

Ladies and Gentlemen,

the current so-called “Euro crisis” revealed the “construction fault” in the design of the Economic and Monetary Union (EMU): A common Monetary Union without a common Economic Union does not work. The EMU, as it stands today, is an asymmetric Union. Whilst the Monetary Union is a supranational one, the Economic Union remains intergovernmental. This division was in line with the traditional technocratic EU policy approach: Disciplining (by a common monetary policy) instead of replacing (by a common economic and fiscal policy) national sovereignty. National economic and fiscal policies should be aligned with certain policy goals set at EU level but without any legally binding enforcement mechanism. They should be disciplined by the markets following the idea that if the position of a Member State on the financial markets is the same as of any other private institution, markets will indicate by lowering or

raising interest rates on government bonds whether a national economic and fiscal policy is convincing or not. Therefore the no-bail-out clause, therefore no purchase of government bonds on primary markets by central banks, therefore no privileged access by central governments to financial institutions. The coordination of Member States' economic and fiscal policies was depoliticised at EU level by definition. This coordination by market means failed.

What was required instead? Genuine executive powers and a legally binding enforcement mechanism at European level vis-à-vis Member States. This means, however, a complete U-turn of the current EMU. The E part of EMU, however, has not the institutional setting for exercising executive powers. There are no legal bases for adopting legally binding measures. There are no mechanisms for a democratic control of executive powers. At the same time, the outlined adjustments had to be done within the

asymmetric legal framework set by the Treaties.

Treaty change was no option. The only institution that, within the EMU, has genuine executive powers at its disposal is the European Central Bank. Besides all executive powers remain at national level.

This quick overview of the challenges for the EMU makes clear why a proper examination of the EMU process with regard to the institutional challenges of the multitier governance requires the perspective of where and how executive powers are claimed. One may distinguish four different modes: There is, first, the supranational mode where executive powers are on the EU level. There is, second, the quasi-supranational mode where national executive powers are used by European institutions. There is, third, the “Union method” where national executive powers are bound by international agreements concluded outside of the EU Treaties. And there is, fourth, the national commitment where national executive powers are

used by national institutions which committed themselves vis-à-vis Union institutions to act in a mutually agreed manner. Within this fourth mode one may further distinguish between those commitments whose realisation is a pre-condition in order to receive financial support (without which the Member State in question would be bankrupt) and those where the non-realisation can only be sanctioned by fines.

The first mode can be found in the establishment of the Single Supervisory Mechanism (SSM) with the ECB as the main institution: There was a legal base for conferring banking supervision upon the ECB which allowed us to make use of the ECB's enforcement mechanism. The price to pay was that there is no supervision over insurance undertakings at EU level since that was excluded by this legal base. And non-Euro Member States couldn't be included as they do not take part in the ECB's enforcement mechanism. The last issue was solved by making use

of the second mode: Non-Euro Member States could enter to into a so-called “close cooperation” with the European Central Bank in order to participate in the SSM. The establishment of this “close cooperation” requires on the part of the non-Euro Member State to adopt national legislation which ensures that its national authorities will be obliged to adopt any measure requested by the ECB: National executive powers are used by European institutions. The third mode can be found in the Fiscal Compact where national executive powers were aligned by setting numerical fiscal rules such as the “golden rule” in an international agreement outside of the EU Treaties. The fourth mode is the traditional coordination of national executive powers within the multilateral surveillance procedure under the reinforced “European semester”. Non-compliance, however, can only be sanctioned with fines. Alternatively, compliance of national commitments could be

honoured by granting financial support. This alternative was used when national governments committed themselves to propose certain legislative initiatives to their national Parliaments on the basis of a merely political declaration called “Memorandum of Understanding”. The adoption of these national legislative initiatives was a pre-condition in order to receive financial support by the European Stability Mechanism and its predecessors. This idea shall now be extended to all Euro Member States, even without financial troubles, under the name of “contractual arrangements”.

Any executive power has to be embedded into an institutional framework and should, in particular, be controlled by a democratically elected institution.

Analysed against this background the institutional challenges are revealed: In the SSM the ECB exercises executive powers as an institution of the 17 euro area Member States whilst non-euro area

Member States may join the SSM without taking part in the final decision-making. European Parliamentary control of the ECB is not foreseen by the Treaties since the ECB's main activity, the conduct of the Union's monetary policy, enjoys political independence. The Fiscal Compact concerns 25 Member States but makes use of the institutions of the 28 Member States such as the Commission and establishes with the Euro summit a new informal gathering. Parliamentary control is not foreseen. ~~The multilateral surveillance procedure did originally not include the European Parliament at all. Within the "European semester" there is at least an Economic Dialogue with the European Parliament. The reinforced multilateral surveillance procedure with regard to Euro area Member States including fines also for excessive macro-economic imbalances was adopted by the Council with the votes of only the Euro area Member States and the European~~

~~Parliament in its entire composition including non-Euro area MEPs.~~ A complete new international organisation consisting of the 17 euro area Member States was created with the ESM in order to grant financial assistance upon the realisation of national policy commitments. Even though the ESM is distinct from the EU, it refers tasks to the European Commission. Whilst a reference to the Commission as a Union institution appeared possible to the Contracting Parties, referring the democratic supervision to the European Parliament over the condition-setting for receiving financial assistance and over granting financial assistance appeared impossible to them. *Honi soit qui mal y pense.*

In sum, in order to equilibrate the EMU by including executive powers into the economic union without Treaty change, the Member States created multiple layers of governance. Questions are to be raised on the use of EU-28 institutions such as the Commission for

extra-EU activities on behalf of the ESM or for only a subset of Member States. Whilst possible doubts could be dispelled by referring to the fact that the Euro is the currency of the union and that a reinforced economic policy coordination and implementation is in the interest of the entire union, one must apply the same reasoning to Parliamentary control. First, there has to be an effective Parliamentary supervision in all EMU matters. Second, this concerns the European Parliament as a whole and not only a fraction of its Members originating from current Euro area Member States. An enhanced Parliamentary control can be reached within the limits of the existing Treaties, supposed that there is a political will, ~~by the following means:~~

~~First, one may think about the extension of the ordinary legislative procedure to matters of economic and fiscal affairs. A coordination of national economic and fiscal policies can also be achieved by the~~

~~harmonisation of important areas of those policies such as tax law (based on Article 113 TFEU concerning indirect taxes and Article 115 TFEU concerning direct taxes) and social law (based on Article 153 TFEU). Yet all those legal bases provide only for a consultation of the European Parliament. The ordinary legislative procedure can, however, be extended to these legal bases either by the simplified Treaty amendment procedure or by making use of Article 333 paragraph 2 TFEU which enables the Council to switch, for the purpose of an enhanced cooperation, to the ordinary legislative procedure. Second, participation rights of the European Parliament can be strengthened by introducing a “de facto co-decision” via Interinstitutional Agreements. The Commission could, for example, inform the European Parliament about its proposals for recommendations and decisions of the Council. Amendments by the European Parliament could~~

~~subsequently be included into the proposal by the Commission before it submits its proposals to the Council.~~

~~Finally, on the basis of Article 38 of the ESM-Treaty, the ESM could formalise its cooperation with the European Parliament and grant it, for example, the status of a permanent observer in the ESM Board of Governors and the Board of Directors.~~

~~To conclude, ladies and gentlemen, the main institutional challenge of a multitier governance in EMU is to tackle the risk of a falling apart of the EU into different subsets of Member States leading into a factual fragmentation or even division of Europe.~~

~~Whilst differentiated integration is needed in order to fulfil a certain forerunner function or to address particular issues, the main task of the European Parliament is to guarantee the unity of Europe. It has to face this challenge.~~