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European integration Odyssey - the ship sails on ... but where?

Abstract

The European integration is a revolving project with sinusoid evolution as well as evaluation. Its last part, the EC and EU integration, has been often mistakenly presented as a decades- long happy and successful, almost fairy-tale like, ever closer and closer getting together by an increasing number of deliriously happy members. However, the occurred problems and issues clearly demonstrate that the concept and fundamentals of European integration have never enjoyed a strong consensus and their implementation has always been far from perfect. The current crisis re-opens old wounds and provides a plenitude of opportunities to state that the European integration via EU economic, social, regulatory and financial policies and activities is ill conceived and inherently wrong. Naturally, it is beyond the scope of this article to present a historic overview of critical facts ultimately leading to the current situation, to present a final appraisal of the European integration and the EU or even trying to find a solution of the current state. Instead, the goal of this article is to provide a set of comments regarding the European integration, its concepts, fundamentals and legitimacy, and to analyze particularly the domain of economic and monetary cooperation and link the information about the current legal framework with observations from daily reality of the EU and thus contribute to the current hot and often unsystematic discussion.

Key words: EU, Eurozone, integration, crisis.

Introduction

The current omnipresent crisis has had an extremely punishing impact on the European Union. Thus the concept, fundamentals, missions and goals of the European Union are exposed to a very close and critical scrutiny influenced by practice and pragmatic considerations. Is the stronger integration of a *sui generis* international organization which is traditionally supporting agriculture politics capable of reflecting and addressing challenges of our post-modern global society?³

European integration represents a concept predominantly understood as a complex unification procedure entailing an abundance of complicated processes in various fields.⁴

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³ MacGREGOR PELIKÁNOVÁ, Radka (2012). And the best top level domain for European Enterprises is ... *International and Comparative Law Review*. Vol.12, Issue 2, p. 41-58. ISSN 1213-8770 .

⁴ VEČEŘA, Miloš (2012). The Process of Europeanization of law in the context of Czech law. *Acta universitatis agriculturae et silviculturae Mendelianae Brunensis*, LX, 60, 2, p.459-464. ISSN 1211-8516.

There was, is, and continues to be many discussions about the applicable, applied and to be applied model, for such an integration and also about the appropriateness and legitimacy of the supranational approach. For all practical purposes, the EU evolved from earlier European models, but, unfortunately, for many impractical ones as well. Typically, there are just a few obvious and constantly yes or no answers. The EU story should not be depicted as a black and white picture, rather this is a very colorful, dramatic (sometimes even comic) play performed on the world stage as well as behind the scenes, and appearing as a changeling, depending upon the seat of the observer. Then things get even more complex due to the dynamic subjectiveness, and so the observers change their reports upon the pertinent context and new circumstances. Since any analysis of the current issues of European integration is impossible without an awareness of the historic consequences of milestones and critical events and at the same time in order to avoid a lengthy repetitiveness of well known data, it is instructive to shortly present some perspectives and opinions about the past six decades. Were really the first 50 years so beautiful, smooth and heavenly (1.) and then progressively, with the enlargement by the 10 Central and East European countries, the aborted Constitutional Treaty, and the Treaty of Lisbon, everything went down hill (2.)? What regime exactly does the Treaty of Lisbon set with respect to economic (3.) and monetary matters (4.)? Focussing on these matters, it is highly illustrative to select a few of the current events and situations and demonstrate on them how European integration, framework and regime address issues from economic and monetary domain, i.e. what are the contemporary economic and monetary symptoms and outcomes of EU integration? (5.)

1. From the Treaty of Paris to the Treaty of Nice - Five decades of integration glory?

The political and economic European integration was launched after the Schuman Declaration⁵ based on three treaties in fifties of the last century, namely by the Treaty of Paris establishing European Coal and Steel Community (ECSC)⁶ and by the Treaties of Rome establishing European Economic Community with a common market (EEC)⁷ and European Atomic Energy Community (Euratom).⁸ One of the institutions established and recognized by all of them for all three communities, the European Court of Justice (ECJ), managed to transform the Treaty of Rome establishing the EEC into a constitution and laying down the legal foundation for the European integration, especially in the economic

⁵ http://europa.eu/about-eu/basic-information/symbols/europe-day/schuman-declaration/index_en.htm - *The Schuman Declaration was presented by French foreign minister Robert Schuman on 9 May 1950. It proposed the creation of a European Coal and Steel Community, whose members would pool coal and steel production.*

⁶ http://europa.eu/legislation_summaries/institutional_affairs/treaties/treaties_ecsc_en.htm - *The ECSC Treaty was signed in Paris in 1951 and brought France, Germany, Italy and the Benelux countries together in a Community with the aim of organising free movement of coal and steel and free access to sources of production. In addition to this, a common High Authority supervised the market, respect for competition rules and price transparency. This treaty is the origin of the institutions as we know them today....*

⁷ http://europa.eu/legislation_summaries/institutional_affairs/treaties/treaties_eec_en.htm - *The EEC Treaty, signed in Rome in 1957, brings together France, Germany, Italy and the Benelux countries in a community whose aim is to achieve integration via trade with a view to economic expansion. After the Treaty of Maastricht the EEC became the European Community, reflecting the determination of the Member States to expand the Community's powers to non-economic domains.*

⁸ http://europa.eu/legislation_summaries/institutional_affairs/treaties/treaties_euratom_en.htm - *Initially created to coordinate the Member States' research programmes for the peaceful use of nuclear energy, the Euratom Treaty today helps to pool knowledge, infrastructure and funding of nuclear energy. It ensures the security of atomic energy supply within the framework of a centralised monitoring system.*

field.⁹ An important reason for European integration was the reinforcement of economic cooperation between Germany and France in order to avoid conflicts in Europe.

After a number of further treaties,¹⁰ including the Treaty of Maastricht establishing the EU with a single market or internal market (TEU)¹¹ and the expansion of the membership to 15, the status quo as well as prospects of the European integration looked promising. However, certain shadows were hanging over and for various reasons many inside as well as outside players decided to overlook them or at least truly minimize them. Therefore, instead of a critical and careful working on an ongoing legitimization of the supranational approach and on the diligent monitoring of the true willingness and preferences of Europeans, an overly positive picture was presented with a glorifying voice. The five decades of European integration were thus described as glorious and successful and the EU was praised as a significantly contributing to prosperity, democracy and security in Europe and its enlargement policy as wonderful and powerful instrument of foreign policy.¹² The inevitable conclusion was that such a terrific achievement should be presented in a solemn constitutional format, making it more clear, official, and illustrious and thus the preparation of the Constitutional Treaty enthusiastically started.

Nevertheless already back in the time of the alleged integration glory, a discussion, if not a dispute, has developed regarding the employment of the state-centred intergovernmentalism and supranationally-oriented neofunctionalist approaches.¹³ The omnipresent legitimacy and sovereignty issue can be boldly shown on the operation of the principles of supremacy and direct effect allowing since 1975 citizens to seek the invalidation of a national law provisions which are in conflict with self-executing provision of the EC secondary legislation, i.e. the norms passed by the Council beat norms passed by national

⁹ BURLEY, Anne-Marie, MATTLI, Walter (1993). Europe Before the Court: A Political Theory of Legal Integration. *International Organization*. Vol.47, Issue 01, p.41-76. ISSN 0020-8183.

¹⁰ 1965 Treaty of Brussels merging institutions of Communities; 1970 Treaty amending Certain Budgetary Provisions, which replaced the system whereby the Communities were funded by contributions from Member States with that of own resources and which put in place a single budget for the Communities; 1975 Treaty amending Certain Financial Provisions gave the European Parliament the right to reject the budget and to grant a discharge to the Commission for the implementation of the budget; 1986 Single European Act reforming Treaties by extending the qualified majority voting and by increasing the power of the European Parliament via cooperation procedure.

¹¹ http://europa.eu/legislation_summaries/institutional_affairs/treaties/treaties_maastricht_en.htm - *The Treaty on European Union (TEU) represents a new stage in European integration since it opens the way to political integration. It creates a European Union consisting of three pillars: the European Communities, Common Foreign and Security Policy (CFSP), and police and judicial cooperation in criminal matters (JHA). The Treaty introduces the concept of European citizenship, reinforces the powers of the European Parliament and launches economic and monetary union (EMU). Besides, the EEC becomes the European Community (EC). Later on, TEU was revised and updated by 1997/1999 Treaty of Amsterdam renumbering and consolidating Treaties and by 2001/2003 Treaty of Nice changing EU institutional structure to allow the accession of new members.*

¹² ATILGAN, Canan, KLEIN, Deborah. *EU Integration Models beyond Full Membership*. Berlin, Germany : Konrad-Adenauer-Stiftung e.V, 2006, p.2 ISBN 3-937731-89-X. Available on http://www.kas.de/wf/doc/kas_8414-544-2-30.pdf?061221153548 - *The European Union enjoys the glory of a 50 year-long success story. It has made significant contributions to prosperity, democracy and security in Europe. The EU's enlargement policy has been one of its most successful, serving as a powerful instrument of foreign policy contributing to the stabilization of political and economic development in the acceding countries. The far-reaching democratization processes in the new Central and Eastern European member states of the EU exemplify this. However, since the Southern and Eastern European enlargement of the EU in 2004, there has at least been talk of a political and institutional "overexpansion" of the EU, which will soon contain 27 member...*

¹³ FAVELL, Adrian, GEDDES, Andrew. *European Integration, Immigration and the Nation State: Institutionalising Transnational Political Action?* San Domenico, Italy : European University Institute – EUI Working Papers RSC No. 99/32, 1999, p.5. Available at http://www.eui.eu/RSCAS/WP-Texts/99_32.pdf

parliament.¹⁴ In addition, certain mistrust towards the intensification of integration can be detected in the Treaty of Maastricht which reflected a determination of the member states to limit the European integration pushed by the ECJ, i.e. to exclude the ECJ from two of the three pillars.¹⁵ Even then, it was generally accepted that in charge are both sometimes, i.e. European integration has been advanced at supranational level by the technocratic European Commission with a undeniable support by the ECJ while simultaneously member states had vigilantly control the use and delegation powers through the Council of ministers clearly overshadowing the Parliament.¹⁶ A strong intergovernmental counterbalance to supranationalism has thus always been at the core of the European integration and for each area and policy a compromise was to be found.¹⁷ Naturally these compromises were different and change over time.

Economic and monetary matters did not constitute an exception, i.e. sometimes more and sometimes less visible confrontation has occurred regarding the choice of the prevailing approach in their respect, i.e. the swing has always moved between the internal European institutions and the institutions borrowed or at least very close to member states. The creation of the Eurozone carried an inherent contradiction of a monetary but not fiscal union, leading to a common currency euro and central banks prevented to finance government deficits.¹⁸ Naturally, this blurred delimitation of approaches, concepts, institutions, powers and competencies has allowed the flexibility as well as has generated a large potential for discrepancies and tensions, which inevitable come to surface during challenging times such our current period. However, back in the pre-Maastricht and shortly after Maastricht times, the picture looked, or at least was presented, lighter colours and was described by rather optimistic tenor. Nevertheless, the storm was pending.

2. From the Constitutional Treaty and Treaty of Lisbon to now – a decade of integration misery?

The joyful preparation culminated on 29th October, 2004 with the signature of the Constitutional Treaty establishing a Constitution for Europe in Rome by the head of 25 EU member states (Constitutional Treaty).¹⁹ The institutional reforms initiated by the Treaty of Nice as well as many other integration steps and actions were projected and reflected by the wording of the unifying, reforming and even more integration Constitution for Europe. Namely, the founding principles of the EU, the institutional framework, the decision-making process and the EU policies belonged to the principal focus areas. For reasons of high

¹⁴ BURLEY, Anne-Marie, MATTLI, Walter (1993). Europe Before the Court: A Political Theory of Legal Integration. *International Organization*. Vol.47, Issue 01, p.41-76. ISSN 0020-8183.

¹⁵ BURLEY, Anne-Marie, MATTLI, Walter (1993). Europe Before the Court: A Political Theory of Legal Integration. *International Organization*. Vol.47, Issue 01, p.41-76. ISSN 0020-8183.

¹⁶ PUTMAN, Robert (1988). Diplomacy and domestic politics. *International Organization*. Vol.42, No.3, p.427-61. ISSN 0020-8183.

¹⁷ FAVELL, Adrian, GEDDES, Andrew. *European Integration, Immigration and the Nation State: Institutionalising Transnational Political Action?* San Domenico, Italy : European University Institute – EUI Working Papers RSC No. 99/32, 1999, p.6. Available at http://www.eui.eu/RSCAS/WP-Texts/99_32.pdf

¹⁸ ANAND, MR, GUPTA, Girdhari Lal, DASH, Ranja. *The euro zone crisis – Its dimensions and implications*. Feb. 2012, eSocialSciences – Working Paper id:4764 p.13. Available on <http://ideas.repec.org/p/ess/wpaper/id4764.html>

¹⁹ Treaty establishing a Constitution for Europe was signed in Rome on 29 October 2004, Published in OJ C 2004 310 and rejected in in French and Dutch referendums

importance and interest the Constitutional Treaty was not ratified due to rejection by citizens of very pro EU integration member states and thus has never entered into force. Due to the limited scope and indicated coverage of this article, neither analysis of the abortion of the Constitutional Treaty nor the aftermath reflection process will be here developed. Instead, the focus will be oriented on the very last Treaty and current situation shaped by it – the Treaty of Lisbon amending the TEU and the Treaty establishing the European Community (Treaty of Lisbon).

The Treaty of Lisbon²⁰ is presented as the outcome of the compromise reached by the European Council in 2007, i.e. it is a reform treaty designated to achieve what should have been accomplished by the Constitution for Europe. Therefore, it significantly updates the TEU and the Treaty establishing the European Community, renamed the Treaty on the Functioning of the EU (TFEU).²¹ The new EU obtained a legal personality and was provided with a legal framework and tools to satisfy four key objectives: a more democratic and transparent Europe (b), a more efficient Europe (a), a more human rights oriented Europe, i.e. thus ultimately including the Charter of fundamental Right into European primary law (c), and a more internationally active and recognized Europe (d). The most important outcome was the abolishment of the complex structure of the three pillars of the former EU and a consequent establishment of a single entity, the new EU, which replaced the European Community and the former EU.²² The new EU was entrusted with a larger scope of competencies to be managed and regulated based on a majority decision, although typically a qualified majority within the co-decision legislative format.

Since the Treaty of Lisbon is not a mere updating and renumbering document but a truly reforming agreement significantly modifying conceptual and institutional framework of the EU, it is necessary to bear in mind the the motor of institutionalization lies in processes of definition and redefinition of common interests. Typically, the process of their elaboration has been opened by the Commission clear reform treaty and has been strongly pushed further and applied by the ECJ, now Court of Justice of the EU. It is even suggested that the ECJ just in its pro-integration work just follows the lead of the Commission²³ and reasons rather based on the goals set by the preamble of the Treaty of Rome and Treaty of Maastricht than on provisions of EU primary or secondary legislation.²⁴ Thus rather supranational actors by low politics (such as legal rulings, jurisprudence, etc.) than intergovernmental actors by high politics (such as international treaties, parliamentary business) have pressured for changes and their institutionalization.²⁵ It is even suggested that the European integration has placed a premium on a specifically legal forms of politics, influenced by the technocratic corridors of power in Brussels, including lobbying, and the

²⁰ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community signed at Lisbon was signed in Lisbon on 13th December, 2007 and published in Official Journal C 306 of 17th December, 2007 (2007/C 306/01).

²¹ Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union - Official Journal C 83 of 30.3.2010 (2010/C 83/01).

²² PETRLÍK David (2012). The Court of Justice of the European Union in the Post-Lisbon Era. Impact of the Treaty of Lisbon on EU Judiciary since its entry into force. Vol.3, No.1, p.145-184. ISSN 0231-6625.

²³ STEIN, Eric (1981). Lawyers, Judges, and the Making of a Transnational Constitution. *75 American Journal of International Law*. Vol.75, p.1-27, ISSN .

²⁴ BURLEY, Anne-Marie, MATTLI, Walter (1993). Europe Before the Court: A Political Theory of Legal Integration. *International Organization*. Vol.47, Issue 01, p.41-76. ISSN 0020-8183.

²⁵ FAVELL, Adrian, GEDDES, Andrew. European Integration, Immigration and the Nation State: Institutionalising Transnational Political Action? San Domenico, Italy : European University Institute – EUI Working Papers RSC No. 99/32, 1999, p.7. Available at http://www.eui.eu/RSCAS/WP-Texts/99_32.pdf

ECJ became the most dynamic arm of supranational power.²⁶ Thus regardless if before or after the Treaty of Maastricht or the Treaty of Lisbon, the European institutions had, have and will have a technocratic and hybrid nature. Thus European integration might and still needs a new vocabulary of political analysis that is not exclusively based on the stable reference to the nation state.²⁷

In addition, law functions as a mask for politics and uses technical language, EU politicians gave historically a more or less free hand to lawyers to speak for the Commission and the Council, and even for the national government the EC and the judges from the ECJ decided to consistently practice rather the law than politics.²⁸

3. Current framework and regime for EU economic matters – (il)legitimately (in)correct?

According to the Treaty of Lisbon, the EU establishes an internal market and promotes economic cohesion and solidarity among its member states²⁹ as well as an economic and monetary union.³⁰ Since the Treaty of Lisbon substituted the famous antic template model that had three pillars with a new model consisting of three sets of competencies – the exclusive competence, the shared competence, and the supporting competence, it is critical to understand their scope. This is not a simple task, since as some authors correctly observe, TEU and TFEU are far from being the proclaimed clear constitutional documents close to the hearts of EU citizens and enjoying a solid and clear understanding and interpretation and this concerns even the actually rather obscure distribution of powers, competencies and authorities to act in the name, for and on the behalf of the EU.³¹ Nevertheless, it is clear that the monetary policy of the Eurozone member states is covered by the exclusive competence of the EU.³² The internal market and economic cohesion are within only the shared competence between EU and EU member states.³³ A split regime is set for the coordination of economic

²⁶ FAVELL, Adrian, GEDDES, Andrew. *European Integration, Immigration and the Nation State: Institutionalising Transnational Political Action?* San Domenico, Italy : European University Institute – EUI Working Papers RSC No. 99/32, 1999, p.8. Available at http://www.eui.eu/RSCAS/WP-Texts/99_32.pdf

²⁷ FAVELL, Adrian, GEDDES, Andrew. *European Integration, Immigration and the Nation State: Institutionalising Transnational Political Action?* San Domenico, Italy : European University Institute – EUI Working Papers RSC No. 99/32, 1999, p.9. Available at http://www.eui.eu/RSCAS/WP-Texts/99_32.pdf

²⁸ BURLEY, Anne-Marie, MATTLI, Walter (1993). *Europe Before the Court: A Political Theory of Legal Integration. International Organization*. Vol.47, Issue 01, p.41-76. ISSN 0020-8183.

²⁹ Art.3.3 TEU - *The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance. ...It shall promote economic, social and territorial cohesion, and solidarity among Member States.*

³⁰ Art.3.4 TEU - *The Union shall establish an economic and monetary union whose currency is the euro.*

³¹ SVOBODA, Pavel (2011) *The Lisbon Treaty – From a Legal and Therefore Politically Incorrect Perspective. The Lawyer Quarterly*. Vol.1, No.2, p.138-141. ISSN 0231-6625.

³² Art. 3.1 TFEU - *1. The Union shall have exclusive competence in the following areas: (a) customs union; (b) the establishing of the competition rules necessary for the functioning of the internal market;(c) monetary policy for the Member States whose currency is the euro; (d) the conservation of marine biological resources under the common fisheries policy;(e) common commercial policy....*

³³ Art.4.2 TFEU - *Shared competence between the Union and the Member States applies in the following principal areas: (a) internal market; (b) social policy, for the aspects defined in this Treaty; (c) economic, social and territorial cohesion; ...*

policies, i.e. broad guidelines go to no Eurozone member states and specific regulation applies to Eurozone member states.³⁴

The broad guidelines of the economic policies are adopted by the Council cooperating with the Commission and European Council.³⁵ The monitoring of the coordination of economic policies, performances and compliance with guidelines is conducted by the Council based on reports prepared by the Commission³⁶ and recommendations for member states for the proper functioning of economic and monetary union can be made by the Commission and the Council.³⁷ The Parliament is not actively involved in this process and is merely informed about the results of the surveillance.³⁸ Similarly, in case of natural disasters or exceptional events out of control, the Commission may propose to the Council to grant a conditional financial assistance to the member state and the Parliament is just informed about it.³⁹

This provision is a basis for the European Financial Stabilization Mechanism (EFSM), an emergency funding program reliant upon funds raised on the financial markets and guaranteed by the Commission while using the budget of the EU as collateral and allowing to raise up to EUR 60 billion.⁴⁰ The European Financial Stability Facility (EFSF) pursues similar goals, provides financial assistance in order to maintain financial stability and is authorized to borrow up to EUR 440 billion. Unlike the EFSM, the EFSF is financed by the member states of Eurozone. The agenda of EFSM and the EFSF is taken over by the European stability mechanism (ESM) which should provide financial assistance to the member states of Eurozone in financial difficulties and function as a permanent financial firewall of the

³⁴ Art.5.1 TFEU - *The Member States shall coordinate their economic policies within the Union. To this end, the Council shall adopt measures, in particular broad guidelines for these policies. Specific provisions shall apply to those Member States whose currency is the euro.*

³⁵ Art.121.2 TFEU - *The Council shall, on a recommendation from the Commission, formulate a draft for the broad guidelines of the economic policies of the Member States and of the Union, and shall report its findings to the European Council. The European Council shall, acting on the basis of the report from the Council, discuss a conclusion on the broad guidelines of the economic policies of the Member States and of the Union. On the basis of this conclusion, the Council shall adopt a recommendation setting out these broad guidelines. The Council shall inform the European Parliament of its recommendation.*

³⁶ Art.121.3 TFEU - *In order to ensure closer coordination of economic policies and sustained convergence of the economic performances of the Member States, the Council shall, on the basis of reports submitted by the Commission, monitor economic developments in each of the Member States and in the Union as well as the consistency of economic policies with the broad guidelines referred to in paragraph 2, and regularly carry out an overall assessment. For the purpose of this multilateral surveillance, Member States shall forward information to the Commission about important measures taken by them in the field of their economic policy and such other information as they deem necessary.*

³⁷ Art.121.4 TFEU - *Where it is established, under the procedure referred to in paragraph 3, that the economic policies of a member State are not consistent with the broad guidelines referred to in paragraph 2 or that they risk jeopardising the proper functioning of economic and monetary union, the Commission may address a warning to the Member State concerned. The Council, on a recommendation from the Commission, may address the necessary recommendations to the Member State concerned. The Council may, on a proposal from the Commission, decide to make its recommendations public. Within the scope of this paragraph, the Council shall act without taking into account the vote of the member of the Council representing the Member State concerned. A qualified majority of the other members of the Council shall be defined in accordance with Article 238(3)(a).*

³⁸ Art.121.5 TFEU - *The President of the Council and the Commission shall report to the European Parliament on the results of multilateral surveillance. The President of the Council may be invited to appear before the competent committee of the European Parliament if the Council has made its recommendations public.*

³⁹ Art.122.2 TFEU - *Where a Member State is in difficulties or is seriously threatened with severe difficulties caused by natural disasters or exceptional occurrences beyond its control, the Council, on a proposal from the Commission, may grant, under certain conditions, Union financial assistance to the Member State concerned. The President of the Council shall inform the European Parliament of the decision taken.*

⁴⁰ From the Board (2012). *Eurocrisis: Fix It As You Fall. Legal Issues of Economic Integration*. Vol.39, No.3, p.297-300. ISSN 1566-6573.

Eurozone with a lending capacity of EUR 500 billion. Since the ESM is linked to the Eurozone, the legal framework for it does not result out of the general economic policy provisions of the TFEU, such as Art.122 TFEU, but out of special Treaty and amendment of provisions dealing specifically with Eurozone, i.e. the new Art.136 TFEU.⁴¹

Since the member states should not have any excessive government deficits, the Commission is entrusted with monitoring of their budgetary situation and of government debts, preparing reports about it and inform accordingly the Council.⁴² If recommendations of Council are not observed by the member state, than the Council make them public.⁴³ If the member state fails to comply, the deficit is not reduced, etc., then the measures escalates and can culminate with very strong measures to be taken by the Council, such as inviting the European Investment Bank to reconsider its lending policy towards the defiant member state or requiring the defiant member state to make a non-interest-bearing deposit.⁴⁴ Again, the European Parliament is merely informed about such a critical decision.

4. Current framework and regime for EU monetary matters – (il)legimitely (in)correct?

⁴¹ The ESM is a permanent international financial institution that assists in preserving the financial stability of the European Union monetary union by providing temporary stability support to euro area Member States. The Treaty Establishing the European Stability Mechanism, signed on 2nd February 2012 and inaugurated on 8th october, 2012, established the ESM as an intergovernmental organisation under public international law supporting the Eurozone – more information available on http://ec.europa.eu/economy_finance/european_stabilisation_actions/esm/index_en.htm

⁴² Art.126 TFEU - 1. Member States shall avoid excessive government deficits. 2. The Commission shall monitor the development of the budgetary situation and of the stock of government debt in the Member States with a view to identifying gross errors. In particular it shall examine compliance with budgetary discipline on the basis of the following two criteria: (a) whether the ratio of the planned or actual government deficit to gross domestic product exceeds a reference value, unless:— either the ratio has declined substantially and continuously and reached a level that comes close to the reference value,— or, alternatively, the excess over the reference value is only exceptional and temporary and the ratio remains close to the reference value; (b) whether the ratio of government debt to gross domestic product exceeds a reference value, unless the ratio is sufficiently diminishing and approaching the reference value at a satisfactory pace. The reference values are specified in the Protocol on the excessive deficit procedure annexed to the Treaties ...5. If the Commission considers that an excessive deficit in a Member State exists or may occur, it shall address an opinion to the Member State concerned and shall inform the Council accordingly. 6. The Council shall, on a proposal from the Commission, and having considered any observations which the Member State concerned may wish to make, decide after an overall assessment whether an excessive deficit exists.

⁴³ Art.126 TFEU - 7. Where the Council decides, in accordance with paragraph 6, that an excessive deficit exists, it shall adopt, without undue delay, on a recommendation from the Commission, recommendations addressed to the Member State concerned with a view to bringing that situation to an end within a given period. Subject to the provisions of paragraph 8, these recommendations shall not be made public. 8. Where it establishes that there has been no effective action in response to its recommendations within the period laid down, the Council may make its recommendations public.

⁴⁴ Art.126.11 TFEU - 11. As long as a Member State fails to comply with a decision taken in accordance with paragraph 9, the Council may decide to apply or, as the case may be, intensify one or more of the following measures: — to require the Member State concerned to publish additional information, to be specified by the Council, before issuing bonds and securities,— to invite the European Investment Bank to reconsider its lending policy towards the Member State concerned, — to require the Member State concerned to make a non-interest-bearing deposit of an appropriate size with the Union until the excessive deficit has, in the view of the Council, been corrected,— to impose fines of an appropriate size. The President of the Council shall inform the European Parliament of the decisions taken.

Pursuant to the Treaty of Lisbon and Protocol (No 4),⁴⁵ one of the seven key institutions of the EU, the European Central Bank (ECB) has the exclusive right to authorize the issuance of euro banknotes, i.e. the euros are printed either by the ECB or by national central banks.⁴⁶ The price stability and the economic policies are supported by the European System of Central Banks (ESCB).⁴⁷ Therefore, the ESCB define and implement the monetary policy of the EU.⁴⁸ The ECB controls to some extent the ESCB because the ESCB is governed by the Governing Council and the Executive Board of the ECB.⁴⁹ In the performance of their duties, both the ECB and ESCB are independent from other EU or national institutions.⁵⁰ Nevertheless, the ECB can impose fines or penalties for failure to comply only within the limits and under conditions adopted by the Council⁵¹ and just gives advice to Council and Parliament when they set measures for the use of the euro.⁵²

Additional special regulations apply to Eurozone member states, i.e. the Council has additional competencies with respect to the EU member states using the euro currency to support the proper functioning of the Economic and Monetary Union (EMU).⁵³ Therefore, the qualified

⁴⁵ Protocol (No 4) on the statute of the European System of Central Banks and of the European Central Bank to the Treaty of Lisbon, resp. to the TEU and the TFEU.

⁴⁶ Art.128.1 TFEU - 1. *The European Central Bank shall have the exclusive right to authorise the issue of euro banknotes within the Union. The European Central Bank and the national central banks may issue such notes. The banknotes issued by the European Central Bank and the national central banks shall be the only such notes to have the status of legal tender within the Union.*

⁴⁷ Art.127.1 TFEU - 1. *The primary objective of the European System of Central Banks (hereinafter referred to as 'the ESCB') shall be to maintain price stability. Without prejudice to the objective of price stability, the ESCB shall support the general economic policies in the Union with a view to contributing to the achievement of the objectives of the Union as laid down in Article 3 of the Treaty on European Union. The ESCB shall act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the principles set out in Article 119.*

⁴⁸ Art.127.2 TFEU - *The basic tasks to be carried out through the ESCB shall be: — to define and implement the monetary policy of the Union, — to conduct foreign-exchange operations consistent with the provisions of Article 219, — to hold and manage the official foreign reserves of the Member States, — to promote the smooth operation of payment systems.*

⁴⁹ Art.129 TFEU - 1. *The ESCB shall be governed by the decision-making bodies of the European Central Bank which shall be the Governing Council and the Executive Board.*

⁵⁰ Art.130 TFEU *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 Union institutions, bodies, offices or agencies and the governments of the Member States undertake to respect this principle and not to seek to influence the members of the decision-making bodies of the European Central Bank or of the national central banks in the performance of their tasks.*

⁵¹ Art.132.3 - *Within the limits and under the conditions adopted by the Council under the procedure laid down in Article 129(4), the European Central Bank shall be entitled to impose fines or periodic penalty payments on undertakings for failure to comply with obligations under its regulations and decisions.*

⁵² Art.133 TFEU - *Without prejudice to the powers of the European Central Bank, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall lay down the measures necessary for the use of the euro as the single currency. Such measures shall be adopted after consultation of the European Central Bank.*

⁵³ Art.136 TFEU - 1. *In order to ensure the proper functioning of economic and monetary union, and in accordance with the relevant provisions of the Treaties, the Council shall, in accordance with the relevant procedure from among those referred to in Articles 121 and 126, with the exception of the procedure set out in Article 126(14), adopt measures specific to those Member States whose currency is the euro: (a) to strengthen the coordination and surveillance of their budgetary discipline; (b) to set out economic policy guidelines for them, while ensuring that they are compatible with those adopted for the whole of the Union and are kept under surveillance. 2. For those measures set out in paragraph 1, only members of the Council representing Member States whose currency is the euro shall take part in the vote. A qualified majority of the said members shall be defined in accordance with Article 238(3)(a).*

majority of ministers of the Eurozone member states can adopt various measures regarding budgetary disciplines and set economic policy guidelines. It is again the qualified majority of the Council who, based upon proposals from the Commission and advice from the ECB, take positions for the EMU with respect to international financial institutions.⁵⁴

The ongoing Eurocrisis has led to the institutionalization of the ESM for the Eurozone and to the amendment of the above mentioned Art.136 TFEU which covers the role of the Council to ensure the proper functioning of the economic and monetary union and its power to adopt, by the qualified majority, measures with respect to the “bad” member states of the Eurozone.⁵⁵ Technically, there are two legal fundaments for the ESM, which replace as a permanent instrument previous temporary instruments - EFSM and EFSF. The amendment of Art.136 TFEU requiring approval by all EU member states, i.e. 27, and the intergovernmental treaty establishing ESM requiring approval and ratification by member states of Eurozone.

5. Current EU economic and monetary issues

Almost simultaneously with the reformation of the EU institutional framework and the introduction of the above described current economic and monetary regulation, there emerged in the US the crisis which quickly came and reached the EU. Leaders and officials in the US took a different approach, and focused on different areas, and in a much more timely fashion, than their counterparts in the EU.⁵⁶ The European crisis is not merely related to sovereign debt and bank financials but is rooted in the economic, structural, and conceptual setting.⁵⁷ Nevertheless, the EU political actors confronted with such large and often unexpected problems often are unable or unwilling to adhere to their obligations, including obligations resulting from the EU primary law, i.e. from treaties.⁵⁸ And seemingly numerous employees of all ranks of the EU seem to have rather their own personal priorities

Considering the EU concept, fundaments and most urgent issues, this is logical. Therefore, it is highly illustrative to shortly analyze a few of the current EU economic and monetary issues in the background of the already three years lasting European debt crisis, of which the Eurocrisis is a major component,⁵⁹ and it would be remiss to not include in between them the chronic Eurozone problems and tensions between “good” members themselves (Germany v. France v. UK) as well as tensions

⁵⁴ Art.138 TFEU - 1. *In order to secure the euro's place in the international monetary system, the Council, on a proposal from the Commission, shall adopt a decision establishing common positions on matters of particular interest for economic and monetary union within the competent international financial institutions and conferences. The Council shall act after consulting the European Central Bank. 2. The Council, on a proposal from the Commission, may adopt appropriate measures to ensure unified representation within the international financial institutions and conferences. The Council shall act after consulting the European Central Bank. 3. For the measures referred to in paragraphs 1 and 2, only members of the Council representing Member States whose currency is the euro shall take part in the vote. A qualified majority of the said members shall be defined in accordance with Article 238(3)(a).*

⁵⁵ From the Board (2012). *Eurocrisis: Fix It As You Fall. Legal Issues of Economic Integration*. Vol.39, No.3, p.297-300. ISSN 1566-6573.

⁵⁶ PACLÍK, Miroslav, MacGREGOR, Robert, MacGREGOR PELIKÁNOVÁ, Radka (2012). Eurocrisis. *AAU Law Forum*. No.4, p. ... ISSN 1804-1094 (in press)

⁵⁷ ANAND, MR, GUPTA, Girdhari Lal, DASH, Ranja. *The euro zone crisis – Its dimensions and implications*. Feb. 2012, eSocialSciences – Working Paper id:4764 p.4. Available on <http://ideas.repec.org/p/ess/wpaper/id4764.html>

⁵⁸ BURLEY, Anne-Marie, MATTLI, Walter (1993). Europe Before the Court: A Political Theory of Legal Integration. *International Organization*. Vol.47, Issue 01, p.41-76. ISSN 0020-8183.

⁵⁹ From the Board (2012). *Eurocrisis: Fix It As You Fall. Legal Issues of Economic Integration*. Vol.39, No.3, p.297-300. ISSN 1566-6573.

between “good” members and “bad” members, pejoratively called “PIGS” countries (Portugal, Italy, Greece, Spain).

When France was being led by Nicolas Sarkozy, cooperation and shared vision with Germany’s Angela Merkel was probably as unified as could be hoped for. But when Sarkozy was defeated by Francois Hollande, things took a decided turn for the worse. Hollande wished to populistically return to higher taxes on businesses (particularly increasing the top rate of capital gains tax from 34 percent to 62 percent) and exorbitant taxes on the rich, serving only to chase much wealth out of the country, with a large potential for loss of jobs. As well, Hollande was against any labor market reforms, and was all for increasing the number of public sector jobs, all moves calculated to increase the government debt, and hardly likely to change the pattern of 30 years of France’s slow national decline. Over the last ten years, France’s share of Eurozone exports has fallen from 17pc to 13pc, unemployment is at a 13-year high, and France has been stripped of its coveted AAA ratings status. As well, France’s state budget is an astronomical 55 percent of their GDP, hardly qualifying it to instruct any other nation on the correct approach to belt-tightening and fiscal responsibility.

In order to meet EU deficit targets, Hollande is tightening fiscal policy by 2 pc of GDP next year, two-thirds of that coming as a result of higher taxes.⁶⁰ Former US Treasury Secretary Lawrence Summers, the ‘mastermind’ of President Obama’s stimulus program publicly stated that “*Europe faces ossification and structural reform issues*”.⁶¹ One can speculate that the best example would be France. Besides clinging to a 35 –hour work week and retirement at 60, in this day and internet age it appears like some time-warp Star-Trek episode to see how much of the EU budget is spent on farm subsidies, particularly to France, as if they were stuck in the 1920’s. In November, France’s intransigence on keeping their same level of agricultural subsidies helped lead to the EU’s failure to reach and accord on EU spending for 2014-2020.⁶² France’s troubles have reached a point where the German Finance minister, Wolfgang Schaeuble, has formed a committee of German experts to determine potential reform proposals for the French government to use, won’t France be happy to be getting such an expert advice?⁶³

In Great Britain, there is a growing impatience with the euro project and the incompetence and dithering of the officials in Brussels. Since 1998, when the Eurozone started, the member’s average GDP growth rate has been lower than America’s or Great Britain’s. Henry James famously described Anthony Trollope’s novels as “*Loose, baggy monsters*” an apt phrase for the EU. Europe’s difficulties come from the mixture of economics and politics, from self-destructive indulgence based on previous economic prosperity.⁶⁴ When Herman Von Rompuy was asking for an increase in spending by

⁶⁰ EVANS-PRITCHARD, Ambrose (2012). French business erupts in fury against „disastrous“ Francois Hollande. *The Telegraph*, 15th October, 2012. ISSN 0307-1235. Available on <http://www.telegraph.co.uk/finance/financialcrisis/9610717/French-business-erupts-in-fury-against-disastrous-Francois-Hollande.html>

⁶¹ USA & European Union Days October 8-9, 2012 Prague, palace Zofin available on http://www.czechteleaxis.cz/en_index.php

⁶² HARRIET, Alexander (2012). Why even Hollande’s backyard says France isn’t working. *The Telegraph*, 24th November, 2012. ISSN 0307-1235. Available on <http://www.telegraph.co.uk/news/worldnews/francois-hollande/9700805/Why-even-Hollandes-backyard-says-France-isnt-working.html>

⁶³ Telegraph staff and agencies (2012). German risks rift with France over economic healthcheck demands. *The Telegraph*, 9th November, 2012. ISSN 0307-1235. Available on <http://www.telegraph.co.uk/finance/financialcrisis/9667687/German-risks-rift-with-France-over-economic-healthcheck-demands.html>

⁶⁴ BOOTLE, Roger (2012). Europe has reached a watershead moment and leaders need to refocus. *The Telegraph*, 7th May, 2012. ISSN 0307-1235. Available on <http://www.telegraph.co.uk/finance/comment/rogerbootle/9249466/Europe-has-reached-a-watershed-moment->

Brussels of 5 to 6.8 pc, while many individual EU governments were having to slash budgets, Prime Minister David Cameron threatened to veto the budget unless new spending in Brussels was cut and the issue of EU government waste was finally addressed,⁶⁵ with the caveat that no budget agreement was reached. Unfortunately, his common-sense stance was not supported by Germany, which apparently feels that a bigger EU budget ensures tighter integration, no matter the amount of waste.⁶⁶

Germany, meanwhile, is coming under increasing heat for its apparent duplicity. A block of four AAA countries, led by Germany, promised in a June, 2012, summit meeting to support direct ESM recapitalisation of Spanish banks. But then in October, Germany, Holland, Finland and Austria turned their collective backs on the deal when they felt they did not have enough support in their own parliaments for the plan, serving only to prolong Spain's agony and recession. It is suggested that the AAA volte-face is a big shocking chicanery, deception, and cowardice. and that the EU has broken its word to the markets.⁶⁷ Many feel that Germany is actually enjoying (!) the crisis.⁶⁸ As well, it has become increasingly apparent to all German taxpayers that they will have to write off billions of euros in aid hands, it has become a 'given'. Yet Angela Merkel refuses to forgive Greek debt yet, not until after German parliamentary elections in September, 2013, thus prolonging Greece's slide, and the EU crisis. There is an elephant in the living room, but Merkel refuses to do anything about it.⁶⁹

Conclusion

The current EU can be perceived as a sui generis post-modern state with strong decentralization, deregulation, and liberalization features.⁷⁰ It is an entity attempting, more or less successfully, to reconcile opposite but complimentary inviolable nation interests and sovereignty on the one hand, and

[and-leaders-need-to-refocus.html](#) - *Economic prosperity has allowed indulgence in self-destructive habits: degenerate politics have perpetuated the sources of decline, as politicians have dished out various opiates to the people....tolerating for too long the arrogance, incompetence and corruption that wals out of Brussels*

⁶⁵ MASON, Rowena, WATERFIELD, Bruno (2012). David Cameron threatens to veto EU budget unless Brussels sacks staff. *The Telegraph*, 19th October, 2012. ISSN 0307-1235. Available on <http://www.telegraph.co.uk/finance/financialcrisis/9620666/David-Cameron-threatens-to-veto-EU-budget-unless-Brussels-sacks-staff.html> - *Mr Cameron said his "favourite" fact about Brussels over-spending is that 16 per cent of administrative staff at the European Commission earn more than €100,000 or more than £80,000 a year.*

⁶⁶ BOOTLE, Roger (2012). David Cameron to Angela Merkel: I'll stick to my guns on EU budget. *The Telegraph*, 22nd October, 2012. ISSN 0307-1235. Available on <http://www.telegraph.co.uk/finance/financialcrisis/9626049/David-Cameron-to-Angela-Merkel-Ill-stick-to-my-guns-on-EU-budget.html>

⁶⁷ EVANS-PRITCHARD, Ambrose (2012). Spain keelhailed by Germany and AAA chicanery. *The Telegraph*, 11th October, 2012. ISSN 0307-1235. Available on <http://blogs.telegraph.co.uk/finance/ambroseevans-pritchard/100020688/spain-keelhailed-by-germany-and-aaa-chicanery/>

⁶⁸ WARNER, Jeremy (2012). The euro has become Germany's new Deutschmark. *The Telegraph*, 17th November, 2012. ISSN 0307-1235. Available on <http://www.telegraph.co.uk/finance/comment/jeremy-warner/9684528/The-euro-has-become-Germans-new-Deutschmark.html> - *For many in Germany's political class, the crisis is the mechanism that allows the euro finally to fulfil its destiny as a dynamo of European reform and integration.*

⁶⁹ Spiegel Staff (2012). Denying Reality Germany's Ongoing Refusal to Forgive Greek Debt. *Der Spiegel*, 26th November, 2012. ISSN 0038-7452. Available on <http://www.spiegel.de/international/europe/germany-remains-adamant-in-refusal-to-forgive-greek-debt-a-869300.html>

⁷⁰ FAVELL, Adrian, GEDDES, Andrew. European Integration, Immigration and the Nation State: Institutionalising Transnational Political Action? San Domenico, Italy : European University Institute – EUI Working Papers RSC No. 99/32, 1999, p.9. Available at http://www.eui.eu/RSCAS/WP-Texts/99_32.pdf

a transnational, multicultural Euro-idealism, on the other.⁷¹ The financial crisis in the Eurozone has become the most widely discussed economic and legal topic in Europe for many decades, but this discussion does not seem to be leading to a clear conclusion. The insider experts, such as Jacques Delors, the former chairman of the European Commission and co-creator of the Euro, as well as external experts have been demonstrating a great deal of lack of certainty and consistency.⁷² Is the European integration ill conceived and/or abused? Does it have an appropriate legitimacy and are the current decision-makers the right people to do so? Further down, do we have lazy Greeks taking advantage of the EU and ultimately exploring other European citizens, namely hardworking Germans, or aggressive Germans taking advantage of the EU to ultimately abuse Greeks and conquer economically the Europe? What is the standpoint to it of the overly for-EU socialist France with Francois Holland or much less for EU excited conservative UK with David Cameron?

It would be inherently wrong to give up on trying to understand the current EU and its issues and just let the politicians and journalist to monopolize the discussion, or rather dispute. As usual, the situation is not black and white. The European integration project is not bad per se, sixty years ago it was a great war prevention instrument along with strong agricultural objectives.⁷³ However, such a project should critically and on ongoing basis have reviewed the current mandates and needs and should address new challenges. More technical than political approach and stronger pragmatism should deserve more consideration. Naturally, this should be allowed and facilitated by an appropriate framework.

Further, if the EU and its representatives, along with internal institutions, want to truly serve the EU and EU citizens, then they need to undergo a serious self-reflection and make all efforts to apply a lean and less redistributing model and to make sure that this information goes across.⁷⁴ In addition, it needs to be clearly stated and obtained general approval who and why has what competencies. Council can have important tasks and exercise matching powers, but the ultimate receivers and destinataires of the European integration, the European citizens, should OK it. It is highly misleading to pompously proclaimed the the Treaty of Lisbon has created a EU even closer to citizens when economic and monetary matters are decided not by the direct representatives of European citizens and taxpayers. Certainly, the Parliament with over seven hundred deputies is not the exclusive right forum to decide and manage everyday economic and monetary issues. At the same time, for an effective and efficient action, the EU does not desperately need to have one leader sitting on or controlling the European Council, the Council, the Commission, and the Parliament and exceed the position of Jean-Claude Juncker in 2005 who was Luxembourg Prime Minister, served as the President of the European Council and presided the Euro Group. It should be heard in mind that the process of legal integration did not come about through the power of law, but rather

⁷¹ FAVELL, Adrian, GEDDES, Andrew. *European Integration, Immigration and the Nation State: Institutionalising Transnational Political Action?* San Domenico, Italy : European University Institute – EUI Working Papers RSC No. 99/32, 1999, p.24. Available at http://www.eui.eu/RSCAS/WP-Texts/99_32.pdf

⁷² PACLÍK, Miroslav, MacGREGOR, Robert, MacGREGOR PELIKÁNOVÁ, Radka (2012). Eurocrisis. *AAU Law Forum*. No.4, p. ... ISSN 1804-1094 (in press).

⁷³ PACLÍK, Miroslav, MacGREGOR, Robert, MacGREGOR PELIKÁNOVÁ, Radka (2012). Eurocrisis. *AAU Law Forum*. No.4, p. ... ISSN 1804-1094 (in press).

⁷⁴ PACLÍK, Miroslav, MacGREGOR, Robert, MacGREGOR PELIKÁNOVÁ, Radka (2012). Eurocrisis. *AAU Law Forum*. No.4, p. ... ISSN 1804-1094 (in press).

the individual actors such as politicians, judges and lawyers were involved with specific motives and objectives.⁷⁵

It seems that the current European integration concepts and fundamentals along with the EU framework are operational provided the indulgent self-illusion is abandoned and a serious and openly discussed and approved revision is performed. Even more challenging might be to obtain a true cooperation from key players. It is suggested that the power flows from a network of strong individuals acting above and below the state.⁷⁶ European politicians as well as EU bureaucrats do not demonstrate any serious willingness to behave in a responsible and educated manner and communicate with the public in a way belonging to the post-modern information society. Although there are many issues, challenges, and questions, there is, as well, a healthy potential for (at least some) positive answers.⁷⁷ Since integration is most likely to successfully occur within a domain shielded from direct political interests,⁷⁸ the question is whether the leaders and actors, often politicians and very well paid bureaucrats, care for it and how much they can be pushed to care and in a pro-EU and non-political way, regardless whether this push comes from the EU institutions, such as CJEU, or directly Europeans. *Arator nisi incurvus praeverticatur.*⁷⁹

⁷⁵ BURLEY, Anne-Marie, MATTLI, Walter (1993). Europe Before the Court: A Political Theory of Legal Integration. *International Organization*. Vol.47, Issue 01, p.41-76. ISSN 0020-8183.

⁷⁶ BURLEY, Anne-Marie, MATTLI, Walter (1993). Europe Before the Court: A Political Theory of Legal Integration. *International Organization*. Vol.47, Issue 01, p.41-76. ISSN 0020-8183.

⁷⁷ MacGREGOR PELIKÁNOVÁ, Radka. (2012). The best TLD for European Enterprises is ... *International and Comparative Law Review*. Vol.12, Issue 2, p. 41-58. ISSN 1213-8770.

⁷⁸ BURLEY, Anne-Marie, MATTLI, Walter (1993). Europe Before the Court: A Political Theory of Legal Integration. *International Organization*. Vol.47, Issue 01, p.41-76. ISSN 0020-8183.

⁷⁹ PLINIUS Older. *Naturalis Historia* – Only the bending plowman plows a straight furrow.