



OVERVIEWS

SPECIAL SECTION – DEMOCRATISING THE EURO AREA THROUGH A TREATY?

T-DEM *VERSUS* ECONOMIC META-POLICY: THE MEANS AND THE ENDS

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I. “[A]xioms as simple as they are universal; the *means* ought to be proportioned to the *end*; the persons, from whose agency the attainment of any *end* is expected, ought to possess the *means* by which it is to be attained”.¹

The democratisation of the European Union is an old challenge. It is virtually impossible to trace back the origin of the notion. It has evolved into one of the Union’s an-thems, that everybody hears but that no one really listens to or believes in. In this con-text, the Treaty on the democratisation of the governance of the euro area is an im-portant initiative.² All too often, debates on this topic have been too theoretical or ab-stract, while concrete solutions are needed. T-Dem offers us food for debate, a material starting point that calls for criticism and improvement. It has the merit of existing.

This *Overview* might be a biased one. During the fall of 2017, T-Dem drafters orga-nized a series of seminars that the author attended. So, this *Overview* might be influenced by the interventions and debates of the different sessions.³ T-Dem should not be seen as a definitive text, but rather as a process. No State signed it or even submitted it. So, this *Overview* is a contribution to this on-going process, with a view to improving T-Dem. The authors recognize that T-Dem was written quickly in the context of the French electoral campaign. So, the Treaty can be improved by examining the diagnosis in greater detail, so as to get a better understanding of the challenges to democracy in the Eurozone.

This draft Treaty raises many questions. Our goal is not to address all of them, but a specific one: are the powers vested in the Parliamentary Assembly of the Eurozone by

¹ A. HAMILTON, *The Federalist*, no. 23, available at avalon.law.yale.edu.

² Hereafter T-Dem. In this contribution, reference will be made to the French version of the T-Dem: S. HENNETTE, T. PIKETTY, G. SACRISTE, A. VAUCHEZ, *Pour un traité de démocratisation de l’Europe*, Paris: Seuil, 2017.

³ The ideas mentioned in this document are the author’s and his only.

the Treaty sufficient to deal with democratic issues in the coordination of national economic policies? This question is central because if the answer is no, adoption of T-Dem is useless. Of course, other issues will emerge along the way, such as the compatibility of T-Dem with the Founding Treaties.⁴ But they are relevant only if T-Dem is concluded.

An ambivalence lies at the heart of T-Dem. The explanations given by its authors provide one of the clearest diagnoses of the problems that the Euro area is facing. But the solutions put forward by them are sometimes too simplistic. The problem lies at the heart of their diagnosis, which is not based on a proper understanding of the Economic and Monetary Union (EMU). The problem is a political one, linked with the question of mass politics. EMU disrupts the link between political choices and citizens by creating a “meta-policy” above national democracies.⁵ This meta-policy evolves in an opaque administrative sphere, as T-Dem authors argue, but its foundation needs to be understood (II). Only then will it be possible to assess the solutions it puts forward (III).

II. The authors’ diagnosis is more developed in the French version. It will be briefly summarized, outlining some of its contradictions (II.1), before pursuing the matter further by offering a new understanding of the significance of belonging in the euro area, which partially converges with the one made by T-Dem authors (II.2).

II.1. A biased recap of T-Dem arguments could be: “Blame it on the Euro Group”. But a closer reading underlines the fact that the Euro Group is just the tip of a bureaucratic iceberg.

In the first page of the book, the Euro Group is presented as the “central institution” of the economic government of the Eurozone.⁶ This affirmation needs to be qualified. Formally and politically, during the crises, the Euro Group played a greater role.⁷

Formally, reforms of the Economic Governance have expanded the tasks given to the Euro Group. The new macroeconomic imbalance prevention and correction procedure, created by the *Six Pack*, makes it responsible for the discussion of the Annual Report prepared by the Commission, “as far as it relates to Member States whose curren-

⁴ For a first assesment, see: S. PLATON, *Democratizing the Euro Area without the European Parliament: Benoît Hamon’s “T-Dem”*, in *Verfassungsblog*, 13 May 2017, verfassungsblog.de.

⁵ See S. ADALID, *L’Union économique et monétaire: une méta-politique*, in *Revue de l’Euro*, 29 June 2017, resume.uni.lu.

⁶ S. HENNETTE, T. PIKETTY, G. SACRISTE, A. VAUCHEZ, *Pour un traité de démocratisation de l’Europe*, cit., p. 5 (“central institution”).

⁷ Symptom of its increased importance, academic literature recently developed an interest for it, see: P. CRAIG, *The Eurogroup, Power and Accountability*, in *European Law Journal*, 2017, p. 234 *et seq.*; L. FROMONT, *L’Eurogroupe: le côté obscur de la gouvernance de la zone euro*, in *Revue du droit de l’Union européenne*, 2017, p. 195 *et seq.*, after a long period of silence: J.-V. LOUIS, *The Eurogroup and Economic Policy Co-Ordination*, in *Euredia*, 2001-2002, p. 19 *et seq.*

cy is the euro”.⁸ The *Two Pack* ask the Member States to submit their “draft budgetary plan” to the Commission and the Euro Group.⁹ It shall also discuss the opinion of the Commission on these plans and, eventually, make it public.¹⁰ Moreover, the Board of Governors of the European Stability Mechanism can be chaired by the Euro Group President.¹¹ According to the European Fiscal Compact, the Euro Group is responsible for “the preparation and follow-up of the Euro Summit meetings”.¹² But the Euro Group has no formal decisional power, as it is simply an “informal” gathering of the “Ministers of the Member States whose currency is the euro”.¹³

Politically, the Euro Group always played a central role, which was broadened during the crisis. The Euro Group has become the negotiation forum for the Eurozone Member States. They agree within the frame of the Euro Group on a common position that they will defend during Ecofin meetings. The Euro Group work program reveals the priority of the economic policy coordination.¹⁴ Moreover, for distressed countries, the Euro Group is the principal diplomatic debate area, where monetary assistance, and its conditions, are settled.¹⁵

This last task of the Euro Group might explain why T-Dem focuses on it. The crisis revealed the role played by it in times of crisis and shattered that, in the everyday life of the Economic Union, the Euro Group is part of a larger structure.¹⁶

So, the diagnosis of T-Dem authors seems rather accurate. But a careful reading of their arguments partially contradicts the centrality of the Euro Group. They mention the creation of a “hard core” by the “ever closer union of European and National economic and financial bureaucracies”.¹⁷ They add: “this is the place where the Euro Zone is ‘ruled’ and where all the coordination, conciliation and arbitration takes place”.¹⁸

⁸ Art. 3, para. 5, of Regulation (EU) 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances.

⁹ Art. 6, para. 1, of Regulation (EU) 473/2013 of the European Parliament and of the Council of 21 May 2013 on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the euro area.

¹⁰ *Ibidem*, Art. 7, para. 5.

¹¹ Art. 5, para. 2, of the Treaty Establishing the European Stability Mechanism.

¹² Art. 12, para. 4, of the Treaty on Stability, Coordination, and Governance in the Economic and Monetary Union.

¹³ Art. 1, para. 1, of Protocol no. 14 on the Euro Group.

¹⁴ See P. CRAIG, *The Eurogroup*, cit., p. 236.

¹⁵ *Ibidem*, p. 237; L. FROMONT, *L'Eurogroupe*, cit., pp. 204-205.

¹⁶ This tendency to see in the crisis mechanisms the heart of the transformation of the EU is shared by others: M. IOANNIDIS, *Europe's New Transformations: How the EU Economic Constitution Changed During the Eurozone Crisis*, in *Common Market Law Review*, 2016, p. 1237 *et seq.*

¹⁷ S. HENNETTE, T. PIKETTY, G. SACRISTE, A. VAUCHEZ, *Pour un traité de démocratisation de l'Europe*, cit., p. 6 (“noyau dur”; “union sans cesse plus étroite des bureaucraties économiques et financières nationales et européennes”, author's translation).

¹⁸ *Ibidem* (“c'est bien là que se 'gouverne' la zone euro et que s'exerce le travail proprement politique de coordination, de médiation et d'arbitrage”).

One of the key organs of this administrative jumble is the Economic and Financial Committee (ECF).¹⁹ The drafters define it, in the Glossary, as “The more powerful administrative body of the Council”.²⁰ One of ECF’s main tasks is to: “keep under review the economic and financial situation of the Member States and of the Union and to report regularly thereon to the Council and to the Commission”.²¹ As it gathers representatives of the Commission, the Member States and the central banks, ECF is the place where most of the negotiations take place. But the text of T-Dem does not mention it.

The authors underline the lack of imputability of the decisions taken. For them, the “the Euro zone government” is “powerful and elusive”.²² This diagnosis is totally accurate. The number of institutions or forums has multiplied: the Ecofin Council, the Euro Group, the Euro Summit, the European Stability Mechanism (ESM), the European Central Bank (ECB), etc. Moreover, acts like the “memorandum of understandings” have no formal authors and no responsibility for their consequences cannot be assigned to anyone. The recent *Sotiriopoulou* decision by the General Court is an excellent example. Although the Council adopted a formal decision translating a memorandum, there is no responsibility of the EU for the pensions reforms in Greece.²³

This is the crucial problem of the new Economic Governance: it relies on new methods which do not correspond to the classic legal reasoning of the Court or to democratic principles. This “semi-intergovernmentalism” offers no real decisional institution to focus on or to blame for.²⁴ But this is not new, the whole economic coordination procedure is built around this goal. A global view of the Economic Union is necessary to make a proper diagnosis.

II.2. Our diagnosis converges with that of T-Dem’s authors: the real power in the economic coordination procedure lies in this jumble of administrations. But we disagree on their sole focus on the Euro Group. Economic coordination does not work the way the rules seem to suggest. Official procedures are on the whole ineffective. Since the 2003

¹⁹ Art. 134 TFEU. See I. DIEZ PARRA, *Le Comité économique et financier*, in *Euredia*, 2000, p. 97 *et seq.*

²⁰ S. HENNETTE, T. PIKETTY, G. SACRISTE, A. VAUCHEZ, *Pour un traité de démocratisation de l’Europe*, cit., p. 6 (“l’organe administratif le plus puissant du Conseil de l’Union européenne”).

²¹ Art. 134, para. 2, TFEU.

²² S. HENNETTE, T. PIKETTY, G. SACRISTE, A. VAUCHEZ, *Pour un traité de démocratisation de l’Europe*, cit., p. 7 (“gouvernement de la zone euro” is “puissant et insaisissable”).

²³ General Court, judgment of 3 May 2017, case T-531/14, *Sotiriopoulou v. Council*.

²⁴ K. LENAERTS, *EMU and the European Union’s Constitutionnal Framework*, in *European Law Review*, 2014, p. 753 *et seq.* There are deep contradictions between the traditional “Community method” and the integration through law process, and the economic coordination method, see: S. DE LA ROSA, *La gouvernance économique de l’Union et le sens de l’intégration*, in *Revue trimestrielle de droit européen*, 2016, p. 513 *et seq.*

crisis of the Stability and Growth Pact,²⁵ no sanctions have ever been imposed on a Member State, and the adoption of the *Six Pack* and the *Two Pack* has not changed this fact. In July 2016, the Commission cancelled the sanctions it had proposed against Portugal and Spain.²⁶

Economic coordination avoids official procedure and institutions. This is a deliberate strategy. Its influence is more opaque. As J. Snell explained: “you cannot have at the same time a well-functioning EMU, mass politics and nation states”.²⁷ Only two of the three can coexist. The choice has been made to preserve EMU and the nation states, specially their sovereignty, at the expense of mass politics. So, coordination needs to happen outside of official channels and transparent procedures.

“Meta-policy” simply means that mass politics is deprived of political choices, that are made above it by a jumble of transnational administrations. Choices are neither purely European – hence it is not a “supra-policy” – nor national. They are made in the opaque collaboration of technical European institutions – the Commission and the ECB – and national ones. These choices appear as vague technical standards, that only European institutions can define, before they are translated into national measures, under European, peer (II.2.1) and market pressure (II.2.2).

II.2.1. The main issue with economic coordination is the delegation of power to independent and technical institutions, especially the Commission. In theory, delegation is only supposed to happen in technical fields, not in very political ones such as economic policy.²⁸ By extending it to economic policy, EMU created a space for political choices to be made outside of mass politics.

Delegation is based on the classic political theory of principal and agents. According to it, powers can be delegated to independent and technical agencies as long as the

²⁵ Which ended by the first judgement of the Court of Justice: Court of justice, judgment of 13 July 2004, case C-27/04, *Commission v. Council*, and the revision of the Pact: Council Regulation (EC) 1055/2005 of 27 June 2005 amending Regulation (EC) 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies and Regulation (EC) 1056/2005 of the Council of 27 June 2005 amending Regulation (EC) 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure. For more details, see. R.M. LASTRA, J.-V. LOUIS, *European Economic and Monetary Union: History, Trends and Prospects*, in *Yearbook of European Law*, 2013, pp. 113-120.

²⁶ On this last example, and more generally on the feebleness of the rules, see: P. LEINO, T. SAARENHEIMO, *Sovereignty and Subordination: On the Limits of EU Economic Policy Co-ordination*, in *European Law Review*, 2017, p. 166 *et seq.*, specifically, pp. 176-181. See also D. ADAMSKI, *Europe's (Misguided) Constitution of Economic Prosperity*, in *Common Market Law Review*, 2013, p. 47 *et seq.*, specifically pp. 50-56.

²⁷ J. SNELL, *The Trilemma of European Economic and Monetary Integration, and Its Consequences*, in *European Law Journal*, 2016, p. 158. The author uses D. Rodrik's trilemma between “deep international economic integration, nation states, and mass politics” (D. RODRIK, *The Globalization Paradox: Why Global Markets, States, and Democracy Can't Coexist*, Oxford: Oxford University Press, 2011).

²⁸ See P. LEINO, T. SAARENHEIMO, *Sovereignty and Subordination*, cit., p. 178.

principal defines the goal pursued by the agent and controls the results of his action, using transparency and accountability.²⁹ But in the context of the EU, agents tend to gain political autonomy from the principal.³⁰ This process also happened in economic coordination because of the Commission's wide administrative power and the lack of specific goals assigned to it.

The Commission is the technical centre of EMU. In this, the Commission loses its political nature because it only acts as a technical actor, evaluating national policy choices, with no control of the European Parliament. Formally, assessment of national reports belongs to the Council, based on a simple recommendation by the Commission.³¹ But the Council follows the Commission's assessment's unconditionally. A brief study of the last 10 years, shows that the Council's recommendation on France's National Reform Programs is a word for word copy of the Commission's recommendation. Only the Commission has the staff and the technical expertise to evaluate the different reports sent by Member States. Information and expertise asymmetry are among the main ways in which agents gain autonomy from the principal.

The other problem with the concept of "assessment" is the standards by which it is made and who is in charge of setting them, namely: the target assigned to the agent. Beyond the ratios of government debt and deficit,³² there is no clear objective for the coordination of national economic policies. The day of the adoption of the Euro Plus Pact, the Council conclusions stipulated that: "Within the new framework of the European semester, the European Council endorsed the priorities for fiscal consolidation and structural reform. It underscored the need to give priority to restoring sound budgets and fiscal sustainability, reducing unemployment through labour market reforms and making new efforts to enhance growth".³³

Every notion used by the Council is obscure and gives autonomous margins of interpretation to the Commission which is free to define "fiscal sustainability", "labour market reforms" or "structural reforms". The Treaty does not use the latter point, which appeared in 1997 with no clear definition,³⁴ but is now used quite systematically by the Commission. All these vague terms gives the Commission a discretionary power of interpretation.³⁵

²⁹ For a theoretical and concrete overview in the context of the EU, see P. MAGNETTE, *The Politics of Regulation in the European Union*, in D. GERADIN, R. MUNOZ, N. PETIT (eds), *Regulation through Agencies in the EU*, Cheltenham: Edward Elgar, 2005, p. 3 *et seq.*

³⁰ It is a well know phenomenon, see F. SCHARPF, *The Joint Decision Trap: Lessons from German Federalism and European Integration*, in *Public Administration*, 1988, p. 239.

³¹ Art. 121 TFEU.

³² Art. 126 TFEU.

³³ European Council Conclusions of 24-25 March 2011, para. 2.

³⁴ European Council Resolution of 16 June 1997 on Growth and Employment Pact Amsterdam.

³⁵ P. LEINO, T. SAARENHEIMO, *Sovereignty and Subordination*, cit., pp. 173-174. These authors mention that: "soft law has pushed the substantive decisions to the stage of implementation and buttressed the

EMU acts as a “meta-political power”, a supranational political agency that pre-emptly national political choices. But the threat of sanctions has little to do with it. Economic coordination is more of a process of influence, than a forced one, except for States under pressure like Greece. The Commission sets standards by which Member States have to measure their policy. The standards are convincing because they meet the so-called “market demands”.

Everyday economic coordination is an assessment process. Member States send reports to the Commission, which compares them to its standards and sends the result to the Euro Group or the Ecofin Council; those results that are discussed beforehand in the ECF.³⁶ The best example is the Macroeconomic Imbalance Procedure: the Commission published a set of indicators and national economies needs to converge on them.³⁷ So Member States have to justify their political choices according to norms defined by the Commission. Due to the absence of sanctions, Member States are free not to comply with the European standards. But they are encouraged to do so by the very existence of the report mechanism, that forces them – at least – to take those standards into account.

The independence of the central bank also encourages Member States to align their economic policy with the ECB monetary policy. In the EMU, no policy mix is possible. Member States and European Institutions are prevented from giving any instructions to the ECB Executive Board or Governing Council.³⁸ So, the States’ economic policy has to be compatible with the monetary policy decided independently by the ECB. The ECB has repeatedly admitted that Member States have to make structural reforms.

Moreover, the standards are one of the expressions of market needs. Member States are encouraged to adopt them to favour economic growth by making “market-compliant” reforms. To finance their debt on the market, States have to convince them to buy it, by consenting to actions backed by large market actors, such as hedge funds.³⁹ The funding treaties organize this market pressure.

II.2.2. The market is not a concrete entity with a will of its own. It presents itself as a constraint on political power, which seems to react to its demands. But the market can-

institutional position of the body – the Commission – tasked to determine what kind of meaning can be attributed to each provision in each individual case”.

³⁶ See S. ADALID, *La nouvelle gouvernance économique de l'UE: mesurer et rapprocher les politiques nationales*, in S. DORMONT, T. PERROUD (eds), *Droit et marché*, Paris: LGDJ, 2016, p. 145 *et seq.*

³⁷ Regulation (EU) 1174/2011 of the European Parliament and of the Council of 16 November 2011 on enforcement measures to correct excessive macroeconomic imbalances in the euro area.

³⁸ Art. 130 TFEU.

³⁹ W. Streeck reports an interview of PIMCO’s President acknowledging that some Finances Ministers (like the Spanish one) regularly consult them, W. STREECK, *Gekaufte Zeit. Die vertagte Krise des demokratischen Kapitalismus*, Berlin: Suhrkamp Verlag, 2013, p. 336 (reference here and after is made to the French translation: *Du temps acheté. La crise dans cesse ajournée du capitalisme démocratique*, Paris: Gallimard, 2013).

not enunciate clear demands. Others speak for the market and interpret what seems to be its needs.

The correction of EMU's democratic deficit requires a better understanding of the role played by the market, and especially financial markets. Economic convergence is based on the forces given to the market by the Treaty. Moreover, the market has become the ultimate reference of economic choices, based on the widespread hegemony of the neoliberal doctrine.

Arts 123 to 125 TFEU subordinate political choices to the judgment of the financial markets, and especially of the sovereign debt markets.⁴⁰ Art. 123 prohibits monetary financing of the States. Art. 124 bans any form of privileged access of the States to financial institutions. Art. 125 impedes any financial solidarity between Member States, and between them and the Union. So, States have no other options but to present themselves to financial markets, with no special treatment. They are debtors like others. Of course, this is also the result of a more complex process of financial globalization and deregulation,⁴¹ which transforms the State into a "debtor state".⁴²

But this reliance of the States upon the market does not mean that the market can make clear demands. The market is not an actor. It needs spokespersons. It has indeed three kinds of spokespersons: economists, independent institutions and lobbies. There is a multiplicity of economic doctrines, but one has become prominent: neoliberalism.⁴³ The core of neoliberalism is a total confidence in the market as the ultimate reference that neoliberal economists understand, so they can speak for it.⁴⁴ International organizations and independent institutions also became spokespersons for the market, the so-called "Washington consensus". Standards used by the Commission and the ECB like "structural reforms" or "market stability" have the ultimate goal of increasing the efficiency of the market, as neoliberals demand. Eventually, the claims of large companies are frequently mistaken for demands of the market itself, usually through lobbying.⁴⁵ And large financial market actors, like hedge funds, also appear as market representa-

⁴⁰ See F. MARTUCCI, *L'interaction dans l'espace financier mondialisé*, in L. BURGORGUE-LARSEN, E. DUBOUT, A. MAITROT DE LA MOTTE, S. TOUZÉ (eds), *Les interactions normatives droit de l'Union européenne et droit international*, Paris: Pedone, 2012, p. 14 *et seq.*; M. IOANNIDIS, *Europe's New Transformations*, cit., pp. 1249-1252.

⁴¹ See J.-M. SOREL, *Les Etats face aux marchés financiers*, in *Souveraineté étatique et marchés internationaux à la fin du XX^{ème} Siècle – Mélanges en l'honneur de Ph. Khaan*, Paris: Litec, 2000, p. 407 *et seq.*

⁴² As W. Streeck calls it, see W. STREECK, *Gekaufte Zeit*, cit.

⁴³ Among many references, see P. MIROWSKI, *Never Let a Serious Crisis Go To Waste – How Neoliberalism Survived the Financial Meltdown*, London: Verso, 2013.

⁴⁴ As F. Hayek explained, see F. HAYEK, *Law, Legislation and Liberty*, Chicago: University of Chicago Press, pp. 1973-1979 (reference here is made to the French translation: *Droit, législation et liberté*, Paris: PUF, 2013).

⁴⁵ See C. CROUCH, *The Strange Non-Death of Neoliberalism*, Gius: Laterza & Figli, 2005 (reference here is made to the French translation: *L'étrange survie du néolibéralisme*, Bienne-Berlin: Diaphanes).

tives. These three kinds of spokespersons are interdependent. In the field of monetary policy and economic coordination, the tasks of the ECB and the Commissions are mainly handled by economists, who sometimes come from private companies.⁴⁶

During the crisis, European institutions used the debtor-States subordination to sovereign-bond markets to further push the neoliberal agenda via the “structural reform” standard. Markets were afraid to depend on some States, so they had to make market-friendly reforms to please the market. This is the kind of manipulation that makes believe that the market is real and has a will of its own, a will that limits the States’ political room for manoeuvre.

There is no formal constraint on Member States but converging influences from the European administration and market actors. Mass politics is totally kept out of the process. National political actors have no real choices; no course of action is possible but the one chosen at the European Level. For example, with the prior approval of national budget plans at the European Level, what margin is left to National Parliaments? Hence, EMU is a policy that encompasses the others, a “meta-policy”.

So, EMU result in a compression of democratic spaces, where choices are made by a jumble of technical authorities, based on the “market needs” represented by a bad summary of the neoliberal doctrine.⁴⁷ This is the result of multiple causes. T-Dem mentions only a few of them: national representatives act in an opaque space, mainly the Euro Group, where no accountability is possible, with a lack of powers of members of National Parliaments and the European Parliament. But they fail to see that the problem runs deeper. There is a “complex democratic dynamic of structural reforms”,⁴⁸ that runs deeper than the most visible aporias that the T-Dem’s authors pointed out. Consequently, not all their solutions are convincing.

III. The real question is: does this assembly have the adequate tools to counter this meta-policy? There is no definitive answer, as some of the solutions suggested by T-Dem seem relevant (III.1) while others are clearly insufficient (III.2).

III.1. We will not discuss every proposition of the T-Dem. We will focus only on the powers given to the Assembly. First of all, as we agree on the diagnosis, we agree on the main proposition: a transnational Assembly for the Eurozone. Moreover, this Assembly should have more information at its disposal, thus reducing information asymmetry between elected officials and technocrats.

⁴⁶ One of the T-Dem author studied this question of “revolving doors” in the field of law: P. FRANCE, A. VAUCHEZ, *Sphère publique Intérêt privés – Enquête sur un grand brouillage*, Paris: SciencePo Les Presses, 2017.

⁴⁷ On the intellectual diversity of the neoliberal doctrine, see S. AUDIER, *Néolibéralisme(s). Une archéologie intellectuelle*, Paris: Grasset, 2012.

⁴⁸ D. ADAMSKI, *Europe’s (Misguided) Constitution of Economic Prosperity*, cit.

EMU seen as a meta-political entity is not a purely European one, it is a transnational one. Its formulation is not solely conducted at the Commission, but during the interaction of the Commission, the Member States, the Euro Group, the ECF, the ECB, etc. So, to democratise this space, it is necessary to have a transnational Assembly. None of the recommendations of the Commission or choices made by Member States at the European level are definitive. They still have to be approved by National Parliaments, but their political leeway is very limited.

In the classic conception of European Institutions, the interests of the Member States are represented by their Ministers at the Council.⁴⁹ But since the Lisbon Treaty, national Parliaments have had an official role in the Union, we may wonder who they actually represent. This raises the question of the disconnection between the executive branch and the legislative branch in Member States. At the national level, the executive branch has taken over most of the powers of the legislative one. Heads of the executive tend to personify the State.⁵⁰ States' interests tend to diverge from the populations', especially at the European Level. Citizens do not want austerity, but the Governments have endorsed it because it is deemed good for the State. The consecration of the formal power to national Parliaments in the EU is actually a consecration of this disconnection.

Moreover, the current state of economic governance leaves no space for national Parliaments. The Council or the Euro Group has turned into an opaque intergovernmental negotiation forum. Calculus is made, rather than decisions driven by general interest. It is necessary to re-integrate mass politics through a national election process.

But, due to economic interdependence, the issues of the Eurozone have become transnational. To represent this sphere, Members of the European Parliaments are necessary. It is, after all, their everyday job. So, the creation of a Parliamentary Assembly with representatives of both national and European Parliaments is a pertinent solution.

But reducing the information and expertise asymmetry between technocrats and elected officials takes time and expertise. The risk is that members of the new Assembly lack this required time to carry out their duties properly. The drafters of the Treaty explain that only members of national Parliaments "have the necessary legitimacy to democratize the powerful intergovernmental bureaucratic network".⁵¹

We propose another solution, which meets this requirement. Members of the new Assembly could be elected at the same time as a national general election is held and thus have a dual status. They should be members of national Parliaments, but only for

⁴⁹ In the classification made by P. Pescatore, the Commission represents the Union, the Council interest of Member States and the Parliaments the citizens (P. PESCATORE, *Le droit de l'intégration*, Bruxelles: Bruylant, 2015, p. 15).

⁵⁰ See: P. ROSANVALLON, *Le bon gouvernement*, Paris: Seuil, 2015, p. 135 *et seq.*

⁵¹ S. HENNETTE, T. PIKETTY, G. SACRISTE, A. VAUCHEZ, *Pour un traité de démocratisation de l'Europe*, cit., p. 10 ("disposent de la légitimité nécessaire pour démocratiser le puissant réseau bureaucratique intergouvernemental").

budgetary matters. The *Two Pack* already laid down a “Common budgetary timeline”, which would be the base for the schedule of Members of the Assembly.⁵² This solution has the advantage of guaranteeing a link between the European and the National phase of the budgetary procedure. This way, they would gain an expertise in economic matters and have enough time to perform their duties both at the National and the Euro level.

At this level, they would be assisted by a “Parliamentary Office for the Evaluation of European Economic Choices”.⁵³ This office is the most innovative creation of T-Dem, and the most efficient in terms of changing the technocratic nature of EMU.

The Office should be responsible for “the production of an autonomous expertise and access to data and institutions of the Eurozone”.⁵⁴ This way, when debating technical matters, members of the Assembly should be as informed and as competent as the representatives of the Commission and the Central Bank. T-Dem makes sure of this. Art. 11, para. 4, requires the ECB and the Commission to “supply to the Assembly all documents and data which the latter requires in the exercise of its powers”. Moreover, “[a]s the case may be, these documents and data may be examined by a parliamentary committee which will meet in camera”. This would be a major step. For example, the ECB could not hide itself behind professional secrecy.⁵⁵ Lack of accountability of the ECB stems from its refusal to publish critical information. This kind of control over information increases ECB’s autonomy and makes it possible for it to choose the data to be made public.⁵⁶

Creating a transnational Assembly and giving it enough expertise and information is the necessary first step, but it is not a sufficient one. The Assembly needs enough powers to influence the outcome of the negotiation. One important means is the control it should exert over the Euro Summit and the Euro Group agenda.

According to Art. 7, para. 1, the Assembly “prepares” the Euro Summits. More importantly, “it shall determine the semi-annual work programme of the Euro Group”.⁵⁷ This last sentence is unclear. The Article states that it does it “in agreement” with the Euro Group Members”. Does this imply that the Assembly has the last word or that the Euro Group has to agree with the programme drafted by the Assembly? Of course, the first solution is preferable. This way the Assembly can set the political priorities of the Eurozone.

⁵² Art. 4 of Regulation (EU) 473/2013, cit.

⁵³ Art. 11, para. 1, of the T-Dem.

⁵⁴ S. HENNETTE, T. PIKETTY, G. SACRISTE, A. VAUCHEZ, *Pour un traité de démocratisation de l’Europe*, cit., p. 74 (“produire une connaissance autonome et lui permettant d’accéder aux données et aux institutions de la zone euro”).

⁵⁵ Art. 37 of Protocol no. 4 on the Statute of the European System of Central Banks and of the European Central Banks.

⁵⁶ See D. CURTIN, “Accountable Independence” of the European Central Bank: Seeing the Logics of Transparency, in *European Law Journal*, 2017, p. 28 et seq.

⁵⁷ Art. 7, para. 2, of the T-Dem.

This is not the only article with an unclear wording. Others jeopardize the efficiency of the Treaty.

III.2. To counter an opaque administrative jumble, with no clear shared responsibility among its participants, the Assembly needs to have well defined powers, otherwise it will be sucked into the jumble. Furthermore, the Assembly needs powers at the heart of this jumble: the definition of economic standards underlying all its work. In the current version of T-Dem, it has none whatsoever.

Wording of T-Dem is too vague to produce real effects. Regarding Art. 8, the powers vested in the Assembly do not imply enough constraints.⁵⁸ They don't create new mechanisms to contradict the opaque techniques currently used.

Concerning the Commissions Alert Mechanism Report, the Assembly "shall adopt a position".⁵⁹ Concerning draft budgetary plan, "It shall take part in the monitoring of the discussions [...] and shall make recommendations".⁶⁰ Concerning structural reforms, "It shall hold regular exchanges of views".⁶¹ First of all, T-Dem gives no definition of the terms it uses. For example, does "recommendation" in T-Dem means the same thing as "recommendation" in EU law?⁶² The frequency of the "exchange of views" and its interlocutors are unknown. This leaves room for manoeuvre for EU institutions or Member States to circumvent the Assembly.

Today's economic governance is full of "soft" law: reports, recommendations, etc.⁶³ The new Assembly should produce more of it. This should not make procedures and their outcome clearer or easier to understand for ordinary citizens. Its absence of real power should merely produce a new voice, admittedly a contradictory one, but will not change the outcome.

Moreover, Art. 8, para. 3, states that: "it shall assess the recommendations and reports submitted by the Commission to the Council concerning the Euro area Member States subject to an excessive imbalance procedure". The use of the "assessment" technique, with no precision, is the outcome of the insufficient diagnostic outline in the first part. The drafters give no clarification as to on what basis this "assessment" should be made. More seriously, "assessment" as a concept and a tool is not neutral. It is, by itself, a social choice that means that everything can be compared, reduced to numbers.⁶⁴

By using the same techniques – reporting and assessment – as economic governance, T-Dem fails to apprehend the deepest problem. The meta-policy of economic

⁵⁸ They only relate to "[c]onvergence and coordination of economic and budgetary policies".

⁵⁹ Art. 8, para. 1, of the T-Dem.

⁶⁰ Art. 8, para. 2, of the T-Dem.

⁶¹ Art. 8, para. 4, of the T-Dem.

⁶² Art. 288, para. 5, TFEU.

⁶³ P. LEINO, T. SAARENHEIMO, *Sovereignty and Subordination*, cit., pp. 173-176.

⁶⁴ See F. SIMONET, *L'évaluation: objet de standardization des pratiques sociales*, in *Cité*, 2009, p. 192 et seq.

governance is the symptom of the transformation of the modern art of governing. General interest fades away, replaced the neoliberal ideology that holds that everything can be reduced to numbers.⁶⁵

The creation of the new Assembly should not, by itself, reverse this ongoing process of unpoliticisation, already deeply rooted in modern ideology.⁶⁶ The least it could do is bring back mass politics to the equation. The Assembly needs the power to call the standards of economic governance into question, as well as their definition. The permanent demand for “structural reforms” and its neoliberal content should be reconsidered. Coordination does not mean permanent justification of their choices by Member States. It means that each State has to take into account the specific needs of the Eurozone as a whole and of other Member States. The transnational Assembly should be the “common public authority” of the Eurozone, making the political choices.⁶⁷ This is a more radical proposition, but the only possible one. Considering the trilemma underlined before, it requires the surrendering of a large part of the States’ sovereignty. However the present economic governance only leads to an illusion of sovereignty, with a real loss of democracy.

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⁶⁵ See A. SUPPIOT, *La Gouvernance par les nombres – Cours au Collège de France (2012-2014)*, Paris: Fayard, 2015, p. 103 *et seq.*

⁶⁶ See D. SINGH GREWAL, J. PURDY, *Introduction: Law and Neoliberalism*, in *Law and Contemporary Problems*, 2015, p. 1 *et seq.*

⁶⁷ The concept was used by the Court of Justice, ruling of 14 November 1978, case 1/78, *Draft Convention of the International Atomic Energy Agency on the Physical Protection of Nuclear Materials, Facilities and Transports*, para. 27, and has been taken up by: S. DE LA ROSA, *La gouvernance économique de l’Union et le sens de l’intégration*, cit., p. 524.

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