



OVERVIEWS

SPECIAL SECTION – DEMOCRATISING THE EURO AREA THROUGH A TREATY?

DEMOCRATISING THE EUROZONE: SOME LESSONS TO BE DRAWN FROM T-DEM

TABLE OF CONTENTS: I. Introduction. – II. Democratising the Eurozone, a creative thinking exercise. – II.1. *De lege ferenda*. – II.2. Working on concepts – II.3. Beyond national constitutional models – III. Democratising the Eurozone, a constrained exercise. – III.1. Democratisation by politicisation? – III.2. Democratising without disintegrating?

I. The Economic and Monetary Union (EMU) is in a process of restructuration. In December 2017 the Commission set out a *Roadmap for deepening the Economic and Monetary Union*, detailing concrete steps to be taken over the next 18 months. The document included a proposal to establish a European Monetary Fund, a proposal to integrate the substance of the Treaty on Stability, Coordination and Governance into the Union legal framework, a Communication on new budgetary instruments for a stable euro area within the Union Framework, and a Communication spelling out the possible functions of a European Minister of Economy and Finance who could serve as Vice-President of the Commission and chair the Eurogroup.¹ In President Juncker's vision, any reform of the EMU has to achieve efficiency and democracy at the same time: "Today's robust economic growth encourages us to move ahead to ensure that our Economic and Monetary Union is more united, efficient and democratic".²

Democracy in the Eurozone is the perspective chosen by four scholars, Stéphanie Hennette, Thomas Piketty, Guillaume Sacriste and Antoine Vauchez, who published in 2017 a Draft Treaty on the Democratisation of the Governance of the Euro Area ("T-

¹ Communication COM(2017) 827 final of 6 December 2017 from the Commission on a proposal for a Council regulation for the establishment of a European Monetary Fund; Communication COM(2017) 824 final of 6 December 2017 from the Commission on a proposal for a Council Directive laying down provisions for strengthening fiscal responsibility and the medium-term budgetary orientation in the Member States; Communication COM(2017) 822 final of 6 December 2017 from the Commission on new budgetary instruments for a stable Euro Area within the Union framework; Communication COM(2017) 823 final of 6 December from the Commission on a European Minister of Economy and Finance.

² J.-C. JUNCKER, *Deepening Europe's Economic and Monetary Union*, 6 December 2017, available at ec.europa.eu.

Dem").³ *European Papers* has invited scholars from different disciplines to comment this Draft Treaty. T-Dem is a stimulating project for at least two reasons. Its authors must be praised, first of all, for having moved away from the splendid isolation of theorists, and for taking the risk of drawing up a treaty draft. Academics are not naturally prone to writing contract drafts or treaty proposals. Secondly, T-Dem deserves to be provided a forum in consideration of its commendable ambition – the democratisation of the Eurozone. Democracy indeed remains to a certain extent a blind spot in the literature about the Eurozone reform. Yet, considering the enormous impact that economic conditionality had on the lives of million of citizens during the Euro Crisis, a project that takes democracy seriously can only be welcome. Of course, T-Dem is neither a definitive nor a perfect draft, but should be thought as a basis for reflection, its authors argue. We have decided to take them at their words, and to consider T-Dem as a starting point to reflect upon the best methods to democratise the Eurozone.⁴

T-Dem is a good starting point because now that the Euro Crisis is over, time has come to assess the Eurozone architecture, and to identify its main flaws. Admittedly, this assessment is not an easy task. Jurists who strive to understand the legal causes of the crisis describe a process of de-legalisation in the Eurozone, and emphasise the problematic unfolding, in the course of the crisis, of a state of exception.⁵ EU law – and the guarantees it usually provides – was circumvented or avoided during the crisis. Resorting to international law instead of EU law instruments constitutes a first cause of the problem, while the Court of Justice's self-restraint in the *Pringle* case demonstrates another facet of the law retreat.⁶ Additionally, the problematic imbalance in the distribution of powers between the EU and its Member States in the economic and monetary fields certainly played a role in the Euro Crisis. As Andrew Duff argues, the EMU could not give any sense of solidarity, and rather provides distrust, torn as it is between federal monetary policy and confederal economic policy.⁷ For many observers indeed, the Eurozone crisis has revealed the limits of European unity.

³ S. HENNETTE, T. PIKETTY, G. SACRISTE, A. VAUCHEZ, *Pour un traité de démocratisation de l'Europe*, Paris: Seuil, 2017. The first version was published in French. Then the authors circulated their Treaty draft in Europe. They opened a discussion on *Verfassungsblog*, and, in Italy, the text was presented in the *Corriere della sera*. Then Paul Magnette has initiated a discussion with the T-Dem team: P. MAGNETTE, *Démocratiser l'Europe: Paul Magnette répond à Thomas Piketty*, in *Alternatives Economiques*, 14 June 2017, www.alternatives-economiques.fr.

⁴ T-Dem, I would argue, is more than what Olivier Rozenberg names a "realistic utopia": O. ROZENBERG, *The T-Dem as a Realistic Utopia: Why it Fits what We Know about Parliaments*, in *European Papers*, 2018, Vol. 3, No 1, www.europeanpapers.eu, p. 121 *et seq.*

⁵ See C. JOERGES, *Integration Through De-Legalisation?*, in *European Law Review*, 2008, p. 291 *et seq.*

⁶ Court of Justice, judgment of 27 November 2012, case C-370/12, *Pringle*. See also N. SCICLUNA, *Politicization without Democratization: How the Eurozone Crisis Is Transforming EU Law and Politics*, in *I-CON*, 2014, p. 545 *et seq.*

⁷ A. DUFF, *Genuine Economic and Monetary Union Will Be Federal or It Will Not Be*, in *European Papers*, 2018, Vol. 3, No 1, www.europeanpapers.eu, p. 67 *et seq.*

While not ignoring any of these elements, the four authors of T-Dem, coming from three different disciplines (law, economics and political science), privilege another perspective, using democracy as their analytical grid. Their ambition is not to improve the efficiency of Eurozone, but to promote its democratisation. The “technocratic-intergovernmentalist” turn of the Eurozone, they argue, is highly problematic.⁸ Admittedly, Eurozone governance has nothing in common with the “economic Government” supported by France during the negotiations of the Maastricht Treaty. The crisis has even increased its architectural defects, revealing that the Eurozone is directed by a “jumble of administration”, with unaccountable entities – namely the Eurogroup and the European Central Bank (ECB) – taking the lead.⁹ In addition, the reinforcement of the executive capacity of European institutions in the field of economic policy has taken place in the absence of any parallel development of parliamentary control. The European Parliament (EP) indeed remains largely excluded from the governance of the Eurozone. As for national parliaments, they are recognised – by the Treaty on Stability, Coordination and Governance (TSCG) – only as limited advisory powers. This is highly problematic given that this “intergovernmental network of bureaucratic entities” is making economic and monetary decisions that encroach upon national social pacts. Consequently, it is the *social acquis* of the Member States that is undermined by the Eurozone configuration.

T-Dem opens with this diagnosis. Then comes the prescription: the democratisation of the Eurozone is the only possible cure. To this end, Hennette, Piketty, Sacriste and Vauchez came up with a straightforward solution: the creation of a new Eurozone Parliamentary Assembly at the core of Eurozone governance. The proposed Assembly is composed of a maximum of four hundred members. Four-fifths of them are representatives appointed by national parliaments in proportion to their constituent groups, while the remaining one-fifth are to be appointed by the European Parliament. Arguing for their choice of a mix composition, the authors claimed that the next necessary steps towards deepened fiscal and social convergence, and economic and budgetary coordination within the Eurozone, will not be decided upon without the direct involvement of the representatives of national parliaments. Logically the new Assembly is vested with important powers in consideration of its central role: it shall set the political agenda by taking part to the preparation of the Euro summit meetings’ program, as well as the work of the Eurogroup; it shall be endowed with legislative capacities, and, in the event of a disagreement with the Eurogroup, it shall have the final say on the vote of the Eurozone budget.

⁸ Habermas refers to the notion of “post-democratic autocracy” and Lenaerts makes use of the expression “semi-intergovernmentalism”, K. LENAERTS, *EMU and the European Union’s Constitutional Framework*, in *European Law Review*, 2014, p. 753 *et seq.*

⁹ The expression is borrowed from Sébastien Adalid’s text, S. ADALID, *T-Dem Versus Economic Meta-policy: The Means and the Ends*, in *European Papers*, 2018, Vol. 3, No 1, www.europeanpapers.eu, p. 19 *et seq.*

In sum, T-Dem is an ambitious exercise of constitutional writing, which deserves to be critically assessed. A collection of essays on T-Dem, with different (positive, sceptical or critical) voices is published in this Issue of *European Papers*. Their authors examine every assumption and choice made by Hennette, Piketty, Sacriste and Vauchez. They scrutinize the treaty draft, focus on its flaws, and suggest improvements. These critical readings must be welcomed because the democratisation of the Eurozone represents a common objective for EU scholars. Undoubtedly, democratising is an ambitious undertaking. It requires creative thinking, which T-Dem assuredly provides.¹⁰ At the same time, democratising the Eurozone constitutes a constrained exercise, for improving the conditions of a democratic debate has to go hand in hand with other ends – whether converging or conflicting.¹¹

II.1. For the authors of T-Dem, reforming the Eurozone governance supposes institutional reorganization, and redistribution of power. Given the current EU law constitutional constraints, this would require significant revisions of the founding Treaties. Yet, the T-Dem drafters rightly acknowledged that such amendments are “strongly impracticable in the short term”, as a consequence of the unanimity requirement, and of the traumatizing experience of the French and Dutch refusal of the European Constitution. Considering that the *status quo* was not an option, Hennette, Piketty, Sacriste and Vauchez have decided to “maximise the legal margins of *manoeuvre* that could allow the creation of a truly democratic system of governance for the Euro Area, as a complement to the EU”: they thus resolved to operate outside the European Treaties framework in order to avoid the legal obstacle that the revision procedures would imply.¹² T-Dem “replicates the modus operandi of both the TSCG and the European Stability Mechanism (ESM) Treaty”, as validated by the Court of Justice in the *Pringle* ruling, but “does so in order to engage in a democratising effort”.

The solution adopted by the T-Dem team required a dose of imagination: in the absence of legal solution within the realm of EU law, they started from what was an anomaly – even if it was legitimized by the Court of Justice –: resorting to international law instruments. The solution, of course, is not beyond criticism; but it gives the T-Dem drafters the possibility to democratise the Eurozone *de lege ferenda*.

II.2. T-Dem operates, simultaneously, at a concrete and a theoretical level. Changing the institutional system of the EU indeed requires both political and philosophical justifica-

¹⁰ See *infra*, section II.

¹¹ See *infra*, section III.

¹² See on this part of the project, S. PLATON, *Democratising the Euro Area without the European Parliament and Outside the EU System. A Legal Analysis on the Draft Treaty on the Democratisation of the Governance of the Euro Area (“T-Dem”)*, in *European Papers*, 2018, Vol. 3, No 1, www.europeanpapers.eu, p. 103 *et seq.*

tion. Interestingly enough, Hennette and the other authors grounded their project on the concepts of “democratic emergency” and “democratic conditionality”. There is a certain dose of provocation in the use of such notions: during the crisis, Member States and EU institutions referred to emergency in order to justify exception, to lessen legal guarantees and democratic control. Hence follows the strategy of the T-Dem team: proposing a “U-turn”, where the concept of emergency justifies neither the suspension of the law nor the introduction of new derogation to the recognition of rights. Instead, in referring to emergency, they point at the absolute necessity of changing the rules of the game.¹³ Unlike the notion of democratic deficit, which is a mere analytical tool in the literature, democratic urgency here constitutes a prescriptive notion: because of its peremptory nature, emergency justifies institutional reform.

Assuredly there is something subversive in this intellectual construction. This might be the reason why Christian Joerges considers that T-Dem reflects the “theoretical moment” EU integration is currently living.¹⁴ The approach has also obviously triggered less enthusiastic reactions: urgency, Andrea Manzella claims, is irreconcilable, according to the general principles of the rule of law, with the creation of a new institutional setting.¹⁵ Alternatively, one may view the notion of democratic emergency and democratic conditionality as slogans used to justify an endeavour to curb the political orientation of the Eurozone. Be that as it may, the authors of T-Dem must be praised for their effort in providing the Eurozone with new conceptual foundations.

II.3. In vesting the Eurozone Assembly with important powers, Hennette *et al.* chose to consolidate the role of the parliamentary in the EU system. Their aim is to inject a dose of parliamentary control in every locus where economic and monetary decisions are taken. Whenever the European executive pole makes a decision on convergence and conditionality, the parliamentary pole should intervene. Justifying their position, the T-Dem authors explain that their objective is neither to replicate “old models” by mimicking the procedures of the representative democracy, nor to put a “Government” and a “Parliament” face to face. Rather, they ambition to depart from the federalist projects that rely on a strong and accountable executive power. Needless to say, the harshest critiques to T-Dem came from federalist voices.¹⁶

¹³ The expression is borrowed from C. JOERGES, *Comments on the Draft Treaty on the Democratisation of the Governance of the Euro Area*, in *European Papers*, 2018, Vol. 3, No 1, www.europeanpapers.eu, p. 75 *et seq.*

¹⁴ *Ibidem.*

¹⁵ A. MANZELLA, *Notes on the Draft Treaty on the Democratisation of the Governance of the Euro Area*, in *European Papers*, 2018, Vol. 3, No 1, www.europeanpapers.eu, p. 93 *et seq.*

¹⁶ See A. DUFF, *Genuine Economic and Monetary Union Will Be Federal or It Will Not Be*, cit.; E. COHEN, J.-L. BOURLANGES, *T-Dem: l'urgence démocratique européenne selon le PS*, 21 March 2017, www.telos-eu.com.

But it is not a regime of Assembly either that the four authors are supporting. Unlike the French Revolution thinkers, they do not promote a regime whereby all the powers are concentrated in the hands of one dominant Assembly. Rather, they suggest that the legislative power should be shared between the Assembly and the Eurogroup. Luuk Van Middelaar and Vestert Borger offer to name this Assembly a “Congress”.¹⁷

Noteworthy is the fact that the T-Dem team does not propose a mere transposition of existing constitutional solutions. Starting from the observation that the Eurozone governance is characterised by the intertwinement between the national and European levels of decision-making. If there was only one thing that the Eurocrisis has revealed, it is that economic decisions at the European and national levels are intimately connected. The phenomenon was even reinforced by the setting up of the European Semester as a cyclical and multilevel process.¹⁸ Consequently, T-Dem tries to operate in the accountability gap between national and European institutions. Unsurprisingly L. Van Middelaar welcomes this perspective: when the power is located in the intermediary sphere between the national and European levels, we need to have institutions operating at this intermediary stage.¹⁹ To him, the complex organisation of the T-Dem Parliamentary Assembly, where members of the European Parliament (MEPs) and members of national parliaments operate in the transnational political sphere, is an appropriate response. There is a vast literature in political science devoted to the transnational political space and inter-parliamentarism in the EU.²⁰ T-Dem can be thus viewed as an endeavour to translate this approach into practise; as an effort to articulate democracy and the EU multi-level constitutional configuration?

The proposal has however met with fierce criticisms. The strongest recurrent critiques are relative to the creation of a Parliament limited to the Eurozone Member States, the mix composition of this Parliament, the fact that T-Dem concentrates only on the parliamentary and not on the governmental aspect of the EMU reform, the possible impact of T-Dem on national parliaments, and the political choices supported by the T-Dem authors.²¹ This is not to deny that T-Dem has room for improvement. Several technical issues must be addressed, and the institutional design chosen for the future

¹⁷ The Eurozone Congress “should operate as the parliamentary interlocutor of the ‘chiefs’. Their political decisions or strategic orientations would require its consent”: L. VAN MIDDELAAR, V. BORGER, *A Eurozone Congress*, in *European Papers*, 2018, Vol. 3, No 1, www.europeanpapers.eu, p. 127 *et seq.*

¹⁸ B. CRUM, *Making Democracy the Priority in EU Economic Governance: Four theses on the Foundations of the T-Dem Project*, in *European Papers*, 2018, Vol. 3, No 1, www.europeanpapers.eu, p. 59 *et seq.*

¹⁹ L. VAN MIDDELAAR, V. BORGER, *A Eurozone Congress*, cit.

²⁰ See *inter alia* N. LUPO, C. FASONE (eds), *Interparliamentary Cooperation in the Composite European Constitution*, Oxford: Hart, 2016; A. MANZELLA, *The European Parliament and the National Parliament as a System*, in S. MANGIAMELI (ed.), *The Consequences of the Crisis on European Integration and on the Member States*, Cham: Springer, 2017, p. 47 *et seq.*

²¹ N. LUPO, *A New Parliamentary Assembly for the Eurozone: A Wrong Answer to a Real Democratic Problem?*, in *European Papers*, 2018, Vol. 3, No 1, www.europeanpapers.eu, p. 83 *et seq.*

democratic EMU remains questionable. But before drawing the constitutional design of the Eurozone, the authors should have reflected upon the means and ends of “democratisation”, for democratising the Eurozone is indeed a very constrained exercise.

III. A number of commentators have criticized the side effects or the contradictions of T-Dem. What comes up from these criticisms is that the proposal underestimates the fact that democracy, in the EMU, is “only one element in a more complicated story”.²² The articulation of politicisation and democratisation in T-Dem remains indeed unclear. Also questionable is whether the proposal rightly articulates democratisation and integration.

III.1. The T-Dem’s primary objective is to replace “intergovernmental bureaucracy” by democracy. This entails that independent authorities become accountable for their decision in the economic and monetary fields.²³ But the Eurozone system is also flawed because rules and numbers have gained importance over time. In line with Antoine Vauchez’s works, the T-Dem drafters call for more “open political struggles and conflicts” in the EMU.²⁴ Democracy needs institutionalised and tamed political conflicts. The politicization of the Eurozone, under this view, is linked to its democratisation.

Hennette, Piketty, Sacriste and Vauchez do however not restrict their politicization ambition to the creation of a new Assembly. They also suggest a political reorientation of the EMU structures and founding principles. Unsurprisingly, many commentators have criticised T-Dem for its “politicisation”.²⁵ Among them, Elie Cohen and Jean-Louis Bourlanges have put forward severe criticisms. They argue that the real objective of T-Dem is not to improve the Eurozone governance; rather, its disguised objective is political – not to say politician: what T-Dem really aims to do is to recycle hackneyed positions coming from left-wing political parties: Eurobonds, debt mutualisation, and the admissibility of deficits.

There is no denying that the first version of T-Dem was drafted in the context of the French presidential electoral campaign. Benoit Hamon, the Socialist party candidate, was the main supporter of the creation of a Eurozone Parliamentary Assembly, which he viewed as the best means in order to democratise the Eurozone. Further, in the French original version of T-Dem, the four authors have acknowledged their political preferences. Their ambition was to provide a democratic framework likely to outvote

²² A. DUFF, *Genuine Economic and Monetary Union Will Be Federal or It Will Not Be*, cit.

²³ See P. CRAIG, *The Eurogroup, Power and Accountability*, in *European Law Journal*, 2017, p. 234 *et seq.*; D. CURTIN, *Accountable Independence of the European Central Bank: Seeing the Logics of Transparency*, in *European Law Journal*, 2017, p. 28 *et seq.* See also B. CRUM, D. CURTIN, *The Challenge of Making EU Executive Power Accountable*, in S. PIATTONI (ed.), *The European Union: Democratic Principles and Institutional Architectures in Times of crisis*, Oxford: Oxford University Press, 2015, p. 63 *et seq.*

²⁴ A. VAUCHEZ, *Démocratiser l’Europe*, Paris: Seuil, 2014, p. 97.

²⁵ E. COHEN, J.-L. BOURLANGES, *T-Dem: l’urgence démocratique européenne*, cit.

austerity, or at least to substantially modify the current balance of power. Consequently, T-Dem was fiercely criticized (and even rejected by some) for constituting a political program rather than a democratisation endeavour.

Even among supporters of the Eurozone Assembly, the introduction of political objectives in T-Dem is debated. L. Van Middelaar and V. Borger consider that the Assembly, acting as a legislator together with the Eurogroup, should not be granted competence allowing it to decide on the corporate tax policy or to pool public debts, for this would go way beyond the democratic “blind angle”.²⁶ For Ben Crum, it is inconsistent and self-undermining to tie democratic reforms to a set of substantive proposals. In doing so, the project “adopts a typical technocratic language of necessity that has so much dominated the handling of Eurocrisis so far”.²⁷ If democracy is the priority “then it cannot be premised on a particular set of policies that we require the democratic process to adopt”. The majority of commentators hence contend that constitutional framework has to be neutral and should facilitate, and not preclude, policy choices.

To this critique, the authors of T-Dem would object that the current economic constitution of the EU is not policy neutral. The existing treaties have constitutionalised the socio-economic ordo-liberal order.²⁸ The Eurozone crisis has evidenced the limited array of political options available to decision-makers. T-Dem would only provide the legislative power with the possibility to opt for alternative economic policies, a possibility that does not exist under the current constitutional constraints. Be that as it may, T-Dem, in connecting democratisation and the debt mutualisation, affects the economic constitution of the EU. This would unquestionably require a democratic debate. At least, such a change calls for a more solemn reform than a surreptitious change of the Eurozone governance at the margin of the founding treaties.

III.2. Another range of critiques has pointed at the potential disintegrative effect of T-Dem, contending that the proposal would have a double impact on the EU integration project. Firstly, in accentuating – and institutionalising – the logic of differentiation, T-Dem would put the European integration process in jeopardy. Secondly, the central role given to national members of parliaments (MPs) in the Euro Area Parliamentary Assembly would create a risk of re-nationalization of the political debates and decisions in the Eurozone.

These two critiques are addressed to the authors of T-Dem in relation to their willingness to create a Parliamentary Assembly specific to the Eurozone. The European Parliament immediately refused to support the project; the Commission rapidly followed. Even Emmanuel Macron, who supported the idea of differentiation in his Sorbonne

²⁶ L. VAN MIDDELAAR, V. BORGER, *A Eurozone Congress*, cit.

²⁷ B. CRUM, *Making Democracy the Priority in EU Economic Governance: Four theses on the Foundations of the T-Dem Project*, cit.

²⁸ See J. GROSIDIER, “Une démocratisation” européenne contre les politiques d’austérité? *Le T-Dem ou le pari d’une zone euro à visage humain*, in *Juspoliticum*, 13 April 2017, blog.juspoliticum.com.

Speech, has not endorsed the idea of a Parliamentary Assembly devoted to the sole Eurozone matters. Finally, a majority of scholars has expressed its doubts on this proposition.

In addition to the complexity implied by the creation of another parliamentary institution in Europe, the main argument against the establishment of a specific assembly relies to its possible negative impact on the European Parliament. After all, the European Parliament is the democratic institution of the EU. And if a main architectural flaw of Eurozone is the limited role of the EP – as Hennette, Piketty, Sacriste and Vauchez have argued –, why not reinforcing it instead of creating another assembly? Moreover, the limited information about the relationship between the two assemblies is problematic: Art. 3, para. 2, of the T-Dem only provides that the Assembly should “work in close cooperation with the European Parliament”, which is clearly insufficient.

It is far from certain that the T-Dem team has properly addressed the challenges related to the coherence of the institutional design of the EU, and to its unity. For instance, the uniqueness of economic policy provisions (Art. 120 *et seq.* TEU) pleads for the inclusion of MPs from non-Eurozone countries.²⁹ It is also clear from Art. 3, para. 4, TEU that the euro is the currency of the whole EMU, and not only of the Eurozone. Allemand's argument is in the same vein. Although the euro area represents a specific level of integration within the EU, it is not an autonomous entity separated from the Union: economic and monetary policies have to comply with EU values, principles and objectives.³⁰ In creating another assembly, T-Dem risks creating an irreversible gap between the countries of the two monetary areas. Nothing is organised to limit its divisive effects on the overall structure of the EU.

Moreover T-Dem opens the Pandora's box. As Brack, Costa and Crespy argue, the draft is institutionalising the differentiation of the EU at the parliamentarian level. In so doing, the proposal risks “to open a Parliamentarianism *à la carte*”.³¹ Why not then also creating a specific assembly for the Schengen area or an assembly for the Permanent Structured Cooperation on Security and Defence (PESCO)? Manzella adds to the critique with the mention of another difficulty: if a Eurozone parliament was created, the rules of the European Parliament would have to resolve the problem of the status of MEPs elected in different monetary areas according to the basic principle of equality among its members.

The reactions to T-Dem evidence the absence of a consensus on the logic of differentiation. T-Dem affronts a complex question: shall we democratise the part (the Eurozone governance) or the whole (the EU in general)? The four authors have justified their

²⁹ A. MANZELLA, *Notes on the Draft Treaty*, cit., p. 93 *et seq.*

³⁰ F. ALLEMAND, *Taking Democracy Seriously in the Euro Area: Reinvigorating the European Parliament's Functions and Responsibilities*, in *European Papers*, 2018, Vol. 3, No 1, www.europeanpapers.eu, p. 33 *et seq.*

³¹ N. BRACK, O. COSTA, A. CRESPIY, *The “T-Dem” for Democratizing the Europe's Economic and Monetary Union – A critical Appraisal*, in *European Papers*, 2018, Vol. 3, No 1, www.europeanpapers.eu, p. 45 *et seq.*

choice by the specificity of the Eurozone governance. For them, the latter differs from the rest of European issues. It is not about organizing market; rather the aim is to coordinate economic policies, to harmonize fiscal legislation, and to organize the convergence of budgetary policies. In other words, it deals with Member States' social pacts. But the argument of a qualitative leap would need to be further substantiated, rooted as it is on a rather old-fashioned reading of the internal market. After all, the *Viking* and *Laval* cases have demonstrated that free movement rules also encroach Member States' social *acquis*.³² Hennessey, Piketty, Sacriste and Vauchez would also be more convincing if they explained why the alternative – to reorganize the functioning of the European Parliament – was not a better option. Alternatives are suggested: to reform the EP's rule of procedure and organise a special session devoted to Eurozone affairs, to create, like in Italy, a system of inter-parliamentary conference as an autonomous body procedurally linked to the EP and empowered to draft legislative proposals pertaining to the regulation of the Eurozone, etc. Be that as it may, in operating at the core of a *dissensus*, T-Dem could only generate reactions.

T-Dem is suspected to produce disintegrative effects for another reason. The composition of the Euro Area Assembly is likely to reinforce the current intergovernmental nature of the decision-process. Indeed, the Eurozone Parliament would be composed in majority of national MPs. The T-Dem team probably anticipated a process of transnational socialization and the emergence of a contradictory European public debate. But a different logic can also be predicted, whereby national MPs would vote along national lines. There is a risk that the mix composition, instead of creating a transnational public space, would replicate the opposition at the Council, thus reinforcing the governmental force in the EU construction. As Duff suggests, one may even doubt that most MPs will be either informed or sympathetic to the common interest of the Eurozone.³³ In other words, T-Dem could gear the system towards the representation of territorial – here national – interests.³⁴ Hence, while promoting a system whereby a strong parliament ensures a democratic decision beneficial to European citizens, it could in the meantime reinforce intergovernmentalism.

For the same reason, what is viewed as a creative and astute idea (to act at the margin of the EU treaties in order to avoid treaty amendment) could well have side effects. Isn't there a contradiction in using international law as a tool to democratise the EU? To work outside the treaty is problematic, Manzella argues, "because tools must al-

³² Court of Justice, judgment of 11 December 2007, case C-438/05, *International Transport Workers' federation and Finnish Seamen Union v. Viking Line ABP* [GC]; Court of Justice, judgment of 18 December 2007, case C-341/05, *Laval und Partneri Ltd* [GC].

³³ A. DUFF, *Genuine Economic and Monetary Union Will Be Federal or It Will Not Be*, cit.

³⁴ N. BRACK, O. COSTA, A. CRESPIY, *The "T-Dem" for Democratizing the Europe's Economic and Monetary Union – A critical Appraisal*, cit.

ways be connected to the constitutional structure of the EU".³⁵ Such a connection emerges from the Fiscal Compact whose obligations largely coincide with measures taken at the EU level; it also emerges from the Treaty on the ESM, which, in reality, was devised as an implementing measure of Art. 136 TFEU. For decades, the EU has strived for its autonomy, for which EU law plays a major role. There is consequently no surprise that, for most commentators, the project to design an international treaty equates to a return to intergovernmentalism. Needless to say that this must sound paradoxical to scholars whose ambition was to depart from the bureaucratic intergovernmentalist structure of the EMU.

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³⁵ A. MANZELLA, *Notes on the Draft Treaty*, cit.

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