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How to Pursue a More Efficient and Legitimate European Economic Governance

by Gian Luigi Tosato



ABSTRACT

The European Union is presently not in good health. Within it, the Economic and Monetary Union (EMU) pillar is no exception. A more efficient and legitimate form of governance is needed for EMU to be able to deliver in terms of productivity, job creation and social fairness. Some claim that EMU's current constitutional structure suffers from a fatal flaw, namely the absence of a centralised economic government, arguing that a fundamental yet unrealistic change would be required to save the Euro. This paper argues that while it is true that the present state of affairs is far from satisfactory, much has been achieved already. Furthermore, significant improvements to EMU are possible on the basis of the existing legal framework, making European economic governance more legitimate and efficient. The evolution of EMU should not be appraised by taking the traditional federal state model as an exclusive point of reference.

*European Union | Economic governance | EMU | EU institutions |
Eurozone crisis*

keywords

How to Pursue a More Efficient and Legitimate European Economic Governance

by Gian Luigi Tosato*

Introduction

The European Union (EU) is presently not in good health, as stated by the President of the Commission, Mr. Juncker, in his speech on the State of the Union 2015.¹ Within the EU, the Economic and Monetary Union (EMU) pillar is no exception to this. In Mr. Juncker's words, the EMU is "only at the beginning of a new, long journey." A new more efficient and legitimated governance is needed for the EMU to be able to deliver the results expected from it (in terms of productivity, job creation and social fairness).

Many commentators take a pessimistic view on this subject.² In their opinion the current constitutional structure of the EMU suffers from a fatal flaw, namely the absence of a centralised economic government. They argue that a single currency cannot survive without this institutional support and observe that the extant governance has proved to be wholly inadequate, as evidenced by the recent economic and financial crisis. A fundamental change is required, but this is not feasible due to the political sentiments prevailing in the Member States. Thus, the breakup of the euro system is predicted to be a likely outcome.

This tenebrous view is not shared by the author of this paper. Indeed it is true that, as recognised by the President of the Commission, the present state of affairs is far from satisfactory. However, first it is appropriate to acknowledge that what has

¹ Jean-Claude Juncker, *State of the Union 2015: Time for Honesty, Unity and Solidarity* (Speech/15/5614), Strasbourg, 9 September 2015, http://europa.eu/rapid/press-release_SPEECH-15-5614_en.htm.

² See, *ex multis*: Gideon Rachman, "The crisis that threaten to unravel the EU", in *Financial Times*, 14 September 2015; Wolfgang Münchau, "Five concurrent crises push Europe into the realm of chaos", in *Financial Times*, 27 September 2015.

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been achieved so far is in no way negligible. Second, there is no reason to exclude the feasibility of significant improvements to the EMU on the basis of the existing legal framework. Thirdly, the possibility cannot be ruled out that the present European economic governance might evolve towards a more legitimated and efficient structure. Fourthly, the evolution of the EMU should not be appraised by taking the traditional federal state model as an exclusive point of reference.

1. The measures adopted during the crisis

The developments of the EMU during the crisis period are not to be underestimated. They include measures to provide financial assistance to Member States in difficulty, to strengthen the surveillance over national economic and fiscal policies, to stabilise the monetary system, and to establish a new regime for credit institutions.

In brief, the measures of the first type have led to the creation of special assistance funds initially temporary in nature (European Financial Stabilisation Mechanism, EFSM; European Financial Stability Facility, EFSF) and subsequently permanent (European Stability Mechanism, ESM). The second set of measures have resulted in a tightening of the substantive and procedural rules of the Stability and Growth Pact (SGP). The third set of measures comprised non-conventional operations enacted by the European Central Bank (ECB): loans to banks of up to three years duration (Long Term Refinancing Operations, LTRO; Targeted Long Term Refinancing Operations, TLTRO); purchase of selected sovereign bonds in the secondary markets under special conditions (conditionality) (Securities Market Programme, SMP; Outright Monetary Transactions, OMT); and injection of large quantity of liquidity into the financial system through purchases of qualified securities (so called Quantitative Easing). Finally, the establishment of the Banking Union involved the transfer of the supervision and regulation of banks from the national to the European level.

2. The ensuing evolution of the EMU

"Too little, too late," describes a widespread censure of the manner in which the EU reacted to the crisis. Nonetheless, the anti-crisis measures, albeit incomplete and laboriously adopted, have set in motion a structural evolution of the EMU. The crisis forced Member States (particularly those of the Eurozone) to take action to cure defects and lacunae in the original EMU.

This remark applies, first of all, to the Economic Union. The conduct of economic policies remains a prerogative of the States. However the powers of the EU institutions to coordinate them and to monitor national compliance with the Treaty fiscal disciplines are significantly enhanced; moreover, a new procedure is in place to counter excessive macroeconomic imbalances (Six Pack, Two Pack, Fiscal Compact). A most relevant step is also represented by the Banking Union; as already mentioned, through the Banking Union the competence to govern the

banking sector is moved to the supranational level.

The gradual strengthening of the EU powers is somewhat balanced by the introduction of forms of collective responsibility (financial assistance funds), and by a more intense cooperation between European and national institutions (European Semester). There is thus a tendency to overcome a rigid two-level split of functions and responsibilities, in favour of a closer interaction between them. Evidence thereof is offered (*inter alia*) by the interconnection between the ESM and the Fiscal Compact: access to the former is limited to the States that have adhered to and implemented the latter.

The evolution appears even stronger with respect to the Monetary Union. The ECB has been forced to take measures that are germane to national central banks and that were not expressly provided for by the Treaty. The legality of the OMT and QE operations has been fiercely challenged. Nevertheless, it is difficult to deny that the primary duty of the ECB is to ensure the safety of the euro system and the single nature of the monetary policy. By so doing, the ECB does not exceed its monetary policy mandate, invading the economic policy area. The Treaty itself empowers the ECB, "without prejudice to the objective of price stability," to "support the general economic policies in the Union"³: a support particularly justified in the current recession and deflationary environment.

3. The differentiation between euro and non-euro States

The developments of the EMU have emphasised the differentiation between euro and non-euro States. Undoubtedly, the financial assistance funds, the Banking Union, and the monetary policy of the BCE mark a distinction between States that are within and those that are outside of the Eurozone. Normative and institutional asymmetries stem from these developments, and they are destined to widen as the Eurozone is increasingly becoming the gravitational centre of future European integration. Yet, this does not necessarily jeopardise the coexistence between the two spheres, namely the Eurozone and the single market.

There is a close relationship between the two spheres: improvements or setbacks in one (the Eurozone) are immediately felt by the other (the single market). Take for instance the Banking Union, which is intended to restore the orderly functioning of a sector severely affected by the crisis and almost reduced to domestic dimensions. The ensuing benefits will accrue to all providers and users of financial services, also those belonging to countries not participating in the Banking Union. In addition, there is no rigid barrier separating the two groups. The Monetary Union is open to new members (initially 11, now 19); and non-euro States also have access to the Fiscal Compact and the Banking Union. In reality, between the Europe of the single

³ Art. 127.1 TFEU.

market and that of the euro, there is a sort of Europlus zone, providing an element of continuity for the EU in its entirety.⁴

4. The legal bases of the anti-crisis measures

It is worth noting that the anti-crisis measures could not rely on an *ad hoc* legal basis for their adoption. The Maastricht Treaty completely overlooked the needs of a crisis situation. No tools were provided to counter asymmetric or systemic shocks affecting the financial stability of the EMU. On the contrary, any form of mutual assistance was in principle barred by the already mentioned no-bailout clause. A single currency was created yet without endowing the ECB with all the powers typically vested in State central banks. Hence, when Europe was hit by economic and financial troubles in the years 2008-2009, it was not easy to find a proper legal basis for the actions required to safeguard the euro system.

An exception can be made for the revision of the SGP through the so-called Six Pack and Two Pack (consisting of regulations based on articles 121, 126 and 136 of the Treaty on the Functioning of the European Union, TFEU); and, to some extent, for the prudential supervision of the banks conferred on the ECB (which could be pegged to article 127.6 TFEU). For the other measures, the Treaty did not provide a clear legal basis which could be invoked.

It was necessary to somewhat stretch the harmonisation competence of article 114 TFEU to establish the mechanism for the resolution of bank failures. The creation of the financial assistance funds had to overcome the no-bailout clause of article 125 TFEU. The recourse by the ECB to non-conventional measures was no easier a task, owing to the limitations to the ECB's monetary policy mandate under article 127.1 TFEU and the prohibition of monetary financing laid down in article 123 TFEU. In the case of the Fiscal Compact, the ESM and the Single Resolution Fund (SRF), a solution outside of the EU legal order was ultimately needed (namely, the recourse to extra-EU international agreements), as Treaty revision was precluded by the absence of the required unanimity.

Not surprisingly, the measures in question have been legally challenged at both the national and European level. This not the place to discuss in depth the issues debated by scholars and submitted to the attention of the competent courts, suffice it to say that the validity of the said measures has not been undermined by the judicial decisions issued thus far, although a final determination by the German Constitutional Court is still pending with regard to the OMT program.

⁴ The Europlus zone comprises euro States and those non-euro States which adhere to initiatives undertaken within the Eurozone. An example is offered by the Euro Plus Pact signed also by six non-euro States (see Annex I to the Conclusions of the European Council of 24/25 March 2011). The Europlus zone provides an element of continuity within the EU in that it contributes to fill the gap between euro and non-euro States and prepare for the entry of the latter into the Eurozone.

5. Towards an enhanced EMU: the Presidents' Reports

The evolution of the EMU, as delineated above, is not yet complete. The crisis is only partially over, as evidenced by the present fragile economic recovery. Europe needs new policies to promote public and private investment, to improve the functioning of the single market, to secure the competitiveness of its products and services, and to create new jobs and defeat social and political unrest. To this end, a more efficient and legitimated governance has to be put in place; failure to do so will put at risk the survival of the euro system in the event of a new global economic and financial crisis.

The so-called Presidents' Reports, namely the Four Presidents' Report (December 2012),⁵ together with the Five Presidents' Report (June 2015),⁶ lay down a roadmap to achieve a more genuine EMU based on four building blocks: (i) Financial Union, (ii) Fiscal Union, (iii) Economic Union, (iv) democratic legitimacy and institutional strengthening. The essential features of the Reports can be summarised as follows.

i) The Financial Union is already implemented in part by the two legs of the Banking Union represented by the single supervision and the single resolution mechanisms (SSM, SRM). However, their functioning is still to be tested and certain questions remain unanswered, such as the backstop for banking crises of a systemic nature and a common deposit guarantee scheme. Furthermore, a fully-fledged Capital Markets Union (CMU) is still missing. Thus, the Financial Union needs to be completed with respect to both the Banking Union and the CMU.

ii) The Fiscal Union should secure full compliance by Member States with the fiscal discipline of the Treaty, the substantive and procedural rules of which have been strengthened during the crisis period. The next step should involve awarding the EU binding powers over national budgets. Such intervention, however, would pose delicate legal and political problems, since it affects the fiscal prerogatives of national parliaments (as repeatedly pointed out by the German Constitutional Court). A more achievable target appears to be to improve on the convergence of national macro-economic policies, by endowing the related imbalances procedure with the enforcement tools it is missing at present.

The Fiscal Union should also entail the conferral of a fiscal capacity of its own to the EU. This measure would represent a major turnaround for EMU governance. It would enable the EMU to finance economic policies aimed at promoting much needed structural reforms and investments. The problems to be solved are nevertheless numerous, including where to place such fiscal capacity (within or outside the

⁵ Herman Van Rompuy et al., *Towards a Genuine Economic and Monetary Union*, 5 December 2012, http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/134069.pdf.

⁶ Jean-Claude Juncker et al., *Completing Europe's Economic and Monetary Union*, 22 June 2015, https://ec.europa.eu/priorities/publications/five-presidents-report-completing-europes-economic-and-monetary-union_en.

ordinary EU budget), how to establish its scope of operations (the Eurozone only or the entire Union), how to provide for its funding (insurance mechanisms, national contributions, EU taxes or debt), and what legal acts and procedures to select for its deployment (typical or atypical acts and procedures).

iii) The third building block, namely the Economic Union, calls for the convergence of economic policies (at the European and national level) towards growth, employment and social cohesion objectives. To this end, both general and diversified measures are required. The former should lead to the introduction of common minimum standards in areas which are sensitive for either the functioning of the single market or the attainment of essential social protections (taxes, labour, environment, communication networks, pensions, health and so forth). The second type of measures should be addressed to individual Member States and aim to facilitate the absorption of asymmetric shocks, the implementation of structural reforms and the fixing of macro-economic imbalances. Clearly, such measures presuppose the existence of an EU fiscal capacity, as referred to above.

iv) The two components of the fourth building block (democratic legitimacy and institutional strengthening) are the necessary tools for achieving a more efficient and legitimated European governance. This building block has a profound impact over all the others. The more competences and powers are attributed to the Union in the financial, fiscal and economic areas, the more they need to be democratically legitimated (input legitimacy) and satisfy efficiency requirements (output legitimacy). Democratic control is to take place at the level where the decisions are adopted. It must be exercised by the European Parliament (EP) and the national parliaments, each within its respective sphere of competence, but also by means of coordinated and joint actions. As to the efficiency, this requires revisiting the decision making procedures and the interaction between European institutions, particularly those vested with executive functions.

6. The available legal instruments

The implementation of a genuine EMU, as outlined in the Presidents' Reports, calls for an investigation into the legal instruments required to attain this objective. Undoubtedly, the conclusion of a new constitutional Treaty would offer the most appropriate solution. Nevertheless, States are reluctant to embark on such a perilous endeavour, in light of past laborious and unsuccessful experiences. It is thus necessary to consider what can be achieved through alternative avenues.

There are two categories of possible alternative legal instruments. The first comprises instruments that are implemented within the EU legal order: it is exemplified by the Six Pack and Two Pack, the regulations setting up the two mechanisms of the

Banking Union (SSM and SRM), the amendment of article 136 TFEU,⁷ and certain inter-institutional agreements concluded by the EP. The second category includes legal instruments that are enacted outside of the EU legal order, such as the Fiscal Compact, the ESM Treaty and the Intergovernmental Agreement (IGA).

These legal instruments should be applied in accordance with a hierarchical order. Priority should be given first to instruments available within the EU over those outside it; second, to instruments having a general scope over those differentiating between Member States; thirdly, to the existing legal bases over those to be established through Treaty revision. Such a hierarchy complies with the principle of sincere cooperation (article 4.3 of the Treaty on the European Union, TEU), that aims to ensure the largest participation of Member States in the integration process and to safeguard the EU institutional balance.

Several measures required for the completion of the EMU can be implemented through EU legislation. For example: article 113 TFEU would provide a legal base for limiting the competition between national tax systems, article 114 TFEU for regulating the capital market or setting up a common deposits guarantee scheme, article 152.2 TFEU for establishing minimum standards for the labour sector, and article 311 TFEU for introducing autonomous EU tax levies. In the absence of the required consents (unanimity or qualified majority), the scope of these measures should be limited to the Eurozone (article 136 TFEU) or to the States taking part in an enhanced cooperation initiative (as is presently the case of the Financial Transactions Tax, FTT).

By contrast, failing an *ad hoc* legal base, recourse could be made to the residual competence clause of article 352 TFEU (so-called flexibility clause), or to the simplified revision under article 48.6 TEU, or to an extra-EU agreement. Measures for the completion of the Banking Union (backstop for general systemic crises, single deposits guarantee fund), as well as for providing the Union with its own fiscal capacity could be adopted by means of such instruments.

The legal base offered by article 352 TFEU, particularly if associated with article 136 TFEU or the enhanced cooperation mechanism, has not yet been fully exploited. The legislative power of article 136 TFEU could be extended, through article 352 TFEU, beyond the scope assigned to it (namely, budgetary discipline and coordination of economic policies). Furthermore, should the residual competence of article 352 TFEU be incorporated into an enhanced cooperation, the unanimity requirement and the special legislative procedure under article 352 TFEU could be subsequently converted into a majority rule and an ordinary legislative procedure (as provided by article 333 TFEU).

⁷ Art. 136 TFEU was amended by adding a new third paragraph which authorises the euro States to establish a financial stabilisation mechanism of a permanent nature.

The simplified revision procedure of article 48.6 TEU should also not be neglected. Admittedly, this procedure (like the ordinary revision procedure) also requires approval by all Member States. However, a distinction should be made between minor, well targeted amendments within the scope of article 48.6 (i.e. limited to EU internal policies and actions) and a substantial restructuring of the Union through the ordinary revision procedure. States should be less opposed to amendments of the first type, as evidenced by the swift approval of the amendment to article 136 TFEU.

7. Input legitimacy issues: the legislative function

It is time to look more closely into what is needed for a more efficient and legitimated European economic governance. In the past, less attention was devoted to this problem. Europe was deemed to be a successful enterprise. The results delivered by it were generally considered satisfactory and there was widespread demand for more integration. It was thus felt that Europe fulfilled the so-called output legitimacy requirements. Today however a different reality is coming to the fore; Europe is no longer regarded as a symbol of success. This inevitably lays blame for the economic crisis at the doors of the European institutions and raises questions about their democratic legitimacy (the so-called input legitimacy).

Under the Lisbon Treaty, Europe rests on the principle of representative democracy based on the national parliaments and the European Parliament. The former represent the peoples of the Union, the citizens of each Member State, and the latter represents the European people together, as the citizens of the Union.

The EP has performed a central role in the legislative developments of the EMU. It has acted as a co-legislator (together with the Council) for the Six Pack, the Two Pack and with regard to the regulation establishing the SRM. Moreover, the EP has exerted a significant influence even beyond the co-decision power granted to it by the Treaty. In the case of the regulation conferring a supervisory function over the banking sector to the ECB, the non-binding opinion of the EP under article 127.6 TFEU has *de facto* been upgraded to an approval. Thus, the special legislative procedure contemplated therein has become an ordinary one. The EP has made its voice heard also with regard to the extra-EU agreements: first, to strongly object to the need to go outside the EU legal order; and second, to influence the contents of such agreements.

The European legislative function receives a further democratic safeguard from the national parliaments. This occurs mainly in three ways: the control over the positions taken by national governments in the exercise of the co-decision power of the Council; the preliminary opinion over the respect of subsidiarity by any draft legislative acts of the Union (pursuant to Protocol n. 2 of the Lisbon Treaty); and the necessary parliamentary approval of any extra-EU agreements. These actions evidence a close link between the normal role of the national parliaments under

their domestic law and that which is attributed to them by the law of the Union.

8. The executive function

More delicate issues of democratic legitimacy arise in respect of the executive function within the EMU. This is due to the preponderant role assumed by the European Council (EC) in dealing with crisis problems, which has somewhat sidelined the Commission. The EC is not subject to proper democratic scrutiny, as it is not subject to the political control of either the national parliaments or the EP. The former can ensure democratic legitimacy to the positions of their respective heads of government within the EC, but not to the deliberations of the EC as a collective institution. As to the EP, it is vested with a political control over the Commission, but it lacks similar powers towards the EC.

The solutions proposed to tackle such democratic deficit can be summarised, in extremely simplified terms, by reference to three models. The first is based on the classic parliamentary theory. The European executive should be unified, by merging the EC into the Commission; and then the Commission should be fully submitted to the control of the EP. A second solution, moulded on US federalism, would entail a European Parliament as a legislative chamber where the citizens are represented, one Council (created from a merger of the two Councils) as the legislative chamber of the States, plus a Commission with executive powers. A third scheme assumes the presence within the EU of two distinct constitutional systems, an intergovernmental one for economic and foreign policies and a supranational one for the functioning of the single market. Hence, the existence of a dual executive structure: on the one side an intergovernmental institution (the EC), on the other side a supranational one (the Commission). The EC would draw its democratic legitimacy from the national parliaments, acting through an inter-parliamentary assembly composed by national parliamentarians. The Commission would be legitimated by the EP, as is currently the case.

None of the above schemes are exempt from flaws. The first and the second appear to overlook the relevance of the executive function exercised by the EC for promoting the integration of Europe and ensuring a balanced coordination of the diverging national interests. The third does not duly consider the close interaction between the constituent parts of the EU (single market, EMU, foreign policy, area of freedom, security and justice), so that their constitutional separation appears unwarranted. Solutions are therefore sought aiming to combine the interstate and the supranational element into a single legal framework.⁸ The efforts in this direction deserve approval. Nevertheless even a compound solution, not unlike the others previously mentioned, requires a new constitutional Treaty, with all the associated difficulties. It is thus worth considering whether improvements

⁸ Sergio Fabbrini, *Which European Union? Europe after the Euro Crisis*, Cambridge, Cambridge University Press, 2015, p. 257 ff.

towards a more legitimated economic governance can be attained on the basis of the existing Treaties.

The EP has two instruments at its disposal to augment the reach of its democratic control within the EMU: inter-institutional agreements under article 295 TFEU and the cooperation with national parliaments envisaged in Protocol 2 of the Lisbon Treaty and article 13 of the Fiscal Compact.

The inter-institutional agreement on budgetary discipline and sound financial management, entered into by the EP with the Commission and the Council on 2 December 2013⁹ has enhanced the democratic dialogue during the European Semester. The EP is thus in a position to monitor closely the economic policy guidelines prepared by the Commission, the stability and reform programmes submitted by the States, and the review by the Commission of these programmes as reflected in the Country Specific Recommendations. Another inter-institutional agreement, namely that between the EP and the ECB on procedures related to the SSM of 30 November 2013,¹⁰ entitles the EP to be fully acquainted and to oversee the activities carried out by the ECB, in its supervisory role over the banking sector. In particular, the appointments of the Chair and Vice-Chair of the Supervisory Board are subject to the prior approval of the EP. Similar controlling tools are granted to the EP over the SRM by means of the inter-institutional agreement concluded with the Single Resolution Board (SRB) on 16 December 2015.¹¹

Article 295 TFEU expressly refers to the EP, the Council and the Commission as subjects of inter-institutional agreements. Nevertheless, this has not prevented the EP from concluding the aforementioned agreement with the ECB and the SRB; in a similar vein, it is submitted that it would not prevent a similar agreement between the EP and the EC. Such an agreement could articulate the form and substance of the interventions of the EP President in the EC meetings. It could also define in greater detail the necessary content requirement of the report presented by the EC President to the EP after each EC meeting. Furthermore, it could provide a formal legal framework to the fruitful relationship that has developed between the EP and the EC President by way of practice (meetings, exchange of letters, written

⁹ Interinstitutional Agreement between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management (2013/C 373/01), 2 December 2013 (OJ C 373, 20.12.2013), [http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32013Q1220\(01\)](http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32013Q1220(01)).

¹⁰ Interinstitutional Agreement between the European Parliament and the European Central Bank on the practical modalities of the exercise of democratic accountability and oversight over the exercise of the tasks conferred on the ECB within the framework of the Single Supervisory Mechanism (2013/694/EU), 30 November 2013 (OJ L 320, 30.11.2013), [http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32013Q1130\(01\)](http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32013Q1130(01)).

¹¹ Agreement between the European Parliament and the Single Resolution Board on the practical modalities of the exercise of democratic accountability and oversight over the exercise of the tasks conferred on the Single Resolution Board within the framework of the Single Resolution Mechanism, 16 December 2015 (OJ L 339, 24.12.2015), [http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32015Q1224\(01\)](http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32015Q1224(01)).

interrogations).

Turning to the cooperation between the EP and the national parliaments, a significant role towards a more legitimated EMU could be played by the Inter-parliamentary Conference on Economic and Financial Governance created in 2013 pursuant to article 13 of the Fiscal Compact. This new Conference could have a positive effect on the European legislative function. It could facilitate a coherent exercise of the co-decision power on the part of the EP, increase the efficacy of the preventive oversight by the national parliaments on the respect of subsidiarity, and ensure a better and more timely implementation of EU legislation into the domestic legal orders. Secondly, it could strengthen the democratic control over the European and national executives: by the national parliaments over the national governments and the intergovernmental institutions of the Union; by the EP over the Commission and the numerous European agencies. The inter-parliamentary cooperation may also provide the national parliaments and the EP with insight into the decision-making process of the Commission (the former) and the EC and the Council (the latter).

9. Output legitimacy issues

A more democratically legitimated governance should also aspire to be more efficient. The Presidents' Reports pay only marginal attention to the "output legitimacy" aspect. A more explicit focus on it can be found in Mr. Juncker's electoral programme for the current European Commission.¹² The efficiency question involves both the policies and the institutional set up of the EMU.

As already noted, the Union has been blamed for acting "too little" and "too late" to counter the crisis. Clearly, more decisive and prompt interventions would have shortened and alleviated the crisis period. Nevertheless, Member States were able to overcome the constraints of the Treaties and provide the EMU with new governance tools. Further improvements of efficiency would accrue if the EMU were completed through the measures presently under discussion. However, a different risk should not be neglected, namely that of the Union doing "too much."

Better, simplified, more limited regulation is strongly required. The economic, fiscal, and financial sectors are overloaded by exceedingly detailed and complicated European legislation, posing construction difficulties even for experts. Take for example the set of rules related to the so-called Capital Markets Union. They are far from being friendly to SMEs, whose needs they intend particularly to address. The Union should concentrate on policy areas where it can play a decisive role and leave the rest to Member States, in accordance with the principles of subsidiarity

¹² Jean-Claude Juncker, *A New Start for Europe: My Agenda for Growth, Fairness and Democratic Change*, Strasbourg, 15 July 2014, https://ec.europa.eu/priorities/publications/president-junckers-political-guidelines_en.

and proportionality.

With regard to institutional problems, the efficiency of the EMU would greatly benefit from rationalisation of the extant dual executive system. The reduction *ad unum* that would result from the incorporation of the EC into the Commission is not realistically feasible, at least for the time being. During the crisis, the EC has extended its executive role beyond the Treaty provisions, but it was an exceptional period. It is the opinion of the author of this paper that, in the future, the activities of the EC should be limited to defining the general strategies of the Union; they should not interfere with the content of specific legislative and administrative acts. By contrast, the Commission should progressively resume its central executive position, thanks also to the stronger legitimacy granted to its President by the new *Spitzenkandidat* selection process. This should enable the Commission to perform its tasks in a more flexible, less rule-based manner. Furthermore, one should not exclude the possibility of unifying in the same person the two presidencies of the EC and the Commission, as the Treaty does not prevent such a development.

Concluding remarks

The survey conducted in this paper shows that some progress towards a more legitimated and efficient European economic governance has already occurred, and more should follow if the proposals for a more genuine and complete EMU are implemented. As previously illustrated, this objective can be achieved to a significant extent, through the instruments provided by the existing legal framework. A new constitutional pact is not necessarily required.

The structure and functioning of the EU are generally analysed comparing them with the models of unitary or federal States. Such a method is not without reason and it has been followed in this paper. As a political entity exercising authoritative powers over States and individuals, the Union is confronted with well-known problems of modern constitutionalism: vertical and horizontal distribution of powers, institutional balance, legal political and democratic controls, law enforcement mechanisms, rule of law, protection of fundamental rights and so forth. The comparative method allows the identification of the peculiarities of the Union, the analogies and differences with federal States, and the existing deficiencies with respect to the requirements of a modern democratic system.

It is submitted, however, that this type of analysis is partial and incomplete, if it considers the structure of the Union in isolation. The Union and its Member States are profoundly interconnected. Their respective legal orders are deeply integrated, giving rise to a unitary constitutional framework that is the product of the combined constitutional systems of the Union and the Member States. This is the defining feature of European integration, as already suggested by the Court of Justice in the

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Costa v Enel judgment in 1964.¹³ It is this feature that differentiates an integrated union of States from other federal union models.

The extent to which the Union satisfies the requirements of a democratic political system must be assessed taking into account the aforementioned unitary constitution. The same approach must also be adopted when discussing the EMU legitimacy and efficiency issues.

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¹³ Court of Justice of the European Union (CJEU), Judgment in the case *Flaminio Costa v E.N.E.L.*, 15 July 1964, <http://curia.europa.eu/juris/liste.jsf?num=C-6/64>.

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