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How can the process of European Unification be organised
democratically on a medium and long-term basis

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HOW CAN THE PROCESS OF EUROPEAN UNIFICATION BE ORGANISED DEMOCRATICALLY ON A MEDIUM AND LONG-TERM BASIS?*

OPENING STATEMENT

by

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I. Democratic deficits and Spill-overs in the EMU	1
II. Methods to deal with excessive debts.....	2
III. A democratic solution to the Crisis	3
IV. Interim solutions for enhanced democratic legitimacy	3
1. Enhanced parliamentary involvement at the EU level.....	4
a. Determining the broad guidelines for the economic policies	5
b. Multilateral economic surveillance and the European Semester.....	5
c. The excessive deficit procedure	6
2. Organising an interparliamentary dialogue.....	6
IV. Conclusions.....	7

I. Democratic deficits and Spill-overs in the EMU

The financial crisis in the EU reveals unexpected democratic deficits in areas of European policy of particular significance for the citizen: economic and financial policies. While governments assumed that to retain economic and financial policies within the realm of national competence would be necessary to protect national sovereignty and key powers of their parliaments even when monetary policies are entrusted to centralized European institutions, the ESCB and the ECB, the opposite seems to be true: Some Member States, in particular those who are under the EFSF umbrella, see themselves subject to austerity policies which their parliaments would never had decided on their own. Other Member States, in turn, see themselves forced to grant loans or guarantees in unbelievable magnitudes in order to avoid the crash of the common currency. None of the members of the German parliament would

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ever accept such commitments voluntarily. It is clear, thus, because of the spill-over or external effects of “autonomous” national economic and fiscal policy decisions on the economies of other Member States in the Euro-zone, there is no such thing as budgetary autonomy left for any national parliament.

The question of democracy regarding budgetary policies, including both, income and expenses, is a delicate problem at least for Euro-countries, in particular if austerity policies for some and enhanced deficit spending for the others cannot be avoided. Democracy is at stake as well with regard to the short term perspective of each government to win elections on the basis of the promise to make gifts to the electors, financed by loans taken from the financial markets or other (Member) states. The risks of redistribution-policies implemented on this basis are plain:

Sovereign budgetary policies financed by “sovereign debts” may finally lead to the death of the Sovereign.

II. Methods to deal with excessive debts

I understand a recently published book, “Debt”, written by the anthropologist ###, to show that historically excessive debts and the failure of the debtor to pay back can have dramatic consequences: If the lender is strong enough it may be the economic (bankruptcy) or even the physical death – or slavery – of the borrower. If the borrower is the stronger, it happened that he killed the lender. I do not like either of these drastic solutions.

In a more civilised world, and particularly in cases of imminent bankruptcy of a state, the “hair-cut” has been found to be a possible solution: It is true that in the absence of direct fraud, two parties are always involved in the credit business: The borrower and the lender, and the two parties have an interest in the deal, both take risks and responsibilities. What is wrong about sharing this risk in a case of failure in some fair way, if this allows both parties to survive? Let me be clear:

More “civilised” seems to me, however, to ensure that excessive deficits and, therefore, the risk of failure to pay back the loans are avoided. Insofar, the introduction of the debt-brake in the constitutions would set clear limits to political manoeuvres of governments to gain elections at the expense of others: future generations. As the German Federal Constitutional Court stated in the recent interim-judgment on the ESM, self-binding provisions limiting significantly the budgetary policy discretion of national parliaments may be necessary in the long

term interest to maintain long-term decision-making capacity and freedom of the parliament.¹ It may even be an imperative of democracy.

III. A democratic solution to the Crisis

In a study prepared for Sylvie Goulard and the European Parliament, we have examined the ways for “A Democratic Solution to the Crisis”.² We propose, as a long term objective, to amend the TFEU with a view to bring the Economic and the Monetary dimensions of the EMU in a sound balance and so to overcome the asymmetry of both parts. This does not mean, I should add, to challenge the requirement expressed by the GFCC judgement on the ESM, that the national parliaments must remain the masters of their decisions regarding national budgets.³ To determine, at the EU level, a legally binding framework within which these decisions are taken, and also common principles of sustainability to govern the concrete framing of the national budgets, as a matter of a common economic and financial policy of the EU would leave the decision on national budgets in the hands of the national parliaments and not be contrary to the conditions set up by the Constitutional Court. There is no constitutional barrier also to a substantial increase of the European budget, as seems to be necessary for the financing of investment and growth strategies necessary to ensure the economic and social cohesion of the Union and the survival of the Euro. The financial resources required for this could be raised by European taxation schemes like the financial transaction tax or a special EU levy on the VAT.

IV. Interim solutions for enhanced democratic legitimacy

Such a far-reaching reform of the Union would have to be undertaken within a medium-term perspective. Meanwhile, steps of democratisation by either inter-institutional agreements or secondary law should be considered with a view to encourage enhanced participation of the European and the national parliaments in the decision-making and so to ensure a higher degree of transparency, public debate and legitimacy. The Six-Pack already addresses the lack of parliamentary participation by introducing the “economic dialogue” in instances where the Council is about to take action according the Commission’s proposals or recommendations. In

¹ GFCC judgment of 12 September 2012, case 2 BvR 1390/12 – ESM, para. 224 (not in English translation).

² Pernice/Wendel/Otto/Bettge/Mlynarski/Schwarz, Die Krise demokratisch überwinden. Reformansätze für eine demokratisch fundierte Wirtschafts- und Finanzverfassung Europas. A Democratic Solution to the Crisis. Reform Steps towards a Democratically Based Economic and Financial Constitution for Europe, Nomos 2012.

³ GFCC judgment of 12 September 2012, case 2 BvR 1390/12 – ESM, para. 213.

recognizing the above-mentioned spill-overs the European Commission proposed the “Two-Pack” including the coordination and synchronisation of the draft budgetary plans of the Member States at the EU level.⁴ This proposal is deemed to strengthening the European Semester, under which a monitoring and supervision of the draft budget plans by the Commission has already been introduced under the Euro-Plus Pact. Mutual consultation among the Member States and monitoring by the Commission and control of national budgeted plans in addition to what is provided for in the Six-Pack, however, does not sufficiently take into account the parliamentary prerogatives in processes regarding economic and financial policies including redistribution policies. And the “Two-Pack” is hardly mentioning any parliamentary participation at all.⁵

Further steps should be taken to increase parliamentary participation with regard to the three levels of framing and supervising national economic and fiscal policies under EU procedures, on the one hand (1.), and to encourage an inter-parliamentary dialogue at the national level, on the other (2.).

1. Enhanced parliamentary involvement at the EU level

The three relevant levels of EU economic and fiscal policies where parliamentary participation should be increased are

- (a) the determination of the broad guidelines of the economic policies of the Member States and of the Union under Article 121 (2) TFEU,
- (b) the multilateral surveillance of the national economic policies and their consistency with the broad guidelines as provided for in Article 121 (3) to (5) TFEU, and the European Semester as mentioned under Article 2a of the revised Regulation 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies, strengthened under the proposed Regulation on common provisions for monitoring and assessing draft budgetary plans

⁴ Proposal for a Regulation of the European Parliament and of the Council on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the Euro area, COM (2011) 821 final.

⁵ See recital 13 and Article 8 (4) of the recital no. 10 of the proposed Regulation (note 4 above), allowing the EP to „offer the opportunity to the Member State concerned (sc. with an excessive deficit procedure) by a recommendation in accordance with paragraph 2 to participate in an exchange of views in accordance with Article 2a of Regulation (EC) n. 1467/97“. Similarly, for the monitoring of the adjustment programs Article 6 (7) of the proposed Regulation on the strengthening of economic and budgetary surveillance of Member States experiencing or threatened with serious difficulties with respect to their financial stability in the euro area, COM(2011) 819 final.

and ensuring the correction of excessive deficit of the Member States in the euro area.

(c) the excessive deficit procedure including sanctions under Article 126 TFEU, as strengthened by the new provisions laid down in the “Six-Pack”, in particular in the revised Regulation 1467/97.

a. Determining the broad guidelines for the economic policies

The broad guidelines of the economic policies of the Member States and of the Union are key for the coordination, as Article 120 TFEU states, and they are determined under Article 121 (2) TFEU. Multilateral surveillance is based upon them, and national policies are checked against them. If they are to be of effective relevance for national policies parliamentary participation must be enhanced. It is not sufficient that the Council informs, as Article 121 (2, subpara 3) TFEU says, the European Parliament of its recommendations. There is room in the procedure of establishment of these broad guidelines for the European Parliament to be consulted by, e.g. before the Commission submits its recommendation to the European Council. This can be made a rule by an inter-institutional agreement between the European Parliament and the Commission. The European Council should, then, take into consideration the views expressed by the European Parliament. Martin Schulz has already put forward this idea, and Gesine Schwan rightly recommends that members of the national parliaments should be invited to take part in the discussions of the European Parliament, so to include those who are finally responsible for the implementation of the coordinated policies. This seems to be particularly important for the discussion within the competent committee of the European Parliaments whose members should establish a continuous dialogue with their national partners.

b. Multilateral economic surveillance and the European Semester

As can be seen in recitals 11, 14 and 16 of Regulation 1466/97 as revised by the Six-Pack, one of the great concerns of the Six-Pack was to “include a closer and more timely involvement of the European Parliament and the national parliaments” in the strengthening of the economic governance. Namely the European Parliament is supposed to discuss the main challenges facing the Union and the euro area and the recommendations given by the Council at the beginning of the annual cycle of surveillance in due time before the discussion takes place in the European Council. Article 2a (4) of the Regulation provides generally for this involvement in the European Semester which comprises, as Article 2a (2 lit. (a)) says, the formulation and the surveillance of the implementation of the broad guidelines of the economic policies. Yet, the subjects which may be discussed in the Economic Dialogue set out in Article 2ab of the Regulation by the competent committee of the European Parliament with the presidents of the other institutions invited do not clearly include the recommendations of the Commission

on the broad guidelines at an early stage, nor is there provision on what the conclusions and views of the committee and the European Parliament may draw from this dialogue. Article 2ab (2) only states that “the Council is expected to, as a rule, follow the recommendations and proposals of the Commission or explain its position publicly”. Nothing is said of a position the Parliament may have taken and its significance for the Commission or the Council. The European Parliament should have the right to adopt conclusions on each subject discussed, particularly where the draft budget plans are examined within the framework of the European Semester, and the Council should be bound to take these Conclusions into consideration. For decisions on a failure of a Member State to comply with the convergence programmes or with the medium term budgetary objectives under Article 10 (2) of Regulation 1466/97, or for sanctions under Article 4 of Regulation 1173/2011 on the effective enforcement of budgetary surveillance in the euro area are at stake, the rights of the European Parliament should even be stronger, as these decisions put national economic and budgetary policies under serious stress and need enhanced legitimacy.

c. The excessive deficit procedure

This question of legitimacy and democratic control is even more serious in the excessive deficit procedure. In our study we suggest that the European Parliament should have a strong say here, not only in being consulted by even with a minority right of 25% of the deputies to invite the Commission to examine more deeply a specific national budget and request it to present a report on that Member State. The European Parliament should also have the last word on final decisions on excessive deficits in a Member State. Should the Council decide, under the rules on the excessive deficit procedure, that in a given case determined by the Commission and contrary to the Commission recommendation there is no excessive deficit or no action should be taken, the European Parliament deciding with a qualified majority should have the right to decide that there is an excessive deficit nevertheless. It is clear that representatives of the competent parliamentary committee of the Member State concerned should be heard and participate in the debates on any such questions by the competent committee of the European Parliament.

2. Organising an interparliamentary dialogue

A interparliamentary dialogue should be institutionalised on questions of economic and fiscal policies also at the national level. Given the spill-over of national decisions in these areas on the economies of other Member States, awareness of the members of national parliaments for the “European dimension” of nation policies has to be raised. Each time, the budgetary committee of a national parliament discusses and is about to adopt the budget for the upcoming year, representatives of the budgetary committees of the other Member States should be invited to actively participate and, as the case may be, make clear what the implica-

tions of a certain decision may have for each of the other Member States. Given the interconnectivity of the national economies in the internal market and, in particular, for the Member States having the Euro, it is important for the parliamentarians, thus, not only to learn from each other and to understand each other, but also to inform about and explain the situation and the policies of other Member States. These debates must be public and open also for representatives of the competent committee of the European Parliament.

IV. Conclusions

The Six-Pack and the Two-Pack provide for important improvement of the ways, particularly the European Parliament is involved in decision-making on matters regarding the coordination of economic and fiscal policies at the European level. This participation should, however, be further developed up to a system of real control of the executives by the European Parliament. As national budgetary policies at stake, a strong participation also of representatives of the national parliaments in the debates of the European Parliament must be organised.

At the national level, it seems to be important, to address the European dimension of national budgetary policies and, to this end, provide for an interparliamentary dialogue each time when debates on national budget are led in the national parliaments.

All these provisions will not be sufficient, however, for effectively establishing a common economic and fiscal policy at the European level comprising in particular measures for investment and growth policies and a necessary degree of economic and social cohesion of the EU. This would require a reform of the Treaties including an arrangement for a substantially increased European budget financed by specific European taxes through which the funds needed are collected.