Department of Political Science - Master’s Degree in International Relations

Chair in Comparative Politics

The European economic governance: principles, policies and a comparative perspectives

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Matriculation number: 618082

Academic Year 2012-2013

The European economic governance: principles, policies and perspectives

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"We have now reached a point where European integration, in order to survive, needs a bold leap of political imagination"

Mario Draghi (2012)

"L'Europa che sogno non è un'Europa dei mercati e neppure solo degli Stati, delle regioni o delle municipalità. È un'Europa dei popoli, dei cittadini, degli uomini e delle donne. Un'Europa riconciliata e capace di riconciliare. Un'Europa dello spirito, edificata su solidi principi morali e, per questo, in grado di offrire a tutti e a ciascuno spazi autentici di libertà, di solidarietà, di giustizia, di pace. Un'Europa che viva gioiosamente e generosamente questa sua missione al servizio del mondo intero, mostrandogli le vie per una civiltà davvero progredita e umana"

Carlo Maria Martini (1999)

"Join, or Die"

Benjamin Franklin (1754)

Introduction

The crisis has forced the European Union to approve new policies, procedures and rules for making stronger its economic governance. Notable developments have taken place since I started to do research for this thesis in May 2012.

The Treaty on Stability, Coordination and Governance which was signed in March 2012 by twenty-five European leaders for introducing fiscal discipline based on the balanced budget rule, rather than a golden rule, represents an historical step and the first of a series of important institutional innovations. After the adoption of the Treaty on Stability, Coordination and Governance, the decision to realize the Single Supervision Mechanism and the new strategy of the European Central Bank as well as the perspective of a wider reform of the European economic governance following the principles written by the four presidents in the report "Towards a Genuine Economic and Monetary Union" have opened the way to a new phase which requires a careful analysis of the problems of our institutional system, a scientific research focusing only on the facts for avoiding influences from the political debates and the fair shares of resiliency and awareness of both the current conditions of the problem and of its possible future developments.

It should be stressed that today the European debate on the Union is mainly focused on the economic aspect of the integrations. Even if it is surely the showiest, it is not and it cannot be the only one. The social dimension cannot be left aside in whatever analysis of the European project, indeed independently from the proposals included in this documents, I hope this research can contribute to find the consciousness of the necessity of a new equilibrium of values focused on politic empowerment, civic solidarity and integral human development as the basic concepts of a new phase of the European political and economic governance.

Bearing in mind the above-mentioned premises, the thesis advances a research focused on the EU and its economic governance, from its genesis to the changes due to the crisis, using not only an analysis based on a proper European perspective about the principles and the institutional aspects but also a comparative analysis with the economic governance in the United States of America. Therefore I have tried to faithfully apply the scientific method from a research on problems. To relaunch again the economic growth interrupted by the crisis and invert the course of a trend which can downgrade our continent in the next decades and jeopardize the integral human and social development reached until today, the European Union has to face great global challenges which are related both to short-term interests and a long-term vision.

The thesis is divided into five chapters. The first chapter is an exercise in historical-institutional analysis which can be considered as an humble attempt to explain the cultural and political principles have contributed to shape the European project. The first chapter is addressed to describe the context of values, decisions, institutional reforms and rules where the Economic and Monetary Union was established. The second chapter examines in depth the Economic and Monetary Union in the long term evolution of our economy and institutional system until 2008. The third one includes a short description of the global financial crisis for clarifying the weaknesses of the European economic governance emerged during the Euro crisis and explains the latest European rules adopted for facing the crisis. The aim of this chapter is not to offer an evaluation or a personal opinion on the effectiveness of the European anti-crisis measures. It is only to study them for preparing the comparative analysis with the Economic governance and the anti-crisis policies approved in the US. The fourth chapter gives an overview of the United States' economic governance and a comparative analysis of the economic policy and the anti-crisis main decisions adopted on the two sides of the Atlantic. The comparison of EU with US furnishes important analytical indications concerning the differences between the European rules of coordination of national fiscal policies and the American fiscal federalism.

After having analyzed the origins and developments of the institutional order and the economic rules in the EU and the US for identifying the problems of the European economic governance, the last chapter finally sets out the European challenges and some proposals of institutional innovations.

The European Union has increased its crisis management capacity and today the European economic governance is stronger than 2008. In order to reform the economic governance, the European leaders have adopted new rules concerning the coordination of fiscal policies based on binding procedures and constraints for member states. These new rules represent an innovation of the EU legal order and they entail a partial reduction of national sovereignties which does not mean also a transfer of sovereignty because of the absence of a European institution responsible for fiscal policy which should exercise these new powers as part of a wider procedure of democratic control and accountability at the European level. There is a set of common rules but there is not a common institution for fiscal policy. The absence of a common institution for fiscal policy creates a problem concerning both the functioning of the economic governance and a problem concerning the quality of the European democracy, in part because of the lack of legitimacy of such an economic governance of pure rules without politics and in part because of the limits to the political rights of the European citizens who cannot influence the current economic governance.

The proposals that are put forward in the last chapter are only a contribution to the debate about reforms for the EU and its future. They concern policies and its institutional aspects. Even if efforts have been made, there is no doubt that we need to continue in the same direction and there remains, however, a lot to be done.

1. The European integration process, Maastricht Treaty, Treaty establishing a Constitution for Europe, the Lisbon Treaty

This chapter is an exercise in historical-institutional analysis which can be considered as an humble attempt to explain the cultural and political principles have contributed to shape the European project. The chapter is divided in paragraphs to help the readers to focus on the crucial phases of the integration process and its aim is to introduce to the study of the European economic governance.

1.1 Rebuilding Europe After World War II

In the years following the Second World War, the balance of power in the European continent changed radically from that of the pre-war period and also the role and the importance of Europe in the global geopolitical dynamics turned over a new leaf.

The post-war European continent was divided into two opposing blocs differentiated by ideology, partially occupied by armed forces settled over the territories theater of conflicts and it lived the dramatic conditions of a post-war crisis. National leaders of Western Europe had to prevent new wars between their states to limit the emergence of a revived German hegemony (the unresolved German question) and to protect themselves from the danger of the Soviet Union. The absence of an autonomous State over the German territory created a great pressure on the European leaders to reach an agreement for maintaining a security system for the whole continent. Germany was under a coordinated control by an Inter-Allied Commission till 1949. In the accelerating Cold War the Western Allies realized that if they wanted to successfully integrate at least parts of Germany into their sphere of influence, they had to do more than to establish a German administrative body under their control.[1]

[1] Reconstruction and Cold War in Germany: The Kreditanstalt Für Wiederaufbau (1948-1961) by Ashgate Publishing, Ltd., 2004 p. 9

The reconstruction of Germany worried the European leaders, because together with the others Allied Forces, they wanted to involve Germany in a system of limits of its national power for preventing it could become an element of future destabilization of the continent but at the same time for setting the essential means and guaranties to protect it from possible enlargements of the strong Soviet occupation force in the heart of Europe.

Many European leaders were aware of the great common challenges they had to face. Firstly, until the end of the Soviet Union, after the fall of the Berlin Wall in 1989, Communism was seen as the most dangerous threat to the democratic life and hopes for prosperity of Western Europe. Secondly, to stop the conflicts between historic enemies by creating institutions for safeguarding the equilibrium of powers in the Old Continent and combating nationalisms. Another challenge was the so-called German problem, which was emblematically explained by the German economist Wilhelm Röpke with the question: "How can the peoples of Europe be secured against repeated bouts of German aggression?"[2]. Lastly, to try and orient the development of the new international governance, divided between the United States and the Soviet Union, by creating a proper European sphere of influence.

The United States also encouraged and supported formal European moves towards regional integration. In 1947 the first post-war effects over the European population, the critical economic situation, the communist threat and pressure from the USA had persuaded many Europeans to consider that the possible solutions should have been to lay in integration. By the late 1940s a series of European international organizations had been established.

At the economic level there were already some forms of cooperation: the Benelux Customs Convention (1944) and the Organization for European Economic Cooperation (today know as Organization for Economic Cooperation

[2] Wilhelm Röpke, The solution of the German problem(New York: J. P. Putnam's sons, 1947)

and Development - OECD). At military and political level there were the Western European Union, established by the Treaty of Brussels (1947) and the Brussels Treaty Organization (which become the North Atlantic Treaty Organization in 1949).

At the Conference for European Economic Cooperation (CEEC) in August 1947 the Italian delegation suggested a European Union and the CEEC set up a "European Union Study Group" as the first official attempt to study the feasibility of that proposal.

The first discussion about a European constitution also is older than the European Communities themselves. Back in 1948, the French Christian Democrat François De Menthon(1900-1984) presented the draft of a "constitution for the United States of Europe". In 1949-50 the recovery, the break with Russia and the success of the European Parliamentary Union contributed to increase the number of suggestions of coming forward. Several European statesmen, such as Dirk Stikker, Chairman and Political Conciliator of the OEEC (Organization for European Economic Cooperation), Giuseppe Pella and Maurice Petsche, produced various integrations plans, but the decisive proposal was that one by the French Foreign Minister, Robert Schuman.

Indeed the official starting point of the European integration process was a famous declaration of May 9th, 1950 by Robert Schuman which can be seen as the birth certificate of the new Europe. Schuman presented his proposal in 1950 to establish the European Coal and Steel Community as an explicit forerunner to a wider common market[3]. The necessity to avoid that in the future as in the past the tragedies of the World Wars could destroy Europe again for the 3rd time as well as the wish expressed by European intellectuals and politicians in many manifestos, appeals and initiatives for launching a united Europe encouraged Schuman in his foresight. One of the most famous of these appeals for the

[3] J. R. Killick, The United States and European Reconstruction: 1945-1960, Routledge, p. 142.

unification of Europe was the political statement written in the Forties by Altiero Spinelli and Ernesto Rossi. It is known as the Ventotene Manifesto and went so far as to envision a new federal model of organization of the European continent into the United States of Europe as a priority for each European state after the Second World War.

Reminding the years following the Second World War, in 1986 Altiero Spinelli said: “a major transformation has occurred in the political consciousness of Europeans, something which is completely new in their history. For centuries, neighboring countries were seen as potential enemies against whom it was necessary to be a one’s guard and ready to fight. Now after the end of the most terrible of wars in Europe, these neighbors are perceived as friendly nations sharing a common destiny”[4].

1.2 The Schuman Declaration

Even if the political organizations for promoting the idea of the European integration perceived the same aim, they were divided because of distinctions in the approaches used to realize it. Churchill and the United Europe Movement supported the so-called unionist position as an alternative way to the integration “a la Spinelli”. Indeed, the unionist position differed from the federalist one supported by the Union of European Federalists under the leadership of Altiero Spinelli. Even if both of them were in favor of a united Europe with its own institutional system and a parliamentary assembly, the unionists wanted this body as a consultative one, while the federalists argued that it would be a constituent assembly with more powers for complying and performing the task to write down a Constitution for the United States of Europe. The federalist position got the better of the unionist one in the Congress of Europe held in The Hague in May 1948.

[4] Neill Nugent, The Government And Politics of the European Union, Duke University Press, 2006 p. 8.

Meanwhile a meeting between the Allied Forces held in London in 1948, diplomats of the Western Allies decided to merge the French zone of German territory and the so-called Bizonia into the Federal Republic of Germany. According to the French diplomats it would have to happen establishing an International Ruhr Authority[5]. The idea of an authority for standing over the Ruhr was used also in the Schuman plan. Indeed it was focused on moving the control over the productions of coal and steel as essential industries for warfare, from the supervision of national institutions to that one exercised by an autonomous authority, with the aim to limit future arms race and make impossible the war between the European states. The German Chancellor Konrad Adenauer was aware the French proposal was the way for obtaining a new chance to Germany's international rehabilitation.

Having ensured the approval by the German Chancellor Adenauer, Robert Schuman made a proposal on behalf of the French government to place the coal and steel production of France and Germany under a common High Authority, which had to work independently and gave to other European countries the possibility to take part to such an ambitious project. Before publicizing the Declaration, Schuman met the American authorities for discussing the proposal with them. The initial reaction of many American observers of the Schuman Plan was that the ECSC would simply be a cover for the revival of pre-war cartels"[6]. Just after his arrive in Paris on May 7th, the US Secretary of State Acheson alerted the US about the French initiative in favor of the integration of the European nation-states. When the firsts hesitations by Secretary Acheson were rode out, he endorsed the proposal by Schuman and Monnet. Within a month the US set up the Special Working Group on the Schuman Proposal in the American Embassy in Paris. The integration of Western Europe was supported

[5] Dietrich Orlow, Common destiny: a comparative history of the Dutch, French, and German social democratic parties, 1945-1969, Berghahn Books, 2000, p. 174.
[6] Gillingham John, Coal, Steel, and the Rebirth of Europe 1945-1955, Cambridge University Press, 1991, p. 234.

by the USA because of economic, political and strategic reasons "for remarking the Old World in the likeness of the New"[7].

Under the firm conviction that any conflict involving Europe had to be avoided at all costs, Schuman explained that merging together these interests regarding coal and steel industries was the first step to make any war between the Europe's states "not only unthinkable but materially impossible"[8] and presented the long term vision of that plan saying that "the pooling of coal and steel production will immediately assure the establishment of common bases for economic development as a first step for the European Federation"[9]. For his convictions, deep-seated in his personal experience of the conflicts between France and Germany in the province of Lorraine, Schuman sought above all else to achieve a long-term peace between enemy countries[10]. Many commentators see the plan as a daring French solution to the age-old European problem of Franco-German rivalry and a courageous assertion of French independence. Actually plans to link the French and German coal and steel industries had been around since the 1920s. One's great surprise which differentiated the Schuman plan from any other previous similar proposal was the French decision - soon after the war - to combine national interests with Germany and to exclude Britain[11].

That Declaration gave a political soul to the strategy for economic and commercial integration imagined by the French political economist and diplomat Jean Monnet. He wanted to bring Europe's coal and steel industries together as a new form of political cooperation for changing relationships among nation states by creating a single market across the Community. After all the pain and suffering, the wrong and the wars, the Schuman Declaration

[7] Hogan Michael. The Marshall Plan: America, Britain and the Reconstruction of Western Europe, 1947-1952. Cambridge University Press, 1987. p.52.
[8] The Schuman Declaration May 9th, 1950, Paris, Salon de l'Horloge, Quai d'Orsay.
[9] The Schuman Declaration May 9th, 1950, Paris, Salon de l'Horloge, Quai d'Orsay.
[10] Poidevin Raymond, "On Schuman's life and career" in *Robert Schuman: home d'Etat, 1886- 1963*. Paris, Imprimerie nationale, 1986. On Schuman's life and career.
[11] J. R. Killick, The United States and European Reconstruction: 1945-1960, Routledge, p. 143.

proposed a new perspective for the future of the old continent, for bringing back to those peoples the conditions to take their long walk to peace, progress and prosperity.

The Schuman Plan embraced the strategy of pursuing European integration by way of market integration. If the means of the Schuman Plan were microeconomics, according to Jean Monnet the goals were political: "... Une autre guerre est proche devant nous si nous ne faisons rien. L'Allemagne n'en sera pas la cause, mais elle en sera l'enjeu. Il faut qu'elle c'esse d'être un enjeu, qu'elle devienne au contraire un lien. Seule la France peut actuellement prendre une initiative. Qu'est-ce qui pourrait lier, avant qu'il ne soit trop tard, la France et l'Allemagne, comment enraciner dès aujourd'hui un intérêt commun entre les deux pays..."[12].

The document read by Schuman was considered a kind of "Declaration of Interdependence"[13], because, as repeated again in the "Europe Declaration" on the occasion of the signing of the Treaty of Paris on 18 April 1951 by leaders of the founding member states: "All these efforts will be guided by the growing conviction that the countries of free Europe are inter-dependent and that they share a common destiny"[14]. The goals and ideas proposed by the Schuman Declaration became a reality with the signature of the founding Treaty of the European Coal and Steel Community (ECSC) on April 18th, 1951 in Paris (Treaty of Paris) and its entry into force on July 23rd, 1952. The openness whished for the participation to that plan by other European states made possible a wider agreement between six founding States. Italy, Luxembourg, Belgium and the Netherlands together with France and Germany accepted to be part of the

[12] Jean Monnet, Mémoires, LGF 2007, P. 342.
[13] Joaquín Roy,Aimee Kanner, The A to Z of the European Union, Rowman & Littlefield 2009, p. 170.
[14] The Europe Declaration was signed in Paris(April 18th, 1951) by Konrad Adenauer (West Germany), Paul van Zeeland, Joseph Meurice (Belgium), Robert Schuman (France), Count Sforza (Italy) Joseph Bech (Luxembourg), Dirk Stikker and J. R. M. van den Brink (The Netherlands).

European Coal and Steel Community. In the shared conviction that coal and steel were dominant economic and "military-strategic" sectors at the time[15].

On 11 August 1952, the United States was the first non-ECSC member to recognize the Community and stated it would now deal with the ECSC on coal and steel matters, establishing its delegation in Brussels. Monnet responded by choosing Washington, D. C. as the site of the ECSC's first external presence. It's not by chance that the headline of the delegation's first bulletin read "Towards a Federal Government of Europe".

1.3 The first institutions of the Community

That agreement opened the way to a new unpredictable evolution of the economic and political dynamics in the continent. The close cooperation in specific economic sector and the binding decisions by the ECSC in the six countries were the driving forces of the integration and they contributed to accomplish European unity and foster the limitations of national sovereignty[16].

In order to organize the necessary coordination of policies and rules of the common market for coal and steel, the Treaty established alongside the High Authority, an Assembly of the Six countries, a Special Council of Ministers and a Court of Justice as a system of organs. The term "institutions" was not in the TECSC but it appeared for the first time in the so-called Treaty of Rome or Treaty Establishing the European Economic Community (1957). According to Desmond Dinan the High Authority was the "institutional depository of shared national sovereignty over the coal and steel sector"[17]. The High Authority was settled in Luxembourg on August 10th, 1952 as an executive body of independent experts who had to act for promoting the interests of the Community as a whole.

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[15] European Union Law, Van Empel Martijn Luiss University Press 19.

[16] Dinan, D. (2000) Ever Closer Union: An Introduction to European Integration, Boulder/London: Lynne Rienner.

[17] Dinan, D. (2000) Ever Closer Union: An Introduction to European Integration, Boulder/London: Lynne Rienner p.25.

“The members of the High Authority shall exercise their functions in complete independence, in the general interest of the Community. In the fulfillment of their duties, they shall neither solicit nor accept instructions from any government or from any organization. They will abstain from all conduct incompatible with the supranational character of their functions” (Treaty ECSC Article 9, paragraph 5). Article 8 of the ECSC Treaty established the role and powers of the High Authority for ensuring the respect of the aims of the Treaty and the good functioning of the single market. The High Authority either on its own initiative or after receiving the assent of the Council of Ministers was able to adopt some acts provided for by Treaty ECSC Art. 14. They were: decisions (which were to be binding in all respects in the member States), recommendations (non-binding acts) and opinions (which were not to have binding force)[18]. Moreover, the High Authority could impose fines on those member States which disregarded its decisions and probably this power more than any others founded the supranational character of the ECSC.

There is no reference to an Assembly as part of the ECSC in the Declaration of 9 May 1950 presented by Schuman. The idea was put forward by Jean Monnet on the second day of the treaty negotiations as a way of monitoring and providing a counterweight to the High Authority. Concerning with its composition, article 20 of the ECSC Treaty refers to “representatives of the peoples”, the words chose demonstrate the authors wanted to distinguish the Common Assembly from traditional assemblies established within international organizations and made up of representatives of the national governments. Indeed the Common Assembly was the first international assembly based on a parliamentary model[19].

[18] The Government And Politics of the European Union Di Neill Nugent Duke University Press, 30/lug/2006 p.38

[19] Centre Virtuel de la Connaissance sur l'Europe (CVCE) http://www.cvce.eu/viewer/-/content/ad6a0d57-08ef-427d-a715-f6e3bfaf775a/en

The Common Assembly was the body which would have to exert a democratic control over the activity of the others organs of the Community. It gathered together seventy-eight peoples appointed by national parliaments and their distribution depended on the population of each member state. Although it had the possibility to enact a motion of censure, its powers were strongly limited to monitor over the High Authority and also exercised the role of an advisory body. The Assembly, comprised of members of parliament from States parties, would be settled in Strasbourg(France). According to ECSC Treaty (Article 26) the Council of Ministers was the body established "in order to harmonize the action of the High Authority and that of the Governments". The Council was considered part of a rudimentary system of checks and balances, in fact it had the power of a formal control over some of the actions by the High Authority. For this reason the role played by the Council was to limit the power of the High Authority as requested by the Benelux countries for avoiding the ECSC might be too Franco-German dominated[20].

One specific feature of the equilibrium among the organs of the European Carbon and Steel Community consisted of the partially divided executive and decision-making structure. It was organized between the High Authority, which was responsible for representing and promoting the common supranational dimension of interests, and the Council, which operated under the task to defend the national interests of each member states (Poidevin and Spierenburg 1994)[21].

The other great organ of the ECSC was the Court of Justice. It was provided for by the Treaty as a court to solve the controversies between organs within the legal framework of the Community or between the member states or between states and the European organs. The Court ensured the treaty was respected.

[20] The Government And Politics of the European Union Di Neill Nugent Duke University Press, 30/lug/2006 p.38

[21] (Poidevin and Spierenburg 1994) The History of the High Authority of the European Coal & Steel Community: Supranationality in Operation …Weidenfeld & Nicolson

After the 1st step in the integration process, a new plan was proposed in the highly sensitive area of defense policy and boosted by the rapid succession of international events. The Berlin blockade, the outset of the Korean War and the French occupation of Indo-China contributed to hasten the negotiations on the European Defense Community(EDC) proposed by the French Prime Minister René Pleven on 24 October 1950. The EDC would provide for integrating future German armed forces under a European Defense Ministry. The negotiations began in February 1951 and led to the signature of the Treaty in Paris in May 1952 by all member states of the ECSC. The decision-making structures provided for by the EDC reflected the organization of the ECSC with more powers for the Council. The political and legal monitoring powers were respectively given over the Council to the Assembly and the Court of the ECSC.

At the same time, under article 38 of the Paris Treaty, which called for the establishment of a supranational political authority to direct the EDC, in 1952 the foreign ministers of the Six member states approved a resolution for entrusting a parliamentary body with the task to write down a draft of statute for the supranational European Political Community[22]. Therefore a special committee was convened within the ECSC Common Assembly for drafting a Treaty[23].

1.4 The failure of the EDC

Because of the opposition to the project of sharing such a crucial aspect of national sovereignty as the defense policy and the strong conviction of the French communist party not to accept whatever hypothesis of German rearmament, listening to the ground swell of opposition by the public opinion, the French National Assembly rejected the law ratifying the Treaty in 1954. Anyway the failure of the EDC Treaty didn't halt the rearmament of Germany

[22] Dinan, D. (2000) Ever Closer Union: An Introduction to European Integration, Boulder/London: Lynne Rienner p. 26.
[23] Cardozo Rita, The project for political union(1952-54), in Prynce, Dynamics, pp. 49-77.

which happened in 1955 with the accession to the North Atlantic Treaty Organization. The end of the perspective of the common defense policy readdressed the evolution of the integration among the European states. Even if it was the first setback of a long series for this process, it also has represented at the same time the confirmation of the necessity to go ahead in the European integration following a step-by-step method from an economic cooperation to others spheres of action. Consequently it has influenced the scope and motives for the European integration for the following 45 years or so from an almost exclusively economic point of view. Indeed the new so-called functioning approach had been preferred to the federalist approach.

The father of Europe Jean Monnet believed in the functionalist approach to the integration of Western Europe and was aware of the important political meaning more than the economic one of sharing the market and the management of coal and steel. Indeed from an analysis of his early statements about the goal of federation, it is clear that Monnet's approach was functional with strong emphasis upon economic activities. The approach to federation, which Monnet called "the ECSC method" implicated that other tasks and people would become subject to the same common rules and institutions[24]. Monnet imagined the path to the federation in this way: "we believed in starting with limited achievements, establishing de facto solidarity, from which a federation would gradually emerge. I have never believed that one fine day Europe would be created by some great political mutation, and I thought it wrong to consult the peoples of Europe about the structure of a Community of which they had no practical experience. It was another matter, however, to ensure that in their limited field the new institutions were thoroughly democratic; and in this direction there was still progress to be made…the pragmatic method we had adopted would…lead to a federation validated by the people's vote; but that federation would be the culmination of an existing economic and political

[24] Michael Burgess, Federalism and European Union: Political Ideas, Influences, and Strategies in the European Community 1972-1986, Routledge 2002, p. 33.

reality, already put to the test…it was bringing together men and practical matters”[25]. Monnet proposed a European Atomic Energy Community for exercise a shared control over the new strategic industrial power of those decades, which would have gradually to replace the coal. In 1955 the Atomic Energy Community was already at the core of the negotiations because of two similar proposals for a coordinated policy about this source of energy. Following the plan developed by Monnet for a specific community, the German Minister of Economics Ludwig Erhard proposed a similar idea of common policy for the atomic energy. Both these proposals were united in a single document called the “Benelux Memorandum”. The Benelux Memorandum expressed the strategy for taking up the route again in the integration which was discussed in June 1955 at the Conference of Messina. In the same years the Common Assembly tried to increase its competences beyond the basic powers of monitoring over the executive organ. On 2 December 1954 the members of the ECSC Common Assembly discussed about a proposal described in the report entitled “The powers of scrutiny of the Common Assembly and their use”. The report written by Mr. Pierre-Henri Teitgen on the Assembly’s control powers oriented the debate by the Assembly to adopt a resolution which called for constituent power for itself and a working party to be set up on its election by universal suffrage. The resolution was adopted by a large majority and stated in particular that the Assembly “asks its Bureau to bring before it a project for setting up a working group with instructions to report to the Assembly on…the procedure that might be proposed for studying the most suitable and effective formulas to ensure…extension of the Community’s substantive powers and, more generally, extension of the Common Market”[26].

The so-called Benelux Memorandum was presented by the governments of Benelux countries to the other three governments of the ECSC member states in May 1952 with the aim to propose a closer and wider cooperation among them

[25] Jean Monnet, A ferment of change, Journal on common market studies, Vol. 1(1962), pp. 203 – 211.
[26] ECSC Official Journal, debated of the Joint Assembly, No. 7, January 1955, p. 124.

for using the ECSC model to develop common rules, policies and infrastructures for atomic energy and transports. The drafters of the Memorandum used the expression European Economic Community and wanted an organization, which replaced that one of the ECSC. The favorable reception by Italy and Germany of that proposal created the conditions for being part of the agenda of the Conference of Messina. The Conference of Messina was held from 1 to 3 June 1955 and gathered the foreign ministers of the six member states of the European Coal and Steel Community (ECSC). As explained by Chris Mulhearn: "At Messina the Six agreed that their collective interests would best be served by the development of common institutions, the gradual fusion of national economies, the creation of a common market and the harmonization of social policies"[27]. Such ambitions by national leaders were conveyed to an intergovernmental committee. Foreign ministers convened at the Conference of Messina decided to give the task to evaluate the practical steps to do for realizing the proposal of a European common market and that one of a single coordination plan for the atomic energy to a team of independent experts appointed by national governments under the political coordination of the Belgian foreign minister Paul-Henri Spaak[28].

The Spaak Committee involved also the British representatives for a time and the most important moot point in its debates consisted of the measures and timing for a customs union as the 1st step towards the common market. For this reason the European customs union seemed as a unified economic space and the beginning of the common market implied also the free internal movement of capital and labor. The works of the Spaak Committee led to the adoption of a report presented and discussed by the foreign ministers of the Six in a conference held in Venice in May 1956. The report by the Spaak Committee was based on the methodological approach previously used by the First

[27] C. J. Mulhearn, The Euro: Its Origins, Development and Prospects, Edward Elgar Publishing, 2008, p. 10 - 11.

[28] Pistone Sergio, The union of european federalists. From the foundation to the decision on direct election of the european parliament (1946-1974), Giuffrè, p. 85.

Committee of Studies for the European Constitution[29]. It was revealed in advance to the public for earning widespread consensus and significantly raising expectations which influenced intergovernmental negotiations and therefore weakened the nationalistic resistance[30].

In the meantime Monnet decided to resign from the office of President of the High Authority in 1954 because of the disappointment due to the slow and uncertain advance of the integration after that the plan of the EDC came to naught. He had realized that without the role of head of an independent organ of the Community he could have been a more influent actor in the international political affairs discussed during the negotiations and promoted directly the European unity in a more effective way. His instrument for pressing the political leaders was the Action Committee for a United States of Europe (ACUSE). Monnet founded the Action Committee in October 1955 for gathering leaders of pro-Europe political parties and trade unions with the aim to make possible a sort of shadow European parliament for giving a contribution to the success of a new phase of the integration based on the Messina resolutions. After 1963, when De Gaulle vetoed Britain's application to join the Communities and there was the so-called empty chair period because France didn't send its representatives to Community meetings, the ACUSE became a group for protecting the European project and the cohesion among the Six member-states[31].

1.5 The new Communities

The success of the re-launch of the integration process was also due to two international crisis in 1956. The intervention by the Soviet Union in Hungary

[29] The Committee of Studies for the European Constitution convened for the 1st time on March 7th, 1952 and it involved federalist leaders and jurists. Among its members there were: P.H. Spaak, Max Becker(German MP), Piero Calamandrei(Italian MP), A. Spinelli and the American professors from the University of Harvard Robert Bowie and Carl Friedrich.

[30] The Union of European Federalists: From the Foundation to the Decision on ... Di Sergio Pistone 86

[31] Frederic J. Fransen, The supranational politics of Jean Monnet: ideas and origins of the European community, Greenwood Publishing Group 2001, p. 125.

demonstrated the inability of a divided Europe to positively influence the evolution of central-eastern Europe, while the end of the Anglo-French military intervention against Egypt, because of the agreement between the two blocs for halting the two countries' imperial ambitions, demonstrated the strong limits to the role played by nation states in the post-war world. The negotiations culminated with the agreement on a final draft of the new pact for more cooperation of economic policies among the Six member states and a single control system for managing the atomic energy at the Intergovernmental Conference on the Common Market and Euratom at Val Duchesse in 1956.

In 1957 the Treaty establishing the European Economic Community and the Treaty establishing the European Atomic Energy Community were signed in Rome. The former included most of the so-called Spaak's customs union plan. The latter provided for setting up new organs and means for a collective supervision which had to secure the development of atomic power for peaceful purposes. Monnet's Action Committee was instrumental, if not decisive for the ratification of the Treaties of Rome. The ACUSE pressed successfully the German Parliament for the ratification, even if there the German Social Democratic Party was contrary to the Communities. The same strategy was used to press the French National Assembly where an encouraging majority ratified both the Treaties[32]. The customs union - leading to a common market - would be a way for Europeans to collectively assert their economic presence in the postwar world and thereby enhance their prospects for economic growth and higher living standards[33]. The lasting legacy of this American reaction sprang from the steps taken by Monnet to assuage American concerns. He contacted the American High Commissioner for Germany and arranged for use of the services of the American diplomat Robert Bowie, who drafted the first versions of what became Article 65 and 66 of the Treaty of Paris, based on Section 1 and 2 of the

[32] Yondorf, Walter *Monnet and the Action Committee : the formative period of the European communities* in International organization : IO ; a journal of political and economic affairs. - Cambridge, Mass : Cambridge University Press. - Vol. 19.1965, 4, p. 885-912.

[33] The Euro: Its Origins, Development and Prospects Di C. J. Mulhearn 12

Sherman Act. The direct ancestors of Articles 85 and 86 of the Treaties of Rome, are themselves direct descendants of Section 1 and 2 of the Sherman Act[34].

Among the most important innovations by the Treaty establishing the European Economic Community was a new organization of the articles dedicated to the organs of the Community. They are listed as follow: Assembly, Council and High Authority. While the Treaty ECSC provided for the following order(art. 7 TECSC): High Authority, Assembly, Council. The Treaty establishing the European Economic Community introduced in the legal framework of the European Communities new important acts which represent the supranational character of the European integration as the regulation and the directive.

By 1 January 1958 there were three European Communities in place between the same six member states. The shared perception that they were all three part of one single "project" was evidenced by the fact that certain institutions were shared between the Communities from the beginning, i.e. the "Parliamentary Assembly" and the Court of Justice. The two Rome Treaties provided for a Commission for each of the two new Communities, to match the ECSC High Authority[35].

By the end of 1958 the EEC had designed an ambitious program for economic and commercial expansion in Europe, and a common welfare based on the same social policy objectives. Among the authors of this policy, there was also Pierre Uri, a French economist and colleague of Jean Monnet. Uri proposed a multifunctional role of the Commission, as an executive civil service which espoused the communities' interest. Commissioners took an oath to pursue community and not national interests. The new development of the European integration needed the elimination of all internal barriers to commercial exchanges between the Six states and the establishment of a common tariff for trade with non-member countries. The elimination of all internal tariffs and

[34] Ball, George W., The past has another pattern. W.W.Norton & Company, 1973
[35] Martijn Van Empel, European Union Law, an introductory overview – Luiss University Press p. 19

restrictions on exchange of goods among the member states made the community as a free trade area, while the introduction of the so-called Common External Tariff(CET) made the free trade area a customs union. The Common External Tariff prepared the ground for the Common Commercial policy. The removal of tariffs and quantity restrictions by the member states for creating a single common market was planned to take place in three stages of four years each since 1958.

Free trade was considered insufficient as differences in national economic policies had to be dealt with. Consequently a common set of rules for a common market was devised so that member states would not play the same economic game by different rules. This has been always the logic behind the common market's regulations on, for example, competition policy, the Common Agricultural Policy and the harmonization of social security payments and benefits[36].

After the establishment of the European Economic Community (EEC) and the European Atomic Energy Community (EAEC or Euratom) in 1957, it was agreed that a single assembly would have the powers and responsibilities that the EEC and the EAEC Treaties assigned to it. According to articles 1 and 2 of the Convention on certain institutions common to the European Communities, the single Assembly would also replace the Common Assembly of the ECSC and enjoy the same powers and responsibilities. It has not passed a law since it started in 1952 as the Assembly of the ECSC and also during the period from 1958 to 1975 its functions were limited because it had to be consulted by the Council of Ministers which in a few words was then free to ignore it. The single Assembly convened for the first time from 19 to 21 March 1958. Right from its very first session it adopted the name European Parliamentary Assembly and a

[36] Martin J. Dedman, The origin and development of the European Union: 1945 - 2008, Routledge Group, London and New York 2010, p. 85.

few years later, on 30 March 1962, it became known as the European Parliament[37].

Pierre Uri and other architects of the Common Market between 1955 and 1957 expected that national responsibilities for economic prosperity and full employment would have been assumed by a supranational EEC, resulting in fiscal, monetary and even political union[38].

1.6 The Common Agricultural Policy

In 1960 a new EEC Commission's proposal was launched to merge together six different systems of agricultural policy into a single common policy. As the first step towards the Common Agricultural Policy (CAP) it opened the way to a negotiation involved for years Adenauer and De Gaulle. It led to the abolition of all the protective measures among national markets and evolved into a highly regulated and protected market. Meanwhile the negotiation on the realization of the common market had been just started, the Suez crisis (1956-57) pushed the United Kingdom to join the European common project. The UK hadn't wanted to be part of the ECSC as a founding member, but it changed its policy following the Suez crisis which showed the incredible reshaping of the role played by European nation states after the Second World War and the so-called traslatio imperii of our time[39]. When the UK asked for the accession to the Communities, the US and other EEC members encouraged the UK to join to counterbalance French influence, but this endorsement by the US and the strong relationship between the US and the UK was actually the main reason which justified the French President Charles De Gaulle to veto British membership. De Gaulle considered the UK as the so-called longa manus of the

[37] Centre Virtuel de la Connaissance sur l'Europe (CVCE) http://www.cvce.eu/viewer/-/content/ad6a0d57-08ef-427d-a715-f6e3bfaf775a/en

[38] Martin J. Dedman, The origin and development of the European Union: 1945 - 2008, Routledge Group, London and New York 2010, p. 86.

[39] Carl Schmitt, "Raum und Großraum im Völkerrecht," in his Staat, Großraum, Nomos: Arbeiten aus den Jahren 1916-1969, ed. Günter Maschke, (Berlin: Duncker & Humblot, 1995), p. 262.

US in Europe. Only the end of De Gaulle's era in 1969 represented a turning point in the negotiation for the enlargement of the Communities to the UK.

The British government white paper published in July 1971 summed up the results of the accession negotiations and declared: "Our country will be more secure, our ability to maintain peace and promote development in the world greater, our economy stronger, and our industries and people more prosperous, if we join the European Communities than if we remain outside them"[40].

The success of the third British application happened after a 12-hour talk between British Prime Minister Edward Heath and French President Georges Pompidou. The same agreement which was achieved on the British accession included the consensus about the creation of EEC its own monetary resources. Together with the UK also Denmark, Ireland, and Norway were part of the negotiations for joining the Communities. The negative results of a national referendum on membership in Norway, forced the government not to accede with the others candidate countries on 1 January 1973.

Dinan considers the history of the EEC during the Sixties as that one of a "community in flux" in the continuous attempt to adapt itself to fundamental changes of the international system. European integration was an exercise in realpolitik: sovereignty remains with the member states and it passes to the supranational level only when(and to the extent) that they are willing to cede it. The events of the 1960s were the basis for later (than might otherwise have been expected) progress in European integration, and ensured that progress took place no more rapidly than the member states were willing to permit.

A further step toward rationalization was taken by the conclusion of the so-called Merger Treaty (1965) which came into force in July 1967. The Merger Treaty combined the independent institutions of the ECSC and Euratom with those of the EEC. It established the Council of the European Communities, which

[40] The UK and the European Communities London, H.M. Stationery Off, July 7th1971, Cmnd.4715.

replaced the Special Council of Ministers of the ECSC, and the EEC and Euratom Councils of Ministers, and the Commission of the European Communities which replaced the ECSC High Authority and the EEC and Euratom Commissions[41].

The new phase of the European integration began with the Hague Summit of December 1969 following the slogan by the French president Pompidou "completion, deepening, enlargement"[42]. Indeed, even if Pompidou was a Gaullist and supported an evolution of the communities as a confederation more than a federation, he was less dogmatic than De Gaulle. During his mandate France lived also persistent economic and monetary problems which obliged him to a greater openness to the European negotiations. Moreover France had to counterbalance the growing power position of Germany under Willy Brandt and the only solution to accomplish that aim was changing the French position on the enlargement.

1.7 The spirit of The Hague

In order to represent important expectations on The Hague Summit there was talk of "the spirit of The Hague". Because of the great economic performance by Germany at the end of the Sixties and the devaluation adopted by the French authorities in 1969, Pompidou proposed a coordination of member states' monetary policies. Brandt and the Prime Minister of Luxemburg Pierre Werner, agreed on drafting a report on Economic and Monetary Union. But on the other hand the proposal of more coordination involved also the foreign policy and it was the issue of the so-called Davignon's report discussed by the Council in May 1970. Five months later another report was submitted to the European leaders. In fact in October 1970 Werner presented a plan in seven steps for the realization in ten years of the Economic and Monetary Union. The following chapter will be focused on the EMU.

[41] Margot Horspool and Matthew Humphreys, European Union Law Oxford University Press, 2006 p. 37.
[42] Erik Jones and Anand Menon, The Oxford Handbook of the European Union, Oxford University Press 2012.

After the Second World War, the European states needed a great reconstruction effort based on financial assistance and the mobilization of their own resources. The answers to these problems were the Marshall Plan, the Organization for European Economic Cooperation (OEEC) and the European Payments Union (EPU)[43]. The EPU was aimed at achieving the transferability and convertibility of European currencies as a transitional system on the way from a bilateralism to full convertibility in Europe. The EPU and its successor, the European Monetary Agreement (EMA), was administered by the Organization for Economic Cooperation and Development (OECD) to provide for the convertibility of the currencies of member states and existed from 1955 until 1972. These forms of coordination of monetary policies worked in light of the Bretton Woods Agreements (1944). It was the international monetary regime that prevailed from the end of the Second World War until the early 1970s in order to govern currency relations among sovereign states[44].

The end of the Bretton Woods System with the statement by the US President Richard Nixon on August 1971 of the suspension of dollar convertibility and the imposition of restrictive trade measures faced the European countries to find a new reference system. In December 1971 a new agreement known as Smithsonian Agreement, temporary replaced the Bretton Woods rules and involved the members of the Group of Ten countries in December 1971 to adopt Floating Exchange Rates. The member states of the Communities enacted in 1972 the so-called “snake” for maintaining the exchange rates among the EC currencies in a 2,5% margin of fluctuation. This measure called “snake in the tunnel”, because the dollar exchange rates of the European currencies would provide the ceiling and the floor (the “tunnel”) between which intra-European exchange rates would move collectively up and down (describing the curve of a snake). Although the precarious equilibrium reached at the Smithsonian

[43] Horst Ungerer, A Concise History of European Monetary Integration: From EPU to EMU, Greenwood publishing group 1997, p. 24.
[44] Benjamin Cohen, "Bretton Woods system," in R.J. Barry Jones (ed.), Routledge Encyclopedia of International Political Economy (Routledge,2002).

Institution in Washington, D.C in 1971 lasted less than two years, the European member states preserved the Snake[45]. In 1974 France left the snake for nine months. The absence of France demonstrated the strong position of German economy. Indeed it was seen as the deutsche mark zone, which sometimes also referred to as the “mini-Snake”. The mini-snake worked till 1979, when it was replaced by the European Monetary System (EMS).

Meanwhile in 1974 a new leader, Valery Giscard D’Estaing, won the presidential election in France and the Brandt’s finance Minister Helmut Schmidt became new chancellor in Germany. Across the Channel also something had changed with the return of Wilson as Prime Minister.

Schmidt and Giscard d’Estaing reestablished the primacy of the Franco-German axis in EC affairs. Finally at the Paris summit meeting in December 1974, the European heads of state and government decided for the institutionalization of regular summits under the name of European Councils and, for counterbalancing the creation of the European Council, they agreed for the direct election of the European Parliament by 1978. According to Schmidt and Giscard d’Estaing the European Council would have been the best place for addressing the political direction of the European affairs. Schmidt was quite aware of the intergovernmental transformation of the European institutional order that could result from this step[46].

1.8 Tensions and debates slowed down the integration

While the Seventies finished with the accession treaty with Greece (which acceded on January 1st, 1981), the first direct election of the European Parliament and the establishment of the European Monetary System (EMS), during the first years of the Eighties the European Communities lived the

[45] Matthias Kaelberer, Money and Power in Europe: The Political Economy of European Monetary Cooperation (Suny Series in Global Politics, Jun 2001), State University of New York Press, United States, p. 106.
[46] Joachim Schild and Ulrich Krotz, Shaping Europe: France, Germany and Embedded Bilateralism from the Elysée Treaty to Twenty-First Century Politics, Oxford University Press, 2013, p.118.

following problems: a weak Commission; the tensions causes by the bad temper of the new British Prime Minister Margaret Thatcher, who asked for a budget rebate (which would have been the moot point of fifteen summits for five years); the decision of Greenland to leave the EC in 1982; the debate to reform the CAP; new enlargement perspectives; the necessity to adopt common economic and monetary policy.

The EMS was conceived as a zone of relative monetary stability for reacting to the growing inflation and the economic stagnation. According to the Dooge Report of 1985, the EMS "enabled the unity of the Common Market to be preserved, reasonable exchange rates to be maintained and the foundations of the Community's monetary identity to be laid"[47]. As explained by the Bulletin of the European Communities, No. 6/1978 on the results of the European Council in Bremen, the discussion centered on monetary questions. The EMS emerged as a "hybrid - not entirely community, not entirely outside it"[48]. It was not based on the Treaty of Rome, even if it fostered a closer monetary coordination, nor on a proposal by the Commission.

The British budgetary question exploded into such a complex framework and opened a new period of difficult relationships between the UK and the European institutions as well as other member states because of the strict behavior of Mrs. Thatcher. According to Sir Michael Butler "from the beginning(of her prime ministership) … she showed a deep-seated prejudice against the EC"[49]. In Thatcher's view, European integration should not go beyond the removal of barriers to trade and investment and the coordination of economic and foreign policies exclusively on an intergovernmental basis. The moot point was that Britain paid too much and received too little in return. In 1986 the European Council once and for all solved the British problem in the

[47] Ad hoc committee for institutional affairs report to the European Council(Dooge Report), March 1985, Bull. EC 3-1985, point 3.5.1.
[48] Williamo Nicoll and Trevor Salmon, Understanding the European Communities(Savage, MD: Barnes&Noble, 1990), p. 197.
[49] Sir Michael Butler, "Simply Wrong about Europe" Times(London), Nov. 1991, p. 3.

framework of a reform which interested the budgetary affairs as a whole. Although Margaret Thatcher was absolutely not a pro-Europe leader, she was one of the leading promoters of the single market program. After the trial of strength on the issue of the reform of budget, she focused her actions and proposals in the European Councils on what she identified as a policy for the "completion of the common market in goods and services"[50].

Probably because of the success of the policies proposed by Etienne Davignon (commissioner responsible for industrial affairs between 1981 and 1985) in the early Eighties reemerged a concrete interest by the European leaders and policymakers in the single market. The Court of Justice of the European Communities gave its contribution to the realization of the common market with some important landmark judgments. Following the Cassis de Dijon(1979) case, concerning a German prohibition on import form another member states of alcoholic beverages that did not meet minimum alcohol content requirements, the Commission has spelled out the implications of free movement of goods in the Community: "Any product imported from another member state must in principle be admitted…if it has been lawfully produced, that is, conforms to rules and processes of manufacture that are customarily and traditionally accepted in the exporting country, and is marketed in the territory of the latter". Thus the Commission developed the principle of mutual recognition that would avoid the otherwise impossible process of harmonizing in detail the member states' diverse legal norms[51]. In parallel with the development of the coordination of economic and monetary policy and the realization of the single market, a sort of European foreign policy based on common external relations tried to establish itself. Thanks to the diligence of the Italian foreign minister Emilio Colombo, in November 1981, the Draft European Act, also known as Genscher-Colombo proposal, was launched to call

[50] Hugo Young , One of us: a biography of Margaret Thatcher, Macmillan, 1991 p. 388.
[51] Dinan, D. (2000) Ever Closer Union: An Introduction to European Integration, Boulder/London: Lynne Rienner p. 95.

for a more effective decision-making and greater Community competence in external relations[52]. Though having not effects on the decisions taken by the European summits, it gave rise to the "Solemn Declaration on European Union"[53] which did not have a great deal of content but did state that there should be a renewed impetus towards the development of Community policies on a broad front including the completion of the internal market. A year later, in 1984, the European Parliament, led by Spinelli, itself drew up a draft treaty on European Union, perceived alternately as a very radical document or a treaty drafted "over dinner at the Crocodile Restaurant in Strasbourg"[54]. In 1980 Spinelli gathered together a group of like-minded parliamentarians who met themselves in the Crocodile Restaurant. From those debates arose a Club which proposed a new institutional model called European Union to replace the European Community. The club became a committee on institutional affairs within the European Parliament in 1983. The Institutional Affairs Committee presented a Draft Treaty establishing the European Union which was voted and approved by the European Parliament by a clamorous 237 to 31 with 43 abstentions[55].

Meanwhile the enlargement continued over two years later Spain and Portugal became member states of the European Communities.

1.9 The Delors Commission and the Single European Act

The great process of reforms of the European institutions started in the second half of the Eighties after the first address by Delors as Commission president to the European Parliament in 1985. In his speech he emphasized the necessity to complete the internal market, re-launch negotiation on a closer monetary policy and extent competences of the Community in foreign and defense policy. Delors

[52] Selection of texts concerning Institutional Matters of the Community from 1950-1982(Luxemburg: European Parliament, 1982), pp. 490-499.
[53] Bulletin EC 6-1983, point 1.6.1.
[54] Ian Ward, The Margins of European Law, Macmillan Pub Co (June 1996) p. 30.
[55] Bulletin EC 2-1984, point 1.1.1.

dedicated his mandate to the realization of the Economic and Monetary Union (EMU) after the completion of the internal market. He convinced the heads of state and government to request the Commission to draw up a plan based on a realistic and binding timetable for completing the latter with a view to the European Council of June 1985. Since 1985, the Schuman Declaration is officially remembered every year on 9th May as Europe Day.

The result of that work by the Commission was a White Paper which includes around 300 proposals for the implementation of the internal market. The White Paper received an official endorsement by the European Council in Milan in June 1985 and the European leaders decided to convene an intergovernmental conference on that issue in September 1985. The works of the IGC finished with the adoption of the Single European Act in December 1985. The debate within the IGC focused on the role played by the European Parliament in the decision-making process. Italy and Germany agreed to give more power to the European Parliament in opposition to the firm conviction of the French delegates. The compromise was reached on extending the compulsory consultation between the Council and the European Parliament to new policy issues and establishing a "cooperation procedure" to involve the European Parliament in the legislative process. The most important phase was influenced by Delors who insisted for including in the Single European Act "a certain monetary capacity". His idea was to reach an alignment of economic policies in the European Communities and "outside it would enable Europe to make its voice heard more strongly in the world of economic, financial and monetary matters"[56]. Following Delors' intensions a new chapter was included in the treaty about the necessity to adopt a policy for the convergence of monetary and economic policies and it mentioned both the EMS and the ECU. The SEA entered into force in July 1st, 1987. Two years later started the post-Cold War era with the end of the communist block and the subsequent unification of Germany.

[56] Marina Gazzo, Toward European Union, 2 vols.(Brussels: Agence Europe, 1985 and 1986), vol 2, p. 9.

The European Council decided in June 1988 to instruct a group of experts, chaired by Delors and including member state central bankers, to "study and propose concrete changes" that could result in EMU[57]. The so-called Delors Committee completed its report, entitled Report of the Committee for the Study of Economic and Monetary Union, in April 1989. It proposed a three-stage approach to the realization of the EMU which was received the endorsement of the European Council (June 1985). A detailed description of the realization of the EMU and the reforms which have contributed to shape the current European economic governance is included in the following chapter.

The Single European Act marked the first significant revision of the Treaty of Rome. It introduced four important changes in the Community's strategy for advancing the integration process. Firstly, it greatly simplified the requirements of harmonizing national law by limiting harmonization to the essential standards and by systematic adoption of mutual recognition of national norms and regulations. Secondly, it established a faster and more efficient decision-making process by extending the scope of qualified majority voting. Thirdly, it gave the European Parliament a greater role in the legislative process. Fourthly, it reaffirmed the need to strengthen the Community's economic and social cohesion[58]. Full integration of Germany happened in October 1990. Links between German unification and a closer political integration and between EMU and European Political Union (EPU) were remembered by a famous call by Thomas Mann's in 1953 "not for a German Europe, but for a European Germany". The result of negotiation between France and Germany on such a complex challenge was the decision to hold an Intergovernmental Conference to advance towards Stage II and III of the EMU. On March 20 Belgium became the first member state to submit a formal proposal for European Political Union (EPU), emphasizing a common foreign policy. This campaign of ideas for

[57] Bulletin EC 6-1988, point 1.1.14.
[58] European Council. Committee for the Study of Economic and Monetary Union, Jacques Delors , Report on economic and monetary union in the European Community, Office for Official Publications of the European Communities, 1989, p. 9-10.

addressing the IGC towards the European Political Union was continued by the Italian foreign minister, Gianni De Michelis. The outcome of the East German elections finally pushed Mitterand to support a Franco-German initiative on EPU. That initiative took the form of a short letter on April 19, 1990 and it is known “the Kohl-Mitterand letter”.

The Kohl-Mitterand letter set the agenda for a meeting of the European Council in Dublin in April 1990 to prepare the IGC on EMU and it discussed also on the possibility of a parallel IGC on the EPU. Kohl and Mitterand did not define EPU but identified four essential elements of it: stronger democratic legitimacy; more efficient institutions; unity and coherence of economic, monetary and political action; and common foreign and security policy. The European Council agreed that both IGCs (on EMU and EPU) would begin at the Rome summit in December 1990[59]. The main goal of the EPU was to include in the policy making process a single government as the institution before whom the ECB would have to be responsible for monetary policy. The works by the two IGCs lasted since December 1990, when they started in Rome, until December 1991 at The Netherlands' regular end-of-presidency summit in Maastricht. Although member states were contraries to this proposal, after the long and anguished negotiations with vetoes by some countries and the British firm opposition to the project of EMU, in late 1991 the decisive moment came. The key element was proposed by Delors, who supported an "opt-out" for any member state not wishing to join the currency union until the later date. Thus the Commission generally favored the treaty's final provisions on EMU[60]. According to Delors, the structure of the decision making process at the European level should have been unitary and not divided into sectors or pillars in alternative to the common view of an institutional framework of three pillars. Delors' proposal was quasi unanimously rejected and the structure in three pillars comprised the European Communities pillar (including EMU) and two intergovernmental pillars, one for

[59] Bulletin EC 6-1990, Presidency conclusions, point 1.1 to 1.8.
[60] Agence Europe, November 19, 1990.

CFSP and the last for Justice and Home Affairs (JHA). Even if the European Parliament was not part of the IGC, the European Council decided in October 1990 to involve it by establishing regular contacts and exchanges of view with the EP. The EP exploited such a new phase of dialogue for trying to exercise a political influence over the IGC. The delegates by EP acted bearing in mind a series of reports prepared by the Committee on Institutional Affairs under the chairmanship of David Martin. Among the ideas supported by the EP there ware: a stronger power for the Parliament in the legislative process with the introduction of the so-called codecision with the Council and the right to initiate legislation[61].

1.10 The Maastricht Treaty

In the Maastricht summit, a consensus emerged among the member states when to move to Stage III and establish a single currency, although not every candidate member states would be economically able or politically willing to participate in the currency union at the outset[62]. The new treaty provided for a third stage of EMU which consisted of a European common currency into circulation since 1999 and it included important provisions for improving the role played by the European Parliament in the legislative process with new rules which set up the codecision procedure. The Maastricht Treaty was signed on February 7, 1992. Ratification process forced again the integration because after the negative results of the 1st Danish referendum Delors reacted emphasized transparency and subsidiarity as the main principles of the legislative process.

The aim of the choice of those principles with more attention by the European Commission was to make true a more effective involvement of citizens. Subsidiarity was considered by Delors as one of the most important principle since when he started to work as president of the Commission in 1985.

[61] Martin I, PE A3-47/90; Martin II, European Parliament(PE) A3-166/90.
[62] Agence Europe, 15 September 1991.

Although no specific mention of the word subsidiarity appeared in the treaties prior to Maastricht, subsidiarity was already operating within EEC law[63]. As declared to Le Figaro in June 1992 he conceived subsidiarity as the key principle of a federal system because "the federal approach is to define clearly who does what"[64].

Unlike the Tenth Amendment to the United States Constitution, which reserves for the states all powers not delegated to the federal government, or Germany's Basic Law, which vests all powers in the Länder except those prescribed in Article 30, subsidiarity was notoriously difficult to define. According to Commissioner Leon Brittan, "subsidiarity must be treated as a guiding political principle as well as a legal restraint". Brittan claimed that Article 5 TEC(formerly article 3b), which formalized the principle of subsidiarity, "places a legally-binding limitation on the scope of action of the Community; it applies without caveat, limitation or exception ... once the treaty has come into effect, every single new legislative act of the Communities can be held up and judged under this standard"[65]. The development of subsidiarity in the late 1992 went hand in hand with efforts to make the EC's legislative process more transparent, adopting a number of specific measures promoted at the Edinburg summit. These changes influenced positively the Danishes who voted for the second time. Indeed "yes" won the second referendum in May 1993. Finally, after the referendum by all member states the Treaty on the European Union entered into force on November 1, 1993 with the positive judgment by the Federal Constitutional Court of Germany[66]. In 1996 the leaders of France, Germany and Spain had changed and that changing of the guard entailed new margin of negotiation about Emu and future enlargements to ten or more small and poor

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[63] Jacques Delors, Le Nouveau Concert Européen(Paris:Éditions Odile Jacob, 1992), and his speech to the European Parliament in January 1985, Bulletin EC S/1-1985.
[64] Le Figaro, June 8, 1992, p.1.
[65] Leon Brittan, speech delivered at the European University Institute, June 11, 1992, IP 42 1477, 92/06/11.
[66] Dinan, D. (2000) Ever Closer Union: An Introduction to European Integration, Boulder/London: Lynne Rienner p. 153-156.

Central and Eastern European states. The last enlargement happened in 1995 with the accession of member states of the European Free Trade Association (EFTA). Indeed it was called EFTA enlargement. The EFTA enlargement was relatively rapid because for the first time the candidate countries had already adopted much of the EU's acquis communitaire. January 1995 was established as the deadline for the enlargement for making possible that the new member states would be able to take part to the 1996 IGC[67].

The significant dispute at the end of the negotiations was focused on the question of the threshold for a blocking minority in the reweighed system of qualified majority voting (QMV). While the institutional questions included the number of commissioners per member state and the size of national delegations in the European Parliament. A compromise was reached at the specially convened General Affairs Council in Ioannina, Greece, on March 1994. The place where the meeting was held gave the name to the compromise, which is called "Ioannina Compromise". The 1996-1997 IGC took place only because it was mandated under the terms of the TEU (article N). Provision for another IGC so soon after 1991 which reflected both unfinished negotiations the necessity of a reform of the TEU's decision making process. The reflection group (which gathered together national representatives, a commissioner and two MEPs) responsible to prepare the IGC met itself in Corfu in 1994. In the same months Europe was still in recession and the economies which would have to converge actually were diverging. In such a complex framework unofficial Italian call for a relaxation of the EMU convergence criteria elicited a frosty German response. The main areas for reform were: making the EU more relevant to its citizens (i.e. human rights and internal security); improving the EU's efficiency and accountability; and improving the EU’s ability to act internationally[68].

[67] Copenhagen European Council, "Presidency Conclusion", Bulletin EC 6-1993, point 1.4.
[68] The Reflection Group report is published in European Parliament, Official text, pp. 149-212.

Between 1996 and 1997 the IGC decided to improve the CFSP's effectiveness and recognized the desirability of establishing a CFSR unit for analysis and planning inside the Council secretariat, with Commission involvement or by the establishment of a High representative for the CFSP. In light of future enlargements the question of QMV was solved compensating large member states for the loss of a second commissioner. Moreover the Edinburgh summit's subsidiarity protocol was incorporated into the treaty.

1.11 The Treaty of Amsterdam

The Treaty of Amsterdam increased the powers of the Union by creating a Community employment policy, transferring to the Communities some of the areas which were previously subject to intergovernmental cooperation in the fields of justice and home affairs, introducing measures aimed at bringing the Union closer to its citizens and enabling closer cooperation between certain Member States (it was the first warning sign of the future enhanced cooperation). It also extended the codecision procedure and qualified majority voting and simplified and renumbered the articles of the Treaties.

Actually the Amsterdam Treaty has been criticized because it didn't change the provisions of the previous European Treaties as expected. The Amsterdam Treaty did provide in Protocol 6, Article 2 that: "At least one year before the membership of the European Union exceeds twenty, a conference of representatives of the governments of the Member States shall be convened in order to carry out a comprehensive review of the provisions of the Treaties on the composition and functioning of the institutions". Treaty revision has been a virtual non-stop process since mid-1980s.

There were basically two reasons for this, enlargement being the first. When future membership was expected to grow to around 25 states and as a club of 15 they were using institutional machinery designed for six, the rules had to be re-examined first. In 15 years the EU membership more than doubled from 12 states in 1992(Maastricht Treaty) to 28 by 2007, with Bulgaria and Romania joining. Enlargement are tricky as they are effectively balancing acts to maintain the political, geographic, demographic and economic symmetry of the EU. The Treaty of Amsterdam failed to do so in 1997 and these problematic reforms were effectively ducked until later. Moreover the European Treaties proliferated because they self-propagated; each one happened to contain the seed for the next. A clause stipulated that a future IGC in so many years would review, revise, complete, correct or change the treaty for another. So one treaty began the next. They are not independent one-off treaties but many in a serial.

The 1996 IGC started in Turin and when its works finished in October 1997, the Treaty of Amsterdam fell far short of its intended objectives, it failed to resolve any of the key issues of institutional reform and the political arithmetic of weighted voting. Despite the limitations of the 1997 Treaty of Amsterdam, the Council decided to press on with enlargement[69]. The enlargement of the EU to the so-called Central and Eastern European States was quantitatively and qualitatively unprecedented. For the 1st time ten states wanted to accede to the Communities even if they were poorer and more breakable democracies than the European member states. The accession to the EU had been conceived by them as the possibility to obtain recognition of their "Europeanness" after the communist era. From the 1st aids to Poland and Hungary decided by the European Commission in 1988 with the adoption of the Poland-Hungary: Actions for Economic Reconstruction (PHARE) program, the rapprochement with the EU progressed rapidly. Václav Havel, president of Czechoslovakia (later of the Czech Republic), called in June 1990 for the two countries to "return to Europe", clearly he meant accession to the European Communities[70].

In August 1990 the Commission proposed that the European Communities conclude "second generation" agreements with the Visegrad Three

[69] Martin J. Dedman, The origin and development of the European Union: 1945 - 2008, Routledge Group, London and New York 2010, p. 166 - 168.
[70] Quoted in William Wallace, The transformation of Western Europe(London:RIIA, 1990), p. 29.

(Czechoslovakia, Hungary and Poland) to broaden and deepen the scope of the "first generation" trade and cooperation agreements. The new accords aimed to strengthen political and economic reform in the Visegrad Three paving the way for the eventual membership[71]. During the Treaty of the European Union ratification crisis the accession of the Central and Eastern Europe States were advantages because the European Communities had to seem to be outward-looking and inclusive. Only in June 1992 the Commission itemized the factors that would influence the EU's consideration of each country's application. These included geographical location, a democratic political system, a commitment to human rights, a functioning and competitive free market economy, an adequate legal and institutional framework, acceptance of the aquis communitaire, and a willingness to participate in the Common Foreign and Security Policy and possibly a common defense policy[72]. The European Council, in Edinburg in December 1992, welcomed the Commission's report and turned its attention fully to the EU's prospective east-ward enlargement.

1.12 A constitutional reform

The European Council spelled out the so-called Copenhagen Criteria in June 1993, by which candidate countries would be judged for accession: stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities; existence of a functioning market economy, as well as the capacity to cope with competitive pressure and market forces within the EU; ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union[73].

Accession negotiations with the Czech Republic, Estonia, Hungary, Poland and Slovenia plus Cyprus began in Brussels on 31 March 1998, when the foreign ministers of the applicant states held separate opening talks with their EU

[71] COM(90)398 final, August 2, 1990.
[72] Commission Report on Enlargement, Bulletin EC S/3-1992, pp. 11-12.
[73] Allan F. Tatham, Enlargement of the EU, Kluwer Law International, 2009, pp. 207-211.

counterparts. The first stage of the negotiations consisted of an analytical review of the acquis communitaire in multilateral sessions conducted by officials of the Commission's Task Force for the Accession Negotiations (TFAN) and officials of the candidate countries. The Treaty of Amsterdam and the 1996 IGC's reform had failed to prepare institutionally the EU for enlargement, postponing reform in this area. A protocol annexed to the Treaty of Amsterdam had attempted a temporary solution, but one that largely went ignored. With this enlargement on the horizon the 2000 Inter Governmental Conference was convened. As is well known, the Treaty of Amsterdam, which came into force on 1 May 1999, also left a certain number of important and controversial "leftover" issues. These had mainly concerned the balance of power between the European Union institutions and the member states but also between the member states themselves[74].

The objective at Nice was clear: to deal with the "Amsterdam leftovers", that is to say, finish the reforming of the institutions and to prepare the EU for further enlargements. The Intergovernmental Conference (IGC) was convened under the Portuguese presidency of the Council on 14 February 2000. After 330 hours of formal discussion, the European Council - badly prepared as ever - met in the Acropolis at Nice on 7 December to conclude negotiations[75]. The Treaty of Nice dealt with the make-up of the Commission, the weighting of votes in the Council and the extension of the areas of qualified majority voting. It simplified the rules on use of the enhanced cooperation procedure and made the judicial system more effective. There are three other important additions to the powers of the Parliament: that it may take the initiative in charging a member state with a breach of fundamental rights by two thirds majority; that Parliament is at least given equal status with the Council, Commission and the member states to challenge the legality of an act in the Court of Justice; and that Parliament is

[74] See The Protocol on the institutions with the prospect of enlargement of the European Union of the Treaty of Amsterdam.
[75] Duff, Andrew The International Spectator. January-March 2001, No 36/1. [s.l.]: Istituto Affari Internazionali. . "From Amsterdam left-overs to Nice hangovers", pp. 13-19.

given equal status with the Council and Commission in seeking an opinion from the Court of Justice about the validity of international agreements. The Charter of Fundamental Rights of the European Union had been prepared outside the IGC by an extraordinary Convention comprised of representatives of member state governments and parliaments, the Commission and the European Parliament. Agreed on 2 October by the Convention, the Charter was jointly and solemnly proclaimed at Nice by the Council, Commission and Parliament.

However, because of the insistence of the British delegation, there is no reference made to the Charter in the Treaty of Nice. The Treaty of Nice also contained a mechanism to permit a vanguard of up to eight countries to press ahead with integration leaving others to catch up later. This was now referred to as "enhanced cooperation"[76]. The Heads of States and Government signed the Treaty in Nice on 26 February 2001. Nice was clearly not the end of the road. The nature of the EU was still very much on the agenda. Germany's foreign minister Joschka Fischer had made a speech in a personal capacity at Humboldt University in Berlin on 12 May 2000 in which he discussed the challenges faced by Europe and the question of the "finality" of European integration. Aware of the difficulties he argued: "…there is a very simple answer: the transition from a union of states to full parlamentarisation as a European Federation, something Robert Schuman demanded 50 years ago. And that means nothing less than a European Parliament and a European Government which really do exercise legislative and executive power within the Federation. This Federation will have to be based on a constituent treaty"[77].

One year after the Intergovernmental Conference held in Nice in December 2000 which launched a debate on the future of the European Union. The Laeken European Council in December 2001 adopted a declaration on how to pursue

[76] Martin J. Dedman, The origin and development of the European Union: 1945 - 2008, Routledge Group, London and New York 2010, p. 173.
[77] Speech by Joschka Fischer at the Humboldt University in Berlin, 12 May 2000 "From Confederacy to Federation: Thoughts on the Finality of European Integration".

this process, including the questions of (i) how to "establish and monitor a more precise delimitation of competencies between the European Union and the Member States, reflecting the principle of subsidiarity"; (ii) the status of the Charter of Fundamental Rights; (iii) "a simplification of the Treaties with a view to making them clearer and better understood without changing their meaning"; and (iv) "the role of national parliaments in the European architecture". The Laeken Declaration of 13 December 2001 redrafted and gave tangible form to the issues raised in Nice regarding a reform of the institutions[78]. The Declaration on the Future of the Union pronounces that the Swedish and Belgian presidencies of the Council in 2001, "in cooperation with the Commission, involving the European Parliament, will encourage wide ranging discussions with all interested parties; representatives of national parliaments and all those reflecting public opinion; political, economic and university circles, representatives of civil society, etc. The candidate States will be associated with this process in ways to be defined".

A new IGC was convened in 2004 and accession states participated in the new conference; as observers[79]. The Convention on the Future of Europe proposed by the Laeken Summit would have former French President Valéry Giscard d'Estaing as President and be composed of fifty representatives of the Heads of States or Government of the member states, thirty members of national parliaments(two from each member state), sixteen members of the European Parliament and two Commission representatives. Candidate countries would also be involved without votes. To sum up there were 105 conventionnels. The Convention went through three phases: (1) a listening phase during the first half of 2002; (2) an analysis phase from September 2002 until early 2003; and (3) a drafting phase during the remaining time in 2003. Even if most of the work has been done by the so-called Praesidium, on 16 January 2003 the works were

[78] Bulletin of the European Union. 2001, No 12. Luxembourg: Office for Official Publications of the European Communities.
[79] Duff, Andrew The International Spectator. January-March 2001, No 36/1. [s.l.]: Istituto Affari Internazionali. . "From Amsterdam left-overs to Nice hangovers", p. 13-19.

influenced by an important Franco-German proposal. The proposal tried to merge the French intergovernamentalist approach with more federalist German approach. The Franco-German proposal was based on a stronger reform of the European Council for improving its powers. The UK and Spain also produced a joint text on institutions on 28 February 2003. These two countries claimed to support a strong and independent Commission. On 28 March 2003 no less than 16 members of the Convection from different small states put forward a document on institutions. It emphasized key principles like maintaining and reinforcing the Community Method preserving the institutional balance, no new institutions, the equality of the member states and openness.

1.13 The Treaty establishing a Constitution for Europe

The supranational EU is an important landmark for the integration since the 1957 Treaties of Rome and is largely the effect of the Community Method[80]. The Praesidium put forward its first proposals on institutions on 23 April 2003[81]. Concerning the European Council the Praesidium submitted a new role for the European Council as a more stable European Council with the election of its president for a term of two and a half years, renewable once. Debate within the plenary Convention focused on how to shape a new system of government for the EU, with virtually all of the attention focusing on the division of power, between the Commission and the Council, reflecting the perennial debate on supranationalism versus intergovernmentalism[82].

The Treaty establishing the Constitution comprises four parts	
Part I	the text of the Constitution
Part II	the Charter of Fundamental rights
Part III	detailed provisions on how the Constitution operates

[80] Dehousse R., The “Community Method”: obstinate or obsolete?, 2011, Basingstoke: Palgrave Macmillan, p. 3-15.
[81] Finn Laursen, The Rise and Fall of the EU’s Constitutional Treaty, Martinus Nijhoff Publishers, 2008 p. 5-13.
[82] Gráinne de Búrca The Constitutional Challenge of New Governance in the European Union, European University Institute, 2002, p. 11.

Part IV	general provisions, including the ratification procedures

Part II of the Treaty contains the text of the Charter of Fundamental Rights of the Union which was introduced as a non-binding declaration in the Treaty of Nice. There have not been any major changes to the text of the Charter from Nice to the version in the Constitutional Treaty, except in incorporating the legally binding nature of the Charter, so that it comes under the jurisdiction of the Court of Justice. This draft Treaty consolidates the existing treaties into a single contractual instrument and incorporates the Charter of Fundamental Rights into the text of the proposed constitution. The Constitutional Treaty realigns the institutions of the EU and introduces the office of a European Foreign Minister. It also further strengthens the role of the European Parliament. In June 2004, the Heads of State or Government of the European Union adopted a draft which was an amended version of the one presented by the Convention. The accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia to the European Union in 2004 was a historical step. The Treaty establishing a Constitution for Europe failed because of the rejection by referendums in France and the Netherlands in May and June 2005. The Heads of State or Government agreed on a reflection phase. After the reflection period it was decided to negotiate another treaty, first referred to as a Reform Treaty. A new IGC was convened by the European Council in June 2007. The Treaty became known as the Lisbon Treaty because it was signed in Lisbon on 13 December 2007. The Union's fifth enlargement round was completed in early 2007, when Bulgaria and Romania became members. As a politician from one of the new member states put it: "Europe has finally managed to reconcile its history with its geography".

1.14 The Lisbon Treaty

The Lisbon Treaty entered into force on 1 December 2009, with some delay because of ratification problems, especially in Ireland, which needed a second referendum in October 2009 after a first referendum in June 2008 had rejected the treaty. The Lisbon Treaty has retained most of the changed of the Constitutional Treaty even if all the symbols of constitutionalism have been removed. As argued by Fabbrini: "For a large majority of policies where integration proceeds through formal acts(integration through law), it is plausible to argue that the Lisbon Treaty has set up a governmental structure organized around two distinct legislative chambers and two distinct executive institutions, thus bringing to maturity a long process of distinction between the executive and the legislative branches"[83].

The Minister for Foreign Affairs as provided for by the Constitutional Treaty, was renamed High Representative of the Union for Foreign Affairs and Security Policy. The LT doesn't include the text of the Charter of Individual Rights but it only provides for recognizing the same legal value as the Treaties. The new mandate of the President of the European Council reflected the provisions of the Constitutional Treaty. Moreover the Lisbon Treaty introduced an exit clause for members who wish to withdraw from the Union and recognized a unified legal personality to the EU. From the beginning of the European integration process, nobody could have predicted where we are. The economic ambitions to create a single market have implicated more than commercial trade, in fact behind commercial trade there is a continuous exchange of ideas which makes possible a blending of traditions and cultures that has driven us in the last decades to a common enrichment. The establishment of the European citizenship by the Maastricht Treaty and the role carried out by the ECJ are two outcomes of the same process. The ECJ contributes to the constitutionalization of the EU with a policymaking role which transforms the nature of the European

[83] Fabbrini Sergio, Intergovernmentalism and Its Limits: Assessing the European Union's Answer to the Euro Crisis, Comparative Political Studies XX(X) 1–27, 2013, p. 3.

governance. As Weiler stressed: “the national courts and the European Court are thus integrated into a unitary system of judicial review” [84].

According to the reasoning of the ECJ the Treaty texts as changed from the ECC Treaty represent more than a mere international agreements. Because the member States have limited their sovereign rights in certain fields by transferring powers to the Community Institutions creating thereby a new, sui generis body of law. As the provisions of the Treaty are directly applicable, there is no need for the Member States to transpose them into domestic law; that means the Treaty provisions penetrate the national legal systems automatically. the Treaty preamble also refers to the ‘peoples’ of the Member States it gives rise to rights and obligations of not only the Member States, but their citizens as well. With this, the Court established the principle of direct effect of EU law, enabling private persons to claim rights based directly on EU law before their respective national courts. The doctrine of supremacy of EU Law over national laws is the result of a long term evolution of the jurisprudence established by the ECJ and based on principles which aren’t mentioned in the treaty texts. The ECJ repeatedly stressed the special nature of EU law, which, in contrast to traditional international agreements constituted an own legal system that became integral part of the Member States’ legal systems(as regards the direct applicability of regulations) and which national courts were therefore bound to apply(as regards the so-called direct effect of some provisions which meet the conditions spelled out in judgments of Van Gend en Loos, Costa vs. Enel, Simmenthal II Cases). The hybrid nature of the EU as a mix of Communities and intergovernmental features are preserved and developed by the Lisbon Treaty with more elements of continuity than elements of rupture with the past[85]. The LT is the heritage of the Constitutional Treaty. In the light of the composition, duties and operating modes of the European Commission, those of the ECJ, the

[84] Weiler J.H. H., The Constitution of Europe: Do the new clothes have an emperor? And other Essays on European Integration(1999)., Cambridge University Press.
[85] See Elgström O., Jönsson C., *European Union negotiations: processes, networks and institutions*, Psychology Press(2005).

possible problem of overrepresentation of smaller states can't be concerned these institutions but only the Council of the European Union and the European Parliament.

1.15 The current institutional system of the Union

The Council shares the legislative powers with the European Parliament and it is set up by one representative for each state, who can commit the single member state. The Council works and takes decisions according to different types of majority. As of 31 October 2014(when the concerning part of the LT will be in force) the Council will work without overrepresentation thanks to the new criteria which will be used to vote considering the population of each state. The Treaty has institutionalized a two-chamber legislative branch, consisting of a lower chamber representing the European electorate(the EP) and an upper chamber representing the governments of the member states(the Council of the EU)[86]. Regarding the EP, there is no question of overrepresentation, not only because the seats are allocated proportionally to the population of each member-states but also because the members of the EP are grouped by political affinity and not by nationality. The existence of supranational institutions (such as the Commission, the European Court of Justice o ECJ and in a later stage the European Parliament or EP) have balanced the intergovernmental logic with a European perspective[87].

The only exceptions regard the decisions taken by the Council in foreign or fiscal policy. According to the LT, they require the unanimity rule.

The multiple separation of powers characterizes both the US and the EU (in a more clear way after the LT). In the LT, the term "federal" is not included in any part of the document, but the innovations provided for the EP and the Council

[86] S. Fabbrini, Beyond intergovernmentalism: the puzzle of European economic governance, Paper submitted at the international conference of the Council for European Studies, Amsterdam, 25-27 June 2013, p. 4.
[87] Ivi, p. 2.

by introducing some federal aspects in this institutional system. The EP and the Council can be considered respectively, the former representing citizens and the latter representing member-states interests. Moreover, the articles 4 and 5 of the Treaty of the Functioning of the European Union establish the competences' distinction between the ones assigned to the EU, those of the Member States and the shared ones.

The current EU institutions reflect a four-sided framework of coordination of policies and relationships with member states and between institutions under the supervision of European Court of Justice (ECJ) and to some extent, under the supervision by national constitutional courts. Among the peculiarities of the European integration process there is the mechanism of enhanced cooperation. It provides enhanced cooperation between those member-states which want to create a deeper integration within the framework of the Union's no-exclusive competences. The problem of "Europe" had always been not only what theoretical structure to build – federation, confederation, or something else – but also than how to bring into existence a stable institutional framework[88]. Within the EU constitutionalisation there have been some decisions which mark a turning point. This is the case of the first direct elections in 1979 for the EP. In fact, even if this institution has been already set up by the Treaty establishing the European Cool and Steel Community, it represents a revolutionary step in our constitutionalisation. The direct election of the EP, the extent of the co-decision in the legislative procedure, together with the method of the composition of the Council of Ministers (which is formed by the ministers of twenty-seven states, who are people appointed by national governments elected by citizens) as well as the European Council composition and the method to appoint commissioners is the response to the people who claim there is a democratic deficit in the EU institutional system. Surely, this is a response but probably not the definitive solution, because, like the

[88] Frederic J. Fransen, The Supranational Politics of Jean Monnet: Ideas and Origins of the European Community, Praeger 2001, p. 140.

constitutionalisation, the democratization in a compound democracy is a permanent adaptation process with the target of joint progress and based on the principles of multiple separation of powers and multiple legitimacies of our institutions. Moreover, we need rules to allow a political accountability of the European decision-making system as a whole. As sad by Harlow "Political accountability is not to be confined to electoral accountability but extends also to a continual process of giving account to en informed and active civil society"[89].

[89] Harlow C., (2002). Accountability in the European Union, Oxford, Oxford University Press, p. 12.

2. The Economic and Monetary Union: institutions, rules and policies(the reasons for them, the strength of these rules and their meaning) in the long term evolution of our economy and institutional system

Research Question: What is the structure and the evolution of the Economic and Monetary Union?

In the previous pages I have tried to explain the evolution of the European Union until today highlighting the political and institutional aspects of the integration process with the aim to describe the context of values, political decisions, institutional reforms and rules where the Economic and Monetary Union was established. The second chapter offers an overview of the economic governance until 2008, therefore the following chapter will be about the latest European rules adopted for facing the crisis.

2.1 Attempts to realize the single currency

The most important attempts to create a single currency area for the European Union have been the following "milestones":

- The first attempt (1969): Den Haag summit and Werner Report;
- The second attempt (1979): The European Monetary System and the ECU;
- The third attempt (1989): The Single European Act and the "Delors Report";
- The start of EMU and the Euro (1999).

The single currency is the outcome of a long term negotiation and policy-making which started with an initiative by the Commission in 1969. Following the so-called Barre Report(1969) the Commission spelled out the need for "greater co-ordination of economic policies and monetary cooperation" and at the summit meeting in Den Haag the Heads of State or Government decided in December 1969 to draw a plan by stages for the realization of an economic and monetary union. On these basis and bearing in mind the proposals by some member states(the Eyskens, Schiller and Giscard d'Estaing plans)[90]. A group of independent experts, chaired by Pierre Werner the Luxembourg's President and Finance Minister, presented the so-called Werner plan as a first commonly agreed blue print to create an economic and monetary union in three stages in October 1970. On the institutional side the Werner Plan recommended setting up two supranational body: a "Community System for the Central Banks" and a "Centre of decision for Economic Policy"[91]. The former would pursue monetary policies, whereas the latter would coordinate macroeconomic policies(including some tax policies). Although the Council took over most of the recommendations of the Werner Plan, EMU did not take off in subsequent years[92]. There were differences regarding to the method to realize the EMU and in the early Seventies the divisions between member states were worsened by the changes of international economic and monetary rules.

Actually a European currency was proposed for the 1st time to the League of Nations by Gustav Stresemann in 1929 against the background of an increased economic division due to a number of new nation states in Europe after the Treaty of Versailles.

The crises due to the non-convertibility of the US dollar into gold since 1971 and to the rising oil prices in 1972 made more complex the negotiations, caused a serious setback for the EMU project.

The European member states reacted with different policies and established exchange rate relations between their currencies on the basis of the "European

[90] DANESCU, Elena Rodica. 'Monetary plans drawn up by Belgium, Germany and Luxembourg (January–February 1970)', in A rereading of the Werner Report of 8 October 1970 in the light of the Pierre Werner archives. Sanem: CVCE, 2012. Available at: www.cvce.eu.
[91] Lars Magnusson, Bo Stråth, From the Werner plan to the EMU: in search of a political economy for Europe, P.I.E.-Peter Lang, 2001, pp. 31 - 42.
[92] Michelle Cini and Nieves Perez-Solorzano Borragan, European Union Politics, Oxford University Press, 2010 p. 325.

system of limited fluctuation margins" also known as the "Snake in the tunnel" in April 1972 and the European Monetary Co-operation Fund in 1973[93].

The second attempt to create EMU led to the European Monetary System and the ECU in 1979. Confronted with an increasing number of European currencies which had left the European system of limited fluctuation margins and started to float, a new attempt to move towards EMU was made in 1979 with the establishing of the European Monetary System (EMS). The aim of the EMS was a coordinated control of a zone of monetary stability in a common increasing efforts to achieve a closer and more effective economic convergence between member states. The floating exchange rates of most currencies of the European Communities had had a negative impact on internal cohesion, investment and trade among member states.

Actually the second oil crisis changed the order of political priorities for the European leaders. The good functioning of internal market became the first area of intervention with policies for the completion of the Single Market, postponing the creation of a monetary union.

In the Eighties the third attempt to create EMU corresponded with the approval of the Single European Act(1986) and the presentation of the Delors Report(1989). The former enshrined in law some of the major economic preconditions for 'fair and loyal' competition and long-term stability within the internal market. The Single European Act introduced a new provision in article 102a(EEC Treaty), related to EMU and co-operation between Member States, with special reference to the EMS and the development of the European Currency Unit (ECU).

[93] Matthias Kaelberer, Money and Power in Europe: The Political Economy of European Monetary Cooperation, SUNY Press 2001, p. 106.

The idea of EMU was re-launched by the European Council at the Hannover Summit in June 1988, where an 'ad hoc Committee' of the Central Bank Governors of the twelve Member States, chaired by the President of the Commission, Jacques Delors, was charge with the task to study and evaluate the concrete proposals of stages leading to EMU by proposing a new timetable with clear, practical, realistic[94].

The committee consisted of the then General Manager of the Bank for International Settlements (BIS) Alexandre Lamfalussy, the Danish professor of economics Niels Thygesen, the then President of the Banco Exterior de España Miguel Boyer, and the governors of the then European Community(EC) national central banks.

2.2 Preliminary conditions to the EMU and the Delors Report

Among the European member states EMU officially stands for Economic and Monetary Union. EMU is the outcome of an agreement which involves not all the member states of the European Union and entails the adoption of a single currency(this single European currency is the Euro "€") and monetary system.

After the first signs of decline of the Bretton Woods system, the failure of the plan adopted by the Heads of State or Government in The Hague in 1969 for the establishment of an economic and monetary union for the states of the Communities and the alternative plan by the Werner Report in 1970, the member states and authorities of the European Communities started important moves which gradually reflected the political will to create the EMU.

The measures which got things moving again were: in 1972 the so called "snake", in 1973 the European Monetary Cooperation Fund(EMCF), in 1974 the Council Decision for more convergence in the Community and the Directive on stability, growth and full employment. Actually the turning point was the

[94] The role of the Delors Committee in the creation of EMU, European University Institute, Robert Schuman Centre, 1998.

European Monetary System(EMS) in 1979 and the European Currency Unit(ECU) which realized a zone of increasing monetary stability by reducing uncertainty related to exchange rates, contributed to conclude positively in 1985 the negotiations on internal market(in January the Commission proposed to complete the market without internal frontiers by the end 1992) and the agreement of the Single European Act(in December). The ESM has served as the focal point for improved monetary coordination and has provided basis for multilateral surveillance within the Community[95].

The EMU and the internal market were the two great projects in progress which boosted the integration and were essential to the implementation of the European Union for improving both the political and economic unity among the peoples of Europe. The EMU and the internal market propelled the European Communities to greater role in the international politics. The resulting Delors Report proposed that EMU should be achieved in three progressive steps.

The internal market has reduced the room for independent policy-making and increased the cross-border effects of development because of the strengthened economic interdependence between member states. Therefore the European Community needed a more effective coordination of policies between national authorities.

More specific reasons pressed for the realization of the EMU. They were a greater convergence of economic performance required for counterbalancing and limiting national differences concerning prices and wage inflation, more intensive and effective policy coordination for halting exchange rate tensions, the success of the internal market hinged to a decisive extent on a much closer coordination of national economic policies as well as on more effective

[95] European Council. Committee for the Study of Economic and Monetary Union, Jacques Delors , Report on economic and monetary union in the European Community, Office for Official Publications of the European Communities, 1989, p. 8.

Community policies[96] and the full realization of free movements for persons, goods, services and capital needed a single currency.

According to the Delors Report: "Economic union and monetary union form two integral parts of a single whole and would therefore have to be implemented in parallel(…). But the Committee is fully aware that the process of achieving monetary union is only conceivable if a high degree of economic convergence is attained"[97]. The proposal by the Committee for the Study of Economic and Monetary Union reflects the consciousness the full realization of the economic union could be possible only together with the realization of the monetary union and vice versa, but in the Nineties the political will to follow the path traced by the Delors Report, as the plan for establishing both the economic union and monetary one, disappeared.

The main features of the monetary union as expected by the Delors Report were:
A currency area based on common policies jointly elaborated for achieving a unique set of macroeconomic objectives
The total and irreversible convertibility of national currencies
To set at zero the fluctuations and locking of exchange rates irrevocably
The free movement of capital transactions
The integration of banking services and financial markets

The natural and desirable developments of the monetary union would have been the replacement of national currencies by a single currency and the single common monetary policy. According to the analysis given by the Delors Report: "The permanent fixing of exchange rates would deprive individual countries of an important instrument for the correction of economic imbalances and for independent action in the pursuit of national objectives, especially price stability"[98]. The monetary union entailed a transfer of sovereignty which doesn't

[96] European Council. Committee for the Study of Economic and Monetary Union, Jacques Delors , Report on economic and monetary union in the European Community, Office for Official Publications of the European Communities, 1989, p. 11-12.
[97] Ibid. p.14.
[98] Ivi p. 16.

mean a loss of sovereignty for member states, quite the contrary because it is equal to the emergence of a new supranational sovereignty.

The basic elements of the plan of economic union
The realization of the single market with the entrance into force of rules for preserving the free movement of goods, services, capital and persons
The introduction of a set of provisions for creating an area of competition and avoiding every measures and procedures hindering the integrity of the single market
Macroeconomic policy coordination including binding rules for budgetary policies

2.3 The three stages of the plan for the EMU

The European Council decided in June 1989 that the first stage of economic and monetary union should begin on 1 July 1990. It entailed in principle the liberalization of all restrictions on the movement of capital between Member States and the beginning of the convergence process. In Strasbourg in December 1989, the European Council agreed to convene an Intergovernmental Conference on EMU before the end of 1990, in particular to make the necessary changes to the treaty for an economic and monetary union. In the realization of the 1st stage the Committee of Governors of the central banks of the Member States of the European Economic Community's task was enlarged form its original and limited one of the monetary cooperation. Indeed the Council Decision(March 12th 1990) established also consultations on and coordination of national monetary policies for achieving price stability. The Committee of Governors became responsible also for the preparatory works for Stage Three of Economic and Monetary Union (EMU). Both Stages Two and Three required a revision of the Treaty establishing the European Economic Community because they provided for new institutional structure. To this end, an Intergovernmental Conference on EMU was held in 1991 in parallel with the Intergovernmental Conference on political union. The outcome of that negotiation was the Treaty on European Union. The Treaty was signed in Maastricht on 7 February 1992, hence it is also known as the Maastricht Treaty. It can be seen as the founding document for the EMU because it introduced for the first time in the EC legal framework the "convergence criteria", the Protocol on the Statute of the European Monetary Institute, the Statute of the European System of Central Banks and of the European Central Bank[99].

During Stage 2 of Economic and Monetary Union (January 1st 1994 - December 31st 1998) the main objective was the convergence between national economies by implementing all secondary legislation on EMU and introducing euro bank notes and coins. For this aim, four measurement criteria were laid down in the Maastricht Treaty and each member state in the European Union must meet before it could join the EMU. Key concepts of that phase were: excessive deficit procedure, prohibition of privileged access, prohibition on the central banks granting credit facilities to public authorities and undertakings, broad economic policy guidelines and convergence criteria.

The Maastricht criteria
Low inflation
Low interest rates
Stable exchange rates
Sound public finances

Every country had to achieve an average inflation rate observed during a one-year period before a country is examined for admission to the single currency rate of inflation within the ceiling of 1.5% of the rates in the three participating countries with the lowest rates. The aim of utmost importance was in terms of price stability[100]. During the year preceding the examination, the average long-term interest rate must not be more than 2% above that of the three best performing Member States in terms of price stability.

[99] René Smits, The European Central Bank: Institutional Aspects, Kluwer Law International 1997, p. 127.
[100] Mark Baimbridge, Philip Whyman Economic and Monetary Union in Europe: Theory, Evidence, Snd Practice, Edward Elgar Publishing 2003, p. 104.

Candidate countries must have observed the normal fluctuation margins provided for by the exchange rate mechanism of the European Monetary System for at least two years, without devaluing their currency against that of any other Member State. The candidate country had to reduce its government deficits to below 3% of its gross domestic product(GDP) and the public debt must not exceed 60 % of GDP unless sufficiently diminished and must be approaching 60% at a satisfactory pace (interpretation in trend terms according to Article 104). The convergence criteria were presented in Article 121(1) of the Treaty establishing the European Community (EC Treaty). The Treaty stipulated: "The sustainability of the government financial position … will be apparent from having achieved a government budgetary position without a deficit that is excessive …".

Each Member State must meet all of the criteria in order to participate in the third stage of Economic and Monetary Union (EMU). These are specified in the "Protocol on the convergence criteria" referred to in Article 121 of the Treaty establishing the European Community. They reflect the degree of economic convergence which the Member States must attain to be able to introduce the euro. In accordance with Article 122(2) of the EC Treaty, the Commission and the European Central Bank (ECB) had the duty to report to the Council at least once every two years. Stage Two of EMU provided for the establishment of the European Monetary Institute(EMI) in 1994 and with it the Committee of Governors ceased to exist. The EMI had not responsibility for the conduct of monetary policy in the European Union – this remained the preserve of the national authorities – nor it had any competence for carrying out foreign exchange intervention. The EMI worked as a forum for consultation and for an exchange of views and information on policy issues for strengthening cooperation among central bank and monetary policy coordination, preparing the establishment of the European System of Central Banks (ESCB), for the third stage. In December 1995 the European Council agreed to name the European currency unit to be introduced at the start of Stage Three, the ‘euro', and confirmed that Stage Three of EMU would start on 1 January 1999.

A report presented by the EMI to the European Council in December 1996 was considered as the basis of a Resolution of the European Council on the principles and fundamental elements of the new exchange rate mechanism which entered into force in 1997 and was called ERM II. The initial participants to the single currency had been unanimously decided by the European Council on May 2nd 1998 which selected 11 member states. Those states met the conditions for the participation in the third stage of EMU and the adoption of the single currency on January 1st 1999. The initial participants were Belgium, Germany, Spain, France, Ireland, Italy, Luxembourg, the Netherlands, Austria, Portugal and Finland. The Eurozone consists of those European Union countries which have adopted the euro as their currency. It now makes up the world's second-largest economy[101]. Eleven countries out of the 15 member countries of the European Union were deemed to have both met these criteria and wished to join. Greece was deemed not to have met the criteria and Sweden, the UK and Denmark negotiated the right to abstain from any move to the EMU and the single currency[102]. Sweden failed to satisfy two of the conditions: Swedish laws on central bank were not compatible with the Maastricht Treaty and the currency exchange rates in Sweden were not sufficiently stable, while Greece failed to meet all of the requirements. These countries will be reevaluated every two years to determine if they meet the requirements for joining the EMU. The two remaining members of the European Union at that time, the United Kingdom and Denmark, chose not to join the EMU immediately.

In December 1996 a selected design series for the euro banknotes was presented by the EMI to the European Council. The Heads of State or

[101] Manoranjan Dutta, The United States of Europe: European Union and the Euro Revolution, Revised Edition, Emerald Group Publishing, 2011, p. 106.
[102] Philip Arestis, Andrew Brown, Malcolm Charles Sawyer, The Euro: Evolution and Prospects, Edward Elgar Publishing, 2001, p. 35.

Government also reached a political understanding on the persons to be recommended for appointment as members of the Executive Board of the European Central Bank (ECB). To ensure stable currency exchange rates among all of the European Union member states, the currencies of those states that did not qualify to join the EMU or that chose not to participate in the EMU initially were linked to the single European currency of the EMU, the euro, by a new currency exchange rate mechanism, known as ERM2. In May 1998, the ministers of finance of the member states adopting the single currency agreed to use the ERM bilateral central rates of the currencies of that time would be used for the irrevocable conversion rates for the euro.

The EMU's plan provided for a new independent authority, the European Central Bank. In 1998 the President, the Vice-President and the four other members of the Executive Board of the ECB were appointed by the governments of the 11 participating member states. The ECB was founded in Frankfurt and started to work on June 1st. The ECB sets monetary policy for the EMU independently from the influence of any of the national governments or any other outside influence. Indeed art. 130 TFEU establishes: "When exercising the powers and carrying out the tasks and duties conferred upon them by the Treaties and the Statute of the ESCB and of the ECB, neither the European Central Bank, nor a national central bank, nor any member of their decision-making bodies shall seek or take instructions from Union institutions, bodies, offices or agencies, from any government of a Member State or from any other body". The ECB and national central banks of the participating Member States constitute the Eurosystem, which formulates and defines the single monetary policy in Stage Three of EMU.

The ECB reflects the influence by the ordoliberal approach to the institutional innovation. As argued by Karl Otto Poehl, then president of the Bundesbank, in a message to Tommaso Padoa-Schioppa:"if you are proposing a European

Central Bank based on a Treaty, then I agree; but I will not allow constraints to be imposed on the Bundesbank without any legal basis"[103].

With the establishment of the ECB on June 1st 1998 the EMI exhausted its tasks and ceased to exist.

On January 1st 1999, the currency exchange rates of the eleven participating member states became permanently fixed. That step marked the beginning of the third and final phase of the EMU. On January 1st 2002, the participating countries had to fulfill the obligation of removing their national currencies from circulation. By July 1st 2002, the old national currencies would no longer have been legal tender and all transactions from that date forward in the participating EMU states would be conducted in euros[104].

2.4 The Maastricht Treaty and its revisions till today

Already at the very beginnings of the European Communities, as shown by the provisions of the 1957 Treaty establishing the European Economic Community, there were the warning signs of the economic and monetary union. The Member States had to co-ordinate their economic policies closely with the institutions of the Community (article 6 of the Treaty establishing the European Coal and Steel Community, ECSC Treaty) to the extent necessary for obtaining the objectives enshrined in ECSC Treaty articles 2 and 3. The Single Act codified a number of major economic preconditions for fair competition and long-term stability within the internal market. With the introduction of new article 102a into the EEC Treaty concerning EMU and co-operation between Member States in this field, with special reference to the EMS and the development of the European Currency Unit (ECU).

The establishment of the EMU has entailed a revision of some provisions of the Treaties. According to Wiedemann, it should be noted from a comparison of

[103] Padoa-Schioppa Tommaso, Corriere della Sera, March 28th 1998.
[104] Franco Praussello, Euro circulation and the Economic Monetary Union, Franco Angeli, 2002, p. 121.

articles 2 and 3 of the Treaty establishing the European Economic Community with the same articles as amended in Maastricht by Treaty establishing the European Community, that:

"1. EEC Treaty, 1957

The EEC Treaty articulated goals in Article 2 and outlined the means for achieving the goals in Article 3. Article 2 stated that a common market was to be established and economic policies of the member states were to be harmonized, with a view to raise the standard of living in an expansive and stable economy. Furthermore it aimed at closer relations between the states. The underlying theme was to build a peace architecture for the continent and to reconstruct Europe economically. The tool to achieve this was economic integration. Article 3 expressed the means: the establishment of a common external tariff and commercial policy, the removal of barriers to the free movement of goods, persons, services and capital, the creation of common policy in key areas of the economy (agriculture and transport), the coordination of economic and monetary policy; the "harmonization" of the laws of the Member States to assist the common market, the creation of a European Social Fund and a European Investment Bank to improve the employment opportunities and facilitate expansion of the Community, and the association with overseas countries and territories to increase trade.

2. EC Treaty, 1992

While the basic structure of the two articles remained the same, the Treaty of Maastricht introduced the additional goal of an economic monetary union[105]. Article 2 further cites issues of growth, environment, economic convergence, employment and social protection and economic and social cohesion as new tasks for the Community.

[105] Organization for Economic Co-operation and Development Staff, OECD Economic Surveys: Euro Area, Volume 2006, p. 10.

Again Article 3 expresses the means how these goals shall be achieved. The Community gains competencies in such areas as the formation of an internal market, industrial policy, research and technology, creation of European networks, health, education, development co-operation, consumer protection, energy, etc"[106].

Lars Jonung[107] and Eoin Drea as well as many other economists warned against establishing EMU without adequate fiscal controls[108]. Even if the founding fathers of EMU ensured that some basic safeguards against fiscal profligacy were enshrined in the Maastricht Treaty. They were the prohibition of monetary financing of government deficits via central banks, the prohibition of privileged access to financial institutions by the public sector, the “no-bailout principle”, which precludes the sharing of liability for government debt across member states, a requirement to avoid excessive budget deficits and government debt (with reference values of 3% of GDP for budget deficits and 60% of GDP for government debt).

The Treaty provisions on EMU were implemented by the European Council with the provisions of the so-called Stability and Growth Pact(June 1997) for ensuring budgetary discipline coherent with the plan of EMU. As explained by Fabbrini: “The Stability and Growth Pact (SGP), an agreement between all EU member states for promoting the stability of the EMU (based on two Council’s regulations entered into force on July 1, 1998, and January 1, 1999), was clear in asserting the exclusive role of the Council in deciding the measure related to the

[106] http://ec.europa.eu/economy_finance/emu_history/history/part_a_1_c.htm
[107] Lars Jonung has since September 2000 been Research Adviser at the Directorate General for Economic and Financial Affairs of the European Commission.
[108] Jonung, L. and Drea, E. (2009), “The euro: it can’t happen. It’s a bad idea. It won’t last. US economists on the EMU, 1989-2002”, European Economy – Economic Papers, No 395, European Commission, December.

excessive deficit procedure. This approach was thus institutionalized by the Lisbon Treaty that has annexed the SGP as Protocol N. 12”[109].

Rules of Stability and Growth Pact were enhanced by a Declaration of the Council in May 1998 and amended by two reforms in 2005 and 2011.

The SGP contains two arms. First, eligibility for membership of the euro area was tied to convergence criteria, including a fiscal criterion stipulating that countries must not have an excessive deficit as defined by the Treaty. Second, member states agreed on the establishment of the Stability and Growth Pact for controlling the obligation to avoid excessive deficits as laid down in the Treaty.

The “preventive arm” imposes on member states the obligation to achieve budgets close to balance or in surplus so as to place debt on a sustainable path and create room for stabilizing demand in times of weak economic activity and other countercyclical policies. The “corrective arm” of the Pact took the form of the excessive deficit procedure. The purpose of these rules was to encourage governments to correct deficits in excess of 3% of GDP through a sequence of graduated steps involving tighter surveillance and ultimately sanctions.

The Pact’s Achilles heel was its weak enforcement provisions[110]. First, the Commission, as the institution initiating proceedings, had to get the backing from Commissioners before any procedural steps could be taken. Thus, there was always a risk that the Commission would seek to water down proceedings against countries. Second, a qualified majority was required in the ECOFIN Council for approving further procedural steps. Initially, things got off to a good start. Since 1992, with the adopting of the Maastricht Treaty to 1998, just a year before the introduction of the euro, developments in public finances were positive. Average deficits improved, falling from almost 5% of GDP in 1992 to

[109] Fabbrini Sergio, Intergovernmentalism and Its Limits: Assessing the European Union’s Answer to the Euro Crisis, Comparative Political Studies XX(X) 1–27, 2013, p. 7.
[110] ECB, 2008; Schuknecht, 2005 Schuknecht, L. (2005), “Stability and Growth Pact: issues and lessons from political economy”, International Economics and Economic Policy, Vol. 2, No 1, October

just over 2% in 1998. All of the founding members of the euro area (including Italy, which had a deficit of around 10% of GDP in the early 1990s) managed to bring their deficits below 3%. In the second half of the 1990s levels of public debt also began to decline.

According to the German Council of Economic Experts: “In retrospect, there are evidently clear weaknesses in that architecture. The rules set out in the Maastricht Treaty proved to be inadequate as they firstly ignored the possibility of excessive private-sector indebtedness. Thus, Spain and Ireland as late as 2007 were able to post public-sector budget surpluses and their debt-to-GDP ratio was 36 per cent and 25 per cent respectively, well below the ceiling of 60 per cent. Secondly, the discretionary sanction mechanism failed, as Greece never faced the Pact’s sanction process although it enduringly violated the two fiscal rules. Thirdly, market discipline has proved insufficient as for many years there was no anticipatory widening of risk premiums, although Greece’s fiscal misbehavior was not to be ignored. At present, market discipline is coming up against its limits if the financial system is not sufficiently cushioned for the event of a country going bankrupt”[111].

According to Fabbrini: “This dilemma emerged dramatically in the case of the disrespect of the rules of the SGP. It became apparent in 2009 that Greece cheated the other member states’ governments (manipulating its statistical data regarding public deficit and debt) for remaining in the euro-area. However, the same dilemma emerged in 2003, when France and Germany were saved from sanctions by a decision of the ECOFIN (and in contrast to a Commission’s recommendation) notwithstanding their disrespect for the SGP’s parameters.

[111] German Council of Economic Experts - Annual Report 2011-2, Prospects for the European Monetary Union p. 115.

The Fiscal Compact Treaty tries to deal with the non-compliance possibility providing for a binding intervention of the ECJ"[112].

The reluctance of member states to sanction Stability and Growth Pact offenders in 2003 and the subsequent 2005 reform that loosened the SGP made it seem highly unlikely that the available sanctions would be used. The obvious influence of France and Germany in the failure to implement the corrective arm made it seem like it was a "dog that would never bite"[113] indeed the SGP procedures were not applied to France and Germany because the Council blocked Commission's initiative and even if the ECJ cancelled the Council's decision, it was clear that the implementation of those rules was limited by an intergovernmental control of the decision-making process.

The European Council of December 2001 in Laeken called an ad hoc Convention to draft a constitutional treaty for the European Union, including aspects of EMU, such as how economic policy co-ordination within the euro area could be made more efficient, how the supervisory role of the European Commission should be strengthened, in particular regarding the mechanisms of multilateral surveillance, the Stability and Growth Pact and the excessive public deficit procedure, or the extent to which the European Parliament should have a say or in setting the "Broad Economic Policy Guidelines" for the Union and its member states. In a communication to the Convention on the Future of Europe, the European Commission made the following proposals concerning further needs to make, in particular, economic policy coordination and the decision-making process within the Economic and Monetary Union more effective: "Following the successful launch of Euro notes and coins, the Union needs to strengthen the coordination of budgetary and economic policies of the member states. Free-riding budgetary behavior by any Euro member must be avoided. Effective

[112] S. Fabbrini, Beyond intergovernmentalism: the puzzle of European economic governance, Paper submitted at the international conference of the Council for European Studies, Amsterdam, 25-27 June 2013, p. 8.
[113] Heipertz, Martin and Amy Verdun, Ruling Europe: The Politics of the Stability and Growth Pact, Cambridge University Press, 2010.

coordination depends on the use of the Community method. The Commission should have the right to introduce proposals to the Council on the Broad Economic Policy Guidelines or on actions against national decisions that threaten macro-economic stability. Currently, the Commission can only recommend. The Council should only be able to depart from Commission proposals by unanimity. For matters directly linked to the functioning of the Euro-area, a Council composed only of Euro members should be established in the Treaty, giving it formal decision-making powers. In the international arena, the Euro-area would gain by speaking with a single voice through the Commission"[114].

Within the Convention a special working group on "Economic Governance" presented a final report which showed very clearly the diverging opinions among the Convention members about the final political architecture at EU level in this field. Meanwhile, a working group within the European Commission independently drew up its own version, of a "Constitution of the European Union" for the Convention under the working name of "Penelope", including more far-reaching ideas in the field of economic and monetary policy (Part 2, Articles III-65 to III-85) of the Union[115]. Today the EMU is regulated by provisions of the Lisbon Treaty and other rules, which have been established by the EU institutions and the leaders of member state for facing the current crisis since October 2007.

Article 119 Treaty on the Functioning of the EU(TFEU) establishes the general principles concerning economic and monetary policy and follows those previously laid down in article 4 TEC. TFEU, Art. 119 establishes “the adoption of an economic policy (…) based on the close coordination of Member States’

[114] For the European Union “Peace, Freedom, Solidarity”, Communication of the Commission on the Institutional Architecture, Brussels, 11.12.2002 COM (2002) 728 final/2 http://ec.europa.eu/economy_finance/emu_history/documents/treaties/commissioncommunicationconvention.pdf

[115] G. Amato, The European Constitution: Cases and Materials in EU and Member States' Law, Edward Elgar Publishing, 2007, p. 136.

economic policies", id est it maintains the principle of decentralization for the fiscal policy.

The first attempt to reinforce EU power are fund in article 121(4) TFEU. This is the terrain of EU economic policy, which is structured through broad economic policy guidelines[116]. If a national economic policy does not cohere with the guidelines, the Commission can do a warning followed by recommendations by the Council, which can decide to make this public. As explained by Paul Craig(Professor of Law at the University of Oxford): "The novelty lies in the fact that the decision whether to 'name and shame' is now expressly said to be made without taking into account the vote of the State under investigation"[117].

Articles 121 and 126 of the TFEU provide the legal basis of the Stability and Growth Pact. While article 121 outlines the preventive arm of the SGP, Art. 126 of the Treaty forms the basis for the corrective arm and the EDP and Protocol 12 defines the reference values of 3% of GDP for public deficit and 60% of GDP for public.

European Treaty does not allow redistribution of public debts between member states and Art. 122 allows other member states' interventions only if a country is in difficulty due to "exceptional reasons beyond its control".

For ensuring the proper functioning of Economic and Monetary Union, in full compliance with the provisions of the Treaties, the Council, adopt measures to those member states whose currency is the euro, with the aim to strengthen the coordination and surveillance of their budgetary discipline, to set out economic policy guidelines for them.

It should be stressed that for those measures set out with regards to the budgetary discipline, only member states whose currency is the euro shall take part in the vote. Under the Lisbon Treaty and the latest provisions adopted:

[116] Paul Craig, The Lisbon Treaty: Law, Politics, and Treaty Reform, Oxford University Press, 2010, p. 319.
[117] Ivi.

“The sanctions for excessive deficits and debts should be subject to the wills of member states’ governments (or their financial ministers in the ECOFIN Council). This is even truer for euro-area member states, whose main deliberations take place either in the Euro Summit or in the Euro Group (consisting, respectively, of the heads of state and government and the ministers of economics and finance of the EU member states adopting the common currency, as regulated by Protocol No. 14 annexed to the Lisbon Treaty), with the technical support of the Commission”[118].

2.5 The political meaning of the EMU and its philosophical grounds

The euro “€” has quickly assumed a great political meaning as the founding element of a new sovereignty which gathers together the interests of the European peoples. The Euro is primarily a political project, not only an economic one, because a national currency is a symbol of identity. For this reason adopting the Euro means symbolically and practically giving up sovereignty. It has opened the way to new future perspectives for the unification as a symbol of the European Union and a vital part of its process of political integration.

As explained by the former President of the Italian Republic Carlo A. Ciampi in his speech on September 16th 1999 for the appointment of Mr. Romano Prodi as president of the European Commission:

"A new supranational identity was born from the single currency, the seed of a new European sovereignty".

We must keep in mind that the Eurozone is part of a broader process of economic, financial and institutional integration that started in the 1950s. This 60 year-long process has political origins and positive economic effects. There are two implications from this progression.

[118] Fabbrini Sergio, Intergovernmentalism and Its Limits: Assessing the European Union’s Answer to the Euro Crisis, Comparative Political Studies XX(X) 1–27, 2013, p. 7 - 8.

The first has an evolutive nature. Indeed, each national economy has had to adequate itself to the changing institutional frameworks. Their market structures have also been transformed. EU countries are now very interdependent each has an increasing stake in the wellbeing of the others. The second implication has an institutional one. The EU, and therefore also the Eurozone, are formed by sovereign countries which are increasingly integrated, but still maintain a wide control over diverse national economic policies. As argued by Dr. W. F. Duisenberg, President of the European Monetary Institute, at the Forum de l'Expansion Paris in 1998: "If all policy areas contribute to creating the right conditions, the chances far outweigh the risks - or, in other words, the net benefits to be expected from EMU are clearly positive. I have already mentioned that the full benefits of the single currency will not come quasi-automatically with a monetary policy geared towards price stability, but only if there is appropriate support from other economic policies, especially fiscal and wage policies, and if structural reforms are carried out in these areas. Thus, price stability is a necessary, but not a sufficient condition for grasping all the opportunities of EMU. Therefore, I would now invite you to have a brief look at the possible contribution of these policy areas towards ensuring that the potential benefits of EMU are fully realized and that the risks are minimized".

The number of participating member states increased to twelve on January 1st 2001, when Greece entered the third stage of EMU. Slovenia became the 13th member of the euro area on January 1st 2007, followed one year later by Cyprus and Malta, by Slovakia on January 1st 2009 and by Estonia on January 1st 2011. The Euro is the currency used in the seventeen member states of the EU that have signed up to full Economic and Monetary Union (EMU). Just over 27% of world foreign exchange reserves are held in Euros. People in all of these countries use the same coins and notes and business amongst companies in Eurozone states takes place in the single currency. All new EU member states have to join the Euro once they fulfill the necessary monetary and budgetary conditions, except Denmark and the UK which have negotiated an 'opt-out' clause. The currency had performed well until a global economic downturn began in 2008[119].

2.6 Optimum Currency Area(OCA) and EMU: theory and reality

The idea behind the single currency is that getting rid of national currencies would make better the functioning of the single market. This requires the EU to become what economists call an 'optimal currency area'(OCA), which effectively operates as one economy. It is the role of the ECB to manage this by attempting to control inflation through setting interest rates and printing money. In this sense, the EMU sees national governments lose monetary power to the ECB.

The classic theoretical approach used for explaining the functioning of an optimum currency area(OCA) is based on the work achieved during the Sixties by the Nobel-Prize winning economist Robert Mundell, Ronald McKinnon and Peter B. Kenen. Robert Mundell won the Nobel Prize for economics in 1999 because of the theory on the optimality and the desirability of monetary unions. The desirability of a single currency includes an assessment on the difference between the benefits for a country of adopting a single currency against the costs of abandoning its national currency and afterwards its autonomous monetary policy.

A monetary union	
Pros	**Cons**
Transaction costs are eliminated	Binding rules for a high degree of convergence of countries
Price transparency	constraint for price stability
Uncertainty caused by exchange rate fluctuations eliminated	
Increased trade and reduced costs to firms	
Price stability with a controlled inflation	

[119] Christopher M. Dent, The global impact of EMU in The European Economy: The Global Context, Psychology Press, 1997, p. 91-98.

A number of institutional arrangements for sound fiscal policies have been agreed at the EU level, also with a view to limiting risks to price stability. These include the prohibition of monetary financing (Article 123 of the Treaty on the Functioning of the European Union), limits to privileged access to financial institutions (Article 124 of the Treaty on the Functioning of the European Union), the no-bail-out clause (Article 125 of the Treaty on the Functioning of the European Union), the fiscal provisions to avoid excessive government deficits (Article 126 of the Treaty on the Functioning of the European Union, including the excessive deficit procedure), the Stability and Growth Pact (secondary legislation based on Articles 121 and 126 of the Treaty on the Functioning of the European Union).

An optimum currency area(OCA) is defined as the optimal geographical area for a single currency, or for several currencies, whose exchange rates are irrevocably pegged[120]

- -vis other currencies. The borders of an OCA are defined by the sovereign countries choosing to participate in the currency area. The literature on the OCA theory came to light in the early 1960s: a period characterized inter alia by the Bretton Woods fixed exchange rate regime, capital controls in many countries and the incipient process of European integration. Various OCA properties – also called “prerequisites” or “criteria” by some authors – emerged from the debate on the merits of fixed versus flexible exchange rate regimes and also the comparison of several features of the US and European economies.

The basic elements of the “early OCA theory”:
Price and wage flexibility
Mobility of factors of production including labour
Financial market integration

When nominal prices and wages are flexible between and within countries contemplating a single currency, the transition towards adjustment following a

[120] Giancarlo Gandolfo, International Economics Two, Springer, 1995, p. 404.

shock is less likely to be associated with sustained unemployment in one country and/or inflation in another. This will in turn diminish the need for nominal exchange rate adjustments, or alternatively, if nominal prices and wages are downward rigid some measure of real flexibility could be achieved by means of exchange rate adjustments. As explained by Masahiro Kawai, in this case the loss of direct control over the nominal exchange rate instrument represents a cost. High factor market integration within a group of partner countries can reduce the need to alter real factor prices and the nominal exchange rate between countries in response to disturbances[121]. Trade theory has long established that the mobility of factors of production enhances both efficiency and welfare. Such mobility is likely to be modest in the very short run and could display its effect over time. The mobility of factors of production is limited by the pace at which direct investment can be generated by one country and absorbed by another. Similarly, labor mobility is likely to be low in the short run, due to significant costs, such as for migration and retraining.

Ingram noted that financial integration can reduce the need for exchange rate adjustments[122]. It may cushion temporary adverse disturbances through capital inflows - e.g. by borrowing from surplus areas or decumulating net foreign assets that can be reverted when the shock is over. With a high degree of financial integration even modest changes in interest rates would elicit equilibrating capital movements across partner countries. This would reduce differences in long-term interest rates, easing the financing of external imbalances but also fostering an efficient allocation of resources. Even if it should be stressed that financial integration does not substitute permanent adjustment when the latter is necessary: in this case, it can only smooth this process. Temporary financial flows may induce a postponement of real adjustment and render it more difficult at a later stage.

[121] Mundell, Robert, (1961), “A theory of optimum currency areas”, American Economic Review, vol. 51, 509-17.
[122] Ingram, J.C. (1973), The Case for the European Monetary Integration. Princeton University, Essaysin International Finance, No. 98.

Joining a monetary union is more useful for those countries which are considered as open economies whose commercial exchanges and trade involve mainly other member states of the single currency area or those states willing to become members of the union. The existence of continuous and sizeable commercial exchanges between member states of a monetary union contribute to improve the competitiveness of the area as a whole and to make possible a better functioning of the single currency. On the other hand, there are not only benefits but the decision to join a currency area entails also costs and risks. The costs of a monetary union derive from the fact that when a country relinquishes its currency, it also relinquishes the instruments of economic policy(i.e. it loses the power to conduct a national monetary policy). In other words, in a full monetary union the national central bank either ceases to exist or will have no real policy making power. This implies that a nation joining a monetary union will not be able any more to change the price of its currency (by devaluations and revaluations), to determine the quantity of the national money in circulation or to change the short-term interest rate.

Moreover fiscal policy may also be organized and coordinated at the central level of the monetary union, implying a transfer of both monetary and fiscal policy to common central authorities.

The latest developments of the Optimal Currency Area approach, which has been indicated with the expression "Mundell II", are focused on the role of financial integration as a source of risk-sharing and consumption smoothing. According to Mundell II, the monetary unification increases the financial market integration which includes developments of market based risk-sharing mechanism. The EMU is probably the most ambitious step towards the European integration and therefore it reveals its nature of political project and not only that simply economic one.

The EMU has improved the functioning of the single market and created new conditions in the global equilibrium between currencies with the introduction of Euro € as a rival to the "Big Two" currencies(the Japanese Yen ¥ and the American Dollar $).

As summarized by Dr. José A. Tavares in the paper written for the Dahrendorf Symposia and named “On The Future of European Integration: Idea, Economics, and Political Economy”, from an analysis conducted for three decades(from the 1970s to the 1990s), taking into account a simple comparative study conducted by Larraìn and Tavares, and related to several optimal currency area criteria for the European Union and other economic areas, namely North America, South America, Central America, and East Asia: “Europe stands out as a deeply integrated region, and European countries are more closely integrated within themselves than with the United States. The only region that has been approaching these high levels of integration is East Asia. However, it is safe to argue that the political fundamentals for a common currency are absent. By managing their currencies in relation to the US dollar, the American currency has been a de facto pseudo common currency in East Asia. In sum, a currency union in Europe was a natural choice given the high degree of intra-regional integration”[123].

2.7 EMU and its main rules: from an OCA to an ordoliberal currency area

As explained by Marco Buti and André Sapir, it should be stressed that: “Europe’s monetary union is unlike any other current or historical example of monetary unification in two fundamental respects. First, there is no instance of a group of countries with a single currency controlled by a single central bank, where each state retains such a large degree of political and fiscal autonomy as in Economic and Monetary Union(EMU). Second, even in the history of European integration, there is no instance of a common policy based on a sole

[123] José A. Tavares, On The Future of European Integration: Idea, Economics, and Political Economy, Dahrendorf Symposia Series - Working Paper, 2012 – 13, p. 4.

country's institutional set-up as in the case of monetary policy. With the European Central Bank(ECB), there was never a question of adopting the average policy of the member states; it was clear from the start that the union's central bank would be like the Bundesbank, with a strong commitment to price stability. The Maastricht Treaty conferred to the ECB all the attributes, and more, of the Bundesbank in term of independence and price stability objective"[124].

Indeed, the Maastricht criteria and the provisions of the Stability and Growth Pact(SGP) had been clearly established for imparting to the EMU states parties the German stability culture, as "the result of traumatic historical events that have spared most of the other European countries"[125], and for reinforcing the ECB's credibility based on the statutory mission of limiting inflation.

As explained by Schettkat and Langkau: "Knowing this full well, the German authorities devoted considerable efforts at enshrining into the Maastricht Treaty the need for a 'culture of price stability'"[126] and "the Stability and Growth Pact is justified by the correct observation that the fiscal indiscipline has universally been the root cause of hyperinflations. The 3 percent budget deficit limit, however, is on a scale of magnitude completely different from inflation-threatening deficits. The 60 percent debt ceiling is so unrealistic that it has been ignored so far"[127].

An important but rarely discussed justification for Germany's emphasis on price stability is the influence on German economic thinking of "ordoliberalism". The expression "ordoliberalism" indicates a theory based on the researches and studies by the Freiburg School or the Ordoliberal School founded in the 1930s at the University of Freiburg in Germany by economist Walter Eucken (1891-1950)

[124] Marco Buti, André Sapir, Economic and Monetary Union and Economic Policy in Europe, Edward Elgar Publishing(2002) p. 3.
[125] Ronald Schettkat, Jochem Langkau, Economic Policy Proposals for Germany and Europe, Routledge, p. 58.
[126] Ivi.
[127] Ivi.

and two jurists, Franz Böhm (1895-1977) and Hans Großmann-Doerth (1894-1944)[128]. The ordoliberalism of the Freiburg School starts from the very premise that the market order is a constitutional order, that it is defined by its institutional framework and subject to (explicit or implicit) constitutional choice. The founders of the Freiburg school emphasized that the principal means by which economic policy can seek to improve 'the economy' is by improving the institutional framework within which economic activities take place or, as they called it, the economic constitution[129]. As a reaction both to the consequences of unregulated liberalism in the early twentieth century and subsequent Nazi fiscal and monetary interventionism, the central tenet of ordoliberalism developed as the necessity to ensure social-political-economic freedoms by adopting rules which can protect the good functioning of the system with a strong reduction of the discretionary exercise of powers by institutions. Rules define in the limits of institutional actions and provide for maintaining high standards of live with partially corrected market outcomes. In a continent where different economic cultures and theories have shaped distinct models of economic policy and methods of interventions by States in the market(for example ordoliberalism, economic interventionism, neoliberalism, the so-called social market economy and so on), the only way for ensuring an equilibrium between the countries involved in the negotiation was to write and establish directly the principles of the new economic cooperation in the Treaties. The economic principles stated in the Treaties of Rome were the free movement of goods, persons, services and capitals with some programmatic provisions about the common market, a customs union and a common external tariffs. According to the common understanding, the competition law provisions in the EEC Treaty were mainly designed in the same manner ordoliberals designed competition law in Germany; above all to ensure "fair competition" and individual and

[128] Viktor J. Vanberg, The Freiburg School: Walter Eucken and Ordoliberalism, University of Freiburg and Walter Eucken Institut, 2011, p. 1.
[129] Eucken, W., Grundsätze der Wirtschaftspolitik.(6th ed.) Tübingen: J.C.B. Mohr, 1990 p. 378.

political freedom[130]. Gerber, argues in short that Article 102 is an ordoliberal provision. Firstly, he emphasizes that some of the "founders" and early advocators of the Freiburg school worked as teachers outside Germany and that this greatly helped the philosophy to spread throughout Europe[131].

Therefore the European Treaties were modeled partly on German economic ordoliberalism with strong protection for economic liberties and freedom of trade, supported by competition and non-discrimination rules[132].

The Christian Democratic Union (CDU) (and its Bavarian sister party, the CSU) sees itself strongly in the tradition of the "social market economy" developed under CDU economics minister Ludwig Erhard following World War II. In the euro crisis, it sees a lack of fiscal discipline as the primary cause of the sovereign debt crisis and therefore called for austerity and fiscal surveillance in an effort to increase Europe's productivity and growth. The CDU argued against mutualizing debt and Eurobonds, invoking the Maastricht Treaty's "no bailout" philosophy. It believed any "community of debt" would reduce political leverage for structural reforms and increase moral hazard within the EU. The CDU opposed the ECB bond purchase program—which it saw as tantamount to "printing money." The CDU advocates an independent ECB and opposes any monetarization of government debt. The Free Democratic Party (FDP) is a classical European liberal party and has even stronger roots in ordoliberal thinking[133]. Ordoliberalism's core message concerned the taming of discretionary politics. Ordoliberalism acknowledged that the state had an important function in ordering the economic sphere. In contrast with the old liberal ideology, it was not the idea of state intervention itself, but the

[130] Gerber, D., Constitutionalizing the economy: German Neo-liberalism, Competition Law and the "New" Europe, American Journal of Comparative Law, vol. 42 (1994), p. 69-83.

[131] Article 102 TFEU, Aimed at Serving the Ordoliberal Agenda or European Consumers?, Examensarbete i Europarätt, 30 högskolepoäng Författare: Ulf Adolphson Handledare: Jur dr Carl Martin Gölstam(2010), p. 20.

[132] D. Gerber, Law and Competition in TwentiethCentury Europe: Prometheus Unbound Oxford University Press, 1998.

[133] Sebastian Dullien and Ulrike Guérot, The Long Shadow of Ordoliberalism. July 27th 2012, http://www.ecfr.eu/content/entry/commentary_the_long_shadow_of_ordoliberalism.

fundamental character of any state intervention that would make the difference with regard to the etatist and socialist alternatives. In the ordoliberal view, the state had to build and enforce a legal regime representing an *ordo* intrinsic to economic life[134].

These constraints upon political discretion together with the guarantee of economic freedoms constitute an "economic constitution". It was this very core idea that lent ordoliberalism significance in the formative stage first of Federal Republic and later of the European Economic Community[135].

Actually "the other facet of the credibility issue concerns the capacity of EMU countries to respond to economic shocks"[136]. According to the economic theory, a monetary union can handle the so-called symmetric shocks, which concern demand shocks, while a monetary union has many difficulties to solve the "asymmetric shocks". The latter are supply shocks and solutions to them require a trade-off between inflation and output stabilization, therefore it has a direct effect on employment.

The Delors Report argued economic and fiscal decisions would have to be placed within an agreed macroeconomic framework and be subject to binding procedures(binding constraints on the size and the financing of budget deficits) and rules for avoiding unsustainable differences between member states in public-sector borrowing requirements and place. In 1989 Alexandre Lamfalussy wrote a paper on the fiscal co-ordination argument for the Committee for the Study of Economic and Monetary Union. According to Lamfalussy "the combination of a small Community budget with large, independently determined national budgets leads to the conclusion that, in the absence of fiscal co-ordination, the global fiscal policy of the EMU would be the accidental

[134] C. Joerges and F. Rödl, "Social Market Economy" as Europe's social model? , EUI Working Paper Law No. 2004/8, p. 13.

[135] Ivi.

[136] Marco Buti, André Sapir, Economic and Monetary Union and Economic Policy in Europe, Edward Elgar Publishing(2002) p. 4.

outcome of decisions taken by Member States. There would simply be no Community-wide macroeconomic fiscal policy … Even within a closed economy, this would be an unappealing prospect … [Therefore] fiscal policy co-ordination would appear to be a vital element of a European EMU and of the process towards it. Appropriate arrangements should therefore be put in place which would allow the gradual emergence, and the full operation once the EMU is completed, of a Community-wide fiscal policy. Such arrangements should also aim at avoiding disruptive differences between the public sector borrowing requirements of individual member countries"[137]. As interpreted by Jean Pisani-Ferry: "Lamfalussy regarded the development of a Community-wide fiscal policy as the primary objective and the avoidance of excessive national deficits as a complementary one. At the limit, coordination was a must and fiscal discipline, the natural and welcomed effect of an appropriate fiscal co-ordination framework"[138].

During the years between the adoption of the single currency and the outset of the crisis, this difficulties were made worse by the lack of a coordination of fiscal policies adopted by national authorities acting non cooperatively(each one took care mainly about domestic output), which could create policy conflicts and lack of coordination with the single central bank.

During EMU's infancy, budgetary policy has been likely to be constrained for some time by the need to achieve the close-to balance targets of the Stability and Growth Pact. It should be noted that "before EMU, policy coordination in the EU relied on two main methods, harmonization of policies based on common rules of behavior, and delegation to community institutions. EMU has expanded the scope of coordination under both methods. The conduct of the common monetary policy by the Eurosystem is an example of delegation. The

[137] Lamfalussy, A. (1989) 'Macro-coordination of Fiscal Policies in and Economic and Monetary Union in Europe'. In Delors, J. (ed.) Report on Economic and Monetary Union in the EC (Brussels:CEC).

[138] Jean Pisani-Ferry, Only One Bed for Two Dreams: A Critical Retrospective on the Debate over the Economic Governance of the Euro Area, JCMS 2006 Volume 44. Number 4, p. 826.

fiscal structures of the Excessive Deficit Procedure and the Stability and Growth Pact are examples for rule-based coordination in EMU. But in addition to these traditional methods, the Maastricht process and the development of the union during the 1990s also introduced new forms of coordination, which are based on dialogue, the exchange of information, peer pressure and persuasion. The reliance on soft enforcement, i.e. peer pressure and persuasion, indicates that the EU member states were unwilling to give up further sovereignty over their economic policies"[139]. When the EU started to exercise powers related to policies which are traditionally conceived as at the core of member states' sovereignty (e.g. foreign, security, financial and fiscal policy, or electorally sensitive policies, such as employment or welfare), an integrative model based on voluntary coordination by member states has been used. Such a model is necessarily free from supranational constraints. This policy-making was the outcome of a compromise made in Maastricht(hence the name "Maastricht Compromise") and then inherited by the CT and confirmed by the Lisbon Treaty. The Maastricht Compromise distinguished two different policy-making processes under the competences of two different types of institutional procedures. The policy areas related to the financial and economic integration are part of exclusive competences of the intergovernmental institutions.

As spelled out by Fabbrini: "the Lisbon Treaty has thus institutionalized a double constitutional regime. In the management of public policies linked to the internal market (which are the majority of policies undertaken by the EU), the Lisbon Treaty prescribes a model of supranational constitution with characteristics that have similarities to those of other democratic unions of states (such the US and Switzerland).

Such a constitution sustains and justifies a system of government characterized by (although ambiguous) separation of powers among the four institutions that

[139] Jürgen von Hagen and Susanne Mundschenk, Working paper 70, Fiscal and Monetary Policy Coordination in EMU, Oesterreichische Nationalbank, 2002, p.15.

participate in the decision-making process (a dual executive constituted by the European Council and the Commission and a bicameral legislative branch consisting of the EP and the Council)"[140]. According to Paul De Grauwe(Professor of international economics, London School of Economics), more than half of the present member states would have been denied Eurozone membership: "Here is the evidence. Take government debt. The Treaty says that government debt should not exceed 60% of GDP. We see from Figure 1 that seven out of the twelve original member countries had a debt level exceeding 60% the year before entry. The Treaty, however, adds a proviso that says that if the debt ratio exceeds 60%, it should "diminish sufficiently and approach the reference value (60%) at a satisfactory pace" (Art. 104c(b)). This should have ruled out Germany, Greece, and Austria, because their debt to GDP ratios exceeded 60% the year before entry and were increasing (from 59.7% to 60.3% in Germany, from 63.8% to 64.3% in Austria, and from 111.6% to 113.2% in Greece[141]. The other four countries with debt ratios exceeding 60% in 1998 (Belgium, Spain, Italy, the Netherlands) were experiencing a decline[142].

The currency was supposed to be regulated by the SGP, but these rules have not been strictly enforced. Paul De Grauwe explains: "What do we learn from the systematic transgressions of the entrance criteria applied to the original member countries and the refusal to be lenient with the new member states? The answer is that the entrance criteria have very little to do with economics, and very much with politics. During the 1990s, the governments of most EU-countries had made a strong political commitment to go ahead with monetary union. As the fatidic date of 1999 approached, it became increasingly obvious that a large number of countries committed to the monetary union would fail the entrance criteria. Only a few marginal countries would succeed, and the

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[140] Sergio Fabbrini, The EU dealing with the Libyan crisis: the unresolved dilemmas of intergovernalism, 2011, p.19.

[141] Paul De Grauwe, The politics of the Maastricht convergence criteria, VoxEU.org 15 April 2009 http://www.voxeu.org/article/politics-maastricht-convergence-criteria.

[142] Source: European Commission, Statistical Appendix to European Economy.

whole thing would have to be shelved. So politics prevailed and the annoying Maastricht numbers were set aside - which was the right decision and conclusively showed that the Maastricht convergence criteria are irrelevant)"[143].

To sum up, De Grauwe concludes: "the Maastricht convergence criteria are instruments that are used in arbitrary ways to pursue political objectives. In the past, they were set aside to achieve the political objective of monetary unification. Today, they are strictly applied to pursue a political objective of slowing down the enlargement of the Eurozone"[144]. The Eurozone is not an optimal currency area because the economies existing in this monetary union are too different to make the Euro work properly. This could result in more severe unemployment during recessions and more inflation during booms. EMU functions according to a decision-making pattern that Puetter has defined as 'deliberative intergovernmentalism'[145]. EMU can't work because of the absence of a single fiscal policy and because many members fail to meet the SGP rules. This will eventually create uncontrollable splits.

According to Sylvester Eijffinger and Lex Hoogduin: "These criteria should not only be fulfilled as a condition for introducing the euro and for entering the euro area at the moment of entry, but should be complied with on a sustainable basis. The latter means that compliance must be ensured after adopting the euro. This is where things have gone wrong"[146]. On the other hand, as Wallace notes: "the development of EMU…bifurcated between, on the one hand, strong delegation to a collective regime for monetary policy, with the ECB as the collective agent (Community method), and, on the other hand, processes of

[143] Paul De Grauwe, The politics of the Maastricht convergence criteria, VoxEU.org 15 April 2009 http://www.voxeu.org/article/politics-maastricht-convergence-criteria.
[144] Ivi.
[145] Puetter, U. (2012) 'Europe's deliberative intergovernmentalism: the role of the Council and European Council in EU economic governance', Journal of European Public Policy, 19 (2): 161-178.
[146] Sylvester Eijffinger, Lex Hoogduin, The European Central Bank in (the) crisis, CESifo DICE Report 1/2012 p. 2

policy coordination. Thus, a period of intensive transgovernmentalism can lead to another policy mode”[147].

Many economists and political economists have expected the problems emerged in the EMU in the last years:

- According to Sims, Canzonieri and Diba, the Fiscal Theory of Price Level(FTPL), if government solvency is not guaranteed, monetary policy will not be able to control the price level, therefore the ECB monetary policy has to go hand in hand with a fiscal policy obeying a solvency constraint[148].

- Beetsma and Uhlig(1999): “Myopic governments issue too much debt; this behavior is magnified in a monetary union as the adverse impact of the common and monetary policy is diluted”[149].

[147] Wallace, Helen, ‘An Institutional Anatomy and Five Policy Modes’, in Hellen Wallace, Mark A. Pollack & Alasdair R. Young, Policy-Making in the European Union, Oxford University Press, p. 102.

[148] See C.A. Sims, "The Precarious Fiscal Foundations of EMU"(1999) and M.B. Canzoneri and B.T. Diba "The Stability and Growth Pact: A Delicate Balance or an Albatross?", (2000).

[149] Beetsma, R. and H. Uhlig (1999), "An Analysis of the Stability and Growth Pact", Economic Journal, No. 109, pp. 546-71.

3. The latest European rules adopted for facing the crisis: towards a more coordinated fiscal policy and a new decision-making process

Research Question: How has the EU responded to the financial crisis and the threats to the single currency?

Following the analysis of the second chapter, the third one will offer a description of the reasons because the global financial crisis has evolved into the Euro crisis and of the new rules and policies adopted by the EU in the last years. The aim of this chapter is not to offer an evaluation or a personal opinion on the effectiveness of the European anti-crisis measures. It is only to study them for preparing the comparative analysis with the Economic governance and the anti-crisis policies approved in the US.

3.1 A general overview of the Euro crisis

Because of the degeneration of the worldwide securitization process in May 2007 the great uncertainty in the United States subprime mortgage market created a vicious cycle and an increase of defaults in a fast-growing segment of the US financial market. In twenty-three months, because of the unprecedented spillover effect, the collapse extended to the international financial markets and compromised also the real economy which was on verge of collapse. According to Luc Laeven and Fabian Valencia: "This crisis started with the collapse of the subprime residential mortgage market in the United States and spread to the rest of the world through exposure to U.S. real estate assets, often in the form of complex financial derivatives and a collapse in global trade"[150]. In September 2008 the fourth largest American investment bank, Lehman Brothers collapsed. In a short period after the bankruptcy of Lehman Brothers the crisis spread the rest of the World and a transmission of the crisis to the real economy happened when banks stopped lending to each other and credit dried-up. These dynamics

[150] Luc Laeven, Fabian Valencia: Resolution of Banking Crises: The Good, the Bad, and the Ugly(2012), p. 3, http://www.imf.org/external/np/seminars/eng/2012/fincrises/pdf/ch13.pdf.

have contributed to plunge the global economy as a whole into the darkest crisis since the second World War.

The main phases of the global financial crisis
1. downfall of confidence in markets which involved financial intermediaries, credit institutions, investors and other economic agents
2. extreme strains in interbank interest rates and growing illiquidity in the chain of structured bonds
3. an unpredicted reform of banks' balance sheets (from a model based on high leverage to a new one based on deleveraging)
4. collapses in the share prices of credit institutions and financial ones
5. a diffuse downfall in the international stock markets
6. new form of "banks run"(for example the Northern Rock bank run in Ireland in September 2007) and failures of important US and European banks, non-bank intermediaries and global financial services firm(for example the bankruptcy of Lehman Brothers in September 2008)
7. large-scale government interventions in the financial markets
8. new recession in wide regions of the world

The global financial and economic crisis deteriorated government balance sheets of some European member states. It caused the emergence of many problems of crisis management and effectiveness of the European economic governance.

The genesis of the crisis of the European economic governance
the socialization of private losses in the financial sector
growth rates of almost all peripheral countries were lower than the growth rates of others since the third quarter of 2009
the unsustainability of automatic adjustment mechanisms during the recessions (for example: unemployment benefits)
negative growth in real Gross Domestic Product(GDP)
out of control balance sheets for most of the European Union member states created a deterioration of the conditions of solvency of the public finances

The global financial crisis became a true Euro-crisis which interested the Eurozone and the EU decision-making capacity. The Euro-crisis was triggered by three different developments: "The first was lack of discipline in the management of government spending and revenues. This was the case in Greece. The second was a gradual and continuous erosion of competitiveness, which was again the case in Greece, but also in Portugal and Italy. That led to structurally low economic growth, which subsequently threatened the sustainability of government debt. One could also make the same point by arguing that these countries have never fully adjusted to the requirements of the Single Market. Finally, the financial crisis of 2007- 2008 had a very strong impact on the banking sector in some countries. Governments offered support to their banks in order to avoid a collapse of the financial system, which weakened government budgets and increased government debt. This negative impact was reinforced by the deep recession of 2009, which caused a sharp decline in government revenues. In countries like Ireland, and to a lesser degree Spain, this became a threat to fiscal sustainability. The fiscal sustainability crises in individual countries became a threat to financial stability in the euro area, because of high financial integration in the euro area and due to (the threat of) contagion. High financial integration was reflected in the fact that, in many cases, a high proportion of the government debt of euro area countries is held outside the country concerned. Doubts about the sustainability of debt of a certain country therefore have an immediate impact on the solvency of banks across the euro area"[151]. According to Sylvester Eijffinger and Lex Hoogduin, the crisis affected the conditions for the existence of the euro and the ECB's capacity to maintain price stability in the euro area[152].

From late 2009 most of the exposed Euro area countries begun to have problems financing their debts leading to the "sovereign debt crisis" with increasing deficits and debts. This conditioned the economic agents in the markets. Investors and savers lost the confidence in certain government stability to pay back what they owed. A group of member states has suffered

[151] Sylvester Eijffinger, Lex Hoogduin, The European Central Bank in (the) crisis, CESifo DICE Report 1/2012 p. 1.
[152] Ivi p. 2.

the crisis more than others in at least four episodes of crisis in the management of public finances: Greece(2009), Ireland (2010), Portugal (2011) and Italy(2011-2012). These episodes were due respectively to previous misleading accounting, huge private debts, severe commercial imbalances, previous high Debt/GDP ratio. Interests rates for their governments bonds soon became unsustainable and since many of these bonds were held by other European countries and their banks, the uncertainty and instability extended to the EU as a whole and this was especially true for those countries which use the Euro as their currency.

The most significant consequences of the crisis
the collapse of the financial markets
the deepest recession after the 1929-33 crisis
since the end of 2009 specific European problems due to the financial and 'real' crisis have changed the evolution of the EU with new rules and procedures
a transformation of EU's policies and institutions which didn't happen in other countries or union of states
a division, from some points of view a divergence, between the Euro area and the non-euro-area member states
the crisis has also challenged the coexistence between the supranational and intergovernmental decision-making processes formalized in the Lisbon Treaty

The EU has adopted an awesome system of many means, rules and new policies which run together with the preexisting principles of the European economic governance for facing the worst financial crisis after the Great Depression.

3.2 The Eurozone moves for solving the crisis

To preventing the great collapse of the banking system European governments came to the rescue of their banks with plans for supports and aids of an unprecedented scale for avoiding bank runs and protecting European's savings. This loss of confidence led the banks to reduce their landing to businesses (many regions of the EU are suffering for a great credit crunch)[153]. In 2009 the

[153] The results of the euro area bank lending survey for the second quarter of 2013, in MONTHLY BULLETIN AUGUST 2013, ECB, p. 24.

EU economy suffered its worst crisis since its creation. Another recessive phase happened in 2012 worsening the unemployment level and poverty.

3.2.1 Financial measures and the role played by the ECB

Greece received the first financial aids in April 2010 from the EMU member states in cooperation with the International Monetary Fund. They were included in a three-years program of bilateral loans from each of the other member states for a total amount of 110 billions euro. In May 2010 the ECOFIN Council decided to launch the European Financial Stabilization Mechanism(EFSM). The European Financial Stabilization Mechanism provided for 60 billions of euro that could be raised by the European Commission on the market by issuing bonds collateralized by the European budget although it was a temporary mechanism(evaluated with a "triple A" rating). EFSM loans are conditional on involvement of IMF and to specific commitments from the member states in difficulty.

A few weeks later EMU's member states launched the European Financial Stability Facility(EFSF), which was considered with the maximum rating(AAA) and it provided for an allocation of 440 billion of euro(which have been totaled up to an equivalent amount from IMF). EFSF loans are planned as agreements between the EU and IMF on the one hand and on the other hand the member states in difficulty, under specific conditions and commitments approved by the Eurogroup.

The Eurogroup works an "informal" institution which follows specific approach to policy-making that has been defined as an "informal governance"[154]. Both the EFSF and the EFSM have been the first European mechanisms to support EMU countries in the management of their public debts, even if EFSF is not internal to EMU but a Special Purpose Vehicle (SPV) based in Luxembourg, with a time

[154] Puetter, U. (2006) The Eurogroup: How a Secretive Circle of Finance Ministers Shape European Economic Governance, Manchester: Manchester University Press.

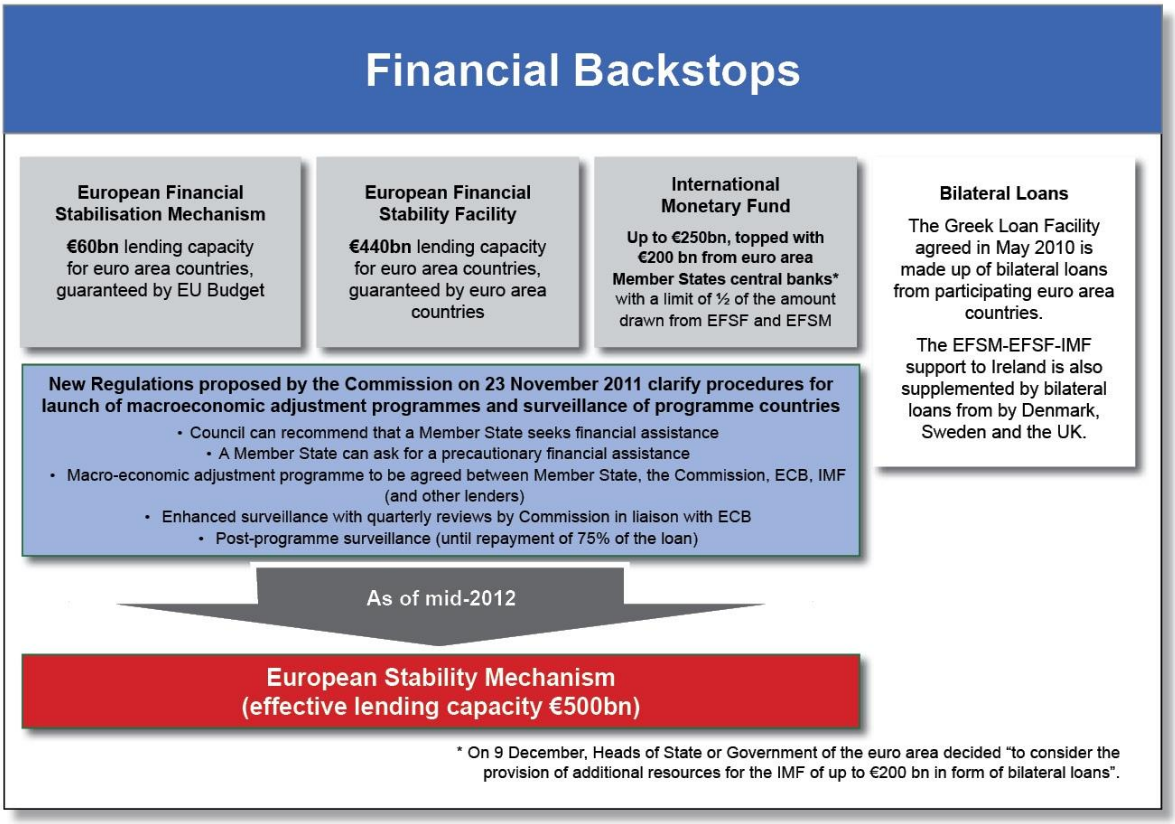
horizon of three years(or until the extinction of all the debt contracts). For ensuring that the two mechanisms are coherent with the rules of EU law the financial support offered by these mechanisms to member states is allowed only when the conditions of difficulties are due to exceptional causes beyond the control of the member states involved(as established by Art. 122.2 TFEU). The European Financial Stability Facility (EFSF) was instituted "at the very same time as a new EU law instrument serving the same purpose of giving financial support to countries facing a severe sovereign debt crisis, namely the European Financial Stability Mechanism (EFSM) was established by a Council Regulation based on Article 122(2) TFEU (…). Both instruments have been used simultaneously and cumulatively with respect to Ireland and Portugal"[155].

Both the interventions provided by EFSM and EFSF revealed themselves not as the solution to the European sovereign debt problems because of many weak points. Their weakness is due to the nature of this type of intervention as "temporary", "last minute" and "case by case" interventions which require too high interest rates and severe adjustment conditions.

For backing up to the side of the rules for financial stability, all the EU member states decided at the European Council meeting on March 25th 2011 to amend TFEU Art. 136 for authorizing the Euro area member states to establish a specific stability mechanism for their currency. That was the first use made of one of the two simplified revision procedures created by the Lisbon Treaty. On that decision of the European Council the Euro area Member States signed an intergovernmental treaty establishing the ESM on February 2nd 2012. The ESM has been planned as a permanent crisis resolution mechanism for giving financial aids to EMU members in difficulty for exceptional reasons and it is modeled on the EFSF. The ESM was inaugurated on October 8th 2012.Even if it reflects the functioning of the EFSF, unlike EFSF its intervention can imply a

[155] De Witte, B. (2012), International Treaty on the Euro and the EU Legal Order, paper delivered at the international conference on "The Euro Crisis and the State of European Democracy", Florence, EUI, p. 4.

punishment of post-2013 new private bond holders and it can purchase public bonds, issued by EMU members in difficulty, on the primary market. It is operative by July 2012, when it replaced the EFSM.



Financial Backstops adopted during the crisis(Source: European Commission)[156]

The ESM has been planned as a fund for helping Eurozone countries which are temporarily unable to borrow money on the financial markets or required support for recapitalization of vulnerable banks. This firewall system should protect the single currency and loans under the ESM will be provided if countries agree to reform their economies, to restore their financial stability.

The ECB has used strategically its powers for neutralizing the risks due to the sovereign debt crisis and the fragility of the Euro. The ECB acted with the "support of the European Parliament, against the position of the Council on the

[156] See also http://ec.europa.eu/europe2020/europe-2020-in-a-nutshell/priorities/economic-governance/graph/index_en.htm.

approval of the six-pack or in letters with specific policy recommendations to the Italian and Spanish governments in Summer 2011, in which it made interventions in secondary debt markets conditional upon domestic reforms. The ECB's various statements have voiced its resistance against pressure from Eurozone governments for it to act as a lender of last resort while it has signaled its readiness to act in areas of its responsibility provided Eurozone governments were to assume their (fiscal consolidation and economic reform) responsibilities. The ECB has therefore strategically engaged in conditioning reform in some Eurozone member states, notably Italy and Spain and arguably France (not to mention the countries under the supervision of the Troika, of which the ECB is part), gaining in this way the support of other members, such as Germany, for some of its more controversial(with potential significant redistributive effects) policies aimed at sustaining EMU. The reaction of the EU to the crisis consists in a group of policies and means which includes the European Stability Mechanism(ESM) as well as unconventional monetary measures of the European Central Banks. As stressed in Torres (2013), the ECB has been acting strategically because of the perceived threat to its independence from an incomplete EMU (on its economic side). It has sought to derive its legitimacy not only from delivering price (and financial) stability but also from acting as a guardian of EMU objectives, doing "whatever it takes to preserve the euro". In that sense, it has aimed at guaranteeing what may be termed its foremost objective: the sustainability of EMU as such. This implicit objective has led the Bank to engage in exceptional policies, beyond standard monetary tools, and wider economic policy debates, pushing for "a gradual and structured effort to complete EMU"[157].

[157] Francisco Torres, The Euro Crisis, Institutional Change and Political Constraints, in The Euro Crisis and the State of European Democracy, published by the European University Institute, Robert Schuman Centre for Advanced Studies, European Union Democracy Observatory – EUDO, 2013, p. 201.

3.2.2 Reforms of procedures of the economic governance

As regards the procedural aspects related to strengthen the economic governance of the EU, a first reform of the EU law provisions on the coordination of the member states' economic and budgetary policies was introduced with the approval of the European Semester in September 2010.

The European Semester is a six-month cycle of policy-making adopted to realize better-coordinated and more effective policies aimed to guide the European Union's economy towards an ever more sustainable growth. Through the European Semester the EU continues to pursue the objective of Europe 2020's strategy implementing structural reforms to boost productivity and competitiveness with targeted investments in R&D, financial supports for innovation and therefore creating a more efficient labor market.

The European Semester creates a programmed debate which involves member states and the EU institutions about the national budgetary and economic plans with at specific times throughout the year. This allows for the peer review of plans and enables the European Commission to give policy guidance to member states in good time, before decisions are finalized at national level. It also enables member states to work towards the targets set in the Europe 2020 strategy, for making national policies adequate to the EU's long-term growth strategy.

The stages in the European Semester are the following: In January the European Commission publishes the Annual Growth Survey, which lists the EU priorities for the coming year to boost growth and job creation. In March Heads of State and Government publish the expected national policies on the basis of the Annual Growth Survey. One month later every member states submit their draft of legislative texts about public finances(the so-called Stability or Convergence Programmes) and project of reforms to make progress towards smart, sustainable and inclusive growth (the latter are gathered in the National Reform Programmes).

In June, the Commission assesses these programs and provides country-specific recommendations which will be examined and discussed by the Council and approved by European Council. The Council adopts the country-specific recommendations in early July.

The Economic Semester in graph(Source: European Commission 2012)[158]

As spelled out by Marzinotto, Wolff and Hallerberg: "the legal architecture of the Semester is not free of ambiguities which – if not properly addressed – may give rise to institutional conflicts. The European Semester is legally enshrined in Articles 121 and 148 of the Treaty on the Functioning of the European Union

[158] See also http://ec.europa.eu/europe2020/europe-2020-in-a-nutshell/priorities/economic-governance/graph/index_en.htm.

(TFEU)”[159]. Probably the most important newness introduced by the European Semester is the new budgetary timeline for the euro area. Indeed from 2013 onwards, Euro area member states must submit their draft budgets for the following year to the European Commission by October 15th(before they are voted through in national parliaments). The budgets should be adopted by national parliaments by the end of December. If the Commission finds that a draft budget is out of line with a member state's medium-term targets, it can ask for it to be redrafted. An additional complementary agenda for reforms was approved by some leaders in March 2011. It was named the Euro Plus Pact. Euro area member states, because of the deep interdependence of their economies, and six non euro area countries(Bulgaria, Denmark, Latvia, Lithuania, Poland and Romania) signed it. It is focused on four main areas: competitiveness, employment, sustainability of public finances and reinforcing financial stability. It is fully embedded in the new economic governance framework and the commitments taken therein are included in the National Reform Programmes of the concerned member states. The single currency was established within a legal framework which included the Stability and Growth Pact for ensuring sound public finances. Actually its inefficient enforcement mechanism did not prevent the emergence of serious fiscal imbalances. Its rules were reformed by the Six Pack which entered into force in December 2011. The so-called Six Pack consists of the measures set out for introducing the degree of coordination necessary to avoid the accumulation of excessive imbalances and to ensure sustainable public finances. The Six Pack includes provisions on fiscal surveillance and macroeconomic surveillance. These rules have the final aim to help enable the EU's monetary union to function properly in the long term.

These means and rules known as “Six Pack” are enshrined into: a regulation amending regulation 1466/97 on the surveillance of member states budgetary and economic policies, a regulation amending regulation 1467/97 on the EU's

[159] Benedicta Marzinotto, Guntram B. Wolff, Mark Hallerberg, How effective and legitimate is the European semester? Bruegel Working Paper 2011/09, (2011), p. 8.

excessive deficit procedure, a regulation on the enforcement of budgetary surveillance in the Euro area, a new regulation on the prevention and correction of macroeconomic imbalances, a directive on the requirements for the budgetary framework of member states.

3.2.3 The Treaty on Stability, Coordination and Governance

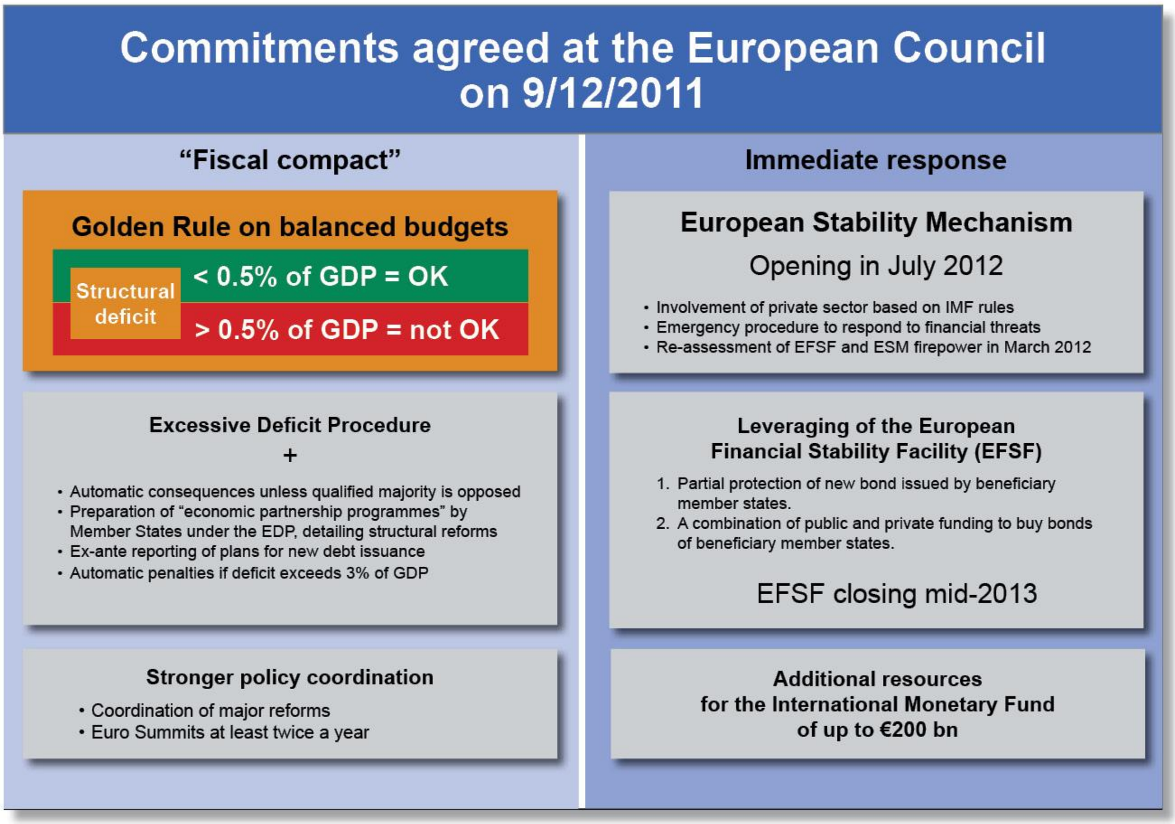
EMU's sustainability came to depend on a further pooling of sovereignty, as put by former ECB President Trichet (2011): "in a union with a single monetary policy and 17 different fiscal and economic policies, a 'quantum leap' in economic governance is necessary to ensure that the degree of economic union is fully commensurate to the already achieved monetary union".[160] The sovereign debt crisis added urgency regarding increased European economic cooperation in order to address the causes (competitiveness differentials between member states and budgetary disequilibria) as to impede spillovers into the monetary sphere, in particular in the Eurozone.

As affirmed on December 9th 2011 in the statement by the Euro area Heads of State or Government the reinforced architecture for Economic and Monetary Union should have been realized with moves towards a genuine "fiscal stability union" for the Euro area based on new stronger rules about the Excessive Deficit Procedure(Article 126 of the TFEU) for Euro area member states. In the meeting of the European Council of March 2nd 2012, representatives of 25 member states(all the EU member states except the Czech Republic and the United Kingdom or UK) signed the Treaty on Stability, Coordination and Governance(TSCG) as an intergovernmental agreement(it is not EU Law, even if

[160] See also Schuknecht et al., 2011 Schuknecht, Ludger, Philippe Moutot, Philipp Rother and Jürgen Stark (2011), "The Stabilityand Growth Pact Crisis and Reform", European Central Bank Occasional Paper 129, September.)

the Commission supports the objective to incorporate key provisions of the TSCG in EU law)[161].

The Treaty on Stability, Coordination and Governance includes the so-called Fiscal Compact for introducing common fiscal correction mechanisms in national jurisdictions. Actually the expression Fiscal Compact is generally used for indicating the Treaty on Stability, Coordination and Governance(TSCG) in the Economic and Monetary Union of which the Fiscal Compact is only one component. The Fiscal Compact and the Six Pack run in parallel.



Commitments agreed at the Euro Area Summit on December 9th 2011(Source: European Commission, 2012)[162]

[161] Six Pack? Two-pack? Fiscal compact? A short guide to the new EU fiscal governance, March 2012, http://ec.europa.eu/economy_finance/articles/governance/2012-03-14_six_pack_en.htm.
[162] See also http://ec.europa.eu/europe2020/europe-2020-in-a-nutshell/priorities/economic-governance/graph/index_en.htm.

The name Fiscal Compact was suggested by ECB President Draghi in a speech before the European Parliament on December 1st, 2011[163]. The concept drew inspiration from Hamilton's statement that "the origin of all civil government, justly established, must be a voluntary compact between the rulers and the ruled"[164]. The Fiscal Compact establishes that the structural budget deficit of the contracting parties may reach a maximum of 0.5% of GDP. Signatories with a public-sector debt of less than 60% of GDP may even run a structural deficit of 1%(of GDP). Adjustment paths for those countries which have a structural deficit or public-sector debt higher than the levels established in the agreement will be set out by the Commission. The FC includes a "balanced budgetary rule", which refers to a legal constitutional measure or its equivalent that is supposed to lead to the respect of the principle of a balanced budget[165]. Its aim is to guarantee the budgetary balance will limit the States' debts for safeguarding its sustainability and therefore helping to stabilize the euro zone(please see p. 147 for a comparison with the "golden" balanced budget rules of the US national legal frameworks and the specific features of the rule used in the German legal system).

Among the correction mechanisms set by the FC there is the procedure mechanism to be triggered automatically if there are deviations from the medium-term objective(MTO) or the adjustment path specified by the Commission. The fourth enhancement offered by the Fiscal Compact is the possibility to call upon the European Court of Justice to verify the transposition of the balanced budget rule and the automatic correction mechanism into national law – including the possibility of financial sanctions to be imposed by

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[163] Introductory Statement by Mario Draghi, President of the ECB, Brussels, 1 December 2011, Eur. Cent. Bank, http://www.ecb.int/press/key/date/2011/html/sp111201.en.html, Jan. 25th, 2013.

[164] Alexander Hamilton, The Farmer Refuted, in 2 The Works of Alexander Hamilton 37, 44 (John C. Hamilton ed., 1850), available at http://www.heritage.org/initiatives/firstprinciples/primary-sources/alexander-hamilton-the-farmer-refuted.

[165] Sébastien Richard, The Golden rule: definition, goals and implications, in "Learning about and understanding the Budgetary Pact", published by The Robert Schuman Foundation October 2012, p. 6.

the Court (equal to 0.1% of GDP) if a country does not properly implement these budget rules.

In the institutional setting of Economic and Monetary Union economic policies have remained largely under the competence of member states. At the same time, national economic policies are considered as a matter of common concern for the European Union and for the Euro area in particular(as established in Articles 120, 121 and 136 of the Treaty on the Functioning of the European Union). The grounds for these rules is the potential of national economic policies to affect other countries, especially in an economically closely integrated union of countries as the EU.

As explained in "A Fiscal Compact for a stronger EMU", published in ECB Monthly Bulletin in May 2012: "The TSCG does not specify any new instruments. Consequently, contracting parties must make full use of and build on the existing instruments as already defined in the EU Treaties" [166]. The improvement of governance in the euro area is an important element of the Treaty on Stability, Coordination and Governance, reflected in particular in Title V (Governance of the Euro area). The TSCG mainly provides for a strengthening of Euro Summits as a forum for regular coordination as well as a strengthening of the role for the European and national parliaments. To ensure a proper degree of transparency and accountability, the TSCG foresees a role for the European Parliament and national parliaments in its implementation. The President of the European Parliament may be invited to the Euro Summits, whose President must in turn report to the European Parliament on the outcome of summit meetings. Moreover, the TSCG also refers explicitly to the possibility of the relevant committees of the European Parliament and of national parliaments to discuss together budgetary policies and other issues covered by the TSCG.

[166] A Fiscal Compact for a stronger EMU, published in ECB Monthly Bulletin(May 2012), p. 85.

The legal framework established by the Fiscal Compact provides that member states continue to be politically and materially responsible for the implementation of national debt brakes and therefore also for the most debated moot point about fiscal policy.

Finally with the Treaty on Stability, Coordination and Governance the Heads of State and Government of the Euro area decide(as established in Art. 12) to meet “at least twice a year” to lead the European economy together. They elect, by a simple majority “a president of the Eurozone summit” at the same time as the President of the Council for the same renewable mandate of two and a half years. As analyzed by the Chairman of the Robert Schuman Foundation, Jean-Dominique Giuliani: “Above all it is a solemn commitment on the part of the signatory States: To work systematically together with their partners in view of guaranteeing stability that is necessary for a return of confidence, a vital condition to recover employment creating growth; To respect discipline that has been freely consented to as part of their national prerogatives under the supervision of their parliaments; To undertake together the necessary reforms to recover competitiveness which the European economy is capable of, providing they do it together; To give value to the efforts made by the citizens, the European institutions, the Member States’ governments and the European Central Bank to solve the present crisis by mutualizing their economic policies”[167].

3.3 A timeline of the measures and decisions adopted during the Euro crisis

The current architecture of the European economic governance is the outcome of the decisions and policies adopted for facing the Euro-crisis. The fundamental steps of the crisis happened as described in the following timeline.

[167] Jean-Dominique Giuliani, Learning about and understanding the Budgetary Pact, Robert Schuman Foundation, October 2012, p. 5.

On March 25th 2010, Euro area leaders agreed, together with the IMF, to offer financial support to Greece if the country should ask for it. In April financial aids were given to Greece. The EFSM was established in May 2010.

With the decision approved by the ECB on May 14th 2010, the so-called Securities Markets Programme(SMP) was established[168] as measures to address severe tensions in financial markets[169] purchasing treasury bonds. The ECB's Governing Council decided to intervene in the euro area public and private debt securities markets for ensuring liquidity in dysfunctional market segments. One month later the EFSF was established(June 7th 2010). In the second half of 2010 the European Semester[170](September 7th 2010) was adopted and on October 28th the EU leaders found an agreement for strengthening the Stability and Growth Pact and establishing a permanent crisis mechanism, while in November the Euro area finance ministers arranged about a plan for replacing the European Financial Stability Facility (EFSF) as an ordinary mean to provide assistance to euro area countries in financial distress.

In response to the financial crisis, the European Systemic Risk Board was established on December 16th 2010 for preventing systemic risks and maintaining financial stability in the EU. Moreover the European Council agreed a two line amendment to Article 136 of the Treaty on the Functioning of the European Union (TFEU), for giving the ESM legal legitimacy[171]. At the European Council meeting the EU leaders approved the European Stability Mechanism for offering financial aids to countries in difficulty, subject to strict conditions.

For the 1st time Finance ministers started on January 2011 to implement the European Semester and three new European authorities were created on January 1st 2011 with the task to supervise the financial activities of banks,

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[168] Decision ECB/2010/5, http://www.ecb.int/ecb/legal/pdf/l_12420100520en00080009.pdf .
[169] http://www.ecb.int/press/pr/date/2010/html/pr100510.en.html .
[170] See also http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/116295.pdf
[171] Phillips, Leigh (17 December 2010) EU leaders agree to tweak treaty, keep bail-out fund unchanged, EU Observer http://euobserver.com/economic/31535.

markets, insurance companies and pension funds. They are respectively: the European Banking Authority in London, the European Securities and Markets Authority in Paris and the European Insurance and Occupational Pensions Authority in Frankfurt.

Between November 2010 and February 2011 Ireland received financial support of 45 billion of euro. The Euro area leaders agreed to strengthen economic governance by improving the economic policy coordination for competitiveness and convergence with a decision(March 11th 2011) on the Euro Plus Pact, which consists of a non-binding policy coordination framework but nevertheless it represents a strong political commitment[172]. The following month Portugal acceded to a financial assistance plan which consisted of 40 billion of euro. For facing the crisis of the Italian and Spanish sovereign debt (spreads over 500 basis points) which reached its peak in August 2011, the ECB intervened with open market operations for steering and smoothing Eurozone interest rates in the form of longer-term refinancing operations(LTRO) as a large purchase of some member states' sovereign bonds on the secondary markets for a total amount of 40 billion of euro in three weeks to provide liquidity to the financial sector.

A package of six legislative proposals was adopted on November 8th 2011 by the Council. The so-called "Six Pack", aimed to strengthen economic governance in the EU as part of the Union's response to the turmoil on sovereign debt markets[173]. On December 9th 2011 Euro area leaders agreed on a draft of new fiscal compact which required that general government budgets must be balanced or in surplus, after the adoption of rules concerning the excessive deficit procedure[174]. During the European Council on March 2nd 2012, 25 European leaders sign the Treaty on Stability, Coordination and Governance,

[172] A Fiscal Compact for a stronger EMU, published in ECB Monthly Bulletin(May 2012), p. 85.
[173] Please see details about the Six Pack on: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/125952.pdf.
[174] See http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/126658.pdf.

which is also known as the Fiscal Compact for introducing a fiscal discipline and introduce stricter surveillance within the euro area, notably by establishing a balanced budget rule[175]. At the Euro Area Summit on June the national leaders decided to establish a new banking supervisory system, called Single Supervisory Mechanism(SSM), under the competence of the ECB in order to tackle tensions in the financial markets and break the vicious circle between banks and sovereign debts[176]. The SSM will be the first pillar of the European Banking Union. In June the Euro area finance ministers approved unanimously the means for helping Spain with financial assistance in the plan of recapitalization of the country's financial institutions.

A turning point happened with the declaration on July 26th 2012 by the President of the European Central Bank Mario Draghi who pledged to do 'whatever it takes' to save euro to protect the Eurozone from collapse. Draghi said: "Within our mandate, the ECB is ready to do whatever it takes to preserve the euro. And believe me, it will be enough"[177].

The following step was the ECB announced the Outright Monetary Transactions (OMTs) on August 2nd 2012 for safeguarding the appropriate transmission and single nature of monetary policy, as an unlimited bond-buying programme in secondary sovereign bond markets, conditional on the countries concerned participating in either a full European Financial Stability Facility programme, a full European Stability Mechanism programme or a precautionary programme, and concerning bonds with a maturity of one to three years[178]. Even the most audacious decisions arrived late for answering to the market's pressures and were perceived as illegitimate by the affected interests. Indeed, it is generally

[175] Please see the Conclusions of the European Council on (1/2 March 2012: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/128520.pdf.
[176] Euro area summit statement: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/131359.pdf.
[177] Speech by Mario Draghi, President of the European Central Bank at the Global Investment Conference in London, July 26th 2012 http://www.ecb.int/press/key/date/2012/html/sp120726.en.html.
[178] PRESS RELEASE, Technical features of Outright Monetary Transactions(6 September 2012), http://www.ecb.int/press/pr/date/2012/html/pr120906_1.en.html.

agreed that the reduction of the spread between the Italian, Portuguese and Spanish public bonds and German bonds, finally achieved in the course of 2012, has to be considered the outcome of the firm position of the ECB "to do whatever it takes to save the euro".

The Treaty establishing the ESM entered into force on September 27th 2012 and the ESM was inaugurated on October 8th. In December the Economic and Financial Affairs Council approved the proposals aimed at establishing a Single Supervisory Mechanism(SSM) for the oversight of banks[179].

During the last months the Eurogroup reached an agreement with the Cypriot authorities on the key elements necessary for a future macroeconomic adjustment programme[180]. The latest reform package is the so-called "Two Pack". It entered into force on 30th May 2013 in all Euro area member states for increasing transparency on their budgetary decisions in a framework of stronger coordination of the Euro area. The Two Pack paves the way for further steps to be taken to reinforce the Economic and Monetary Union, as set out by the Commission in its 'Blueprint for a Deep and Genuine EMU' published last November.

On March 19th 2013 the European Parliament and the Council reached an agreement on conferring new powers to the European Central Bank for the oversight of Euro area banks, which reflects partially the integrated banking union proposed by the Commission. Indeed there is not yet an agreement on an EU-wide common deposit scheme, with the solvency of national deposit guarantee schemes irrevocably tied to that of the sovereign nor on the adoption

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[179] PRESS RELEASE, 3214th Council meeting Economic and Financial Affairs(12 December 2012) http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/134287.pdf.

[180] Eurogroup Statement on Cyprus(25/03/2013) http://www.eurozone.europa.eu/newsroom/news/2013/03/eg-statement-cyprus-25-03-13/.

of “a single rulebook in the form of capital requirements and of a single European recovery and resolution framework"[181].

The key elements of the current European economic governance are:
Stricter monitoring of public debt levels(established by the Fiscal Compact)
The Annual Growth Survey (AGS)
The European Semester

The stricter monitoring system over public debt levels is based on fiscal surveillance focused on deficits and debts for evaluating the long-term fiscal sustainability and avoiding that national budgets do not put at risk other European economies. The European Semester, as a periodic procedure of policy coordination. The Annual Growth Survey (AGS), which is a European Commission report that launches the European Semester. In the AGS, the Commission provides a solid analysis of the progress towards Europe 2020 targets, a macro-economic report and the joint employment report. The AGS applies to the EU as a whole, and its main messages will form the basis for the Country-Specific Recommendations next spring.

For overseeing the correction of imbalances the macroeconomic surveillance system uses the preventive arm of the surveillance with an alert mechanism based on a scoreboard of economic indicators. The Euro area countries that fail to follow the agreed fiscal rules may face tougher and more automatic financial sanctions. The Single Supervision Mechanism and other rules and authorities have been adopted to ensure a better capitalization of the European banks and a more responsible behavior by the credit institutions operating in the EU for preserving their function to lend money and contribute to investment and economic growth. This paved the way for banking union with the task to make sure that people’s deposits are protected and avoiding the failure of banks.

[181] Commission proposes new ECB powers for banking supervision as part of a banking union, September 2012, http://europa.eu/rapid/press-release_IP-12-953_en.htm.

3.4 The institutional innovations of the European economic governance

At the time of the creation of the Euro the monetary policy was established as a centralized policy, while financial, fiscal and budgetary policies remained in the hands of national authorities. The latter are still today decentralized although the functioning of those policies is essentially interdependent with that one of the monetary policy and vice-versa.

This is the great ambiguity which has been considered among the causes of the weaknesses of the Euro area. Mr. Carlo A. Ciampi, former President of the Italian Republic, has used the term “Zoppia” to indicate the absence of a good and representative institutional framework for the EU, because of a EMU which has been actually limited to a monetary union, without a single fiscal policy[182]. Ciampi underlined the absence of a true European economic policy and the institutional gap due to the absence of a single decision making authority for fiscal policy as for the monetary policy at the European level.

With the creation of EMU, the governments have chosen to ignore the short-run interaction between monetary and fiscal policies and the interactions between fiscal policies. A framework for cooperative policymaking among the ECB and the national governments has not yet been developed. Instead, the current setup of the EMU seems to rely on the assumption that economic policy in the euro area can be separated into the different fields covered by the various processes and that interdependencies between these fields are negligible[183]. Such a division between policies “holds only in the long run, while

[182] Antonio Puri Purini, Dal Colle più alto. Al Quirinale, con Ciampi negli anni in cui tutto cambiò, Il Saggiatore(2012).

[183] Padoa Schioppa, T. (1999), Europe’s New Economic Policy Constitution, in D. Currie, A. Donnelly, H. lassbeck, B. Hall, J. Lemierre, T. Padoa-Schioppa, and N. Wicks, Will EMU Lead to a European Economic Government?, Center for European Reform, London.

in the short run, a conflict potential exists between fiscal and monetary policy together with a distributional conflict between the national policies"[184].

The existence of such a conflict potential was recognized by the Luxembourg Council in 1997 which concluded that "…To the extent that national economic developments have an impact on inflation prospects in the euro area, they will influence monetary conditions in that area. It is for this basic reason that the move to a single currency will require closer community surveillance and coordination of economic policies among euro area member states".

According to Jürgen von Hagen and Susanne Mundschenk: "limiting the fiscal policy to the operation of automatic stabilizers does not solve the issue of policy coordination. Instead it destabilizes aggregate output and implies that countries will compete for the aggressiveness of their optimal automatic stabilizers due to the implied monetary reaction. Solutions to solve these short term conflicts requires agreements among member states on a joint fiscal policy stance at the aggregate level, reconciling the fiscal stance with the union's monetary policy, and procedures to express and aggregate preferences over the output-inflation trade-off at the EMU level and to make choices consistent with these preferences. The existing processes and mechanisms for policy coordination are inadequate for dealing cooperatively with the relevant conflicts at the EMU level. They are insufficiently focused on EMU macroeconomic variables, and they do not provide a framework for entering binding commitments among the governments and between them and the central bank.

Existing processes for policy coordination in EMU may perhaps provide a basis for expressing the distributional conflicts among the member states, for expressing concerns about policies in one country that could have negative effects on others through the EMU aggregates, and for peer pressure encouraging reforms. However, they provide no framework to analyze the relevant conflicts in detail

[184] Jürgen von Hagen, Susanne Mundschenk, Working Paper 70 – Fiscal and Monetary Policy Coordination in EMU, 2002, p. 21.

nor to arrive at binding agreements among the governments assuring the consistency of their individual fiscal policies with their policy goals at the national and the aggregate level. Thus, the current institutional setup largely keeps the member states in a non-cooperative policy game. One implication is that the central bank is rightfully reluctant to engage in cooperative policymaking with the fiscal authorities, as it cannot count on the reliability of agreements it might enter into with the governments. Thus, the lack of commitment among the governments implies an inability to commit between the monetary and fiscal authorities"[185].

During the crisis new tensions emerged as regards the sovereignty of member states and their future relationship with the ECJ, indeed: "with the implication that a new organization (set up by the Fiscal Compact Treaty or ESM Treaty) claims to use an institution (such as the ECJ, the Commission or the ECB) of another organization (the EU of the Lisbon Treaty) to bind its own contracting parties. Certainly, the intervention of the ECJ is justified by TFEU, Art. 273, that states: "the Court of Justice shall have jurisdiction in any dispute between Member States which relates to the subject matter of the Treaties if the dispute is submitted to it under a special agreement between the parties". Nevertheless, the ECJ or the Commission or the ECB are institutions operating within a legal structure defined also by the UK and the Czech Republic that did not agree upon the Fiscal Compact Treaty that utilizes them. In sum, the intergovernmental decision-making regime, originally justified by the need to guarantee the political discretionary power of national governments, has ended up in introducing automatic legal measures of intervention in member states' economic governance systems that dramatically curtails their political discretion. Intergovernmentalism has become the source for the judicialization of economic

[185] Jürgen von Hagen, Susanne Mundschenk, Working Paper 70 – Fiscal and Monetary Policy Coordination in EMU, 2002, p. 22.

policy. The ‘gouvernement economique’ of national executives is going to be substituted by its contrary, the ‘gouvernement des juges’”[186].

The euro crisis has tested the crisis management capability of the intergovernmental EU, showing the inefficiency of the intergovernmental institutions and such type of decision-making process. According to Fabbrini: “Under the financial threat of the euro’s collapse, the heads of state and government of the EU member states eventually ended up in dramatically redefining the intergovernmental system of economic governance in Europe (and the euro-area in particular)” .

Most of the responses of the EU to the crisis(in the period 2010-2012) have been elaborated as based on the intergovernmental approach and their functioning has been conferred to the intergovernmental institutions. According to Fabbrini: “When the euro crisis exploded, thus, there was in place a specific constitutional logic and a specific institutional framework for dealing with it. The euro crisis has represented an occasion for assessing the crisis management and crisis prevention capabilities of the intergovernmental EU. The article argues that the test has been unsatisfactory”[187].

The institutional transformation followed to the crisis over the EU and the EMU has impacted on the decision-making regime based on the voluntary coordination of member states’ governments, showing that whatever form of “voluntary” participation in such type of policy area may compromise its effectiveness. Many decisions taken for facing the crisis(the Fiscal Compact, the EFSF, etc.) by the European Council or the ECOFIN Council had been approved without any essential involvement of the EP as the institution representing the European citizenship creating a deeper problem of transparency, accountability and legitimacy.

[186] Fabbrini, Beyond intergovernmentalism: the puzzle of European economic governance, Paper submitted at the international conference of the Council for European Studies, Amsterdam, 25-27 June 2013, p. 9.

[187] Fabbrini Sergio, Intergovernmentalism and Its Limits: Assessing the European Union’s Answer to the Euro Crisis, Comparative Political Studies XX(X) 1–27, 2013, p. 2.

The decisions took from 2009 and 2011 showed a clear absence of legitimacy due to the bilateral leadership exercised by Germany and France which represented the so-called "Merkozy" directoire at the head of the European financial and fiscal policy. This directoire has transformed the "deliberative intergovernmentalism" of the EMU in a "directorial intergovernmentalism". The latter has distorted the equilibrium of interests previously ensured by the intergovernmentalism centralization. The Merkozy created a domination of a group of member states on the others. The new model of intergovernmentalism gave more political discretional powers to some members states and reduced those ones of the other member states:

"In sum, the intergovernmental EU has not satisfied both needs of an effective and legitimate decision-making process"[188].

The hard core of the problem is the unresolved veto dilemma which emerges when unanimous consent is required. The necessity to reach unanimity creates limits on the decision-making capacity of every collegiate body with the results of interminable negotiations and decisions deprived of any content. As argued by the first President(1948–55) of the Republic of Italy about the Schuman Plan: "È da escludere che sia adatto un piano nel quale viga il principio della unanimità, ossia del veto anche di uno solo dei componenti. Unanimità vuol dire Società delle nazioni, vuol dire Nazioni Unite, vuol dire Consiglio europeo, ossia organizzazioni prive di vera autorità. Se l'«Autorità» deve funzionare, occorre sia adottato il principio della maggioranza. Si potrà discutere se basti la maggioranza assoluta od occorra una maggioranza speciale; si potrà discutere se tutti i paesi rappresentati nell'«Autorità» abbiano il medesimo peso, ovvero se si debba tenere conto, sebbene non completamente, dell'apporto alla cosa comune, ma trattasi di punti non essenziali. Sembra difficile far ingoiare alla Germania ed alla Francia l'idea di avere solo tanti voti quanti ne avrebbe l'Italia

[188] S. Fabbrini, Beyond intergovernmentalism: the puzzle of European economic governance, Paper submitted at the international conference of the Council for European Studies, Amsterdam, 25-27 June 2013, p. 10.

con una produzione di carbone e di minerali di ferro tanto minore, ma non è neppur questo il punto veramente fondamentale. Fondamentale è l'idea della maggioranza la quale lega la minoranza; idea su cui, del resto, funzionano tutti i governi liberi"[189].

At the same time, the intergovernmental decision-making regime cannot guarantee the proper application of decisions taken on a voluntary bases because of ineffective and weak enforcement mechanisms.

"New radical legislative measures were approved (from the 2010 European Semester to the so-called 2011 Six Pack and 2013 Two Pack) within the institutional frame of the Lisbon Treaty and new intergovernmental decisions (the 2010 European Financial Stability Facility or EFSF and the European Financial Stability Mechanism or EFSM) and new intergovernmental treaties (the 2011 Treaty on European Stability Mechanism or ESM and the 2012 Treaty on the Fiscal Compact) were set up outside of the Lisbon"[190].

"The Fiscal Compact Treaty has finally arrived to formalize (Art. 10) the possibility for member states whose currency is the euro to recur "to enhanced cooperation as provided for in Article 20 of the Treaty on the European Union (TEU) and in Articles 326 to 334 of the Treaty on the function of the European Union (TFEU)", thus making the new Treaty de facto redundant. After a long negotiation, the Fiscal Compact Treaty has come to recognize, first, that the Commission's role in monitoring the excessive deficit's member states is necessary and, second, that the European Parliament cannot be considered an outsider on par with the EU member states whose currency is not the Euro(both conditions absent in the initial announcement of the Fiscal Compact Treaty). However, if the Commission has been finally included in the policy-making

[189] Einaudi L., Lo scrittoio del Presidente (1948-1955), Torino, 1956, pp. 47-55.
[190] S. Fabbrini, The Outcomes of Intergovernmentalism: the Euro Crisis and the Transformation of the European Union in The Euro Crisis and the State of European Democracy, published by the European University Institute, Robert Schuman Centre for Advanced Studies, European Union Democracy Observatory – EUDO, 2013, p. 103.

process, the EP continues to be kept on the margins. According to Art. 12(5), "the President of the European Parliament may be invited to be heard (by the Euro Summit, ndr). The President of the Euro Summit shall present a report to the European Parliament after each of the meetings of the Euro Summits". Thus, the EP has entered the Treaty, but its powers on Euro Summit's Reports remain undefined. At the same time, the EP is never mentioned in the ESM Treaty. Although the intentions of the German and French promoters of the new treaties were originally much more intergovernmental, the reaction coming from the EP and the Commission has tamed them, but only to a certain extent"[191].

According to the European Commission: "During the financial crisis of 2008, the euro protected the euro area countries from more severe consequences of the global meltdown. The EU's economic governance has now been considerably strengthened. The revised rules, which reinforce fiscal discipline and economic coordination, should allow the full benefits of the EMU to materialize"[192].

Bearing in mind the latest developments of the economic governance of the EU, as spelled out by Fabbrini, the evolution of our institutional system: "would move the centre of gravity of the EU in the intergovernmental side, consequently constraining the same functioning of the supranational side. One might argue (*the author refers to* Crum[193]) that this transformation would envisage the institutionalization of an executive federalism's model. In any case, the intergovernmental EU emerged during the euro crisis has gone much

[191] S. Fabbrini, The Outcomes of Intergovernmentalism: the Euro Crisis and the Transformation of the European Union in The Euro Crisis and the State of European Democracy, published by the European University Institute, Robert Schuman Centre for Advanced Studies, European Union Democracy Observatory – EUDO, 2013, p. 123.
[192] See also http://ec.europa.eu/economy_finance/general/pdf/eu_economic_governance_en.pdf.
[193] Crum, B. (2012). 'The Democratic Dilemma of Monetary Union', paper submitted at the EUDO Dissemination Conference on 'The Euro Crisis and the State of European Democracy', EUI, Florence, 22-3 November.

beyond a ‘confederal constitutional settlement’ (*the author refers to* Moravicsik[194]), assumed that there was one”[195].

3.5 Perspectives and expectations on the evolution of the Eurozone

The June 2012 European Council invited the President of the European Council together with the Presidents of the Eurogroup, the ECB and the European Commission to develop "a specific and time-bound road map for the achievement of a genuine Economic and Monetary Union". The European Parliament launched an own-initiative procedure on this report. On this basis, the European Commission delivered its ahead of mid-December EU Summit paper on 28 November 2012. The Interim Report was presented on 12 October 2012 and the final report was published on 5 December 2012. The Interim Report, on the Euro area member states, lays down several proposals for the implementation of a real Economic and Monetary Union: an integrated financial framework (single European banking supervision, common deposit insurance and resolution framework); an Integrated budgetary framework (stronger economic governance, fiscal capacity and a safe and liquid financial asset for the euro area); an Integrated economic policy framework (reforms of the EU surveillance framework, promoting structural reforms through arrangements of a contractual nature, and strengthening macroprudential policy).

However, as the Four Presidents Report “Towards a Genuine Economic and Monetary Union” of December 5th 2012 stressed, “the creation of a new fiscal capacity for the EMU should also lead to adequate arrangements ensuring its full democratic legitimacy”. Here the two strategies diverge. According to what may be called as the parliamentary federation’ strategy, democratic legitimacy can be guaranteed only by the fiduciary relation between the EP and the

[194] Moravcsik, A. (2007) ‘The European Constitutional Settlement’, in S. Meunier and K. R. McNamara (eds.), Making History: European Integration and Institutional Change at Fifty, The State of European Union, Vol. 8, Oxford: Oxford University Press, pp.23-50.

[195] S. Fabbrini, Beyond intergovernmentalism: the puzzle of European economic governance, Paper submitted at the international conference of the Council for European Studies, Amsterdam, 25-27 June 2013, p. 11.

Commission. (…) Any centralization of power, in the EP or otherwise, has the effect of strengthening the power of larger member states at detriment of smaller member states. Both strategy of executive federalism and parliamentary federalism are uncongenial with the asymmetrical nature of the EU. A third strategy might thus be considered for granting legitimacy to the European system of economic governance (*that Fabbrini called in 2010 as compound democracy in Compound Democracies: Why the United States and Europe Are Becoming Similar*). This strategy aims to recompose the intergovernmental and supranational unions within a new constitutional project based on the institutional logic of separation of powers. This project is finalized to prevent any decision-making centralization, either in the EP-Commission or in the European Council-Council relations. This strategy consist in the formation of a strong executive system balanced by an equivalent strong legislative system. The institutionalization of an original system of separation of powers at the Brussels' level might take different forms.

It would be necessary to strengthen the role of the president of the European Council extending his/her legitimation to national electors or parliaments, although maintaining the power of the European Council in selecting the candidates for the office and the collegial nature of the institution. That implies also the strengthening of the coordination between the presidents of the European Council and the Commission, identifying a Treasury commissioner or high representative, nominated by the former with the consent of the legislature, with the tools for managing economic and financial policies. In this strategy, it is the office of the president of the European Council that should become the focus of the process of politicization, shielding the Commission from it. The Commission has to preserve its civil service and technical nature, maintaining its special relation with the EP. The outcome would consist of a plural executive, yet politically-centered around the president of the European Council. At the same time, it would be necessary to strengthen the congressional (that is, checking and balancing) role of the EP and the Council recognizing to both institutions the power of legislative initiative. A separated political decision-making system can resort on political decisions, and not only on the automaticity of legal rules, yet avoiding the trap of centralization. Political or policy decisions should emerge from the checks and balances between separate (legislative and executive) institutions sharing decision-making power[196].

Today the Euro area is the Economic and Monetary Union of the EU. It includes 17 member states that use the same currency, whose monetary policy is decided by the ECB. The Euro area continues to live a condition of asymmetry between the centralized decision making process for the monetary policy at the European level and 17 fiscal policies which are decided at the national level as the outcome of a decision making process shared between national institutions and the European Commission.

Even if the fiscal policy is still in the hands of national authorities, they exercise their powers under a series of common rules and principles which impose specific features for the budget to be approved each year and also an ex ante involvement of the European Commission which analyze the draft proposals of budget and fiscal policies.

Both the European Commission and the ECJ exercise an ex-post control over the fulfillment of the rules of the European economic governance by the member states which adopt the Euro.

The Euro area is under the surveillance by the ECB over financial markets and baking, even if they are only some parts of the proposal of a banking union.

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[196] S. Fabbrini, Beyond intergovernmentalism: the puzzle of European economic governance, Paper submitted at the international conference of the Council for European Studies, Amsterdam, 25-27 June 2013, p. 11.

There were at least three problems related to the architecture and legal framework of the European economic governance.

The three crucial problems of the European economic governance
1. the effectiveness and strength of rules, which implies the dilemma of authority of the European institutions
2. the asymmetries in the policymaking process for centralized policies and decentralized ones
3. some ambiguities related to the coherent functioning of the EMU and the EU as well as of distribution of powers between national institutions and supranational ones

4. The economic governance in the US and the American anti-crisis policies in a comparative analysis with the European economic governance

A complete research on the European economic governance should also consider its principles, rules and institutions in a comparison with other models of economic governance which have similar features and are trying to solve similar problems. A comparative analysis with the US can be considered useful because both the European Union and the United States of America have had to face the same challenges. The comparison of EU with US furnishes important analytical indications.

First, I will discuss the evolution of the decisions which have shaped the institutions and the means of policy which represent the hard core of the American economic governance and its fiscal federalism. Second, I will try to explain the fiscal policy, monetary policy and the anti-crisis measures adopted since 2008 by the White House.

Third, I will go back to the European economic governance for doing a comparison with the American one.

4.1 Origin and evolution of the Economic governance in the US

In the early days of the nation, before and just after the revolution, Americans still used English, Spanish, and French moneys and only in 1690 the Massachusetts Bay Colony issued the first paper money(the Colonial Notes) in the territories which would later form the United States.

The Articles of Confederation were silent on state-issued paper money and state-issued paper money never appeared also in the amendments to the Articles nor in the report from the September 1786 Annapolis Convention, which is considered the precursor to the Philadelphia Constitutional Convention.

In the numerous plans proposed at the Constitutional Convention from the Convention's beginning in May through July, e.g., the Virginia Plan, the Pinckney plan, the New Jersey plan, the Alexander Hamilton plan, and so on, state-issued paper money was never mentioned. On July 26th the delegates turned all the various plans and deliberations over to a committee of detail to craft a draft constitution. The committee consisted of John Rutedge of South Carolina, Edmund Randolph of Virginia, James Wilson of Pennsylvania, Oliver Ellsworth of Connecticut, and Nathaniel Gorham of Massachusetts. Buried in the back of the committee's last draft, written in James Wilson's hand, appeared for the first time a clause banning state-issued paper money.

This is the same James Wilson who at Pennsylvania ratifying convention on December 4th 1787, said, "If only the following lines...[banning paper money]...were...in this Constitution, I think it would be worth our adoption...".

This draft was submitted to the rest of the Convention on August 9th and, from then until the Convention ended on September 17th, the Pennsylvania delegation blocked any move to temper or remove this clause[197].

The economy of North America lived a dynamic economic expansion which happened because of the population growth from births and immigration from the adoption of the Declaration of Independence on July 4th 1776 by the Congress on the behalf of the thirteenth colonies.

The United States emerged from the U.S. war for independence in 1783 with big debts and a constitution that disabled the U.S. central government. The Articles worked as intended to restrain the central government from taxing and spending, indeed to levy taxes, the central government required unanimous consent of thirteen sovereign states[198]. As explained by Forrest McDonald: “Authority to levy tariffs, the most remunerative potential source of tax revenues, resided in the states. In 1781 and 1783, the Continental Congress asked the thirteen states to ratify amendments to the Articles of Confederation that would have allowed it to impose a Continental import duty whose proceeds were to be devoted entirely to

[197] Jensen 1976, vol. 1; 1976, vol. 2, p. 500; Farrand 1966, vols. 1-2

[198] Thomas J. Sargent, United States then, Europe now, Prize Lecture, 2012, p. 11.

servicing the Continental debt. Each time, twelve states approved, but one state did not (Rhode Island the first time, New York the second), killing the amendments"[199].

Such pace of expansion contributed to make the American colonies self-sufficient[200]. Indeed the growth of the American economy continued also after the writing of the United States Constitution in 1787. The Constitution included in its articles some provisions and principles for the American economy. From an interpretation of the Constitution from the point of view of economic theory, a true economic charter emerges and it spelled out basic guidelines for regulating the decision-making process of institutions and their competences as well as limits to their functioning.

Although the true inwardness of the Constitution is not revealed by an examination of its provisions as simple propositions of law; but by a study of the correspondence of the period, contemporary newspapers and pamphlets, the records of the debates in the Convention at Philadelphia and in the several state conventions, and particularly, The Federalist Papers, which was widely circulated during the struggle over ratification and are seen as a primary source for constitutional interpretation[201].

Since the late 18th century, when the founding founders lived, to the present day the founders' approach is still used as a guide based on the great question of the role of government in the economic system. As already said by John Nelson: "When the causes of the slow dissolution of consensus among America's ruling elites after ratification of the Constitution are detailed, the evidence points to

[199] McDonald, Forrest. 1985. Novus Ordo Seclorum: the Intellectual Origins of the Constitution. Lawrence, Kansas: University of Kansa, p. 170.
[200] Perkins, J. Edwin. 1988. The Economy of Colonial America. New York: Columbia University Press.
[201] Charles A. Beard, An Economic Interpretation of the Constitution of the United States, The Macmillan Company, 1962, p. 82.

specific disagreements over programmatic issues and not fundamental schisms over the essential role of government"[202].

There are three main Founding-era economic policy principles that make possible sufficient production, of the goods that are essential for life and the pursuit of happiness, as proclaimed by the Declaration of Independence.

The first principle is private property, indeed the founders thought government should have an extensive set of responsibilities that it must fulfill in order to enable people to exercise their right to acquire and possess property. The Constitution does not explicitly mention property. The pre–Civil War case law applying U.S. Constitution, Art. IV, sec. 2, generally agrees with the finding in a 1797 Maryland case, Campbell v. Morris, that "one of the great objects [of the clause] was the enabling [of] the citizens of the several States to acquire and hold real property in any of the States"[203]. The U.S. Constitution affirms property rights throughout the United States using institutions for coordinating economic activity, which can be considered as: "property rights structures(we could call them governance mechanisms) that are comprised of systems of rules, procedures, and norms that define ownership and control of the means of production, govern transactions, and determine the efficiency with which resources and information are allocated"[204]. The second principle of sound policy is market freedom. Even if there are some exceptions established by law when government define and enforce contracts. For the Founders, free markets were secured by fundamental policies that were affirmed in state and federal constitutions, as well as in other official and unofficial documents of the Founding

[202] John R. Nelson, Jr., Liberty and Property: Political Economy and Policymaking in the New Nation, 1789–1812 (Baltimore: Johns Hopkins University Press, 1987), p. 77.
[203] Samuel Chase's opinion in Campbell v. Morris, 3 H. & McH. 535, 553–554 (Md. 1797), in The Founders' Constitution, Vol. 4, p. 490. The major federal case was Corfield v. Coryell, 6 F. Cas. 546, 551–52 (C.C.E.D. Pa. 1823), in The Founders' Constitution, Vol. 4, p. 503.
[204] John L. Campbell, J. Rogers Hollingsworth, Leon N. Lindberg, Governance of the American Economy, Cambridge University Press, 1991, p. 11.

period[205]. The third principle is reliable money as a medium of exchange whose value is reasonably constant and certain for facilitating market transactions.

The Constitution established few but crucial powers and responsibility within the task of the federal government. Most of the powers expressly reserved for the federal government are set out in Article I, Section 8 of the U.S. Constitution("The Congress shall have power..."). Some of these powers can be considered strictly related to the economic governance: to levy and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; to borrow money on the credit of the United States; to regulate commerce with foreign nations, and among the several states, and with the Indian tribes; to establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States; to coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures; to provide for the punishment of counterfeiting the securities and current coin of the United States; to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Among the powers for positive action conferred upon the new government there is the power to lay and collect taxes. The taxing power was the basis of all other positive powers and it afforded the revenues that were to discharge the public debt in full. Provision was made for this discharge in Article VI to the effect that "All debts contracted and engagements entered into before the adoption of this Constitution shall be valid against the United States under this Constitution as under the Confederation".[206] It represents an important turning point in the organization of the US institutional system because under the Articles of

[205] See also Thomas G. West , The Economic Principles of America's Founders: Property Rights, Free Markets, and Sound Money, First Principles Series Report #32 on Political Thought http://www.heritage.org/research/reports/2010/08/the-economic-principles-of-america-s-founders-property-rights-free-markets-and-sound-money.
[206] Ivi p. 90.

Confederation, the Congress had no power to lay and collect taxes immediately while it could only make requisitions on the state legislatures.

The US Constitution gave the central government the power to devote enough tax revenues to service debts that the Continental Congress and the states had issued to pay for the war and an exclusive authority to tax and regulate US international trade. The US international trade was conferred under the competence of the central government because “in the early days of the U.S., the government budget constraint linked debt service capacity very closely to trade policy. That tariffs were the main source of federal revenues confronted the country with a choice that framed U.S. politics from 1789 to 1815"[207].

To sum up the Constitution introduced a new “centralized” decision-making process for the fiscal policy which is decided at the federal level. The new fiscal policy substituted the previous decentralized decision making process which maintained the power to lay tax in the hands of federated states.

Bearing in mind that before the Constitution, most of the states relied largely on direct taxes for their revenues, the demands of Congress were keenly felt and stoutly resisted. Although under the new system the Congress has the power to lay taxes on its own account, actually the same provisions impose the apportionment of direct taxes on a basis of population. This is due to the necessity to consider them as a last resort when indirect taxes failed to provide the required revenue.

As stated by article 6 of the United States Constitution: “All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation”.

Article 6 provides for measures which ensure that the debt would be paid and thus it increases confidence in the growing government.

[207] Thomas J. Sargent, United States then, Europe now, Prize Lecture, 2012, p. 13.

This article is crucial for understanding the present condition of the US public finances, because of the high amount of the gross federal debt, which doesn't include state and local debt and it doesn't include also the so-called unfunded liabilities of entitlement programs(i.e. Social Security and Medicare). Actually it is a crucial provision for a retrospective analysis, because thought it we can try and realize the political meaning of this rule and that one of the public debt, in the debates of that time as regard both the attempt of achieving a more stable integration with the new Constitution and the political dispute about the division of competences.

In the First Report on the Public Credit in 1790, Alexander Hamilton wrote: "The United States debt, foreign and domestic, was the price of liberty. The faith of America has been repeatedly pledged for it... Among ourselves, the most enlightened friends of good government are those whose expectations of prompt payment are the highest. To justify and preserve their confidence; to promote the increasing respectability of the American name; to answer the calls of justice; to restore landed property to its due value; to furnish new resources, both to agriculture and commerce; to cement more closely the Union of the States; to add to their security against foreign attack; to establish public order on the basis of an upright and liberal policy; these are the great and invaluable ends to be secured by a proper and adequate provision, at the present period, for the support of public credit".

In The Federalist No. 6 Hamilton described the sources of possible conflicts between the federated states and among them if not united into a firm union: territory, commerce, the national debt, and violations of contractual rights in property. He included the public debt among them:

"The public debt of the Union would be a further cause of collision between the separate states or confederacies"[208].

[208] Alexander Hamilton, James Madison, and John Jay, The Federalist Papers No. 6, October of 1787 - August 1788.

Hamilton was aware that some states would oppose paying the debt, because they can be: "less impressed with the importance of national credit, or because their citizens have little, if any, immediate interest in the question". But other state "a numerous body of whose citizens are creditors to the public beyond the proportion of the state in the total amount of the national debt, would be strenuous for some equitable and effective provision"[209].

As expressed in the 51 articles he wrote and collected in the Federalist Papers, Hamilton supported a federal government that would have all the necessary powers to "form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity"[210].

"In his political philosophy there was no place for the political monster of an imperium in imperio"[211], therefore Hamilton emphasized strong central government and implied powers, under which the new U.S. Congress funded the national debt, assumed state debts, created a national bank, and established tariffs and taxes.

"A national debt, if it is not excessive," Hamilton argued, "will be to us a national blessing. It will be a powerful cement of our Union"[212].

Hamilton contributed to the future success of the American economy not only through many institutional innovations, but also through an intellectual and conceptual contribution focused the inventiveness and power of the human mind that he summarized in his three famous government Reports(two on Public Credit and one on Manufactures) as the "productive powers of labor".

On July 6th 1785 Congress declared that the official monetary system would be based on the "dollar" in decimal units to be the official monetary unit of the United States. Actually the first coin representing the start of this system would

[209] Ivi.
[210] The preamble of the US Constitution, September 17th 1787.
[211] George Rogers Taylor, Hamilton and the National Debt, Wildside Press LLC, 2009, p. 97.
[212] Alexander Hamilton, Letter to James Duane, September 3, 1781.

not be struck for several years. The US monetary union was created with the signing of the Constitution in 1787. The constitution gave the Congress the sole power to "coin money" and "regulate the value thereof"[213].

Under Article I, Section 10, Clause 1:

“No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bills of Attainder, ex post facto Law, or Law impairing the Obligation of Contract, or grant any Title of Nobility”.

According to Farley Grubb this clause: “constitutionally manufactured a currency union within the United States. After 1787 states could no longer constitutionally issue new bills of credit. While outstanding state bills could continue to circulate until redeemed and destroyed by their respective states, after 1787 states lost the ability to engage in independent monetary policy with regard to their money supply and price level”[214].

The young republic elected its first president in 1789. President George Washington appointed Hamilton as his Secretary of the Treasury in September 1789 when there was no national currency worthy of the name, just coins of various other nations circulating and an enormous amount of debt.

In January 1790 Hamilton submitted a Report on Public Credit to the Congress and in that document he expressed the principle that the debt from the war is a moral obligation of the nation ("the price of liberty") and must be repaid. But to do that, there are certain urgent measures that had to be taken to support public credit. He summarized the objectives as follows:

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[213] Michael D. Bordo, Lars Jonung, The Future of the EMU: What does the History of monetary unions tell us?
Working Paper 7365, NATIONAL BUREAU OF ECONOMIC RESEARCH(http://www.nber.org/papers/w7365) Cambridge, September 1999, pp. 7 – 9.

[214] Farley Grubb, Creating the U.S. Dollar Currency Union, 1748-1811: A Quest for Monetary Stability or a Usurpation of State Sovereignty for Personal Gain?, Univ. of Delaware Newark, January 26th 2002, p. 5.

"To justify and preserve their confidence; to promote the increasing respectability of the American name; to answer the calls of justice; to restore landed property to its due value; to furnish new resources both to agriculture and commerce; to cement more closely the union of the states; to add to their security against foreign attack; to establish public order on the basis of an upright and liberal policy. These are the great and invaluable ends to be secured, by a proper and adequate provision, at the present period, for the support of public credit".

Hamilton's first Report proceeds describing the three categories of debt and also arrears in interest on them as follow: the first category consisted of money owed by the Confederation to individuals or states and it had explicitly been taken over by the Federal government, as prescribed in the Constitution; the second category of debt was that owed by the states for their ability to function during the war; the third category was foreign loans.

Hamilton proposed that the federal government could assume responsibility for the repayment of all three categories of debts[215].

During Hamilton's tenure as Treasury Secretary, political factions began to emerge. A Congressional caucus, led by Madison and Jefferson, began as a group that openly opposed and challenged Hamilton's financial programs and publicly supported a military alliance with France. The faction was later consolidated as the "Democratic-Republicans." Hamilton and his allies began to call themselves "Federalists," and used their coalition not only to push aggressive economic policies through Congress, but also to support developing trade relations, the Jay Treaty, and the Quasi-War with France. The possible risks relate to public debts and the tensions they could create among federated states, as expected by Hamilton in The Federalist Papers No. 6, emerged in the debates within the Congress. In fact, the Senate supported Hamilton, even if the vote reflected the

[215] Making America: A History of the United States, Volume I: To 1877 Di Carol Berkin, Christopher L. Miller, Robert W. Cherny, James L. Gormly Cengage Learning, Oct. 1st 2007, p. 198.

growing rift between regions and a strong political opposition to Hamilton's debt program come from Madison and the so-called Republicans[216].

The assumption of the state debts was passed by the House of Representatives after a first deadlock with a behind-the-scenes compromise with Madison and his ally Jefferson as regard the location of the national capital, moving it from Philadelphia to the Maryland-Virginia border along the Potomac to create the Federal District of Columbia.

He defended the constitutionality of his proposals by arguing that, even though the Constitution did not mention the establishment of a new bank, the authority to do so was implied by granting the executive the responsibility for the financial affairs of the federal government, the 'implied powers doctrine', which became a permanent feature of US constitutional law[217].

To sum up Hamilton proposed to add to the debt owed by the Federal government the debts of the states by establishing bonds, into a pool of capital for a National Bank for securing the public credit of the bankrupt country. His Report on the National Bank in December 1790 went into the particulars of the formation of the National Bank and the benefits that it would accrue to the nation. The Bank was not to deal with public debt after the initial funding (i.e. buy government bonds) and its major function was to provide a money supply for financing the economy. He saw his plan as a grand political project[218].

Hamilton's plan had to face the opposition of Madison based on extensive Constitutional arguments the claim that the Constitution did not permit the Federal government to create a corporation, namely the Bank of the United States.

[216] Ivi.

[217] Chernow, R. (2004) Alexander Hamilton, New York: Penguin Press, pp. 344 - 361.

[218] C. Randall Henning and Martin Kessler, Fiscal federalism: US history for architects of Europe's fiscal union, Bruegel(2012), p. 8.

Hamilton outlined in detail the benefits which would accrue upon his plan to fund the debt. It would extend trade, by making available greater capital. It would promote agriculture and manufactures. It would also reduce the interest on money, by putting more into circulation. It would also be a blow against speculators, who were counting on the depressed values of land and overall instability in the economy, to profit at the expense of the nation[219].

Hamilton explained his thinking of the plan of a National Bank in a document on the meaning of sovereignty under the U.S. Constitution, which is entitled "Opinion on the Constitutionality of the National Bank". In this document he rejected the argument that the U.S. government cannot erect a corporation: "Now it appears to the Secretary of the Treasury, that this general principle is inherent in the very definition of Government and essential to every step of the progress to be made by that of the United States: namely—that every power vested in a Government is in its nature sovereign, and includes by force of the term, a right to employ all the means requisite, and fairly applicable to the attainment of the ends of such power; and which are not precluded by restrictions and exceptions specified in the constitution; or not immoral, or not contrary to the essential ends of political society".

Hamilton proved beyond the shadow of a doubt that the establishment of the Bank was necessary for meeting the basic objectives of the U.S. government: creating a prosperous nation, with an efficient tax system, and with the institutions that would support its credit and the expansion of its future productive power, through its investments in agriculture and industry, all for the General Welfare. Washington was convinced, and the Bank bill was signed into law on February 25th 1791.

The Congress chartered the First Bank of the U.S. in March of 1791, for issuing dollar denominated paper bank notes and, under Alexander Hamilton's guidance, tried to do what Robert Morris had attempted to do with the Bank of North

[219] Forrest McDonald, Alexander Hamilton, A Biography (New York: WW Norton & Company, 1979.

America he founded in 1782, but on a much larger scale, namely, make bank notes the chief circulating medium of the new nation.

After adoption of the Constitution in 1789, Congress chartered the First Bank of the United States until 1811 and authorized it to issue paper bank notes to eliminate confusion and simplify trade. The bank served as the U.S. Treasury's fiscal agent, thus performing the first central bank functions.

In summary, the U.S. Constitution legally forced a transition in the circulating medium of exchange. It led not only to a common monetary unit of account within the U.S. (the U.S. dollar), but also to a transformation of the monetary system.

The Supreme Court affirmed Hamilton's view in its 1819 opinion upholding the constitutionality of the National Bank, McCulloch vs. Maryland, written by Hamilton's collaborator, Chief Justice John Marshall. That decision has never been overturned, and thus, is part of our Constitutional law.

The establishment of U.S. Mint in Philadelphia in 1792 secured the foundations for an effective currency area. While the Congress was given the exclusive power to coin money, the States were allowed to charter commercial banks and to regulate their note issue. The movement to a complete monetary union with a more uniform nation-wide price level was aided by the practices of the First Bank of the United States (1791-1811) and the Second Bank of the United States (1816-1836). The second Bank of the United States was chartered for 20 years until 1836.

Even if after the demise of the Second Bank of the United States in 1836, the United States had no formal central bank until the establishment of the Federal Reserve System in 1914, the Treasury served as a monetary authority and maintained specie convertibility. For this reason the period from 1836 to 1865 is considered the “Free Banking Era” as the decades when unchartered “free banks” issued their own notes, redeemable in gold or specie, and started to offer demand deposits to enhance commerce[220].

The legal tender status of a number of foreign currencies was abolished by the US Congress as late as in the 1850´s. The monetary union remained intact with the exception of the Civil war period 1861-65 when the Confederate States issued their own fiduciary inconvertible currency denominated in dollars. In the face of great difficulties in raising tax revenues and in selling debt both at home and abroad, the Confederate government also expanded its money issues at an ever increasing rate. By the end of the Civil War a hyperinflation vastly reduced the value of Confederate notes. Upon Union victory in April 1865, Confederate notes were declared illegal in the United States[221].

Monetary unification of the US was thus not completed until long after its political unification. Accordingly the US did not establish a central bank with a lender of last resort function until the Twentieth century[222].

The Civil War represented also a turning point in the transition of the US economy from an agricultural economy to an economic system powered by manufacturing and driven by innovation and invention opening the way to an unprecedented period of development.

North Carolina and the other southern states that left the Union because of the Civil War were free from any constraint upon them as that previously imposed by the United States Constitution's restrictions on the production of state-issued currencies. Therefore rebelling states closely guarded its own independence especially in economic affairs and under the Confederate Constitution this new independence meant also guaranteeing to the allied states the right to print their own money: “Along with the various state governments, the national government of the Confederacy (in Montgomery, Alabama, and later in

[220] See also History of the Federal Reserve: http://www.federalreserveeducation.org/about-the-fed/history/.

[221] Eugene Lerner, "Money, Prices and Wages in the Confederacy, 1861-1865", Journal of Political Economy, 1955, p. 63.

[222] Cohen, B. J., The Geography of Money, Cornell University Press, Ithaca and London(1998), p. 3.

Richmond, Virginia) issued massive amounts of paper currency to finance the war. The wide variety of notes only added to the chaos caused by the South's inability to absorb this huge money supply. The Confederate treasury alone issued at least 72 types of notes during the war, amounting to an estimated two billion dollars”[223].

The first years of the Civil War brought a great crisis to the Northern economy. The enormous costs of war borne by the government seriously depleted its reserves of gold and the uncertainties of war were causing private citizens to hoard vast amounts of the precious metals. When the dwindling precious-metal reserves of banks in New York, Philadelphia, and Boston caused those institutions to suspend paying out specie to back their notes, the Union was on the verge of a calamitous financial disaster that threatened its ability to continue the war.

As the Treasury Secretary Salmon P. Chase told to the Congress on February 3rd 1862: "Immediate action is of great importance. The treasury is nearly empty".

The solution was the proposal by New York Congressman Elbridge G. Spaulding of a government-issued own paper currency to be considered fiat money not redeemable in gold or silver but would be legal tender for all public and private debts except import duties and interest due on government bonds. On February 25th 1862 Congress passed the first Legal Tender Act, which authorized the printing of $150 million in Treasury notes. The bills were printed on only one side with green ink and soon became known as "greenbacks". The Civil War led to the nationalization of United States currency. In financing its war effort, the Federal government also resorted to paper moneys, including national bank notes. These notes were printed by or for the government and were issued by private banks throughout the North and eventually, the reunited country.

During the Civil War the National Banking Act of 1863 was passed “providing for nationally chartered banks, whose circulating notes had to be backed by U.S. government securities. An amendment to the act required taxation on state

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[223] See also History of N.C. Civil War Currency: http://www2.lib.unc.edu/ncc/gallery/cwcur.html.

bank notes but not national bank notes, effectively creating a uniform currency for the nation. Despite taxation on their notes, state banks continued to flourish due to the growing popularity of demand deposits, which had taken hold during the Free Banking Era"[224].

After the financial peaks of 1893 and 1907, the Federal Reserve Act of 1913 was passed, in an effort to further the United States monetary system, the Federal government established the Federal Reserve System. This is the system under which the present currency has been introduced into the economy. The Federal Reserve System was created as the nation's central bank with the task to regulate the flow of money and credit for economic stability and growth.

Other influential economic events of the twentieth century for America happened after the First World War and they are the Great Depression and World War II with disastrous economic effects. Following World War I, Benjamin Strong, head of the New York FED from 1914 to 1928, recognized that gold no longer served as the central factor in controlling credit. Strong's aggressive action to stem a recession in 1923 through a large purchase of government securities gave clear evidence of the power of open market operations to influence the availability of credit in the banking system. During the 1920s, the FED began using open market operations as a monetary policy tool. During his tenure, Strong also elevated the stature of the FED by promoting relations with other central banks, especially the Bank of England.

During the 1920s, Virginia Representative Carter Glass warned that stock market speculation would lead to dire consequences. In October 1929, his predictions seemed to be realized when the stock market crashed, and the nation fell into the worst depression in its history. From 1930 to 1933, nearly 10,000 banks failed, and by March 1933, newly inaugurated President Franklin Delano Roosevelt declared a bank holiday, while government officials grappled with ways to remedy the nation's economic woes. Many people blamed the FED for failing

[224] See also History of N.C. Civil War Currency: http://www2.lib.unc.edu/ncc/gallery/cwcur.html.

to stem speculative lending that led to the crash, and some also argued that inadequate understanding of monetary economics kept the FED from pursuing policies that could have lessened the depth of the Depression.

For facing that crisis, the US under President Franklin Delano Roosevelt, launched a series of economic stimulus called the “New Deal”. Many new rules were introduced for reducing and limiting risks for deposits with the adoption of the new Federal Deposit Insurance Corporation (FDIC) which lured people back to banks while the Public Works Administration provided vast tracts of inexpensive housing. The Federal Housing Administration provided government underwriting for mortgages, rebuilding the mortgage market in the United States.

Some of the reactions to the Great Depression took the form of the financial rules as happened for the Banking Act of 1933, better known as the Glass-Steagall Act, which was approved by the Congress, calling for the separation of commercial and investment banking and requiring use of government securities as collateral for Federal Reserve notes. The Act also established the Federal Deposit Insurance Corporation (FDIC), placed open market operations under the FED and required bank holding companies to be examined by the FED, a practice that was to have profound future implications, as holding companies became a prevalent structure for banks over time. Also, as part of the massive reforms taking place, Roosevelt recalled all gold and silver certificates, effectively ending the gold and any other metallic standard. The New Deal enlarged the role of the federal government in the American economy.

The Banking Act of 1935 called for further changes in the FED’s structure with the establishment of the Federal Open Market Committee (FOMC) as a separate legal entity and a new members’ terms of 14 years. Following World War II, the Employment Act added the goal of promising maximum employment to the list of the FED’s responsibilities. In 1956 the Bank Holding Company Act named the FED as the regulator of bank holding companies owning more than one bank, and in 1978 the Humphrey-Hawkins Act required the FED chairman to report to

Congress twice annually on monetary policy goals and objectives. After a fierce debate between the FED and the Treasury for control over interest rates and US monetary policy, their dispute was settled resulting in an agreement known as the Treasury-FED Accord of 1951. This eliminated the obligation of the FED to monetize the debt of the Treasury at a fixed rate and became essentially independent and therefore the monetary policy started to be exercised as happened today.

In 1980 the Monetary Control Act established a change in the reserve requirements for all eligible financial institutions marking the beginning of a great banking industry reforms and by 1999 the Gramm-Leach-Bliley Act was passed, overturning the Glass-Steagall Act of 1933 and allowing banks to offer a set of financial services, including investment banking and insurance.

The effectiveness of the Federal Reserve as a central bank was put to the test on September 11, 2001 with the sudden crisis of US financial markets. The FED issued a short statement reminiscent of its announcement in 1987: “The Federal Reserve System is open and operating. The discount window is available to meet liquidity needs”.

The FED played the pivotal role in contrasting the effects of the September 11 attacks on US financial markets.

4.2 The US economic governance: fiscal policy, monetary policy and the anti-crisis measures

4.2.1 A synthetic overview

The United States is a constitutional republic. Its government is based on a congressional system under a set of powers specified by its Constitution[225].

The United States Congress is a bicameral legislature. The United States can be seen as a mixed economy because privately owned businesses and government both play important roles.

[225] S. Fabbrini, Transatlantic constitutionalism: Comparing the United States and the European Union, in European Journal of Political Research, 2004, p. 551.

Decision taken by government have a powerful effect on the U.S. economy in at least the following four areas: Regulation and Control; Stabilization and Growth; Direct Assistance; Direct Services.

The U.S. federal government can regulate private enterprises with two forms of intervention. Economic rules can be aimed to impose over the market a direct or indirect price control. An alternative intervention consists in antitrust laws which are addressed to improve the efficient functioning of the market forces for example by prohibiting practices or mergers that would threaten competition.[226]

The federal government has a role in addressing the pace of economic activity in the attempt of preserving an uninterrupted steady growth with high levels of employment and price stability. The tools used for pursuing this aim are: fiscal policy based on spending and tax rates and monetary policy for both managing the money supply and controlling the use of credit. The monetary policy is in the hands of the Federal Reserve, which works independently from the President and the Congress.

Decisions of fiscal policy are the outcome of a long and complex process which involves many institutions and is subject to the mechanism of checks and balances. The fiscal policy is the outcome of a shared decision-making process by the President or by Congress. The fundamental tools at the disposal of these branches of government. By changing tax laws, the government can effectively modify the amount of disposable income available to its taxpayers.

The President proposes a spending plan or budget to the Congress, where lawmakers consider the proposals. The President presents his proposals in February.

In the evaluation by lawmakers the overall level of spending and taxes is established by the Congress and the draft of the budget is divided into sections. The Congress has to examine every individual appropriations bills which have to

[226] Christopher Conte and Albert R. Karr, An Outline of the U.S. Economy, U.S. Department of State, 2009 Edition
Published in 2009 by: Bureau of International Information Programs United States Department of State.

say how money in each category will be spent. Congress finishes its works on appropriations bills in September. After their approvals every appropriations bills must be signed by the President in order to take effect.

4.2.2 The US Fiscal Policy

Each level of government provides many direct services which have a significant effect on local and regional economies and even on the overall pace of economic activity, although federal decisions generally have the greatest economic impact.

Government also provides many kinds of help to businesses with low-interest loans and technical assistance to small businesses as well as to individuals with supports for people who cannot adequately care for themselves.

The history of fiscal federalism in the United States dates back to the founding of the Union in 1789. Prior to the establishment of the federal government, the states had exercised their powers to levy taxes and provide certain public services. The tenth amendment to the US constitution explicitly reserves to "the States or to the people" all powers "not delegated to the United States by the Constitution, nor prohibited by it to the States"[227].

The pre-federal period was characterized by a league of sovereign states under a weak executive: "It was a "league of friendship" which was opposed to any type of national authority"[228].

According to Boyd and Fauntroy argue that the greatest weakness of the Articles of Confederation was that they only established state sovereignty and only delegated a few responsibilities to the central authorities[229]. Without the power to collect taxes, the central government was unable to balance its finances. It resulted in a debt of $42 million after the Revolutionary War.

[227] Michael D. Bordo, Agnieszka Markiewicz, Lars Jonung, A Fiscal Union for the Euro: Some Lessons from History, NBER Working Paper No. 17380, NATIONAL BUREAU OF ECONOMIC RESEARCH, 1050 Massachusetts Avenue Cambridge, MA 02138, September 2011, p. 7.
[228] Ivi.
[229] Boyd, Eugene and Michael K. Fauntroy, (1997), "American federalism 1776-2000:significant events", CRS Report RL30772.

In 1950 Edward Corwin defined the period from 1789 to 1901 using the expression "dual federalism" because of the absence of a continuous and fear collaboration between the national and state government[230]. Those were the decades of Alexander Hamilton's reforms immediately after the establishment of the new federal government under the US Constitution in 1789.

In 20 years since 1820 the states engaged in extensive borrowing to finance domestic activities overstocking high debts. Many states demanded bailouts from the federal government, but the Congress refused to bailout indebted states and in 1840 several states defaulted. The series of defaults at state and local level continued also after the Civil War.

After the dual federalism a period of "cooperative federalism", as it was defined by Elazar in 1966, lasted between 1901 and 1960[231]. Under the Johnson Presidency, in the Sixties, the idea of Great Society and his plan of reforms for establishing better social rights, eradicating poverty and fighting racial injustice, contributed to the improvement of the role of the federal government.

The four pillars of the package proposed by Alexander Hamilton(Bordo and Vegh)
the assumption of state debts by the federal government
creation of a Sinking Fund
securing sufficient tax revenue
creation of the Bank of the United States[232] and of the mint

These were to be complementary, mutually reinforcing elements of the new American financial architecture[233]. He delivered the first of his blueprints in the form of the Report on Public Credit to Congress in January 1790[234].

[230] Corwin, Edward S.,(1950), "The passing of dualfederalism", Virginia Law Review vol. 36, pp. 1-24.
[231] Elzar, Daniel J.,(1966), American federalism: A view from the States, Thomas Y. Crowell, New York.
[232] Bordo Michael and Carlos Vegh, (2002), "If Only Alexander Hamilton had been Argentinean: A Comparison of the Early Monetary Experience of Argentina and the United States" Journal of Monetary Economics April.
[233] C. Randall Henning and Martin Kessler, Fiscal federalism: US history for architects of Europe's fiscal union, Bruegel(2012), p. 7.
[234] Chernow, R. (2004) Alexander Hamilton, New York: Penguin Press, pp. 297 - 306.

Following the British example of 1717, the proposal included a sinking fund for ensuring the credibility of the whole funding program. Indeed the sinking fund was the way to set aside revenues provided by specific taxes for purchasing public securities and the interest earned would be used to acquire more public securities and eventually pay off the debt.

Bordo, Markiewicz and Jonung write that: "Another element of Hamilton's debt package was to ensure the government's ability to collect sufficient tax revenues to continuously service the debt. Debt service was an important ingredient of the program of creating a well-functioning, credible long-term capital market. (…) Alexander Hamilton's debt package had all the elements of a modern stabilization plan. It led to the creation of a U.S. government bond market which in the future would be key to long-term sustainability of the U.S. fiscal union"[235].

The New Deal marked a turning point in the evolution of the American federalism, particularly in the relations between federal government and local administrations, bearing the new role of the policymaking by the central government which approved large deficits for counterbalancing the effects of the business cycle in time of recession. Since 1970 the contemporary federalism is based on "shifts in the intergovernmental grant system, the growth of unfunded federal mandates, concerns about federal regulations, and continuing disputes over the nature of the federal system"[236].

Generally speaking subnational governments are free to borrow without federal involvement and their action is regulated in a framework of balanced limits and duties because nearly all federated states have some kind of constitutional balanced-budget requirement while the US federal government has followed a no-bailout policy. The norm is neither a 'clause' in the US Constitution nor a

[235] Michael D. Bordo, Agnieszka Markiewicz, Lars Jonung, A Fiscal Union for the Euro: Some Lessons from History, NBER Working Paper No. 17380, NATIONAL BUREAU OF ECONOMIC RESEARCH, 1050 Massachusetts Avenue Cambridge, MA 02138, September 2011, p. 9.
[236] Ibid. p. 10.

provision of federal law. The rejection of debt assumption established a 'no bailout' norm on the part of the federal government[237].

No bailout requests have been denied since 1840, with one special exception: “The single exception to the federal government’s no-bailout position is the case of the District of Columbia in the 1990s, an exception that proves the rule. In this case, Congress did indeed take control of the District’s finances, injected funds, and managed the budget for four years though the District of Columbia Financial Control Board, created in 1995, which left the city in surplus after four years”[238]. This exception was allowed by Article I, Section 8, gives Congress exclusive legislative jurisdiction over the District of Columbia.

As said by Sargent: “Without Congress’s 1840s refusal to bail out the states, it is probable that those state constitutions would never have been rewritten to mandate year-by-year balanced budgets”[239].

According to Wallis and Weingast, the emergence of balanced budget rules should be understood as the demand of voters for more transparent and realistic financing rules. All of the states that defaulted in the 1840s except Florida, Mississippi and Arkansas, wrote some kind of deficit restriction into their constitution immediately afterward. The point was not so much to forbid deficits altogether, but to avoid ‘tax less finance’[240]. Henning and Kessler have analyzed the rule characteristics and they realized: “Because each state adopted its own balanced budget rule (Vermont is the only state without such a rule in some form), there is a large variation in the way these rules function. According to the National Association of State Budget Officers(NASBO), which surveyed State Budget Controllers, 44 states have a constitutional or statutory rule that requires

[237] C. Randall Henning and Martin Kessler, Fiscal federalism: US history for architects of Europe’s fiscal union, Bruegel(2012), p. 12.
[238] Ivi p. 15.
[239] Thomas J. Sargent, United States then, Europe now, Prize Lecture, 2012, p. 27.
[240] Wallis, John Joseph and Barry R. Weingast (2008) ‘Dysfunctional or optimal institutions: state debt limitations, the structure of state and local governments, and the finance of American infrastructure’, in Elizabeth Garrett, Elizabeth Graddy, and Howell Jackson (eds) Fiscal challenges: an interdisciplinary approach to budget policy, Cambridge University Press.

the governor to submit a balanced budget, 41 require the legislature to pass a balanced budget, while 37 demand that the governor signs a balanced budget”[241].

As regards the limitations on the deficits of the individual states, most balanced budget rules are ‘golden’ and as explained Henning and Kessler “the meaning of ‘golden’ as a modifier for ‘rule’ has shifted in this discourse over time. As we use the term, a golden rule requires that current expenditures and tax receipts be balanced but allows borrowing for long-term public investment. Despite the prevalence of the golden rule at the state level, proposals to differentiate between operating and capital budgets at the federal level have not gained traction in the United States”[242].

The American fiscal federalism is grounded on
the transfers that take place between the federal government and the states
absence of federal bailouts of the states
limitations on the deficits of the individual states[243]
federal budget which can be used by the federal government for expenditure during the crisis when at the state level procyclical expenditure cuts are imposed by balanced budget rules[244]

The case of US fiscal federalism is an important example of political meaning of a long run perspective for the EU: “Their careful historical account yields several important lessons. It first recalls that the US system as we know it, with its combination of a large federal budget responsible for the bulk of public debt and limited thrifty state budgets subject to balanced budget rules, emerged gradually from a sequence of events; in fact the initial set-up, as designed and enforced by Alexander Hamilton, was almost exactly the opposite. Second, it makes clear that beyond economic principles, attitudes towards what was in the aftermath of

[241] C. Randall Henning and Martin Kessler, Fiscal federalism: US history for architects of Europe’s fiscal union, Bruegel(2012), p. 17.
[242] Ibid. p. 18.
[243] Ibid. p. 5.
[244] See also Francesco Saraceno, Of the EU Budget and Fiscal Rules November 26th 2012, http://fsaraceno.wordpress.com/2012/11/26/of-the-eu-budget-and-fiscal-rules/.

independence called the 'assumption' of state debt were shaped by broader political considerations – not least the aim of building a genuine federal government. Third, it explains how after the US was firmly established as a federation, changing political conditions led to a reversal of the federal government's stance and to the enforcement of a 'no bail-out' principle. An intriguing feature of US history is therefore that the competences and features of federal government grew out of its assumption of state debt"[245].

4.2.3 The US Monetary policy

The Constitution grants Congress the power to "coin money, and regulate the value thereof...." However, operational responsibility for making U.S. monetary policy has been delegated by Congress to the Fed. Congress is still responsible for oversight(as I have above said, since 1978 the Chairman has the duty to report twice per year to the Congress) setting the FED's mandate, and approving the President's nominations for the FED's Board of Governors, but several institutional features grant the FED significant "independence" from the political process[246].

The FED's responsibilities as the nation's central bank fall into four main categories established by the Federal Reserve Act of 1977(P.L. 95-188, 91 Stat. 1387) which charged the FED with "the goals of maximum employment, stable prices, and moderate long-term interest rates". The central bank doesn't control these three indicators directly but it controls only overnight interest rates through the use of open market operations, the discount window, and reserve requirements. Its task includes: monetary policy, ensuring financial stability

[245] C. Randall Henning and Martin Kessler, Fiscal federalism: US history for architects of Europe's fiscal union, Bruegel(2012), p. 4

[246] Marc Labonte, Congressional Research Service Report RL31056, Economics of Federal Reserve Independence.

through the lender of last resort function, supervision of bank holding companies, and providing payment system services to financial firms and the government[247].

The US monetary policy has two basic goals prescribed in a 1977 amendment to the Federal Reserve Act, which are to promote "maximum" sustainable output and employment and to promote "stable" prices. As explained by Paul Romer and Robert Lucas[248] he level of output of the economy and the unemployment rate in the labor market depends on technology, human capital, and people's preferences for saving, risk, and work effort. Even if when the economy goes through business cycles in which output and employment are above or below their long-run levels monetary policy can't affect either output or employment in the long run, it can affect them in the short run. For example, when demand weakens and there's a recession, the FED can stimulate the economy - temporarily - and help push it back toward its long-run level of output by lowering interest rates. That's why stabilizing the economy - that is, smoothing out the peaks and valleys in output and employment around their long-run growth paths - is a key short-run objective for the FED and many other central banks.

The FED can't control inflation or influence output and employment directly; instead, it affects them indirectly, mainly by raising or lowering a short-term interest rate called the "federal funds" rate. Most often, it does this through open market operations in the market for bank reserves, known as the federal funds market. Open market operation is the most important tool used by the FED for affecting the supply of reserves in the banking system buying and selling government securities on the open market. These operations are conducted by the Federal Reserve Bank of New York. Temporary open market operations involve repurchase and reverse repurchase agreements that are designed to

[247] Marc Labonte Monetary Policy and the Federal Reserve: Current Policy and Conditions, 2013, p. 1 http://www.fas.org/sgp/crs/misc/RL30354.pdf.
[248] See also Robert Lucas, On the mechanics of economic development, 1988, http://www.fordham.edu/economics/mcleod/LucasMechanicsEconomicGrowth.pdf.

temporarily add or drain reserves available to the banking system. Permanent open market operations involve the buying and selling of securities outright to permanently add or drain reserves available to the banking system. The federal funds rate is the interest rate at which depository institutions lend balances at the Federal Reserve to other depository institutions overnight[249].

In the US the Federal Reserve acts as the lender of last. This role means that the Federal Reserve is responsible for ensuring the sustainability, solvency, and continued functioning of the nation's financial system as a whole, although this does not necessarily extend to any individual financial institution. Thus, in times of financial stress or crisis, the FED is responsible for ensuring that financial intermediation does not come to a halt. The Federal Reserve System is composed of 12 federal reserve district banks that are responsible for issuing the government's money supply to commercial banks[250].

4.3 The monetary and fiscal policies approved in the US after the outset of the current financial crisis

Because of the crisis the US has introduced some innovations in both the monetary and fiscal policy.

The bursting of the housing bubble led to the onset of a financial crisis that affected both depository institutions and other segments of the financial sector involved with housing finance which suffered capital losses and lost access to liquidity. The production and aggregate demand were strongly hit by the reduction of credit which became soon a distressing credit crunch. In December 2007, the US economy entered a recession.

In March 2008, the Federal Reserve created two programs to provide short-term secured loans to primary dealers similar to discount-window loans provided to

[249] See also http://www.newyorkfed.org/markets/openmarket_concepts.html.

[250] Marc Labonte, Monetary Policy and the Federal Reserve: Current Policy and Conditions, 2013, p. 1 http://www.fas.org/sgp/crs/misc/RL30354.pdf.

banks. Conditions in these markets improved considerably in 2009. The possible failure of the investment bank Bear Stearns early in 2008 carried the risk of a domino effect that would have severely disrupted financial markets. In order to contain the damage, the Federal Reserve provided non-recourse loans to the bank JP Morgan Chase to facilitate its purchase of certain Bear Stearns assets. Following the collapse of the investment bank Lehman Brothers, financial panic threatened to spread to several other key financial institutions, potentially leading to a cascade of failures and a meltdown of the global financial system. For limiting the contagion, the Federal Reserve provided secured loans to the giant insurance company American International Group (AIG) which had a central role guaranteeing financial instruments. The reaction to the economic crisis by the Federal Open Market Committee, which is the Federal Reserve's policy making body, was bringing target for the federal funds rate nearly to zero by December 2008 for making lower the cost of borrowing for households and businesses on mortgages and other loans. Indeed, as described by Labonte, the FED reduced the federal funds target on September 18th 2007 and at the end of December the target was reduced from 5¼% to a range between 0% and ¼%, where it currently remains[251].

To stimulate the economy the FED decided to use also nontraditional methods to provide additional monetary policy stimulus introducing a number of emergency credit facilities to provide increased liquidity directly to financial firms and markets with a program of purchasing $300 billion in longer-term Treasury securities. The first facility was introduced in December 2007, and several were added after the worsening of the crisis in September 2008. These facilities were designed to fill perceived gaps between open market operations and the discount window.

To support the housing market, the Federal Reserve approved the purchase of $1.25 trillion in mortgage-backed securities guaranteed by agencies and about

[251] Ivi p. 9.

$175 billion of mortgage agency longer-term debt with the final aim to reduce mortgage interest rates and make home purchases more affordable[252].

The FED began to employ a seldom used emergency provision, Section 13(3) of the Federal Reserve Act, that allows it to make loans to other financial institutions and to non-financial firms as well. The FED justified the pursuit of this policy on the grounds that it falls under its mandate to "promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates"[253].

According to Labonte: "This was clearly not a "business as usual" monetary policy, but something quite extraordinary, sometimes referred to as "quantitative easing" While there may not be a universally accepted definition of quantitative easing, this report defines it as actions to further stimulate the economy through growth in the Fed's balance sheet once the federal funds rate has reached the zero bound"[254].

Another tool that the FED has used recently in an attempt to achieve additional monetary stimulus at the zero bound is to announce that the FED plans to keep the federal funds rate low for an extended period of time, which has been called "forward guidance" or "forward commitment".

Over time, this forward guidance has become more detailed and explicit. In September 2012, the FED extended its expected time frame for "exceptionally low levels for the federal funds rate" from late 2014 to mid-2015. Three months later, the FED replaced the date threshold with an economic threshold: it pledged to maintain an "exceptionally low" federal funds target at least as long as unemployment is above 6.5% and inflation is low.

It is difficult to pinpoint how effective the forward guidance tool has been, in part because it depends on how credible the market finds the commitment. A

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[252] See also http://www.federalreserveeducation.org/about-the-fed/history/2006andbeyond.cfm.
[253] Federal Reserve Act, Section 2A, 12 USC 225a.
[254] Marc Labonte, Monetary Policy and the Federal Reserve: Current Policy and Conditions, 2013, p. 12 http://www.fas.org/sgp/crs/misc/RL30354.pdf.

problem with this approach is that economic conditions may unexpectedly change (e.g., inflation is higher than expected), so this commitment is likely only a contingent one.

As regards the decisions by the US government, the Dodd–Frank Wall Street Reform and Consumer Protection Act (Pub.L. 111–203, H.R. 4173) was signed into federal law by President Barack Obama on July 21st 2010.

Chris Dodd, Chairman of the Senate Committee on Banking, Housing, and Urban Affairs, who has been the main proposer of Dodd–Frank Wall Street Reform and Consumer Protection Act explained in his speech "Restoring American Financial Stability: Create a Sound Economic Foundation to Grow Jobs, Protect Consumers, Rein in Wall Street, End Too Big to Fail, Prevent Another Financial Crisis", that its main pillars are: "Consumer Protections with Authority and Independence: Creates a new independent watchdog, housed at the Federal Reserve, with the authority to ensure American consumers get the clear, accurate information they need to shop for mortgages, credit cards, and other financial products, and protect them from hidden fees, abusive terms, and deceptive practices. Ends Too Big to Fail Bailouts: Ends the possibility that taxpayers will be asked to write a check to bail out financial firms that threaten the economy by: creating a safe way to liquidate failed financial firms; imposing tough new capital and leverage requirements that make it undesirable to get too big; updating the Fed's authority to allow system-wide support but no longer prop up individual firms; and establishing rigorous standards and supervision to protect the economy and American consumers, investors and businesses. Advance Warning System: Creates a council to identify and address systemic risks posed by large, complex companies, products, and activities before they threaten the stability of the economy. Transparency & Accountability for Exotic Instruments: Eliminates loopholes that allow risky and abusive practices to go on unnoticed and unregulated - including loopholes for over-the-counter derivatives, asset backed securities, hedge funds, mortgage brokers and payday lenders. Federal Bank

Supervision: Streamlines bank supervision to create clarity and accountability. Protects the dual banking system that supports community banks. Executive Compensation and Corporate Governance: Provides shareholders with a say on pay and corporate affairs with a non-binding vote on executive compensation. Protects Investors: Provides tough new rules for transparency and accountability for credit rating agencies to protect investors and businesses. Enforces Regulations on the Books: Strengthens oversight and empowers regulators to aggressively pursue financial fraud, conflicts of interest and manipulation of the system that benefit special interests at the expense of American families and businesses”[255].

The Dodd-Frank Wall Street Reform and Consumer Protection Act establishes also the so-called “Volcker Rule”. It was inspired by the American economist and former United States Federal Reserve Chairman Paul Volcker, who proposed to restrict United States banks from making certain kinds of speculative investments that do not benefit their customers. The final aim of the Volker Rule is to impose a distinction and a division in the financial activities and services offered by credit institutions, banks and financial intermediaries and therefore divide the risks over the investments and savings from those of speculative activities, indeed the rule prohibits depository banks from proprietary trading.

Congress and the Bush Administration enacted the Economic Stimulus Act of 2008 as a $120 billion package for tax rebates to households and accelerating depreciation rules for business. The Congress and the Obama Administration passed the American Recovery and Reinvestment Act of 2009 (ARRA) as a $787 billion package with $286 billion of tax cuts and $501 billion of spending increases that relative to what would have happened without ARRA is estimated to have

[255] Chris Dodd, Summary: Restoring American Financial Stability, Create a Sound Economic Foundation to Grow Jobs, Protect Consumers, Rein in Wall Street, End Too Big to Fail, Prevent Another Financial Crisis, p. 1, http://www.banking.senate.gov/public/_files/FinancialReformSummaryAsFiled.pdf.

raised real GDP between 1.5% and 4.2% in 2010 but increased real GDP by progressively smaller amounts in the years that followed[256].

In terms of extraordinary measures, the Emergency Economic Stabilization Act of 2008 was approved for creating the Troubled Asset Relief Program(TARP) which authorized the Treasury to use up to $700 billion to directly bolster the capital position of banks or to remove troubled assets from bank balance sheets[257].

4.4 A comparative analysis of the economic governance in the EU and US

There are some similarities between the history of the EU and the American one. Before the start of their processes of integration, the countries on the two sides of the Atlantic Ocean lived similar conditions:

1) Countries characterized by different features (they were asymmetric from a demographic and geographic point of view, historically differentiated, with well separated structures of powers and institutional-political systems as well as separate economies);

2) In both cases Europeans and Americans tried to gain the possibility to govern themselves without external conditionings The American colonies wanted to be independent from the British motherland. The European countries wanted to maintain a relative autonomy in a world broken into two parts by the Cold War and build a new international role for themselves after the unstoppable process of decolonization;

3) Both the American colonies and the European member-states needed more collaboration and less division (mostly in the Europe where, after having experienced centuries of wars, the European were exhausted).

Today many differences exist between the EU and US as regards their economic governance. Differently for the US and other federal states(i.e. Argentina, Brazil, Canada) the Eurozone represents a new type of monetary union: “It is the first monetary union where monetary policy is decided at the central (European) level

[256] See CRS Report R40104, Economic Stimulus: Issues and Policies, by Jane G. Gravelle, Thomas L. Hungerford, and Marc Labonte.

[257] For more information on TARP, see CRS Report R41427, Troubled Asset Relief Program (TARP): Implementation and Status, by Baird Webel.

while fiscal policy is carried out at the sub-central (member state) level. Thus, the economics profession lacks historical cases to use as guidance for theoretical, empirical, and policy-oriented work"[258]. The economic governance existing in the US is coherent with the Optimum currency area theory, therefore its economy and currency work properly and are resilient to asymmetric shocks thanks to mobility of labor, openness to trade, a consolidated fiscal, economic and political integration. Not the Euro area, nor the EU as a whole are characterized by such a level of mobility of labor, fiscal and political integration or condition of coordination similar to the American ones.

The US is a monetary union as well as fiscal union based on fiscal federalism, in the sense that there is one common currency and one central bank managing monetary policy for the union. The US fiscal union have not evolved as a static pattern, but it has represented a continuous process by which a number of separate political communities enter into arrangements for working out solutions and making joint decisions on common problems, indeed the US federation is an evolving entity shaped by economic and political events[259].

Basically the institutions responsible for conducting monetary policy in the two unions of states are both independent institutions with a decentralized structure and using basic monetary tools such as reserve requirements and open market operations[260]. Actually there are also significant differences between US and the EU in various fields: monetary policy and authorities, fiscal policies, the budgets, legal orders and economic institutions.

Concerning the monetary policy and authorities: Federal Reserve System is the US central bank and it consists of 12 Federal Reserve Banks, each serving a specific region of the union. The FED Board of Governors includes 7 members and

[258] Michael Bordo, Lars Jonung, Agnieszka Markiewicz' A fiscal union for the euro: Some lessons from history, 21 September 2011, http://www.voxeu.org/article/fiscal-union-euro-some-lessons-history.
[259] Ivi.
[260] R. Guttmann, Central banking in a debt-deflation crisis: a comparison of the FED and ECB, Retrieved November 20, 2008, from http://www.univ-paris13.fr/CEPN/texte_guttmann_210308.pdf.

it is based in Washington(DC). The Board of Governors is appointed by the US President for 14-year mandate. The governors are appointed for 14 years, and the terms are staggered, with one expiring on January 31st of every even-numbered year. The length of the mandate and the term of appointment have been established for limiting the power of the Presidency, indeed if all governors serve full terms, a US president would be able to appoint only two governors in a four-year presidential term. The appointments must be ratified by the US Senate. To sum up: "The length of the terms and the staggered appointments process are intended to contribute to the insulation of the Board - and the Federal Reserve System - from day-to-day political pressures to which it might otherwise be subject"[261]. The policy-making is determined by the Federal Open Market Committee (FOMC) which comprises the presidents of each of the 12 Federal Reserve Banks and the 7 members of the Board of Governors. The FED is an independent central bank whose decisions are autonomous from every government institutions although the FED has to report to the Congress. The book of the Federal Reserve System defines itself as "independent within the government"[262], inasmuch the FED has to work within the framework of the objectives of economic and financial policy established by the government. The Federal Reserve's tasks are addressed to conduct a monetary policy for pursuing full employment and stable prices. Actually the FED competences includes also supervision and regulation over banks and other financial institutions for preserving the safety and soundness of the nation's banking and financial system, containing systemic risk and providing certain financial services to the U.S. federal government. The FED is responsible to Congress which has the power to affect the internal circumstance of the FED by a simple majority voting and through interventions by laws the structure and the functions of the FED can

[261] See also http://newyorkfed.org/aboutthefed/fedpoint/fed46.html.
[262] Board of Governors of the Federal Reserve System, The Federal Reserve System; Purposes and functions(1984), Washington(DC).

change[263]. The FED works as a Bankers' Bank and a Government's Bank, because it maintains the Treasury's account and manages the Treasury debt. The accountability of the FED functioning consists of the semi-annual monetary policy report to the Congress. The Federal Reserve and the Dollar work in a homogeneous economic area.

The ECB is the central bank for Europe's single currency, therefore its task is not pointed towards the EU as a whole, but it is limited to the Euro area. Its Executive Board includes 6 members, based in Frankfurt am Main(Germany). The members of the Executive Board of the ECB are appointed by the European Council for 7-year mandate. The appointment process involves also the European Commission and the European Parliament, even if they do not have a right of veto over an appointment of the new Executive Board(as happens for the US Senate). Their role is limited to a consultation. The ECB was purposely established with a large degree of autonomy for reducing any political interference in the formation of monetary policy. As established by art. 127 TFEU the primary objective of the ECB is to achieve price stability. Its powers will be enlarged to the financial supervision with the realization of the project of the European Banking System. The ECB has the duty to report annually to EU institutions and to the European Parliament. The ECB and the Euro work in a heterogeneous economic area.

<u>With regard to the fiscal policies in the EU and the US:</u> according to the Nobel Prize laureate in economics(2011) Thomas J. Sargent: "The fiscal institutions of the EU today remind me of those in the U.S. under the Articles of Confederation. The power to tax lies with member states. Unanimous consent by member states is required for many important EU-wide fiscal actions"[264]. The US Constitution confers at the federal level most of the powers related to the fiscal policy and the economic governance. Those federal competences are established by Article 1,

[263]G. Kumas, A comparison of FED and ECB, Bilkent Univ. Institute of Economics and Social Sciences, 2009, p. 7.

[264] Thomas J. Sargent, United States then, Europe now, Prize Lecture, 2012, p. 3.

Section 8 of the Constitution and they are given to the Congress. The Congress exercise the so-called taxing power, which is the power “to lay and collect taxes”[265], the spending power, which is the power “to pay the Debts and provide for the common defence and general Welfare of the United States”[266]. Moreover the United States also “has in place a number of federal institutions, most notably the federal tax system, that automatically cushion shocks to individual income and hence also to aggregate income in any particular state or region and thus lessen the impetus for further action in response to a shock. Such federal institutions function not only as shock-absorbers; they also provide persistent transfers among regions, with wealthy states and regions providing considerable support to those that are poorer. This weakens the perceived need to intervene to bail out governments. Although there has been some movement toward a stronger central fiscal authority in Europe, it seems very unlikely that transfers on a scale that exist in the United States could develop. But this is precisely because of differences in the degree of social cohesion, and therefore hardly makes a stronger case for the need to avoid the Samaritan’s dilemma”[267].

The EU fiscal policy is still today decentralized and the power to tax lies with the member states. The economic policy coordination process is the most powerful of the existing open method of coordination(OMC) processes and is anchored within the Treaties. Indeed the coordination of fiscal policies by the member states is also today limited by structural resistances to reforms. For example unanimous consent by member states is required for many important EU-wide fiscal actions.

Most American states have stricter rules than those required by the Fiscal Compact for the European member states for imposing that the budget must be balanced every year but “it is also true that the federal government in the US

[265] Article 1, Section 8 of the US Constitution.
[266] Ivi.
[267] Alan J. Auerbach, Budget Rules and Fiscal Policy: Ten Lessons from Theory and Evidence, University of California, Berkeley, November 2012, p. 11 http://elsa.berkeley.edu/~auerbach/BudgetRulesandFiscalPolicy.pdf.

retains the possibility to conduct discretionary policy, that it used massively also to contrast the procyclical expenditure cuts at the state level. European countries have no supranational entity of that sort”[268]. Therefore the US can face the crisis by using the discretional fiscal policy at the federal level, respecting the balanced-budget rules at local level. Moreover the balanced budget rules used in the American federated states are “golden” because they allow borrowing for long-term public investment also when the budget is not balanced. The centralized fiscal role in the US also allows all of the individual states to operate with true balanced budgets, modified only by relatively small “rainy day” funds[269]. While in the EU the balanced-budget rule inserted in the national Constitutions of member states are not “golden rule”.

As explained by Suzanne Kennedy, Janine Robbins and François Delorme: “the most common type of fiscal rule is a restriction on the budgetary balance. These often take the form of balanced budget requirements, as in many of the U.S. states and Canadian provinces. Inasmuch as these rules often apply only to the current budget, they are equivalent to the “golden rule”, which specifies that deficits may only be run in order to fund investment”[270]. Moreover the absence of an effective EU budget which could be used for anticrisis measures and the regime of balanced-budget rules which are not “golden rules” have shown the fragility of the EU economic governance. Actually, at the end of the 1960’s Germany adopted a budgetary rule stipulating that the public deficit could not rise over total gross public investment. Included as part of article 115 of the fundamental law, provisions were made for exceptions that have limited the

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[268] Saraceno F., Of the EU Budget and Fiscal Rules November 26th 2012, http://fsaraceno.wordpress.com/2012/11/26/of-the-eu-budget-and-fiscal-rules/.

[269] Feldstein, The driving force of Europe’s economic policy is the “European project” of political integration, Europe’s Empty Fiscal Compact, Project Syndicate, February 2012.

[270] Suzanne Kennedy, Janine Robbins and François Delorme, Fiscal rules : papers presented at the Bank of Italy Workshop held in Perugia, 1 - 3 February 2001. - [Roma] : Banca d'Italia. – 2002, p. 244.

extent to which it is respected: it cannot be implemented if there is a disruption in the macro-economic balance[271].

According to Randall Henning and Kessler Europeans should consider three essential aspects of the context in which the balanced-budget rules of the American states operate. Firstly, the US constitutional design is very different from the framework of rules established by the Treaties for the Euro area and enforced by the European Commission and the ECJ. Secondly, the stabilization of banking system is primarily the responsibility of the federal government in the

US. As a consequence, this function did not come into conflict with balanced-budget rules at the state level. By contrast, in the EU the fiscal costs of bank rescues and recapitalization remain primarily a national responsibility[272]. Lastly, a European capacity for countercyclical stabilization doesn't exist, while federal budget has helped to stabilize the national economy in a countercyclical fashion since the 1930s[273].

Before the adoption of the Fiscal Compact, Feldstein described the decision of approving balanced budget rules which are not golden nor in a framework including the action of a central fiscal policy: "it would have the effect of turning small recessions into major economic downturns. Fortunately, this recipe for creating future European depressions was rapidly dropped"[274].

Regarding the budgets: The US federal budget is decided autonomously from the American federated states, while the EU budget is based on the Multiannual Financial Framework(MFF) which is a spending plan that translates the EU priorities into financial terms. The EU budget depends directly on the

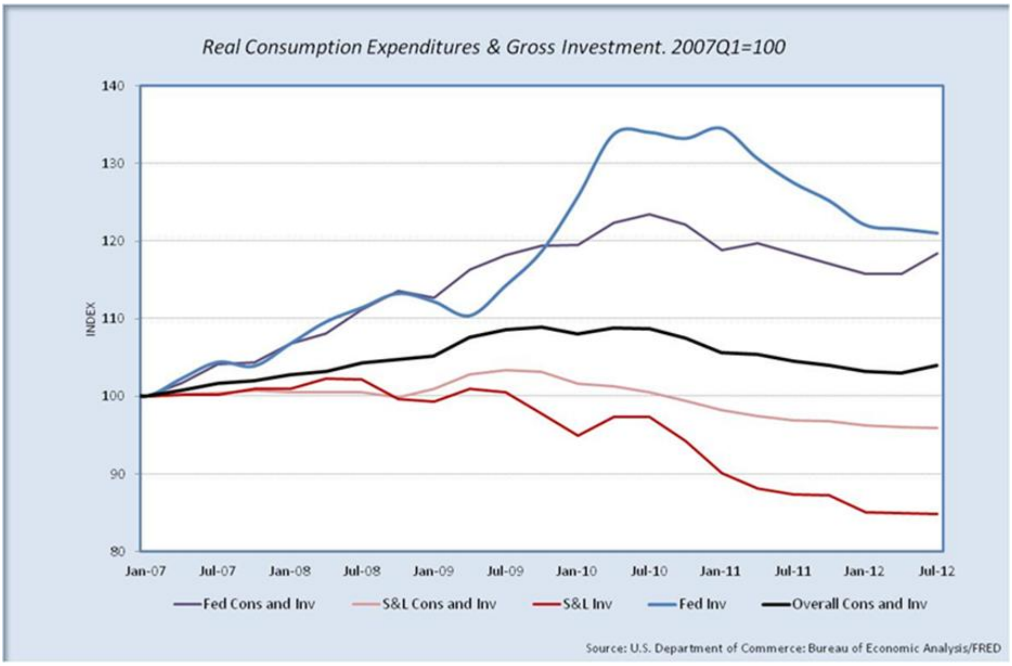
[271] Learning about and understanding the Budgetary Pact", published by The Robert Schuman Foundation October 2012, p. 10.

[272] Posen, Adam, and Nicolas Véron (2009), "A solution for Europe's banking problem", PIIE Policy Brief, 09/13, June.

[273] C Randall Henning, Martin Kessler, Lessons for Europe's fiscal union from US federalism 25 January 2012 http://www.voxeu.org/article/europe-s-fiscal-union-lessons-us-federalism.

[274] Feldstein, The driving force of Europe's economic policy is the "European project" of political integration, Europe's Empty Fiscal Compact, Project Syndicate, February 2012

negotiations between member states because the MFF is adopted in the form of a Council Regulation with a consent of the European Parliament[275]. The US budget consists of an amount of resources which is enormously higher than the EU budget. The 2012 US budget total expenditures amounts to \$3.538 trillion[276], while the EU budget amounts to € 147.2 billion[277]. The EU has not a fiscal capacity and there is not a common policy for countercyclical action.



The chart shows federal and local total expenditure in volume, together with a part of it, gross investment. The black line is overall(State and Local plus Federal) expenditure. (Source: US Department of Commerce: Bureau of Economic Analysis)

As analyzed by Saraceno: "local governments saw a brutal reduction of their expenditure during the crisis, due to the balanced budget rules. But this was compensated by federal spending, so that overall expenditure increased at least until the end of 2009, and then went back towards the initial level"[278]. Finally the

[275] See also http://ec.europa.eu/budget/biblio/documents/fin_fwk1420/fin_fwk1420_en.cfm.
[276] "Summary Table1". The Budget and Economic Outlook: Fiscal Years 2013 to 2023. Congressional Budget Office. February 5, 2013. Retrieved March 15, 2013 http://www.cbo.gov/sites/default/files/cbofiles/attachments/43907-BudgetOutlook.pdf.
[277] See also http://ec.europa.eu/budget/figures/2012/2012_en.cfm.
[278] Ivi.

fiscal union of the US is founded on a fiscal capacity, with the assumption of state debt, issuance of federal debt and access to its own tax revenue.

As regards the fiscal capacity, the report of the four Presidents, which is the basis for the debate on the future of the EMU, says that its creation should include arrangements ensuring full democratic legitimacy and accountability. The European Commission's contribution, A blueprint for a deep and genuine EMU, envisages three phases: in the short term (2013-2014), a "convergence and competitiveness instrument"(CCI) would be created within the EU budget(but outside the MFF) to provide financial support to structural reforms in member states; in the medium term (2014-2017), a dedicated fiscal capacity for the Euro area would be established on the CCI, using own resources only; in the long term(post 2017), a Euro area budget with stabilization objectives could be put in place by developing the fiscal capacity. According to the European Commission indicates that medium and long-term actions may require Treaty changes, such as provisions for a dedicated budgetary and own resources procedure. In 2012 the US has a debt of 107.2% of GDP, while the EU has not its own common public debt. Even though we hear a lot about the "Euro-debt-crisis", we see that the Euro-area only has a debt of 90% of GDP, and the EU total average is only 84,9% (about 20 percentage points lower than the US). In short, the US debt crisis is worse, than what we see in the EU, and we can expect the US debt crisis to grow, as long as the US Congress just raises the US debt limit, as they have 13 times already since 2000(Data is from the World Economic Outlook of the International Monetary Fund, October 2012)[279]. The EU is empowered by the EU Treaty to adopt borrowing programmes to mobilise the financial resources necessary to fulfill its mandate, not from the budget but only on the capital markets, as the EU is not permitted to borrow to finance its ordinary budgetary expenses. The European Commission, acting on behalf of the European Union (EU), currently operates three programmes under which it may grant loans and fund these by

[279] Read more: http://www.gfmag.com/component/content/article/119-economic-data/12370-public-debt-percentage-gdp.html#ixzz2cigAWoZv.

issuing debt instruments in the capital markets: European Financial Stabilisation Mechanism(EFSM); Balance-of-Payments(BoP); Macro-Financial Assistance (MFA). The EU enjoys an AAA credit rating from the three major rating agencies, which reflects very strong Member State support. Member States include several of the world's largest and most developed industrial economies and together form a major bloc in the world economy[280].

According to C. Fred Bergsten and J.F. Kirkegaard: "Given that Europeans continue to identify themselves as citizens of their respective member states (rather than of Europe as a whole), a large tax-financed centralized euro area budget similar to the US federal budget remains utterly unrealistic. A Euro area fiscal union would be far more decentralized in terms of where the taxing and spending occurred (e.g., overwhelmingly at the member state level, not at the central level as in the United States)"[281].

With regards to the two legal orders and economic institutions: the most important difference emerges concerning the features and nature of the American and European legal orders and institutional systems. EU institutions and therefore its economic governance reflect the coexistence of supranational and intergovernmental decision-making models, while the US institutional system reflects the federal model. The US constitutional founding did not specify a single locus of sovereignty. In this way, the constitution symbolized the retention of the Tudor principle of a government of "separated institutions sharing power"[282] in a dual federal system of distribution of powers between state and federal level based on four features.

Features of the American dual federal system of distribution of powers
the national government is one of enumerated powers only
the purposes which it may constitutionally promote are few

[280] See also http://ec.europa.eu/economy_finance/eu_borrower/ .
[281] C. Fred Bergsten, J.F. Kirkegaard, The Coming Resolution of the European Crisis: An Update, Peter G. Peterson Institute for International Economics, Washington DC, June 2012.
[282] Huntington S.(1996), Political modernization: America vs Europe, World Politics, 18(3), pp. 378 - 414.

the within their respective spheres the two centres of government are sovereign and hence equal
the relation of the two centres to each other is one of tension rather than collaboration, actually it means that from the outset the US Supreme Court was expected to be the arbiter in the predicted struggles over jurisdictional competence[283]

The US Constitution is the hard core of the federal political authority and it has made possible the good functioning of a well-structured compound democracy[284]. On this side of the Atlantic, the legal order of the EU and its legal status is still debated. The EU has developed an “autonomous legal order” as established by the actions of the ECJ which has transformed the politics of integration into constitutional politics[285], but actually as spelled out by W. Lehmann: “such an intensity of the internal legal order makes the Union resemble federal polities, its limitation of powers, in the sense of policy areas subject to EU legislation, reminds us of the specialized character of international organizations”[286] and at the same time as said by Alex Warleigh-Lack “the EU, like the US and other federal or quasi-federal systems, relies not only on explicit conferral of powers to the central government, but also on “flexible” or “necessary and proper” clauses which authorize the central government to act where necessary to facilitate inter-state commerce or otherwise achieve its aims"[287].

Bearing in mind the definition of federalism given by Kelemen as “an institutional arrangement in which (a) public authority is divided between state governments and a central government, (b) each level of government has some issues on

[283] Derthick M., Keeping the Compound Republic: Essays on American Federalism, Washington DC, Brookings Institution, October 2001, p. 45.
[284] Fabbrini S., The Puzzle of the Compound Republic. The Us, EU and the Implications of Federalization, in: NATION FEDERALISM AND DEMOCRACY. THE EU, ITALY AND THE AMERICAN FEDERAL EXPERIENCE, 2001, pp. 55-65.
[285] Weiler J., The Constitution of Europe: 'Do the New Clothes Have an Emperor?' and Other Essays on European Integration, Cambridge University Press, 1999, p. 61.
[286] Lehmann Wilhelm, Federal states and international organisations: A short comparison of their amending rules with the European Union, Policy Department C - Citizens' Rights and Constitutional Affairs European Parliament, 2011, p. 7.
[287] Alex Warleigh-Lack, Reflections on European Integration, Palgrave Macmillan, February 2009, p. 6.

which it makes final decisions, and (c) a federal high court adjudicates disputes concerning federalism"[288], the EU can be considered a de facto federal system.

In the US, from the 1787 onwards, sovereignty has been enshrined in the Constitution. Through the preamble "We the people", the colonies' delegates transferred sovereignty from the people to the Constitution. The America institutions at the federal level are horizontally equal and have been constitutional. Instead, in the European countries, no powers can be considered equal to the Parliament, so sovereignty has traditionally been enshrined in national parliaments (because the latter alone represent the popular will) and has been parliamentary. For these reasons, in Europe, the institutions of the governors (the legislature) coincides with the will of the governed ones (the people), indeed these are systems based on monistic constitutions. In the US there is a clear distinction between the decision-making process by the people (expressed by the Constitution) and the decision-making process by the governors (expressed by the ordinary law), in fact it is a system based on a dualistic constitution. The EU is something different compared to both a monistic constitutional system and a dualistic constitutional one. The LT is a transitory constitutional document, but meanwhile a step towards a pluralistic constitutional system for a compound democracy.

The constitution can be defined "pluralistic", because of the different sources of legitimation (from states through ratifications and people through referenda), the various distributions and divisions of powers between member-states and the institutions of the EU (for some principles of sharing competences, subsidiarity and proportionality) as well as the institutions of the EU (to realize a continuous complementarity among their actions). Walter Hallstein, in the original German edition of Europe in the Making called it "an unfinished federal

[288] Kelemen R. D., Federalism in the European Union: rhetoric and reality, in Nicolaidis and Howse (eds), The Federal Vision (Oxford: Oxford University Press), 2003, p. 185.

state"[289]. The German Constitutional Court refers to the European Union as an association of sovereign states. As described by Fabbrini: "The European Union (EU) is a union of states and citizens structured around both inter-states (or intergovernmental) and supra-states (or supranational) institutional relations. Unions of states and citizens are federalized or federalizing polities coming out from the aggregation of previously independent territorial units (as it is the case of the United States or Switzerland)"[290]. To sum up the EU "aggregates historically powerful nation states, with rooted cultural and linguistic identities, with sophisticated representative and administrative structures"[291].

[289] Walter Hallstein, Europe in the Making, translated by Charles Roetter (English ed.). George Allen & Unwin 1972.
[290] S. Fabbrini, Beyond intergovernmentalism: the puzzle of European economic governance, Paper submitted at the international conference of the Council for European Studies, Amsterdam, 25-27 June 2013, p. 2.
[291] Ivi.

5. The European challenges: some proposals and their political meaning

After having analyzed the origins and developments of the institutional order and the economic rules in the EU and the US, I will use the study of these issues for identifying the problems of the European economic governance and proposing some reforms based on the fair shares of resiliency and awareness of both the current features of the European Union and of its possible future developments.

5.1 The European challenges

"A day will come when all the nations of this continent, without losing their distinct qualities or their glorious individuality, will fuse together in a higher unity and form the European brotherhood. A day will come when the only battlefield will be the marketplace for competing ideas. A day will come when bullets and bombs will be replaced by votes" (Victor Hugo, Opening Address to the 3rd Peace Congress (Paris, August 21, 1849)

Since that speech by V. Hugo, the two World Wars and countless other conflicts on European soil happened with millions of deaths and there were times when all hope seemed lost. The first part of the 21st century offers brighter prospects, but it also brings Europe new difficulties and challenges.

Merits and strong points of the European project:

The European integration process has changed radically the history of the European continent and its democracies. The European Union has been shaped as a dynamic institutional and political experimentation which nowadays involves 28 member states.
Today, the EU is the biggest economy in the World with a Gross Domestic Product(GDP) in 2010 equal to $16200 billion, while the US has a GDP equal to $ 14500 billion(Source: FMI).
As described by a survey of the Freedom House the EU represents a unique success process of spreading democracy, where today there are 28 member

states which are democracies, in 1972 seventeen of them were not free states. Europe is the only death penalty free continent in the world. As said by Yves Mény: “it is not merely euphemistic to say that Europe has brought to the renewal and diffusion of the democratic principle a contribution whose only equivalent can be found in the cumulative contributions of the British Glorious Revolution, the American Revolution and the French Revolution”[292].

The EU and its Member States collectively provide more than half of global Official Development Assistance[293].

Concerning the education, 204 out of the top 500 universities in the world are European universities(Source: Academic Ranking of World Universities, 2010). The EU is the world's largest single market with transparent rules and regulations, the world's largest exporter of manufactured goods and services and is itself the biggest export market for around 80 countries(It accounts for 19% of world imports and exports). The EU is the top trading partner for 80 countries, by comparison the US is the top trading partner for a little over 20 countries. Moreover the EU is the most open to developing countries. Fuels excluded, the EU imports more from developing countries than the USA, Canada, Japan and China put together[294].

As explained by Alessandro Giovannini and Daniel Gros “the current representation of Euro area countries inside the IMF could appear extremely powerful, representing up to more than 20% of the total voting shares. However, the lack of a common representation and coordination as well as the split into eight(sometimes nine) constituencies result in a much lower power in determining the final decisions. (…)if Euro area countries would decide to take over the simple stronger coordination and establish a single membership, most

[292] Mény Yves, The EU and the challenge of a post-national constitution, in Democracy and Federalism in the European Union and the United States, Routledge, 2005, p. 192.
[293] See also http://ec.europa.eu/europeaid/what/development-policies/financing_for_development/.
[294] EU position in world trade (2013) http://ec.europa.eu/trade/policy/eu-position-in-world-trade/.

likely the other IMF members would oppose the creation of single member representing more than 21% of all voting shares”[295].

The European Union speaks with a single voice within organizations such as the International Energy Agency (IEA), the International Atomic Energy Agency (IAEA) and the International Energy Forum (IEF)[296].

The European Union has to face two great global challenges which are respectively related to short-term interests and a long-term vision. They are: the priority to relaunch again the social and economic development interrupted by the crisis as well as the need to invert the course of a trend which can downgrade our continent in the next decades and jeopardize the positive human, social and economic conditions reached by the EU changing them into those ones of a poor and waning continent.

From a more specific point of view, we know partially the future challenges we will have to face and which require action by the EU.

The ten European global challenges
unemployment, poverty, competitiveness and debt dependence
the social and economic progress as part of an integral human development
to complete the Union
the “demographic winter” and the unsustainability of current welfare state
the challenge of new values for the European economic governance
the geo-economics decadence
the need of a “geopolitical dimension” of the EU
the new era of the “Euro-Mediterranean relations” and the risk of a future vacuum of leadership in the Mediterranean
the risk of a “clash of civilization”
the great energetic challenge

[295] Alessandro GIOVANNINI, Daniel GROS, Paul IVAN, Piotr Maciej KACZYŃSKI, Diego VALIANTE, External Representation of the Euro Area, DIRECTORATE GENERAL FOR INTERNAL POLICIES, POLICY DEPARTMENT A: ECONOMIC AND SCIENTIFIC POLICY, May 2012, pp. 44 - 49.

[296] European Commission Directorate-General for Communication Publications, The European Union explained Energy, 2012, p. 14.

The geo-economics decadence requires a strategy which can ensure the protection of the European economic interests in the future seeing that by 2030 none of the European member states will be involved in the most important economic global fora where the decisions about global economic trends as well as rules are established. The global financial crisis has hit the traditional G7 much harder than the E7(which are the emerging economies: Brazil, Russia, India, China, Indonesia, Mexico and Turkey), boosting the emerging economies which will grow much faster than the G7 (France, Germany, Italy, Japan, the UK, the US and Canada) over the next four decades. If the current trend will be confirmed new economies will take seats of the European states in the G7 Summits and in the next decades Europe will be left out from many important decisions[297].

Concerning the great energetic challenge, Europe's import dependence has increased in the last two decades and is set to grow to more than 80% in the case of oil and gas by 2035. According to the International Energy Agency (IEA), global energy demand is expected to grow by more than one-third over the period to 2035 and 60% of this increase will be due to China, India and the Middle East. The increasing of the energy demand in other parts of the world might have direct impacts on Europe indeed higher electricity price, determined by the price of fossil fuels, represents a dead weight for the economic system.

Bearing in mind the three main goals at the core of the Europe 2020 strategy for smart, sustainable and inclusive growth for reducing the energy bill for households and businesses ("competitiveness"), ensuring a reliable and uninterrupted supply of energy ("security of supply") and limiting the environmental impact of energy production, transport and use ("sustainability"), future policy-makers should take into account the following priorities: ensuring that energy prices do not make Europe less competitive; securing Europe's

[297] PricewaterhouseCoopers, The World in 2050, 2013, pp. 8 - 9, http://www.pwc.com/en_GX/gx/world-2050/pdf/world-in-2050-jan-2011.pdf. See also http://www.pwc.com/hu/en/sajtoszoba/2013/world_in_2050.jhtml.

energy supplies; protecting the environment and in particular combating climate change; improving energy grids[298].

As the world's largest importer, Europe must prepare now for a radical change in its energy production, transport and consumption, for example "a broader and more coordinated EU approach to international energy relations must become the norm, including redoubling work to strengthen international climate action"[299]. Directly related to this issue there is also the need to change current ways of using natural resources for establishing a sustainable exploitation of them.

With the passage of time, Europe is living in a relentless demographic revolution with regard to both the population size and its age. In a trend started in the 1960s with a progressive decline of the European birthrate and Europe is the only continent to register a process of natural negative growth[300] in the world. We know that by 2025, nearly a fifth of all European inhabitants will be over the age of 65[301] and if current trends will continue, those 65 and older will represent 42% of the population by 2050.

Therefore we are going towards a "demographic winter". Europe is going towards an ever more ageing societies. This demographic implosion might create difficulties in realizing a better quality of life because of the trap of unsustainability of the current European welfare state. Europe isn't reproducing its population, accordingly the subsequent demographic shift from young to old, with the increasing pressures on pensions, will raise the total age-related spending, endangering the sustainability of the European welfare system[302]. This European perspective is made worse by a wider process at the global scale

[298] European Commission Directorate-General for Communication Publications, The European Union explained Energy, 2012, p. 4.

[299] European Commission, Energy roadmap 2050, Luxembourg: Publications Office of the European Union, 2012, p. 20.

[300] See the World Population Data Sheet 2000.

[301] See http://ec.europa.eu/health/ageing/policy/index_it.htm.

[302] The impact of ageing on public expenditure: projections for the EU25 Member States on pensions, health care, long-term care, education and unemployment transfers(2004-2050), Report prepared by the Economic Policy Committee and the European Commission (DG ECFIN), 2006, http://ec.europa.eu/economy_finance/publications/publication6654_en.pdf.

concerning many models of welfare across which have begun to crumble already before the recent financial crisis. Indeed income inequality has increased globally and western income distribution stands today in stark contrast to where it was a few decades ago[303].

Within an ever more multipolar world "Only a more united and integrated European Union may aspire to vie with the global players face themselves: US, China, India, Russia, Brazil"[304]. Europe is very weak whenever it exists a bilateral negotiation because of the absence of a concrete European foreign policy for representing the Union in global fora. Today a marginalization of Europeans from the global decision-making is still possible. The EU is one of the main economies globally, it has a global interest, but it cannot act globally and has difficulties in presenting itself as a global actor. It is difficult for the EU to speak with one voice, particularly because of its decline and the absence of a single foreign policy for representing the common interests of the EU as a whole and respecting an independent diplomatic activity of each member state as regards single specific and strategic national interests.

The obstacles to a single foreign policy are: unanimous decision-making in foreign policy therefore decisions in this area are devoid of substance and the lack of a clear institutional role for a figure and an office responsible for a mandate consisting in the defense of the European interests. Indeed foreign policy is agreed between EU member states, the High Representative can speak for the EU in that area, such as negotiating on behalf of the member states. We are in a sort of renationalization of foreign policy. The sovereign-debt crisis has weakened the EU internally in its social and economic security functions, but it has also weakened the EU capacity to act externally inasmuch there is less strategic attention to foreign policy in Brussels today because the institutional system has focused its attention to the Euro crisis management now, but also the difficulties

[303] Yacine Fares, Reform: The Future of the Welfare State, The Harvard International Review, Feb. 25th 2013, http://hir.harvard.edu/the-future-of-the-welfare-state?page=0,1.

[304] Luca Paolazzi, Mauro Sylos Labini, L'Europa e l'Italia nel secolo asiatico, Integrazione e forza industriale a difesa di libertà e benessere, Luiss University Press, 2013, p. 11.

to take strategic decisions(for ex as regards immigration and demographic winter) are also due to tensions between strategic necessities and common mood. According to Jean-Victor Louis: "For legal as well as political reasons and for the sake of coherence, the EU international representation should reflect the adjustment of competences in the internal sphere"[305].

As Commissioner De Silguy stated: "By giving itself a single currency, Europe is also giving itself one existence and one voice on the international stage"[306]. We need fewer Europeans and more European Union. To sum up, the European Union needs of a "geopolitical dimension" of the EU.

Future changes of the European society will also be due to mass migrations from developing to developed countries with threat in the form of political radicalization and terrorism require an effective management of migration flows and public security policy as well as a Migrant Integration Policy because immigration is an important part of the solutions to Europe's economic, demographic and competitive decline. This is the risk of a "clash of civilization". The EU has not yet established a policy of dialogue and cooperation with countries of the Mediterranean area where everything is changing. For example, the US shale gas boom will change the US from a gas importer to a net exporter and: "once the US needs only a fraction of the 11mbd it currently imports, its interest in the Middle East may decline considerably"[307] with possible uncontrollable consequences for the EU and the risk of a future vacuum of leadership in the Mediterranean area.

Last, but not least the necessity to readdress the EU long term evolution for promoting a more accountable, effective and transparent decision-making process at the European level by a new equilibrium of values focused on politic

[305] Jean-Victor Louis, Institutional dilemmas of the Economic and Monetary Union, in Challenges of multi-tier governance in the EU, European Parliament, October 2012, p. 8.

[306] Europe, No. 7046, 29 August 1996.

[307] See also Riley Alan, The Geostrategic Implications of the Shale Gas Revolution http://www.statecraft.org.uk/research/geostrategic-implications-shale-gas-revolution

empowerment and civic solidarity as the basic concepts of a new phase of economic and political governance.

Bearing in mind that "A Union that fails to satisfy, even for the functions that have been attributed to it, the cardinal principles of western constitutionalism (balance of powers; the democratic vote; the majority principle), and does not have real competence for foreign policy and internal and external security, is incomplete and weak. It is thus right not only to applaud yesterday's step but also to underline its unfinished nature, the risks and the rashness"[308].

For facing these challenges we need a more effective decision-making process and a European institutional system with more power in those policies which are necessary for completing the Union and changing it into a global player.

Values for economics and politics to give some sense of awareness

Bearing in mind that the current political decisions adopted by the EU during the crisis have created many debates on their adequacy to react to the crisis and their social consequences, I have decided to avoid any reference to it in the previous chapters, but I am obliged to give my point of view on this issue. Our public life is under the specter of a new type of poverty which goes beyond the old phenomena of the homelessness, the growing unemployment rate and the unbearable debt dependence. New sides of poverty have appeared in our countries and they have the faces of a decline of the value of work and the desertification of economic, social and cultural rights. If we want a future of shared prosperity, we need policies for bringing inequalities down, fighting against poverty, being ready to change our habits as well as alerting to the importance of individual responsibilities and contributions to face these challenges.

According to Joseph Stiglitz "Every time austerity was tried, the economy went from a downturn to a recession, and from a recession to a depression" and as said to Amartya Sen "It is difficult to see austerity as a soundly reasoned

[308] Padoa-Schioppa Tommaso, Corriere della Sera, May 3rd 1998.

economic solution to the European malaise today. And it may not even be a good way of reducing public deficits. (…)There is plenty of evidence in the history of the world that indicates that the most effective way of cutting deficits is to resist recession and to combine deficit reduction with rapid economic growth"[309].

Here it is the gap of a solid conceptual ground of our development perspective which used a wrong and limited idea of economics and politics. Economics cannot be aimed only to increase profit for profit and to achieve growth for growth but it should ask oneself how to make better the economic and social conditions of wellbeing. In the same way politics cannot be the exercise of power for more power but it should be the use of power for improving the opportunity of every human being.

We are not only poorer because of the crisis, we are poorer today than the Nineties because of the absence of the political consciousness. Hence we have to reinterpret our economy and politics at the service of humanity of today and tomorrow, not of a single generation or of a country, not of a part of the world or another but of the humanity as a whole, as individuals and a global family. The lack of consciousness and the end of trust have created the most dramatic face of poverty, which is not due to what we have got or we haven't got but to what we believe in and what we are able to imagine to do. It doesn't compromise only the material conditions of life but it compromises what is, in the strict sense of the word, the "human condition" of our life. Awareness is half solution of our problem.

5.2 Policy proposals and institutional innovations

As said by the Governor of the Bank of Italy, Ignazio Visco: "Yield spreads between government bonds in the euro area are determined by two factors, one national and one European, linked respectively to the weaknesses of some countries' economies and public finances (sustainability risk), and to the

[309] Sen A., What Happened to Europe?, August 23rd, 2012.

incompleteness of European construction and the attendant fears of a break-up of the monetary union (redenomination risk). Europe's response to the sovereign debt crisis has consequently been two-pronged: on the one hand, individual countries have pledged to adopt prudent budgetary policies and structural reforms to support competiveness; on the other, a far-reaching reform of EU economic governance has been undertaken"[310].

Will the national reforms and the European ones be adequate to bring the EU out of the dangers of a 'currency without a State'?

The Euro crisis is actually an institutional crisis which reflects that the scope and level of politics has not followed the scope and level of political problems in Europe. According to Maduro: "political actors at EU level are predominantly responsive to national constituencies that are not able to internalize the consequences of interdependence"[311], moreover "the excessive dependence of the EU political process on national politics involves another negative consequence: political authority is too diffuse in Europe. (…)When political power is too diffuse then democracy becomes ineffective or dominated by minorities. This is, in fact, what we have been witnessing in the EU"[312].

Maduro argues: "Europe's real democratic deficit is to be found in its excessive reliance on national politics that have not internalized the consequences of European and global interdependence"[313].

The same asymmetry between scope and level of politics and political problems concern also to most of the future challenges I have already listed above. The creation of single policies under the competence of the EU in place of those ones

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[310] Visco Ignazio, The sovereign debt crisis and the process of European integration, 32nd Seminar "Federalism in Europe and in the World", September 1st 2013, p. 3.

[311] Miguel Poiares Maduro, A New governance for the European Union and the Euro: democracy and justice, in "Challenges of multi-tier governance in the European Union Effectiveness, efficiency and legitimacy",
European Parliament, March 2013, p. 33.

[312] Ivi, p. 14.

[313] Miguel Poiares Maduro, A New governance for the European Union and the Euro: democracy and justice, in "Challenges of multi-tier governance in the European Union Effectiveness, efficiency and legitimacy",
European Parliament, March 2013, pp. 45 - 47.

that today are still in the hands of the member states even if they require a European dimension, because of the level of integration reached in these areas of interest, can fill this gap. This revolution of proper new “European single policies” can represent a turning point in both the scope and level of politics for making possible they follow the scope and level of the common political problems.

In a few words Europe needs European solutions to European problems. National means and policies have revealed themselves insufficient and created a political and institutional gap in the policy-making at the European level. The asymmetry between problems and problem-solving capacity becomes a challenge to democracy itself in the EU, because it can undermine the effectiveness of its institutions. Amartya Sen has explained that “The costs of failed economic policies extend well beyond the statistics of unemployment, real income, and poverty (important as they are). The grand vision of a union with a cementing sense of European unity is itself threatened by what is taking place in the economic arena”[314]. To sum up “It is clear that we needed more of a European State, not less of a European currency: without the euro, Europe would now be living a catastrophe. One reason for the lack of credibility of national politics is that it keeps on giving people the illusion that national powers are capable of tackling issues (energy, climate, finance, security, migration, primary goods) which are not national, but continental and global”(Tommaso Padoa-Schioppa)[315].

Democracy requires procedures for the control over the public decisions for making possible a clear distinction of responsibilities between the institutions, building institutional credibility and implementing the basic principles of transparency and accountability.

[314] Sen A., What Happened to Europe?, August 23rd, 2012.

[315] Padoa-Schioppa: "Discussing the Financial Crisis", la Repubblica, October 6th 2008, http://www.eng.notre-europe.eu/011-1692-Tommaso-Padoa-Schioppa-Discussing-the-Financial-Crisis-La-Repubblica.html.

Today the European economic governance is a governance of rules and not a governance of political institutions and rules. This means that there is a control by rules over the European citizens rather than a control by the European citizens over the rules and policies. The current European economic governance does not meet one of the basic principle of democracy, that is the right of citizens to influence the decision-making process with elections and the control exercised by the representative institution(i.e. the European Parliament) over the political authority responsible for fiscal policy. It is a model of governance which delegates to the rules every aspect of the control of the policies and it does not include a democratic decision-making process nor a role for political institutions. It is quite clear that such a model of governance, which is made only by rules without any role for a democratic policy-making process, imposes a de facto limit to the political rights of the European citizens.

Such a step of the integration does not entail an improvement of the European democracy rather than it can be seen as a reduction of the democracies of the member states. Political rights are essential not only for democracy but also for pursuing an integral human development. Indeed a democratic decision-making process concerning the economic governance can also contribute to the emergence of a shared consciousness on the importance to address the fiscal policy to social and economic equality as well as solidarity among different area of the Union.

To sum up the current vacuum of a political institution for taking decisions about fiscal policy creates a democratic deficit both at the European level and the national ones.

The proposals that are later put forward are only a contribution to the debate about reforms for the EU and its future concerning policies and its political as well as institutional aspects.

5.2.1 A European Minister of Finance and Economic Affairs

In order to reform the economic governance, the European leaders have adopted new rules concerning the coordination of fiscal policies based on binding procedures and constraints for member states. These new rules represent an innovation of the EU legal order and they entail a partial reduction of national sovereignties which does not mean also a transfer of sovereignty because of the absence of a European institution responsible for fiscal policy which should exercise these new powers as part of a wider procedure of democratic control and accountability at the European level. There is a set of common rules but there is not a common institution for fiscal policy.

The absence of a common institution for fiscal policy creates a problem concerning both the functioning of the economic governance and a problem concerning the quality of the European democracy, in part because of the lack of legitimacy of such an economic governance of pure rules without politics and in part because of the limits to the political rights of the European citizens who cannot influence the current economic governance.

National parliaments' activities to control European Council meetings and their involvement in the European Semester is not enough for ensuring a democratic control by the European citizens, therefore it should be stressed the European economic governance needs a political institution for fiscal policy responsible to the European Parliament.

The establishment of an institution responsible for fiscal policy as the European Minister of Finance and Economic Affairs can counterbalance the lack of a democratic and accountable decision-making process and can legitimize the economic governance. The single European fiscal policy should be legitimized by a democratic procedure for the appointment of the Minister, who should be responsible in the exercise of his/her functions to the European Parliament, and a shared decision-making process, which should require an approval by the European Parliament of every decision related to fiscal policy.

For this reason I propose to establish the office of the Ministry of Finance and Economic Affairs. The Minister shall exercise all the necessary functions and powers, established within the Treaty and under the control of the European legislative body, for conducting the interests of the Union as a whole. The Minister will prepare economic and fiscal policy, draft the annual Budget and offers experience in tax policy matters. The European interest under the competence of the Minister should be related to the economic affairs and finance for safeguarding prosperity, bringing inequalities down, addressing the path of economic growth, preserving future development and integrity of the EU. The decision-making process concerning fiscal policy should be reformed and the intergovernmental approach to fiscal policy issues, which is subjected to consensus rule, should be substituted by a legislative procedure within the EU institutions.

The European Minister of Finance will represent the Union in the global economic governance's fora and institutions because today Europeans are overrepresented but underperforming in most international bodies[316].

Only with a transition from a European economic governance of rules to a democratic governance of fiscal rules and policy, a proper European democracy can emerge. Only with the involvement of citizens and their representatives in the European institutions, a European fiscal policy can success. Only with a civic empowerment and the establishment of a political institution responsible for fiscal policy the problems of the current democratic deficit can be rode out.

5.2.2 A new European Budget

The EU should provide itself of a budget for exercising the function of instrument of countercyclical fiscal policy after that almost all the member states have introduced a national balanced budget rule which constrains local governments. The EU budget should reflect the federal budget of the US for conducting also

[316] Balfour Rosa, Emmanouilidis Janis A., Martens Hans, Wyles John, and Zuleeg Fabian, A Schuman Declaration for the 21st Century, European Policy Centre, 2012.

discretionary policy with the aim to contrast the procyclical expenditure cuts at the state level and fill the gap in the European economic governance where doesn't exist a supranational entity of that sort with a degree of fiscal sovereignty for the EU institutions.

Accordingly, the EU Budget should replace the MFF and be decided without a direct involvement of the member states, directly by the European institutions.

This implies three elements: an own-resource system based on (limited)tax-raising powers; flexible spending power in areas of EU competence; and the power to make localized investments to offset, when required, negative pro-cyclical consequences of fiscal rules. Such a system of own resources would provide a backstop to issue Union Bonds or alternative instruments, which could leverage the EU's investment capacity backed by the EU's new fiscal powers[317] as a real tool to assist paralyzed member states to break out of the crisis.

The MFF establishes that the maximum possible expenditure for the European Union is equal to € 959.99 billion, corresponding to 1.0% of the EU's Gross National Income(GNI). This means that the overall expenditure ceiling has been reduced by 3.5% in real terms, compared to the previous MFF(2007-2013)[318].

Contrary to what happened with the adoption of the MFF the EU budget should be significantly expanded for facing austerity by member states.

As analyzed by Maduro: "Currently the Union budget is 1% of EU GDP. We estimate that an increase of the EU budget to at least 3% of GDP (an amount foreseen at earlier stages of European integration and also when the Euro was created) should provide the Union with the firepower necessary to play two fundamental roles in the context of a Monetary Union. First, introducing policies capable of addressing the asymmetries affecting the well-functioning of the monetary union or for improving the labor mobility across Europe, for example thanks to a European employment agency(that could coordinate and facilitate

[317] Francesco Nicoli, Pathways to achieve a Genuine Fiscal Union, EPC, June 3rd 2013 p. 3 http://www.epc.eu/documents/uploads/pub_3544_pathways_to_achieve_a_genuine_fiscal_union.pdf

[318] See also http://www.consilium.europa.eu/special-reports/mff/summary-of-the-european-council-agreement#_ftn1.

exchange of job offers and demand among the different Member States) and a job training and mobility program that could focus on structural unemployment. Second, using the EU budget to address financial emergencies like the one that the Union is currently living through"[319].

Giuliano Amato clarifies that "In a more federal-like architecture each of the member States would be more free and, at the same time, more responsible of its own future. Don't forget that in such architecture the value and the solidity of the single currency would depend not on the debts of the member states, but on the treasury of the supranational level"[320].

5.2.3 A single fiscal policy for the EMU

During the Seventies the Budgetary Treaties of the European Communities, signed for establishing basic budget rules and creating the "own resources" of the Communities, opened the way to a gradual building process of common rules and procedures related to budgetary, fiscal and monetary policies. Following this path of evolution and integration, the so-called Delors I and II packages were approved in 1988 and 1993 as the first accords on a multiannual financial perspective that today have the form of the Multiannual Financial Framework. In May 1998, on the eve of the introduction of the single currency, Padoa-Schioppa wrote in the Corriere della Sera, the European economic and monetary union's "capability for macroeconomic policy is, with the exception of the monetary field, embryonic and unbalanced […]. For the European Central Bank the real danger will not be too little independence but too much isolation […], having to operate almost in a vacuum, with no political power, budgetary policy, banking supervision, or financial market control function[…]. It is thus right not

[319] Miguel Poiares Maduro, A New governance for the European Union and the Euro: democracy and justice, in "Challenges of multi-tier governance in the European Union Effectiveness, efficiency and legitimacy", European Parliament, March 2013, p. 39.
[320] G. Amato, A Democratic Solution to the Crisis: Reform Steps towards a Democratically Based Economic and Financial Constitution for Europe, WHI Occasional Study, Nomos Verlagsgesellschaft, Baden-Baden 2012, p. 88.

only to applaud yesterday's step but also to underline its unfinished nature, the risks and the rashness"[321].

This way of integration which led to the single currency and a single monetary policy should be completed by a single fiscal policy for making the Union fiscally independent and at the same time rebalancing fiscal rights and fiscal duties in the common currency area, within a more comprehensive reform of the institutional system of the EU for making it more effective, representative and accountable. As argued by Sargent "monetary and fiscal policies cannot be independent. They must be coordinated"[322].

A single fiscal policy is necessary for completing the functioning of the EMU and in this way dealing with the legacy costs of the initially flawed design of the Euro area and fixing the design itself[323].

The three dimensions of the European fiscal policy
a national dimension concerning the fiscal responsibility and sustainability(a "golden" balanced-budget rule)
a transnational dimension pertaining the fiscal solidarity(the European solidarity system)
a European dimension in the strict sense, which should take shape as a triple "fiscal capacity"

Concerning the national dimension, it should be addressed to the fiscal responsibility and sustainability in the form of a golden balanced-budget rule. In my view the European leaders should amend the pure balanced-budget rule required by the Fiscal Compact and changing them into "golden" balanced-budget rule as those ones used by the American federated states which allow borrowing for long-term public investment also when the budget is not balanced. The aim is keeping all reasonable investment off the books in calculating the deficit, e.g. in infrastructure, R&D, training/education, energy modernization because the speed of the deficit reduction is moderated by the rate of growth as

[321] Padoa-Schioppa Tommaso, Il passo più lungo, Corriere della Sera, May 3rd 1998.
[322] Thomas J. Sargent, United States then, Europe now, Prize Lecture, 2012, p. 30.
[323] INET Council on the Eurozone crisis, Breaking the Deadlock: A Path Out of the crisis, Institute For New Economic Thinking, July 23rd, 2012.

argued also by Vivien A. Schmidt[324]. The ability of a country to adequately manage its debt burden determines its debt sustainability[325].

The transnational dimension should be used for realizing the fiscal solidarity in the form of a "European solidarity system" which should reflect the functioning of the German fiscal federalism and its "financial equalisation system". In Germany, the fiscal solidarity emerges in concrete terms in the financial . As for the Länder, a joint liability system with a bail-out guarantee can ensure the practical anchoring of the solidarity principle which might entail yield spreads between the EU member states narrower, than today as those ones between Federation[326]. The transnational dimension can be used in other ways. For example, bearing in mind than Germany and other countries have profit from lower interest rates due to the Euro crisis, part of their interest savings can be transfer to those countries with higher interest rates. This is the proposal made by the Centre for European Economic Research (ZEW) in Mannheim last summer[327].

Another proposal is the introduction of a European transfer system in the form of a European unemployment insurance system[328].

The European dimension in the strict sense should take shape as a triple "fiscal capacity". Fiscal capacity determines a country’s ability “to finance larger fiscal deficits without jeopardizing macroeconomic stability and debt sustainability”[329]. Before the establishment of the EMU, Delors returned repeatedly to his pet project, included "a certain monetary capacity" in the Single European Act. In the

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[324] Vivien A. Schmidt, Can the EU Bicycle Turn into a Jet Plane by 2020? Two Pathways for Europe, German Marshall Fund, 2012, p. 3.

[325] International Monetary Fund, Fact Sheet: Debt Relief Under the Heavily Indebted Poor Countries (HIPC) Initiative, 2011, Washington, DC.

[326] Fran
, Deutsche Bank Research, May 2011 http://www.dbresearch.com/PROD/DBR_INTERNET_EN-PROD/PROD0000000000273969/German+finances%3A+Federal+level+masks+importance+of+Länder.pdf.

[327] See also http://www.zew.de/en/presse/2051.

[328] See also http://www.diw.de/sixcms/detail.php?id=diw_01.c.410751.de.

[329] World Bank, The Global Economic Crisis: Assessing Vulnerability with a Poverty Lens, 2009, Washington, DC.

same way today, in “Towards a genuine economic and monetary union” the four Presidents of the European institutions refer to a “fiscal capacity”. The single fiscal policy is necessary because “the ‘messy structure’ of economic governance, the role of ‘summitry’, the lack of democratic control, the variety of instruments, the diversity of their legal nature which creates legal uncertainty and the anarchic differentiation it organizes, may be temporarily justified but it is now time to aim at a more efficient and democratic institutional setting”[330].

A triple "fiscal capacity"
From my point of view the European Union needs a fiscal capacity which should go beyond its classic definition of (i)fiscal capacity as the ability to raise own-source revenue(usually through taxation) and include also (ii)fiscal reliability for borrowing money independently from member states which means the possibility to create debt and (iii)fiscal stability as the mechanism for absorbing asymmetric shocks.

The fiscal reliability can be realized, as suggested in the Report of the "Tommaso Padoa-Schioppa group” with the creation of a European Debt Agency(EDA) that would allow a flexible refinancing possibility to countries in exchange for a stepwise transfer of sovereignty[331]. Or following the proposal of the creation of a union-wide bond, by Bordo, Markiewicz, Jonung: “The third lesson indicates that the current euro area fiscal arrangement lacks the means to respond to a rare but economically disastrous event like the recent financial and debt crisis. History suggests that the creation of a union-wide bond market with a common bond may prove to be a successful way to finance increases in public expenditure to prevent the malaise experienced today in Europe. Federal borrowing has avoided the problems of liquidity and credibility faced by smaller members.

Moreover servicing this debt by taxes collected directly by the federal government - as Alexander Hamilton instituted in the eighteenth century in the

[330] Jean-Victor Louis, Institutional dilemmas of the Economic and Monetary Union, in Challenges of multi-tier governance in the EU, European Parliament, October 2012, p. 6.
[331] ‘Completing the euro - A road map towards fiscal union in Europe’, Studies & Reports No. 92, Notre Europe - Jacques Delors Institute, June 2012, p. 7.

US - avoided problems of free riding"[332]. Another alternative proposal by the German Council of Economic Experts is the European Redemption Pact[333] which has been debated and approved as part of the famous by the European Parliament[334].

Therefore as for the Hamilton's idea of the Assumption Plan, the proposals addressed to create a debt of the EU may restore faith in the European project and show strength in the EU. The European integration process should follow the American way to interpret fiscal federalism: "In the United States, for example, the central government collects about 20% of the country's GDP and pays out a similar amount. That centralization of taxes and spending creates an automatic stabilizer for any region that experiences an economic downturn: the affected region's residents send less money to Washington and receive more in transfers"[335].

The establishment of the single fiscal policy requires the "role for a Finance Minister or the "fiscal body such as a treasury office" as mentioned in the Van Rompuy report of 25 June 2012"[336].

This perspective of a single fiscal policy may be the final step to complete the EMU facing also the long-term political challenge partially behind the crisis:

"All those who, in trying to meet the economic challenges set out by the treaty of Rome, neglected the political dimension have failed. As long as [those] challenges will be addressed exclusively in an economic perspective, disregarding their political angle, we will run – I am afraid – into repeated failures"[337].

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332 Michael D. Bordo, Agnieszka Markiewicz, Lars Jonung, A Fiscal Union for the Euro: Some Lessons from History, NBER Working Paper No. 17380, NATIONAL BUREAU OF ECONOMIC RESEARCH, 1050 Massachusetts Avenue Cambridge, MA 02138, September 2011, p. 26.

333 See The European Redemption Pact, February 2012 http://www.sachverstaendigenrat-wirtschaft.de/fileadmin/dateiablage/download/publikationen/working_paper_02_2012.pdf

334 See EP votes on Economic governance (2-Pack): - extracts from the votes on the reports by Jean-Paul GAUZES (EPP, FR)and Elisa FERREIRA (S&D, PT) http://ec.europa.eu/avservices/video/shotlist.cfm?format=pdf&ref=84827&sitelang=en.

335 Feldstein, The driving force of Europe's economic policy is the "European project" of political integration, Europe's Empty Fiscal Compact, Project Syndicate, February 2012.

336 Jean-Victor Louis, Institutional dilemmas of the Economic and Monetary Union, in Challenges of multi-tier
governance in the EU, European Parliament, October 2012, p. 8.

337 Paul-Henri Spaak, Discours à la Chambre des Représentants, 14 June 1961.

The main aim of the proposal of a triple fiscal capacity is to try and solve the so-called Obstfeld's new trilemma. Obstfeld (2013) explains that the absence of independent monetary policy at member state level, the combination of deep financial linkages with high debt creates the following trilemma: "it posits the impossibility of simultaneously maintaining cross-border financial integration, financial stability and national fiscal independence in a monetary union"[338].

Actually, as Hans-Peter Grüner argues, reforms undertaken during the crisis may not be politically viable if they lack the necessary long run political support[339].

According to the former President of the Italian Republic, Sen. Carlo Azeglio Ciampi: "The aim of European Union institution-building should be to make available the entire panoply of instruments for governing the economy, whether budgetary, revenue-related or those linked to tangible and intangible elements.

Europe needs to foster an economic governance capable of promoting income growth, a more equitable distribution thereof and better employment opportunities"[340].

I did not consider a proposal based on a distinction between the Euro area member states and the remaining non-euro area member states bearing in mind that among those which acceded to the Union since 2004, they have committed to join the Euro area even if at the time of their accession they did not meet the necessary conditions for adopting the Euro.

5.3 A Constitutional reform for the Union

The effect of intergovernmentalism

[338] Obstfeld, M. (2013) "Finance at center stage: Some lessons of the euro crisis", European Economy. Economic Papers, No. 493 | April 2013, Brussels.

[339] Robert Kuenzel and Eric Ruscher, The Future of EMU, ECFIN economic briefs are occasional working papers by the European Commission's Directorate General for Economic and Financial Affairs April 2013, p. 3 http://ec.europa.eu/economy_finance/publications/economic_briefs/2013/pdf/eb22_en.pdf .

[340] Ciampi C.A., Speech for the celebrations of the 10th Anniversary of the European Central Bank and the European System of Central Banks Frankfurt am Main, June 2nd 2008.

In my opinion the weakness of the EU originate in the limits of intergovernmentalism. Intergovernmentalism represents a way for limiting the conferral of powers upon supranational institutions, halting the emergence of common policies which can represent and promote the European interests. Within such a decision-making model if no agreement is reached there is no action at the EU level or when an agreement is reached it usually is insufficient and consist of "too little too late" decisions, because of the consensus rule. Allerkamp[341] considers the current EU legal framework as an alternative model of integration based on(as listed by Fabbrini): (a)"policy entrepreneurship from some national capitals and the active involvement of the European Council in setting the overall direction of policy"; (b)"the predominance of the Council of Ministers in consolidating cooperation"; (c)"the limited or marginal role of the Commission"; (d)"the exclusion of the EP and the ECJ from the circle of involvement"; (e)"the involvement of a distinct circle of key national policy-makers"; (f)"the adoption of special arrangements for managing cooperation, in particular the Council Secretariat"; (g)"the opaqueness of the process to national parliaments and citizens"; and (h)"the capacity on occasion to deliver substantial joint policy"[342].

To sum up in the current institutional system of the EU, the European Council and the Council play the role of the institutions which have the last word about the decisions and policies of the EU, institutionalizing a "de facto" intergovernmental control over the EU as a whole, with the possibility of giving more power to a small group of states. This hypothetical extreme consequence can create the condition of supremacy of someone over someone else broking the principle of a "Union of Equals". As explained by Fabbrini, from an analysis of the effectiveness of the intergovernmental decision-making regime three basic dilemmas emerged

[341] Allerkamp, D. K. (2009). Intergovernmentalism reloaded: The Transformative Power of "Intergovernmental" Council Policy-Making, p. 14.

[342] Fabbrini Sergio, Intergovernmentalism and Its Limits: Assessing the European Union's Answer to the Euro Crisis, Comparative Political Studies XX(X) 1–27, 2013, p. 7.

during the Euro crisis. They are: the veto dilemma, the enforcement dilemma, the compliance dilemma[343].

From my point of view unanimous agreement in all cases would simply lead to paralysis. The only kind of system that will work is a political and legal system based on majority voting. As spelled out by Tommaso Padoa-Schioppa, the essential problem of the economic governance depends: "on the mere coordination of national policies was at the same time too weak and too ambitious.

Too weak because it is fatally flawed by the fact that the power of coordinating is at the hands of the same ones that are supposed to be submitted to this power. Too ambitious because it grants the EU a power of intrusion in its member States policies that – even in mature federations – the central government normally lacks vis-à-vis local governments (be they States, Länder, Provinces or Regions)"[344].

I share Perissich's analysis that: "La crisi dell'euro non può essere risolta solo stabilendo delle nuove regole più vincolanti. La sfida principale risiederà nella loro gestione e questo è un compito che spetta a un esecutivo. Spinto dell'emergenza, il Consiglio europeo ne ha assunto di fatto alcune funzioni. Tuttavia questo non può essere un assetto stabile; esso è un organo intrinsecamente intergovernativo che manca strutturalmente dell'unità di direzione e della continuità di un esecutivo. Lo stesso Presidente permanente, privo di un'amministrazione propria, è per definizione un facilitatore, un costruttore di compromessi, ma non il capo di un governo. Né si può assimilare il Consiglio europeo a un governo di coalizione poiché la sua composizione è il risultato di processi politici distinti. Durante tutta la crisi, il principale problema istituzionale è stato che la Bce, organo propriamente federale, vincolato da uno

[343] Ibid. pp. 16 - 18.
[344] Padoa-Schioppa Tommaso, "Stability yes but also growth", Notre Europe, 2010.

statuto ma costretto dalla necessità a esplorarne ogni limite, ha avuto di fronte a sé un interlocutore intergovernativo"[345].

Constitutionalism of union of states

The historical account demonstrates that most of the unions of states have been created for similar reasons, indeed: "many independent regions decided to found a union because of military insecurity and a consequent need for a common defense or a desire to be independent of foreign powers. This was the case of the US which was founded in revolution against the British Empire. Similarly, the British North American Act established the Canadian federation in response to the threat of political, economic and military absorption by the US. The foundation of the Argentine federation reflected a desire to gain independence from the Spanish empire"[346].

For these reasons a clear sense of unity addressed the first American dream, by the colonies and "two decades after the Albany Congress of 1754, Franklin's "WE ARE ONE" in 1776 corresponded to his political commitment to the Continental Congress, the Articles of Confederation and the unified American opposition to the constitutional monarchy of Britain"[347].

As testified by the following lined from the Federalist No. 11, the founding fathers acted under the consciousness that "United we stand, divided we fall": "All the powers of Europe could not prevail against us. Under a vigorous national government the natural strength and resources of the country, directed to a

[345] "The Euro crisis cannot be solved by new rules even if they will be more binding than the previous ones. The main challenge will consist in their use and this is a task of a government. Because of the crisis, the European Council has taken on some proper functions of government. Nevertheless this cannot be seen as a stable arrangement; it is an intrinsically intergovernmental institution without unity of leadership and continuity of government. (…)The European Council cannot be assimilated to a coalition government because its composition is the outcome of different political processes. During the crisis the main institutional problem was that the ECB, proper federal institution, has had to work with an intergovernmental interlocutor" by Perissich Riccardo, Dal metodo comunitario al metodo dell'unione, in Prove di Europa Unita, Libri di Astrid, Passigli Editori, 2013, p. 277.

[346] Michael D. Bordo, Agnieszka Markiewicz, Lars Jonung, A Fiscal Union for the Euro: Some Lessons from History, NBER Working Paper No. 17380, NATIONAL BUREAU OF ECONOMIC RESEARCH, 1050 Massachusetts Avenue Cambridge, MA 02138, September 2011, p. 24.

[347] Olson L.C., (2004). Benjamin Franklin's vision of American community: a study in rhetorical iconology, University of South Carolina Press, p. 141.

common interest, would baffle all the combinations of European jealousy to restrain our growth. ...An active commerce, an extensive navigation, and a flourishing marine would then be the offspring of moral and physical necessity. We might defy the little arts of the little politicians to control or vary the irresistible and unchangeable course of nature. In the present state of disunion the profits of trade are snatched from us; our commerce languishes; and poverty threatens to overspread a country which might outrival the world in riches. The army and navy are to be not only instruments of defense in protecting the United States against the commercial and territorial ambitions of other countries; but they may be used also in forcing open foreign markets"[348].

The principle "United we stand, divided we fall" was true for the American colonies in the 18th century and it can be considered true for the European member states in the 21st century. The challenges we have to face now as Europe are different from those ones that boosted the process of integration of these federal systems but at the same time as happened yesterday to Americans, Canadians, Argentinians, today a group of European states live the same condition of vulnerability and risk.

Crucial institutional developments in most of these federations were driven by exceptional events, often downturns in economic activity during deep crises, for example the Great Depression of the 1930s affected in a fundamental way their institutions: "In response to the economic crisis, central governments increased their power… The main policy innovation of the Great Depression was a new role for the fiscal policy of central governments. Governments increased their spending and/or cut taxes in order to stabilize the distressed economy"[349].

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[348] Alexander Hamilton, James Madison, and John Jay, The Federalist Papers No. 6, October of 1787 - August 1788.

[349] Michael D. Bordo, Agnieszka Markiewicz, Lars Jonung, A Fiscal Union for the Euro: Some Lessons from History, NBER Working Paper No. 17380, NATIONAL BUREAU OF ECONOMIC RESEARCH, 1050 Massachusetts Avenue Cambridge, MA 02138, September 2011, p. 24.

In the same way, evoking Jean Monnet: "Europe will be forged in crises, and will be the sum of the solutions adopted for those crises", C. Fred Bergsten and Jacob Funk Kirkegaard considered that the current process of European integration can be explained by the "only on the brink " theory. According to the only on the brink theory, periods of crisis are often essential for implementing far-reaching structural reforms towards an ever closer union[350]. Even if "we have defined a democratic model on a European scale"[351], the crisis has forced the EU to adopt policies and new rules which represent significant changes in the institutional and regulatory framework as regards both fiscal policy, sovereignty and the quality of our European democracy. Indeed the crisis has been not only a financial and economic crisis, but is part of a long term latent crisis of institutional design which started when the founding members of the Euro did not demonstrate to be moved by a firm political will to create a common system of control over the banking sector and a single fiscal policy for the Euro area.

The financial crisis was the triggering event of a crisis of the decision-making process involving both the member states and the European institutions that had to handle an undesired progress in the integration about new transfer of national sovereignty to common institutions for overseeing banking and controlling fiscal policies. The European leaders should act under the firm conviction that "confidence in the outlook for Economic and Monetary Union would benefit greatly from significant new steps towards political integration, including on a sectorial basis"[352].

Europe's permanent transition

Since 2008, when the 1st effects of the current economic crisis arose in our continent it has been clear that each member state alone is not strong enough to react with effective policies to those social and economic difficulties the member

[350] C. Fred Bergsten, J.F. Kirkegaard, The Coming Resolution of the European Crisis: An Update, Peter G. Peterson Institute for International Economics, Washington DC, June 2012.
[351] Giscard d'Estaing Valery, Speech to the European Parliament, September 3rd 2003.
[352] Visco Ignazio, The sovereign debt crisis and the process of European integration, 32nd Seminar "Federalism in Europe and in the World", September 1st 2013, p. 8.

states are still living. Even if the Euro survived intact to 2012, after eight meetings of the European Council, we cannot be sure that most of the problems of the crisis are things of the past. Without a definite reform of the European institutions to provide for policy responses to address all the pressing current global challenges, Europe will continue to suffer because of the weakness of a union in the sense of states which try to cooperate for facing together the emergencies, more than a union in the sense of a system of institutionalized powers with competences in a set of proper European policies and an accountable functioning for defending the EU as a whole and preventing emergencies and challenges. The current institutions face greater complexity and difficulty in providing effecting solutions in due time.

My thesis is that what made possible the Euro crisis was the permanent transition path of the EU as a whole towards a non-defined destination. I called this thesis "Europe's permanent transition", because the European Union lives in a condition of continuous transition which creates uncertainty about its future compromising the credibility of the Union.

In my view, the best response to the future challenges is to provide to give to the Union the means and powers for facing these challenges. More than new policies, Europe needs new institutions, more than a closer coordination, Europe need new competences with the power to adopt better and more effective policies. Therefore the first reform can be only inspired by vision and institutional innovation.

Today the Spinelli's ideas and hopes of a constitutional foundation of Europe are still alive. Spinelli argued the adoption of a constitution for Europe as the necessary step for the pooling of sovereignty with the aim to create a European power "whose capacity to decide and execute would be independent of the goodwill of the single states"[353] within the areas of policy and competences voluntarily conferred by the member states on the EU.

[353] Spinelli A., Una strategia per gli Stati Uniti d'Europa(1989), Il Mulino, p. 269.

Even if Europe appears not united today by a sufficient political ethnos as said by Von Bogdandy, the experiences of previous established unions of states, as the American model of a constitutional order and a constitutional identity, have been predominantly projected into the future. For example: "a barely existent American people made a constitution setting a state for a future nation and laid down the mere outlines of a constitutional identity that would become essential not only for the future success of the constitution, but for the self-image of the emerging nation. Why would an adequate future-oriented constitutional model along similar lines not work for Europe?"[354]. Such a political vision of the institutional system was used by the US founding fathers for the US Constitution of 1789 as showed by their own words:

"The only greater [evil] than separation... [is] living under a government of discretion"[355] (Thomas Jefferson)

"I consider the foundation of the [Federal] Constitution as laid on this ground: That "all powers not delegated to the United States, by the Constitution, nor prohibited by it to the States, are reserved to the States or to the people." [10th Amendment] To take a single step beyond the boundaries thus specifically drawn around the powers of Congress is to take possession of a boundless field of power, no longer susceptible of any definition"[356] (Thomas Jefferson)

“The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite” (James Madison)

[354] Michel Rosenfeld, Altneuland: The EU Constitution in a Contextual Perspective, The European Treaty – Constitution and Constitutional Identity. A Comment on Professor von Bogdandy, New York University School of Law and Woodrow Wilson School of Public and International Affairs at Princeton University, Jean Monnet Working Paper 5/04, 2004 p. 2.

[355] Thomas Jefferson to William Gordon, 1826. The Writings of Thomas Jefferson, (Memorial Edition) Lipscomb and Bergh, editors, ME 10:358.

[356] Thomas Jefferson, "Opinion on the Constitutionality of a National Bank", February 15, 1791.

and, referring to the failure of the Articles of the Confederation, Alexander Hamilton wrote “The Insufficiency of the Present Confederation to Preserve the Union”(The Federalist No. 17): “a concise review of the events that have attended confederate governments will further illustrate this important doctrine; an inattention to which has been the great source of our political mistakes”[357].

A Constitution for the EU

The aim of my proposal is to introduce a Constitution of the EU and a reorganization of the European institutional system for establishing a clear distinction and balance of the Executive, Legislative and Judicial power.

I would like to divide the EU Constitution from the Charter of Fundamental Rights and the Institutional Regulation on the EU. The Constitution should enshrine the founding principles of the Union, a list of the European institutions, the basic conferral of powers to them, rules on the relations between the EU and member states as well as those ones related to the main aspect of the functioning of the European institutions.

Following the Pure Theory of Law created by Hans Kelsen[358], the Constitution will include only the Basic norms or Grundnorm for the entire EU legal order. A Constitution has the power of a positive narrative of yesterday and tomorrow for connecting the Union’s past to its future.

The Charter of Fundamental Rights already exists and I consider it as the Bill of right of our time. It should continue to be the document establishing a protection at the EU level of values and fundamental liberties, economic and social as well as civil and political rights, for the European Union citizens, with not only limits to the action of the European institutions and of the member states, but also positive norms and positive rights. Under the norms of the Constitution, the

[357] Alexander Hamilton, The Federalist No. 17, The Insufficiency of the Present Confederation to Preserve the Union, Independent Journal, Wednesday, December 5, 1787.

[358] See Kelsen H., General Theory of Law and State. 1949: Harvard University Press.

Institutional Regulation on the European Union should lay down the rules on the procedural aspects and details related to how the European institutions work.

The three documents should be distinguished because of the differences of the norms established by them, their different types of objectives, the different features and their different reform processes.

The hierarchy of norms in EU law would be changed as follow:

FROM the current hierarchy of norms[359], which includes:

Primary Law(Provisions of TEU, TFEU, Charter of Fundamental Rights (CFR), protocols to these Treaties) and unwritten general principles of EU law; International agreements negotiated and decided under the procedure of Article 218 TFEU;

Legislative acts(Article 289 TFEU) which are legal acts decided by the legislative procedure(either the ordinary legislative procedure under Article 294 TFEU or one of the specific legislative procedures)

TO a new hierarchy based on: constitutional rules established by the Constitution of the EU and the Charter of Fundamental Rights; rules established by the Institutional Regulation on the EU and legislative norms decided by the legislative procedure.

The Constitution should establish a reorganization of the European institutions for a better functioning, a better clarity of roles and responsibilities as well as a more equilibrated system of checks and balances, following the Montesquieu's distinction of powers between executive, the legislative and the judicial:

-**The legislative power**: At present, the European Union has three law making institutions; the Commission with executive powers, and the European Parliament and the Council of the European Union with legislative powers. In

[359] See Hierarchy of norms in EU law http://www.cvce.eu/obj/hierarchy_of_norms_in_european_union_law_after_the_lisbon_treaty-en-1623b797-f93f-4255-9ad8-1ceea5e2eb20.html.

my opinion the Council of the EU should be change into a deliberative assembly of representatives of member states which should be equally represented for counterbalancing its evolution towards a party controlled chamber. For reducing the slowness and red tape due to the continuous intergovernmental negotiations within the Council of the EU, it should no more work in different groups of ministers but it should decide by majority as an assembly. The current European Parliament would be transformed into a European Assembly and the Council into the European Senate.

The two chambers will have the same powers and they will exercise jointly the legislative function. The European Assembly and the European Senate will be the two chambers of the EU's legislative body. The European Senate will be chaired by a President whose office and functions will reflect those ones of the President of the European Assembly. This implies the end of the rotating presidency.

The right of initiative will be given to the Government, individual member of the European Assembly or of the European Senate, the people(one million citizens with the right to vote and the signatures must be from at least 7 member states). The European House of Representatives and the European Senate will exercise the legislative function within bicameral commissions whose works will reflect the functioning, composition and rules of the Conciliation Committees for preliminary consideration, debating and preparing a Joint text to be voted by both Chambers. For a bill to become law, the identical text must be approved by both the branches of the legislative body. The Presidents of the two chambers will set the agenda in every case except when a bill has been presented by the European Government in exceptional cases of necessity and urgency. In such a case, the bill will be immediately transmitted to the chambers and the debates can be subjected to control timing through guillotine. Guillotine Motion to ensure that certain stages of a bill are completed by a certain date or within a fixed number of sittings.

-**The executive power**: From my point of view it should be necessary to establish the role of the President of the EU for leading the executive branch as the head of the European government. He or she will be in charge of proposing to the legislature the European executive. He or she will be the presiding and actual head of the government and head of the executive branch, representing the Union in the international fora, taking care that the laws be faithfully executed, concluding treaties with foreign powers. The EU needs only one president and it does not need three presidents as we currently have(a president of the Commission, a president of the Parliament and a president of the European Council). The President will be elected indirectly as in the United States, therefore a number of electors, gathered together in the Electoral College, choose the president. Each member state has a number of electors, equal to the size of its representatives in both Chambers.

The European government will take the form of a Council of Ministers whose members will be presented by the President to the legislature and submit to the confidence vote of both Chambers. Actually law-making is not the only function of the legislature, indeed in J.S. Mill's view, the proper function of a representative assembly is "to watch and control the Government; to throw the light of publicity on its acts, to compel a full exposition and justification of all of them which any one considers questionable; to censure them if found condemnable, and, if men who compose the Government abuse their trust, or fulfill it in a manner which conflict with the deliberate sense of the nation, to expel them from office"[360]. To sum up the legislature still has the power to shape legislation and hold the government to account. Indeed the assessment of the responsibility of the executive is both periodic and daily.

[360] J.S. Mill, Considerations of Representative Government, pp. 229-235 and 239-241.

The former assessments happens by the electorate at the time of the election. The latter is done by the legislative body through questions, resolutions, no-confidence motions, adjournment motions and debates using the right of information and criticism ex post facto. The European government is responsible and the administration accountable to the European legislative body. The Executive for the most part proposes the legislation necessary for the imprimatur, after due deliberation and debate and suggesting modifications, whenever necessary. The Executive enjoys the right to formulate the Budget, the legislative controls over the Budget.

The European government will be an important body which will be independent of any one national government for putting forward the general European interest. A minister is responsible to the legislative for all the acts of the ministry as well as also the European Council of Ministers is collective responsible.

The current crisis has demonstrated the weakness of the European institutions due to the lack of independent enforcer(for example for the rules of the Stability and Growth Pact) which is the same old problem of "quis custodiet ipsos custodies?". Taking into account the current Council of the EU, it should be stressed a question for the future "Can Council really punish(big) sovereign states?". A European government with more powers and a decision-making capacity autonomous from the member states might represent the independent enforcer the EU needs.

A balance should be established, between government and the states, with appropriate mechanisms for ensuring the protection of states' rights and proper European rights. Alongside with the principles of subsidiarity, proportionality and conferral as already established by the current treaties, the European Government will exercise its conferred powers for promoting the European interests. The European interest should be: different from national interests of a single member state, related to the need of a European action at the global level for safeguarding the values, independence, future development and integrity of the EU. The ECJ will decide on the proceedings started by a member state for an alleged violation of national interests by the European Government.

The European Council will be radically reformed and it will become the forum for confrontation between the European executive and member states on long term policies objectives of the Union. I consider the current European Council an ambiguous institution of the EU because its role is to provide political impetus and not to exercise legislative functions, but actually during the crisis the European Council has partially derogated to these limits to its role. Moreover the European Council's composition compromise the capacity of the European Council itself to take care of the European interests, because none of its members who has the power to decide and at the same time a European mandate, therefore "none of them represents the Union"[361].

-**The judicial power**: the European Court of Justice make up the judicial branch. Alongside with the ECJ, others institutions will work for ensuring a control over the good functioning of the EU:

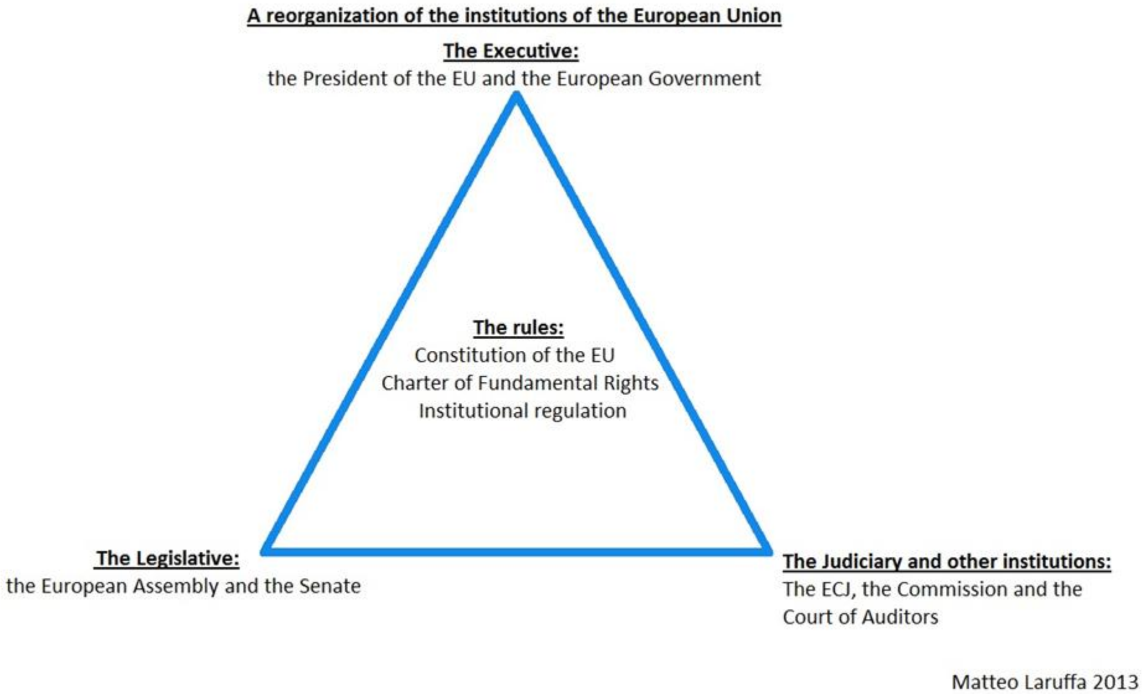
- the Court of Auditors for monitoring the financial management of the EU, therefore it exercises a control over the expenditures;
- for eliminating any risk of a politicization of the Commission, I propose to reform its task into that one of exercising an ex-ante and ex-post control over the policies of the Union. The Commission will be the "Union Accountability institution" which will evaluate the effectiveness of the European policies. It will take the form of a permanent administration of control, comprising the civil servants and experts for assisting the other institutions to elaborate policies, implement them and evaluating their effectiveness in the pursuit of

[361] Padoa-Schioppa Tommaso, "Demos e Kratos in Europa", il Mulino, 2009, p. 376.

specific predetermined policy objectives. To sum up it will be reformed into an institution for exercising the control over the policies and to do scientific research aimed at contributing to the economic decision-making process of politicians and policymakers;

- the European Ombudsman investigates complaints about maladministration by EU, exercising a control over the administration.

Concerning the revision of the Constitution, the proposed amendment begins in the legislature where it is introduced as a bill. One third of both Chambers or one thirds of the member states will be able to propose amendments. The amendment will enter into force after its approval by more than two thirds of both Chambers and the ratification by the legislatures of at least two thirds of the states. The reorganization of the EU can change the current European institutional system into that one summarized in the following figure:



Conclusion

JOIN, or DIE. Completing the Union

The history of the European integration since 1951 has been a great success story. After two devastating World Wars the perspective of a Union between those countries which at that time were enemies and now share the same policies under common rules and institutions, can be seen as the miracle of our recent history ant a lesson not only for us:

"the process of European unification was the strongest positive legacy that the [last] century leaves to humanity in the sphere of political orders. It is the demonstration that human society can, with peaceful means, move from the state of nature to civilization also in an area – relations between sovereign states – where this transition had not yet succeeded"[362].

The outcomes achieved till today by this long-lasting integration still in progress are indicated by the three "p" words: peace, progress and prosperity. In the last sixty years, most of the seatbacks of the integration process happened for internal divisions between member states and their opposition to give more powers to the Union's institutions for defending a strictly national control of the last bastions of states' sovereignty. The uninterrupted resistance by member states to a progress in the development of a proper political has represented an insurmountable obstacle to the achievement of the EU as a global player. Even if our common European story has witnessed many crisis and today we are living under the specter of decline, treaty by treaty we have gone on and on stronger than before.

Today Europe is under the risk of new types of poverty which goes beyond the old phenomena of the homelessness, the growing unemployment rate and the unbearable debt dependence. New sides of poverty have appeared in our

[362] Padoa-Schioppa Tommaso, "Europa, forza gentile", 2001, il Mulino.

countries and they have the faces of a decline of the value of work and the desertification of economic, social and cultural rights. The crisis has showed not only our weaknesses but also that, today as it has never been before, the European member states live in a condition of inextricable interdependence on each other. The last years have offered a chance to realize that they are too small for facing the common problems and challenges we have to face with national policies. The crisis is actually a crisis of the European member states more than a crisis of the EU.

More than ever, the challenges on the horizon are worldwide, the means of our nations are limited, the potentialities of the Union as a global player can make the difference.

Therefore more than acting as states we should act as a Union, more than wasting our forces in many national policies we should combine them into single European policies, more than demanding to our national heads of states and governments to act for defending the European interests we should establish proper political European institutions in charge of defending the European interests, more than the politics of small steps we need a the political courage to approve long-term decisions, more than accepting the EU as it is we should remake the Union as it should be. In a time of interdependence and a globalized world, clinging to national sovereignties and intergovernmentalism can reduce our capacity to react to the crisis forcing the Union in a quasi-paralysis and compromising the success of our attempts to solve common problems.

If we want to see our values and interests, our quality of life and the legacy of the European continent for future generations reflected in the global governance of tomorrow we need to speak with one voice.

If we want to protect and to improve our conditions of personal and collective security against material and immaterial threats we need to pass the baton from the member states to the EU in policies which have already integrated de facto.

If we want to enhance the quality of life and to achieve an integral development we need a radical change for more solidarity and the awareness that only the EU can save Europeans from the traps of economic stagnation and international marginalization.

Today, sixty-three years after the Schuman's Declaration, we stand again on a turning point in history. if the European states want to survive to the decline, to maintain and improve the level of development already reached the only possibility is to complete our Union with the consciousness that "the EU is not a foreign power"[363] because we are part of its functioning and institutional life and the European citizens can contribute to the Union as they can do for their respective member states.

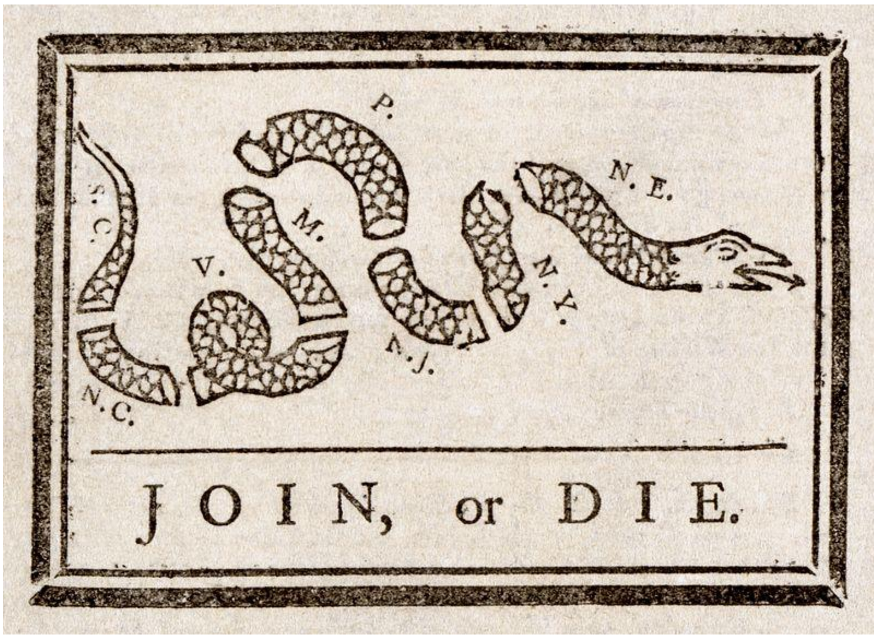
A political government for the Union within a democratic and accountable institutional system which can protect and promote the European interests, a Constitution for establishing a long-term perspective concerning both the functioning of the Union and the agreement of peoples on our common values alongside with a Charter for defending our rights and freedoms.

This is my answer to the crucial question about the direction of the Union in the future.

On May 9th 1754, Benjamin Franklin published for the first time a segmented snake with the motto "JOIN, or DIE", consisting of eight sections or parts: the head represented New England and each of the seven remaining parts corresponded to a single colony identified by its initial letters. Franklin's "JOIN, or DIE" represented the united British colonies in America before the Albany Congress. In a few years it promoted the political will of unity among the American colonies and it meant that only through unification could the part of the snake survive.

[363] José Manuel Durão Barroso, State of the Union address 2013, September 11th 2013, http://europa.eu/rapid/press-release_SPEECH-13-684_en.htm.

As yesterday for the American colonies, today for the European member states which wants to maintain the Union devoid of the necessary powers for becoming a global player, there is no possibility for them to win the challenge alone as single states, but there is an only one to win all together as a Union.



In such a spirit we must ride out our common difficulties, we must face our common challenges and complete the Union and the journey started more than sixty years ago.

"JOIN, or DIE"

Matteo Laruffa

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