

# The European Union in 2011: a Review

## I. Introduction

On 14 December 2011, speaking before the European Parliament (EP) to summarise the achievements of the Polish Presidency of the Council of the European Union, Prime Minister *Donald Tusk* described the impact of the on-going European fiscal and financial crisis in no uncertain terms: “nothing will be like before the crisis anymore. The *status quo ante bellum* is unacceptable. Europe will be different after the crisis, that’s for sure.”<sup>1</sup> In view of the developments in 2011, such a statement is prone to attract both cautious agreement and cautionary criticism.

On the one hand, the European Union (EU) certainly has been (and still is) engulfed in a series of events that constitute essential challenges, especially in regard of its most ambitious project, the Economic and Monetary Union (EMU). The European institutions may not “have (...) been the real source of this crisis”<sup>2</sup>, but the design of the common currency has without doubt exacerbated its effects. These challenges need to be met in terms of both institutional adjustments and credible policy solutions. In this regard, the nature, direction, and reach of any such adjustments will indeed determine the future path of the European project.

On the other hand, the past few years have shown that alarmism on an ever-escalating scale is likely to overstate current problems, to understate the adroitness of existing institutions in absorbing external shocks and in adapting to a changing environment, and to discount the likelihood of unforeseen future developments. It is important to bear in mind that the EU – in addition to its quotidian tasks – has been in some form of crisis mode for at least a decade, first in view of the effects of enlargement, then concerning the Constitutional and Reform Treaties, followed by the global financial and economic upheaval, and culminating in the European sovereign debt crisis. While this series of challenges underscores important questions that have perhaps been disregarded for too long,

1 *Tusk, D.*: Address to the European Parliament to Conclude the Polish Presidency, Strasbourg, 2011, 5, cf. [www.pl2011.eu](http://www.pl2011.eu).

2 *Ibid.*, 2.

it also demonstrates the EU's capacity to adapt – even if not as well or as fast as might be desired. “2011 was a year in which European resolve to respond to crises has been put to the test *once again*.”<sup>3</sup>

The following review will summarise the development of the Union over the past calendar year. In a *first step* (II.), the discussion will focus on the dominant theme of 2011, the European fiscal crisis, its effects on the Union and its Member States, and the policy measures adopted in response. In a *second step* (III.), important developments in major policy areas of the EU will be outlined. The *third part* (IV.) will detail several important changes within the Union's major institutions, the state of the debate on the new Multi-annual Financial Framework 2014-2020, and the EU's financial and human resources in 2011, leading to brief concluding summary (V.).

## II. The European Debt Crisis and the EU's Response

In view of the European Debt Crisis, several measures introduced in 2010 came to fruition over the course of 2011: the first European Semester was implemented, an exercise aimed at a better co-ordination of Member States' fiscal and economic policies.<sup>4</sup> This was initiated by the European Commission's first Annual Growth Survey, an instrument to identify country-specific challenges and to provide an early-warning mechanism for potential imbalances.<sup>5</sup> Furthermore, the controversial debate on the introduction of so-called Eurobonds (or, in the Commission's terminology, “stability bonds”) moved into a more concrete direction with the presentation of a Green Paper on the feasibility of such joint obligations.<sup>6</sup>

The following section will concentrate on major developments in key areas of crisis response over the course of 2011. Beginning with the assistance frameworks for Greece, attention will turn to the temporary and permanent mechanisms of general crisis management, the EFSM, the EFSF, and the ESM. Subse-

3 *Barroso, J.M.*: Foreword, in: European Commission: General Report on the Activities of the European Union 2011, Brussels, 2012, 4, emphasis added.

4 *Council of the European Union*: Conclusion of the first European Semester, 12748/11, Brussels, 2011; cf. also *European Commission*: European Semester: A New Architecture for the New EU Economic Governance, MEMO/11/14, Brussels, 2011.

5 *European Commission*: Annual Growth Survey: Advancing the EU's Comprehensive Response to the Crisis, COM(2011) 11 final, Brussels, 2011.

6 *European Commission*: Green Paper on the Feasibility of Introducing Stability Bonds, COM(2011) 818, Brussels, 2011.

quently, the reform programme on “economic governance” (the so-called *six-pack*) will be outlined, followed by a description of the intergovernmental Euro Plus Pact and the planned Fiscal Compact. The final section will discuss the involvement of the European Central Bank (ECB) in the rescue efforts. Additional policies implemented or debated in 2011, such as the regulation of credit rating agencies, the reform of financial market supervision, the conduct of “stress tests” for European banks, or the introduction of a financial transaction tax will be mentioned in the Internal Market section of part II. of this review.

## 1. Extraordinary Measures: Rescuing Greece

Greece has been experiencing extraordinary difficulties in re-financing its sovereign debt since early 2010. The first rescue plan of May 2010, drawing on € 110 bn. from the Member States and the International Monetary Fund (IMF) over three years and supervised by the so-called Troika of the European Commission, the ECB, and the IMF, had to be complemented by a second assistance programme that was first discussed at the July 2011 Eurozone summit, finalised in February 2012, and boosted by an IMF contribution of € 28 bn. to reach € 130 bn. in total.<sup>7</sup> At the behest of the German delegation, the second assistance programme was dependent on and included provisions for an “exceptional” and “voluntary” contribution from the private sector that amounted to a reduction of Greek debt by 53.5 per cent in nominal value upon implementation in March 2012, reducing the overall level of government debt by an estimated € 100 bn. from € 350 bn. to € 250 bn.<sup>8</sup>

From early 2010 onwards and as a condition for receiving funds from the aforementioned facilities, Greece has pledged to implement a series of austerity measures designed to contain the public deficit and restore market confidence. These measures were designed to comply with the Troika’s repeated demands for stricter fiscal discipline, austerity in public sector employment and public services (including social security programmes), improvements in the area of tax collection and tax avoidance, market liberalisation, privatisation, and the increase or introduction of a number of taxes. In September 2011, a Commission task force led by *Horst Reichenbach* was dispatched to support Greece in the implementation of said measures.

7 Council of the European Union: Statement by the Heads of State or Government of the Euro Area and EU Institutions, Brussels, July 2011.

8 Loc. cit.; *Financial Times*: Greek Debt Swap Support Close to 95 %, 8 March 2012, cf. [www.ft.com](http://www.ft.com).

*Table 1:* Disbursements to the Greek Exchequer until December 2011 (in € bn.)

Date	Volume	Contributed by...	
		...the Eurozone	...the IMF
May 2010	20.0	14.5	5.5
September 2010	9.0	6.5	2.5
December 2010/ January 2011	9.0	6.5	2.5
March 2011	15.0	10.9	4.1
July 2011	12.0	8.7	3.3
December 2011	8.0	5.8	2.2
<b>Total</b>	<b>73.0</b>	<b>52.9</b>	<b>20.1</b>

Source: own table based on *European Commission: General Report*, op. cit, 2012, 16.

Over the course of the year, progress was monitored in three Review Missions designed to evaluate the feasibility of further disbursements of funds to the Greek exchequer.<sup>9</sup> The fourth and fifth Progress Reports in June and September 2011 were particularly critical of the outcomes achieved by the Greek government thus far, leading to the implementation of further austerity measures, the short-lived idea of a referendum on these measures in November 2011, and, eventually, the resignation of Prime Minister *Georgios Papandreou* and the formation of a transitional national unity government headed by the former Vice President of the ECB and Governor of the Bank of Greece, *Lucas Papademos* (independent). The transitional government successfully steered the new reform programme through Parliament and is expected to remain in power until the anticipated early parliamentary elections in April 2012 as agreed by the major parties.

## 2. Temporary and Permanent Crisis Management: EFSM, EFSF, and ESM

In 2010, it was agreed to establish the European Financial Stability Mechanism (EFSM), a Community instrument issuing bonds up to € 60 bn. against the EU budget as collateral and administered by the European Commission, and the European Financial Stability Facility (EFSF), an intergovernmental instrument

<sup>9</sup> *International Monetary Fund: Statement by the EC, ECB, and IMF on the Third Review Mission to Greece*, February 2011; *International Monetary Fund: Statement by the EC, ECB, and IMF on the Fourth Review Mission to Greece*, June 2011; *International Monetary Fund: Statement by the EC, ECB, and IMF on the Fifth Review Mission to Greece*, October 2011.

(in the shape of a private company under Luxembourg law) issuing obligations against Member States' guarantees and headed by a Chief Executive Officer, *Klaus Regling*, the former Director-General of DG ECFIN. The task of both these temporary instruments is to provide assistance to Eurozone members with refinancing difficulties.

The EFSF was initially designed with € 440 bn. in capital guarantees but has since been expanded to € 780 bn. in the wake the second Greek rescue programme, increasing its effective lending power at AAA ratings to € 440 bn.<sup>10</sup> After ratification by all participating Member States (including, notably, Slovakia, whose Prime Minister *Iveta Radicová* stepped back to garner sufficient opposition support), the need for further action became palpable when both Italy and Spain began experiencing rising costs of sovereign debt refinancing. Subsequently, the EFSF's lending capacity was further expanded to reach a maximum potential of € 1 tn. by a decision of the Eurozone members in October 2011, allowing for financial leverage, insurance-based operations, and the inclusion of extra-European capital.<sup>11</sup>

Since its inception, the EFSF received applications for support by Ireland (November 2010) and Portugal (May 2011), leading to support measures of up to € 85 bn. and € 78 bn., respectively, over three years. In the case of Ireland, this includes EFSM and IMF support, direct loans from the United Kingdom, Denmark, and Sweden, as well as monies from the Irish Pension Reserve Fund and the Irish Treasury reserves. The Portuguese package includes contributions from the EFSM, EFSF, and the IMF up to € 26 bn. each.

In an effort to establish a permanent mechanism to support struggling Eurozone members upon the expiration of the EFSM and the EFSF, the December 2010 European Council agreed to reform the Treaty on the Functioning of the European Union (TFEU), amending Art. 136 to include the necessary provision.<sup>12</sup> This is to be achieved by employing the simplified revision procedure (Art. 48(6) Treaty on European Union, TEU) to avoid national referenda. In addition, the Eurozone members agreed on an additional treaty establishing the ESM in April 2011 (revised in early 2012), establishing the Mechanism as a Luxembourg-

10 *European Financial Stability Facility: EFSF Framework Agreement Amendment Agreement*, Brussels/Luxembourg, 2011.

11 *Council of the European Union: Euro Summit Statement*, Brussels, October 2011.

12 *European Council: Conclusions of the European Council on 16 and 17 December 2010*, EUCO 30/1/10 REV 1, Brussels, 2011.

Table 2: Disbursements to the Irish Exchequer until December 2011 (in € bn.)

Date	Volume	Contributed by...		
		...EFSM	...EFSF	...IMF *
January 2011	10.62	5.0	–	5.62
February 2011	3.30	–	3.3	–
March 2011	3.40	3.4	–	–
May 2011	4.58	3.0	–	1.58
September 2011	3.48	2.0	–	1.48
October 2011	0.50	0.5	–	–
November 2011	3.00	–	3.0	–
December 2011	3.91	–	–	3.91
<b>Total</b>	<b>32.79</b>	<b>13.9</b>	<b>6.3</b>	<b>12.59</b>

\* IMF contributions in Special Drawing Rights, Euro equivalent at date of disbursement. Source: own table based on *European Commission: General Report*, op. cit, 2012, 17.

Table 3: Disbursements to the Portuguese Exchequer until Dec. 2011 (in € bn.)

Date	Volume	Contributed by...		
		...EFSM	...EFSF	...IMF *
May 2011	8.20	1.75	–	6.45
June 2011	10.55	4.75	5.80	–
September 2011	8.98	5.00	–	3.98
September 2011	2.00	2.00	–	–
October 2011	0.60	0.60	–	–
December 2011	2.90	–	–	2.90
<b>Total</b>	<b>33.23</b>	<b>14.10</b>	<b>5.80</b>	<b>13.33</b>

\* IMF contributions in Special Drawing Rights, Euro equivalent at date of disbursement. Source: own table based on *European Commission: General Report*, op. cit, 2012, 17.

based international organisation under international law.<sup>13</sup> Originally intended to take over the functions of the temporary facilities in 2013, the ESM is currently set to commence operations in July 2012, thus complementing the EFSF/EFSM for one year. Ratification of these measures is scheduled for the first half of 2012 and was first approved by the French Parliament in February 2012. The ESM is designed to wield an effective lending volume of c. € 500 bn. covered by guaran-

13 *European Council: Conclusions of the European Council on 24 and 25 March 2011*, EUCO 10/1/11 REV 1, Brussels, 2011.

tees of € 700 bn., consisting of € 80 bn. in cash contributions (“paid-in shares”) and € 620 bn. in guarantees (“callable shares”).

### 3. Reforming the EMU: the *Six-Pack* on Economic Governance

In 2010, based on the experience of the sovereign debt crisis and an intense debate between Member States and the European institutions, the European Commission tabled six legislative drafts (subsequently labelled the *six-pack*) designed to achieve a greater level of co-ordination between Member States in the areas of fiscal and economic policy making. The measures were approved by the EP in September, passed by the Council in November, and came into effect on 13 December 2011.

The first four measures (one directive and four regulations) aim at a reform of the dysfunctional Stability and Growth Pact (SGP). They seek to strengthen the SGP by changes to the measurement and evaluation of sovereign debt levels and growth rates, by a shift of emphasis from the latter to the former in the preventative part of the Pact, by accelerating the excessive deficit procedure of the SGP’s corrective part, by improved budgetary transparency and statistical reporting, and by introducing a revised system of (financial and non-financial) sanctions in order to enforce the SGP’s provisions (including a so-called quasi-automatic sanctions mechanism enabling the Commission to issue sanctions as a result of an excessive deficit procedure which are enforced unless opposed by a qualified majority in the Council).<sup>14</sup>

The remaining two measures cover the introduction of an “excessive macroeconomic imbalance” procedure, based on the example of the excessive deficit procedure, in order to include additional measures of internal and external macroeconomic stability in the EU’s surveillance mechanism. This new mechanism is accompanied by provisions concerning a relevant enforcement mechanism.<sup>15</sup>

14 *Council Directive* 2011/85/EU of 8 November 2011 on Requirements for Budgetary Frameworks of the Member States; *Regulation* (EU) No. 1173/2011 of the European Parliament and of the Council of 16 November 2011 on the Effective Enforcement of Budgetary Surveillance in the Euro Area; *Regulation* (EU) No. 1175/2011 of the European Parliament and of the Council of 16 November 2011 amending Council Regulation (EC) No. 1466/97 on the Strengthening of the Surveillance of Budgetary Positions and the Surveillance and Coordination of Economic Policies; *Council Regulation* (EU) No. 1177/2011 of 8 November 2011 amending Regulation (EC) No. 1467/97 on Speeding Up and Clarifying the Implementation of the Excessive Deficit Procedure.

15 *Regulation* (EU) No. 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the Prevention and Correction of Macroeconomic Imbalances; *Regulation* (EU) No. 1174/2011 of the

As of November 2011, the Commission had proposed two further measures aimed at improved surveillance of national fiscal and economic policies. These controversial proposals would require Member States to submit draft budgets to the Commission for review and comment in view of the SGP's provisions and would give the Commission more leeway in the area of surveillance once an excessive deficit or imbalance has been noted.

#### **4. Competitiveness and Debt Ceilings: the Euro-Plus-Pact and the Fiscal Compact**

Based on an initiative of the French and German governments, 23 Member States (the Eurozone countries plus Bulgaria, Denmark, Latvia, Lithuania, Poland, and Romania) joined the “Euro-Plus-Pact”, to be implemented via the Open Method of Co-ordination (OMC). The Pact contains a number of recommendations aimed at increased economic competitiveness such as a raise of the retirement age, a linkage between wage and productivity increases, lowering taxes on labour, implementing public debt ceilings, changes in financial stability regulations, etc. Implementation of these measures falls within the responsibility of the participating Member States and is to be monitored by a set of specified indicators.<sup>16</sup>

In December 2011, 26 Member States (all but the United Kingdom) agreed in principle to a new “Treaty on Stability, Coordination and Governance in the Economic and Monetary Union” to create a legal framework for a European system of stricter fiscal discipline. Since a revision of the EU's primary law could not be agreed upon, the pact will be subject to general international law, thus complementing the European treaty base and leading to questions on its legal position. This “Fiscal Compact” includes, among other provisions, a maximum permissible annual structural deficit of 0.5-1.0 per cent of GDP, the requirement to introduce debt ceiling provisions and automatic correction mechanisms at the national constitutional level (subject to transposition supervision by the European Court of Justice, ECJ), and strict debt reporting and reduction procedures under surveillance of the Commission. The Czech government did not sign the final version of the Treaty in early 2012, leaving the total number of

European Parliament and of the Council of 16 November 2011 on Enforcement Measures to Correct Excessive Macroeconomic Imbalances in the Euro Area.

16 *European Council*: Conclusions of the European Council on 24 and 25 March 2011, EUCO 10/1/11 REV 1, Brussels, 2011.

participating Member States at 25. Ireland has announced that it would hold a referendum as part of the on-going ratification process.<sup>17</sup>

## 5. The Crisis and the European Central Bank

In addition to its regular policies of monetary supervision and price level stabilisation, the ECB reacted to the crisis by purchasing government bonds issued by crisis-ridden states (e.g. Italy, Spain, Portugal, and Greece) and by providing large amounts of long-term liquidity to these countries' financial institutions. Both involvements have been criticised on legal and policy grounds since the direct purchase of sovereign debt raises questions of compatibility with the Union's primary law and due to the risk involved in refinancing private institutes that are backed only through guarantees by fiscally frail national governments. Furthermore, the ECB's political independence and its commitment to price stability have been questioned, while the use of the TARGET-2 framework of the European System of Central Banks (ESCB) has been criticised due to its implicitly redistributive nature and its latent effect on the balance sheet of the German *Bundesbank*.<sup>18</sup> In September 2011, ECB Chief Economist *Jürgen Starck* announced his resignation due to concerns over the direct purchase of government debt.

## III. Developments in Major Policy Areas

The crisis also influenced the existing regular policy remit of the EU in a number of areas. As the following outline will show, the greatest number of crisis-related items relate to the regulation of the European Internal Market. However, many noteworthy measures adopted in 2011 that go beyond (immediate) crisis management have been documented.

### 1. Internal Market

As a response to the financial crisis, the EU created three new agencies that became operational in January 2011: the European Banking Authority (EBA), the European Securities and Market Authority (ESMA), and the European Insurance

17 *European Council*: Statement by the Euro Area Heads of State or Government, Brussels, December 2011.

18 *Sinn, H.W/Wollmershäuser, T.*: Target Loans, Current Account Balances and Capital Flows: The ECB's Rescue Facility, CESinfo Working Paper No. 3500, 2011.

and Occupational Pensions Authority (EIOPA). Within their respective areas of competence, these supervisory bodies' tasks are to monitor and co-ordinate their counterparts at the Member State level, to liaise with similar institutions in other countries and regions, and to thereby constitute an early-warning system for instabilities and risks in the financial sector. This was complemented by the creation of a European Systemic Risk Board (ESRB) in late 2010, which has been tasked with overall supervision and monitoring of the financial markets in order to enable policy-makers to tackle systemic imbalances in advance.

In July 2011, the London-based EBA announced the outcome of a first so-called stress test on 90 major banks in 21 Member States. The methodology included a peer-review mechanism and led to the conclusion that many major institutes were exposed to a considerable burden of risk that arose from the debt crisis. This led to a decision by the Eurozone summit in October 2011 to recapitalise these banks and provide further guarantees in order to stabilise the European financial markets. In December, this was complemented by an EBA report detailing the concrete capital requirements for the institutes in question.<sup>19</sup>

Further efforts in the field of financial market reform were aimed at the internal functioning of financial institutes (including the question of bonus payments),<sup>20</sup> the regulation of short-selling operations and the question of credit default swaps,<sup>21</sup> the role and functioning of credit rating agencies,<sup>22</sup> the regulation of hedge funds and private equity,<sup>23</sup> the regulation of derivatives trading,<sup>24</sup> and

19 *Council of the European Union: Euro Summit Statement, Brussels, October 2011; European Banking Authority: EBA Recommendation on the Creation and Supervisory Oversight of Temporary Capital Buffers to Restore Market Confidence, EBA/REC/2011/1, London, 2011.*

20 *Directive 2010/76/EU of the European Parliament and of the Council of 24 November 2010 Amending Directives 2006/48/EC and 2006/49/EC as Regards Capital Requirements for the Trading Book and for Re-securitisations, and the Supervisory Review of Remuneration Policies.*

21 *Regulation (EU) No. 236/2012 of the European Parliament and of the Council of 14 March 2012 on Short Selling and Certain Aspects of Credit Default Swaps.*

22 *Regulation (EU) No. 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation (EC) No. 1060/2009 on Credit Rating Agencies; Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1060/2009 on Credit Rating Agencies, November 2011; Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/65/EC on the Coordination of Laws, Regulations and Administrative Provisions Relating to Undertakings of Collective Investment in Transferable Securities (UCITS) and Directive 2011/61/EU on Alternative Investment Funds Managers in respect of the Excessive Reliance on Credit Ratings, November 2011.*

23 *Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and Amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No. 1060/2009 and (EU) No. 1095/2010.*

several other areas.<sup>25</sup> ESRB, EBA, ESMA, and EIOPA serve as the institutional basis for the implementation of many of these measures. While some of the aforementioned legislation and legislative proposals constitute a transposition of co-ordinated decisions on financial market reform at the G20 level, the Commission explicitly pushed ahead of the G20 agenda by suggesting the introduction of a financial transaction tax for all Member States. The proposal seeks to address concerns on the off-shoring effects of such a measure by taxing all European financial institutions' operations, independent of the market place chosen. It has since been rejected for both the Union at large and the Eurozone.<sup>26</sup>

As a further step in a long-standing political debate, the Commission launched a proposal for a Common Consolidated Corporate Tax Base (CCCTB), aimed at simplifying tax reporting for cross-border businesses within the internal market. It is designed to be a voluntary system, allowing companies to decide whether to continue operating under *status quo* or to switch to the new system, and contains a number of rules on the calculation of the corporate tax base. The proposal is currently under discussion in the EP and the Council.

The "Single Market Act", a series of measures aimed at increased competitiveness and a revitalisation of the internal market and first proposed in late 2010, has led to a number of initiatives over the course of 2011. Twelve areas of action were selected from 50 potential measures outlined in an October 2010 draft,<sup>27</sup> namely: access to finance for small enterprise, mobility of citizens, patent law, dispute resolution, service standards, infrastructure, a digital single market, social entrepreneurship, energy taxation, social cohesion, business regulation, and public procurement. Starting in April 2011, these were addressed by several Commission proposals: a reform of the energy taxation directive as well as legislation on energy and transport infrastructures, an initiative on a unitary EU patent (cf. below), the harmonisation of service standards, support for business initiatives in the social sector, a reform of common accounting standards, a pan-

24 *Proposal for a Regulation* of the European Parliament and of the Council on OTC Derivatives, Central Counterparties and Trade Repositories, September 2010.

25 Including proposals for: revisions to accounting regulations, a reform of the audit sector, a regime on market abuse, a venture-capital regime, and a revision of the Markets in Financial Instruments Directive (MIFID); for further information, cf. [ec.europa.eu/internal\\_market/finances/policy/map\\_reform\\_en.htm](http://ec.europa.eu/internal_market/finances/policy/map_reform_en.htm).

26 *Proposal for a Regulation* of the European Parliament and of the Council on a Common System of Financial Transaction Tax, COM(2011) 594.

27 *European Commission: Communication to the European Parliament, the Council et al. – Towards a Single Market Act, 50 Proposals for Improving Our Work, Business and Exchanges with One Another* COM(2010) 608 final/2, Brussels, 2010.

European extra-judicial settlement mechanism for contractual disputes, improved access to venture capital for Small and Medium-sized Enterprises (SMEs), a reform of the European system of recognition for professional qualifications, and a reform of the framework for public procurement procedures. In 2012, this is to be supplemented by proposals on electronic authentication and a reform of the posted workers directive in order to implement social rights for cross-border employment situations.<sup>28</sup>

The Commission furthermore tabled proposals for an optional European Sales Law aimed at a reduction in legal barriers to cross-border sales<sup>29</sup> and for complementing national private debt recovery mechanisms with a European system that would enable creditors to rely on a European Account Preservation Order to block debtors' funds and reduce the costs of cross-border debt recovery.<sup>30</sup>

Several high-profile cartel cases were decided by the Commission in 2011: in April, Procter & Gamble and Unilever were fined € 315.2 m. in total for engaging in an unlawful price cartel on washing powder products; Henkel, also involved, avoided a fine by acting as the whistle-blower. In October, Pacific Fruit Groups was fined € 8.9 m. for operating a banana cartel with Chiquita, which avoided punishment by co-operating with the Commission. Finally, TelePolska was fined € 127.6 m. for abusing its market power in the Polish telecommunications sector.<sup>31</sup>

In the area of cohesion policy, the Commission has proposed eight legislative measures, aiming at the creation of common overall provisions for the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development, and the European Maritime and Fisheries Fund, and seeking to reform or maintain the Regional Development Fund, the Cohesion Fund, the Social Fund, European Globalisation Adjustment Fund, the European Union Programme for Social Change and Innovation, European Territorial Cooperation, and the European Grouping of Territorial

28 *European Commission*: Communication to the European Parliament, the Council et al. – Single Market Act – Twelve Levers to Boost Growth and Strengthen Confidence, Brussels, 2011.

29 *European Commission*: Communication to the European Parliament, the Council et al. – A Common European Sales Law to Facilitate Cross-Border Transactions in the Single Market, COM(2011) 636, Brussels, 2011; critically examined by *Grigoleit, H.C.*: Die Europäische Kommission und ein Gemeinsames Europäisches Kaufrecht, in: ZSE 9/4 (2011).

30 *Proposal for a Regulation* Creating a European Account Preservation Order to Facilitate Cross-Border Debt Recovery in Civil and Commercial Matters, COM(2011) 445, Brussels, 2011.

31 *European Commission*: General Report, op. cit., 2011, 49.

Cooperation.<sup>32</sup> These measures are scheduled for discussion and decision in 2012 and 2013.

On 1 January 2011, Estonia became the 17<sup>th</sup> member of the Eurozone, introducing the Euro for an initial two-week dual currency window and phasing out the Estonian Kroon by mid-January.

## 2. Agriculture and Fisheries

The debate on the reform of the *Common Agricultural Policy* (CAP) for the upcoming financial planning period from 2014 to 2020, launched via a Commission communication in 2010 and subsequently discussed by the major institutions, has culminated in an array of seven legislative proposals published by the Commission in October 2011.<sup>33</sup> These measures aim at a reform of the CAP's direct payments system, a simplification of the tools used to manage the markets for agricultural goods, placing emphasis of rural development policy on competitiveness and innovation, introducing new mechanisms to help farmers cope with income volatility, and increasing the focus on questions of ecologically sound development ("greening"). The proposals have attracted a wide range of views, including some vocal criticism (focusing on the distribution of funds between new and old Member States, concerns over additional red tape, and the impact on developing countries). They are to be discussed, amended, and decided over the course of 2012 and 2013, to enter into force before January 2014.

Concerning the *Common Fisheries Policy* (CFP), the Commission pointed at potentially harmful levels of over-fishing in a number of areas and has identified

32 *European Commission: Cohesion Policy 2014–2020. Investing in Growth and Jobs*, Brussels, 2011.

33 *Proposal for a Regulation of the European Parliament and of the Council Establishing Rules for Direct Payments to Farmers Under Support Schemes within the Framework of the Common Agricultural Policy*, COM(2011) 625 final/2; *Proposal for a Regulation of the European Parliament and of the Council Establishing a Common Organisation of the Markets in Agricultural Products (Single CMO Regulation)*, COM(2011) 626 final/2; *Proposal for a Regulation of the European Parliament and of the Council on Support for Rural Development by the European Agricultural Fund for Rural Development (EAFRD)*, COM(2011) 627 final/2; *Proposal for a Regulation of the European Parliament and of the Council on the Financing, Management and Monitoring of the Common Agricultural Policy*, COM(2011) 628 final/2; *Proposal for a Council Regulation Determining Measures on Fixing Certain Aids and Refunds Related to the Common Organisation of the Markets in Agricultural Products*, COM(2011) 628 final; *Proposal for a Regulation of the European Parliament and of the Council Amending Council Regulation (EC) No. 73/2009 as Regards the Application of Direct Payments to Farmers in Respect of the Year 2013*, COM(2011) 630 final; *Proposal for a Regulation of the European Parliament and of the Council Amending Council Regulation (EC) No. 1234/2007 as Regards the Regime of the Single Payment Scheme and support to Vine-Growers*, COM(2011) 631 final.

an urgent need for reform,<sup>34</sup> leading to three legislative proposals.<sup>35</sup> The measures intend to move fish production to a sustainable level by 2015, to include ecological aspects in the conduct of the CFP, to end the wasteful practice of discarding unwanted catches, to define clear targets, to introduce a system for transferable fishing concessions, to support small-scale fisheries, and to improve the collection of statistical data. Furthermore, a European Maritime and Fisheries Fund (EMFF) is to be created in order to accompany the implementation of reform measures in local communities.

### 3. Transport, Environment, and Energy Policies

From January 2013, a new European driving licence will be introduced, harmonising validity periods and vehicle categories across the EU and replacing the licences currently issued by Member States.<sup>36</sup>

A new directive on the sharing of information on road traffic offences between Member States was passed in September 2011, closing existing loopholes in cross-border enforcement of penalties by allowing authorities from one Member State to identify the owner of a vehicle registered in another Member State.<sup>37</sup>

As a reaction to the 2010 Yemen parcel bomb incident, the Commission has adopted rules imposing stricter security protocols on the operators of inbound flights from outside the EU. In addition, flights originating in certain high-risk countries of origin will be subject to further controls.<sup>38</sup>

In February 2011, a regulation on passenger rights in the area of long-distance bus and coach travel was adopted, in tune with similar existing provisions for travel by air, rail, and water.

34 *European Commission*: Communication to the European Parliament, the Council et al. – Reform of the Common Fisheries Policy, COM(2011) 417 final, Brussels, 2011.

35 *Proposal for a Regulation* of the European Parliament and of the Council on the Common Fisheries Policy, COM(2011) 425 final; *Proposal for a Regulation* of the European Parliament and of the Council on the European Maritime and Fisheries Fund, Repealing Council Regulation (EC) No. 1198/2006 and Council Regulation (EC) No. 861/2006 and Council Regulation No. XXX/2011 on Integrated Maritime Policy, COM(2011) 804 final; *Proposal for a Regulation* of the European Parliament and of the Council on the Common Organisation of the Markets in Fishery and Aquaculture Products, COM(2011) 416 final.

36 *Directive* 2006/126/EC on Driving Licences.

37 *Directive* 2011/82/EU Facilitating the Cross-Border Exchange of Information on Road Safety Related Traffic Offences.

38 *Regulation* (EU) No. 859/2011 Laying Down Detailed Measures for the Implementation of the Common Basic Standards on Civil Aviation Security in Respect of Air Cargo and Mail.

In May 2011, the Commission implemented a regulation to foster the creation of pan-European rail journey information, planning, and ticketing systems, completing a decade-long series of measures aimed at railway inter-operability and technical harmonisation.<sup>39</sup>

In October 2011, the first two Galileo navigation satellites were launched from French Guiana. The positioning system is scheduled to be fully operational by 2014 and is designed to compete effectively with GPS by providing a higher level of accuracy.

In the area of environmental policy, measures were adopted to include the aviation industry in the European Emissions Trading System (ETS) from 1 January 2012. This was challenged – unsuccessfully – by a number of U.S. airlines that claimed incompatibility with international law.<sup>40</sup>

Revised legislation on the “Eurovignette” for heavy road transports was adopted in September 2011, including, among other reforms, the internalisation of environmental costs due to gas and noise emissions.

In the wake of the Fukushima disaster, Member States agreed on common standards for the safety of nuclear power stations, leading to a “stress test” review of all 143 nuclear plants operated in the EU. Furthermore, a directive on radioactive waste safety was passed under the EURATOM Treaty in the summer of 2011.<sup>41</sup>

#### 4. Justice and Home Affairs, Migration

As one of the provisions of the Lisbon Treaty, the EU is in the process of acceding to the European Convention on Human Rights (ECHR) – independent of Member States’ individual memberships. In 2011, a preliminary accession agreement was formulated at the working level, leaving several aspects for higher-level negotiations in the following months, if not years. In addition, 2011 saw the publication of the first annual report on the implementation of the Charter of Fundamental Rights.<sup>42</sup>

39 *Regulation* (EU) on the Technical Specifications for Interoperability Relating to the Subsystem ‘Telematics Applications for Passenger Services’ of the Trans-European Rail System.

40 *Decision* 2011/389/EU on the Union-Wide Quantity of Allowances Referred to in Article 3e (3) (a) to (d) of Directive 2003/87/EC Establishing a Scheme of Greenhouse Gas Emission Allowances Trading within the Community.

41 *European Commission*: Communication on the Interim Report on the Comprehensive Risk and Safety Assessments (“Stress Tests”) of Nuclear Power Plants in the European Union, COM(2011) 784 final.

42 *European Commission*: Annual Report on the Application of the EU Charter of Fundamental Rights, Brussels, 2011.

The EP and the Council furthermore passed a regulation on the implementation of the European Citizens' Initiative in early 2011. This vehicle, introduced by the Lisbon Treaty, will allow any coalition of 1 million EU citizens from at least seven Member States to call on the Commission to propose a legislative act in an area of Union competence. The instrument will be ready for use from April 2012 onward.

A Commission report on the use of the European Arrest Warrant concluded that nearly 55.000 warrants were issued between 2005 and 2009, resulting in the transfer of about 12.000 suspects from one Member State to another.<sup>43</sup>

As a result of the uprisings in the Middle East, the number of seafaring refugees arriving at the EU's southern shores increased markedly over the course of 2011. This put an unusually heavy strain on the southern Member States, Italy in particular. In order to support Rome in dealing with this refugee crisis, the EU mobilised humanitarian assistance funds and dispatched a FRONTEX operation (termed "Hermes 2011").

In a political controversy over the distribution of costs resulting from this increase in illegal immigration, the Italian government threatened to issue documentation to refugees that would allow for intra-Schengen travel. As a result, France threatened to re-introduce border controls. In a separate development, the former Danish government reinstated regular border controls (which have since been discontinued). The Commission voiced concern over these developments since they could be perceived as threats to the Schengen *acquis*.

In the second half of 2011, the Polish Council Presidency unsuccessfully pushed for the accession of Bulgaria and Romania to the Schengen area; the proposal was vetoed by Finland and the Netherlands in September.

## 5. Research and Education Policy

As part of the discussion on the upcoming fiscal planning period, the Commission launched a proposal on the new Research Framework Programme under the title "Horizon 2020". Combining the previously independent approaches of the Research and Development Framework Programme, the relevant aspects of the Competitiveness and Innovation Framework Programme (CIP), and the Euro-

43 *European Commission*: Report to the European Parliament and the Council on the Implementation since 2007 of the Council Framework Decision of 13 June 2003 on the European Arrest Warrant and the Surrender Procedures between Member States, COM(2011) 175.

pean Institute of Innovation and Technology (EIT), the programme is scheduled to disburse € 80 bn. in funds between 2014 and 2020.<sup>44</sup>

The long journey towards a single EU patent made significant progress in 2011 as the Commission introduced a proposal for enhanced co-operation between 25 Member States (all but Italy and Spain), which was subsequently discussed by the EP as well as the Council and is scheduled for implementation in the first half of 2012.

In late 2011, the Commission proposed two additions to the existing Erasmus programme of student exchanges: the “Erasmus for Masters” loan guarantee scheme for university students choosing to study in another Member State during the second (Master’s) stage of their studies, and the “Erasmus for All” programme which would double the number of available Erasmus scholarships during the 2014-2020 planning period. Both measures are currently under consideration.

## 6. External Trade

On 1 July 2011, the EU-South Korea Free Trade Agreement entered into force. It constitutes the EU’s most important free trade treaty by volume and represents the first such agreement with an Asian country.

Furthermore, free trade negotiations with Central America, Colombia and Peru were completed and the Commission proposed that the Council sign and conclude the respective treaties.

Negotiations with Canada, Ukraine, India, Singapore, Malaysia, the Euro-Med region, the Persian Gulf countries, and Mercosur are on-going, while the launch of several additional processes is under consideration (most importantly with Russia and Japan).

## 7. Enlargement and CFSP

Croatia successfully completed all accession requirements in 2011, leading to an accession conference where the country was unanimously accepted as the EU’s 28<sup>th</sup> Member State. Croatia will join the EU on 1 July 2013.

Further accession negotiations with five candidate countries (Iceland, Turkey, Macedonia, Serbia, and Montenegro) and three potential candidates (Bosnia and

<sup>44</sup> *European Commission: Horizon 2020 – The Framework Programme for Research and Innovation*, Brussels, 2011.

Herzegowina, Kosovo, and Albania) are on-going. Negotiations with Turkey were hampered by Ankara's announcement to freeze all contacts with the EU during Council Presidency of Cyprus.

At the beginning of 2011, the European External Action Service (EEAS) began its work as the operational arm of the High Representative for Foreign Affairs and Security Policy's work. Initially, two thirds of the EEAS' staff contingent was seconded by the Commission while one third came from the Council secretariat. By 2013, the proportion of Member States' national diplomats seconded to the EEAS is to reach one third. The Service commanded an annual budget of € 0.46 bn. and employed 3.611 staff (of which 2.060 worked in the EU's delegations abroad). This complements more than 7.000 people employed as part of the Union's on-going CFSP missions (three military and 17 civilian operations).<sup>45</sup>

## IV. Institutions, Personnel, and Finances

### 1. Institutional Developments

As part of the inter-institutional adjustment process in the wake of the Lisbon Treaty, the Council and the EP began negotiations on the role of the EP in international negotiations and on EP access to confidential material – with little success in either of these sensitive areas. At a more technical level, a compromise was reached on the issue of legislative correlation tables.

*Jerzy Buzek's* term as the President of the EP approached its conclusion by the end of 2011; *Martin Schulz* was elected as his successor in January 2012. Furthermore, Vice Presidents *Lambrinidis* (now the Greek Foreign Minister) and *Koch-Mehrin* (resigned) were replaced by the MEPs *Chichester* and *Podimata* over the course of 2011.

The ECB also saw a number of changes in its leadership structure; President *Jean-Claude Trichet* was replaced by *Mario Draghi* as his term ran out in November 2011. Chief Economist *Jürgen Stark* resigned over the ECB's involvement in the sovereign debt crisis and was succeeded by fellow board member *Peter Praet*. *Stark's* chair on the Executive Board was filled by *Jörg Asmussen*. Furthermore, pressure was put on *Lorenzo Bini Smaghi* to resign in order to appoint a new French board member (and to avoid two Italian members – *Draghi* and *Bini Smaghi*). The latter eventually resigned and was replaced by *Benoît Cœuré*.

<sup>45</sup> *European Commission*, General Report, op. cit., 2012, 108.

## 2. The Multiannual Financial Framework 2014-2020

The financial framework for the 2014-2020 planning period constituted one of the more controversial issues in EU politics during 2011. The relevant Commission proposal, published in June, led to a far-reaching debate between the Union's institutions, the Member States, civil society, and the business community. The framework was presented as a "budget for the Europe 2020 strategy" and proposes an expenditure of € 1,025 bn. in current prices over the seven-year period. Five Member States (Germany, France, the United Kingdom, Finland, and the Netherlands) have, as early as December 2010, called for a cap on EU budgetary expansion at or below the level of inflation. The European Council is scheduled to reach an agreement in principle by June 2012, leading to further discussions between the EP and the Council. The associated individual legislative proposals are to be adopted by 2013.

## 3. The EU's Resource Base in 2011

In 2011, the EU maintained 38,286 permanent and 2,322 temporary posts, of which 25.061 were attributable to the Commission, about 6.500 to the EP, and less than 3.200 to the Council and the European Council.

Concerning the 2011 budget, expenditures rose by 2.9 per cent in comparison to 2010 and reached a level of € 126.5 bn., with a largely similar structure of disbursements: 45.5 per cent on cohesion policy, 41.3 per cent on agriculture and natural resources, 6.2 per cent on external affairs, 5.7 per cent on administration, and 1.3 per cent on home affairs.

## V. Summary and Outlook

The year 2011 witnessed a number of decisive developments in EU politics. As a result of the on-going efforts at managing the sovereign debt crisis, the institutional balance was shifted strongly in favour of intergovernmental policy-making. This development culminated in a "fiscal compact" under international law that covers only 25 Member States while ignoring the existing framework designed for such situations (Enhanced Co-operation). The *ad hoc* design of new instruments outside the existing treaty base calls into question the purpose of EU primary law: why create a quasi-constitutional set of rules if these rules are not adhered to but rather circumvented when substantial problems arise? This question is particularly salient in view of the purpose of the entire exercise, the restoration of credibility. How can confidence be restored if the means are at odds

with the ends, if the circumvention of existing legal provisions creates the impression that future behaviour will be less, not more predictable?

At the same time, idleness or even suicide for fear of death – such as the (partial) dissolution of the single currency – are no realistic alternatives. Fiscal consolidation, either by strict austerity – as advocated by the proponents of the fiscal compact – or by more careful approaches that avoid pro-cyclical interventions, is pivotal to the restoration of market confidence and, subsequently, the ability of fledgling countries to re-finance their sovereign debt. To this end and as a consequence of its structural faults, the Monetary Union needs to be complemented by a closer co-ordination of fiscal and economic policies, horizontally as well as vertically. It therefore remains to be seen whether current efforts in this direction are sufficient and whether the instruments thus created can eventually be integrated into the Union's *acquis*.

The EU has once more experienced an extraordinary year. It demonstrated an underlying degree of robustness in dealing with substantial difficulties while keeping up the day-to-day management of both internal and external affairs. However, as long as the *finalité* of the European project remains undefined, the EU is likely to continually experience frictional effects at the fringes of its policy remit and in the relationship to (and between) its Member States. Therefore, a substantial (and open) debate on the future of the EU is highly desirable, even inevitable. Such a debate should, however, not be left to intergovernmental *ad hoc* policy-making, which, by its very nature, does not tend to operate in view of long-term considerations. On the contrary: it should be the object of a wider discourse – not only among the political and academic elites, but in the public sphere at large. The Union and its institutions should document a willingness to learn and to accept rational criticism in order to facilitate such a debate.

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