Reforming the European Union: Which methods? Which options?

Abstract:
The crisis has highlighted the limits of the economic and political governance of the European Union and more specifically that of the euro zone. Given the limits of the present EU treaties and the difficulty in planning their revision in the short term, what methods are there available and what options are possible to strengthen Economic and Monetary Union (EMU)?

After reviewing the positions of the European institutions and the Member States on the issue of revising the treaties the aim of this paper is to analyse the advantages and drawbacks of the various possible ways to strengthen European integration – a strengthening, the necessity of which, has been brought to fore by the crisis: either innovating with the treaties as they stand; or modifying the EU treaties; or creating an intergovernmental treaty.

In fine, this paper shows that there is no perfect solution (revision of the treaties and also an intergovernmental treaty both have their drawbacks) and suggests some possible ideas for an acceptable compromise, for example the implementation of measures at the end of 2014 that will not require any change to the treaties and the launch of a modification of the treaties that might notably target:
- the creation of a protocol on EMU annexed to the Treaty on the Functioning of the EU (TFEU) whose goal would be to: consolidate the Intergovernmental Treaties, created outside of the community framework (budgetary pact, treaty on the European Stability Mechanism –ESM); define the legal basis for the banking resolution mechanism and the direct recapitalisation of the banks by the ESM;
- the adoption of a limited revision procedure of the EU treaties by the EMU Member States, thereby facilitating the adoption of additional measures that are specific to the EMU;
- the integration of changes that aim to strengthen the democratic legitimacy of the European institutions.

With the crisis fundamental debates over the future of European integration have been raised. In order to recover their sovereignty in the face of the markets and thereby the ability to decide about their future the States of Europe, notably those in the euro zone have understood that they must consolidate the Economic and Monetary Union. Financial solidarity mechanisms have been introduced [1] and the European Stability Mechanism has entered into force; stricter common budgetary rules have been adopted and the economic governance mechanisms have been strengthened (“six-pack”, “budgetary pact”, “two-pack”). Finally, the project for Banking Union has moved forwards, which has led to the creation of a European supervisory board under the European Central Bank (ECB), as well as an agreement within the Council on a truly European banking resolution mechanism.

And yet there is disagreement about economic and budgetary union, notably regarding European interference in national decisions and over the timeliness of increased budgetary solidarity (the pooling of part of the debt, financial incentives in exchange for reform, euro zone budget etc …). Moreover, the challenge made to the legitimacy of European decisions requires that progress be made towards Political Union, an issue that is advancing very slowly [2].

1. Since 2010, the total amount of financial aid granted by the euro zone to its weakened members has risen to 425 billion euro.
Reforming the European Union: Which methods? Which options?

However, although progress is possible to strengthen European integration, the question of the institutional and legal framework is inevitable. Each of the potential reforms leads to a question about method: innovation with the treaties as they stand; modification of the EU treaties; an intergovernmental treaty.

1. THE TEMPTATION OF A CONSOLIDATED STATUS QUO: A REALISTIC CHOICE?

In the present political climate, marked by the strength of populism as well as the far right anti-European parties, it is likely that many heads of State and government would deem the context politically unfavourable for an ambitious reform of the EU treaties and would not want to take the political risk of an uncertain ratification process, especially in States where a referendum is required. In a situation like this analysis should first focus on the progress that might be achieved without modifying the present legal framework, because this would be the only political impetus that the States involved would want to give to the Economic Union of the euro zone.

Given these challenges the choice of consolidating the status quo is tempting, since the obstacles seem too numerous in order to rise beyond the plateau that the European Union has now reached over the last twenty years, with the internal market and the euro being the most recent structuring projects. The explanations of why it is difficult for “Europe” to have a renewed political project in the mid to long term have now been defined [3] : a deficit in terms of European leadership, the strengthening of intergovernmentalism [4], a trend towards State withdrawal in the dual context of increased international competition and a crisis, the scale of which has not been seen since the Great Depression. These factors are threatening to bring an ageing Europe to a standstill.

With this in hand it might be tempting to give up – especially in a context in which many governments have been weakened politically at home. The ensuing uncertainty increases the perception of economic risk on the part of the investors and reduces the credibility of European commitments.

Lastly, the present way of functioning, which notably gives primacy to the Council over the European Parliament in terms of crisis management, sets a precedent that European “economic governance” has shown its limits [6] both from the point of view of its efficacy and its legitimacy. The Member States’ budgetary rules and economic coordination policies are no longer credible: either because they have not been implemented [7]; or because the matching institutional tools are not adapted to a crisis situation – the European budget is inadequate to be able to have any significant impact in terms of recovery; budgetary and fiscal decisions suppose the unanimity of the Member States and therefore long diplomatic negotiations – or because they only speak of goals without defining an obligation of the means.

In addition to this and from a more political point of view, the gap between the European institutions’ present way of functioning and the demands made by the crisis is increasingly obvious. Diplomatic negotiation-time is too slow; it took months to negotiate the aid plans for the countries in difficulty, which raised the cost of that vital aid. The feeling slowly developed that Europe was always outpaced by the crisis.

Moreover this functioning method is a source of anxiety: the outcome of negotiations is always uncertain, the positions of the different governments seem to be regularly subject to electoral agendas, and decisions taken by governments can then be challenged nationally – especially in a context in which many governments have been weakened politically at home. The ensuing uncertainty increases the perception of economic risk on the part of the investors and reduces the credibility of European commitments.

Hence there is no real trans-European public debate about subjects covering budgetary federalism and economic policy (austerity measures and structural reform in particular) outside of the European Parliament, which has no decision-making power in these matters. All of this has a political and economic cost. The
populist and extremist parties are rising in Europe, denouncing the weaknesses of democracy, notably on a European level, and rejecting the present political and economic system. From an economic point of view uncertainty is impeding investment, growth and therefore employment in Europe.

The status quo is therefore harmful and it would be illusory to content ourselves simply with the consolidation of what we have achieved!


- In September 2012, the Foreign Ministers of 11 EU Member States [9] signed what might be considered to be the first bid to formalise a project for political union;
- On the occasion of the European Council in December 2012, its president, Herman van Rompuy presented a roadmap for true economic and monetary union [10] which pinpoints four structuring issues: an integrated financial framework, an integrated budgetary framework, an integrated economic framework and a strengthening of the democratic legitimacy and the obligation to accountability;
- In November 2012 the European Commission published “A Blueprint for a Deep and Genuine EMU. Launching an European Debate” [11]. Some of the proposals would involve a revision of the treaties; for its part the European Parliament believes “true EMU requires competences, financial resources and increased democratic responsibility and that its implementation must follow a two-stage process, the first being the immediate use of all of the options within the existing treaties and the second a modification of the treaty to be defined by a convention.” [12];
- From time to time German Chancellor Angela Merkel seems to say that she wants to bring a new Convention together [13]. During its Congress in Leipzig in November 2011 the CDU also proposed the election of the President of the European Commission by direct universal suffrage, which supposed a revision of the treaties; more recently in her speech to the Bundestag on 18th December 2013 Angela Merkel re-iterated that she supported “developments in the EU treaties” [14];
- French President François Hollande announced on 16th May 2013 that he wanted to provide political union with content [15]. This content remains to be defined however in the extension of Franco-German proposals [16] put forward in May 2013, which suggest the creation of a full time President of the Eurogroup and a sub-formation of the European Parliament that would be competent for the euro zone [17], which does not suppose a revision of the treaties.

3. REVISION OF THE TREATIES OR DEVELOPMENT OF THE TREATIES AS THEY STAND?

3.1. A revision of the treaties ruled out in the short term?

A priori, the usual way to revise the treaties (article 48 TEU) seems to be the most logical. This is the method most often used before the crisis, whether it pertained to the creation of the single market (Single European Act), the Single Currency (Maastricht Treaty), the Common Foreign and Security Policy and the European Policy on Asylum and Immigration (Amsterdam Treaty). Revision of the treaties like this would be advantageous because it would:
- Consolidate the present international treaties (ESM, budgetary pact) within the legal framework of the EU treaties;
- Provide an opportunity to deepen EMU with financial solidarity, true Banking Union, all based on greater democratic legitimacy (with notably greater financial solidarity, true Banking Union, all based on)
- Strengthening of intergovernmental regimes (intergovernmental treaties vs Commission) as well as that economic point of view (Council vs Commission) as well as that of competition between two legal regimes (intergovernmental treaties of the euro zone vs EU treaties).
- How can the two be reconciled? Moreover the powers of the European Parliament’s competent sub-formation for the euro zone merits clarification. Would it exercise its democratic control? Could it co-decide with the Council on economic matters? Would it have control over the troika? Would have the power to audition and approve the appointment of the president of the Eurogroup?
Reforming the European Union: Which methods? Which options?

Council and the Commission have taken office (which would coincide with the end of the Italian Presidency of the Council), the European Council might decide to convene a Convention at the end of 2014 whose work would be undertaken through 2015 (election year in the UK) and followed by an Intergovernmental Conference (IGC); the ratification process would take place in 2016 (2017 being a presidential election year in France and general election year in Germany).

It is not guaranteed that the political conditions will be satisfied, notably in the Member States for a revision of the treaties to occur, i.e. Member States’ unanimity for the signature and ratification of the modifications:

- Although some leading German executives do not necessarily seem to rule out a modification of the treaties to improve euro zone governance, [18] there is no certainty that there is a consensus in Germany on this point or that a revision like this should be undertaken in just some areas (for example to provide a sound legal base to the Banking Union resolution) [19];
- Revising the treaties also means opening Pandora’s Box again in terms of special treatment given to one State or another, starting with the UK, which is trying, now more than ever before, to redefine the terms of its relations with the EU [20]. However several leaders including the President of the European Council Herman van Rompuy warn of the damage that might be incurred to the Single Market by the possible repatriation of power by London [21]. The desire to prevent repatriation may be an impediment to a possible revision of the treaties;
- Lastly, the present political climate is typified by the strength of populism, as well as far right anti-European parties, which criticise the power of the national and European elites and are challenging the political and democratic legitimacy of the European institutions.

3.2. Moving forwards with the treaties as they stand

Progress might be made without changing anything to the present legal framework based simply on the political impetus that the States involved want to provide to the Economic Union of the euro zone. This would apply to:

- The appointment of the full-time president of the Eurogroup without that person having another national mandate. He might also become a true euro zone finance minister since he would also be appointed Commissioner responsible for the euro at the same time. This Finance Minister would be supported by a DG Euro Zone Treasury comprising part of the present services of the DG ECOFIN;
- One representative for the euro zone at the IMF and the World Bank (article 138 of TFEU) embodied by the President of the Eurogroup;
- The introduction of a political timetable for Member States’ economic and fiscal convergence;
- The creation of a euro zone sub-committee within the European Parliament;
- The more ambitious implementation of article 13 of the Budgetary Treaty that provides for the increased involvement of national parliaments thereby strengthening the democratic legitimacy of the decisions taken in terms of budgetary supervision [22].

From the point of view of timing these proposals might be discussed when the appointments are made by the end of 2014 (president of the Commission, Commissioners, president of the European Council).

However they do have their limits:

- The treaties limit financial solidarity between the States notably those in the euro zone;
- Integrating the ESM and the Budgetary Pact [23] into the EU legal framework would suppose change to the treaties;
- Strengthening the democratic legitimacy of European economic decisions supposes, to a great extent, change to the treaties - notably in the context of strengthening the legitimacy and representativeness of the European Parliament.

In short, more significant progress in budgetary, banking and political integration for the euro zone on a par with monetary union in the past, requires...
significant change being made to the present legal framework. But how?

4. AN INTERGOVERNMENTAL TREATY?

Since the unanimity required for the revision of the EU treaties seems difficult to achieve, we should not rule out the method comprising the signature of an intergovernmental treaty between the euro zone Member States - a treaty that should be compatible with the EU treaties [24]. This method has already been used in the past on several occasions: for example the Schengen Agreement (1986) when border controls between signatory Member States were abolished; the Prüm Treaty (2005) on the exchange of data and cooperation in terms of the fight to counter terrorism; the European Stability Mechanism (ESM) and the TSCG (Budgetary Pact), signed by 25 Member States in March 2012 – with them all signing as part of an intergovernmental framework outside of the treaties.

Using the intergovernmental treaty, which would aim to consolidate the present international treaties (ESM, Budgetary Pact) in one treaty on Economic and Monetary Union, would be advantageous in that:

- An international agreement like this would create a stronger base on which the signatory States could commit legally to the establishment of a more integrated economic and budgetary union, as well as financial solidarity and true banking union – all based on greater democratic legitimacy;
- Those who support this option believe that negotiation between the euro zone Member States and the "pre-ins" who want to take part would be deemed easier than with 28 participants and that this would avoid the danger of obstruction, notably on the part of the UK;
- Moreover its entry into force would not be conditioned by the unanimous ratification of the signatory countries, since the conditions for its entry into force would be the same as those applied to the budgetary treaty on 25th March 2012 [25];
- If necessary the negotiation and ratification of an agreement like this would show that a direction had been deliberately been chosen to overcome the crisis.

Regarding the timetable of this option, if were to be chosen – an agreement between Germany and France would launch negotiations between the euro zone Member States and the "pre-ins" who so wanted in 2014-2015. The ratification process might take place in 2016 or might be postponed until after the elections in France and Germany in 2017.

The use of an international agreement rather than revision of the EU treaties does have some drawbacks however:

- From a political/diplomatic point of view would negotiations on such an international treaty be easier than as part of a revision of the treaties between the 28 EU Member States? This cannot be guaranteed;
- Moreover even if the conditions for entry into force were modified, the issue of difficulties that are always inherent to the ratification process of a European agreement has to be raised – especially if a referendum has to be organised in one Member State or another;
- From a legal point of view this option would raise the issue of competition between two legal regimes (intergovernmental treaties of the euro zone vs EU treaties) and that of conciliating the two. In addition to this, how and up to which point can further stages towards integration be decided and implemented outside of the EU treaties?;
- This option is not a sinecure because it makes the map of Europe increasingly complicated. The multiplication of the degrees of integration and institutional arrangements makes European integration increasingly illegible – and this makes the democratic debate more complicated in its turn;
- The choice of a legal instrument like this would then reveal the dominating influence of the intergovernmental granted to the EMU.

5. WHAT IS THE POSSIBLE COMPROMISE?

The explanations above show that there is no ideal solution (since a revision of the treaties and also an international treaty both have their faults). It seems appropriate then to end this analysis by suggesting some possible options for an acceptable compromise, for example the implementation of measures that do
Reforming the European Union:
Which methods? Which options?

not require any change to the treaties at the end of 2014 (section 3.2) and the launch of a change to the treaties might aim to:

• Create a protocol on EMU annexed to the TFEU which would aim to: consolidate the intergovernmental treaties created outside of the community framework (budgetary pact, treat on ESM); define the legal base for the banking resolution mechanism and the direct recapitalisation of the banks by the ESM; also define the functioning of the European institutions in the euro zone format (euro zone committee within the European Parliament, creation of a euro zone Finance Minister combining the role of President of the Eurogroup and Commissioner responsible for the euro, accountability to the euro zone institutions - including the Troika, the finance ministers and the ESM - on the part of this committee;
• Adopt a limited revision procedure of the EU treaties by the EMU Member States thereby facilitating the adoption of additional measures specific to the EMU, if they are compatible with EU rules. Non-euro zone Member States would be free to join but would not be able to oppose it. Additional measures would be included in the protocol on EMU annexed to the TFEU (see below). The modification of this protocol (and therefore the addition of further measures specific to the euro zone) would only require ratification in the euro zone States (and in the States that decide to adopt the euro);
• Specify in the Protocol on the UK the areas (apart from the internal market) in which this country would continue to participate. The UK would not be able to participate (in the Parliament or the Council) in the decisions taken on areas in which they have relinquished participation. Regarding the budget they would contribute and give opinion only on the budgets drawn up for the areas in which they participate, without being able to give opinion on the overall budget. Finally the UK would retain the possibility of opting-in to other policies other than those to which it has already committed to participating as part of the protocol;
• Integrate modifications that aim to strengthen the democratic legitimacy of the European institutions and turn “Political Union” into a reality.

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### Reforming the European Union: Which methods? Which options?

#### Annexe 1 – Summary Table of the Proposals

<table>
<thead>
<tr>
<th>Proposals</th>
<th>Without the revision of the treaty</th>
<th>Revision of the treaties necessary or a new intergovernmental treaty</th>
<th>Revision of the Eurogroup Protocole</th>
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<tbody>
<tr>
<td><strong>Banking Union</strong></td>
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<tr>
<td>Creation of a Single Resolution Mechanism for Banking Union (thereby completing the Single Supervisory Mechanism)</td>
<td>X</td>
<td></td>
<td>A revision of the treaties would be necessary to be able to hand over decision making in terms of resolution to an independent agency and not to the Commission</td>
</tr>
<tr>
<td>Giving the option to the European Stability Mechanism of being able to recapitalise the banks directly</td>
<td>X</td>
<td>See the agreement already achieved on this: <a href="http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/137569.pdf">http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/137569.pdf</a></td>
<td>A revision of the treaty introducing the ESM would be necessary to allow a line of credit for the Single Resolution Fund</td>
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<tr>
<td><strong>Budgetary Union</strong></td>
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<tr>
<td>Integration of the ESM treaty and the Budgetary Pact into the TFEU</td>
<td>X</td>
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<td>Creation of a specific euro zone budget</td>
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<td>Euro zone economic stabilisation capability</td>
<td>X</td>
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<td>Creation of a European Treasury with the possibility of issuing a common debt</td>
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<td>Specific euro zone/eurobill redemption fund</td>
<td>X</td>
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<tr>
<td>Power of control granted to another institution (Court of Justice or Parliament) in terms of excessive deficit</td>
<td>X</td>
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<td><strong>Economic Union</strong></td>
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<tr>
<td>Make the Europlus Pact binding (it was already the goal of the procedure for excessive macro-economic imbalance created by the Six-Pack, which is however not very binding) /Implement an incentive mechanism in support of reform which is the focus of an agreement between the Council and the Member State in question</td>
<td>X (a regulation can be adopted unanimously on the basis of article 121)</td>
<td>X (if an arrangement similar to the budgetary pact is made necessary by the obstruction on the part of a Member State)</td>
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<tr>
<td>Unique representation of the euro zone at the IMF and the World Bank</td>
<td>X</td>
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<tr>
<td>Creation of a European equivalent of the Congressional Budget Office</td>
<td>X</td>
<td></td>
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<tr>
<td>Strengthening of the European Parliament’s role in terms of excessive deficit and imbalances supervision</td>
<td>X</td>
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Reforming the European Union: Which methods? Which options?

<table>
<thead>
<tr>
<th>Proposals</th>
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<th>Revision of the Eurogroup Protocole</th>
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</thead>
<tbody>
<tr>
<td><strong>Political Union</strong></td>
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<tr>
<td>Implementation of article 13 of the Stability Treaty (underway, cf. Vilnius and Brussels conferences)</td>
<td>x</td>
<td></td>
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<tr>
<td>Modification of the number of Commission members or introduction of a hierarchy amongst commissioners</td>
<td>x</td>
<td></td>
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<tr>
<td>Creation of a Vice-President of the Commission and of the Council responsible for the euro and economic affairs</td>
<td></td>
<td>x</td>
<td>X For the definition of his role (not absolutely necessary)</td>
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<tr>
<td>Modification in the means of election applicable to the European elections</td>
<td>x</td>
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<tr>
<td>Composition of the European Parliament—abolition of the degressive proportionality rule</td>
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<td>x</td>
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<tr>
<td>Acknowledgement of the right to joint initiative for the European Parliament and the Council</td>
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<td>x</td>
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<tr>
<td>Creation of a euro zone sub-committee within the European Parliament</td>
<td>X (only the Parliamentary rules of procedure)</td>
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Reforming the European Union:
Which methods? Which options?

Annexe 2 – Timetable of the European Union 2014-2017

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
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</thead>
<tbody>
<tr>
<td>07-12/2014</td>
<td>Italian Presidency of the Council of the European Union</td>
</tr>
</tbody>
</table>
| Autumn/2014| Renewal of the Commission
End of mandate for Herman Van Rompuy                          |
| 01-06/2015 | Latvian Presidency of the Council of the European Union       |
| 05/2015    | General Elections UK [26]                                    |
| 07-12/2015 | Luxembourg Presidency of the Council of the European Union    |
| 10/2015    | Parliamentary elections Poland                               |
| 11/2015    | Parliamentary elections Spain                                |
| 01-06/2016 | Latvian Presidency of the Council of the European Union       |
| 07-12/2016 | Czech Presidency of the Council of the European Union         |
| 01-06/2017 | Maltese Presidency of the Council of the European Union       |
| 05/2017    | Presidential election in France                              |
| 06/2017    | General elections in France                                  |
| 07-12/2017 | British presidency of the Council of the European Union       |
| 09/2017    | Federal elections in Germany                                 |

Key:
- Rotating presidencies of the Council of the European Union
- Elections within the Member States of the European Union
- European Political Events

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26. In a speech given on 23rd January 2013 David Cameron promised that if the Tories won the elections in the spring of 2015, a referendum on the new conditions governing the UK’s membership of the EU would be organised in 2017 - https://www.gov.uk/government/speeches/eur-speech-at-bloomberg.

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