

Public Hearing of the European Parliament
Committee on Constitutional Affairs
„The institutional future of the European Union within and beyond the
Treaty of Lisbon“
on 26 May 2015 in Brussels

I. Introduction

1. The institutional design of the European Treaties was not capable of dealing efficiently and legitimately with the three fundamental issues of the current crisis: the banking crisis, the sovereign debt crisis and the competitiveness crisis, that led after all to a crisis of European democracy. All three facets of the current crisis mutually reinforced each other and therefore are closely interlinked with each other. And the crises is still not over, we all relax in the sunrays of the ECB's OMT- and QE-Program. But since all the challenges of the financial markets as well as all the shortcomings of the incomplete Monetary Union are still not sustainably answered, we have to be prepared to deal with a next crisis. Against this background it is not surprising that the President of the ECB called for further reforms.

2. As the Maastricht Treaty of 1992 did not establish a supranational European economic and fiscal policy compatible with the common European monetary policy,

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Member States can only *coordinate* their own economic policies within the Council framework (Article 121 TFEU). To bridge this institutional gap Member States agreed on two instruments to defend the stability of the Euro: as a first line of defence they established the excessive deficit procedure (Article 126 TFEU). And as a second line of defence they established the so called 'No-Bail-Out-Clause' in Article 125 TFEU as a signal to the financial markets.

3. During the crisis in the Eurozone it has become obvious that the above mentioned instruments in primary law intending to safeguard the Member States' discipline in budget policy were incapable of fulfilling their function, which was to prevent a systematically relevant excess indebtedness of Eurozone Member States. Furthermore, the mere coordination of the national economic policies was incapable of achieving the — due to the existing monetary and economic interdependencies — in a Monetary Union by all means necessary policy adaptation with regard to the common monetary policy of the ECB.

4. The Fiscal Treaty did not initiate the great leap forward in the direction of a 'Fiscal Union', which removes the asymmetrical distribution of competences within the framework of the EMU. Nevertheless, necessary steps to secure the stability of the Union demanded by European and constitutional law are made. These are in turn compulsory requirements for the solidarity practised in the context of the ESM within the Eurozone. However, this solidarity cannot and may not be (mis)understood as one-way street. This aspect is not only emphasised by the jurisdiction of the ECJ in the *Pringle Case*, but also by the wording of Article 136 (3) TFEU, which explicitly allows emergency aids as an exception to the 'No-Bail-Out-Clause' in Article 125 TFEU only on condition that structural reforms are implemented.

5. Apart from that, the Fiscal Treaty might become the initial point for a deepened integration of the Eurozone towards a 'Fiscal Union'. The Fiscal Treaty can be seen as a first step into a new institutional arrangement between a possible Euro-Treaty and the EU. But its institutional design is not up to the tasks that need to be done in a real Fiscal and Economic Union. Furthermore, it shows the legal and practical problems of a Two-Speed Europe.

6. The European Council, and therefore the Heads of State and Government of the Member States, have become key players in the Eurozone's government debt crisis. One reason for this is the political decision taken with the Maastricht Treaty not to establish an efficient European economic and fiscal policy. The mere coordination (Art. 121 TFEU) is combined with a relatively low level of participation of the European Parliament (EP).

7. The European Financial Stability Facility (EFSF), the European Stability Mechanism (ESM), the Fiscal Treaty as well as parts of the Banking Union (the Single Resolution Fund (SRF) operate on formal intergovernmental agreements outside the European treaties. Therefore, it is not only a necessity of the constitutional principle of democracy but also one of the principle of dual legitimacy set out in Article 10 (2) and 12 TEU, that – regarding to their competences – the EP as well as the national parliaments make a decisive contribution to legitimacy.

II. The need for a binding Roadmap: A Step-By-Step Approach from a pragmatic Short-Term-Perspective to a Treaty based Long-Term-Perspective

8. In order to resolve the current crisis in a sustainable manner, to achieve resilience and to prevent future crisis, the economic, political and democratic integration of the Eurozone has to be deepened in a **step-by-step approach within and beyond** the Treaty of Lisbon. Addressing all three elements of the current crisis, a renewed European Economic and Monetary Union requires a Fiscal Union, a genuine Economic Union and a deepened Political Union.

9. Insofar the Five Presidents Report should ask for a **road map** (like the 'Delors Plan', that led in three steps to the EMU) to be decided at the end of this year. This road map should not only define the necessary steps but include a binding timetable of reforms till 2022 ("**Europe 2022**") as well.

10. **Guiding constitutional principles** of each reform within and beyond the Lisbon Treaty have to be the principle of democracy, the rule of law, the subsidiarity principle as well as the solidarity principle. In the framework of the Monetary Union the 'stability principle' has to be respected. As confirmed by Art. 136 (3) TFEU as well as the *Pringle*-Decision of the ECJ in the EU solidarity and conditionality from a constitutional point of view go hand in hand.

11. There are several legal options for implementing policy reforms, one of them is the enhanced cooperation as provided in Art. 20 TEU and Art. 326 et. seq. TFEU. In the public and political debate enhanced cooperation is often wrongly referred to as a 'all-purpose weapon' for deeper integration. Therefore, it has to be emphasised again, that enhanced cooperation is not a method to get rid of EU primary law limitations. The contrary is the case, using enhanced cooperation does require a legal basis in EU primary law; it is not an option for conferring any new competences to the European level.

12. Apart from the crisis mechanisms (EFSF, ESM, SRF) the necessary amendment of the Monetary Union through a Fiscal Union requires a **European shaped** national economic, financial and budgetary policy. In the multilevel constitutionalism of the EU this implies that the national competences will remain, but need to be vastly better interlocked with binding European guidelines combined with a more effective monitoring and surveillance resulting from this.

13. A starting point for this reform could be the '**European Semester**'. But neither the relevant secondary legislation nor the Fiscal Treaty establish the possibility of legally binding interventions in national budgets. Therefore, a European concept of intervention in the national budgets has to be established. Given the fact that such legally enforceable instruments of intervention possibly interfere with the budgetary autonomy of national parliaments, they always have to be arranged in accordance with the principles of subsidiarity and proportionality.

14. **Within** the Treaty of Lisbon it should become possible to **support** a Member State with regard to the **implementation of structural reforms** agreed in the framework of the European Semester. Based on bilateral agreements between the Commission and the Member State this support could range from administrative to financial assistance with regard to concrete reform projects.

15. Beyond the Treaty of Lisbon reinforced **rights of intervention in the national budgetary autonomy** may be possible on following conditions: as long as Member States comply with their obligations under the common debt rules, only **legally non-binding** recommendations are possible (as it is the case *de lege lata*). If a Member State, however, infringes the stability criteria, it must be possible to make **abstract, but legally binding** stipulations of how much the state has to save – but the state will keep the specific decision where to save. Only if a Member State is dependent on financial assistance through the ESM, **concrete legally binding** recommendations would be possible. In a case like this it is only fair to ask, to what extent a Eurozone Member State that receives money from the ESM (or a future EMF) has already lost its budget autonomy.

16. In a renewed Eurozone national budgetary responsibility as established by the Fiscal Union and European **solidarity** should go hand-in-hand. The concept of such a 'social market economy' is already mentioned in Art. 2 TEU. Instruments should be established to implement this hand-in-hand relationship in a manner of cooperation between the EU and the Member States.

17. First steps within the Treaty of Lisbon could be: an '**Employees Mobility Directive**', that introduces a mechanism of mutual recognition similar to that of the

'Freedom of Service Directive'. Although Art. 45 TFEU already guarantees an individual right of free movement to workers, all barriers set up by the Member States have to be reviewed in each individual case by the national courts and if needed with assistance of the ECJ through the preliminary ruling procedure. Similar to the freedom of services (Art. 56 TFEU), where the idea behind the 'Freedom of Service Directive' was to have one general directive that liberalises services by establishing one general rule of mutual recognition, a general 'Mobility Directive' could reduce still existing barriers for employees by introducing such a general rule. Additionally, the existing **structural funds** of the EU could be reformed in order to support structural reforms in the labour market.

18. A possible way to counterbalance economic shocks beyond the Treaty of Lisbon might be a Eurozone Insurance Mechanism to cushion the fiscal consequences of a dramatic economic downturn. The Eurozone could for example establish a common **unemployment insurance system** to complement national systems. All Member States that organize their labour markets in line with the needs of the Monetary Union and the Fiscal Union could be eligible for participation.

19. In view of a sovereign default with all its systemic consequences for the Eurozone and the international financial markets, it is of particular importance to provide an instrument, which has a deterrent effect beforehand and at the same time a stabilising effect in the worst-case scenario. With that aim, the ESM could be developed to a **European Monetary Fund (EMF)**, which — together with the EU institutions (especially the Commission) — could be equipped with the aforementioned rights of intervention in national budgets.

20. Moreover, this EMF should be enabled to **initiate the insolvency** of a bankrupt Eurozone Member State. Following this, an institutionalised sovereign default should be added to the Monetary Union. On that basis, an EMF could grant time-limited credits in the case of the absence of debt sustainability in order to secure, with regard to the financial stability, a structured insolvency of the Eurozone Member State concerned.

21. The Eurozone – within or beyond the Treaty of Lisbon – needs a European executive capable of acting. An **Economic Government** should not have an intergovernmental character based on the model of the ECOFIN or the Euro-Summit. Instead it should be established as part of the **European Commission**. It could be comprised by its President and 5 Commissioners that deal with the relevant policy fields (e.g. the Commissioners for the Monetary Union, the Internal Market, for Trade and Financial Stability).

22. Beyond the Treaty of Lisbon the Economic Government should have the **competence** to negotiate reform packages and conclude bilateral agreements with Member States undertaking structural reforms. It should decide on bank closures and it should ensure the provision of public goods by proposing legislation with regard to the Fiscal- and Economic Union. Together with the above mentioned EMF it could be equipped with the already described graduated instruments of intervention in national budgets.

23. Furthermore, the Economic Government needs a **budget to finance a growth fund**, by which it can support structural reform processes in those Member States that concluded a bilateral agreement. The budget should be financed through a membership fee in the amount of about 0.5 per cent of the gross domestic product (GDP).

24. With regard to democratic accountability the Economic Government has to be elected and scrutinised by a **Parliament**. Since its purpose is the provision of public goods in the Euro area, one possibility is to staff this body with deputies from the European Parliament representing Member States of the Eurozone..

25. In order to make a **Treaty Change with a transfer of competences** in such sensitive policy fields as economic, fiscal, budget and social policy possible, it might be wise to integrate national parliaments in the new established European decision making process. Insofar there are **different possibilities**: when framework-legislation is passed on matters, that touch economic, fiscal, budget and social policy **only in these policy fields** an additional Third Chamber consisting of members of national parliaments could be involved. Arguably, it is likely that such an additional institution makes the European decision-making process even more complex. But such a Third Chamber would evolve the role of the national parliaments as it is currently funded in Article 10 (2), 12 TEU and Article 13 TSCG into a further integrated **multi-level parliamentarism**, which is necessary to get support for a Treaty Reform including a competence transfer in the field of economic, fiscal, budget and social policy.

26. Another possibility (that might be achieved partly even within the Treaty of Lisbon) would be to establish a veto right (red card) of national parliaments specifically with regard to these sensitive policy fields. The basic idea of such a veto card or red card corresponds to the right of national parliaments to raise a subsidiarity complaint (Art. 12(b) TEU). Furthermore, specifically with regard to the field of judicial cooperation in criminal matters as another sensitive policy area such emergency breaks' do exist already (Art. 82(3) and 83(3) TFEU). In order to ensure that one national veto cannot block the whole European decision-making-process for an unlimited time, the **veto might be only of a suspending character**. The European institutions would have to consider and take into account the reasons of the national parliament. If a compromise

can't be found after, a time period of six month, there could be **two possibilities**: either a minimum of one third of the other national parliaments supports the veto, and the proposal is taken from the agenda, or if this minimum is not reached, the European institutions could continue with the decision-making-process. In doing so, there would need to be a unanimity decision in the Council.

27. A third possibility would be to **combine the above mentioned proposals** 25. and 26. Consequently, not the national parliaments but the above discussed Third Chamber would have a veto right with regard to the sensitive policy fields of economic, fiscal, budget and social policy. Again, in order to ensure that one national veto cannot block the whole European decision-making-process for an unlimited time, the veto might be of a suspending character (see in detail the procedure in proposal 25.)

28. The proper functioning of the Monetary Union speaks in favour of an Europeanisation of national fiscal, economic and social policies in the framework of a real Political Union. This, as well as the necessary institutional changes, make a Treaty reform inevitable. If there is no consensus between the Member States, the example set by the Fiscal Treaty might become the starting point for a 'Europe of Two-Speeds' with some Member States leading the way and with the opportunity for the other Member States to join whenever they want.

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