



ARTICLES

THE INTERNATIONAL REPRESENTATION OF THE EUROZONE AND OF THE EUROSISTEM: THE ROLE OF THE ECB

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ABSTRACT: This *Article* will attempt to answer three main questions: *i)* whether the ECB is a qualified representative for the eurozone or the Union in international fora – and if so, *ii)* to what extent its role falls within art. 138 TFEU or rather art. 6 of the ESCB Statute – and *iii)* whether national central banks in the eurozone enjoy any residual competence in managing external activity falling within the area of monetary relations and specifically ESCB technical cooperation projects. To that end, it will be necessary to explore the current external projection of the Union and of the eurozone in the area of economic and monetary policies and their representation in the main fora in charge of global economic governance. Specific attention will be paid to the impact of the dichotomy Union-eurozone on the EMU external relations. In the concluding remarks, the advantage of a single eurozone external representation at all levels will be pointed out, after having explored the political and technical obstacles which explain the delay in the achievement of such an objective.

KEYWORDS: European Central Bank – EMU – Eurosystem – euro area – EU external relations – monetary policy.

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I. THE COMPLEX INSTITUTIONAL BALANCE IN THE EXTERNAL RELATIONS OF THE EUROPEAN MONETARY POLICY: LEGAL BASES

European Treaties provide several appropriate legal bases to take all the necessary decisions to project an external dimension of the European monetary policy. Some provisions pertain to the external relations of the Union and may be found in part V of the TFEU, “The Union’s External Action”, under title V concerning international agreements. Other provisions specifically regarding the external projection of the euro area are set out in part III, “Union Policies and Internal Action”, title VIII, “Economic and Monetary Policy”, chapter 4, “Provisions Specific to Member States Whose Currency Is the Euro”. The conclusion of formal agreements on monetary and exchange policy and the approval of orientations in currency exchange matters fall within the first group of provisions, while the adoption of common positions and of a unified representation in international fora is in the second category. Following the Lisbon revision, the two sets of provisions are found in arts 219 and 138 TFEU, respectively. As it has already been pointed out, the first refers to all the Member States without distinction, while the second is specific to the Member States whose currency is the euro.¹

All these provisions apply only to States sharing the euro as their currency, as in art. 139(2)(g) TFEU it is specified that art. 219 TFEU “shall not apply to Member States with a derogation”. However, the international agreements concluded on the legal basis of art. 219 TFEU are agreements of the Union, while the common positions in international fora that are agreed upon under art. 138 TFEU are positions of the eurozone.

Yet, to date, little use has been made of these provisions, and specifically of art. 138 TFEU. Therefore, the eurozone fails to have both one voice and proper visibility as a monetary union in international financial institutions (IFIs).

A third area of international monetary relations falls within the competence of the European Central Bank (ECB) and it is based on art. 6 of Protocol No. 4, “Statute of the European System of Central Banks and of the European Central Bank” (hereinafter ESCB Statute).

After a general overview, we will attempt to answer three questions. Firstly, we will try to understand *i)* whether the ECB is a qualified representative for the eurozone or the Union in international fora. If so, we will examine *ii)* to what extent its role falls within art. 138 TFEU or rather art. 6 ESCB Statute. Finally, we will focus on *iii)* whether national central banks in the eurozone enjoy any residual competence in managing external activity falling within the area of monetary relations and specifically the ESCB technical cooperation projects. In the concluding remarks, we are going to point out the advantage of a single eurozone external representation at all levels, after having explored the political and technical hindrances that could explain the delay in achieving such an objective.

¹ This is how the relevant provisions were reorganised by the Treaty of Lisbon, signed on 13 December 2007 and in force since 1 January 2009, the latest significant revision of the Treaty establishing the European Union and of the Treaty establishing the European Community, the latter now Treaty on the functioning of the European Union. Previously, all of them were in different paragraphs of art. 111, in part III of the EC Treaty.

II. THE EXTERNAL RELATIONS OF THE EUROPEAN UNION IN INTERNATIONAL ECONOMIC AND MONETARY RELATIONS

Art. 219 TFEU has a relevant role in the international monetary relations of the European Union, as it largely, if not completely, clarifies the complex institutional balance in external relations in the wide area of economic and monetary policies. While the internal monetary policy is set by the ECB, its external dimension falls within the competence of the Council, which shall decide it while also taking into consideration the key role of the ECB and the views of the other political institutions. According to this provision, which makes an exception to the ordinary treaty making power regulated by art. 218 TFEU,

“[...] the Council, either on a recommendation from the ECB or on a recommendation from the Commission and after consulting the ECB, *in an endeavour to reach a consensus consistent with the objective of price stability*,² may conclude formal agreements on an exchange-rate system for the euro in relation to the currencies of third States. The Council shall act unanimously after consulting the European Parliament and in accordance with the procedure provided for in paragraph 3”.³

Within this hypothesis,

“[t]he Council may, either on a recommendation from the ECB or on a recommendation from the Commission, and after consulting the ECB, once again *in an endeavour to reach a consensus consistent with the objective of price stability*, adopt, adjust or abandon the central rates of the euro within the exchange-rate system. The President of the Council shall inform the European Parliament of the adoption, adjustment or abandonment of the euro central rates”.⁴

On the same line:

“[i]n the absence of an exchange-rate system in relation to one or more currencies of third States as referred to in paragraph 1, the Council, either on a recommendation from the Commission *and after consulting the European Central Bank or on a recommendation from the European Central Bank*, may formulate general orientations for exchange-rate policy in relation to these currencies. These general orientations shall be *without prejudice to the primary objective of the ESCB to maintain price stability*”.⁵

² Art. 219 TFEU, emphasis added, here and in the following lines.

³ *Ibid.* para. 1.

⁴ *Ibid.*

⁵ *Ibid.* para. 2. According to Louis, the term “orientation” should be interpreted as “*plus que des simples recommandations mais moins que des actes contraignants*” (emphasis added), see J.V. Louis, *L'Union Européenne et sa monnaie* (Commentaire J. Mégret 3rd ed. University of Bruxelles 2009). On this point, also J.V. Louis, ‘Les relations extérieures de l'Union économique et monétaire’ in Cannizzaro (ed.), *The European Union as an Actor in International Relations* (Kluwer Law International 2002) 84; A. Malatesta and C. Ricci, ‘Le relazioni esterne della Comunità europea in materia monetaria’ (2002) *Diritto dell'Unione Europea* 231; HJ

To date, no such orientations have been adopted.⁶

In the absence of such general orientations, which may be considered an extraordinary measure, the management of exchange-rate policy falls entirely within the competence of the ECB, under art. 127(2) TFEU, which lists, among the “basic tasks to be carried out through the ESCB”, “to conduct foreign-exchange operations consistent with the provisions of Article 219” and “to hold and manage the official foreign reserves of the Member States”, in its second and third lines, respectively.

The above-mentioned paragraphs of art. 219 TFEU are more interesting from a theoretical than a practical point of view, since, having never been used, they simply help to understand that external relations in the field of monetary policy are entrusted, in the first place, to the Council, even though it is committed to seeking the consensus of the European Central Bank.⁷

As the idea of an international multilateral agreement on an exchange-rate system for the euro in relation to the currencies of third States – similar to the Bretton Woods agreement in 1944 – seems to be unrealistic nowadays, bilateral agreements could be envisaged.

The third paragraph of the same art. 219 TFEU has proved far more useful as a legal basis, as it governs the conclusion of any agreements on monetary and exchange-rate policies, being so the main legal basis for the EU treaty making power in this field. It is particularly interesting as it is not just an attribution of competence, but it gives *carte blanche* on how to establish procedures for negotiating, concluding, and carrying out international agreements on the matter. Consequently, there is much more flexibility in external relations in the field of monetary policy than there usually is in other EU external policies, just as it has been shown by the agreements concluded in over two decades of European monetary union. Yet, these are the external monetary relations of the European Union, rather than just of the eurozone, despite specifically affecting the euro area.

Hahn, ‘Exchange Rate Policies in the ESCB’ in M Giovanoli (ed.), *International Monetary Law: Issues for the New Millennium* (Oxford 2000) 195 ff. This art. 219 (former art. 111 TCE) is defined as a procedural rule in C Zilioli and M Selmayr, *La Banca Centrale europea* (Giuffrè Milano 2007) 352.

⁶ Resolution II/523/97 – C4-0574/97 of the European Parliament of 04 December 1997 on Economic Policy Coordination in Stage 3 of EMU: Common Ground and Ways Forward arts 109 and 109(b), Annex I to the European Council Conclusions states that “the Council may, in exceptional circumstances, for example in the case of clear misalignment, formulate general orientations for exchange-rate policy in relation to non-EC currencies in accordance with Article 109(2) of the Treaty. These general orientations should always respect the independence of the ESCB and be consistent with the primary objective of the ESCB to maintain price stability”. Therefore, it seems that such general orientations of a political nature have been considered exceptional since the very beginning.

⁷ The notion of consensus is well-known in international law. It could be defined as the presumption of acquiescence in the absence of expressed objections. One of the first legal recognitions of the practice is in the opinion concerning Certain expenses of the United Nations, by the International Court of Justice, see ICJ *Certain Expenses of the United Nations* (art. 17 para. 2 of the Charter) [20 July 1962] 151 ff. and 167 ff.

Most of these agreements aim at establishing (or rather extending) a wider monetary union. Quite exceptionally, the first set of them was negotiated and concluded by Italy and France, on behalf of the European Community, with the Republic of San Marino, the Vatican City State, and the Principality of Monaco, respectively, taking great advantage of the flexibility allowed by art. 219(3) TFEU (previously art. 111 TEC). In other cases, on the same legal basis, Member States have been authorised to maintain previous agreements, such as the ones between Portugal and Cape Verde, and the ones between France and the African states using the CFA Franc as their currency.⁸

Some years later, the older agreements were further renegotiated and eventually concluded directly by the Union. Unlike the previous ones, these were agreements of the Community, and not simply authorised by it. The monetary agreement between the European Union and the Vatican City State, signed on 17 December 2009, repealed the previous agreement between the European Community, represented by the Italian Republic, and the Vatican City State, while the monetary agreement between the European Union and the Republic of San Marino, concluded on 27 March 2012, replaced the previous agreement between the Italian Republic, on behalf of the European Community, and the Republic of San Marino.⁹ Both agreements provide for the authorisation of the minting of euro coins (but not the issuing of banknotes), the attribution of legal tender status to the euro on the territory of third States and the creation of a mixed committee composed of representatives of the Union and of the signatory State; the Court of Justice has exclusive jurisdiction in the event of disputes between the parties.

An agreement similar in content was concluded with the Principality of Andorra, a microstate without an official currency of its own, which – unlike the aforementioned countries – had never concluded any monetary agreement with a Member State or a third

⁸ The CFA Franc agreement involves 15 African countries, 8 members of the Monetary Union of Western Africa (Benin, Burkina Faso, the Ivory Coast, Guinea Bissau, Mali, Niger, Senegal and Togo), whose currency is the *franc de la Communauté Financière de l'Afrique*, and 6 members of the Monetary and Economic Community of Central Africa (Cameroon, Central African Republic, Chad, Congo, Equatorial Guinea and Gabon), whose currency is the *franc de la Coopération financière Africaine*. The two areas, although diverse from a formal legal perspective, are both part of just one currency area, as the two currencies have the same parity with the Euro, as the French Franc previously did. The Comoros Islands joined the same currency area with their Comorian Franc. Decision 98/683/EC of the Council of 23 November 1998 concerning exchange rate matters relating to the CFA Franc and the Comorian Franc and Decision 98/744/CE of the Council of 21 December 1998 concerning exchange rate matters relating to the Cape Verde Escudo.

⁹ The revision process of the agreements started in 2009, after the Communication COM/2009/359 final from the Commission to the Council of 14 July 2009 Report on the functioning of the Monetary Agreements with Monaco, San Marino and Vatican. Subsequently, the Council adopted the Decision 2009/895/EC of 26 November 2009 on the position to be taken by the European Community regarding the renegotiation of the Monetary Agreement with the Vatican City State, and the Decision 2009/904/EC of the Council of 26 November 2009 on the position to be taken by the European Community regarding the renegotiation of the Monetary Agreement with the Republic of San Marino.

country. The Spanish and French banknotes and coins, which were legal tender in Andorra, were replaced by euro banknotes and coins starting from 1 January 2002. Today, the use of the euro is governed by a monetary agreement between the European Union and the Principality of Andorra, signed on 30 June 2011,¹⁰ under which the euro is the official currency. Yet, unlike the other ones, this agreement was not just negotiated, but also concluded, by the European Commission on behalf of the Union and was published in the Official Journal in the C series.

In 2011, the same art. 219(3) TFEU was used as a legal basis for an agreement between the EU and France (acting for the benefit of the French overseas collectivity of Saint-Barthélemy), on keeping the euro in Saint-Barthélemy following the amendment of its status regarding the European Union.¹¹

Despite being perfectly compatible with the legal basis provided by art. 219(3) TFEU, such a variety of concluding procedures is quite surprising and can only be explained by historical ties and the special regimes previously in place. Even though the main actors in the procedure were the Council, which opened and concluded negotiations, and the Commission, which was asked to lead the negotiations, the ECB was also strongly associated with the negotiations, together with the euro area national authorities of those Member States having a strong historical link with the concerned country. Nevertheless, to date, the ECB still does not have an office specifically entrusted with the negotiation of monetary agreements.¹²

External relations in matters of economic and monetary policy are not always based on agreements but are more often conducted by means of soft law and negotiations in a series of international fora that make up the so-called global economic governance. Some of them are institutionalised, such as the Bretton Woods organizations (International Monetary Fund (IMF) and World Bank), others are informal, such as the Groups of

¹⁰ Monetary Agreement 2011/C 369/01 between the European Union and the Principality of Andorra [2011].

¹¹ See Decision 2011/433/EU of the European Council of 12 July 2011 on the signing and conclusion of the Monetary Agreement between the European Union and the French Republic on keeping the euro in Saint-Barthélemy following the amendment of its status with regard to the European Union. Such a change is a consequence of Decision 2010/718/EU of the European Council of 29 October 2010 amending the status with regard to the European Union of the island of Saint-Barthélemy, as it is to cease to be an outermost region of the Union with effect from 1 January 2012 and is to have the status of an overseas country or territory, as referred to in Part Four of the Treaty.

¹² This competence is shared within the institution by the DG Legal Service (DG/L) and DG International and European Relations (DG/I). The appointed ECB representatives in the Joint Committee meetings are managers in DG/L and DG/I, respectively. Appointment of the ECB representatives in the Joint Committees is an Executive Board competence (current business of the ECB under art. 11(6) of the ESCB Statute) that has been delegated to the two Executive Board members in charge of DG/L and DG/I, respectively. The delegation decision allows the appointed ECB representatives to be supported by ECB staff from relevant business areas. They can also be substituted for individual meetings of the Joint Committees by other ECB staff, subject to prior guidance to the substituting staff and to a debriefing to be provided after the Joint Committee meeting. Source: ECB staff.

States (G7, G10, G20, G24), and others are characterised by a technical nature, such as the Bank for International Settlements (BIS) and the Financial Stability Board (FSB). The next section will explore how these relations are managed without resorting to the legal bases provided for by European Treaties.

III. THE EXTERNAL RELATIONS OF THE EUROZONE: THE ECB AS A REPRESENTATIVE OF THE UNION AND OF THE EUROZONE

III.1. INSTITUTIONAL “INTRICACIES”

Under art. 138(1) TFEU, “[t]o secure the euro’s place in the international monetary system, the Council, on a proposal from the Commission, shall adopt a decision establishing common positions on matters of particular interest for economic and monetary union within the competent international financial institutions and conferences”.

Once again, “[t]he Council shall act after consulting the European Central Bank”. The second paragraph of the same art. 138 TFEU, more ambitiously, states that “[t]he Council, on a proposal from the Commission, may adopt appropriate measures to ensure unified representation within the international financial institutions and conferences”, always “after consulting the European Central Bank”.

The Council is still the Economic and Financial Affairs Council (ECOFIN) of the whole Union, made up of 27 members, even though eight of them have had their vote suspended, being states with a derogation, outside the eurozone, and perfectly sovereign in their monetary relations. Therefore, the measures adopted under its rule have a binding effect only upon the Member States whose currency is the euro.

Consequently, the main difficulties concerning external political representation in international monetary relations lie exactly in this multi-speed system introduced by the Maastricht Treaty along with the double track established for economic and monetary policies: the first being a matter of coordination among all the Member States, the second an exclusive competence of the Union.¹³ The consequences of these intricacies in the so-called “economic and monetary union” may be summarised as follows:

a) There is a clear division of competences in terms of economic and monetary policies: while the first one is a coordination of the national economic policies of all the Member States, the second is an exclusive competence of the Union, specific to the eurozone.¹⁴

b) This is mirrored by a clear division of institutional roles – economic policy belongs to all the Member States, the Council, and the European Council, while monetary policy

¹³ In 1992, the Treaty of Maastricht, revising the Treaty establishing the European Community, added the title dedicated to economic and monetary policy to Part III, thus laying down the new provisions necessary for European monetary integration. These articles have been subject to minor changes since then.

¹⁴ On this inconsistency in the project of EMU, see S Cafaro, *Unione monetaria e coordinamento delle politiche economiche. Il difficile equilibrio tra modelli antagonisti di integrazione europea* (Giuffr  2001).

is entrusted (and for the eurozone only) to the ECB. Consequently, the external projection of the Economic and Monetary Union (EMU), as referred to in art. 138 TFEU, cannot but be complicated, as it puts together the two policies.¹⁵

c) Moreover, the dividing line between economic and monetary policies remains extremely unclear also in the definition of what is meant by economic policy and monetary policy. Even more so when considering the secondary objective of the ECB, which is to support the general economic policies in the Union.¹⁶ Economic policy has an impact on monetary policy and vice-versa, as it has clearly been pointed out by the European Court of Justice (ECJ) in the recent *Weiss* case.¹⁷ The case law of the ECJ on the topic has confirmed the fluidity of this dividing line: see the *Pringle*,¹⁸ *Gauweiler*,¹⁹ and *Weiss*²⁰ cases, and the ruling of the German Constitutional Court.²¹

d) As it has already been mentioned, the internal complex institutional balance is not reflected exactly in the external dimension concerning *economic and monetary* policies. In

¹⁵ ECB, *The External Representation of the EU and EMU* www.ecb.europa.eu; B Dutzler, 'EMU and the Representation of the Community in International Organizations' in S Griller and B Weidel (eds), *External Economic Relations and Foreign Policy in the European Union* (Springer Wien New York 2002) 449; M Herrmann, 'Monetary Sovereignty of the Euro and External Relations of the Euro Area: Competences, Procedures and Practices' (2002) *European Foreign Affairs Review* 1; M López- Escudero, 'La politique de taux de change de l'euro vis-à-vis des monnaies de pays tiers' in G Vandersanden (ed.), *Mélanges en hommage à Jean-Victor Louis* (Editions de l'Université de Bruxelles 2003) 282-300; JV Louis, 'Les relations extérieures de l'union économique et monétaire' cit. 77; C Zilioli and M Selmayer, 'The External Relations of the Euro Area: Legal Aspects' (1996) *CMLRev* 273.

¹⁶ For a further example of the important role of the ECB in supporting the general economic policies of the Union, see C Zilioli and M Ioannidis, 'Climate Change and the Mandate of the ECB: Potential and Limits of Monetary Contribution to European Green Policies' (2022) *CMLRev* 363.

¹⁷ Case C-493/17 *Weiss and others* ECLI:EU:C:2018:1000.

¹⁸ Case C-370/12 *Pringle* EU:C:2012:756. See C Koedooder, 'The Pringle Judgment: Economic and/or Monetary Union?' (2013) *FordhamIntLJ* 111-146; G Lo Schiavo, 'The Judicial "Bail Out" of the European Stability Mechanism: Comment on the Pringle Case' (College of Europe Research Papers in Law 9-2013).

¹⁹ Case C-62/14 *Gauweiler and others* EU:C:2015:400. See V Borger, 'Outright Monetary Transactions and the Stability Mandate of the ECB: Gauweiler' (2016) *CMLRev* 139-196; P Craig and M Markakis, 'Gauweiler and the Legality of Outright Monetary Transactions' (2016) *ELR* 4-24; F Fabbrini and others, 'The European Court of Justice, the European Central Bank, and the Supremacy of EU Law' (1 February 2016) *Maastricht Journal of European and Comparative Law* 23; F Martucci, 'La Cour de justice face à la politique monétaire en temps de crise de dettes souveraines: l'arrêt Gauweiler entre droit et marché: Commentaire de l'arrêt CJ, GC, 16 juin 2015, Peter Gauweiler e.a, C-62/14 (1)' (2015) *Cahiers de droit européen* 493-534.

²⁰ *Weiss* cit. See AAM Mooij, 'The *Weiss* Judgment: The Court's further Clarification of the ECB's Legal Framework: Case C-493/17 *Weiss and others*, EU:C:2018:1000' (2019) *Maastricht Journal of European and Comparative Law* 449-465.

²¹ German Federal Constitutional Court (BVerfG) judgment of 5 May 2020 2 BvR 859/15. See M Avbelj, 'The Right Question about the FCC Ultra Vires Decision' (6 May 2020) *Verfassungsblog* verfassungsblog.de; L Bini Smaghi, 'The Judgment of the German Constitutional Court is Incomprehensible' (Luiss SEP Policy Brief 25-2020); F Fabbrini and RD Keleman, 'With one Court Decision, Germany May be Plunging Europe into a Constitutional Crisis' (7 May 2020) *Washingtonpost.com* www.washingtonpost.com; MP Maduro, 'Some Preliminary Remarks on the PSPP Decision of the German Constitutional Court' (6 May 2020) *Verfassungsblog* verfassungsblog.de.

fact, while the internal monetary policy is set by the ECB, its external dimension appears to have a strong link with the economic policy (with relevant foreign policy implications). This could explain why – under arts 219 and 138 TFEU – it falls mostly within the competence of the Council, even though it is bound to take into consideration the views of the ECB and its primary objective.

e) While the principle of the unity of the institutional framework of the Union cannot be denied, sovereignty in monetary policy has been irrevocably transferred to the EU level exclusively by the eurozone countries. The ECB's deliberative process falls within the competence of the Governing Council (in charge of the monetary policy of the eurozone), while the Council of the Union is a decisional body of the whole Union, although the voting right of non-euro countries is suspended.²² Moreover, art. 138 TFEU refers to the adoption of common positions "on matters of particular interest for economic and monetary union" and unified representation in international fora, without specifying if those regard the eurozone only, although the article falls within a chapter concerning "provisions specific to member states whose currency is the euro" (arts 136-138 TFEU). The following pages will explore how the eurozone contrived to take (some) decisions by itself, by developing parallel bodies and tools.

f) Most critically, both the Union and the ECB have legal personality, under art. 47 TEU and art. 9 ESCB Statute, respectively, yet the eurozone does not. Therefore, any single representation adopted on the legal basis of art. 138 TFEU refers to the Union, rather than the eurozone. The ECB is the central bank of the European Union and the euro is the currency of the Union, even though the Member States whose voting rights are limited have preserved their monetary sovereignty entirely.²³ This makes it more difficult to figure out an autonomous representation for the eurozone.

III.2. PRACTICAL ARRANGEMENTS

a) *The IMF*

One of the most sensitive political issues is the representation of the euro area within the Groups of States and the IMF, as these organizations deal with both monetary and financial matters, simultaneously covering economic and monetary policies, Union and eurozone.

²² Art. 139 TFEU excludes the application of the following provisions 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(1)); (j) measures to ensure unified representation within the international financial institutions and conferences (Art. 138(2))".

²³ Although they keep their monetary sovereignty, their national central banks are part of the European System of Central Banks and are represented in its General Council. Moreover, they have to respect some fundamental principles of the TFEU regarding monetary policy, including central bank independence (see e.g. recent Opinion CON/2020/13 of the European Central Bank of 20 April 2020 on reform of Sveriges Riksbank).

The IMF might be said to be the most important case to study, as it is a cornerstone in the global economic governance, due to it being entrusted with the mission of safeguarding financial stability, highly relevant for both the Union and the ECB. Furthermore, it is an institution built on hard law, which is not often the case in global economic governance. The unified representation of the euro area in IMF contexts seemed to be quite a natural legal development of European monetary integration since the beginning, as the eurozone States no longer had all the requirements needed to fulfil the obligations specified in the IMF Articles of Agreement.²⁴ Consequently, since the very beginning of European monetary unification, practical arrangements have been set up for the new currency union to fit into the IMF framework, for instance concerning the exchange of information and statistical data.²⁵ Since January 1999, official views have been exchanged between the IMF and the ECB about the monetary and exchange policy of the euro area. Since November 2000, the ECB has held the status of “other holder” of special drawing rights (SDR)²⁶ and may exchange these against freely usable currencies. The so-called art. IV Consultations with Member Countries are now also being carried out with the European institutions on the euro area policies. Consequently, the IMF not only meets the national authorities of Member States, but also representatives from the EU Commission, the ECB, the Economic and Financial Committee and the Eurogroup.²⁷

Within the IMF, the ECB enjoys an observer status in both the Executive Board (EB) and the International Monetary and Financial Committee (IMFC), which allows it to send an (invited) representative to meetings and to address the EB with the permission of the chairman, on matters falling within the responsibility of the ECB. These are: euro area policies in the context of art. IV Consultations, Fund surveillance under art. IV on 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. Written statements may be circulated in advance and

²⁴ See, for instance, the “Obligations regarding exchange arrangements” set out in art. IV IMF Articles of Agreement, or the “General Obligations of Members” in art. VIII IMF Articles of Agreement: Avoidance of restrictions on current payments; Avoidance of discriminatory currency practices; Convertibility of foreign-held balances; Furnishing of information; Consultation between members regarding existing international agreements; Obligation to collaborate regarding policies on reserve assets. The IMF enjoys the correspondent right to supervise the fulfilment of these obligations, and may, to this end, ask its members to provide all the necessary information. On this topic, see FA Mann, *The Legal Aspect of Money* (V ed. Clarendon Press 1992) 364 ff. On the same topic, see RSJ Martha, ‘The Fund Agreement and the Surrender of Monetary Sovereignty to the European Community’ (1993) CMLRev 749 ff.; R Smits, *The European Central Bank: Institutional Aspects* (Kluwer 1997) 429 ff.

²⁵ See ECB, *Annual Report 1998* www.ecb.europa.eu 99.

²⁶ Art. XVII sect. III IMF Articles of Agreement.

²⁷ See DG of the European Commission, *The Relationship between Union and the IMF in Stage III: Issues and Options* (27 June 1997) II/316/97-EN on file with the author, or the International Monetary Fund, *Concluding Statement of the IMF Mission on the Economic Policies of the Euro Area* (30 January 2001) www.IMF.org.

added to the recording with the chairman's permission.²⁸ All the mentioned activities seem to show that the ECB contributes to the activity of the IMF as a representative of the euro area in the field of monetary policy, projecting on the international level its policies as adopted by the General Council. When it comes to economic policy, the ECB's position might be regarded as an original contribution which nonetheless is fed by its continuous exchanges of views with the Council of the Union and the Commission.²⁹ Moreover, the ECB observers in the meetings of the IMFC have an informational role, as they are consulted by non-EU members in the IMF to explain questions pertaining to the euro area.³⁰ The ECB's permanent representative in Washington, D.C. is appointed by the Executive Board of the ECB.

Since 2005, the voice of the Union has also been expressed by the euro area Executive Board members in the IMF, through a coordination mechanism of the Member State' representatives at the IMF headquarters in Washington called EURIMF, and by its appointed President since 2007. This coordination body holds regular meetings involving the executive directors of the countries of the euro area. The EURIMF interacts with, and is addressed by, a sub-committee on the matters of the Fund (SCIMF), established within the Economic and Financial Committee.³¹ Furthermore, the position of the Union is officially presented to the Board of Governors of the Fund by the rotating presidency of the

²⁸ See the Eurosystem's contribution to the "Code of Good Practices on Transparency in Monetary and Financial Policies", adopted by the IMF Interim Committee on 26 September 1999, mentioned by T Padoa-Schioppa, 'Introductory statement at the Sub-Committee on Monetary Affairs European Parliament' (17 March 1999) www.ecb.europa.eu. On this topic, see also M López-Escudero, 'New Perspectives on EU-IMF Relations: A Step to Strengthen the EMU External Governance' (2016) *European papers* www.europeanpapers.eu 469-499.

²⁹ The ECOFIN Council, *i.e.*, the Council meeting of finance ministers, can take formal decisions related to the economic and financial policies of the EU. According to the TFEU Treaty, the President of the ECB attends Council meetings whenever the Council discusses matters relating to the objectives and tasks of the ECB. The Treaty also provides for the President of the Council to participate in the meetings of the Governing Council without a right to vote. The decisions of the ECOFIN Council are prepared by the Economic and Financial Committee (EFC), which brings together senior national representatives from finance ministries and central banks, as well as senior officials from the European Commission and the ECB. The EFC plays a key role in reviewing the economic and financial situation of the Member States and also coordinates the EU positions in international fora. The ECB is also a member of the Economic Policy Committee (EPC), which plays a key role in preparing the ECOFIN Council's deliberations in the area of structural reforms and enjoys an observer status in the Financial Services Committee (FSC), involved in the preparation of ECOFIN decisions in the field of financial services and supervision. The ECB is in regular contact with the Commission and exchanges views with Commission representatives; the Commissioner for Economic and Monetary Affairs may participate in the meetings of the Governing Council without the right to vote. Beyond these formal contacts, the ECB has established a number of informal working contacts with the Commission services (see e.g., the ECB, 'Monthly Bulletin "10th Anniversary of the ECB"' (2008) www.ecb.europa.eu 28).

³⁰ See JA Koops and D Tolksdorf, *The European Union's Role in International Economic Fora – Paper 4: The IMF* (October 2015) www.europarl.europa.eu 45, which refers to IMF staff as source.

³¹ Established on the legal basis of art. 134 TFEU, the ECOFIN Committee is the preparatory body of the activities of the ECOFIN Council. See S Cafaro, 'Article 134 [Economic and Financial Committee]' in HJ

Council in annual and spring meetings, while the Commissioner for Economic and Monetary Affairs – who is generally competent to coordinate the member countries on their representation in international financial institutions – participates as an observer in the ministerial committees of the Fund.

Two documents by the European Commission address the goal of a more organic and coherent participation of the Union in the IMF decisional bodies: the Communication COM(2015) 602 final, and the Proposal COM(2015) 603 final.³² Such documents were issued more than fifteen years after another Commission's Proposal COM(1998) 637 final,³³ adopted at the very beginning of European monetary unification, in 1998. What all these proposals have in common is the little or no follow-up by the Council.

In the Communication COM(2015) 602, the Commission pointed out how the current representation of the euro area in the IMF is weakened by several factors: *i)* the high fragmentation among eurozone member states, which are spread over six constituencies³⁴ and mixed up with non-euro or even non-European states; *ii)* the insufficient representation of the euro area as a whole, notwithstanding the coordination mechanism and the role of observer of the ECB; *iii)* the insufficient coordination at euro area level, meaning the lack of the common positions previously agreed. Hence a specific proposal aimed at establishing a unified representation of the euro area in the IMF. This aims at a single voice for the eurozone through a transitory stage, whereby IMF constituencies are re-organized, by grouping together the Member States of the euro area, so that it is possible for them to start speaking with one voice. On the final stage, "The Member States of the euro area, supported by the Commission and the European Central Bank (ECB), adopt all the necessary measures for the establishment, by 2025, of a unified representation of the euro area in the IMF".³⁵ In particular, the euro area is expected to be represented in the Board of Governors and in the International Monetary and Financial Com-

Blanke and R Böttner (eds), *Springer Commentaries on International and European Law Series* (2022) SpringerLink.

³² Communication COM(2015) 602 final from the Commission to the European Parliament, the Council and the European Central Bank of 21 October 2015 *A roadmap for moving towards a more consistent external representation of the euro area in international fora*; Proposal COM(2015) 603 final from the Commission of 21 October 2015 for a Council decision laying down measures in view of progressively establishing unified representation of the euro area in the International Monetary Fund.

³³ Resolution COM(98)0637 – C4-0638/98 of the European Parliament of 7 December 1998 on a 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, which preceded the "Report to the European Council on the state of preparation for Stage 3 of EMU, in particular the external representation of the Community", annex II to the Conclusions of the European Council of 11-12 December 1998 in Wien. This proposal had no follow-up by the Council.

³⁴ In the IMF Executive Board each member is appointed by a state, or a group of states called constituencies.

³⁵ COM(2015) 602 final cit.

mittee by the president of the Eurogroup, and in the Board of Directors by its own executive director, appointed by the eurozone constituency. The 2010 IMF reform, in force since 2015, with an all-elected EB, eliminated legal obstacles to a consolidation of the EU Member State constituencies in the IMF.³⁶

Yet, in those documents, a genuine single membership of the Union or of the eurozone does not appear as a goal. They reflect the *status quo*: the current impossibility for the Union to apply for a full membership in the IMF, as only States may do so, under art. II of the IMF Articles of Agreement. Nevertheless, the possible replacement of the Member States by the Union or the joint membership option are still debated solutions.³⁷

b) The "Gs"

The position of the EU and of the ECB in the Groups of States (Gs) is completely different, as these are informal forums, and significant differences exist between one grouping and another.

Membership of different forums varies across the euro area Member States. France, Germany and Italy are members of the G7; the same countries along with Belgium and the Netherlands are part of the G10; France, Germany and Italy – alongside the European Union – are members of the G20, where Spain is a permanent guest invitee, together with one or more other European or non-European countries. In 2021, the euro area was also represented by the Netherlands as a permanent guest invitee. The ECB, always present whenever issues falling within its field of competence need to be discussed, represents both the monetary authority of the member countries and that of the eurozone as a whole, and as such, it presents its positions on monetary policy.

The G20 and G7 deal with broad economic and monetary policies, while the G10's focus on financial and monetary matters is narrower.

The participation of the Union's delegation in the G7 has been the result of pragmatic arrangements since the very beginning.³⁸ The EU's participation has been easier in the context of G7 Finances, where an understanding has been reached with the non-European

³⁶ An interesting precedent, pointed out by M López-Escudero, 'New Perspectives on EU-IMF Relations' cit. 498, is that all the euro-area Member States which are currently participating in the Asian Infrastructure Investment Bank agreed in January 2016 to form a single euro-area constituency in this Bank. See European Council, *Eurogroup of 14 January 2016* www.consilium.europa.eu.

³⁷ The joint membership option is the one which will result from the adoption of the Commission's proposal. It is also considered the best option by M López-Escudero, 'New Perspectives on EU-IMF Relations' cit. 497-498. The replacement of the Member States by the Union is suggested in JV Louis, *L'Union européenne et sa monnaie* cit. 162; S Cafaro, *Il governo delle organizzazioni di Bretton Woods. Analisi critica, processi di revisione in atto e proposte di riforma* (Giappichelli 2012) 143-177.

³⁸ Since monetary unification in 1999, "pragmatic solutions" have been found to address the need to represent the euro area, and channels to present agreed positions have been established. In 1998, a "Report to the European Council on the state of preparation for Stage 3 of EMU, in particular the external representation of the Community" became annex II to European Council conclusions of 11-12 December 1998.

members: the President of the European Central Bank (replacing the national central bank governors from the euro area) and the President of the Eurogroup take part in the meetings when the world economic situation, multilateral surveillance and exchange-rate issues are being discussed. The Commission can also take part in the meetings, represented by its presidency, to the extent required to enable it to perform its role.³⁹ Since 2005, with the appointment of a full-time Eurogroup President, the external representation of the euro area has enjoyed greater stability. When the Treaty of Lisbon came into force in 2009, the President of the European Council became the Union's representative in the meetings of Heads of State and Government, along with the President of the Commission. The High Representative for Foreign Affairs and Security Policy and/or the Commissioner competent for economic and financial matters represent the Union at a ministerial level.

The G20 took over some tasks of the G7 when the increased globalization and the impressive growth of some emerging market economies made the G7 less credible as a control room for the global economy, especially since the global financial crisis in 2008. Within that context, in the final Statement of the Pittsburgh meeting, it defined itself as "the premier forum for our international economic cooperation".⁴⁰ The participation of the Union in the G20 is not controversial, as it is one of the founding members of the Group and the only one that is not a State but a regional organization. Yet, this is not such a big difference given the soft law ground on which decisions are taken and the practice of consensus in both forums.

In the G20 Leaders' Summits, the delegation of the European Union is formed by the President of the European Commission and that of the European Council. While the President of the Commission represents the EU in economic and financial matters, the President of the European Council speaks on behalf of the EU in matters of foreign policy and security. At a ministerial level, the EU delegation is tripartite, comprising the European Commissioner for Economic and Financial Affairs, the Minister of Finance of the country holding the rotating Council presidency, and the President of the European Central Bank.⁴¹ As part of the European Union delegation, the ECB participates in meetings of G20 finance ministers and central bank governors, as well as their substructures. It also takes part in meetings of G7 finance ministers and central bank governors and of G10 governors (the latter set up under the aegis of the BIS). The role of the Union's representation in the G20 and in the G7 is specifically relevant for those Member States – the large majority – that do not enjoy an autonomous membership of these fora.

³⁹ Council meeting (Economic and Financial Questions) held in Brussels on 12 July 1999, on file with the author.

⁴⁰ See the G20 Research Group, *G20 Leaders Statement: The Pittsburgh Summit* (24-25 September 2009) www.g20.utoronto.ca para. 50.

⁴¹ See F Amtenbrink and others, *The European Union's Role in International Economic Fora – Paper 1: The G20* (European Parliament Directorate-General for Internal Policies 2015) 27, and the authors there mentioned.

Unlike what happens in other international financial institutions, in this case there is an overlap of representation with just a few Member States. Nonetheless, this could be perceived as unfair by third countries and as setting a double standard from the Union's inner perspective. In any case, following the silence accompanying the latest Commission's communication and proposal on the eurozone representation in the Groups of States, this can easily be identified as a highly politically sensitive issue. A compromise solution could be a single eurozone representation only in the G7, which is more focused on financial issues, and in the G20's working groups dealing with monetary policy, while the broader discussions in the G20 might go on accommodating the Union as a founding member alongside France, Germany and Italy.

c) The OECD

The ECB participates in several Organization for Economic Cooperation and Development (OECD) committees and working groups, thanks to an evolutionary interpretation of Supplementary Protocol No. 1 to the Convention of the OECD, which sets out a representation of the European Communities "in accordance with the institutional provisions of those Treaties": being the TFEU a direct evolution of the EC treaty, all its provisions and annexes are covered by this protocol. The role of EU representative originally attributed to the European Commission is now also fulfilled by the ECB, which has been added to the European Union delegation. Yet, the participation of the Union in the OECD remains weak compared to the substantial EU contribution to the organization's budget and activity.⁴²

d) The autonomous representation of the eurozone in the IFIs: a role for the ECB?

The above-mentioned pieces of information may be summarised as follows. In intergovernmental organizations whose members are all or mostly Member States (IMF, OECD, G7), or Member States along with the Union (G20), the ECB is part of the Union's delegation, even when enjoying a status of its own (IMF).

The *status quo* is entirely different in transnational organizations whose members are central banks, such as the BIS or the coordination fora for national technical bodies like the FSB, as the participation of the ECB could qualify as genuine membership – a case which will be addressed in the following paragraphs. However, this is a general rule whose application must be verified case by case on the ground of agreements, protocols and practices regulating the ECB's participation or its specific status (as a member or as an observer).

It cannot be said that there is a complete absence of representation of the eurozone in international fora. Nonetheless, agreed political positions are often lacking, those to be adopted on the legal basis of art. 138 TFEU, as lacking is a strong single voice. The

⁴² See E Hadzhieva, *The European Union's Role in International Economic Fora Paper 3: The OECD* (European Parliament Directorate-General for Internal Policies 2015).

current solutions show a fragmented Union where various institutional actors compete, and their role is hindered by their overlapping with Member States.

Over the last decade, this lacuna has been partly compensated informally by the increasing role of the European Summit, of the European Council and of the Eurogroup in discussing beforehand the economic and monetary points on the agenda of the Group of States. This routine allowed Member States to participate in a meeting having reached agreed positions or – at least – having had a first exchange of views.

The political stature of the Eurogroup increased significantly after the global financial crisis and especially the sovereign debt crisis in 2010. Following the entry into force of the Lisbon Treaty and under new art. 137 TFEU,⁴³ this body had an elected president. The Eurogroup's increasingly prominent role⁴⁴ makes it the natural forum for the discussion of political choices specific to the eurozone, even though decisions must be adopted through the ECOFIN Council, which could hardly reject positions already supported by a solid majority. This means that a role (or interference) of the Eurogroup can be imagined both upstream and downstream of a (possible) decision, pursuant to art. 138 TFEU. If this partially solves the riddle of common positions which the Council is not able to adopt based on art. 138 TFEU, another solution might be provided by a greater role for the Eurogroup and its President in the international representation of the eurozone, as the Commission suggested in its 2015 proposal.

Similarly, the Euro Summit, institutionalised by art. 12 of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union,⁴⁵ could acquire greater significance on the international stage. Its President, who currently coincides with that of the European Council, is the natural spokesperson for common positions agreed in this body. Further possible evolutions are already being explored, such as the creation of an EU Minister of Economy and Finances.⁴⁶

Authoritative doctrine, however, believes that the role of external representation of the euro area falls to the ECB in the first place.⁴⁷ In our view, in the case of international “political” representation, such an option should be set out in art. 138 TFEU. As a decision on this legal basis is lacking, the ECB may claim a sort of supplementary role.

⁴³ Art. 137 TFEU states that arrangements for meetings between ministers of those Member States whose currency is the euro are laid down by the Protocol on the Euro. This is Protocol 14 on the Eurogroup, annexed to the TFEU, whose most interesting article, art. 2, provides for the election of a president for two and a half years.

⁴⁴ See R Baratta, ‘Diritto e prassi evolutiva dell’Eurogruppo’ (2015) *Il Diritto dell’Unione Europea* 223-251.

⁴⁵ This Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, sometimes referred to as the Fiscal Compact, was signed on 2 March 2012 by 25 EU Member States. The UK and Czech Republic did not sign it. The treaty came into force in January 2013.

⁴⁶ See the Communication COM(2017) 823 final from the Commission to the European Parliament, the European Council, the Council and the European Central Bank of 6 December 2017 ‘A European Minister of Economy and Finance’.

⁴⁷ See C Zilioli and M Selmayr, *La Banca Centrale europea* cit. 574 ff.

To this day, the ECB is present in several international fora as the central bank of the Union, or as part of the delegation of the Union, or as representative of the Eurosystem. Such different roles reflect not only the goals and tasks of the organizations, but also their legal nature, which could be either intergovernmental or transnational. Since in intergovernmental organizations the ECB complements other mechanisms of political representation (IMF) or is part of the Union's delegation (Groups of States, OECD), it can easily be observed that its presence in international fora is not considered sufficient to represent a union of States. The situation is different in technical bodies and transnational fora, such as the Bank for International Settlements (BIS) and the Financial Stability Board (FSB). In these cases, the role of the ECB does not need any political acknowledgement, and it can be perfectly grounded on its statutory provisions, as it will be seen in the following section.

IV. THE EXTERNAL RELATIONS OF THE ECB UNDER ART. 6 OF THE ESCB STATUTE: TRANSNATIONAL TECHNICAL MONETARY RELATIONS?

Under art. 6(1) of the ESCB Statute, “[i]n the field of international cooperation involving the tasks entrusted to the ESCB, the ECB shall decide how the ESCB shall be represented” and “[t]he ECB and, subject to its approval, the national central banks may participate in international monetary institutions”. As it is clarified by the final para. 3, this is to be without prejudice to art. 138 TFEU, and the lack of its use clearly leaves more room for manoeuvre for the ECB, although its action is confined to *international cooperation involving the tasks entrusted to the ESCB*.

The first of the tasks listed in art. 23 of the ESCB Statute seems to vaguely respond to the need of defining such international cooperation: “[t]he ECB and national central banks may: (i) establish relations with central banks and financial institutions in other countries and, where appropriate, with international organizations”. It appears to be an operational rule responding to the aims of the two “external” tasks allocated to the ECB in accordance with art. 127(2) TFEU: conducting foreign-exchange operations and managing official foreign reserves.

In legal terms, this could be translated into agreements, memoranda of understanding, joint projects, and other initiatives which enjoy at least a minimum degree of formalization involving the ECB and the national banks of third countries, or international financial institutions, and grounded on the ECB's legal personality.⁴⁸

A legal criterion that could be used to distinguish the scope of action of art. 138 TFEU and that of art. 6 ESCB could reflect the difference between the international subjectivity of the Union, which would support the expression of positions adopted in compliance with the first of these legal bases, and the legal personality of the ECB under art. 282(3)

⁴⁸ Under art. 9(1) ESCB Statute, “The ECB which, in accordance with Article 282(3) of the Treaty on the Functioning of the European Union, shall have legal personality, shall enjoy in each of the Member States the most extensive legal capacity accorded to legal persons under its law; it may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings”.

TFEU, which would allow the conclusion of agreements of a contractual or transnational nature (between homologous national authorities and international financial institutions) based on the second.

It is still debated whether the legal personality of the ECB, conferred *expressis verbis* to the ECB by the TFEU and specified by the ESCB Statute in art. 9(1), is also an international legal personality. Doubts have been expressed in the doctrine even though most scholars⁴⁹ have supported this option, grounded on the recognition of the international legal personality of the ECB by some international organizations and important third states – including the US – and based on a similarity with the status of the European Investment Bank (EIB). Doubts have become stronger after the latest revision of the EU Treaty, which lists the ECB as an institution of the Union. Therefore, should this thesis be still considered valid, at least an overlap of international legal personalities might occur.

The ECB website clarifies the field of action for technical cooperation in monetary matters and its interrelation with several tasks entrusted to the Eurosystem and to the Single Supervisory Mechanism.⁵⁰ Here is the list:

- i)* formulating and representing policy positions in its areas of competence.
- ii)* exchanging information and views and assessing economic developments with other policymakers in multilateral organizations and fora, as well as bilaterally.
- iii)* engaging with international institutions in their monitoring of the euro area and the ECB's monetary policy, such as the International Monetary Fund (IMF) and the Organization for Economic Cooperation and Development (OECD).
- iv)* participating in international efforts to develop rules and best practices to improve financial stability and the efficiency and transparency of policymaking.

In addition, the ECB website clarifies that there is an ECB Representation in London and in Washington D.C., and a Representative Office in Brussels, which contribute to international representation by preparing policy meetings and liaising with partner organizations.⁵¹

Tommaso Padoa Schioppa, addressing the Sub-committee on Monetary Affairs of the European Parliament in 1999, stated that:

"[...] In preparing the external representation of the Eurosystem, the ECB took the view that Article 6 of the Statute of the ESCB, provided a proper and sufficient legal basis for developing arrangements with multilateral institutions and forums. Article 6.1 provides that 'in the field of international co-operation involving the tasks entrusted to the ESCB, the ECB shall decide how the ESCB shall be represented'. As I have already mentioned, the single monetary policy and the related tasks have been entrusted to the Eurosystem as an exclusive competence [...]"⁵²

⁴⁹ See C Zilioli and M Selmayr, *La Banca Centrale europea* cit. 574 and footnote 358.

⁵⁰ European Central Bank, *International Relations and Analysis* www.ecb.europa.eu.

⁵¹ Source: ECB staff.

⁵² T Padoa-Schioppa, 'Introductory statement at the Sub-Committee on Monetary Affairs European Parliament' cit.

Yet, should the Commission eventually succeed in having a proposal on the matter approved by the Council (by qualified majority of the eurozone members), it may integrate, update or even overwrite the representation measures adopted by the ECB in international bodies such as the IMF and the OECD. It should be remembered, however, that the procedures envisaged by art. 138 TFEU to guarantee the projection of the euro area into the international monetary system and possibly the unified representation of the euro area require prior consultation with the European Central Bank, so that a prior agreement can be imagined between the Commission, the Council and the ECB on the respective delimitation of roles and responsibilities.

Nonetheless, as it has been previously pointed out, the ECB is likely to remain in charge of, and fully responsible for, the relations safely grounded on art. 6 ESCB. For instance, the ECB is a full member of the Bank for international settlements, alongside seventeen national central banks of the Eurosystem (all but those of Cyprus and Malta). As suggested by its name, the organization is international, although it does not show the intergovernmental features of the typical international organization, being rather a transnational organization, as its members are central banks in their full right. The latter definition applies to any kind of activity or collaboration – in this case among homologue national bodies – across national borders.

The ECB is a member and shareholder of the BIS;⁵³ it participates in governing and oversight bodies and in many Committees, such as the Basel Committee on Banking Supervision,⁵⁴ the Committee on Payments and Market Infrastructures, the Committee on

⁵³ The BIS was created as an international organization in the context of the Young Plan, adopted on 20 January 1930 at the Hague Conference to settle the question of reparation payments imposed mostly on Germany by the Treaty of Versailles following the First World War. Over time, it evolved into a bank for central banks, owned by 63 central banks, becoming an organization that serves central banks and other financial authorities to support their pursuit of monetary and financial stability through international cooperation.

⁵⁴ On the topic, see L Quaglia, *The European Union's Role in International Economic Fora – Paper 5: The BCBS* (European Parliament Directorate-General for Internal Policies 2015) 12-13. As the author has pointed out, “[t]he ECB and the ECB/Single Supervisory Mechanism (SSM) are full members of the main Committee, and the EBA and European Commission take part in an observer capacity. Decisions by the main Committee require the consensus of the full members, but not of the observers”. Additionally, “[t]he ECB holds a two-seat membership in the BCBS on account of its tasks as (i) central bank and (ii) micro-prudential supervisory authority for the banking sector in the EU countries that participate in the SSM. This membership arrangement is in place since late 2014, when – as a result of the operationalization of the SSM – the ECB became a competent authority for banking supervision. Previously, the ECB held only one seat and also a different status in the BCBS (i.e. observer instead of member). In accordance with the BCBS Charter, the change in the membership status of the ECB aimed to reflect the importance of the euro area as a single supervisory jurisdiction. Moreover, the two-seat representation granted to the ECB reflects the separation principle between the supervisory and monetary policy functions. The two-seat membership is not an unusual arrangement in the BCBS for central banks that in addition have a supervisory authority [...]. The representative of the ECB's central banking wing in the BCBS is the Executive Board member of the ECB responsible for overseeing the DG for Macro-Prudential Policy and Financial Stability; the representative of the ECB's SSM is the Executive Board member who is also the Vice-Chair of the Supervisory Board of the SSM and is

the Global Financial System and the Markets Committee. The permanence of the eurozone central banks in the shareholder structure of the BIS together with the ECB will be the subject of some reflection.

The ECB also participates in the Financial Stability Board⁵⁵ (FSB) and in several of its substructures as a reflection of the European Union participation in the G20 (since the FSB was created on the initiative of the G20). Its specific role in promoting international financial stability, by coordinating national financial authorities and international standard-setting bodies, has put it at the core of the ECB's mission since the establishment of both the European Systemic Risk Board and the European System of Financial Supervision. However, the FSB has all the characteristics of a transnational body governed by soft law. Being informal, it seems established on a more practical basis, involving several national central banks and surveillance authorities, together with relevant international organizations and fora. The legal nature of the ECB participation remains unspecified, yet it could be easily assimilated to a national central bank, for both its structure and tasks.⁵⁶ What is interesting is its double representation and participation as ECB (in the person of its Vice-President) and as ECB Banking Supervision (SSM) (in the person of the Vice Chair of the Supervisory Board). Here too, the ECB's membership is additional to that of the national authorities (comprising central banks) of the G20 members belonging to the eurozone: France, Italy, Germany, and Spain. Although many states are represented by two or three different authorities, they appear to be different facets of a single delegation, rather than two, contrary to what happens in the case of the ECB.

Consequently, the way in which the Eurosystem is represented in the BIS or the FSB is not a controversial political issue, as it refers to the international role of the European Central Bank or the Eurosystem, rather than that of the Union or the eurozone. The two organizations, despite being very different in legal nature, were conceived as fora for specialized (mostly national) authorities rather than for governments.

responsible – with the Chair of the Supervisory Board – for those business areas dealing with banking supervision. At the technical level (working groups, task forces) of the BCBS, the institutional representation is performed by senior members of staff with specialized expertise in banking and financial stability matters. In addition, the President of the ECB is currently the Chairman of the GHOS, which is the oversight body of the BCBS".

⁵⁵ The FSB was established by the G20 in 2009, by soft law, in order to create a dimension of transnational collaboration between international standard-setting bodies and the national supervisory authorities of the banking and financial sectors, with the aim of pursuing international financial stability.

⁵⁶ We prefer this interpretation to the one that assimilates the ECB to other international financial institutions, such as development banks, because in such cases the affinity is confined to the origin in an international treaty. Moreover, the ECB is an institution of the European Union (see art. 13 TEU), a legal order with several quasi-federal features, and it is the central bank of the Union. Conversely, the other financial institutions are mostly the result of autonomous international treaties and may be defined as international organizations.

The role of observer enjoyed by the ECB in the IMF is a more ambiguous one. In our opinion, it may be interpreted as a role of vicarious representation of the Union/eurozone (alongside the EURIMF and its President and the rotating presidency of the Council) – in the absence of a decision grounded on art. 138 TFEU – or as the ECB being part of a Union's delegation and having a technical role which could easily fall within the provisions in arts 6 and 23 of the ESCB Statute, when it participates in more operational and technical activities.⁵⁷ Although it could currently be interpreted in both ways, the above-mentioned Commission's proposal suggests maintaining it, but making it evolve into an observer status of the eurozone.⁵⁸ Nonetheless, the eurozone will be differently represented, once the proposal is adopted and displays its full effect by 2025 (if the proposed decision is adopted), as the President of the Eurogroup will be in charge of such representation both in the Board of Governors and in the IMFC, with the Executive Board and Executive director being appointed by the Eurogroup. Even though this is not expressly mentioned, a survival of the ECB's observer status in this final stage could fall within the provisions of art. 6 of ECB Statute for some technical bodies, while in other cases the ECB could support the above-mentioned organizations on behalf of the eurozone, expressing the agreed positions adopted at Council level under art. 138 TFEU.

Under any option, the Union could suffer, in this case as in others, for having too large a delegation, which does not improve the clarity of its positions.

It is true that the national states in the IMF are not usually represented by their central banks (contrary to what happens in the World Bank Group), but they enjoy full competence on both economic and monetary policies. By contrast, in the Union, these are separate competences, with the political institutions of the Union being in charge of the economic policy,⁵⁹ which is defined as a coordination of the economic policies of the Member States, despite being much more than just that.

A delegation of powers from Member States to the Union would significantly simplify the situation, without the need for an *ad hoc* protocol similar to the FAO one⁶⁰ in case of

⁵⁷ See, for instance, the participation of the ECB in the IMF Board discussions about global financial stability or the role of the Euro in the international monetary system.

⁵⁸ In the motivation for the Proposal COM(2015) 603 final cit. para. 13 it is clearly stated that “this status of observer of the ECB should benefit the euro area as a whole. Such a single status of observer in the Executive Board for the euro area as a whole would allow covering the full range of euro area matters. This would also allow the euro area to better organize its representation as observer”. In the following para. 14, it is suggested that “The President of the Eurogroup, the Commission and the ECB should negotiate this observer status of the euro area with the IMF”.

⁵⁹ In Title VIII, Economic and Monetary Policy, and particularly in the Chapter “Economic Policy”, arts 120-125 TFEU.

⁶⁰ As regards the participation of the European Economic Community (now the Union), alongside its Member States, in the Food and Agriculture Organization (FAO), the definition of their respective roles was the subject of an interinstitutional agreement between the Commission and the Council of 19 December 1991, concerning the preparation of meetings, the right to speak and to vote. Commentators are unanimous in believing that the division of roles between the Union and its Member States is not easy to manage.

accession of the Union to the IMF. Nonetheless, any evolution related to the political participation of the Union and/or the eurozone in the IMF – regarding its representation in the Boards of Governance, Executive Board and Ministerial Committees – will also affect the level of technical collaboration.

The participation of the ECB in G7 and G20 meetings of Finance ministers and central banks governors (by sharing the EU seat with the European Commission and the EU Presidency) will not probably change, as the ECB participates in its own right, as the central bank of the eurozone, on equal footing with central banks of third countries. What is remarkable, once again, is the duplication of representation due to the participation of the member states of the eurozone, which – at least when central banks are concerned – can be seen as an overlap.

When the representation is that of the ECB alone (rather than the Union) – in the meetings among central bank governors – the position/comments are developed and approved within the ECB. If the issue affects the Eurosystem or the ESCB, the position of the ECB is based on prior discussions and on the conclusions reached in Eurosystem or ESCB formats, which may subsequently be approved in Governing Council or General Council formats. If the issue affects European Union members or euro area members – in the ministerial meetings or in meetings involving the Heads of Government – the position adopted by the ECB will be based on prior discussions and on the conclusions reached in meetings involving also the finance ministers of EU Member States, such as in the Eurogroup, or their representatives, such as in the Economic and Financial Committee.⁶¹

The G20 and the G7 hold sectoral meetings regularly. When they focus on monetary policy matters, in our opinion, arts 6 and 23 ESCB Statute are sufficient legal bases to enable the ECB to express its own position (the first option listed above).

Although there is no pending proposal at the moment for a Council decision on art. 138 TFEU concerning the Gs, it would be logical and consistent with the spirit of the TFEU that the ECB alone join the Groups as the monetary authority of the Union and of the eurozone member states, while the participation of eurozone states may be still contended as grounded on their residual economic policy competence.

The ECB's international role in central bank cooperation goes beyond its participation in international fora. It reflects its role as a major central bank on a global scale, as the central bank of the Union and the one governing the euro, the second most traded currency in the world. In general terms, the cooperation between central banks comprises the exchange of expertise, the sharing of best practices and capacity-building, including a wide range of activities, such as workshops and seminars, staff secondments, expert visits, and occasional training programs. The aim of this cooperation is to strengthen relations among central banks and foster sound central banking practices, thereby contributing to price and financial stability worldwide.

⁶¹ Source: ECB staff.

Being involved in such a cooperation helps the ECB to explain its policies in an international context. All these activities are grounded on arts 6 and 23 of the ESCB Statute and do not represent an exhaustive list, as the two articles allow a broad interpretation: “international cooperation involving the tasks entrusted to the ESCB” (art. 6) and “relations with central banks and financial institutions in other countries and, where appropriate, with international organizations”.⁶²

As the ECB website explains, the ECB negotiates Memoranda of Understanding (MoUs) with national and international authorities outside the EU in the sphere of technical cooperation. A different kind of MoUs is also adopted for the coordinated supervision of the banks and their cross-border subsidiaries and branches, as banks directly supervised by the ECB are widely present in third countries through subsidiaries and branches. However, this specific aspect falls outside the scope of this analysis.⁶³ MoUs clearly have legal consequences although they are not generally thought to be binding instruments.⁶⁴

Most technical cooperation requests are dealt with directly by the ECB’s International Cooperation Office.⁶⁵ Furthermore, a Working Group on Central Bank Cooperation coordinates EU funded programs and cooperation on technical issues within the ESCB. It comprises experts from the ECB and national central banks and operates under the auspices of the International Relations Committee of the ESCB.⁶⁶ In December 2017, the working group published a best practice document outlining the rationale behind, and the principles underpinning the ESCB’s international central bank cooperation activities, as well as examples of the format they take.⁶⁷ Such a document clarifies that international cooperation among central banks is voluntary, non-binding, often demand-driven (especially

⁶² Art. 23 ESCB Statute.

⁶³ See www.bankingsupervision.europa.eu. MoUs are published on this page once consent has been granted by the partner authority.

⁶⁴ MoUs are increasingly being used in international relations and in the Union’s Law. However, their precise legal status is unclear, as they cannot be compared to international treaties. Could they qualify as administrative agreements or, more correctly, as informal and non-binding statements of intent? The term MoU, which is not a strictly legal definition, might also encompass a range of different agreements. Yet, in some cases, the conclusion of a MoU is even required by EU legislation. For example, under the confidentiality regime laid down in the Capital Requirements Directive (2013/36/EU), the use of a MoU legalises information exchange that would be illegal in its absence, and under the SSM Regulation (EU 1024/2013) there is an obligation to conclude a MoU with the European Parliament. See Directive (2013/36/EU) of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC; Regulation (EU) 1024/2013 of the Council of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions.

⁶⁵ Source: ECB staff.

⁶⁶ Information available at European Central Bank, *International Central Bank Cooperation* www.ecb.europa.eu.

⁶⁷ See European Central Bank, *International Central Bank Cooperation: ESCB Best Practices* www.ecb.europa.eu 1.

when involving the central banks of emerging market economies and developing countries). In February 2020, the working group provided further insights into its approaches to evaluating international cooperation activities. These insights are the results of ESCB-wide discussions among staff members involved in these activities.⁶⁸

V. RESIDUAL FUNCTIONS OF NATIONAL CENTRAL BANKS: DO THEY ALSO PERTAIN TO EXTERNAL RELATIONS?

Under art. 14(3) of the ESCB Statute, dealing with national central banks, “[t]he national central banks are an integral part of the ESCB and shall act in accordance with the guidelines and instructions of the ECB. The Governing Council shall take the necessary steps to ensure compliance with the guidelines and instructions of the ECB and shall require that any necessary information be given to it”.

Yet, para. 4 provides that “[n]ational central banks may perform functions other than those specified in this Statute unless the Governing Council finds, by a majority of two thirds of the votes cast, that these interfere with the objectives and tasks of the ESCB. Such functions shall be performed on the responsibility and liability of national central banks and shall not be regarded as being part of the functions of the ESCB”.

For instance, *Banca d'Italia*, the Italian central bank, carries out services on behalf of the State in combating usury, or through its Financial Information Unit for Italy (UIF) which, in a position of specific autonomy, exercises functions for the prevention of money laundering and the financing of terrorism. Another example is provided by the Banque de France, whose economic services towards households and businesses include assistance to people in severe financial difficulty, company ratings, credit mediation and support for very small enterprises. It also conducts national and regional surveys of economic conditions that are widely sought after by business leaders. Another area of competence for some national central banks is banking supervision, which falls outside the scope of this study.⁶⁹

The previous analysis leads one to wonder whether national central banks of the euro area, being national authorities, could carry out tasks in the field of international cooperation. And, if so, to what extent that would be in compliance with the provisions of art. 6 of the ESCB Statute.

Art. 6 provides that the governing bodies of the ECB decide *how* the Eurosystem shall be represented, and it is possible for it to be represented by ECB officials or by NCBs.

⁶⁸ European Central Bank, *Approaches to Evaluating the International Cooperation Activities of the European System of Central Banks (ESCB)* www.ecb.europa.eu.

⁶⁹ The area of banking supervision is a shared competence between European and national authorities, with some of them (such as in Italy) being central banks. The ECB directly supervises the 114 significant banks of the euro area, while banks that are classified as “less significant” continue to be supervised by their national supervisors, which cooperate with the ECB and apply the European Single Rulebook provided by the European Banking Authority (EBA).

Accordingly, art. 6(2) ESCB Statute specifies that the NCBs' participation in international monetary institutions is subject to the approval of the ECB.

Even though the practice of duplication of representation (national and European) in several international fora stands as a difficult precedent to break, some caveats are important from a legal standpoint.

In the area of (possible) political representation – such as G7 and G20 meetings, with the exclusion of technical working groups and gatherings – the presence of eurozone member states and national central banks governors results from the absence of a decision under art. 138 TFEU. If any of the proposals and initiatives in this field – from the Five Presidents' Report to the Commission's proposals and Parliamentary documents – succeeds, the political solution will be provided by a Council Decision. This will be a decision committing to coordinated or single representation, entrusting the task of representing the eurozone to one or more institutions (ECB, Eurogroup, Commission) forming a single delegation.

The wide range of activities covered by the BIS could more easily justify the role of members and shareholders played by national central banks of the euro area (skipping the approval of the ECB required by art. 6 ESCB Statute for their participation in international monetary organizations). However, it is our opinion that their permanence might add to confusion and undermine the possibility for the Eurosystem to speak with one, stronger voice.

Yet, there is little doubt about the full competence of the ECB to carry out its tasks autonomously in the area of technical cooperation with central banks of third countries outside international fora, under arts 6 and 23 of the ESCB Statute. The fact that art. 23 ESCB Statute entrusts this task to both the ECB and national central banks should be read in connection with the wider provisions of art. 6 ESCB Statute: in the field of international cooperation involving the tasks entrusted to the ESCB, the ECB shall decide how the ESCB shall be represented. As the wider scope seems to be to strengthen relations with central banks outside the EU, foster sound central banking practices, and hence contribute to price and financial stability worldwide, the European Central Bank could easily defend its supremacy. Not only does this activity fall within its mission as stated in art. 6 ESCB Statute, but the ECB may also allow national central banks to carry out such technical international cooperation activities only after its authorisation or delegation. A decision of the Governing Council on "how the ESCB shall be represented" could be based on art. 6(1), and an authorisation to the national central banks to "participate in international monetary institutions" is "subject to its approval".⁷⁰

On the other hand, the whole area of development cooperation remains a reserved competence of the Member States and their central banks, for two main reasons. Firstly, the EU Treaties and the ESCB Statute do not attribute to the ECB any specific competence in the area. Secondly, that is in compliance with the specific reserved competence of

⁷⁰ Art. 6(2) ESCB Statute.

Member States provided for in art. 4(4) TFEU.⁷¹ Therefore, the voice and representation of the Union and the eurozone in the group of the World Bank and in the many international banks for cooperation and/or development – such as the EIB and the EBRD – may be the result of *ad hoc* decisions but is not forced by arts 6 and 23 of the ESCB Statute.

The interrelation between monetary policy and development cooperation is nonetheless significant, as these two areas are both related to global financial stability. This appears to be a challenging opportunity for the application of the principle of sincere cooperation stated in art. 4 TEU, which, as it has often been clarified by the ECJ, does not apply only to the EU and its Member States, but to the whole set of institutions and authorities within European and national legal orders.

VI. POLITICAL AND TECHNICAL OBSTACLES TO A UNIFIED EXTERNAL REPRESENTATION, AND THE ADVANTAGES OF SPEAKING WITH ONE VOICE

As it has already been observed, there is a clear political gap in the external representation of the eurozone, due to the lack of use of the legal basis in art. 138 TFEU and because of confusing and redundant practical arrangements which allow the member states of the eurozone to keep their international visibility, a consequence they do not seem to regret.

To bridge similar gaps in other areas of EU external relations, the ECJ applied a reasoning grounded on the general principles of EU law. In the absence of formal agreements, in all cases in which the Union is not entitled to participate in an international organization despite its activity falling within its sphere of competence, States should refrain from taking positions that harm its external competences. In this case, the principle of sincere cooperation comes into play, stating that “the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties”.⁷²

The Court of Justice has repeatedly recalled this principle, specifying that it is possible for the Union to adopt its own position (on the legal basis of art. 218(9) TFEU) when the specific activity of the organization falls in its area of competence. In this case, the Member States that are part of the organization will act “jointly in its interest”.⁷³ In such cases, if the external competences of the Union do intersect with those of the States, the Court of Justice has held that the Member States may cast their vote only after a European decision,⁷⁴ and that the Member States are required to act on behalf of the Union once a position has been expressed.⁷⁵

⁷¹ “In the areas of development cooperation and humanitarian aid, the Union shall have competence to carry out activities and conduct a common policy; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs” art. 4(4) TFEU.

⁷² Art. 4(3) TEU.

⁷³ Case C-399/12 *Federal Republic of Germany v Council* ECLI:EU:C:2014:2258 para. 52.

⁷⁴ Opinion 2/91 *Convention 170 of the International Labour Organization (ILO)* ECLI:EU:C:1993:106.

⁷⁵ Case C-45/07 *Commission v Greece* ECLI:EU:C:2009:81 para. 52 states that “Where an area of law falls within a competence of the European Union, such as the one mentioned in the preceding paragraph, the

Yet, the position of the ECJ on the specific area of European economic governance is still unknown.

Several programmatic documents have provided a glimpse into the possible evolution of external representation. In the fifth chapter of the Five Presidents' Report (2015) concerning institutional matters, a paragraph was specifically dedicated to the goal of "consolidating the external representation of the euro". There, it has been stated that

"As EMU evolves towards Economic, Financial and Fiscal Union, its external representation should be increasingly unified [...]. However, in the international financial institutions, the EU and the euro area are still not represented as one. This fragmented voice means the EU is punching below its political and economic weight as each euro area Member State speaks individually. This is particularly true in the case of the IMF despite the efforts made to coordinate European positions".⁷⁶

There is little doubt that these clear statements inspired the Commission's proposals regarding the euro area representation in the IMF formulated in the same year. Nonetheless, not much has changed since then. Recently, the "legislative train" seems to be *en marche* again, as the Commission pushed forward its proposal in its 2017 work programme, when it invited the Council to accelerate the adoption of the proposal.⁷⁷

Even the European Parliament has strongly pushed for this relaunch. In its resolution of 17 December 2015, the European Parliament asked the Commission "to ensure that the international representation of the euro is subject to the democratic scrutiny of Parliament".⁷⁸ A further initiative has been the Report on the EU Role in the Framework of International Financial, Monetary and Regulatory Institutions and Bodies.⁷⁹ Interestingly, the EP asked for a "progressive streamlining of the EU representation [...] through enhanced coordination and then, after an assessment, through the unification of seats".⁸⁰

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".

⁷⁶ European Commission, *The Five President's Report: Completing Europe's Economic and Monetary Union* ec.europa.eu.

⁷⁷ Communication COM(2016) 710 final from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 25 October 2016 'Commission Work Programme 2017 Delivering a Europe that Protects, Empowers and Defends'.

⁷⁸ Resolution 2015/2936 (RSP) of the European Parliament of 17 December 2015 on completing Europe's Economic and Monetary Union. See also Resolution 2015/2060(INI) of the European Parliament of 12 April 2016 on the EU role in the Framework of International Financial, Monetary and Regulatory Institutions and Bodies.

⁷⁹ Report 2015/2060(INI) of the European Parliament of 17 March 2016 on the EU Role in the Framework of International Financial, Monetary and Regulatory Institutions and Bodies.

⁸⁰ *Ibid.* para. 19.

The Parliament calls for high standards of democratic legitimacy, transparency and accountability to be developed via “an interinstitutional agreement with the aim of formalizing a ‘financial dialogue’, to be organized with the European Parliament for the purpose of establishing guidelines regarding the adoption and the coherence of European positions in the run-up to major international negotiations, making sure that these positions are discussed and known *ex ante* and ensuring a follow-up, with the Commission reporting back regularly on the application of these guidelines and scrutiny”.⁸¹

Yet, the obstacles do not lie all on the European side. Much confusion in the international representation of the eurozone comes from the conservative structure of the international community and the fact that many founding treaties and charters of international organizations do not reflect the current role of international organizations properly: the IMF Articles of Agreement were signed in 1944, the OECD Convention in 1960, the BIS was established in 1930.

After WWII, institutions such as the IMF and the OECD were created on the assumption that only states could be sovereign. The one country-one currency relation and the assumption – which was accepted throughout the twentieth century – that (almost) each state has a corresponding central bank that manages its monetary policy is no longer true in Europe and is soon likely to be untrue in other regions as well. However, some exceptions were found in the past – despite not being accompanied by non-state monetary sovereignty⁸² – and others may occur in the future,⁸³ so that the European monetary union and the ECB are currently playing a pioneering role.

⁸¹ *Ibid.*

⁸² Prior to the European Economic and Monetary Union, also other monetary unions had been established, including the Monetary Union of Western Africa (Benin, Burkina Faso, the Ivory Coast, Guinea Bissau, Mali, Niger, Senegal and Togo), whose currency is the “*franc de la Communauté Financière de l’Afrique*”, the Monetary and Economic Community of Central Africa (Cameroon, Central African Republic, Chad, Congo, Equatorial Guinea and Gabon), whose currency is the “*franc de la Coopération financière Africaine*”, and the Eastern Caribbean Currency Union (Anguilla, Antigua and Barbuda, Commonwealth of Dominica, Grenada, Montserrat, St Kitts and Nevis, Saint Lucia, and St Vincent and the Grenadines), with an Eastern Caribbean Central bank issuing the Eastern Caribbean dollar. However, these Unions did not enjoy full monetary sovereignty, as the CFA franc was linked to the French franc (and now to the euro), while the Eastern Caribbean dollar is pegged to the US dollar.

⁸³ Among the possible, future, monetary unions there is the Gulf Monetary Cooperation Organization (GMCO), founded in March 2010 as a regional economic organization. The GMCO’s membership is open to countries of the Gulf Cooperation Council (GCC) only. The current membership of GMCO includes the Kingdom of Bahrain, the Kingdom of Saudi Arabia, the State of Qatar, and the State of Kuwait. Another example is offered by the African Monetary Union (AMU), the proposed creation of an economic and monetary union for the countries of the African Union, administered by the African Central Bank. Such a union would call for the creation of a new unified currency (such a currency union has been foreseen by the Abuja Treaty signed in 1991). In the continent, in 2000, a smaller group formed the West African Monetary Zone (WAMZ), whose six countries, within ECOWAS, plan to introduce a common currency called the Eco. The six member states of WAMZ are Gambia, Ghana, Guinea, Nigeria and Sierra Leone, which founded the organization together in 2000, and Liberia, which joined it on 16 February 2010.

In fact, the IMF Articles of Agreement are not written in stone – they have recently been amended and they could be again – and European Countries, with their significant package of voting rights, are in the position to push for the needed update.⁸⁴ Challenging the *status quo* does not appear impossible. Even though no one denies that it would lead to a consistent loss of chairs for the EU Member States in the decisional bodies and a reduction of shares and votes in the organization,⁸⁵ the European position would become more solid. Despite this institutional gap, the euro is the second leading global currency after the US dollar, thereby taking on a far more important function than that of the currencies it has replaced. Its role is especially significant in countries that have agreements with the EU, such as associated countries and countries bound by agreements under European trade policy and development policy. The EU is paying the political price of its low profile in economic and financial international fora, as the Union as a full member would easily match the political stature of the United States, which are now majority shareholders, holding 16.5 per cent of the votes, while the EU members hold one third of the whole amount of (now dispersed and unassembled) shares. Reversing such a situation might open unexpected scenarios, including the possibility of a radical renewal of the institution itself.

Furthermore, as many small countries complain about the European overrepresentation – due to it having its roots in colonial times – they might support such a change, which would result in a smaller, consolidated, but more effective European voice.⁸⁶

And here is another obstacle: to this date, the Member States in the eurozone still have not declared their will to take the appropriate measures that would leave room for the Union or the eurozone to claim membership. This lack of political will has also prevented the Council of the Union from approving the Commission's two proposals

⁸⁴ By jointly suggesting a revision of the Articles of Agreement based on art. XXVIII "a) [a]ny proposal to introduce modifications in this Agreement, whether emanating from a member, a Governor, or the Executive Board, shall be communicated to the chairman of the Board of Governors who shall bring the proposal before the Board of Governors. If the proposed amendment is approved by the Board of Governors, the Fund shall, by circular letter or telegram, ask all members whether they accept the proposed amendment. When three-fifths of the members, having eighty-five percent of the total voting power, have accepted the proposed amendment, the Fund shall certify the fact by a formal communication addressed to all members".

⁸⁵ Obviously, the single euro-area States would no longer have their number of basic votes. Each member State had 250 basic votes plus a far more important number of votes calculated through a formula. On 28 April 2008, a large-scale quota and voice reform resulting from a two-year-long process was adopted by a wide margin by the Board of Governors, tripling the number of basic votes. A second important effect on the quota formula that would affect the European votes is that intra-European trade would no longer appear as international trade (an important indicator of openness of a country).

⁸⁶ The perceived over-representation of this region is pointed out (*ex multis*) by the so-called Manuel Report. See T Manuel and others, *Report of the Committee of Eminent Persons on IMF Governance Reform* (24 March 24 2009) International Monetary Fund www.imf.org para. 27 and 41; and by F de Larosière, *Report of the High-Level Group on Financial Supervisions in the EU* ec.europa.eu para. 256.

grounded on art. 138 TFEU.⁸⁷ Yet, the mere existence of a specific legal basis in the treaty for the purposes of speaking with one voice leads to reflect on how desirable this outcome was considered to be by the authors of the Treaty of Maastricht in 1992 and in the years to come. This seems to be even truer in the area of economic global governance than in other chapters of the TFEU, which include less-specific provisions.

Moving beyond historical ties with third countries, Member States have significantly taken advantage of presenting themselves as a single block in the global arena. This has happened in global trade and may happen in other areas of geopolitical importance. The possible hindrances to the EMU, the banking union or even the single market of this still fragmented external representation cannot be fully explored in this contribution, which brings us back to the intricacies generated by the double standard of *ins* and *outs* and the blurred boundaries between monetary union and economic coordination. In these times of crisis, economic governance is being influenced by the centripetal force of monetary unification, which is encouraging the stretching of TFEU articles to cover an increasing economic integration and fiscal solidarity.⁸⁸

The differentiation in the Union between the *ins* and the *outs* does not cast its shadow only on the external dimension of the EU.⁸⁹ The countries of the euro area, the most exposed to crisis contagion due to a greater integration of their financial markets, created intervention mechanisms and signed international treaties that do not involve countries outside the euro area (except on a voluntary basis).⁹⁰ The Eurogroup and the Euro Summit⁹¹ became the specific institutional dimension of the eurozone and the place to discuss bilateral loans and control tools, such as the Troïka.⁹²

⁸⁷ L Bini Smaghi, 'Powerless Europe: Why is the Euro Area Still a Political Dwarf?' (2006) *International Finance* 16: "[t]he 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 [...]".

⁸⁸ S Cafaro, 'The Evolving Economic Constitution of the European Union: Eulogy to Stability?' in G Grigoire and X Miny (eds), *The Idea of Economic Constitution in Europe, Genealogy and Overview* (Brill 2022) 505.

⁸⁹ V Beneš and M Braun, 'An Ever-Closer Eurozone and Its Consequences for Differentiated Integration in Europe' in S Blockmans (ed.), *Differentiated Integration in the EU: From the Inside Looking Out* (CEPS 2014) 12-19.

⁹⁰ Treaty on Stability, Coordination and Governance [2012].

⁹¹ The Euro Summit was mentioned for the first time by the Treaty on Stability, Coordination and Governance signed in 2012, whose art. 12 states that "1. The Heads of State or Government of the Contracting Parties whose currency is the euro shall meet informally in Euro Summit meetings, together with the President of the European Commission. The President of the European Central Bank shall be invited to take part in such meetings. The President of the Euro Summit shall be appointed by the Heads of State or Government of the Contracting Parties whose currency is the euro by simple majority at the same time as the European Council elects its President and for the same term of office. 2. Euro Summit meetings shall take place when necessary, and at least twice a year, to discuss questions relating to the specific responsibilities which the Contracting Parties whose currency is the euro share with regard to the single currency, other issues concerning the governance of the euro area and the rules that apply to it, and strategic orientations for the conduct of economic policies to increase convergence in the euro area".

⁹² The term "troïka" has been used, especially in the media, to refer to the group formed by the European Commission, the European Central Bank and the International Monetary Fund in the context of the

Not surprisingly, several recent official documents – such as the Five Presidents’ Report, the Bresso-Brok Report on improving the functioning of the European Union building on the potential of the Lisbon Treaty,⁹³ the Verhofstadt Report on possible evolutions of and adjustments to the current institutional set-up of the European Union,⁹⁴ the Protocol of Frankfurt: a new treaty for the eurozone, presented by Andrew Duff in 2016,⁹⁵ as well as many think tanks’ and academics’ contributions⁹⁶ – all point up the need to strengthen the institutional dimension of the euro area, which would result in the opening of new solutions to its external representation. The proposal by the European Commission for an EU Finance minister on December 2017⁹⁷ was a move in the same direction and likely to add complexity to the unresolved dispute about the external representation of the eurozone, until now governed by keywords such as “practical” and “pragmatic”.

Until then, the external projection of the eurozone will still be weak in monetary and financial international relations and not commensurate with its economic weight and with the position of the euro as the second international currency after the US dollar.⁹⁸ The weakness of the external projection of the euro area is particularly evident in the IMF, where EU countries are overrepresented in the Executive Board, with one-third of Executive Directors and a high voting share (more than 30 per cent), but the EU is less influential than the US, which have half the EU’s quota of voting rights.⁹⁹ This explains

“bailouts” of Cyprus, Greece, Ireland and Portugal. The origin of this informal gathering can be traced back to the Greek loan package in May 2010.

⁹³ Procedure 2014/2249(INI) of the European Parliament of 16 February 2017 Improving the Functioning of the European Union building on the Potential of the Lisbon Treaty.

⁹⁴ Procedure 2014/2248(INI) of the European Parliament of 16 February 2017 on Possible Evolutions and Adjustments of the Current Institutional set up of the European Union.

⁹⁵ A Duff, ‘The Protocol of Frankfurt: A New Treaty for the Eurozone’ (EPC Discussion Paper 2016).

⁹⁶ See, among others, the manifestos by the Glienicke Group (October 2013), by the Groupe Eiffel (February 2014), and Le Monde, *Manifeste pour une Union Politique de l’Euro* www.lemonde.fr; B Lechat, ‘For a Political Community for the Euro’ (1 May 2014) Green European Journal www.greeneuropeanjournal.eu.

⁹⁷ See the Communication COM(2017) 823 final from the Commission to the European Parliament, the European Council, the Council and the European Central Bank ‘A European Minister of Economy and Finance’, 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, as it is possible under the current EU Treaties by bringing together existing responsibilities.

⁹⁸ M López-Escudero, ‘New Perspectives on EU-IMF Relations’ cit. 471-498; 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’ (2009) *European Banking and Financial Law Journal* 297-333.

⁹⁹ See S Cafaro, *Il governo delle organizzazioni di Bretton Woods* cit.; M López-Escudero, ‘New Perspectives on EU-IMF Relations’ cit. 475 and footnote 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

why the euro area representation in the IMF is the only object of the 2015 Commission's proposal and why it is considered a priority. The evolving balance in the global economy, and the ongoing inevitable decline of Europe due to the growth of other areas, speak volumes in favour of a consolidation of the European external representation aimed at having a stronger voice.

VII. CONCLUDING REMARKS: THE ECB AND OTHER ACTORS

The role played by the ECB in the external relations of the eurozone can be considered significant in various ways, despite being vicarious in several international fora, such as the IMF and the OECD, due to a lack of clear political representation. The role of the ECB can be regarded as a supporting one, insofar as external representation revolves around the tasks and objectives of the ESCB, or as an exclusive one (that is representing the ESCB) when the international activity falls entirely within the remit of the ECB.

Arts 219 and 138 TFEU prefigure the first hypothesis: the ECB is involved in the procedures, may possibly be delegated by the Council of the Union, but it is not the principal or the only actor.

In the absence of decisions taken based on art. 138 TFEU, practical arrangements for the external representation of the euro area within the IMF, G7, G20 and OECD also fall into the same category. Indeed, it can be observed how the ECB – despite having a defined status as an observer in the IMF – is part of a larger delegation representing the Union.

On the other hand, the activities carried out in several fora for cooperation among central banks – such as the BIS – or those for transnational technical collaboration among homologue national authorities – such as the FSB – fall into the category provided for in art. 6 ESCB Statute in which the ECB acts *jure proprio*. It includes the so-called technical cooperation and the ESCB cooperation projects with the central banks of third countries.

The fact that such activities are currently being carried out also by national central banks within the ESCB does not prove the ECB incompetent.¹⁰⁰ Moreover, if any conflict of competence had existed, the ECB Governing Council – where governors of national central banks sit – would not have carried out so many international activities so far. On the contrary, it seems that the ESCB Statute is not fully applied, and the ECB's competence is not fully exercised. The fact that art. 23 ESCB Statute entrusts this task to both the ECB and the national central banks must be read in connection with the wider provisions in art. 6 ESCB Statute: in the field of international cooperation involving the tasks entrusted

analyses show that the US has more real voting power in the current IMF decision-making process than its voting share would suggest".

¹⁰⁰ The competence of the ESCB and the attention dedicated by its staff to these activities seem further proved by the analysis, evaluation, and feedback that can be found on the ECB website. See the two documents: European Central Bank, *International Central Bank Cooperation* cit., and European Central Bank, *Approaches to evaluating the international cooperation activities of the European System of Central Banks* cit.

to the ESCB, the ECB shall decide how the ESCB shall be represented. Therefore, the national central banks may well conduct bilateral cooperation with the national central banks of third countries, but still within a delegation of competence or an authorization by the ECB. The silence on the point by the ECB Governing Council may be considered some tacit acquiescence that can always be retracted.

The fact that such an activity is often carried out "on demand" and reflects historical ties is not an obstacle *per se*, as it has not been an obstacle for the Union to renegotiate previous monetary agreements with third countries which had significant ties with single Member States. Nothing would prevent such privileged relationships from being maintained under a "European umbrella" in the form of authorisation or delegation.

A specific exception could be found in the area of development cooperation which, according to the general rules of European Union law, is a parallel competence that both the Member States and the Union have. When national central banks act with a national mandate for this area, they can still be considered national bodies acting in a national capacity.

