

## INTRODUCTORY STATEMENT

# Constitutional Implications of a Reform of the Eurozone Governance

with attention to the democratic scrutiny of the euro group and the possibility of an IIA on the European semester

*Expert Hearing of the Constitutional Affairs Committee of the European Parliament (AFCO) on the  
The Constitutional Implications of the Different Scenarios for the Future of the Union'*

Tuesday, 21 November 2017

Good morning, Madam Chairwoman Professor Hübner, and dear Members of the Constitutional Affairs Committee. I would like to thank you for inviting me to participate in this hearing on the 'The Constitutional Implications of the Different Scenarios for the Future of the Union'. With the presentation of the White Paper on the Future of Europe the European Commission triggered together with the subsequently published reflections papers an exciting debate on the reform of the EU. A lot is to say about these papers and even more on the reform of EU's and of the Eurozone's economic governance – being the subject of my research. But I would like to refrain from a comprehensive comment and focus, as it was requested from me, on the issues relating to the democratic accountability. This focus should, however, not exclude any questions from you on economic governance in the discussion afterwards. In the following minutes I will first address the democratic accountability in the EMU Economic Policy Coordination in general before turning to the specific point on the democratic scrutiny of the Eurogroup. It should be mentioned at this point that all my proposals are based on the 'No-Treaty-Change' assumption.

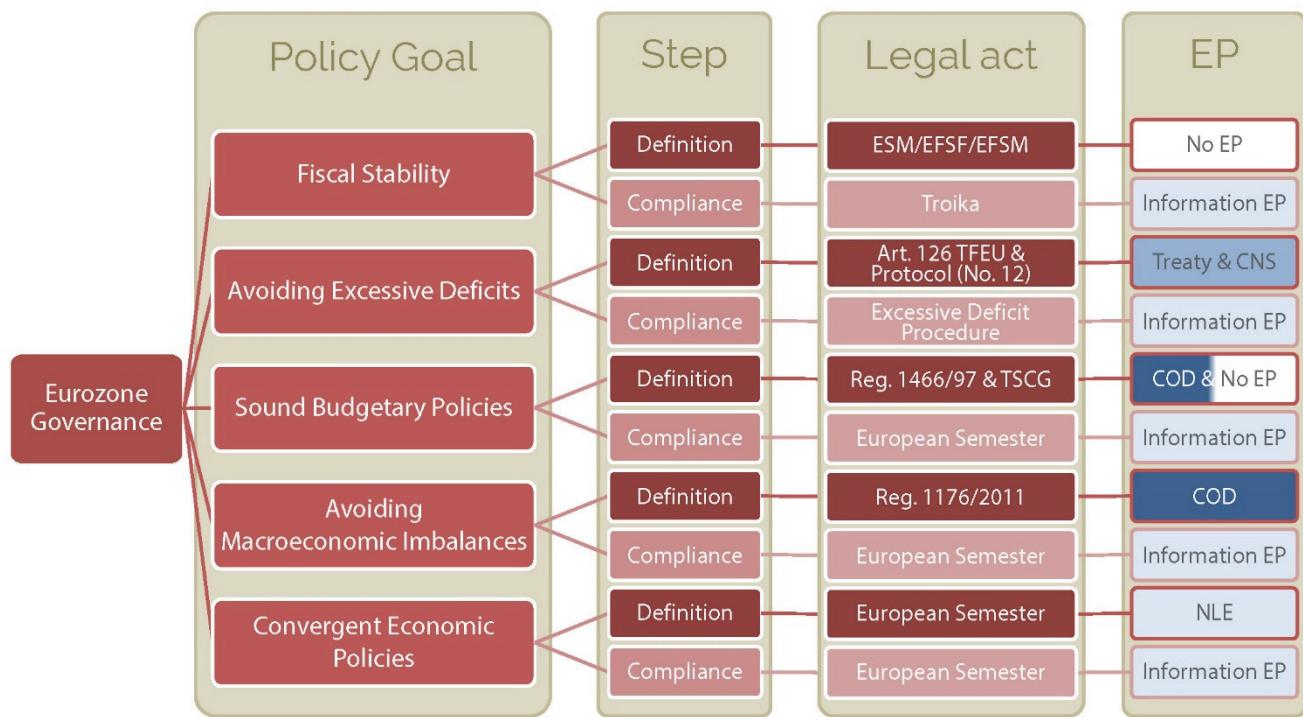
## DEMOCRATIC ACCOUNTABILITY IN THE EMU ECONOMIC POLICY COORDINATION

Let me turn now, first, to the economic policy coordination. This policy field is characterised by the continuity of national sovereignty. Europe only interferes in a manner that is below the threshold of binding legal harmonisation. In theory, decision-making lies within the Member States. Hence it is for national Parliaments to hold their governments to account and hence there is no role for the European Parliament. In practice, the lack of monetary policy instruments at national level, the pressure of the internal market on national economies to adjust and the refinancing needs of some Member States as a consequence of the economic and financial crisis created a much deeper intrusion of supranational policymaking into domestic law-making, which, in its quality is comparable to binding legal harmonisation. This supranational policymaking is, however, not counterbalanced by a control of the European Parliament. We have here an executive federalism committed to a supranational interest, on the one hand, and a loose network of national Parliaments with diverging national interests, on the other. In this setting, the counterweight has to come from a Parliamentary body that pursues the same supranational interest as the federalist executive. It cannot stem from a body committed to national interests. This is why I will focus in the following on the European Parliament. In my analysis I will put the European Parliament in the position of a principal which is supposed to hold its counterpart, the federalist executive, to account. This assumption faces immediately the doubt as to whether the European Parliament actually delegated Eurozone governance to the federalist executive or whether the Member States did not rather pool their own powers so that they are the principal of the federalist executive. In my understanding, Member States indeed pooled, at the very outset, their efforts at supranational level. Yet, these pooled efforts did not act, over time, in a somewhat pooled national interest but in the supranational interest: Safeguarding the Euro as the currency of the Union. The supranational interest is not defined by the nation states but by the Union institutions: The Council and the European Parliament. Whilst the Council can be found everywhere in the Eurozone's governance structure, the role of the European Parliament in supervising the supranational interest is hardly included. But let's have now a quick look at the Eurozone governance.

## CHARACTERISTICS OF THE EMU ECONOMIC POLICY COORDINATION

The Eurozone governance pursues, after its transformation during the crisis, five policy goals. First and one could say nowadays foremost, it aims at ensuring fiscal stability. Fiscal stability of the Member States is the necessary counterpart for the lack of monetary policy instruments at national level and, by that, for the existence of a supranational monetary union. Fiscal stability is threatened once a state accumulates a huge debt due to the excessive deficits, which should therefore, second, be prevented. Main element to prevent such deficits are, third, sound budgetary policies, which can be achieved when the national public budget has not bear the financial burden for endogenous shortcomings in its national economy due to, fourth, macroeconomic imbalances or, fifth, unsustainable economic policies in a borderless internal market.

The implementation of these policy goals requires, first, the definition of the content of these goals and the setting of concrete requirements for policymakers. This sets the benchmark for, second, the subsequent control of Member States' compliance with supranational targets. This distinction is important for the assessment of the quality of the Parliament's involvement. When it comes to the definition of the content of a policy goal, a Parliament must have the power to overrule policy proposals made by the executive in order to speak of a fully-fledged Parliamentary control. Otherwise the Parliament does not have one of the most important tools available when it intends to attach consequences to a performance assessment of the agent that it is supposed to hold to account: the change of the legal framework for the agent's actions. When it comes to procedures for the agent to check compliance, Parliaments don't have to interfere with the concrete assessment check of the agent so that a power to overrule the agent's assessments is not needed. Yet, if the agent intends to specify the policy goals in its decisions addressed to the Member States, the principal must have the power to modify these specifications. If the agent misjudges compliance, the principal must have tools to sanction such a mistake. The distinction between the definition of the policy goals and the procedures to ensure compliance can be found in relation to all policy goals. Here you can see the current state of affairs in Eurozone governance showing in which legal framework policy goals and the check of the compliance procedures are defined, and how the European Parliament is involved.



When it comes to the definition of the policy goals, the European Parliament as a co-legislator is only engaged in the definition of macroeconomic imbalances and in setting budgetary objectives below the infamous 3% of GDP for the annual government deficit: the medium-term budgetary objective in the preventive arm of the Stability and Growth Pact. In the definition of all other policy goals of the Eurozone governance, the European Parliament is at best informed about what the Council intends to do. In other words, if the European Parliament disagrees with the economic political direction of the supranational policy goals it cannot change their concrete content accordingly.

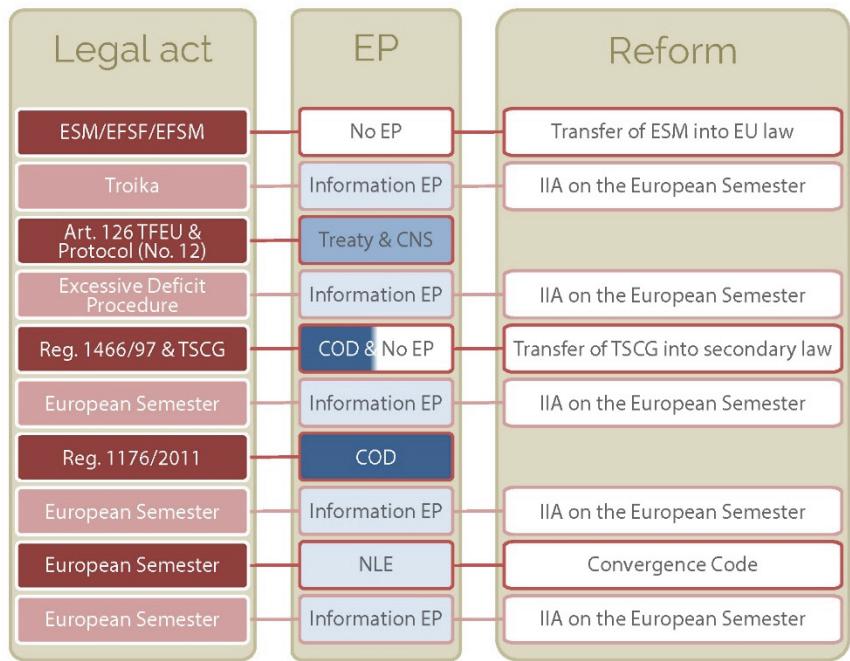
When we look at the procedures, by which the European Commission (alone or together with the ECB and the IMF) checks the compliance of Member States with the supranational targets, we can only identify the economic dialogue within the

European semester that allows for a significant access to information but that provides for no tools to attach any consequences to the Parliament's assessment of what happened throughout these compliance procedures.

## IMPROVING THE DEMOCRATIC ACCOUNTABILITY IN THE EMU ECONOMIC POLICY COORDINATION

What can be done? Here you see an overview of fields of action to fill the identified gap:

The transfer of the ESM into EU law. The transfer of the Fiscal Compact into secondary law. The adoption of a convergence code under the ordinary legislative procedure and the conclusion of an interinstitutional agreement on the European semester. When it comes to the transfer of intergovernmental instruments into the EU legal framework, the European Parliament must ensure its role of co-legislator. The Convergence Code is an interesting proposal. It intends, in short, to grant all policy goals relating to the convergence of economic policies the same legal value as the budgetary goals defined in the preventive arm of the Stability and Growth Pact. Although it could be questioned whether such an upgrade would not undermine the distribution of competences in the area of economic policy coordination, the definition of the medium-term budgetary objective, being an economic policy goal, by means of secondary legislation sets a clear legal precedent, which can be invoked in favour of the legal feasibility of a convergence code. With this measure, the European Parliament would also be upgraded to a fully-fledged player in defining economic policy goals.



Finally, the interinstitutional agreement. In such an agreement, the Parliament could negotiate a quasi co-decision procedure in Eurozone governance matters. Currently, the European Commission drafts proposals for recommendations or decisions, which the Council alone adopts (such as the country-specific recommendations). By means of an interinstitutional agreement the Commission could commit itself to communicate its draft proposals before the vote in the college of Commissioners to the European Parliament, which could then file amendments to these drafts. The Commission could then include these amendments into its draft proposals or explain to the Parliament why it did not. You find here a proposal for a recital introducing such a quasi co-decision in an IIA on the European semester:

*The Commission shall commit itself to submit draft proposals or draft recommendations intended to be adopted under Articles 121, 126, 148 TFEU and under secondary legislating implementing these articles to the competent committee of the European Parliament.*

*Within 1 month following the submission the competent committee may file amendments to the draft proposals or draft recommendations.*

*The Commission shall commit itself to report on the concrete follow-up of any request to amend draft proposals or draft recommendations within 1 month following adoption in the competent committee. The Commission shall accept the amendment. If the Commission does not accept the amendment, it shall give the competent committee detailed explanations of the reasons.*

## DEMOCRATIC SCRUTINY OF THE EUROGROUP

Let me now, finally, turn to the Eurogroup. The Eurogroup was originally designed as a mere forum of exchange of views of the finance ministers of the Euro area Member States. Neither the Treaty nor the Protocol assigned any formal decision-

making rights to it. Consequently, the European Court of Justice decided in the recent 'Mallis' case on the Cypriot bail-in that decisions of the Eurogroup do not produce legal effects and are hence not subject to an action for annulment (CJEU, Joined Cases C-105/15 P to C-109/15 P, *Mallis*, EU:C:2016:702). Whilst this point of view appears, having only regard to the legal texts, comprehensible, it does ignore the strong de facto-role of the Eurogroup in the new economic governance framework. In the 'Macroeconomic Imbalances Procedure', the European Commission has now to inform the Eurogroup about its measures and it has to take due account of the Eurogroup's discussion when undertaking an in-depth review of a Member State. Under the 'Two Pack' regulations, Euro area Member States have now to submit their draft budgetary plans and their national debt issuance plans not only to the Commission but also to the Eurogroup for monitoring and assessment. Furthermore, the composition of the Eurogroup is identical to the one of the Board of Governors of the ESM deciding on financial assistance and on conditionality and to the one of the ECOFIN Council when voting on decisions and recommendations to Euro area Member States under the multilateral surveillance and the budgetary control procedure. This strong de facto-role requires a democratic scrutiny that goes beyond the one needed for a forum of exchange of views.

Below the threshold of Treaty change, two suggestions seem recommendable to me. First, the Eurogroup could be included into the regulation on public access to documents. Second, the positions of the president of the Eurogroup, of the president of the Board of Governors of the ESM and of the Commissioner responsible for EMU could be merged so that the president of the Eurogroup becomes personally accountable to the European Parliament as a member of the college of the European Commission. It might then be imaginable to redraft the IIA with European Commission concerning the activation of the right of the president of the Commission to request resignation of single Commissioners under Article 17(6) TEU in a sense that the president is obliged to make use of the right when there is a vote of distrust of the European Parliament concerning the Commissioner acting as president of the Eurogroup. Otherwise, the Parliament could only table a motion of censure against the entire Commission if it wants to hold the Eurogroup to account.

I hereby want to conclude my introductory statement and I am very much looking forward to the upcoming debate of this hearing.

