PROJECT
"NEW DECISION-MAKERS, NEW CHALLENGES"

NOTRE EUROPE
JACQUES DELORS INSTITUTE

REFORMING EUROPE'S GOVERNANCE

FOR A MORE LEGITIMATE AND EFFECTIVE FEDERATION OF NATION STATES

by Yves Bertoncini
and António Vitorino
Foreword by Philippe de Schoutheete

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Addressing the Bundestag in December last year, Chancellor Merkel said that in a constantly changing world no one could possibly expect the European treaties never to be altered after the Treaty of Lisbon had been signed. It simply would not work: "*Das wird nicht funktioneren*", she said.

The logic behind her thinking is unimpeachable in the longer term. There is no reason to suppose that the European entity that we have built, at quite some effort, through a succession of treaties over the decades, has found in the Treaty of Lisbon such a perfect level of completion that it will never require modifying again. That would be absurd.

But we also need to accept the fact that, in the short term, negotiating any substantial changes to the European treaties would plunge us headlong into a chancy and dangerous process. The political debate today is focusing on the economic crisis, on jobs, on the uncertain future and on people's lack of confidence in their leadership class. The rise of euroscepticism is the worrying factor. In this light, proposing a new treaty on the institutions would probably be interpreted by many European citizens as a provocation. With the climate reigning today, who can seriously believe that a crucial new text would ever be unanimously ratified? And how can we negotiate with one major member country, namely the United Kingdom, deliberately allowing an existential question mark to dangle over its ongoing participation in the common enterprise? Setting negotiations of that kind in motion would be just as absurd, in the present circumstances, as ruling them out forever.

This Study conducted by António Vitorino, the president of the Notre Europe – Jacques Delors Institute, and by Yves Bertoncini, the Institute's director, attempts to come up with a reply to this apparent contradiction. The anthology contains a collection of essays published by the Jacques Delors Institute over

the past few months, taking their cue from the consideration that the issues raised by the institutions' functioning, by European governance, by the division of areas of authority and by decision-making democracy can find political answers which do not require a modification of the treaties.

The authors make a highly instructive effort to clarify the confusion reigning at the grass-roots level over concepts, names and figures. Their work is particularly useful when it addresses the governance of the Economic and Monetary Union. The measures adopted, often piecemeal, under the urgency and the pressure of events, need to be put into proper perspective. That perspective is achieved here, in particular, by drawing a parallel with the practices adopted by other institutions such as the IMF, the OECD, the United Nations or the World Bank. The difference between a country's having to achieve results by specific means and simply having to achieve results without the means being specified becomes clearer. The relationship between solvency and sovereignty also becomes clearer. We all know that the crisis has led to the transfer of areas of competences at the European level, but it is a beneficial exercise to gauge that transfer's exact scope, which varies in each case.

Other considerations address what we might call the institutions' own internal discipline. Would it not be beneficial for the Commission to reflect, further down the road, on subsidiarity and on the *de minimis* principle? Had it done so, it might have been possible to avoid ruling on the curve of the cucumber. And would it not be beneficial for the European Parliament to focus on legislating? For it to avoid voting on issues which, however important they may be, in actual fact lie well outside the Union's brief? We might have been better off without resolutions on same-sex marriage or abortion, for instance. And would it not be beneficial also for the Council to impart greater transparency to its decision-making process? Or for it maybe to ponder the question of whether a rotating duty presidency really is the best solution in the light of its now considerable number of members?

Ever since the Cecchini Report in 1988 we have known that "non-Europe" has an economic cost, and that we can even quantify that cost. The authors of this Study, whose pro-European convictions are common knowledge, now tell us that "too much Europe" can have a political cost, fuelling incomprehension and rejection. That is a useful addition to our debate.

Clarification of the real situation and of the issues at stake, a reflection on the spirit which needs to underpin the institutions' functioning, and a consistent use (particularly for the EMU) of the flexibility and differentiation clauses which already exist in the treaty would all allow us to move much further ahead. It will probably be beneficial to make a few changes to the treaty at some point in the future. But in the meantime, we need to explain things better and to operate better. That is the only way to win back people's dropping confidence, and maybe even to rediscover the dream to which Jean-Claude Juncker alluded when he addressed the European Parliament in July, a dream which is part and parcel of our inheritance.

Philippe de Schoutheete
member of the Board of directors of Notre Europe – Jacques Delors Institute
and of the Académie royale de Belgique

EXECUTIVE SUMMARY

The positions adopted in relation to the governance of the EU and the EMU, whether adopted before or after the European elections in May 2014, prompt further debate on the legitimacy and the effectiveness of the "European federation of nation states" evoked by Jacques Delors. In this connection it is necessary to formulate proposals for action and beneficial reforms in the short and medium terms, with a view both to consolidating the 28-strong political union and to completing the EMU.

1. CONSOLIDATING THE EU BEYOND THE TREATY OF LISBON

The political and institutional system on which the EU's functioning rests became the object of major adjustments when the Treaty of Lisbon came into force. These adjustments had only a limited impact on the allocation of competences between the EU and its member states, but they did endeavour to clarify the way in which those competences are exercised. They led primarily to a strengthening of the European Parliament's powers, to heightening the profile of the European Council and of the Council (a stable presidency for the former, transparency in legislative work for the latter) and to redefining the composition of the Commission (a reform ultimately never implemented). It is in these **four areas that additional adjustments** could be made in the short and medium terms, along the following lines.

1.1. Imparting greater legitimacy to the exercise of the EU's competences

It is **not a priority to modify the allocation of competences** between the EU and its member states, but rather to proceed with **adjustments relating to the conditions governing the exercise of the EU's competences**, which are often the target of complaints focusing on the way the Community produces laws. It is with this in mind that we have formulated our analyses and recommendations designed:

- **to dispel the "myth that 80%" of laws are of Community origin:** it is necessary to put forward a clear and substantiated argument on the basis of the converging figures now available, which demonstrate that the proportion of laws of Community origin is closer to 20% than to 80%, with major differences from one sector to the next; in the longer term it will be necessary to change the treaties' misleading phrasing, which suggests that "education", "industry" and "social policy" are part of the EU's competences.
- **to improve the distinction between that which pertains to the "legislative" sphere in the narrowest sense of the term and that which pertains to the "regulatory" sphere:** this presupposes a clearer distinction between "legislative acts", "delegated acts" and "implementing acts" on the basis of their political or technical scope, and a clearer distinction in the use of the terms **directives/implementing regulations**; the effect of these adjustments would be to highlight the fact that the EU intervenes more on technical issues for the purposes of standardisation than it does in defining the laws that govern its citizens' lives.
- **to make Community laws less intrusive:** it is necessary to trigger a "**legislative shock**" by jointly identifying sectors in which greater European legislation would be useful but also those in which European measures could be fewer or less intrusive. The key issue here is not to restrict the exercise to merely adopting a technical approach targeting the "**cost of non-Europe**" but to set that approach alongside a political analysis demonstrating the "**cost of too much Europe**" in relation to symbolic issues showing that the presence of European laws leads to incomprehension, or even to rejection (ranging from measures regulating the size of chicken coops to the regulation of state aid granted by local players).
- **to afford priority to the citizens in terms of the right of legislative initiative:** the exercise of a monopoly on legislative initiative granted to the Commission is closely monitored by the European Council and the European Parliament, and calling it into question could well place the Commission in a fragile position in that institutional triangle; thus it is necessary to afford priority to the development of a new "right of citizens' initiative" by simplifying the conditions for exercising that right, particularly with regard to the conditions governing the collection of signatures and the delays required.

1.2. A more transparent European Parliament

Though considerably strengthened by the Treaty of Lisbon, the European Parliament's powers should nevertheless be exercised in circumstances that are more transparent in democratic terms, which entail in particular:

- **lowering the majority thresholds required when a vote is taken:** the proportional rules in force in the European Parliament may work in favour of political pluralism, but the fact that a large number of motions cannot be adopted by a simple majority of the votes cast is not positive in terms of democratic transparency because it **obstructs the forging of alliances among political forces perceived as being close to each other** (for instance the liberals and the conservatives, or the socialists and the environmentalists) and imposes the formation of cross-party majorities; thus it would be beneficial to lower as often as possible the majority thresholds set by the European Parliament's internal regulations and, in the longer terms, also to lower the thresholds enshrined in the Treaties;
- **working to devise a better balance between decision-making powers and resolutive activities:** the Treaty of Lisbon followed in the footsteps of the previous Treaties by bolstering the legislative powers of the European Parliament, placing it on a virtually equal footing with the Council and with a propensity for achieving full parity if a new treaty were to be devised; yet in the immediate term it would be beneficial for the democratic transparency of the MEPs' actions if they were to focus on exercising those "legislative" powers and adopting **fewer "non-legislative resolutions", which blur their image and that of the EU** when they concern domestic issues over which they have neither authority nor any real powers (for instance such social issues as homosexual marriage or abortion).

1.3. A more transparent and more effective Council of ministers

The Council of ministers lies at the very heart of the Community's decision-making power yet at the same time it is the least well-known of the European institutions. This political paradox must spawn three sets of reforms designed to bolster the institution's legitimacy and efficiency and to enable it to make decisions that do not fall within the province of the European Council, which

would then be able to focus on the adoption of the broad guidelines and choices that the EU needs:

- **transparency equal to that of the European Parliament in the legislative sphere:** it is crucial for "the Council to meet in public when it debates and votes on draft legislation", so that interested parties, the media and the citizens at large can have access to the different positions voiced and to the motivations underlying any compromises reached; and it is therefore essential that its decisions be formalised by widely disseminated **voting records indicating the various member states' positions, even when they do not lead to an agreement** or when they lead to the rejection of proposals submitted by the Commission.
- **fixed-term presidencies rather than a rotating presidency:** at this juncture the principle of a rotating presidency of the Council appears to have more disadvantages than benefits, in view of the number of member states (a presidency every 14 years and early nominations divorced from national and European political cycles); thus it is advisable to put an end to the rotation principle, as indeed has already been done with the European Council (with a stable president) and in the sphere of foreign and defence policy (with a high representative who is also the Commission's vice-president); this presupposes **choosing the incumbents for the posts of president of the Council's sectoral groups, with the General Affairs Council heading the list, on the basis of their expertise and presumed availability**, through a comprehensive decision taking into account the Union's principle political balances (small/large member states, left/right, north/south/east/west).
- **more qualified majority voting:** while the Treaty of Lisbon has increased by almost 40 the number of items in connection with which the Council of ministers votes by a qualified majority, close to 80 items are still the object today of a unanimous vote *(see Table 4)*; an overview of the practical experience of voting by qualified majority in the Council over the long term shows us that it acts as a powerful incentive, fostering convergence among member states over given positions yet without turning into a tool for pushing reluctant countries into a minority because the institution is driven to a great extent by the consensus ethos; a further revision of the European treaties should therefore be designed to gradually extend qualified majority voting's field of application, especially if it is applied to areas less sensitive in terms of national sovereignty (for

instance, measures against discrimination or relating to the functioning of the institutions).

1.4. A more vertical and collegial Commission

The Commission must continue to depend on the dual confidence of both the European Council and the European Parliament, but its functioning and effectiveness could be improved by three sets of changes, the common denominator in which involves simply adopting the rationale of the normal European political arena rather than an in-depth revision of the treaties:

- **improving the Commission's composition:** it is necessary first and foremost for the member states and the European Parliament to put "**the right commissioners in the right posts**", acting on the basis of priority criteria fairly reflecting the balance of party forces, the balance between the candidates' countries of origin and the profile factors listed in the treaties ("overall competence", "commitment to Europe", "independence").
- **a more functional team based on clusters:** the planned reduction in the Commission's size has not been implemented; it is necessary to aim for a more vertical internal organisation by assigning a **key role to the six current vice-presidents**, chosen on the basis of their political weight rather than to compensate for the limited nature of their portfolio. This way the Commission's president and vice-presidents will be able to act in conjunction with the other commissioners whose portfolios are connected with seven spheres of competence working to further the same political objectives on the basis of a "cluster system" and of regular meetings. The Commission's overall collegial nature would, for its part, be strengthened by weekly meetings organised on the basis of input from the cluster meetings and of more open collegial debates ending in **more systematic voting**.
- **more power for the president and the vice-presidents:** the Commission's dual legitimacy will always have a key diplomatic and civic dimension to it, but its effectiveness would unquestionably be bolstered if the political changes proposed above were to be completed in the longer terms by **two legal changes:** on the one hand, changes relating to certain measures in the **Commission's internal regulations, aiming to facilitate the implementation of a cluster system** by, for instance, allocating certain specific rights to the vice-presidents (empowerment and

delegation procedures); on the other hand, a minor yet decisive amendment to the Treaty regarding the **appointment of commissioners, assigning that power to the Commission president**, would increase the likelihood of finding the right commissioners in the right posts and it would also give the Commission president genuine vertical powers.

2. MOVING BEYOND THE CRISIS: COMPLETING THE ECONOMIC AND MONETARY UNION

From a political and institutional standpoint, completion of the EMU demands at least four kinds of additional action to clarify the allocation of competences and powers within the EMU, to improve the governance of the euro area, to strengthen the euro area's parliamentary dimension, and to organise differentiation around the euro area.

2.1. Clarifying the allocation of competences and powers within the EMU

It is urgent to establish the extent to which the reforms of the EMU's governance have or have not narrowed the field of national sovereignty and democracy. This prior clarification is crucial both in order to get recent developments into proper perspective and to make it possible to implement on a healthy basis all those adjustments that the euro area's governance still requires.

An analysis of the nature of the various competences exercised by the EU in the context of the EMU's new governance by comparison with the competences exercised in international organisations allows us to note that relations between the EU and its member states reflect four different political regimes which have an extremely variable political impact on national or popular sovereignty (*see Table 6*):

– The "**IMF regime**": the sovereignty of the 4 "countries benefiting from European aid programmes" is conditioned by the fact that representatives of the Troika and of the European Council can combine **an obligation to achieve results with an obligation concerning the means for achieving those results, demanding specific, major pledges** in return for the loans they grant. Other than when a new bail-out is required, it could appear possible to extend this European control over the budgetary, economic and social choices made at the national level only

in the event all or some of the member states commit to the mutualisation of national debts (Eurobills or Eurobonds).

- The "**UN regime**": this regime applies to the monitoring of national budgetary surpluses (rather than to national budgets *per se*) and it also rests on member states' pledges not to exceed certain budgetary ceilings (in particular, a deficit standing at over 3% of GDP). If they comply with those ceilings, they are free to act as they please, but if they consistently exceed them, then in theory they can be subjected to a coercive approach based on potential financial penalties. In any event, member states have an **obligation to achieve a result (i.e. to return below the ceiling) but no obligation as to the means used to achieve that result:** it is up to them to define the ways chosen for achieving it and it is their choice whether or not to comply with the EU's detailed recommendations.
- The "**hyper-OECD regime**": this regime concerns the relationship between the EU and its member states regarding monitoring national economic and social policies, thus "structural reforms". These relations are based on a combination of political initiatives (recommendations, supervision and mutual pressure) among member states. This political pressure is considerably greater than that brought to bear by the OECD, yet it has no compulsory impact on the member states' domestic political choices. Where structural reforms are concerned, **the EU can recommend but it cannot command.**
- The "**World Bank regime**": this regime rests on the principle whereby if the EU grants financial aid to its member states, that **aid must serve to promote structural reforms at the national level.** The proposal to set up a new "financial tool for convergence and structural reforms" illustrates this approach, as indeed do the reiterated attempts to enforce a macro-economic conditionality in return for access to European structural funds.

In the absence of clarification regarding the real scope of their competences and powers, the EMU institutions will continue to adopt **doubly counterproductive positions and recommendations** because on the one hand those positions and recommendations will be perceived as being excessively intrusive and thus illegitimate in view of their level of detail, while on the other they will ultimately have no direct, concrete impact on the decisions taken by the member states concerned.

2.2. Reviewing the euro area's political and institutional architecture

An improvement in the **governance of the euro area** primarily requires three sets of political and institutional adjustments (*see Table 5*):

- the organisation of **regular euro area summit meetings** by its permanent president, with a contribution from the Commission president;
- the creation of a **full-time Eurogroup presidency**;
- the implementation of strengthened services for the euro area: a **Commission-ECB-Eurogroup Trio** for bail-outs, and closer cooperation between the services of the Commission and the Eurogroup Secretariat in the context of a "**European Treasury**" for the coordination of economic policies.

Strengthening the euro area's parliamentary aspect, on the other hand, requires the following adjustments:

- national parliaments must exercise stronger information and penalty control over their governments in connection with all decisions relating to the EMU;
- a **sub-committee for the euro area** must be created at the European Parliament and must be open to all MEPs (up to a maximum of 60 members);
- a genuine "**inter-parliamentary EMU conference**" must be put in place with its own internal regulation and with powers complementary to those of the European Parliament.

2.3. Organising differentiation around the euro area

As Jacques Delors has suggested, it is to be hoped that further progress in economic and monetary integration will rest on recourse to an enhanced cooperation mechanism based on two options. Either, preferably, recourse to a **comprehensive enhanced cooperation for the EMU** resting on a group of initiatives; or recourse to **several enhanced cooperation** designed to allow for the "variable geometries" among member states, although this latter option carries with it the risk of complicating the governance of the EMU. Basically, the enhanced cooperation(s) in question should involve:

- **the definition of the component parts of a "euro area budget":** on the one hand, a "super-cohesion fund" or "competitiveness fund" to finance aid for structural reform; and on the other, a "cyclical stabilisation fund" designed to temper the impact of the economic cycle and funded by the euro area's member states, if necessary in accordance with an insurance-style rationale.

- **a move towards the harmonisation of laws within the euro area:** harmonisation **in the fiscal sphere** must first impact company tax through some form of tax rate framework based in particular on countries' geographic specificity; while harmonisation **in the social sphere** might be based on regulations relating to the minimum salary and on measures facilitating cross-border mobility for workers (in particular with regard to the transferability of qualifications and supplementary pensions).

Several of the changes proposed can be adopted in the very short term while others may be envisaged in the medium term, especially where they demand a modification of the treaties. The important thing is that the changes as a whole must be seen to form part of a political dynamic designed to anchor the EU's functioning more strongly to its citizens and to its member states in order to allow it to boost its effectiveness and to bolster its legitimacy.

INTRODUCTION
WHAT POLITICAL AND INSTITUTIONAL CHANGES FOR THE EU AND THE EMU?

The European elections in May 2014 resulted in conflicting political messages being sent out with regard to the European Union (EU), messages that essentially concerned either the content of Community policies, particularly in terms of the balance between austerity and growth, or the EU's commitment in the international arena. The outcome of these elections and the comments that they aroused also highlighted the need to clarify and to adjust the nature of the EU's powers and of the way it functions. The enormous economic, social, identity-related and geopolitical challenges facing the EU demand, first and foremost, detailed and effective political responses based on appropriate actions, and deserving the full attention and energy of the decision-makers and of the parties involved[1]. Yet it is no less important to focus on the European institutions, which need to come up with those political responses and whose missions and proper functioning are crucial for its impact and its image.

The principal analyses and recommendations formulated in this connection, including by the European authorities, concern both the Economic and Monetary Union's governance, marked most recently by the arrival on the scene of the "Troika" and by the conclusion of a "fiscal compact", and the European Union in the broader sense, its actions having been judged on occasion to be too pernickety and "unintelligible" and its "institutional triangle" frequently being considered to be excessively opaque. All in all, the positions adopted both before and after the May 2014 elections suggest deepening the debate on the legitimacy and the effectiveness of the "European federation of

1. In this connection, see in particular Jacques Delors and António Vitorino, "Post-election EU: Ask for the programme!", *Tribune*, Notre Europe – Jacques Delors Institute, June 2014 and Jacques Delors, "Rethinking the EMU and making Greater Europe positive again", *Tribune*, Notre Europe – Jacques Delors Institute, July 2013.

nation states" evoked by Jacques Delors, in order to forge proposals for action and beneficial reforms in the short and medium terms.

The European Union (EU) is *de facto* a federation and a "political union" of a special kind, which it is necessary both to consolidate and to complete. The scope of Community law, qualified majority voting in the Council of ministers, "bicameralism" and the emergence of European citizenship, for example, are all elements that are federal in nature. Member states' exercise of constituent power, a member state's right to secede from the Union, the practice of unanimity or the sharing of governance between the European Council, the Council and the Commission are all elements that are confederal in nature. It is legitimate to suggest that this hybrid nature is a transitional solution leading to the birth of a "genuine", more complete federation, but also to stress that it is better to improve the existing Union on the basis of concrete progress than to rely on the "miracle of institutional innovation"[2]. It is with that prospect in mind that we have formulated the analyses and recommendations outlined below, to provide concrete, operational answers in connection with the three crucial issues that are: the division of competences between the EU and its member states; the European mode of governance; and democracy within the EU.

These analyses and recommendations concern first and foremost the EU as a whole, which needs to become more democratic and more efficient so that it can better serve its member states and its citizens, both of which categories form the foundation stone of its legitimacy as laid down in the Treaties. These analyses and recommendations take into account the major progress associated with the entry into force of the Treaty of Lisbon which, like the previous Treaties, has improved the EU's functioning, yet without including all of the potential factors for institutional improvement in the short and medium term. They also dwell on a number of developments of a political nature, for instance in pedagogical terms relating to the exercise of the EU's competences or of the Commission's internal organisation.

These analyses and recommendations contained in this Study also address the Economic and Monetary Union (EMU), in particular the euro area, which is the

2. In connection with these issues, see Gaëtane Ricard-Nihoul, *Pour une Fédération européenne d'États-nations : la vision de Jacques Delors revisitée*, Larcier, 2011.

crucible of a "political union" that, while already substantial, can be further deepened. The crisis in the euro area has radicalised the criticism that the EU suffers from a "deficit of democracy", particularly through the delegation of excessive power to certain European countries (symbolised by the "Merkozy" duo) or, even worse, by assigning a key role to the body of experts that goes by the name of "Troika". Thus it seems all the more necessary to conduct a careful analysis of the democratic aspect of this crisis if we consider that the increase in criticism of "Brussels' despotism" is accompanied by an unprecedented intensification of the public debates that the crisis is fuelling throughout the EU. This contrast must prompt us to transcend appearances and the almost caricatural reflexes at work regarding the EU's functioning[3] in order to avoid hastily lumping together a deficit in efficiency, a deficit in popularity and a deficit in democracy, and going on to consider the developments required to complete the EMU on clear foundations[4].

As we shall see, the developments and reforms thus proposed do not, as a group, necessarily presuppose a major revision of the existing treaties, even though we do suggest certain adjustments to the treaties in one or the other instance. The attitudes and choices of the political players acting in the name of the EU and of the EMU will also have a major impact on their efficiency and legitimacy, allowing them to thus better reflect the aspirations of their member states and of their citizens.

3. In connection with these issues, see Yves Bertoncini and Valentin Kreilinger, "Seminar on the Community Method. Elements of Synthesis", with contributions from José Manuel Barroso, Jacques Delors and Antonio Vitorino, *Synthesis*, Notre Europe, May 2012.
4. For a more extensive exploration of these issues, see Yves Bertoncini, "Eurozone and democracy(ies): a misleading debate", *Policy Paper No. 94*, Notre Europe – Jacques Delors Institute, July 2013.

1. Consolidating the EU, beyond the Treaty of Lisbon

The political and institutional system on which the functioning of the EU rests has been subject to major adjustments prompted by the adoption of the Treaty of Lisbon, whose measures largely derive from the conclusions of the "Convention on the future of Europe". These adjustments have had a limited impact on the division of competences between the EU and its member states, but they have endeavoured to clarify the manner in which those powers are exercised. They have resulted primarily in a strengthening of the European Parliament's powers, in giving the European Council and the Council a higher profile (a stable presidency for the former and transparency in the legislative work performed by the latter), and in redefining the composition of the Commission (a reform which, in the event, was not implemented following a decision by the European Council and rejection on Ireland's part). It is in these four areas that complementary adjustments could be adopted in the short and medium terms, in accordance with the guidelines outlined below[5].

1.1. Improving the legitimacy of the exercise of the EU's powers

It is by no means a foregone conclusion that the EU needs to have new powers allocated to it in the short and medium terms, given that the current Treaties already list five areas of exclusive competence, thirteen areas of shared competence and seven areas in which the EU plays a support and coordination role. And a new, formal adjustment of the division of competences seems to be even less necessary when we consider that use of the flexibility clause contained in the Treaties (Article 352 in the TFEU) authorises additional innovative intervention on the EU's part.

5. On this broad approach, see Thierry Chopin, "Political Union: from slogan to reality", *European Issue* No. 280, Robert Schuman Foundation, May 2013.

Conversely, any repatriation of competences to the national level should be justified on a case-by-case basis by the national authorities making the request, as "the burden of proof" lies with them. And quite apart from the technical difficulties involved in formulating such a justification, a unanimous consensus would have to be forged among the member states in order to make the necessary changes to the treaties.

In this light, priority must be assigned to making adjustments relating to the way in which the EU's powers are exercised, because they are frequently the object of disputes focusing on the way the Community's norms are produced[6]: it is in this perspective that the analyses and recommendations outlined below are presented.

1.1.1. Dispelling the myth that 80% of laws are of Community origin

Improving the legitimacy of the way the EU exercises its competence requires first and foremost an initial clarification of a pedagogical nature regarding the scope and impact of laws originating with the Community. This, because this crucial political issue is the target of ceaseless exaggeration both from those opposed to the European construction and from the least important supporters of that process, to the point where they end up bolstering the myth that 80% of laws in force in EU member states originate in "Brussels"[7].

In this regard, an adjustment of the phrasing of the treaties would be useful to clarify the exact scope and impact of the Community's competences, because it is both incorrect and misleading to argue that "education", "industry" or "social policy" are part of the EU's areas of jurisdiction, even in a support or coordination role. And it would be preferable by far to confine the text to more accurate descriptions. For example, the EU has no general competence in the field of education, only in the sphere of exchange and cooperation in the education and university fields. So that being the case, why do the treaties not talk about "the European education and training area" in the same way as they talk

6. In connection with this issue, see Yves Bertoncini, "What is the impact of the EU interventions at the national level?", *Studies & Reports No. 73*, Notre Europe – Jacques Delors Institute, June 2009.
7. In this connection, see Yves Bertoncini, "The EU and its legislation: prison of peoples or chicken coops?", *Policy Paper No. 112*, Notre Europe – Jacques Delors Institute, May 2014.

about "the area of freedom, security and justice" without going as far as to claim that "security" and "justice" are EU competences?

By the same token, it would be better to make a clear distinction at the Community level between that which falls strictly within the "legislative" sphere and that which falls within the "regulatory" sphere, a distinction which might help to highlight the fact that the EU intervenes to a far greater extent on technical issues for purposes of standardisation than it does in defining the laws that govern its citizens' lives (in connection with this necessary distinction, *see § 1.1.2.*).

In the immediate term, however, the urgent issue is more political than legal in nature: it requires that players in, and observers of, European affairs adopt clear and substantiated arguments regarding the real scope and impact of the EU's competences and the proportion of laws originating with the Community, on the basis of the converging figures now available, which show that that proportion is closer overall to 20% than to 80%, with major differences from one sector to the next (*see Box 1*).

BOX 1 ► The scope and impact of Community law at the national level[8]

1. European legislation with a highly variable sectoral impact

- The Europeanisation of national laws is high in some sectors (agriculture, financial services, the environment, etc.) and very limited in others (education, social protection, housing, security, etc.).
- This contrasting state of affairs stems directly from the major sectoral concentration of legislative intervention by the EU, dealing mainly with agriculture, the internal market, followed by foreign relations.

2. A cross-cutting legislative impact: the supervisory power of the EU

- Member states must notify the EU of a large number of state aid measures that they grant. Despite EU supervision of this aid, tens of billions of euros are granted each year (banking and railway sectors, etc.).

8. For a more detailed discussion of these figures, see Yves Bertoncini, "The EU and its legislation: prison of peoples or chicken coops?", *op. cit.*

– The distribution of powers within EMU allows the EU to supervise national policies, but it has not drastically limited the capacity of the member states to take action, particularly in terms of budget deficit.

3. European legislation having regulatory rather than legislative implications

– Only one quarter of directives transposed in France have legislative implications, as opposed to three quarters with purely regulatory implications (including on the size of chicken coops).
– Almost two-thirds of draft directives and regulations submitted to the Council of ministers have legislative implications, but this is the case for only 12% approximately of all directives and regulations adopted by the Council, the European Parliament and the Commission.

4. The subsidiary legislative impact of the EU: 20% rather than 80%

– All studies available converge towards a proportion of Europeanised national laws varying from between 10% and 33% according to countries.
– This proportion varies according to the calculation methods used, but remains within this law hypothesis as shown by studies concerning Germany and France.

Getting Community law back into its rightful perspective by comparison with national laws is both beneficial from a civic standpoint and useful from a political standpoint. This, because a pedagogical clarification of this nature is by no means at variance with the desire to promote further EU intervention in certain spheres. In fact, it is far more consistent to argue that case by noting that the EU produces only 20% of laws in force than by claiming that it already produces 80% of our laws (because if it already did that, how much further could it go?). In any event, this is a pedagogical task of the utmost importance for all of the players in the European public debate, but above all for the national and Community authorities.

1.1.2. Improving the separation of the legislative and regulatory spheres

At the EU member state level there is a clear separation between the legislative and executive powers: legislative power is exercised by parliament, the only body entitled to adopt laws, and the fact that parliament may exceptionally delegate its powers to the government (for instance with the "order" system in France) merely confirms this rule. This "separation of powers", of course, varies from country to country, because not all of them have the same concept

of legal hierarchy; it does not apply at the Community level, despite the clarification effort undertaken by the CJEU and pursued by the Treaties' drafters:

- At the Community level, first of all, there is no "instrumental" distinction between legislative instruments of general scope: the EU adopts directives or regulations without one or other of those instruments being reserved for the law-makers (the European Parliament and Council) along the lines of "laws" at the national level;

- At the Community level, the distinction between legislative and executive cannot be based on "material" elements: secondary legislative instruments naturally concern "essential elements" rather than major "political choices" when they are adopted by the Community "law-maker"; but they can equally well be "legislative" or "non-legislative" with regard to national law, whether they are adopted by the "law-maker" or even by the "executive", as shown by the nature of the acts transposing Community directives adopted in France (*see Table 1*)[9].

TABLE 1 ► Number and material nature of the acts transposing Community directives in France from 2000 to 2010

	LEGISLATIVE ACTS			REGULATORY ACTS			
Type of act	DDADC*	Laws	Ordinances	Decrees	Orders	Diverse**	TOTAL
Number of acts	62	224	67	788	1,356	34	2,531
Total Leg./Reg.	353			2,178			
Proportion of acts Leg./Reg. (%)	14%			86%			
Number of directives concerned	236			757			993
Number of directives concerned/year	21.4			68.8			90.2
Proportion of directives/year (%)	23.8%			76.2%			100%

Source: SGAE data, Y. Bertoncini's computations.

* "DDADCs" ("Diverses Dispositions d'Adaption au Droit Communautaire") are laws on diverse provisions for the adaptation to Community Law.
** "Diverse" acts with regulatory implications include, for example, decisions made by an independent public service authority.

9. The EU's member states do not necessarily transpose Community directives in the same way, even from a material standpoint: thus measures transposed by regulation in France can be transposed by law in other EU member states in accordance with each country's stance on legal hierarchy.

The identification of a "legislative" act cannot rest either on an "organic" differentiation: the Community "law-maker" (the European Parliament and Council) and executive (the Commission and Council) are both empowered to adopt directives and regulations; we may of course consider the legislative instruments adopted by the law-maker to be instruments of "secondary" law and the legislative instruments adopted by the executive to be instruments of "tertiary" law (the Treaties themselves being the "primary" law in this instance), but that does not fully predetermine the material content of such instruments (*see Table 2*).

TABLE 2 ► The method governing the transposition of directives in France from 2000 to 2008

PERCENTAGE OF DIRECTIVES	LEGISLATIVE TRANSPOSITION*	REGULATORY TRANSPOSITION**
Council	58.2%	41.8%
European Parliament and Council	48.1%	51.9%
Commission	3.5%	96.5%
Total	26.6%	73.4%

Source: Yves Bertoncini, "What is the impact of the EU interventions at the national level?", *Studies & Reports No. 73*, Notre Europe – Jacques Delors Institute, June 2009

* Transposition by law or by "order"
** Transposition by decree, by resolution or by other legislative act.

The fact that the percentage of instruments of a truly legislative nature is considerably more substantial for the European Parliament and Council than it is for the Commission should urge us first and foremost to modify the terms used to designate them. Of course, the Treaty of Lisbon already states (in Article 289-3 in the TFEU) that "legal acts adopted by legislative procedure shall constitute legislative acts". But we need to use different terms to designate presumably non-legislative implementing acts adopted by the Commission (in the context of comitology procedures): to achieve this, it is sufficient for us to call them implementing directives and implementing regulations in order to provide an initial, clear indication of what is essential and what is accessory; it does not require a revision of the Treaties, simply a change in the terms used at the Community level.

The fact that the percentage of "non-legislative" directives adopted by one or other of the Community "law-makers" is far from negligible (accounting for

approximately half of all directives adopted under the co-decision procedure) should urge us to engineer another, more ambitious clarification as an extension of the clarification introduced by the Treaty of Lisbon with the creation of the "delegated act" (Article 290 in the TFEU).

This is in effect a new Community act considered "non-legislative" but which allows the Commission to complete or to modify "certain non-essential elements of the legislative act" under given circumstances. The creation of this new legal instrument has basically been devised to allow the Commission itself to define the ground rules with regard to highly technical issues after being "delegated" to do so by the Community "law-maker"; its effect has been to introduce a kind of hierarchy of instruments between "legislative acts", "delegated acts" and traditional "implementing acts" (Article 291 in the TFEU) adopted by the Commission.

For this new hierarchical order to be clear in political and civic terms, it is necessary at this juncture for the Community authorities (and their legal offices) to ensure that the texts submitted to the law-makers are restricted to containing only measures of a genuinely legislative nature, while the implementing acts and delegated acts must be confined to non-legislative measures. This is one of the ways in which the production of Community law can at once associate upstream those decision-makers that have the greatest legitimacy to adopt it, and be better perceived downstream for what it is, namely a partly legislative but mostly non-legislative production of law. A clarification in this sense seems to be crucial in order to shed light on the nature of the areas of authority and of the powers exercised by the EU and those exercised by its member states.

1.1.3. Less intrusive Community laws

The pedagogical clarifications recommended above may not necessarily be sufficient to seal the debate on the impact of Community laws at the national level, thus it demands more specific political action.

It is necessary, therefore, for the European institutions on the one hand to focus their initiatives on a limited number of properly-targeted political priorities; and on the other, to monitor the strict application of the principles of

subsidiarity and of proportionality under the watchful eye of national parliaments and of the Court of justice.

On this basis, it is incumbent upon them, and especially on the Commission, to strictly limit the "bureaucratic" output of Community laws in certain sectors, or to allay the impact of some of the Community laws currently in force, in order to send out a clear signal to the citizens and to the member states.

This "legal signal" will be a balanced signal if it simultaneously identifies the sectors in which European laws could be less numerous or less intrusive, and those in which more European legislation could be considered useful, for instance in the fiscal or energy spheres. This, because it is crucial to properly decipher the highly contradictory demands that have emerged from the European elections in May 2014 and in the various national political arenas throughout the year. The new European authorities must rapidly draft this dual inventory in order to set the debate in motion over the coming months. But in any event, it is not a matter of withdrawing or of rewriting laws which a majority of public opinion are eager to see remaining in force.

For example, when the "Barroso I" Commission decided to pursue "better lawmaking" (often tantamount to "less lawmaking"), including in the financial services sphere, it is by no means certain that its choices proved beneficial for the EU's economies and societies or would have attracted majority support. On the other hand, it made a better choice when it decided to dispense with Community measures regulating the curve of the cucumber, dating back to 1973, which had triggered a huge amount of misunderstanding and of sarcasm.

The "legal signal" that the European authorities address to the EU's member states and citizens will also be balanced if it clearly sets out the terms of the debate in terms of effectiveness, but also of legitimacy. Thus it is crucial to admit that the political cost of some of these laws is higher than their economic or social benefit on account of the way in which they are perceived. The key issue here is not to restrict action to simply adopting a technocratic approach, rightly pointing to the "cost of non-Europe"[10] in numerous spheres,

10. According to the expression popularised by the "Cecchini Report": Research on the Cost of non-Europe - Basic Findings, volumes 1 to 16, EC Commission, Documents Series, 1988.

but to associate action with a political analysis including the "cost of too much Europe" in those spheres where it might seem that the presence of European laws leads *de facto* to incomprehension or even to outright rejection.

It must be clear, therefore, that it is possible to forego the adoption of new Community laws, for political and even symbolic reasons, even if doing so would damage the European citizens' purchasing power or protect their health to a lesser degree. The crucial thing is that this choice be made explicitly and publicly (rather than implicitly, as is so often the case) in such a way that its benefits and disadvantages can clearly be perceived by the citizens and by all of the players involved.

The European institutions have special responsibility with regard to this choice between cost and benefits, and the Commission is in the front rank in this connection because it holds a monopoly on legislative initiative. In particular, it is crucial for the college of commissioners to play their role to the full in this area in order to steer the activities of the Commission's services in the right direction. The European institutions' responsibility is all the greater if we consider that they cannot really rely on the national authorities to provide Community laws with a decent "after-sales service". This can be because ministers and heads of state and government do not feel directly involved in the production of certain laws, primarily when those laws are adopted by "committee-style" procedure, it can be because they have no wish to spend any of their political capital on defending the EU and its achievements, or, even worse, it can be because they can then adopt a demagogical posture targeting one or the other Community law that may be especially symbolic in their own country[11]. So it really is up to the Commission to gauge the extent to which the production of new Community laws or a revision of the content of some of those currently in force can serve the "broader European interest" and, more specifically, echo the political messages coming from the member states, while simultaneously improving the transparency of the EU's operations in its citizens' eyes.

And lastly, the "legal signal" that the Community authorities send out will be more clearly received if it concerns laws which have cornered the public

11. For instance the law designed to facilitate the circulation of "cheese made from unpasteurised milk" in the past (François Mitterrand) or the law regulating the domestic production of alcoholic beverages today (Viktor Orbán).

debate at either the European or the national level and which are therefore of symbolic significance. It should be relatively easy for the Commission to identify such laws, through its offices in the member states or on the basis of public opinion surveys (whether already available or specially commissioned). By way of an example, based purely on a "gut feeling", we shall confine ourselves here to identifying at least two categories of law that should be made less intrusive in order to trigger a beneficial "legislative shock": on the one hand, health, phytosanitary and environmental safeguard laws which, while basically useful, regularly grab the headlines to the point where they undermine the EU's image (laws regulating the presentation of bottles of olive oil, the consumption of toilet waters, the size of chicken coops, hunting migratory birds and so forth); and on the other hand, laws connected with European competition rules, particularly those relating to state aid, which unquestionably provide for (excessively low?) thresholds below which the EU has no calling to intervene (so-called "*de minimis*" rules) but which *de facto* result in the nit-picking monitoring of national and local public-sector players who frequently fail to understand either their cumbersomeness or their legitimacy.

1.1.4. The right of legislative initiative: priority to the citizens

The exercise of the monopoly over legislative initiative assigned to the Commission is strictly regulated: in this sphere the Brussels Commission takes its inspiration from the conclusions of the European Council on the one hand and from the guidelines of the European Parliament on the other, in the context of its annual working agenda. But this monopoly also allows it to play an irreplaceable role when the time comes to draft the content of proposals for directives and regulations, after consulting with all of the interested parties and making every effort to serve the general European interest. Calling into question this monopoly over legislative initiative, by assigning it to the European Parliament for instance, could well undermine the Commission's position within the institutional triangle, within which its role as an intermediary has already been impacted to a major degree by the substantial increase in the number of first-reading agreements between the European Parliament and Council[12].

12. In connection with these issues, see Olivier Costa, Renaud Dehousse and Aneta Trakalova, "Co-decision and 'early agreements': an improvement or a subversion of the legislative procedure?", *Studies & Reports No. 84*, Notre Europe, March 2011.

Introduced by the Treaty of Lisbon, the "right of citizens' initiative", in other words the opportunity offered to a representative group of EU citizens to call on the Commission to propose a legislative initiative, offers more promising potential for development because it breathes substance into the notion of participatory democracy at the European level. This new right has already been exercised by over twenty groups of citizens from at least seven EU member states, and over one million signatures have been gathered in connection with it. Several of the initiatives launched have succeeded in attracting over one million signatures and have thus triggered a fully-fledged Europe-wide debate on which the Commission is now in a position to follow up. But numerous other mobilisations have encountered difficulties of a technical, legal or political nature which have hampered their development and revealed the need to simplify the circumstances governing the exercise of this right of initiative, particularly in relation to conditions governing the collection of signatures (a system should be set up for on-line signature gathering) and the 12-month time limit set for their collection, which appears to be too short for players in associations devoid of sufficient means to enable them to act at the pan-European level (a 24-month delay would be better).

It is up to the European and national authorities to engineer that simplification on the basis of the initial reviews drafted after the right of citizens' initiative has been exercised for a few years.

1.2. A more transparent European Parliament

The EU's political consolidation also concerns the European Parliament (EP), whose powers have been considerably strengthened by the Treaty of Lisbon and whose job is to become the receptacle of the wishes of the voters who elect its members. This demands an initial review of the way in which the institutions reaches its decisions, without ruling out the possibility of further strengthening the powers it holds.

1.2.1. Majority thresholds need to be lowered

The functioning of the European Parliament rests largely on proportional ground rules (for the allocation of responsibilities, reports, speaking time and

so forth), which is an excellent thing from a democratic standpoint in that it permits the pluralistic expression of the different currents of opinion representing the EU's citizens.

On the other hand, the fact that a considerable number of votes in the European Parliament cannot be adopted by a majority of the votes cast is not positive in terms of democratic legibility, because the application of such a rule makes it easier to achieve the majority thresholds which prompt the political forces close to one another to form groups over key issues (for instance the liberals and the conservatives, or the socialists and the environmentalists), especially in consideration of the absentee rate at plenary sessions. Conversely, the need to bring together the "majority of members making up the European Parliament", or even larger majorities (2/3 of the members, and more rarely 3/5) very often imposes the formation of cross-party or circumstantial majorities which tend to cloud the political and ideological legibility of the Strasbourg assembly's decisions.

It is certainly not appropriate to lower all of the majority thresholds currently set by the European Parliament's internal regulations and, in certain cases, even by the Treaties themselves (*see Table 3*): in particular, there is no point in changing the threshold for adopting a motion of no-confidence (2/3 of votes cast by a majority of the EP's members) because that would be likely to increase the Commission's fragility. But lowering the majority thresholds in force would be very useful in other areas, for instance in voting on: requests for legislative initiative addressed to the Commission (currently a majority of the EP's members - Article 225 in the TFEU); the adoption of proposed amendments in the budgetary sphere during the first stage of the debate (a majority of the EP's members); assent aiming to establish a breach of the Treaty's principles (2/3 of votes cast by a majority of the EP's members - Article 7.6 in the TFEU); and so forth. Lowering these thresholds will provide a clearer picture of the party political divide in the European Parliament and thus increase the institution's democratic legibility.

TABLE 3 ► Voting rules of the European Parliament as set out by its rules of procedure or by the Treaties (when indicated *)

VOTING RULES IN TERMS OF NOMINATION/DEPOSITION	
Internal elections at the European Parliament	
President of the European Parliament	1st to 3rd round: absolute majority of votes cast 4th round: (if necessary) idem but only between the 2 MEPs obtaining the greatest number of votes in the 3rd round
Vice-presidents of the European Parliament	1st round: absolute majority of votes cast 2nd round: (if necessary) idem 1st round 3rd round: (if necessary) relative majority
Quaestors of the European Parliament	Idem vice-presidents
Interruption of above terms	3/5 majority of votes cast
Investiture/censure of the European Commission	
Investiture president of Commission	Majority of votes cast
Investiture of Commission	Majority of votes cast
Censure of the Commission*	2/3 votes cast representing a majority of members making up the Parliament (Article 234 TFEU)
Other nominations	
Members of the Court of auditors	Majority of votes cast for each candidate
Mediator (nomination & deposition)	Majority of votes cast

VOTING RULES IN LEGISLATIVE MATTERS	
Legislative initiative (request to the Commission to submit a proposal)*	Majority of Parliament members (Article 225 TFEU)
1st reading (co-decision, consultation and cooperation procedures)	
Amendments to Commission's proposal	Majority of votes cast
Rejection of Commission's proposal	Majority of votes cast
2nd reading (co-decision and cooperation procedures)	
Adoption of or amendments to Commission's proposal*	Majority of Parliament members (Article 294.2 TFEU)

Rejection of Commission's proposal*	Majority of Parliament members (Article 294.2 TFEU)
3rd reading (co-decision procedure)*	
Majority of votes cast (Article 295.5 TFEU)	

VOTING RULES IN BUDGETARY MATTERS	
1st phase	
Draft amendments	Majority of Parliament members
Amendment proposals	Majority of votes cast
Draft amendments exceeding the maximum rate of increase	3/5 of votes cast representing a majority of Parliament members
2nd phase	
Draft amendments	2/3 of votes cast representing a majority of Parliament members
Overall rejection of the budget	2/3 of votes cast representing a majority of Parliament members
Provisional twelfths mechanism	3/5 of votes cast representing a majority of Parliament members
Others	
Setting of a new maximum rate of increase	3/5 of votes cast representing a majority of Parliament members
Refusal of discharge	Majority of votes cast

VOTING RULES REGARDING CONSENT PROCEDURES	
Election of MEPs (uniform procedure or common principles)*	Majority of members of the European Parliament (Article 223 TFEU)
Specific missions of the ECB*	Majority of votes cast (Article 127.6 TFEU)
Modifications of the Statute of the European system of central banks*	Majority of votes cast (Article 129.5 TFEU)
Missions, priority objectives and organisation of structural funds*	Majority of votes cast (Article 177 TFEU)
International agreements and association agreements*	Majority of votes cast (Articles 218.3 and 217 TFEU)
Accession of new states (recommendation and acceptance)*	Majority of Parliament members (Article 56 TEU)

Establishment of infringement of the Treaty's principles*	2/3 of votes cast representing a majority of members (Article 7.6 TEU)

INTERNAL FUNCTIONING OF THE EUROPEAN PARLIAMENT	
Convening of Parliament outside of scheduled sessions*	Majority of Parliament members (Article 229 TFEU)
Plenary session outside seat (Strasbourg)	Majority of votes cast
Rejection of an appeal before the Court of justice	Majority of votes cast
Establishment of a Commission of Inquiry*	1/4 of Parliament members (Article 226 TFEU)
Adoption of and amendments to the rules of procedure of the European Parliament*	Majority of Parliament members (Article 232 TFEU)

MISCELLANEOUS	
Recommendations	Majority of votes cast
Legislative or non-legislative resolutions	Majority of votes cast
Rules relative to the political parties at European level	Majority of votes cast
Opinion on the derogations granted to states not adopting the euro*	Majority of votes cast (Article 141 TFEU)

Source: EU Treaties and European Parliament data, catalogue by Y. Bertoncini and T. Chopin, in *Politique européenne. États, pouvoirs et citoyens de l'Union européenne*, Presses de Sciences Po/Dalloz, coll. "Amphis", 2010.

* Article 231 of TFEU stipulates that "Save as otherwise provided in the Treaties, the European Parliament shall act by a majority of the votes cast".

1.2.2. More decision making powers, fewer resolutive activities

The Treaty of Lisbon has followed in the footsteps of the previous Treaties by extending the sphere of application of the "co-decision" procedure (now known as the "ordinary legislative procedure") to include forty new articles, in addition to the thirty-three already subject to that procedure, making a current total of seventy-three articles covered by the procedure (*see Graph 1*).

At this juncture, the European Parliament's decision-making power concerns such spheres as border checks on individuals (Article 77-2 in the TFEU),

measures governing the intake and handling of asylum-seekers (Article 78-2 in the TFEU) and the struggle against illegal immigration (Articles 79-2 and -4 in the TFEU). Where police cooperation is concerned, Article 87 in the TFEU also extends co-decision to all non-operational aspects. And finally, in the context of the CAP, the Treaty subjects the definition of common market organisations to ordinary legislative procedure, but the Council maintains such prerogatives as establishing prices, aid and quotas[13].

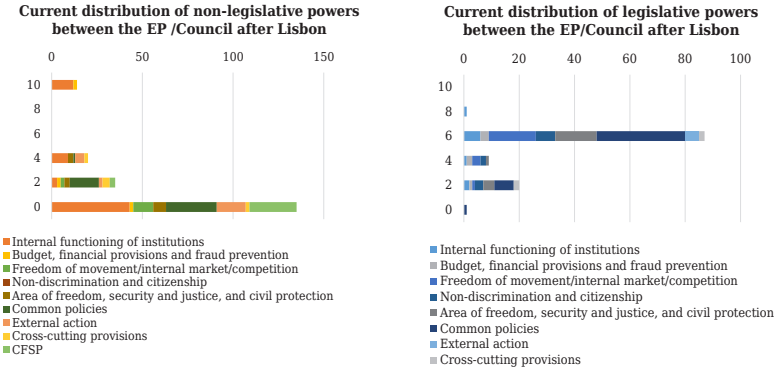
The Treaty of Lisbon has also increased the European Parliament's powers through "special legislative procedures". The consultation process, for instance, has been extended to approximately forty articles, including several relating to energy (Article 194-3 in the TFEU); or measures regarding worker protection (Article 153-2 in the TFEU); and such spheres as operational police cooperation (Article 87-3 in the TFEU), measures concerning passports, identity cards and residence permits (Article 77-3 in the TFEU) as well as measures relating to family law with cross-border implications (Article 81-3 in the TFEU). The field of application of the approval process, for its part, has been extended to include decisions concerning a member state's secession from the Union (Article 50 in the TFEU), the creation of a European Public Prosecutor's Office (Article 86-1 in the TFEU) and the adoption of the regulations establishing the multi-annual financial framework (Article 312-2 in the TFEU).

Any further revision of the European Treaties would need to deepen this movement based on the gradual strengthening of the European Parliament's powers, in order to bolster the democratic basis of the EU's functioning. For example, one might mention a move from the approval procedure to the co-decision procedure in connection with the adoption of sanctions for serious and ongoing breaches of the Union's principles by a member state (Article 7 in the TFEU); a move from consultation to co-decision in the adoption of specific programmes for the implementation of the Framework Programme on R & D (Article 182-4 in the TFEU); or a move to consultation procedure for the assignation of aid in the agricultural sphere (Article 42-2 in the TFEU) for which, as things stand today, the Council makes decisions on its own.

13. For a detailed description of the division of competences between the Council and the European Parliament, see Yves Bertoncini and Thierry Chopin, *Politique européenne. États, pouvoirs et citoyens de l'UE*, Sciences-Po Dalloz, Appendix 2, September 2010.

In the immediate term, it would have an extremely beneficial impact on MEPs' democratic transparency if they were to focus on the exercise of the so-called "legislative" powers with which they are endowed and to adopt fewer "non-legislative resolutions" than during their previous mandates. The adoption of legislative resolutions is perfectly in keeping with the role as a political driving force that it is their duty to play at the Community level. The adoption of non-legislative resolutions is perfectly understandable when those resolutions concern external issues in connection with which the MEPs wish the other European institutions, the citizens and the non-EU countries concerned (for example, regarding human rights issues) to be apprised of their opinion. But an excess of non-legislative resolutions blurs the image of the EU and of the European Parliament when those resolutions concern more domestic issues over which neither the EU nor the EP have any real power or authority (for instance, such social issues as homosexual marriage or abortion). The adoption of such resolutions thus appears to be doubly counterproductive because they suggest that the EU and the EP are poking their noses into certain areas without any legitimacy to do so, and also because those resolutions ultimately have no impact on the European citizens' lives. In view of the criticism levelled at the EU's action, which is judged to be excessively "intrusive", it would therefore be particularly wise for the European Parliament to show a greater sense of responsibility and to drastically diminish its "resolutory" activity in order to focus on the exercise of its legislative powers.

GRAPH 1 ► The European Parliament's decision-making powers after the Treaty of Lisbon



Key:
10 = EP decision alone
8 = EP decision after approval by the Council
6 = Co-decision by the Council and EP
4 = Council decision after approval by the EP
2 = Council decision after consultation with the EP
0 = Council decision alone

Source: Yves Bertoncini and Thierry Chopin, *Politique européenne. États, pouvoirs et citoyens de l'Union européenne*, Paris: Presses de Sciences Po/Dalloz, 2010. Graphics: Claire Taglione-Darmé

1.3. A Council of ministers with a higher profile and greater effectiveness

The Council of ministers lies at the heart of the Community decision-making power when it is in effect the least well-known of Europe's institutions. This political paradox demands three sets of adjustments designed to strengthen the institution's effectiveness and legitimacy. In fact it is particularly important to strengthen the Council's effectiveness and legitimacy because this would help to ensure that decisions not falling within the European Council's brief are taken at the Council of ministers' level, thus enabling it to be used less like an "Appeals Chamber" and to focus more on adopting the major guidelines and arbitration that the EU needs.

1.3.1. Transparency akin to that of the European Parliament in the legislative sphere

The Treaty of Lisbon has introduced a kind of parallel between the way the European Parliament and the Council of ministers function when the Council meets for legislative purposes. This, because Article 16-8 in the TFEU now stipulates that "the Council is obliged to meet in public when considering and voting on a draft legislative act" in order to guarantee a transparency comparable with that in force in the European Parliament with regard to the exercise of powers of a similar nature (particularly of a legislative nature). It is crucial from both a legal and a political standpoint that such measures be fully applied in order for the parties concerned, the media and especially the man in the street to be able to have access to the debate between the positions adopted and to see how Community negotiations can lead to a compromise based on differences in national interests (as opposed to being enforced by "the Europe of Brussels").

These formal parallels between the European Parliament and Council must also lead to greater publicity for the voting that takes place in the Council. Even if the Council works largely on a consensus basis, it is crucial for its decisions to be formalised through voting records indicating the position adopted by each member state and published on the Council's website, as indeed is broadly the case already. As things stand today, this formalisation, which would impart greater democratic transparency to the way the Council operates, only concerns the draft legislation adopted by the member states. No publicity is given, on the other hand, to the conclusion of negotiations which fail to end in an agreement, while the European Parliament for its part habitually publishes the results of voting even when that voting ends in the rejection of a proposal submitted by the Commission. Even if systematic recourse to a formal vote is likely to be incompatible with the efficient functioning of the Council, it would nevertheless be useful for the Council, too, to publish the reasons for its failure to adopt given draft legislation after several successive meetings, by producing a voting report listing the member states that voted in favour and those that voted against. This additional transparency would provide a clearer picture of the debating and compromise rationales at work within the Council, which tend to reflect those held by national grass-roots opinion in the various member states.

1.3.2. Fixed-term presidencies rather than a rotating presidency

For a long time the rotating presidency of the Council of ministers had the political advantage of pegging the EU in political terms to the level of national governments, which were prompted to play a more direct role in the common governance, and it also allowed them to insist on priorities reflecting their own agendas. But such a goal is impossible to achieve in an EU now 28-strong, which leads to member states holding the rotating presidency once every fourteen years. Moreover, the very early designation of the countries appointed to hold the rotating presidency leads to designations out of sync both with national electoral cycles and with the global political situation. The presidency's six-month time span barely allows the holder to get anything lasting or sustainable done, and the establishment of the "Trio presidency" system has only partially remedied that state of affairs. All in all, the principle of a rotating presidency of the Council seems, at this juncture, to contain more disadvantages than benefits.

The rotating presidency principle has already been altered in two areas: on the one hand, at the level of the European Council with the appointment of a permanent president entrusted with a two-and-a-half year renewable mandate; and on the other, in the foreign and defence policy field because it is the high representative, who is also the vice-president of the Commission, who chairs the Council in connection with those issues. And a similar rationale has been adopted for the appointment of the Eurogroup's president. The holders of these posts are chosen by the member states on the strength of their presumed expertise and on the basis of arbitration covering a group of posts needing to be filled (on the Commission, in particular), to counter the haphazard nature of the appointments prompted by the six-monthly rotating presidency system whereby presidents are chosen solely on the strength of their nationality.

Thus an approach based on that adopted for the presidency of the Foreign Affairs Council should be used to designate the presidents appointed to chair all of the Council of ministers' ten configurations. This, because having to appoint nine presidents in a more open manner is likely to facilitate the designation of more suitable figures whilst fostering the right conditions for a compromise among member states, because it should be possible to respect the

main political balances (large and small countries; right and left; north, south, east and west).

A development of this kind should at least be adopted at the level of the General Affairs Council, which has to be able to effectively coordinate the work of the Council's other groups and to comprehensively monitor the implementation of the political priorities laid down by the European institutions, in conjunction with the president of the European Council and the president of the Commission. In this connection, the usefulness of placing a more stable president at the head of the General Affairs Council would be in direct proportion to his or her acknowledged profile at the European level and to his or her amenability to fill the post.

The designation of the presidents of the Council's other groups could, if necessary, be applied within the "Trio" of successive presidencies, which already tend to develop agendas with an eighteen-month time frame, and it could include the appointment of the presidents of the Council's nine configurations. The three member states concerned could thus hold three presidencies of the Council each, in accordance with their respective priorities and with the spheres in which they can put forward a minister who enjoys sufficient legitimacy and who is available to exercise his presidency effectively. Opting for a duration of a year and a half would also allow the ministers involved to be a little less influenced by the emergencies linked to the deadlines typical of a six-monthly presidency. The fact of working on a longer-term basis should therefore be beneficial in terms both of efficiency and of democratic legitimacy (because such an innovation would allow people to give a face to the Council, and thus to the EU).

1.3.3. More qualified majority voting

While the Treaty of Lisbon has increased by almost 40 the number of articles in which the Council of ministers takes a qualified majority vote, seventy-five articles are still subject to a unanimous vote, so that it is inappropriate to talk about the "generalisation" of qualified majority voting[14] (*see Table 4*). In

14. For a detailed description of the occasions on which the Council adopts a qualified majority or a unanimous vote, see Yves Bertoncini and Thierry Chopin, *Politique européenne. États, pouvoirs et citoyens de l'UE*, *Op. cit.* Appendix 3,

particular, we can see that the "general measures relating to the EU's external action and to the CFSP" are still broadly subject to a unanimous vote, while "institutional and financial measures" and "non-discrimination and citizenship" are evenly split between unanimous and qualified majority voting.

Monitoring the practice of qualified majority voting in the Council over a long period of time has shown that it is a powerful incentive for fostering convergence among member states' positions, yet without becoming a tool for placing reluctant countries in a minority because the institution itself is largely driven by a consensus-based ethos[15]. Any further revision of the European Treaties would need to deepen this movement based on the gradual strengthening of the sphere of application of the qualified majority voting method in order to bolster the effectiveness of the EU's functioning, which is often held to be insufficient by the man in the street, yet without undermining its legitimacy in the eyes of the member states, especially if it is applied to those areas that are less sensitive in terms of national sovereignty. For instance, one might mention the adoption of measures relating to the struggle against discrimination (Article 19-1 in the TFEU), the appointment of judges and advocates-general of the CJEU and of members of the EU General Court (Articles 253 and 254 in the TFEU), or the Council's decision to appoint a special representative on a proposal from the high representative for foreign policy (Article 33 in the TFEU).

15. In this connection, see Stéphanie Novak, "Qualified majority voting from the Single European Act to present day: an unexpected permanence", *Studies & Reports No. 88*, Notre Europe, November 2011.

TABLE 4 ► Legal bases subject to unanimous and qualified majority voting in the Treaty on the EU and the Treaty on the Functioning of the EU

	UNANIMITY	QUALIFIED MAJORITY VOTING	TOTAL
Common, general, principle or final provisions	10	9	19
Provisions on the institutions	2	3	5
General provisions on the Union's external action and specific provisions on the CFSP	20	7	27
Non-discrimination and citizenship	5	5	10
Union policies and internal actions	23	73	96
Union's external action and association of the overseas countries and territories	4	10	14
Institutional and financial provisions	18	21	39
TOTAL	**82**	**128**	**210**

Source: Data from Yves Bertoncini and Thierry Chopin, *Politique européenne, États pouvoirs et citoyens de l'UE, op. cit.*, processed by Yves Bertoncini

NB: several measures in a single article can be involved and thus they may be listed as such in this table (2 paragraphs of the same article = 2 legal bases).

1.4. A more vertical and collegial Commission[16]

The Commission should continue to depend on the double confidence of both the European Council and the European Parliament, but its functioning and impact could be improved on the basis of three ranges of changes, whose common grounding is that they rest on the rationale of the daily European political game more than on a sweeping revision of the Treaty (profiles of the commissioners, role of the vice-presidents and powers of the president).

16. These arguments are largely based on a publication by Yves Bertoncini and António Vitorino entitled "The Commission reform: between efficiency and legitimacy", *Policy Paper No. 115*, Notre Europe – Jacques Delors Institute, July 2014.

1.4.1. On the human level: a well-composed Commission

It could seem a sign of naivety and wishful thinking to recall that the legitimacy and efficiency of the Commission rely on the profiles of its members, whose selection is in member states' hands, under the control of the European Parliament: they can't complain that they have an inefficient Commission if they don't select the right commissioners in the right place, on the basis of the following political principles.

Elements of status quo: the euro area as the core of the political union

A non-written rule has been applied since the launch of the Economic and Monetary Union and the creation of the so-called "Schengen area": all the presidents of the Commission appointed since then on come from member states which belong to these two major milestones of the European construction process[17], which lie at the very heart of the political union.

Given the intensity of the political debates generated around these two areas, especially during the so-called "euro area crisis", it seems highly desirable to go on applying such rule. The same is true for the position of "Ecofin" commissioner, who should continue to hail from a euro area country.

Elements of change: the right commissioner in the right place

The president of the Commission should be appointed on the basis of his/her proactive profile and willingness to serve the European Council and the European Parliament; he/she should not necessarily be a former member of the European Council[18] but should combine three decisive elements, i.e. relying on his/her collegial political input, using all the powers of the Commission (especially its right of initiative) and, last but not least, promoting a clear and overarching vision of the EU's policies and future.

17. On this point, see Yves Bertoncini and Thierry Chopin, "Who will the next president of the Commission be? A multiple choice question", *Policy Paper No. 113*, Notre Europe – Jacques Delors Intitute / Robert Schuman Foundation, June 2014.
18. Jacques Delors has not been Prime minister, yet a very good president of the Commission.

The commissioners proposed by the member states should also be chosen on the basis of their potential contribution to the general European interest rather than for reasons of domestic politics (in line with the provisions of the Article 17.3 of the TEU).

The president of the Commission should choose the candidate he/she wants to appoint among those proposed by the member states, as he/she is the best placed to assess the profiles of potential commissioners in line with the concrete needs of the institution and its internal organisation.

The Commission vice-presidents's "general competence", "European commitment" and "independence" should be particularly "beyond doubt" (Article 17.3) so that they can be able to play to the full their coordinating role within a cluster-based system (*see § 2.2.*).

The president of the Commission can play a reinforced political role vis-à-vis the other Commission members, not only as a member of the European Council, but also if he/she is chosen among the candidates participating in the electoral campaign: this reinforced role could also give him/her more powers to compose a more efficient college, on vertical and functional bases.

The legitimacy and efficiency of the college of commissioners will be all the greater, the more its composition is defined in accordance with the internal political balance of powers in the European Council and in the European parliament[19].

1.4.2. On the organisational level: a more functional college based on clusters

The political efficiency of the Commission is closely connected with the effective functioning of the principle of collegiality. The reduction of the size of the Commission not having been implemented by the European Council, there is a need to rely on a more vertical internal organisation, by giving a key role to the 6 existing vice-presidents (there is then no need to create a new category of "junior commissioners", which would be perceived negatively).

19. Around one third of the members of the "Barroso 2" Commission members are affiliated to the "ALDE" group, which represented only 12% of the MEP's during the 2009-2014 period, and even of a smaller proportion of the head of states or government.

Elements of status quo: member states on an equal footing

Commissioners should still be able to participate in the vote of the college on an equal footing (no different voting rights: the Commission is not the Coreper 3), on the basis of the majority rule (Article 249 TFEU): this simple majority rule is indeed a functional advantage for the Commission, whose decisions can be made much more easily than in the Council (qualified majority or unanimity) and even more easily than in the European Parliament (where a majority of its component members or a 2/3 majority are sometimes required[20]).

The number of commissioners' portfolios would remain the same (28) even if the number of Directorates general could be reduced.

Elements of change (1): 6 real vice-presidents within a real college

The internal hierarchy to be put in place within the college should not only rely on the president's power to structure and allocate responsibilities among its members, but also on a new use of the status of the 6 "vice-presidents of the Commission": on the basis of the Article 248 TFEU, the president should choose these 6 vice-presidents according to their political weight, and not to compensate the narrowness of their portfolio.

The president and vice-presidents of the Commission should work in coordination with the other commissioners, whose portfolio should be connected to their seven respective spheres of competence, on the basis of a "cluster system".

The president or vice-presidents of the Commission should meet on a regular basis with the commissioners acting within their respective sphere of competence (sector-based collegiality within cluster meetings); the president of the Commission and his/her 6 vice-presidents should meet on a periodic basis so as to promote a better political coordination of the institution; all these meetings will take place with the support of the Secretariat general of the Commission. The overall collegiality of the Commission will be reinforced by weekly meetings based on the input from the cluster meetings and coordination meetings

20. On this point, see Yves Bertoncini and Thierry Chopin, "Faces on divides – The May 2014 European elections", *Studies & Reports No. 104*, Notre Europe – Jacques Delors Institute / Robert Schuman Foundation, April 2014.

mentioned above; it will also be reinforced by more open discussions of the college, concluded by more systematic votes.

Last but not least, the collegiality principle will indeed be fully applied and used (open political discussion versus formal endorsement of technical ones) if votes are regularly organised during the Commission's meetings, based on the principle that its president is a "first among others", but not a prime minister.

Elements of change (2): one president, six vice-presidents, thus 7 clusters

A new organisation of the college should be promoted in a functional and vertical perspective, on the basis of 7 complementary thematic clusters.

The format of some of these clusters seems to be quite obvious and consistent – for example the "presidential" cluster, gathering transversal political missions and the "External relations" cluster, already partly in place. Some other clusters reflect clear European missions, such as the "Internal market, cohesion and networks" cluster or the "European citizenship" cluster. Some others reflect functions which are often pulled together on the same basis at the national level (for example the "Ecofin" or "Social affairs" clusters).

The 7 clusters to be created could naturally be formed on slightly different bases: for example, employment and social affairs could merge with the economic ones, so as to promote a more integrated vision of economic and social development[21]. A cluster dedicated to investment could also be built, with the objective of gathering all the commissioners and DG in charge of the main European expenditures (except external and home affairs). Commissioners not formally member of a cluster could be invited to take part in its meetings on an *ad hoc* basis (for example commissioner dealing with migration issues joining the External relations cluster). The clusters could also be named on the basis or more political objectives, such as the names used in the "multiannual financial framework" (Competitiveness, Cohesion, etc.).

The key element is to establish clusters gathering commissioners and DG acting along the same functional lines, while the need to reach the overall political

21. A cluster dedicated to "networks" would then be created to stick to 1+6 clusters.

objectives of the Commission and the EU – which should in any case be guaranteed by the college itself and, last but not least, its president. It is in this "functional" spirit that commissioners who are not formally members of one or the other cluster should be invited to cluster meetings on an as needed basis.

1.4.3. A potential legal consolidation of these functional developments: more power for the president and the vice-presidents of the Commission

The Commission's dual legitimacy will still have a key diplomatic and civic dimension. Its efficiency will certainly be reinforced if the political changes proposed above are completed on the medium term by some legal changes, including a slight but decisive amendment of the Treaty providing a shift from the Council to the president of the Commission with regard to the appointment of the commissioners.

Elements of status quo: the dual representative nature of the Commission

In the short term, there will still be one commissioner per member state, so as to preserve the diplomatic legitimacy of the Commission (no change) – this is a non-starter for many member states[22]. It should in no way block the Commission's decision-making process, given the simple majority rule applied in the event of a vote.

The appointment of the president of the Commission is still made by the European Council, on the basis of the results of the European elections (no change in Article 17.7 of the TEU): its twofold diplomatic and civic legitimacy is thus confirmed.

There should be no change either as regards the dual status of the high representative for foreign affairs and security policy, who is at the same time one of the vice-presidents of the Commission (Article 18 of the TEU). He/she will keep on ensuring "the consistency of the Union's external action" and being "responsible within the Commission for responsibilities incumbent on it in external relations and for coordinating other aspects of the Union's external action".

22. Articles 17.5 TEU and 244 TFEU could then be redrafted.

Elements of change (1): New "internal rules of procedure" at the Commission to organise the cluster system

The Commission's "internal rules of procedure" should be revised to facilitate the implementation of the cluster system, for example by giving some specific rights to the vice-presidents such as setting the working agenda of their clusters and the political agenda of the commissioners acting in their respective field of competence. With a view to all this, it is going to be necessary to devise a new way of using "empowerment procedures" and "delegation procedures". This rewriting of the rules of procedure should be made on the basis of the provisions of the Article 18 of the TEU dealing with the vice-president/high representative for foreign affairs and security policy (Article 18.4), drawing lessons (political, human, functional, etc.) from the way they were implemented (or otherwise).

Elements of change (2):
a slight but decisive treaty change on the appointment of commissioners

After having been given the power to fire the members of the college (Article 17.6 TEU), the president of the Commission should be able to appoint the commissioners in a personal capacity, instead of the Council acting on the basis of a common agreement with him/her (Article 17.7 TEU to be amended); this slight modification would reinforce the likelihood to have good commissioners in the right place, but would also give real vertical powers to the president of the Commission.

The president of the Commission would naturally appoint the commissioners in close conjunction with the national governments (see for example what happens for the composition of the commissioners' cabinets).

Within this new legal framework, the president of the Commission could more easily appoint vice-presidents and commissioners, as in any national government[23]; the president should choose the vice-presidents while respecting the political balances of the EU (big-smaller member states and North-South-East-West especially); the member states could accept this kind of *de facto* political internal hierarchy, whereas they are reluctant to accept a *de jure* hierarchy.

23. If the Ecofin commissioner were to hold the post of permanent president of the Eurogroup (see high representative status), its designation would be made jointly by the European Council and the president of the Commission (see Article 18 TEU).

2. Moving beyond the crisis: completing the Economic and Monetary Union

The crisis in the euro area has prompted a change in the division of competences and powers between the European and national levels. It has spawned unprecedented acts of European solidarity towards member states in difficulty, consisting initially of bilateral and then European bail-out plans (through the EFSF and the ESM), as well as a pro-active stance on the ECB's part involving buying back countries' debts and providing banks with massive liquidity. As an offset, the EU's competences and powers have been strengthened in connection with national budgetary policies (via a reform of the Stability Pact and the adoption of the "Fiscal Compact") – with the case of countries benefiting from aid programmes, and thereby *de facto* losing a part of their sovereignty, taking the EU's powers to exceptional, if temporary, heights. New proposals are being debated today in connection with budgetary union, economic union and a banking union, and they need to be adopted on the basis of a European institutional mechanism that is at once both effective and legitimate, in other words based on institutions and mechanisms allowing the citizens and their representatives to play their rightful decision-making and monitoring role.

The fact that this kind of institutional mechanism is the logical outcome of the reaffirmation of the euro area's democratic basis sparked by the crisis makes it all the more necessary to identify such a mechanism. Citizens in the euro area's member countries have now taken on board a greater awareness of the specific rights and duties involved in membership of the monetary union, although a majority in each member country firmly wishes to remain in it. From a democratic standpoint it is necessary for them to be able to identify and to influence the institutions governing the monetary union and the powers they wield. The crisis has already generated a certain amount of progress in a democratic direction, yet the process needs to be completed in order to ensure the legitimacy and the effectiveness of the EMU's governance (*see Table 5*) on the basis of four complementary guidelines.

TABLE 5 ► Completing the institutional architecture for the euro area

THE "GOVERNANCE" OF THE EURO AREA	
Presidency level	**Regular** euro area summits with permanent president and with input from the president of the Commission
Ministerial level	Eurogroup **with full time president** and with input from the Commission
THE EURO AREA'S PARLIAMENTARY DIMENSION	
European Parliament	**Sub-committee for the euro area** (open to all MEPs, in the limit of 60 members)
National parliaments - European level	**Interparliamentary conference for the EMU** (open to representatives of the 25 national parliaments having ratified the TSCG, in the limit of 150). Participation of MEP's in the limit of 30
National parliaments National level	**Strengthening *ex-ante* and *ex-post* control** on their government when deliberating and voting on euro area issues
STRONGER SERVICES FOR THE EURO AREA	
Bail out	ESM, then **expanded EFSM / Commission, Eurogroup, ECB "Trio"** (instead of Troika)
Budget supervision	Commission – Eurogroup Secretariat – **European Treasury**
Economic Coordination	Economic and financial Committee – Eurogroup working group

NB: already put in place, **yet to be implemented**

Source: Yves Bertoncini, António Vitorino.

2.1. Clarifying the allocation of competences and powers within the EMU

The euro area crisis is also a "sovereignty crisis", which has led it to change how competences were distributed between the EU and its member states. This crisis has therefore led some of these states to provide assistance to those whose private and public debts had become excessive, in exchange for increased EU monitoring of national fiscal and economic policies. In this context, the series of "memoranda of understanding", "packs" and "pacts" seem however to have produced a political system based on poorly defined responsibilities, while EU treaties are based more traditionally on the principle of subsidiarity.

TABLE 6 ► The way competences are exercised in the EMU

PURPOSE	TOOLS	KEYWORD	EUROPEAN ACTORS	COMPARABLE ACTORS
Bailout	Memorandum of Understanding MOU	Condition	Commission / ECB European Council	IMF
Preventing/ correcting fiscal excesses and macro-economic imbalances	Stability Pact TSCG	Sanction	Commission Council	UN
Monitoring economic and social policies	Europe 2020 Euro + Pact TSCG	Incitation (political)	Commission Council	OECD
Promoting structural reforms	Reform financial aid	Incitation (financial)	Commission Council	World Bank

Source: Yves Bertoncini, "Eurozone and democracy(ies): a misleading debate", *Policy Paper No. 94*, Notre Europe – Jacques Delors Institute, July 2013.

Even if a certain complexity is inevitable in getting member states "united in diversity" to take action, there is an urgent political need to establish to what extent EMU governance reforms have limited the scope of national democracies and sovereignties. This means putting up for debate the idea that "Brussels" governs member states without the legitimacy to do so, while this is generally not the case[24].

With this in mind, it is important to analyse in more detail the nature of the competences exercised by the EU under the new EMU governance with regard to those that international organisations exercise. If we leave aside the competences exercised in the framework of the banking union, it's possible to classify the relations between the EU and its member states under four different political regimes, in which national or popular sovereignties are being jeopardised to extremely variable degrees (*see Table 6*), including from a geographic and temporal point of view (*see Table 7*). Clear descriptions of them should

24. For a more detailed discussion of these issues, see Sofia Fernandes, "Who calls the shots in the euro area? "Brussels' or the member states?", *Policy Paper No. 111*, Notre Europe – Jacques Delors Institute, May 2014.

then be a prerequisite to any in-depth discussion on relations between the EU and national democracies. By promoting this clarification, political leaders and observers would certainly make the debate on reform of the euro area governance more relevant and more productive.

2.1.1. The "International Monetary Fund regime" (to bail out the "countries under programme")

Both brutal and original, the IMF regime has dramatically changed power relationships between the EU and a number of programme countries[25], to the extent that it sometimes seems to affect the political perception of all European actions. These new relations have been established because these countries have basically lost a portion of their sovereignty because of their incapacity to be financed on financial markets at an acceptable price – also, "sovereignty ends when solvency ends", as the report of the Tommaso Padoa-Schioppa Group points out[26]. They are based on a solidarity-control dialectic according to which member states that have accepted to bail out their counterparts financially demand in return the power to weigh on their solvency over the medium term, and therefore on their immediate fiscal, economic and social choices.

Such relations remain based on the expression of democratic choices, mainly because national parliaments logically vote upon bailout and reform plans, sometimes rejected, as was the case in Cyprus. Under this regime, the sovereignty of beneficiary countries of external aid is however limited and representatives of the Troika and European Council can combine outcome obligations and means obligations, by requiring extremely specific and sizable commitments in compensation for the loans they grant: like a banker facing debtors in difficulty, the EU can temporarily control, for better or for worse. It is important to underline that this regime is only temporary; also that it only concerns, at this stage in any case, 4 out of the 28 EU countries (in Spain, only the banking sector is concerned), two of which are already clear, which clearly distinguishes it from the other regimes described hereinafter (*see Table 6*).

25. Some non Euro area countries (Hungary, Latvia, Romania) have also benefited from a joint aid from the EU and the IMF due to the difficulties of their balance of payments.
26. See Henrik Enderlein et alii, "Completing the Euro: A road map towards fiscal union in Europe", Foreword by Jacques Delors and Helmut Schmidt, *Studies & Reports No. 92*, Notre Europe, June 2012.

Except in the case of a new need for a bailout, it would seem that such European control over fiscal, economic and social choices made at national level could only be extended if all or a portion of member states began pooling their national debts. This pooling could be applied to accumulated debt beyond the ceiling of 60% of the GDP (as in the "public debt redemption" option proposed by the five wise German economists[27]); it could also involve the issuing of new debt with short-term maturity (eurobills) or long-term maturity (eurobonds). This type of "solidarity based integration" would result in the application of the "the one who pays controls" principle, albeit progressive: joint control exercised by European countries that have decided to pool their debt would be for example minimal if this pooling involves sums below 10% of the GDP, then gradually increased as the ceiling of 60% of the GDP is reached[28]. In any case, such pooling would lead to the emergence of much greater European control over national fiscal, economic and social choices than what has been exercised thus far, on the basis of UN- and hyper-OECD-type regimes.

TABLE 7 ► The scope and impact of competences exercised within the EMU

TOOLS	POLITICAL SCOPE	GEOGRAPHIC SCOPE	TEMPORAL SCOPE
Memorandum of understanding (MoU)	Definition of national economic and social policies	Greece, Ireland, Portugal, Cyprus	2009-214 (Greece, Ireland, Portugal) 2013-2016 (Cyprus)
SGP TSCG	Control of national fiscal excesses and macro-economic imbalances	EU28 EU25 (except Croatia, UK &Czech Republic).	Since 1997 (SGP) Since 2013 (TSCG)
Europe 2020 Euro+ Pact TSCG	Coordination of national economic and social policies	EU28	Since 2000 (Lisbon Strategy)
Reform aid fund	National structural reforms	Euro area	Post-2014?

Source: Yves Bertoncini, "Eurozone and democracy(ies): a misleading debate", *Policy Paper No. 94*, Notre Europe – Jacques Delors Institute, July 2013.

Note: SGP: Stability and Growth Pact; TSCG: Treaty on stability, coordination and governance.

27. See German Council of Economic Experts, "After the Euro Area Summit: time to implement long-term solutions", Special Report, July 2012.
28. See Henrik Enderlein, *op. cit.*

2.1.2. The "United Nations regime" (to control national fiscal excesses and macro-economic excessive imbalances)

The UN regime is applied to control national fiscal excesses (and not national budgets) and macro-economic imbalances. It is based on member states' undertaking not to surpass certain limits at the risk of threatening the stability of the entire Community (as the ongoing crisis so clearly reminded us). The member states are mainly required to maintain their current account deficit under 3% of their GDP and their structural deficit under the ceiling of 0.5% of their GDP. As long as they respect these limits, they can act freely: the EU does not intervene in their fiscal, economic and social choices. But they can all be placed under surveillance if they come close to or exceed these limits, similar to provisions of Chapter 6 of the Charter of the United Nations (concerning the peaceful settlement of disputes). If their excesses continue, the euro area countries can theoretically be subject to enforcement measures (similar to Chapter 7, which provides the use of force), based on possible financial sanctions, which the Council of ministers decides on a proposal from the Commission[29].

In any case, member states are faced with an outcome obligation (return under the limit) but not a means obligation: it is up to them to define how they can do this and whether or not to respect the EU's detailed recommendations. To use an automobile metaphor, we could say that the member states are naturally free to choose the power of their vehicle (their level of public expenditure) and the options they would prefer (distribution of this expenditure). However they must also be careful to avoid speeding or driving off the road, putting other drivers in danger, and radars and guardrails are put in place to prevent that.

The reforms introduced in the Six-Pack, the Two-Pack and the TSCG did not fundamentally change this type of relationship – the French Constitutional Council has for example noted that the TSCG does not change the "essential conditions for exercising sovereignty". The Six-Pack has facilitated the adoption of sanctions if required, since the Council adopts commission proposals except if a qualified majority of member states opposes them, whereas up to now a qualified majority has approved them. The Two-Pack has reinforced upstream

29. Except for the two countries having negotiated an opt-out clause, namely Denmark and the UK.

monitoring of fiscal choices (i.e. before national budgets are approved), without the EU having a power to exercise restraint. Lastly the TSCG has led to a number of already existing elements at Community level being integrated into national legal orders, especially the objective of a structural deficit limited to 0.5% of the GDP. As with reform of the Stability Pact, the adoption of the TSCG has led to more extensive EU monitoring of the conduct of national economic and social policies and the prevention of macro-economic internal or external imbalances[30]. But in the two cases, this extension of European monitoring[31] has not been accompanied by sanction mechanisms similar to those that have existed since 1997 to prevent and correct fiscal excesses[32].

In this context, it is very much to be hoped that the European institutions will make it more obvious that member states have an obligation to achieve given results in the budgetary sphere, but that they are under no obligation to adopt specific means to achieve those results; this, in particular, means that the institutions avoid the temptation to enter into detail regarding the action to be taken to rebalance national budgets, formulating far less detailed recommendations which do not address the substance of such symbolic and sensitive issues as pension or social welfare reform. Otherwise the European institutions will continue to adopt doubly counterproductive positions and recommendations, because on the one hand those positions and recommendations will be perceived as being excessively intrusive and thus illegitimate in view of their level of detail, while on the other they will ultimately have no direct, concrete impact on the decisions taken by the member states concerned.

2.1.3. The "hyper-OECD regime" (to monitor economic and social policies of member states)

The hyper-OECD regime concerns the relations established between the EU and its member states to monitor national economic and social policies, and therefore the famous "structural reforms". These relations are based on the joint analysis of the main economic and social challenges that the EU countries

30. See the Regulation (EU) No. 1176/2011 on the prevention and correction of macro-economic imbalances and the Regulation (EU) No. 1174/2011 on enforcement measures to correct excessive macroeconomic imbalances in the euro area.
31. Countries with excellent results in terms of public finances, such as Spain and Ireland, were in reality in a dangerous situation that the new monitoring indicators should contribute to better detect.
32. For more precisions on this point, see Sofia Fernandes, "Who calls the shots in the euro area? "Brussels' or the member states?", *op. cit.*

are facing and on the definition of common goals, particularly under the Europe 2020 strategy. They are likewise based on a combination of political incentives (recommendations, control and peer pressure) between member states. This political pressure is much greater than that of the OECD, where it is quite rare to see heads of state and government. It even expected to increase within the framework of the European Semester, in order to avoid major structural divergences between economies of the euro area; it should actually be even more specific and better-tailored to individual countries, taking member states' structural and cyclical specificity into greater account (thus steering clear of a "one-size-fits-all" syndrome).

This kind of public pressure does not however have any binding effect on the domestic political choices of the member states, including after the adoption of the euro+ pact and the TSCG[33]. The perfectly commendable objective of devoting 3% of GDP to R&D expenditure should therefore not be confused with the 3% GDP limit for the public deficit: the EU has the power to ask its member states to make efforts in both cases, but it only has the power to apply sanctions in the second instance. That is why it is tempting for the EU to link the control of fiscal excess to the monitoring of structural reforms, even if these two activities concern different powers. When it comes to structural reforms, the EU can therefore recommend, but not command.

So in this instance too it is very much to be hoped that the European institutions make it more obvious that member states have absolutely no obligation to achieve given results or to adopt specific means for achieving results in the sphere of structural reforms. This means that they take even greater care to avoid the temptation to enter into detail regarding the action to be taken, formulating far less detailed recommendations which steer well clear of addressing the substance of symbolic and sensitive issues. A single example is sufficient to illustrate the doubly counterproductive nature of the at once intrusive and proclamatory attitude adopted by the European institutions since the 2000s. When the European Council in Barcelona recommended in its conclusions of March 2002 that retirement age should gradually be raised by 5 years in all member states, it attracted very strong criticism questioning its legitimacy to formulate such a recommendation; twelve years on, one cannot really

33. On this topic, see António Vitorino, "The TSCG, much ado about nothing?", *Tribune*, Notre Europe, February 2012.

claim that that recommendation has been very effective in any concrete sense. Even if a number of member states have *de facto* raised the retirement age for their citizens, they are highly unlikely to have done so thanks to, or on account of, the European Council's conclusions, yet the harm done to the EU's image in the eyes of numerous citizens is eminently tangible.

In this context, it is important to note with Jacques Delors that cooperation between states is the missing link in the EMU, and that it is through such cooperation, and not by using enforcement, that we could more effectively and more legitimately improve coordination of national economic and social policies. It is because it is in their best interest that member states must convince themselves of the need to further discuss their main economic and social arbitration upstream, simply because this arbitration has a direct influence on their mutual situations, and not because they are prompted to do so by some "constraint from Brussels". The report the German and French authorities recently issued[34] seems to indicate that the benefit of such cooperation is better perceived during a crisis that brought the interdependence of economies in the euro area and the ensuing positive and negative externalities to the forefront: it addresses a wide range of issues, from pension schemes to minimum wage, that would be trickier to address in a Community framework. Such a spirit of cooperation also seems to have progressed on such essential issues as tackling tax avoidance, since countries seem to have understood the extensive resources that they are losing because their different laws are not coordinated. It is in enhancing cooperation of this type that a European approach will be more easily developed on national structural reform – except if European impetus in this area is combined with not merely political incentives but financial ones as well.

2.1.4. The "World Bank regime" (to promote national structural reforms)

The World Bank regime is based on the principle whereby if the EU provides financial aid to its members states, this aid must be used to promote national structural reform.

34. "France and Germany – Together for a stronger Europe of Stability and Growth", French Presidency and German Chancellery, May 2013.

This regime has directly emerged from the mitigated results of hyper-OECD-type relations and reflects a shift of political incentive measures towards financial incentive measures, which are considered more effective because they are more legitimate. The European proposal to introduce a new "financial instrument for structural reforms and convergence" illustrates this shift, as do the repeated attempts to impose greater macroeconomic conditionality in exchange for access to European structural funds.

The creation of a "structural reform facility" that would serve as a "super cohesion fund" for the euro area would give European institutions more political influence in conducting national economic and social policies. Its use could be based on "specific contractual arrangements" concluded by the member states concerned and European authorities, as mentioned in the report issued by the four presidents. It could also and preferably be based on the definition of common goals that would result in the quasi-automatic granting of European financial aid to countries that make efforts to meet them, in order to avoid reproducing a bilateral scheme that is too intrusive, like the current one being implemented in programme countries[35].

Member states in the euro area could also finance a "cyclical adjustment fund" aiming to smooth out the effects of the economy, using an insurance-based approach and criteria establishing a relative balance between member states, when needed[36]. The creation of this fund would also enable participating member states to have greater influence in defining their economic and social choices since they would all be stakeholders of its revenue and expenditure. This more intrusive approach is also likely to be developed in European initiatives aimed at tackling unemployment of young people, since financing countries will probably seek to link their contributions to conditions in exchange, especially in terms of practices to use in training and entering the job market. In any case, it is because the monitoring of structural reforms at European level will be combined with financial incentives that it is likely to have a greater impact than political incentives alone, which has been used up until now.

35. See Eulalia Rubio, "Which financial instrument to facilitate structural reforms in the euro area?", *Policy Paper No. 104*, Notre Europe – Jacques Delors Institute, December 2013
36. See Henrik Enderlein, Lucas Guttenberg and Jann Spiess, "Making one size fit all. Designing a cyclical adjustment insurance fund for the eurozone", *Policy Paper No. 61*, Notre Europe – Jacques Delors Institute, January 2013.

2.2. Improving the governance of the euro area

The crisis in the euro area has led to a strengthening of the European Council, to which the Treaty of Lisbon accords full recognition as an institution. This "crisis government" was rightly criticised when it turned into a tandem ("Merkozy"), the existence of which would have sanctioned a break with the formal equality that exists among the EU's member states. So it is to be welcomed that broader consultation should now be in place, as we can see for instance in the "four presidents' report" drafted by the presidents of the Commission, the European Council, the Eurogroup and the ECB. In this connection, aside from the ECB and its management which has to continue steering the euro area's monetary policy and taking on new functions in the field of bank supervision, the government of the euro area needs to be consolidated at the presidential and ministerial levels on the basis of the following guidelines.

2.2.1. Regular summits for the euro area

As their name indicates, the "euro area summits" constitute first and foremost a place of power that is specifically devoted to the euro area and in which the heads of state and government of this area are called upon to decide on the main guidelines to be followed with regard to bailouts of struggling countries and the organisation of EMU. The principle of such summits had long been rejected, especially by the German authorities, on the pretext that they could have represented an attempt to place the ECB under the supervision of or be pressured by the euro area member states. It was the crisis that hastened their advent in 2008, under the French presidency of the EU. Since then, they have been granted a stable president (currently Herman Van Rompuy) and "Rules of procedure"[37] detailing their organisation and functioning.

These rules of procedure specify that the president of the Commission is an *ex-officio* member of such summits, that the president of the ECB is "invited to participate", that the president of the Eurogroup may be "invited to be present" and that the president of the European Parliament may be "invited to be heard". By virtue of their composition, these summits are therefore expected to meet regularly in order to exercise "leadership" over the key euro area issues, by

37. See Council of the European Union, "Rules for the organisation of the proceedings of Euro summits", March 2013.

requesting expertise and recommendations from the Council, the Commission and the ECB. With this in mind, and as suggested by the French and German authorities, it would be extremely useful for the euro area summits to rely on the Eurogroup, but also on the Council of Employment and Social Affairs ministers and any other type of Council that is likely to provide a vision that is not limited to economic and financial issues alone.

2.2.2. A Eurogroup with a full-time president

Established in 1997, the Council of Economy and Finance ministers of the euro area countries, or the Eurogroup, constitutes the natural ministerial component of the euro area government. The euro area crisis has nevertheless highlighted the democratic shortcomings of such a body in terms of visibility and accountability: the conditions governing the adoption of the Cyprus bailout, of which almost no Eurogroup member seemed to openly admit ownership, remains, from this point of view, a particularly catastrophic counterexample. In this context, appointing a full-time president of the Eurogroup swiftly would be welcome in terms of both effectiveness and legitimacy. The public good that the euro represents should actually be supported and embodied continuously rather than sporadically. This dual mission should be the responsibility of this president, not only so that he can ensure the follow-up of decisions made within the EMU framework, but also be accountable to member states and parliament members. In the long term, this post of Eurogroup president could be combined with that of the European commissioner for Economic and Monetary Affairs, as appropriate, according to the current model in the field of CFSP (EMU and CFSP being precisely two areas in which the combination of national sovereignty and the European approach is required).

2.2.3. The Commission's hybrid role

The Commission should also play a key political role in euro area governance conducting missions that are both "presidential" and "ministerial". They should be "presidential-type" missions when it concerns contributing to the work of euro area summits on the basis of analyses and proposals prepared by its services, then debated and endorsed by the college of commissioners, so that they fully convey the cross-sectoral added value of the institution.

"Ministerial-type" missions come into play when it comes to drawing legislative and fiscal initiatives required for the smooth functioning and organisation of the euro area. It goes without saying that the full involvement of the college will also help strengthen the political weight of the Commission's contribution within the euro area government, while the influence of the commissioner for Economic and Monetary Affairs will be structurally more limited in relation to the Eurogroup president if he appears to be acting alone too often. It is also because the college of commissioners, which brings together members with varied backgrounds and responsibilities, will ensure full supervision of its services that its positions and contributions will find enhanced political legitimacy and effectiveness regarding those made by the Eurogroup.

2.2.4. Stronger European services for the governance of the euro area

Lastly, the "euro area government" should rely on a group of European services capable of ensuring several types of duties in the bail-out field, in the monitoring of national budgetary policies and in the coordination of national economic and social policies:

+ European services in the bail-out field:

- in the short term it is necessary to continue to rely on the structure managing the ESM, whose head should be allowed frequent parliamentary hearings at both European and national levels;

- in the medium term, it would be necessary to substantially increase the ceiling of guarantees that can be granted within the EFSM framework. Its use would place the European Commission in the front line, under the supervision of the European Parliament.

- European expertise acquired in the implementation of bailouts should allow a fully European team or "Trio" to be formed in the future, made up of the European Commission, the Eurogroup and the ECB (for the banking part), instead of the current Troika. This team could thus act under the direct supervision of the "euro area Parliament" (*see § 2.3.*), without the co-management with the IMF constantly overshadowing the responsibilities held by a specific party.

+ European services for monitoring national budgetary policies:

- the services of the Commission seem to be fully playing their role under the authority of the college, in particular to provide the Council with analyses and recommendations linked to excessive deficit procedures and macro-economic imbalances;

- the sharing of government debts would give them a more significant role if it took place as part of enhanced cooperation: otherwise it would instead become part of the Eurogroup services, which would then be responsible for laying the foundation of a European "Treasury".

A division of similar tasks could be worked out to manage an incentive fund for structural reform (by the Commission's services) and to manage a cyclical stabilisation fund (by the Eurogroup's services).

+ European services for coordinating national economic and social policies:

- it would be appropriate to allow the Eurogroup president to rely on substantially enhanced services: the "Euro area working group", with a permanent secretariat and which meets regularly in Brussels and the "Economic and Financial Committee" meeting at the level of the euro area.

- these services would thus be able to make contributions that are more grounded in the economic, social and political realities of the member states, in addition to those provided by the services of the Commission, and which therefore would probably be better heard and more useful at national level.

2.3. Strengthening the euro area's parliamentary dimension

The euro area crisis will have confirmed the need for heightened debate between citizens' direct representatives, and which cannot be limited to the occasional "solemn rituals" that the European Council meetings and the euro area summits are today. This crisis has stimulated reflection on the way in which to better associate European but also national parliament members in

such debate, to the point of creating major tension between these two categories of citizens' representatives. It is therefore vital to highlight the fact that the central issue is to organise more democratic support of the progress that has recently been made possible in EMU governance, and not the weakening of the democratic dimension of the EU or the role of the European Parliament. It is necessary to bridge certain gaps in the European "democracy deficit", not to redistribute a limited number of parliamentary prerogatives. In other terms, all EMU parliaments are, in reality, confronted with a positive agenda that needs to be implemented at several levels. Independently of the necessary strengthening of the supervisory activities of national parliaments in relation to their own governments, two complementary initiatives should also be encouraged at European level, so as to strengthen the euro area's parliamentary dimension

2.3.1. A key issue: national parliamentary control over governments

National parliaments have as usual ratified any amendments to the TEU, the Treaty establishing the ESM and the TSCG – the two latter being approved by a referendum only in Ireland. This weighty intervention on the part of representative democracy's primary organs at the national level highlights the full legitimacy of those elected by the people to take decisions having a structural impact on the functioning of the EMU. Yet it is at odds with the far more heterogeneous involvement of those parliaments in the regular monitoring of the guidelines adopted by their heads of state and government, or even by their government, at the European level (*see Table 8*).

TABLE 8 ► Parliamentary monitoring of European Councils and euro area summits

EX-ANTE / Ex-post	REDUCED INVOLVEMENT	COMMITTEE	PLENARY	INVOLVEMENT BOTH IN COMMITTEES AND PLENARY
Reduced involvement	**Limited control model** Hungary Luxemburg Romania	**"Europe as usual"** Czech Republic Estonia Italy Latvia Poland Slovakia	Netherlands	
Committee	Cyprus	**Expert model** Belgium Finland Lithuania Slovenia	France	**Policy maker** Germany
Plenary	**Government accountability** Bulgaria Malta Spain UK	Austria Sweden	**Public forum** Ireland	
Involvement both in Committees and Plenary	Greece	Portugal		**Full Europeanisation** Denmark

Explanation:
Reduced involvement = less than 3 meetings in European affairs committees (EACs) and less than 3 sessions in plenary from March 2011 to March 2012.
Committee = 3 or more meetings in EACs and less than 3 sessions in plenary.
Plenary = less than 3 meetings in EACs and 3 or more sessions in plenary.
Involvement in both = 3 or more meetings in EACs and 3 or more sessions in plenary.

Source: Olivier Rozenberg, Valentin Kreilinger, Wolfgang Wessels and Claudia Hefftler, "The democratic and parliamentary control of the European Council and Eurozone summits", *Study for the European Parliament*, Notre Europe – Jacques Delors Institute / TEPSA, January 2013.

This parliamentary oversight is extremely specific in such countries as Denmark and Germany, but far less structured in such countries as Luxembourg or Romania[38]. Angela Merkel has had to report regularly to the Bundestag, whose

38. On these issues, see Olivier Rozenberg, Valentin Kreilinger, Wolfgang Wessels and Claudia Hefftler, "The democratic and parliamentary control of the European Council and Eurozone summits", *Study for the European Parliament*, Notre Europe – Jacques Delors Institute / TEPSA, January 2013.

decisions have often been awaited with a certain anxiety; whereas the French president is not even legally authorised to appear before parliament, where he must delegate his presence to the prime minister or, more often than not, to the minister for European affairs. This variety is the product of constitutional choices and political ethics that are themselves extremely variable from one member state to the next. Yet such a situation is detrimental to the governance both of the EMU and of the EU as a whole, because it is within the member states themselves that the "democracy deficit" associated with this governance is most substantial, given that numerous governments can take decisions which are of vital importance at the European level without their action coming under any kind of scrutiny or being aired in any kind of in-depth public debate. In this connection, it is a good thing that Article 13 in the TSCG calls for a strengthening of national parliaments at the European level; but it would be just as useful if certain institutional and legal adjustments were to be made within those member states whose parliaments do not play a sufficiently strong role, in order to strengthen the democratic aspect of the EMU's governance[39].

2.3.2. A "Euro area subcommittee" in the European Parliament

A "Euro area subcommittee" should first of all be established within the European Parliament, which would simply require the modification of its rules of procedure. Such subcommittees already exist in fields where the EU does not necessarily have more powers than for euro area governance, such as human rights or defence: it is therefore logical that a subcommittee of the same type could be established, for both functional and political reasons (the euro is a public good that is sufficiently valuable to merit a specific parliamentary group).

This subcommittee should be mainly composed of European Parliament members on the Economic and Monetary Affairs, Employment and Social Affairs and Budgets committees. For legal, political and philosophical reasons, this subcommittee should not be reserved to parliament members elected within the euro area countries alone, but should be open to all parliament members wishing to join it, in the limit of 60 members, for legal (articles 10.2 and 14.4 of

39. On this issue, see as well Corina Stratulat, Janis A. Emmanouilidis, Thomas Fischer, Sonia Piedrafita, "Legitimising EU Policymaking: What Role for National Parliaments?", *Discussion Paper*, EPC, Bertelsmann Stiftung and CEPS, January 2014.

the TEU), political (not to re-establish borders within the EP) as well as philosophical reasons (all the EU countries are concerned by the EMU).

2.3.3. A fully-fledged interparliamentary conference for the EMU

Better involvement of national parliament members in EMU governance should also be organised on the basis of Article 13 of the TSCG, which provides for the establishment of a "conference of representatives of the relevant committees" of the national parliaments and of the European Parliament in order to discuss economic and fiscal issues. This does not mean creating a new European "institution", but rather providing the opportunity for national and European Parliament members to meet and discuss issues relative to EMU, in order to increase their level of involvement and mutual understanding.

The organisation of such a conference would be useful on two counts: it will allow greater involvement of national parliament members at EMU level, given their role in adopting euro area bailout plans and in decisions relative to national fiscal and economic choices. It will bring together representatives from all the specialised committees linked to EMU governance, in particular the Economic and Financial Affairs committee, and not only the European Affairs committee. The mobilization of 6 members per country will guarantee a good representation of the committees and of the political groups, within a limit of 150 members. The 30 full member of the euro area committee of the European Parliament will participate as well to the works of this conference. In short, this conference will play the role played by the "COSAC", but in the sphere of the EMU, and should be both a forum for discussion and an influential stakeholder. This objective will naturally be easier to achieve if the conference has the necessary resources and publicity to strengthen and maintain the motivation of the national parliament members concerned[40].

In this perspective, the agreement reached by the parliaments at the occasion of their Nicosia meeting in April 2013 and Vilnius meeting in October 2013 has shown the need for a much stronger organisation: it's because this conference will adopt genuine "Rules of procedure", mentioning the number of its

40. See Christophe Caresche, "Rapport d'information de l'Assemblée nationale portant observations sur le projet de loi de ratification du Traité sur la stabilité, la coordination et la gouvernance au sein de l'Union économique et monétaire", No. 202, September 2012.

members and the nature of its activities that it will be able to play the useful role it has been given, on the basis of a functional distribution of tasks between the parliaments.

2.3.4. Sharing out tasks among parliaments in a functional way

The parallel establishment of two parliamentary bodies dedicated to the euro area will all the more enhance the democratic dimension of EMU governance that it will be based on a functional, not a rigid or exclusive, distribution of tasks[41]. In addition to its contribution to the European Parliament's exercise of legislative powers, the euro area subcommittee could thus ensure comprehensive and continuous supervision of EMU positions and decisions, and adopt resolutions on the decisions made by the executive authorities. For its part, the EMU interparliamentary conference could meet in the spring and autumn to adopt resolutions on national economic and fiscal strategies. These two bodies could also conduct regular hearings with euro area leaders. The euro area subcommittee would focus on European leaders while the EMU Interparliamenary Conference would put questions to national and intergovernmental leaders. Joint hearings could be conducted on an *ad hoc* basis, in particular for presidents of euro area summits and the Eurogroup.

The follow-up of decisions linked to the euro area's "fiscal capacities" should also be shared. For example, the monitoring of the use of bailout funds should be conducted by the EMU interparliamentary conference for the ESM, and by the euro area subcommittee for the EFSM. The supervision of European funds allocated to the implementation of national structural reforms or those from a possible "cyclical adjustment fund" would be attributed in relation to the origin of these funds: the interparliamentary conference for national funds, the euro area subcommittee for Europeanised funds, including through enhanced cooperation.

The creation of two parliamentary bodies dedicated to EMU governance could finally make it possible to think about the possible organisation of sharing mechanisms concerning the issuing of national debt (redemption funds,

41. For more detailed analyses and proposals on this subject, see Yves Bertoncini, "The Parliaments of the EU and the EMU Governance", *Tribune*, Notre Europe – Jacques Delors Institute, April 2013.

eurobills, eurobonds, etc.). In the short term, the EMU interparliamentary conference would undoubtedly be the ideal forum for discussing these issues, as today debts are issued at national level to finance budgets voted upon by national parliaments. The European Parliament euro area subcommittee should also explore the possibility of issuing a common debt, in accordance with the terms of the compromise reached with the adoption of the Two-Pack. It is particularly important for it to be involved if eurobonds are issued to finance EU expenditure, in the area of investment in trans-European networks, for example.

2.4. Organising differentiation around the euro area

The aforementioned analyses and recommendations logically lead us to recommend the use of the enhanced cooperation procedure, so as to achieve the effectiveness and legitimacy components of euro area governance, in accordance with the proposal made by Jacques Delors[42].

2.4.1. Enhanced cooperation, a priority tool for differentiation

Granted the EMU does not stem from enhanced cooperation, but from a treaty under which almost all member states accepted to become part of the economic union as well as, in the long term, monetary union. But the EMU conveys a "differentiated integration" that corresponds well to the spirit of the procedure of enhanced cooperation. This differentiated integration has recently been deepened on the basis of non-Community treaties, which have made it possible to implement a "European Stability Mechanism" at euro area level, but also the TSCG, ratified by the euro area countries and by eight other EU countries. It is noteworthy that the TSCG has provided for direct referral to the European institutions (Commission, Council and Court of justice), notably considered as a way to guarantee the effectiveness of whatever action is taken, but also better democratic supervision of the decisions taken.

42. See in particular Jacques Delors, "Rethinking the EMU and make greater Europe positive again", *Tribune,* Notre Europe – Jacques Delors Institute, June 2013, and "Fear not, we will get there!", *Tribune,* Notre Europe – Jacques Delors Institute, June 2013.

The use of the enhanced cooperation procedure first guarantees a better identification of the European decision makers, since it implies the full commitment of the members of the Commission, of the Council and of the European Parliament; on the contrary, *ad hoc* cooperations only include the ministers of the countries concerned, whose activities go well beyond the EU sphere, and who are then not very often accountable for their European decisions. The use of the enhanced cooperation procedure also guarantees a more effective parliamentary control: not only the one exercised (on a very heterogeneous basis) by the national parliamentarians vis-à-vis their government, but also the one exercised by the members of the European parliament, much more directly committed in this task.

In this context, it would be important for further progress from economic and monetary integration to rely on the enhanced cooperation mechanism, based on two options. Firstly, preferably, through enhanced and comprehensive cooperation for the EMU, addressing a set of initiatives – the conclusion of the comprehensive package being likely to facilitate compromise between states and increase overall transparency; or secondly, through several enhanced cooperation initiatives, in order to take the "variable geometries" identified between states into account, at the risk of making EMU governance more complex.

2.4.2. A budget and laws for the euro area

As Article 20 of the TEU specifies that enhanced cooperation cannot lead to increased competences for the EU, and can only be exercised as part of its non-exclusive competences (which excludes monetary policy, for example), using enhanced cooperation within the EMU framework should mainly address issues that are both fiscal and normative. Several components of a euro area budget could thus be established outside the Community budget (in accordance with Article 332 TFEU), and in particular a "structural reform facility" and a "cyclical stabilisation fund".

Although the "convergence" of the economic and social policies of member states is not one of the objectives of the TEU and the TFEU, some of their provisions also provide for the "approximation of legislation" in areas that are important for the smooth functioning of the EMU. Within this framework, at least two initiatives aimed at avoiding marked differences between member

states from the same monetary union should be launched as part of enhanced cooperation: one relative to the harmonisation of corporate tax rates, the other in terms of rules relative to the minimum wage and measures facilitating cross-border mobility.

BOX 2 ► Enhanced cooperation for the euro area: main points of application

1. Implementing components for a "Eurozone budget"

- A "***structural reform facility***" (a sort of "super cohesion fund" or "competitiveness fund" for the euro area) destined for euro area countries (such as contributors and beneficiaries)[43]. It could be managed by the European Commission, which is already in charge of managing structural funds and monitoring the implementation of structural reforms (Europe 2020 strategy) – this option corresponding to the model used to manage the European Development Fund, outside the EU budget.

- A "***cyclical stabilisation fund***" aimed at smoothing out the effects of the economy, could be financed by the euro area member states, if necessary on the basis of an insurance-based logic[44]. This fund could be managed by the Eurogroup and/or the Council – this option corresponding more or less to the model used to manage the ATHENA mechanism in force for external operations (sharing of common costs).

2. Progressing in terms of approximation of standards within the euro area

- ***Harmonisation in the field of taxation*** should firstly concern corporate taxation: as a complement to work already underway at EU level to harmonise the corporate tax base, for a more limited number of member states this concerns committing to a form of supervision of rates taking into account in particular the geographic characteristics of each country, based on the three-pronged tax bracket model already in effect in terms of VAT.

- ***Harmonisation in the social field*** should also be progressively undertaken and could first of all gather a more limited number of countries around elements mentioned through the recent Franco-German declaration dated May 2013, and especially the rules relating to a minimum wage and measures to facilitate the fluidity and the control of cross-border mobility of workers (transferability of qualifications and of supplementary pensions in particular).

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43. On this issue see, Eulalia Rubio, "Which financial instrument to facilitate structural reforms in the euro area?", *Op. cit.*
44. In this connection, see Henrik Enderlein, Jann Spiess and Lucas Guttenberg, "Blueprint for a Cyclical Shock Insurance in the euro area", *Studies and Reports* No. 100, September 2013.

CONCLUSION
A GRADUAL ADJUSTMENT OF POLITICAL PRACTICE AND OF THE TREATIES

While the operational changes proposed above may not be revolutionary with regard to the nature either of the treaties or of the political game in Europe, they nevertheless appear to rank among the best options available for endowing the euro area and the EU with the institutional base-frame that they need both to strengthen their efficiency and their legitimacy, and to better face up to the challenges they need to address.

The European political union is already a reality which it is worth completing and consolidating, without necessarily resorting to a "moment of truth" or to a "federal quantum leap" but proceeding to adopt a whole series of more or less sweeping adjustments. Some of these changes are possible in the very short term, such as those concerning the appointment of the next commissioners, making it easier to use the right of citizens' initiative or the creation of a fully-fledged interparliamentary conference for the euro area; while other adjustments appear to be possible in the medium term, for instance extending the field of application of the co-decision procedure or of qualified majority voting.

The important thing is for the changes as a whole to clearly form part of a political dynamic designed to bind the EUs functioning far more solidly to its citizens and to its member states in order to allow it to acquire greater efficiency and greater legitimacy. It is important also not to forget that the EU's institutions will continue to reflect in their functioning the decisions formulated by the representatives elected and appointed to them, so the renewal of those institutions in the course of 2014 is also going to have a crucial impact on the future of European integration.

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REFORMING EUROPE'S GOVERNANCE

FOR A MORE LEGITIMATE AND EFFECTIVE FEDERATION OF NATION STATES

If the challenges facing the EU demand, first and foremost, detailed political responses, it is essential that the European institutions whose aim is to come up with those political responses are fully legitimate and effective, and that the "European federation of nation states" evoked by Jacques Delors functions more harmoniously.

It's with this in mind that Yves Bertoncini and António Vitorino formulate analyses and recommendations both on the European Union in the broader sense, sometimes judged to be too pernickety and "unintelligible," and its "institutional triangle" frequently being considered to be excessively opaque, as well as on the Economic and Monetary Union, marked most recently by the arrival on the scene of the "Troika" and by the conclusion of the "fiscal compact". These analyses and recommendations take into account the major progress associated with the entry into force of the Treaty of Lisbon which, like the previous treaties, has improved the EU's functioning, without necessarily including all of the potential institutional and political reforms.

According to Yves Bertoncini and António Vitorino, reforming "Europe's governance" supposes to better legitimate the exercise of the EU and the EMU's powers, to clarify the actions of and interactions between the European institutions, as well as to modify their internal functioning. Reforming "Europe's governance" also implies promoting adjustments in the short and medium terms, above all regarding the interventions and organisation of the European institutions, and concerning certain points on the drafting of the Community treaties, in order to "consolidate political union" and to "complete the EMU".

The set of changes proposed by Yves Bertoncini and Antonio Vitórino do not involve an "institutional big bang" or a "big federal leap", but constitute a number of pragmatic, democratic and beneficial improvements for European governance, which will enable the EU to better meet the expectations of its member states and citizens.

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