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## ARTICLES

# THE LAW OF THE ECONOMIC AND MONETARY UNION: COMPLEMENTING, ADAPTING OR TRANSFORMING THE EU LEGAL ORDER?

*edited by Fernando Losada and Klaus Tuori*

## THE PARLIAMENTARY ACCOUNTABILITY OF EMU DECISIONS: BETWEEN INFORMALITY AND FRAGMENTATION

DIANE FROMAGE\*

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ABSTRACT: This *Article* compares the democratic accountability mechanisms in place in the area of Economic and Monetary Union (EMU) with those existing in other fields of EU law. In so doing, it shows that, although democratic accountability standards have generally been improved following the entry into force of the Lisbon Treaty, important shortcomings still exist as a result of institutional flaws and practice in EU decision-making. It then shows that the accountability gap that exists in the field of EMU is even deeper owing to the complexity of the procedures in place, and to the informality that characterises some of them as well as some of the decision-making bodies involved (chief of which is the Eurogroup). The *Article* concludes by making some proposals to improve the current unsatisfactory situation, improvement which will be ever more necessary in post-Covid times.

KEYWORDS: Economic and Monetary Union – democratic accountability – European Parliament – national parliaments – European Semester – democratic deficit.

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## I. INTRODUCTION

Like the Great Financial Crisis before it, the Covid-19 pandemic has evidenced in the strongest possible way that European Union (EU) Member States must cooperate, in particular in the responses provided to try and shelter European economies from the dramatic downwards trends caused by the sanitary crisis. This is certainly true of all EU policy areas, but especially so of the Economic and Monetary Union (EMU). Indeed, considering how intrinsically interlinked European economies are, and in view of the differences in the fiscal space available at the national level to bolster the future economic recovery, the EU institutions and the Member States, especially those belonging to the euro area, have had to mobilize swiftly, and collectively. In the period between March and December 2020, they approved an extraordinary range of instruments in policy areas including monetary and fiscal policy, emergency financial assistance to Member States, rules applicable to state aid, or measures to preserve the banking sector.<sup>1</sup> As the adopted measures directly affect Member States' economic, fiscal and budgetary capacities, guaranteeing democratic accountability is of paramount importance. However, this is a particularly complex endeavour owing to the constitutional features of the EMU architecture in place, which, as shown in this *Article*, clearly distinguishes this policy domain from other domains of European integration. In fact, the issue of democracy in EMU has been recurrently addressed, by officials and academics alike, over the past decade.<sup>2</sup> The question addressed by this special issue regarding whether the rules applicable in the field of EMU are distinct from those generally in force in EU law is thus particularly relevant in relation to democratic accountability in the field of EMU.

The aim to create an EMU is clearly set out in the European Treaties. Art. 3(4) TEU unequivocally states that “[t]he Union shall establish an economic and monetary union whose currency is the euro”. Yet, the euro has not been adopted by all the Member States to date. In fact, Denmark is not even under the obligation to do so, while Sweden is formally under this obligation, but it benefits *de facto* from a right to opt out as well, as no action has ever been taken against it on the ground of its not joining the common currency area. It has also

<sup>1</sup> The European Commission, the European Parliament and the European Banking Institute regularly publish updated accounts of those measures. European Commission, *Timeline of EU action* [www.ec.europa.eu](http://www.ec.europa.eu); European Parliament, *EUEA measures to mitigate the economic, financial and social effects of coronavirus* [www.europarl.europa.eu](http://www.europarl.europa.eu); European Banking Institute, *EBI Report on the 'Pandemic Crisis-related' Economic Policy and Financial Regulation Measures: International, EU and Euro Area Levels* [www.ebi-europa.eu](http://www.ebi-europa.eu).

<sup>2</sup> Ben Crum has noted that “[i]n the steady stream of [official EU] reports on the future of Economic and Monetary Union (EMU) that have appeared in recent years, it has become a common habit to reserve the final section for the question of democratic legitimacy”. See B Crum, ‘Parliamentary Accountability in Multilevel Governance: what Role for Parliaments in Post-crisis EU Economic Governance?’ (2017) *Journal of European Public Policy* 268. Academic publications on this issue have been so numerous that only a few of them may be mentioned here; the most recent ones of them include: M Markakis, *Accountability in the Economic and Monetary Union: Foundations, Policy, and Governance* (Oxford University Press 2020) and VA Schmidt, *Europe's Crisis of Legitimacy. Governing by Rules and Ruling by Numbers in the Eurozone* (Oxford University Press 2020).

become clear that other Member States, such as for instance Poland,<sup>3</sup> are unlikely to take the necessary steps to achieve this goal for political reasons, in the near future at least. Thus, the belief that originally prevailed at Maastricht that “Member States would join as soon as they fulfilled the convergence criteria”<sup>4</sup> no longer corresponds to today’s reality.

A very important part of the EMU, both politically and economically, is the single currency area and its management, but it is not limited to it. The EMU requires also the coordination of Member States’ fiscal and economic policies, in which all EU Member States are involved, even if those belonging to the euro area are submitted to stronger oversight. Even if it has not resulted in the creation of a dedicated institution proper, a distinction between euro area and non-euro area Member States had to be made in the institutional framework of the EU, most visibly in the form of the Eurogroup and the Euro Summit. Due to the possibility open to non-euro area Member States to be part of the European Banking Union (EBU), safeguards had to be established to make sure that they would not be fully marginalised where they avail themselves of this possibility;<sup>5</sup> the accession to the EBU of two non-euro area Member States (Bulgaria and Croatia) in October 2020 sets those mechanisms to the test for the first time ever. Decisions in EMU matters are thus governed by different logics and institutions depending on whether they affect all the Member States, or euro area or EBU Member States only. Given the (supposed) temporary nature of this distinction, some of the euro area-specific bodies and institutions have not been fully formalised or enshrined in the Treaties, and the resulting informality creates a number of political and legal challenges. In today’s EU, EMU-related decisions are thus made, or at least formally prepared, by the Eurogroup and the Council; the Euro Summit and the European Council; the European Commission (Commission); the European Central Bank (ECB); the European Parliament (EP); and Member States. To make things even more complex, their actions are governed by a series of rules contained in both EU law and *inter se* agreements to which not all Member States are party.<sup>6</sup> Furthermore, some institutions, and in particular the ECB and the Eurogroup, are involved in several capacities in a wide range of procedures governed by both EU and international law.<sup>7</sup> The number of existing institutions and bodies could even increase further in the

<sup>3</sup> See for a recent account of the Polish case: A Czerniak and A Smolenska, ‘Poland Without the Euro. A Cost Benefit Analysis’ (March 2019) *Polityka Insight* [www.politykainsight.pl](http://www.politykainsight.pl).

<sup>4</sup> Ka Tuori and Kl Tuori, *The Eurozone Crisis: A Constitutional Analysis* (Cambridge University Press 2014) 28.

<sup>5</sup> Indeed, in banking supervision, the decisions made by the Supervisory Board need to be adopted by the Governing Council in which only euro area central banks are represented. Therefore, a mechanism had to be devised to allow those Member States to object to decisions of the Supervisory Board. See Council Regulation (EU) 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, art. 7.

<sup>6</sup> See on these developments: T Tridimas, ‘Indeterminacy and Legal Uncertainty in EU Law’ in J Mendes (ed), *EU Executive Discretion and the Limits of Law* (Oxford University Press 2019), 61-84, esp. 63 ff.

<sup>7</sup> See on the Eurogroup: P Craig, ‘The Eurogroup, Power and Accountability’ (2017) *ELJ* 234. See on the ECB and the difficulty in guaranteeing its accountability: D Fromage, P Dermine, P Nicolaidis and K Tuori,

future, should, for instance, the “European Finance Minister” proposed by the Commission ever be implemented,<sup>8</sup> or should new, original, measures need to be adopted after the current Covid crisis, for example in the form of a European treasury of some sort.

In all, the existing framework is characterised by its complexity, by less transparency than in the ordinary EU decision-making procedures as a result of the informality of certain of the decision-making bodies, as well as by a strong intertwinement between the national, the European and the international levels. Furthermore, in the field of EMU, rules have been applied with a significant margin of discretion, in particular of the European Commission, which was strongly empowered following the adoption of euro crisis law,<sup>9</sup> and formally non-binding soft law instruments are also commonly used.<sup>10</sup> Against this background, ensuring that adequate democratic accountability standards are adhered to may prove challenging, and in fact recurrent criticism has, among others, already been voiced towards the informal Eurogroup.<sup>11</sup>

This *Article* sets forth to examine the mechanisms in place to ensure democratic accountability in EMU with a view to comparing them with those that commonly apply to EU decision-making procedures in other fields of EU law. In so doing, it also seeks to outline the effects of the response to the Covid crisis, and to assess whether there are good reasons for democratic accountability standards to be different in the field of EMU, and how this could be improved.

This *Article* is organised as follows. It first depicts the accountability mechanisms in place in the EU in general and highlights their characteristics (section II) before considering those existing in the field of EMU in particular (section III). The final section compares and assesses both frameworks, thereby showing that the situation in EMU is still peculiar, and it makes some proposals to remedy the existing shortcomings (section IV).

## II. GUARANTEEING DEMOCRATIC ACCOUNTABILITY WITHIN THE EU

Before delving into the analysis of the mechanisms in place to guarantee democratic accountability within the EU, a few words on the issue of the EU’s “democratic deficit” are in

‘Special Issue: The ECB’s Accountability in a Multilevel European Order’ (2019) *Maastricht Journal of European and Comparative Law* 3.

<sup>8</sup> Communication COM(2017) 823 final from the Commission of 6 December 2017 on a European Minister of Economy and Finance.

<sup>9</sup> See on the issue of discretion: M Dawson, ‘How Can EU Law Contain Economic Discretion?’ in J Mendes (ed), *EU Executive Discretion and the Limits of Law* (Oxford University Press 2019) 85-106. See on the Commission’s empowerment: P Leino and T Saarenheimo, ‘Discretion, Economic Governance and the (New) Political Commission’ in J Mendes (ed), *EU Executive Discretion and the Limits of Law* cit.132-154.

<sup>10</sup> P Dermine, ‘The Instruments of Eurozone Fiscal Surveillance Through the Lens of the Soft Law/Hard Law Dichotomy – Looking for a New Paradigm’ (2021) *Journal of Banking Regulation*.

<sup>11</sup> See most recently: B Braun and M Hübner, ‘Vanishing Act: The Eurogroup’s Accountability’ (2019) *Transparency International EU* [www.transparency.eu](http://www.transparency.eu).

order. Indeed, this term, used for the first time by David Marquand in reference to the introduction of qualified majority voting in the Council which deprived national parliaments from their capacity to exercise any veto through their government representative,<sup>12</sup> has since gained considerable popular support, and is often understood as depicting reality within the EU. Yet, it remains that the assessment of the EU's democratic credentials necessarily depends on the yardstick used. The first question thus appears to be how the EU is qualified, *i.e.*, whether it is assimilated to an international organisation, a State or a *sui generis* entity. Secondly, it is also fair to wonder whether (Member) States themselves actually live up to the standards of democratic accountability some have found the EU unable to comply with.

The following paragraphs serve to illustrate the mechanisms in place under the current Treaty framework (II.1), while also highlighting some of the existing shortcomings (II.2).

## II.1. DEMOCRATIC ACCOUNTABILITY IN TODAY'S EU

The Lisbon Treaty brought about an important improvement to the democratic credentials of the EU. Prior to its entering into force, the EP (and national parliaments to a more limited extent) had, with no doubt, played an important though insufficient role already, for the latter mostly thanks to prerogatives attributed to them at the national level which allowed them to (imperfectly) scrutinise EU documents or their executive representatives.<sup>13</sup> Against this backdrop, the Lisbon Treaty undoubtedly contributed to further enhancing democratic accountability within the EU. National parliaments were even deemed to have become "European institutions" post-Lisbon.<sup>14</sup>

For the first time ever, this Treaty introduced a definition of democracy (title II of the TEU). In particular, art. 10 TEU states that democracy within the EU is to be based on two main pillars: the directly-elected EP representing EU citizens on the one hand, and national parliaments in charge of holding Council and European Council members to account individually, on the other. To this end, national parliaments and the EP alike were granted a series of prerogatives in the Treaties, so much so that the Lisbon Treaty was dubbed the "Treaty of the parliaments".<sup>15</sup> Three remarks have to be made before examining the powers attributed to the two kinds of parliamentary assemblies more in detail. Firstly, this concerns the principle according to which accountability is to be guaranteed at a same institutional

<sup>12</sup> D Marquand, *Parliament for Europe* (Jonathan Cape 1979).

<sup>13</sup> See for a historical account of the evolution of parliaments' role within the EU: D Fromage, *Les Parlements dans l'Union Européenne après le Traité de Lisbonne. La Participation des Parlements allemands, britanniques, espagnols, français et italiens* (L'Harmattan 2015); A Maurer and W Wessels (eds), *National Parliaments on Their Way to Europe: Losers or Latecomers?* (Nomos 2001).

<sup>14</sup> European Council, *Speech by President Herman Van Rompuy to the Interparliamentary Committee meeting on the European Semester for Economic Policy Coordination* (27 February 2012) [www.consilium.europa.eu](http://www.consilium.europa.eu).

<sup>15</sup> European Parliament Draft report 2016/2149(INI) of 1 December 2017 on the implementation of the Treaty provisions concerning national parliaments, 4.

level. This principle implies that EU institutions are to be held accountable at the EU level by the EP, whilst national institutions are accountable to the national parliaments, a principle that still holds generally.<sup>16</sup> Secondly, the EP is still generally viewed – at least by the European Commission – as the organ in charge of ensuring democratic accountability within the EU *par excellence* even where not all Member States participate in a specific policy area; as illustrated below, this is also the case in EMU and Euro-area matters for instance. Thirdly, it remains that “in the EU, legitimation chains are still long and rather non-transparent, and accountability is not easily claimed. Council members, for instance, are legitimised via national elections and national parliaments”.<sup>17</sup> The following paragraphs examine in turn the role played by the EP, and by national parliaments.

The EP, which is the organ of direct representation of EU citizens at the EU level (art. 10(2) TEU), exercises functions of political control (art. 14(1) TEU). The European Commission – as a collegial organ – is politically responsible before it (art. 17(8) TEU). Resultantly, the EP is deeply involved in the designation procedure of the Commission.<sup>18</sup> The European Commission regularly reports to the EP on the execution of its duties, for instance in the framework of the budgetary procedure (arts 317-319 TFEU). Interestingly, owing to the EU’s peculiar institutional structure characterised by a blurred division of executive and legislative functions,<sup>19</sup> the EP also exercises a control function toward the European Council, and even toward the Council to some extent. The President of the European Council “shall present a report to the European Parliament after each of the meetings of the European Council” (art. 15(6)(d) TEU), and the President of the European Parliament may be invited to make a statement at the beginning of each of the European Council meetings (art. 235(2) TFEU). Nonetheless, considering that the EP may not ask any questions, these procedures do not amount to any relationship of accountability proper,<sup>20</sup> as developed further below. The possibility furthermore exists for European Council and Council representatives to make

<sup>16</sup> This is the reason why, for instance, the ECB is primarily to be held accountable by the EP. See European Central Bank, ‘European Central Bank Replies to the Questionnaire of the European Parliament Supporting the Own Initiative Report Evaluating the Structure, the Role and Operations of the ‘Troika’ (Commission, ECB and the IMF) Actions in Euro Area Programme Countries’ (10 January 2014) ECB Research & Publications [www.ecb.europa.eu](http://www.ecb.europa.eu).

<sup>17</sup> C Wiesner, *Inventing the EU as a Democratic Policy: Concepts, Actors and Controversies* (Palgrave Macmillan 2018) 175.

<sup>18</sup> Even if the *Spitzenkandidaten* procedure in place since the 2014 elections to the EP is more the result of practice than a procedure specifically foreseen in the Treaties. In fact, in 2019, Member States discarded the President-elect, and chose their own candidate instead. D Fromage, ‘The Spitzenkandidaten Procedure: a Critical View’ in H Van Eijken, T Marguery and S Platon (eds), *Les élections européennes 40 ans après. Bilans, enjeux et perspectives* (Bruylant 2020) 167-181.

<sup>19</sup> See on the hybrid nature of the Council between executive and legislative organ: E Griglio, ‘Divided Accountability of the Council and the European Council: The Challenge of Collective Parliamentary Oversight’ in D Fromage and A Herranz-Surrallés (eds), *Executive-legislative (im)balance in the European Union* (Hart 2021) 51-66.

<sup>20</sup> W Wessels, *The European Council* (Palgrave Macmillan 2016) 90.

statements before the EP at their own initiative (art. 132(1) EP Rules of procedure). Naturally, the EP's strongest power in the daily functioning of the EU is exercised through its capacity as a co-legislator – together with the Council – in most policy areas post-Lisbon, as is illustrated for instance by the fact that the former co-decision procedure is now designated as “ordinary legislative procedure” (art. 289 TFEU).

As regards the control exercised by national parliaments, it varies significantly across Member States. The Lisbon Treaty finally guaranteed them a minimum amount of information and a minimum capacity to be involved at the EU level after the Treaties had long largely failed to mention them, or had done so in protocols and not in the core of the Treaties. Most of those rights and prerogatives may be found in art. 12 TEU that unequivocally establishes that “[n]ational parliaments contribute actively to the good functioning of the Union”. However, on the one hand, beyond the fact that they now receive legislative and certain preparatory documents directly from the EU institutions (art. 1 Protocol 1), the other rights that have been guaranteed to them, such as the possibility to control the respect of the principle of subsidiarity or the right to be informed when a legislative proposal is made based on the flexibility clause (art. 352 TFEU), are not particularly useful for them to play a (pro)active role in the EU. On the other hand, these Treaty provisions merely represent a minimum; some national parliaments have only seen their capacities to participate in EU affairs limited to this, whereas others have been attributed much stronger powers including, for example, the requirement for a law to be adopted before the national representative in the Council may give his consent to a specific decision,<sup>21</sup> or the definition of a mandate prior to the conduct of negotiations at the EU level.<sup>22</sup>

## II.2. PERSISTENT SHORTCOMINGS IN THE ACCOUNTABILITY FRAMEWORK POST-LISBON

Despite these significant improvements, numerous shortcomings in the accountability framework in place within the EU persist post-Lisbon. They are mostly related to structural issues as well as to the way in which the EU operates in practice; examples belonging to these two categories are provided here as illustrations of the existing problems.

The most evident and arguably the most important hindrance preventing fully-fledged accountability mechanisms being set up at the EU level derives from the fact that, as defined in art. 10(2) TEU, “Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments, themselves democratically accountable either to their national Parliaments, or to their citizens”. The democratic legitimacy of the Council and of the European Council therefore rests on the (imperfect) individual control mechanisms existing at national level despite the fact that national

<sup>21</sup> This is, for example, the case in some instances in Germany and Italy. D Fromage, *Les Parlements dans l'Union Européenne après le Traité de Lisbonne* cit.

<sup>22</sup> This is typically the model in place in Nordic parliaments. See the chapters dedicated to Nordic parliaments in C Heftler, C Neuhold, O Rozenberg and J Smith (eds), *The Palgrave Handbook of National Parliaments and the European Union* (Palgrave Macmillan 2015).



representatives in fact constitute supranational institutions in their own rights when they come together. Since unanimity ceased to be the rule within the Council, the sum of individual accountability channels in place at the national level may be deemed insufficient. This is all the more true as national parliaments' powers of scrutiny of, and control over, their representatives in Council and especially European Council meetings is still imperfect, in some Member States at least.<sup>23</sup> Even if some interactions between the European Council and the EP exist, as mentioned above, they do not amount to a relationship of accountability understood, following Mark Bovens, as a "relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pass judgment, and the actor may face consequences".<sup>24</sup> Whilst the first two criteria may be considered to be fulfilled, the absence of any possibility to ask questions, pass judgement and, most importantly, take any repressive measures indicate that the dialogue between European Council and EP rather amounts to an information channel even if, admittedly, the EP naturally remains free to express its opinion in the form of parliamentary resolutions for instance. Interparliamentary cooperation between national parliaments and the EP has been viewed as a possible, though imperfect, avenue to improve this unsatisfactory situation.<sup>25</sup> This possibility, in fact, raises the question as to whether national parliaments should be collectively represented at the EU level, as they used to be prior to the introduction of the direct elections to the EP in 1979. The debate on a second (or third) parliamentary chamber at the EU level regularly resurfaces,<sup>26</sup> but does not gain traction. The leap forward in financial solidarity (and responsibility) which derives from the common issuance of debt in response to the Covid-19 pandemic might potentially lead to changes in this regard, as the fact that this topic was discussed during the 2021 edition of the European Parliamentary Week – one of the two yearly interparliamentary

<sup>23</sup> W Wessels, O Rozenberg, M van den Berge, C Hefftlar, V Kreilinger and L Ventura, 'Democratic Control in the Member States of the European Council and the Euro Zone Summits' (January 2013) European Parliament Directorate General for Internal Policies Study [www.europarl.europa.eu](http://www.europarl.europa.eu). In 2019, a majority of national parliaments however declared that they were satisfied with their prerogatives in relation to Council meetings. See COSAC, *32<sup>nd</sup> Bi-annual Report of 14 October 2019 on Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny* and COSAC, *Annex to the 32<sup>nd</sup> Bi-annual Report of 14 October 2019 on Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny* [www.secure.ipex.eu](http://www.secure.ipex.eu).

<sup>24</sup> M Bovens, 'New Forms of Accountability and EU-Governance' (2007) *Comparative European Politics* 104, 107.

<sup>25</sup> E Griglio, 'Divided Accountability of the Council and the European Council' cit.

<sup>26</sup> A report was, for instance, dedicated to this question by the French Senate in 2001 (Sénat, 'Rapport d'information n. 381 (2000-2001) de M Daniel Hoeffel fait au nom de la délégation pour l'Union européenne déposé le 13 juin 2001' (13 June 2001) [www.senat.fr](http://www.senat.fr)) and it was also examined during the debates held by the Convention on the future of Europe in charge of drafting the Treaty establishing a constitution for Europe. National parliaments opposed this possibility though. See COSAC, *28<sup>th</sup> Meeting in Brussels of 27 January 2003 addressed to the Convention of the Future of Europe, the EU's institutions, the national parliaments and the Presidency* [www.cosac.eu](http://www.cosac.eu).

meetings on EMU – seems to indicate.<sup>27</sup> The bonds issued by the European Commission on behalf of the EU in both the framework of Next Generation EU and the temporary Support to mitigate Unemployment Risks in an Emergency (SURE) instrument are, directly and indirectly, backed by national budgets.<sup>28</sup> Therefore, national parliaments will have a specific interest in monitoring the use of those funds as was already evidenced by the debates some of them held during the adoption procedures of these instruments,<sup>29</sup> whilst the EP will need to be involved owing to the European nature of those funds. Thus, to avoid tensions, national and European parliaments should, at least as a first step, try to establish common instruments of scrutiny rather than solely concentrating on their national governments or on specific individual Member States. This is all the more important as an “emergency brake” mechanism was established at the European Council level where a Member State considers that another State fails to respect the rule of law in its management of EU funds.<sup>30</sup>

Other difficulties in ensuring adequate accountability derive from the existence of comitology procedures (even if some improvements over time have been noted),<sup>31</sup> and from an increased institutional fragmentation within the EU overall, notably because of the rising trend towards agencification, that is the continuous establishment of new agencies upon which (EU) executive powers are conferred.<sup>32</sup> This is problematic from an accountability perspective, as national parliaments only have limited relationships to agencies, and as the EP is not satisfied with the powers at its disposal to exercise its accountability function.<sup>33</sup>

<sup>27</sup> European Parliament, *European Parliamentary Week 2021* [www.europarl.europa.eu](http://www.europarl.europa.eu).

<sup>28</sup> See on the details of these instruments and the legal constructs underpinning them: A D'Alfonso, 'Next Generation EU. A European Instrument to Counter the Impact of the Coronavirus Pandemic' (6 July 2020) European Parliament Research Service Briefing [www.europarl.europa.eu](http://www.europarl.europa.eu); C Dias and A Zoppè, 'The SURE: Main Features' (26 February 2021) European Parliament Directorate-General for Internal Policies In-Depth Analysis [www.europarl.europa.eu](http://www.europarl.europa.eu); P Dermine, 'The EU's Response to the COVID-19 Crisis and the Trajectory of Fiscal Integration in Europe – Between Continuity and Rupture' (2020) LIEI 337.

<sup>29</sup> See on these procedures: B Dias Pinheiro and D Fromage (eds), 'National and European Parliamentary Involvement in the EU's Economic Response to the COVID Crisis' (2020) EU Law Live Weekend Edition [eulawlive.com](http://eulawlive.com) 13.

<sup>30</sup> See on this and the controversy it sparked: Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget; KL Scheppele, L Pech and S Platon, 'Compromising the Rule of Law While Compromising on the Rule of Law' (13 December 2020) *Verfassungsblog* [www.verfassungsblog.de](http://www.verfassungsblog.de); A Dimitrovs, 'Rule of Law-Conditionality as Interpreted by EU Leaders' (11 December 2021) EU Law Live [eulawlive.com](http://eulawlive.com).

<sup>31</sup> GJ Brandsma, *Controlling Comitology Accountability in a Multi-level System* (Palgrave Macmillan 2013) ch. 7.

<sup>32</sup> See on this trend: M Chamon, *EU Agencies: Legal and Political Limits to the Transformation of the EU Administration* (Oxford University Press 2016).

<sup>33</sup> The limited relationship existing between national parliaments and agencies was recently highlighted in a survey conducted by the Interparliamentary conference of EU affairs Committees. See COSAC, *33<sup>rd</sup> Bi-annual Report of 14 April 2020 on Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny* [secure.ipex.eu](http://secure.ipex.eu). See on the EP's position: Resolution 266/359 of the European Parliament of 3 April 2014 on discharge in respect of the implementation of the budget of the European Union agencies for the financial year 2012: performance, financial management and control.

To these shortcomings resulting from the institutional features of the EU proper, others deriving from practice, of which a few examples shall be provided, must be added. For instance, one of these is the result of the *de facto* leading role assumed by the European Council, despite the fact that it is formally only expected to “provide the Union with the necessary impetus for its development and [to] define the general political directions and priorities thereof [...and that i]t shall not exercise legislative functions” (art. 15(1) TEU). In view of its importance in the management of both the Eurocrisis and the current pandemic, at the very least, doubts may be cast as to whether its actions are still in line with what is prescribed by the Treaties.<sup>34</sup>

In addition, parliaments commonly lack sufficient information: they suffer from informational asymmetry in favour of governments generally,<sup>35</sup> and the mechanisms in place to control their representatives in the Council and in the European Council are not always satisfactory as mentioned before.<sup>36</sup> The quasi-systematic resort to trilogues in recent years makes this situation only worse: the negotiation procedures bring together Commission, EP and Council to reach an early agreement behind closed doors before legislation is approved in replacement of the lengthier ordinary legislative procedure comprising several readings by both EU legislators.<sup>37</sup>

Soft law instruments, which may be associated to insufficient parliamentary involvement or difficulties in guaranteeing adequate judicial control, are also recurrently used, as was recently most visible in the immediate response to the pandemic.<sup>38</sup>

<sup>34</sup> See on its role during the eurocrisis among many others: U Puetter, ‘Europe’s Deliberative Intergovernmentalism: the Role of the Council and European Council in EU Economic Governance’ (2012) *Journal of European Public Policy* 161. See as part of the immediate response to the pandemic D Fromage, ‘Towards Increasing Unity Within the E(M)U post-COVID?’ (2020) *LIEI* 385, and for a critical reflection on its importance in recent years generally JG Giraud, ‘The European Council: a Self-Proclaimed “Sovereign” off the Rails’ (Foundation Robert Schuman *European Issues* 574-2020).

<sup>35</sup> D Curtin, ‘Challenging Executive Dominance in European Democracy’ (2014) *ModLRev* 1, 15.

<sup>36</sup> D Fromage, ‘Executive Accountability to National Parliaments in Post-Crisis EU Affairs: The Persistent Shortcomings in the Council and European Council Oversight’ in D Jancic (ed), *National Parliaments after the Lisbon Treaty and the Euro Crisis: Resilience or Resignation?* (Oxford University Press 2017) 159-175; S Roland, ‘Un déficit démocratique peut en cacher un autre: la responsabilité politique du Conseil européen et du Conseil en question’ in C Geslot, PY Monjal and J Rossetto (eds), *La responsabilité politique des exécutifs des Etats membres* (Bruylant 2016) 219, 235-236; W Wessels, O Rozenberg, M van den Berge, C Heffler, V Kreiling and L Ventura, ‘Democratic Control in the Member States of the European Council and the Euro Zone Summit’ cit.

<sup>37</sup> See for a recent discussion on this question the special issue on trilogues in the *Journal of European Public Policy* (‘Special Issue: Inside the ‘Black Box’ of EU Legislative Trilogues’ (2021) *Journal of European Public Policy*) and notably G Rosén and AE Stie, ‘Balancing Seclusion and Inclusion: EU Trilogues and Democratic Accountability’ (2020) *Journal of European Public Policy* 1.

<sup>38</sup> See on this use of soft law and the advantages and drawbacks of soft law as a crisis management instrument: O Stefan, ‘COVID-19 Soft Law: Voluminous, Effective, Legitimate? A Research Agenda’ (2020) *European Papers* [www.europeanpapers.eu](http://www.europeanpapers.eu) 663-670.

Finally, a further accountability gap within the EU derives from international standardisation: formally non-binding standards are adopted in the framework of international fora with varying forms of national (EU) and EU-wide representations whereby some Member States are full members whilst others are “only” represented by EU institutions. Despite democratic controls by national parliaments and/or the European Parliament not being always sufficiently fully-fledged, these standards may *de facto* shape the content of EU legislation at a later stage, as is for example evidenced by the determining role of the Basel Standards in the area of banking supervision.<sup>39</sup>

In sum, even if the EU’s democratic credentials are now stronger post-Lisbon, important shortcomings deriving both from the EU’s institutional structure and from practice still exist. The next section turns to the democratic accountability of EMU decisions specifically.

### III. DEMOCRATIC ACCOUNTABILITY OF EMU DECISIONS

#### III.1. EMU DECISION-MAKING PROCEDURES AND THEIR CHARACTERISTICS

Even if the panorama highlighted in the introduction already points to the EU institutional framework’s complexity, EMU decision-making procedures are arguably even more complex, and in dire need for reforms to patch the existing accountability gaps. Five main problems of the EMU governance raise issues concerning democratic accountability.

First, different types of EU competences co-exist in this field. These differences shaped the measures adopted in response to the eurocrisis, and have led to frictions, as evidenced for instance by the most recent judgement of the German Federal Constitutional Court in the *Weiss* case.<sup>40</sup> As is well known, the EMU framework has been evolving on an *ad hoc* basis (primarily through the adoption of secondary legislation and intergovernmental Treaties) as crises arose instead of being guided by a thorough plan. Second and resultantly, in EMU, more so than in other fields of EU law, a large variety of instruments and implementation procedures co-exist. They include formally non-binding soft law instruments used, for instance in the framework of the European Semester, and the

<sup>39</sup> See on these issues: M de Bellis, ‘Reinforcing EU Financial Bodies’ Participation in Global Networks: Addressing Legitimacy Gaps?’ in HCH Hofmann, E Vos and M Chamon (eds), *The External Dimension of EU Agencies and Bodies Law and Policy* (Edward Elgar 2019) 126-144; A Viterbo, ‘The European Union in the Transnational Financial Regulatory Arena: The Case of the Basel Committee on Banking Supervision’ (2019) JIEL 205.

<sup>40</sup> German Federal Constitutional Court judgment of the Second Senate of 5 May 2020 n. 2 BvR 859/15, 2 BvR 980/16, 2 BvR 2006/15, 2 BvR 1651/15 ECLI:DE:BVerfG:2020:rs20200505.2bvr085915. Academics have massively reacted to this case by publishing blogposts, most notably on EU Law Live and Verfassungsblog, and by publishing academic articles. See, for instance, P Dermine, ‘The Ruling of the Bundesverfassungsgericht in PSPP – An Inquiry into its Repercussions on the Economic and Monetary Union’ (2020) Eu-Const 525 and P Nicolaidis, ‘An Assessment of the Judgment of the Federal Constitutional Court of Germany on the Public Sector Asset Purchase Programme of the European Central Bank’ (2020) LIEI 267.

unique system of multilevel administrative cooperation in the operationalisation of the Banking Union. To this must be added the predominant role of executives at the national and the EU levels, and an important role attributed to informal (or even non-EU) bodies (chief of which is the Eurogroup), which adds to the important degree of discretion permitted to the institutions in charge of the implementation of the rules in place, primarily, the European Commission.<sup>41</sup> The third problematic characteristic when seeking to guarantee democratic accountability is the co-existence of EU and international norms, which in some instances are not fully aligned though not contradictory, with therefore rules in EMU being based on EU and international law. Fourth, the co-existence of three main categories of Member States (EU27/Internal market vs euro area vs Banking Union Member States) among which the distinction is sometimes blurred, makes for extraordinary complexity, institutional and otherwise.<sup>42</sup> Fifth and lastly, as already mentioned in the introduction, over time the unitary status foreseen for all Member States but Denmark has become more deeply entrenched with, *inter alia*, the Lisbon Treaty having introduced for the first time a possibility for non-euro area Member States not to vote in the Council on decisions that concern euro area Member States only (art. 136(2) TFEU). There are nonetheless some signs that the trend towards an ever-more permanent disunity between, on the one hand, euro area and, on the other, EU27 that had become visible since the eurocrisis may be diminishing as a consequence of Brexit, of the adoption of the euro by a growing number of Member States, and of the pandemic and the response to the economic downturn it has already provoked.<sup>43</sup>

The institutional balance and the governance structures in place in the field of EMU are therefore different from those existing in other fields of European integration. The following paragraphs focus on depicting the mechanisms of parliamentary control in place in the main areas of EMU, before the centrality of the Eurogroup and the democratic oversight to which it is submitted are considered.

### III.2. PARLIAMENTARY INVOLVEMENT IN THE DIFFERENT FIELDS OF EMU: DIALOGUE INSTEAD OF FULL INVOLVEMENT

As underlined by Vivien Schmidt, the EP was the weakest institution when the eurocrisis started, and “[o]ver time, [...] this [...] changed, as the EP pushed to become more of an

<sup>41</sup> This has led to recurrent calls in favour of the simplification of the existing framework. See for instance: Communication COM(2020) 55 final from the Commission of 5 February 2020 to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions, Economic governance review Report on the application of Regulations (EU) 1173/2011, 1174/2011, 1175/2011, 1176/2011, 1177/2011, 472/2013 and 473/2013 and on the suitability of Council Directive 2011/85/EU.

<sup>42</sup> See for a summary of these differences: VA Schmidt, *Europe's Crisis of Legitimacy* cit. 299.

<sup>43</sup> D Fromage, 'Towards Increasing Unity Within the E(M)U post-COVID?' cit.

‘equal partners’, even if it still has a long way to go”.<sup>44</sup> This weakness derives from the fact that it is not automatically a co-legislator in all matters related to EMU, like it has become in most other areas of EU law. Notwithstanding this, it was able to exercise (some) influence during the negotiations of eurocrisis law,<sup>45</sup> but the prerogatives it has secured for itself remain weak. For instance, in the operation of the European Semester for the coordination of economic policies, its role is very limited as it is not involved in the approval of the recommendations and observations issued at the EU level. The EP has, instead, been empowered with the possibility to host ‘economic dialogues’ with a series of EU institutions and bodies. Under the Six Pack and the Two Pack of legislation, the competent committee from the EP (mostly the Committee on Economic and Monetary Affairs – ECON) may invite the President of the Council, the Commission and, where appropriate, the President of the European Council or the President of the Eurogroup to appear before it. National parliaments have been endowed with a similar opportunity to invite the Commission, when it assesses a Member State’s budgetary plans for example.<sup>46</sup> The “dialogue” format between the EP and the EU institutions is not limited to economic coordination: it is also resorted to with the ECB in the fields of monetary policy and prudential supervision (where it is open to national parliaments under certain conditions), as well as in the area of banking resolution (also open to national parliaments).<sup>47</sup> Even if their potential in allowing parliamentarians to exert political pressure on the institutions submitted to them may not be neglected, these dialogical procedures undoubtedly confer only a limited role upon national and European parliaments in the field of economic coordination, a trend that was followed in the design of the economic response to the Covid crisis with the creation of the “Recovery and Resilience Dialogue”.<sup>48</sup> By contrast, parliaments’ mere control by means of a dialogue with the ECB in the area of monetary policy may be more justifiable, in view of its exclusive EU nature, of the ECB’s strict independence and its sole responsibility in this field. Parliaments’ scrutiny of banking supervision and resolution may call for a different assessment, a fact the EU’s legislator itself recognised when it stated that

<sup>44</sup> VA Schmidt, *Europe’s Crisis of Legitimacy* cit. 208.

<sup>45</sup> C Fasone, ‘European Economic Governance and Parliamentary Representation. What Place for the European Parliament?’ (2014) ELJ 164.

<sup>46</sup> Regulation (EU) 473/2013 of the European Parliament and of the Council of 21 May 2013 on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the euro area, art. 7(3).

<sup>47</sup> See on these procedures: F Amtenbrink and M Markakis, ‘Towards a Meaningful Prudential Supervision Dialogue in the Euro Area? A Study of the Interaction Between the European Parliament and the European Central Bank in the Single Supervisory Mechanism’ (2019) ELR 3; D Fromage and R Ibrido, ‘Accountability and Democratic Oversight in the European Banking Union’ in G Lo Schiavo (ed), *The European Banking Union and the role of law* (Edward Elgar 2019) 66-86.

<sup>48</sup> See on this: C Dias and I Lara Miranda, ‘European Parliament Involvement in Scrutinising the Recovery and Resilience Facility’ (September 2021) European Parliament Directorate General for Internal Policies Briefing [www.europarl.europa.eu](http://www.europarl.europa.eu).

“[t]he national parliament of a participating Member State should also be able to invite the Chair or a representative of the Supervisory Board to participate in an exchange of views in relation to the supervision of credit institutions in that Member State together with a representative of the national competent authority. *This role for national parliaments is appropriate given the potential impact that supervisory measures may have on public finances, credit institutions, their customers and employees, and the markets in the participating Member States*”.<sup>49</sup>

Parliamentary accountability was particularly weak in the field of financial assistance. The European Stability Mechanism (ESM) is established on the basis of an intergovernmental agreement which does not recognise any formal role to the EP (or national parliaments), even after it was recently amended. In fact, issues of governance appear to have been fully absent from the reform discussions that were concluded in December 2020. National parliaments may naturally hold their individual representatives to account and generally be involved in the operations of the ESM in accordance with the existing rules at the national level, but the ESM Treaty only refers to them in their quality as recipients of its annual report.<sup>50</sup> As to the EP, it is only indirectly involved in the operationalisation of the ESM. It may invite the Chairperson of the ESM Board of Governors, to take part in an “economic dialogue” regarding financial assistance in his capacity as President of the Eurogroup under the Two Pack of legislation.<sup>51</sup> Furthermore, an informal dialogue has developed between the EP and the ESM Managing director.<sup>52</sup> Its existence has since been recognised in the amended ESM Treaty. The terms used are still weak and limited to this sole recognition.<sup>53</sup> The EP shall also receive the ESM’s annual reports from now on,<sup>54</sup> but nothing further. This situation has already attracted criticism considering the minimal changes introduced by the draft revised ESM Treaty.<sup>55</sup>

As evidenced from the preceding paragraphs, the mechanisms in place to guarantee adequate democratic accountability in the various areas of EMU are thus characterised by their weakness and incompleteness, even if certain improvements were made over time. Efforts in this sense may nevertheless arguably only have a limited impact as long

<sup>49</sup> Emphasis added. Recital 56 Council Regulation (EU) 1024/2013 cit.

<sup>50</sup> Art. 30(5) of the Treaty establishing the European Stability Mechanism [2012].

<sup>51</sup> Regulation (EU) 472/2013 of the European Parliament and of the Council of 21 May 2013 on the strengthening of economic and budgetary surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability, art. 7.

<sup>52</sup> A Zoppè and C Dias, ‘The European Stability Mechanism: Main Features, Instruments and Accountability’ (October 2019) European Parliament Directorate General for Internal Policies In-Depth Analysis [www.europarl.europa.eu](http://www.europarl.europa.eu) 13.

<sup>53</sup> Recital 7 of the Agreement amending the Treaty establishing the European Stability Mechanism [2021] (“ESM Members acknowledge the current dialogue between the Managing Director and the European Parliament”).

<sup>54</sup> *Ibid.* art. 30(5).

<sup>55</sup> M Markakis, ‘The Reform of the European Stability Mechanism: Process, Substance, and the Pandemic’ (2020) LIEI 417.

as executives, and especially the informal Eurogroup, maintain the central role they have increasingly assumed over the past decade as presented next.

### III.3. EXECUTIVE AND EUROGROUP CENTRALITY IN EMU

The centrality of executives in EMU, primarily the European Council and the Eurogroup, is problematic for several reasons. As highlighted in the preceding paragraphs, it is generally an issue because collective accountability mechanisms targeted at the EU bodies and institutions composed of representatives stemming from national governments are, to date, largely inexistent. In the field of EMU, this situation is worsened by two additional factors. First, the EP is not systematically involved on an equal footing in legislative procedures, as was most recently visible in the answer to the Covid crisis. It has managed to assert its power by negotiating two legislative initiatives granting it varying powers as a package deal,<sup>56</sup> and despite an undeniable transfer of powers to the EU levels in the field of economic and fiscal coordination, it does not have a strong word. Second, two structures co-exist parallel to the European Council and the ECOFIN Council in the form of the Euro Summit and the Eurogroup. The Treaty on Stability, Coordination and Governance (TSCG) formalized the Euro Summits at the level of the heads of State and government and established some mechanisms for the involvement of the European Parliament. For instance, “[t]he President of the European Parliament may be invited to be heard [...and t]he President of the Euro Summit shall present a report to the European Parliament after each Euro Summit meeting” (art. 12(5) TSCG). However, in the years that followed its adoption at least, the EP’s participation was not effective. There were few Euro Summits and the EP President was not invited to make a statement at the beginning of the meetings that did take place.<sup>57</sup> This lack of involvement was however partly mitigated by the fact that the EP President was indeed invited to make a statement as per art. 235(2) TFEU during the European Council meetings taking place in parallel to these Euro Summit meetings. Furthermore, the President of the European Council reports *ex post* to the EP (art. 15(6) TEU),<sup>58</sup> and it has regularly done so after Euro Summit meetings too.

Contrary to the Euro Summit, the Eurogroup has become a (if not the) central decision-making, or at least preparatory organ in EMU matters. As Paul Craig summarised it: “The Eurogroup has [...] played an increasingly important role in decision-making since the financial crisis. The reality is that it is central to all major initiatives relating to the euro

<sup>56</sup> This was, for instance, the case of the SSM Regulation and the contemporary reform of the EBA Regulation (I thank Menelaos Markakis for this addition).

<sup>57</sup> D Fromage, ‘The European Parliament in the Post-crisis Era: an Institution Empowered on Paper Only?’ (2018) *Journal of European Integration* 281.

<sup>58</sup> JR Vanden Broucke, EM Poptcheva and S de Finance, ‘The European Council and its President’ (January 2015) European Parliamentary Research Service [www.europarl.europa.eu](http://www.europarl.europa.eu) and SE Anghel, IC Bacian, R Drachenberg and S Tenhunen, ‘The European Council in 2015 Overview of Decisions and Discussions’ (July 2016) European Parliamentary Research Service [www.europarl.europa.eu](http://www.europarl.europa.eu) 22 ff.



area, broadly conceived, which cover structural adjustment, macroeconomic planning, negotiation with states in receipt of aid from the ESM [European Stability Mechanism], and aspects of banking union”.<sup>59</sup> The Eurogroup more often than not meets in inclusive format, that is in a configuration that is identical to the ECOFIN Council, although the number of attendees including assistants may be significantly less.<sup>60</sup> It is entrusted with the task to prepare reforms that affect Euro area Member States only, as in the case of the changes to the ESM Treaty, with membership to the ESM Board of governors being additionally identical to the Eurogroup. It also plays a role – in inclusive format – in the negotiations towards the completion of the Banking Union,<sup>61</sup> an initiative in which, to date, only the 19 euro area Member States and two Member States that are currently in the “Euro area waiting room” (ERM II) participate. What is more, the Eurogroup has had to design solutions that affect all Member States in an identical manner as well, as in the case of SURE and the Recovery and Resilience Facility.<sup>62</sup> Besides this role in crisis management and constitutional design, the Eurogroup plays a particularly important role in the daily efforts of economic coordination. For instance, it receives euro area Member States’ draft budgetary plans and discusses the Commission’s opinions on them.<sup>63</sup> The President of the Eurogroup is also involved in the “economic dialogue” with the EP under the same status as the other EU institutions that interact with the EP in their own right (*i.e.*, the President of the Council, the Commission, and the President of the European Council).<sup>64</sup> It is to the Eurogroup that the ECB’s annual report on supervisory activities is presented, and not to the Council, to which it is however transmitted too, and it is the Eurogroup and not the Council that may hold a hearing with the Chair of the Supervisory Board.<sup>65</sup> While this important role of the Eurogroup may be justified in view of the responsibility it assumes, and of Euro area Member States’ predominance in the Banking Union, it is more problematic when considering that the Court of Justice still views it as an informal body.<sup>66</sup> Indeed, the Eurogroup’s nature and the ensuing consequences, in terms of the non-contractual liability of the Union for example, have been subject to recurrent examination by the Court of Justice, most recently in the *Chrysostomides* case.<sup>67</sup>

<sup>59</sup> P Craig, ‘The Eurogroup, Power and Accountability’ cit. 235

<sup>60</sup> This precision is owed to Menelaos Markakis.

<sup>61</sup> Euro Summit Statement of 11 December 2020 regarding the Euro Summit meeting, in European Council Press Release 502/20 of 11 December 2020, 2.

<sup>62</sup> Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility.

<sup>63</sup> Arts 6 and 7 of the Regulation (EU) 473/2013 cit.

<sup>64</sup> *Ibid.* art. 15.

<sup>65</sup> Art. 20 of the Council Regulation (EU) 1024/2013 cit.

<sup>66</sup> Joined cases C-105/15 P to C-109/15 *Mallis and Malli v Commission and ECB* ECLI:EU:C:2016:702.

<sup>67</sup> Joined cases C-597/18 P, C-598/18 P, C-603/18 P and C-604/18 P *Council v K. Chrysostomides & Co. and Others* ECLI:EU:C:2020:1028. See also M Markakis and A Karatzia, ‘The Final Act on the Eurogroup and Effective Judicial Protection in the EU: *Chrysostomides*’ (22 December 2020) EU Law Live [www.eulawlive.com](http://www.eulawlive.com).

The Court insists on its intergovernmental and informal nature, thereby shielding its actions, also when acting as ESM Board of Governors, from judicial review. For this reason, the expansion of its role over the past decade, and over the past year in the management of the Covid crisis, is worrisome and, in fact, there are hints that accountability gaps in EMU-related matters may only be widening despite the apparent recurrent commitment of EU officials in favour of higher accountability standards.

#### **IV. CONCLUSION: EMU ACCOUNTABILITY REGIME IS (STILL) DISTINCT FROM THE STANDARD EU REGIME... AND RIGHTFULLY SO?**

As shown in this *Article*, the democratic accountability regime applicable in the field of EMU is still clearly distinct from the one generally applicable within the EU. This is, among other reasons, because EMU is a particularly complex policy field governed by a wide variety of institutions and bodies, defined by sets of formal and informal rules that apply distinctly to varying sets of Member States – rules that have, additionally, been constantly evolving over the past decade. As a result of all the factors that distinguish EMU from ordinary EU law, there exists at present even more numerous and varied accountability gaps in this policy area.

Whilst this is naturally an unsatisfactory situation that needs remedying, and whilst at the very least some pragmatic solutions could be found to improve this situation as proposed in closure, it is argued here that as long as a general overhaul of the E(M)U legal framework is not conducted, it will be impossible for democratic accountability to be fully guaranteed in all circumstances. For instance, if the imbalance in the degree of competence exercised at the EU level in the different areas of EMU were to be corrected through the exercise of more powers at the EU level, then national and European parliamentary involvements should be commensurate to these changes taking due account of parliaments' primary, and unremovable, responsibility in budgetary and financial matters. For these reforms to suffice however, the accountability deficits that generally still persist post-Lisbon within the EU would also have to be resolved. Both this and the changes required in EMU would nonetheless require changes to the Treaties, a goal that appears particularly unrealistic at this stage.

The problematic character from a democratic accountability point of view of the existing EMU architecture has, in fact, long been a well-known fact to both academic and (EU) institutions. In its Reflection paper on the deepening of the EMU published in spring 2017, the Commission stated that "the institutional architecture of the EMU is a mixed system which is cumbersome and requires greater transparency and accountability".<sup>68</sup> In particular, it noted that "the involvement of the European Parliament and the democratic

<sup>68</sup> European Commission, *Reflection Paper on the Deepening of the Economic and Monetary Union* (31 May 2017) [www.ec.europa.eu](http://www.ec.europa.eu) 27.

accountability for the decisions taken for or on behalf of the euro area should be enhanced". To this end, the Commission proposed that an "agreement on the democratic accountability of the euro area" signed by the Commission and "other institutions and bodies taking decisions on or acting on behalf of the euro area" be concluded before the next EP elections in 2019, and be later integrated in the EU Treaties, but it never materialised. Likewise, even if criticism on the basis of its thin democratic credentials have recurrently been made, and despite the extended role it was attributed following the reforms agreed in December 2020, the governance of the ESM has not been changed, and its democratic credentials remain insufficient.<sup>69</sup> The Eurogroup's undefined, informal and thus problematic character is no secret to anyone. Yet, it is resorted to by Heads of States and Governments particularly when in crisis mode, and has been heavily relied upon in the design of the response to the ongoing pandemic.<sup>70</sup> It should not be neglected that the (imperfect) standard accountability channels in EU matters naturally apply to EMU as well, and that parliamentary oversight over the Eurozone-specific Euro Summits and Eurogroups are even less developed.

Interparliamentary cooperation between the EP and national parliaments, and amongst national parliaments, could contribute to increase their oversight capacities, in particular because interparliamentary cooperation allows them to exchange information and best practices. The TSCG foresees, in its art. 13, that

"[a]s provided for in Title II of Protocol (No 1) on the role of national Parliaments in the European Union annexed to the European Union Treaties, the European Parliament and the national Parliaments of the Contracting Parties will together determine the organisation and promotion of a conference of representatives of the relevant committees of the European Parliament and representatives of the relevant committees of national Parliaments in order to discuss budgetary policies and other issues covered by this Treaty".

On this basis, the Interparliamentary conference on Stability, Economic Coordination and Governance in the EU (SECG Conference) was established in 2013. Nevertheless, it is still unclear whether this Conference can bring much benefit. The idea to establish a fully-fledged "Europarliamentary chamber" has been aired with frequency as well. Although only few of the proposals have gone beyond the mere expression of the idea, for example, detailing all the characteristics of such a chamber, the Treaty on the democratization

<sup>69</sup> See on the ESM and its (expected) evolution: J Aerts and P Bizarro, 'The Reform of the European Stability Mechanism' (2020) *Capital Markets Law Journal* 159 and M Markakis, 'The Reform of the European Stability Mechanism Pandemic' cit.

<sup>70</sup> B Dias Pinheiro and D Fromage, 'Parliamentary Oversight of the EU Economic Recovery Plan – Lessons Learned and Which Way Forward?' in D Utrilla and A Shabbir (eds), *EU Law in Times of Pandemic. The EU's Legal Response to COVID-19* (EU Law Live Press 2020) 102-116.

of the Economic and Social Government of the European Union (T-Dem) did include concrete proposals.<sup>71</sup> Nonetheless, thus far, neither the EU institutions, nor most Member States have clearly warmed up to the idea: The European Commission, for instance, has declared that “[i]nterparliamentary cooperation as such does not, however, ensure democratic legitimacy for EU decisions. That requires a parliamentary assembly representatively composed in which votes can be taken. *The European Parliament, and only it, is that assembly for the EU and hence for the euro*”.<sup>72</sup> As is only logical, this view is also endorsed by the EP itself when it declared that

“[w]hile reaffirming its intention to intensify the cooperation with national parliaments on the basis of Protocol No 1, [it] stresses that such a cooperation should not be seen as the creation of a new mixed parliamentary body which would be both ineffective and illegitimate on a democratic and constitutional point of view; [it also] *stresses the full legitimacy of Parliament, as parliamentary body at the Union level for a reinforced and democratic EMU governance*”.<sup>73</sup>

Arguments in favour of the EP guaranteeing democratic accountability in the field of EMU including the euro area as well are numerous. They range from its quality as an EU institution and EMU being an EU policy, to the impossibility to introduce any distinction among MEPs who represent EU citizens and not national constituencies, and include most notably the fact that even policies that are applicable to the euro area only (or to the Banking Union only) inevitably have important spill-over effects on all the remaining Member States.<sup>74</sup> Nonetheless, other, in my view, equally strong arguments actually lead to an adverse conclusion with respect to the EP’s suitability to guarantee democratic accountability at the EU level. For instance, the fact that MEPs elected by citizens who are not directly affected by all EMU policies leads to the chain to ensure democratic legitimacy being broken. Also, accountability at the EU level alone is certainly not sufficient in view of the fact that large part of EMU procedures either still concern areas within the realm of national competences (this includes economic and fiscal policies which are only to be

<sup>71</sup> S Hennette, T Piketty, G Sacriste and A Vauchez, *How to democratize Europe* (Harvard University Press 2019). See for a critical analysis of the T-Dem: C Fasone, N Lupo and A Vauchez, *Parlamenti e democrazia in Europa: Federalismi asimmetrici e integrazione differenziata* (Il Mulino 2020). See for a comparative and critical analysis of the proposals to establish a euro area Parliament made to date: I Cooper, ‘A Separate Parliament for the Eurozone? Differentiated Representation, Brexit, and the Quandary of Exclusion’ (2017) *Parliamentary Affairs* 655.

<sup>72</sup> Communication COM(2012) 777 final from the Commission of 28 November 2012 on a blueprint for a deep and genuine economic and monetary Union Launching a European Debate, 35. Emphasis added.

<sup>73</sup> European Parliament Report 2012/2151(INI) of 19 November 2012 with recommendations to the Commission on the report of the Presidents of the European Council, the European Commission, the European Central Bank and the Eurogroup “Towards a genuine Economic and Monetary Union”, 19. Emphasis added.

<sup>74</sup> See on this: M Markakis, ‘Differentiated Integration and Disintegration in the EU: Brexit, the Eurozone Crisis, and Other Troubles’ (2020) *JIEL* 489.

coordinated at the EU level) or operate through composite administrative procedures whose nature is still subject to diverging interpretations by national and European courts (this is the case of the Banking Union).<sup>75</sup> Put differently: an accountability gap arises because the mechanisms in place at the EU level are yet to be mirrored by similar procedures to guarantee democratic accountability.<sup>76</sup> Admittedly, since changes to the treaties are very unlikely at this stage, this is bound to remain a theoretical discussion.

This leads us towards pragmatic solutions à *Traités constants* that should be urgently implemented, to compensate the accountability gaps that exist both within the EU and within EMU in particular. Generally, interparliamentary cooperation, understood here both in its vertical dimension (that is: between the EP and national parliaments) and in its horizontal dimension (that is: exclusively among national parliaments), should be strengthened. Calls in this sense are recurrently made, and initiatives in favour of more interparliamentary cooperation at both a political and an administrative level have been blossoming over the past decade.<sup>77</sup> This notwithstanding, some more efforts should still be made to make the most out of the exchanges that already take place at present: the format of existing conferences could be improved so that these events become more (politically) attractive to MPs and MEPs, and are able to better cater the need for them to have discussions on key issues as they unfold as opposed to debates on long previously-agreed questions.<sup>78</sup> More room for debate should be instituted, and pre-written long speeches avoided in as far as possible. Also, new forums could be set up so that most if not all the existing Council configurations be mirrored by a thematic interparliamentary forum, and, more simply, the exchange of best practices and information that already happens could be enhanced. The efforts towards the centralisation of all sources of information on the Platform for EU interparliamentary exchange platform (IPEX) recently made are most welcome, but not sufficient, as more information on current developments in the different parliaments could be published. Even if this will never totally compensate the absence of formal mechanisms to this end, interparliamentary cooperation should also generally be used as a means to interact with the European Council and the Council on a collective basis, be it on the occasion of the different interparliamentary conference meetings or be it through the exchange of information and best practice which each national parliament may, in turn, use in conducting its scrutiny at the national

<sup>75</sup> See on these diverging views: case T-122/15 *Landeskreditbank Baden-Württemberg v ECB* ECLI:EU:T:2017:337 and German Federal Constitutional Court judgment of the Second Senate of 30 July 2019 n. 2 BvR 1685/14.

<sup>76</sup> These shortcomings have been remarkably well described in M Lamandini, D Ramos Muñoz and V Ruiz Almendral, 'The EMU and its Multi-level Constitutional Structure: the Need for More Imaginative 'Dialogue' Among and Across EU and National Institutions' (2020) LIEI 311.

<sup>77</sup> See on this evolution: E Griglio and S Stavridis, 'Inter-parliamentary Cooperation as a Means for Reinforcing Joint Scrutiny in the EU: Upgrading Existing Mechanisms and Creating New Ones' (2018) Perspectives on Federalism.

<sup>78</sup> In fact, a reflection on interparliamentary cooperation was launched by the Council presidency in 2020. COSAC, 32<sup>nd</sup> Bi-annual Report of 14 October 2019 cit.

level. It is beyond any doubt that European and national parliaments have a reinforced duty to – collectively – exercise their budgetary prerogatives in overseeing the implementation of the economic instruments adopted to counter the Covid crisis.

Increased efforts toward transparency could also be made to improve democratic accountability. In 2006, the Commission President Barroso took the initiative to send EU legislative proposals and planning documents to national parliaments directly after the Constitutional Treaty, which would have provided for such a procedure, had been rejected. Similarly, the European Commission could, on its own initiative, transmit more documents to parliaments. This would be a positive development overall, but also particularly in EMU-related matters in view of the importance of the soft law instruments adopted in the framework of the European Semester, for example. Generally, efforts could be made (where legally possible) to try to resort to instruments, which do provide for some form of parliamentary involvement, as opposed to (soft law and other) instruments that do not.

To improve democratic accountability in the field of EMU specifically, all Member States should be submitted to the same regime. Yet, as long as this is an unrealistic target, Euro area Member States will need to come together to discuss policies that are specific to them, and hence the Eurogroup will continue to exist in parallel to the Council, and the Euro Summit will co-exist with the European Council. It is indeed the case that any decision made for the euro area likely affects the rest of the Member States, who thus must legitimately be involved, also because they are, at least formally, bound to adopt the euro in the long run. At the same time, these elements cannot justify the quasi-systematic resort to Eurogroup and Euro Summit meetings in inclusive format we have observed in recent years. This is undesirable and unacceptable for reasons of *clarity* (the already complex institutional structure in place becomes even more obscure and, in no few instances, the justification of the choice between inclusive and non-inclusive format and the choice not to meet in standard (European) Council format is difficult to grasp for outside observers); for reasons of *transparency* (transparency standards applicable to the Eurogroup and the Euro Summit are lower than those in place in the framework of the Council and the European Council) and for reasons of *accountability* (parliaments' prerogatives are generally more limited with regard to Eurogroup and Euro Summits meetings). Agreements concluded by Member States outside of the EU legal framework lead to similar and additional issues, including the need to guarantee that Member States and EU institutions continue to observe their obligations under EU law, and to ensure the consistency and the legality of these instruments with EU norms. Accordingly, wherever possible, EU law-based solutions should be favoured, and resort should be made to standard EU institutions (*i.e.*, European Council and Council) instead of Eurogroup and Euro Summit, especially where these meet in inclusive formats.

