A Direct Vote to Pick the Face that Runs the Union – Some Thoughts on the Occasion of the Current Crisis

Sven Simon*

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* Dr. Sven Simon is Assistant Professor of Public Law, International and European Law at the Franz von Liszt Institute for International and Comparative Law, Justus Liebig University Giessen (Chair for Public Law, International and European Law, held by Prof. Dr. Thilo Marauhn, M.Phil.). This article was developed out of a paper presentation given at the International Graduate Conference on "Democracy in Crisis – Critiques of Democracy" held in Giessen, 21-22 June 2012. The author is grateful to the Conference delegates for their feedback, and especially that of the following on an earlier draft: Prof. Steven M. Barkan, Ayşe-Martina Böhringer, Tom Cambidge, Prof. Dr. Ben Chigara, Jan Hellwig, Dr. Karsten Herzmann, Dr. Thilo Kuntz, Prof. Dr. Thilo Marauhn, Joscha Müller, Judith Thorn and Martin Wortmann. The article is attributable to the writer alone.

I. Introduction

More than five years after the onset of the sub-prime financial crisis, the continent's debt and banking crisis remains unsolved. If not bleak, the future of the European Union (EU) is uncertain. There are three major challenges: "First, the problems in the Eurozone. Second, there is a crisis of European competitiveness, as other nations across the world soar ahead. And third, there is a gap between the EU and its citizens which has grown dramatically in recent years. And which represents a lack of democratic accountability and consent […]."[1] Whilst politicians try to overcome the Euro crisis step-by-step, it is clear what the citizens want: "They want the Union to address their concerns and help solve their problems. They want it to do what it was created to do: to take on, effectively and democratically, those cross-border problems, which the nation states of Europe are unable to deal with on their own. No more, no less."[2] However, it contrasts with the situation in which the European Union is today. The macroeconomic policy-making system in Europe is in profound crisis: facing a historically unprecedented structural challenge. We are dealing with questions of input- as well as output-oriented arguments[3] of legitimacy[4] and with more than a dozen minor problems. Europe is struggling in a financial and macro-economic crisis, a sovereign debt, a banking and also a social crisis. These problems mutually

1 *Cameron*, Speech of 23/1/2013 on the future of the EU and the UK's relationship with it, www.number10.gov.uk/news/david-cameron-eu-speech/ (13/3/2013).

2 *De Vries*, The European Conference: A Mid-Term Assessment, Proceedings Conference, Debating Europe's future: The Political Setting of the European Convention, 2002.

3 *Scharpf*, Demokratietheorie zwischen Utopie und Anpassung, 1970; *Scharpf*, Regieren in Europa: Effektiv und demokratisch?, 1999. *Scharpf* has been pleading for an output-oriented rather than an input-oriented legitimisation of European Union policies. In terms of *Lincoln's* famous description of the main elements of democracy input-oriented legitimisation refers to government by the people, whereas output-oriented legitimisation refers to government for the people, Address delivered at the Dedication of the Cemetery at Gettysburg (19. Nov. 1863), in: Basler (ed.), The Collected Works of Abraham Lincoln, Vol. 7, 1953, p. 22 et seq.; see also *Scharpf*, Monetary Union, Fiscal Crisis and the Pre-emption of Democracy, ZSE 9 (2011), p. 193.

4 *Scharpf*, Legitimationskonzepte jenseits des Nationalstaats, MPIfG Working Paper 04/6, November 2004; *Thomassen/Schmitt*, Democracy and Legitimacy in the European Union, www.mzes.uni-mannheim.de/publications/papers/Schmitt_26_1_04.pdf (13/3/2013).

reinforce each other and thus lead to a political crisis – a crisis of confidence.[5] In a sense, it is a crisis of confidence in the ability of political leaders to find solutions for the problems threatening the existence of the Union. And yet the EU is far from out of the woods.

The reasons for the crisis are diverse.[6] At its root, the crisis results from irresponsible practices in the financial sector; unsustainable public debt,[7] uneven macroeconomic developments among Member States including a lack of competitiveness between the Members of the Eurozone. The EU is *sui generis* in political and economic history, and markets do not know what to expect from its unique combination of a single currency and separate nation states. The so-called subprime crisis, which began in the United States, expanded rapidly into a global financial and economic crisis. To add to that, the Euro faces structural problems of its own.[8] Its architecture has not been up to the job. Imbalances have built up.[9]

Enormous shifts in the economic world-order and the pressures of globalization have added another layer of complexity to the crisis.[10] It is clear that most, if not all, Member States have lived beyond their means. Public unease with the EU project; problems with the Euro; and dysfunctional institutions have combined to make the threat more real than imaginary that the European Union's world stage influence is dimming as its Member States face more and more competition in a globalized world.[11] Some of the problems are now being corrected.[12] But reducing the imbalances is a difficult and painful process. Citizens are frustrated, anxious and feel their way of life is at risk.[13] Fear among citizens for the future and there are increasing signs of a retreat to nationalism as a result. In many parts of Europe, nationalism and populism are on the rise, while the feeling of solidarity and a sense of belonging in Europe are dwindling. But business-as-usual cannot go on indefinitely. The Europeans themselves must find a solution to their crisis. This requires first and foremost, a resolution of the Euro area's imbalances. In particular, the gap between the organs

5 *Barroso*, State of the Union 2012 Address, SPEECH/12/596 of 12/9/2012. A loss of confidence is also noted by *Di Fabio*, Europa in der Krise, ZSE 9 (2011), p. 459.

6 Cf. *Scharpf*, Die Eurokrise: Ursachen und Folgerungen, ZSE 9 (2011), pp. 324-337; *Hesse*, Die europäische Verschuldungskrise: eine dreifach unerledigte Agenda, ZSE 9 (2011), pp. 338-351; *Csaba*, Revisiting the Crisis of the EMU: Challenges and Options, ZSE 10 (2012), pp. 53-77.

7 *Schäuble*, Staatsfinanzen in der Eurozone: Ansätze zur Bewältigung der aktuellen Herausforderungen, ZSE 9 (2011), p. 301 et seq.

8 Cf. *Arestis/Sawyer*, Can the Euro Survive after the European Crisis?, in: Arestis/Sawyer (eds.), The Euro Crisis, 2012, pp. 1-34.

9 *Barroso*, (fn. 5).

10 *Barroso*, State of the Union Address 2011, SPEECH/11/607 of 28/9/2011.

11 *Piris*, The Future of Europe – Towards a Two-Speed EU?, 2012.

12 Cf. *Scharpf*, (fn. 3), ZSE 9 (2011), pp. 163-198; *Schorkopf*, Europas politische Verfasstheit im Lichte des Fiskalvertrages, ZSE 10 (2012), pp. 1-29.

13 *Piris*, (fn. 11).

of the EU and public opinion must be closed; and a solution found to the dysfunctional decision-making processes that have created a legitimacy and democratic deficit. This article consists of thoughts on the occasion of the crisis, and seeks to make a contribution to answering the questions posed by the current economic crisis.

II. Analysis of the situation

Citizens, but also people in the outside world,[14] are observing and wondering whether the EU is able to manage its problems and to uphold its economic system of social market economy which for many years was widely seen not only as successful, but also transferable to other parts of the world. While elsewhere in the world unprecedented economic growth rates are being reported, for many European countries insolvency, and government bond interest rates have dramatically increased as a direct consequence of the financial industry fears of sovereign risk and national debt default. EU and IMF[15] funds have staved off economic collapse in Greece, Portugal and Ireland – at least for now. But the desperation of Europe's leaders to protect their banking systems from the effects of the sovereign debt crisis is leading to startling decisions and actions which call into question their commitment to the principles of democracy and the rule of law.[16]

It is not the Greek people who decide via elections in which direction their country might progress. The decisions are taken by political leaders who are democratically legitimized elsewhere. In 2011, German chancellor *Merkel* and former French president *Sarkozy* made it clear that Europe required Italy and Greece to install technocratic leaders that were capable of ensuring the austerity and structural reform measures that the EU required in order to continue supporting these countries through their debt crises. When the former Greek Prime Minister *Papandreou* suggested holding a referendum on adopting austerity measures, he was told in no uncertain terms that this was unacceptable.[17]

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14 See, *Allen/Carletti/Corsetti*, Life in the Eurozone with or without Sovereign Default, 2011; *Dinan*, Governance and Institutions: Implementing the Lisbon Treaty in the Shadow of the Euro Crisis, Journal of Common Market Studies 49 (2011), pp. 103-121.

15 See, *Walter*, Debt Crisis, in: Wolfrum (ed.), The Max Planck Encyclopedia of Public International Law, 2008, www.mpepil.com (13/3/2013), paras. 25-35.

16 *Beckwith*, Is "Europe" more important than democracy or the rule of law?, Beckwith's Blog – Insights on the world economy and financial markets of 20/2/2012.

17 See, www.bbc.co.uk/news/world-15575198 (13/3/2013).

"As governments are felled by a widening national debt crisis, a perceived loss of sovereignty to the IMF and the EU is raising questions of democratic legitimacy."[18] It seems that there is no room for democratic decision-making but merely for taking decisions "without alternative". The dilemma is that most of the government spending resulted from the democratic will of the people. Thus, the question is whether the peoples of the EU now have to pay the price for voting in favour of parties which promised more government spending? It appears that the price of living on credit in the long run is a diminution of sovereign authority by the exchange of credit for political decision-making powers between those giving credit on the one hand and those desperately in need of it. *Scharpf* writes that: "[…] it appears that elections and changes of government cannot make a difference, the democratic legitimacy of the political regime itself may be undermined".[19] At the very least, there is really no room for a democratic legitimate political decision process for affected EU States, but merely an automated process resulting from economic pressures to save the day.

Even worse, there is the question of whether there is a direct relationship between the inability of representative democracies to control government spending and/or increase taxation and their resultant debt crisis.[20] Former German chancellor *Schmidt* has recently formulated this dilemma of legitimacy and democratic deficit as follows: "Politicians are trying to get re-elected. Democracy is a constant lure to politicians to spend money without having to pay for it. That means going into debt. This temptation is inherent in a democracy."[21]

This temptation of democracy raises the further question of whether supranational control over national budgets should therefore not be a *sine qua non* of EU membership. However, if the answer to the crisis is an even closer union, with deeper integration and more supranational control, this would mean, at the same time, less democratic participation at supranational level, since according to the Lisbon Treaty, most of the decisions are still made by the governments of the Member States, and not the parliaments or directly elected EU politicians. Deeper political and economic integration will require a stronger democratic basis and broad support from citizens. Thus, the EU will have to develop strategies that strengthen processes of democratic decision-making, including the strengthening of the institutional framework

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18 *Taylor*, Analysis – Euro debt crisis fells governments, Reuters U.K. of 11/9/2011.

19 *Scharpf*, (fn. 3), ZSE 9 (2011), p. 166.

20 See, *Hudson*, Debt and Democracy: Has the Link been Broken?, Credit Writedowns of 6/12/2011; *Feld/Kirchgässner*, Does Direct Democracy Reduce Public Debt?, Evidence from Swiss Municipalities, Public Choice 109 (2001), pp. 347-370.

21 *Schmidt*, Menschen bei Maischberger of 7/8/2012; see also *Schragger*, Democracy and Debt, Yale Law Journal 121 (2012), p. 860; *Hudson*, Democracy and Debt, FAZ of 5/12/2011, p. 5.

not for co-ordinated or intergovernmental[22] purposes; nor for federal purposes;[23] but solely for the strengthening of supranational strategies for economic and fiscal discipline. However, one has to be acutely aware of the fact that the latter is seen in most EU States as the core competence of national parliaments. The German Federal Constitutional Court has indicated that if anyone tried to push Germany in similar ways to Greece, opposition based upon the primacy of sovereignty[24] and democracy[25] would be forthright. *Van Rompuy* in his report "Towards a genuine economic and monetary union" writes that "decisions on national budgets are at the heart of Europe's parliamentary democracies. Moving towards more integrated fiscal and economic decision-making between countries will therefore require strong mechanisms for legitimate and accountable joint decision-making."[26]

22 *Emmanouilidis/Zuleeg*, Thinking beyond a fiscal union, European Policy Centre, Commentary of 20/12/2011.

23 With federal here a type of government is characterized by both a central (federal) government and states or regional governments that are partially self-governing. A federation (Latin: *foedus*, *foederis*, "*covenant*"), also known as a federal state, according to that meaning, would be political entity characterized by a union of partially self-governing states or regions united by a central (federal) government. In a federation, the self-governing status of the component states, as well as the division of power between them and the central government, are typically constitutionally entrenched and may not be altered by a unilateral decision of the latter.

24 See, BVerfGE 123, 267 (361); see also BVerfGE 89, 155 (185).

25 See, BVerfG, 2 BvR 987/10, para. 126. In its judgment of 7 September 2011 on the aid for Greece, the Federal Constitutional Court has rejected as unfounded three constitutional complaints which are directed against German and European legal instruments and other measures in connection with the aid to Greece and with the euro rescue package. Article 38 GG demands, in connection with the tenets of the principle of democracy (Article 20(1) and 20(2), Article 79(3) GG), that the decision on revenue and expenditure of the public sector remain in the hand of the German Bundestag as a fundamental part of the ability of a constitutional state to democratically shape itself. As elected representatives of the people, the Members of Parliament must remain in control of fundamental budget policy decisions in a system of intergovernmental governance as well. When establishing mechanisms of considerable financial importance which can lead to incalculable burdens on the budget, the German Bundestag must therefore ensure that later on, mandatory approval by the Bundestag is always obtained again.

26 *Van Rompuy*, Towards a genuine economic and monetary union, Report by President of the European Council, Brussels of 26/6/2012, EUCO 120/12, p. 6. The report proposes a vision for a stable and prosperous EMU based on four essential building blocks: (a) An integrated financial framework to ensure financial stability in particular in the euro area and minimise the cost of bank failures to European citizens. Such a framework elevates responsibility for supervision to the European level, and provides for common mechanisms to resolve banks and guarantee customer deposits. (b) An integrated budgetary framework to ensure sound fiscal policy making at the national and European levels, encompassing coordination, joint decision-making, greater enforcement and commensurate steps towards common debt issuance. This framework could include also different forms of fiscal solidarity. (c) An integrated economic policy framework which has sufficient mechanisms to ensure that national and European policies are in place that promote sustainable growth, employment and competitiveness, and are compatible with the smooth func-

The conclusion to be drawn from this short analysis is that the current situation poses three main questions: First, is a supranational institution necessary to take control of sovereign debt and national budgets? Second, how should such a supranational body be democratically legitimized? And third, how can we succeed in convincing the European population of the need for this reform? While none of these questions is exactly new, the European debt-crisis demonstrates how urgently these questions need to be addressed.

1. The crisis of the monetary union and the sovereign debt crisis

A brief overview of the crisis of the monetary union, the European sovereign debt crisis and the emergency measures taken by European leaders is necessary in order to enable a coherent advance of this discussion.[27]

a) Course of the crisis

From late 2009, fears of a sovereign debt crisis developed among investors as a result of the rising government debt levels around the world, together with a wave of downgrading of government debt in some EU states.[28] In the first few weeks of 2010, there was renewed anxiety about excessive national debt. Dismayed, investors demanded increasingly higher interest rates from several governments with higher debt levels, deficits and current account deficits. This in turn made it difficult for some governments to finance further budget deficits while simultaneously servicing their existing debts, particularly when economic growth rates were low, and when a high percentage of debt was in the hands of foreign creditors, as in the cases of Portugal and Greece.[29] Elected politicians have focused on austerity measures, including higher taxes and lower expenditure. This has been blamed for contributing to social unrest. Especially in countries where government budget deficits and sovereign debts have increased sharply, a crisis of confidence has emerged.

tioning of EMU. (d) Ensuring the necessary democratic legitimacy and accountability of decision-making within the EMU, based on the joint exercise of sovereignty for common policies and solidarity.

27 See for a more detailed overview, *Calliess*, Perspektiven des Euro zwischen Solidarität und Recht – Eine rechtliche Analyse der Griechenlandhilfe und des Rettungsschirms, ZEuS 14 (2011), p. 215; *Ruffert*, The European Debt Crisis and European Union Law, Common Market Law Review 48 (2011), p. 1777.

28 Standard & Poor's, Standard & Poor's Puts Ratings On Eurozone Sovereigns On Credit Watch With Negative Implications (2011-12-05 EST).

29 *Ventura/Aridas*, Public Debt as Percent of GDP 2006-2013, www.gfmag.com/tools/global-database/economic-data/10394-public-debt-by-country.html#axzz1x8fVwqYB (13/3/2013).

b) EU emergency measures

Concerns about the sustainability of national debt of certain EU States intensified in early 2010.[30] Consequently, the European Commission developed new strategies,[31] leading to Europe's finance ministers deciding to approve a rescue package aimed at ensuring financial stability across Europe by creating the European Financial Stability Facility (EFSF),[32] which is basically a "special-purpose vehicle"[33] financed by members of the Eurozone. It was agreed upon with the objective of preserving financial stability in Europe by providing financial assistance to Eurozone states in economic difficulty.[34] Furthermore, the European Financial Stabilization Mechanism (EFSM)[35] was created. This is an emergency-funding program reliant upon funds raised on the financial markets and guaranteed by the European Commission using the budget of the European Union as collateral, supervised by the Commission. The EFSF, like the EFSM, will be replaced by the permanent rescue funding program, called the European Stability Mechanism (ESM).[36]

A new reform of the Stability and Growth Pact[37] was initiated in March 2011, aimed at straightening the rules by adopting an automatic procedure for imposing penalties

30 Cf. *Ruffert*, (fn. 27), pp. 1777, 1779 et seq.

31 Communication from the Commission, Europe 2020, A strategy for smart, sustainable and inclusive growth, COM (2010) 2020 final of 3/3/2010; Communication from the Commission, Reinforcing economic policy coordination, COM (2010) 250 final of 12/5/2010.

32 The European Financial Stability Facility (EFSF) is a company which was agreed by the countries that share the euro on 9 May 2010 and incorporated in Luxembourg under Luxembourgish law on 7 June 2011. The EFSF's objective is to preserve financial stability of Europe's monetary union by providing temporary financial assistance to euro area Member States if needed. On 24 June 2011, the Head of Government and State agreed to increase EFSF's scope of activity and increase its guarantee commitments from 440 billion Euro to 780 billion Euro which corresponds to a lending capacity of 440 billion Euro and on 21 July 2011, the Heads of Government and State agreed to further increase EFSF's scope of activity; cf. www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/123979.pdf and www.efsf.europa.eu/attachments/esm_treaty_en.pdf (13/3/2013).

33 *Regling*, Chief bail-out officer, The new head of the euro-zone, The economist of 1/7/2010, www.economist.com/node/16485600?story_id=16485600&fsrc=rss (13/3/2013).

34 The Council and the Member States decided on a comprehensive package of measures to preserve financial stability in Europe, including a European financial stabilisation mechanism, with a total volume of up to EUR 500 billion, www.consilium.europa.eu/ue docs/cms_data/docs/pressdata/en/ecofin/114324.pdf (13/3/2013).

35 Council Regulation (EU) 407/2010 of 11/5/2010 establishing a European financial stabilisation mechanism, OJ L 118 of 12/5/2010, p. 1.

36 See, www.european-council.europa.eu/media/582311/05-tesm2.en12.pdf (13/3/2013).

37 The Stability and Growth Pact (SGP) is an agreement, among the 27 Member states of the European Union, to facilitate and maintain the stability of the Economic and Monetary Union. Based primarily on Articles 121 and 126 of the Treaty on the Functioning of the European Union, it consists of fiscal monitoring of members by the European Commission and the Council of Ministers and, after multiple warnings, sanctions against offending members. The pact was adopted

in the case of breaches of either the deficit or the debt rules.[38] By the end of the year Germany, France and some other EU countries went a step further and vowed to create a fiscal union across the Eurozone with strict and enforceable fiscal rules and automatic penalties embedded in the EU treaties.[39] On 9 December 2011 at the European Council meeting, all 17 members of the Eurozone and six aspiring EU States agreed on a new *intergovernmental* treaty, the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (TSCG or Fiscal Compact).[40] Its main purpose is to put strict caps on government spending and borrowing, with penalties for those countries that violate the limits, including the commitment of each participating country to introduce a balanced budget amendment.[41] All other non-Eurozone countries apart from the United Kingdom have declared their readiness to join, subject to parliamentary vote. The treaty took effect on 1 January 2013 since 16 members in total and 13 members of the Euro-area had ratified it by then.[42] As of 19 January 2013, the Fiscal Compact had been ratified by 13 of 17 Eurozone states[43] and by 4 of the 8 other signatories.[44]

To sum up, crisis mechanisms have been set up by the EU, including the European Financial Stability Mechanism – EFSM; and the European Financial Stability Facility – EFSF. Financial assistance has been provided to some countries. Governments in

in 1997 so that fiscal discipline would be maintained and enforced in the EMU. Member States adopting the euro have to meet the Maastricht convergence criteria, and the SGP ensures that they continue to observe them. The actual criteria that Member States must respect are: an annual budget deficit no higher than 3 % of GDP (this includes the sum of all public budgets, including municipalities, regions, etc.) and a national debt lower than 60 % of GDP or approaching that value. See, for the structure and mechanism of the deficit criteria of the European primary law *Dittrich*, Die Defizitkriterien des Europäischen Primärrechts, ZSE 9 (2011), p. 574 et seq.

38 Council reaches agreement on measures to strengthen economic governance, Brussels of 15/3/2011, 7691/11, PRESSE 63; *Regling*, Die Währungsunion – auf dem Weg in eine neue Stabilitätskultur, ZSE 9 (2011), p. 305 et seq.

39 See, www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/120296.pdf (13/3/2013).

40 See, http://european-council.europa.eu/media/639235/st00tscg26_en12.pdf (13/3/2013); cf. *Schorkopf*, Europas politische Verfasstheit im Lichte des Fiskalvertrages, ZSE 10 (2012), p. 2 et seq.

41 By this Treaty, the Contracting Parties agree, as Member States of the European Union, to strengthen the economic pillar of the economic and monetary union by adopting a set of rules intended to foster budgetary discipline through a fiscal compact, to strengthen the coordination of their economic policies and to improve the governance of the euro area, thereby supporting the achievement of the European Union's objectives for sustainable growth, employment, competitiveness and social cohesion.

42 See, http://european-council.europa.eu/home-page/highlights/the-fiscal-compact-ready-to-be-signed-(2)?lang=en (13/3/2013).

43 Austria, Cyprus, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Portugal, Slovakia, Slovenia and Spain.

44 Denmark, Lithuania, Latvia and Romania.

these and other affected countries have implemented severe austerity measures and started to put structural reform programs in place.

c) Controversies and political impact of the crisis

There has been substantial criticism of the austerity measures implemented by most EU nations to counter the current debt crisis.[45] Handling of the ongoing crisis has led to the premature end of a number of European national governments and impacted the outcome of many elections.[46] The Greek legislative election in May 2012, for example, was the first in the history of the country to vote out the bipartisanship of PASOK[47] and New Democracy parties, which had ruled the country for over 40 years. This was widely seen as retribution for their support of the strict measures proposed by the country's foreign lenders and the "Troika" consisting of the EU, the IMF and the European Central Bank. The extreme right-wing and left-wing political parties that have opposed the policy of strict measures won the majority of the votes. This resulted also in changes of government in Ireland, Finland, Portugal, Denmark, Greece, Italy and France.

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45 Cf. *Habermas*, Die Krise der Europäischen Union im Lichte einer Konstitutionalisierung des Völkerrechts – Ein Essay zur Verfassung Europas, ZaöRV 2012, p. 2; *Scharpf*, (fn. 3), ZSE 9 (2011), p. 176.

46 Republic of Ireland – November 2010 – In return for its support for the IMF bailout and consequent austerity budget, the junior party in the coalition government, the Green Party set a time-limit on its support for the Cowen Government which set the path to early elections in February 2011, following which *Enda Kenny* became PM; Portugal – March 2011 – Following the failure of parliament to adopt the government austerity measures, PM *José Sócrates* and his government resigned, bringing about early elections in June 2011; Finland – April 2011 – The approach to the Portuguese bailout and the EFSF dominated the April 2011 election debate and formation of the subsequent government; Spain – July 2011 – Following the failure of the Spanish government to handle the economic situation, PM *José Luis Rodríguez Zapatero* announced early elections in November. Following the elections, *Mariano Rajoy* became PM; Slovenia – September 2011 – Following the failure of June referendums on measures to combat the economic crisis and the departure of coalition partners, the *Borut Pahor* government lost a motion of confidence and December 2011 early elections were set, following which *Janez Janša* became PM; Slovakia – October 2011 – In return for the approval of the EFSF by her coalition partners, PM *Iveta Radičová* had to concede early elections in March 2012, following which *Robert Fico* became PM; Italy – November 2011 – Following market pressure on government bond prices in response to concerns about levels of debt, the Government of *Silvio Berlusconi* lost its majority, resigned and was replaced by the Government of *Mario Monti*; France – May 2012 – The French presidential election, 2012 became the first time since 1981 that an incumbent failed to gain a second term, when *Nicolas Sarkozy* lost to *Francois Hollande*; Greece – November 2011 – After intense criticism from within his own party, the opposition and other EU governments, for his proposal to hold a referendum on the austerity and bailout measures, PM *George Papandreou* announced his resignation in favour of a national unity government between three parties.

47 Panellinio Sosialistiko Kinima.

2. Structural weaknesses of the EU

During national attempts to get the crisis under control, economic policy co-ordination in the EU and the Eurozone has changed.[48] To tackle the crisis, the EU has undertaken a radical overhaul of its economic governance structures, especially in the Euro area, and of its financial sector.[49] These are integral to the new "economic governance structures" of the EU,[50] which were concerned with reducing and preventing macro-economic imbalances.[51] The reinforcement of the Stability and Growth Pact (SGP) which is embedded in the legislative package of six legal acts – the so-called six-pack[52] that entered into force on 13 December 2011 – establishes a more robust Union framework for economic and fiscal policy coordination and surveillance. It seems to mark a first step in order to establish a regime of "supranational economic management".[53]

However, all these measures are subject to *de facto* and *de jure* limitations since due to the operation of TFEU provisions on economic policy *co-ordination* – Article 5 and

48 It now consists of three pillars. (1) The Integrated Guidelines ensure coordination via an extensive reporting system that encompasses guidelines for economic and employment policies. These objectives are complemented by the Euro Plus Pact, a political agreement reached between 23 EU Member States. (2) Fiscal policy coordination is conducted via the Stability and Growth Pact. The Fiscal Compact strengthens fiscal policy coordination between 25 EU Member States. (3) The newly introduced macroeconomic surveillance is a target-based mechanism underpinned by sanctions.

49 As the European Commission rightly points out in its statement for Schuman Day at 9 May 2012 – Time to decide: action for growth, action for jobs.

50 The Economic Governance Package (Economic Six-pack) is a legislative package that reformed and supplemented the existing rules. The Euro Plus Pact and the intergovernmental Fiscal Compact were supplementary new governance instruments.

51 Regulation (EU) No 1174/2011 of the European Parliament and of the Council of 16 November 2011 on enforcement measures to correct excessive macroeconomic imbalances in the euro area, OJ L 306 of 23/11/2011, p. 8; 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, OJ L 306 of 23/11/2011, p. 25; cf. also *Scharpf*, (fn. 3), ZSE 9 (2011), p. 188 et seq.

52 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 1174/2011 of the European Parliament and of the Council of 16 November 2011 on enforcement measures to correct excessive macroeconomic imbalances 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; 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; 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; Council Directive 2011/85/EU of 8 November 2011 on requirements for budgetary frameworks of the Member States. All published in OJ L 306 of 23/11/2011.

53 *Scharpf*, (fn. 3), ZSE 9 (2011), p. 189.

Article 119-144. Firstly, the macro-economic situations and competitiveness of European countries are still very diverse. Imbalances in the Euro area are at the root of the present crisis.[54] In the case of Greece this fact is a fundamental difference between the Member States of the Eurozone that was not given adequate attention when the euro was founded.[55]

Secondly, the current European legal system permits only Member States to carry out economic policy action themselves – Article 119 TFEU. The EU currently has no power to take such action. Article 119 para. 1 TFEU reads: "For the purposes set out in Article 3 of the Treaty on European Union, the activities of the Member States and the Union shall include, as provided in the Treaties, the adoption of an economic policy which is based on the close coordination of Member States' economic policies, on the internal market and on the definition of common objectives, and conducted in accordance with the principle of an open market economy with free competition." The competences provided under Article 121 of TFEU in paras. 3 and 4 contain only reporting obligations for the Member States and the Commission's competence to give recommendations. However, para. 6 of this provision does not authorize the adoption of a Regulation,[56] which would enable the Commission to impose mandatory sanctions. Thus, targets from Brussels may at most be formulated along a common target corridor for all EU States as they are not set on a country-specific basis and cannot be enforced by the Union. This enforcement dilemma has weighted most heavily upon the Eurozone.[57] This probably explains why there are common guidelines and targets that can only be made specific once the Member State has delivered some input. The same is true for all reforms of state structures like tax administration, social administration and public service employment, just to name the most serious factors.

The current European legal framework requires that all economic policy measures continue to be initiated at the Member State level. Economic policy co-ordination can therefore at best act as a means of assessing the effectiveness of national economic policy. Thus, policy coordination of national strategies may be the right step forward at the moment. Nonetheless, it could not launch concrete country-specific measures

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54 *Hein/Truger/van Treeck*, The European Financial and Economic Crisis: Alternative Solutions from a (Post-)Keynesian Perspective, in: Arestis/Sawyer (eds.), The Euro Crisis, 2012, pp. 35, 37 et seq.

55 *Cassis*, Life With and Without Sovereign Defaults: Some Historical Reflections, in: Allen/Carletti/Corsetti (eds.), Life in the Eurozone with or without Sovereign Default, 2011, p. 125; *Sinn*, Die Target-Falle, 2012; *Belke/Schnabl/Zemanek*, Current account imbalances and structural adjustment in the euro area, Journal of International Economics and Policy 7 (2010), pp. 83-127.

56 *Joerges*, Europas Wirtschaftsverfassung in der Krise, Der Staat 51 (2012), p. 372; *Höpner/Rödl*, Governance in der Staatsschuldenkrise, ZBW – Leibniz-Informationszentrum Wirtschaft 2012, p. 219.

57 *Lane*, Rules and Incentives in the Eurozone Crisis, ZSE 10 (2012), p. 270.

as it was intended to serve merely as a reactive instrument via the assessment of national policy.[58] "There are still loopholes, exemptions and wide discretionary powers. Under current European law the European institutions are not bestowed with the power they would require for greater rights of intervention. With regard to expedient coordination this remains a shortcoming that results in economic policy coordination always only being able to follow national policy via an iterative process of constant *ex post* monitoring of success, but not being able to take the lead."[59] Weak surveillance and an absence of enforcement mechanisms have resulted in a situation where only the principle of debt mutually can provide the Eurozone with urgently needed breathing space.[60]

This situation will not change with the recent reforms. All these formats described above have not yet sufficiently defined an effective enforcement mechanism. For instance according to Article 8 of TSCG (Fiscal Compact),[61] only the implementation of the treaty into national law can be controlled by the Commission and the European Court of Justice (Article 273 TFEU) but not, however, the content of the treaty itself.[62] In addition Article 2 para. 2 TSCG states that the TSCG: "shall apply [only] insofar as it is compatible with the Treaties on which the European Union is founded and with European Union law. It shall not encroach upon the competence of the Union to act in the area of the economic union."[63]

This is also true for a new regulation on "common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the Euro area,"[64] and will also not be changed with the regulation

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58 *Heinen*, European economic policy – A profile of the coordination mechanisms, DB Research Briefing, European integration of 2/5/2012, p. 1.

59 Ibid.

60 *Lane*, (fn. 57), p. 267.

61 According Article 8 para. 1 TSCG the European Commission is invited to present in due time to the Contracting Parties a report on the provisions adopted by each of them in compliance with Article 3(2). If the European Commission, after having given the Contracting Party concerned the opportunity to submit its observations, concludes in its report that such Contracting Party has failed to comply with Article 3(2), the matter will be brought to the Court of Justice of the European Union by one or more Contracting Parties. Where a Contracting Party considers, independently of the Commission's report, that another Contracting Party has failed to comply with Article 3(2), it may also bring the matter to the Court of Justice. In both cases, the judgment of the Court of Justice shall be binding on the parties to the proceedings, which shall take the necessary measures to comply with the judgment within a period to be decided by the Court of Justice.

62 See, *Herzmann*, Europäische Währungsstabilität über Bande gespielt, Ein Überblick über den Fiskalpakt, ZJS 2 (2012), pp. 168, 171 et seq.; cf. *Schorkopf*, (fn. 12), p. 13 who draws a different interpretation into consideration.

63 See, *Joerges*, (fn. 56), p. 373.

64 Proposal for a Regulation of the European Parliament and of the Council on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the euro area, COM (2011) 821 final.

on "the strengthening of economic and budgetary surveillance of Member States experiencing or threatened with serious difficulties with respect to their financial stability in the euro area".[65]

Under the European Semester, the Commission submitted on 1 June 2012 to the Council, 27 Recommendations for a Council Recommendation combining economic and employment recommendations with Council opinions on stability and convergence programs. This was based on Article 121 para. 2 and Article 148 para. 4 of TFEU, as well as a recommendation on the implementation of the broad guidelines for the economic policies of the Member States whose currency is the euro, based on Articles 136 and 121 TFEU.[66] With these recommendations[67] the Commission hopes, at least, that it has taken a decisive step to support each EU State in delivering growth and jobs, and thus put the whole EU economy back on track. Regardless of whether these recommendations are based on a thorough assessment, as long as the Commission has no supranational power to implement them, it will be a weak instrument.

As a result, the sovereign debt crisis is putting the monetary union at risk, and the issue of the economic and fiscal governance at the centre of the political agenda. The Council has discussed several proposals with an essentially *intergovernmental* character,[68] up to the signing of the Fiscal Compact. It is remarkable, however, that the Commission initially made relatively weak proposals to ensure a better coordination of national fiscal policies and can be taken as evidence for an all too weak body.[69]

What the EU lacks is a powerful government. Consequently, it was unable to intervene at the start of the current debt crisis, and still today does not offer convincing answers to the markets. Essentially, the issue is that a single market of twenty-seven countries, a single currency for seventeen countries, but without a single fiscal and economic policy, is increasingly proving unsustainable. The Commission's President writes: "While much has been done here, for instance through the six-pack and the Country-Specific Recommendations, further steps are crucial to combine specific conditions with specific incentives and to really make the economic and monetary

65 Ibid.

66 http://register.consilium.europa.eu/pdf/en/12/st11/st11296-re03.en12.pdf (13/3/2013).

67 These kind of recommendations were given on 7 June 2011 for the first time and updated on 30 May 2012, http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm (13/3/2013). These texts were examined and finalised by the Council, meeting in its EPSCO formation on 21 June, its ECOFIN formation on 22 June, its General Affairs formation on 26 June and endorsed by the European Council on 28-29 June.

68 Cf. *Steiger*, Mehr Demokratie in der EU – aber wie?, ZRP 13 (2012), p. 14.

69 Reinforcing economic policy coordination – Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the Economic and Social Committee, and the Committee of the Regions of 12/5/2010.

union sustainable. To deliver lasting results, we need to develop a fully equipped Community economic governance together with a genuine, credible Community fiscal capacity."[70]

We can tentatively conclude that a coherent economic and financial policy coordination strategy in the European context can only be realized if institutions are empowered which are, firstly, on a supranational level and secondly, strong enough to enforce a common economic and financial policy. Even then however, the question of the democratic legitimacy of these more powerful institutions arises. Ultimately, the credibility and sustainability of the Economic and Monetary Union depends on the institutions and the political construct behind it. This is why the Economic and Monetary Union raises the question of a political union and a European democracy to underpin it.

3. Democratic weakness of the EU

Sometimes the "democratic deficit" of the EU has been scolded wrongly in the past. There have been many political steps taken in a bid to address it. The European Parliament is now much more powerful than two or three decades ago; the European Commission is more accountable to the European Parliament. Ministers from EU Member States now meet in the Council of Ministers in public and not in private when it deliberates and votes on a draft legislative act – Article 16 para. 8 TEU. However, the European Union still lacks a strong supranational institution for a common economic and financial policy with a democratic legitimacy which would be widely accepted.

But particularly in a moment of crisis the democratic legitimacy of EU institutions is vital. Today most of the mechanisms to solve the crisis are imposed onto other EU countries by EU summits, the European Commission and the IMF.[71] One special and current political dilemma in the EU is that some people claim that the European Council – at least during the crisis – has become "unbalanced and Germany-dominated".[72] The people of Italy, Spain, Ireland, Portugal and Greece feel undermined by others in their political and democratic choices.[73] Not only the people in Greece have the impression that they have lost their democratic right to vote and that the German Chancellor and the French President together with the IMF and the European Central Bank *de facto* rule their country. In the face of the sovereign debt crisis,

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70 *Barroso*, (fn. 5).

71 *Hughes*, EU democracy in crisis mired in a perfect storm or rebounding, open Democracy of 16/1/2012.

72 Ibid.

73 Cf. *Scharpf*, (fn. 3), ZSE 9 (2011), p. 187.

democracy in some states has been effectively suspended, and almost forgotten as an important factor in addressing national and EU problems.[74]

Neither the European Commission nor the Council nor any other inter-governmental body like the Governing Council of the European Central Bank have the power, an adequate democratic mandate or legitimacy to overrule elected governments. Passing such control to a European institution in the context of the EU's entrenched democratic weaknesses would undermine its democratic legitimacy even further.

Joerges and *Rödl* underscore the discrepancy and write that: "A growing systemic demand for European correction of national policies is prescribed by virtue of the current structures of European Monetary and Economic Union. On the one hand, the Euro demands economic convergence between member states. On the other hand, thanks to its unitary exchange rate, its unitary bank rate, and […] common budgetary policy, the Euro nonetheless forces member state economies inexorably apart. The member states are expected to act as servants of two categorically different masters, namely the expectation of their citizens that they will respect the democratic institutions and will formation on the one hand, and the macro-economic imperatives as defined by a supranational regulatory machinery on the other. Consequently, because these discrepancies are not simply felt in single member states, but instead impact upon the Eurozone and EU as whole, the Union level must intervene in order to facilitate realization of macro-economic imperatives."[75] The status of the European Monetary Union is uncommon in that as a centralized monetary authority it has a relatively weak set of political institutions and identities, lacks fiscal competencies.

A lack of common identity is another core problem which arises from the still essentially domestic nature of political life in Europe. Discussions of economic and financial policies are conducted in each country largely on the basis of national information and national considerations. "We have achieved a Europe of coordinating institutions and open markets but we lack a European citizenry, a pan-European, supranational public sphere"[76] and a supranational democracy.

Therefore, supranational democratic decision-making processes have to be developed since it is these long-term problems of weak supranational powers unsupported by democratic processes and the power of legitimacy that have helped to ensure that a deep economic crisis is also a deep political crisis and a crisis of democracy.

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74 *Linden-Retek*, Stronger Europe or democratic sovereignty? Yes, please! – In search of a new European politics, open Democracy of 12/2/2012.

75 *Joerges/Rödl*, Would the election of a Member of the European Parliament as President of the Commission make democratic sense?, Verfassungsblog of 4/7/2012.

76 Ibid.

What we learn from the current situation is that there are mainly three connected problems. Firstly, there is no supranational enforcement mechanism; secondly, there is only a weak democratic legitimization of supranational institutions like the Commission. Thirdly, there is no "supranational public sphere".

III. Developing a supranational power democratically legitimized

This leads us to one of the most pressing questions: How to develop democracy at supranational level? How can we improve the institutional framework in the EU? Two basic considerations arising from the analysis above should form the starting point. Firstly, a strong and powerful institution with supranational power and far-sightedness instead of an externally determined decision-making power is needed. Secondly, this institution has to be democratically legitimized.

1. A strong and powerful supranational institution

The capacity of EU institutions to make collective decisions should be strengthened in the sense of stronger *output-oriented* legitimation.[77] "In a truly integrated market supervision cannot remain decentralized because the decisions that supervisors take do not only affect national taxpayers."[78] This would require three components. First, reducing the degree of inter-governmentalism in decision-making as it undermines democratic legitimacy by diluting the unanimity principle. Second, strengthening the rules that constrain national decision-making in order to limit differentiation of States' fiscal capabilities at any one time. Third, establishing a more effective enforcer of those rules in order to ensure compliance.

As indicated above, an institution that is technically able to fulfil the task of a sustainable economic and financial policy which is quite different from a national-interest based short-term focused economic policy is already existent. This is the European Commission. Even if some people claim that the Commission is already too powerful, the opposite is true. It should have more supranational powers and enforcement powers in all concerns of a common economic policy to cope with the current issues. Without a strong Commissioner for economic and financial affairs,

77 See, *Scharpf*, Demokratietheorie zwischen Utopie und Anpassung, 1970; *Scharpf*, Regieren in Europa, Effektiv und demokratisch?, 1999. *Scharpf* has been pleading for an output-oriented rather than an input-oriented legitimisation of European Union policies.

78 *Smaghi*, European democracies and decision-making in times of crisis, Member of the Executive Board of the ECB, Speech by Hellenic Foundation for European and Foreign Policy, Poros of 8/7/2011, http://www.ecb.int/press/key/date/2011/html/sp110708.en. html (13/3/2013).

there will never be a coherent strategy for solving the problems currently confronting the EU. As long as important EU decisions remain strongly premised on national interests, its efficiency will remain moot.

The idea of a supranational body was developed 60 years ago to prevent Germany and France building their war industries of coal and steel. Today the risk of division in Europe is not ruled by the production of coal and steel, but by the regulation of the European (and global) financial markets. 60 years ago, the need to build a peaceful Europe had priority. Today it is about the role of Europe in a world that is increasingly dominated by economies that are significantly larger than even the largest European economy.[79] Thus, it seems obvious that we need a supranational power to manage these challenges.

A proposal made by *Smaghi*,[80] deserves consideration as a next step: "Member States parties could transfer to a supranational agency the right to issue their debt, up to levels agreed upon by the Council in the context of the yearly approval of the stability programs, to be previously decided by the national parliaments. Then it would no longer be possible to issue debt to cover expenditure over the debt limit set every year. Had such a system been in place, Greece would not have been able to hide nor incur the higher deficits and debts in 2009 and before that. It would have been forced to adopt corrective measures at a much earlier stage. The same would have applied to other countries".

However, it is a matter of fact that the core problem regarding the current situation is a lack of political will[81] of the people to reach an agreement on the missing supranational enforcement body. For this reason, the countries of the European Monetary Union should see the crisis as an opportunity to take the intention seriously and increase its capacity for political action at the supranational level. The Greek disaster is a clear warning of the "post-democratic path" that politicians have taken. Not to be misunderstood, it must be stated that in a situation with the present treaties, they had no other choice than a regime of bureaucrats! They took the right approach in making a decision on an intergovernmental level in the absence of a supranational one. There should be no need for concern as "similar transitional governments are, after all, not unusual".[82] However, the pressure to calm "the market" is now so intense that departures from democratic rules may well be accepted

79 *Crouch*, Der europäische Netzwerkeffekt, FAZ of 14/8/2012.

80 *Smaghi*, (fn. 78).

81 Also as far as the "new international financial architecture" and international regulation of financial markets is concerned it is mainly a lack of political will or courage to come to an agreement. See, inter alia, *Nunnenkamp*, Liberalisation and Regulation of International Capital Flows: Where the Opposites Meet, in: Grote/Marauhn (eds.), The Regulation of International Financial Markets: Perspectives for Reform, 2006, pp. 259-276; *Voigt*, Do we need a new international financial architecture?, Many questions and some preliminary policy advice, in: ibid., pp. 277-295.

82 *Wirtén*, Where were you when Europe fell apart?, open Democracy of 8/1/2012.

in an acute crisis situation in the short term but not in the long term. A concentration of power in the hands of an inter-governmental Conference which premises its agreements on national parliaments without room for real decisions is not the path to follow for Europe.

2. A democratic legitimized supranational institution

The proposals for stronger rules and tougher enforcement mechanisms raise questions of legitimacy and accountability. It is of particular importance that the accountability of the supranational institutions is determinable and the democratic legitimacy of the most powerful institutions improved.

a) A directly elected "European Government"

Some kind of a directly elected "European Government" is needed. If a strong supranational body were established, for example elected for seven years with the option of re-election once, one could imagine a much more accepted political body that would be better able to deal with problems in the sense of sustainable long term strategies than the Council can today. The EU needs a real economic government to manage economic and fiscal policies.

Nonetheless, some might argue that an EU government with supranational powers, elected for seven years might result in less democratic governance instead of more. But that is not necessarily the case because first of all, there would be a supranational body that was directly democratically legitimized. Secondly it would be an institution focused on EU premised strategies rather than the present one that is premised on national interests. This is what is needed to face up to global competition, to fight for our values (human rights, workers rights, social standards, etc.) and our system of social market economy and the regulation of financial markets.[83] With a seven year period the politicians in office would also once again be able to think long term rather than for the next two years from one election to another.

Hughes argues that for democratically elected governments to come together in intergovernmental fora and agree a free trade pact, for example, is legitimate and fairly easy for the public to understand.[84] But regarding more and more powers, for instance aspects of labour standards, parts of criminal justice, and in particular the important decisions on regulation to stem financial crises, as well as other decisions having a direct impact on national budgets, the authority of the EU has grown and not diminished over the years. "The practice of using intergovernmental meetings and summits started to create a distance from EU citizens".[85] It resulted in a complex lack

83 See, *Pöttering*, Traum? Hoffnung? Notwendigkeit!, FAZ of 13/8/2012.

84 *Hughes*, (fn. 71).

85 Ibid.; cf. also *Steiger*, (fn. 68), p. 14.

of transparency and accountability. This is inimical to development of longer lasting democratic traditions for any society, including the EU for that matter.

Nation-states, democratic national elections, national parliaments and national governments will remain critical to the EU in order to guarantee social stability in particular. But in addition to this an EU government with democratic legitimization of all citizens of the EU is required. The current financial crisis has demonstrated beyond doubt that the Union is bound to a common destiny and must provide support for one another. But for the French, Irish or the Greek people to contend that another political leader elected by the Germans only and themselves is actually running their business is to place the whole EU agenda at great risk of rejection by the citizenry. A democratic Union which by no means has to take the form of a Federal EU state, must present a different face.

b) European elections

This proposal requires periodic elections by citizens to the governing institutions of the EU. The Lisbon Treaty does indeed provide that in the nomination of the Commission President to the European Council by qualified majority, the majority in the European Parliament is to be "considered". Parliament however, has not implemented this institutional capability, as the parties refused to nominate a candidate for the office of the President of the Commission. Elections to the European Parliament were therefore completely rooted in the domestic sphere and served parties and voters in particular to domestic political purposes. Thus, at least one institution has to be created that would allow the Europeanization of electoral-related decision-making. Additionally, one can think about European-wide referenda occasionally on specific issues.[86]

c) Direct election of the President of the Commission

The President of the European Commission, who appoints two Vice-Presidents, one for Foreign Affairs and one for Economic and Financial matters, should be elected directly by the European people. The direct election of a single President for the two posts would create a new form of dual executive branch with a strong legitimate head to ensure cohesion of the two bodies. Every seven years the European parties should present a candidate for the President of the Commission and a program to politicize the European election and strengthen the Commission's popular legitimacy and its role as the European "government". There should be two rounds of voting. The first one, together with the elections of the European Parliament, and the second

[86] Cf. *Henke*, Plädoyer für kürzere Legitimationsketten in der Europäischen Union, EuR 45 (2010), p. 129 et seq.

one – organized as a run-off two weeks later – in which the two candidates with the highest number of votes compete against each other. Together with the first round of election the leading candidate should present a shadow cabinet, which suits his political and personal preferences. There should be one member in the cabinet of each Member State. The President of the Commission should be the President of the European Council too, called the President of the European Union.

Originally postulated by British political scientist and legal scholar, *Bogdanor*,[87] on the occasion of the Single European Act, the notion of a directly elected President of the Commission was further developed by *Hix*[88] and continues to be put forward strongly by *Decker* and *Sonnicksen*.[89] The introduction of a direct election was furthermore proposed by *Fischer*,[90] later by former Irish Prime Minister *Bruton*,[91] German Finance Minister *Schäuble*,[92] and also included in the party program of the German Christian Democratic Union (CDU) in November 2011.[93]

Decker and *Sonnicksen* rightly argue that: "[…] the EU parliamentary practice would remain unaffected by the direct election of the Commission President. The European Parliament could continue to democratize further as the EU popular chamber […], expand its legislative competences relative to the Council of Ministers [as a second chamber] and still maintain its powers of executive control over the Commission (including the power to confirm nominated Commissioners before appointment). The Commission would in fact become more politicized, but its institutional integrity and independence, upon which, among others, the Community Method is ultimately based, would not even be compromised. That independence is a valuable asset, not only in the Commission's relationship to the member states, but also with the

87 *Bogdanor*, The Future of the European Community: Two Models of Democracy, Government and Opposition 21 (1986), pp. 161-176.

88 *Hix*, Elections, Parties, and Institutional Design, A Comparative Perspective on European Union Democracy, West European Politics 21 (1998), pp. 19-52.

89 Cf. *Decker*, Demokratie und Demokratisierung jenseits des Nationalstaates: Das Beispiel der Europäischen Union, Zeitschrift für Politikwissenschaft 10 (2000), pp. 585-629; *Decker*, Parlamentarisch oder präsidentiell?, Institutionelle Entwicklungspfade des europäischen Regierungssystems nach dem Verfassungsvertrag, ZSE 5 (2007), pp. 181-202; *Decker/Sonnicksen*, The Direct Election of the Commission President, A Presidential Approach to Democratising the European Union, ZEI Discussion Paper C 192, 2009.

90 *Fischer*, Vom Staatenbund zur Föderation, Speech delivered at 12/5/2000 at the Humboldt-University in Berlin, printed in: Joerges/Mény/Weiler (eds.), What Kind of Constitution for What Kind of Polity?, Responses to Joschka Fischer, 2000, pp. 5-17.

91 *Bruton*, A Proposal for the Appointment of the President of the Commission as Provided for in Article 18bis of the Draft Constitutional Treaty, Contribution as Member of the Convention on the Future of Europe, for Consideration by the Convention on 6/1/2003 (CONV 476/03).

92 See, Schaeuble calls for direct election of EU president, Reuters UK of 17/5/2012.

93 See, 24. Parteitag der CDU Deutschlands, Beschluss Starkes Europa – Gute Zukunft für Deutschland, 2011, p. 19.

Parliament since the Commission needs to consciously refrain from taking a party-political bias if it hopes to reach broad approval for its proposals.[94] Hence, the Commission President is well advised to maintain the necessary balance when building the Commission team."[95]

Nevertheless, a considerable number of authors have a preference for the parliamentary democratization approach.[96] The supporters of the parliamentary approach even seem to be in the overwhelming majority amongst critics of the EU democracy deficit, or at least those who argue for an institutional path to reforming the EU.[97] However, given the multi-party structure of the European Parliament it would probably be more difficult to form a coalition government than in the national parliamentary democracies that operate similar multi-party systems. Another argument is that the parliamentary model does not 'fit' the hybrid structure of the EU, which is characterized by a complex link between supranational and intergovernmental principles.[98] It is doubtful also whether the EU could even fulfil the structural conditions required to implement a parliamentary system,[99] since parliamentary governments rely on highly developed parties capable of organizing stable majorities in order to support a government. But this is not the case in Europe.[100]

An outstanding problem with the European Parliament is further that of proportional representation and electoral equality. "As seats are allocated to the Member States, the European Parliaments factually remains a representation of the peoples of the Member States. The degressively proportional composition prescribed for the European Parliament by Article 14.2(1) third sentence of the TEU stands between the principle of equality of states under international law and the state principle of electoral equality. […] As a result the weight of the vote of a citizen from a Member State with a small population may be about twelve times the weight of the vote of a

94 *Höreth*, Die Europäische Union im Legitimationstrilemma, Zur Rechtfertigung des Regierens jenseits der Staatlichkeit, 1999, p. 206 et seq.

95 *Decker/Sonnicksen*, (fn. 89), p. 27.

96 The presidential system is clearly opposed by *Patzelt*, Wie weiter mit Deutschland in der EU?, ZSE 10 (2012), p. 256.

97 See, *Decker/Sonnicksen*, (fn. 89), who, for example, cite the following contributions: *Bogdanor*, Legitimacy, Accountability and Democracy in the European Union, A Federal Trust Report, 2007; *Mittag*, Wegmarke für die Parlamentarisierung der Europäischen Union: Die finanziellen Neuregelungen des europäischen Abgeordnetenstatuts, Zeitschrift für Parlamentsfragen 37 (2006), pp. 713-728; *Holzinger/Knill*, Institutionelle Entwicklungspfade im Europäischen Integrationsprozess: Eine konstruktive Kritik an Joschka Fischers Reformvorschlägen, Zeitschrift für Politikwissenschaft 11 (2001), pp. 987-1010; *Patzelt*, (fn. 96); *Knelangen*, Regierungssystem sui Generis?, Die institutionelle Ordnung der EU in vergleichender Sicht, ZSE 3 (2005), pp. 7-33.

98 *Decker/Sonnicksen*, (fn. 89), p. 6.

99 Ibid., p. 7.

100 *Tsebelis/Garrett*, The Institutional Foundations of Intergovernmentalism and Supranationalism in the European Union, International Organization 55 (2001), pp. 357-390.

citizen from a Member State with a large population."[101] According to the current Treaty, "a Member of the European Parliament elected in France [r]epresent[s] approximately 857,000 citizens of the Union and thus as many as a Member elected in Germany, who represents approximately 857,000 as well. In contrast, a Member of the European Parliament elected in Luxembourg, however, only represent[s] approximately 83,000 Luxembourg citizens of the Union, i.e. a tenth of them, in the case of Malta, it would be approximately 67,000, or only roughly a twelfth of them […]".[102] "In federal states, such marked imbalances are, as a general rule, only tolerated for the second chamber existing beside the parliament; in Germany and Austria, the second chamber is the Bundesrat, in Australia, Belgium and the United States, it is the Senate. They are, however, not accepted in the representative body of the people because otherwise that could not represent the people in a way that does justice to equality based on the principle of personal freedom."[103]

In addition, a presidential system would work without entrenched party structures that do not (yet) exist in Europe. The example of the United States Congress highlights that parliament there is just as powerful, where it remains confined to the function of a legislature.[104] This is also the reason why the role of the European Parliament in the legislative process is more significant than is commonly understood. The European Parliament wields considerably more influence in the legislative process than its counterparts at national level, where parliaments over time have fallen behind their respective governments who have come to dominate the legislative process. Since members of the parliamentary majority may not govern, while members of the parliamentary minority cannot govern, the parliamentary system of government can prove rather frustrating for the members of parliament.'[105] This is also the reason why disciplined party-voting is much lower in the European Parliament than in national parliamentary systems.[106] When it comes to coalition building, the European Parliament follows the presidential functional logic, where coalitions are formed ad hoc, on a vote-to-vote basis and with shifting majorities.[107]

Furthermore, as *Weiler* wrote in 1999: "[…] a system that enjoys formal legitimacy may not necessarily enjoy social legitimacy […] democracy can be measured by the closeness, responsiveness, representativeness, and accountability of the governors to

101 BVerfG, 2 BvE 2/08 of 30/6/2009, para. 284.

102 Ibid., para. 285, (for the population figures on which these calculations are based see Eurostat, Europe in figures, Eurostat yearbook 2008, p. 25).

103 Ibid., para. 286.

104 *Decker/Sonnicksen*, (fn. 89), p. 27.

105 Ibid.

106 Cf. *Hix/Noury/Roland*, Power to the Parties: Cohesion and Competition in the European Parliament, 1979-2001, British Journal of Political Science 35 (2005), pp. 209-234.

107 *Decker/Sonnicksen*, (fn. 89), p. 28.

the governed".[108] "These conditions are not met in the case of the European Parliament".[109] Thus, it would make more sense to give citizens the right to elect the Commission President directly. Democracy means that a European government, wherever it is located institutionally must be accountable to the voters. This is most pronounced when the head of government is directly elected by the European people. As an intermediate step "at the next European parliamentary elections the parties could enter a top candidate that in the event of an electoral victory could then be accepted by the leaders of the national governments as the Commission president".[110]

A second chamber for the Member States is a further potential consideration in order to galvanize democracy as well.[111] However, a second chamber already exists in the form of the Council which is democratically legitimized at a national level. What remains curious is that it is precisely the legislative process in the EU which is characterized by a lack of democratic decision-making, due to the participation of the Ministers in the Council.[112] No one in Germany, for example, would even think about a democratic deficit when recognising that, according to the German federal system, there are members of the executive in the various *Länder* with legislative competences at the national level, i.e. the members of the *Bundesrat*.[113] This perspective recommends the view that National parliaments could become more effectively involved in the work of the EU but without difficulty.[114] If this happened, the requirement for a second EU chamber would become a moot point.

d) Structure of the Commission

According to this proposal four issues need to be resolved simultaneously:[115] How many members should the Commission have? How can an adequate representation of all Member States be guaranteed? Who chooses the Commissioners? And who decides which Commissioner takes over which department?

108 *Weiler*, The Constitution of Europe – Do the New Clothes Have an Emperor?, 1999, p. 81.

109 *Piris*, (fn. 11), p. 35.

110 See fn. 95.

111 See, *Steiger*, (fn. 68), p. 15.

112 See, for e.g. *von Bogdandy*, The European Lesson for International Democracy: The Significance of Articles 9-12 EU Treaty for International Organizations, EJIL 23 (2012), p. 326.

113 See, *Patzelt*, (fn. 96), p. 256.

114 For example in form of a closer "Political *Kooperationsverhältnis*" like proposed in *Croon/Maduro*, The Euro Crisis and the Democratic Governance of the Euro: Legal and Political Issues of a Fiscal Crisis, Global Governance Programme Policy-Brief 2012/3, p. 6.

115 *Decker*, Mehr Demokratie für Europa – aber wie?, Berliner Republik 2/2012.

As a well-functioning body, the number of 15 members should not be exceeded.[116] To solve the problem arising with 28[117] or more Member States one could assign each Commissioner a Deputy Commissioner. With 14 Commissioners no country would go without.[118] The directly elected president should be able to appoint Commissioners, following a nomination by the European parties. More difficult would be the distribution of the 14 commissioner posts.

This could perhaps be avoided if the distribution was part of a "weighted lottery" by lot, as proposed by the political scientist *Buchstein*[119] – rather than laboriously negotiated. The weighting should follow the principle of digressive proportionality: this principle results in a slight under-representation of large and strong over-representation of small countries. This form of lottery would mean that the big countries would be very likely represented in the Commission. At the same time, the small countries have a chance of fair representation. The lot would fall on them. Thus, they would no longer be palmed off with the least important ministries. On the other hand, they would at least have a substitute position.[120] This proposal would, however, have to be given serious consideration, since it would not be acceptable to lose a more than suitable candidate just because the lot has so decided.

IV. Resulting considerations

The EU once again finds itself at a critical junction where it can decide on a "post-democratic regime of bureaucrats" or, on a transitional democracy.[121] The European Union has long been moving towards such a democratic solution by improving the participation of the European Parliament. This seems to have major obstacles not only because of proportionality. Thereby it seems less convincing to reinvent the federalist idea.[122] The current financial crisis recommends that establishes for itself

116 Ibid.

117 Croatia finished accession negotiations on 30 June 2011 and on 9 December 2011 signed the Treaty of Accession to become the 28th member. The ratification process, by the Parliaments of all 27 EU Member States, is expected to be concluded by the end of June 2013. Therefore, entry into force and accession of Croatia to the EU is expected to take place on 1 July 2013.

118 *Decker*, (fn. 115).

119 *Buchstein*, „Demokratie und Lotterie", Das Los als politisches Entscheidungsinstrument von der Antike bis zur EU, 2009; *Decker*, (fn. 115).

120 *Buchstein*, (fn. 119).

121 *Wirtén*, (fn. 82).

122 This is proposed by ibid.

a new and more comprehensive model of economic governance that is also capable of "EU States" performance. Such a development would guarantee a stronger sense of "common responsibility".[123] A new form of supranational democracy with a strong and powerful President directly elected by the European people is what the EU requires in order to stem its democratic deficit, and also to deal with and ensure better handling of any future financial crises – a direct vote to pick the face that runs the Union.

1. Common identity

The crisis appears to have focused the EU on the deficiencies of the current EU paradigm. Although Europeans believe they share a common destiny, they still lack a common European media, and what one might call a common European public life. More than that, the Member States appear to have so far ignored or failed to develop a collective identity. A robust, shared identity is the pre-requisite for individual populations to accept it as legitimate if they were outvoted in European decisions. Only if the people feel a common identity will they accept that it is necessary to maintain the monetary union, despite the heterogeneity of the participating countries.

2. European public space

In order to achieve a common identity we need the development of a European public space, where European issues are discussed and debated from a European standpoint. This process has already begun. If we remember the major issues of conflict that have been discussed publicly in Europe, we find especially in areas where the Europeans are finding it very difficult to integrate, examples that might be useful. This is not the case with the Takeover Bids Directive,[124] the Services Directive[125] and also not in the current situation (in which national feelings break through). We always observe conflict structures that extend between countries and not between political groups. The reactions in Germany have been dreadful, as they have been in Greece in response to national debt decisions. But there are policies in which the opinion was not based on national boundaries. To a certain extent this has been the case, surprisingly, and in particular, regarding common foreign and security policy. The decision on participation in the Iraq war or even the intervention in Libya, are two examples. Ultimately the individual states determined whether they were either involved in missions or not, but the political debate was pan European, in the

123 *Van Rompuy*, A Test for Europe, ZSE 9 (2011), p. 469.

124 Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids (Text with EEA relevance), OJ L 142 of 30/4/2004, p. 12.

125 Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, OJ L 376 of 27/12/2006, p. 36.

individual Member States with policy-oriented focus and not confined to national boundaries. In that concern the European External Action Service (EEAS) should be strengthened within the framework of the review of the EEAS Decision in 2013.

3. Strengthening the institutional framework

European history before the creation of the EU is littered with examples of irrational, emotional – and sometimes dramatic – decisions which have actually aggravated a crisis instead of resolving it. The EU has helped to avoid any repetition of such catastrophic mistakes over the last 60 years, thanks to some visionary leaders and strong institutions. All the reforms ahead of us require a huge shift in political leaders' and politicians' attitudes and behaviour. All too often, European politicians are focused on short-term national political careers, with none of them showing serious strategic or forward-looking European political initiative, still less real conviction about intertwining national and European interests.

However, the failure of the existing institutional framework is sufficiently obvious to convince Member States and – even more importantly – the people in the Member States of the need to take another step forward. Of course, it will be a difficult process to convince people in Europe that we are a community of destiny and that we will not be able to withstand global competition without the mutual solidarity of the European peoples. We require structural reforms that will be very painful without guaranteeing instant success. But, there is a simple fact that is more than a symbol of the power of Europe: at the turn of the millennium the population of Europe was about 12 % of the world population; in about 50 years, the UN estimate that the population living in Europe will be about 7 % of the world population.[126] If Europe wants to maintain its prosperity, way of life, and have a say in the world, there is no alternative other than to raise our concerns with one voice.

V. Conclusion

To conclude, the Euro area has learned that the original design of the European Monetary Union was incomplete, and it will be a hard task to complete. For various reasons, the Euro area is not in a position to adopt in the near term the institutions of a political federation. This means that it has to take a different road to increase overall stability and – in true European tradition – a *sui generis* approach is being developed that focuses on preventing imbalances and improving collective management of crisis.

[126] See, www.un.org/esa/population/publications/ReplMigED/Europe.pdf and www.un.org/esa/population/publications/worldageing19502050/pdf/016europ.pdf (13/3/2013).

It is clear that this approach implies a loss of sovereignty. But "[t]he crisis has proved that the Euro area is a political entity which is not self-adjusting; it needs to be actively governed, and this cannot happen without Member States sharing more power with each other. This shift has profound implications for the involvement of all levels of governments in the European project. EU institutions, national governments, national parliaments, and even local governments [and parliaments] would be required all to participate in the common governance of the Euro area. Managing this process represents the next great challenge for the EU integration project."[127]

"Globalization demands more European unity. More unity demands more integration. More integration demands more democracy, European democracy. In Europe, this means first and foremost accepting that we are all in the same boat. It means recognizing the commonality of our European interests. It means embracing the interdependence of our destinies. And it means demanding a true sense of common responsibility and solidarity."[128] A further strengthening of the institutional framework is now required to help European democracies make timely decisions in a global world. This in turn means that the Euro area's institutional model has to be adapted to the fact that the monetary union is a political union. Like all innovations, a process of steady adjustment and refinement is needed in order to create the finished product. The way ahead is not necessarily to imitate other forms of political union – such as the United States' fiscal federation. "Europe's undertaking has no precedent. It demands original thinking as much as if not more than its founding fathers in their times. It certainly also demands courage and leadership."[129] Finally, when 'it is time for the British people to have their say' the continent should work as hard as it can to convince the people in England, Scotland, Wales and Northern Ireland "[t]hat Britain's national interest is best served in a flexible, adaptable and open European Union and that such a European Union is best with Britain in it."[130]

127 *González-Páramo*, Member of the Executive Board of the ECB, OMFIF Conference: On the cusp: The world economy at a turning point, Strengthening stability at a time of challenge and change, Frankfurt am Main on 15/3/2012, http://www.ecb.int/press/key/ date/2012/html/sp120315.en.html (13/3/2013).

128 *Barroso*, (fn. 5).

129 *Smaghi*, (fn. 78).

130 *Cameron*, (fn. 1).