Articles

# New Perspectives on EU-IMF Relations: A Step to Strengthen the EMU External Governance

Manuel Lopez-Escudero*

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Abstract: After many years of inactivity, the time has come to activate the external side of the EMU and surpass the time of pragmatic arrangements applied until now to the EU-IMF relationship. The economic crisis and the subsequent sovereign debt crisis in Europe have forced more transfers of competences from the EU countries to the EU institutions in the economic policy field, and this new dynamic in the European integration process provides a strong rationale for the EU and Euro area to reassess the external representation of the EU on EMU issues, including the participation in international institutions and fora and, in particular, in the IMF. Moreover, the implementation of the 2010 IMF reform after the US congressional approval will eliminate legal obstacles to a consolidation of the EU Member States' constituencies in the IMF. To develop Art. 138 TFEU, the European Commission presented a proposal to enhance the Euro area representation in the IMF in October 2015. After a reshuffling of the current IMF constituencies with Euro area Member States, the proposal advocates EU mixed representation in the IMF (EU and their Member States) with a single chair for the Euro area in the IMF Executive Board from 2025.

Keywords: EU external action – external representation of EMU – EU-IMF relationship – 2010 IMF reform – EU single chair in the IMF – Art. 138 TFEU.

* Professor of Public International Law and European Union Law, University of Granada Law School (Spain) and Legal Secretary at the Court of Justice of the European Union, manlopez@ugr.es.

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## I. Introduction

The Maastricht Treaty and then the Lisbon Treaty thoroughly regulate the internal aspects of the Economic and Monetary Union (EMU). In contrast, external representation was extremely complex, and its regulation was very limited in the Maastricht Treaty (Art. 111 of the Treaty establishing the European Community – TEC) and the Treaty of Lisbon maintains this line with minor modifications in Arts 138 and 219 TFEU.

As a result of the Great Recession and the subsequent European debt crisis, the EU has reformed the internal economic governance of the EMU. Since 2010, European Union institutions have adopted many new EU secondary law rules and even intergovernmental treaties outside EU law to reinforce the internal governance of the economic leg of the EMU. These new measures are the strengthening of the EU mechanism to coordinate the national economic policies and the tightening of sanctions in case Member States breach EU disciplines, the introduction of crisis resolution mechanisms to assist Member States in crisis, and the transfer of responsibilities in banking supervision to the EU institutions in order to achieve a banking union.[1] In addition, the Euro area has a single monetary and exchange rate policy.

The improvements that have been achieved on further internal integration of the Euro area need to be projected externally and they should induce a change in the external EMU governance and open the opportunity for a centralized representation of the Euro area.[2] It would be logical to equilibrate the internal and the external sides of the EMU in order to allow the Euro area to play a more active role in international financial institutions and to shape effectively its future role in the global financial architecture.

[1] On the reforms in the European economic governance after the crisis, see generally F. Allemand, F. Martucci, *La nouvelle gouvernance économique européenne*, in *Cahiers de droit européen*, 2012, pp. 1-100; P. Chiti, J. Teixeira, *The Constitutional Implications of the European Responses to the Financial and Public Debt Crisis*, in *Common Market Law Review*, 2013, p. 683; O. Clerc, *La gouvernance économique de l'Union européenne. Recherches sur l'intégration par la différenciation*, Brussels: Bruylant, 2012; A. Hinarejos, *Fiscal Federalism in the European Union: Evolution and Future Choices for EMU*, in *Common Market Law Review*, 2013, p. 621; D. Hodson, *Governing the Euro Area in Good Times & Bad,* Oxford: Oxford University Press, 2011; J.P. Keppenne, *Institutional Report*, in U. Neergaard, D. Jacqueson, O. Danielsen (eds), *The Economic and Monetary Union: Constitutional and Institutional Aspects of the Economic Governance within the EU. XXVI FIDE Congress in Copenhagen, 2014*, Copenhagen: DJØF Publishing, 2014, p.179; R. Lastra, J.V. Louis, *European Economic and Monetary Union: History, Trends, and Prospects*, in *Yearbook of European Law*, 2013, pp. 4-5; K. Lenaerts, *EMU and the EU's Constitutional Framework*, in *European Law Review*, 2014, p. 753; M. López-Escudero, *La nueva gobernanza económica de la Unión Europea: ¿una auténtica union económica en formación?*, in *Revista de Derecho Comunitario Europeo*, 2015, p. 361; F. Martucci, *L'ordre économique et monétaire de l'Union européenne*, Brussels: Bruylant, 2016.

[2] D. Schwarzer, F. Steinberg, D. Valiante, *Towards A Common External Representation for the Eurozone?*, Madrid: Real Instituto Elcano, March 2013, p. 5; R. Chemain, *L'UE dans le système monétaire international*, in M. Benlolo-Carabot, U. Candas, D. Cujo, *Union européenne et droit international*, Paris: Pédone, 2013, p. 503.

The external governance of the Euro area cannot continue to be the *failed* or the *forgotten* component of the EMU. The price to pay for this weakness is too high: the Euro area does not have an influence or a leadership role in monetary and financial international relations commensurate to its economic weight and the position of the Euro as the second international currency after the US dollar.[3]

More than 15 years after the implementation of the EMU, we have only pragmatic arrangements to allow a scarce Euro area participation in the international financial organizations and fora. This regrettable situation could evolve in the coming months due to two elements: the entry into force of the 2010 IMF reform and the process of completing the EMU. As the Five Presidents' report of June 2015 underlines, in the way of the completion of EMU perhaps the most difficult challenge will be the strength of its external governance.[4] The first step to reach this objective was the publication by Commission in October 2015 of a Communication designing a road map for a more consistent external representation of the Euro area[5] and a Proposal for a Council Decision in order to unify progressively the Euro area representation in the International Monetary Fund (IMF).[6]

Another event that opens new possibilities for the EU and Euro area to improve their representation at the IMF is the approval of the 2010 IMF reform by US legislature on December 2015. After five years of US veto, this reform will entry into force and it contains relevant legal changes of the IMF Articles of Agreements that will facilitate the consolidation of EU representation at the IMF.

Our aim is to analyse the legal questions raised by this necessary reinforcement of the external economic governance of the Euro area. Our study will focus on the EU-IMF relationship because the IMF is the most relevant and powerful international financial organization and the EU participation in it is an essential part of the EMU external relations, and a litmus test for the actions of the member.

[3] R. SMITS, *International Representation of Europe in the Area of Economic and Monetary Union: Legal Issues and Practice in the First Ten Years of the Euro*, in *Euredia, European Banking and Financial Law Journal*, 2009, pp. 297-333. On the international role of the euro, see generally I. ANGELONI, A. BENASSY-QUÉRÉ, D. CARTON, Z. DARVAS, E. PHEDESTRAIS, J. PISANI-FERRY, *Global Currencies for Tomorrow: A European Perspective*, Brussels: Bruegel, 2011; D. COHEN, *The Future of Global Currency. The Euro Versus the Dollar*, New York: IIE, 2011; ECB, *International Role of the Euro,* Frankfurt: European Central Bank, 2013; M. LOPEZ-ESCUDERO, *El Euro en el Sistema Monetario International*, Madrid: Tecnos, 2005; J. PISANY-FERRY, A. POSEN (eds), *The Euro at 10: The Next Global Currency?,* Brussels: Bruegel, 2009.

[4] Five Presidents' Report on Completing Europe's Economic and Monetary Union, 22 June 2015, ec.europa.eu.

[5] Communication COM/2015/0602 final of 21 October 2015 from the Commission to the European Parliament, the Council and the ECB on a roadmap for moving towards a more consistent external representation of the euro area in international fora.

[6] Commission proposal for a Council Decision laying down measures in view of progressively establishing unified representation of the euro area in the International Monetary Fund, COM(2015) 603 final.

First, I intend to explain the minimalist approach applied to IMF-EU relations since the introduction of the single currency in 1999 and the pragmatic solutions put into practice to take into account the Euro reality. Second, I will review the consequences for EU-IMF relations of the implementation of the 2010 IMF reform, which comes into force after US Congressional approval in December 2015. Third, I will analyse the Decision Proposal introduced by the European Commission in October 2015 in order to achieve a unified Euro area representation in the IMF by 2015. Finally, I will present some conclusions for developing better EU-IMF relations, useful also for better international economic and financial governance.

## II. Pragmatic Arrangements in the EMU External Governance

The original EU primary law included only one article as the express legal basis for the external governance of EMU. This was Art. 111 TEC, which after the Lisbon Treaty became Arts 138 and 219 TFEU.[7] The last article regulates the EU competences to conclude international treaties on EMU matters and the single exchange rate policy of the Euro area, which are elements of the EMU external relations not envisaged in our study. Art. 111, para. 4, was the rule on EU participation in international financial organisation, but it was always neutralised by the EU Member States.

In effect, the Commission submitted in 1998 a modest proposal for a Council decision on external representation[8] calling for the Council, along with the Commission and the European Central Bank (ECB), to represent the Community at the international level in the context of the EMU. The Council could not agree on this proposal and, instead, it submitted a report to the Vienna European Council, which adopted it, considering that a pragmatic approach would be the most successful in minimizing the adaptation of the international rules and practices.[9] There were too many legal and political obstacles to resolve and the wait- and- see tactic dominated this area of EU external action.

[7] See J.V. Louis, *The International Projection of the Euro and the International Monetary System*, in M. Telò (ed.), *The European Union and Global Governance*, London: Routledge, 2009, p. 74.

[8] Commission proposal for a Council Decision on the Representation and Position Taking of the Community at International Level in the context of Economic and Monetary Union, COM(1998) 637 final.

[9] European Council Conclusions of 11-12 December 1998. See the comments from S. Cafaro, *The Missing Voice of the Euro. Legal, Technical and Political Obstacles to the External Representation of the Euro Area*, in *Il Diritto dell'Unione europea*, 2011, pp. 901-902; B. Steinki, *Competencies of the European Community on International Monetary Fund Matters: an Overview of the Key Legal Issues*, in *IMF, Current Developments in Monetary and Financial Law*, Washington: IMF, 2003, p. 120.

### II.1. The legal and political obstacles against the external projection of the Euro area

The external relations of the EMU were and continue to be a field full of legal and political obstacles. Some of these barriers have their origin in the EMU legal framework and in the EU Member States' attitudes towards the international financial institutions, especially the IMF, and others come from the international financial law and the institutional dynamics of the international financial organisations and fora.

If we look at the EU law, it has also generated some barriers against the developments of the EMU external relations. The most relevant are: the asymmetrical character of the EMU, the dichotomy between the EU and the Euro area, and the reluctance of some EU Member States and their bureaucracies to lose privileged positions at the IMF and other financial institutions, in particular some Euro area members holding the chair or the alternate executive director position of their constituencies.[10]

The EMU has been characterized by a specific combination of monetary transfer of competences from the Member States to the EU institutions, the ECB, and the weak economic coordination of national economic policies at the EU level. The asymmetry between the *M* of EMU and the *E* is one of the dominant features of EMU and it determines much of the EMU's external relations.[11] Taking into account the logic of Arts 3, para. 2 and 216, para. 1, TFEU and the CJEU case-law on EU external competences,[12] I

[10] This argument was mentioned by European Commission, *EMU@10: The Evolution of Economic Governance in EMU*, in *Economic Papers no. 328*, 2008, p. 46. See the strong criticism of the former Executive Board member of the ECB L. Bini Smaghi, *Powerless Europe: Why is the Euro Area Still a Political Dwarf?*, in *International Finance*, 2006, p. 16 "The real obstacle to stronger [Euro area] representation does not reside in the aversion of its citizens but rather in its national institutions and policy makers' reluctance to leave their seats at the table. […] Unless national representatives are particularly gifted in understanding the little power that they have in their current role, they will tend to use all possible arguments to oppose a single Euro area representation. The ultimate argument is 'the political conditions are not yet ripe', which means in plain words 'I don't like it'."

[11] ECB, *The External Representation of the EU and EMU*, in *ECB Monthly Bulletin*, May 2011, pp. 96-97; M. Dutzler, *EMU and the Representation of the Community in International Organizations*, in S. Griller, M. Weidel (eds), *External Economic Relations and Foreign Policy in the European Union*, Wien: Beck, 2002, p. 449; M. Herrmann, *Monetary Sovereignty of the Euro and External Relations of the Euro Area: Competences, Procedures and Practices*, in *European Foreign Affairs Review*, 2002, p. 1; M. López- Escudero, *La politique de taux de change de l'euro vis-à-vis des monnaies de pays tiers*, in *Mélanges en hommage à Jean-Victor Louis*, Vol II, Brussels: Bruylant 2003, pp. 282-300; J.V. Louis, *Les relations extérieures de l'union économique et monétaire*, in E. Cannizzaro (ed.), *The European Union as an Actor in International Relations*, The Hague: Kluwer, 2002, p. 77; C. Zilioli, M. Selmayer, *The External Relations of the Euro Area: Legal Aspects*, in *Common Market Law Review*, 1996, p. 273.

[12] Court of Justice, judgment of 31 March 1971, case 22/70, *Commission v. Council ('ERTA')*; opinion 1/76 of 26 April 1977; opinion 1/94 of 15 November 1994: judgment of 14 April 2005, case C-519/03, *Commission v. Luxemburg;* judgment of 14 July 2005, case C-433/03, *Commission v. Germany*; opinion 1/03 of 7 February 2006; judgment of 24 April 2007, case C-523/04, *Commission v. Netherlands*; opinion 1/13 of 14 October 2014. About this doctrine see among others P. Eeckhout, *EU External Relations Law*, Oxford:

consider an exclusive EU external competence in monetary and exchange rates matters to be logical. Because the EU has an exclusive internal competence on monetary and exchange rate policy, the EU alone must be responsible for the external representation of that competence. In contrast, the EU is not able to exercise an exclusive external competence on economic matters due to the persistent internal competences of EU Member States on economic policy. It is an area of coordination or shared competence, and a mixed representation at the IMF (Member States and EU) and other organisations and fora would seem to be a consistent way for the EU to proceed.[13]

The dichotomy between the EU and the Euro area also seems an inconvenience for the EU relationship with the international financial institutions, especially the IMF. Nowadays, only 19 EU Member States make up the Euro area and nine Member States have not yet made the leap to the common currency. The EU cannot expect to substitute the EU members outside the Euro area in international organizations and forums like the IMF, because these countries maintain their monetary sovereignty.[14]

If we turn now to the international financial law, there are two main barriers to the EU participation in the complex network of international organisations and fora competent in financial affairs. The first one is the country-based character of these institutions and the second one is the institutional complexity of some organ of these organisations such as the IMF Executive Board.

The international financial architecture is built by states and the principle of one country, one money is at the centre of all the international financial institutions and forum. The Euro and the Euro area are aliens in this international financial system composed by the G-20, the Financial Stability Board (FSB) and many standard setting bodies, the Bank of International Settlements (BIS), the Organisation for Economic Cooperation

Oxford University Press, 2011; P. Eeckhout, *Exclusive External Competences: Constructing the EU as an International Actor*, in European Court of Justice, *The Court of Justice and the Construction of Europe: Analyses and Perspectives on Sixty Years of Case-law*, Berlin: Springer Verlag, 2013, pp. 613-626; R. Gosalbo Bono, *The Organization of the External Relations of the European Union in the Treaty of Lisbon*, in P. Koutrakos (ed.), *The European Union's External Relations a Year After Lisbon*, CLEER Working Paper 2011/3; C. Hillion, P. Koutrakos (eds), *Mixed Agreements Revisited*, Oxford: Hart Publishing, 2011; G. De Baere, P. Koutrakos, *The Interactions Between the Legislature and the Judiciary in EU External Relations*, in T. Syrpis (ed.), *The Judiciary, the Legislature and the EU Internal Market*, Cambridge: Cambridge University Press, 2012.

[13] For a different view, see J.V. Louis, *L'Union européenne et sa monnaie*, in *Commentaire J. Mégret,* Brussels: Bruylant, 2009, p. 162; and S. Cafaro, *Il governo delle organizzazioni di Bretton Woods. Analisi critica, processi di revisione in atto e proposte di riforma*, Torino: Giapichelli, 2012, p. 162.

[14] In that sense, Art. 139 TFEU excludes the application of the following provisions of the Treaties to the Member States with a derogation: (g) monetary agreements and other measures relating to exchange-rate policy (Art. 219); [...] (i) decisions establishing common positions on issues of particular relevance for economic and monetary union within the competent international financial institutions and conferences (Art. 138, para. 1); (j) measures to ensure unified representation within the international financial institutions and conferences (Art. 138, para. 2).

and Development (OECD), and the IMF. The EU participation in this system needs to erode its intergovernmental nature.

In addition, some key organs of these international financial institutions has a complex institutional structure, as is the case of the IMF Executive Board that consists of 24 executive directors (EDs)[15] but there is no EU, Euro area, or EU Member States constituency. The EU Member States' representation is spread among many executive directors. While Germany, the United Kingdom, and France each appoint one Executive Director and an alternate, all other EU Member States participate in the election of seven different executive directors and form mixed constituencies, together with other non-EU Member States. The EU countries are overrepresented in the IMF Executive Board with one-third of EDs and the high voting share (more than 30 per cent), but the influence of the Europeans on IMF policy is more limited than the US, which has, however, a quota about half the size of the EU's aggregate quota.[16]

### II.2. The pragmatic arrangements: The EU in the IMF

Due to these obstacles, the EU has applied a pragmatic approach in order to participate in the international financial and monetary system[17] and, in particular, in the IMF.[18] The most relevant pragmatic arrangements agreed by the EU and the IMF are the following:

[15] See IMF Executive Directors and Voting Power, www.imf.org.

[16] The clearest way to explain this contradiction is to use power index analysis, which political scientists use to measure the power of an institution's member by taking into account not only its voting share but also its real possibilities to influence the final outcome of the voting process. Applying the Banzhaf Index, the Coleman's Power Index, and the Shapley and Shubik Index, some economists have analysed the voting power of the EU and the Eurozone in the IMF. These analyses show that the US has more real voting power in the current IMF decision-making process than its voting share would suggest. See M. Giovannini *et al.*, *External Representation of the Euro Area*, IP/A/ECON/FWC/2010_19, May 2012, p. 45; M. Leech, S. Leech, *Power Versus Weight in IMF Governance: the Possible Beneficial Implications of a United European Bloc Vote*, in A. Biura (ed.), *Reforming the Governance of the IMF and the World Bank*, London: Anthem Press, 2005; P. Brander, H. Grech, I. Paterson, *Unifying EU Representation at the IMF Executive Board A Voting and Veto Power Analysis*, Vienna: Institute for Advanced Studies, 2009.

[17] I focus in the EU-IMF relations, but the EU participation in other international institutions and fora conforming the international financial and monetary system is also very complex. See L. Quaglia, *The European Union and Global Financial Regulation*, Oxford: Oxford University Press, 2014; F. Amtenbrink, N. Blokker, S. van den Bogaert, M. Cuyvers, M. Heine, C. Hillion, M. Kantorowicz, A. Lenk, L. Repasi, *The European Union's Role in International Economic Fora. Paper 1: The G20*, 2015; J. Wouters, J. Odermatt, *International Banking Standards, Private Law and the European Union*, in M. Cremona, H.W. Michlitz, *The External Dimension of EU Private Law*, Oxford: Hart, 2014, p. 290; C. Ohler, *Back in Balance? The EU and the Challenges of International Financial Regulation*, in D. Kochenov, F. Amtenbrink (eds), *The European Union's Shaping of the International Legal Order*, Cambridge: Cambridge University Press, 2014; Econopolis, *The European Union's Role in International Economic Fora. Paper 2: The FSB*, 2015; M. Lopez-Escudero, *EU Banking Union and International Financial Law*, in L. Hinojosa Martínez, J.M. Beneyto Pérez, *European Banking Union. The New Regime*, Deventer: Kluwer, 2015, pp. 181-198.

*a)* Restricted presence of the EU institutions in the IMF organs.

Even though all the EU countries participate in the IMF, the EU itself is not an IMF member because it is a strictly intergovernmental organisation only composed by sovereign States. Nevertheless, since 1999 the IMF granted ECB the observer status by a decision of the Board of Governors.[19] The ECB sends a representative to meetings of the Executive Board which deal with Euro area policies in the context of the Art. IV consultations, Fund surveillance under Art. IV over the policies of individual Euro area members, the role of the Euro in the international monetary system, the World Economic Outlook, global financial stability reports, and world economic and market developments. The observer status means that the ECB representative at Executive Board meetings will be able to address the Board with the permission of the Chairman on matters within the responsibility of the ECB and may circulate written statements in advance of Board meetings to which the ECB has been invited.

The EU also has observer status in the International Monetary and Financial Committee (IMFC), a consultative IMF organ created in 1999. The President of the ECB and the European Commissioner for Economic and Financial Affairs, Taxation and Customs attend the twice a year meetings as observers in the context of the IMF's Spring and Annual Meetings. Both EU representatives are allowed to make statements at these meetings, commenting on economic developments related to the Euro area. The EU Council rotating presidency also makes a statement.

Finally, it is interesting to note that, for the IMF's first multilateral consultation on the topic of global imbalances in 2006, the Euro area as an entity (rather than individual Member States) was invited to participate together with China, Japan, Saudi Arabia, and the United States.[20]

*b)* Incorporation of the Euro in the composition of the SDR basket.

The Special Drawing Right (SDR) is the unit of account for the IMF. Before the appearance of the Euro, the SDR basket was composed of the US dollar, the pound sterling, the Japanese yen, the French franc, and the deutsche mark. The IMF took into account the Euro and changed the composition of the SDR basket by three Board of Gov-

[18] About the origin of this approach, see A. Broome, *The Politics of IMF-EU Cooperation: Institutional Challenge from the Maastricht Treaty to the Launch of the Euro*, in *Journal of European Public Policy*, 2013, pp. 1-15.

[19] IMF Decision 12925-(03/1) of 27 December 2002, as amended by Decision 13414-(05/01) of 23 December 2004, 13612-(05/108) of 22 December 2005, and 14517-(10/1) of 5 January 2010 on Selected decisions and selected documents of the International Monetary Fund, updated as of 31 December 2013.

[20] IMF Staff, *The Multilateral Consultation on Global Imbalances*, in *IMF Issues Brief*, July 2003. As a result, the IMF introduced in 2011 the first *consolidated spill-over report*, which assesses interconnections in the global economy and in particular potential spill-overs from the five most "systemic" economies. See ECB, *IMF Surveillance of the Euro Area and its Member Countries*, in *ECB Economic Bulletin no. 4*, 2015, p. 80.

ernors' decisions on September 1998.[21] Taking effect on January 1, 1999, these decisions replaced references in the SDR basket to the Deutsche mark and the French franc with references to the Euro as the currency of Germany and France, respectively. In addition, the currency amounts of the Deutsche mark and the French franc in the SDR valuation basket have been automatically replaced by the Euro as the currency of Germany and France.[22]

*c)* IMF surveillance of Euro area policies under Art. IV consultations.

Under Art. IV, Section 3, of the IMF Articles of Agreement the Fund oversees the international monetary system in order to ensure its effective operation and oversees the compliance of each member with its obligations. This is the legal basis for the surveillance activity of the IMF over the national economies of all member countries and over the world economy.[23] To take into account the EMU impact, the Executive Board adopted decisions in 1998 and 2002[24] to extend IMF surveillance to the Euro area, maintaining at the same time the individual supervision of the Euro area countries.[25]

The new Decision on Bilateral and Multilateral Surveillance regulates the application of surveillance procedure to the currency unions and has thus completed the specific decisions on the Euro area. Its para. 8 says that members of currency unions remain subject to all of their obligations under Art. IV, Section 1, and, accordingly, each member is accountable for those policies that are conducted by union-level institutions on its behalf. In its surveillance over the policies of members of a currency union, the Fund will assess whether relevant policies implemented at the level of the currency union (including exchange rate and monetary policies) and at the level of members are promoting the balance of payments and domestic stability of the union and will advise on policy adjustments necessary for this purpose. Because exchange rate policies in a currency

[21] IMF Decision 11801-(98/101) G/S, Decision 11802-(98/101) G/S and Decision 11803-(98/101), G/S, of 21 September 1998. See IMF, *Selected Decisions and Selected Documents of the International Monetary Fund*, updated as of 31 December 2013.

[22] In November 2015, the IMF Executive Board decided that, effective 1 October 2016, the Chinese renminbi will be included in the SDR basket as a fifth currency, along with the US dollar, euro, Japanese yen and pound sterling. See IMF, *Review of the Special Drawing Right (SDR) Currency Basket*, *IMF Factsheet*, 30 November 2015.

[23] IMF, *Modernizing the Legal Framework for Surveillance - An Integrated Surveillance Decision*, 26 June 2012, www.imf.org.

[24] IMF Decision 11846-(98/125) of 9 December 1998 on modalities for conducting surveillance over the monetary and exchange rate policies of the members of the euro area, as set out in SM/98/257 (11/25/98), effective of 11 December 1998; IMF Decision 12899-(02/119) of 4 December 2002 on modalities for surveillance over Euro area policies in context of Art. IV consultations with member countries, as amended by Decision 14062-(08/15) of 12 February 2008. See IMF, *Selected Decisions and Selected Documents of the International Monetary Fund*, updated as of 31 December 2013, www.imf.org.

[25] In 2015, all the documents related to the IV consultation on Euro area are published in the same document IMF, *Euro Area Policies: 2015 Article IV Consultation Press Release; Staff Report; and Statement by the Executive Director*, in *IMF Country Report 15/204*, 10 July 2015, www.imf.org.

union are implemented at the level of the union, the principles for the guidance of members' exchange rate policies and the associated indicators set out in para. 21 of this Decision only apply at the level of the currency union. In my opinion, it is another relevant precedent for an EU membership at the IMF, taking into account the currency and not the home country of that currency.[26]

The Euro area was also considered directly by the IMF in the Financial Sector Assessment Programme (FSAP). In April 2010 the IMF's Executive Board agreed to consider making stability assessments under the FSAP a mandatory part of bilateral surveillance. In September 2010 this agreement took concrete shape when the IMF made it mandatory for 25 jurisdictions with systemically important financial sectors to undergo financial stability assessments under the FSAP every five years. The Euro area is one of these jurisdictions with a systemically important financial sector, and the first EU-wide FSAP was concluded in March 2013.[27]

*d)* IMF financial assistance for EU Member States.

The 2008 Great Recession precipitated a European sovereign debt crisis, and some EU members needed economic assistance from abroad to address their economic problems. EU Member States outside and inside the Euro area required financial assistance, and in this context the IMF and the EU have cooperated closely to assist those EU countries with balance of payments problems, the EU today surprisingly being the biggest user of IMF resources.

Art. V, Section 3 of the IMF Articles of Agreement allows the IMF to finance Member States with balance of payments problems. From the IMF law perspective, EU Member States have access to Fund facilities in the same way that all IMF members do, and being part of a currency union is irrelevant. The EU primary law does not preclude an EU Member State from requesting the use of IMF resources, but some requirements must be fulfilled which differ from those laid down for Euro area members. The EU Member States outside the Euro area which face difficulties can be helped by the EU using the medium-term financial assistance facility, for which the legal basis is Art. 143 TFEU developed by Regulation (EC) 332/2002 of the Council of the 18 February 2002 establishing a facility providing medium-term financial assistance for Member States' balances of payments. Art. 143, para. 2, let. a), TFEU enables the EU Member State to request aid from "any other international organization to which such a member may have recourse."

[26] A deep and critical study of the IMF surveillance practice in the euro area has revealed that the Eurozone surveillance and the surveillance of individual euro countries by the Fund were not integrated. See J. Pisani-Ferry, A.Sapir, G. Wolff, *An Evaluation of IMF Surveillance of the Euro Area*, Brussels: Bruegel Blueprint 14, 2011. See also Task Force on IMF Issues of the international relations committee of the European system of Central banks, *IMF Surveillance in Europe*, in ECB, *Occasional Paper Series no. 158*, 30 January 2015, and ECB, *IMF Surveillance of the Euro Area and its Member Countries*, cit., pp. 78-85.

[27] IMF, *European Union: Financial System Stability Assessment*, in *IMF Country Report no. 13/75*, March 2013.

The use of the EU's medium-term financial assistance facility was combined with IMF loans to help Hungary and Latvia in 2008 and Romania in 2009, 2011 and 2013.[28]

The legal framework for Euro area countries under EU laws was different, and the assistance of the IMF to these states was more complicated. In spite of Art. 125 TFEU, which prohibits EU Member States from assuming the commitments of other EU Member States (the no bail-out clause), the EU Council in May 2010 used Art. 122, para. 2, as the legal basis for establishing an assistance mechanism for Euro area states in crisis and built the European Stabilization Mechanism with two legs. The EU leg was the European Financial Stabilization Mechanism (EFSM), established by Regulation (EU) 407/2010 of the Council of the 11 May 2010 on establishing a European financial stabilization mechanism, and reproducing for the Euro area countries the medium-term financial assistance facility for countries outside the Euro. The intergovernmental leg was the European Financial Stability Facility (EFSF), created outside EU law by Euro area Member States on a temporary basis until June 2013. In December 2010, the European Council decided to enact a permanent crisis resolution mechanism, and it was adopted as a simplified reform of the TFEU by the Decision 2011/199/EU of the European Council of the 25 March 2011.[29] The Treaty Establishing the European Stability Mechanism (ESM) was signed in Brussels on February 2, 2012. The ESM was inaugurated on October 8, 2012 and is operational, using the staff and building of the EFSF, which has substituted for the ESM. The ESM is an intergovernmental organization under public international law and a permanent crisis resolution mechanism for the countries of the Euro area.

These Euro area resolution mechanisms have been activated in the context of the EU sovereign debt crisis, and in many cases, the IMF has supported the Euro area countries: Greece in 2010 and 2012, Ireland in 2010, Portugal in 2011 and, Cyprus in 2013.[30] On December 3, 2012 the Spanish government formally requested the disbursement of close to 39.5 billion euros funds. The IMF did not agree to provide any loan to Spain, but it did agree to monitor European financial assistance for Spain's bank recapitalization program under technical assistance, which ended in January 2014. Irelands and Portugal concluded their programmes in December 2013 and June 2014, respectively, and they then entered into Post-Programme Monitoring. On August 2015, the European Commission signed a Memorandum of Understanding (MoU) with Greece following approval by the European Stability Mechanism Board of Governors for further stability support accompanied by a third economic adjustment programme. This paves the way for mobilising up to 86 billion euros in financial assistance to Greece over three years

[28] All the information is on the EU website at ec.europa.eu.

[29] European Council Decision 2011/199/EU of 25 March 2011 amending Art. 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro. The validity of this decision and the ESM Treaty was confirmed by the CJEU in the famous full Court judgment of 27 November 2012, case C-370/12, *Pringle.*

[30] All the information is on the EU website at ec.europa.eu.

(2015-2018).[31] The IMF did not agree at the moment to lend more money to Greece but the IMF has confirmed that it has assisted in preparing the programme and it continues to support the process.

From an economic and political perspective, the IMF's involvement in the assistance to EU countries during the sovereign debt crisis was colossal.[32] Even though the EU is not member of the IMF, the EU countries have been assisted by the Fund, which has collaborated extensively with the European Commission and ECB in the application of the Euro area programme countries.[33] The EU institutions had little experience in the surveillance of economic programmes, and they needed the IMF's expertise, which has more than 60 years of experience lending money and encouraging reforms to help countries with balance-of-payments problems or in financial crisis. This enhanced collaboration has become known as the Troika and its roles and activities generate some critics.[34]

*e)* Coordination of the EU Member States at the IMF: the SCIMF and the EURIMF.

EU leaders have called for enhanced cooperation on economic and financial matters related to the IMF since the Vienna Council in 1998. Following this, EU Member States set up a multi-layered structure of coordination, composed of two bodies that allow for a certain level of coordination among EU Member States at the IMF: the EURIMF and the SCIMF.[35]

The SCIMF is a sub-committee on IMF matters and related issues, linked to the Economic and Financial Committee (EFC).[36] The SCIMF comprises one representative of each Country's finance ministry and central bank plus two from the DG Ecfin of the European Commission and two from the ECB. The SCIMF meets eight to ten times a year

[31] See the information on the EU web site at ec.europa.eu.

[32] IMF, *The IMF and Europe*, in *Factsheet*, 10 April 2015. See, M. Koops, T. Tolksdorf, *The European Union's Role in International Economic Fora. Paper 4: The IMF*, 2015, pp. 52-58.

[33] *See* W. Bergthaler, *The Relationship between International Monetary Fund Law and European Union Law: Influence, Impact, Effect, and Interaction*, in R.A. Wessel, S. Blockmans (eds), *Between Autonomy and Dependence*, Berlin: Springer Verlag, 2012, pp. 183-186; and for a deep analysis of the IMF assistance to the EU countries, see J. Pisani-Ferry, A. Sapir, G. Wolff, *EU-IMF Assistance to Euro-area Countries: an Early Assessment*, Brussels: Bruegel Blueprint, 2013.

[34] See the European Parliament Resolution 2013/2277(INI) of 13 March 2014 on the enquiry on the role and operations of the Troika (ECB, Commission and IMF) with regard to the euro area programme countries, europarl.europa.eu.

[35] J. Aubrechtová, W. Coussens, G. Pineau, *How to Reconcile EU Integration with the Governance of the International Monetary Fund*, in *Banking Journal no. 18,* 2010, pp. 7-8; J. Koops, D. Tolksdofr, *The European Union's Role in International Economic Fora*, cit., pp. 46-48.

[36] The EFC also meets in a Euro area configuration, the so called Eurogroup Working Group (EWG), in which only the Euro area Member States, the Commission and the ECB are represented. In this configuration, the Committee prepares the work of the Eurogroup and usually meets once a month ahead of Eurogroup meetings. The Eurogroup Working Group members elect a President for a period of four years, which may be extended by a further two years. It is full-time role, in line with the agreement by the heads of state or government of the Euro area of 26 October 2011, and is based in Brussels in the General Secretariat of the Council of the EU. *See*, Eurozone Portal, eurozone.europa.eu.

in Brussels, depending on its chairman, and is a consensus-based body (although simple majority voting is the legal rule). Due to its intergovernmental nature, SCIMF is dominated by a culture of diplomacy and compromise building.[37] The President of SCIMF is chosen by consensus from amongst high-ranking officials belonging to the EFC.

The SCIMF drafts the text of the EU Council President's speech at the spring and autumn meetings of the IMFC, which is usually broad enough to be consensual. Another task of the SCIMF is to prepare the Art. IV review of the Eurozone, and, on an *ad-hoc* basis, the SCIMF may draft common policy papers known as “common understandings” about key subjects of IMF activity.

The second body, the EURIMF, is an informal body based in Washington, D.C., composed of representatives of EU Member States at the IMF and a representative from both the EU Delegation in Washington, D.C., and from the ECB representatives of the EU Member States in the IMF. Interestingly, the presidency of this group is chosen for two years, and therefore does not always reflect the EU presidency, which rotates more frequently. The EURIMF so-called permanent President is in charge of presenting the views of the EU and the Euro area to the IMF Executive Board in the form of written statements.[38]

The EURIMF meets once to three times a week in Washington, and its activities consist primarily of day-to-day coordination and informal exchange of views and information on Member States’ positions, especially on IMF economic surveillance activities. For the Euro area Art. IV discussions in the IMF Executive Board, the Euro area speaks with one voice and issues a written statement, which includes a distinct section on monetary policy prepared by the ECB. Apart from these Art. IV review exercises, EURIMF discusses almost all important political or economic topics that are on the agenda of the IMF Executive Board.[39]

The EU Member States’ coordination has evolved in recent years through EURIMF and SCIMF activities. However, there are limits to the ability of the EU members to forge common positions.

[37] EURODAD, *European Coordination at the World Bank and International Monetary Fund: A Question of Harmony?*, January 2006, www.eurodad.org, p. 11

[38] D. HODSON, *The Paradox of EMU’s External Representation: The Case of the G20 and the IMF*, in *EUSA Twelfth Biennial International Conference*, Massachusetts-Boston, 2011, p. 13.

[39] The most common and formalized coordination method is the EU Presidency *grey* mechanism. The EU presidency prepares a European grey to be discussed at EURIMF before the Board meeting. The strongest form of coordination is the so-called common written statement (also known as grey), which precludes other EU chairs from issuing separate written statements. The EURIMF is a deliberative body dedicated simply to exchanging views and opinions with a high degree of frankness and openness without taking binding decisions. The European executive directors are linked to their capitals. See ECB, *The External Representation of the EU and EMU*, in *ECB Monthly Bulletin no. 5,* 2015, p. 92.

## III. The Impact of the 2010 IMF Reform Implementation on the EU

After a limited IMF reform in 2008, which became effective on 3 March 2011, a more ambitious IMF reform package was agreed to by the G-20 leaders in Seoul in November 2010. It was implemented by the Board of Governors of the IMF, which approved a package of relevant reforms of the Fund's quotas and governance on 15 December 2010, completing the 14th General Review of Quotas.[40]

The package of IMF governance reforms should have been put in place by November 2012, in time for the biennial election of executive directors at that time. This deadline was not met, because the United States had not given its approval due to the Republican reluctance in the Congress. This country with 16.75 per cent of the vote in the IMF has a veto power because the entry into force of the 2010 reform requires 85 per cent of member countries' votes of the IMF, according to the IMF Articles of Agreements. Because of other countries' pressures, as well as US academics and officials[41] and the IMF staff, the Obama administration has obtained Congress approval to ratify the reform on 18 December 2015.[42]

The 2010 reform fixed an unprecedented 100 per cent increase in total quotas and a reallocation of quota and voting shares in the IMF to better reflect the changing relative weights of the IMF's member countries in the global economy. The reform also restructures the composition of the IMF's Executive Board, paving the way for an increase in the representation of emerging markets and developing economies (EMDCs) in the

[40] IMF Resolution 66-2 of 15 December 2010 on Fourteenth General Review of Quotas and Reform of the Executive Board, in IMF, *Selected Decisions and Selected Documents of the IMF, Thirty-Sixth Issue*, updated as of 31 December 2011, p. 9. The content of the 2010 reform is well explained in IMF, *IMF Quota and Governance Reform: Elements of an Agreement*, 2010. For a general overview, See S. Hagan, *Reforming the IMF*, in M. Giovanoli, D. Devos (eds), *International Monetary and Financial Law. The Global Crisis*, Oxford: Oxford University Press, 2010, pp. 40–68; W. Bergthaler, G. Bossu, *Recent Legal Developments in the International Monetary Fund*, in *European Yearbook of International Economic Law*, 2010, p. 391.

[41] T. Truman, *IMF Governance Reform, Better Late than Never*, in *Real Time Economic Issues Watch*, Washington, DC.: Peterson Institute for International Economics, 16 December 2015; R. M. Nelson, M. A. Weiss, *IMF Reforms: Issues for Congress*, Congressional Research Service, 9 April 2015; R. Henning, *U.S. Interests and the International Monetary Fund*, in *Policy Brief no. 9-12*, Washington, DC.: Peterson Institute for International Economics; G. Lavelle, *Legislating International Organization: the US Congress, the IMF and the World Bank*, Oxford: Oxford University Press, 2011.

[42] In order for the proposed amendment on reform of the Executive Board to enter into force, acceptance by three-fifths of the Fund's 188 members (or 113 members) being 85 percent of the Fund's total voting power is required. As of 21 January 2016, 149 members having 94.04 per cent of total voting power had accepted the amendment. For the quota increases under the 14th General Review of Quotas to become effective, the entry into force of the proposed amendment to reform the Executive Board is required, as well as the consent to the quota increase by members having not less than 70 per cent of total quotas. As of 21 January 2016, 170 members having 97.667 percent of total quota had consented. See IMF, *Acceptances of the Proposed Amendment of the Articles of Agreement on Reform of the Executive Board and Consents to 2010 Quota Increase*, 22 January 2016, www.imf.org.

day-to-day decision-making at the IMF. There will be two fewer Board members from advanced European countries, and all Executive Directors will be elected rather than appointed, as some are now.

This reform is relevant for the EU position in the IMF in two ways. First, it introduces some legal changes in the composition and functioning of the Executive Board that would facilitate the joint EU/Euro area representation. The subsequent modifications in IMF quotas will erode the EU's relative position. Second, it marks a clear tendency to reduce the EU Member States' quotas in the IMF and the rise of the EMDCs linked to the increase in the influence of the emerging countries in the global economy.

### III.1. The EU representation in a renovated IMF Executive Board

Some legal conditions of the current legal framework constrain joint EU representation at the IMF Executive Board. First, members having the five largest quotas (currently the US, Japan, Germany, the United Kingdom, and France) have the right but also the obligation to appoint an executive director to the Executive Board.[43] Accordingly, Germany, the UK, and France do not participate in the biannual regular elections of executive directors and thus no other EU member could join a German, British, or French chair. It would thus be impossible for all of the EU or Euro area members to form a single constituency and elect a single executive director. Second, the rules under which executive directors are elected biannually prescribe that, in order to achieve an equitable distribution of voting power among executive directors, there is an upper limit of nine per cent of voting power imposed on the constitution of any constituency. Consequently, EU Member States (currently representing together about 30.8 per cent of the IMF's total voting power), minus the UK, Germany, and France, who together represent about 14.4 per cent of the IMF's total voting power, represent about 16.4 per cent of the total voting power of which the Euro area accounts for 12.2 per cent and thus both groups would exceed the current upper limit of nine per cent. Finally, the formation of constituencies is voluntary, and no IMF member can be compelled to be part of a constituency.

The 2010 IMF reform introduces relevant changes in these legal conditions to improve the governance of the IMF,[44] and some of them would facilitate the consolidation of the European representation on the Executive Board. In particular, four aspects must be emphasized: (i) the elimination of the category of appointed directors at the IMF Executive Board thereby enabling European consolidation on the Board (i.e., members with the five largest voting powers would no longer appoint one executive director each) which would mean that all of the Executive Board will be elected; (ii) the election rules contained in Schedule E of the Articles of Agreements will be deleted, and, going

[43] Art. XII, Section 3 of the IMF's Articles.

[44] W. Bergthaler, *The Relationship between International Monetary Fund Law and European Union Law: Influence*, cit., p. 179.

forward, the IMF Board of Governors will set the upper and lower limits for the regular election of executive directors for each biannual election (i.e., making a Euro area chair pooling more than 9 per cent of the votes possible); (iii) under Art. XII, Section 3, let. e), of the IMF's Articles together with Board of Governors Resolution 66-2, executive directors representing seven or more members in a constituency may appoint a second Alternate following the 2012 regular elections of executive directors (i.e., a Euro area chair would be an executive director as well as two Euro area alternate executive directors, which would be an interesting way to distribute the responsibilities between Euro area countries); (iv) the commitment to 24 executive directors at the IMF Executive Board would remain in place for the time being;[45] and (iv) the IMF Board of Governors noted the commitment to reduce "advanced European country representation" at the IMF Executive Board by two executive directors leading to a greater integration and consolidation of European representation.[46]

The first step towards Board realignment was taken in November 2012 by the Benelux countries. The Netherlands and its constituency partners, Belgium and Luxembourg, decided to create a new constituency as of first November 2012.[47] The constituency comprises[48] seven states, or a full quarter of all EU members (three Euro area countries), alongside a number of (potential) EU candidate countries and close European neighbours (15 members). This new constituency is represented by the fifth largest chair, and it is the largest multi-country constituency on the Executive Board in terms of quota (6.57 per cent of votes). Belgium and the Netherlands designate the Executive Director for this group on a rotating basis. Currently, the Executive Director is Dutch; the Alternate Executive Director is Belgian. Except for Luxembourg and Montenegro, most of the countries in the new constituency will be adversely affected by the 2010 IMF re-

[45] Art. XII, Section 3, let. b) of the IMF's Articles (currently, and as proposed to be amended by Board of Governors Resolution 66-2) sets the number of Executive Directors at 20, which may be increased or decreased by the Board of Governors with a majority of 85 per cent of the total voting power, for the purposes of each regular election of Executive Directors.

[46] This political agreement was adopted at the G-20 Ministerial Meeting in Gyeongju, Korea in 2010. See IMF, *G-20 Ministers Agree "Historic" Reforms in IMF Governance*, in *News Release*, 23 October 2010, www.imf.org. It was argued that the overrepresentation of the EU on the Executive Board was denying emerging countries the opportunity to play a bigger role in the IMF, which was seen as vital for the Fund's effectiveness and legitimacy (see, K. Gnath, *The Reform of the IMF: Europe's Short-Term Arithmetic and Long-Term Choices*, in *AICGS Transatlantic Perspectives*, 2010, p. 4; T. Truman, *The Congress Should Support IMF Governance Reform to Help Stabilize the World Economy*, in *Peterson Institute for International Economics Policy Brief PB*, July 2013, p. 4).

[47] Netherlands Central Bank, *IMF Governance Reform: Open Economies Have a Place at the Table*, in *DN Bulletin*, October 2012.

[48] The chair is composed by Belgium, Armenia, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Georgia, Israel, Luxembourg, former Yugoslav Republic of Macedonia, Moldova, Montenegro, The Netherlands, Romania, and Ukraine.

form and will lose quota and voting shares (almost 22 per cent). Therefore, this realignment is particularly advantageous for these medium and small European countries.

The eight countries left-over from the old Belgian chair have constituted a new Central and Eastern European IMF Constituency.[49] The Constituency Agreement was signed in Vienna on July 11, 2012,[50] and includes five EU Member States and three Euro area countries. As a result of the Constituency Agreement, the current executive director is from Austria and the alternate executive directors rotate between Turkey, the Czech Republic, and Hungary. The first alternate executive director will be from Austria in 2014-2022 and the second Alternate Director will rotate between Turkey, Czech Republic, and Hungary. Through this complex rotation scheme, one seat on the IMF's Executive Board will be redistributed from the advanced European countries to the emerging market countries.

This first realignment is a step towards the consolidation of EU representation on the IMF, but it could also be understood as a movement against the more crucial realignments instigated by bigger European countries to implement the Gyeongyu compromise.[51] I am not sure that this first realignment follows the Art. 138 TFUE mandate.

### III.2. New quotas assignments and the EU

Each member Country of the IMF is assigned a quota, based broadly on its relative position in the world economy, and this quota determines a member's maximum financial commitment to the IMF and its voting power. The distribution of IMF quotas is the key to explaining the balance of power in the IMF, and the formula to calculate quotas has always been a highly controversial matter. The current quotas and voting shares of the EU Member States are based on the application of the 2008 quota formula that is a weighted average of GDP (weight of 50 per cent), openness (30 per cent), economic variability (15 per cent), and international reserves (five per cent). For this purpose, GDP is measured through a blend of GDP, based on market exchange rates (weight of 60 per cent), and on purchasing power parity (PPP) (40 per cent). The formula also includes a *compression factor* that reduces the dispersion in calculated quota shares across members.[52] The EU Member States together have approximately 31.9 per cent of the quota shares and 30.9 per cent of the voting shares, which is more than the US (17.7 per cent and 16.7 per cent respectively), which is the single biggest shareholder in the IMF.

[49] The members of this chair are Austria, Belarus, Czech Republic, Hungary, Kosovo, Slovak Republic, Slovenia and Turkey.

[50] See www.friedlnews.com.

[51] See the critics by J.V. Louis, *Monetary Union and the Law: Some Comments*, in T. Cottier, R. Lastra, C. Tietje, S. Satrango (eds), *The Rule of Law in Monetary Affairs*, Cambridge: Cambridge University Press, 2015, p. 120.

[52] The documentation about the IMF studies on quota formula can be found in IMF, *IMF Quota and Governance Publications*, 9 October 2012.

The Executive Board uses the 2008 quota formula as a base for calculating the new quotas, but using many highly technical and complex corrections to attain the agreed-upon results. The 2010 package of reforms doubled the overall IMF quotas to about 755 billion dollars and shifted voting power to dynamic emerging market economies. In fact, the 14th General Review of Quotas will: (i) double quotas from approximately SDR 238.5 billion to approximately SDR 477 billion, (about 715 billion dollars at current exchange rates); (ii) shift more than six per cent of quota shares from over-represented to under-represented member countries, a quota shift made possible mainly by reducing the shares of a number of advanced economies and oil-producing countries; (iii) shift more than six per cent of quota shares to dynamic EMDCs; (iv) preserve the quota and voting share of the poorest member countries, and (v) significantly realign quota shares. As a result of these modifications, the 10 Fund members with the largest voting shares will consist of the United States, Japan, the so-called BRICs (Brazil, China, India, the Russian Federation), and the four largest European countries (France, Germany, Italy, the United Kingdom).[53]

The 2010 quota reform will only reduce the EU quotas by 1.616 per cent. There will be some EU Member States that will sacrifice a significant voting share (Belgium, 43 per cent; Netherlands, 18 per cent; and Bulgaria 37 per cent); the biggest states (Germany, France, United Kingdom, and Italy) lose between five per cent and seven per cent. Most of the Central and Eastern states will increase their voting shares by five per cent to 17 per cent), and Spain, Ireland, and Luxembourg will capture significant additional voting shares. Clearly, the 2008 quota formula was fruitful for the EU States, and the adjustments applied in 2010 do not modify those results. The EU decline in the world economy in favour of emerging economies is insufficiently reflected in the IMF quota and voting shares.

Although the 2010 quota reform was pending and it will be implemented after the US ratification, it is a transitory modification, because the Resolution 66-2 required the Executive Board to complete a comprehensive review of the formula. It has discussed the new formula without success and has decided that consensus on a new quota formula will best be done in the context of the 15th Review rather than on a stand-alone basis.[54]

In any case, the negotiation of a new quota formula will be a challenge for the EU Member States, and their quotas and voting shares in the IMF will be reduced in line

[53] All the calculations by IMF Staff are available in IMF, *Quota and Governance Reform Elements of an Agreement*, 2010. See also M. Moreno, *Metamorfosis del FMI*, Madrid: Tecnos, 2011, pp. 174-196; New Rules For Global Governments, *Impact of 2010 IMF Quota Reform: Winners, Losers and Realignments*, 24 July 2012, www.new-rules.org.

[54] See IMF, *Executive Board Reports on the Quota Formula Review*, in *Press Release no. 13/30*, 30 January 2013; IMF, *IMF Executive Board Discusses Quota Formula Review—October 2012*, 9 October 2012; IMF, *Quota Formula—Data Update and Further Considerations*, in *IMF Policy Paper*, July 2014.

with the decrease in their relative weights in the world economy.[55] This is a good argument for going to a single EU or Euro area chair at the IMF and thus compensating for the loss of individual quotas by unifying the national quotas.

## IV. A SINGLE EURO AREA CHAIR IN THE IMF FOR 2025? THE 2015 COMMISSION PROPOSAL AND THE WAY FORWARD

The strengthening of the internal economic governance during the Great Recession, the impact of the 2010 IMF reform and the decreasing EU weight in the world economy have influenced the opinion and positions of the EU institutions related to the EU-IMF relations. In spite of the academic literature,[56] what voiced the inadequacy of the EU position in the IMF and proposed several approaches to a more unified EU representation or even a single chair for the EU at the IMF, the EU institutions have remained silent since 1998, apparently comfortable with the pragmatic approach that was chosen for EU-IMF relations.

The Great Recession contributed to a louder call from the European authorities for a unified external representation of the Euro area. The Eurogroup President, Jean-Claude Juncker,[57] was quite clear, as was the Commissioner Almunia.[58] The European Parliament also pressed for such action, the Feio Report re-launched the debate and more recently, on October 25, 2011 a non-legislative resolution on Global Economic Governance was adopted by the European Parliament, the Hökmark Report, recalling "that, under Art. 138 of the Lisbon Treaty, the Euro area is supposed to introduce unified external representation; [the Parliament] urges the Commission to put forward a legislative proposal to that effect".[59]

[55] Un update analysis is available in R. MOHAN, M. KAPUR, *Emerging Powers and Global Governance: Whither the IMF?*, in *IMF Working Paper 15/219*, 2015.

[56] A. AHEARNE, B. EICHENGREEN, *External Monetary and Financial Policy: a Review and a Proposal*, in A. SAPIR (ed.), *Fragmented Power: Europe and the Global Economy*, Brussels: Bruegel, 2007, p. 142; S. CAFARO, *Il governo delle organizzazioni di Bretton Woods. Analisi critica, processi di revisione in atto e proposte di riforma*, cit., pp. 141-177; J.V. LOUIS, *L'Union Européenne et sa monnaie*, cit., paras 418-424; L. BINI SMAGHI, *A Single EU Seat in the IMF?*, in *Journal of Common Market Studies*, 2004, p. 229; M. LÓPEZ-ESCUDERO, *Crisis y reforma del Fondo Monetario Internacional*, in *Revista Española de Derecho Internacional*, 2007, p. 435; DE LAROSIÈRE *et al.*, *Report of the High-Level Group on Financial Supervisions in the EU*, 2009, para. 256.

[57] Mr. Juncker said "It is absurd for those 15 countries not to agree to have a single representation at the IMF. It makes us look absolutely ridiculous. We are regarded as buffoons on the international scene", declaration of the Eurogroup President Mr. Junckers in April 2008, euobserver.com.

[58] Speech by J. ALMUNIA, *Laying the Foundations of a European Foreign Economic Policy*, 6 April 2009, europa.eu. He clearly stated that "The Commission has long called for a consolidation of European representation on the boards of the IFIs. In the case of the IMF, the argument for a single consolidated Euro-area chair is quite obvious".

[59] European Parliament, Committee on Economic and Monetary Affairs, Rapporteur: Diogo Feio, Report A7-0282/2010 of 11 October 2010 with recommendations to the Commission on improving the economic governance and stability framework of the Union, in particular in the euro area; European Parlia-

New expectations have been opened by the European Commission with the 2012 Communication about the development of the EMU,[60] which included a serious commitment to activate Art. 138 TFEU. The European Commission wanted to take into account the progress achieved in the internal economic governance in response to the crisis to strengthen and consolidate its external representation based on the current Treaties (Art. 17 TEU and Art. 138 TFEU). The focus was on EU representation in the IMF, and no reference was made to the EU's participation in other international economic organizations and fora. The pragmatic approach was deemed unsatisfactory, and the Commission will propose a two-stage process to enhance the Euro area representation in the IMF. In a first stage, the Commission will design a rearrangement of the country constituencies in the IMF so as to re-group countries into Eurozone constituencies which could also include future Euro area Member States. In parallel, observer status at the IMF Executive Board should be sought for the Euro area. At a second stage, a single seat in the IMF bodies is planned with a few specifications. Finally, the Barroso Commission did not make any proposition to activate this compromise.

The Juncker Commission announced in its 2015 work programme that it intended to address the external representation of the Euro area in the framework of deepening the EMU. The Five Presidents' Report of June 2015 on completing EMU indicates "as EMU evolves towards Economic, Financial and Fiscal Union, its external representation should be increasingly unified".[61] This Report criticizes that EU and the Euro area are still not represented as one in the international financial institutions and this fragmented voice means the EU is punching below its political and economic weight as each Euro area Member State speaks individually, in particular in the case of the IMF. Consequently, the Five Presidents' Report proposes in the first stage of the completion on EMU to "take steps towards a consolidated external representation of the euro area".

Taking into account Art. 138 TFEU and the Five Presidents' Report mandates, the European Commission published in October 2015 a Communication[62] and a Proposal for a Council Decision in order to unify progressively the Euro area representation in the IMF.[63] According to Art. 138, para. 3, TFUE, it is the Council which, acting on a proposal of the Commission and after consulting the ECB, will decide on the Euro area's

ment, Committee on Economic and Monetary Affairs, Rapporteur: Gunnar Hökmark, Report A7-0323/2011 of 25 October 2011 on Global Economic Governance, European Parliament.

[60] Communication COM(2012) 777 final/2 of 28 November 2012 from the Commission on blueprint for a deep and genuine economic and monetary union. Launching a European debate.

[61] Five Presidents' Report of 22 June 2015, *Completing Europe's Economic and Monetary Union*, p. 17, ec.europa.eu.

[62] Communication COM/2015/0602.

[63] Proposal for a Council Decision, COM(2015) 603 final.

participation and representation in international financial institutions and conferences based on a qualified majority of the Member States which have adopted the Euro.[64]

The Commission Proposal is spineless and unambitious in the sense that it does not encourage EU membership in the IMF. However, it suggests moving to a unified representation for the Euro area in the IMF since 2025 with the President of the Eurogroup as the representative, applying a gradual approach involving intermediate transitional steps for representation in the IMFC and the IMF Executive Board. Such transitional steps would involve granting observer rights to the Euro area represented by a representative of a Euro area Member State already a member of the Board, in association with the Commission and the ECB. Furthermore, the coordination process for establishing common positions should be strengthened in order to have systematic common statements on all IMF policy, country and surveillance issues that are of relevance to the Euro area. I consider that the content and strategy established by this Proposal could be understood by analysing the following issues: the EU membership possibilities at the IMF, the improvement of the coordination of the EU Member States on IMF issues and the Euro area single chair options.

### IV.1. The EU membership possibilities at the IMF

Art. 2 clearly says that the 2015 Commission Proposal lays down provisions for the progressive establishment of a unified representation as well as common positions of the Euro area within IMF until the Euro area will have obtained full membership of the IMF. Consequently, the Proposal takes into account the current IMF membership without prejudice to the possibility of full membership of the Euro area at a later stage. The objective pursued by this Proposal is a unified representation with a single seat for the Euro area within all organs of the IMF, while allowing Euro area Member States to maintain their current shareholder status in the Fund. The Commission should undertake work to achieve this objective but not to obtain full membership in the IMF.

In my opinion, it is not an ambitious approach; the Proposal accepts that the external representation of the Euro area will depend on the future status of the Euro area in the IMF that member countries of the IMF would be willing to grant. In spite of this certainty, I consider that the EU could apply a more proactive approach and try to eliminate the obstacles to become a full IMF member, which is the best way to be represented in this international organisation.

As now constituted, the IMF is strictly a country-based organization due to the formalistic interpretation of the word *countries* included in Art. II, Section 2, of the IMF's Articles of Agreement. Nevertheless, some scholars have proposed a more open and up-

[64] The 2015 Commission Proposal withdraws the 1998 Proposal for a Council decision on the representation of the Community at international level in the context of EMU, which was not adopted and became obsolete since the launch of the euro and the entry into force of the Lisbon Treaty.

dated interpretation of this word that would allow the inclusion of states and international organizations that benefit from an attribution of states' powers in the monetary and exchange rate fields. In the case of the EU/Euro area, the responsibility for monetary and exchange rate matters, an essential characteristic of statehood and a condition for compliance with the obligations resulting from membership of the IMF, no longer lies with the Member States; it is in the hands of the EU institutions. In addition, the EU/Euro area has increasing powers on banking supervision and resolution in the framework of the EU banking union and the strengthening of the EU economic governance during the crisis has increased the EU competences in this area. Under these circumstances, the EU has arguably already assumed the characteristics of a country for the purposes of the Articles of Agreement.[65]

The modification of the BIS statute to open up membership in the BIS to the ECB[66] is a relevant precedent to support this broad interpretation of the word country in Art. II, Section 2 of the IMF's Articles of Agreement. However, a less controversial way to open IMF membership to international organizations with competence in monetary matters is to introduce a specific clause in Art. II to open the IMF to monetary unions with specific conditions.[67] Arts XI and XII of the Agreement Establishing the World Trade Organization could be a model, and I think that the new Section 3 in Art. II of the IMF's Articles of Agreement could be "Membership shall be open to international organizations with full competences in monetary matters at such times and in accordance with such terms as may be prescribed by the Board of Governors".[68] The membership of the

[65] E. DENTERS, *Representation of the EEC in the IMF*, in M. GIOVANOLI (ed.), *International Monetary Law. Issues for the New Millenium*, Oxford: Oxford University Press, 2000, pp. 221-224; E. DENTERS, *The IMF*, in J. WOUTERS (ed.), *International Encyclopaedia of Laws: Intergovernmental Organizations*, Deventer: Kluwer, 2010, para. 23; R. SMITS, *The European Central Bank: Institutional Aspects,* The Hague: Kluwer Law, 1997, p. 443; J. WOUTERS, S. VAN KERCHOVEN, T. RAMOPOULOS, *The EU and the Euro Area in International Economic Governance: the Case of the IMF*, in D. KOCHENOV, F. AMTENBRINK (eds), *The European's Union Shaping of the International Legal Order*, Cambridge: Cambridge University Press, 2013, pp. 321-326.

[66] Art. 56 of the Statutes of the Bank for International Settlements of 20 January 1930, text as amended on 27 June 2005, www.bis.org.

[67] In fact, it is an inclusion of a Regional Economic Integration Organization (REIO) clause in the Articles of Agreements. AREIO clause is commonly defined in UN protocols and conventions as "an organization constituted by sovereign states of a given region to which its Member States have transferred competence in respect of matters governed by [...] convention or its protocols and [which] has been duly authorised, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it [the instruments concerned]". See for instance Arts 4.1, 4.2, 4.3 and 4.5, 21 and 22 of the Kyoto Protocol. Art. II of the FAO Constitution was specifically modified to allow for the accession of "regional economic organizations". On the qualification of the EU as an international (integration) organization also C. ECKES, R. WESSEL, *The European Union: An International Perspective*, in T. TRIDIMAS, R. SCHÜTZE (eds), *The Oxford Principles of European Union Law – Volume 1: The European Union Legal Order*, Oxford: Oxford University Press, 2014.

[68] In that sense, see R. HENNING, *Regional Arrangements and the IMF*, Seminar of the Institute for International Economics on IMF Reform, Washington, 2005.

EU in the IMF raises the question of whether there should be a new quota to the EU that simply amasses the current EU member quotas or whether a new quota excluding the intercommunity trade and subsequently its effect on a member's role in the IMF's governance.

The modification of the IMF Articles of Agreement is *conditio sine qua non* to open the IMF to the EU membership and it requires an 85 per cent majority of the votes of the IMF members. The interest of the emergent countries in EU unification in the IMF, supported by the US opens up possibilities for this step. However, a strong political will in the EU countries is required to encourage this relevant IMF reform, and nowadays that does not exist.

In any case, the EU is a regional organization with legal personality (Art. 47 TFEU), and it will be the EU that joins the IMF. The Euro area has no international legal personality as an international organization and thus could not be an IMF member[69] even it was possible to organize two EU constituencies in the IMF, one for the Euro area countries and the other for the EU countries outside it with less intervention by EU institutions. It is clear, however, that a strong coordination between these two EU constituencies could be desirable and easy to establish.

The model to follow in the IMF for EU membership should be the joint participation of the EU Member States and the EU (mixity). The substitution of a single EU representation and a single EU chair for EU countries is neither legally founded, nor politically workable, because the EU could not substitute for the EU countries outside the Euro area, which continue to have their own currencies and national economic and monetary policies. On the other hand, the IMF has competences related to the surveillance of economic and fiscal policies, and even the Euro area Member States continue to keep competences in this field.

In my opinion, the IMF's Articles of Agreement do not fulfil the CJEU conditions, and the functional succession doctrine applied to the GATT is excluded in this case, because the matters covered by IMF activity are partially shared competences in EU law. Moreover, the other IMF members did not accept the EU institutions in substitution for EU countries in the Fund.[70] Consequently, an EU membership in the IMF could be a mixed

[69] See the reasoning in that sense of J. Wouters, S. Van Kerchoven, T. Ramopoulos, *The EU and the Euro Area in International Economic Governance*, cit., pp. 317-319.

[70] This functional succession doctrine has been constructed by the CJEU in, among others, judgment of 12 December 1972, joined cases 21/72 e 24/72, *International Fruit Company NV et al. v. Produktschap voor Groenten en Fruit*; judgment of 3 June 2008, case C-308/06, *Intertanko et al. v. Secretary of State for Transport*, para. 48; judgment of 21 December 2011, case C‑366/10, *Air Transport Association of America and Others*, paras 61-63. The CJEU recognized that multilateral agreements to which the EU is not a party may be binding upon the EU, provided that five conditions are satisfied: (i) All EU member states are parties to the multilateral agreement; (ii) member states intend to continue to be bound by such multilateral agreement as evidenced by their statements or in provisions of the TFEU; (iii) the multilateral agreement has been entered into prior to 1 January 1958 or before the accession of the country to the EU; (iv) the

representation and will not affect the IMF membership of the EU countries. This conclusion[71] is in line with the EU membership in other international organizations such as the WTO, the Food and Agriculture Organisation, or the European Bank for Reconstruction and Development.[72]

### IV.2. Improvement of the coordination of the EU Member States on IMF issues

The current EU coordination mechanism on IMF issues is based as I explained before on the work of two committees, the Brussels-based SCIMF and the Washington-based EURIMF. The performance of this mechanism is limited at the moment. In particular, the SCIMF has demonstrated little ability to steer the EURIMF due to a number of deficiencies. First, the SCIMF is hindered by its composition, which includes too many officials, some of whom are too junior to speak with authority on sensitive policy issues. Second, the SCIMF meets on a monthly basis, whereas the EURIMF meets as many as three times per week when there are urgent matters to discuss. Third, the SCIMF devotes most of its attention to horizontal policy issues such as the development of common

matter of the multilateral agreement has later been fully and exclusively assumed by the EU; and (v) the other contracting parties to the multilateral agreement have recognized such a shift in competence from the member states to the EU. The only international agreement that the CJEU considers as fulfilling these conditions was the GATT. However, the Court recently considered these conditions were missing in the Chicago Convention on Civil Aviation and the MARPOL Convention on marine pollution. On this cases, see P.J. Kuijper, *It Shall Contribute to the Strict Observance and Development of International Law*, in ECJ, *The Court of Justice and the Construction of Europe: Analyses and Perspectives on Sixty Years of Case-law*, Berlin: Springer Verlag, 2013, pp. 593-594; A. Rosas, *The Status in EU Law of International Agreements Concluded by the Member States*, in *Fordham International Law*, 2011, pp. 1304–1345; R. Wessel, *Reconsidering the Relationship between International and EU law: Towards a Content-based Approach*, in E. Cannizzaro, P. Palchetti, R. Wessel (eds), *International Law as Law of the European Union*, The Hague: Martinus Nijhoff, 2011, pp. 7–33.

[71] Louis rejects this interpretation because he said that “the economic perspective in the Fund is limited by the main objective of monetary and financial stability that, in turn, has to contribute to growth and jobs. On the other hand, the joint participation of the EU and its Member States raises problems due to IMF is a very specific financial institution based on quotas that are intended to express, by the use of objective data, the relative ranking of any country in the world economy. Nothing similar is to be found in other international institutions” (J.V. Louis, *The International Projection*, cit., p. 80).

[72] See among others F. Hoffmeister, *Outsider or Frontrunner? Recent Developments under International and European Law on the Status of the European Union in International Organizations and Treaty Bodies*, in *Common Market Law Review*, 2007, pp. 41-68; R. Wessel, *The Legal Framework for the Participation of the European Union in International Institutions*, in *Journal of European Integration*, 2011, pp. 621–635; J. Wouters, J. Odermatt, T. Ramopoulos, *The EU in the World of International Organizations: Diplomatic Aspirations, Legal Hurdles and Political Realities*, in M. Smith, S. Keukeleire, S. Vanhoonacker (eds), *The Diplomatic System of the European Union: Evolution, Change and Challenges*, London: Routledge, 2015; R. Wessels, S. Blockmans, *The Legal Status and Influence of Decisions of International Organizations and other Bodies in the European Union*, in P. Eeckhout, M. Lopez-Escudero (eds), *The European Union’s External Action in Times of Crisis*, Oxford: Hart Publishing, 2016 (forthcoming).

views on exchange rate policy and the international economic situation, whereas the EURIMF spends most of its time trying to reach a common view on country-specific issues in the context of IMF Art. IV consultations.

The Commission Proposal envisages strengthening this EU coordination on IMF issues until the establishment of a Euro area single chair. Arts 6 to 9 references some transitional arrangements in order for the Euro area to present a more coherent position within the IMF, in particular in the Executive Board, and the IMFC.

First, Art. 9 recalls the Council's ability, according to Art. 138, para. 1, TFEU to adopt a common position on IMF issues and imposes ("shall") on the Euro area Member States the obligation, within the Council, the Eurogroup, the EFC and/or the EWG, as appropriate, to closely coordinate and agree on common positions on all matters of Euro area relevance for the IMF Executive Board and Board of Governors meetings and shall use common statements on those issues.

This obligation can only be put in practice by improving the functioning of the two committees in charge of this coordination, the Brussels-based SCIMF and the Washington-based EURIMF. Perhaps it will be possible to create a Euro area SCIMF, linked to the EWG, and maintain the current SCIMF dependence on the European Financial Committee, similarly to the way the relations between the Eurogroup and the Ecofin Council are organized. The SCIMF function might be reformed using as a model the EU Trade Committee (previously known as the Art. 133 committee), which closely monitors the Commission's involvement in international trade talks through weekly meetings at the level of deputies and monthly meetings at the level of full members. In addition, the reverse majority procedure now accepted within the new EU economic governance framework could be applied in the decision-making process of the SCIMF.

It is interesting to note that Art. 218, para. 9, could be useful to strength the EU coordination in the IMF as clarified by the CJEU in a recent case which relates to decisions taken by the International Organization for Wine and Vine (IOV), of which the EU is not a member, but several of its Member States are. On 19 June 2012, the Council by qualified majority with Germany voting against adopted a decision establishing an EU position to be adopted in the OIV[73] on the basis of Arts 43 and 218, para. 9, TFEU. Germany (itself a member of the OIV) brought an action for annulment against that decision challenging Art. 218, para. 9, TFEU as the correct legal basis for the adoption of the decision arguing that Art. 218, para. 9, TFEU concerns only the adoption of the positions of the Union in bodies set up by international agreements of which the Union is a member. In its judgment of 7 October 2014 the Court reached a different conclusion. It argues that there is nothing in the wording of Art. 218, para. 9, TFEU to prevent the European Union

[73] Council Document 11436 on establishing the position to be adopted on behalf of the European Union with regard to certain resolutions to be voted in the framework of the International Organisation for Vine and Wine (OIV).

from adopting a decision establishing a position to be adopted on its behalf in a body set up by an international agreement to which it is not a party. [74]

However, there are complex limits to the ability of the EU members to forge common positions; some EU countries have difficulties or have no possibility of respecting the agreed position when they are in mixed constituencies where the majority is against the EU common position.

The second transitional arrangement is the extension to the Euro area as a whole of the ECB observer status in the IMF Executive Board. Art. 6, para. 1, of the Proposition entrusts the Eurogroup, the Commission, and the ECB to negotiate jointly to secure with the IMF the status of observer for the Euro area within the IMF Executive Board. This negotiation must be conducted taking into account conditions as set out in para. 2:

- the Euro area shall be represented in the Executive Board by the representative of a Euro area Member State already a member of the Board. That is the formalization of the current practice of having one of the current Executive Directors of the Euro area Member States, the EURIMF President, also representing the interests of the Euro area.

- The representative shall be designated for two and a half years in accordance with the procedure provided for in Art. 2 of Protocol no. 14 on the Eurogroup annexed to the Treaties.

- The Commission and the ECB shall also be able to attend meetings and intervene, as appropriate.

- An observer office shall be established within the IMF in order to support the exercise of the euro area's observer rights (Art. 6, para. 3).

- The status of observer in the Executive Board for the Euro area as a whole would allow covering the full range of Euro area matters, which include today most of the IMF activities.

The third transitional arrangement is related to the Euro area status in the IMFC. Art. 7 of the Proposal put by the Eurogroup, the Commission, and the ECB in charge to secure with the IMF a right for the Euro area to address the IMFC. The EU wants to maintain the current situation in which the Commission and ECB are already observers in the IMFC and to entrust to the President of the Eurogroup the Euro area representation in its Spring and Annual Meetings and the right to make a statement for the Euro area instead of the EU Council rotating presidency.

The last transitional arrangement concerns the reshuffling of the EU constituencies in order to create a Euro area single chair at the IMF Executive Board.

[74] Court of Justice, judgment of 7 October 2014, case C-399/12, *Germany v. Council*. "Where an area of law falls within a competence of the European Union, such as the one mentioned in the preceding paragraph, the fact that the European Union did not take part in the international agreement in question does not prevent it from exercising that competence by establishing, through its institutions, a position to be adopted on its behalf in the body set up by that agreement, in particular through the Member States which are party to that agreement acting jointly in its interest" (para. 52).

### IV.3. Euro area unified representation

The Commission Proposal envisages a unified representation of the Euro area within the IMF by 2025 at the latest and paves the way to the reshuffle of the current IMF constituencies into a single or some chairs composed only by Euro area countries. This reshuffle is the most controversial question to resolve in order to reach this unification.

In fact, the Commission thinks about a gradual rearrangement of the IMF constituencies in the transitional period and a single chair at the end of the process. Art. 8 of the Proposition forced the Euro area countries to regroup to establish one or several constituencies composed only of Euro area Member States and lays down the obligation to fully coordinate and agree in advance within the Council, the Eurogroup, the EFC and/or the EWG, as appropriate, all questions related to constituency arrangements of the IMF involving Euro area countries. In addition, the positions taken in relation to these constituency arrangements or changes thereto shall be consistent with the objectives of increasing coherence of the representation of the Euro area and achieving its unified representation within the IMF.

The entry into force of the 2010 IMF reform after US approval will facilitate the reshuffling of the EU constituencies on the IMF Executive Board. With the move to an all-elected Executive Board, it would become legally possible for executive directors who were formerly appointed by single-seat countries such as France and Germany (the United Kingdom is outside the Euro area) to be elected by other Member States and to represent them in the future. Also, the limit of 9 per cent of the quotas on countries merging into a constituency will go out, and it will be possible for big Euro area countries to come together and with other medium-size and small Euro area countries.

As I pointed out before, a first reshuffling was decided for some EU countries in November 2012. A new Benelux constituency and a Central and Eastern European constituency have been created, in order to accomplish the commitment to reduce "advanced European country representation" at the IMF Executive Board by two Executive Directors, a move included in the 2010 IMF reform. This reshuffling affects Euro area countries alongside a number of (potential) EU candidate countries, close European neighbours and even Asian countries. The constitution of these two new constituencies is not in line with the Commission Proposal and this reshuffling could be understood as a way for medium and small countries of the Euro area to perpetuate their power in the IMF.

It is possible to speculate about potential new constituencies, taking into account the rationale to create constituencies in the IMF.[75] The Commission Proposal envisages

[75] For Woods and Lombardi an effective constituency has four features: Maximization of voting powers, a shared agenda, unity within the constituency beyond shared interests, and lobbying capacity and technical support. Applying these features to the creation of constituencies by EU countries, the panorama is discouraging. In spite of the fact that EU countries share a similar agenda, have shared interests in IMF matters, and have lobbying capacity and technical means to build new IMF constituencies, they will

in the transitional period to establish one or several constituencies composed of only Euro area Member States. In my opinion, it is a bad strategy and the reshuffling will be more difficult. I think that it will be easier and more desirable in this transitional period to include all the EU countries and even to attract European candidates for future accession to the EU (Balkan states, Iceland) and other European countries like Norway, Switzerland, Ukraine, Moldova, Belarus or Turkey.

Using this broader approach, we can spread the reshuffling in several steps. The easiest reshuffle would be for Spain to leave its current Central American constituency and join the Italian constituency with an agreement between these two states to rotate the posts of executive director and alternate. Poland could migrate to the Central and Eastern European constituency and Ireland could leave the Canadian constituency and join either the Nordic/Baltic or the Benelux constituencies. It is also possible to envision a Mediterranean chair that could encompass France, Italy, Spain, Portugal, Greece, Malta, and Cyprus; a British/Nordic/Baltic chair which would add the United Kingdom and Ireland to the current Nordic/Baltic constituency; a German-Benelux constituency that would encompass Germany, the Benelux countries, and Austria; and a Central and Eastern European constituency comprised of Poland, Hungary, Czech Republic, Slovakia, Slovenia, Romania, Croatia, and Bulgaria.

The end of the process should be a unified representation with a single seat for the Euro area within all organs of the IMF. Art. 3 would specify the meaning of this unified representation which shall be based on the following principles:

- in the Board of Governors, presentation of the views of the Euro area by the President of the Eurogroup;
- in the IMFC, representation of the Euro area by the President of the Eurogroup;
- in the IMF Executive Board, direct representation of the Euro area by the Executive Director of a Euro area constituency, following the establishment of one or several constituencies composed only of Euro area Member States;
- election of the Executive Director, as referred to above, upon proposal of the President of the Eurogroup and in accordance with the procedure provided for in Art. 2 of Protocol no. 14 on the Eurogroup, annexed to the Treaties.

It is unclear if the Commission envisages a single chair or several constituencies for the Euro area countries. Clearly, a single chair is the highest degree of unification and the last steps of the unification process, headed by an Executive Director elected upon proposal of the President of the Eurogroup and in accordance with the procedure provided for in Art. 2 of Protocol no. 14 on the Eurogroup, annexed to the Treaties. However, it could be interesting to open the door to several Euro area chairs if the reordering

not maximize the voting power of each EU country in the IMF (N. Woods, D. Lombardi, *Uneven Patterns of Governance: How Developing Countries Are Represented in the IMF*, in *Review of International Political Economy*, 2006, pp. 480-515).

process of the IMF Executive Board advises it, due to the implications of the other EU Member States and many third countries. In this case, a strong coordination is needed and a single Executive Director could speak for the Euro area chairs.

In my opinion, the best end of the reunification process should be to regroup all Euro area countries in a single constituency, to create another chair with EU countries outside the Euro led by United Kingdom (if this country remain in the EU in spite of the Brexit referendum) and to encourage the creation of another constituency with the other European countries led by Switzerland. The coordination between the three chairs should be intense and an agreement could be established to facilitate the flow of States from one to another (when a European country adheres to the EU, it will join the EU countries outside the euro constituency and, if a EU Member States accede to the Euro it will pass to the Euro area chair).

This approach is also interesting to maintain a greater cooperation of the Euro area with non-Euro area Member States in the IMF. It is important to note that many IMF activities are related to matters covered by the EU rules applied to all EU countries as is the case for internal markets rules on financial services, capital markets union, some banking union elements and, EMU rules on coordination of economic policies. We cannot forget that EU Member States outside the Euro are compelled by the obligation to represents EU interest in an international organisation in which the EU is not a member (IMF) as the CJEU recalls in the OIV case.

If we have a Euro area single chair, the common position of the Euro area countries in IMF activities is necessary.[76] Nevertheless, Art. 4 of the Proposal establishes that all positions to be taken, orally or through written statements, within IMF organs shall be fully coordinated in advance within the Council, the Eurogroup, the EFC and/or the Euro Working Group (EWG), as appropriate. To put this obligation in place and speak with a single voice this Art. 4 also foresees the creation of a dedicated support structure within the IMF in order to support all actors engaged in the unified representation of the Euro area. In my opinion, it will be necessary to rearrange the EURIMF Committee and to create an EU Permanent Mission to the IMF following the model applied to the EU representation in the WTO.

A remarkable characteristic of the Proposal is the prominent role of the Eurogroup in the Euro area representation at the IMF. The Eurogroup President is in charge of the presentation of the views of the Euro area to the Board of Governors, as well as to represent it in the IMFC meetings. The Eurogroup will also manage the process of rearranging the current constituencies in order to achieve a single Euro area chair. This pre-eminence of the Eurogroup is in line with its increasing *de facto* powers in the EMU internal governance. However, this is an exception in the EU external relations in which the European

[76] The Council always has the power to adopt a common position on IMF activities pursuant to Art. 138, para. 1, TFEU.

Commission has the dominant position, except the Common Foreign and Security Policy (CFSP) domains in which the High Representative leads the EU representation.

To counterbalance the Eurogroup pre-eminence it may be adequate for the European Commission to manage the Euro area support structure, the technical infrastructure required to cook the Euro area common position on IMF activities under the political supervision of the Eurogroup.

## V. CONCLUSIONS

After many years of inactivity and *ad hoc* pragmatic arrangements, the time is coming to rearrange the external side of the EMU. The economic crisis and the subsequent sovereign debt crisis in Europe have forced more transfers of competences from the EU countries to the EU institutions in the economic policy field, and these changes must be reflected in the EMU's external relations, including the EU participation in the international organisations and fora working in the international financial and monetary system, in particular the IMF.

The distribution of power in the global economy is changing, and the EU share in it is expected to decline in the coming years and decades. The EU Member States' power in the international institution must also decline in a similar way. The best measure to counterbalance this tendency is that EU or at least the Euro area has a joint representation and speaks with one voice. To this end and to develop Art. 138, para. 2, TFEU, the European Commission has introduced a Decision Proposal in October 2015 to enhance the Euro area representation in the IMF in a two-stage process. The final objective is to have a single Euro area chair in the IMF Executive Board for 2015 leading by and Executive Director that will be nominated using the Eurogroup Protocol procedure. During the transitional period, the Eurogroup and the Council will promote and supervise the reshuffling of the current IMF chairs including Euro area countries to Euro-only constituencies. It is a difficult diplomatic challenge for the EU, because it will also affect EU Member States outside the Euro and, others close European and even Asian countries. Hopefully, the US Congress approves in December 2015 the 2010 IMF reform the implementation of which will eliminate legal obstacles to a consolidation of the EU Member State constituencies in the IMF.

An encouraging precedent to this reshuffling is that all Euro area Member States which are currently participating in the Asian Infrastructure Investment Bank have agreed in January 2016 to form a single Euro area constituency in this Bank.[77]

[77] See the Eurogroup President Jeroen Dijsselbloem information about this decision in www.consilium.europa.eu.

The Decision Proposal assigns a prominent role to the Eurogroup to control and supervise this reshuffling process and to represent Euro area at the IMF. The Eurogroup President will be in charge of the presentation of the views of the Euro area to the Board of Governors, as well as to represent it in the IMFC meetings. This pre-eminence of the Eurogroup is in line with its increasing *de facto* powers in the EMU internal governance but need to be counterbalance with the European Commission powers and the European Parliament controls.

The Decision Proposal is not ambitious and proposes a single Euro area chair at the IMF Executive Board but without forcing a legal EU mixed representation in the IMF. In my opinion, the EU member countries must continue to be IMF members and the EU must also become an IMF member, after changing the IMF's Articles of Agreement or using a broad interpretation of Art. II, Section 2. The EU representation at the IMF Executive Board could be structured into two constituencies, one including the Euro area countries and controlled by EU representatives and the other including the remaining EU countries outside the Euro.

The challenge to articulate a single voice of the Euro area at the IMF is a test for the external action of the EU in the coming years. In the IMF, the current dispersion of European representation is not only suboptimal from an effectiveness and efficiency perspective when trying to pursue EU interests, but it is also increasingly at odds with the expectations of the international partners. The EU's position in the new financial world governance will dependent on the ability to develop a single voice of the Euro area at the IMF and subsequently in the remaining international financial organisation and fora.