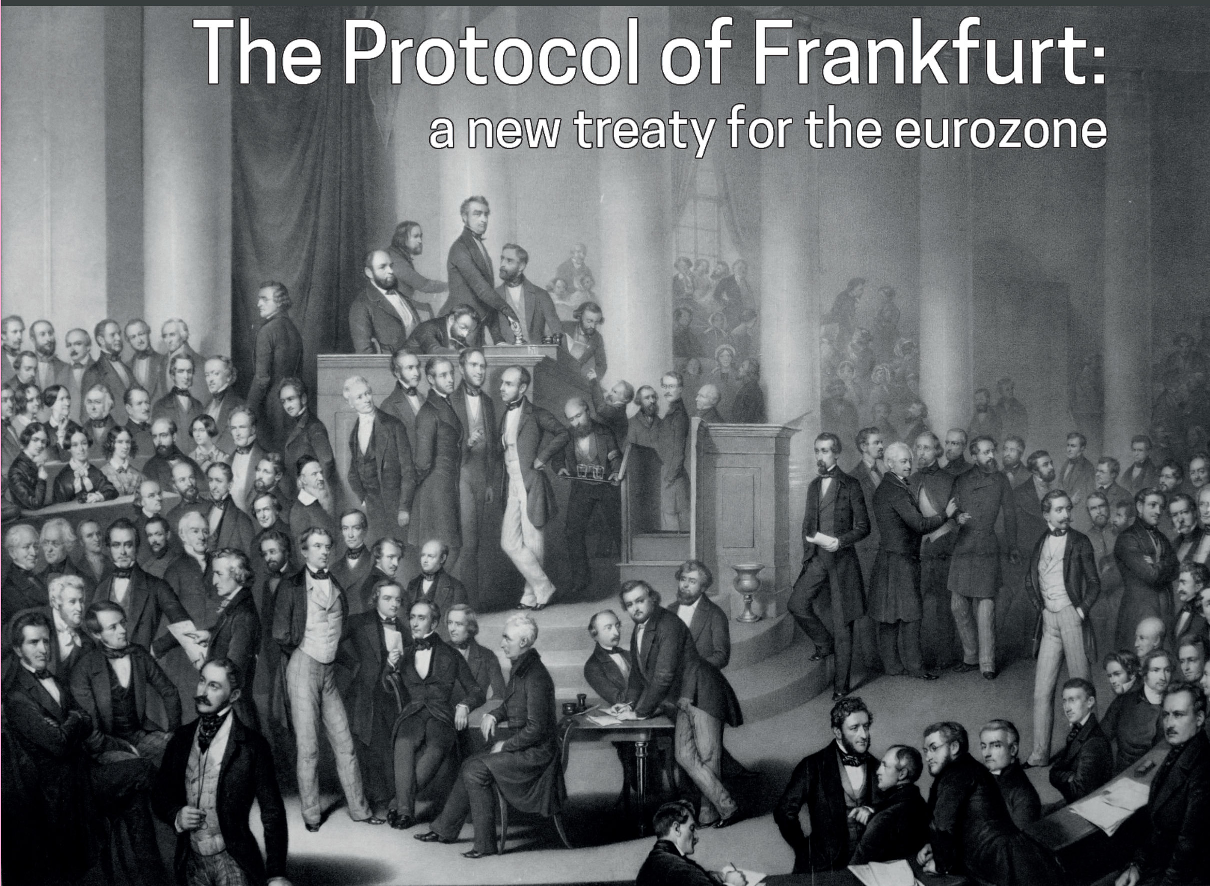
EUROPEAN POLICY CENTRE

Andrew Duff

The Protocol of Frankfurt:

a new treaty for the eurozone



King Baudouin Foundation

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Andrew Duff

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Cover illustration: *The German National Assembly meeting in St Paul's Church, Frankfurt am Main, 1848*. Chalk Lithography by Eduard Meyer. Housed in the permanent exhibition of the Deutsches Historisches Museum, Berlin.

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EUROPEAN POLICY CENTRE

Table of contents

A failing experiment?	5
The shaky beginnings of the euro	7
The euro crisis	8
The fiscal compact treaty	11
The four Presidents 2012	13
The five Presidents 2015	15
The quest for European government	17
Towards a eurozone treaty	20
Democratic choices under simplified procedures	22
Constitutional surgery	24
THE FRANKFURT PROTOCOL: A SUMMARY	27
THE PROTOCOL OF FRANKFURT	31

The Protocol of Frankfurt: a new treaty for the eurozone

"The idea of sustaining Economic and Monetary Union over time without political union is fallacy."

Helmut Kohl, Bundestag, 6 November 1991

"Of course, they've got 17 countries that have to agree to every step they take. So I think about my one Congress, then I start thinking about 17 congresses and I start getting a little bit of a headache."

Barack Obama, 21 May 2012

This pamphlet presents, for the first time, a treaty of the eurozone. Its purpose is to accelerate progress towards fiscal union. The treaty aims to strengthen economic governance and enhance economic policy among the countries sharing a single currency. The new treaty is designed as a Protocol to the Treaty of Lisbon.

The pamphlet looks first at the present plight of the EU, the inherent weaknesses of EMU and the impact of the euro crisis. It then examines the crisis-management measures and the incomplete proposals of the institutions to strengthen economic governance. After an analysis of the desirable main features of a new eurozone treaty and its constitutional complexities, the pamphlet presents the preamble and 21 articles of the Frankfurt Protocol, with explanations.

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A failing experiment?

The achievements of the European Union should not be underrated. They are many and remarkable. The EU retains its original purpose: to make peace among former enemies, to bring wellbeing to its citizens, and to intensify inwards and spread outwards the principles and practice of liberal democracy, fundamental rights and the rule of law. But the Union faces many crises and suffers some indignities. It is badly governed. Its authority abroad, even in its own immediate neighbourhood, is weak. EU enlargement has ground to a halt. At home, the Union is unloved by many of its own citizens and, increasingly, even by its elites. Very few national political parties and parliaments now actively support the cause of further European unification. Rising centrifugal forces in the regions compete with the centripetal force of European unification to undermine the old nation states of Europe. One of its member states, the United Kingdom, is thinking of leaving altogether, and another, Greece, may yet be slipping quickly towards a messy exit from the euro. The Union risks disintegration.

By any standard, the historic project of building a united democratic Europe is only half complete. The recent financial crisis, with its damaging social and economic aftermath, has exposed very well the interdependence of the member states of the European Union whereby what happens in one country matters to all its partners. But these turbulent events have also shredded any delusion that the European project is immutable, in some ill-defined way 'bound to succeed'. Frenetic crisis management has just about allowed the EU to cope: things have not fallen apart as they did at the last great recession in the 1930s, but we have ended up fractious and exhausted. In constitutional terms, the strains on the Treaty of Lisbon (2007) are already being felt. Everyone waits apprehensively for the next crisis. On the surface there is great activity at the top of the EU body politic: studies are made, reports written, speeches delivered, endless meetings organised. Elections and referenda are held. Eurosceptic forces even rise up into the government of several member states. But too little changes.

On top of the Union's financial and economic problems come two other huge challenges. First, Vladimir Putin has broken the post-Cold War consensus. His recidivist Russia is redrawing the map of Eastern Europe and contesting American dominance in the Middle East. Second, the collapse of Syria into civil and sectarian war has swelled the ranks of migrants seeking a better and safer life in Europe to proportions unparalleled since World War II. Neither the European Union nor its member states are able to deal well with this dual intimidation. As with the economic crisis, the lack of firm government at the EU level matters. Military capacity has been reduced to unprecedented low levels, even for those in NATO. One of the great achievements of the EU to date, the Schengen Agreement on free movement within the internal borders of the Union, is effectively bust. The surge of refugees leaves the EU's earlier common policies on visas, asylum and immigration in tatters. Even the concepts of solidarity and burden sharing are derided.

While the frailty of the EU's system of government is widely acknowledged, bold and logical solutions are shirked. The result is constitutional stalemate. The European Union has got stuck in its confederal phase, where every one of its twenty-eight states has to agree on almost everything before anything much happens. European integration has reduced the capacity of national governments to act effectively in many circumstances, but has yet to put in place an alternative government of a federal type at the supranational level. The EU institutions are in the invidious position of being significant enough to take the blame but not important enough to take the credit.

It is a commonplace that everything the Union needs to do can be done under its existing treaties. However, few stop to explain why it is that, if indeed everything can be done under the existing treaties, everything is not, in fact, being done. Even the opportunities for governance flexibility afforded by the Treaty of Lisbon, such as the *passerelle* clauses, are not being exploited.[1] Too much of the EU establishment takes routine comfort in the belief that there is no European crisis whose political dimension defies a technocratic solution and that, therefore, a little bit more temporisation here and procrastination there will do the trick.

1 Article 48(7) TEU, for example, allows the European Council to shift some decision-taking from unanimity to majority voting.

Taking refuge in the metaphor of Pandora's Box, so the argument goes, radical change is complicated and unpopular. Instead, things will be okay once Greece and/or Britain have returned to their senses, once economic recovery is underway, once Putin has returned his troops to barracks, once the refugees have gone elsewhere, and when, in 2017, elections in France and Germany have determined the future leadership of Europe.

We argue here that it is precisely because the EU is faced with these difficulties that it should now move forward swiftly to the next stage of integration. The EU remains in essence a constitutional experiment, which like all true experiments can still fail. Without radical reform, the likelihood increases that the Union will indeed flop. True, Europe may not revert to the worst of its nationalist past, but if remedial action is not taken and integration revitalised, the EU could well find itself reduced to little more than a common market; the euro may dwindle into a nervous regime of fixed exchange rates; the erection of internal barriers could end the hopes of an area of freedom, security and justice; and Europeans could rule themselves out from playing a significant role on the world stage.

If the EU is to rise to the occasion of its accumulated crises, a precondition is that it agrees to concentrate political power at the centre. The days of a complacent, loose confederation of national governments are over. Only a larger fusion of sovereignty in federal institutions will create that critical mass of executive authority with the necessary capacity to act decisively. As eurosceptics are keen to observe, the concentration of political power in Europe has attendant risks. That is why our quest for government must be decidedly federal in its inception and methodology, and must seek to build democratic EU institutions which articulate and serve the common interests of its states and citizens. The checks and balances which control the exercise of power, and which ensure that the institutions are coordinate rather than subordinate, must be robust. The place to start the quest for federal governance is where sovereignty in the EU has already been pooled to the greater extent – namely in the decision to have a single currency.

The shaky beginnings of the euro

The latest transfiguration of the EU's constitution is the Treaty of Lisbon, whose difficult conception and protracted birth pangs we know. Yet the quarter of a century the Union took to move from the Treaty of Maastricht (1992), which founded economic and monetary union, through the Treaties of Amsterdam (1997) and Nice (2001) to Lisbon via the Convention and the aborted Constitutional Treaty (2004), followed by the crisis-ridden first years of Lisbon in operation, must not be allowed to distort our memory about why treaty change is always an inevitable feature of European integration. Whatever the strengths and weaknesses of Lisbon, not even its strongest advocates can claim that it achieved for the Union a sense of constitutional settlement, or that the way the Union is run today is satisfactorily stable, effective and democratic.

There have been several attempts to revive a political debate about the future of Economic and Monetary Union (EMU). After all, the deficiencies of the arrangements made at Maastricht were quite well-versed at the time. Both Jacques Delors and Helmut Kohl

acknowledged that the political pillar of EMU was lacking in credibility, but they set out on the introduction of the single currency confident in the belief that the effect of its introduction would be convergence between the economies of the states which signed up, that governments would respect their voluntary code of conduct with regard to fiscal discipline, and, lastly, that the financial markets would act as a strict external supervisor and corrector of errant behaviour. In retrospect, it was an elementary mistake to think that markets would ever be sufficiently rational or diligent to bring discipline to bear.

The fragility of the system of EMU governance was actually apparent (to anyone who cared to notice) from the outset of the single currency. The European Council of heads of state or government, in which peer pressure had turned to peer licence, allowed several countries to join the euro when they were technically ill-prepared and legally ineligible. The Commission was too weak to uphold the Maastricht rules. For example, Greece, Germany and Austria joined even though their debt to GDP ratios were rising instead of falling. Belgian and Italian debt was much higher than the prescribed ration of 60% of GDP, and neither Italy nor Finland had been a member of the Exchange Rate Mechanism for the requisite two years prior to entry. And the rules were also applied unfairly. Lithuania was refused entry in 2006 because its inflation rate was just 0.1% above the prescribed reference value. The single currency was erected on the sandy foundation of creative accounting and, at least in the case of Greece, on the pretence of false data. It was not a good start.

The euro crisis

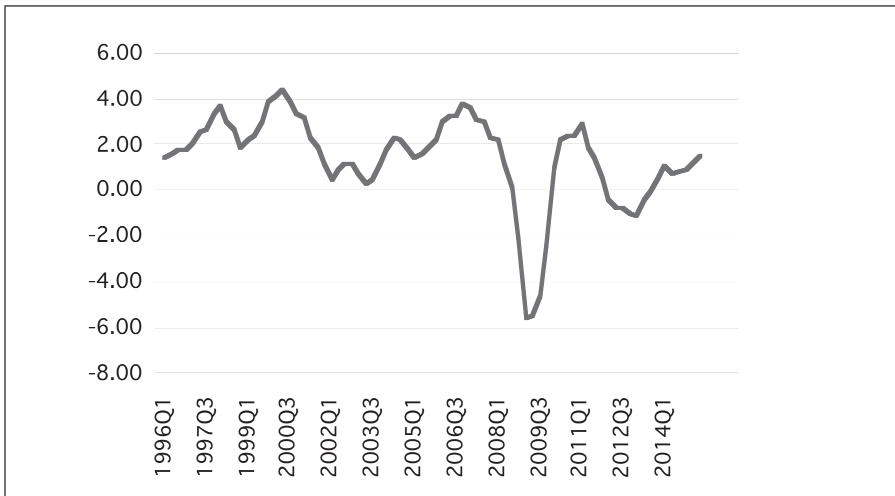
We drafters of the Constitutional Treaty and then the Treaty of Lisbon did nothing to correct the weakness of EMU governance. It was accepted that the experiment of the euro was still too young to deserve root and branch reform. Nevertheless, as the cohesion of the eurozone laboured under severe macro-economic imbalances, the original assumption that monetary union would inevitably lead to economic convergence was demolished. Eurozone states were individually issuing debts in a currency over which they had no control. The profligate use of cheap euros by the poorer states, and their avoidance of labour and product market reforms and competition, allowed the disparity between the rich and poor countries of the eurozone to grow to intolerable proportions. As early as 2003, Germany and France chose to disregard the code of conduct on fiscal discipline, the Stability and Growth Pact, which every participating euro state had undertaken to respect. The Pact, with a preventive and a corrective arm, was aimed at reaching the targets of limiting state deficits to 3% of GDP and public debt at below or declining towards 60% of GDP.[2]

When the markets folded in 2008, the EU took collective action to correct the weak supervision of the financial institutions and to strengthen capital requirements. In December 2009, the European Council agreed to set up a European Banking Authority, a European

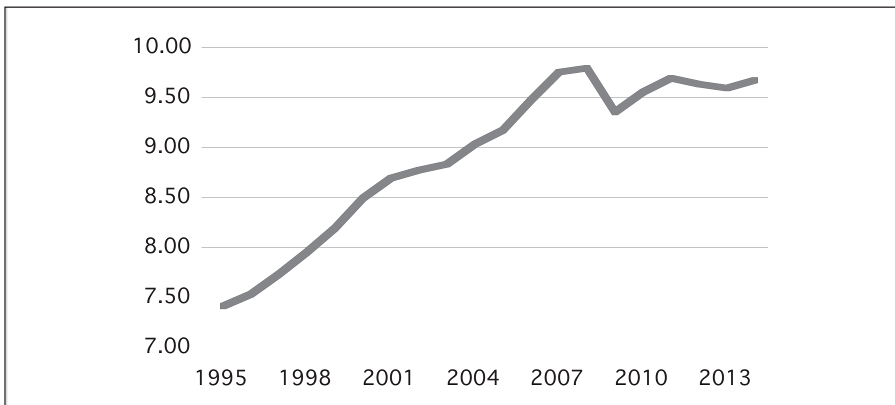
2 Based on Articles 121 & 126 TFEU respectively, and Protocol No. 12. The Stability and Growth Pact was introduced by regulation in 1997, weakened in 2005 and strengthened again in 2011.

Insurance and Occupational Pensions Authority and a European Securities and Markets Authority. A European Systemic Risk Board was also established under the chairmanship of the President of the European Central Bank (ECB).

Euro Area GDP Growth y/y change



Euro Area GDP Volume in tn euro



A raft of laws in the financial services sector was initiated by the Commission. There were two main legal bases for the new financial legislation: Articles 114 and 136 of the Treaty on the Functioning of the European Union (TFEU). Article 114 provides for the approximation of laws for the purpose of the establishment and functioning of the internal market, with the exception of tax harmonisation. Unlike Article 114 which applies to all member states, Article 136 allows eurozone states to "strengthen the coordination and

surveillance of their budgetary discipline" and to set out economic policy guidelines in order to ensure the proper functioning of EMU.

When the public finances and economies of Greece and Ireland collapsed in 2010, the EU was forced into emergency action in order to restore financial stability. As bond yields continued to spread, innovatory bail-out mechanisms were created quickly. A European Financial Stabilisation Mechanism (EFSM) of €60bn was established under the authority of the Commission on the legal basis of Article 122(2) TFEU. This allows for financial assistance to be granted from the EU budget to a member state when it is "in difficulties or is seriously threatened by severe difficulties caused by natural disasters or exceptional occurrences beyond its control". The UK, however, objected to the use of this provision to bail out a eurozone country, in the first case Greece. In a self-denying ordinance, the European Council in December 2010 decided to ban the further use of Article 122 for bail-out purposes.

Subsequent bailouts were arranged on an intergovernmental basis. The first such facility, for €440bn, called the European Financial Stability Fund (EFSF) was created just for the eurozone. Greece and Ireland were rescued first, followed by Portugal, Spain and Cyprus, plus a second and then a third bail-out for Greece.[3] The participation of the International Monetary Fund (IMF), which was insisted upon not least by Germany, served to accentuate the intergovernmental nature of these bail-outs. The IMF brought the benefit of experience of rescuing failing economies elsewhere (such as Argentina), but it also relieved the EU institutions of shouldering themselves the full burden of responsibility for the euro crisis. As far as the bailed-out were concerned, the intrusion of the IMF emphasised the technocratic (and non-democratic) nature of crisis resolution, a phenomenon that came to be particularly resented in Greece.

In October 2010 the European Council launched a proposal for a permanent European Stability Mechanism (ESM) for the eurozone, an innovation which was deemed to require, especially by Germany, a limited but important change to Article 136 TFEU. A third paragraph was therefore added to Article 136 to read:-

> "3. The Member States whose currency is the euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the euro area as a whole. The granting of any required financial assistance under the mechanism will be made subject to strict conditionality."

This treaty amendment was made according to a simplified revision procedure, introduced by Lisbon as Article 48(6) of the Treaty on European Union (TEU), with the collusion of the European Parliament and the ECB, and with the necessary unanimous agreement of all member states. The ESM, with a loan facility of €500bn and a total credit capital of €700bn, takes over from the EFSM and the EFSF, and will come to the aid of those states in

3 To date since 2008, bailouts to eurozone states are Cyprus €13bn, Ireland €68bn, Portugal €77bn, Spain €41bn and Greece €216bn plus another possible €86bn. Non-euro states Romania have had €23bn, Hungary €16bn and Latvia €5bn. Of the €544bn total, the IMF contribution is €105bn.

need which meet the fiscal requirements imposed by the EU institutions. Subject to strict conditionality, the ESM may give loans to support structural adjustments; it can purchase debt in both the primary and secondary markets, provide credit lines by way of precautionary assistance, and grant loans to governments which are forced to recapitalise banks. In November 2012, after a challenge from an Irish MP called Thomas Pringle, the European Court of Justice found that the ESM and the manner of its inception were just in line with EU law.[4] The ESM is up for review by 2018.

In parallel to these novel developments concerning bail-outs, secondary legislation continued to strengthen the EU dimension of economic governance with regard to fiscal discipline, macro-economic policies and structural reforms. In September 2010, the Commission launched its 'Six Pack' proposals aimed at reinforcing both the preventive and corrective arms of the Stability and Growth Pact. The Six Pack installed a new voting mechanism in the Council whereby a Commission proposal is deemed adopted unless a qualified majority of states can be assembled to block it. This method of 'reverse Quality Majority Voting' (QMV) greatly strengthened the power of the Commission: had it been in place and used previously the breaching of the Stability and Growth Pact would have been less likely.

Even before the Six Pack, applicable to all states, had entered into force, the Commission proposed another two laws under the legal base of Article 136 – inevitably dubbed the 'Two Pack' – which oblige the governments of the eurozone to present their annual national budgets in advance to the Commission for inspection and comment, and which, if necessary, permit the Commission to propose to the Council that corrective action be taken by the errant state. These activities were to take place during a dedicated 'European Semester'. To cope with these new duties, the role of the Commissioner responsible for economic and monetary affairs was upgraded. After a lengthy process of co-decision with the Parliament, the Two Pack entered into force in May 2013.

The fiscal compact treaty

Not content with these measures at the level of secondary legislation, the German government, aware of the critical mood both in the Bundestag and at the German Federal Constitutional Court in Karlsruhe, moved towards demanding another treaty change in order to reinforce fiscal discipline across the eurozone. Such a revision in terms of primary law was presented as the *quid pro quo* for agreeing to the creation of the ESM. Accordingly, the Euro Summit meeting in October 2011 agreed to consider "limited Treaty changes". The President of the European Central Bank Mario Draghi told the European Parliament (1 December 2011) that he wanted a "new fiscal compact" which would be a "fundamental restatement of the fiscal rules together with the mutual fiscal commitments that euro area governments have made", in order that those commitments should become "fully credible, individually and collectively". Herman Van Rompuy, President of the European Council, took up the challenge. His target was a revision to Protocol No. 12 of

4 Case C-370/12.

the EU treaties on the excessive deficit procedure – a revision which could be undertaken by an abnormal procedure, namely a unanimous decision of the Council following consultation of the Parliament and the ECB.[5]

However, things were brought to a head at the European Council meeting on 9 December 2011 by David Cameron who refused point blank even to contemplate Van Rompuy's minimalist reforms despite the fact that the UK would not be directly affected by the strengthening of the EU's coercive powers over the eurozone.[6] Cameron's bluff was called. The upshot was the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (TSCG), signed by all but the UK and the Czech Republic, in March 2012. In terms of constitutional law, this fiscal compact treaty is a hybrid: intergovernmental in nature but deploying the EU's institutions and envisioning its own incorporation into the Union's legal framework within five years of its entry into force. In general, the fiscal compact treaty works only by way of close analogy with the EU treaties. But in an important break with precedent, the fiscal compact treaty was freed of the classic constraint of unanimous ratification: it was designed to enter into force once ratified by only twelve of the seventeen eurozone states.

The signatory states commit "to strengthen the economic pillar of the economic and monetary union by adopting a set of rules intended to foster budgetary discipline through a fiscal compact, to strengthen the coordination of their economic policies and to improve the governance of the euro area".[7] The treaty seeks to respect the institutional provisions of the EU treaties, including those connected to the European Semester, as embellished by the Six Pack and Two Pack, such as reverse QMV. Yet the signatories are enjoined to transpose the rules on balanced budgets into national law "through provisions of binding force and permanent character, preferably constitutional" within one year of its entry into force in January 2013.[8] The terms are rigidly German: a commitment to balancing the national budget with automatic correction in cases of serious deviation from the Stability and Growth Pact. The parties to the treaty agree to support in advance the positions taken by the Commission throughout the excessive deficit procedure. They stand ready to exploit the enhanced cooperation arrangements of the EU treaties "on matters that are essential for the proper functioning of the euro area".[9] And they promise to consult each other on all major economic reforms. The European Court of Justice will be used to settle disputes between the signatory states in accordance with the (as yet unused) Article 273 TFEU. The European Parliament and national parliaments are expected to widen the scope of interparliamentary cooperation to embrace the operation of the fiscal compact treaty.

The fiscal compact treaty foresees regular meetings of the eurozone heads of state or government. At least once a year, these Euro Summits will include non-eurozone leaders. The status of the non-euro states in this new architecture is sensitive. Many of the central European

5 Article 126(14) TFEU.
6 Protocol No. 15.
7 Article 1(1) TSCG.
8 Article 3(2) TSCG.
9 Article 10 TSCG.

states rely heavily on banks established in eurozone countries, and Donald Tusk, as Poland's prime minister, was right to insist that those countries which are genuine candidates to join the single currency have a vested interest in the resolution of the banking crisis and the design of the post-crisis eurozone architecture. Appointed to chair the Euro Summits from December 2014 alongside his new post as President of the European Council, in succession to Van Rompuy, Tusk is now in the optimal position to press his point.

In practice, the fiscal compact treaty has rather been taken over by events. In a period of secular stagnation, balanced budgets remain only a distant dream. It is difficult, frankly, to recall quite why the Germans thought the fiscal compact treaty so important – or why the British found it so objectionable. Much of its content, such as that contained in the Two Pack, could have been regulated under Article 136.

The four Presidents 2012

During 2012, as the crisis continued to unfurl, Van Rompuy attempted to launch a process of more deep-seated reform which, he argued, should lead to "genuine" economic and monetary union. Along with the presidents of the European Commission, European Central Bank and Eurogroup, Van Rompuy identified the first priority, which was to build a *banking union* involving the centralised supervision of Europe's banks and new rules on capital requirements. A single system of European banking supervision, with ultimate authority resting with the ECB, was envisaged. A European deposit insurance scheme would be needed to re-insure national deposit guarantee schemes, and a European resolution scheme, funded by the banks, would oversee the winding down of non-viable institutions. A common resolution authority would control both these schemes, backed up, so far as the eurozone is concerned, by the fiscal backstop of the European Stability Mechanism.

The second priority, said the four presidents, was to make decisive moves towards *fiscal union*. In the short term this meant implementation of the Two Pack. In the medium term, "the issuance of common debt could be explored" involving "the introduction of joint and several liabilities … as long as a robust framework for budgetary discipline and competitiveness is in place to avoid moral hazard and foster responsibility and compliance". Progress towards the issuance of common debt should be phased. "A fully-fledged fiscal union would imply the development of a stronger capacity at the European level, capable to manage economic interdependences, and ultimately the development at the euro area level of a fiscal body, such as a treasury office. In addition, the appropriate role and functions of a central budget, including its articulation with national budgets, will have to be defined".[10]

In November 2012, José Manuel Barroso, President of the Commission, produced his own 'Blueprint', in which he spoke about the necessity of the "significant additional transfer of political powers from the national to the European level".[11] The deepening of EMU "should

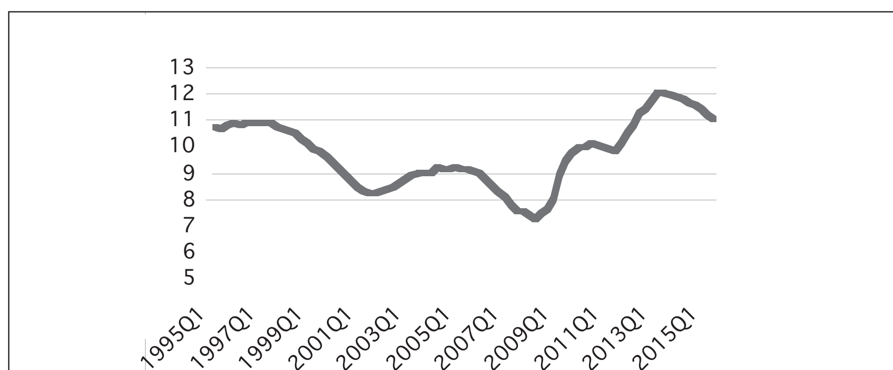
10 Towards a Genuine Economic and Monetary Union, June 2012. An interim report was produced for the European Council in October 2012, with a final report in December.
11 A Blueprint for a Deep and Genuine Economic and Monetary Union, p.11.

be done within the Treaties, so as to avoid any fragmentation of the legal framework, which would weaken the Union and question the paramount importance of EU law for the dynamics of integration".[12] In other words, Barroso was warning against a repeat of the extra-EU fiscal compact treaty. The Blueprint repeated the call, first made by Barroso a year earlier, for the creation of a large and liquid 'stability eurobond' market of size equal to that of its US counterpart. It also backed the idea of a redemption fund to reduce public debt in excess of the treaty-based criteria of 60% of GDP – but that, too, would need a new legal base.

The European Council, however, was not lured by the combined efforts of the four presidents into making longer-term commitments beyond that of banking union. The Dutch and Scandinavians displayed their habitual euroscepticism; and in spite of the much-vaunted axis between Paris and Berlin, French and German politicians continued to talk past each other. Most of the leaders were greatly relieved by the effect of Draghi's famous statement in July 2012 when he promised that, within the existing mandate of the European Central Bank, he would do "whatever it takes to preserve the euro". Draghi was preparing the ground for the ECB to make Outright Monetary Transactions in the secondary markets. The markets were duly calmed and the political urgency receded.

Yet the euro crisis was and is not over. It is evident that the original Maastricht system for economic and monetary union is bust. Fiscal discipline can no longer be left to voluntary coordination among interdependent sovereign state governments; the risk of moral hazard remains prevalent; and the link between weak sovereign governments and bad sovereign banks stands still to be broken. The plethora of crisis management measures taken in the wake of the crisis has mitigated its impact, but the core issues of governance have not been resolved. Indeed, if anything, the crisis has accentuated the rules-based, technocratic nature of the EU: one still awaits consensus around democratic initiatives.

Unemployment in the Euro Area % of the active population



12 Ibid, p.13.

In the 2014 elections to the European Parliament, as well as in several national parliamentary elections, there were strong political reactions to the deep and protracted euro crisis. In the new European Parliament the forces of the far right and far left have grown. Populist political parties have been elected, even into government, on implausible manifestos that have blamed 'Brussels' and all its works for the crash. Too many mainstream parties have been tempted to take up a populist stance.

During his campaign to succeed Barroso as Commission President in 2014, and subsequently, Jean-Claude Juncker has linked the need to improve economic policy to the inevitability of making structural changes to the EU's system of governance. In this he is ably supported by Mario Draghi, who continues to make the point first voiced by his predecessor Jean-Claude Trichet, that the Union needs to move "from rules to institutions", taking a "quantum leap in institutional convergence" if its policy making is to be credible and its laws enforceable.[13] As Draghi points out, where the EU institutions have had supranational executive power (such as the ECB, the ESM and the European Commission in state aid and competition matters), they have used it well. By contrast, those fiscal rules that have been left to national governments to implement have not worked well. The EU rule book – usually designed to deal in retrospect with the last crisis – is rigid in the medium term but flexibly applied in the short term. The rules are complex yet too uniform for such a diverse eurozone; they rely in vain on peer review by the Council to be enforced – and the Council meets behind closed doors, well away from the healthy disruption of public attention.

The Juncker Commission deliberately set out to be a more 'political' institution, using its discretion to the full. It added its weight to the analysis of Europe's negative 'doom loop'. "[A]s banks that had become too systemic to fail got into financial difficulties and turned to their sovereigns for help, the stability of the banking system could only be guaranteed to the detriment of the public finances … The crisis then turned into a sovereign debt crisis."[14] Compared to the USA, the Commission says, reaction at the EU level to the financial crisis has been far too slow. Whereas the US had its Troubled Asset Relief Program (TARP) in place within two months of the collapse of Lehman Brothers in September 2008, the EU's smaller equivalent, the European Fund for Strategic Investments (EFSI) arrived only in 2015. Despite frantic and disjointed national reactions to the crisis, the EU as a whole is taking much longer to recover from the crisis than the US, prompting the Commission to reflect that "an incomplete monetary union adjusts much slower than one with a more complete institutional setup in place".[15]

The five Presidents 2015

In June 2015 President Juncker launched what was dubbed the 'Five Presidents' Report' (after the President of the European Parliament had clambered on board). In some ways

13 Speech by Mario Draghi at SZ Finance Day, Frankfurt, 16 March 2015.
14 Preparing for Next Steps on Better Economic Governance in the Euro Area, pp.2-3.
15 Ibid, p.7.

the five in 2015 were less far-reaching and more pragmatic than the four had been three years earlier. The five are certainly less specific on the need for eventual debt mutualisation and the creation of a special fiscal capacity for the eurozone. But the direction of travel is the same:-

> "For the euro area to gradually evolve towards a genuine Economic and Monetary Union, it will need to shift from a system of rules and guidelines for national economic policy-making to a system of further sovereignty sharing within common institutions, most of which already exist and can progressively fulfil this task."[16]

The quintet took a phased approach. Stage 1, already begun, is the pragmatic phase. A White Paper to be published in spring 2017 will lay out the necessary legal and institutional changes for Stage 2, during which legally binding common standards and a shock absorption mechanism will be put in place. The whole *political union*, including treaty change, should be completed by 2025.

A network of national competitiveness authorities will strengthen the Commission's economic analysis. A strong macro-economic imbalance procedure will be put in place to detect and tackle bubbles and sudden loss of capital flows, and to incentivise structural reforms. Steps will be taken to integrate labour markets more deeply. An independent advisory European Fiscal Board will be set up in Stage 1 to help the Commission shape the overall fiscal stance of the eurozone. Also in Stage 1, the Commission proposes a *capital market union*, involving a common EU clearing and settlement infrastructure and simpler bankruptcy laws, which should ease the trading of portfolios across the EU's internal borders.

While political commitments have been made to progress the integration of the capital markets, the reception to date by the European Council to the wider agenda of the Five Presidents' Report is less than overwhelming. Other matters, notably the refugee crisis but also Brexit, have meant that the report has so far not been given the attention it deserves. This is a pity – not least because the schedule proposed by the authors themselves is already quite leisurely. The date of 2017 for the beginning of Stage 2 has no other justification than the electoral rendezvous of France and Germany and the probable timing of the British 'in/out' referendum. Any objective reading of events, however, suggests that the pace of reform needs to be quicker rather than slower if the EU is to be rendered more resilient against asymmetric shocks. The next shock is indubitably already on its way: shocks are shocking because nobody anticipates them.

There is even a worrying lack of urgency about the transposition of the Bank Recovery and Resolution Directive that had been scheduled for January 2015. The BRRD is a key element of the concept of banking union whose practical effect will be to bail in creditors while protecting sovereigns. The BRRD nevertheless only affects the failure of a single bank: insurance against the systemic failure of the banking system as a whole will have to wait in any case on treaty change.

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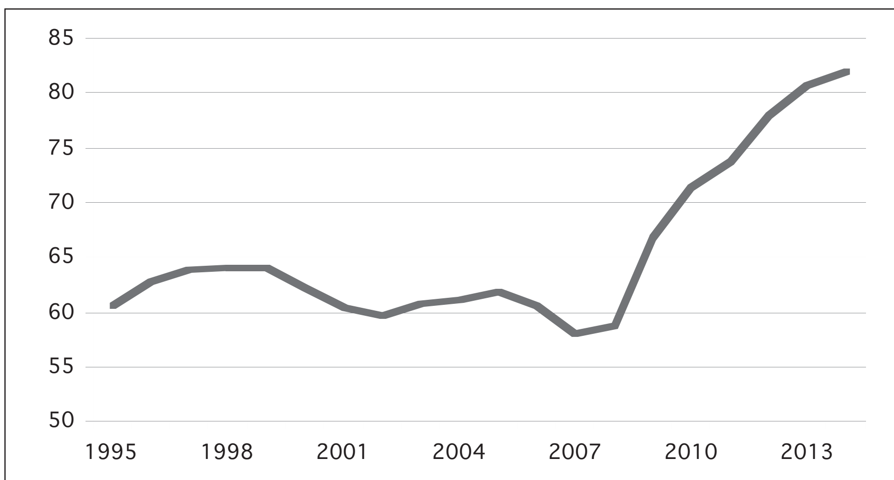
16 Completing Europe's Economic and Monetary Union, p.5.

Back in Frankfurt, Draghi has embarked on his programme of large scale quantitative easing (QE). The ECB's public sector purchases began in March 2015 and are scheduled to last at least until September 2016. 12% of the €60bn monthly asset purchases are supranational, directed mainly at the European Investment Bank and the ESM. The ECB evades contravention of Article 123 TFEU, which forbids monetary financing, by limiting the size, proportion and timetable of its purchase of EU assets, and by insisting that QE is a tool of monetary policy – hence within its mandate – with the aim of achieving a sustained adjustment of inflation rates to below, but close to, 2%. Nevertheless, one unavoidable effect of QE is *de facto* to mutualise over the long term a portion of sovereign debt, but without establishing the ECB as the clear lender of last resort and without eliminating moral hazard. The ECB's balance sheet is being enlarged but little common revenue is being produced. Perforce, the EU is building up a huge debt (currently 94% of GDP) which can only be reduced eventually by the effects of inflation, restored growth or a negotiated restructuring. Facing the threat of secular stagnation in Europe, it now falls to the political authorities to take corrective budgetary measures.

Euro Area Debt as % of GDP 1995-2014



The quest for European government

So who are these political authorities? And do they have the legal, political and financial capacity to do whatever it takes to make the economic and monetary union more resilient and convergent? Is the system properly democratic?

Taking a snapshot of the way the EU governs itself in the matter of economic and financial affairs, it is difficult to avoid the impression that the Byzantines would have felt well at home in today's Europe. The exercise of executive authority in internal market matters and in running the economic and monetary union is shared under the treaties between the

Commission and the Council. The fulcrum of the system is the Economic and Financial Committee, whose extensive powers are spelled out in Article 134 TFEU. Composed of national civil servants from the twenty-eight member states (sometimes supplemented by officials from the national central banks) as well as representatives of the Commission and the ECB, the Committee reports to the Council of Economic and Finance Ministers (Ecofin). The chair of the Economic and Financial Committee is Thomas Wieser, an Austrian national, who also chairs the Committee's eurozone formation, the Eurogroup Working Group – which in turn reports to the formally 'informal' body of eurozone finance ministers, the Eurogroup. The activities of these official committees are confidential.

Higher up the tree, Ecofin reports to the European Council and the Eurogroup reports to the Euro Summits. The President of the Commission is a member of both configurations. The President of the ECB is invited to participate. Ecofin is chaired by the minister of finance of the state holding the rotating six-monthly presidency of the Council. The chair of the Eurogroup since 2013 (and president of the ESM board) is Jeroen Dijsselbloem, the Dutch finance minister. Increasingly, the Euro Summits have an important agenda-setting role for the whole European Council: they may be informal but they are certainly not inconsequential.

In addition to its executive function, Ecofin has a legislative role as the second chamber of the EU's bicameral legislature. The Eurogroup, being informal, has to act either through Ecofin or the Commission when it wants to make a legal act. The European Council, like the Commission, has the power to take executive decisions but is prohibited under Article 15(1) TEU from law making.

All these Commission, ministerial and summit meetings are supposedly confidential with the exception of Ecofin at the point when it actually passes a law. The relative discretion of meetings of the Executive Board and Governing Council of the ECB, and the fulsomeness of their minutes, is a matter of rich debate.

Alongside the political organs sit the new bodies and agencies, mentioned earlier, that have been set up in reaction to the great financial crash: the surveillance and supervisory system under the aegis of the ECB, and the regulatory authorities for the banking industry, fruitlessly dispersed because of national jealousies between a number of European cities.

All this is certainly a complex set-up and not very transparent. Nor is it very accountable in a democratic sense. Most national government leaders and ministers are answerable individually to their own national parliaments for their performance in the European Council and Council formations. The President of the European Council, who is also acting as the chair of the Euro Summits, reports to the European Parliament fairly regularly, as does the rotating chair of Ecofin and the chair of the Eurogroup, but all three are kept on a tight leash by their respective bodies, and in no case is there true accountability at the European level. The President of the ECB appears regularly in front of MEPs, and appears to appreciate the dialogue. But only the European Commission is directly and fully accountable for its actions to the Parliament.

A big responsibility, therefore, falls on the Commission to make sense of what is going on in the Union's mixed executive. This presents difficulties. For it is not the Commission but national

governments, even those who have agreed to fuse their currencies in the euro, which remain in charge of fiscal policy. Decisions on taxation and spending are subject to comment and even sharp criticism by the Commission, but they remain relentlessly national in their design and execution. The treaties confer on the EU the competence to *coordinate* national economic policies, but not to formulate and implement a *common* European economic policy, even for the eurozone. In fact, the treaties are stacked full of constraints and prohibitions on what the EU may do. Even where the national veto has been in theory replaced by qualified majority voting, it is a rare presidency of the Council that will push things to a vote if a consensus cannot be found. The Commission is dubbed loosely the 'guarantor of the treaties', but in practice the Commission has seldom had the political courage to face down hostile state governments. Since November 2014 the nineteen eurozone members have enjoyed an in-built qualified majority in the Council, but they seem curiously reluctant to use that advantage in a coherent or consistent manner.[17]

The Commission might expect to find help from the European Parliament in driving supranational solutions, but this is not always the case. Although the parliamentary party groups are multinational, most MEPs are still the creatures of the national political parties on which their candidature for election (and re-election) rests. The European political parties emerging at the federal level as yet offer no serious alternative form of democratic representative organisation. Tensions between MEPs of national parties of government and opposition are never far from the surface during controversial debates and votes. Although the European Parliament plays a significant role in amending and enacting specific pieces of legislation, many of them related to the euro crisis, it seems difficult for a majority of MEPs to focus on EU priorities in a strategic way.

So the Commission is fairly isolated, being one part only, and the only supranational part, of the Union's political executive. It is not surprising that the Commission has earned a reputation of always promising more than it delivers. Nor is it easy for the European Parliament to shake off its own unfashionable reputation. As the Grexit crisis has amply demonstrated, nobody really knows who's in charge of the EU in a political sense – and that's because nobody is. It is in these circumstances that the emergence of the technocratic 'troika' – basically functionaries from the Commission, the ECB and the IMF – has caused such resentment in those countries honoured by its visits.

Under the presidency of Herman Van Rompuy, an applied economist by training, the European Council played a central role in managing the financial crisis. It was inevitable that the heads of state or government were wheeled in to deal with the collapse of Europe's banks. But it cannot generally be sensible for the leaders of national governments to try to run the political economy of Europe on occasional day-trips to Brussels. Likewise, the Eurogroup has limitations as an executive: it is made up of ministers whose primary concern is the state of their national finances; their legitimacy stems from their national parliament and not from the European Parliament. Peer pressure among national ministers is a fickle instrument when applied at the European level. The

17 Article 16(4) TEU.

Eurogroup may be a convenient platform for the reporting of economic news and the sharing of common concerns, but it is more a diplomatic negotiation than a cabinet forum, and a weak way of taking and implementing tough executive decisions.

Consistent with the method of Jean Monnet, routine economic governance comes best from the European Commission, working in regular dialogue with the ECB about monetary policy and with the Eurogroup about national economic policies. In order to shoulder greater responsibility, the Commission needs an enhanced capacity for economic analysis, but at the level of the college of Commissioners Jean-Claude Juncker has already achieved a sense of serious political intent. The Commission thus strengthened should have less compunction about using to the full its powers to enforce compliance with EU law. Only the Commission is charged under Article 17(1) TEU to promote the general interest of the Union, to execute the EU's budget and to manage its programmes. The Commission is also tasked to represent the EU externally (in fields outside foreign and security policy). And it is only the Commission that is equipped to run the EU's treasury facility and issue eurobonds, or to acquire impartial redistributive functions capable of mutualising and diversifying risk. The next treaty change must endow the Commission with the full compass of fiscal, financial and macro-economic levers, backed up by a decent budget, to deliver the common economic policy that the eurozone needs.

Towards a eurozone treaty

The way the EU conducts its business is greatly complicated by the diffuse and abstruse nature of its executive. These shortcomings are constitutional. A deepening of the economic and monetary union is scarcely possible under present legal and political constraints – a point of view which is beginning to be reflected in jurisprudence of the constitutional courts.

Recent case law from European courts reveals a rising interest in the constitutional questions thrown up by the widening and deepening of eurozone interdependence. Notably, in the area of economic and monetary union, we have *Pringle* against the ESM, already mentioned, and a comparable complaint raised by the Bavarian MP Peter Gauweiler and others against the European Central Bank's incursion into Outright Monetary Transactions (OMT).[18] The main concern of the plaintiffs is that the ECB and other EU institutions are in breach of their mandates by permitting the monetary financing of governments in the primary markets (Article 123) and by assuming liability for the sovereign debt of the member states (Article 125). The national courts, in their responses, are equally anxious to protect the constitutional prerogatives of their own states in fiscal matters and, in particular, to preserve the budgetary autonomy of their respective national parliament. Chief among national constitutional courts is Germany's *Bundesverfassungsgericht*, whose position is central to the EU's legal controversies not least because it is itself a supreme court with a federal constitution to uphold which, alongside a cast-iron commitment to European integration, sets limits to the development by the European Union of state-like qualities.

18 Case C-62/14.

For its part, the European Court of Justice in its judgments and preliminary rulings shows itself to be robust in defence of the legitimate interests of the EU as well as determined to respect the corpus of EU law and the unicity of its institutions. But the European Court is also very well aware of the risks of an open clash with the family of member state courts, led in the charge by Karlsruhe. The courts cannot determine when or how the treaties should be revised to accommodate the deeper fiscal integration which the politicians deem necessary, but they can put a stop to EU initiatives which cross the line. It is in nobody's interest to risk more constitutional litigation.[19]

One option touted is to exploit to the full the potential of the existing enhanced cooperation clauses of the Lisbon treaty, possibly combining their deployment with the legal bases of Article 136 and Article 352, the flexibility clause.[20] Those provisions would allow for a core group of states to go further in an integrationist direction in the area of non-exclusive competences (therefore, not monetary policy) 'as a last resort'. However, acts adopted under enhanced cooperation would not be regarded as being part of the *acquis communautaire* to which other states have to accede once they join the euro. And the enhanced cooperation procedure would not allow for the shift in competences or powers to the extent that is implied in the concept of fiscal union.

For example, under the existing treaty arrangements the EU is unable *de jure* to contemplate even a partial mutualisation of sovereign debt. The creation of a federal deposit scheme for the banks cannot be admitted under the Lisbon treaty. The shift in the interinstitutional balance of executive power, which we advocate here, away from the Council towards the Commission can only be realised by treaty change. In terms of full democratic legitimation, any sharing of the burden between EU taxpayers cannot be managed by confederal, intergovernmental and technocratic methods but only by federal institutions of a type the Union does not yet enjoy – and cannot entertain under the constraints of Lisbon.

Ideally the European Union would be embarking shortly and determinedly upon a general revision of the Treaty of Lisbon according to the provisions of Article 48 TEU. Unfortunately, the political conditions, fearful of disintegration, militate against the possibility of a large constitutional overhaul happening anytime soon. But the case for a general revision of the treaties should continue to be made, especially by federalist MEPs (and not only by David Cameron or Viktor Orban).[21]

What is proposed here, therefore, is a shorter treaty revision that concentrates on re-engineering the Maastricht arrangements for the economic and monetary union. It will be applicable directly to the states of the eurozone and only indirectly to the non-euro

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19 Another example is Case T-496/11, in which the Court overruled the ECB decision requiring counterparties to be located in the eurozone.
20 Article 20 TEU and Articles 326-334 TFEU.
21 For the fuller reform agenda, see for example Andrew Duff, *Pandora, Penelope, Polity: How to Change the European Union*, John Harper, 2015; and The Spinelli Group, *A Fundamental Law of the European Union*, Bertelsmann Stiftung, 2013.

states. Because this eurozone treaty may be seen as a prelude to a later, bigger revision of the EU treaties, it should do as little as possible to disturb the *status quo* while doing everything that is basically necessary to allow confident steps to be taken to fiscal union. However, if one is going to tamper at all with the treaties, it is best to tamper properly. Just as we are not tempted by enhanced cooperation under the Lisbon treaty, we are not attracted by the idea of yet another intergovernmental treaty outside the EU framework. Such an approach might enable the utilisation of the EU institutions for express purposes but it would allow neither for the enhancement of the powers of those institutions and the shift in the interinstitutional balance nor for the widening of the scope of their activities to the extent we deem to be desirable. It might also lead to the development of new institutions, putting the *acquis* in jeopardy and risking the cohesion of the Union.

We propose, therefore, that the new eurozone treaty takes the form of a Protocol to be added on to the existing Treaties and, as and when necessary, to derogate from them. We call it the Protocol of Frankfurt.

Democratic choices under simplified procedures

The main purpose of the Protocol of Frankfurt is to establish a credible and discernible economic government for the eurozone. It will pool executive authority in the Commission, giving it a Treasury, and endowing it with the latitude to shape the fiscal stance of the EU and to steer the direction of its economic policy. It will streamline decision making and allow for greater institutional flexibility, not least by including a revised version of Article 352 to give the eurozone the optimum conditions for making a success of its new regime. The Commission will assume the lead role in the operation of the excessive deficit procedure. And the IMF can be released from its duties with regard to the domestic tribulations of the eurozone.

Because the point is sometimes ignored, the EU treaties at their best should merely establish the constitutional framework inside which substantive political choices can be made by democratic actors. In the present economic climate, it is vital not to preclude options in public policy at the federal level. Nothing should be pre-ordained in too rigid a manner: the schools of both Keynes and Hayek have a valid place in the debate about the direction of EU policy within the overall objective of a highly competitive open market economy. For that reason, the fiscal compact treaty, which circumscribed policy options tightly, should not be transposed to the letter into the framework of EU law, but filleted prudently.

The new arrangements will enable the eurozone to create its own fiscal capacity. Revenue will be raised from new 'genuine' own resources, the subject currently being explored by a high level interinstitutional group under the leadership of Mario Monti. A eurozone budget of roughly the same size as the current EU budget (about 1% GDP) would give the Commission over time the capacity to intervene meaningfully to support contra-cyclical adjustments, for instance through the instrument of a common unemployment insurance scheme. The budget would also be used for investment in large-scale European public goods with real European added value, for example in the field of R&D, energy infrastructure or

security measures. The transfer upwards of such expenditure items from national to EU budgets as well as, on the revenue side, the replacement of direct GNI contributions by genuine own resources will serve to save national treasuries money. As is the case with the US, the larger the federal budget at its disposal, the less intrusive would the Commission need to be in the realm of domestic budgets. With the extra leverage the Commission would gain as a result of its new fiscal capacity, the common economic policy should focus on structural reform and the stabilisation of public finance, leaving the national authorities, coordinated in the Eurogroup, room for adjustment at state and regional level.

The scope of Article 136 has to be widened from the narrow demands of fiscal discipline to embrace the possible development of a common economic policy. The introduction of a federal fiscal policy requires the EU to gain powers, at least as far as the eurozone is concerned, for the harmonisation of the structure of taxes and even for the setting of certain tax rates. The prohibitions applying to the EU as a whole in taxation matters will be lifted for the eurozone. As a complement to the new fiscal capacity, we also suggest that much greater salience is given in the economic policy mix at EU level to employment policy. The prohibition on the harmonisation of national employment law should be disapplied for the eurozone.

So with an enriched policy mix and provided with meaningful fiscal policy instruments, the Commission should be able to provide a clear macro-economic framework within which the policy actors can work at the national and subnational levels. No doubt to the relief of the European Central Bank, the acquisition by the Commission of powerful fiscal policy tools will reduce the political pressure on monetary policy-making, allowing Mario Draghi to return to more orthodox central banking. The mandate of the ECB will have to be adjusted so that it is charged to support, through its monetary policy, the objectives of the common economic policy, including full employment.

The European Central Bank will be banker to the Treasury. The European Stability Mechanism and the other pooled funds will be incorporated fully within the Treasury. The Protocol must put the banking union on sound legal foundations. The ECB needs a new legal base in order to obtain powers over the resolution of failed banks, currently prohibited under Article 127(6), and to widen its supervisory and resolution functions to the whole financial sector, including insurance. Banking union will remain inherently unstable in the absence of a federal European deposit insurance scheme, enjoying the joint and several guarantee of the eurozone members, in place of the current, half-baked scheme that does not break the link between private banks and their sovereigns.

As the five presidents have already observed, the intergovernmental decision-making processes of the ESM are complex and lengthy: putting confidence in the Commission will allow their rationalisation. Because the decision was taken to create the ESM under the simplified treaty revision procedure, it was not possible at that stage to enlarge EU competence with regard to conditionality and compliance. That omission should be rectified now, and the revised ESM could better be renamed the European Monetary

Fund. Moreover, the other crisis-management measures introduced hurriedly in secondary legislation over the last few years would profit from a review, and some of their provisions, notably reverse QMV for both preventive and coercive decisions, must be codified in primary law.

Another adjustment that should be made to the present treaties is to provide a legal basis for the unfortunate eventuality in which a state has to leave the single currency. Following the pattern of Article 50 TEU which was introduced by the Treaty of Lisbon to allow a state to secede in a relatively orderly fashion from membership of the Union, a comparable clause is needed for the euro. A good constitutional reason for inserting a safety valve in the euro system is to ordain that any exit can only be at the request of the state concerned: there is no provision for an errant state to be booted out by its partners. In that sense, the decision to fuse currencies retains its quality of irrevocability. Neither Grexit nor Brexit is made more likely by the Protocol of Frankfurt.

Once the EU has something that equates to a proper government, it will need a proper parliament. The new system will consolidate the power of the European Parliament in the scheme of things, mainly as the lead player in the European Semester which will itself be the central feature of the improved policy-making process. What are now recommendations of the Commission or decisions of the Council should become legislative acts passed with the co-decision of the Parliament. Parliament's powers need to be extended to the revenue as well as the expenditure side of the budget, and Parliament will also have co-responsibility for the levying of taxes within the eurozone. In that case, only the votes of MEPs elected in the eurozone states should be decisive.

More generally, MEPs will need to strengthen their scrutiny of the Commission's use of its enhanced executive authority; they should also commit themselves more than is the case at present to genuine interparliamentary cooperation with national parliaments. The role of national parliaments, not least during the excessive deficit procedure in the programme countries, must be reinforced. In general terms, the putting in place of a powerful executive is certain to provoke a lively parliamentary reaction with instant spill-over effects on the development of EU level political parties and the conduct of the European elections. The power over the purse strings, to levy taxes and withhold spending, is what shaped European representative democracy. EU democracy now needs a government with a purse, a treasury with a treasure.

Constitutional surgery

The installation of a new treaty within an older treaty through a protocol is inevitably a delicate exercise. It will only be possible if all parties concerned, including the nine EU states which are not yet (and which may never become) members of the eurozone, accept that the good governance of the euro system demands greater scope and wider powers than the general governance of the EU as a whole. Were the eurozone to deliver up the stronger executive, it would be acting as a pioneer for the whole of the Union when it comes, in due time, to take its final steps towards a federal constitutional settlement through a general

revision of the Treaty of Lisbon. So while the Frankfurt Protocol must allow for more permission and less prohibition than the current treaties, it must be crafted expressly to respect not only the basic tenets of the EU's foundation treaties and the unicity of its institutions, but also the special rights and interests of the non-euro states with regard to the single market. That being the case, it is appropriate to write into the Protocol a clause which allows a non-euro state fearing an abuse of the single market to appeal to the European Council for a re-examination of the matter.

Unsurpassable hurdles must not be erected to impede the passage of those states that are determined to join the single currency in due course. The new Protocol must be a real improvement on the Maastricht arrangements, giving confidence to those who still have to converge on the euro that the right lessons have been learned from the crisis and that their economic affairs will be well governed once they have joined up. A more resilient economic and monetary union will be better equipped to drive the single market process forward in a direction that should appeal even to the obdurately non-euro British. The Protocol of Frankfurt should allow the whole European Union to raise its game, and must be crafted therefore with the full-hearted collaboration both of the 'pre-ins' and the 'outs'. A constitutional innovation that provoked endless litigation between the euro 'ins' and 'outs' would be a retrograde step indeed.

Finally, a word about the wording. The eurozone treaty is designed to end up as a new Protocol to be annexed to the TEU and TFEU. Its reference point is the current treaties as amended most recently by Lisbon. One of its tests must be that it is faithful to the spirit of EU law and the corpus of jurisprudence of the European Court of Justice even where it aims to go farther in an integrationist direction. Where a new clause departs substantively from a current treaty provision we use the term 'notwithstanding', meaning 'in spite of'. Where the new clause builds substantially on but may differ from a current treaty provision, we say 'without prejudice to'. In some cases, existing provisions of the treaty are superseded or disapplied, and in others it is clearer to suggest a complete re-writing of a clause.

We commend this draft treaty to those inside and outside the eurozone who would wish to deepen European integration. One hopes that its appearance might serve to accelerate the reflection on the Five Presidents' Report, especially but not only among the nineteen euro states. Article 48(2) of the Treaty on European Union allows the government of any member state, the European Parliament or the Commission to table amendments to the Treaties. We suggest that somebody, informed by this draft Protocol, does just that.

Strengthening economic and monetary union is neither a luxury option nor a distraction from dealing with other pressing issues, such as the refugee or security crisis. Indeed, making a qualitative step forward in the federal direction in economic matters should help to restore Europe's sense of purpose and solidarity more widely. Conversely, not to consolidate economic and monetary union would further deplete the overall political capability of the European Union.

THE FRANKFURT PROTOCOL: A SUMMARY

The Preamble explains why this new treaty comes about. It draws on the language of previous treaties, paying homage to the mission of 'ever closer union' and to certain general principles of EU law. It links the two key pillars of the European Union, namely the single market and the economic and monetary union, which must continue to support each other under the aegis of a proper, democratic executive. It refers to the ESM and fiscal compact treaties.

Article 1 adds to the functions of the European Commission (Article 17(1) TFEU) that of the Treasury, to be administered by a Commission Vice-President in the post of Treasury Secretary (which is designated thus on the American model in order to avoid confusion with a national minister of finance). The Treasury will incorporate the ESM and the other pooled funds into a European Monetary Fund. It asserts the right of the Commission to represent the eurozone at the IMF (in contradistinction to the five presidents who would leave international representation up to the Eurogroup). Such an assertion of Commission power will give it the authority to deliver a single message on the EU's economic policy and fiscal stance, including exchange rate policy, at home and abroad.

Article 2 turns the Eurogroup from the informal body it is now into a formal formation of the Council endowed with full legislative and budgetary powers. It sets out the decision-making procedure, and allows the genuine euro 'pre-ins' to attend Eurogroup meetings, without voting rights. It confirms the current practice with regard to the chairmanship of the Eurogroup formation. It introduces twice yearly formal Euro Summit meetings that will involve all other (non-euro) states when structural matters relating to economic governance are on the agenda. The transformation of the Eurogroup supersedes existing provisions and implies the abrogation of Article 137 TFEU and Protocol No. 14.

Article 3 permits the emergence of separate voting in the European Parliament in certain circumstances such as the raising of eurozone taxes and the special budget for the eurozone, by excluding the votes of MEPs elected in non-euro states. This is a sensitive matter, not least because the treaty says that Parliament is "composed of representatives of the Union's citizens", regardless of nationality. But it will be up to the Parliament to regulate the detail within its own rules of procedure, and it is likely that, in the interests of cohesion, separate voting will be kept to a minimum. Nothing prevents any MEP from attending and speaking at any committee or plenary session. This approach avoids the need for a new parliamentary institution such as a 'third chamber', which would add to rather than subtract from the complexity of EU governance.

Article 4 confirms the role of the European Central Bank as banker to the Commission Treasury. The ECB gains the power to represent the eurozone in the Basel institutions. The revised provision enhances the role of the Commission and the European Parliament in the appointment of the Executive Board, and allows for the expansion of the size of the Executive Board in order to maintain balance as more countries join the euro. The

Commission and not the Council is rendered the Bank's main interlocutor. It seeks to protect the independence of the Bank in the matter of monetary policy.

Article 5 makes, for the eurozone only, a common economic policy a shared competence of the Union (in contrast to the coordination of national economic policies, which is left as the duty of non-euro states). Consequently, eurozone states will no longer be eligible to legislate separately in the area of economic policy if the EU has filled the legislative space.

Article 6 likewise widens the scope of the new economic governance to include employment policy of the eurozone as a shared competence. It allows for the harmonisation of the employment laws of the eurozone states.

Article 7 gives the eurozone the competence to harmonise direct taxes by way of the ordinary legislative procedure (co-decision between Parliament and Eurogroup, acting by QMV, on a proposal of the Commission) for the purposes of the fiscal union. It also extends EU competence for approximation of tax laws into the internal market arena (for the eurozone only).

Article 8 aims to ensure cohesion between EMU and the single market policies, and stipulates the need for solidarity between the 'ins', 'pre-ins' and even 'outs' – policed by the Commission. By way of a backstop, any state can appeal to the European Council to suspend the legislative process for draft acts based on any provision of the Protocol. The heads of government, acting by QMV (with the higher threshold), can request the Commission to amend the draft. In any case, any aggrieved non-euro state will be able to appeal to the Court of Justice if political avenues are exhausted.

Article 9 is the famous 'flexibility clause' adapted for the use of the eurozone, acting by a special legislative procedure (again with the higher QMV threshold). It is certain to be needed.

Article 10 establishes a supplementary budget for the eurozone, for which the normal practice of rigid unanimity for the decisions on own resources and the MFF is modified, and co-decision powers are given to the Parliament. The financial regulation will have to be modified to allow for the emergence of this special fiscal capacity within the general budget of the EU.

Article 11 establishes the nature, broad aims and instruments of the common economic policy for the eurozone. The social dimension and sustainable development are added in comparison to the existing Article 119 TFEU. The ECB by implication is bound to support the common economic policy through the operation of its monetary policy.

Article 12 defines more precisely the objectives of the common economic policy, establishing an agenda that is a supplement to, but not a substitute for, the existing treaty strictures about fiscal rectitude found in Article 120 TFEU.

Article 13 adapts the provisions in Article 121 TFEU concerning the broad economic guidelines for the enhanced governance of the eurozone, within the context of the European Semester. It makes the guidelines themselves subject to a legislative vote of the European

Parliament and Eurogroup. It strengthens the executive authority of the Commission throughout the operation of the preventive procedure, and gives Parliament the right to attempt to amend Commission recommendations.

Article 14 reverts to the original meaning of Article 122 TFEU (before the European Council decision of December 2010), although the decisive power to act is given to the Commission, after consultation, rather than, as at present, the Council. It defines the meaning of exceptional circumstances in which emergency financial aid can be granted to a eurozone state in trouble.

Article 15 amends Article 125 TFEU, the 'no bail-out rule', by permitting EU legislation to be introduced to manage the progressive mutualisation of sovereign debt in the eurozone, under strict conditionality.

Article 16 adapts the excessive deficit procedure in Article 126 TFEU to the new situation. It enhances the role of the European Parliament and Commission throughout the procedure, and introduces the reverse QMV procedure for the Eurogroup. It streamlines the procedure and makes it more transparent. It introduces the budgetary and economic partnership programmes that will apply to eurozone states subject to the excessive deficit procedure. The programmes will be laws voted in the normal way. It also allows a direct appeal by the national parliament concerned to the Commission against the content of the programme, possibly made jointly with the European Parliament. It enhances the power of the European Parliament in any revision to the Protocol on the debt and deficit targets. Lastly, it protects the Court of Justice from having to adjudge whether an excessive deficit exists.

Article 17 provides clear legal bases for the banking union, including common deposit insurance, as well as for the new regulatory bodies for the financial sector. Participation in the banking union is open (and encouraged) for eurozone and non-euro states alike. It gives the European Central Bank fully comprehensive powers of surveillance and supervision.

Article 18 adjusts Article 136 TFEU (on measures specific to the eurozone) to the new situation of a common economic policy, including the setting of minimum standards, while keeping the commitment to budgetary discipline. It gives the power of co-decision to the European Parliament.

Article 19 reflects the stipulation of the fiscal compact treaty on the issuance of public debt.

Article 20 provides for a state to leave the euro in an emergency and as a last resort. A law will have to be enacted by the special legislative procedure to regulate the conditions and procedures under which a withdrawal can take place. The intention of such a regulation will be to make a withdrawal as least disruptive as possible to the stability of the rest of the eurozone and the cohesion of the Union as a whole.

Article 21 commits any state that joins the euro to be subject immediately also to the provisions of this new treaty.

Finally, **why Frankfurt?** It is certainly Germany's turn, being the only one of the original six founding member states never to have hosted an EU treaty. In 1848 the *Paulskirche* in Frankfurt was the location of the great assembly at which liberals met to draft the first democratic constitution for a united Germany. Admittedly things turned out rather differently, but the Federal Republic of Germany that was established a hundred years later owes something to the skill and courage of those earlier revolutionaries. Frankfurt today is also the seat of the European Central Bank.

EPC EUROPEAN POLICY CENTRE

THE PROTOCOL OF FRANKFURT

THE HIGH CONTRACTING PARTIES,

BEING THE MEMBER STATES OF THE EUROPEAN UNION WHOSE CURRENCY IS THE EURO,

RESOLVED to advance the creation of an ever closer union among the peoples of Europe on the basis of the Treaties on which the Union is founded,

RECALLING that the process of European integration needs continual renewal,

CONSCIOUS of the need to consolidate the single currency by strengthening further the governance of the economic and monetary union,

CONFIRMING their respect for the equality of Member States before the Treaties and PURSUANT to the principle of sincere cooperation,

TAKING NOTE of the Treaty establishing the European Stability Mechanism and of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union,

DETERMINED to promote economic convergence and financial stability across the Union in order to improve Europe's competitiveness and the employment and well-being of its peoples,

RESOLVED to complete the single market in capital, financial and digital services, and, further, by way of a banking union, to restore the benefits of a trusted and well-regulated financial system to the economy, ensuring a high level of consumer and investor protection,

CONSCIOUS that the creation of the single currency and the sharing of fiscal responsibility among states and citizens require the establishment of a strong democratic executive authority at the Union level,

DETERMINED to put in place a system of government at the level of the Union which, being endowed with the necessary powers, instruments and assets to meet current and future challenges, is resilient, efficient and clearly accountable,

DESIRING to accomplish the building of the economic and monetary union, whose currency is the euro, by proceeding to the stage of fiscal union,

HAVE AGREED UPON the following provisions, which shall be annexed as a Protocol to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Institutions of the euro area

Article 1

1. Without prejudice to Article 17(1) TEU, the Commission shall acquire a treasury facility and shall exercise the functions of treasurer to lend and borrow money, to issue bonds and to levy taxes. The Commission shall be responsible for the operation and maintenance of the financial system, the collection of revenues, the management of accounts, the enforcement of tax laws and the imposition of penalties.

The Treasury will establish a European Monetary Fund whose purpose is to safeguard the financial stability of the euro area by mobilising funding and providing stability support under strict conditionality to Member States whose currency is the euro when they are experiencing or are threatened by severe financing problems. The European Monetary Fund will incorporate the European Stability Mechanism, the European Financial Stabilisation Mechanism, the European Financial Stability Fund and the Single Resolution Fund.

2. Notwithstanding Article 17(6) TEU, the President of the Commission shall appoint a Vice-President with the designation of Treasury Secretary.

3. In accordance with Article 17(1) TEU, the Commission, after having consulted the Eurogroup and the European Central Bank, will ensure the unified representation of the euro area within international financial institutions and conferences.

Article 138(2) TFEU is abrogated.

Article 2

1. Without prejudice to Article 16(2) and notwithstanding Article 16(6) TEU and Article 236 TFEU, the ministers of finance of the Member States whose currency is the euro shall meet in a formation of the Council called the Eurogroup.

Without prejudice to Article 16(1) TEU, the Eurogroup will carry out legislative and budgetary functions specific to the euro area.

The ministers of finance of those Member States with a derogation which have joined the exchange rate mechanism of the European Monetary System may participate in the meetings of the Eurogroup but shall not vote.

2. Unless the Treaties provide otherwise, the Eurogroup shall act by the ordinary legislative procedure.

A qualified majority in the ordinary legislative procedure shall be defined in accordance with the provisions of Article 238(3)(a) TFEU. A qualified majority in the special legislative procedure shall be defined in accordance with the provisions of Article 238(3)(b).

3. The Eurogroup, acting by simple majority, shall elect a president from one of its number for a period of two and a half years.

4. The Member States whose currency is the euro shall meet at the level of Heads of State or Government at least twice a year. The President of the European Council shall chair Euro Summits. The President of the Commission, the Treasury Secretary, the President of the Eurogroup and the President of the European Central Bank shall also participate.

The Heads of State or Government of Member States with a derogation shall be invited to participate in Euro Summits when those meetings concern the modification of the architecture of the euro area or of the fundamental rules that apply to it.

Article 137 TFEU and Protocol No. 14 are abrogated.

Article 3

Without prejudice to Article 14(2) TEU and notwithstanding Article 231 TFEU, only those Members of the European Parliament elected in Member States whose currency is the euro shall vote on fiscal legislation specific to the euro area. No Member shall be excluded from any other activity of the Parliament pertaining to the economic and monetary union.

Article 4

1. Without prejudice to Article 127(2) TFEU, the European System of Central Banks shall acquire the additional basic task of:-

"- to hold and manage the official reserves and to act as fiscal agent of the Treasury;"

2. Without prejudice to Article 1(3), the European Central Bank, after consulting the Commission, shall represent the euro area at the Bank for International Settlements.

3. Without prejudice to Article 130 TFEU, the powers conferred on the European Central Bank in relation to the banking and fiscal union shall not affect the independence of the Bank in the area of monetary policy.

4. Article 283(2) TFEU is amended to read:-

"The Executive Board shall comprise the President, the Vice-President and at least four other members. The number of the other members shall be decided by the European Parliament and Council, after having consulted the European Central Bank, acting in accordance with the special legislative procedure on a proposal of the Commission.

"The President, the Vice-President and the other members of the Executive Board shall be appointed by the Council, acting by a qualified majority, and by the European Parliament from among persons of recognized standing and professional experience in monetary or

banking matters, on a recommendation from the Commission, after they have consulted the Governing Council of the European Central Bank.

"Their term of office shall be eight years and shall not be renewable. Only nationals of Member States may be members of the Executive Board."

5. Article 284(1) TFEU is amended to read:-

"The President of the Council, the President of the Eurogroup and the Treasury Secretary may participate, without having the right to vote, in meetings of the Governing Council of the European Central Bank.

"The Commission may submit a motion for deliberation to the Governing Council of the European Central Bank."

<u>Competences and powers</u>

Article 5

In accordance with Article 5(1) TFEU, second paragraph, the Member States whose currency is the euro shall establish and maintain a common economic policy of the euro area.

Without prejudice to Article 2(2) TFEU, the Union institutions and the Member States of the euro area may legislate and adopt legally binding acts and make specific provisions to that end. The Member States shall exercise their shared competence to the extent that the Union has not exercised its competence.

Article 6

1. Without prejudice to Article 5(2) TFEU, the Member States whose currency is the euro shall have a common employment policy of the euro area.

Without prejudice to Article 2(2) TFEU, the Union institutions and the Member States of the euro area may legislate, adopt legally binding acts and make specific provisions to that end. The Member States shall exercise their shared competence to the extent that the Union has not exercised its competence.

2. Notwithstanding the second paragraph of Article 149 TFEU, the prohibition on the harmonisation of the laws and regulations of the Member States in the field of employment policy shall be disapplied within the euro area.

Article 7

1. With regard to the euro area, without prejudice to Article 113 TFEU, the European Parliament and the Eurogroup shall, in accordance with the ordinary legislative procedure, adopt

provisions for the harmonisation of legislation concerning direct taxes, turnover taxes, excise duties and other forms of indirect taxation to the extent that such harmonization is necessary to ensure the good functioning of the economic, monetary and fiscal union.

2. Notwithstanding Article 114(2) TFEU, the prohibition on the approximation of fiscal laws shall be disapplied within the euro area.

Article 8

1. The enhanced governance of the euro area shall not undermine the internal market or economic, social and territorial cohesion. It shall not constitute a barrier to or discrimination in trade between Member States, nor shall it distort competition between them. It shall respect the competences, rights and obligations of the Member States with a derogation.

2. The Commission shall ensure the consistency of the policies and activities of the euro area with those of the Union as a whole.

It shall report on an annual basis to the European Parliament and to the European Council about the application of this provision.

3. Where any Member State considers that a draft legislative act that is based on one of the provisions of this Protocol would breach the conditions of paragraph 1, it may request that the draft measure be referred to the European Council. In that case, the legislative procedure laid down under the said provision of this Protocol shall be suspended.

After discussion, the European Council shall, within four months, terminate the suspension or request the Commission either to withdraw the measure or to submit a revised draft measure. The European Council shall act by a qualified majority in accordance with the provisions of Article 238(3)(b). In the case that the European Council does not act within four months, the aforesaid legislative procedure shall recommence.

Article 9

Without prejudice to Article 352 TFEU, if action should prove necessary within the framework of the Treaties to attain one of the objectives of this Protocol, and the Treaties have not provided the necessary powers, the European Parliament and the Eurogroup, acting on a proposal from the Commission, in accordance with the special legislative procedure, shall adopt the appropriate measures.

Finances of the euro area

Article 10

1. Without prejudice to Article 310 TFEU, the European Parliament and the Eurogroup shall establish a supplementary budget specific to the Member States whose

currency is the euro. This budget will contribute *inter alia* to the fiscal stabilisation of the euro area.

2. Without prejudice to Article 311 TFEU, the European Parliament and the Eurogroup, acting in accordance with the special legislative procedure, shall adopt a decision laying down the provisions relating to the system of own resources of the euro area. In this context they may establish new categories of own resources or abolish an existing category in the supplementary budget.

Acting by means of regulations in accordance with the ordinary legislative procedure, they shall lay down implementing measures.

3. Without prejudice to Article 312 TFEU, the European Parliament and the Eurogroup, acting in accordance with the special legislative procedure, shall adopt a regulation laying down a multi-annual financial framework specific to the euro area.

4. Without prejudice to Article 322 TFEU, the European Parliament and the Eurogroup, acting in accordance with the ordinary legislative procedure, and after consulting the Court of Auditors, shall adopt by means of regulations the implementing measures relating to the supplementary budget of the euro area.

Policies of the euro area

Article 11

Without prejudice to Article 119 TFEU, the common economic policy of the euro area shall be implemented by means of fiscal, financial, monetary and macro-economic instruments, in accordance with the principle of a highly competitive open market economy.

The aim of the common economic policy is to promote job creation, productive investment, economic stability, social cohesion and sustainable development.

The aim of the common monetary policy is to maintain price stability and, without prejudice to the objective of price stability, to support the common economic policy.

Article 12

Without prejudice to Article 120 TFEU, the Member States whose currency is the euro shall take all necessary action to ensure the proper functioning of the economic and monetary union in pursuit of the objectives of enhanced convergence and competitiveness, of promoting employment and social cohesion, of protecting environmental sustainability, of maintaining sound public finances and monetary conditions, of reducing macro-economic imbalances and of achieving a sustainable European balance of payments.

Article 13

1. Without prejudice to Article 121 TFEU, the Member States whose currency is the euro shall ensure that all major reforms of national economic policy will be discussed beforehand and, where appropriate, coordinated with the Commission and within the Eurogroup. The coordination of national budgetary policies will take place within the context of a European semester.

2. The Commission shall, after consulting the European Parliament and the Eurogroup, formulate a draft for the broad guidelines of the common economic policy of the euro area, which it shall recommend for adoption. The European Parliament and the Eurogroup, acting in accordance with the ordinary legislative procedure, shall adopt a recommendation setting out these broad guidelines.

3. In order to ensure the sustained convergence of the economic performance of the Member States, the Commission, with the assistance of the European Central Bank and the Eurogroup, shall monitor economic developments and assess conformity with the broad economic guidelines.

4. Where it is established that the economic policies of a Member State in the euro area are not consistent with the broad guidelines or that they risk jeopardizing the proper functioning of the economic and monetary union, the Commission shall address a warning to the State concerned.

The Eurogroup may, on a proposal of the Commission, and after consulting the European Parliament, address necessary recommendations to the State concerned. The recommendations shall be made public.

In the case that the State concerned fails to follow the recommendations, the Eurogroup may decide, on a proposal of the Commission, to take more intensive action.

5. At any stage of this procedure, the European Parliament may request the right to be heard and may propose amendments to the Commission's proposal for recommendations. The Eurogroup may reject those amendments if the Commission delivers a negative opinion on Parliament's amendments. Otherwise the Commission's proposal shall be deemed to have been adopted by the Eurogroup in its amended version.

6. Within the scope of paragraphs 4 and 5, the Eurogroup shall act without taking into account the vote of its member representing the State concerned. A qualified majority of the other members of the Eurogroup shall be defined in accordance with Article 238(3)(a) TFEU.

7. The European Parliament and the Eurogroup, acting by means of regulations in accordance with the ordinary legislative procedure, shall adopt detailed rules for the conduct of the multilateral surveillance procedure during the European semester.

Article 14

1. Without prejudice to Article 122(1) TFEU, the Commission, after having consulted the Eurogroup and the European Central Bank, shall decide upon measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products, notably in the area of energy.

2. Without prejudice to Article 122(2) TFEU, where a Member State whose currency is the euro is in difficulties or is seriously threatened with severe difficulties caused by natural disasters or exceptional circumstances beyond its control, the Commission, after obtaining the consent of the Eurogroup, may grant, under certain conditions, financial assistance to the State concerned. Exceptional circumstances are those which may prevail in periods of severe economic downturn or which have a major impact on the financial position of the general government.

3. The Commission shall keep the European Parliament fully informed at all stages of these processes.

Article 15

Notwithstanding Article 125 TFEU, the European Parliament and the Eurogroup, acting in accordance with the special legislative procedure and after having consulted the European Central Bank, may establish for the Member States whose currency is the euro a system for the common management of sovereign debt. Participation in such a system shall be subject to strict conditionality.

Article 16

1. Without prejudice to Article 126(5) TFEU, if the Commission considers that an excessive deficit in a Member State whose currency is the euro exists, it shall address an opinion to the State concerned and shall inform the European Parliament and Eurogroup accordingly.

2. Without prejudice to Article 126(6) TFEU, the Eurogroup shall, on a proposal from the Commission, after having consulted the European Parliament, and having considered any observations which the State concerned may wish to make, decide after an overall assessment whether an excessive deficit exists.

The Member States whose currency is the euro shall support the Commission's proposal unless a qualified majority of the Eurogroup, without taking into account the vote of the member representing the State concerned, is opposed to the proposal.

3. Without prejudice to Article 126(7) TFEU, where the Eurogroup decides that an excessive deficit exists, the Eurogroup shall adopt, on a proposal of the Commission, recommendations addressed to the State concerned with a view to bringing that situation to an end within a given period. Notwithstanding Article 126(8) TFEU, these recommendations shall be made public.

4. Without prejudice to Article 126(9) TFEU, if a State persists in failing to put into practice the recommendations of the Eurogroup, the Eurogroup may decide, on a proposal of the Commission, to give notice to the State to take, within a specified time limit, measures for the reduction of the deficit in order to remedy the situation.

The Commission shall request the State concerned to submit reports in accordance with a specific timetable in order to examine the adjustments efforts of that State.

5. Without prejudice to Article 126(11) TFEU, as long as a State that is subject to the excessive deficit procedure fails to comply with a decision taken in accordance with paragraph 4, the Eurogroup, on a proposal of the Commission, may require that State to put in place a budgetary and economic partnership programme that includes a detailed description of the structural reforms that must be undertaken to ensure an effective and durable correction of its excessive deficit.

The content of such a programme shall be defined in a legally binding act of the Union on a proposal of the Commission enacted by the European Parliament and Eurogroup under the ordinary legislative procedure. The Member States whose currency is the euro shall support the Commission's proposal unless a qualified majority of the Eurogroup, without taking into account the vote of the member representing the State concerned, is opposed to the proposal.

The implementation of the budgetary and economic partnership programme will be monitored by the Commission in partnership with the government of the State concerned.

6. The Commission, the Eurogroup and the European Parliament shall keep the national parliament of the State concerned fully informed at all stages of the procedure.

The national parliament of the State concerned may require the European Parliament to hold a hearing of the Commission and the Eurogroup, with the participation of the European Central Bank, to discuss the partnership programme. At the conclusion of the hearing, that parliament, acting either alone or jointly with the European Parliament, may address a resolution to the Commission. The Commission shall respond to the parliamentary resolution by way of a reasoned opinion within ten days.

7. Without prejudice to Article 126(12) TFEU, the Commission and the Eurogroup shall abrogate some or all of their decisions or recommendations referred to in paragraphs 2, 3, 4 and 5 to the extent that the excessive deficit in the State concerned has, in the view of the Commission, been corrected.

8. Article 126(14) TFEU is amended to read:-

"14. Further provisions relating to the implementation of the procedure described in this Article are set out in the Protocol on the excessive deficit procedure annexed to the Treaties.

"The Council shall, acting unanimously in accordance with a special legislative procedure, after consulting the European Central Bank, and with the consent of the European Parliament, adopt the appropriate provisions which shall then replace the said Protocol.

"The European Parliament and the Council shall, in accordance with the ordinary legislative procedure, lay down detailed rules and definitions for the application of the provisions of the said Protocol."

9. The rights to bring actions before the European Court of Justice provided for in Articles 258 and 259 TFEU may not be exercised within the framework of paragraphs 1 to 3 of this Article.

Article 17

1. A banking union shall be established for the purpose of undertaking prudential oversight of credit and other financial institutions. The banking union shall be open to all Member States on a non-discriminatory basis. The Commission shall ensure the integrity of the internal market in financial services.

2. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, and after having consulted the European Central Bank, shall lay down laws governing the establishment of a regulatory framework for the financial sector, including single surveillance, supervisory and resolution mechanisms and a single resolution fund, underpinned by a common guarantee scheme for deposit insurance.

Notwithstanding Article 127(6) TFEU, the European Central Bank shall be endowed with full powers of microprudential supervision and resolution within the euro area.

Article 18

Article 136 TFEU is amended to read:-

"1. In order to ensure the proper functioning of economic and monetary union, and in accordance with the relevant provisions of the Treaties, the European Parliament and the Eurogroup shall, in accordance with the ordinary legislative procedure, adopt measures specific to those Member States whose currency is the euro:

(a) to strengthen the coordination and surveillance of their budgetary discipline;

(b) to develop a common economic policy of the euro area, which may include the setting of minimum standards, comprising fiscal, financial, monetary and macro-economic instruments.

"2. The European Parliament and Eurogroup, acting in accordance with the ordinary legislative procedure, shall establish for the States whose currency is the euro a European stability mechanism to be activated if indispensable to safeguard the stability of the euro area

as a whole. The granting of any required financial assistance under the mechanism will be made subject to strict conditionality."

Article 19

Article 136 bis [new]:-

"The Member States whose currency is the euro shall report to the Commission ex-ante their plans for the issuance of public debt."

General and Final Provisions

Article 20

1. Notwithstanding Article 140(3) TFEU, any Member State whose currency is the euro may decide, in accordance with its own constitutional requirements, in emergency circumstances and as a last resort, to withdraw from the euro.

A Member State which decides to withdraw shall immediately notify the European Council of its intention.

2. The European Parliament and the Eurogroup, acting by the special legislative procedure, and after consulting the European Central Bank, shall lay down a regulation governing the conditions and modalities that shall apply in the event that a Member State notifies the European Council of its intention to withdraw from the currency.

In the case of an imminent or actual withdrawal, every due concern shall be given to maintaining the stability of the euro and the cohesion of the Union as a whole.

3. A Member State which has withdrawn from the euro shall be deemed to be a Member State with a derogation and subject henceforward to the provisions of Chapter 5 of Title VIII TFEU.

Article 21

The provisions of this Treaty shall apply in full with immediate effect to any Member State of the Union that joins the euro in accordance with the conditions and procedures laid down in Article 140 TFEU.

DONE AT FRANKFURT this xxx day of yyy in the year Two Thousand and zzz.

About the Author

Andrew Duff is a Visiting Fellow at the European Policy Centre. He was a Liberal Member of the European Parliament from 1999-2014, and President of the Union of European Federalists 2008-13. Before becoming an MEP, Duff was Director of the Federal Trust, London. His latest of many books on European constitutional developments is *Pandora, Penelope, Polity: How to Change the European Union* (2015). He tweets @AndrewDuffEU.

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