



**CENTRO STUDI SUL FEDERALISMO**

**research paper**

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**THE INSTITUTIONAL ARCHITECTURE  
OF ECONOMIC UNION**

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## ABSTRACT

The present paper explores the most salient aspects of the institutional architecture of the European Union (EU) economic union. It focuses on the main bodies of economic governance and coordination, i.e., the Council, the Eurogroup, the European Council and the Euro Summit as well as on the role of the Commission.

**Keywords:** European Union, economic union, institutional architecture, economic governance, European Council, Eurogroup, Euro Summit, Commission

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## **1. Council of the EU**

It is necessary to offer an initial general account of the institutional setup of the Council. This will be followed by a number of remarks that concern the specific role of the Council in the field of economic union.

### **1.1 The Council: generalities**

According to the Treaties, the Council is a single institution, but meets in different configurations.<sup>1</sup> Those configurations are listed in Annex I to the Council's Rules of Procedure.<sup>2</sup> Currently, there are 10 Council configurations, among which the Economic and Financial Affairs (ECOFIN).<sup>3</sup>

The singlehood of the Council means that there is no hierarchy as such between the different configurations of the Council.<sup>4</sup> The decision to entrust a specific Council configuration with the adoption of a particular act belongs to the presidency, which is responsible for organising Council work. The presidency enjoys in that respect a wide margin of discretion and is guided by criteria such as specialisation or timing.

According to Article 16 TEU, the Council is composed of "representatives of each Member State at ministerial level, who may commit the government of the Member State in question and cast its vote". Those representatives may be members of the central government or of a regional

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1 See Article 16(6) TEU

2 The Rules of Procedure of the Council are based on Article 240 of the Treaty on the Functioning of the European Union [2016] OJ C 202/47 (hereafter TFEU). They have been elaborated in the '70 and have been amended regularly in particular in order to reflect the modifications to the Treaties. The current Rules of Procedure date from 2009, after the entry into force of the Lisbon Treaty: see Council Decision 2009/937/EU adopting the Council's Rules of Procedure, [2009] OJ L 325/35 (hereafter Council's Rules of Procedure).

3 The other configurations being General Affairs; Foreign Affairs; Justice and Home Affairs; Employment, Social Policy, Health and Consumer Affairs (hereafter EPSCO); Competitiveness (Internal Market, Industry and Research); Transport, Telecommunications and Energy; Agriculture and Fisheries; Environment; Education, Youth and Culture

4 However, Article 16(6) TEU states that the General Affairs Council shall ensure consistency in the work of the different Council configurations.

government; they are required in any case to have a ministerial level, the capacity of committing the Member State as a whole and to cast a vote on its behalf.<sup>5</sup>

According to Article 5 of the Council's Rules of Procedure, the Commission is invited to all Council meetings, including in the preparatory bodies of the Council. The same rule applies for the European Central Bank (ECB), when it exercises its right of initiative. The Council has however the possibility to decide at simple majority to exclude the Commission or, where applicable, the ECB from its deliberations.

It is also recalled that, according to Article 284(2) TFEU, the President of the ECB is invited to participate in Council meetings when the Council is discussing matters relating to the objectives and tasks of the European System of Central Banks. In practice, the ECB is a permanent guest to the meetings of the ECOFIN, whether it has exercised or not its right of initiative. In certain circumstances, the European Investment Bank is also invited to its meetings.

According to Article 16(9) TFEU, the Presidency of Council configurations other than the Foreign Affairs configuration shall be held by "Member States representatives in the Council on the basis of equal rotation, in accordance with the conditions established in accordance with Article 236" TFEU.

The Lisbon Treaty has established the qualified majority as the general voting rule within the Council. The exceptions to this rule, which are the simple majority and the unanimity, are exhaustively defined by the Treaties. The Treaties also specify the instances where there is recourse to the simple majority and to unanimity.

Since 1<sup>st</sup> of November 2014, according to Article 16(4) read in conjunction with Article 238(2), where the Council acts on a proposal from the Commission or from the High Representative of the Union for Foreign Affairs and Security Policy (which is the majority of instances), a qualified majority means at least 55% of the members of the Council comprising at least 15 Member States. The population of those Member States has to comprise at least 65% of the population of the Union. The blocking minority has to include at least four Member States.

The work of the Council is structured in a pyramidal manner, with the ministerial level at its top. The ministerial level has the monopoly for adopting substantial decisions in the name of the Council. The work of the ministerial level is prepared by the Committee of Permanent Representatives of the Governments of the Member States (hereafter Coreper). The Treaties<sup>6</sup> refer to Coreper as a preparatory body of the Council without referring specifically to its two configurations (which have been developed in practice since 1962 in order to respond to its increasing workload): Coreper Part 2 (hereafter Coreper II) and Coreper Part 1 (hereafter Coreper I). Coreper II (composed of the Permanent Representatives) traditionally feeds in the work of the following Council configurations: GAC, Foreign Affairs, ECOFIN and Justice and Home Affairs.

Below Coreper there are around 150 preparatory bodies that feed in its work which can be divided into two categories: (1) bodies established by the Treaties, at intergovernmental level or by a

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<sup>5</sup> See also Annex I of the Council's Rules of Procedure, second paragraph.

<sup>6</sup> See Article 16(7) TEU and Article 240 TFEU

Council decision,<sup>7</sup> (2) committees and working parties established by Coreper to deal with specific issues or files. The General Secretariat of the Council publishes the updated list of those bodies on the website of the Council.<sup>8</sup>

In the context of the EMU, the Economic and Financial Committee (hereafter EFC) deserves a special attention. The EFC is laid down in Article 134 TFEU. Its aim is "to promote coordination of the policies of Member States to the full extent needed for the functioning of the internal market". The Treaties confer upon the EFC two tasks. First, as a self-standing Committee the EFC keeps under review the economic and financial situation of the Member States and of the Union and examines the situation regarding the movement of capital and the freedom of payments. Second, as a preparatory body, the EFC contributes to the works of the Council referred to in certain provisions of the Treaties.<sup>9</sup>

The EFC, and its euro area specific formation (the Eurogroup Working Group, to which reference shall be made afterwards) have become a fundamental center of decision during the euro crisis. It has been key in agreements of mechanisms such as the banking Union: although in an intergovernmental format, it has negotiated and drafted Treaties such as the one on the European Stability Mechanism (ESM), the Treaty on Stability, Governance and Coordination (TSCG) or the Intergovernmental Agreement on the transfer of contributions to the Single Resolution Fund; it has been key in the preparation and negotiation of the programmes of financial assistance, notably the three subsequent Greek programmes and the Cypriot one; it has been finally the forum to which ministers have entrusted the preparation of the deepening of the Economic and Monetary Union debate which is undergoing throughout 2017 and 2018.

## **1.2 The Council: specific considerations regarding its role in economic union**

In the context of economic policy, the Council exercises two main functions. First, it plays its usual role of legislator, either together with the European Parliament (as in the case provided for in Article 121(6) TFEU in relation to the detailed rules for the multilateral surveillance procedure<sup>10</sup>), or alone (as in the case of Union financial assistance referred to in Article 122 TFEU<sup>11</sup>).

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<sup>7</sup> See in particular the Economic and Financial Committee (hereafter EFC), set up by Article 134 TFEU or the Financial Services Committee (hereafter FSC) set up on 18 February 2003 by the Council with a mandate to provide for cross-sectoral strategic reflection separate from the legislative process; to help to define the medium- and long-term strategy for financial services issues; to consider sensitive short-term issues; to assess progress and implementation; and to provide political advice and oversight on both internal and external issues (Council Decision (EC) 2003/165 concerning the establishment of the Financial Services Committee [2003] OJ L67/17).

<sup>8</sup> The list of the preparatory bodies of the Council is provided in document 15371/17 POLGEN 160, available on the Council website : <http://data.consilium.europa.eu/doc/document/ST-15371-2017-INIT/en/pdf>

<sup>9</sup> Articles 66, 75, 121(2), (3), (4) and (6), 122, 124, 125, 126, 127(6), 128(2), 129(3) and (4), 138, 140(2) and (3), 143, 144(2) and (3), and in Article 219 TFEU

<sup>10</sup> See Regulation (EU) No 473/2013 of the European Parliament and of the Council of 21 May 2013 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, OJ L 140, 27.5.2013, p. 11–23.

<sup>11</sup> See Council Regulation (EU) 2016/369 of 15 March 2016 on the provision of emergency support within the Union, OJ L 70, 16.3.2016, p. 1–6.

Second, and more significantly, the Council is the institution where economic coordination among Member States takes place. Article 5(1) TFEU states that "The Member States shall coordinate their economic policies within the Union. To this end, the Council shall adopt measures, in particular broad guidelines for these policies". Moreover, under Article 121(1) TFEU, "Member States shall regard their economic policies as a matter of common concern and shall coordinate them within the Council (...)".

Economic coordination within the Council is carried out through the two arms of the Stability and Growth Pact:<sup>12</sup> the preventive - which aims, notably, at preventing at an early stage the occurrence of excessive government deficit and to promote the surveillance and coordination of economic policies - and the corrective one - or the excessive deficit procedure, laid down under Article 126(2) to (13) TFEU whose objective is to encourage and, if necessary, compel the Member State concerned to reduce a deficit which might be identified.

The comparison of the interinstitutional balance powers in economic policy with the distribution of powers among the institutions in other – more traditional - areas of the Union shows remarkable differences. These are grounded on the very nature of the economic policy of the Union. It is not a policy of *integration* (as is per excellence the internal market). It is a policy of *coordination* among States.

The coordinative nature of the competence is a deliberate choice by the drafters of the Treaty of Maastricht for whom the establishment of a single currency did not mean the creation of an economic government. Member States, their parliaments, their governments remain the masters of their economic decisions, for in them resides the democratic legitimacy of those decisions. In fact, the preservation of the national budgetary and economic sovereignty is a red line for some Constitutional Courts (notably the German Constitutional Court) beyond which the principle of democracy would be imperilled.<sup>13</sup>

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<sup>12</sup> See Jean-Paul Keppenne, "Fiscal Rules", Research Paper, Centro Studi sul Federalismo, November 2018 – Forthcoming in: Federico Fabbrini & Marco Ventoruzzo (eds.), *Research Handbook on European Economic Law*, Elgar, Cheltenham, 2019).

<sup>13</sup> In its judgment of 30 June 2009 on the Treaty of Lisbon (BVerfG, 2 BvE 2/08 vom 30.6.2009), the BVerfG ruled at point 256 that "A transfer of the right of the Bundestag to adopt the budget and control its implementation by the government which would violate the principle of democracy and the right to elect the German Bundestag in its essential content would occur if the determination of the type and amount of the levies imposed on the citizen were supranationalised to a considerable extent. The German Bundestag must decide, in an accountable manner vis-à-vis the people, on the total amount of the burdens placed on citizens. The same applies correspondingly to essential state expenditure. (...) Budget sovereignty is where political decisions are planned to combine economic burdens with benefits granted by the state. Therefore the parliamentary debate on the budget, including the extent of public debt, is regarded as a general debate on policy. Not every European or international obligation that has an effect on the budget endangers the viability of the Bundestag as the legislature responsible for approving the budget. The openness to legal and social order and to European integration which the Basic Law calls for, includes an adaptation to parameters laid down and commitments made, which the legislature responsible for approving the budget must include in its own planning as factors which it cannot itself directly influence. What is decisive, however, is that the overall responsibility, with sufficient political discretion regarding revenue and expenditure, can still rest with the German Bundestag".

The "low intensity" of the competence of the Union in economic matters entails a number of consequences on the role that institutions play in that field, as compared to their role in traditional policies of integration.

First, the Commission does not occupy the same executive and watchdog roles that it otherwise holds in the integration policies of the Union. The particular and qualified role of the Commission in economic coordination shall be the object of separate examination later.

Second, the Treaties attribute to the European Parliament a quite specific role concerning economic coordination. It co-legislates with the Council, as referred to above, through the ordinary legislative procedure, on the legal framework on the multilateral surveillance procedure (see Article 121(6) TFEU); it may also co-legislate on some of the rules specific for the euro area founded on Article 136 TFEU; however, it does not co-decide with the Council on the legal framework concerning the excessive deficit procedure (see Article 126(14) TFEU); and, more fundamentally, it has no actual role in the execution of economic policies, either in the preventive and in the corrective arms, apart from being informed about the results of the multilateral surveillance procedure and of the decisions taken by the Council in the excessive deficit procedure (see Articles 121(5) and 126(11) TFEU)<sup>14</sup>.

The role of the European Parliament in economic coordination, as originally conceived by the Treaty of Maastricht, has hardly changed throughout the subsequent amendments to the Treaties since the Treaty of Maastricht. In particular, the Treaty of Lisbon, that made general the ordinary legislative procedure, did not alter the original attribution of competences in economic policy, that still lies on the idea that the democratic legitimacy of economic and budgetary decisions remains within Member States.

## 2. The Euro Group

The Treaty of Lisbon granted a formal recognition to an informal meeting of Ministers, previously created by a Resolution of the European Council of 13 December 1997 and introduced specific provisions relating to the Euro Group. The Eurogroup is designed to reinforcing the governance of the euro area, building on the modifications already incorporated in the Treaty establishing a Constitution for Europe pursuant to a French-German proposal to the Convention on Economic Governance.

According to Article 137 TFEU "*[a]rrangements for meetings between ministers of those Member States whose currency is the euro are laid down by the Protocol on the Euro Group*". Article 1 of Protocol No 14 annexed to the Treaties, on the Euro Group, sets out that "[t]he Ministers of the

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<sup>14</sup> The six pack (five Regulations and a Directive approved in 2011 to enhance the economic governance of the Union) has specified the role of the European Parliament in economic coordination, through the so-called "economic dialogue", that establishes a framework of cooperation and reporting between the relevant institutions of the Union in charge of executing economic policy (the European Council, the Council, the Commission and the European Central Bank) and the European Parliament. However, economic dialogue does not change the nature of the competences of the Parliament in this particular field, as laid down by the Treaties, namely to be informed, once decisions have been taken by the relevant institutions, as explained previously.

Member States whose currency is the euro shall meet informally. Such meeting shall take place, when necessary, to discuss questions related to the specific responsibilities they share with regard to the single currency. The Commission shall take part in the meetings (...)".

The managing director of the European Stability Mechanism and a representative of the IMF may also participate to the Euro Group meetings. The presence of the IMF is in such case limited to the discussions on the economic programmes to which the IMF participates.

The Euro Group adopts its programme every six months. As a general rule, it meets once a month, before the Council (ECOFIN) meeting. Since the Euro Group is also in charge with preparing the work for the Eurosummits (on which see below), as a general rule, the Euro Group is furthermore convened within fifteen days before the Eurosummit.

The discussions within the Euro Group may either concern specific euro-related questions or larger questions which may have an impact on the fiscal, monetary or structural policies of the Member States of the euro area<sup>15</sup>. Amongst these questions, the economic situation and the financial stability of the euro area, the budgetary policies of the Member States of the euro area, the enlargement of the euro area or the terms of the financial assistance for the euro area's Member States are regularly on its agenda.

Each ECOFIN Council meeting starts by a debriefing by the Euro Group president of the Euro Group meeting.

According to Article 2 of Protocol No 14 on the Euro Group, the Euro Group is chaired by a president elected by majority of Member States of the euro area for a renewable two and a half years term. The first permanent President of the Euro Group was elected in 2004 in the person of Jean-Claude Juncker (at that time: Prime-Minister and Minister of Finance of Luxembourg), who occupied this position until 2013. He was followed by Jeroen Dijsselbloem (at that time: Dutch Finance Minister) and, since December 2017, Mário Centeno (Portuguese Finance Minister) is presiding over the Euro Group.

The Euro Group is neither one of the institutions of the Union referred to in Article 13(1) of the Treaty on European Union (TEU), nor a Council configuration in the sense of Article 16(6) TEU. Furthermore, the Council's Rules of Procedure contain no provision concerning the functioning of the Euro Group.

The fact that the Euro Group is deprived of any decision making power and that it cannot replace the Council in its competences under the Treaties is underlined by the 1997 European Council Resolution establishing the Euro Group, which states the following:

"(...) By virtue of the Treaty, the ECOFIN Council is the centre for the coordination of the Member States' economic policies and is empowered to act in the relevant areas. In particular, the ECOFIN Council is the only body empowered to formulate and adopt the broad economic policy guidelines which constitute the main instrument of economic coordination.

The defining position of the ECOFIN Council at the centre of the economic coordination and decision-making process affirms the unity and cohesion of the Community.

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<sup>15</sup> See the Working Methods of the Euro Group of 3 October 2008, ECFIN/CEFCPE(2008)REP/50842 rev1, available at: <https://www.consilium.europa.eu/media/21457/08-10-03-eurogroup-working-methods.pdf> , p. 1.

The Ministers of the States participating in the euro area may meet informally among themselves to discuss issues connected with their shared specific responsibilities for the single currency (...).

Whenever matters of common interest are concerned they will be discussed by Ministers of all Member States.

Decisions will in all cases be taken by the ECOFIN Council in accordance with the procedures laid down in the Treaty (...)"

The Euro Group cannot replace the decision making of the Council, even in matters that relate specifically to the euro area. It is not a body of the Union capable of adopting decisions entailing legal effects. Actually, in its judgment of 20 September 2016 in *Mallis*,<sup>16</sup> the Court of Justice had confirmed that "the Euro Group cannot be equated with a configuration of the Council or be classified as a body, office or agency of the European Union within the meaning of Article 263 TFEU".

The above judgement has been qualified by the General Court in *Chrysostomides*, a case where a number of investors affected by the 2013 bail-in of Cypriot banks claimed compensation for damages as a consequence of decisions taken by, inter alia, the Eurogroup.<sup>17</sup>

In its judgement, the General Court has confined the case law referred to in the previous paragraph to the actions for annulment under Article 263 TFEU, whilst concluding that actions and conduct of the Euro Group are subject to the control of the Court on account of the non-contractual liability of the Union.

The General Court clarified that the purpose of actions for non-contractual liability - i.e., the possible compensation for acts and conducts of the institutions of the European Union - is different to the one of actions addressed to control the legality of Union's acts. In the light of the different and complementary purposes of those two types of action, the notion of "institution" subject to the control of the Court under Article 340 TFEU (on non-contractual liability) is wider than the notion of institutions, bodies, offices or agencies of the Union referred to in Article 263 TFEU (among which the Euro Group is not comprised, according to the Court, as referred to above). Wherever the EU entity is established by the Treaties and its functioning is intended to contribute to the achievement of the Union's objectives, its actions and conduct may engender the liability of the Union. This is the case of the Euro Group, according to the General Court: it is established by article 137 TFEU and Protocol No 14 and its actions aim at achieving the Treaties objectives. Any contrary solution would clash with the principle of the Union based on the rule of law, in so far as it would allow the establishment, within the legal system of the European Union itself, of entities whose acts and conduct could not result in the EU incurring liability.

It is noted that the above judgement of the General Court has been appealed by the Council in September 2018 (case C-597/18 P).

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<sup>16</sup> Judgment of the Court (Grand Chamber) of 20 September 2016, *Konstantinos Mallis and Others v European Commission and European Central Bank (ECB)*, Joined Cases C-105/15 P to C-109/15 P, ECLI:EU:C:2016:702, at 61

<sup>17</sup> Judgment of the General Court of 13 July 2018, *Chrysostomides v Council, Commission, Euro Group and ECB*, points 105 and following.

While the Euro Group as such has no role to play in the legislative process, where it is the Council of the Union that intervenes, one has to underline the important part played by the Euro Group President in the shaping of the Banking Union, in particular in the discussions relating to the Single Resolution Mechanism.<sup>18</sup> A critical examination on the role of the Eurogroup in the discussions concerning the deepening of the economic and monetary union will follow in a subsequent section.

The meetings of the Euro Group are prepared by the Euro Group working group, which has a chair appointed by the Euro Group for a two years term following its election by his pairs. The Euro Group working group is composed of representatives of the euro-area Member States of the Economic and Financial Committee, the European Commission and the ECB. The office of the President of the Working Group is at the General Secretariat of the Council. The secretariat tasks in relation to the Euro Group are divided between the General Secretariat of the Council (which is in charge, beyond the assistance to the President, of logistics) and the EFC Secretariat (which is responsible for the substance).

### 3. The Commission

As mentioned previously, economic policy supposes an exception to the exercise by the Commission of some of the traditional competences that the Treaties vest upon it. It shares with the Council the role of executing the economic policy of the Union (through the preventive and corrective procedures to which reference has been made previously). However, the Council remains ultimately responsible to adopt the relevant decisions; the Commission does not have the competence to enforce the budgetary obligations incumbent upon Member States through the infringement procedure (see Article 126(10) TFEU), and, accordingly, the Court of Justice has no jurisdiction to verify compliance by Member States with their budgetary obligations through that procedure.

This exceptional character of the Commission's role is rooted in the very nature of the competence of economic coordination as referred to above: it consists of a competence of coordination addressed to Member States themselves (Article 5(1) TFEU) that takes place within the Council (article 121(1) TFEU). Member States are at the same time the subjects and the object of that coordination.

Hence, the executive function of the Commission to ensure the application of the Treaties and of measures adopted by the institutions pursuant to them (Article 17 TEU) further translated in its power to adopt implementing acts where uniform conditions for implementing legally binding Union acts are needed (Article 291(2) TFEU), is fundamentally limited when it comes to the enforcement of the economic policy of the Union.

As explained above, the Treaties confer instead upon the Council the role of implementing economic policy through the multilateral surveillance and the excessive deficit procedures.

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<sup>18</sup> See Commission' statement of 20 March 2014, following the final trilogues in this legislative file: [http://europa.eu/rapid/press-release\\_STATEMENT-14-77\\_en.htm](http://europa.eu/rapid/press-release_STATEMENT-14-77_en.htm).

In spite of the above the role of the Commission in the application of economic policy is significant.

First, the Commission holds the right of initiative for most of the Council decisions both in the preventive and in corrective arms of the Stability and Growth Pact: the Council adopts the broad guidelines of the economic policies of the Member States and of the Union as well as the decisions of the multilateral surveillance procedure on the basis of a recommendation of the Commission (see the second subparagraph of Article 121(2) and the first subparagraph of Article 121(4) TFEU). Likewise, the decision of the Council under the excessive deficit procedure are adopted on the basis of a recommendation of the Commission (Article 126(13) TFEU).

Second, the Commission is vested with some powers of general budgetary surveillance with a view to ensuring compliance with the Member States' obligation to avoid excessive deficit (Article 126(2) TFEU). As corollary of these powers the Commission may prepare a report if a Member State does not fulfil the requirements under the debt and deficit criteria of the Stability and Growth Pact (Article 126(3) TFEU). Finally, the Commission (Eurostat) is in charge of providing the statistical data for the application of Protocol (No 12) on the excessive deficit procedure that lays down rules and definitions for the determination of the debt and deficit criteria (Article 4 of Protocol No (12)).

Third, in line with its general attributions, the Commission holds the right of initiative of Union legislative acts in the field of economic policy. This is the case for the preventive arm of the Stability and Growth Pact (whose detailed rules are adopted on the basis of the ordinary legislative procedure, hence on a Commission's proposal, see Article 121(6) TFEU) and the corrective arm (where the detailed rules for the application of the excessive deficit procedure, as well as those replacing or supplementing the Protocol on the excessive deficit procedure, are adopted by the Council on the basis of a Commission's proposal, see Article 126(14) TFEU). An interesting remark may be made here. Whilst, in general, EU legal acts confer upon the Commission the task to adopt both delegated and implementing acts in relation to them, this is a rare practice in the field of economic policy. For instance, neither Regulations 1466/97 and 1467/97 (that lay down, respectively, detailed provisions on the preventive and corrective arms of the Stability and Growth Pact) establish any implementing or delegated powers for the Commission. The practical modalities of application of both Regulations are rather laid down in an instrument of soft law, the so called "Code of Conduct" (Specifications on the implementation of the application of the Stability and Growth Pact), adopted by the Council by means of conclusions<sup>19</sup>. Moreover, it is common that economic policy legislation grants to the Council (instead the Commission) the power to adopt implementing acts (for instance, the adoption of sanctions against Member States failing to comply their budgetary obligations, as provided for in the six pack)<sup>20</sup>.

Fourth, the Commission has been given a fundamental role of management by the different intergovernmental agreements concluded among Member States. This is most notably the case of the intergovernmental mechanisms of financial assistance, where the Commission has been

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<sup>19</sup> See the latest version of the Code of Conduct in Council document 9344/17.

<sup>20</sup> See Article 3 of Regulation 1174/2011 on enforcement measures to correct excessive macroeconomic imbalances in the euro area and recital (18) thereof.

granted powers such as the assessment of the appropriateness of granting financial assistance as well as of the financial needs of the Member State concerned, the negotiation and signature of memoranda of understanding with the beneficiary Member State on behalf of the lenders – the euro area Member States, the EFSF or the ESM – and the monitoring of compliance with the conditionality measures laid down in the context of assistance<sup>21</sup>.

The allocation of powers of management and execution to the Commission in connection with intergovernmental structures has been blessed by the Court of Justice as compatible with the principle of conferral of powers, in the Bangladesh judgment, (which dealt with the constitution of a fund of aid to Bangladesh, an extra-EU instrument)<sup>22</sup> and most notably in case Pringle where the Court confirmed the such allocation of powers (in casu, those entrusted to the Commission by the ESM) is in line with the Treaties provided it does not alter the essential character of the powers as conferred upon by the Treaties<sup>23</sup>.

## **4. European Council / Euro Summits**

### **4.1 The European Council**

One of the most important institutional novelties brought about by the Treaty of Lisbon is the recognition of the European Council as an official institution of the Union. The European Council is listed as one of the Union institutions in Article 13(1) TEU.

Its powers, composition, organisation and functioning are laid down by article 15 TEU: the main role of the European Council is to provide the Union with the necessary impetus for its development and define the general political directions and priorities thereof. It shall not exercise legislative functions (Article 15(1) TEU). It consists of the Heads of State or Government of the Member States, together with its president and the President of the Commission, the High Representative for Foreign Affairs and Security Policy taking part in its work (Article 15(2) TEU). It shall meet twice every six months (Article 15(3) TEU). Except where the Treaties provide otherwise, decisions shall be taken by consensus. When a vote is taken, the President of the European Council and the Commission's president do not have the right to vote (article 235(1) TFEU). Its president is elected by a qualified majority of the European Council for a term of two and a half years, renewable once (Article 15(5) TEU). Its functions are described in rather vague manner in Article 15(6) TEU, which does not entrust the president with important executive powers (as proposed by some Member States, notably France during the drafting of the Treaty of Lisbon), but rather a general role of chairing and organising the meetings.<sup>24</sup>

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<sup>21</sup> See article 13(3) of the ESM Treaty.

<sup>22</sup> In this judgment the Court stated that "The...Treaty does not prevent the Member States from entrusting the Commission with the task of coordinating a collective action undertaken by them on the basis of an act of their representatives meeting in the Council". See Joined Cases C-181 & 248/91, Parliament v. Council and Commission, [1993] ECR I-3685, para 20.

<sup>23</sup> See case Pringle at paragraphs 31 and following.

<sup>24</sup> See in this sense J-C Piris, *The Lisbon Treaty, a Legal and Political Analysis*, Cambridge University Press, 2010, 207.

The institutionalisation of the European Council entails two fundamental consequences in legal terms. First, the European Council is empowered to adopt legally binding acts, for which it is held to abide by the rules and procedures fixed in the specific legal basis. Likewise, the European Council has been added to the list of institutions against which an action for annulment or an action for failure to act may be brought before the Court of Justice (Articles 263 and 265 TFEU). The control of the legality of acts of the European Council by the Court of Justice may also take place through preliminary references, as happened in the seminal *Pringle* case, where the legality of the European Council's decision to amend the Treaties through a simplified amendment procedure, by adding new Article 136(3) TFEU, was questioned.<sup>25</sup>

#### 4.2 The Euro Summits

The euro crisis gave rise to frequent meetings of the Heads of State or Government of the Euro area to discuss the measures to redress such a situation. In a meeting of 26 October 2011, those Heads agreed, inter alia, ten measures to improve the governance of the euro area. The first of the ten measures, related to the Euro Summits, read as follows:

"There will be regular Euro Summit meetings bringing together the Heads of State or government (HoSG) of the euro area and the President of the Commission. These meetings will take place at least twice a year, at key moments of the annual economic governance circle; they will if possible take place after European Council meetings. Additional meetings can be called by the President of the Euro Summit if necessary. Euro Summits will define strategic orientations for the conduct of economic policies and for improved competitiveness and increased convergence in the euro area. The President of the Euro Summit will ensure the preparation of the Euro Summit, in close cooperation with the President of the Commission".

Euro Summits were formally established in the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (TSCG), an agreement of international public law concluded among all then 27 EU Member States, except the UK and the Czech Republic, that entered into force on 1 January 2013<sup>26</sup>. Article 12 of the TSCG creates the Euro Summits, and lays down the rules for its organization, composition and functioning.

Euro Summits are defined as "informal" meetings of the Heads of State or Government of the euro area, in the image of the Eurogroup (also defined by Protocol No 14 as an informal meeting of ministers) thus underlining the non-institutional character of the Euro Summits. The Heads of state and government of Eurozone Member States participate thus in the Euro summits meetings in the quality of their national function and not in the quality of member of an EU institution. The Heads meet in the Euro Summits together with the president of the Commission, the president of the ECB being invited to take part in the meetings.

The works of the Euro Summit are chaired by a president that shall be appointed by a qualified majority of its members at the same time as the European Council elects its president and for the same term of office. The two first presidents of the European Council, Herman Van Rompuy and

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<sup>25</sup> Case C-370/12, ECLI:EU:C:2012:756, where the legality of Decision 2011/199 by the European Council was put into question.

<sup>26</sup> See text of the Treaty at [https://www.consilium.europa.eu/media/20399/st00tscg26\\_en12.pdf](https://www.consilium.europa.eu/media/20399/st00tscg26_en12.pdf)

Donald Tusk, have been appointed presidents of the Euro Summits, thus maintaining personal overlap between the leadership of the European Council and that of the Euro Summit.

The Euro Summits shall take place when necessary and at least twice a year (Article 12(2) TSCG). In practice, since the entry into force of the TSCG, the rule of the Euro Summit meeting at least twice a year has not been systematically respected. In fact, the Euro Summit has met much more often<sup>27</sup>. Meetings have been rather called on a demand basis, either to respond to critical situations (the Greek solvency crisis during the spring/summer 2015) or to discuss on the deepening of the Economic and Monetary Union as a result of the Leaders agenda drawn in December of 2017.

Article 12(3) TSCG contain a clause of inclusiveness to allow non euro area Member States that have ratified that Treaty to participate in meetings of the Euro Summits, when they deal with competitiveness, the modification of the global architecture of the euro area and the fundamental rules that will apply to it in the future, as well as, when appropriate and at least once a year, in discussions on specific issues of implementation of the TSCG. As a matter of fact, 27 Member States (all bar the UK) have participated in the three meetings of the Euro Summit of 2018 dealing with the deepening of the EMU, thus including the two Member States which had not ratified the TSCG at the moment of drafting this article (the Czech Republic and Croatia, that participated in those meetings in the quality of observers). This inclusiveness formula was strongly pushed by countries like Poland at the moment of drafting the TSCG, against the views of some other Member States, notably France, which regarded the Euro Summit as falling within the ownership of the euro area Member States in order to enhance the visibility, coherence and efficiency of its governance.

Euro Summit meetings are prepared by its president in cooperation with the president of the Commission. The body charged with the preparation of the Euro Summits is the Eurogroup (article 12(4)).

## **5. Critical assessment of the role of the institutions in economic governance**

### **5.1 Critical assessment of the role of the Council on economic coordination**

Two critical remarks should be made concerning the role of the Council on economic coordination. First, the coordination nature of the Council competence for economic policy has shown to be a flawed construction; second, the central role of the Council in economic coordination has brought about some tensions with the Commission.

#### **5.1.1 Economic coordination as a flawed construction**

The Treaty of Maastricht, that established economic and monetary union as we know it today, was drafted on the proviso that peer pressure among Member States - the control inter pares -

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<sup>27</sup> See in this particular respect the analysis by Fabbrini, F., *Economic governance in Europe: comparative paradoxes, constitutional challenges*, Oxford University Press, 2015.

and the discipline of the markets would be enough to make them comply with their obligations under the Treaties - notably the obligation to avoid excessive deficits.

However, the political control *inter pares* proved not to work at the beginning of the euro crisis, probably because those in charge of enforcing economic and budgetary obligations are themselves the addressees of the obligations object of enforcement. Provisions on economic coordination are difficult to enforce against Member States: most of them empower the Union institutions to adopt acts of a non-legally binding nature whereby Member States are merely invited to adopt a particular course of economical action; at the end of the day the Council retains a wide margin of discretion to adopt or not to adopt the recommendations and proposals put forward by the Commission; at the end of the day, the application of the instruments to ensure compliance with the budgetary obligations laid down in the Treaties has relied too much on political or diplomatic factors. As Mario Monti put it in the margins of a Council meeting whilst holding the Italian Ministry of Finance, the problem has not been too much deficit but too much deference among the Members of the Council.

And the same goes for the purported discipline of the markets, which have not proven to work efficiently towards ensuring budgetary stability.

And yet, the decisions that this or that Member State have adopted in exercise of their own economic and budgetary sovereignty bring about externalities that have affected the shared sovereignty over the single currency and threatened its very existence.

A number of measures have been adopted since 2010 to correct the original pitfalls of economic coordination, most notably, the six and the two packs, as well as the Treaty on Stability, Coordination and Governance (the TSCG).<sup>28</sup> These measures, *inter alia*, reduce the discretion of the Council to decide both in the preventive and corrective arms through the so called reversed qualified majority upon which certain measures proposed by the Commission in enforcing the Stability and Growth Pact are deemed to be adopted by the Council unless it rejects it in a period of time.<sup>29</sup> Moreover, they introduce a regime of pecuniary sanctions against Member States failing to respect their obligations under the Treaties. And nonetheless those measures have shown little effect: sanctions have not been applied even in situations where Member States were in a flagrant breach of their budgetary obligations: for example, this was the case of Spain and Portugal in relation to their excessive deficit procedures in 2016.<sup>30</sup> The application of the Stability and Growth Pact has not been "depolitised" even if the Commission's role has been enhanced in economic policy.

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<sup>28</sup> See Jean-Paul Keppenne, "Fiscal Rules", *cit.*

<sup>29</sup> The introduction of reversed qualified majority has been criticized by some legal literature on the grounds that the Treaties do not provide for reverse QMV, infringe institutional autonomy and violate the institutional balance of the Treaties. Bast, Rödl, "Jenseits der Koordinierung? Zu den Grenzen der EU-Verträge für eine europäische Wirtschaftsregierung", (2012) *EuGRZ*, 269–278, at 275 et sqq; Palmstorfer, "The Reverse Majority Voting under the 'Six Pack': A Bad Turn for the Union?", 20 *ELJ* (2014), 186–203, at 193; Fischer-Lescano, Oberndorfer, "Fiskalvertrag und Unionsrecht", (2013) *Neue Juristische Wochenschrift (NJW)*, 9–14, at 12 et sq.

<sup>30</sup> See in the particular case of Spain the Council implementing decision 2017/2351 on imposing a fine on Spain for failure to take effective action to address an excessive deficit.

### 5.1.2 The relationship between the Council and the Commission in the application of the Stability and Growth Pact

As presented above, the revamped economic governance of the Union after the euro crisis passed through enhancing the role of the Commission. The expectation of the Member States was the following: by entrusting an eminently political task (as economic policy is) to an institution which is more technocratic – or less political – than the Council, the implementation of the task would be rendered more neutral. Yet, the result has been rather the contrary. The reinforcement of powers of the Commission in applying the Stability and Growth Pact has contributed to render that institution more political than to rendering the task more technical.<sup>31</sup> Examples of this are the very protagonist role the Commission has assumed in the negotiation of the third programme of assistance to Greece during 2015, or its new macroeconomic policy orientation of which its communication on flexibility in the Stability and Growth pact is an evidence.<sup>32</sup> The latter communication marked the Juncker's Commission approach to the Stability and Growth Pact and became highly controversial. It did not only identified the elements of flexibility within the arithmetic of economic coordination (especially in its preventive arm); rather, it moved away from the "rule based-centralised model" sponsored by most of the Member States, through instruments as the TSCG, towards a model of bilateral governance, where the Commission would discuss and negotiate with each Member State tailor made objectives and milestones.<sup>33</sup>

That controversy entailed two main institutional consequences. First, the EFC agreed to discuss and incorporate the elements of flexibility in the so-called Code of Conduct on the application of the Stability and Growth Pact, to which reference has been made previously. The bets were very clear: the Council, as the institution where economic coordination is to take place, should retain the ultimate competence of interpretation of the rules of the Stability and Growth Pact.

Second, the Commission's political stance fueled a reflection in the sense of upgrading the role of the European Stability Mechanism (the ESM) from a simple lender to an IMF like institution, hence with certain competences of economic surveillance over the euro area Member States alongside (or in place of, according to some Member States) the Commission.<sup>34</sup> The objective of upgrading

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<sup>31</sup> See president's Juncker, Opening Statement in the European Parliament Plenary Session of 15 July 2014, A New Start for Europe: "The Commission is political. And I want it to be more political. Indeed, it will be highly political". See the Keynote speech by the head of the cabinet of the president of the European Commission, Martin Selmayr, «How political are the institutions of the economic and monetary union? The Cases of the European Central Bank and the European Commission» in the ECB Legal Conference 2015 of 1 and 2 September 2015, in ECB Legal Conference 2015, "From Monetary union to Banking union, on the way to capital markets union", December 2015, at page 261.

<sup>32</sup> See Communication from the Commission on making the best use of the flexibility within the existing rules of the Stability and Growth Pact, 13.1.2015, COM(2015) 12 final.

<sup>33</sup> See, analogously the Commission's proposal for a Council Directive laying down provisions for strengthening fiscal responsibility and the medium-term budgetary orientation in the Member States, whereby the TSCG would be integrated in the law of the Union (COM(2017) 824 final). Instead of establishing a single budgetary obligation concerning structural deficit expressed in numerical terms for all the Contracting Parties, that proposal envisages a framework of binding permanent numerical fiscal rules specific (and hence differentiated) for each Member State.

<sup>34</sup> See Tomi Tuominen, "Mechanisms of Financial Stabilisation", Research Paper, Centro Studi sul Federalismo, November 2018 – Forthcoming in: Federico Fabbrini & Marco Ventoruzzo (eds.), *Research Handbook on European Economic Law*, Elgar, Cheltenham, 2019.

the role of the ESM is actually part of the 2018 debate on the deepening of the economic and monetary union.<sup>35</sup> Of course, the ESM being an intergovernmental structure created outside the EU legal order, any attribution of competences in relation to economic surveillance should respect, and not de-construct the competences that the Treaties allocate to the EU institutions, including the Commission, in economic policy.<sup>36</sup>

## **5.2 Role of the Eurogroup in economic coordination and in the euro crisis**

Since early 2010 the Union and its Member States whose currency is the euro have devised a number of mechanisms to provide financial assistance to Member States suffering problems of solvency and liquidity, more specifically: the Greek loan facility agreement, the European Financial Stability Mechanism (hereinafter: "the EFSM"), the European Financial Stability Facility (hereinafter: "the EFSF") and the ESM.<sup>37</sup> Like the Greek loan facility agreement and the EFSF, the ESM is not an institution or body of the Union. It is an international public institution established inter-governmentally through an international treaty by the Member States whose currency is the euro.

The ESM is endowed with a number of governing bodies. The Board of Governors, which is called to adopt the most fundamental decisions of the ESM (including the granting of assistance and the approval of conditionality attached), is composed of a governor by each ESM Member which "shall be a member of the government of that ESM Member who has responsibility for finance" (Article 5(1) ESM Treaty<sup>38</sup>). The Board of Governors may be chaired either by the President of the Euro Group, as referred to in Protocol No 14 on the Euro Group annexed to the TEU and to the TFEU or a Chairperson elected from among its members (Article 5(2) ESM Treaty). Currently, the President of the Euro Group chairs also the Board of Governors of the ESM.

Because it is called to discuss about "questions related to the specific responsibilities [that the Member States participating in the euro area] share with regard to the single currency", the Euro Group has regularly dealt, since the beginning of 2009, with the management of assistance to Member States suffering problems of solvency or liquidity, in particular: Ireland, Portugal, Greece, Cyprus and Spain. Members of the Euro Group therefore act in a double capacity also as members of the Board of Governors of the ESM.

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<sup>35</sup> See letter of 25 June 2018 of the president of the Eurogroup, M. Centeno, to the president of the Eurosummit, D. Tusk, in relation to the June 2018 Eurosummit, presenting the main building blocks for the deepening of the economic and monetary union. The letter underlines that "Some countries suggested that the ESM could also have capacity to assess the overall economic situation in the Member States, without overlapping the role of the Commission and in full respect of the allocation of competencies under the EU Treaty".

<sup>36</sup> See Financial Times, online edition of 5 October 2018, "Brussels will remain the EU's only budgetary policeman", <https://www.ft.com/content/d766c6cc-c84e-11e8-ba8f-ee390057b8c9>.

<sup>37</sup> See Tomi Tuominen, "Mechanisms of Financial Stabilisation", (2018), cit.

<sup>38</sup> Treaty establishing the European Stability Mechanism between the Kingdom of Belgium, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Grand Duchy of Luxembourg, Malta, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic and the Republic of Finland, signed on 2 February 2012 by the contracting parties.

The Euro Group keeps under constant review the situation of the countries benefiting from financial assistance and ensures the post-programme surveillance.

In the field of financial assistance, agreements at the level of the Euro Group have a simple political value. They are subsequently translated into formal decisions, adopted by the governing bodies of the ESM, which entail legal effects as instruments of international public law. For example, as regards Cyprus, the Euro Group agreement 25 March 2013 relating to the key elements necessary for a future macroeconomic adjustment programme<sup>39</sup> was reflected, in legal terms in the Memorandum of Understanding approved by the ESM Board of Governors on 24 April 2013.

Another aspect concerning the Eurogroup is worth underlining: as explained above, it is the body in charge of preparing the Eurosummits. The Eurosummits do not only deal with crisis management but also, more recently on a preponderant manner with the deepening of the economic and monetary union. The design by Eurosummits of the future of the EMU risks affecting legislative work: this is the particular case of the so-called instrument of competitiveness and convergence for the euro area. The Eurosummit of 14 December 2018 agreed on developing such an instrument whilst, at the same time, mandating the Eurogroup "to work on the design, modalities of implementation and timing of a budgetary instrument for convergence and competitiveness for the euro area, and ERM II Member States on a voluntary basis". The main features of this instrument, that will be part of the EU budget and whose size would be determined in the context of the MFF, are to be agreed by the Eurogroup in June 2019, after which "The instrument will be adopted in accordance with the legislative procedure, as foreseen by the Treaties, on the basis of the relevant Commission proposal to be amended if necessary"<sup>40</sup>.

The sequence is very telling: the Eurosummit, an informal meeting of Leaders, mandates another informal meeting, the Eurogroup, to work on the main features of a mechanism for funding specific for the euro area, so that legislation can ultimately follow.

This is not only an institutional oddity, where political bodies (which are not institutions of the Union) orient legislative action. This particular aspect will be addressed separately below when considering the relationship of the European Council and the Eurosummit with the Commission and the EU legislator. It is also an interesting exercise of variable geometry, where bodies in principle conceived for a subset of Member States, such as the Eurosummit and the Eurogroup, effectively deal with EU instruments called to be adopted by all the 27 Member States.

In discussing the deepening of the EMU, the Eurogroup has followed, and will certainly follow, a new paradigm, the one of inclusiveness, moving apart from its initial design of being an euro area exclusive format. In year 2018 practically all of the Eurogroup meetings have taken place with, also, 27 Member States participating. It seems rather unavoidable that the forthcoming discussions on the new instrument of convergence and competitiveness will also be tackled at the Eurogroup with the 27 Member States taking part in the discussions.

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<sup>39</sup> [http://www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/en/ecofin/136487.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ecofin/136487.pdf).

<sup>40</sup> See statement of the Eurogroup at <https://www.consilium.europa.eu/en/press/press-releases/2018/12/14/statement-of-the-euro-summit-14-december-2018/>

### 5.3 The role of the European Council and of the Euro Summits during the crisis of the euro

The political dynamics of the euro crisis have made the European Council emerge, together with the Council, as the main decision-making body in the EU.<sup>41</sup> Integration during the euro crisis has followed an intergovernmental logic through growing coordination in the European Council and in the Euro Summits.<sup>42</sup>

This is specially clear in respect of the Banking Union, where the European Council and the Heads of the euro area have designed in rather precise terms the response to be given by the legislator of the Union to the banking and euro area crisis. They so designate the Treaty legal basis to be followed to set up a Single Supervision Mechanism (Article 127(6) TFEU). The Heads have also indicated the timetable for negotiations and agreement on the Banking Union proposals. The June 2012 deal asked the legislator to ‘consider’ the Commission’s proposals on supervision as a matter of urgency by the end of 2012, whilst the European Council of 19 October 2012 invited to proceed with work on the legislative proposals on the SSM as a matter of priority, with the objective of agreeing by 1 January 2013.<sup>43</sup>

This ‘hyperactivity’ of the European Council and of the Euro Summit entails a number of consequences for the other institutions.

First, it could relativize the power of initiative of the Commission as well as its role. In fact, it remains unsettled how to reconcile the European Council’s power to define the general political directions and priorities of the Union (as laid down in Article 15(1) of the Treaty on European Union, TEU) and the Commission’s power to “promote the general interest of the Union and take appropriate initiatives to that end” (Article 17 TEU).<sup>44</sup> Whatever response is given to this question, what is clear is that the Commission is a member of both the European Council (Article 15(2) TEU)

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<sup>41</sup> See U; Puetter, "The European Council—the New Centre of EU Politics", 16 Swedish Institute for European policy analysis, 2013; S. Fabbrini, "The democratic governance of the euro", in European University Institute, Robert Schuman Centre for Advanced Studies policy papers, 2012/08, at page 27.

<sup>42</sup> President Sarkozy stated in a speech in Toulon on 1 December 2011 that "L'Europe se refondera en tirant pragmatiquement les leçons de la crise. La crise a poussé les chefs d'États et de gouvernements à assumer des responsabilités croissantes parce qu'au fond eux seuls disposaient de la légitimité démocratique qui leur permettait de décider. C'est par l'intergouvernemental que passera l'intégration européenne parce que l'Europe va devoir faire des choix stratégiques, des choix politiques" - emphasis ours. One year before, on 2 November 2010, Chancellor Merkel had sponsored the intergovernmental method in the opening speech of the 61st academic year of the College of Europe, by stating that "a coordinated European position can be arrived at not just by applying the community method; sometimes a coordinated European position can be arrived at by applying the intergovernmental method. The crucial thing is that on important issues we have common positions".

<sup>43</sup> See point 6 of the European Council conclusions of 19 October 2012, EUCO 156/12.

<sup>44</sup> The Juncker’s Commission is perceived as more "political" and less "technocratic" in relation to its predecessor in questions related to economic and monetary union. See president’s Juncker, Opening Statement in the European Parliament Plenary Session of 15 July 2014, A New Start for Europe: "The Commission is political. And I want it to be more political. Indeed, it will be highly political". See the Keynote speech by the then head of the cabinet of the president of the European Commission, Martin Selmayr, "How political are the institutions of the economic and monetary union? The Cases of the European Central Bank and the European Commission" in the ECB Legal Conference 2015 of 1 and 2 September 2015, in ECB Legal Conference 2015, "From Monetary union to Banking union, on the way to capital markets union", December 2015, at page 261.

and of the Euro Summit (Article 12(2) of the TSCG) and, as such, it is closely involved in the taking of decisions of both bodies, that agree, as a general rule, by consensus.<sup>45</sup>

Second, the European Council and the Euro Summit have "funnelled" the powers of the European Parliament and the Council as co-legislators, marking their tempos and, in some way, guiding their legislative choices. Again here questions arise whether the European Council's influence on legislative processes can be reconciled with the Treaty rule that this institution "(...) shall not exercise legislative functions" (Article 15(1) TEU). This question is even more pertinent since the autumn 2017, when the European Council has adopted new working methods, around the so called "Leaders agendas"<sup>46</sup>. The latter are addressed to bring to the attention of the European Council matters of special relevance for the Union that are though stuck in the middle of the legislative process, so that the deadlock is broken and discussions accelerated at the level of the legislator.<sup>47</sup>

It is early to assess the usefulness and results of this new practice. Time will say whether it is used as a genuine chamber for political discussion and impetus or, whether it will render the European Council in a sort of higher legislative chamber above the Council and the Parliament, somehow propagating the consensus decision making (i.e., the one of the European Council) to the legislative process, that typically undergoes the rule of qualified majority.

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<sup>45</sup> See Article 15(4) TEU and 6(3) of the Rules for the organisation of the proceedings of the Euro Summits.

<sup>46</sup> See Fabbrini, F. "The Relation between the European Council and the Council" (2016) 22 *European Public Law*, 485-500, where the role of the European Council in relation to legislation is examined.

<sup>47</sup> The Leaders agendas were proposed as a new working method of the European Council in a letter of president Tusk to the Heads of State or Government ahead of the European Council of October 2017. Since then, each and every European Council has included "leaders agendas" in its discussions.

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