credited](#) with ensuring, against the wishes of some MS, greater power for the Commission to impose sanctions on MS infringing the deficit rules through use of reverse qualified majority by the euro area MS in the Council.¹⁰

The six-pack also codified the [European Semester](#) as an annual six-month cycle within which national structural reforms are coordinated and recommendations adopted by the European Council. In this context, commentators consider the EP's greatest achievement during negotiations the introduction of the "economic dialogue". It establishes the right of EP committees to invite the President of the Council, of the Commission and of the European Council to appear before the committee and discuss coordination and surveillance measures. However, it does not establish any formal duty for the relevant actors in the economic dialogue to report to the EP. Parliament is also not able to take any binding decisions

or to amend Council recommendations.¹¹ Therefore, the EP called in its [report on the European Semester for economic policy coordination](#) to be involved in the overall evaluation at the end of the European Semester to give the process greater democratic legitimacy.

Amendment of Article 136 TFEU

A [new paragraph 3](#) was introduced into Article 136 TFEU to enable the creation of permanent mechanisms for financial aid. The amendment was made using the simplified treaty revision procedure under Article 48(6) TFEU, providing only for consultation of the EP. Amendments proposed by the EP, for instance proposing that the conditions for the provision of a financial assistance be determined by an EU regulation adopted under co-decision, were not taken up by the European Council.¹²

European Stability Mechanism (ESM)

The [European Stability Mechanism](#) (ESM) was signed on 2 February 2012 as an international agreement between the euro area MS outside the EU institutional framework. As such, there was no obligation to consult the EP. Despite the EP's [request](#) to participate in negotiations, it was not involved in either its preparation or adoption. Moreover, no accountability or even reporting duty for the Commission vis-à-vis the EP, regarding its activity under the ESM, was established, as proposed by many commentators.

Fiscal Compact

In contrast to the ESM, the EP was invited to send four representatives to negotiations on the [Treaty on Stability, Coordination and Governance in the Economic and Monetary Union](#) (TSCG or Fiscal Compact) aimed at fostering budgetary discipline and strengthening the coordination of the economic policies among MS. As [unanimous MS support](#) for amending the Treaties could not be found, the Fiscal Compact was concluded by 25 MS outside the EU framework. The UK and the Czech Republic did not sign the Fiscal Compact.

Some commentators praised the EP for acting as the real guarantor of the EU *acquis*, by securing the implementation of the stability, coordination and governance principles of the Compact through secondary legislation adopted with EP involvement, as well as a "repatriation" clause foreseeing the future incorporation of the Compact's provisions into the EU legal framework.¹³ However, no EP participation in decisions taken under the TSCG is envisaged, although the EP President may be invited to Euro Summits. Inter-parliamentary cooperation on fiscal policy between the EP and the national parliaments is also foreseen, although Article 13 TSCG provides only for the EP and of national parliaments to "discuss" policies and other issues covered by the TSCG.

Two pack

In November 2011, the Commission proposed two draft Regulations applying to euro-area MS – for monitoring and correction of [excessive deficits](#) and on the strengthening of [economic and budgetary surveillance](#). The two-pack is to be adopted under the ordinary legislative procedure. In its first reading position, the EP [proposed](#), *inter alia*, the partial pooling of eurozone debt through a European Debt Redemption Fund and legal protection for countries at risk of default. The EP also seeks to strengthen the democratic oversight of the Commission's powers to ask MS to change their budgetary plans. It has been [argued](#) however that this would compromise the rapid-response character of the procedure. The proposal is still the subject of triilogue negotiations with the Council.

Banking Union

The Commission tabled in September 2012 proposals for common bank supervision, including a proposal on the [supervision of eurozone banks by the ECB](#) and on [relations between the ECB and the European Banking Authority](#). Whereas the latter is subject to the ordinary legislative procedure, the former is based on Article 127(6) TFEU with

the EP only consulted. However, the EP has [stated](#) that it will treat the two regulations as a package, to enhance the democratic legitimacy of the proposals. Furthermore, the ECON committee of the EP [demanded](#) in its report on the Commission proposal for bank supervision by the ECB for the EP to be able to hold inquiries into alleged failures of the ECB supervisor and to approve the chair of the supervisory board.

Assessment of the EP's role

The limited participation of the EP in the adoption of anti-crisis measures is often justified by MS as a means to ensure legislation can enter into force quickly, with differences between Parliament and Council slowing agreement.

However, most commentators assess positively the "activist" role of the EP in the adoption of anti-crisis measures and [acknowledge](#) an improvement in the EP's position in macro-economic policy-making in comparison with the earlier Stability and Growth Pact.

As the examples of the ESM and the Fiscal Compact show, whereas other EU institutions such as the Commission and the CJEU are involved in these mechanisms, the EP faces the risk of being sidelined not only in adoption but also in implementation of such intergovernmental agreements.

Despite its lack of a formal role in agreements adopted outside the EU framework, the EP did have a "say" in the preparatory works. Moreover, the EP's participation in the implementation of crisis-resolution measures is seen to be limited to mere rights to information, with no power to take binding decisions under the economic governance instruments.

Economic governance and democratic legitimacy

The new economic architecture of the EU is [said](#) to lack democratic control and accountability. In particular, the two-pack brings new powers for the Commission, in

controlling the budgetary plans of the MS, while the financial stability instruments are equipped with considerable financial means from public funds. These measures have been [criticised](#) for withdrawing control powers from national parliaments, with no compensation for this democratic gap from equivalent powers for the EP.

These shortcomings in the democratic legitimacy of crisis-resolution measures are considered to lead to a [lack of efficiency](#) in such measures, as the EC is seen by national parliaments and other national actors as an instrument of MS executives.¹⁴

The question of the level at which democratic legitimacy of economic governance measures should be provided is controversial. As **national parliaments** traditionally hold budgetary prerogatives at national level, many see them as the only source of legitimacy for such measures.

This was underlined by the German Constitutional Court in its [Lisbon ruling](#) in 2009. The Court held that only national parliaments can provide (fiscal) legislation with the necessary democratic legitimacy since the EP is not elected on the basis of full electoral equality between Union citizens ("one man, one vote" principle).

Van Rompuy's final report, ["Towards a genuine economic and monetary Union"](#), states that democratic control and accountability should occur at the level at which decisions are taken, while ensuring that the common interest of the EU is taken duly into consideration. The report points out that national parliaments are not best placed to take the common interest into account and therefore proposes "commensurate involvement of the EP in the integrated frameworks for a genuine EMU".

Inter-parliamentary cooperation between EP and national parliaments is thus seen by many as a necessary tool in a multi-level governance system. This is already reflected in Article 13 of the Fiscal Compact, which

provides for discussions between the EP and national parliaments on budgetary matters.

However, in its Blueprint for a deep and genuine EMU the Commission stated that inter-parliamentary cooperation as such may not ensure democratic legitimacy for decisions taken at EU level. For this a representative parliamentary assembly, in which votes can be taken, would be necessary. The Commission paper concludes that "The European Parliament, and only it, is that assembly for the EU and hence for the euro."¹⁵

Possible solutions

New structures in the EP?

Some commentators argue that the position of the EP as guarantor of democratic legitimacy could be undermined by the fact that many MEPs are elected in MS outside the euro area. It has been claimed that while MEPs represent Union citizens, issues dealing with economic governance are likely to spark or further prioritise national interests and sentiments in MEPs. As a consequence, very divergent views can be expected – and are seen already – between MEPs from within or outside the euro area, as well as from MS party, or not, to the ESM and the Fiscal Compact.

To address this problem, the establishment of a committee within the EP drawn solely from MEPs of euro area MS, possible also with participation of members of national parliaments has been suggested.¹⁶

This proposal was also taken up by the Commission in its [Blueprint](#) of 28 November stating that the EP could adapt itself to a stronger EMU by setting up a special committee on euro matters in charge of scrutiny of decision-making in the euro area.

EP President Martin Schulz recently [proposed](#) the creation of a new committee to provide democratic scrutiny of EMU questions, with membership drawn only from participating states.

Those arguing against this approach cite the institutional indivisibility of the EP as representative of EU citizens, and affirm that it is the only EU institution in which solidarity and mutual trust between MS and nationals can be achieved. The institutional unity of the EP is seen as a counter-weight to eventual fragmentation of the EU framework, and to divisions between MS as a result of DI.¹⁷

Politicisation of EU policies

Some of those who perceive a lack of legitimacy in anti-crisis measures conversely [attribute](#) the democratic deficiencies to the technocratic approach of EU policies as implemented by the Commission. Many see the possibility for the EP to participate actively in the creation of a new European political space by transforming the EP elections into an electoral competition for the government of Europe, in which the different political groups present competing policies along with candidates for Commission President.¹⁸

Main references

[The Struggle of the European Parliament to Participate in the new Economic Governance](#) / C Fasone, EUI Working Papers, RSCAS 2012/45, EUDO, 2012.

[The Democratic Governance of the Euro](#) / L M Poiars Maduro, B De Witte, M Kumm, European University Institute, EUI RSCAS Policy Paper 2012/08, August 2012.

[The Future of Europe: Towards a Two-Speed EU?](#) / J-C Piris, Cambridge University Press 2012.

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<http://www.library.ep.ec>

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Endnotes

- ¹ [Politicising the Union to strengthen the Community method](#) / M Maduro, October 2012, Notre Europe, Speakers Corner, p. 1.
- ² [Speech of German chancellor Angela Merkel at the opening ceremony of the 61st academic year of the College of Europe in Bruges on 2 November 2010](#), p. 8.
- ³ In this regard, the CJEU held in the [Pringle case](#) that MS are entitled, in areas which are not an exclusive Union competence, to entrust tasks to the EU institutions outside the EU framework, provided the new tasks do not alter the essential character of the powers conferred on these institutions by the Treaties.
- ⁴ [Differentiated integration in the European Union: Many concepts, sparse theory, few data](#) / K Holzinger and F Schimmelfennig, Journal of European Public Policy 19:2, March 2012, pp. 292-305., p. 299.
- ⁵ [Institutional Consequences of Differentiated Integration](#) / J Emmanouilidis, Bertelsmann Group for Policy Research, Discussion paper, February 2007, p. II.
- ⁶ Which lessons to draw from the past and current differentiated integration? / J Emmanouilidis, [Workshop Challenges of Multi-tier governance in the EU](#), 4th October, European Parliament, p. 10.
- ⁷ [The future of Europe: towards a two-Speed EU?](#) / J-C Piris, 2012, p. 100.
- ⁸ [Regulations 1173/2011, 1174/2011, 1175/2011, 1176/2011, 1177/2011](#), and [Directive 2011/85/EU](#).
- ⁹ Although not all legal acts adopted within the six-pack were adopted under the ordinary legislative procedure, the EP also played a crucial role in the adoption of the two Council regulations (1175 and 1176) on which it was merely consulted. Some commentators bemoaned this practice stating that the EP is acquiring legislative powers not conferred on it by the Treaties. See [The future of Europe: towards a two-Speed EU?](#) / J-C Piris, 2012, p. 31.
- ¹⁰ The reverse qualified majority means that the decision to impose a sanction is deemed to be adopted unless a qualified majority in the Council votes against it.
- ¹¹ [The Euro Crisis and the Democratic Governance of the Euro: Legal and Political Issues of a Fiscal Crisis](#) / M Poiars Maduro, B De Witte and M Kumm, Robert Schuman Centre for Advanced Studies, High Level Policy Seminar "The Democratic Governance of the Euro", 10 May 2012, p. 7.
- ¹² Bruno De Witte points out that this would have implied that the Treaty amendment would have conferred new competences on the EU institutions, so that the Treaty amendment would not have been feasible under the simplified revision procedure. [The European Treaty Amendment for the Creation of a Financial Stability Mechanism](#) / B De Witte, European Policy Analysis, June 2011, Swedish Institute for European Policy Studies (Sieps), p. 7.
- ¹³ [The Struggle of the European Parliament to Participate in the new Economic Governance](#) / C Fasone, EUI Working Papers, RSCAS 2012/45, EUDO, 2012, pp. 9, 10.
- ¹⁴ [The Democratic Governance of the Euro](#) / L M Poiars Maduro, B De Witte, M Kumm, European University Institute, EUI RSCAS Policy Paper 2012/08, August 2012, p. 4.
- ¹⁵ [Blueprint for a deep and genuine EMU](#) / European Commission, 28.11.2012, p. 36.
- ¹⁶ See e.g. [The future of Europe: towards a two-Speed EU?](#) / J-C Piris, 2012; Inter-institutional balance in the EU: is the community method still relevant? / R Dehousse, in [Workshop Challenges of multi-tier governance in the EU](#), European Parliament, 4 October 2012, p. 23. A euro-area assembly within the EP was also suggested by Chancellor Merkel in her [speech](#) to the EP's Conference of Presidents on 7 November.
- ¹⁷ Is the EP legitimate as a parliamentary body in EU multi-tier governance? / A Manzella, in [Workshop Challenges of Multi-tier governance in the EU](#), 4th October, European Parliament, p. 37.
- ¹⁸ [A new governance for the European Union and the euro: Democracy and Justice](#) / M Poiars Maduro, European Parliament DG IPOL, Policy Department C, October 2012.