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on constitutional problems of a multi-tier governance in the European Union

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United in diversity

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1. Introduction

The question of multi-tier governance and the institutional issues it raises is not a new phenomenon. For example the Social Charter adopted in 1989 was initially vetoed by the UK and included as a protocol to the 1992 Maastricht Treaty. In 1997 the UK formally subscribed to the Agreement on Social Policy, which allowed it to be included as the Social Chapter of the 1997 Treaty of Amsterdam. The Schengen Treaty is another example of a different nature: as the EU Treaty did not provide a legal basis to establish an area of free movement of persons some Members States agreed in 1985 on an international Treaty on this issue. This Treaty was integrated in the EU legal framework in 1999 (protocol to Amsterdam Treaty).

This shows that the European integration has always been striving to find a right equilibrium between integration, enlargements and increasing asymmetry in implementation of its policies. The possibility of enhanced cooperation is foreseen in the Treaties and a pallet of concepts has been used to clarify different types of integration: differentiated integration, concentred circles, variable geometry, two or multi-speed Europe, *Europe à la carte* and many others.

The euro is another example of a policy developed by certain Members States within the EU framework and the specific conditions of the EMU policy requires a new reflexion on the issue of multi-tier governance. It has recently become topical notably in the context of the economic and sovereign debt crisis.

In fact, the eurozone is undoubtedly the most important example of multi-tier governance in the Union and also the one of which institutional developments are of the greatest significance. In addressing the current crisis, we witnessed the adoption of two inter-governmental treaties concluded between some Member States. These treaties involve, in some respects, both the institutions and the community method.

This situation presents an institutional challenge of unprecedented magnitude, which requires further analysis given its relevance to and implications for coherence, viability, and democratic legitimacy of the Union. The own-initiative report on "Constitutional Problems of Multi-tier Governance in the European Union" intends to address the latest development of the institutional structure of the Union, its inner balance and democratic legitimacy.

After having identified and highlighted institutional problems that may arise from the adopted solutions and track possible ways to address these problems, the core issue will focus firstly on to mobilize the full potentialities of the current Treaties and secondly to develop a strategy to strengthen integration of the Eurozone, the effectiveness and democratic legitimacy of its governance while maintaining consistency of the Union in the future.

In other words, this report has for objective to start a broad reflection on the state of governance in the "post fiscal pact" and to develop a strategy that will incorporate, in the medium term, economic governance into the Union institutional framework, improve institutional set up of the Union and strengthen its democratic legitimacy while maintaining the consistency and dynamism of the European construction.

2. Multi-tier governance: a concept to be clarified

Multi-tier governance should not be confused with the notion of multi-level Europe which focuses on the cooperation and the European integration through the different existing levels (national, regional, federal, European) following a bottom-up and a top-bottom approach. Multi-tier governance goes beyond all the above mentioned concepts since it is a more comprehensive but also a more interdisciplinary spectrum.

In this context, it could be said that multi-tier governance reflects a kind of governance of the European Union characterised by multiple but different speeds of integration pace, by a variety but also a complexity of structures and institutional relations, by different kinds of competences and levels of powers around a policy axis and by multi-centres of democratic control exercised both by input and output legitimacy. Multi-tier governance is also characterized by the overlapping and the asymmetry of the different policy layers that can be further diffused and enlarged in a horizontal way.

Multi-tier integration have gained ground both from the Member States that have the will and capacity to go ahead and the Member States that do not want to be included in a deepening of cooperation in a certain policy area. Taking this into account, two leading opinions have started to prevail in the discourse about the definition and the impact of the multi-tier governance: according to the first opinion, the multi-tier governance is a necessary and an efficient instrument for the continuity and feasibility of the integration process that contributes to the coordination and management of diversity and of different views. For instance, the creation of the eurozone reflects the common will of a certain number of Member States that agreed to delegate national powers since they believed that the benefit of being an insider of this Union was larger than the cost of being an outsider.

On the other hand, differentiated integration can also lead to the creation of parallel institutional structures and fragmented legislation and become a dissolvent factor. It can decrease the level of transparency and democratic accountability since all important decisions are taken at the European Council and ECOFIN level, leaving the democratically elected institutions with little room for manoeuvre.

All in all, multi-tier governance can be defined as method of governance where the main features (institutions, powers, and legitimacy control) are interdependent in order to be successful and balanced. The current uncertain situation of the European Union invites to consider the multi-tier governance both as an opportunity and as a risk and to find a right balance between the two in the name of the Europe of results.

3. Our priority: mobilise the potentiality of the existing Treaties

The definition of a roadmap towards the genuine EMU, for both what is feasible in the short-term and desirable in the medium-term should be based on a more global view of a constitutional nature. This view must identify both the constitutional context and origin of the crisis, and the institutional dilemmas which must be solved to find an effective solution to the crisis. There is no doubt that, since 2010, the crisis has strengthened the integration of the EU

and of Member States whose currency is the euro. However, the path which has been chosen so far has proven to be ineffective while it has widened the democratic deficit of the Union.

This model is based on a trade-off between stronger and stricter fiscal rules and the building-up of a stability mechanism of intergovernmental nature funded by national budget and based on strict conditionality. As Miguel Maduro pointed out, "this model of a Union of rules based on national democracies basically does not work efficiently because it produces an unsustainable contradiction between the national dimension of politics and the European dimension of policies which are required for an effective governance of an EMU".

The purpose of the initiative report is to start drawing a vision which is based on a clearer division of roles, functions and resources between EU policies based on EU resources and managed by EU institutions on the basis of an EU democratic process, and national policies, resources and democracies. Of course, this more typically federal vision, even if there are limited resources and competencies at the federal level, requires to build the EMU governance on the EU institutions and to deal, in doing so, with the problem of the asymmetry between the EMU and the EU and also the problem of competencies and procedures laid down in the treaties.

In this respect, our approach should be clear: we want to protect the unity and the integrity of the European project, the EU institutions and the community method that have led to great achievements in EU integration. The option of creating a Union within a union is for us a non-option.

As a consequence we are of the opinion that, firstly the current treaties offer all the necessary tools to start framing this genuine Economic and Monetary Union and we highlight the potentialities of Article 136 TFEU and of "enhanced cooperation", but also the possibility could also be explored to use the "flexibility clause" of article 352, in conjunction with article 136 or "enhanced cooperation".

Secondly, we think that, not only more binding economic ex-ante coordination would be possible under the existing treaties but also that the idea of "a multi-tier own resources and budget mechanism" could be implemented within the current EU procedures.

This does of course not mean that we do not consider the need of a treaty change to complete the building of a genuine EMU. However, also for political reasons and not only institutional reasons, we take the view that the only way to render possible the perspective of a Treaty change is precisely not to start the process with the claim for a treaty change. On the contrary, to start the process by making the EMU more effective and rebalance the path towards this bigger integration using the tools we have and especially making effective the bigger institutional reform we need: ensuring that the next European elections are based on an European political space, where the citizens can choose not only their individual MEP but also the Commission, on the basis of a political debate at the European level. That is also an unavoidable step in order to provide the necessary legitimacy for further steps in terms of transfer of competencies. This approach could find its historical parallel in the follow-up of the 1989 Madrid Summit, which recommended that the EMU be approached in three stages, the first stage being the completion of the internal market, closer economic convergence and the membership of all states of the Exchange Rate Mechanism (ERM). None of these required

a treaty change or new treaty powers.

We reject the argument of a supposed lack of legitimacy of the European Parliament and the Commission because of the existing asymmetry between Eurozone membership and EU membership. We think that this asymmetry is foreseen explicitly in the Treaties, not only for the different kinds of legitimacy of the Parliament and the Council, but also for the specific procedures which are possible and have already been used. We refer to article 136 TFEU in conjunction with 121(6) that allow for very important, binding and effective legislation for the Eurozone countries with decisive votes in the Parliament of non-Eurozone MEP's. Nobody contests the validity of the "Six-Pack".

The most important argument, as democracy is never perfect, is to consider the problems of the alternative. We would not consider the alternative solution of, to quote the contribution of Jean-Claude Piris, "European delegation of national parliaments", a viable alternative. Such a body would not have any legislative power, its resolutions could not be published in the "Official Journal", and it could only be a forum of discussion. Unless we build a big new institution like another Parliament, there would be no proportional representation both in political and national terms.

At this stage we strongly believe that we have to work within, and make proper and extensive use of all the possibilities of the existing treaties. We consider that the EU institutions should be the basis for enhanced governance and are against any new intergovernmental treaty. We see also of course the problems, the contradictions, the dilemmas of this line, of this idea which probably will also be at the basis of our report.

As a further step, the process towards more ambitious reforms involving treaty changes should start, at the earliest, after the European elections in June 2014, which, as already said before, should be used as a platform for a broad political debate about the future of European integration. Making full use of the procedures and the flexibility of the existing Treaties to swiftly improve the governance of the EMU in the context of the framing of a true European political space is a condition for building the democratic consensus for a future comprehensive and successful treaty change.

The treaties already provide appropriate procedures for multitier governance which allow to move closer towards a genuine EMU without undermining the integrity of the EU legal and institutional order, by adopting provisions in the framework of fiscal and economic policies specifically applying to those Member States whose currency is the euro, and by establishing enhanced cooperation between Member States in the framework of the Union's non-exclusive competencies.

The Union should aim at placing the governance of the EMU within the institutional framework of the Union, which is a precondition for its effectiveness and for filling the current political gap between national politics and European policies.

4. What could be achieved within the actual European Treaties to improve EU governance?

4.1. Strengthening input (democratic) legitimacy

In the time of crisis when unpopular measures are called for, there is an increased need to reach for legitimacy resources. The core principles of democratic legitimacy, such as accountability and representation, need to be strengthened at the European level. In this regard it is of salient importance that the executive (the European Commission) is already accountable to the European Parliament which represents the Union's citizens (Articles 10 and 14 TEU). The Commission as a body is responsible to the EP (Article 17(8) TEU).

Moreover, Parliament shall elect the President of the Commission "taking into account the elections to the European Parliament" (Article 17(7) TEU). After the 2014 European elections Article 17(7) TEU will be applied for the first time and if applied correctly, it will have the potential of reinforcing both the principle of accountability and of representation and thus providing increased legitimacy resources for the Union to face the challenges ahead of us. This constitutional context gives all its importance to Declaration 11 on Article 17(6) and (7) of the TEU, annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon.

According to this Declaration, the EP and the European Council are jointly responsible for the smooth running of the process leading to the election of the President of the European Commission. Prior to the decision of the European Council, representatives of the European Parliament and of the European Council will thus conduct the necessary consultations in the framework deemed the most appropriate. These consultations will focus on the backgrounds of the candidates for President of the Commission, taking account of the elections to the EP. The arrangements for such consultations may be determined, in due course, by common accord between the European Parliament and the European Council.

4.2. Legal bases possibly serving to deepening EMU under the current treaties

It is sufficient to throw a glance on the following list of legal bases in order to realise that the Lisbon treaty provides a rich toolbox for deepening economic and monetary integration.

- Article 53 TFEU is a legal basis applicable for issuing directives – in the ordinary legislative procedure – concerning the right of establishment. Article 62 makes its provisions applicable to the freedom to provide services. Both legal bases could serve in the future to further strengthen economic interdependence in order to fully exploit the enormous potentialities still dormant in the largest market the world has ever seen in terms of GDP.

- Article 114 TFEU is a legal basis which serves for the adoption of measures – yet again in the ordinary legislative procedure – harmonising laws concerning the establishment and functioning of the single market.

- Article 125(2) TFEU allows the Council to specify – after consultation of the EP – definitions for the application of the prohibitions concerning overdraft facilities and privileged access as laid down in Articles 123 and 124. This legal basis has already served for the

adoption of two regulations¹.

- Article 126(14) TFEU allows for the adoption of detailed rules and definitions for the application of protocol n° 12 on the excessive deficit procedure. The same provision establishes a simplified procedure for modifying the protocol. The EP has to be consulted².

- Article 127(6) TFEU is the legal basis for the Commission proposal for a regulation conferring specific tasks on the ECB concerning policies relating to the prudential supervision of credit institutions and for regulation n° 1096/2010 conferring specific tasks on the ECB concerning the functioning of the European Systemic Risk Board. The EP, as well as the ECB, has to be consulted.

- Article 136 TFEU provides for the adoption of measures specific to the eurozone Member States in order to strengthen the coordination and surveillance of their budgetary discipline and to set out economic policy guidelines for them. Such measures must nonetheless be compatible with those adopted for the whole of the Union. However, this article provides only for the adoption of measures based on Articles 121 and 126. If the eurozone Member States wish to adopt specific measures on other bases, they would need to use the enhanced cooperation.

- Article 138 TFEU serves for securing the euro's place in the international monetary system. However, no involvement of the EP is foreseen, and only members of the Council representing eurozone Member States are allowed to take part in the vote.

- Article 175 TFEU refers to the objectives of strengthening the Union's economic, social and territorial cohesion, as laid down in Article 174, and provides for action through the Structural Funds, the EIB and other existing financial instruments.

- Last but not least, Article 352 TFEU which has been widely used during different historical phases of European integration, and not necessarily as an 'implied powers clause', still has the potential of serving as a general legal basis. The clause could be used for example to create a European treasury office.

4.3. Modalities for setting up a possible additional fiscal capacity under the current treaties³

The reports by the President of the European Council of 26 June 2012 and of 12 October 2012 both refer to an additional fiscal capacity and “ultimately [to] the development at the euro area level of a fiscal body, such as a treasury office”. This fiscal capacity “would support new fiscal functions which are not covered by the MFF”. Although any such decision should in principle not precede the final decision on the Multiannual Financial Framework for 2014-20, three modalities could be conceived to establish such a capacity within the current legal framework of the Union.

¹ Council regulations n° 3603/93 and n° 3604/93.

² This was the legal basis for one of the regulations in the “Six Pack”: Council regulation n° 1177/2011.

³ René Repasi, *The additional fiscal capacity and its institutional implications*, EP Policy Department C, November 2012.

First, by using the Community method, the additional fiscal capacity could be established by creating a new own resource which has to be financed by contributions of the eurozone Member States, and a new budget heading for financing the functions of the fiscal capacity. This concept would however require the integration of the fiscal capacity into the MFF, as Article 312(1) TFEU states that the annual budget of the Union shall comply with the MFF.

Secondly, the central budget for the eurozone could also be a fund outside of the EU budget and implemented by the Commission. The European Development Fund could serve as a model for this modality. The third modality would mean the creation of a fund outside the EU budget which could be implemented by a new separate agency. Such a fund could be created (a) under Article 352 TFEU and in enhanced cooperation of eurozone Member States, or (b) on the basis of an international treaty.

However, it is clear that every exception which restricts the budgetary powers of in particular the EP (and the Council) should be interpreted narrowly under the current treaties, because the purpose of Article 310(1) TFEU is to protect the budgetary powers of these two institutions, the EP being the representative of the citizens of the Union. Therefore, dissociating the fiscal capacity from the MFF (as the interim report hints to it) would cause serious institutional implications. If the basic act does not provide supervisory role for the EP, it would be an infringement of budgetary sovereignty of the EP as protected by Article 310 TFEU. But if the EP were given that role, it would have to fulfil it (under Articles 10 and 14 of the Union) as the representative of the citizens of the *Union*, and not as the representative of a certain category of citizens who happen to be nationals of the eurozone Members States. To sum up, maintaining the EP's budgetary sovereignty means maintaining the same democratic control exercised by *all* MEPs, through the necessary internal arrangements within the EP, as for all Union revenue and expenditure.

4.4. Incorporation of the Fiscal Pact in the EU legal framework

The Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (Fiscal Pact) applies in full to the contracting parties whose currency is the euro. It shall also apply to the contracting parties with a derogation, as defined in Article 139(1) TFEU, or with an exemption, as referred to in Protocol (No 16) on certain provisions related to Denmark annexed to the European Union Treaties, which have ratified that Treaty, as from the date when the decision abrogating that derogation or exemption takes effect, unless the contracting party concerned declares its intention to be bound at an earlier date by all or part of the provisions in Titles III and IV of the Treaty.

The Treaty is open to accession by Member States of the European Union other than the contracting parties. According to Article 16 of the treaty, within five years, at most, of the date of its entry into force, on the basis of an assessment of the experience with its implementation, the necessary steps shall be taken, in accordance with the TEU and TFEU, with the aim of incorporating the substance of the Treaty into the legal framework of the European Union.

4.5. Building on the findings of the Thyssen report

On 20 November 2012 the plenary adopted the Thyssen report¹, which constitutes the EP's official position as far as 'a genuine Economic and Monetary Union' is concerned. In exploring the potentialities of the current treaties for improving governance within the EU, valuable inspiration might be drawn from the findings of that report, especially in the following fields.

- Article 121 TFEU provides that Member States are to regard their economic policies as a matter of common concern and to coordinate them within the Council; those Member States which desire solidarity should be obliged to shoulder their responsibility for implementing all their commitments in the budgetary field as well as their country-specific recommendations and their commitments under the European Semester. Under the existing Treaties the coordination and surveillance of the budgetary discipline of the Member States whose currency is the euro could be made binding and subject to the control of the Court of Justice of the European Union on the simple basis of Article 136 TFEU in conjunction with Article 121(6). However, from a constitutional point of view, this step should be taken into consideration only if it would substantially strengthen Parliament's role as far as the detailed implementation of Articles 121(3) and 121(4) TFEU is concerned and in order to complete and implement the multilateral surveillance procedure with delegated acts on the basis of Article 290 TFEU.
- Employment and social policies aspects of the EMU governance could be reinforced through Article 9 TFEU, Article 151 TFEU, and Article 153(1) TFEU.
- The Treaties offer several *passerelle* clauses that could be activated: Article 48(7) of the Treaty on European Union (TEU) provides for a specific procedure for adopting an act for which the TFEU requires a special legislative procedure in accordance with the ordinary legislative procedure and Article 333 TFEU also contains provisions that allow for making use of the ordinary legislative procedure in the context of enhanced cooperation.
- The Treaty-based operational independence of the ECB in the field of monetary policy remains a cornerstone for the credibility of EMU and the single currency; the ESM should, under certain conditions, be able to fund banks in difficulties directly.
- The legitimacy, transparency and effectiveness of the European Semester should be improved. The existing legal framework should be fully mobilised in order to ensure that the Semester is, at all stages, subject to full democratic scrutiny.
- A democratic parliamentary oversight must be established on banking supervision activities and for this reason making the single supervisory mechanism operational is the first and most urgent task in the realisation of the banking union.
- A single European recovery and resolution regime should be established, ideally in

¹ European Parliament resolution of 20 November 2012 with recommendations to the Commission on the report of the Presidents of the European Council, the European Commission, the European Central Bank and the Eurogroup 'Towards a genuine Economic and Monetary Union (P7_TA-PROV(2012)0430).

parallel with the entry into force of the single supervisory mechanism, for restoring the viability of banks in difficulties and resolving non-viable financial institutions.

- A "genuine EMU" cannot be limited to a system of rules but requires an increased budgetary capacity based only on specific own-resources (including a Financial Transaction Tax) which should, in the framework of the EU budget, support growth and social cohesion addressing imbalances, structural divergences and financial emergencies which are directly connected to the monetary union, without undermining its traditional functions to finance common policies (article 311 which requires quasi constitutional procedure). It is also possible to increase budgetary capacity via an enhanced cooperation establishing the tax on financial transactions that could increase the budget of the ESM. The idea of a euro-zone budget could raise issues of the respect of the principle of unity and universality of the EU budget¹.
- the potential of Protocol n°1 for the cooperation among the national parliaments and with the EP could be further explored to intensify the cooperation with national parliaments but such a cooperation should not be seen as the creation of a new mixed parliamentary body which would be both ineffective and illegitimate on a democratic and constitutional point of view. It is the European Parliament, as parliamentary body at the Union level, that has the full legitimacy for a reinforced and democratic EMU governance. The euro is the currency of the European Union; the European Parliament is the parliament of the European Union; therefore the European Parliament is the parliament of the EMU.
- The integration of the ESM into the EU legal framework through the flexibility clause (Article 352 TFEU) in conjunction with the revised Article 136 TFEU could be a possible solution even if it raises several legal concerns.
- Within an ever-closer economic, fiscal and budgetary Union more must be done to coordinate systems of taxation, and to address harmful tax competition between Member States which is clearly against the logic of an internal market. Enhanced cooperation should be used more frequently in the field of taxation (such as for establishment of a Common Consolidated Corporate Tax Base or a Financial Transaction Tax) since harmonised frameworks for taxation will enhance budgetary policy integration.
- The ESM should evolve towards Community-method management and be made accountable to the European Parliament. Key decisions, such as the granting of financial assistance to a Member State and the conclusion of memorandums, should be subject to proper scrutiny of the European Parliament.

5. Which Union for the future?

5.1. Avoiding false dichotomies

Any reflection on the future of the Union should avoid falling into the trap of separation of Member States into two artificial, opposing categories. Such artificial separation happens when Member States are divided to "ins" and "outs", i.e. those who belong to the eurozone at

¹ See point 4.3. above.

a given moment and those who don't. An even worse form of this dichotomy is when citizens of the Union are divided into those who are nationals of a eurozone Member State and those who are not.

The existing political, economic and legal divisions are more dynamic, complex and subtle in reality. According to Article 3(4) TEU the "Union shall establish an economic and monetary union whose currency is the euro". This provision concerns the whole of the Union, because the health of individual (and not just eurozone) Member States' economies can have real implications for the value of the single currency, hence the necessity to regard the economic policies of all Member States as a matter of common concern and to coordinate them within the Council and hence the obligation for all Member States to conduct their economic policies with a view to contributing to the achievements of the objectives of the Union, as defined in Article 3 TEU¹.

The treaty chapter on Member States whose currency is not yet the euro and who don't have an opt-out bears the title "Transitional Provisions". It defines that such Member States shall be referred to as 'Member States with a derogation' until the Council decides that they fulfil the necessary conditions for the adoption of the euro (Article 139(1) TFEU). The same Article establishes a closed list of treaty provisions which don't apply to these Member States. During this phase, considered transitory by primary law, Member States with derogation shall treat their exchange-rate policy as a matter of common interest², they are entitled to mutual assistance if in, or seriously threatened with, difficulties³, and may take protective measures where a sudden crisis in the balance of payments occurs⁴. A regular report shall be drawn up on the progress made by the Member States with derogation in fulfilling their obligations regarding the achievement of economic and monetary union⁵. Moreover, the General Council of the ECB will be constituted as a third body of the ECB only if and as long as there are Member States with derogation⁶.

Thus Member States with a derogation are obliged under primary law to make constant efforts until the moment when the Council is in a position to consider that their progress towards fulfilling the necessary conditions for the adoption of the euro have reached its end. On the other hand, Member States with an opt-out reserve for themselves the decision to step on that path. Protocol n° 15, point 1 stipulates that unless "the United Kingdom notifies the Council that it intends to adopt the euro, it shall be under no obligation to do so". The UK shall retain its powers in the field of monetary policy according to national law. According to Protocol n° 16, Denmark shall have an exemption the effect of which "shall be that all Articles and provisions of the treaties and the Statute of the ESCB referring to a derogation shall be applicable to Denmark". The abrogation of the exemption shall only be initiated at the request of Denmark.

In the light of these provisions, a more appropriate working hypothesis could be to treat all Member States as part of a community of rules, where those rules are differentiated in the

¹ Cf. Articles 120 and 121 TFEU

² Article 142 TFEU.

³ Article 143 TFEU; such mutual assistance is not applicable to Member States whose currency is the euro.

⁴ Article 144 TFEU.

⁵ Article 140 TFEU.

⁶ Article 141 TFEU.

field of economic and monetary policy and where the resources at their disposal are also, potentially, differentiated. One could also differentiate certain layers of this community as to the agent entitled to pronounce the decision on the accession to a certain set of differentiated rules: this agent is the Council in the case of Member States with derogation and it is the Member State itself in the case of those with an opt-out. Thus instead of "ins" and "outs" the reflection could be focused on a dynamic community of multi-tier rules and resources.

Another dichotomy to be avoided is to settle a clear and fixed theoretical separation between the status quo and "true federalism". The stake of strengthening economic governance is not a sudden leap into fully fledged federalism, but the question of when, how and at what price should the introduction of some more federal aspects take place.

5.2. On the path towards a treaty change

Governance of the EMU is the key element for the general institutional and decision-making balance in future. The completion of a genuine EMU within the Union will require in the medium-term a Treaty change to be completed. The proper functioning of the eurozone will require that Member States accept to transfer certain aspects of their sovereignty. Member States should understand that they have already lost part of their sovereignty because of their excessive national debt and that the only way to regain it is by accepting to share at least part of their sovereignty at European level. The sovereign debt crisis showed the limits of the claim that the "dishonour of a national currency may seem better than its death"¹.

Wherever new competences are transferred to or created at Union level or new Union institutions established, corresponding legitimacy, democratic control by, and accountability to, Parliament should be ensured. Therefore, a Convention should take place after the next European elections and preparations for such a Convention should start already before the next European elections.

A future treaty change could first of all be geared to allowing further differentiation of the rules applicable in institutional and budgetary procedures. In this regard, we can refer back to the working hypothesis, which considers Member States as belonging to a community of multi-tier rules but also of multi-tier resources.

Another track of thought could be to reflect on how to overcome unanimity. In a community of multi-tier rules backed by multi-tier resources it should be possible to overcome veto power in order to go further in integration without obliging the Member States not wishing to participate to face the hard choice of 'take it or leave'. Other tracks of thought could be raised along the lines of the following questions. Should economic policy become a shared competence in the sense of Articles 2(2) and 4 of the TFEU? If yes, should the ordinary legislative procedure apply? Should enhanced cooperation be extended in a way to allow for conferring more competences on the Union?

Strategic long term direction of the EU may also concentrate on the following issues and principles, some of them also raised by the above-mentioned resolution of 20 November 2012:

¹ C Johnson, *In with the Euro, Out with the Pound* (Penguin, 1996) 87.

- The EMU is not an end in itself but rather the instrument to achieve Union and the Member States' objectives, in particular a balanced and sustainable growth and a high level of employment; social inclusion and solidarity are the cornerstones of the European social model and of European integration as a whole and should not be left out of any future reform of the Union.
- The European Semester and the economic dialogue should be regarded as part of the EU institutional framework and any Treaty modification should seek to integrate the European Semester, promoting the Community method.
- The current intergovernmental structure of the EMU represents a severe lack of democratic legitimacy; the common currency can only be stabilised if Member States are willing to shift competences in fiscal policies to the Union level; the intergovernmental method has reached its limits and is not well suited for democratic and efficient decision-making in 21st century. The ultimately political union is the key to overcome the crises, encouraging solidarity and to carry on with the European project.
- National parliaments should engage in the process of preparing their governments' fiscal and reform plans before their submission to the EU; this explicit responsibility could be added to the functions enjoyed by national parliaments under the provisions of Article 12 TEU.
- The growing division between core and peripheral countries in the Union should not become chronic in nature; a permanent framework must be created in which Member States in difficulty should be able to rely on solidarity-based support from other Member States.
- The amendment of the Treaties which subsequently need to be examined by a Convention shall complete the framing of a genuine EMU by enhancing the Union's competencies, in particular in the field of economic policy, and by strengthening not only the Union's budgetary capacity but also solidarity, the role and democratic accountability of the Commission and Parliament's prerogatives. In this regard reflection could be also made on how to reinforce accountability of the Commission (introduction of an interpellation right, individual responsibility of Commissioners in front of the EP, etc)?
- Any future Treaty changes should never exclude opt-ins for Member States and should guarantee the integrity of the Union.

6. Preliminary conclusions

As the absence of a real political authority undermines the effectiveness and credibility of the Union's governance of the euro and its capacity to govern financial markets instead of being governed by them, it clearly appears that any successful model of governance is dependent on the building up of a political authority for the Union and the euro. This political authority should be based and driven by the need for democratic legitimacy and accountability based on

common constitutional standards that is the precondition for financial solidarity related to the wealth generated by the European integration. Financial solidarity needs to be decoupled from financial transfers between Member States and it should be a product of the wealth that the process of European integration generated, and be guided by the goal of a fair distribution of the benefits of integration among all European citizens.

Finally, this call for more political integration should not be presented as a bitter pill, which has to be swallowed in order to save to the greatest extent possible our European way of life. In this sense it is possible that the task is no smaller than reinventing a European dream which once emerged from the spirit of “a generation and its leadership whose personal experiences had instructed them that the alternative to the European dream was the recent European nightmare”¹. Legitimacy of a political Union should not merely be based on input and output, on process and results, but also on a moral narrative, a compelling vision for the future.

¹ J Weiler: *The Constitution of Europe*, Cambridge, University Press, 1999, p. 8.