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A reshaped Economic and Monetary Union – still attractive, but hardly legitimate?

Summary. This article seeks to shed some light on the institutional implications of the latest economic governance at EU level and democratic concerns that stem from the applied decision-making modality. The author points to the relevance of legitimacy in financial and sovereign debt crisis management, including its potential correlation with levels such as effectiveness and efficiency. Various factors of potential attractiveness of common monetary union are explored, ranging from the prospect of inclusion in the financial assistance under the conditional umbrella of solidarity, to a somewhat questionable concept of "freedom to join" in normative terms, the avenues for which *de lege lata* remain closed.

Key words: Economic and Monetary Union, legitimacy in economic governance, democratic accountability

Introduction

The financial and sovereign debt crisis which broke up in 2009 and is still lingering has put the Economic and Monetary Union (hereinafter EMU) to a "stress test"[1] not exclusively with regard to the regulatory framework that underpins the single currency, but also the *raison d'être* of the monetary union as such. In the aftermath of the crisis the euro has considerably lost on its popularity, at least in the country like Germany,[2] and is regarded by some as a source of the prob-

[1] M. Buti, N. Carnot, *The EMU Debt Crisis: Early Lessons and Reforms*, "Journal of Common Market Studies" 2012, vol. 50, no. 6, p. 899.

[2] Cf. O. Issing, *Die Währungsunion im Spannungsfeld von Politik und Ökonomie*, in: *Grundlagen, aktuelle Entwicklungen und Perspectiven der Europäischen Währungsunion*, eds. E. Pache, K.-A. Schwarz, Nomos, Baden-Baden 2012, p. 53.

lem rather than a commonly accepted tool of enhanced economic integration. The governance reforms which have been undertaken within EMU with a view to safeguard the stability of the common currency are frequently criticised not only for their limited effectiveness and efficiency, but also insufficient legitimisation of the governance as such and missing democratic accountability of the key decision-makers.[3]

1. The convergence criteria

In order to join EMU and use the euro as an official currency, EU member states need to fulfil specific convergence criteria, (also known as the Maastricht criteria due to their being specified by the Treaty of Maastricht), which involve the following requirements:

– price stability, i.e. the inflation rate should not exceed 1.5 percentage points above the rate for the 3 EU states with the lowest inflation over the previous year,

– budget deficit must be lower than 3% GDP,

– national debt should be lower than 60% GDP,

– the long-term interest rate should not exceed 2 percentage points above the rate in the 3 EU states with the lowest inflation over the previous year,

– exchange rate stability, i.e. the exchange rate of the national currency should have stayed within certain pre-set margins of fluctuation for 2 years.[4]

Initially the euro area was composed of eleven states, namely: Belgium, Germany, Spain, France, Ireland, Italy, Luxembourg, the Netherlands, Austria, Portugal and Finland which, following the Council's Decision[5] as to the fulfillment by those states of the convergence criteria, adopted the euro on 1 January 1999. Greece and Sweden were granted the status of member states with a derogation, just like the ten Central and Eastern European states which joined the European Union on 1 May 2004; subsequently also Bulgaria and Romania which joined the EU on 1 January 2007, and most recently Croatia (accession on 1 July 2013). In the meantime, following the Council's favourable decision on the fulfillment of the necessary conditions to adopt euro, Greece became EMU member as of 1 January 2001, Slovenia as of 1 January 2007, Cyprus and Malta as of 1 January 2008, Slovakia as of 1 January 2009 and finally Estonia as of 1 January 2011.

Pursuant to Article 140(1) of the Treaty on the Functioning of the European Union (TFEU), at least once every two years or at the request of a member state

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[3] Resolution of the European Parlament of 12.12.2013, P7_TA-PROV(2013)0598.

[4] For a more comprehensive account on the matter, see Articles 126 and 140 Treaty on the Functioning of the European Union (TFEU) and Protocol no. 13 on the convergence criteria annexed to the EU Treaties.

[5] Decision 1998/317/EC, OJ L 139, 11.05.1998, p. 30.

with a derogation, the European Commission and the European Central Bank (ECB) report to the Council on the progress made by member states with a derogation in the fulfillment of their obligations relating to the achievement of EMU. In March 2013 Latvia submitted a request for a new convergence assessment with a view to introduce the euro on 1 January 2014. In accordance with the procedure laid down in Article 140(2) TFEU, on the basis of its Convergence Report (whereby the Commission concludes that Latvia fulfils the conditions for the adoption of the euro) as well as that of the ECB, the Commission has adopted a proposal for a Council decision to abrogate the derogation of Latvia with effect as of 1 January 2014.[6]

In the light of the fact that in the midst of the economic and financial crisis new member states are willing to join the common monetary union (Estonia in 2011 and at present Latvia), a hypothesis may be put forth that despite somewhat strained credibility of the euro, it remains attractive for those outside the system.

2. Between enhanced fiscal consolidation and remaining flaws underlying the EMU governance system

According to the European Commission's winter 2013 forecast,[7] the aggregate general government deficit for the eurozone fell from 4.2% of the gross domestic product (GDP) in 2011 to 3.5% of GDP in 2012. The reduction in the budget deficit was primarily attributed to the higher government revenues stemming from higher taxes on income and wealth. In turn, the eurozone average gross general government debt ratio increased from 88.1% in 2011 to 93.1% in 2012. The increase is said to be "a result of a large "snowball" effect of 2.5% GDP (which captures the impact of interest expenditure, real GDP growth and inflation on the debt ratio) and a stock-flow adjustment of 2.2% of GDP, while the primary budget balance of –0.4% of GDP contributed to the debt deterioration only marginally."[8] By way of comparison, the US federal budget deficit decreased from 8.7% of GDP in 2011 to 7.0% in 2012, which in turn led to an increase in the level of federal debt from 68% of GDP at the end of 2011 to 73% at the end of 2012.[9]

It is noteworthy that at the end of 2012, the debt ratio was above the reference value of 60% of GDP in 12 out of 17 eurozone countries. Whilst most affected were the states under the EU-IMF financial assistance programmes (Greece, Ireland and Portugal with the debt ratio of 161.6%, 117.2% and 120.6% respectively)

[6] Proposal for a Council Decision on the adoption by Latvia of the euro on 1 January 2014, COM(2013) 345 final, Brussels, 5.06.2013.

[7] As cited by ECB Annual Report 2012, p. 64.

[8] Ibidem.

[9] ECB Annual Report 2012, p. 22.

and Italy (127.1%), even such strong economies as Germany exceeded the accepted reference value (81.6%).

However, as rightly pointed out by Dariusz Adamski, the experience of the crisis has shown that maintaining the agreed values of national debt below 60% of GDP and of national deficit below 3% of GDP does not necessarily render public finances sustainable.[10] Indeed both Ireland and Spain had balanced budgets in 2007 with the debt ratio much below the reference value. Moreover, also the correlation between the two reference values appears unreliable, given that "[t]he national debt position may deteriorate even when the country runs deficits below the reference value, if rolling-over of the outstanding stock of debt is costly or the GDP growth rate is small enough."[11]

The fundamental flaws of EMU's architecture are nonetheless of both economic and institutional nature. The Treaty of Maastricht established a monetary union but left the issue of a sound system to govern the political economy by and large unattended. This situation "allowed individual member states of the eurozone to pursue their own distinctly national policies while they only paid lip-service to the broad EU framework of macro-economic policy guidelines."[12] Beyond doubt it is a certain paradox that "[t]he same ministers, who are responsible for drafting national budgets, also have to decide whether they breach the 3 per cent criterion and the medium term objective. This has to be considered as a severe weakness in economic coordination both with regard to the multilateral surveillance and early warning procedure as well as the excessive deficit procedure."[13]

Last but not least, it would be illusive to construe the financial assistance to the eurozone countries in distress as a pure gesture of solidarity lying at the heart of the monetary union. A contrario, it was an inevitable intervention in order to safeguard the stability of financial markets in euro area.[14] Likewise, the further political integration is now being recognised as a "product of necessity"[15] in the

[10] D. Adamski, *National Power Games and Structural Failures in the European Macroeconomic Governance*, "Common Market Law Review" 2012, vol. 49, p. 1322.

[11] Ibidem; Proposal for a Council Decision...

[12] A. Duff, *On Governing Europe*, "Policy Network" 24.09.2012, p. 17.

[13] F. Amtenbrink, J. de Haan, *Economic governance in the European Union: Fiscal policy discipline versus flexibility*, "Common Market Law Review" 2003, vol. 40, p. 1095; as cited by D. Adamski, op. cit., p. 1361. It is noteworthy, though, that this weakness has now been partially overcome by the reversed majority voting agreed in the Six Pack.

[14] Cf. in this respect e.g. Th. Silberhorn, *Die Eurozone zwischen Solidarität und Eigenverantwortung – von der Währungsunion zur Fiskalunion?*, in: *Grundlagen, aktuelle Entwicklungen...*, p. 128f. The author states that „[d]ie Grenze zwischen Solidarität und Eigenverantwortung muss dabei so gezogen werden, dass die Stabilität des Euro erhalten werden kann [the border line between solidarity and responsibility of individual states must be established in such a way that the stability of euro may be preserved – transl. I. J.].

[15] Ph. de Schoutheete, S. Micossi, *On Political Union in Europe: The changing landscape of decision-making and political accountability*, "Centre for European Political Studies' Essay" 2013, no. 4(21), www.ceps.eu [25.05.2013].

light of the fact that the strengthened macroeconomic governance within the EMU impelled a higher degree of transfers of previously strictly national competences (and thus also responsibility) to the European level. Philippe de Schoutheete and Stefano Micossi conceive of political EMU as consisting in greater integration of financial, fiscal and economic policies within the euro area, as well as the institutional consequences implied for the euro area and the European Union at large.[16]

According to the Commission's "blueprint for a deep and genuine economic and monetary union,"[17] democratic legitimacy constitutes a corner stone of a genuine EMU and its materialisation should be based on two basic principles:

"First, in multilevel governance systems, accountability should be ensured at the level where the respective executive decision is taken, whilst taking due account of the level where the decision has an impact. Second, in developing EMU as in European integration generally, the level of democratic legitimacy always needs to remain commensurate with the degree of transfer of sovereignty from Member States to the European level."

The following sections attempt to outline possible avenues towards enhanced democratic legitimacy in the context of new governance system within the EMU.

3. Perspectives on the concept of legitimacy

Whenever the intricacies of economic governance in the EU, and notably eurozone are being explored, the theme of legitimacy tends to be overshadowed by that of effectiveness and efficiency. Still, the relevance of legitimacy both for global governing entities and for those governed has already attracted some attention in the contemporary literature on global governance. In very simple terms, legitimacy may be explicated as "the sense that we are governed by the right institutions, the right people, and the right norms."[18] The concept is nevertheless much more complex and may be analysed from a normative and an empirical/social perspective. From a normative standpoint, legitimacy relates to the validity of a legal norm in regard of normative expectations of its addressees[19] and thus is relying on the democratic process (*input/process legitimacy*, not to be confused with legality). From the empirical/social perspective, legitimacy designates the degree of acceptance of a legal norm as being "the right thing to do."[20] The better

[16] Ibidem.

[17] H. van Rompuy, op. cit.

[18] N. Hachez, J. Wouters, A *Glimpse at the democratic legitimacy of private standards. Assessing the Public Accountability of GLOBAL G.A.P.*, "Journal of International Economic Law" 2011, vol. 14, no. 3, p. 679.

[19] Ibidem, p. 680. Whilst this definition is debatable in legal theory, it allows for a useful distinction for the purpose of the present article.

[20] Ibidem.

the results delivered (e.g. economic prosperity and stability), the higher the degree of acceptance, and thus also *the output/result legitimacy*.[21] When overall community acceptance of a legal norm or in general a mode of governance is given on the basis of "a promise" of results that are to be delivered in the future, we may even talk about *telos legitimacy* (or political messianism).[22]

The concept of a positive result, would that be already delivered or merely expected, is the key factor to the perception of direct correlation between legitimacy of governance on the one hand and its effectiveness and efficiency on the other. In short, efficiency of economic governance designates by and large economic calculation of the costs incurred and their translation into the expected benefit. As regards effectiveness, it boils down to an ability to set specific objectives and strategies, to pursue them and verify the achieved results.[23] For that purpose, a clear division of tasks within the structure, the exchange of information, decision-makers' accountability and monitoring the system are required.[24] Exactly these elements are recognised as deficient within the current economic governance system in the EMU and the EU at large and are designated to be subjected to reforms under the aforementioned formula of *political union.*

4. Institutional consequences of crisis management and relevant democratic concerns

Given that the Treaty of Lisbon was drafted and signed before the onset of the crisis, a question arises whether the institutional framework under current Treaties is adequate to accommodate somewhat revolutionary developments in the EU governance, notably vis-à-vis euro-area economic integration.

The fact that deserves attention is that the improved system of EMU governance has made the Union even more technocratic and less political than before the outbreak of the crisis.[25] The invisibility of those in charge paired with "behind-doors" politics contributed to compromising democratic legitimacy of crisis decision-making in the name of effective governance.

[21] For a more comprehensive account of the input and output legitimacy. See: K.-O. Lindgren, Th. Persson, *Input and output legitimacy: Synergy or trade-off? Empirical evidence from an EU survey*, "Journal of European Public Policy" 2010, vol. 17, no. 4, pp. 449-467.

[22] J.H.H. Weiler, *In the Face of Crisis: Input Legitimacy, Output Legitimacy and the Political Messianism of European Integration*, "Journal of European Integration" 2012, vol. 34, no. 7, pp. 825-841.

[23] S. Cafaro, *Democratising the Bretton Woods Institutions. Problems and tentative solutions, 2013*, publication with the support of the Global Finance Coalition, available as e-book, p. 15.

[24] Ibidem.

[25] A. Duff, op. cit., p. 25.

On the other hand, it would be unfair to claim that the need for more openness and transparency in the process towards a deeper EMU is not being recognised by the decision-makers[26] and even more so by the world of academia.[27] On the contrary, it is gaining momentum and is being identified as an indispensable component of "good" governance. It is also defensible that low-performance of *EU emergency governance* in relation to democratic standards may be excused on grounds of the "state of exception," that is "evident necessity" of stabilisation of economies and banking systems. In other words, under emergency government theory, even if the executive's emergency actions are contrary to the law, they are thought to be justified in so far as they are necessary for protecting the "public good."[28] In the context of the EU governance, it may be formulated as the necessity to protect citizens from the effects of unsound economic and fiscal policies, and work towards the achievement of high level of growth and social welfare.

It is noteworthy that in the aftermath of the economic and financial crisis the EU's institutional architecture has undergone a significant modification. This transformation may be concisely described as the emergence of new European executive powers in economic policy-making. The European Council has taken up a leading role in macroeconomic management at the level of the European Union and thereby amounted to the *European economic government*[29], even if merely of provisional character. This development may be explained on two reasonable grounds. Firstly, under the pressure of the economic and financial crisis and strengthened by the integration power of its elected permanent president, the European Council has evolved into a new executive level within the Union since the entry into force of the Lisbon Treaty (whereby it also gained the formal status

[26] See e.g. H. van Rompuy, op. cit.; cf. also Communication from the Commission to the European Parliament and the Council: Towards a Deep and Genuine Economic and Monetary Union. The introduction of a Convergence and Competitiveness Instrument, Brussels, 20.3.2013, COM(2013) 165 final, pp. 6-7.

[27] Cf. inter alia Ch. Lord, *No representation without justification? Appraising standards of justification in European Parliament debates*, "Journal of European Public Policy" 2013, vol. 20, no. 2, pp. 243-259; J.-W. Müller, *Defending Democracy within the EU*, "Journal of Democracy" 2013, vol. 24, no. 2, pp. 138-149; *Die Krise demokratisch überwinden. Reformansätze für eine demokratisch fundierte Wirtschafts- und Finanzverfassung Europas* [A Democratic Solution for the Crisis. Reform Steps Towards a Democratically Based Economic and Financial Constitution for Europe], ed. I. Pernice, Nomos, Baden-Baden 2012; P. Schiffauer, *Die demokratische Grundsätze des Vertrags von Lissabon. Rückkopplungen on der Praxis zur Theorie*, in: *Perspektiven der Unionsgrundordnung gewidmet Prof. Dr. dr. h.c. mult. Dimitris Th.Tsatsos zu seinem 75. Gerburtstag*, ed. P. Brandt, Berliner Wissenschafts Verlag, Berlin ROK, pp. 43-66.

[28] M. de Wilde, *Locke and the State of Exception: Towards a Modern Understanding of Emergency Government*, "European Constitutional Law Review" 2010, vol. 6, no. 2, p. 266.

[29] P. Schiffauer, *Konstitutionelle Aspekte der Europäischen Wirtschaftsregierung. Gefahr oder Chance für europäische Sympoliteia?* Beitrag zum Gedenksymposion für Dimitris Th. Tsatsos, 6.-7. Mai 2011, p. 9.

of the Union's institution). Secondly, the vacant political space which the European Commission was not able to fill under the given conditions has been taken over by the European Council.[30] Although both executive levels have in principle a complementary function, this peculiar *Verdoppelung* (doubling) may lead to unnecessary frictions and conflicts.[31]

Another institution which has played a crucial role in the tackling of the economic and financial crisis is the European Central Bank. This institution, which mirrors the model of the German Bundesbank, pursuant to Article 130 TFEU "when exercising the powers and carrying out the tasks and duties conferred [...] by the Treaties and the Statute" enjoys a far reaching independence from any political influence, would that be on the part of the Union and member states institutions as well as any other bodies. In the context of the crisis management the ECB has emerged as a powerful institution which can stand up to the European Council.

A somewhat problematic aspect pertaining to the institutional architecture of EMU is the influential role of Eurogroup and Eurosummit, which do not have a formal status in the system. Despite the *de facto* institutionalization of Eurogroup meetings and Euro Summits, the Eurogroup remains merely an informal configuration of the Economic and Financial Affairs Council, just as the Eurosummit an informal configuration of the European Council. In other words, the Eurogroup and Euro Summit are "informal bodies for discussion and not institutions for decision-making in the governance of the Economic and Monetary Union."[32] A question arises whether the said bodies run the chance of evolving into independent institutions in charge of EMU governance and whether it were desirable that they do so?

Such a scenario may not be entirely ruled out given that the idea of creating entirely separate institutional framework for the EMU has also its devoted proponents.[33] The solution in question is, in the view of the author, not feasible and should be rejected on two basic grounds. Firstly, under the crisis management the relations between eurozone and non-eurozone Union members are already complex enough and not entirely unambiguous. With the regular Eurogroup meetings, newly institutionalized euro area summits and other measures designed specifically for the euro-countries, a "Two-Speed EU" has already been by and large materialized. The establishment of fully fledged and independent euro area institutions would thus lead to irreversible breaking of the whole system.[34] Irrespective

[30] Ibidem, pp. 6, 8.

[31] Ibidem, p. 8.

[32] R. Gualtieri, R. Trzaskowski, *The Report on constitutional problems of a multi-tier governance in the European Union (2012/2078(INI))*, AFCO, European Parliament A7-0372/2013, par. 34.

[33] J.-C. Piris, *The Future of Europe. Towards a Two-Speed EU?*, Cambridge University Press, Cambridge 2012.

[34] J. Emmanouilidis, *Institutional Consequences of Differentiated Integration*, Discussion Paper, Centre for Applied Policy Research, Munich 2007, p. 15.

of its inevitably disruptive effect on the EU, a separate institutional framework for eurozone would be unacceptable also on economic grounds. It goes without saying that creating a separate parliamentary body, a new administrative authority distinct from the European Commission or even a new jurisdiction (tribunal)[35] would involve additional expenses, which could legitimately raise objections on the part of the citizens who are already forced to bear the costs of the financial crisis which they did not induce.

A somewhat more plausible alternative solution could consist in setting up a special euro-committee within the European Parliament, which would be composed of Members originating exclusively from euro area countries and endowed with decision-making on euro-matters, potentially with a limited oversight by plenary by either endorsing or rejecting the committee's decisions. Such a special euro-committee was proposed by the Commission in its blueprint[36] and the option as such is also gaining ground in the EP's debates, albeit only in mitigated forms which leave the appointment to such a committee entirely to the political discretion of Parliament's political groups, thus avoiding any possible legal discrimination on the grounds of nationality. Still such solutions meet strong opposition of Members of the European Parliament elected in states wishing to join EMU but not yet able to do it, including Poland. The opponents argue that such a development would further fuel the Two-Speed Europe and deepen the dividing lines between the "ins" and the "outs." Even more importantly, it is rightly claimed that decisions taken by the euro-states not infrequently influence economically and politically, even if indirectly, also non-members. Finally, given that for most non-euro Union members EMU remains a paramount political goal to be achieved in a reasonable time frame, excluding those states from the decision-making process shaping the design of EMU institutions also at the parliamentary level (by virtue of Article 136 only members of the Council representing euro-states participate in a vote relating to euro matters) could have negative political ramifications.

To cup it all, the pressing problem of limited democratic legitimacy of the economic governance decision-making remains unsolved. In this context it should

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[35] J.-C. Piris, op. cit., p. 127. Interestingly, Piris admits himself that creating such new institutions or organs parallel to those of the EU could entail "political tensions and legal difficulties" (p. 126). See also in this respect the statement by J. M. Barroso, *La gouvernance européenne et la méthode communautaire, discours d'ouverture par le président de la Commission européenne, Séminaire sur la méthode communautaire organisé par Notre Europe et le Bureau des conseillers de politique européenne (BEPA)*, in: *Éléments de synthèse*, eds. Y. Bertoncini, V. Kreilinger, Brussels, 28.02.2012, p. 44, who argues that such a move would endanger the integrity not only of the internal market, but also of the European Union as a whole.

[36] Ibidem; H. van Rompuy, op. cit. As stated in the blueprint, the said euro committee could be granted "certain special decision-making powers beyond those assigned to other committees, e.g. a greater weight in the preparatory parliamentary stages or even a possibility to perform certain functions or to take certain acts in lieu of the plenary."

be emphasised that the alternative decision as to whether the measures and policies undertaken with a view to strengthening economic governance should be effected through the EU's (Community method) or intergovernmental channels[37] is not purely ideological in nature. As rightly argued by Janis A. Emmanouilidis: "Neither the EP nor national parliaments or representatives of civil society play a role when intergovernmental cooperation is established and operated. If cooperation is based on a treaty between the "ins," national parliaments have in most cases merely the right to reject or to adopt the treaty in the context of ratification. Experience has shown that governments aim to limit national parliamentary control in order to sustain their freedom of action. The role of national parliaments is restricted to ex-post control, without an ability to form the content of the treaty/agreement worked out by the participating governments. For equivalent regulations developed in the framework of the EU, (some) national parliaments are able to exert (strong) influence on their governments and the EP is able to exert powers attributed to it by the Union Treaties."[38]

Furthermore, in the running of the cooperation established by an intergovernmental agreement, decisions are often taken in the form of administrative acts which means that they are not subject to parliamentary scrutiny on neither the EU nor the national level.[39] However, some authors claim that the emergence of new forms of governance does not occur upon the demise of Community method. Judging from the number of "hard laws" it gives rise to, which *de facto* does not seem to be on the decline,[40] Community method proves quite resilient as a mode of governance. Democratic legitimisation of decision-making bodies and their activities is a very broad subject matter the exhaustive consideration of which is beyond the scope of this paper. Therefore, the author takes the liberty to limit herself to the following remarks:

– the economic governing by the European Council is not unproblematic when measured according to the standards set for democratic legitimacy by the Treaty of Lisbon.[41] Under Article 17(8) TEU the Commission is collectively responsible to the European Parliament and subject to a vote of consent (Article 17(7)). It is therefore expected that the European Parliament will struggle to render also the European Council politically accountable;[42]

[37] For a more comprehensive elaboration on the problem see: I. Jędrzejowska, op. cit.

[38] J.A. Emmanouilidis, op. cit.

[39] Ibidem.

[40] L. Boussaguet, R. Dehousse, S. Jacquot, *The 'Governance Turn' Revisited*, in: *The 'Community Method': Obstinane or Obsolate*, ed. R. Dehousse, Palgrave Studies in European Union Politics 2011, p. 194ff.

[41] P. Schiffauer, *Konstitutionelle Aspekte...*, op. cit., p. 9.

[42] Ibidem. Cf. in this respect the resolution of the European Parliament of 9.12.2013 on the: "relations between the European Parliament and the institutions representing the national governments" (Rapporteur: Alain Lamassoure) – P7_TA-PROV(2013)0599.

– as the only democratically elected institution at EU level, the EP could also be empowered with oversight of the ECB in its new enhanced role as prudential financial supervisory body;[43] the recent interinstitutional agreement between the EP and the ECB concerning the SSM is a step into this direction;[44]

– apart from democratic accountability, an essential component of democratic legitimisation of European economic executive is sufficient transparency of its activities. This effect may partly be achieved by way of "politicisation" of relevant institutions. A plausible option would be establishing the office of a European minister of finance and economy, which function could potentially be combined with that of the chair of the Ecofin Council (the Council of Economic and Finance Ministers). Together with the nomination of candidates for the office of the European Commission's President by the European political parties for the EU-wide elections of 2014,[45] the nomination of candidates for this office could contribute to giving the EU/ EMU executive a personal face widely known to citizens;

– if the person nominated as the President of the Commission would simultaneously hold the office of the President of the European Council, the somewhat problematic *Verdoppelung* of the EU executive[46] could be partly mitigated; the said "double-hatted" President would give the EU a personal face[47] and the accountability of his/ her office as the European Council's President could potentially be facilitated through already existing accountability of the office of the Commission's President.

Concluding remarks

Governance is *prima facie* a means to better organise complex decision-making (in particular in the context of differenciated levels of authority), and thus to render public intervention more effective and efficient. Thus construed 'good'

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[43] Whilst the autonomy and independence of the ECB need to be respected, a parliamentary oversight of the ECB in its current function is not excluded and could follow the example of the powers of the US congress on such matters: The Federal Reserve is subject to oversight by Congress. Board governors and staff testify before Congress frequently (e.g. 35 times in 2008) to discuss issues within the Federal Reserve's purview.

[44] The agreement approved by the EP on 9.10.2013 addresses *inter alia* issues such as: submission of an Annual Report to the EP, public hearings on the execution of the supervisory tasks, access to information, responding to written questions by the EP (P7_TA-PROV(2013) 0404).

[45] See in this regard European Parliament resolution of 4 July 2013 on improving the practical arrangements for the holding of the European elections in 2014, P7_TA-PROV(2013)0323.

[46] P. Schiffauer, *Konstitutionelle Aspekte...*, op. cit.

[47] I. Pernice, *What future(s) of democratic governance in Europe: Learning form the crisis*, in: *Challenges of multi-tier governance in the European Union. Effectiveness, efficiency and legitimacy*, Compendium of contributions to the seminar of 4 October 2012 organised by the Constitutional Affairs Committee of the European Parliament, p. 9.

governance does not need to stand in the opposition to the concept of legitimacy, but those two levels should rather work on a complementary basis. Assuming this stance as a point of departure, it may be preferable to conceive of the EU/EMU governance as a hybrid system rather than perceive it in terms of "old" and "new" patterns of governance, as those instruments not only coexist, but are at times purposefully designed to operate together (ibid). At any rate, "the deeper the legitimacy resources of a regime, the better able it is to adopt *unpopular* measures critical in the time of crisis where exactly such measures may be necessary."[48] In this context, the remaining weaknesses of the economic governance at the European level become evident and show a peculiar vicious circle: it either compromises its output legitimacy due to deficiency in adequate powers and institutions to act as they remain within the national governments, or it encroaches in the play-field of national sovereigns thus raising justified concerns relating to legitimacy of the centralisation process in economic and fiscal policy making, and consequently also the issue of democratic accountability of decision-makers.

To sum up, the matter which deserves utmost priority is the following:

Firstly, decisions in the field of economic, fiscal and taxation policies touch directly the individual concerns of the citizens. Good democratic practice requires that under normal (as opposed to emergency governance) circumstances, both the decision on the transfer of competences in these fields from national to supranational level, as well as concrete policy measures should be object of sufficiently profound public debate including consultations with the civil society prior to their implementation.[49] In addition, the fact which should not be overlooked is that peer pressure may be at times just as an effective means as "hard" laws, with the Euro Group meetings and Euro area summits serving as a potentially good deliberative environment for that purpose.

Secondly, it may not be excluded that the prospect of the EU's excessive interference in national policy-making may potentially act as a deterrent to continue to participate on a "voluntary" basis.[50] More precisely, "freedom to join" is under current circumstances more of a privilege of the "outs" as the "ins," with all arrangements for the euro area being obligatory ones. In the light of the fact that the Treaty of Lisbon opened the possibility for the member states to withdraw from the EU (Article 50 TEU), a question arises whether the same should not be possible with respect to the euro area. Normatively speaking, such option is not provided for in the EU Treaties, albeit the logic would imply that states which

[48] J. H. H. Weiler, op. cit., p. 827.

[49] J. Habermas, *Ein Pakt für oder gegen Europa*, "Süddeutsche Zeitung" 2011, no. 81, p. 11.

[50] For an interesting account of the disappearance of popular permissive consensus for the process of European integration that characterized most of its history. Cf. R. Vilpišauskas, *Eurozone Crisis and European Integration: Functional Spillover, Political Spillback?*, "Journal of European Integration" 2013, vol. 35, no. 3, pp. 361-373.

estimate that the benefits of their participation in the common monetary union are outweighed by the losses should have the right to leave the euro area (which does not change the fact that it would mean inevitable losses to the other members and to the whole system). It could also be argued that forced membership contributes to the loss of attractiveness of the monetary union for both its member states as well as those remaining outside it[51] (would that be for the reasons of not fulfilling the Maastricht criteria, such as Poland, or current limited attractiveness of the membership despite the voiced commitment to enter, such as Sweden.[52] Continuing risks and uncertainties surrounding euro entry are *de facto* likely to result in crystallising a group of semi-permanent outsiders[53]).

However, Georg Menz and Mitchell Smith[54] assess critically the option of such a managed exit claiming it would inevitably lead to substantial political upheaval. The authors claim that the refusal of some member states to partake in the single currency will result in stronger tensions for European governance than already observable, but at the same time admit that the attraction of membership in the euro area seems fairly undiminished amongst elites in central European countries,[55] which obviously has not only economic, but also political grounds. Nevertheless, a divergent interpretation, namely: that the main incentive for seeking membership is and will be the euro area shelter function[56], may not be ruled out either.

For the time to come, what may be expected is the acceleration in the direction of European political union in order to parallel the developments in the monetary union and with a view to offer a "protective umbrella of solidarity" [57], albeit merely strictly conditional. The ever increased delegation of sovereign powers from national to European level should be accompanied by commensurate increase of financial means for these competences. For this purpose, a shift towards a real EU own resources financing system based on e.g. a proper EU VAT (at 1%)

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[51] In this sense e.g. H. Dieter, *Maastricht 2.0. Bei der Weiterentwicklung der Wärungsunion hat Europa Alternativen zum Zentralisierungsfetisch, Stiftung Wissenschaft und Politik*, Deutsches Institut für Internationale Politik und Sicherheit, Berlin 2012, p. 6.

[52] Sweden has naturally fulfilled the requirements to enter the Eurozone, but despite the theoretical commitment, or more precisely obligation to become a member, under current political climate exerting any pressure on Sweden is naturally unthinkable.

[53] K. Dyson, *'Euro' Europe: 'Fuzzy' Boundaries and 'Constrained' Differentiation in Macro--Economic Governance*, in: *Which Europe?*, eds. K. Dyson, A. Sepos, Macmillan, Palgrave 2010, p. 232.

[54] G. Menz, M.P. Smith, *Kicking the Can Down the Road to More Europe? Salvaging the Euro and the Future of European Economic Governance*, "Journal of European Integration" 2013, vol. 35, no. 3, p. 205.

[55] Ibidem. The accession of Estonia to the euro area on 1 January 2011 as well as the prospective membership of Latvia as of 1 January 2014 seem to confirm the shrewdness of this observation.

[56] K. Dyson, op. cit., p. 232.

[57] Ibidem.

or EU carbon tax[58] (and not primarily on national contributions) seems, at least in the long perspective, the only appropriate solution. Such a new system based on own resources would not undermine the fiscal sovereignty of the member states and at the same time provide substantial advantages in terms of its simplicity and visibility, thus being more transparent for the EU citizens who may legitimately claim the right to know what they pay for.[59]

The fact that top national politicians can effectively coordinate a policy which, when enforced properly, must run counter to their (domestic) political calculations[60] constitutes beyond doubt one of the major flaws of the institutional framework of EMU governance which is unlikely to be addressed in the foreseeable time horizon. Still, the aforementioned conditional umbrella of solidarity provides for powerful enforcement of structural reform due to sanctions of withholding financial support. "But it is also – and quite rightly so – broadly perceived as an assault on sovereignty justified only in the short term and by exceptional circumstances."[61] However intrusive, it seems more of a solidarity gesture than a forced exclusion of a bankrupt member state from the euro area, which option is also making its way in some political and academic circles.[62] A voluntary and responsibly managed exit, which would minimise the costs of other states partaking in the system, remains a separate issue the possible consequences of which would need to be properly explored.

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[58] J. Haug, A. Lamassoure, G. Verhofstadt, *Europe for Growth. For a Radical Change in the Financing the EU*, with the collaboration of D. Gros, P. de Grauwe (CEPS), G. Ricard-Nihoul, E. Rubio (Notre Europe), CEPS, 6.04.2011, notably p. 51 f.

[59] Ibidem.

[60] D. Adamski, op. cit., p. 1319.

[61] Ibidem, p. 1363.

[62] In this sense e.g. Th. Silberhorn, op. cit., p. 137 ff.

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Zreformowana unia gospodarczo-walutowa – wciąż atrakcyjna, ale bez legitymacji demokratycznej?

Streszczenie. Celem artykułu jest przybliżenie zmian instytucjonalnych, jakie dokonują się w wyniku zarządzania kryzysowego na poziomie UE, a także konsekwencji zastosowanych metod podejmowania decyzji dla procesu demokratycznego. Porusza on problem deficytu legitymizacji (uprawomocnienia) dotyczącego tak zarządzania kryzysowego, jak i jego decydentów. Wskazuje także na korelację między istnieniem legitymacji demokratycznej dla wybranych metod zarządzania a ich skutecznością i efektywnością. Rozważane są także czynniki mogące wpływać zarówno pozytywnie, jak i negatywnie na atrakcyjność unii gospodarczej i walutowej (UGW), np. perspektywa włączenia w ramy mechanizmu pomocy finansowej dla państw spoza strefy euro czy „przymusowe członkostwo" w ujęciu normatywnych dla państw UGW, zważywszy, iż droga do wystąpienia z unii walutowej pozostaje *de lege lata* zamknięta.

Słowa kluczowe: unia gospodarcza i walutowa, legitymizacja zarządzania gospodarczego, odpowiedzialność demokratyczna