



THROUGH A TREATY?

A EUROZONE CONGRESS

TABLE OF CONTENTS: I. Introduction. – II. Summit and Congress. – III. Ministers and Congress. – IV. Treaties and Congress. – V. To conclude.

I. Between spring 2010 and summer 2012, the euro was at least three times close to collapsing, but in a sustained effort of fire-fighting and improvisation, European Union leaders and institutions managed to save it.¹ Five years after the emergency, public support for the currency zone is again solid. Especially Emmanuel Macron's victory in the 2017 French election has reenergized ideas for reforming the monetary union, even if operational follow-up has had to wait due to German coalition building. This lull is a good moment for reflection on the euro's democratic future.

The European Commission, stepping into the debate in December 2017 with a series of proposals, wishes to prune the Eurozone of its messy branches and strange crisis outgrowths. It aims to bring the rescue-funds of the European Stability Mechanism within the Treaty-remit as a European Monetary Fund, to "repatriate" the Fiscal Compact, and to give the Eurogroup of Finance Ministers a permanent chair who also is a Commission Vice-President and hence accountable to the Parliament – all in the name of efficiency and democracy.² Unsurprisingly, the Juncker-Commission rejects ideas of a separate Eurozone parliament.³ Such a body upsets the Brussels doctrine; this is true for both the "Macron", Members of the European Parliament-only variant and perhaps even more for the "T-Dem" composite version.⁴

¹ This *Overview* has originally been written as a contribution to S. HENNETTE, T. PIKETTY, G. SACRISTE, A. VAUCHEZ, *T-Dem*, Harvard: Harvard University Press, 2018.

² Communication COM(2017)821 of 6 December 2017 from the Commission, *Further Steps Towards Completing Europe's Economic and Monetary Union: A Roadmap*.

³ In European Commission, Speech SPEECH/17/3165 of 13 September 2017, *President Jean-Claude Juncker's State of the Union Address 2017*, europa.eu, Juncker said: "The parliament for the eurozone is the European Parliament" (his Strasbourg audience applauded).

⁴ Art. 4 of the Draft Treaty on the Democratization of the Governance of the Euro Area (T-Dem).

Whereas the Commission prefers to treat currency politics as just any other Union policy, the authors of T-Dem rightly contend: “The government of the eurozone is not a Europe as the others: it’s not just about organizing a continental market, it’s henceforth about coordinating economic policies, harmonizing tax policies and converging the budgetary policies of the states, in short to enter the heart of the social pacts of the member states”.⁵

Most of the economic and budgetary policy competences have until now remained in the hands of the Member States, and for good reason. At the same time, the crisis made clear to the public at large that the euro is also a common good. The Eurozone becomes stronger if this specific nature of its politics is acknowledged.

We therefore warmly welcome the “T-Dem proposal” for a Eurozone assembly composed of national and European parliamentarians. We also agree with the authors that such a body should have substantial powers in order not to become a “talking shop”. In our view, it should concentrate on the newly emerged highest political authority in the currency union, serving in fact more as a “Eurozone Congress” (II). For both political and constitutional reasons, its powers should not interfere in the already crowded field of European and national law-making, by setting the corporate tax rate and pool public debt (III). And its purpose might be better served with a legal basis in the Union Treaties, instead of a new treaty (IV).

II. Since the negotiations on the Treaty of Maastricht some Member States, in particular France, have stressed the need for a *gouvernement économique*, a highest political authority for the currency union, embodied by the heads of state or government. Due to resistance of other Member States, in particular Germany, these efforts have not found their way into the Union Treaties. Hence, the finance ministers, halfway the technical and political level, were attributed most powers in coordinating economic and budgetary policies (Arts 121 and 126 TFEU).

The financial and sovereign debt crises have exposed the shortcomings of this arrangement. As of 2008, at the initiative of French President Sarkozy, the political vacuum has been “filled” by the Eurosummit. From an *ad hoc* meeting at the height of the banking crisis to a series of “summits of the truth” in 2010 and 2011, it was accorded legal recognition in the 2012 Fiscal Compact.⁶ In the line of authority, the Eurosummit takes precedence over the Eurogroup, as became very visible for the public at large during the more recent Greek debt saga in the summer of 2015. But it was no different

⁵ S. HENNETTE, T. PIKETTY, G. SACRISTE, A. VAUCHEZ, *Pour un traité de démocratisation de l'Europe*, Paris: Seuil, 2017, p. 9.

⁶ Art. 12 of the 2012 Treaty on stability, coordination and governance in the Economic and Monetary Union (hereinafter Fiscal Compact).

during earlier key episodes in the crisis.⁷ In emergencies and for strategic decisions, the “chiefs” are in charge, either in full European Council format or in euro area composition. Contrary to what the authors argue, it is therefore the joint presidents and prime ministers in their various constellations who bear primary responsibility for Eurozone politics *vis-à-vis* their electorates.

The creation of the Summit forms an expression of the political nature of the currency union where national economic policies and central steering go hand-in-hand. Some observers conclude that the currency union, in its present form, cannot survive: either it should develop into a Federal entity or it will collapse. We don’t share this view. The blend of national and central features corresponds to the Union’s constitutional nature, in which constituent power lies with the Member States whose governments also play a central role at the level of constituted power. This is a historical and political reality governments are aware of, but which is often missed, or dismissed, by economic commentators and legal scholars. And yet, political leaders in this set-up not only act on their own national interests, but also in concert, in support of the common good, as representatives of *Member States*.⁸

This political awareness at the executive level of a common bond is difficult to create or reproduce at the level of democratic representation and control. National leaders sit around the same table, national parliamentarians do not. Hence the present conundrum, in which neither the European Parliament nor national parliaments are capable of adequately acting in this ‘intermediate sphere’, where national and common interests meet;⁹ it is the source of the “blind angle” the authors identify.¹⁰ This is where their case for a Eurozone parliament, with its composite membership, is strongest. The body would control the political decisions that the Eurosummit takes, such as the green-lighting of financial assistance, the initiation of new constructs like the Banking Union, the setting of economic priorities and personnel issues such as the nomination of the Eurogroup president who should become a full-time chair.

In light of its major interlocutor and its dual composition, this parliamentary assembly should perhaps not be called “Eurozone parliament” but rather “Eurozone Congress”. Already in 2003, then European Convention president Valéry Giscard d’Estaing coined the

⁷ See in this regard L. VAN MIDDELAAR, *De nieuwe politiek van Europa*, Groningen: Historische Uitgeverij, 2017, pp. 256-259 (discussing the involvement of political leaders in the Cypriot assistance operation of 2013), and V. BORGER, *The Transformation of the Euro: Law, Contract, Solidarity* (dissertation thesis, defended at Leiden University on 31 January 2018, pp. 220-229 (discussing the steering role of the leaders in relation to the establishment of the temporary rescue facilities European Financial Stability Facility and European Financial Stabilization Mechanism in the weekend of 7-9 May 2010).

⁸ Either through Institutions like the European Council or international agreements like the Fiscal Compact or the 2012 European Stability Mechanism Treaty (hereinafter, ESM Treaty).

⁹ This is a key argument in L. VAN MIDDELAAR, *The Passage to Europe: How a Continent Became a Union*, New Haven, London: Yale University Press, 2013.

¹⁰ S. HENNETTE, T. PIKETTY, G. SACRISTE, A. VAUCHEZ, *Pour un traité de démocratisation de l'Europe*, cit., p. 7.

term “European Congress” for an assembly consisting of national and European parliamentarians which would gather for important occasions.¹¹ But whereas the body envisaged by Giscard would be little more than an applauding machine, legitimizing the authority of the European Council and its president, the Eurozone Congress would have teeth.

In sum, the Eurozone Congress should operate as the parliamentary interlocutor of the “chiefs”. Their political decisions or strategic orientations would require its consent.

III. The Eurogroup stands below the Summit in the line of authority. Under the radar, it has witnessed a major increase in its powers. It no longer only operates as an informal body,¹² it also takes legally binding decisions when its members meet in their capacity of Governors of the European Stability Mechanism.¹³ The Governors approve of assistance and its payment in tranches, control the drafting of Memoranda of Understanding and decide on increases in the capital of the fund.¹⁴ Here too, there is no adequate joint parliamentary control and there is a role to play by the Eurozone Congress. In our view this role would still exist if and when the European Stability Mechanism would be “repatriated” in the EU Treaties. The politics of the currency union, after all, would continue to demand dual legitimacy.

However, we do not agree that the Eurozone assembly, acting as “legislator” together with the Eurogroup, should acquire competences allowing it to set the corporate tax rate or to pool public debt (Art. 12, paras 2-4, T-Dem). This goes way beyond addressing the democratic “blind angle”. It would amount to a fundamental change in the division of responsibilities between the national and central level. The authors make no secret in this regard of their wish to break Germany’s hold on the direction of economic policy, spelling out the assembly’s capacity to outvote a recalcitrant bloc of German deputies. This is surprising since they themselves wish to avoid that “the institutions of

¹¹ Note that one could argue that the Union’s constitutional set-up already contains a (legislative) “Congress”, consisting of the Council and the European Parliament.

¹² Strictly speaking, the Eurogroup *de facto* also has the capacity to adopt legally binding decisions under the EU Treaties, as States outside the currency union are excluded from voting in the Council on certain economic policy decisions (see Art. 139, paras 2 and 4, TFEU).

¹³ Art. 5 ESM Treaty.

¹⁴ Since the entry into force of the “Two-Pack” (*id est*, 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, and 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) the main elements of economic policy conditionality linked to assistance of the European Stability Mechanism also have to be approved by the Council (see Art. 7 of regulation 472/2013).

a national democracy operate in a vacuous space".¹⁵ This move cannot be compensated by "associating" national parliamentarians, in their capacity as members of the Congress, with such decisions. It would bereave national parliaments of a vital power, and thus meet with political as well as constitutional obstacles and concerns.

In sum, the Eurozone Congress could also act as the parliamentary interlocutor of euro area finance ministers, be it in the forum of the Eurogroup or in the European Stability Mechanism Board of Governors, and in particular of their full-time president (who in our view should not also be a Commission Vice-President). This in itself warrants its existence, for which a major transfer of budgetary competences is not required and which will in practice form a major hurdle to its coming about.

IV. How to establish the Eurozone assembly? The authors of T-Dem opt for a new treaty. And they have the law on their side. Member States can exercise their economic policy competences individually but also jointly, through the conclusion of an international treaty, as was (re)confirmed by the Court in *Pringle* when it approved of the European Stability Mechanism.¹⁶ But what are the benefits of this approach over amendment of the Union Treaties? The authors argue that the latter is an arduous process as it requires the consent of all Member States, yet the conclusion of a new treaty is not without obstacles either. Such a treaty too needs to be approved and ratified by the Eurozone States in line with their constitutional requirements, which means that it may become the subject of a referendum, as happened with the Fiscal Compact in Ireland, or a constitutional challenge, notably in Germany. As the hurdles to the establishment of a Eurozone assembly will consequently be significant anyhow, it is best to take the royal road: amendment of the EU Treaties.

This is not to say that we reject the use of international treaties altogether. During the crisis it proved a valuable tool when the situation called for *instant action*. The argument of a "democratic urgency"¹⁷ has its appeal but cannot be equated with moments of sheer survival.

V. Establishing a Eurozone Congress will not be easy. Neither proud national parliaments nor the prickly European Parliament like to see new rivals on their turf. The authors seem to underestimate this potential for on-the-ground resistance (which has effectively killed the interparliamentary forum foreseen by Art. 13 of the Fiscal Compact). The best way to overcome this resistance to its creation is to stress the complementary nature of the Congress.

¹⁵ S. HENNETTE, T. PIKETTY, G. SACRISTE, A. VAUCHEZ, *Pour un traité de démocratisation de l'Europe*, cit., p. 10.

¹⁶ Court of Justice, judgment of 27 November 2012, case C-370/12, *Pringle*.

¹⁷ S. HENNETTE, T. PIKETTY, G. SACRISTE, A. VAUCHEZ, *Pour un traité de démocratisation de l'Europe*, cit., p. 26.

In many cases existing institutions can adapt to the demands of a new situation. In general, prudence is therefore in order before engaging in institutional engineering. But the authors are fully right that the existing parliaments have not been able to fill the void of democratic control, and – we would add – are unlikely to do so in the near future. Their case for a Eurozone assembly is therefore strong.

The Eurozone Congress would be a forum bringing together the various debates *in* and *on* the currency union, which now often take place within the confines of national boundaries. But the objective of energizing the political debate should not be confounded with achieving certain policy outcomes. At some points the T-Dem authors seem to favour the latter over the former, emphasizing the chance for the Left to depart from the “politics of austerity” of the crisis years. The beauty of the Congress, however, lies in its representative function, both echo chamber and a place forging a stronger common bond. It would be a pity to pre-empt and close these functions of openness by ascribing it an *a priori* economic destination.

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