EDITORIAL

THE EMU AND THE EBU: TIME FOR REFORM

La UEM y la UBE: tiempo de reforma

JEAN-VICTOR LOUIS[1]

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"Europe is back" is the title of a publication of the official think tank of the EU Commission (EPSC, 2018). "EU27 on solid path of growth, job creation, investments, innovation and inclusion", "Economy Growth has returned: the crisis is now firmly in the past", "Investment has recovered", "EU is world's top destination for foreign investment", "A global trading superpower", "Euro is world's second largest currency": those and more are the titles of chapters of this EPSC paper full of optimism. Quoting SWIFT[2], the document mentions that "over 36 % of global payments are concluded in

[1] Catedrático emérito de la Universidad Libre de Bruselas.
[2] *Society for Worldwide Interbank Financial Telecommunication*, located in La Hulpe, near Brussels.

euro — just short of the US dollar which stands at 39 %”[3]. And the list of comparative successes for the EU/Euro area continues in the same tone. Of course, the aim of the document is to describe the global situation of the EU/ Euro area, without considering the differences which still exist among the Member States. At this regard, one could mention the level of public debt, (European Commission, 2017:19)[4] the still important number of jobless people or the working poor, especially among non-educated young people, or the subsistence of non-performing loans that still weakens the situation of some banks in determined countries, despite of the realised progresses in this field. The unemployment due in a substantial part to a lack of qualified candidates for the proposed jobs requires the adaptation of the educating system to the new industrial revolution created by the increased digitalisation of the economy. The so-called heritage debts are to be eliminated because they are a permanent risk for financial stability.

Globally, the picture described by the EPSC is correct: the crisis is over. But the optimistic description could not obscure the need to correct the situation and to do that rapidly.

Views differ indeed on the near future development of the economy. There are many authorised voices evoking the relative proximity of a recession. It was the main message of Mme Christine Lagarde, general manager of the IMF, in her speech at the recent World Economic Forum[5]. Her words are perfectly adapted to our subject. After having affirmed that “global growth has been accelerating since 2016, and all signs point to a continuous strengthening of that growth this year 2018 and next year, 2019”, she observed that “we should not feel satisfied”. Why? First, because “there are still too many

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[3] The euro retrains a systemic currency.

[4] See European Commission (2017: 9): “Public debt has overall further reduced in the EU in 2017, supported by economic recovery, very favourable financial conditions and a broadly stable financial outlook […]. However, in several countries, public debt levels have not decreased, or have done so at a slow pace, and remain close to their historical peaks. Close to 90 % at the euro area aggregate level in 2017, public debt ratios linger around 100 % of GDP in Belgium, Spain, France and Cyprus, and around 130 % of GDP in Italy and Portugal. Several countries remain therefore exposed to unfavourable shocks”. Greece remains out of the show…

[5] International Monetary Fund, Transcript of World Economic Outlook Update Press Conference, Davos, January 22, 2018. After Mme Lagarde, Mr Maury Obstfeld, IMF Economic Counsellor and Director of Research developed the themes included in the introduction of the General Manager. His message was that “the recession will come sooner and will be harder to fight”. Although this view was not shared at Davos by all the participants, it was not isolated.

people left out from the recovery: in fact, about one fifth of emerging markets and developing countries saw their per capita income decline in 2017. Second, this is clearly mostly a cyclical recovery. Absent continuous reforms, the fundamental forces that had us so much worried about the 'new mediocre'… In that we feared —in other words, the scare of the crisis… all of this will continue to weigh on medium-term prospects". Mme. Lagarde added to the picture the uncertainties of the year ahead due to the vulnerabilities created in the debt markets by the long period of low interest rates and she quotes John Fitzgerald Kennedy: "The time to repair the roof is when the sun is shining". The IMF General Manager focussed the attention thereafter to three global features, in her responsibility for the global area but the objectives can, *mutatis mutandis*, apply to the EU.

She called first for a "shared growth", considering that "policy-makers should use the moment to make the difficult structural and fiscal reforms that may not happen otherwise and that are too difficult in time of hardship".

"Shared opportunity" is then mentioned, calling for more inclusive growth not only across countries but also within them. She called for "training for workers displaced or at risk of being displaced by technology and globalisation", mentioning specifically young workers and women.

"Shared Global responsibility" is the third area where progresses should be made for "fighting corruption, improving the international trading system, and tackling tax evasion".

This idea that the improvement of the economic situation offers "an opportunity to discuss the challenges ahead and the ways to tackle future crises, bearing in mind that many potential risks are external and not specific to Europe" is also to be found in the so-called "EU Leaders' Agenda" of December 2017. But the approach in the EU differs from the global view proposed by Mme Lagarde. It appears as being more technical. It is far from reflecting great visions. Debates on reform agenda are mostly taking place behind closed doors and they are limited by the unachieved institutional structures and by the field of competences transferred by treaty to the EU, a revision of the treaties not being believed to be a possibility for the time being or in a near future.

This explains that the focus of the present negotiations at the level of the EU institutions, is elaborated on an ongoing process. As far as Economic and Monetary Union (EMU) and European Banking Union (EBU) are concerned, the Summits and Eurogroup were mandated to give the priority to the issues where there is "the largest degree of convergence". Big reforms are either considered as useless or postponed to an uncertain future. On September 27, 2017, President Donald Tusk had already written in a letter to EU leaders (the new short cut for "Heads of State or Government") ahead of their informal dinner at Tallinn that "our priority should be to complete the Banking Union

in line with the agreed roadmap so that the euro area is strengthened structurally"[6]. And, as it is obvious, this roadmap is not to be compared to what were in the past the Werner Plan of 1970 or the Delors report of 1989 for an EMU.

President Tusk mentioned in his Press Conference after the Euro Summit of 15 December 2017 that "progressing step-by-step on issues such as the completion of the Banking Union and the transformation of the European Stability Fund (ESF) into the so-called European Monetary Fund (EMF) should significantly strengthen the resilience of the EMU". We will see that there will be a link between the Banking Union and the ESF/EMF, if the common backstop for the Single Resolution Fund (SRF) takes the form of a credit line of the ESF/EMF, what is one of the perspectives opened by a proposal of the Commission. Before going further we must observe that the reflection progresses at various levels on the basis of a *de facto* combination of various elements following the adoption of the so-called Five presidents report of 2015, the Bratislava 2016 and Rome 2017 declarations, the conclusions of the Ecofin Council of 17 June 2016 and, last but not least, the Commission Reflection Papers, Communications and initiative packages on Finances of the Union, EMU and Banking Union, culminating in the impressive number of propositions of 6 December 2017, some of which we will come back later on. To these EU official documents, one has to add two important speeches: the State of the Union speech of President Juncker and the Sorbonne speech of President Macron, both in September last. The German voice was not very much heard up to now due to the long process of negotiating the formation of a Government which was to be based on a big coalition between three parties: CDU, CSU and SPD.

As it is difficult to give in an editorial a full record of the whole picture, taking furthermore into account the impossibility for an outsider to pretend to be informed on the details of the negotiations in progress, and the real chance of agreements on the numerous points at the agenda, we will limit the developments to some aspects: first, on the topics related to Banking Union and then we will pick up other points of other parts of the Proposals and Communications package of December 6, 2017, namely the transformation of the EMS in an EMF, the appointment of an Economy and Finance

[6] See letter addressed by President Donald Tusk to the EU leaders before their informal dinner at Tallinn, Council of the EU, Press Release 529/17, 21 September 2017. In mentioning the "agreed roadmap", President Tusk was referring to the important conclusions of the Ecofin Council of 17 June 2016 on *Strengthening the Banking Union* on which we will come back.

Minister for the euro area and the integration of the Fiscal Compact into Union law, before concluding.

I. COMPLETING THE BANKING UNION

It has become a common place to mention that the completion of the Banking Union has to be a priority. The number of voices calling for it, the multiple occasions on which this necessity is underlined is impressive. It doesn't mean that there is no resistance from some Member States against the effective adoption of the lacking measures, as we will recall, but there is a serious perspective that a positive result will be achieved at least in some important points. As it is well-known, realisation of a banking union started with the famous decision of the Euro Area Summit on 29 June 2012, to create a Banking Union referring to the need "to break the vicious circle between banks and sovereigns". The decision was taken three days after the first Van Rompuy report of 26 June 2012[7], which "identified the building blocks and suggest[ed] a working method" for building what Nicolas Véron called "a fourfold union"[8]. The report proposed to start with "an integrated financial framework to ensure financial stability in particular in the Euro area and minimise the cost of bank failures to European citizens". As for the Euro Summit, getting rid of the doom loop between banks and the States was already the main concern. The report continues by mentioning the three components of the financial framework which should elevate "responsibility for supervision to the European level, and provide for common mechanism to resolve banks and guarantee customer deposits". For the report, "building on the single rulebook,[9]an integrated financial framework should have two central elements: a

[7] "Towards a Genuine Economic and Monetary Union", a report by Herman Van Rompuy, president of the European Council, prepared in close cooperation with the presidents of the Commission, of the Eurogroup, and of the European Central Bank.

[8] Véron (2017). This short but suggestive paper has helped me to write this paragraph. The idea of the necessary progression on "four fronts" was also present in the so-called five presidents Report of 2015, mentioned in note 7.

[9] This expression designates the whole of legislation, either directives or regulations which are applicable to banking supervision and resolution. As often mentioned in the literature and the speeches of the responsible authorities, this rule book is only theoretically single due to the frequent use of directives that are transposed in the different legal systems and the famous "options and discretions" (ONDs) which enable national authorities either to choose among different ways to implement the rule or to dispense themselves to apply a determinate provision. This contributes to the

single European banking supervision and a common deposit insurance and resolution framework". For the financial framewwork, the report observes —and this will not seriously be contested— that "the possibilities foreseen under art. 127(6) TFEU regarding the conferral upon the European Central Bank of powers of supervision over banks in the euro area would be fully explored". An interesting feature of the strategy proposed by the report was to underline the importance of a European deposit insurance scheme which "could introduce a European dimension to national deposit guarantee schemes for banks overseen by the European supervision. It would strengthen the credibility of the existing arrangements and serve as an important assurance that eligible deposits of all credit institutions are sufficiently insured". This way, the report underlines the contribution of a performing deposit guarantee scheme to financial stability. It also suggests a link between the European resolution and the deposit insurance schemes. The single resolution scheme could have been "set up under the control of a common resolution authority". Let us quote also the idea that the resolution scheme should be "primarily funded by contributions of banks" and "could provide assistance in the application of resolution measures to banks overseen by the European supervision with the aim of orderly winding-down non-viable institutions and *thereby protect tax payer funds*"[10]. This confirms the importance of this objective at the basis of the realisation of the Banking Union.

It is also remarkable that the report already underlined that "the credibility of any deposit guarantee scheme requires access to a solid financial backstop" and suggested that it could be the ESM which would act as the fiscal backstop to the resolution and deposit guarantee authority". Although the idea was already retained at least for the resolution process in December 2013[11], this point is still at the agenda of the reform presently discussed by

fragmentation of the application of a number of rules, mainly included in directives but also in some regulations, implemented by national competent authorities, and which are to be applied by the SSM, which is a source of difficulty: the same question may be resolved on different manners depending of the law applicable to the financial institution and this diversity is an obstacle to a level playing field. When the choice is open to the national competent authority (NCA), the ECB Banking Supervision will be able, with the agreement of NCAs, to adopt a uniform interpretation but it is not the case when the exercise of the option is reserved by the EU act to each national legislator. This is the reason why action by the EU legislator is then necessary to cope with the problem.

10 Italics are ours.

11 Statement of Eurogroup and ECFIN Council on the Single Resolution Backstop, 18 December 2013.

the institutions. The same could be said about the three other "frameworks" foreseen in the report: "Towards an integrated budgetary framework", "Towards an integrated economic policy framework" and "Strengthening democratic legitimacy and accountability". This ultimate objective deserves at this stage to be evoked because it is fundamental and applies to the three other frameworks. After having observed that "decisions on national budgets are at the heart of European democracies", the report evokes the need for "strong mechanism for legitimate and accountable joint decision-making" because "building public support for European-wide decisions with a far-reaching impact in the everyday lives is essential". We will come back to some questions raised by this impressive document[12].

The developments of the Banking Union have been remarkably rapid. The SSM was operational in November 2014 and the SRM on January 2016. Let us quote once more Nicolas Véron: "[…] the euro area banking sector shift from a state of acute fragility in mid-2012 to a significantly healthier, though not fully recovered, conditions, as of September 2017" (Véron, 2017: 4). On June 17, 2016, the Ecofin produced a document with the title "Strengthening of banking union" (European Commission, 2017b) which is still considered as the Council Roadmap on the subject. The *leitmotiv* of this paper is the necessity of "further steps […] in terms of reducing and sharing risks in the financial sector, in the appropriate sequence in order to address a number of remaining challenges". This includes a number of amendments to existing legislation, specifically the rule book, in particular the BRR/BRRD: "Harmonisation of options and discretions granted to Member States, which could[…] contribute to the objective of reducing financial fragmentation" and "implementing and finalising remaining Basel reforms", but also "harmonisation of insolvency law in the context of the Capital Markets Union, which

[12] It is important to recall the difficult context of the orientation taken by the European Summit in June 2012. The euro was entering in a big crisis. There was no transmission of the impulsions of monetary policy to some countries where interest rates reached levels not commanded by the economic situation. One observe there a tendency to the redenomination of contracts. The danger was important for the future of the euro. It is in July 2012 that Mario Draghi, the president of the European Central Bank pronounced in London his famous speech in which he announced that "Within our mandate, the ECB is ready to do whatever it takes to preserve the euro" and the decision on the Outright Monetary Transactions (OMT) was taken at the beginning of September 2012. It has been said and written by President van Rompuy that it is the historic initiative of the Euro leaders that encouraged the ECB president to announce these measures which due to the reaction of the markets were not to be effectively concretised.

may[…] support efforts to reduce future levels of non-performing loans". These proposals are for the moment before the European legislator. They are among the steps towards "risk reduction" that the Council considers as necessary for the adoption of "risk sharing" measures. It is in line with the adoption of risk reduction measures listed under paragraph 7 of the Roadmap that the Council could envisage to decide that the backstop for the Single Resolution Fund (SRF) which, in principle, has to be fully operational only at the end of a transition period may become operational ahead of the end of this period. There is an interesting footnote that mentions three uncontested points: arrangements concerning the SRF will be fiscally neutral over the medium term (this means that banks will reimburse the SRF for the cost of its interventions), it will ensure equivalent treatment across all Member States participating and incur no cost for Member States not participating in the Banking Union.

On the European Deposit Insurance Scheme (EDIS), the Council affirmed in its 2016 Roadmap that it was not preparing to start "negotiations at political level". Before, "it will continue constructive work at technical level". Negotiations at political level "will start as soon as sufficient progress has been made on the measures on risk reduction". And, as if it was not sufficiently clear: "In this context, the Council takes note of the intention of the Member States to have recourse to an IGA (Intergovernmental Agreement) when political negotiations on EDIS start". This request demonstrates the lack in confidence of the Council in EU mechanisms and the will to preserve the national control on the expenses realised under the insurance. In its Communication already quoted, the Commission records that the Five Presidents report of 2015, identified an EDIS "as an essential step to complete the Banking Union" (Juncker, 2015: 13). The arguments that have been repeatedly mentioned appeared unquestionable. An EDIS is indeed a factor of resilience and stability for the EU banking system and the functioning of the internal market in the financial services, as underlined by the Commission. We will quote it literally: "By reducing depositors' vulnerability to large local shocks […] and the link between banks and their home sovereign, an EDIS should increase the resilience of the Banking Union against future financial crises by providing strong and uniform insurance coverage for all depositors independently of their geographical location within the Banking Union" (European Commission, 2017b: 9). An EDIS contributes to building a level playing field in the single market for financial services. In a resolution of the EP on "Banking Union" (rapporteur: Mrs. D.N. Hübner), EDIS would "avoid any fragmentation of the single market" (Juncker, 2015: point 53).

The opposition to an EDIS is particularly strong in Germany which has a very efficient system of banking deposit guarantee with special guarantees for regional banks. German authorities, are reluctant to participate to a

European regime if previously are not adopted more risk-reduction[13] measures, as we have noticed in the analysis of the famous 2016 Roadmap of the Ecofin Council.

The Commission has put forward a proposal in November 2015 that provides "a very comprehensive solution to achieve these goals through the progressive transfer, according to a defined timeline (which should have started in 2017), of funds and of the management of payout events to the EDIS from national guarantee schemes"[14]. For the Commission, discussions at the European Parliament and the Council "have revealed divergent positions" on different central points of the proposal. Without reforming its proposal, the Commission has decided to move ahead in order "to reinvigorate the negotiations". Hence an approach that introduces the EDIS "in a more gradual manner, commensurate to progress with regard to risk reduction and the tackling of legacy issues, starting with a more limited re-insurance phase and moving gradually to co-insurance"[15]. "Another idea for consideration could be", for the Commission, "that at the end of the re-insurance phase, the move to the co-insurance phase would not be automatic, but contingent on a set of conditions" to be assessed by the Commission. When the conditions will be met, the co-insurance would start and the EDIS "in addition to full liquidity coverage, [would] progressively cover losses provided that all conditions are continuously met". The National Guarantee Funds and the EDIS will collaborate to the coverage of losses. Both would contribute according to a key "from the first euro of losses", starting with a 30% part for the EDIS.

Will the reticent Member States and EP members accept the new ideas sketched by the Commission? Will others not consider that the guarantees offered to the opponents would not exaggeratedly delay the date when EDIS will become fully operational? The Commission is of the opinion that its move would give time to Member States to "effectively address concerns related to legacy risks and moral hazard" and that "in its final stage […] EDIS

13 On risk-sharing, see Ioannou and Schäfer (2017: 2 and 9), "Risk-reduction suggests increasing resilience by reducing risks or exposure to risk in the first place". There are public risk-sharing and private one which is operated through capital markets and savings. The authors argue that private and public risk-sharing are complements, not substitutes, which justifies the completion of the reform agenda of EU policy-making. They mention that "from a shock absorption capacity perspective, an effective Capital Markets Union would provide an essential corner stone of a resilient EMU".

14 See: https://goo.gl/qzVXtr.

15 (European Commission, 2017b: 10), "In the first re-insurance phase, the EDIS could provide only liquidity coverage, and no loss coverage".

[will provide] the strongest protection for depositors and, at the same time, safeguards for financial stability" (European Commission, 2017b: 11).

For the Commission, there is "scope for further improvements with regard to the coordination among national Deposit Guarantee Schemes and a more coherent implementation of rules" of the Deposit Guarantee Scheme Directive of 2014[16]. Important differences which are mentioned by the Commission remain across Member States: on the conditions to declare deposits unavailable, the eligibility of deposits[17], the financing of Deposit Guarantee Schemes or the use of Deposit Guarantee Scheme funds. A greater harmonisation of these differences is needed for the Commission. "The exchange of information and instruments to promote coordination among national Deposit Guarantee Schemes need also to be improved", mentioned the Commission, because the national schemes and the EDIS will have to coordinate among themselves, very often within very tight deadlines, as well as with the Single Resolution Board (SRB) and the European Banking Authority (EBA). For the Commission, "filling this gap will also align the architecture of the three pillars of the Banking Union (supervision, resolution and deposit insurance)". It also calls for the harmonisation of some national options and discretions set out in the Directive which would contribute to further reducing financial fragmentation and simplifying the coordination role played by the EDIS and the EBA.

Completing a backstop to the Banking Union is the next step mentioned by the Commission in its Communication of 11 October 2017. The principle of the creation of a backstop for the SRM was already admitted by the Council in December 2013. This backstop should be "fiscally neutral over the medium term as contributions would be recouped by way of contributions from the banking sector. It was also agreed that this backstop had to be fully operational at the latest after ten years" (European Commission, 2017b: 13). The Commission has proposed to provide for this backstop to be managed by the European Monetary Fund that should succeed, as we will see, to the European Stability Mechanism[18]. At the Euro Summit of 15 December 2017, one of the areas "on which there [was] a broad convergence" was "putting into

[16] See: https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-supervision-and-risk-management-/managing-risks-banks-and-financial-institutions/deposit-guarantee-schemes_en.

[17] A further question has been raised at this regard: should the guarantee of 100.000 euros, be applicable account by account in various banks as it is the case now, or cumulating all the bank accounts of the holder? See at this regard (Goldschmidt, 2017).

[18] See Annex to the Proposal for a Council Regulation on the establishment of the European Monetary Fund, Part V. Support to the SRB, art. 22, Credit line or

operation a common backstop for the Single Resolution Fund possibly in the form of a credit line from the European Stability Mechanism"[19].

Another way forward is the possibility evoked by the Commission, as a first step, to provide for an enabling framework for so-called Sovereign Bond-Backed Securities (SBBS), an instrument which could contribute to the "de-risking of sovereign portfolios without mutualising sovereign risks in Europe" as mentioned by a report of the High Level Task Force on Safe Assets of the ESRB on "Sovereign Bond-Backed Securities: a feasibility study"[20]. "By pooling and possibly tranching sovereign bonds from different Member States, SBBS could support further portfolio diversification in the banking sector, while creating a new source of high-quality collateral particularly suited for use in cross-border financial transactions" (European Commission, 2017b: 18). The Commission was considering putting forward a proposal on the subject.

The objective is to reduce risks to financial stability by facilitating the diversification of banks' sovereign portfolios but also "further weakening the bond-sovereign nexus", an objective which, as we have mentioned was a priority when the decision to build a Banking Union was taken at Euro area level.

In order to achieve this objective, another measure would consist in providing a regulatory regime of sovereign exposures, but considering the different views among the Member States on the principle and the modalities of such a regime, they have decided to wait for the conclusions of the Basle Committee on Banking Supervision on the subject. It is indeed a very sensitive problem for the authorities but also for the citizens.

The last point evoked in the Communication on completing the Banking Union relates to "continuing to ensure high quality supervision". After having noticed the "remarkable achievement" of the ECB, as supervisory authority "in a context where timelines were extremely challenging and the underlying supervisory realities of the 19 participating Member States were very diverse", the Commission observes "a trend for banking groups to have increasingly complex structures, operating through entities that escape bank supervision, but undertake largely the same activities as banks". It specifically mentions the exercise of banking activities by investment companies and announces upcoming legislative proposals reviewing the prudential treatment of investment firms (European Commission, 2017b: 190). This relates to the

guarantees for the SRB; art. 23, Rules applying to the EMF and art. 24, Rules applying to non-euro area countries bound by a close cooperation agreement to the SSM.

[19] See the Conclusions of the Euro Area Summit, 15 December 2017.

[20] ESRB, Volume I: *Main Findings*, January 2015.

problem of regulatory arbitrage. As exposed by Mme Daniele Nouy, chair of the Supervisory Board, there are three kinds of regulatory arbitrage. The first one could be defined as "cross-jurisdiction arbitrage". It consists for the bank to exploit the difference of rules from one country to another. That gives an advantage to the country applying the less invasive rule and is not compatible with the pursuit of a level playing rule. This kind of conduct is still possible in the euro area because there are gaps or options and discretions in the EU legislation. The use of directives, incorporated by each Member States in its own way, is per se an incitement to find ways to escape the law normally applicable. The second kind of regulatory arbitrage, described by Mme Nouy, is a "cross-framework arbitrage". "Banks can pass through that door by moving the business to the (less or not regulated) shadow banking sector". During the crisis, banks shifted assets to so-called special vehicles (SPVs).

The third way of regulatory arbitrage is termed "intra-framework arbitrage": no need to "jump national or sectoral fences", it is enough to exploit loopholes within a single set of rules. The answer is to harmonise the rules. Of course, a balance has to be respected. For the Vice-Chair of the ESB (Sabine Lautenschläger, 2017) at a conference in Vienna: "The problem here is 'too much detail', a kind of regulatory overload —involving too many stakeholders and too much bureaucracy. There is a tendency to add more details to the rulebook. This is driven by the desire to have rules that cover every eventuality. Whatever happens there should be a rule to deal with […]. However, trying to have a rule for every eventuality is an elusive goal, of course […]. The unexpected will always happen".

As observed by Mme Nouy, the set of standards existing at the global level: the now being completed Basle III, will help to reduce the scope of regulatory arbitrage. "To reduce" and not to eliminate, because the Basle rules have to be transposed in national laws and "supervisors around the World will then need to apply those rules in the same way". Mme Nouy approved the efforts made by the G20 and the Commission to tackle the problems of shadow banking and she observes that "the aim should be to address financial stability concerns and turn shadows banks into a resilient source of market-based funding" (Nouy, 2017).

In the same Communication analysed in the preceding developments, the Commission includes in the "Way forward" section, the "Clarification by the Commission of existing supervisory powers to address risks related to Non-Performing Loans (NPLs) in the framework of the SSM Review Report" and later on, "Proposals on measures addressing issues linked to NPL's". These announcements are linked to the Council conclusions on an Action

plan to tackle non-performing loans in Europe[21]. By these conclusions the Council called "on Member States, EU institutions, bodies and agencies to take work forward on policy options included in a report on NPLs produced by a Subgroup of the Financial Services Committee[22], on the basis of the Council conclusions". As noted by this institution, the NPLs ratios have declined but given their remaining magnitude in certain Member States[23], "a mixed of complementing policy actions, at national level and at the European level where appropriate, is the most effective way to address stocks of NPLs as well as the emergence and accumulation of new NPLs on bank balance sheets in all the four following policy areas: (i) supervision, (ii) structural reforms of insolvency and debt recovery frameworks, (iii) development of secondary markets for distressed assets, and (iv) fostering restructuring of the banking system".

The Commission concluded its Communication of 11 October 2017 by pointing to the incompleteness of the Banking Union "which does not therefore play its full role as a mechanism of shock absorption through private channels in a strong EMU"[24]. It invites the "European Parliament and all the Member States to reach a political agreement in the coming months on a renewed commitment to actively contribute to and facilitate these discussions".

II. THE ESTABLISHMENT OF A EUROPEAN MONETARY FUND

"Further developing the European Stability Mechanism, possibly to become a so-called European Monetary Fund (EMF). [This would have to be aligned with the work on the common backstop]". The conclusions of the Euro area Summit of December 15, meeting in a formation extended to the 27 EU Member States, includes the first sentence in a list of three points at the agenda "on which there is a broad convergence" and which will benefit of a priority in the six months ahead of the meeting. The second sentence between square brackets was to be found only in the document prepared for

21 Council of the EU, Press Release, 459/17, 11 July 2017.

22 Council of the EU, Doc. 9854/17.

23 ECB Banking Supervision (2018) mentions NPLs in the section "Credit risk". It observes in particular that "High levels of NPLs affect capital and funding, reduce profitability, and consequently inhibit the supply of credit to households and companies. Working out NPLs is therefore important for both bank viability and macroeconomic performance".

24 On the Banking Union see also the Resolution of the European Parliament of 2 February 2016 on "Banking Union — Annual Report 2016", ECON, rapporteur: Danula Maria Hübner, P8_TA(2017)0041.

the meeting which very schematically includes the Euro Group conclusions on this topic.

The Commission has made a proposal[25] which aims at replacing the European Stability Mechanism which was based on an international agreement by an EU regulation, incorporating the EMF in the EU legal order. The proposal, which is based on art. 352 TFEU, a provision that may be used when it exists no other legal basis in the Treaty, integrates, completes and slightly modifies the substance of the agreement. The proposal consists in a short Regulation and an important Annex devoted to the Statute of the future EMF. The transformation of the intergovernmental agreement in an EU act was not provided by the EMF Treaty but this move was envisaged by the Report of the Five Presidents of 2015. The Preamble of the Regulation gives the following justification for the move in recital No 8:

> Over the years, the ESM has proven decisive in helping to preserve financial stability of the euro area. It has done so by providing additional financial support to euro area Member States in distress. Its transformation into European Monetary Fund (EMF) will further strengthen its institutional anchoring. It will help to create new synergies within the EU framework, notably in terms of transparency, efficiency of the EU financial resources and legal review, thus offering a better support to Member States. It will also help improve further cooperation with the Commission and accountability to the European Parliament. This will be done without affecting the way in which national governments are held to account by their own national Parliaments and preserving ESM commitments.

Part I of the short regulation provides in art. 1 for the establishment of the EMF and announces that the Statute of the EMF is set out in an Annex to the Regulation and forms an integral part of it. Art. 2 is relative to "the replacement of and succession to the EMS by the EMF". It also provides that "all existing appointments and mandates in the ESM shall be maintained for the remaining period of their terms of office, within the framework of the EMF".

Part II relates to the "Role of the Council and accountability". In order to conform the decision-making process to the Meroni doctrine about delegation power, art. 3 provides that the decisions of the Governing Board, listed in this provision "shall be transmitted to the Council immediately after their adoption, together with the reasons on which they are based. They may enter into force only if they are approved by the Council". In a judgement

[25] Proposal for a Council regulation on the establishment of the European Monetary Fund, COM (2017) 827 final, 6 December 2017.

of 22 January 2012[26], concerning the powers of the European Securities and Markets Authority (ESMA) on short selling, the Court of Justice recalled the limits of such delegation that could not involve a "discretionary power implying a wide margin of discretion which may, according to the use which is made of it, make possible the execution of actual economic policy" because such delegation would replace "the choices of the delegator by the choices of the delegate' and so bring about an 'actual transfer of responsibility"[27].

It was the same Meroni doctrine that was instrumental for implying the Commission and the Council in the resolution process provided by art. 18, par. 7 of Regulation (EU) No 806/2014 of the European Parliament and the Council of 15 July 2014 establishing uniform rules and procedure for the resolution of credit institution[28]. An emergency procedure is provided under art. 3, par. 2 of the EMF Regulation when urgent provision of stability support in the form of an EMF loan to an EMF Member State under art. 16 of the Statute is required. This procedure could also be applied to the attribution of a support to the SRB under arts. 22. 4 and 5 and 23.1 of the statute, which will be the great novelty in the means of action of the EMF. The Fund will inherit of the possibilities of intervention of the ESM[29]. Art. 3, par. 2 disposes that votes of members of the Council representing countries whose currency is not the euro shall be suspended except for a decision concerning the application of the credit line guarantee to the SRB under arts. 22 to 23 of the Statute. This exception results from the possible situation of a Member State having requested to the SRB to enter into a close cooperation between its competent national authority and the ECB Supervision, a case foreseen by art. 24 of the Statute. Except in this rather exceptional situation, the necessity of the intervention of the Council, for the sake of respecting the Meroni doctrine, is in this case particularly remarkable. As a matter of fact, the members of the Council having the right to vote (at a qualified majority) are the same who have taken the decision by an enforced qualified majority (85 % of weighted votes) within the EMF Governing Board, a situation which radically differs from the one of the ERB. Let us note as far as the decision-making procedure is concerned that in the negotiated project for a coalition, concluded between

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[26] Judgment of the Court of 22 January 2014, United Kingdom v. Parliament and Council, C-270/12, EU:C:2014:18, par. 41 and 42.

[27] The Court of Justice refers to pages 152 and 154 of *Meroni v. High Authority*.

[28] OJ L225, 30 July 2014.

[29] Art. 19 of the ESM treaty includes an enabling clause for reviewing the list of instruments for financial assistance. On this basis, the instrument for direct recapitalisation of banks was created. The enabling clause will disappear and this new instrument will be inserted in art. 19 of the Statute.

the CDU, CSU and SPD on February 2018, it is provided that "the rights from national parliaments will remain unchanged"[30]. This would mean, in particular, that decisions of the Fund with financial impact will have to be approved by the Bundestag.

Title II of the regulation provides for the EMF accountability in terms which are very close to those used by arts. 45 and 46 of the Regulation No 806/2014 on the Single Resolution Mechanism which provides accountability of the SRB towards the European Parliament, the Council and also towards national parliaments.

The EMF statute, annexed to the Regulation, includes several innovations which are worth mentioning. In the procedure applied for granting stability support to EMF Member States, under art. 13 of the statute, the IMF is no more mentioned, and it will not be for the Commission alone to negotiate and sign the Memorandum of Understanding (MoU) but for the Commission in cooperation with the EMF. There definitely would be no more troika. The necessary consistency of the MoU with the measures of economic policy coordination, legally binding or not, is already affirmed in art. 13 of the ESM Treaty but the proposed statute adds a reference to a possible macroeconomic adjustment programme approved by the Council and requires that the MoU should be preceded by a "social impact assessment". Also to be observed in this context, is the requirement of the EMF, the Council, and the Member States to "fully observe" art. 152 TFEU and art. 28 of the European Charter of Fundamental Rights which relate to the recognition and promotion of the role of social partners and the importance of the social dialogue, the right of social partners to negotiate and conclude collective conventions, as well as to make recourse to collective actions, included to go on strike, in order to defend their interests.

It has also been observed that the EMF will not be involved "in economic and fiscal surveillance and policy coordination, areas where the Council and the Commission will retain their competences and responsibilities… Accordingly, the fields of fiscal surveillance and crisis management (both for sovereigns and for credit institutions) would broadly remain separated" (Gortsos, 2017). This is contrary to the views of those who want to transfer from the Commission to the EMF (or to a transformed ESM) the responsibility of the surveillance of the economic and fiscal discipline (Schäuble, 2017; Fuest, 2018). It goes without saying that this solution would not only be contrary to the treaties but incompatible with their philosophy.

[30] See: https://goo.gl/HvLYv2, line 176 : "Die Rechte der nationalen Parlamente bleiben davon unberührt". It has become line 249 of the version of 7 February 2018.

The denomination of a future EMF has attracted some criticism. It is clear that there is something symbolic in the appellation. It consists in the political conviction that the EU can remedy to its own crises without having to call the IMF for support like it was done in 2010. In its Reflection paper on the deepening of EMU of May 2017, the Commission mentioned the debate about giving "the euro area more autonomy from other international institutions", while evoking the idea of an EMF[31]. But the adjective "monetary" is not justified: the EMF will not be in charge of monetary policy, a responsibility that in the EU is exercised by the ECB. And neither the IMF is mainly in charge of monetary policy: its function is more to be the guardian of the World financial stability (Verhelst, 2018).

III. A EUROPEAN MINISTER OF ECONOMY AND FINANCE

The Euro Summit of 15 December mentions the creation of the function of a European Minister of Economy and Finance among the points on which the discussions have not allowed to reach a large convergence, adding that the role of this Minister was to be defined. The Commission has produced a Communication on this question[32]. The idea was mentioned by President Juncker in his 2017 State of the Union address. The Commissioner for Economic and Financial Affairs —ideally also a Vice-President— should assume this role. He or she should also chair the Eurogroup. For the Commission, this move "builds on" ideas included in different documents of the EU Institutions, like in the Five Presidents Report which aims at strengthening the Eurogroup by giving to it a full-time president with a role in the external representation of the Euro area, and providing the creation of a Treasury[33]. The Communication of 6 December 2017 also refers to the Resolution of 16 February 2017 of the European Parliament calling for "an executive authority to be concentrated in the Commission in the role of Finance Minister" but it is the Reflexion Paper on deepening the EMU which went further in the discussion. It suggests that "a new balance could be established between the Commission

[31] Reflection Paper, COM (2017), 291, 31 May 2017, p. 28.

[32] COM (2017) 823 final, "A European Minister of Economy and Finance", 6 December 2017.

[33] It is interesting to observe that the communication doesn't mention the creation of a Treasury which was hold in the Four presidents report of 26 June 2012, for an implication of a fully-fledged fiscal union. The idea was repeated in the Five Presidents Report of 2015 and developed in the Reflection paper on the EMU of 2017.

and the Eurogroup". The Commission "would remain in charge of promoting the general interest of the EU as a whole" and "Conferring decision-making competences to the Eurogroup could be a way forward and could in turn justify the appointment of a full-time permanent chair". The Reflection Paper also evokes "at a later stage of the deepening of EMU […] the idea of regrouping several competences and functions under a single umbrella" in the context of the creation of a Treasury[34]. The Communication of December 2017 refers to the ideas on the Eurogroup expressed at the Euro Summit of 26 October 2011 which included a future debate on whether the president of the Eurogroup should continue to be elected among its members or would be a full-time president residing in Brussels.

President Juncker in his State of the Union Speech 2017 declared: "We need a European Minister of Economy and Finance: a European Minister that promotes and supports structural reforms in our Member States. He or she can build on the work the Commission has been doing since 2015 with our Structural Reform Support Service. The new Minister should coordinate all EU financial instruments that can be deployed if a Member State is in a recession or hit by a fundamental crisis". The Communication of 6 December 2017 lists in a diagram and it comments the key functions that could be conferred to the European Finance Minister (EFM): to pursue the general interest of the EU/euro area economy and to represent it at global level; to strengthen policy coordination and overseas economic, fiscal and financial rules; to pronounce on the adequate fiscal policy area in support of the monetary policy of the ECB; to oversee the use of EU/euro area budgetary instruments including supportfor structural reforms, macroeconomic stabilisation (euro area) and convergence (non-euro area). Regarding this last objective, the Communication adds: "The EFM would coordinate the use of relevant EU and euro area budgetary instruments and maximise their impact in support of shared priorities" (Wolff, 2017: 6).

Looking at institutional aspects, the Communication mentions first that the Treaty allows for the institution of the envisaged "double-hatting": art. 2 of Protocol No 14 on the Eurogroup, attached to the treaties, mentions that: "the Ministers of the Member States whose currency is the euro shall elect a president for two and a half years, by a majority of Member States". There is no legal obstacle to the appointment as chair of the Eurogroup of a vice-president of the Commission. "This would not create a new supranational bureaucratic layer, nor would the Minister impinge on national competences". But, as the Reflection Paper mentioned, this question should normally lead to

[34] Reflection Paper, p. 27 and p. 28.

a questioning about the role of the Eurogroup which is still hold by Protocol No 14 for an informal body.

As a vice-president of the Commission the EFM could "steer the work of several policy portfolios and services across the Commission". He would "represent the Commission in the meetings of the ECB's Governing Council"; he would be "responsible at EU-level social dialogue and interaction with key stakeholders". As chair of the Eurogroup, the EMF, he would take into account the interests of the euro area as a whole. He would be "helping to balance and align the points of views of national ministers with the shared priorities pursued at Euro area and EU level [...]. The Minister would also assure a coherent preparation of Euro Summit meetings". In his quality of president of the Eurogroup, he will chair the Board of Governors of the ESM/EMF. The Communication evokes at this respect the role of "overseeing the work of the EMF". Being a member of the Commission, the EFM will be accountable before the European Parliament "on all issues related with his functions". He will hold continuous dialogue with the European Parliament and national parliaments may request him to present the Commission opinion on the respective budget plan to them.

The Communication concludes by sketching a possible agenda: the function of the Minister as Vice-President of the Commission could be established as a part of the appointment of the next Commission as from November 2019; the Eurogroup could agree to elect the Minister as its President for two consecutive mandates, thus agreeing on an alignment of its mandate of the Commission.

What could we think about this agenda? A number of experts have questioned this initiative because they consider that the Vice-President of the Commission who would assume the responsibility of president of the Eurogroup would be in a situation of conflict of interest. They base this judgment on the responsibilities of the Commission in the supervision of fiscal policy, the Eurogroup preparing the decisions of the Ecofin Council which decides on the basis of recommendations by the Commission. Guntram Wolff considers that: "In fact, the proposal would amount to asking the prosecutor to preside as the chief judge over fiscal decision making" (Wolff, 2017: 2; CEPR, 2018: 19). It is an objection that is difficult to evacuate, for example, by attributing to the commissioner responsible for budgetary control a great autonomy. The authors of the CEPR 2018 report (CEPR 2018) propose either to create the function of "an independent fiscal watchdog", for example one commissioner, or to entirely displace the controller outside the Commission. In this case, this responsibility could be given to an independent organ like the Consultative European Fiscal Board or the ESM/EMF. The opportunity of these suggestions is debatable. All these ideas could only be achieved through a revision of

the Treaty. It would perhaps be more opportune to concentrate the discussion on the "future evolution of the budgetary framework" as it is envisaged, for example, in the first annual report of the European Fiscal Board published in 2017[35]

IV. THE INCORPORATION OF THE FISCAL COMPACT IN EU LAW

Among the legislative package proposed by the Commission on December 6, 2017, figures a proposal of Council Directive laying down provisions for strengthening fiscal responsibility and the medium-term budgetary orientation in the Member States[36]. The purpose of this proposal is to comply with art. 16 of the Treaty on Stability, Coordination and Convergence (TSCG), signed on 2 March 2012 by 25 Member States and entered into force on 1 January 2012. Art. 16 provides that "within five years, at most, of the date of entry into force of this Treaty, on the basis of an assessment of the experience within its implementation, the necessary steps shall be taken, in accordance with the TEU and the TFEU, with the aim of incorporating the substance of this Treaty into the legal framework of the EU". The form of an intergovernmental agreement was adopted because of the resented urgency to act in a context of a blockade of the European Council due to the opposition of the United Kingdom to a revision of the TFEU. The cornerstone of the TSCG is its Title III which includes the so-called Fiscal Compact. Twenty-two countries are bound by this Title III of which the main provision is art. 3 which settles the "obligation for Contracting Parties to enshrine in binding and permanent national provisions, preferably constitutional, a balanced-budget rule in cyclically adjusted terms.The rule mirrors the requirement that is at the centre of the preventive arm of the Stability and Growth Pact, namely the medium-term budgetary objective". The content of the other provisions of the TSCG have already been inserted in provisions of the Two-Pack regulations (Nos 472 and 473) or have been applied on another basis. It is the reason why only art. 3 had to be incorporated.

The legal basis of the proposed directive is art. 126, par. 14, second subparagraph, which provides that: "The Council shall, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the European Central Bank, adopt the appropriate

[35] See at this regard, the last chapter (No 5), of this report published on 15 November 2015, p. 52.

[36] COM (2017) 824 final, 6 December 2017.

provisions which shall then replace the said Protocol [on the excessive deficit procedure]".

For the Commission, this incorporation in EU law is necessary. It refers to the numerous requests of the European Parliament "for the substance of the TSCG to be brought under the Treaties, arguing that, to be effectively legitimate and democratic, the governance of a genuine EMU must be placed within the institutional framework of the Union"[37]. The Commission develops "the rationale for bringing the 'substance' of the TSCG into the body of the EU fiscal framework [which] is manifold". It mentions the simplification of the legal framework, the ensuring of "more effective systematic monitoring of implementation and enforcement of fiscal rules at both EU and national level as part of the overall EU economic government framework, compared to an intergovernmental set-up". The Commission adds, among other considerations, that the proposed integration in EU law "diminishes the possible risks of duplications and conflicting actions inherent in the co-existence of intergovernmental arrangements alongside the mechanisms foreseen by Union law". It will also facilitate "a consistent and coordinated evolution of the EU and national fiscal rules within the wider process of deepening the EMU". A number of considerations advanced by the Commission about the need of a top-down approach for an effective enforcement of the EU fiscal framework were already valid for the intergovernmental instrument but apparently, the Commission has not forgotten the lack of enthusiasm, to say the least, which, particularly in some Member States, welcomed the Fiscal Compact. It is the reason why it insists on the need of fiscal rules and independent fiscal institutions in order to address the challenges ahead: "Long-term sound budgetary policies are jeopardised by the deficit bias and more generally the pro-cyclical policy stance which can be observed across member States". But it also recognises that "since the adoption of Six-pack, Two-pack and the TSCG have already led to establishing independent fiscal institutions in almost all Member States, the proposed Directive is unlikely to require new structures". Nevertheless, it includes important provisions concerning the existing independent fiscal institutions, which role and independence are strongly emphasised (art. 4), and it includes also specific aspects of the correction mechanism.

In its communication on "Further steps toward completing Europe's EMU"[38], the Commission mentions that "integrating the Fiscal Compact into Union Law will simplify the legal framework and improve monitoring,

[37] An argument also used by the Five Presidents Report of 2015.
[38] COM (2017) 821 final, 6 December 2017, already mentioned.

as part of the overall EU economic framework". It is in this context that the Commission observes that "at the same time, the proposal takes into account the appropriate flexibility built on the Stability and Growth Pact and identified by the Commission since January 2015". It is with these terms that the Commission refers to its Interpretative Communication on Flexibility within the SGP[39] which, after strong reactions of a number of Members of the Council, was first applied for the preparation of the 2015 European Semester Council Recommendations (ECR) and endorsed by the Council on 12 February 2016.[40] An Annex 17 was added in 2017 to the Code of conduct on the SGP —a document of 230 pages— which includes the so-called "commonly agreed position on flexibility within the SGP"[41]. The Preamble mentions that "this document is intended to serve as a basis for the codification in the Code of Conduct of a commonly agreed position on flexibility in the SGP"[42]. At the end of the document, a section 5 announces a "review of the structural reform clause and the investment clause […] by the end of June 2018"[43]. Neither the Commission guidelines nor Annex 17 to the Code of conduct are mentioned in the preamble of the proposed directive. Nevertheless, the preamble (whereas 9) refers to the modification of the adjustment path to the medium-term objective (MTO), due to "the implementation of major structural reforms" provided that they have "a veritable positive impact". The same paragraph also mentions "exceptional circumstances —in the form of severe economic downturns, for the euro area as a whole or unusual events outside the control of the Member State concerned which have a major budgetary impact". Art. 2 on "Definitions" adds to the list of Protocol 12, in particular the notion of "exceptional circumstances" and art. 3, par. 2 a), second sentence, relates to "structural reforms" and par. 3 on the effect of exceptional circumstances on the (non)activation of the correction mechanism, provided that the deviation from the medium-term objective or the adjustment path towards it "does not endanger fiscal sustainability in the medium-term".

Although the Commission insists on the simplification of the procedure of implementation of the SGP, which is meant to result from its initiative, the new directive will be a new element of an impressive set of rules, interpretations and guidelines that govern the application of the SGP. An authoritative doctrine underlines the complexity and the lack of effectiveness of

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39 COM(2015) 12, 13 January 2015. See: https://goo.gl/NLdNjZ.

40 See: https://goo.gl/ufEsFq.

41 See: https://goo.gl/HdaKYz, p. 211-223.

42 But the Vademecum on the SGP remains unchanged.

43 *Ibid.*, p. 223. This refers to two clauses of flexibility introduced in the document.

these mechanisms. Grégory Claeys observes that "the current European fiscal framework remains, in practice if not in theory highly ineffective and has contributed to the anaemic economic recovery in Europe, raising questions about why EU budget rules failed to deliver economic stabilisation and public debt sustainability" (Claeys, 2017: 13; Claeys *et al.*, 2016). The CEPR Report of January 2018 notes "the poor design and complexity of the EU's fiscal rules" which "has put the European Commission in the difficult position of enforcing a highly complex and error-prone system" (CEPR, 2018: 3). In the first report of the European Fiscal Board, the president, Professor Niels Thygesen, also observes in the Foreword that: "With regard to the SGP, the initiatives launched in the aftermath of the crisis tightened the surveillance of the rules while at the same time broadening their flexibility, at the cost of a high degree of complexity and reduced transparency" (European Fiscal Board, 2017: 1, 62)[44]. Some Member States are reluctant to make evolve the SGP. They seem to believe that "Maastricht orthodoxy" is to be basically maintained. A "more intelligent" discipline would strengthen the power of interpretation in the hands of the Commission. It is worth mentioning that in his Introductory Statement at the Press Conference after the meeting of the ECB Governing Council of 28 January 2018, President Draghi, after evoking elements of the current debate on the importance of structural reforms and for the Member States of "rebuilding fiscal buffers", declared that "A *full, transparent and consistent* implementation of the Stability and Growth Pact and of the macroeconomic imbalance procedure over time and across countries remains essential to increase the resilience of the euro area economy"[45]. Particularly remarkable is the addition of the three adjectives…

V. FINAL REMARKS

We are of course aware of the incompleteness of our short review. One of the most important lacunas concerns the necessity of a dedicated budget line within the EU budget for the Euro area which was mentioned in the State of the Union speech of President Juncker and the Proposals or Communications of the Commission related to this budget line for a number of purposes. In some Member States, there is clearly a demand for it or for a budget specific

[44] The Report mentions that questions are raised among the Council "on how predictability and equal treatment can be ensured with the new margin of discretion".

[45] Italics are ours.

to the euro area. In a Communication[46], the Commission refers to the following challenges which could better be addressed by EU public finance: (1) the promotion and support of structural reforms, building on the Commission's Structural Reform Support Programme (SRSP) available to Member States out or within the Euro area in order to achieve greater resilience of economic structures and better convergence in performances; (2) to support euro area Member States to respond better to rapidly changing economic circumstances and stabilise their economy in the event of large asymmetric shocks; the crisis has indeed enlightened that States in a Monetary Union have limited means to fight such asymmetric shocks; (3) a backstop for the Banking Union which will be the responsibility of the future EMF. The Commission observes that "this backstop is meant to act as last-resort insurance and is important to strengthen confidence further in the European banking system".

To fight against those challenges, the Commission proposes the following four specific functions, in line with the State of the Union speech: a new way to support national reforms identified in the European Semester, building on both budgetary and technical support; a dedicated convergence facility for Member States on their way to joining the euro; key features of a backstop to the Banking Union; key features for the roll-out of a stabilisation function[47].

Also, we have not mentioned the important legislative work[48] which started before the launching of the package of proposals of the Commission issued at the end of 2017, in order to reform the single rulebook —which is particularly important for realising the crucial operation of de-risking necessary *per se* but also for making risk-sharing acceptable. This legislative work in progress has also the aim of developing the level playing field in the single market.

We have not alluded to the external projection of the EMU, and in particular, to the proposal for a Council decision lying down measures in view of progressively establishing unified representation of the euro area in the

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[46] See European Commission, New budgetary instruments for a stable Euro area within the Union framework, COM(2017) 822 final, 6 December 2017; the Commission Reflection Paper on the future of EU finances, 28 June 2017, COM(2017) 2025, 1 March 2017; the Reflexion Paper on the deepening of EMU, COM(2017) 291, 31 May 2017.

[47] See also a Communication from the Commission for "A new, modern Multiannual Financial Framework for a European Union that delivers efficiently on its priorities post-2020", The European Commission 'contribution to the Informal Leaders' meeting on 23 February 2018, COM(2018) 98 final, 15 February 2018.

[48] See Commission, Press Release of 23 November 2016, available at: https://goo.gl/1J2sxi.

International Monetary Fund[49]. This proposal is a follow-up to the Five Presidents Report of 2015. It is of course an important initiative on a delicate question that deserves a further and individual treatment.

We will conclude by looking to some reactions as they are visible in the present debate. First a general remark, President Tusk and President Juncker do their best efforts to preserve the unity of the EU in the debates. The president of the European Council insists on this point in his agenda for the leaders and in his letters before their meetings. The clearest sign of this preoccupation is reflected in the invitation of all the 27 Member States at the Euro Summits. The president of the Commission —as the European Parliament itself— refuses the idea of a Euro area Parliament. He is in favour of a Euro line in the general budget and not as President Macron would like a budget for the euro area. As a follow-up of the State of the Union speech of September last, the Commission has proposed that this line should provide for a convergence instrument to give pre-accession assistance to Member States on their road to joining the euro. The structural reform support programme would as it does now be addressed to both Ins- and Outs the euro area. That doesn't mean that the reality of the specificity of the euro area in respect of the other Member States is negated. This could justify a closer cooperation among the Member States having already adopted the euro. But this differentiation seems to be conceived as temporary, following a strict interpretation of the Treaty although those countries protesting against a possible discrimination are also those which appear as postponing or rejecting in an undefined future their participation to the monetary union.

In his declarations, which we will not plan to sum up, President Macron[50] exposes his option for a strategy on ten years where the basis for a more sovereign, more unified and more democratic Europe, a strategy for the economy, the social, the environment ("le vert"), for science (his idea of 20 European universities), and for the governance ("la politique"). And he further specifies: for the migration, the digitalisation ("le numérique"), the energy, the defence, the finances, the investments, the hearth of what will make up sovereign in this environment will be to build a common policy". He realises that although we have to start the work at 27, it will be impossible "to

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[49] COM(2015) 603 final, 21 October 2015. See on this subject López Escudero (2016).

[50] See the Sorbonne speech of 26 September 2017: "Initiative pour l'Europe. Discours d'Emmanuel Macron pour une Europe souveraine, unie et démocratique" and the "Discours du Président de la République au Forum économique mondial de Davos", 24 January 2018. All the speeches of President Macron are to be found at the address: http://www.elysee.fr/declarations/.

build something enough ambitious at 27". We need "a sort of avant-garde of Europe". One easily realise that President Macron could not be happy of the very technical discussions like the ones conducted by the Euro area summit of 15 December to which we have alluded in this Editorial. Coming back to this meeting, he told in his speech to the (French) Ambassadors on 5 January 2018: "We agreed to commit ourselves to adopt in the spring 2018, for the EMU and the big strategic stakes, the definition of a common framework which will allow us to progress more efficiently".

There is also a great vision expressed in the "Koalitionsvertrag" agreed by the CDU, CSU and SPD for a new Government in Germany[51]. Our intention is not to sum up this document which counts 170 pages. This length is to be explained by the fact that it includes a whole government programme. The document strikes by its numerous references to European integration and the importance it gives to Germany acting together with France on a number of subjects. Part I is dedicated to the need of a new departure for Europe. It mentions that Germany has to be infinitely grateful to Europe and that for the country, a strong and unified Europe is the guarantee for a good future in peace, freedom and prosperity. But the progress ofEurope is not automatic. The challenges are important: the Brexit, the immigration. For sure Europe makes progress on growth and jobs, but the consequences of the crisis are still there. The EU has to strengthen its capacity to act through internal reforms. The *Koalition* agrees on the perspective of accession to the EU for South Balkan States but it attaches a great importance to the development of democracy, the requirements of the *Rechtstaatlichkeit* and the other criteria for accession. The EU must at the same time observe a policy concerning the refugees and the immigration conform to its humanitarian responsibility but this policy has to be better organised and controlled. For Africa, the programme supports the idea of a Marshall Plan for helping the African Union to complete the Agenda 2063. It opts for an open and loyal trade policy, a leading international role for Europe for climate protection.

[51] We refer to the version of 7 February 2018 which was adopted after the agreement of the SPD militants of January 13 on the first version of 5 January 2018. There are some differences which are either of form or of substance between the two documents. The definitive version is to be found in particular at: https://goo.gl/BT6xkc. The title of the document is threefold: "A new departure for Europe. A new dynamic for Germany. A new cohesion for our country" (our translation). My translation of the first of the three titles is based on the fact that the document wishes to demonstrate why "the EU needs a renewal and a new departure" ("[…] die EU braucht eine Erneuerung und einen neuen Aufbruch", line 119). Needless to say, all translations are mine.

For reaching these goals, there is a need to strengthen the capacity of action of the EU, especially for what concerns the European Parliament. Finances must be reinforced and the occasion is given by the near discussion on the Plurennial Financial Perspectives. The programme mentions the need for specific budgetary means for economic stabilisation and social convergence and for the support of structural reforms in the Euro area, a first step for a future investment for the Euro area. Germany is prepared to increase its contribution to the budget. They will a budget ready to finance operations for the future with a European added value. These orientations are clearly very near to what both France and the Commission are also preconizing. But the proximity with France goes farther. Many sentences would deserve to be quoted on this will of Germany to collaborate with France in the EU reform. So, the programme expresses the will to durably strengthen and reform the Euro area, in close partnership with France in order to allow it to better resist to global crises. Lines 255 and foll.are expressing the following views: "The renovation of the EU can only succeed if Germany and France work to this effect with all their forces. To this end we will strengthen and renew the collaboration between both countries. A new Élysée Treaty is a first and important step, which should in particular strengthen the collaboration in the field of European policies". For the programme, both countries hould act as "innovation's motors".

The idea of a special collaboration with France is repeated for a number of specific policies and sectors. If it is undoubtedly a positive element for the success of the negotiations at the level of the EU, but one should not neglect that differences of accent still exist. It is interesting to observe that in the definitive programme, where traditional positions of Germany were repeated in lines 240 and foll. after the affirmation of the necessity of reforming and strengthening the Euro area, the text continues with the affirmation of three traditional German views: "At this regard the Stability and Growth Pact remains in the future our compass. Stability and growth need each other and form a unity. At the same time, the principle must remain valid that risk and responsibility remain linked". Perhaps, it is also possible to observe that the German programme is not mentioning the possibility of closer cooperation in contrast with the Davos speech of Emmanuel Macron but it doesn't exclude it. Second, the collaboration of the two big countries —and the Commission— is important but not sufficient. Of course, there are potential allies for an important EU reform like the Member States that have participated to the fourth South EU Summit[52], but there are also reticent or opposed Governments.

[52] A group of seven Mediterranean countries (Portugal included), meeting in Rome on 10 January 2018. See their declaration: http://www.elysee.fr/declarations/article/.

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