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The Difficult Reform of the Economic and Monetary Union and the European Banking Union

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Introduction¹

The so-called Atlantic and the EU crises that we have known between 2007/2008 and 2015 have triggered, on the one hand, the drive for a reform of EU budgetary norms through the adoption of acts of Union law, including the regulations on the so-called six-pack and two-pack and the conclusion of international agreements, like the Treaty on Stability, Coordination and Governance and the European Stability Mechanism (ESM), and, on the other hand, for the start of a so-called Banking Union (BU), with a Single Supervisory Mechanism, operational from November 2014, a Single Resolution Mechanism, operational from January 2016 and a so-called 'single rulebook', including in particular a Capital Requirements Regulation and a Capital Requirements Directive as well as a Bank Recovery and Resolution Directive.²

A substantial number of reports from the Commission and from four or five EU institutions' presidents, have called for complements to the EMU and of the BU. The most widely known, if not the most audacious, was the one on 'Completing the European EMU' of June 2015, a report from a group chaired by President Juncker: the so-called 'five presidents' report. This suggested short or medium-term reforms of which only a few have been enacted to date. The European Parliament and the Commission as well as a number of think tanks, private groups or informal groups of officials have launched ideas, one of the most recent and most widely discussed being a CEPR report produced by an equal number of renowned French and German economists: 'Reconciling risk sharing with market discipline: A constructive approach to euro area reform'.³ At the centre of the debate, were and still are, the interpretation of the Stability and Growth Pact, the adoption of a stabilising budget either for combatting unemployment, or promoting investment and the creation of a so-called safe asset, in addition to some institutional reforms and a proposal for representation of the euro area in the IMF.

The BU made a rapid start after the decision taken by the European Council and the Euro Council in June 2012 which decided, on the basis of the first presidents' report, on the creation of a single supervisory mechanism (SSM), located in the ECB. The motivation for the decision to engage in a Banking Union was the long-felt need to eliminate, with an institutional creation and the development of harmonised rules, in addition with existing EU State aid discipline, the *doom-loop* ('the vicious circle') between banks and their sovereign nations: 'Sovereign nations are exposed to bank risk and banks are exposed to sovereign risk'.⁴ The report recognised the need for three elements that are complementary to the SSM: a single resolution mechanism which would provide the bail-in by the banks' creditors, in lieu of a public bail-out through national budgets, a European

¹ This text corresponds to the author's address at Banco de Portugal Legal Seminar "The Reform of the Economic and Monetary Union: how to achieve it in times of division?" that took place in Lisbon on 3 December 2018. For the purpose of publication in these Booklets, it is complemented by an *afterword* | Este texto corresponde à intervenção do Autor no *Seminário Jurídico do Banco de Portugal* "A Reforma da União Económica e Monetária: como concretizá-la em tempos de divisão?", ocorrido em Lisboa, no dia 3 de dezembro de 2018, complementado, para efeito de publicação nestes Cadernos, com um *posfácio*.

² For a synthesised but accurate description of the evolution of the EU answer to the crisis, see Nicolas Véron, 'EU Financial Services Policy since 2007: Crisis, Responses, and Prospects', Peterson Institute for International Economics, Washington, *Working Paper* 18-6.

³ CEPR Policy Insight, No 91, January 2018. This important paper was the object of a considerable number of comments especially in VOX.eu and by think tanks' (including Bruegel, PIIE and CEPS) publications.

⁴ See Spyros Alogoskoufis and Sam Langfield, 'Regulating the doom loop', ESRB. *Working Paper Series*, No 74, May 2018, p.1. As the authors observe however, if reforms have served 'to mitigate the exposures of sovereigns to bank risk... recent reforms do not directly address the exposures of banks to sovereign risks'. The EU institutions are still awaiting a – compromise – solution to be adopted by the Basle Committee for Banking Supervision and which this Committee has rejected – at least for the moment- the adoption of a position considering the huge differences of views between its members.

deposit insurance scheme (EDIS) and, in conjunction with these reforms, further steps towards democratic legitimacy and accountability, the principle being⁵ that ‘the general objective remains to ensure democratic legitimacy and accountability at the level at which decisions are taken and implemented’.⁶ The two first elements, centred respectively on the SSM and SRM, have been built in a few years, as has been stated, although the resolution mechanism is still incomplete. The (intergovernmental)⁷ resolution fund is a provisional mechanism that is valid for a transitional period which requires a more solid foundation. It also requires a financial backstop, considering the sums called for in a major crisis. At the present stage of the negotiations, said backstop would be provided by the European Stability Mechanism (ESM). The European Deposits Insurance Scheme (EDIS) requires, for a number of States, a further improvement in risk reduction before engaging the EU in risk sharing, a central question in the present political debate. On December 6, 2017, the Commission published a substantial number of proposals and communications on the reform of the EMU, which had a particular bearing on these matters and added to earlier proposals. The progress towards the accomplishment of a Capital Markets Union, which was launched in 2015, is also on the agenda. This aims at limiting the predominant role of banks in the provision of financing on the Continent and contributing to a better private risk sharing thanks to a geographical dissemination of investments.

I will first of all undertake some reflexions on the new method for approaching the reform of the EMU in parallel with the so-called Bratislava agenda, the latter centred essentially on security (PESCO) and immigration problems. I will then devote some remarks to the main obstacles to an agreement on the EMU and BU: risk reduction as a condition for risk sharing and the intergovernmental approach as a constitutional obstacle to further Europeanisation of the rules.

1 The leaders’ Agenda and the new negotiation method⁸

Right from the beginning of the discussion on the EMU and the BU reform, the President of the European Council and of the Euro Summit, Donald Tusk has proposed that this Summit should meet, in a so-called inclusive composition, i.e. including not only the Member States having ratified the whole Treaty on the Stabilisation, Coordination and Governance, the so-called “Fiscal Compact”, but also those which have only adhered to the budgetary objective of this Treaty, plus Croatia and the Czech Republic,⁹ i.e. all the 27 countries that are members of the euro area or

⁵ European Council, 13-14 December 2012, Conclusions, 14 December 2012, EUCO 205/12, p. 5.

⁶ Nicolas Véron, ‘Europe’s fourfold union: Updating the 2012 vision’, Bruegel, *Policy Contribution, Issue 23*, September 2017, 12 pages.

⁷ The SRM Regulation is based on article 114 TFEU, the legal basis for harmonisation in the single market although the financing of the Resolution Fund is based on an intergovernmental agreement, at the request of some member States and contrary to the opinion of the legal services of both the Commission and the Council. It is not proposed to change this legal basis for the dispositions which will be adopted for the end of the transitional period in 2024 or before, should this anticipation be accepted by the member States.

⁸ On this topic, see the very informative report: ‘From Rome to Sibiu. The European Council and the Future of Europe debate’, Study, EPRS/European Parliamentary Research Service, Suzana Anghel, Desmond Dinan and Ralph Drachenberg, European Council Oversight Unit, PE 615.667 – April 2018.

⁹ Article 12, par. 3, of the Treaty on SCG provides for the possibility for heads of State and government of Contracting Parties, other than those having adopted the euro, which have ratified the Treaty on SCG, to participate in the euro summit discussions for a very large addenda. Croatia and the Czech Republic do not enter the categories of Member States covered by the SCG Treaty, but of course, nothing prevented their being invited. It should be mentioned that the Eurogroup will hold meetings of nineteen member States for current Euro area business and for 27 for the sessions dedicated to the reform. The same comment is valid for Council’s meetings.

have the legal prospect of adopting the euro.¹⁰ When explaining the new working method¹¹ that he qualified as informal, for the European Council meeting of 20 October 2017 and set out what this method will consist of: 'It means confronting the areas where European cooperation (sic) does not work well and being honest about the reasons why. Confrontation is healthy as long as it is respectful and helps to move forward...But what I am very pleased about today is that none of the leaders questioned the fact that we must work united, hand-in-hand, with all the member States on board...'

The new strategy of President Tusk, reflected in the Euro Agenda was endorsed by the European Council on 20 October 2017. It was described under the title 'Building our future together' and included the main issues that the President of the European Council intended to include in the agenda for the Leaders between October 2017 and June 2019 where a meeting would take place in Sibiu (Romania) for the adoption of a new agenda after the elections to the European Parliament. A longer document that is entitled 'Leaders' Agenda and Bratislava implementation report'¹² includes the principles and methods for this new procedure. This Agenda was published following the Bratislava European Council meeting. The October 2017 Agenda, established 'at the request of leaders at a meeting at Tallinn', includes a list of three principles which describe the new strategy:

- 'Firstly, we should focus on *practical solutions* to EU citizens' real problems. This means changes – not just for the sake of change, but in order to bring back a sense of stability, security and predictability in people's lives as well as faith in the future. Institutional innovation can in some cases be a means to an end, but we should be careful not to get bogged down in unnecessary institutional or theoretical debates.'
- 'Secondly, we should proceed *step by step*. Some matters are ripe for decisions now and should therefore be dealt with immediately, with speed, ambition and determination, so as to ensure real progress. Other matters will need to be further prepared, before we can debate them.'
- 'Thirdly, we should *preserve the unity* that we have managed to develop over the last year.' [A list of matters follow of which none concerns the EMU.]¹³

If a moment is taken to analyse these three principles, the impression might be given that the justification for reform of the EMU, as included in a number of proposals on the table of the Council, could very uneasily be answered to the exposed requirements.

Considering the first principle, it is not difficult to maintain that there are technical and legal reforms that could be justified for very good legal and political reasons, even if they don't directly impact on citizens' life. For example, the question of the Euro area's representation within the IMF or the transforming into European Union acts of international law agreements, as the ESM Treaty or the TSCG – the so-called Fiscal Compact. If, as will be seen subsequently, some aspects of the reform were not held as deserving a priority it is not because they have no impact on citizens but because they challenged outdated conceptions of national sovereignty that are incompatible with the concept of integration. This attitude reflects a reluctance to admit that EU membership implies a sharing of sovereignty and a limitation of the power of international representation. Furthermore, the question about a proposed reform: 'do we need it?' is a priori a reasonable

¹⁰ Some meetings have also included the United Kingdom.

¹¹ See Council of the EU. Documents by President Donald Tusk for the members of the European Council: Invitation letter, Leaders' Agenda and Bratislava implementation report, Press release 593/17, 17/10/2017.

¹² Council of the EU, Press release 593/17, 17 October 2017.

¹³ The highlighted words and the italics are mine.

question but which has often been used in favour of preserving a status quo which could be seen as favourable from a national standpoint.

The second principle evoked by President Tusk is the need to 'proceed step by step. Some matters are ripe for decisions now and should therefore be dealt with immediately, with speed, ambition and determination, so as to ensure real progress. Other matters will need to be further prepared, before we can debate them.'

This is the format for the discussion that can matter. Is it possible to believe that if Article 136 TFEU would not have allowed for a vote by a qualified majority of the euro area member States, the six- and two packages could have been adopted without major problems? The mere existence of the possibility of a qualified majority vote should necessarily facilitate the reaching of a compromise. When, for good reasons, you aim at unanimous decisions by all the Member States, including those not sharing the single currency, because they are legally bound by the obligation to adopt the euro, their interest may be less evident or at least, far from their immediate preoccupations. Furthermore, there is some truth in the affirmation of a former Dutch member of the European Council: 'a superior level of decision corresponds to an inferior degree of competence.'¹⁴

The third principle aims precisely at preserving unity in a number of fields and could be applied to EMU questions. 'To be clear, for president Tusk, unity cannot become an excuse for stagnation, but at the same time, ambition cannot lead to division'. It could though, surely lead to temporary exceptions and would not prevent the application of the majority vote, if available.

In the agenda attached to the Documents of the 17 October 2017, all the present and future challenges are suggested for 'Leaders' meetings: European Councils meetings, Euro summits and informal meetings (these last ones without final communiqués) of heads of state and government and a brief description of the items which would be covered was elaborated. The Agenda was flexible. It was described as a 'living document'. The actuality could lead to the addition or deletion of some items. The specificity of Leaders' meetings, contrary to what usually takes place at European Councils or Euro summit meetings, are meant not to approve resolutions but to enable a frank discussion, a kind of brain storming among heads of State or Government without the pressure to get a specific result and as specified for example, in the Leaders' Agenda for the meeting in March 2018: 'There will be no written output from [the] debate.' These have been compared with the fireside conversations dating from before the institutionalisation of the European Council although at this time, participants were less numerous.

The philosophy of the new strategy is transparent: to sum up, let us quote once again President Tusk, who has engaged himself fully in the launching of the new procedure:

'Our guiding principles are clear. First and foremost, I will do everything in my power to retain the unity of the EU. Secondly, I will concentrate on finding solutions to the real problems of our citizens, who are concerned about security, migration or unemployment. Finally, we will all make sure that Europe is making progress.'

EMU is not quoted in this paragraph although it may be felt that the search for general consensus is also applicable in this matter. This is the main justification for the participation of all 27 'leaders' in most of the summit meetings¹⁵.

President Tusk retains unity as a basic concern although he doesn't exclude that:

¹⁴ See the quotation made by Luuk Van Middelaar, *'Quand l'Europe improvise. Dix ans de crises politiques, Le débat*, Gallimard, 2017, p. 271. The original Dutch title of this suggestive book is: *De nieuwe politiek van Europa*.

¹⁵ There are also meetings at 28.

'As we set out in the Rome Declaration [of 2017], this approach does not prevent Member States moving forward more rapidly in specific areas, in accordance with the Treaties, while keeping the door open for those who want to join later. To be clear, unity cannot become an excuse for stagnation but at the same time, ambition cannot lead to divisions'.

After having set out these principles, President Tusk made three suggestions.

Firstly, he proposed a 'more political approach... and - whenever necessary- more meetings'... in order to 'overcome the sense of powerlessness, where political interests or bureaucratic inertia, stand in the way of achieving results.' The leaders' agenda will be organised on the basis of 'decision notes' reporting on the differences between members. 'The aim will be to break any deadlock'.

'Secondly, at each meeting, there would be a report on progress made by a representative of the six-monthly presidency. These reports should be clearer in order to provide 'a better basis for us to draw political conclusions for our work'.

Thirdly, President Tusk alluded to the need expressed by several leaders to preserve the interaction with their parliaments and inform their public opinion. He didn't object to those practices which depend on 'specific constitutional traditions and political circumstances' while meaningfully adding: 'We could also draw inspiration from new ideas on how to debate Europe, such as those expressed recently'. He obviously doesn't want to be constrained by national debates and tries to deal with the effects of injunctions potentially addressed to heads of Government by their parliaments.

The first meeting of the Euro Summit in the new format on EMU reform took place on 15 December 2017. In the first session of the *inclusive* Euro Summit¹⁶, Donald Tusk sought to limit the discussion on a certain number of ideas on which there was a convergence on the basis of the work conducted by the Eurogroup.

In his summing up of the Euro meeting he explained:

'The summit participants agreed with my proposal, that in the next 6 months, the work of our finance ministers should concentrate on areas where the convergence of views is the greatest. Progressing step-by-step on issues such as the completion of the Banking Union and the transformation of the ESM into the so-called European Monetary Fund, should significantly strengthen the resilience of the EMU. Discussions will continue also on other ideas, which need more time to mature and have a longer-term perspective. I will call the next Euro Summit for next March to continue this discussion while June [2018] could be the moment for us to take the first decisions.'

The priority decided on by the European Council to focus first on the debate on Banking Union and the reform of the ESM was also favoured by the Commission.

Unfortunately, it was not possible to maintain the proposed schedule. The Summit in June adjourned until the December 2018 meeting for the adoption of the first decisions on these matters which was dealt with concisely¹⁷. It was decided that 'Adhering to all elements of the 2016 roadmap in the appropriate sequence, work should start on a roadmap for beginning political negotiations on the EDIS'. 'Start on a road map' is an important step but final negotiation has still to begin afterwards. The Euro Council was somewhat more explicit on the ESM which 'will provide the common backstop to the Single Resolution Fund' (SRF) and be strengthened working on the

¹⁶ The term 'inclusive' means including all EU (27 or 28) Member States.

¹⁷ Janis A. Emmanoulidis, 'Time to move up a gear: the results of an insufficient summit', *European Policy Centre* (EPC), Post-Summit Analysis, p. 11.

basis of all of the elements of an ESM reform as set out in the letter from the Eurogroup President addressed on 25 June to the President of the European Council. The Eurogroup will prepare the terms of reference for the common backstop and agree on a term sheet for the further development of the ESM by December 2018'. For the rest, the Euro Summit decided that the Eurogroup would 'further discuss all the items mentioned in the letter by the Eurogroup president'.¹⁸ A special interest in this letter was due to the fact that President Macron and chancellor Merkel met at Meseberg on 19 June, some days before the Eurogroup meeting and adopted a declaration which inspired the deliberations of the Economic and Finance Ministers. It is also worth mentioning that the June Summit took place one month after the adoption by the Ecofin Council of amendments to the single banking rulebook, - as will be seen subsequently - which were considered as an important step towards risk prevention. The texts have been transmitted to the European Parliament which has now to adopt a position on the proposals. The work had not been concluded at the time of writing.

The debate, especially in relation to the BU reform but also *de facto* in discussions about the larger EMU reform, is still profoundly influenced by the conclusions of the Ecofin Council on 'Strengthening of Banking Union' of June 17, 2016, a roadmap which was based on the need for risk-reduction as a strict condition for risk-sharing, a leitmotiv insisted upon especially by Germany and the Netherlands. This is the reason that the next chapter will be on the theme 'Risk reduction as a condition for Risk sharing?' which is undoubtedly the biggest obstacle to an agreement about the delicate matters on the agenda.

2 Risk reduction and Risk sharing

The important letter sent on 25 June 2018 by the President of the Eurogroup to the President of the European Council, includes a report on the state of discussion within the Eurogroup and it 'lays down the elements for further deepening EMU'. This letter was written a few days after the so-called Meseberg Declaration which includes a 'French German roadmap for the Euro Area.' The two documents allude to the link already underlined in the June 17, 2016 conclusions between risk reduction and risk sharing in the financial sector, 'in the appropriate sequence' (Meseberg Declaration). The Letter from Mr. Centeno, after noting that substantial progress has been made in risk reduction, observes that 'different views on these developments and their link with risk sharing elements...led to intense discussions on the appropriate sequencing towards completing the Banking Union.'

President Tusk has recently noted that 'a big divide exists on some subjects, not between East and West but between North and South'.¹⁹ This reality is illustrated by what has been called the 'repositioning' of the Netherlands from the perspective of Britain's departure from the EU.²⁰ This latter comment refers to the adoption at the initiative of the Netherlands, of a Declaration of 5

¹⁸ See *infra*.

¹⁹ See also Remarks by President Tusk ahead of the European Council meetings, Council of the EU, Statements and Remarks, 803/17, 14/12/2017. Referring also to the east and west divide on migrations, Donald Juncker added: 'These divisions are accompanied by emotions which make it hard to find even a common language and rational arguments for this debate. This is why we should work on our unity even more intensively and more effectively than before.'

²⁰ See Rem Korteweg, 'Why a New Hanseatic League will not be enough?' *Clingendael spectator*, The Hague, 9 July 2018. This author writes that Peter Altmaier, the then German minister of economic affairs, was present during the meeting that drafted the letter. For him, this presence gives weight to the view that this coalition is meant primarily as a counterweight to Macron's plans. Spain declined to participate in the group. The Ministry of Economy, Industry and Competitiveness published in April 2018 a 'Spanish position on strengthening the EMU'.

March 2018 in which Finance Ministers from Nordic and Baltic countries ‘underline their shared views and values in the discussion on the architecture of the EMU’.²¹ These refer to their agreement for prioritising the completion of the banking union and the strengthening of the ESM. As far as BU is concerned, they are of the opinion that the *Roadmap to Complete the BU* from June 2016 ‘should remain the basis for future discussion’ and they support the view that decision-making within the future EMF ‘should remain firmly in the hands of Member States’. Those are the two points on which the views of the eight Nordic and Baltic countries coincide with those supported by Germany.

Before referring to the measures already adopted by the Council in the field of risk reduction, I would like to comment on the priority recognised for risk reduction as a condition for risk sharing. The emphasis on the overarching concept of risk reduction as a condition for risk sharing, corresponds to an attitude largely shared in Germany and the Nordic countries, as was made evident during the Greek crisis. This concerns the whole spectrum of the EMU and BU. As far as Germany is concerned, this attitude has to be related to the famous case law of the Constitutional Court inaugurated by the so-called Maastricht decision of 12 October 1993 which describes the European Union Treaty as regulating “monetary union as a community that is permanently committed to stability and in particular to monetary stability...The Treaty contains long-term guidelines which make the objective of stability the criterion for monetary union, seek to ensure the final achievement of that objective through institutional arrangements and thus, in the final analysis, do not preclude withdrawal from the Community in the event of failure of the community of stability”²². It is also well-known that each time a case where a conflict was alleged between a decision from an act of a European institution such as, in particular, the ECB and German Constitutional Law, in the field of EMU, the Court of Karlsruhe has found, in recent years, solutions to avoid sanctioning EU law after a preliminary ruling from the European Court of Justice.

The dichotomy between the two concepts of risk reduction and risk sharing is understandable. It is clear that rules aiming at risk reduction should make it easier for richer countries to accept risk sharing but it is also true that the existence of an effective instrument of risk sharing can have a positive effect on risk avoidance. President Draghi is not the only one to have stated that the opposition between the two apparently contradictory concepts is, to a large extent, artificial. The two objectives re-join themselves if there is a sound political framework. As the ECB President said:

‘Public risk-sharing through backstops helps reduce risks across the system by containing market panics when a crisis hits.’²³ A strong resolution framework also ensures that, when bank failures do the place, very little public risk-sharing is actually needed as the costs are fully borne by the private sector.’²⁴

²¹ The text was signed by Finance ministers from Denmark, Estonia, Finland, Ireland, Latvia, Lithuania, the Netherlands and Sweden. Of these countries, two do not participate in the EMU. It is to be noted that the first point of the Declaration approves the ‘inclusive format’ or discussions on the future of the EMU which is ‘relevant to all and therefore [should] be discussed and decided by all.’

²² See for this English version of the decision of the BVerfG, 12 October 1993, II, 5, 2, Oppenheimer (ed.) *The Relationship between European Community Law and National Law: The Cases*, Cambridge UP, 1994, p. 568. See also on economic discipline, Francesco Martucci, *L'ordre économique et monétaire de l'Union économique et monétaire*, Bruxelles, Bruylant, 2016, Partie II, Titre I, Les règles de discipline, p. 593 et s.

²³ Therefore, for example, there will be no queues at banks’ lockets, if the client is confident that some part of their account is safe. See Luis de Guindos, ‘Building a resilient EMU’, Madrid, 5 October 2018, <https://www.ecb.europa.eu/press/key/date/2018/html/ecb.sp181005.en.html> : ‘EDIS and the backstop for the SRF are thus not only risk-sharing but also confidence-building mechanisms contributing to risk-reduction.’

²⁴ ‘Risk-reducing and risk-sharing in our Monetary Union’, <https://www.ecb.europa.eu/press/key/date/2018/html/ecb.sp180511.en.html> See also ‘Risk-sharing in EMU: key insights from a literature review’, by Demosthenes Ioannou and David Schäfer, SUERF Policy Note, Issue No 21, November 2017. The authors conclude their brief survey by observing that ‘More risk-sharing in the euro area through capital markets, savings, and direct transfers would increase its shock absorption capacity.’

President Draghi concluded by saying that the completion of both Banking Union and Capital Markets Union 'is therefore a necessary condition for the expansion of private risk-sharing in the euro area.' For him however, this was not sufficient because the growth potential of some states is taken hostage by a lack of equilibrium'. He also emphasised these ideas in another speech on 'Economic and Monetary Union: past and present'²⁵ where he observed that 'the opportunities for our large financial market are not being exploited'. He pleaded for completion of the single market for the reason that 'integrated markets and especially financial markets, help share risks within and across countries'. Integrated capital markets allow people to 'diversify their asset holdings across different regions' and an integrated banking sector allows banks to cross-borders to 'offset losses in a region with gains in other regions'.

In 2017, the Commission was also of the opinion that 'Responsibility and solidarity, risk-reduction and risk-sharing go hand-on-hand.'²⁶ The Reflexion paper also added that 'Greater incentives for risk reduction and conditional support should go together with the design of risk-sharing measures, especially in the financial sector and the conduct of structural reforms.' A Manifesto of personalities proposing 'a Spanish view of EU reforms'²⁷ refers to 'a virtuous circle: rules that ensure discipline would lead to a better acceptance of mutualisation of risks and an increase in solidarity would enhance capacity to comply with the rules.' As it is clearly stated in a paper from the Spanish Ministry of Economy, Industry and Competitiveness²⁸, '[A common deposit insurance scheme] requires full assurances that risk sharing will not be used for material legacy exposures pre-dating the Banking Union in order to avoid adverse selection problems.'

Bénassy-Quéré et al.²⁹, quoted by Roel Beetsma and Martin Larch,³⁰ tend to propose a synthesis in the discussion which sets advocates of risk reduction against the apologists for risk sharing: 'Progress requires movement on both fronts – risk sharing and risk reduction are complements, not substitutes. Hence finding the balances [between the two] will be of crucial importance.'

I would like to quote also a phrase from the departure speech from the ECB of Vitor Constâncio: '...a monetary union can never be just a matter of demanding and assuming that individual member countries behave appropriately. The diversity of shocks, the level of financial integration and interdependence requires collective mechanisms for discipline and risk sharing'.³¹

Jeromin Zettelmeyer, one of the authors of the 7/7 report, describes the elements of a 'new consensus', with a question mark which comprises of four points: 1. 'Euro area requires both more risk sharing and more (market) discipline; 2. 'There is no tension between the two.' He also added: 'Risk sharing facilitates market discipline by making the no-bail clause credible' (which is an interesting formula); 3. 'More risk sharing means completing banking union (EDIS, fiscal backstop

²⁵ <https://www.ecb.eu/press/key/date/2018/html/ecb.sp180919.en.html>

²⁶ European Commission, 'Reflection Paper on the deepening of the EMU', May 2017, p. 18, COM(2017)291, 31 May 2017. It would also be useful that progresses in the building of Capital Markets Union would make a reality of private risk-sharing across borders through the financial system, as mentioned in EWG/Eurogroup Secretariat, *National automatic stabilisers in the euro area*, ecfin.cef.cpe(2018)5494322.

²⁷ Joaquín Almunia and others, 'Quit kicking the can down the road : a Spanish view of EMU reforms', 8 May 2018, www.realinstitutoelcano.org/wps

²⁸ 'Spanish position on strengthening the EMU, April 2018, p. 3. See also Luis de Guindos, 'Building a resilient Economic and Monetary Union', 5 October 2018, <https://www.ecb.europa.eu/press/key/date/2018/html/ecb.sp181005.en.html>

²⁹ 'Reconciling risk sharing with market discipline: A Constructive Approach to Euro Area Reform' CEPR Policy Insight No 91, January 2018, a document – also called the 7/7 report – due to 7 French and 7 German economists, which has been followed by an ongoing debate. See the summing up of the report and of the points addressed to it, one year after the start of the 7/7 reflexion, in a synthesis made by Jean Pisani-Ferry, 'Euro area reform: An anatomy of the debate', VOX, CEPR Policy Portal, 2 October 2018.

³⁰ 'Risk reduction and risk sharing in EU fiscal policy making', vox.eu.org, May 10, 2018.

³¹ See Vitor Constâncio, 'Completing the Odyssean journey of the European monetary union', <https://www.ecb.europa.eu/press/key/date/2018/html/ecb.sp180517.en.html>

[to the Resolution Fund], capital market union [for diversifying risk], safe asset[with the same purpose], easier access to ESM liquidity as well as a fiscal risk sharing mechanism (in addition to the reform of fiscal rules); 4. Market discipline in addition requires a reduction in sovereign exposures of banks to their own sovereign, to make sovereign debt restructuring feasible as a last resort.³²

Two important advances have been realised thus far by agreements reached within the ECOFIN Council or the Committee of Permanent Representatives: the first one concerns the adoption by the Ecofin Council, meeting on 25 May 2018,³³ of a number of amendments to the so-called 'Rule book' which, by completing norms to be followed by financial intermediaries, are deemed to contribute to risk avoidance by limiting leverage, strengthening risk-sensitive capital requirements for banks (MREL) and TLAC in case of resolution for G-SIIs. In the latter case, the act implements an FSB standard from November 2015. The acts concerned by the modifications are the Capital Requirements Regulation n° 575/2013 (CRR), and the Capital Requirements Directive 2013/36/EU (CRD), the Bank Recovery and Resolution Directive 2014/59/EU (BRRD) and the Single Resolution Mechanism Regulation SRMR 806/2014). These reforms were included in a Commission Communication of November 2015 'Towards the Completion of the Banking Union' and the proposals were presented in November 2016, following the already mentioned roadmap adopted by the Council in June 2016.

The presidency of the Council was asked 'to start the negotiations with the European Parliament as soon as the Parliament is ready to negotiate.' Two proposals were promptly adopted following a fast-track procedure in 2017 which relate to the bank creditor hierarchy which is applied in a winding-up procedure and to the IFRS9 and large exposures.

Another point of agreement within the Council is related to the treatment of Non-Performing Loans (NPLs). NPLs 'are bank loans that are subject to late repayment or are unlikely to be repaid by the borrower'.³⁴ Although the volume of those NPLs has substantially declined in recent years, there is still a need to address a high level of stock and to prevent its potential build-up in the future. The Committee of Permanent Representatives reached an agreement on 31 October 2018 for a first proposal for a regulation³⁵ concerning the capital requirements applying to banks with NPLs on their balance sheets. This is one measure in a package of proposals put forward by the Commission on 14 March 2018.³⁶ These proposals sought to deliver on the Council's Action Plan to tackle NPLs adopted on 11 July 2017.³⁷ Likewise, negotiations could start with the European Parliament as soon as the Parliament is ready to negotiate. On 28 November 2018, the Council

³² The extensive quotation is from a slide of the speech of Jeromin Zettelmeyer on 'Euro area governance – A new consensus? Two challenges, and an open flank' at NBB/ECB/Solvay/TSE Conference, Brussels, 5 and 6 November 2018, on *Managing financial crises*. It is reproduced with the author's kind permission.

³³ See Council of the Union. Press Release 293/18, 25 May 2018.

³⁴ Under the proposal, a bank loan is considered non-performing when more than 90 days pass without the borrower paying the agreed instalments or interest.

³⁵ Proposal for a regulation from the European Parliament and the Council on amending Regulation (EU) No 575/2013 concerning minimum loss coverage for non-performing exposures, 14 March 2018 COM(2018) 134 final.

³⁶ See on this package, the 'Overview of Progress in Achieving Risk Reduction Measures (RRMs). A Follow-up Note to the February 2018 discussions on EMU deepening', a document of 6 June 2018 requested by the President of the Eurogroup, and drafted by the EC and the ECB (in view of its tasks in the SSM and the SRB). Four areas as set out in the ECOFIN Action Plan on NPLs are established: (i) bank supervision and regulation, (ii) recommending further reforms for national restructuring, insolvency and debt regulatory frameworks, (iii) developing secondary markets for distressed assets, and (iv) fostering, as appropriate and necessary, the restructuring of banks. Measures and actions are also to be initiated at national level. It is observed in this paper that NPLs are 'on a significant downward trend, having fallen by a third since the peak of the crisis and being on a steady decline, especially in those MSs that hold the largest stock of NPLs'.

³⁷ Council of the EU. PRESS RELEASE, 459/17, 11 July 2017.

agreed stance on an EU framework for covered bonds, on the basis of which the presidency will be able to start negotiations with the European Parliament. It is a step forward in the realisation of a Capital Market Union.³⁸

The same progress has not been observed in the treatment of other capital questions: the EDIS and the reform of the ESM, two subjects considered as priorities and the common backstop to the European Resolution Fund³⁹ of which the principle was 'accepted' when the Agreement on this Fund was approved. We cannot enter into an analysis of the questions raised by those important matters. Their treatment is still subjected to the principle laid down in the Council conclusions on a roadmap for the completion of the Banking Union of 17 June 2016. As is widely known, these conclusions reaffirmed - in the context of the deepening of the EMU - the importance of the Banking Union with a view to its completion (point 5) and recognize that, to this end, further steps will have to be taken in terms of *reducing and sharing risks in the financial sector, in the appropriate sequence*, in order to address a number of remaining challenges' (point 6). The latter wording, which is tirelessly repeated by Germany and other Nordic countries, constitutes the main brake on the smooth evolution of the legislative process. This attitude is completed by an evident inclination to prefer, when financing is at stake, international legal agreements in lieu of EU acts. This preference allows for control by national authorities, both judiciary and legislative. In the Council 2016 conclusions, a specific requirement is stated as far as EDIS is concerned: 'the Council takes note of the intention of Member States to have recourse to an IGA (Intergovernmental Agreement) when political negotiations on EDIS start' (point 8, a).

The same is also true for the ESM. The letter from President Centeno to the President of the European Council of 25 June 2018, is very clear in this regard. The Eurogroup will prepare an 'outline of the key features of a reinforced ESM...Thereafter, the ESM and the Commission could update the MoU on working arrangements. In a second step and following agreement at political level, we will prepare the necessary changes to the ESM Treaty and guidelines. In the longer term, leaders could decide to incorporate the ESM into the EU framework, retaining the key features of its governance.'

A number of Member States have clearly manifested their intention to preserve the intervention of the Member States in the decision-making process of the ESM. It is very clear from the start for Germany and it has been confirmed at the highest level.⁴⁰ This will is shared by the so-called Hanseatic group of countries⁴¹ which published on November 1, their 'shared views' on ESM reform. These support a 'reinforced role for the EMS, as an intergovernmental institution accountable to its shareholders'. This position is said to contrast with the attitude of southern

³⁸ See Council of the European Union, Press Release, 28/11/2018.

³⁹ Which would be transformed into a common backstop to the Banking Union (for EDIS and the SRF).

⁴⁰ In the Meseberg agreement, Mrs. Merkel recognised with President Macron the need for a backstop instrument for the EMS and the importance of enhancing the effectiveness of precautionary instruments, as well as the EMS role in assessing and monitoring future programs although they both considered that 'in a second step (sic)', they can 'ensure the incorporation of the ESM into EU law, preserving the key features of its governance', which means the role of the Finance Ministers and, for the German Government, control by both the national parliament and the Constitutional Court.

⁴¹ These countries have been joined by Slovakia (a member of the euro area) and the Czech Republic (which is not), *Euractiv*, 5 Nov. 2018.

countries that would like access to precautionary financing without being stigmatised.⁴² There is now a majority of Member States in favour of the development of a precautionary credit line.⁴³

The limits imposed on the discussion about EDIS largely explain the delay in progress in the examination of this question: it is difficult to distinguish in the debate between technical and political questions and on the nature of the measures.⁴⁴

While reading the official communiqués on the negotiations about these last topics, one could not be very optimistic as to the possibility of deciding by the end of the year on the two priorities assigned to the institutions and organs within the Council. Silence or ambiguity are characteristic of the attitudes shown.

Typical in this matter is the formula used by the Euro Summit concerning EDIS on 29 June 2018: 'Adhering to all elements of the 2016 roadmap in the appropriate sequence, work should start on a roadmap for beginning political negotiations on EDIS'. The leaders announced that 'the Euro Summit will come back to these issues [EDIS, ESM and all the items mentioned in the letter of 25 June by the Eurogroup President]'. In a further report of 17 September 2018, reporting on the Eurogroup meeting in inclusive format on 7 September 2018, on EDIS, President Centeno limited himself to repeating the words used in June at the Euro Summit. He was more explicit in his remarks to the Press following the Eurogroup meeting of 5 November 2018: 'Today we had a good exchange of views. *No progress was made*⁴⁵ but we now have a better understanding on where we are, how we should approach this issue and work towards a roadmap. So EDIS will not go away, it will stay on our agenda for upcoming meetings.'⁴⁶ It is clear that if we may still hope against all odds that a roadmap could be adopted before the end of the year, it is far from sure, that it would be possible to get a definitive text on EDIS without some more months for discussion. The adoption of the measures concerning the BU, at a summit of leaders in December, a wish expressed by Eurogroup President Centeno in his quoted letter of 25 June, appears to be very hypothetical,

⁴² Ibid. In his introductory remarks, at the Eurogroup press conference, on 5 November 2018, Commissioner Moscovici mentioned with reference to the SRF: the design of the backstop and, for the ESM, the reform of its toolkit, particularly regarding its precautionary instruments. Mr Moscovici evokes the necessity of a 'swiftly deployable backstop', as a 'vital building block towards a stronger BU, one that can withstand future crises and can help foster the development of pan-European banks able to compete globally'. Speech/18/6308.

⁴³ The Eurogroup discussed this question at its meeting of 5 November. President Centeno declared that 'the aim is to make these instruments more effective so they are a viable option for countries with sound fundamentals that need assistance. There is a difficult balancing act we have to accomplish to address the potential stigma of requesting precautionary support and, at the same time, ensure an appropriate level of conditionality. We have made progress on this issue...'

⁴⁴ See the remark in the letter from President Centeno to President Tusk, of 25 June 2018. After having noted the progress made at national and EU levels in risk reduction in the banking system, the Eurogroup President notes that 'different views on these developments and their link with risk-sharing elements included in the June 2016 roadmap led to intense discussions on the appropriate sequencing towards completing the BU. To advance further, an objective assessment of the progress made in the implementation of risk-reduction measures became an important part of the discussion on the implementation of the June 2016 roadmap.'

⁴⁵ Italics are ours.

⁴⁶ It could be helpful to reproduce some lines of a Bulgarian Presidency Progress report on the work of the Ad hoc Working Party on the strengthening of the BU (the AHWP) of 15 June 2018, 9819/1/18, Rev 1, where the difficulty of the selected method of examination is clearly described. He mentioned the compromise solution suggested by the Commission in October 2017 which consisted in providing a more gradual model to introduce EDIS, an approach which had received 'an overall support under the condition that the participation in the discussion of the possible elements of the alternatives for the initial model of EDIS would not be interpreted as Member States' support for any of the alternatives and related topics discussed and that the technical work should in no way pre-empt the future negotiations at political level but should rather provide the necessary basis for informal political discussion. In this respect many delegations stressed that the discussion shouldn't lose the overarching objective of establishing a fully-fledged EDIS, while other delegations stressed that there has not yet been a political decision on the design of EDIS'. *Loc.cit.* p. 3. The formulation of the June conclusions of the Euro Council meeting on the subject confirms the instruction not to rush to a solution. It would eventually be for the European Council to make the necessary arbitrage.

although the Eurogroup held an extraordinary meeting in inclusive format on 19 November 2018 and has scheduled another meeting on 3 December before the European Council meeting.

At the November meeting,⁴⁷ as far as BU was concerned, the Eurogroup took stock as usual, of the progresses in the field of 'risk reduction, on the basis of an assessment by the institutions'. Views were exchanged 'on possible options to improve the current setup to address possible liquidity needs of resolved banks'. It is usually called 'liquidity in resolution'. As mentioned by Mario Centeno in his remarks after the meeting, 'the current framework presents clear limitations on that topic. Various policy remedies were discussed but it 'is a complex issue which needs further work early in 2019. The common backstop in bank resolution was, once again, a subject for the meeting but it is necessary to determine the way to setting it. The hypothesis of a partial revision of the IGA on this topic will still be envisaged in the hope of introducing the backstop before 2024.' Let us repeat the last sentence of the report: 'Overall, there was broad support for an early introduction of the common backstop, *provided that sufficient progress has been made in terms of risk reduction.*'

Mr Centeno observes that the 'early introduction of the common backstop' was, with the ESM reform, 'the key deliverable for December'. Not a word about the EDIS. Clearly, it is too soon for a decision on this topic.

About the ESM, the president of the Eurogroup welcomes the agreement reached between the Commission and the ESM on their future cooperation which 'falls into line with the treaty provisions', which was not an 'acquis' at the beginning of the discussion. Mr Centeno underlines the importance of this agreement between what he called 'the two institutions' who will manage rescue programmes in the next crisis'.

The Eurogroup exchanged views about debt restructuring. There was broad support for the 'single limb' collective action clauses (an idea that was included in the Meseberg declaration).

President Centeno then referred to a 'very good discussion' on a new fiscal instrument for the euro area. The Meseberg Declaration included a proposal on this subject, which was accommodated in a recent Franco-German proposal on the architecture for a euro area budget, an idea already present in Commission proposals. The EG president observes that future work will 'certainly be needed on the design of possible instruments for competitiveness, convergence and stabilisation, as well as on their articulation with the EU budget plan, the Multiannual Financial Framework' and, he concluded: 'The topic will remain on our agenda.'

3 Some final remarks

The first point I would like to raise in these remarks will be a short but important one. I would like to put, once again, the accent on the necessary complementarity between risk reduction and risk sharing. The institutions and the Member States are under pressure especially from the so-called Nordic Member States. However, they are not alone. Let us remember that at the high point of the Greek crisis in 2010, one Member State, a developing country, member of the Visegrad 4, refused to contribute because Greece was a developed Member State richer than it was itself. The stake is important both politically but also legally: the BVerfG attitude is copied by other constitutional jurisdictions in the Czech Republic, in Denmark, in Poland and in the Baltic countries. Hence the fact that each Eurogroup meeting starts with a report by the institutions about 'the progress

⁴⁷ See Eurogroup Draft annotated agenda, 16 November 2018, ecfin.cerfin.eu/2018/11/16/eurogroup-draft-annotated-agenda; /2018, Main results and remarks by Mr Centeno following the Eurogroup meeting of 19 November Eurogroup, 19/11/2019. A document called 'Proposal on the architecture of a Eurozone budget within the framework of the EU was also published on 16/11/2018.

achieved on risk reduction'. No doubt the emphasis placed by some on this topic is not exclusively inspired by legal considerations but it is a fact of life which is important to take into account and which is taken into account. Now, time has come to conclude.

The second point will be dedicated to what is sometimes called the 'new intergovernmentalism'. As a matter of fact it is not a new phenomenon. If a quote is permitted of what was written nine years ago about the invasive role of the European Council : 'Ce phénomène, loin de consolider la structure communautaire en lui donnant une base de légitimité au niveau le plus élevé, constitue, au contraire, un signe de décomposition de cet ordre juridique. Il substitue le consensus et une procédure conventionnelle aux règles de vote et à l'intervention formelle des institutions dans l'élaboration des actes.'⁴⁸

Indeed I would like to stress the primacy in the negotiations of the role of the 'leaders' acting within the European Council, the Euro Council or informal encounters. The difference with the recent past is that the leaders intervened normally to give encouragement or when the other levels of power required their intervention or at their initiative, if the solution of the problems appeared difficult at the legislative level.⁴⁹ The European Council was created in order to smooth the Brussels debate, writes the same author quoted.⁵⁰ For the reform of the EMU and the conclusion of the BU, the leaders didn't succeed in giving a decisive impetus on matters where apparently an agreement was possible, after having eliminated controversial points from the Commission's package. The reason for this provisory or partial failure is due to the deep contradictory views dividing the Member States and in particular, the controversy on risk reduction as a condition for risk sharing. The leaders fixed dates for the legislative power while delimiting its mandate at an initial stage for the adoption within a deadline of the term sheet of the problem (whether it be the role of the ESM or the EDIS), leaving to the Ecofin Council or the leaders, the responsibility for giving the green light for the follow up.

Another important new factor in the decision-making process is the development of political groupings between like-minded Member States. It has been observed that those groupings have always existed. The Benelux States entertained close relations between themselves which included joint meetings before Council meetings in Brussels or Luxembourg.⁵¹ The Visegrad 4 (Czech Republic, Hungary, Poland and Slovak Republic) is another such grouping. More recently, groups like the 'Hanseatic league' (including Finance ministers from the Nordic countries, at the initiative of the Netherlands) with the recent rallying of the Czech Republic and Slovakia and in addition, the V4 manifested their will as pressure groups aiming to fight for what they see as their interest. However, if 'the new coalition is not sufficiently large to form a blocking minority under the EU system of qualified majority voting', it nevertheless constitutes a 'blocking coalition'.⁵² By contrast, at the fourth Summit of Southern countries on 10 January 2018, the heads of State or government of Cyprus, Spain, France, Greece, Italy, Malta and Portugal have adopted a Declaration with the meaningful title: 'Let the EU progress in 2018'.

The Visegrad Group and the so-called 'Hanseatic' group both hold views that are in line with the German position. The Southern Countries expressed opinions close to the ones held by President

⁴⁸ Jean-Victor Louis, 'L'évolution du Conseil européen à la lumière de la réalisation de l'Union économique et monétaire', *Divinire sociale e adeguamento del diritto*, Studi in onore di Francesco Capotorti, II, 2009, p.253-272, 272.

⁴⁹ See Luuk Van Middelaar, *Quand l'Europe improvise. Dix ans de crises politiques*, Paris, Le débat, Gallimard, 2018, p. 270.

⁵⁰ *Op. cit.*, p. 271.

⁵¹ The three Governments still entertain good individual relations but do not necessarily hold analogous views on Europe.

⁵² Rem Korteweg, *op. cit.*, p. 4. For a similar attempt for Nordic countries to weigh on the negotiations related to the Banking Union and the powers of the ESM, see the Joint Statement of Ministers of Finance of Germany, the Netherlands and Finland, 25 September 2012, http://www.vn.fi/vmen/en/03_press_releases_and_speeches/01_press_releases/20120925jointS/name.jsp.

Macron, although this was before the Italian elections which brought other political forces to power which are surely less Europhile.

A paragraph in the V4 Statement on the Future of Europe of 26 January 2018 will particularly hold our attention. Under the heading, 'Democratic Legitimacy' the following statements can be read: 'As encompassed by the Treaties, the democratic control of Member States over the legislative and political processes of the EU should follow the principle of subsidiarity. It should be considered how vital national interests can be safeguarded under the present voting system, bearing in mind that the European Council is destined to be a broker where sensitive issues are on the table. On matters of strategic national interest, every Member State should be entitled to demand a unanimous decision by the European Council.'⁵³ This vision recalls the so-called Luxembourg Compromise of 1986, which was more correctly also known as an agreement to disagree.

There is more however. A reasoning similar to the thesis adopted by the V4 Declaration was on the basis of an argument raised by the Slovak Republic and Hungary in a case before the Court against a decision by the Council which provided for the distribution among the Member States of a number of migrants with a non-EU foreign identity.⁵⁴ For the requiring parties, the decision was contrary to a decision by the European Council which was in favour of a decision adopted by consensus. For the Court, the position adopted by the European Council didn't prevent either the Commission proposing a non-legislative act based on article 78 (3) TFEU, nor the Council to adopt such proposal. The Court added that: 'The principle of institutional balance prevents the European Council from altering that voting rule by imposing on the Council, by means of conclusions adopted pursuant to Article 68 TFUE, a rule requiring a unanimous vote. Indeed, as the Court has already held, as the rules regarding the manner in which the EU institutions arrive at their decisions are laid down in the Treaties and are not at the discretion of the Member States or of the institutions themselves, the Treaties alone may, in particular cases, empower an institution to amend a decision-making procedure established by the Treaties (judgment of 19 September 2015, *Parliament v Council*, C-363/14, EU:C:2015:579, paragraph 43).'⁵⁵

I believe that this Court decision should lead us to remember that if unity is an important value it cannot go so far as opposing the judicious use of the qualified majority vote and neglecting the existing balance of power as well as the respect for the prerogatives of each institution. This leads us to observe the growing intergovernmentalism which impregnates the decision-making process inherent to the so-called Leaders agenda.

As a final comment, the extensive recourse to international agreements and the will to keep those existing should be referred to. The EMS will in future still be based on a Treaty for an undetermined period. The transformation of the Treaty on Stability, Coordination and Governance into an EU act, as proposed by the Commission, is not on the present agenda and if the negotiation succeeds on EDIS, it will be based on an intergovernmental agreement.

This lecture will end with a reference to a statement by President Tusk following the Tripartite Social Summit of 16 October 2018: 'The economy is another area where the EU wants to be more resilient. Good progress in reinforcing EMU is still possible. Even if the tensions among Member States are greater today than they were in June.' The Italian resistance against the budgetary rules

⁵³ See in this regard, *From Rome to Sibiu*, *op. cit.*, p. 16.

⁵⁴ Court of Justice, judgment of 6 September 2017, joint cases C-643/15 and C-647/15, *Slovak Republic and Hungary v Council and Commission*, paras. 143 and foll.

⁵⁵ Points 147 to 149.

added to the difficulty of the negotiation by confirming in their position those reluctant to make concessions in the discussion about risk sharing.

Let us hope that these tensions will at the end not impede the success of the negotiation...

4 Afterword

'The ongoing euro area reform process', to quote Eurogroup President Mario Centeno, continues.

The most impressive progress consists of the positive direction taken towards the creation of a budgetary instrument for the euro area. An idea initially supported essentially by France and Germany has rallied more Member States. It has become a central point in Eurogroup level and European Council discussions. Three main questions are at stake: what is the money for? How will its governance be provided? And how will the instrument be financed?⁵⁶

On the aims of the European budget, the consensus in the Eurogroup and in the European Council is for a 'budgetary instrument for convergence and competitiveness' (BICC). A number of Member States would like to include a stabilising function, considered by the IMF and a large part of the economic literature, as an essential element of a monetary union. The financial crisis of 2009 has fully demonstrated this necessity. Work will continue at a technical level on this latter function,⁵⁷ vehemently opposed by the Netherlands, which has adopted a strong opposition to a so-called 'Transfer Union'.

In terms of governance, it appears that the orientation inclines towards conferring the Commission with 'the day-to-day administration and overseeing implementation as with other EU budgetary instruments, by euro area countries – and the countries on their way to adopt the euro that voluntarily participate in the instrument [the ERM II Member States] – will set the direction of travel.'⁵⁸ In other terms, it would be an intergovernmental instrument administered by the Commission. France is one of the champions of this configuration because the question of the attribution of funds by the new instrument would be a political decision which naturally has to remain within the responsibility of the Member States. It is the same philosophy that has dictated the rejection of the 'communitisation' of the European Stability Mechanism and is also the option chosen for the future European Deposit Insurance System (EDIS). This orientation is based on the supposed greater legitimacy of the Member States as "Herren der Verträge" and the responsibility of governments to their own parliaments. By nature, this scheme encourages political bargaining among member States. The appointment of a Finance Minister for the euro area, which would appear to complement the attribution of a budget to the euro area, seems to be a wish for the very distant future, as mentioned by President Centeno in his Bloomberg speech.

The financing of the instrument is another important problem. Will it be within the general budget? To what point will it be an instrument for the euro area and managed by the euro area? It is clear that, as stated by President Centeno, the discussion of this point is linked to the negotiation of the MFF which is due to start next October. The problem raises, from what we were able to draw from

⁵⁶ We follow here the presentation adopted by President Centeno in a speech to Bloomberg Brussels on 7 May 2019: 'The Euro's path towards fiscal autonomy – Ensuring the single currency works for all.'

⁵⁷ The President of the Eurogroup notes in his letter of 15 June 2019 that 'Technical work has continued on stabilisation, on which there is no consensus'.

⁵⁸ Bloomberg speech, p.4.

the available documents, the question of recourse to general own resources with or without national contributions. There was no consensus on this matter during last June's Eurogroup.

With regard to EDIS, a high level working group appointed in December 2018 has been tasked to report on technical questions. It still has further elements to work on, especially a transitional path. Its report should also include a roadmap for beginning political negotiations on a European deposit instrument system.

The third element we wish to include in this short post-script is the ESM reform. The objective is to finalise the full package by December 2019. Optimistically, Eurogroup President Centeno envisages starting the ratification procedure in early 2020.

There are other elements of concern, especially the Banking Union and, in particular, the reform of MIFID II. When an assessment of the legislation that has been adopted since the beginning of 2018 is made, it appears that the ongoing reform is impressive⁵⁹, however, a number of questions still remain to be resolved in order to improve the functioning of the Banking Union, the realisation of a Capital Market Union and the progress of Economic Union.

We wish to conclude by mentioning, in this context, the intention of the Croatian government as expressed in a letter of 4 July 2019 addressed to a number of EU authorities to participate in the Exchange Rate Mechanism (ERM II). Croatia has also sent a request to enter into close cooperation with the ECB with regard to banking supervision in particular. So, Croatia would accede, if its request is successful, to all the parts of the Banking Union, the Single Resolution Mechanism and the financial commitments associated. A statement on Croatia's path towards ERM II participation was adopted on 8 July by the Finance Ministers of the euro area Member States and Denmark, the President of the European Central Bank and the representative of the Governor of Denmark's Nationalbank on 8 July 2019. The statement lists the commitments taken by Croatia and provides for monitoring by the ECB and the Commission of the effective implementation of these commitments. The conclusion of the 'comprehensive assessment' by the ECB is expected to last approximately one year from Croatia's formal application.

Bulgaria took the same step in July 2018. These applications are important actions which demonstrate the attraction of the euro area. Perhaps other applications will follow. It must be underlined that the necessary preparation includes the adoption of important reforms not only in the financial sector or through economic measures but also related to strengthening of institutions and public governance.

⁵⁹ See Council of European Union, 13 May 2019, 9405/19 *Progress on financial services legislative files*.

