

UNIVERSITA' COMMERCIALE "LUIGI BOCCONI"

PhD SCHOOL

PhD program in Legal Studies

Cycle: 33°

Disciplinary Field: IUS/14

**An Intentionalist Approach to the Distinction between
Monetary and Economic Policies**

Advisor: Professor Eleanor SPAVENTA

Co-Advisor: Professor Donato MASCIANDARO

PhD Thesis by

Victorien SALLES

ID number: 3050536

Year 2021

Acknowledgments

Writing a doctoral thesis is not an easy path, especially when working full-time in Brussels. In that context, I would like to first express my deepest thanks to my supervisors, Professor Spaventa and Professor Masciandaro, for their support and flexibility regarding my situation.

I would also like to express my gratitude to Professor Hinarejos and Professor De Witte for their precious comments and feedback as external reviewers of this thesis.

Moreover, I would also like to warmly thank Dr Nowak-Salles for her constructive comments, tireless patience, and support regarding language revision.

As this thesis has been the object of a professional proofread, I would like to thank Stephanie Hitch for her work.

Although I did not physically spend much time at Bocconi, I still had the opportunity to make life-long friendships. In that regard, I would like to thank Alina, Andrea and Javier. Special thanks should go to Pietro who directly integrated me into Milanese life upon my arrival in Italy.

I would never have had the opportunity to study for so long a period of time without the sacrifices made by my parents. I believe that I do not have enough words to express my gratitude to them.

These last few years have been particularly intense, but as Napoléon Bonaparte said: « *Impossible n'est pas français* ». However, the Emperor never uttered those words. Rather, he declared: « *Comment? Impossible! Je ne connais point ce mot-là ! Il ne doit y avoir pour mes Polonais rien d'impossible.* ».¹ Indeed, nothing is or would have been possible without having you by my side, Anna. *Jeszcze raz bardzo dziękuje za wszystko, Kochanie.*

¹ Papot, « *Impossible n'est pas français* » *Napoléon, 1808*, Historia, Janvier 2013, 46-47.

Abstract

This thesis investigates the necessity to draw a legal demarcation line between monetary policy and economic policy. While a distinction between monetary and economic policies makes no sense from an economic perspective, it has nonetheless been the subject of challenge on three occasions before the CJEU. Those judgments led the literature to consider that any legal distinction would either be “doomed to failure” or “arbitrary”. However, the recent judgment issued by the FCC, declaring ultra vires the PSPP and the Weiss and others judgment, put this legal issue at the heart of the European legal order. Consequently, this thesis aims to answer the following research question: In light of the intent of the authors of the Treaties, how should monetary and economic policies be legally distinguished to respect the principle of conferral?

Similarly to the CJEU in Weiss and others, this thesis employs an intentionalist methodology to answer this research question. More specifically, this thesis examines, in a chronological order, relevant documents that have been researched in the Historical Archives of the European Union to appreciate the intent of the authors of the Treaties. Based on a myriad of historical sources, this thesis finds that the intent of the authors of the Treaties is much more complex and paradoxical than has been claimed by the CJEU. Indeed, after examining the conceptualization of the single monetary policy, this historical analysis is confronted with the judgments issued by the CJEU in Pringle, Gauweiler, and Weiss and others. In essence, this thesis finds that the CJEU misperceived the intent of the authors of the Treaties. Additionally, by cautiously examining the written observations submitted by the parties to the proceedings, this thesis also sheds new lights on the reasoning of the Court. After considering the judgment issued by the FCC, this thesis examines the necessity to draw a legal demarcation line that would not be arbitrary. In that regard, and similarly to Council Regulation (EC) 3603/93, this thesis concludes by proposing to specify the intent of the authors of the Treaties by means of an act of secondary law.

Main abbreviations

(by alphabetical order)

AHMU	Austro-Hungarian Monetary Union
APP	Asset Purchase Programme
CE	Communautés Européennes
CECA	Communauté Européenne du Charbon et de l'Acier
CEE	Communauté Economique Européenne
CJEU	Court of Justice of the European Union
CoE	Council of Europe / Conseil de l'Europe
COREPER	Comité des Représentants Permanents
COVID-19	Coronavirus disease 2019
DORIE	Documentation et Recherche sur les questions Institutionnelles Européennes
EC	European Communities
ECB	European Central Bank
ECJ	European Court of Justice
ECSC	European Community of Steel and Coal
ECU	European Currency Account
EEC	European Economic Community
EFSF	European Financial Stability Facility
EMCF	European Monetary Cooperation Fund
EMI	European Monetary Institute
EMS	European Monetary System
EMU	European Monetary Union
EPU	European Payment Union
ERM	European Rate Mechanism
ESCB	European System of Central Banks
ESM	European Stability Mechanism
EU	European Union
FCC	Federal Constitutional Court of Germany
FED	Federal Reserve System

FMI	Financial Market Infrastructure
GFC	Great Financial Crisis
HAEU	Historical Archives of the European Union
HICP	Harmonised Index of Consumer Prices
IGC	Intergovernmental Conference
IMF	International Monetary Fund
LMU	Latin Monetary Union
M3	Broad Monetary Aggregate
NCB	National Central Bank
OEEC	Organisation for European Economic Cooperation
ONB	Austrian National Bank
OUB	Austro-Hungarian Bank
OMT	Outright Monetary Transactions
PEPP	Pandemic Emergency Purchase Programme
PELTROs	Non-targeted pandemic emergency long-term refinancing operations
PSPP	Public Sector Purchase Programme
SEA	Single European Act
SGP	Stability and Growth Pack
SMU	Scandinavian Monetary Union
TARGET	Trans-European Automated Real-time Gross Settlement Express Transfer System
TEC	Treaty establishing the European Economic Community
TEC 1992	Treaty of Maastricht
TEC 1997	Treaty of Amsterdam
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
TLTRO-III	Targeted longer-term refinancing operations
UK	The United Kingdom
US	The United States of America
WWI	World War I
WWII	World War II

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Introduction

Giving the rhythm of the economy, crises seem to be gaining in complexity as the subtle music played with financial instruments is often imbued with wrong notes. Those notes led Central Banks, in the course of the Great Financial Crisis (“**GFC**”), to resort to unorthodox monetary policies to address impairments in the monetary transmission process and preserve financial stability. Along with other factors, these measures of monetary policy contributed to the strengthening of the global economy.² It is noteworthy that the global economy presented in mid-2018 a 3.2% of growth of world output³ and a projected 3.5% of global growth for 2019.⁴ However, the global economy in 2019 was under “darkening skies”⁵, for which the “weather is unsettled”,⁶ due to the increase of downside risks slowing down global growth.⁷ Those risks – being mostly trade tensions, tightening of financial conditions, and Brexit – were further exacerbated in the pandemic crisis that occurred in the first quarter of 2020.

According to the International Monetary Fund (“**IMF**”), the global growth is currently projected at -4.9%, which represents a gap of -6% on 2019.⁸ Such contraction in global growth goes alongside a forecasted contraction in global trade of about -11.9% and downward-revised inflation projections.⁹ The deterioration of economic conditions has led policy makers to implement discretionary and non-discretionary fiscal measures to mitigate adverse effects on the real economy.¹⁰ However, this fiscal support has significantly increased the level of global indebtedness that had already been considerably deteriorated by the GFC. Indeed, benefiting from monetary and fiscal stimulus, along with other factors and legacies of the crises, including the pandemic, global debt across all sectors increased to 331% of worldwide GDP, according to the Institute of International Finance.¹¹ This level of global indebtedness not only exposes low-income countries

² Stefano Neri and Stefano Siviero, ‘The Non-Standard Monetary Policy Measures of the ECB: Motivations, Effectiveness and Risks’ (Occasional Papers, Questioni di Economia e Finanza, Banca d’Italia March 2019) 28–30.

³ ‘World Economic Situation and Prospects 2018 - Update as of Mid-2018’ (UNCTAD, United Nations 2018) 1–2.

⁴ ‘World Economic Outlook Update: A Weakening Global Expansion’ (International Monetary Fund January 2019) 3–4.

⁵ ‘Global Economic Prospects: Darkening Skies’ (International Bank for Reconstruction and Development / The World Bank January 2019).

⁶ Christine Lagarde, ‘A Delicate Moment for the Global Economy: Three Priority Areas for Action’ (Speech, International Monetary Fund, 2 April 2019).

⁷ ‘Growth Slowdown, Precarious Recovery’ (World Economic Outlook, International Monetary Fund April 2019) 19.

⁸ ‘A Crisis Like No Other, An Uncertain Recovery’ (World Economic Outlook Update, International Monetary Fund June 2020) 5, 7.

⁹ *ibid* 8.

¹⁰ ‘Fiscal Monitor: Policies for the Recovery’ (World Economic and Financial Surveys, International Monetary Fund October 2020) 4.

¹¹ Andrea Shalal, ‘Global Debt Hits Record High of 331% of GDP in First Quarter: IIF’ (*Reuters*, July 2020); ‘IMF Fiscal Monitor: Capitalizing on Good Times’ (World Economic and Financial Surveys, International Monetary Fund, April 2018) 10.

to financial and fiscal distress¹² but also advanced economies, such as the European Union (“EU”).¹³

The situation in the EU deserves special attention due to its inherent complexity that derives from a myriad of economic, legal and institutional features. More specifically, the GFC, followed by the sovereign debt crisis, led EU institutions, and notably the European Central Bank (“ECB”), to do “whatever it takes” to preserve the euro. In particular, the ECB complemented its monetary policy framework with non-standard measures of monetary policy to maintain price stability and safeguard the euro. In essence, these measures markedly eased financial conditions in the eurozone.¹⁴ Furthermore, ten years after the beginning of these crises, the ECB expansionary monetary policy framework, aiming to positively shift the aggregate demand curve, should have been subject to a normalization process. In substance, it should have ended some of its non-standard measures of monetary policy at a patient pace. However, the normalization of monetary policies of the ECB is not an easy task. Indeed, by first ending quantitative easing and then launching TLTRO-III,¹⁵ this process seems highly complex and particularly sensitive to the aforementioned risks, where eventually interest rates should be raised to the neutral rate of interest.

Currently anchored into a zero lower bound policy, the latter seems prone to risks when considering the current economic downturn and some Member States’ fiscal positions,¹⁶ where a hike in interest rate might dramatically impair public debt financing.¹⁷ Consequently, the aforementioned economic situation infers the continuous need for monetary stimulus through the accommodative monetary policy of the ECB.¹⁸

In light of the current economic downturn, it seems particularly opportune to wonder how the ECB will design its next generation of measures of monetary policy to provide the necessary monetary stimulus to the real economy. It is noteworthy that the design of measures of monetary

¹² ‘World Economic Situation and Prospects as of Mid-2020’ (United Nations, 13 May 2020) 14.

¹³ ‘Fiscal Monitor: Policies for the recovery’ (n 10) 23; ‘Chapter 1: Fiscal Policy for a Changing Global Economy’ (Fiscal Monitor, International Monetary Fund April 2019) 19; ‘Chapter 1: Vulnerabilities in a Maturing Credit Cycle’ (Global Financial Stability Report, International Monetary Fund 10 April 2019) 1–7.

¹⁴ Philipp Hartmann and Frank Smets, ‘The First Twenty Years of the European Central Bank: Monetary Policy’ (ECB Working Paper, European Central Bank December 2018) 27.

¹⁵ Decision of the Governing Council of the European Central Bank, March 7th, 2019.

¹⁶ ‘Global Economic Prospect’ (World Bank June 2020) 3-1;158-160; Economic and Financial Affairs, ‘Fiscal Sustainability Report 2018’ (European Economy Institutional Paper, European Commission January 2019) 147–49.

¹⁷ For a brief presentation of the relationship between Monetary and Fiscal policies, see Paul Hilbers, ‘Interactions of Monetary and Fiscal Policies: Why Central Bankers Worry About Government Budgets’ in IMF (ed), *Current Development in Monetary and Financial Law*, vol 4 (International Monetary Funds 2005).

¹⁸ Claire Jones, ‘ECB Faces Stimulus Pressure over Falling Inflation Outlook’ (*Financial Times*, Frankfurt am Main, 15 April 2019); Cavin Davies, ‘ECB Considers Options to Combat Low Inflation’ (*Financial Times*, April 2019).

policy is of fundamental importance for the future of the European Monetary Union (“**EMU**”) in general and for the European economy in particular. However, these measures could violently collide with complex legal considerations due to their redistributive effects. Indeed, by adventuring into the “unchartered territory” of non-standard monetary policy measures,¹⁹ the European System of Central Bank (“**ESCB**”) also visited the extreme confines of its mandate to preserve the stability of the eurozone under the objective of price stability.

It should be recalled that the mandate conferred on the ECB is provided in Title VIII TFEU, ‘Economic and monetary policy’. Specifically, Articles 119(2) and 127 provide that the activities of the Member States and the Union shall notably include “(...) the definition and conduct of a single monetary policy (...)”. Pursuant to Articles 127(1) and 282(2) TFEU, the single monetary policy shall be conducted by the ESCB with the view of achieving price stability and, without prejudice to the latter, of supporting general economic policies in the Union. Thus, the definition and implementation of the monetary policy of the Union is one of the four basic tasks that the ESCB should carry out pursuant to Article 127(2) TFEU.

While the mandate conferred on the ESCB appears to be crystal clear, neither the TFEU nor the Statute of the ESCB and of the ECB provide for a definition of what a measure of monetary policy is. As surprising as it may be, the absence of definition for monetary policy is not exclusive to the European Union. This was notably highlighted by Lastra who noted that “(...) a legal definition of monetary policy is generally absent in central bank statutes.”²⁰ It is important to note that such absence did not pose any problem until special economic measures were taken to mitigate the adverse effects of the GFC. Indeed, how should one assess whether a measure of economic policy qualifies as a measure of monetary policy, for its indirect effects, in the absence of such definition? This basic question, which infers complex issues related to the principle of conferral, was referred by the High Court of Ireland to the Court of Justice of the European Union (“**CJEU**”) in 2012.

More specifically, the High Court of Ireland made a reference for a preliminary ruling regarding the validity of Decision 2011/199/EU and the interpretation of Articles 2, 3, 4(3) TEU and Articles 2(3), 3(1)(c) and 2 TFEU, 119 to 123 TFEU and 125 to 127 TFEU.²¹ In the view of the appellant, Decision 2011/199/EU (which established the European Stability Mechanism (“**ESM**”))

¹⁹ Hartmann and Smets (n 14) 36.

²⁰ Rosa Lastra, ‘Chapter 2: Central Banking Law’ in *International Financial and Monetary Law* (2nd edn, Oxford University Press 2015) 37.

²¹ CJEU, Judgement of 27 November 2012, *Thomas Pringle v Government of Ireland and Others*, C-370/12, EU:C:2012:756

encroached upon the exclusive competence of the Union in the area of monetary policy.²² In order to determine whether the ESM Decision encroached upon such competence, the CJEU had first to define what a measure of monetary policy was. In line with the observation of Lastra, the CJEU held that the TFEU does not include a definition of monetary policy but “(...) refers, in its provisions relating to that policy, to the objectives, rather than to the instruments, of monetary policy.”²³ Therefore, after assessing Decision 2011/199/EU in the light of those criteria, the CJEU ruled that it was valid under Union law. While the ESM financial assistance might have indirect effects on the stability of the euro,²⁴ it cannot be qualified as a measure of monetary policy.²⁵

It is noteworthy that by disregarding the indirect effects of the financial assistance support of the ESM on money supply, the CJEU did not draw a clear demarcation line between economic and monetary policies. Although indirect effects of a measure of economic policy might be contained, and identified, the analogy with non-standard measures of monetary policy proved to be more complex. In fact, a few years later, the CJEU had to refine its identification criteria after the adoption of non-standard measures of monetary policy by the ECB.

Indeed, the Federal Constitutional Court of Germany (“**FCC**”) made in 2014 a reference for a preliminary ruling regarding the validity of the OMT Decision and the interpretation of Articles 119, 123 and 127 TFEU and of Articles 17 to 24 of Protocol on the Statute of the ESCB and of the ECB.²⁶ In the views of the appellants, the absence of direct monetary policy objective transformed the OMT Decision in a measure of economic policy.²⁷ The questions referred by the FCC, along with its observations and those of the appellants, led the CJEU to examine whether the OMT Decision constitutes a measure of monetary policy. Similarly to Pringle, the CJEU held that the OMT Decision pursued the objective of price stability and employed instruments provided in Protocol 4 to attain it.²⁸ Therefore, the CJEU ruled that the OMT Decision was valid under Union law although it might have indirect effects on economic policy.²⁹

Similarly to Pringle, the CJEU in Gauweiler did not clearly draw the fine frontier between monetary and economic policies. In fact, it blurred such distinction via the so-called, but legally undefined,

²² CJEU, *Written observations of Thomas Pringle – Appellant in the main proceedings*, C-370/12, paras 3.21-3.29.

²³ *ibid* para 53.

²⁴ *ibid* para 57.

²⁵ *ibid* para 56.

²⁶ CJEU, Judgment of the Court (Grand Chamber) of 16 June 2015, *Peter Gauweiler and Others v Deutscher Bundestag*, C-62/14, EU:C:2015:400.

²⁷ CJEU, *Observations of Dr. Peter Gauweiler*, C-62/14, 12 June 2014, n°66726, paras 15, 21-23.

²⁸ CJEU, *Gauweiler*, C-62/14, EU:C:2015:400, para 56.

²⁹ *ibid* paras 52 ; 128.

indirect effects. The question of indirect effects, and more generally of the demarcation between monetary and economic policies, was again referred to the CJEU in *Weiss and others*.³⁰ More specifically, the FCC made in 2017 a reference for a preliminary ruling to the CJEU regarding the validity of Decision 2014/774 and on the interpretation of Article 4(2) TEU and Articles 123 and 125 TFEU. Similarly to *Gauweiler*, the CJEU had to assess whether the redistributive effects of a non-standard measure of monetary policy transforms it into a measure of economic policy. Unlike in *Pringle* and *Gauweiler*, the CJEU definitively blurred the distinction between monetary and economic policies by holding that the authors of the Treaties did not intend to make an absolute separation in that regard.³¹ Therefore, in light of this examination, and of the principle of proportionality, the CJEU ruled that Decision 2014/774 was valid under Union law.

However, unlike in *Gauweiler*, the referring court did not concur with the preliminary ruling of the CJEU in *Weiss and others*.³² In fact, it declared it *ultra vires*. More specifically, the distinction made by the CJEU between monetary and economic policies was “untenable” in the view of the FCC.³³ In essence, this untenability resulted from the limited CJEU appreciation of the relevant effects of Decision 2015/774 that should have been weighed and balanced against its monetary objective.³⁴ According to the FCC, the absence of balancing violated Article 5(1) TEU and 127(1) TFEU and, as a consequence, rendered Decision 2015/774, and to that extent the CJEU judgment,³⁵ *ultra vires*.³⁶

While the judgment issued by the FCC on 5 May 2020 entails constitutional considerations, it above all puts the question of the distinction between monetary and economic policies at the heart of the European legal order. More specifically, such distinction directly relates to the principle of conferral enshrined in Article 5(2) TEU and therefore, to the degree of economic integration in the Union. In concrete terms, this distinction could be appreciated as the boundaries to which the ECB should adhere when implementing non-standard measures of monetary policy that may encroach upon the coordinated competence of the Member States for economic policy due to their redistributive effects. However, as mentioned above, the use of non-standard measures tends to blur the distinction of monetary from economic policies and, therefore, leads to controversial domestic

³⁰ CJEU, Judgment of the Court (Grand Chamber) of 11 December 2018, *Weiss and Others*, C-493/17, EU:C:2018:1000

³¹ *ibid* para 60.

³² BVerfG, *Judgment of the Second Senate of 05 May 2020*, 2 BvR 859/15, paras 1-237, DE:BVerfG:2020:rs20200505.2bvr085915.

³³ *ibid* paras 116, 119.

³⁴ *ibid* paras 123, 127, 133, 135-136, 165.

³⁵ *ibid* para 116.

³⁶ *ibid* paras 176-178, 232.

judgments. In that regard, the current measures of monetary policy adopted by the ECB to mitigate adverse effects of the pandemic rather suggests a “new normal” situation than a normalization process. This situation exacerbates legal uncertainty until the distinction between monetary and economic policies is clarified.

In the light of the foregoing, there clearly appears an urgent necessity to examine the distinction between monetary and economic policies, as enshrined in Union law. Inasmuch as such distinction does not make sense from an economic point of view, it seems relevant to wonder where it originates from a Union law perspective. Indeed, such historical approach appears more than opportune to appreciate what was the intent of the authors of the Treaties, as claimed by the CJEU in *Weiss and others*. In essence, this thesis aims to answer the following research question: In light of the intent of the authors of the Treaties, how should monetary and economic policies be legally distinguished to respect the principle of conferral?

In the context of this research question, it is of note that the study of transfers of economic and monetary competences to a common or supranational institution is as old as economic integration in Europe. Indeed, it can easily be traced to early ‘monetary unions’ that contributed to the economic development of the 19th century. As an illustration, Faugère discussed in 1859 the different provisions of the Zollverein Treaty, while Fournier de Flaix examined the Latin Monetary Union in 1888.³⁷ It is important to note that these different ‘monetary unions’ contributed to the shaping of the contemporary European integration project. For instance, the Dichgans Report examined some features of the Zollverein and of the Latin Monetary Union to illustrate its considerations for a European monetary union.³⁸ Interestingly, this Report did not limit its analysis to early ‘monetary unions’. Instead, it also appreciated the distinction between monetary and economic policies.³⁹ More specifically, the Dichgans Report noted the indivisibility of monetary policies from economic policies, while the van Campen Report of 1962 proposed a theoretical separation.⁴⁰

³⁷ Armand Prosper Faugère, *Le Zollverein Ou l'union Des Douanes de La Prusse et Des États Allemands, de 1819 à 1841* (Firmin Didot Frères, Fils et Compagnie 1859) 50; Ernest Fournier de Flaix, ‘Le Problème Monétaire (Suite et Fin)’ (1888) 29 *Journal de la société statistique de Paris* 179, 179;181.

³⁸ EEC, European Parliament, Dichgans, *Report drawn up on behalf of the Economic and Financial Committee on the future activities of the Community in the field of monetary policy and on the establishment of a European monetary union*, Working Document, 28 November 1966, doc° 138, HD-HAEU, PE0-645, 12, para 51.

³⁹ *ibid* para 8.

⁴⁰ CEE, Parlement Européen, van Campen, *Rapport fait au nom de la commission économique et financière sur la coordination des politiques monétaires dans le cadre de la C.E.E.*, 7 avril 1962, doc n°17, VC-HAEU, PE0-313, 17, paras 9-10.

These early considerations on economic and monetary policies influenced seminal European integration proposals throughout that time. In fact, one may observe the influence played by some reports of the European Parliament on different integration initiatives, including the ‘Plan(s) Barre’, the Werner and Delors Reports. Of crucial importance, the Delors Report aimed to relaunch a EMU project that had previously failed several times.⁴¹ In essence, the latter recommended to establish a ESCB to which would be conferred the exclusive competence for monetary policy.⁴² This first monetary limb of the EMU was to be complemented with an economic one conferring coordination competence on the Union in the area of economic policy. Moreover, to succeed, this “two integral parts of a single whole”⁴³ was to be enshrined into an ex novo Treaty: the Maastricht Treaty.

Unlike the Treaty establishing the European Economic Community (“**TEC**”), the Maastricht Treaty included in Title VI a special chapter on monetary policy. Thus, in line with the Delors Report and of the Commission non-paper of 1990,⁴⁴ the Maastricht legally dissociated, but not isolated, monetary policy from economic policy, with the exclusive competence for monetary policy being conferred on the ECB. The latter should have started implementing it from 1 January 1999, after the European Monetary Institute (“**EMI**”) should have formulated monetary policy proposals. However, instead of recommending monetary strategies that could clearly delimit the scope of the ECB’s competence, the EMI blurred the distinction between monetary and economic policies.⁴⁵

Given the design of the Maastricht Treaty, some scholars expressed their concerns on the repartition of economic and monetary competences between the Union and the Member States. More specifically, some authors pointed out the legal consequences of an unclear delimitation between monetary and economic policies. For instance, Craig noted in 1999 that such delimitation could engender legal actions before the European Court of Justice (“**ECJ**”) inasmuch as “the line between monetary and economic policy may not always be pristinely clear (...)”⁴⁶ Similarly, but a few years later, Aghion, Cohen and Pisany-Ferry examined the non-optimal repartition of

⁴¹ Delors, Committee for the Study of Economic and Monetary Union, *Report on Economic and Monetary Union*, 17 April 1989, para 21.

⁴² *ibid* para 32.

⁴³ *ibid* para 50.

⁴⁴ CE, Commission, *Projet de Traité portant révision du Traité instituant la Communauté Economique Européenne en vue de la mise en place d’une Union Economique et Monétaire*, document de travail, 10 décembre 1990, SEC (90), 2500.

⁴⁵ EMI, *The Single Monetary Policy in Stage III: Elements of the monetary policy strategy of the ESCB*, February 1997, 11.

⁴⁶ Paul Craig, ‘EMU, the European Central Bank, and Judicial Review’ in Neil Walker and Paul Beaumont (eds), *Legal Framework of the Single Currency* (Hart Publishing 1999) 115.

competence in the EMU.⁴⁷ In the view of these authors, the area of economic policy « *souffre ensuite d'une confusion des responsabilités entre les États et l'Union.* ».⁴⁸ Naturally, the discussion on the repartition of competences in the EMU re-emerged during the European sovereign debt crisis. As an illustration, Craig and Markakis examined whether it is necessary to indeed distinguish monetary from economic policies. For these authors, although the distinction is “uncomfortable in legal terms”, the

(...) search for a pristine legal dichotomy with an unequivocal boundary between those measures to be regarded as coming within ‘economic’ policy, and those falling within ‘monetary’ policy, is doomed to failure.⁴⁹

Similarly to Craig and Markakis, Hinarejos also noticed the “grey area” that exists between monetary and economic policies.⁵⁰ According to this author, when analysing Gauweiler, the search for a legal frontier between monetary and economic policies would necessarily be arbitrary.⁵¹ Analysing part of the literature described above, Waibel also considered it difficult to draw a frontier between monetary and economic policy (i.e. fiscal policy).⁵² Although the impossibility, and unnecessary, to clearly legally delimit those two policies is shared by most of the academic community, it does not mean that it has not been cautiously examined.

Indeed, the judgments issued by the CJEU in *Pringle*, *Gauweiler*, and *Weiss* and others naturally invited the academic community to examine such distinction. For instance, when examining *Gauweiler*, Gerner-Beurle and others recharacterized the economic rationale of the OMT Decision and thus assessed its indirect effects on economic policy.⁵³ According to these authors, the OMT Decision did not lead the ECB to exceed its mandate when supporting general economic policies in the Union.⁵⁴ However, the question of indirect effects, as a key element of the distinction, is still

⁴⁷ Philippe Aghion and others, ‘Politique Économique et Croissance En Europe’ (Conseil d’Analyse Économique 2006) 41–85.

⁴⁸ *ibid* 33.

⁴⁹ Paul Craig and Menelaos Markakis, ‘Gauweiler and the Legality of Outright Monetary Transactions’ (2016) 41 *European Law Review* 4, 12.

⁵⁰ Alicia Hinarejos, ‘The Courts and the Crisis’ in *The Euro Area Crisis in Constitutional Perspective* (Oxford University Press 2015) 142.

⁵¹ Alicia Hinarejos, ‘Gauweiler and the Outright Monetary Transactions Programme: The Mandate of the European Central Bank and the Changing Nature of Economic and Monetary Union: European Court of Justice, Judgment of 16 June 2015, Case C-62/14 *Gauweiler and Others v Deutscher Bundestag*’ (2015) 11 *European Constitutional Law Review* 575.

⁵² Michael Waibel, ‘Monetary Policy: An Exclusive Competence Only in Name?’ in Sacha Garben and Inge Govaere (eds), *The Division of Competences between the EU and the Member States: Reflections on the Past, the Present and the Future* (Hart Publishing 2017).

⁵³ Carsten Gerner-Beurle and others, ‘Law Meets Economics in the German Federal Constitutional Court: Outright Monetary Transactions on Trial’ (2014) 15 *German Law Journal* 281.

⁵⁴ *ibid* 311–12.

subject to debate. For example, Lars and others considered that the OMT Decision could not pursue an objective of monetary policy due to its redistributive effects.⁵⁵ It could “at best” be justified under the secondary objective conferred on the ECB if one adopts a large interpretation.⁵⁶ Naturally, the appreciation of indirect effects by the CJEU led some scholars to examine not only its standard of judicial review but also the FCC’s one.⁵⁷ By way of illustration, Goldman balanced the advantages and disadvantages of the judicial review performed by the FCC in Gauweiler and estimated that a full judicial review would contradict the ECB independence.⁵⁸ It is noteworthy that the distinction between monetary and economic policies gained in importance after the FCC declared the PSPP Decision ultra vires. Indeed, such decision not only led Wendel to consider again the standard of judicial review adopted by the FCC in Weiss and others but also to examine its proportionality assessment.⁵⁹ However, little attention has been paid to the intent of the authors of the Treaties in that respect, while the CJEU used this originalist approach before performing its proportionality assessment. Such a gap in the literature weakens the analysis of the distinction between monetary and economic policies in the Union. Naturally, it could be argued that appreciating the intent of the authors of the Treaties to distinguish these two policies is necessarily “doomed to failure”.⁶⁰ However, a failure may also be not to undertake such analysis, especially in current times.

Indeed, the analysis of such distinction in the light of the intent of the authors of the Treaties appears opportune when considering the current economic downturn and the recent judgment of the FCC. However, such an intent to provide a demarcation between monetary and economic policies is a difficult notion to appreciate. In fact, it requires a specific methodology and time frame.

More specifically, to contribute to the discussion on the distinction between monetary and economic policies, this thesis will mostly adopt a legislative history methodology that pertains to the intentionalist theory of law. According to Dickerson, legislative history refers “(...) to

⁵⁵ Lars P Feld and others, ‘Dismantling the Boundaries of the ECB’s Monetary Policy Mandate: The CJEU’s OMT Judgement and Its Consequences’ (Research Report, Kronberger Kreis-Studien 2016) 18–28, 25.

⁵⁶ *idem*.

⁵⁷ Stefania Baroncelli, ‘Chapter 8: Monetary Policy and Judicial Review’ in Federico Fabbrini and Marco Ventoruzzo (eds), *Research Handbook on EU Economic Law* (Research handbooks in European Law series, 2019); Sven Simon, ‘Direct Cooperation Has Begun: Some Remarks on the Judgment of the ECJ on the OMT Decision of the ECB in Response to the German Federal Constitutional Court’s First Request for a Preliminary Ruling’ (2015) 16 *German Law Journal* 1025, 979–80, Cambridge Core; *ibid* 1031–32.

⁵⁸ Matthias Goldmann, ‘Adjudicating Economics? Central Bank Independence and the Appropriate Standard of Judicial Review’ (2014) 15 *German Law Journal* 265, 272–74, 279.

⁵⁹ Mattias Wendel, ‘Paradoxes of Ultra-Vires Review: A Critical Review of the PSPP Decision and Its Initial Reception’ (2020) 21 *German Law Journal* 979, 984–86, Cambridge Core.

⁶⁰ Craig and Markadis (n 49) 16.

utterances (and some events) that engage the attention of the legislature during the process, from conception to birth, of enacting the statute being interpreted.”⁶¹ In order to examine the intent of the authors of the Treaties, and in line with this methodology, this thesis will rely to a limited extent on the academic literature. Such limitation is justified on the basis that the intent of the authors might rather be traced in primary sources than in secondary ones. Therefore, this thesis will analyse primary resources mostly researched in the Historical Archives of the European Union (“**HAEU**”), the Archives of the European Parliament, the Archives of European Integration and finally in the *Documentation et Recherche sur les questions Institutionnelles Européennes* (“**DORIE**”). For the purpose of this analysis, the written observations submitted by the parties to the CJEU in Pringle, Gauweiler, and Weiss and others should also be considered as primary resources. As regards the time frame, it would be presumptuous to consider that the intent of the authors of the Treaties exclusively originates from the Intergovernmental Conference on the EMU of late 1990. Indeed, that intent was framed throughout the different monetary unions and economic projects that preceded the EMU. As a consequence, this thesis will use as a starting point the year 1814 when the Treaty of Paris was ratified.

To examine the abovementioned research question in line with this methodology, this thesis will follow a French structure organized around two parts. The first part aims at analysing the legislative history that framed the intent of the authors of the Treaties with respect to the separation of monetary from economic policies. More specifically, this part will analyse, based on primary resources, the different early monetary unions and integration initiatives (**Chapter I**) that influenced that intent and, as a consequence, the design of the single monetary policy (**Chapter II**). Moreover, on the basis of that intent, the second part will examine the three cases where the CJEU had to distinguish monetary from economic policies (**Chapter III**) to eventually conclude on the necessity of such a distinction (**Chapter IV**).

⁶¹ Reed Dickerson, ‘Statutory Interpretation: Dipping into Legislative History’ (1983) 11 Hofstra Law Review 1125, 1125.

Part I: The Distinction between Monetary and Economic Policies: A Historical Approach

A demarcation between monetary and economic policies may be traced in early economic and monetary projects (**Chapter I**) that shaped the intent of the authors of the Maastricht Treaties in that regard (**Chapter II**).

Chapter I: Early Economic and Monetary Integration in Europe

Introduction

This chapter examines the early economic and monetary integration process in Europe to appreciate, at a later stage, the intent of the authors of the Treaties. Indeed, the intent of the authors of the Treaties cannot, and should not, be summarized to the negotiations held during the Intergovernmental Conference of August 1990. Rather, this thesis claims that the intent of the authors of the Treaties was a long intellectual journey that originates in the early monetary and economic unions of the 19th century. Indeed, following the ratification of the Treaty of Paris in 1814, a few economic and monetary unions emerged in Europe. These presented interesting legal features that would be considered in post-war integration organizations. Following the World Wars, which ruined the economic efforts made in the 19th century, many economic integration initiatives were launched. In that regard, this chapter analyses some of them not only to appreciate their influence on the Treaty of Rome but also to understand whether preliminary considerations were given on a potential separation between monetary and economic policies. For this purpose, this chapter cautiously analyses parliamentary reports mostly researched in the archives of the Council of Europe and in the Historical Archives of the European Union. Based on these historical sources, this chapter will examine economic and monetary integration, or cooperation, in Europe from the Treaty of Rome to the Delors Report that launched the EMU.

In essence, this chapter investigates the distinction between monetary and economic policies, which is deeply rooted in early integration initiatives (**I**), and which contributed to the emergence of the current European economic and monetary integration project (**II**).

I. Economic and Monetary Integration in Europe (1814–1957)

From economic integration to disintegration (**A**), early integration projects influenced the design of the European Economic Community (“**EEC**”) when was considered the distinction between monetary and economic policies (**B**).

A. From Economic Integration to Disintegration (1814–1945)

The following sections aims to present some of the monetary unions which contributed to the economic development of the 19th century (1). However, they all dramatically ended with the Great War that ruined integration efforts previously made (2).

1. *Economic and Monetary Unions in the 19th Century*

To appreciate their legal features, it is first important to consider the Zollverein, the Latin Monetary Union, and the Scandinavian Monetary Union (a) before presenting the most advanced monetary union of the 19th century: the Austro-Hungarian Monetary Union (b).

a. *Early Economic and Monetary Unions: Cooperating or Integrating?*

While the fall of Napoléon Bonaparte led to the creation of the Zollverein (i), a tariff union evolving towards a monetary union, it is less known that his nephew, Napoléon III, promoted the creation of the Latin Monetary Union (ii) that later inspired the Scandinavian Monetary Union (iii).

i. The Zollverein (1834–1871)

« *La dignité dans le malheur, la soumission à la nécessité, ont aussi leur gloire; c'est celle des grands hommes que l'infortune terrasse.* »⁶²

By meticulously detailing Napoléon's journey, and memories, towards Saint-Hélène Island, de Las Cases provided a formidable insight, later considered as the Bonapartism breviary, on the last moments following the fall of the French Empire. The fall led the four victors, namely Prussia, the United Kingdom, Russia, and Austria – France being represented by de Talleyrand, former Minister of Napoléon – to discuss the repartition of territories in Europe. These discussions, undertaken within the framework of the Vienna Congress, led to the ratification of the *Acte du Congrès de Vienne* on 9 June 1815.⁶³ Of crucial importance for the future of Europe, the Act of the Vienna Congress was composed of several annexes, including seven treaties, among which was the *Acte sur la Constitution fédérative de l'Allemagne* (“**Act**”).⁶⁴

⁶² Comte de Las Cases, ‘Chapitre Premier’ in *Le Mémorial de Sainte-Hélène* (Bibliothèque de la Pléiade, Gallimard 1956) 56.

⁶³ Acte du Congrès de Vienne, 9 juin 1815, édition officielle et collationnée avec le texte de l'instrument original déposé aux Archives de la Chancellerie de Cour et d'État, available at <https://gallica.bnf.fr/ark:/12148/bpt6k91227n/f1.image>

⁶⁴ *ibid*, Annexe IX, Acte sur la Constitution Fédérative de l'Allemagne, 8 juin 1815, 234-249.

Based on Article 6 of the Treaty of Paris ratified on 30 May 1814, which provided that « *Les États de l'Allemagne seront indépendants, et unis par un lien fédératif* », ⁶⁵ the Act aimed to reassemble the myriad of states and principalities formerly composing Germany. In order to ensure an optimal confederation while promoting peace, the Act included a few economic provisions mostly detailed in Articles 18 and 19. Indeed, while Article 18 consecrated a freedom of movement of capital, Article 19 provided for future negotiations on trade relationships among German states. This last provision was considered by Faugère as the promise which, a few decades later, would lead to the signing of the Zollverein Treaty on 22 March 1833. ⁶⁶

Following the assemblage of customs unions formed between 1819 and 1833, which first started with the Treaty concluded between Prussia and the Schwarzbourg-Sondershausen principality, most of the German states adopted the principles stipulated in the Zollverein Treaty. ⁶⁷ These principles, which Faugère transcribed, could be summarized as the uniformization of tariffs legislations and the suppression of internal tariffs. Interestingly, these custom unions' features were deemed to evolve towards a more economically integrated area. Indeed, Article 14 provided for the establishment of a monetary system common to all the Member states of the Zollverein. Naturally, the formation of the Zollverein was synonymous with trade effects later transformed into economic benefits widespread among its Member States.

In that regard, it is worth mentioning the efforts deployed by academics on the studying of the economic benefits and consequences produced by the Zollverein. In particular, it is noteworthy that Keller and Shiue assessed its impact on economic growth and industrial development by incorporating the effects of state accession into an estimate of its economic impact. ⁶⁸ According to these authors, bilateral prices between cities fell by about one-third of the mean price gap as a consequence of the establishment of the Zollverein. ⁶⁹ Although analysed on the basis of different datasets and methodologies, these results were also considered in previous works. In fact, after publishing his seminal essay on the Zollverein, ⁷⁰ Henderson compared it with the EEC. ⁷¹

⁶⁵ Traité de Paris, 30 mai 1814, Article 6.

⁶⁶ Faugère (n 37) 50.

⁶⁷ *ibid* 22, 33–35.

⁶⁸ Wolfgang Keller and Carol H Shiue, 'The Trade Impact of the Zollverein' [2013] Centre for Economic Policy Research, 30–32.

⁶⁹ *ibid* 3.

⁷⁰ WO Henderson, *The Zollverein* (Cambridge University Press 1939).

⁷¹ WO Henderson, 'The German Zollverein and the European Economic Community' [1981] *Zeitschrift für die gesamte Staatswissenschaft / Journal of Institutional and Theoretical Economics* 491.

While the economic benefits from trade liberalization suggest some resemblances between the Zollverein and the EEC, the former markedly differed from the latter on many points. As observed by Henderson, the temporary institutional framework of the Zollverein was not democratic until 1867, when the General Congress was replaced by a Custom Council and a Custom Parliament.⁷² Notwithstanding some similarities with the European integration project, the Zollverein dramatically changed its structure with the unification of the German states under the auspices of the German Empire. Indeed, pursuant to Article 4(2) of the Constitution of the German Reich,⁷³ all legislation related to customs and duties should be under the direct supervision of the Empire. This was further explained in Chapter VI ‘Customs and Commerce’ that provided for the formation of a custom union within the boundaries of the German Empire.

Absorbed into the German Empire, the Zollverein might constitute a formidable example for drawing considerations for the European Union. However, as underlined by Flandreau, the setting of a monetary union within the Zollverein was determined by prior political unification among German states.⁷⁴ This is an important observation since the EMU was not formed with such a degree of political unification. It is noteworthy that during the 19th century, this imperial feature of the Zollverein was not exclusive to Germany; the Second Empire ruled by Napoléon III established the Latin Monetary Union in late 1865.

Considered by Einaudi as “(...) probably the most interesting and long-lasting experiment”,⁷⁵ though being more a coinage union than a monetary union,⁷⁶ the Latin Monetary Union deserves careful attention.

ii. The Latin Monetary Union (1865–1926)

On 23 December 1865, France, Italy, Belgium and Switzerland signed a *Convention Monétaire* which, after being ratified on 19 July 1866 and entering into force on 1 August 1866,⁷⁷ established a monetary union, the ‘Latin Monetary Union’.

⁷² *ibid* 497–98.

⁷³ Constitution of the German Reich, 16 April 1871.

⁷⁴ Marc Flandreau, ‘The Bank, the States, and the Market: An Austro-Hungarian Tale for Euroland 1867-1914’ in Forrest H Capie and Geoffrey E Wood (eds), *Monetary Unions: Theory, history, public choice* (Routledge International Studies in Money and Banking 2003) 116.

⁷⁵ Luca Einaudi, ‘A Historical Perspective on the Euro: The Latin Monetary Union (1865–1926)’ (2018) 16 DICE Report 3, 17.

⁷⁶ *ibid*.

⁷⁷ *Convention Monétaire conclue à Paris, le 23 Décembre 1865 entre la France, la Belgique, l’Italie et la Suisse*, Recueil des traités de la France, vol 9 (A Durand et Pedone-Lauriel) 453–458.

The Latin Monetary Union aimed to remedy to economic disturbances which, following fluctuations in coinage metals, impacted countries that had adopted a currency pegged to the *franc germinal*. After the discovery of auriferous deposits in 1850 in Australia and in California, gold supply considerably increased. However, due to its exportation and extensive use for small payments, its intrinsic value decreased.⁷⁸ In addition, the significant use of silver currencies, resulting not only from trade development with Far-East countries but also from speculation on silver/gold differences estimated at 1.75% on December 1859,⁷⁹ led to a shortage (and sometimes to the disappearance of some coins⁸⁰) of silver currencies. Naturally such fluctuations in coinage metals adversely affected European currencies and, therefore, the economies of the above-mentioned countries. Hence, to support their respective monetary systems, Italy and Switzerland enacted laws which, by notably decreasing their coinage alloy, strongly departed from original French coinage conditions.⁸¹ As a consequence, these measures altered the former monetary uniformity established between these countries and, thus, further exposed their currencies to speculation.⁸²

In the light of the consequences susceptible to occurring as a result of these monetary policies divergences, Belgium formulated an unofficial request to France and the four countries decided to form a commission, within the framework of a *Conférence Monétaire*, that could address these economic issues.⁸³

The first session of the *Conférence Monétaire* was of crucial importance for the early construction of the Latin Monetary Union. More specifically, representatives of the four countries convened on 20 November 1865 at the French Ministry of Foreign Affairs to discuss a questionnaire related to a possible joint action in the monetary field.⁸⁴ It is of note that this questionnaire was prepared by French officials in order to reflect French economic ambitions. Interestingly, the questionnaire, comprising nine questions, did not provide for a set of alternative solutions but only for the formation of a monetary union with respect to silver currencies and was (mostly) articulated around

⁷⁸ *Protocole n°1 de la Conférence tenue à Paris, le 20 Novembre 1865 entre la Belgique, la France, l'Italie et la Suisse, pour la conclusion d'une Convention Monétaire*, Recueil des traités de la France, vol 9 (A Durand et Pedone-Lauriel) 422.

⁷⁹ *Rapport de la majorité de la Commission du Conseil national sur la question monétaire* (14 janvier 1860), Feuille Fédérale Suisse, Vol 1, mercredi 2 février 1860, Archives Fédérales Suisses, réf n°10 059 149, 120.

⁸⁰ *Protocole n°1 de la Conférence tenue à Paris...*op.cit 422.

⁸¹ 'Protocole N°1 de La Conférence Tenue à Paris, Le 20 Novembre 1865 Entre La Belgique, La France, l'Italie et La Suisse, Pour La Conclusion d'une Convention Monétaire' in *Recueil des traités de la France* (Ministère des affaires étrangères, A Durand et Pedone-Lauriel 1880) vol 9, 422.

⁸² *ibid.*

⁸³ *ibid* 423.

⁸⁴ *ibid.*

the *franc germinal*.⁸⁵ Naturally, technical objections on national silver alloy and on national currency issuance volumes occurred among the participants during different sessions.⁸⁶ In spite of that, the participants reached a consensus, on 21 December 1865,⁸⁷ that led to the signing of the *Convention Monétaire* on 28 December 1865.

Surprisingly, the *Convention Monétaire*, while providing on monetary technicalities, neither established a common central bank nor any common institutional framework. The absence of a common institutional framework – a consequence of national reluctances against transfers of monetary sovereignty – considerably reduced the efficiency of some provisions. This can be illustrated by Article 11, which faced considerable objections from some High Contracting Parties during the fifth session of the *Conférence Monétaire*. More specifically, since Article 11 provided for information-sharing on currency issuance volume, Belgium and France expressed their strong disagreement to a foreign supervision over such sensitive information.⁸⁸ In these circumstances, the Commission agreed to only produce opinions on their currency issuance volume.

Notwithstanding these reluctances, the *Convention Monétaire* should be considered as a monetary agreement with considerable integration ambitions and particularly opened to new members.⁸⁹ In that regard, pursuant to Article 12, any country fulfilling the conditions laid down in the *Convention Monétaire* could formulate an accession request to the Latin Monetary Union. Hence, as mentioned by Einaudi, many states, such as Spain, Sweden, the Vatican and Serbia, requested membership to the Latin Monetary Union.⁹⁰ Although Spain adhered to the Latin Monetary Union's rules,⁹¹ only Greece eventually acceded to it in 1867.⁹²

According to Einaudi, Article 12 reflected the integration ambitions, imbued with federalist objectives, of Esquirou de Parieu, former Vice-President of the *Conseil d'État* but above all President of the *Conférence Monétaire*.⁹³ This French economic ambition, illustrated during the *Conférence Monétaire* of 1867,⁹⁴ may be justified on the basis of trade benefits resulting from such

⁸⁵ *Annex 1 au protocole n°1*, Recueil des traités de la France, vol 9 (A Durand et Pedone-Lauriel) 430-431.

⁸⁶ *Protocole n°2 de la Conférence réunie à Paris, le 27 Novembre 1865*, Recueil des traités de la France, vol 9 (A Durand et Pedone-Lauriel) 431-438.

⁸⁷ *Protocole n°5 de la Conférence réunie à Paris, le 21 Décembre 1865*, Recueil des traités de la France, vol 9 (A Durand et Pedone-Lauriel) 443-459.

⁸⁸ *ibid* 451.

⁸⁹ Luca L Einaudi, 'From the Franc to the "Europe": The Attempted Transformation of the Latin Monetary Union into a European Monetary Union, 1865-1873' (2000) 53 *The Economic History Review* 284.

⁹⁰ Einaudi (n 75) 18–19.

⁹¹ Fournier de Flaix (n 37) 181.

⁹² Einaudi (n 75) 19.

⁹³ *ibid* 18.

⁹⁴ *ibid*.

association. However, the economic literature did not reach a consensus with respect to the benefits generated by the Latin Monetary Union.⁹⁵

Surviving World War I (“**WWI**”), though a suspension of the *Convention Monétaire* was implemented, the Latin Monetary Union ended in 1926. While its legacy has been highly discussed, and compared with the contemporary European integration project, it is worth pointing out that it also paved the way to another ‘monetary union’: the Scandinavian Monetary Union (“**SMU**”).⁹⁶

iii. The Scandinavian Monetary Union (1873–1924)

In the light of their desire to protect the economic integration efforts made prior to the Franco-Prussian war,⁹⁷ Denmark and Sweden decided, after three technical meetings spread over twelve years,⁹⁸ to establish a monetary union on 23 May 1873. Later joined by Norway on 16 October 1875,⁹⁹ the SMU was legally based on a currency agreement, the so-called *Myntkonvention*.¹⁰⁰ Explained by Jonung, this currency agreement provided for the introduction of a common gold currency, the Scandinavian krona, to be accepted in the three countries forming part of the SMU.¹⁰¹ Although the Scandinavian krona circulated widely, the SMU did not formally establish cooperation between central banks, according to Krim.¹⁰² This absence of cooperation led Denmark and Sweden in 1885, and eventually Norway in 1888, to conclude a clearing agreement in order to ease monetary transactions between their central banks.¹⁰³ It is of note that, this clearing agreement played a considerable role in fostering cooperation among the central banks of the SMU, particularly in the absence of other mechanism provided by the *Myntkonvention*. Indeed, the

⁹⁵ Marc Flandreau, ‘The Economics and Politics of Monetary Unions: A Reassessment of the Latin Monetary Union, 1865–71’ (2000) 7 *Financial History Review* 25; Jacopo Timini, ‘Currency Unions and Heterogeneous Trade Effects: The Case of the Latin Monetary Union*’ (2018) 22 *European Review of Economic History* 322.

⁹⁶ John Ryan and John Loughlin, ‘Lessons from Historical Monetary Unions - is the European Monetary Union Making the Same Mistakes?’ (2018) 15 *International Economics and Economic Policy* 709, 712.

⁹⁷ Lars Fredrik Øksendal, ‘The Impact of the Scandinavian Monetary Union on Financial Market Integration’ (2007) 14 *Financial History Review* 125, 134–35.

⁹⁸ Lars Jonung, ‘The Scandinavian Monetary Union: 1873–1924’ in Philip L Cottrell and others (eds), *From the Athenian Tetradrachm to the Euro* (Studies in European Monetary Integration, Asghgate, 2007) 77.

⁹⁹ Michael Bergman and others, ‘The Rise and Fall of the Scandinavian Currency Union 1873–1920’ (1993) 37 *European Economic Review* 507, 508.

¹⁰⁰ The *Myntkonvention* is not available in English or French translated versions which, as a result, obliges to extensively resort to the literature as to explain it.

¹⁰¹ Jonung (n 98) 79.

¹⁰² Krim Talia, ‘The Scandinavian Currency Union, 1873–1924’ (Stockholm School of Economics 2004) 100.

¹⁰³ *ibid.*

Myntkonvention did not provide for a common institutional framework for the Member States of the SMU.¹⁰⁴ Nor did it provide for any stabilization tool other than the gold standard.¹⁰⁵

As a consequence of a lack of coordination among the three countries,¹⁰⁶ and of the adverse effects of the Great War,¹⁰⁷ the SMU disappeared in 1924. Nonetheless, it lasted for many decades and evolved, throughout the years, towards a more economically integrated area. In that regard, Ryan and Loughlin studied the smooth transition of the SMU from a currency union to a “monetary union”. According to these authors, such transition occurred when Bank of Norway and Bank of Denmark agreed to accept each other’s currencies at par in 1901.¹⁰⁸ This transition was supported by the existing macroeconomic conditions and regional political stability that lasted until 1905. It is noteworthy that it generated of economic benefits, although they were not uniformly spread among the Member States of the SMU.¹⁰⁹ Interestingly, these economic benefits strongly departed from those of the Zollverein or the Latin Monetary Union. Indeed, they did not arise from trade effects but rather from stronger financial integration within these Scandinavian countries, according to Øksendal.¹¹⁰

However, the SMU ended in 1924 due to the absence of coordination among its Member States and due to the Great War and monetary protectionism. All these reasons prevented any transfer of competences to a common institution. In the light of this unsuccessful integration project, special attention should be paid to the most advanced economic integration project of the 19th century: the Austro-Hungarian Monetary Union (“**AHMU**”).

b. The Austro-Hungarian Monetary Union (1867–1919)

The Austro-Hungarian Monetary Union was formed following the defeat of Hasburg by Prussia in 1866.¹¹¹ It is of note that due to its legal and institutional features, the AHMU is considered as the most advanced economic union of the 19th century. Legally founded on the Ausgleich of 1867 (“**Compromise of 1867**”),¹¹² the AHMU presented features which strongly departed from those

¹⁰⁴ Flandreau (n 74) 117.

¹⁰⁵ Jonung (n 98) 79.

¹⁰⁶ Ryan and Loughlin (n 96) 722.

¹⁰⁷ Jonung (n 98) 92.

¹⁰⁸ Ryan and Loughlin (n 96) 712; Jonung (n 98) 81.

¹⁰⁹ Jonung (n 98) 83.

¹¹⁰ *ibid* 93; Øksendal (n 97).

¹¹¹ Flandreau (n 74) 117.

¹¹² The Compromise (Ausgleich) of 1867, Law of 21 December 1867, concerning the mailers common to all countries of the Austrian monarchy and the manner of treating them, quoted in James Harvey Robinson and Charles Beard, *Readings in Modern European History* volume 2 (New York: Ginn and Company, 1909), pp. 165-168 and available on <https://saleemcc.instructure.com/courses/451/pages/the-compromise-ausgleich-of-1867>.

of previously discussed monetary unions. For a clear understanding of the AHMU, special attention should be given to certain provisions of the Compromise of 1867.

Pursuant to Article 1, the Compromise of 1867 provided that foreign affairs, including the ratification of international treaties, military affairs, and their respective financing (setting a common public debt in that respect), were competences allocated to the Dual-Monarchy. In order to ensure an efficient administration for these specific matters, the latter were subject to an original institutional framework composed of a joint-ministry and of delegations from respective national parliaments. Pursuant to Article 5, a joint-ministry was established to administrate the above-mentioned affairs, with the exception of the army under direct control of the Emperor and the King. It is of note that, in that capacity, the joint-ministry was prevented from administering any national affairs during the same period.

Of crucial importance, the joint-ministry, pursuant to Article 14, was tasked with receiving any legislative proposals from the government of the Dual-Monarchy and transmitting them to the delegations of national parliaments. Composed of parliamentary delegates from provincial diets and from nobility, and renewable every year, the government of the Dual-Monarchy had to be convened every year to vote on their own legislative proposals as well as on those proposed by national governments. Furthermore, as provided in Article 13, parliamentary delegations could only exercise their legislative power with respect to the above-mentioned affairs. Therefore, any other matters fell under the exclusive competence of national governments, unless they fell within the scope of Article 2.

Article 2 provided that some specific affairs of a technical nature were not to be dealt with at the Dual-Monarchy level. Rather they would be, from time to time, subject to periodical joint-agreements concluded between Austria and Hungary. In that context, joint-agreements had to be concluded for any common affairs related to indirect taxes legislation and commercial matters, notably tariff legislation. It is noteworthy that the scope of joint-agreements encompassed the regulation of the monetary and coinage systems. On that point, , as highlighted by Flandreau, Austria and Hungary concluded, on September 1867, a joint-agreement granting an exclusive issuance right on the florin to the Austrian National Bank (“**ONB**”).¹¹³ As a result of this unbalanced monetary relationship, exacerbated when Austria was conferred a monetary monopoly, and as a result of the Vienna Stock Market crash of 1873, Hungary requested a reform of the

¹¹³ Flandreau (n 74) 123.

common monetary system.¹¹⁴ This eventually occurred in 1877 with the establishment of a common central bank: the Austro-Hungarian Bank, (“**OUB**”).¹¹⁵

Composed of Hungarian and Austrian representatives, and of two national offices,¹¹⁶ the OUB was conferred an exclusive competence in the area of monetary policy. This exclusive competence was in sharp contrast with those of previous monetary unions. With the exception of the Zollverein when it was absorbed into the German Empire, no participants of previous monetary unions had transferred their monetary sovereignty to a supranational institution, let alone to a common central bank. However, this unique institutional feature was subject to criticisms and therefore, of monetary reforms. Most notably, the reforms of 1892 and 1893 led to the adoption of the gold standard and to the reorganization of monetary institutional relationships.¹¹⁷ In spite of that, as highlighted by Flandreau, the OUB was able to conduct the Dual-Monarchy’s monetary policy without political interference until the Great War.¹¹⁸

A formidable example of economic integration, the AHMU has often been considered the closest example to the European Union. However, similarly to the other monetary unions, the AHMU dramatically ended with the Great War. Indeed, the latter ruined the economic integration efforts deployed within the framework of the monetary unions previously discussed. In that regard, it seems particularly opportune to briefly present the economic consequences produced by the Great War.

2. *The Disintegration of Monetary Integration: The Costs of War*

Despite previous conflicts, such as the Franco-Prussian war, the occurrence of the Great War (**a**), was followed by World War II (“**WWII**”) (**b**), not only ruined these integration efforts but disintegrated European national economies.

a. The Cost of the Great War

Although no words can adequately qualify the consequences of the Great War, their approximate quantification is of paramount importance when considering the ruined economic integration efforts made during the 19th century. In 1920 Bogart undertook a detailed analysis of direct and

¹¹⁴ *ibid* 123–24.

¹¹⁵ *ibid* 123–24.

¹¹⁶ *ibid* 121.

¹¹⁷ *ibid* 123–24.

¹¹⁸ *ibid* 127–28.

indirect costs of the Great War in the light of available economic and statistic data.¹¹⁹ After measuring the costs of war “in loss of life, destruction of property, loss of economic efficiency and prestige, and lowering of normal standards of consumption along many lines.”¹²⁰ he approximated expenditures and revenues of belligerents.¹²¹ Without neglecting former studies,¹²² the author first compared the tax systems as well as monetary and financial measures and debt structures of the belligerents. This comparative analysis allowed Bogart to estimate the direct costs of the Great War at about \$186 billion.¹²³ While the latter were considerable on a standalone basis, they were complemented with indirect costs.

Drawing upon previous works of Barriol, Guyot and Crammond, Bogart defined indirect costs as the capitalized value of human life loss.¹²⁴ Such loss, representing 12.996.571 deaths and 20.297.570 wounded (including deaths from wounds),¹²⁵ estimated at \$67 billion,¹²⁶ also led to other indirect costs of economic nature. More specifically, Bogart analysed the externalities, of human life loss, caused on belligerents’ economies such as the loss of property (\$29.960 billion),¹²⁷ the loss of merchant shipping (\$6.8 billion),¹²⁸ loss of production (\$45 billion),¹²⁹ war relief (\$874,062 million),¹³⁰ and finally the costs to neutral nations (\$1,75 billion).¹³¹ Hence, by adding indirect costs, estimated of about \$151 billion, to direct costs, Bogart approximated total costs as being 337.846.189.657 dollars.¹³² This estimation of the costs of the Great War, along with the costs of building the peace,¹³³ gives a remarkable insight into the economic and financial impact on belligerents’ economies, particularly when sovereignty, coloured by nationalism, was exacerbated.

Although a seminal study on the costs of the Great War, Bogart’s analysis was not free from constructive criticisms some decades after its publication. In 2005, Broadberry and Harrison undertook an extensive review of the “Direct and Indirect Costs of the Great World War” when

¹¹⁹ Ernest L Bogart, *Direct and Indirect Costs of the Great World War* (Carnegie Endowment for International Peace 24, Second (revised) edition, Oxford University Press 1920).

¹²⁰ *ibid* v.

¹²¹ *ibid* v–vi.

¹²² *ibid* 265–66.

¹²³ *ibid* 268.

¹²⁴ *ibid* 275–84.

¹²⁵ *ibid* 274.

¹²⁶ *ibid* 284.

¹²⁷ *ibid* 287.

¹²⁸ *ibid* 291.

¹²⁹ *ibid* 292.

¹³⁰ *ibid* 294.

¹³¹ *ibid* 298.

¹³² *ibid* 299.

¹³³ John Maynard Keynes, *The Economic Consequences of the Peace* (Wordsworth Classics of World Literature, Wordsworth 1919).

studying, among other research questions, the Great War's effects on economic institutions and post-war belligerents' growth.¹³⁴ After first assessing economies of the belligerents and their differences throughout the war, these authors reviewed the results of Bogart. They pointed out some shortcomings in the light of contemporary data and methodologies. According to these authors, these shortcomings were the adding up of nominal data in the light of wartime inflation, the conversion of domestic currencies into US dollars, the accounting procedures (notably for the capitalized value of human life loss and the relationship of these costs to income and wealth).¹³⁵ Moreover, after addressing these discrepancies by resorting to a national balance-sheet approach *à la* Broadberry and Howlett,¹³⁶ the authors assessed the impact of the Great War on belligerents' post-war growth through the data of Feinstein and others.¹³⁷ From these data there can be observed a moderated growth of GDP of the (six) belligerents compared to those of (six) neutral nations.¹³⁸ Indeed, when computing the geometric mean of the GDP for each group, a (1.512)% growth difference for belligerents can be seen.¹³⁹ In the light of these data, these authors pointed out the disintegration of national economies and the rise of both nationalism and protectionism as a Great War consequence.¹⁴⁰

b. The Costs of World War II

To the costs of the Great War should be added those needed to build the peace. The reparations stipulated in the Treaty of Versailles imposed consequent, not to say insurmountable, costs to Germany. In that regard, it should be recalled that Keynes previously mentioned the lack of provisions on economic solidarity between Allies and defeated countries and their economic consequences on the future of Europe. In particular, Keynes estimated the following:

The Treaty includes no provisions for the economic rehabilitation of Europe – nothing to make the defeated Central Empires into good neighbours, nothing to stabilise the new States of Europe, nothing to reclaim Russia; nor does it promote in any way a compact of economic solidarity amongst the Allies themselves; (...) ¹⁴¹

¹³⁴ Stephen Broadberry and Mark Harrison, 'The Economics of World War I: An Overview' in Mark Harrison and Stephen Broadberry (eds), *The Economics of World War I* (Cambridge University Press 2005) Cambridge Core.

¹³⁵ *ibid* 22–25.

¹³⁶ *ibid* 25.

¹³⁷ *ibid* 33.

¹³⁸ *ibid*.

¹³⁹ Own calculations based on the Feinstein *et al* data provided in Broadberry and Harrison (n 134).

¹⁴⁰ *ibid* 32–34.

¹⁴¹ John Maynard Keynes, 'Chapter 6: Europe after the Treaty' in *The Economic Consequences of the Peace* (Wordsworth Classics of World Literature, Wordsworth 1919) 497.

Naturally, the disintegration of Europe was “(...) the one question in which it was impossible to arouse the interests of the Four”¹⁴² and which led a few decades later to a second world conflict.

WWII brought unnameable losses to belligerent economies that Harrison quantified and analysed in a similar way than he did in his study on the costs of the Great War.¹⁴³ In the light of different variables,¹⁴⁴ Harrison first started to analyse the economies of the belligerents between 1939 and 1942 and then between 1942 and 1945. This two-phase analysis allowed the author to emphasize losses attributable to physical destruction.¹⁴⁵ More specifically, Harrison, acknowledging the difficulties in making accurate comparisons, estimated that Germany lost about 9% of its human assets and 17% of its industrial fixed assets during WWII.¹⁴⁶ Already impacting considerably Germany, WWII also adversely affected the USSR and Japan, which suffered most from it due to their initial level of development.¹⁴⁷ In essence, the costs of WWII greatly affected the GDP growth of belligerents.¹⁴⁸

From prosperous integrated economies to ruined ones, the costs of the World Wars highlighted the necessity to deepen European economic cooperation/integration to promote peace stability. Despite years of intellectual effervescence, early integration projects struggled to allow the emergence of a unique organization capable of leading the integration process. In substance, such process started with the Treaty of Brussels and the Council of Europe.

B. Post-War European Integration Initiatives (1946–1957)

Early post-war integration initiatives (1) formalized the emergence of different international organizations where vivid integration discussions occurred. This invited heads of state to reconsider economic integration with the creation of the European Community of Steel and Coal (“ECSC”)(2).

¹⁴² *ibid.*

¹⁴³ Mark Harrison, ‘The Economics of World War II: An Overview’ in Mark Harrison (ed), *The Economics of World War II: Six Great Powers in International Comparison* (Studies in Macroeconomic History, Cambridge University Press 1998) Cambridge Core.

¹⁴⁴ Notably the belligerents’ initial level of development

¹⁴⁵ Harrison (n 143) 37.

¹⁴⁶ *ibid.*

¹⁴⁷ *ibid.* 10.

¹⁴⁸ *idem.*

1. Early Integration Initiatives (1946–1951)

Following the end of WWII, several initiatives were launched to promote peace and economic development through close economic cooperation (a) such as the Council of Europe which, formed in 1949, became a veritable integration idea laboratory (b).

a. Early Post-War Integration Projects (1946–1949)

To avoid the resurgence of another world conflict and the associated costs, European countries took several initiatives to promote peace and economic development through close cooperation in strategic economic sectors. In this regard, it is of note there was the rapid emergence of the Organisation for European Economic Co-operation (i) and the Treaty of Brussels (ii).

i. The Organisation for European Economic Co-operation

In September 1946, Churchill gave a speech whereby, after remembering the consequences of the World Wars, he called for the emergence of a European regional structure called “the United States of Europe”.¹⁴⁹ By promoting reconciliation between France and Germany, this regional structure aimed to assemble European countries to recreate, with a federalist inspiration, a European family. However, recreating a European family inferred a close economic coordination between its members in order to avoid another costly divorce. In that context, the first practical step towards the emergence of the *United States of Europe* was for Churchill to form a Council of Europe.

Initiated in 1946, the Council of Europe was established almost three years later, on 5 May 1949.¹⁵⁰ In the meantime, a few European economic integration projects, promoting various objectives and including different members, emerged. In that regard, it seems opportune to mention that, on 16 April 1948, eighteen countries signed the Convention for European Economic Cooperation (“OEEC”).¹⁵¹ Entering into force on 1 July 1948, the creation of the OEEC would constitute one of the most significant milestones for economic cooperation in post-war Europe. In particular, the OEEC would become an important forum for discussing the economic rebirth of Europe. In the light of the Marshall Plan and of the Paris Conference where European delegations called for long-term economic cooperation,¹⁵² such forum was of crucial importance. This economic cooperation was enshrined in the OEEC Convention, and Article 1 notably provided: “The Contracting Parties

¹⁴⁹ Churchill, speech delivered at the University of Zurich, 19 September 1946, para 3.

¹⁵⁰ Statute of the Council of Europe (London, May 5th, 1949).

¹⁵¹ Convention de Coopération Économique Européenne (Paris, April 16th, 1948).

¹⁵² Memorandum submitted by the Netherlands Delegation (Paris, July 29th, 1947), para 5.

agree to work in close co-operation in their economic relations with one another.”. Naturally, this economic cooperation provided in Article 1 should be read in conjunction with Article 5 of the OEEC Convention related to the studying and conclusion of Customs Unions (or analogous arrangements). Remarkable inasmuch as it invited further economic integration, the necessity to form Customs Unions pursuant to Article 5 was nonetheless not innovative. Indeed, it had already been mentioned by Keynes who had already advised to conclude a Tariff Union in order to remedy the future consequences of the Treaty of Versailles.¹⁵³

ii. The Treaty of Brussels

By seeking to promote economic cooperation through trade exchanges, the conclusion of the OEEC was of crucial importance for the economic rebirth of Europe. However, it should be considered as the first European integration initiative in that regard. For instance, the United Kingdom (“UK”), France, Belgium, Luxembourg and the Netherlands signed the Treaty of Brussels on 17 March 1948. By entering into force on 25 August 1948, the Treaty of Brussels not only aimed to promote peace but also to support closer coordination of economic policies.¹⁵⁴ This coordination of economic policy was enshrined in Article 1 of the Treaty of Brussels:

(...) the High Contracting Parties will so organise and co-ordinate their economic activities as to produce the best possible results, by the elimination of conflict in their economic policies, the coordination of production and the development of commercial exchanges.

In spite of a scope restricted to defence only, of strategic nature at that time, the Treaty of Brussels played a considerable role in the early coordination of economic policies in Europe. Most of its High Contracting Parties would ratify in 1951 the Treaty of Paris which established ECSC.¹⁵⁵ It is interesting to note that the Treaty of Brussels presented, to a limited extent, similarities with the Treaty of Paris. While their scopes did not overlap, they nonetheless shared strong resemblances as the industry of coal and steel provides primary resources for war purposes. Additionally, both Treaties promoted the coordination of economic policies within the boundaries of specific economic sectors. Further, Article 2 of the Treaty of Brussels provided for an economic objective common to the High Contracting Parties: “the promotion of the attainment of a higher standard

¹⁵³ John Maynard Keynes, ‘Chapter 7: Remedies’ in *The Economic Consequences of the Peace* (Wordsworth Classics of World Literature, Wordsworth 1919) 520.

¹⁵⁴ Treaty of Economic, Social and Cultural Collaboration and Collective Self-Defense (Brussels, 17 March 1948).

¹⁵⁵ Treaty establishing the European Coal and Steel Community (Paris, April 18th, 1951).

of living of their citizens”. Further discussed in this thesis, this objective was often to be considered as one of the most important objectives for subsequent European integration initiatives.

In the light of the foregoing, not only did these Treaties play a major role in the economic rebirth of Europe but they also markedly influenced other economic integration initiatives and in particular those considered within the premises of the Council of Europe.

b. The Council of Europe and the European Economic Integration (1949–1951)

By its very intense intellectual effervescence, the Council of Europe proved to be a veritable laboratory of integration ideas where innovative ideas were discussed (i) but it failed to emerge as the main organization for European integration (ii).

i. The Council of Europe as an Integration Laboratory

From economic cooperation to the premises of economic integration, the Council of Europe became, between 1949 and 1950, a remarkable European integration laboratory where innovative ideas were discussed. Only a few months after being formed, on 23 August 1949, Mackay, a British member of the Consultative Assembly, proposed a visionary resolution related to the role of the Council of Europe in the economic field.¹⁵⁶ Apart from proposing to form a Tariff Union¹⁵⁷ and to enhance working relationships with the OEEC on economic matters dissociated from the Marshall Plan,¹⁵⁸ Mackay also proposed to establish a “Banque Européenne”.¹⁵⁹ The latter, largely inspired by the Federal Reserve System established in 1913 as Member States’ central banks should be affiliated to it, presented the peculiarity of having the exclusive competence on currency issuance.

Although relatively brief, thus precluding from speculative considerations as van der Goest van Naters apprehended it more as a suggestion than a concrete plan,¹⁶⁰ this proposition was nonetheless remarkable on many points. Firstly, it surely constituted, to the best of our knowledge, one of the very first propositions that dissociated monetary policies from general economic policies. While its first point proposed the creation of a “Banque Européenne”, thus suggesting

¹⁵⁶ CoE, Assemblée Consultative, Proposition de Résolution, Mackay, « *Rôle du Conseil de l'Europe dans le domaine économique, compte tenu des organisations internationales existantes, ainsi qu'il est prévu aux articles 1 (c) et 23 (b) du Statut* ». Session ordinaire de 1949 (Séance du 23 août 1949), doc n°18.

¹⁵⁷ *ibid* para 2.

¹⁵⁸ *ibid* paras 3-5.

¹⁵⁹ *ibid* para 1.

¹⁶⁰ CECA, Assemblée Consultative, Van der Goest van Naters, *Le développement de l'intégration économique de l'Europe*, 1955, 22.

integration through a transfer of monetary sovereignty, all other points focused on economic-policy coordination only. This suggests that Mackay adopted, at that time, a monetarist perspective for economic integration in post-war Europe. Secondly, this proposition invited, for 1949 only, the adoption of a federalist approach of economic integration in Europe as Member States would have to transfer their monetary sovereignty to this bank.

Nonetheless, this proposition neither provided any details on the structure of this “Banque Européenne” nor, apart from the exclusive competence on issuing a common currency, on its powers. It is worth noting that until May 1951, when a resolution with statutory character was adopted in the 8th session of the Committee of Ministers,¹⁶¹ the Statute of the Council of Europe did not provide for the possibility of establishing specialized authorities having their own competence. Regardless of its innovative feature, the Mackay resolution should not be considered marginal; other members of the Consultative Assembly proposed original resolutions and plans as well.¹⁶²

On the same day, Buron proposed a resolution whereby the OEEC would become the main actor in the progressive realisation of the “European Economic Union”. Naturally, this resolution would not be considered innovative for recommending to confer the OEEC with the task of economic integration in Europe. Rather, it would be acknowledged for having recommended to the Committee of Ministers to establish a “European Institute of Statistics and Conjuncture”.¹⁶³ Although this recommendation did not come with justifications, its reasoning can be explained. More specifically, as it will be presented later when examining the first reports of the *Comité Monétaire*, economic cooperation depends on the quality of economic information shared among Member States. It should be recalled that it had already been discussed within the framework of the *Conférence Monétaire* for the LMU. In that context, information discrepancies could be easily eliminated, or at least markedly reduced, by the creation of such institute.

In the same vein and on the same day, Philip requested the Economic Commission to provide a plan on the coordination of Member States’ central banks to establish a federal system of central

¹⁶¹ CoE, *Resolution adopted by the Committee of Ministers at its 8th Session*, May 1951.

¹⁶² Van der Goest van Naters, *Le développement de l'intégration économique...op.cit.* ., In his introductory part, van der Goest van Naters also presents, but does not analyse, some, and not all, integration and resolutions projects which are explained and contextualised below.

¹⁶³ CoE, Assemblée Consultative, Buron, Proposition de Résolution, « *Rôle du Conseil de l'Europe dans le domaine économique, compte tenu des organisations internationales existantes, ainsi qu'il est prévu aux articles 1 (c) et 23 (b) du Statut* ». Session ordinaire de 1949 (Séance du 23 août 1949), doc n°10.

banks.¹⁶⁴ At first glance, this proposition may seem similar to that of Mackay. However, it neither provided for the establishment of a central bank common to all Member States nor for the creation of a single currency. This intellectual effervescence for monetary affairs was also raised in a resolution proposed by Bonnefous whereby intra-convertibility of Member States' currencies was claimed to remedy the unbalanced economic relationship with the United States.¹⁶⁵

Similarly, on 24 August 1949, de Valera recommended to the Committee of Ministers to provide national parliaments with propositions related to the establishment of a Clearing Union.¹⁶⁶ Eventually, on 5 September 1949, some of these propositions, such as those of de Valera and of Buron (and also of Mackay as it concerned a single currency for Member States), were recommended by the Consultative Assembly to the Committee of Ministers.¹⁶⁷

These resolution propositions, along with the recommendations submitted to the Committee of Ministers and a resolution passed on 5 September 1949, invited the Council of Europe to further consider political and economic integration in Europe. In that regard, several reports considered the methods to achieve further integration in Europe. Among them was the Mackay Report which, in its preliminary version of December 1949, compared federalism, confederalism and the setting of functional arrangements as potential integration methods.¹⁶⁸ Assessing both federalism and functional arrangements as “out of date”,¹⁶⁹ the Committee on General Affairs, by explaining its six assumptions for the future of the Council of Europe,¹⁷⁰ considered a combination of both as the optimal method.¹⁷¹ Such combination of methods was of strategic nature since it aimed to go beyond the role and scope of both the OEEC and of the Treaty of Brussels, thus ensuring a role

¹⁶⁴ CoE, Assemblée Consultative, Philip, Proposition de Résolution, « *Rôle du Conseil de l'Europe dans le domaine économique, compte tenu des organisations internationales existantes, ainsi qu'il est prévu aux articles 1 (c) et 23 (b) du Statut* ». Session ordinaire de 1949 (Séance du 23 août 1949), doc n°12.

¹⁶⁵ CoE, Assemblée Consultative, Bonnefous, Proposition de Résolution, « *Rôle du Conseil de l'Europe dans le domaine économique, compte tenu des organisations internationales existantes, ainsi qu'il est prévu aux articles 1 (c) et 23 (b) du Statut* ». Session ordinaire de 1949 (Séance du 23 août 1949), doc n°29.

¹⁶⁶ CoE, Assemblée Consultative, de Valera, Proposition de Résolution, « *Rôle du Conseil de l'Europe dans le domaine économique, compte tenu des organisations internationales existantes, ainsi qu'il est prévu aux articles 1 (c) et 23 (b) du Statut* ». Session ordinaire de 1949 (Séance du 24 août 1949), doc n°22.

¹⁶⁷ CoE, Assemblée Consultative, Recommandations au Comité des Ministres, Mackay, *Rôle du Conseil de l'Europe dans le domaine économique, compte tenu des organisations internationales existantes, ainsi qu'il est prévu aux articles 1 (c) et 23 (b) du Statut* », Session ordinaire de 1949 (Séance du 5 septembre 1949), doc n°71, see also Spaak, *Letter sent to M. Paul Van Zeeland*, 9th September 1949 in Council of Europe, Second Session, 3-5 November 1949, Ministry of Foreign Affairs (Paris), doc 458.

¹⁶⁸ CoE, Consultative Assembly, Committee on General Affairs, Confidential, *Report of the Committee on General Affairs (Submitted by Mr. Mackay) prepared pursuant to the Resolution of the Assembly passed in August 1949*, 3rd Session, undated, AS/AG (50) 5, 22-25.

¹⁶⁹ *ibid* 26.

¹⁷⁰ *ibid* 26-34.

¹⁷¹ *ibid* 31.

of main integration actor to the Council of Europe. This was perfectly assumed by the Committee on General Affairs since it was, by virtue of the resolution, “(...) charged with the task of advising something more than the O.E.E.C, more than the Brussels Treaty and more than the present statute of the Council of Europe.”.¹⁷²

Such an ambitious integration project naturally involved practical implications related, in terms of the creation of a single currency, to the transfer of competences from the Member States to the Council of Europe. In fact, in points 45(c) to 47 of its report, the Committee on General Affairs mentioned the need to transfer sovereign powers to realize the integration project, along with the difficulties related to competences interactions.¹⁷³ Undoubtedly, this competence issue was confined neither to political integration per se nor to the Committee on General Affairs. On 16 December 1949, the Committee on Economic Questions adopted a resolution in relation to the European Monetary Reform.¹⁷⁴ The latter, strongly echoing with some of the propositions previously presented, stated the need for further coordination of monetary policies to ensure a common policy towards US dollar hegemony. Among the propositions, including the creation of a European Monetary Fund for monetary clearing, the Committee on Economic Questions highlighted, in a subtle manner, the need to fragment monetary sovereignty. In its point 11, the Committee claimed that intra-convertibility of Member States’ currencies requires monetary coordination which:

(...) cannot proceed any distance if individual countries are determined to remain absolute masters at all times and in all ways of their domestic credit policies.¹⁷⁵

This intra-convertibility of Member States’ currencies, and the clearing of monetary transactions through a “monetary fund”, suggested a transfer of competences, or at least strong monetary coordination. Naturally, this was not only discussed within the premises of the Council of Europe but also at the OEEC where the European Payment Union (“**EPU**”) later emerged.

ii. Redundancy in European Integration Organization

Of similar nature and scope, the discussions held in both the OEEC and the Council of Europe raised some concerns about a potential duality between those institutions. These concerns were

¹⁷² *ibid* 25.

¹⁷³ *ibid* 41.

¹⁷⁴ CoE, Consultative Assembly, Committee on Economic Question, *Resolution on European Monetary Reform*, Session December 15-16 1949, 16 December 1949, AS/EC (49) 12.

¹⁷⁵ *ibid* 4.

crystallized during the second meeting of the Committee of the Ministers held on 4 November 1949. Specifically, Member States discussed the recommendations, of 5 September 1949, on the actions to be taken in the economic field.¹⁷⁶ From the *procès-verbal* of the session, some national divergences may be perceived as regards the economic roles played by the OEEC and by the Council of Europe. The former seemed to have received considerable deference from the latter which, supported notably by the UK and Ireland, ‘asked’ the OEEC to provide observations regarding the above-mentioned recommendations before adopting them. Although considering the economic recommendations of the Council of Europe, the OEEC was not free from tensions among its Contracting Parties. These tensions were crystallized in the discussions of the different plans related to the establishment of the EPU in 1950.¹⁷⁷

Similarly to in 1949, these tensions did not preclude both the OEEC and the Council of Europe from deepening their European economic integration considerations for 1950. Indeed, as van der Goest van Naters pointed out,¹⁷⁸ economic integration proposals were more detailed and narrowed down to specific sectors in order to ensure close coordination in strategic areas. This may be illustrated with the three plans submitted by Stikker, Petsche and Pella to the Council of Ministers of the OEEC¹⁷⁹ and also with the *Pacte de l’Union Européenne* that Bardoux submitted to the Consultative Assembly of the Council of Europe.¹⁸⁰ Although those plans were eventually not implemented, they nonetheless highlighted the economic integration activity of both organizations as well as their individual inefficiency to emerge as the main European institutional structure. This institutional inefficiency must have resulted from a lack of competences/powers transferred to the above-mentioned organizations. Nonetheless, such situation did not preclude one Member State’s representative of both organizations, Robert Schuman, from pronouncing, on 9 May 1950, a declaration proposing the establishment of a European federation whereby the production of coal and steel would be pooled in order to preserve peace.

¹⁷⁶ CoE, Committee of Ministers, *Recommendation (c) Action to be taken in the economic field between Member States of the Council of Europe and between the latter and other nations*, Second Session, 3-5 November 1949 (4 November 1949), Ministry of Foreign Affairs (Paris), doc 458, 60-62

¹⁷⁷ Gérard Bossuat, ‘Chapitre XIX. Le Printemps Précaire de l’OECE: L’union Européenne Des Paiements’ in *La France, l’aide américaine et la construction européenne 1944-1954* (Institut de la gestion publique et du développement économique 1997) vol II.

¹⁷⁸ Van der Goest van Naters, *Le développement de l’intégration économique...* op.cit 22.

¹⁷⁹ CoE, Consultative Assembly, Committee on Economic Questions, Confidential, *Note by the Secretariat on the plans submitted by MM. Stikker, Petsche and Pella*, 19 August 1950, AS/EC I (2).

¹⁸⁰ CoE, Assemblée Consultative, Commission des Affaires Générales, Bardoux, Confidential, *Projet de Pacte de l’Union Européenne*, 3^{ème} session, 27 février 1950, AS/AG (50) 2.

Naturally, this sectorial integration was embedded into a supranational institutional framework that invites the devotion of special attention.

2. *Sectorial Integration and Economic-Policy Coordination: The Treaty of Paris*

Fostering economic sectorial integration while promoting close economic-policy coordination (a), the Treaty of Paris nonetheless disregarded natural economic sectorial interlinkages that led the Common Assembly on the quest for further integration (b).

a. *A Sectorial Approach to Economic Integration*

« (...)
Fils des saxons, fils de la France,
Vous souvient-il du sang versé ?
Près du soleil de l'Espérance
Voyez-vous l'ombre du passé ?

Le Rhin n'est plus une frontière ;
Amis, c'est notre grand chemin,
Et, maintenant, l'Europe entière
Sur les deux bords se tend la main. »¹⁸¹

Was Schuman inspired by this poem, composed by de Musset in 1852, when pronouncing his declaration whereby the pooling of strategic economic resources with Germany was claimed in order to avoid the reminiscence of a world conflict?¹⁸² While asserting so would certainly be presumptuous, it is nonetheless worth noticing the consequences of the Schuman Declaration on the European economic integration process. Following the Declaration, six European states ratified on 18 April 1951 the Treaty of Paris which, by entering in force on 23 July 1952, established the ECSC.

Despite an economic scope restricted to coal and steel,¹⁸³ thus delimiting economic integration to these sectors only, the Treaty of Paris provided the ECSC with a few economic integration-oriented objectives. According to Article 2, these objectives were to contribute to economic expansion, to the development of employment, to improve the standard of living and, finally, to establish a common market for coal and steel. While improving the standard of living was an objective formerly included in the Treaty of Brussels, establishing a common market for coal and steel was

¹⁸¹ Alfred De Musset, 'Le Chant Des Amis' in *Poésies complètes* (Poésies complémentaires, Bibliothèque de la Pléiade, Gallimard 1933) vol 12, 489.

¹⁸² Schuman Declaration (Paris, May 9th, 1950).

¹⁸³ Iron, coal, steel and scrap were the four primary resources concerned by the Treaty of Paris.

of innovative nature. Naturally, this requested the establishment of normal conditions of competition, with limited ECSC market intervention. This was not only provided in Articles 4 and 5 but also in different Chapters of the Treaty of Paris. In providing so, the Treaty of Paris aimed to eliminate customs duties, or any other form of trade restrictions, between its Member States. These ambitious economic objectives, requesting transfer of competences from the Member States towards the ECSC, with both sectorial and policy limitations, involved the creation of a supranational institutional framework.

Highlighted by the French Delegation to the Treaty of Paris,¹⁸⁴ this ECSC institutional framework was articulated around the High Authority which by virtue of Article 8 aimed to realize the missions set out in Article 2. As the executive power of the ECSC, having the ability to issue binding decisions and recommendations binding with respect to its objectives,¹⁸⁵ the High Authority had nonetheless some checks and balances. In order to avoid « (...) *un organisme irresponsable doté, lui, de pouvoirs illimités* »,¹⁸⁶ the Treaty of Paris instituted, pursuant to Article 7, a Common Assembly which, according to Article 20, had to supervise the action of the High Authority. While rather limited, this supervisory power was nonetheless of paramount importance. Indeed, considered neither constitutional nor legislative but as essential by the French Delegation,¹⁸⁷ this supervisory power was restricted by Article 24 to the discussion of the general report submitted by the High Authority pursuant to Article 17. In that context, should a motion of censure be adopted by two-thirds of parliamentary delegates, the members of the High Authority should resign as a body.

It is interesting to compare such supervisory power with that of the Consultative Assembly, which, as provided in Article 23 of the Statute of the Council of Europe, was limited to the formulation of recommendations to the Committee of Ministers. As important as the creation of an Assembly, with such a supervisory power was, it nonetheless did not constitute the only check and balance of the ECSC. Pursuant to Article 7, the Treaty of Paris also established the Court of Justice that, by virtue of Article 31, was empowered to interpret the provisions of the Treaty of Paris. Moreover, as provided in Article 33, the Court of Justice was competent to hear appeals, lodged either by the Special Council or by a Member State, aimed at annulment of decisions and recommendations issued by the High Authority. As just stated, the ECSC was composed of a fourth institution, the Special Council. Created pursuant to Article 7, the Council was charged, as provided in Article 26,

¹⁸⁴ *Rapport de la délégation Française sur le Traité instituant la Communauté Européenne de Charbon et de l'Acier et la Convention relative aux dispositions transitoires signées à Paris le 18 avril 1951*, Ministère des Affaires Etrangères, Octobre 1951, 15.

¹⁸⁵ Treaty of Paris, Article 14.

¹⁸⁶ *Rapport de la délégation Française sur le Traité instituant...* op.cit 15.

¹⁸⁷ *ibid* 25.

to represent national governments and to contribute to the harmonization of actions of the High Authority with those of the Member States. Significantly different from that of other organizations, the supranational institutional framework of the ECSC requested sincere cooperation between its Member States to ensure sectorial economic integration.

Cooperation with governments, and also with other stakeholders, was first mentioned in Article 5 in relation to the ends of the ECSC. As previously mentioned, the Council acted, to a certain extent, as a cooperation catalyser between the ECSC and the governments. However, cooperation with governments and other stakeholders was not limited to this unique provision. More specifically, the Treaty of Paris provided for many cooperation provisions, such as Article 46 in relation to consultation with stakeholders or Article 57 in relation to the cooperation of the High Authority with domestic governments in order to influence general consumption. Nevertheless, these provisions, due to the restricted scope of the Treaty of Paris, were of limited nature as regards economic integration in Europe. In fact, as also underlined by the French Delegation,¹⁸⁸ the Member States transferred a part of their sovereignty to the ECSC but only with respect to these two economic sectors. Hence, general economic policies remained an exclusive competence of the Member States. Such preservation of competence was permitted by Article 26 in relation to harmonization, by the Council, of actions of the High Authority and those of the governments “(...) which are responsible for the general economic policy of their countries.”

Undoubtedly, sectorial integration promoted peace and economic expansion in the six Member States of the ECSC. However, this approach, considered as progressive, has rapidly shown its limits. By isolating iron, coal, steel and scrap from general economic policies of its Member States, the Treaty of Paris disregarded natural economic interlinkages between them. This isolation, and their “indirect effects” on other economic sectors, such as monetary policy, was naturally very rapidly pointed out by both the Common Assembly and the High Authority.

b. The Quest for Further Economic Integration (1953–1957)

Interestingly, legal isolation of these sectors from general economic policies of the Member States was one of the first items considered by the Common Assembly when, pursuant to Article 24, it discussed the Report on the Situation of the Community submitted by the High Authority on 10 January 1953.¹⁸⁹ This report, which presented three months of High Authority activity, was rapidly

¹⁸⁸ *ibid* 16-17.

¹⁸⁹ European Coal and Steel Community, High Authority, *Report on the Situation of the Community*, 10 January 1953.

commented on by parliamentary delegates who, during the first session of the Assembly held on 12 January 1953, pointed out the ECSC integration approach. Opening the discussion after Monnet presented the report to the Assembly, Lemaire expressed his regrets on the restricted pooling of the ECSC which, according to him, should also have included agricultural goods.¹⁹⁰ Following the comments of this French parliamentary delegate, Motz formulated a similar observation with respect to the transportation sector. According to him, sectorial integration naturally engenders externalities in other sectors, which might be distorted during the integration process.¹⁹¹ Similarly, Preusker, following the third question asked by Menthon on the link between monetary parity and the establishment of a common market,¹⁹² pointed out « *le lien indissoluble qui existe entre ce domaine intégré et la politique monétaire, économique, ainsi que la politique de crédit en général de nos pays* ». ¹⁹³ The discussion on the natural interlinkages between these sectors and general economic policies was reopened on 13 January 1953 when de Vita emphasized the need to have unified general economic policies for the common market.¹⁹⁴

Considerations on coordination of general economic policies naturally re-emerged when the High Authority, on 11 April 1953, submitted its first General Report to the Common Assembly.¹⁹⁵ To satisfy the requirements laid down in Article 24, the *Commission du Marché Commun*, chaired by Preusker, provided a report focusing on Chapters III and IV of the General Report.¹⁹⁶ Thereupon, the Preusker Report formulated specific recommendations to the Assembly on the establishment of a common market. More precisely, on the issue of indirect taxes in the ECSC,¹⁹⁷ analysed by a group of experts led by Tinbergen,¹⁹⁸ the Preusker Report recommended the Common Assembly to foster coordination of all general economic policies to deepen economic integration.¹⁹⁹

These parliamentary discussions, alongside the Preusker Report, were of paramount importance for the deepening of economic integration in the ECSC; they both constituted preliminary

¹⁹⁰ CECA, Débat de l'Assemblée Commune, *Compte rendu in extenso des séances*, Séance du 28 février 1953, édition de langue française, 165.

¹⁹¹ *ibid* 169.

¹⁹² *ibid* 176.

¹⁹³ *ibid* 178.

¹⁹⁴ *ibid* 192.

¹⁹⁵ ECSC, High Authority, *The Activities of the European Community: General Report of the High Authority (10 August 1952 to 12 April 1953)*, 11 April 1953.

¹⁹⁶ CECA, Assemblée Commune, *Rapport fait au nom de la Commission du Marché Commun sur les Chapitres III et IV (pages 29 à 97), traitant de l'évolution et de l'établissement du marché commun du charbon, du minerai de fer et de la ferraille, du Rapport général de la Communauté (1952-1953), ainsi que des mesures et décisions préparatoires relatives à l'établissement du marché commun de l'acier*, Session ordinaire 1953, 9 juin 1953, document n°8.

¹⁹⁷ *ibid* paras 5-6.

¹⁹⁸ *ibid* para 41.

¹⁹⁹ *ibid* para 45.

considerations leading to the formulation of the fifth resolution of the Common Assembly.²⁰⁰ The latter, related to the first General Report, was fundamental since it constituted the first resolution, adopted by the Common Assembly, related to the coordination of general economic policies. The importance of this resolution, which should be considered as the starting point of the ECSC progressive economic integration, was provided in the fourth point of the third paragraph of the Report, which stated: « *pour que la Haute Autorité contribue à la coordination des politiques économique, financière, monétaire et de crédit en vue de réaliser progressivement une intégration économique.* » Considered to be the most important conclusion of the Report by the *Commission du Marché Commun*, this paragraph of the 15th resolution was, despite intense vivid discussions at the Assembly,²⁰¹ directly inspired by the 45th paragraph of the Preusker Report.²⁰²

This first contribution towards coordination of general economic policies, in order to attain economic integration at a later stage, invited the Assembly to further develop those considerations. From its first session in 1954 to the discussion on the second General Report of the High Authority,²⁰³ the parliamentary delegates debated on different forms of economic integration. It should be observed in that regard that some parliamentary delegates promoted a broader, but still sectorial, economic integration, while others, such as Pohle, envisaged integration through a monetary union.²⁰⁴ The necessity to enlarge economic integration, due to legal isolation of coal and steel from the general economic policies, was further recalled in 1955. Following the submission of the third General Report of the High Authority, the Common Assembly adopted several resolutions calling for further coordination aiming to achieve economic integration. More specifically, from transportation sectorial integration²⁰⁵ to the deepening of cooperation relationships between the Council and the Member States for economic policies,²⁰⁶ the Common Assembly apprehended economic integration as the unique way to form Europe. Nonetheless, most of the integration progress took place in 1955 when, consecutively to the unsuccessful

²⁰⁰ CECA, Assemblée Commune, *Résolution relative au Rapport général de la Haute Autorité sur l'activité de la Communauté du 10 août 1952 au 12 avril 1953 et sur l'État prévisionnel général pour l'exercice 1953-1954*, Journal Officiel de la Communauté du 21 juillet 1953.

²⁰¹ CECA, Débat de l'Assemblée Commune, *Compte rendu in extenso des séances, Session extraordinaire de janvier 1954*, édition de langue française, 50.

²⁰² *ibid* 193.

²⁰³ ECSC, High Authority, *The Activities of the European Community: Second General Report of the High Authority (13 April 1953 to 11 April 1954)*, 11 April 1954.

²⁰⁴ CECA, Débat de l'Assemblée Commune, *Compte rendu in extenso des séances, Séance du 28 février 1953*, édition de langue française, 165.

²⁰⁵ CECA, Assemblée Commune, *Résolution relative aux problèmes de transport dans la Communauté*, JO A 13, 10 juin 1955, p 777 see also High Authority, Information Service, *Bulletin from the European Coal and Steel Community*, June 1955, vol.8, 1.

²⁰⁶ CECA, Assemblée Commune, *Résolution à l'adresse du Conseil spécial de Ministres relative à la politique générale d'expansion et à l'évolution de la conjoncture*, JO A 17, 23 juillet 1955, 846-847.

ratification of the European Defence Community Treaty, the six Ministers of Foreign Affairs met in Messina, Italy.

The cornerstone of the European economic integration, the Messina Conference was held from 1 June to 3 June 1955. It ended with the adoption of a resolution that requested the achievement of economic integration mainly via the establishment of a common market, not restricted to coal and steel only.²⁰⁷ Highlighting the limits of sectorial integration, largely imbued with Beyen's considerations, the Messina Conference not only invited the Common Assembly to ask for further considerations on institutional cooperation and potential ECSC competences enlargement²⁰⁸ but also requested the High Authority to formulate propositions with respect to the common market. In that regard, the Report of the Heads of Delegations to the Ministers of Foreign Affairs. Released on 21 April 1956 within the framework of the Intergovernmental Committee created by the Messina Conference served as a preliminary basis for negotiating the future Treaty.²⁰⁹ The so-called "Spaak Report" formulated propositions to merge separated markets and establish a Custom Union, in order to achieve the establishment of a "general common market".

From the first session of the Common Assembly to the formulation of the Spaak Report, which served as a negotiation basis for the Treaties of Rome, the ECSC rapidly appreciated the limits of the sectorial economic integration approach. The economic interactions between coal and steel, which inferred transfer of sovereignty to the ECSC, with general economic policies of the Member States could no longer be disregarded. Though underlined in several reports, this observation required the establishment of a supranational structure with competences larger than those conferred on the ECSC. Hence, the ratification of the Treaties of Rome, which notably established the EEC, was considered as major headway towards the achievement of economic integration.

²⁰⁷ Résolution adoptée par les ministres des Affaires étrangères des États membres de la CECA, Messine, 2 juin 1955.

²⁰⁸ CECA, Assemblée Commune, *Résolution à l'adresse du Conseil spécial de Ministres et de la Haute Autorité, relative à la résolution adoptée par les ministres des Affaires étrangères des États membres de la Communauté européenne du charbon et de l'acier réunis à Messine les 1^{er} et 2 juin 1955*, JO A 17, 23 juillet 1955, 845 see also van der Goest van Naters et Wiggy, *Rapport fait au nom du Groupe de Travail sur le Marché Commun et l'Euratom*, Session ordinaire, doc n°14, AC 2226.

²⁰⁹ Comité Intergouvernemental créé par la Conférence de Messine, *Rapport des Chefs de Délégation aux Ministres des Affaires Étrangères*, Bruxelles, 21 avril 1956, 10.

II. Economic and Monetary Integration in the European Economic Community

As stated above, the setting of the EEC invited the Community to enhance economic and monetary cooperation before starting integration (A). This was further strengthened with several integration initiatives discussed and implemented in the 1970s (B).

A. The European Economic Community: from Cooperation to Integration (1958–1970)

In establishing the European Economic Community, the Treaty of Rome provided an institutional and legal framework that aimed at fostering the economic and monetary cooperation (1). However, the silence of the Treaty on specific topics, among which was formulation of a common economic policy, exacerbated the political difficulties during its transition period (2).

1. *The European Economic Community Treaty*

Original on many points, the Treaty of Rome established a specific institutional setting (a) articulated around its economic provisions (b).

a. Aims and Institutional Setting of the European Economic Community

Signed on 25 March 1957, and in force since 1 January 1958, the Treaties of Rome,²¹⁰ by establishing the Euratom and the European Economic Community, dramatically fostered both sectorial integration and coordination of general economic policies. Hence, without neglecting the importance of the Euratom Treaty, which promoted economic development and trade exchanges pursuant to its Article 1, special attention should be devoted to the TEC and its provisions on sectorial integration and economic cooperation.

Pursuant to Article 2 and through a progressive establishment of a common market and the rapprochement of economic policies, the TEC provided the EEC with the missions of harmonious promotion of economic development in the Community, a continuous and balanced expansion, a strengthened stability, an acceleration of living standards and, finally, closer Member State relationships. Assuredly broader than the objectives of the Treaty of Paris, notably as regards rapprochement of economic policies, these missions were further specified in Article 3 of the TEC, according to which the Community integrated three other economic sectors. More specifically, to ensure the establishment of a common market, the EEC should establish common policies with respect to trade, transportation and, finally, to agriculture, as requested under Article 3(b), (d) and

²¹⁰ Traité établissant la Communauté Economique Européenne, 25 mars 1957.

(e).²¹¹ Apart from commercial policy, briefly considered in the Treaty of Paris,²¹² it is worth recalling comments from Lemaire and Motz, as well as the Kapteijn Report,²¹³ that requested the inclusion of these sectors into the ECSC pooling. Importantly, Article 3(g) provided for the implementation of procedures related both to coordination of economic policies of the Member States and to avoidance of disequilibria in balance of payment. Nonetheless, this coordination of economic policies, considerably deepened when compared to the ECSC, was embedded in a different, and specific, institutional framework. In that regard it seems opportune to examine this before moving onto the economic provisions of the TEC.

With a similar institutional setting as the ECSC but with a considerable extension of economic competences, the institutional framework of the EEC was also articulated around an executive power formed by the Council and the Commission. The latter was composed of nine members vested, pursuant to Article 155, with the decisional power to ensure the development and functioning of the common market. Furthermore, the EEC Commission also benefitted from the right to participate in the elaboration of acts of the Council and the *Assemblée Européenne Parlementaire*.

It is important to note that the action of the EEC Commission was nonetheless subject to the supervision of the Assembly. Similarly to the Common Assembly of the ECSC, the Assembly of the EEC was granted a supervisory power pursuant to Article 137. More specifically, the Assembly was charged, by virtue of Articles 143 and 144, with the task of discussing the yearly general report submitted to it by the EEC Commission, pursuant to Article 156. Moreover, should a motion of censure be adopted by two-thirds of the parliamentary delegates representing the majority of the Assembly, the Commission should resign as a body. Although the competences of the Assembly may be similar to those of the Common Assembly of the ECSC, they could nonetheless be distinguished by the Assembly's consultative competence. From the definition of common agricultural and transportation policies, provided in Articles 43 and 73 respectively, to the harmonization of legislation, both the EEC Council and the EEC Commission were obliged to consult the Assembly before taking any decision.

²¹¹ Article 3(b), (d) and (e).

²¹² Treaty of Paris, Article 71.

²¹³ CECA, Assemblée Commune, Kapteijn, *Rapport fait au nom de la Commission des Transports sur le chapitre III, §3, chiffres 89-95 du Deuxième Rapport général sur l'activité de la Communauté (13 avril 1953-11 avril 1954), traitant des problèmes du transport au sein de la Communauté*, Session ordinaire de 1954, 10 mai 1954, doc n°14, paras 28-29 see also Kapteijn, *Proposition de résolution relative aux questions de transports*, 14 mai 1954, doc n°19.

Although the establishment of an Assembly with enlarged competences and common to the three Communities was important, it nonetheless did not constitute the only check and balance of the EEC. By virtue of Article 4, the TEC founded also the Court of Justice, common to the three Communities, which, as provided in Article 164, was empowered to interpret the provisions of the TEC. Finally, as mentioned previously, the TEC founded a fourth institution to form the executive power of the EEC alongside the EEC Commission: the Council. Founded pursuant to Article 4, the Council was vested, by virtue of Article 145, with a decision-making power. Importantly, it was charged to ensure the coordination of general economic policies of the Member States, pursuant to the same Article.

Such coordination of general economic policies, accompanied with monetary policy cooperation, merits careful study.

b. The Economic Provisions of the Treaty of Rome

First suggested in Articles 2 and 3, the coordination of general economic policies, was mentioned again briefly in Article 6, which provided for close collaboration between the Community institutions and the Member States with respect to their economic policies, in order to satisfy the objectives of the EEC. Interestingly, the TEC neither provided a legal definition, nor a delimitation, of an ‘economic policy’. Rather, it simply enumerated, in the second title, its different components: conjuncture policy, balance of payments and commercial policy.

Despite its importance, the first component – conjuncture policy – was considered in a rather laconic manner by the authors of the TEC. Pursuant to Article 103(1), Member States should, by consulting between themselves and with the EEC Commission, consider their conjuncture policy as of common interest. Surprisingly, the TEC neither provided a definition of a conjuncture policy nor any indications as regards the expression “common interest”. Should the authors of the TEC comprehend this expression as a preliminary step to the establishment of a common conjuncture policy? Despite no indications in that regard in the TEC, the myriad of analyses provided in various reports submitted to the *Assemblée Parlementaire Européenne* infers that to be the case.²¹⁴

Unlike for the first component, the TEC provided more indications with respect to the balance of payments, in the second chapter of this second title. In particular, pursuant to Article 104, Member

²¹⁴ CEE, Assemblée Parlementaire Européenne, Deist, *Rapport fait au nom de la commission de la politique économique à long terme, des questions financières et des investissements sur les problèmes posés par une politique de conjuncture commune dans la Communauté économique européenne*, 10 mai 1960, doc n°23, D-HAEU, PE0-135, paras 5-10.

States should implement their economic policies to ensure stability of both their balances of payments and their currencies, while ensuring a high level of employment and price stability. These economic objectives, encompassed within the scope of the second component of the economic policy, were remarkable for many reasons. Notably with respect to monetary policy which, unlike in the Treaty of Paris,²¹⁵ was mentioned for the first time. This interconnection between balance of payments and monetary stability, resulting from the consequences of the exchange rate on trade exchanges between Member States, also highlights indirect monetary effects on the level of employment and price stability. Furthermore, these objectives, embedded in a monetarist perspective, required, pursuant to Article 104(2), a close coordination of economic policies of the Member States. Such coordination was further explained in Article 105 which, on the basis of recommendations formulated by the EEC Commission to the EEC Council, requested the administrations of the Member States and Central Banks to cooperate between themselves. As significant as this horizontal cooperation may be, the importance of Article 105 was to be found in its second paragraph, which instituted a consultative committee on monetary cooperation, the *Comité Monétaire*.

Expected to appear as « (...) *un catalyseur favorisant le rapprochement des politiques monétaires* », ²¹⁶ the *Comité Monétaire* was established on 4 June 1958. It was tasked, pursuant to Article 105, with several missions that aimed at favouring the coordination of monetary policies of the Member States in order to unify them at a later stage. More specifically, the *Comité Monétaire* was responsible for monitoring and presenting to the EEC Commission a yearly report on monetary and financial developments in the six Member States of the EEC. In addition, based on the TEC Articles touching upon its competences (Articles 69, 71, 73 and 105 to 109), the *Comité Monétaire* could also formulate recommendations to the EEC Commission and the EEC Council, concerning the monetary situation in the Member States.

Originally vaguely defined, these missions were later specified in the *Statut du Comité Monétaire*, notably in its Articles 2 and 3, as well as in its first activity report.²¹⁷ In that regard, it is interesting to note the double dimension of the mission conferred on the *Comité Monétaire* with respect to monetary policy. Due to natural interactions between exchange rates and the equilibrium of the

²¹⁵ CEE, Assemblée Parlementaire Européenne, van Campen, *Rapport fait au nom de la Commission des investissements, des questions financières et de la politique à long terme sur les chapitres du sixième Rapport général sur l'activité de la Communauté (C.E.C.A) qui relèvent de la compétence de la Commission*, Session de juin 1958, 11 juin 1958, doc n°22, VC-HAEU, PE0-19, para 12.

²¹⁶ *idem*.

²¹⁷ CEE, Comité Monétaire, *Premier rapport d'activité du Comité Monétaire*, 28 février 1959, 622/2/59-F, HAEU, CM2/1959-598, paras 7-8.

balance of payments, the *Comité* pursued its tasks not only with respect to monetary stability but also to financial stability. On this point, the *Comité Monétaire* was willing, certainly for efficiency purposes, to extend its scope of monitoring to other aspects of the economic policy of the Member States, such as conjuncture policy or investment and employment policies. This was acknowledged by van Lennep, the first President of the *Comité Monétaire*, when he presented the first activity report to the Council.²¹⁸ Naturally, this broadening of competences, which was not provided in the TEC, engendered some tensions among Member States' representatives, as highlighted by Bottex.²¹⁹

The institutionalization of the rapprochement of monetary policies of the Member States should not be only perceived as the premise of their unification at a later stage. Rather, since Article 107 invited the Member States to consider their exchange rate policies as of common interest, this institutionalization should also be perceived as the starting point for formulation by the EEC of an economic policy, common to all its Member States. By institutionalizing the rapprochement of monetary policies, the TEC adopted a mixed integration approach, whereby monetary cooperation should, at a later stage, make room for economic integration. Therefore, the EEC should define an economic policy common to the six Member States to deepen monetary cooperation with the view to ensure economic integration at a later stage.

However, the elaboration of an EEC common economic policy revealed to be an extremely arduous task due to the natural interactions between some of its components. While some fell under the exclusive competence of the Member States, others did not. This task was very rapidly undertaken by the institutions of the EEC, together with those of the ECSC and Euratom, through consequent parliamentary and legislative work carried out in the transition period.

2. *Economic and Monetary Integration in the EEC Transitional Period (1958–1969)*

The relative silence of the TEC regarding economic and monetary matters led policy makers to attempt to define a common economic policy, which (a) gave rise to multiplication of specialized *Comités* (b) and, finally, to conceptualize an economic and monetary union (c).

²¹⁸ CEE, *Extrait du procès-verbal de la 21^{ème} session du Conseil de la C.E.E., tenue à Bruxelles le 5 mai 1959*, Annexe II, doc. 209 f/39, HAEU, PE0-3420.

²¹⁹ Agnès Bottex, 'La mise en place des institutions monétaires Européennes (1957-1964)' (1999) 18 *Histoire, Économie et Société* 753, bks 754–755.

a. First Transition Phase: Elaborating an EEC Common Economic Policy (1958–1961)

Articulated around conjuncture policy (i), the conceptualization of a common economic policy highlighted the silence of the TEC as well as the need to start institutionalizing the coordination of economic policies by establishing a *Comité de politique conjoncturelle* (ii).

i. Articulating the Common Economic Policy Around Conjuncture Policy

Arduous by virtue of its ambition and its intrinsic technicalities, the elaboration of a common economic policy, within the meaning of Article 104, was naturally one of the first items considered by the EEC institutions in 1958, notably by the *Assemblée Parlementaire Européenne*.

The elaboration of an economic policy common to the six Member States was first discussed by the *Commission des investissements, des questions financières et de la politique à long terme* in its seminal report that commented on the Sixth General Report of the High Authority of the ECSC.²²⁰ Adopted on 11th June 1958, the Sixth General Report provided rare insights into the ECSC's awareness of its sectorial integration limitations.²²¹ In addition, by claiming closer coordination between the institutions of the Communities,²²² it also specified the reasons for elaboration of a common economic policy. Those reasons referred, notably, to the negative economic impact on aggregated national economies of the EEC due to divergences between the Member States with respect to conjuncture policy. However, in the light of the extreme technicalities inherent to this task, as well as of the recent entry into force of the TEC, the Sixth General Report deliberately eluded some economic-policy components, (e.g. monetary policy²²³) and confined its observations to conjuncture policy only.²²⁴ Notwithstanding the general nature of the observations, mostly promoting the expertise of the High Authority for conjuncture policy, this Report paved the way to subsequent works on expanding the definition of a common economic policy.

It should be observed in that regard that the *Commission des investissements, des questions financières et de la politique à long terme* considerably expanded its long-term economic-policy analyses in another seminal report adopted on 3 December 1958.²²⁵ The report, which meticulously considered each

²²⁰ CEE, van Campen, VC-HAEU, PE0-19...op.cit.

²²¹ *ibid* paras 7, 10.

²²² *ibid* paras 8-11, 43-46.

²²³ *ibid* para 12.

²²⁴ *ibid* para 11.

²²⁵ CEE, Assemblée Parlementaire Européenne, van Campen, *Rapport fait au nom de la Commission des investissements, des questions financières et de la politique à long terme sur certaines questions concernant la politique économique à long terme, les finances et les investissements, soulevées à propos des premiers rapports généraux de la Communauté Économique Européenne et de la Communauté Européenne de l'Énergie Atomique*, 3 décembre 1958, doc n°54, VC-HAEU, PE0-25.

economic branch of the common economic policy, without underestimating their technicalities, was of paramount importance. After reminding that the efficiency of an economic policy depends on the quality of statistical data,²²⁶ as already underlined by Buron in a proposition notified to the Council of Europe in 1949,²²⁷ the report attempted to conceptualize an economic policy by analysing each of its components. In contrast to the TEC that provided for three economic components, the report acknowledged that other components should be integrated into an economic policy and consequently, it distinguished seven components.²²⁸ This common economic policy – articulated around regional policy, monetary policy, conjuncture policy, financial policy, balance of payments, public finances and investment policy – deserves cautious attention, with a particular emphasis on the conjuncture policy.

Considered to be the « (...) *expression essentielle d'une politique économique commune* », ²²⁹ conjuncture policy rapidly became the central element of the common economic policy to be elaborated. This could be justified by the economic strengthening of the EEC as well as by the potential impact on the world conjuncture in the event of policy divergence among the Member States.²³⁰ Indeed, the necessity to stabilize national economic conjuncture, in order to favour harmonious economic development, invited EEC institutions to foster their coordination.

Nevertheless, it seems opportune to wonder, in the light of the rather succinct Article 103, how to coordinate such a barely defined economic component. It is noteworthy that the TEC did not provide guidance for its objectives, nor for its instruments. Thus, to bring some technical clarity, the report attempted to define conjuncture policy by presenting its respective objectives. More specifically, the *Commission des investissements, des questions financières et de la politique à long terme* stated:

(...) en d'autres termes, cela signifie qu'une politique de conjuncture à long terme n'est pas autre chose qu'un effort déployé en vue d'atteindre un développement économique qui soit harmonieux et équilibré.²³¹

This first definition will be further complemented with the definition proposed in the Deist Report of 1960.²³²

²²⁶ *ibid* para 4.

²²⁷ CoE, Buron, Session ordinaire de 1949 (Séance du 23 août 1949), doc n°10...op.cit.

²²⁸ van Campen, VC-HAEU, PE0-25 ...op.cit., para 13.

²²⁹ *ibid* 21.

²³⁰ *ibid* para 27-29.

²³¹ *ibid* para 25.

²³² CEE, Deist, ...op.cit., D-HAEU, PE0-135, para 10. See particularly footnote 1 which states that « (...). *Dans le présent rapport, il faut entendre par politique conjoncturelle commune une politique conjoncturelle qui comprenne le plus d'éléments communs possible.* ».

It is worth pointing out that the van Campen Report expressly linked conjuncture policy with the achievement of the third objective of the TEC, as provided in Article 2. However, the realization of that objective, and more generally the coordination of the conjuncture policy, was dependent upon coordination of another economic-policy component: monetary policy. This dependency was materialized by the significant influence played by monetary policy on conjuncture policy, notably through the implementation of discount rates. However, this dependency raised a very delicate, and substantial, issue with respect to the role of monetary policy. Should monetary policy be considered as an economic component of the common economic policy, corresponding to the second title of the TEC, or rather as the most important instrument of conjuncture policy? In other terms, is there any deference of monetary policy towards conjuncture policy? Interestingly, this question was later answered by the *Comité Monétaire* which, in its second activity report published on 1 February 1960, declared:

4. Le Traité fixe dans son article 104 les buts de la politique économique des pays membres : l'équilibre de la balance globale des paiements, un haut degré d'emploi et la stabilité du niveau des prix. Ces objectifs constituent un ensemble cohérent permettant d'éviter, si les États membres soumettent leurs politiques à ces exigences, que le bon fonctionnement du marché commun ne soit mis en cause par des difficultés d'ordre monétaire. Le Traité ne pouvait évidemment définir les moyens appropriés pour atteindre ces objectifs en toutes circonstances. **L'objet même de la coordination des politiques monétaires est de les définir et de les adapter aux nécessités propres de la situation conjoncturelle de chaque pays.**²³³

Hence, in considering that the monetary policy of the Member States should be coordinated to support conjuncture policy, the *Comité Monétaire* did not view the former as a component of economic policy but rather as an instrument of conjuncture policy. This approach, shared by the *Commission des investissements, des questions financières et de la politique à long terme*,²³⁴ underlined the considerable difficulties of 'coordinating the coordination processes'. Indeed, while monetary policy should be coordinated in conformity with the state of national conjuncture policy, the coordination of the latter was also dependent on monetary conditions. Naturally, these technical difficulties led to complex issues related to the EEC institutional framework. More specifically, by considering monetary policy as an instrument of conjuncture policy, the *Comité Monétaire* indirectly highlighted the limits of its mandate for coordination of monetary policy.

²³³ CEE, Comité Monétaire, *Deuxième rapport d'activité du Comité Monétaire*, 1^{er} février 1960, II/729/60-F, HAEU, CM2/1960-508, para 4 (own emphasis with bold).

²³⁴ CEE, Deist, ...op.cit., D-HAEU, PE0-135, paras 44, 51.

Although it formerly requested to enlarge its scope of monitoring to better apprehend monetary and financial development in the EEC,²³⁵ the *Comité Monétaire* was nonetheless not competent to provide guidance on conjuncture policy in order to foster monetary coordination. Interestingly, while the *Comité Monétaire* was, pursuant to Article 105, established in order to favour the rapprochement of monetary policies, Article 103 did not provide for a similar institutional framework with respect to coordination of conjuncture policy. Hence, the absence of an institutional organ competent to foster coordination of conjuncture policy, along with the limits of the mandate conferred on the *Comité Monétaire*, led the EEC Commission to formulate, pursuant to Article 103§2, a proposition for establishing the *Comité de politique conjoncturelle*.

ii. The Institutionalization of Conjuncture Policy: the *Comité de politique conjoncturelle*

Originally initiated by Müller-Armack, the suggestion to establish a *Comité de politique conjoncturelle* was first recommended by the EEC Commission, on the basis of four working documents, to the Council in late January 1960.²³⁶ More specifically, it was consecutive to the EEC Commission proposition related to the adoption of a regulation for the coordination of conjuncture policy of Member States²³⁷ that the Comité des Représentants Permanents (“COREPER”) recommended to the Council to establish a *Comité de politique conjoncturelle*.²³⁸ However, this proposition was conditioned to the analysis of legal and institutional issues related to the establishment of such committee under EEC law.²³⁹ In that regard, it should be recalled that while the *Comité Monétaire* was established pursuant to Article 105§2, the TEC did not provide for a similar institutional framework with respect to coordination of conjuncture policy. Naturally, this raised a myriad of technical issues mostly related to its legal basis, its probable redundancy with the *Comité Monétaire* and, finally, to its competences. While the second issue did not raise many comments,²⁴⁰ except from the Italian delegation,²⁴¹ the third one highlighted some difficulties regarding the interactions between Article 6, providing for close economic coordination at Community level, and Article

²³⁵ CEE, *Extrait du procès-verbal de la 21^{ème} ...op.cit.*, HAEU, PE0-3420.

²³⁶ CEE, *Extrait du procès-verbal de la 84^{ème} réunion du Comité des Représentants Permanents, tenue à Bruxelles, les 21, 22 et 25 janvier 1960*, doc n° 28/60, HAEU, CM2/1960-727. This proposition was discussed on the basis of documents n° R/57/60, R/62/60, COM (60) 3 rév. and S/0180 rév. Unfortunately, I have not been able to retrace the first three documents and, as a consequence, any reference made to them are directly taken from the different *procès-verbaux* provided in document HAEU, CM2/1960-727.

²³⁷ *ibid* 53.

²³⁸ CEE, *Extrait du procès-verbal de la 85^{ème} réunion du Comité des Représentants Permanents, tenue à Bruxelles, le 28 janvier 1960*, doc n° 60/70, HAEU, CM2/1960-727.

²³⁹ *idem*.

²⁴⁰ CEE, *Extrait du procès-verbal de la 84^{ème} ...op.cit.*, HAEU, CM2/1960-727 (referring to s/0180 rév), 9.

²⁴¹ CEE, *Extrait du procès-verbal de la 91^{ème} réunion du Comité des Représentants Permanents, tenue à Bruxelles, le 26 février 1960*, doc n° 101/60, HAEU, CM2/1960-727.

103§2.²⁴² Notwithstanding these difficulties, rapidly clarified by the COREPER, the Council adopted on 9 March 1960 a decision, and not a regulation,²⁴³ establishing the *Comité de politique conjoncturelle*.²⁴⁴

Composed of three representatives of the EEC Commission, three representatives from each Member State and the President of the *Comité Monétaire*, the *Comité de politique conjoncturelle* aimed to achieve the objective stated in Article 2 of Decision 764/60/EEC. In essence, the *Comité de politique conjoncturelle* was established to facilitate coordination of conjuncture policy between Member States and with the EEC Commission. It should be observed that with only three Articles, the Council Decision did not provide many details on the objectives that should be achieved by the *Comité de politique conjoncturelle*, nor did it give specific guidance on how coordination of conjuncture policy should take place. In fact, these crucial information were only explained in document n° s/1080 in which the EEC Commission described the four tasks of coordination of conjuncture policy.²⁴⁵

Interestingly, the first three tasks of the *Comité de politique conjoncturelle* were quasi-similar with those conferred, and subsequently broadened in 1959, on the *Comité Monétaire*. Indeed, by performing conjuncture policy analysis and reviewing instruments of conjuncture policy, as monetary policy was considered as such, the *Comité Monétaire* partially achieved the two first tasks conferred on the *Comité de politique conjoncturelle*. Moreover, when the *Comité Monétaire* proposed recommendations on German monetary affairs in 1960,²⁴⁶ it naturally invited Member States to abide to conjunctural common rules. Unsurprisingly, this was another task conferred on the *Comité de politique conjoncturelle*. Notwithstanding these competences' overlaps, the importance of the *Comité de politique conjoncturelle* should be neither underestimated nor neglected. With its analyses on instruments of conjuncture policy, performed with the support of the *Comité Monétaire*, the *Comité de politique conjoncturelle* played a considerable role in the first phase of the transition period.

Apart from the establishment of the *Comité de politique conjoncturelle*, it is worth observing the sectorial integration approach adopted by EEC policymakers during the first phase. Originally differing from the ECSC approach, although trade and agriculture were to be similarly integrated, the EEC

²⁴² CEE, *Note du Président du Comité des Représentants Permanents*, Annexe, 24 février 1960, HAEU, CM2/1960-727.

²⁴³ CEE, *Extrait du procès-verbal de la 93^{ème} réunion du Comité des Représentants Permanents, tenue à Bruxelles, le 4 mars 1960*, doc n° 103/60, HAEU, CM2/1960-727.

²⁴⁴ CEE, Conseil, *Décision concernant la coordination des politiques de conjuncture des États membres*, 9 mars 1960, OJ, 9 mai 1960, extrait n°31/1960, HAEU, CM2/1960-728.

²⁴⁵ CEE, Communication de la Commission au Conseil, Confidentiel, *Coordination des politiques de conjuncture des États membres*, s/0180 rév, HAEU, CM2/1960-727, 2-4.

²⁴⁶ CEE, Comité Monétaire, *Troisième rapport d'activité du Comité Monétaire*, 14 avril 1961, II/1660/1/61-F, HAEU, CM2/1960-1021, para 18.

sectorized its integration approach. In particular, the EEC sectorized elements of economic policy in specifically institutionalized committees in order to favour economic integration – as was already the case with the *Comité Monétaire* and the *Comité de politique conjoncturelle*. Interestingly, for some reason, this integration approach would be deepened in the second phase of the transition period. Since the first phase of the transition paved the way to the creation to other committees, aiming to deepen the institutionalization of the coordination of economic policy, special attention should be devoted to the second phase.

b. Second Transition Phase (1962–1965)

Unlike in the first phase, the second phase of the transition period provided for clear economic integration objectives (i) emphasizing the role of monetary cooperation (ii).

i. Monetary Policies' Indirect Effects on Economic Integration

As previously mentioned, the first phase of the transition period underlined the difficulties of deepening an economic integration process articulated around conjuncture policy without specific guidance on the different steps to be taken. Unlike for the first phase, the EEC Commission provided clear guidance for the second phase. In its memorandum of 24 October 1962, the EEC Commission gave clear indications on the action programme of the Community to be implemented in the second phase of the transition period.²⁴⁷ Since it encompasses various topics, the memorandum of the EEC Commission deserves special attention in order to fully appreciate the EEC integration approach adopted for the second phase. In particular, any observations should be narrowed down to economic and monetary policies respectively encompassed in Chapters VII and VIII.

It should be recalled that the EEC Commission formerly distinguished conjuncture policy from long-term economic policy. However, in order to better reflect the action of the Community,²⁴⁸ the EEC Commission preferred to opt for a distinction between policies for economic development and structural policies.²⁴⁹ Hence, in the context of economic development policies, the EEC Commission emphasized two categories of objectives. First, it recommended to strengthen conjuncture policy by deepening analyses on instruments of conjuncture policy and on national budgets. In the view of the EEC Commission, the analysis of national budgets would request the

²⁴⁷ CEE, Commission, *Mémoire de la Commission sur le Programme d'action de la Communauté pendant la 2^{ème} étape*, 24 octobre 1962, COM (62) 300, HAEU, CM2/1962-139.

²⁴⁸ *ibid* para 89.

²⁴⁹ *ibid* para 88.

Comité de politique conjoncturelle to annually present the state of the budgetary situation.²⁵⁰ Undoubtedly based on the conclusion of the Bousch Report,²⁵¹ turned into a resolution adopted on 17 October 1962,²⁵² this aimed to complement analyses of conjuncture policy instruments previously narrowed down to monetary policy only. These first recommendations from the EEC Commission not only aimed to improve accuracy in conjunctural forecast but were mainly to: «(...) *faire apparaître progressivement une politique conjoncturelle communautaire, dans laquelle viendront s'amalgamer les politiques nationales.*».²⁵³

Interestingly, this common conjuncture policy was well grounded in the second category of propositions. In order to ensure the coordination of conjuncture policy, or economic development policy, the EEC Commission proposed, starting from 1963, to implement an '*European economic programme*'.²⁵⁴ Naturally, all propositions for economic development policies were complemented with those related to structural policies – notably those devoted to sectorial analyses and regional development policies.²⁵⁵ Hence, both economic development policy and structural policy propositions from the EEC Commission should be understood as the deepening of efforts deployed in the first phase on the conceptualization of a common economic policy articulated around a coordinated conjuncture policy. Of crucial importance for understanding the foundations of economic policy coordination in the EEC, this process would nonetheless be incomplete without strengthening coordination of monetary policy.

By considering, in Chapter VIII, that « (...) *une telle coordination des politiques nationales, tendant à la limite à leur unification, serait incomplète et risquerait, par conséquent, d'être inefficace, si une action comparable n'était menée quant aux politiques monétaires* »,²⁵⁶ the EEC Commission not only emphasized the importance of coordinating monetary policy. In fact, via its proposition on the fixity of exchange rates, it also emphasised the necessity to establish a monetary union.²⁵⁷ Nonetheless, the TEC did

²⁵⁰ *ibid* para 90.

²⁵¹ CEE, Parlement Européen, Bousch, *Rapport fait au nom de la commission économique et financière sur la coordination des politiques budgétaires et financières*, 7 mai 1962, doc n°19, EB-HAEU, PE0-314.

²⁵² Parlement Européen, *Résolution relative à la coordination des politiques monétaires dans le cadre de la C.E.E.*, et *Résolution sur la coordination des politiques budgétaires et financières*, Procès-verbal de la séance du mercredi 17 octobre 1962, OJ 116, 12 novembre 1962, 2664-2667.

²⁵³ CEE, Commission, ...op.cit., COM (62) 300, HAEU, CM2/1962-139, para 95.

²⁵⁴ *ibid* para 96, The European economic programme should not be comprehended as an authoritative economic programme to be implemented in the EEC but rather as an economic guidance, on the sectors to be coordinated, needed to reach the economic objectives set in the EEC Treaty. For detailed explanations see CEE, Commission (DG ECFIN), *Rapport général pour le colloque sur la programmation Européenne*, 14 novembre 1962, II/965I/62-F, HAEU, CM2/1962-139.

²⁵⁵ *ibid* 79-85.

²⁵⁶ *ibid* 127.

²⁵⁷ *ibid* 128.

not provide for a common monetary policy; rather, it provided that the *Comité Monétaire* should favour the rapprochement, and not the unification, of monetary policies. Therefore, as with the *Comité de politique conjoncturelle*, the EEC Commission proposed to establish a *Conseil des Gouverneurs des Instituts d'Émission de la Communauté*.²⁵⁸ At first sight, the idea of establishing such committee, which institutionalizes the discussions previously held by central bankers within the premises of the Bank for International Settlement, may appear rather innovative. However, it was not really the case. More specifically, it may be inferred from paragraph 138 that it was directly inspired by paragraph 7 of the van Campen resolution of 17 October 1962 that proposed to establish a federal system of central banks.²⁵⁹ Such proposition could in turn be inspired by the proposition of resolution submitted by Mackay to the Council of Europe on 23 August 1949.²⁶⁰

This proposition derives its significance from the willingness of the EEC Commission to consider the establishment of the monetary union as the main objective of the third phase of the transition period.²⁶¹ Naturally, the necessity to coordinate monetary policy to establish a monetary union fostering economic integration in the EEC raised a myriad of difficulties. Prior to being briefly addressed by the EEC Commission in its memorandum, those difficulties were first thoroughly analysed by the *Commission économique et financière* of the European Parliament.²⁶²

For the very first time, the van Campen Report, which was adopted on 7 April 1962, cautiously analysed the different possibilities of coordinating monetary policies to form a monetary union in the ECC. It examined different domestic monetary policy instruments, international monetary relations, and finally the current problem of liquidity in the EEC. In essence, this examination was necessary to formulate a common monetary policy that would first start with the establishment of a federal system of central banks. Therefore, the van Campen Report was considered, and should still be considered, as a seminal thought on monetary integration in the EEC.

However, the significance of the van Campen Report should not be limited to the examination described above. It also underlined the too-fine and porous frontier that exists between monetary policy and other economic-policy components, including financial and budgetary policies. The van Campen Report developed interesting considerations on monetary policy, in particular proposing

²⁵⁸ *ibid* para 132.

²⁵⁹ CEE, Parlement Européen, van Campen, *Rapport fait au nom de la commission économique et financière sur la coordination des politiques monétaires dans le cadre de la C.E.E.*, 7 avril 1962, doc n°17, VC-HAEU, PE0-313, page 17, para 7.

²⁶⁰ CoE, Mackay, *Rôle du Conseil*...*op.cit.*, Session ordinaire de 1949 (Séance du 23 août 1949), doc n°18.

²⁶¹ CEE, Commission, ...*op.cit.*, COM (62) 300, HAEU, CM2/1962-139, para 138.

²⁶² CEE, van Campen, ...*op.cit.*, VC-HAEU, PE0-313.

the following theoretical delimitation between monetary policies and other economic-policy components:

9. Dans la politique économique, la section intitulée « politique monétaire » a un rôle important à cet égard. Elle se caractérise par l'ensemble des instruments dont elle dispose plutôt que par les buts qu'elle poursuit. D'une manière générale, la politique monétaire poursuit les mêmes objectifs que la politique économique, dans son ensemble, bien que la politique monétaire tende vers certains objectifs plus directement que vers d'autres. Ce sont pourtant ses instruments qui distinguent le plus nettement la politique monétaire des autres branches de la politique économique : on pourrait définir la politique monétaire comme la politique qui utilise des instruments de la politique économique ayant une action directe sur les éléments monétaires – notamment le volume de monnaie, le crédit, les réserves monétaires et le taux de change. Cette définition regroupe à peu près tous les pouvoirs de la banque centrales, certains pouvoirs du gouvernement, qui sont le plus souvent exercés en fait par le ministre des finances, ainsi que certains pouvoirs d'instituts spéciaux qui dans certains pays, ont une action régulatrice sur le marché des capitaux et de la monnaie. »

10. Il n'est pas toujours possible, dans la pratique de fixer les limites précises de la politique monétaire par rapport aux autres sections de la politique économique : cela vaut en particulier pour la politique d'emprunt et la politique budgétaire des pouvoirs publics. La distinction opérée ici n'est donc que théorique et n'est pas conçue comme une directive pour la pratique.²⁶³

In the light of these considerations, which were later confirmed in the Dichgans Report adopted on 28 November 1966,²⁶⁴ it seems opportune to formulate a few comments. Monetary policy is defined by its instruments rather than its objectives, as provided in Article 104§2. This suggests that a measure of monetary policy may indirectly affect other economic sectors depending on the instrument it employs. In that context, it may be inferred from the van Campen Report that the implementation of appropriate instruments of monetary policy could minimize any indirect effects. Such approach could considerably reduce legal uncertainty related to the repartition of competences when monetary unification would be achieved.

The definition proposed by the van Campen Report for monetary policy is not only important because it constitutes the first parliamentary initiative that attempted to distinguish monetary from other economic-policy components; it derives its significance because it underlined and contextualized the indirect effects of monetary policy on both budgetary and financial policies. As further considered in the report, such a thought was of fundamental importance. Indeed, it suggested that monetary policy could not, on a standalone basis, due to its indirect effects, attain

²⁶³ CEE, van Campen, ...op.cit., VC-HAEU, PEO-313, paras 9-10.

²⁶⁴ EEC, Dichgans, ...op.cit., HD-HAEU, PEO-645, paras 2-3, 8.

the objective of price stability without being supported by coordinated budgetary and financial policies.²⁶⁵

Complemented by those contained in the Bousch Report on the coordination of budgetary and financial policies, these theoretical considerations emphasized both the role of monetary policy in the EEC integration process and its indirect effects. Special attention should be given to the monetary cooperation process undertaken in the course of the second phase of the transition period as emphasized in Chapter VIII of the EEC Commission memorandum and in the two above-mentioned reports.

ii. Institutionalizing Monetary and Economic Cooperation

The year 1962 emphasized both the importance of monetary policy for the EEC economic integration process and its natural interlinkages with budgetary and financial policies. It ended with the entry into force of the second directive on the liberalization of financial movements that aimed to ease monetary cooperation.²⁶⁶ In the continuity of this rich activity, the year 1963 translated these theoretical objectives into policy. Naturally, this invites a brief presentation of them.

On 19 June 1963, the EEC Commission released a Communication whereby it addressed several recommendations, related to financial and monetary cooperation, to the EEC Council.²⁶⁷ In essence, the EEC Commission shared the conclusions of the fifth activity report of the *Comité Monétaire*²⁶⁸ and recommended to the EEC Council to establish two new committees, respectively the *Comité de politique budgétaire*²⁶⁹ and the *Comité des Gouverneurs des Banques Centrales de la Communauté Économique Européenne*.²⁷⁰ While the latter was explicitly mentioned in the EEC Commission memorandum of 1962, the *Comité de politique budgétaire* was a rather new idea which may have been directly inspired by the conclusions of the Bousch Report.

²⁶⁵ CEE, van Campen, ...op.cit., VC-HAEU, PE0-313, para 10.

²⁶⁶ CEE, *Deuxième directive du Conseil en date du 18 décembre 1962 complétant et modifiant la première directive pour la mise en œuvre de l'article 67 du traité (63/21/CEE)*, Extrait du Journal Officiel des Communautés Européennes, n° 9, 22 janvier 1963, HAEU, CM2/1962-449.

²⁶⁷ CEE, *Communication de la Commission au Conseil sur la coopération monétaire et financière au sein de la Communauté économique européenne*, 19 juin 1963.

²⁶⁸ CEE, *Cinquième rapport d'activité du Comité Monétaire*, 5 avril 1963, paras. 5-7, OJ P 090, 17 juin 1963, HAEU, CM2/1963-339, please note that this report also shared the conclusions of the van Campen and Bousch reports.

²⁶⁹ CEE, *Communication de la Commission au Conseil sur la coopération monétaire et financière au sein de la Communauté économique européenne*, 19 juin 1963, para 9.

²⁷⁰ *idem* ; *Recommandation de la Commission au Conseil sur la collaboration entre les Banques centrales de la Communauté Économique Européenne*.

In line with the recommendation formulated by the Commission in its Communication of 1963, the Council established the *Comité de politique budgétaire* on 8 May 1964.²⁷¹ Pursuant to Article 1 of Council Decision 64/299/CEE, the *Comité de politique budgétaire* aimed to examine budgetary policies and to submit opinions either to the EEC Council or to the EEC Commission. Coordinated by the EEC Commission, the work of the *Comité de politique budgétaire* was synchronized with those of the *Comité Monétaire* and the *Comité de politique conjoncturelle* to avoid any overlaps. Such collaboration was further strengthened with the participation of Presidents as members of the *Comité de politique budgétaire*. Undoubtedly, this last committee, by being able to compare and confront national budgets to facilitate conjuncture policy without undermining monetary cooperation, constituted the appropriate policy response.

However, 8 May 1964 was not only the day of the establishment of the *Comité de politique budgétaire*, it also became the cornerstone of the second period of the transition phase with the adoption of two other fundamental decisions by the Council. These decisions aimed to considerably foster the coordination of monetary policies with a view to preparing their progressive integration.

While the consultative competence of the *Comité Monétaire* had already been broadened in 1959, it was still limited to internal monetary affairs. By Decision 64/301/CEE, the Council complemented this consultative competence by enlarging it to external monetary relationships.²⁷² This enlargement should be interpreted as the willingness of the EEC to adopt a common, or rather unique, position towards other monetary international institutions, as with the IMF. This common position was reinforced by Decision 64/300/EEC, a second Council Decision, related to monetary affairs, that established the *Comité des Gouverneurs des Banques Centrales de la Communauté Économique Européenne*.²⁷³ According to Scheller, the *Comité des Gouverneurs* played a considerable role in the establishment of the European Monetary Union,²⁷⁴ and should be considered as the first step in the setting up of a federal system of central banks.²⁷⁵ Hence, these two decisions highlighted the necessity to intensify the process of monetary coordination to attain a monetary, and at a later

²⁷¹ CEE, *Décision du Conseil du 8 mai 1964 concernant la collaboration entre les services compétents des administrations des États membres dans le domaine de la politique budgétaire* (64/299/CEE), OJ P 077, 21 mai 1964, 1205-1206.

²⁷² CEE, *Décision du Conseil du 8 mai 1964 concernant la collaboration entre les États membres en matière de relations monétaires internationales* (64/301/CEE), JO P 077, 21 mai 1964, 1207-1208.

²⁷³ CEE *Décision du Conseil du 8 mai 1964 concernant la collaboration entre les banques centrales des États membres de la Communauté économique européenne* (64/300/CEE), JO P 077, 21 mai 1964, 1206-1207.

²⁷⁴ Hanspeter K Scheller, 'Le Comité des gouverneurs des banques centrales de la CEE et l'unification monétaire européenne' (2011) 30e année Histoire, économie & société 79, 81.

²⁷⁵ CEE, Parlement Européen, Vals, *Rapport fait au nom de la commission économique et financière relatif à la communication de la Commission de la C.E.E. au Conseil (doc. 72) sur la coopération monétaire et financière au sein de la Communauté économique européenne*, 10 janvier 1964, doc n°103, V-HAEU, PE0-403, para 9.

stage, an economic union. This aim was perfectly clear in the 1964 Initiative Communication of the EEC Commission²⁷⁶ and was even strengthened in the Declarations of 8 May 1964 and 1 April 1965.²⁷⁷ In that regard it should be observed that representatives of the Member States agreed on prior consultations before introducing any change in monetary parity. However, the objective of monetary integration could not be attained without being embedded in a common economic policy or, at least, common action in the field of economic policy.

It would be incomplete here not to mention the fourth decision, related to Chapter VII of the EEC memorandum, that was adopted by the Council on 15 April 1964. To foster and strengthen coordination of general economic policies of the Member States, the Council established the *Comité de politique économique à moyen terme*.²⁷⁸ By establishing such committee, and pursuant to Article 2 of Decision 64/247/EEC, the Council aimed to institutionalize the *European economic programme*. Such European and economic programme was further explained in the EEC memorandum. More specifically, based on prospective studies of a group of independent experts, it was to be planned for a five-year period and confronted with mid-term economic policy of Member States at a later stage. It is of note that the *Comité de politique économique à moyen terme* was to ensure the monitoring of those economic policies.

The end of the second phase of the transition period could be summarized to a few recommendations addressed by the Commission to the Council. This notably includes a recommendation related to consultations on movement of capital²⁷⁹ and a proposition of a directive on the collection of statistical capital data. In essence, the second phase should be considered as deepening the institutionalization process of the economic and monetary sectorial integration within the EEC. However, such process was not synonymous with significant progress in

²⁷⁶ EEC, *Communication by the Commission to the Council and the Member Governments*, Information Memo, P-69/64, October 1964, 4-5.

²⁷⁷ CEE, Conseil, *Déclaration du 8 mai 1964 des représentants des gouvernements des États membres de la Communauté économique européenne réunis au sein du Conseil relative à l'organisation de consultations préalables entre les États membres en cas de modifications des parités de change de leurs monnaies* (64/306/CEE), Extrait du Journal Officiel des Communautés Européennes, n°78, 22 mai 1964, HAEU, CM2/1965-37 ; CEE, Conseil, *Déclaration du 1 avril 1965 des représentants des gouvernements des États membres de la Communauté économique européenne réunis au sein du Conseil portant mesures d'application de la déclaration du 8 mai 1964 des représentants des gouvernements des États membres de la Communauté Économique Européenne réunis au sein du Conseil relative à la procédure de consultation préalable à toute modification de parité de change*, Très secret, exemplaire n°9, HAEU, CM2/1965-371.

²⁷⁸ CEE, *Décision du Conseil du 15 avril 1964 créant un Comité de politique économique à moyen terme* (64/247/CEE), JO P 064, 22 avril 1964, 1031-1033.

²⁷⁹ CEE, *Recommandation de la Commission en vue d'une décision du Conseil relative à l'organisation de consultations au sein de la Communauté sur les politiques nationales en matière de mouvements de capitaux en provenance des pays tiers* (66/227/CEE), JO P 066, 7 avril 1966, pages 970-971 ; *Proposition de directive du Conseil pour la communication à la Commission des données statistiques afférentes aux mouvements de capitaux à destination et en provenance des pays tiers* (66/226/CEE), JO P 066, 7 avril 1966, 969-970.

integration/cooperation policy;²⁸⁰ in fact, it rather emphasized its inherent complexities. This process would eventually be developed in the third, and last, phase of the transition period.

c. Third Transition Phase (1966–1970)

The last phase of the transition period was marked by a relative intensification of both legislative and parliamentary reports until 1969 (i) where Government officials, convened at The Hague Summit, decided to dramatically foster the monetary integration process (ii).

i. Conceptualizing an Economic and Monetary Union (1966–1969)

The third phase of the transition period highlighted the urgent necessity to better conceptualize, and not only establish, the monetary integration within the EEC. Hence, on 28 November 1966 (some months after the Illerhaus resolution invited the EEC Commission to produce a Community action plan for the third phase),²⁸¹ the *Commission économique et financière* adopted a report on the creation of a monetary union in the EEC.²⁸²

More specifically, the Dichgans Report agreed with the Seventh Activity Report of the *Comité Monétaire* and with the conclusions of the van Campen, Bousch and the Vals Reports, and proposed a very detailed analysis of contemporary monetary problems. These problems, being notably fluctuations of exchange rates, divergences in budgetary and financial policies, and the need to reform EEC capital markets,²⁸³ led the Dichgans Report to highlight the urgency of achieving monetary integration/cooperation and of formulating several recommendations.²⁸⁴ In that regard, the Dichgans Report not only recommended classical remedies to those aforementioned problems but also recommended to implement a currency common to the six Member States, the “*euro-franc*”.²⁸⁵ In that regard, such recommendation was based on the seventh paragraph of the van Campen Report and certainly on the preliminary considerations of the *Comité Monétaire* on accounts units.

²⁸⁰ CEE, *Septième rapport d'activité du Comité Monétaire*, Confidentiel, 12 février 1965, 430/II/65-F, HAEU, CM2/1965-373, para 1 – for 1964 only but, no significant policy actions were undertaken until 1967.

²⁸¹ CEE, Parlement Européen, Illerhaus, *Résolution relative à la présentation par la Commission de la C.E.E., d'un rapport sur les résultats atteints pendant la deuxième étape et d'un programme d'action pour la troisième étape de la période transitoire*, JO P 053, 24 mars 1966, 773-774.

²⁸² EEC, Dichgans, ...op.cit., HD-HAEU, PE0-645.

²⁸³ *ibid* 6.

²⁸⁴ *ibid* para 7.

²⁸⁵ *ibid* paras 51-58.

The common currency, gold-coined or at least gold-backed, was not aimed to replace national currencies but rather to complement them during the process of monetary integration. However, as interesting as this proposition (which foresaw the advent of the euro) was, it was not in fact so innovative. Although it was the first time that it was recommended in a Community parliamentary report, it was undoubtedly inspired by the Mackay resolution of 23 August 1949. In that regard it is worth recalling that that resolution was composed of two elements that certainly influenced the aforementioned reports. While the first part that recommended to establish a *Banque Européenne* was included in the van Campen resolution, the second part, related to the establishment of a common currency, was proposed in the Dichgans Report and was later turned into a resolution as well.²⁸⁶

Although seminal since it proposed to implement a common currency to foster monetary integration, the significance of the Dichgans Report was nonetheless enshrined in its eighth paragraph entitled '*Politique monétaire et politique économique*'. Similarly to the ninth and tenth paragraphs of the van Campen Report, this paragraph read:

8. La politique monétaire ne peut être dissociée des autres secteurs de la politique économique. Toute mesure de politique monétaire se répercute sur la politique conjoncturelle. Toute mesure en ce domaine a également une incidence sur le commerce extérieur. Enfin, nombre de ces mesures ont des répercussions sur la politique structurelle ou régionale. Ce n'est que dans le cadre d'une politique économique élaborée selon un plan d'ensemble, qui considère et pèse les conséquences possibles de toutes les interventions concevables de politique économique que l'on pourra décider quelles mesures de politique monétaire sont appropriées. (...).²⁸⁷

For its theoretical importance, this paragraph should be considered as remarkable and thus deserves comment. Firstly, while agreeing with the theoretical considerations set out in paragraphs 9 and 10 of the van Campen Report, the Dichgans Report nonetheless proposed their truncated version. Indeed, while the van Campen Report acknowledged the indirect effects of monetary policy and its natural interlinkages with budgetary and financial policies, it nevertheless did not emphasize the indivisibility of monetary policy from other economic sectors. Secondly, the Dichgans Report acknowledged that, to implement an appropriate monetary policy, the latter should be understood as embedded in a common economic-policy programme. This last consideration strongly echoes

²⁸⁶ CEE, *Résolution sur l'activité future de la Communauté dans le domaine de la politique monétaire et la création d'une union monétaire européenne*, JO P 232, 16 décembre 1966, 3911-3912, paras. 5-6.

²⁸⁷ EEC, Dichgans, ...op.cit., HD-HAEU, PE0-645, para 8.

with the recommendation of the EEC Council of 11 April 1967 related to the implementation of a European economic programme with the support of the *Comité de politique économique à moyen terme*.²⁸⁸

The first mid-term economic programme covered the period 1966–1970, that is, the last phase of the transition period. It provided a thorough and very detailed guidance on regional, labour, financial, and budgetary policies. However, it provided next to nothing on monetary policy; monetary policy was only briefly mentioned in Chapters III and V dedicated to general economic orientations and public finances.²⁸⁹ In those circumstances, the Commission presented to the Council, on 5 December 1968, a memorandum on the policy that should be adopted in the light of economic and monetary problems.²⁹⁰ Those problems referred notably to the impairment of monetary stability consecutive to aggressive speculation on the Deutsche Mark and the Franc and to some conjecture policy divergences among Member States.²⁹¹ In order to resolve these problems, the Commission formulated recommendations, as the enhancement of monetary cooperation,²⁹² which were positively received by the Council.²⁹³

It is of note that the memorandum of 5 December 1968 did not become seminal due to its proposition to set up a monetary cooperation framework, but rather because it constituted the preliminary version of the *Plan Barre I*, which was presented to the Council on 12 February 1969.²⁹⁴ Albeit considered less important than the EEC Commission memorandum of 1962,²⁹⁵ the *Plan Barre I* was still more explanatory than the memorandum of 1968. While the latter provided for an unspecified monetary cooperation system, the *Plan Barre I* proposed to implement a better coordination of economic policies, to avoid economic disaggregation,²⁹⁶ and a short-term monetary support.²⁹⁷ In so proposing, the *Plan Barre I* highlighted the urgency of deepening monetary integration but above all suggested concrete cooperation between the Member States. This

²⁸⁸ CEE, Conseil, *Programme de politique économique à moyen terme (1966-1977)*, 67/265/CEE, JO P 079, 25 avril 1967, pages 1513-1567, HAEU, CM2/1967-439.

²⁸⁹ *ibid* 1547; 1561.

²⁹⁰ CE, *Mémoire de la Commission au sujet de la politique susceptible d'être poursuivie au sein de la Communauté pour faire face aux problèmes économiques et monétaires actuels*, Confidentiel, 5 décembre 1968, SEC (68) 3958 final.

²⁹¹ *idem* 1, 9.

²⁹² *ibid* 20-22.

²⁹³ CE, *Session du Conseil du 12 décembre 1968*, SEC (68) 4212, 19 décembre 1968, quoted in Bino Olivi, *Vers l'Union économique et monétaire*, BO-HAEU, BO-13, 2.

²⁹⁴ CE, *Mémoire de la Commission au Conseil sur la coordination des politiques économiques et la coopération monétaire au sein de la Communauté*, 12 février 1969.

²⁹⁵ Frédéric Allemand, "Le "Plan Barre I" ", Dans ALLEMAND, Frédéric, *L'Union Économique et Monétaire: Origine, Fonctionnement et Futur* [2013] Sanem: CVCE.

²⁹⁶ CE, *Mémoire de la Commission au Conseil sur la coordination...* op.cit., 12 février 1969, paras 5, 8-11.

²⁹⁷ *ibid* para 24.

ambitious policy objective was implemented with a time lag.²⁹⁸ Moreover, the *Plan Barre I* was accompanied by several other Commission memorandums/plans, smoothly ending the transition period.

The Communities work programme for the period 1969 to 1971,²⁹⁹ as well as the second mid-term economic programme³⁰⁰ and the memorandum for a balanced economic growth in the Communities,³⁰¹ all illustrate the intellectual effervescence surrounding the last moments of the transition period. Nevertheless, apart from Council Decision 69/227/CEE on coordination of economic policies,³⁰² no concrete actions were taken to foster economic and monetary cooperation/integration in the third phase. Furthermore, it may be observed in the light of those reports and documents the difficulties faced by the EEC Commission and the parliamentary commissions for transforming recommendations and propositions into policy actions. Indeed, while the last phase of the transition period should have led to the advent of a monetary union, none of the proposals were concretized, in particular, those that were related to formulation of an economic policy common to the Member States.

In the light of the failure of the transition period, governmental officials discussed the question of deepening the European integration when convened in The Hague in late 1969.

ii. From The Hague to the Economic and Monetary Union

A synonym of a great intellectual effervescence, the end of the transition period highlighted the urgent need to “relaunch” the European (monetary) integration project. This need may have been justified by the failure of the transition period to elaborate an economic policy common to all Member States. Such urgency was exacerbated when France decided, in contradiction with the declaration of 8 May 1964 that established prior consultations,³⁰³ to devalue its currency in August 1969. Thus, following the initiative of Georges Pompidou, the Netherlands invited the heads of

²⁹⁸ The short-term monetary support has been formally implemented on 9 February 1970 however, it has not been subject to a publication in the Journal Officiel des Communautés Européennes. See BO-HAEU, BO-13, 4.

²⁹⁹ EC, *The Communities' Work Programme: Programme for the next three years*, 20 March 1969, Supplement to Bulletin n°4-1969 of the European Communities, Secretariat General of the Commission.

³⁰⁰ CE, *Second programme de politique économique à moyen terme*, 69/157/CEE, OJ L 129, 30 mai 1969.

³⁰¹ CE, *Mémoire de la Commission au Conseil relatif au maintien des conditions d'une croissance équilibrée dans la Communauté*, 9 juillet 1969, COM (69) 650.

³⁰² CE, *Décision du Conseil du 17 juillet 1969 relative à la coordination des politiques économiques à court terme des États membres*, 69/227/CEE, JO L 183, 25 juillet 1969, 41- 42.

³⁰³ CE, *Conférence de presse de Monsieur Rey, Président de la Commission des Communautés Européennes*, 14 octobre 1969, Comptendu sténographique, PP/500/69-F, DORIE, 2.

the six Member States to discuss the achievements realized during the transition period as well as the furthering of the European integration.

Though The Hague Summit was organized without a formal agenda, it was nonetheless articulated around three themes. The latter were first mentioned in the summit preparatory document,³⁰⁴ and then further specified in the French Summit Declaration pronounced by Pompidou on 1 December 1969. Pompidou first recalled the achievements of the transition period, as the establishment of the custom union and elaboration of a common agriculture policy, before mentioning three fundamental issues. Those integration issues were the achievement, the deepening, and the enlargement of the EEC.³⁰⁵ In fact, these three issues were underlined in a single question, namely, « (...) *sommes-nous décidés à poursuivre la construction de la Communauté européenne?* ».³⁰⁶ Naturally, the French position was to considerably foster the rapprochement of economic and monetary policies via the adoption of targeted objectives.

The French Summit Declaration was immediately followed by the German one, which mostly agreed on the above-mentioned points, and was even slightly more precise with respect to economic and monetary integration.³⁰⁷ Chancellor Brandt recalled the economic interdependencies between the six Member States, where any policy divergence was previously synonymous with spillovers, and reaffirmed the German commitment to a step-by-step process aimed at achieving an economic and monetary union.³⁰⁸ In that regard, it should be observed that this step-by-step process was elaborated around two phases. In essence, the first phase would be devoted to the formulation of a common economic policy (after having completed the coordination of short-term economic policies) to achieve an economic and monetary union in the second phase.³⁰⁹ However, in the light of the three phases of the transition period, it may legitimately be wondered whether Germany truly wished the EEC to achieve a monetary and economic union. This invites to consider the other monetary and integration approaches that were assessed in the course of The Hague Summit, as for this from Luxembourg.

³⁰⁴ CE, *Projet d'aide-mémoire de la Commission destinée à la Conférence des Chefs d'État et de Gouvernement*, 18 novembre 1969, DORIE, paras 2-4.

³⁰⁵ République Française, *Rencontre des 6 Pays de la Communauté à la Haye – Déclaration de G. Pompidou, Président de la République Française*, 1 décembre 1969, DORIE, 2-3.

³⁰⁶ *ibid* 3.

³⁰⁷ Federal Republic of Germany, *Déclaration d'introduction présentée le 1er décembre 1969 à la Haye par le Chancelier de la République fédérale d'Allemagne lors de la Conférence au sommet de la C.E.E.*, 1 Décembre 1969, traduction officielle, DORIE.

³⁰⁸ *ibid* 8.

³⁰⁹ *ibid* 9.

On 2 December 1969, the Prime Minister and Finance Minister of Luxembourg pronounced the Luxembourgish declaration whereby another approach to monetary and economic integration was requested.³¹⁰ In essence, Werner estimated that coordination of economic policy should not be a requirement before launching monetary integration but rather it should be made in parallel.³¹¹ This monetary integration approach was supported with the evidence that monetary integration would foster economic coordination while economic coordination, often conditioned to political considerations, was merely possible.³¹² To underpin its approach, the Luxembourgish delegation proposed a step-by-step process which, based on some propositions of the *Plan Barre I*, could be implemented to achieve a monetary union within ten years.³¹³ It is important to note in that regard that the process proposed by Luxembourg was at the inception of the EMU. Indeed, at the end of The Hague Summit, the Werner approach was accepted by all Member States which requested the Council to propose a step-by-step plan aiming to establish an Economic and Monetary Union.³¹⁴

While the Commission proposed the setting of a monetary union as the main objective of the last phase of the transition period,³¹⁵ it is noteworthy that this objective was to be further considered in the Werner Report.

B. Monetary Integration in the European Communities (1970–1989)

The Werner Report (1) adopted a step-by-step approach, which was of fundamental importance, notably in the light of its proposals strengthening the institutions. However, due to international economic disturbances amplified by a lack of political cohesion, it did not achieve the EMU (2).

1. The Importance of Competences in Monetary Integration: the Werner Report

As a cornerstone of European integration, the Werner Report proposed to establish a monetary and economic union embedded in a strengthened institutional framework with a transfer of competences to the Community (a). However, due to economic disturbances as well as divergences between national policies, it failed to attain its objective (b).

³¹⁰ Grand-Duché de Luxembourg, *Déclaration faite par Monsieur Pierre Werner, Président du Gouvernement Luxembourgeois et Ministre des Finances lors de la séance du 2 décembre 1968 de la Conférence du sommet à la Haye*, 2 décembre 1969, DORIE.

³¹¹ *ibid* 1-2.

³¹² *ibid* 2.

³¹³ *ibid* 3-4.

³¹⁴ EC, *Communiqué final de la Conférence des Chefs d'États et de Gouvernements des 1^{er} et 2 décembre 1969 à la Haye*, 9 décembre 1969, PE 23 461/F, DORIE, paras 8-9.

³¹⁵ CEE, *Rapport général pour le colloque...op.cit.*, CM2/1962-139, para 139.

a. Community Institutional Framework Strengthening

The Werner Report was seminal for its propositions to foster monetary and economic integration in the Community (i). It derives its significance from the willingness to transfer national competences to the Community (ii).

i. A Consensual Approach to Integration

As may readily be understood from the Council resolution of 4 December 1969³¹⁶ and from the *Communiqué final*,³¹⁷ The Hague Summit became memorable for its firm political will to irremediably foster monetary and economic integration. To succeed in this proposition, theoretical considerations were enshrined into a highly technical framework.

It is of note that, on the basis paragraph 8 of the *Communiqué final*, the Commission issued a Communication aiming to contribute to elaboration of a step-by-step plan for attainment of a monetary union, the so-called *Plan Barre II*.³¹⁸ The latter, which was presented to the Council on 4 March 1970, subtly promoted construction of an economic and monetary union through a monetary approach. More specifically, the *Plan Barre II* was articulated mostly around technical monetary policy proposals, such as stabilization of currency rates. It also suggested to first reach monetary cohesion in order to then proceed to economic unification.³¹⁹ Though this monetary approach was accompanied with specific economic measures, the *Plan Barre II* provided the Council with a fertile technical ground for further considerations on realization of an economic and monetary union.

In the light of Article 8 of the *Communiqué final* and the *Plan Barre II*, the Council decided to establish a group tasked with preparing a report on the attainment by stages of an economic and monetary union. Established on 6 March 1970, the ‘Werner Group’ was composed of representatives of each *Comités* and a representative of the Commission.³²⁰ On 8 October 1970, it submitted to the Council

³¹⁶ CE, Conseil, *Résolution sur la position du Parlement européen à l'égard des problèmes fondamentaux de la politique européenne et communautaire, en prévision de la conférence des chefs d'État ou de Gouvernement des États membres de la Communauté adoptée par l'assemblée lors de la session extraordinaire du 3 novembre 1969*, 4 novembre 1969, 1766/69 (ASS 1090), para 2(b).

³¹⁷ *Communiqué final de la Conférence des Chefs d'États*...op.cit., PE 23 461/F, DORIE.

³¹⁸ CE, *Communication de la Commission au Conseil au sujet de l'élaboration d'un plan par étapes vers une union économique et monétaire*, COM(70)300, Supplément au Bulletin n°3 – 1970 des Communautés européennes.

³¹⁹ *ibid* paras 5-7.

³²⁰ CE, *Décision du Conseil du 6 mars 1970 relative à la procédure en matière de coopération économique et monétaire (70/192/CEE)*, JO L 59, 14 mars 1970, 44.

a report on the realization of an economic and monetary union in the Communities.³²¹ Reflecting the consensual approach underlined by the Luxemburgish delegation at The Hague Summit, the Werner Report opted for a clear focus on measures of monetary integration, but to be implemented in conjunction with harmonized economic measures. Acknowledging the achievements and shortfalls of the transition period,³²² the Werner Report proposed a set of measures of monetary integration to be integrated in a harmonized economic environment, with the most important monetary measure being an irreversible intra-convertibility of domestic currencies.³²³

It should be observed in the Werner Report the political will to form a homogeneous monetary environment supported by favourable and harmonized economic policies in order to finally attain an economic union. In essence, this was expressed by the centralization of measures of monetary policy and the interconvertibility of domestic currencies within an economic area where capital market policies would be unified and orientations of economic policies would be decided at the Communities level.³²⁴ Notwithstanding this nuanced approach, the set of integration measures proposed in the Werner Report did not differ much from those expressed in previous reports and memorandums. Hence, the significance of the Werner Report should not only be perceived as a formidable compromise between the monetarist and the economist approach but part of its significance mostly derives from the strengthening of the Community institutional framework through a transfer of competences.

ii. Community Competences and European Integration

The relationship between monetary sovereignty and monetary integration, embodied into a specific institutional framework, has long been the subject of interpretation, evolution and eventually, stagnation. This stagnation of the integration process should be viewed in light of the design of the TEC, which, having promoted economic and monetary convergence and coordination, reached its limits. More specifically, while some policies were under the exclusive competence of the EEC or coordinated at the level of Member States, others were only considered as being “of common interest”. This notably included monetary, exchange rate and conjecture policies that were provided in Articles 103(1) and 107 TEC.

³²¹ CE, *Rapport au Conseil et à la Commission concernant la réalisation par étapes de l'Union Économique et Monétaire dans la Communauté « Rapport Werner »* (version finale), supplément au Bulletin II – 1970 des Communautés européennes, 8 Octobre 1970.

³²² *ibid* 8-9.

³²³ *ibid* 10.

³²⁴ *ibid* 12.

This highly sensitive and prone-to-interpretation notion “*of common interest*” led the EEC to institutionalize monetary and economic cooperation through the setting up of a multitude of *Comités*. However, due to domestic policy divergences, further such institutionalization process failed to deepen integration. In fact, no technical measures aiming to converge economic and monetary policies could really be effective without conferring additional competences upon the Community.

In that respect, it is worth noting that the Werner Report constituted the first EEC initiative, since the Mackay Report of 1949,³²⁵ to preconize transfer of monetary and economic competences from Member States to the Communities. To “ensure the cohesion of economic and monetary union (...)”,³²⁶ these transfers requested a strengthened institutional framework from which a centre of decision for economic policy and a Community system for the central banks could emerge.³²⁷ While establishment of a federal system of central banks was not a novel idea,³²⁸ the suggestion to set up a centre of decision for economic policy, where conjuncture and short-term policies would be decided, was rather innovative.

However, the Werner Report did not provide any institutional proposals to support the transfer of competences. Instead, it specified that both Communities organs, dealing separately with general economic policies and monetary policy, should aim “at the same objectives”.³²⁹ This statement was of paramount importance in light of the previous reports, notably those from van Campen and Bousch. Indeed, the Werner Report acknowledged, as previously emphasized in the van Campen Report, that monetary policy could not, on a standalone basis, satisfy the objective of price stability. It is of note that the objective price stability is not isolated but influenced by financial and budgetary policies.³³⁰ From this statement, one may already foresee the future difficulties in legally dissociating monetary policies from general economic policies.

To understand the emergence of the economic and monetary union and the consecutive legal dissociation of monetary policies from general economic policies, it seems opportune to analyse the three different phases of the implementation of the Werner Plan.

³²⁵ CoE, *Report of the Committee...*op.cit., AS/AG (50) 5, 41.

³²⁶ *ibid* 10.

³²⁷ *ibid* 12-13.

³²⁸ It has been first mentioned on 23 August 1949 and discussed in subsequent EEC parliamentary reports.

³²⁹ *idem* 13.

³³⁰ CEE, van Campen, ...op.cit., VC-HAEU, PE0-313, para 10.

b. A Step-by-Step Analysis of the Implementation of the Werner Plan (1971–1979)

Frustrated by the perturbed international economic environment (i), the ambitious Werner Report failed to achieve the EMU (ii). However, based on this failure, other initiatives led to establish the European Monetary System (iii).

i. First Step (1971–1973): Integration in Perturbations

Lasting for three years, the first phase of the Werner Report aimed at strengthening economic cooperation and consultations procedures. Although it officially started on 1 January 1971, the first phase should rather be considered as being from 8 and 9 February 1971 when the Council adopted a resolution and three decisions. It is important to note that the resolution, which was formally adopted on 22 March 1971, formulated three general objectives that would guide European integration for the next few decades.³³¹ However, those objectives did not constitute the main elements from which the resolution derived its significance. Instead, the resolution was politically significant due to the method of integration it chose. In that regard, the Council first recalled that at the end of the transition period, an area should emerge where the four freedoms would be established into an individual monetary system. To succeed, some monetary and economic competences would need to be allocated to the Community.³³² Further to that, the Council emphasized a soft monetarist approach to attain those objectives.³³³ Naturally, the latter reflected the consensual Luxemburgish approach to economic and monetary integration. However, this approach also suggested to strengthen, economic convergence with formal and specific consultations in order to facilitate monetary integration.

This was further specified in the Council Decision of 22 March 1971 related to strengthening of the coordination of short-term monetary policies. The Council, which would gather three times a year, would have to set the general short-term economic orientation of the Community.³³⁴ It is important to note that, by amending the short-term economic cooperation that was provided in Decision 69/227/EEC, the Council was conferred significant coordination powers. Such powers aimed at facilitating monetary integration.

³³¹ CE, *Résolution du Conseil et des représentants des gouvernements des États Membres du 22 mars 1971 concernant la réalisation par étapes de l'union économique et monétaire dans la Communauté*, JO C 28, 27 mars 1971, 1-5.

³³² *ibid* 2.

³³³ *ibid* 3.

³³⁴ CE, *Décision du Conseil du 22 mars 1971 relative au renforcement de la coordination des politiques économiques à court terme des États membres de la Communauté économique européenne* (71/141/CEE), JO L 73, 27 mars 1971, 12-13.

On 22 March 1971, the Council complemented Decision 69/227/EEC with two more decisions related to monetary integration. One of them implemented the monetary support described in the *Plan Barre I*,³³⁵ while the other strengthened, in light of the Council orientations for economic policies, coordination of central banks with respect to monetary policies.³³⁶ All three decisions, along with the Resolution of 22 March 1971, may be considered to be the technical starting point of the first phase of the Werner Report. Nonetheless, and regardless of the adoption of the soft monetary approach, the first phase collided with abrupt decisions on foreign monetary policies.

More specifically, on 15 August 1971, “the time has come for a new economic policy for the United States.”³³⁷ Indeed, following a severe degradation of its balance of payments resulting from an expansionary fiscal policy,³³⁸ the US announced several extraordinary economic measures. Among these, ranging from a 10% reduction in foreign economic aid to trade restrictions,³³⁹ should be noticed different monetary measures, such as the freezing of wages and prices for 90 days to control the ramping up of inflation.³⁴⁰ However, the most important one was the suspension of convertibility of the dollar into gold or other reserve assets. This last measure, introduced by President Nixon as “Let me lay to rest the bugaboo of what is called devaluation,”³⁴¹ brutally ended the Bretton Wood Agreement Act of 1944. As a consequence, this measure forced the Community to redefine its monetary system due to the adverse economic effects it produced. Under those circumstances, the Council had to implement policy actions to mitigate those effects, notably on the agricultural sector,³⁴² and to affirm the position of the Community monetary system *vis-à-vis* the rest of the world.

Interestingly, most of these actions followed the signing of the Smithsonian Agreement on 18 December 1971. In order to mitigate the US *bugaboo* effects, that agreement implemented a 2.25% widening of exchange margins as well as fixity in central rates parities. Nonetheless, according to

³³⁵ CE, *Décision du Conseil du 22 mars 1971 portant mise en place d'un mécanisme de concours financier à moyen terme* (71/143/CEE), JO L 73, 27 mars 1971, pages 15-16 and *Mémoire de la Commission au Conseil sur la coordination...* op.cit., 12 février 1969, para 24.

³³⁶ CE, *Décision du Conseil du 22 mars 1971 relative au renforcement de la collaboration entre les banques centrales des États membres de la Communauté économique européenne* (71/142/CEE), 27 mars 1971, n° L 73, 14.

³³⁷ Richard Nixon, *Address to the Nation Outlining a New Economic Policy: "The Challenge of Peace."*, August 15 1971, Online by Gerhard Peters and John T. Woolley, The American Presidency Project.

³³⁸ CE, *Treizième Rapport d'Activité du Comité Monétaire*, 16 février 1972, HAEU, CM2/1972-583, paras 2-5.

³³⁹ Richard Nixon, Proclamation 4074 – *Imposition of Supplemental Duty for Balance of Payments Purposes*, August 15 1971, Online by Gerhard Peters and John T. Woolley, The American Presidency Project.

³⁴⁰ Richard Nixon, Executive Order 11615 – *Providing for Stabilization of Prices, Rents, Wages, and Salaries*, August 15 1971, Online by Gerhard Peters and John T. Woolley, The American Presidency Project.

³⁴¹ Richard Nixon, *Address to the Nation Outlining a New Economic Policy: "The Challenge of Peace."*,...op.cit.

³⁴² EC, *Consequences of the present situation for the common agricultural policy*, 15 September 1971, Reproduced from Bulletin of the European Communities, Supplement 6/71 pages 7-33, SEC (71) 3271 final, 10-18.

the Commission, those measures were synonymous with economic problems,³⁴³ which had to be mitigated via specific measures. The latter were specified in the Council Resolution of 21 March 1972, which recalled the Resolution of 22 March 1971 and implemented some monetary measures from the Smithsonian Agreement.³⁴⁴ Further, on 10 April 1972, the Basel Agreement was signed and entered into force on 24 April 1972. In essence, it provided for the establishment of the 'European Monetary Snake'. The latter may be considered as the most important integration headway during the first phase of the Werner Plan, even though it failed during the 1973 oil crisis.

The first phase of the Werner Report should have led to preliminary actions with respect to transfer of competences. However, apart from the Vedel Report,³⁴⁵ no serious considerations were made until late May 1972. Indeed, following the Treaty of Brussels of 22 January 1972, representatives of Member States were informally convened in Luxembourg on 25, 26 and 27 May 1972, to discuss the necessary strengthening of the Community institutional framework. In that regard, it should be observed that while most Member States and Candidate States agreed not to modify the existing institutional structure of the Community, they nonetheless diverged on the extent of its strengthening. These divergences may be illustrated by the consensual approach of Luxembourg³⁴⁶ or the UK's modest proposition for a political secretariat next to the institutions,³⁴⁷ and eventually by the German claims on permanency of Council sessions along with appointment of European Secretaries.³⁴⁸ In that context, the Member States agreed on the necessity to continue discussions on this sensitive issue.

In fact, those discussions were continued within the framework of the Paris Summit held on 19 and 20 October 1972 following the relatively unsuccessful meeting held in Frascati on 12

³⁴³ EC, *Memorandum on the Organization of Monetary and Financial Relations within the Community*, 12 January 1972, English text reproduced from the Bulletin of the European Communities, No.1, 1972, COM(72) 50, 25-26.

³⁴⁴ CE, *Résolution du Conseil et des représentants des gouvernements des états Membres du 21 mars 1972 relative à l'application de la résolution, du 22 mars 1971, concernant la réalisation par étapes de l'union économique et monétaire dans la Communauté*, JO C 38, 18 avril 1972, 3-4.

³⁴⁵ The only exception is the "Report Vedel" related to the institutional strengthening of the European Parliament: EC, *Report of the Working Party examining the problem of the enlargement of the powers of the European Parliament* "Report Vedel", Bulletin of the European Communities Supplement No. 4/72.

³⁴⁶ Gaston Thorn, *Schéma de l'intervention de Monsieur Gaston Thorn, Ministre des Affaires Étrangères du Grand-Duché de Luxembourg*, Rencontre informelle des Ministres des États Membres de la Communautés et des États adhérents ainsi que de représentants de la Commission, Luxembourg, 26 et 27 mai 1972.

³⁴⁷ Sir Alec Douglas Home, *Schéma de l'intervention de Sir Alec Douglas Home, KT, MP. Ministre du Royaume-Uni pour les Affaires Étrangères et du Commonwealth*, Rencontre informelle des Ministres des États Membres de la Communautés et des États adhérents ainsi que de représentants de la Commission, Luxembourg, 26 et 27 mai 1972, page 5 para 2.

³⁴⁸ Walter Scheel, *Schéma de l'intervention de Monsieur Walter Scheel, Ministre des Affaires Étrangères de la République Fédérale d'Allemagne*, Rencontre informelle des Ministres des États Membres de la Communautés et des États adhérents ainsi que de représentants de la Commission, Luxembourg, 26 et 27 mai 1972, 2, 4.

September 1972. Vested with the task “(...) to define the institutional framework which will allow us to move swiftly and surely towards Economic and Monetary Union”,³⁴⁹ the Paris Summit was undoubtedly the most important political summit held in the course of the first phase. More specifically, after having dealt with international economic/monetary events, it reminded that solid policy actions should be taken in order to facilitate the advent of Economic and Monetary Union while strengthening the Community institutional framework.³⁵⁰ However, such actions, and notably those related to the transfer of economic/monetary competences to the Community, could only be based on a Commission report, submitted to the Council pursuant to the Resolution of 22 March 1971.

Submitted on 19 April 1973, thus only a few days after having established the European Monetary Cooperation Fund (“**EMCF**”),³⁵¹ the Commission Communication formulated clear technical propositions to be implemented in the second phase. Indeed, after recalling the insufficient progress of the first phase as well as some propositions formulated in previous documents, the Report considered conferral of new powers and responsibilities of the Community. Interestingly, the Commission estimated that, in light of the objectives of the economic and monetary union, no transfer of competences was specifically required, as the TEC already provided for the necessary legal basis. More specifically, the Commission stated the following:

these new responsibilities do not involve a real transfer of powers from the Member States to the Community: the corpus of measures proposed can be adopted under the existing provisions of the EEC Treaty, notably Articles 70, 99, 100, 103, 105, 116, 145 and 235. There is no need therefore to amend the Treaty by resort to Article 236 (...).³⁵²

While this strict institutional approach was not specifically developed in the Report, most of the related arguments may be found in the confidential memo of the Commission Legal Service dated of 13 April 1973.³⁵³ The latter estimated that, instead of allocating new competences, the

³⁴⁹ *Meetings of the Heads of State or Government: Paris 19-21 October 1972*, Looking to the “Summit” of Ten: Preparations up to August 1972, Reproduced from the Bulletin of the European Communities, No. 8, 1972, 19

³⁵⁰ *Meetings of the Heads of State or Government: Paris 19-21 October 1972*, The First Summit Conference of the Enlarged Community: Conclusion of the Preparatory Work, Official Invitation, Communiqué, Reactions of the European Institutions, Reproduced from the Bulletin of the European Communities, No. 1^o, 1972, 16-18; 22-23.

³⁵¹ EC, *Regulation (EEC) No 907/73 of the Council of 3 April 1973 establishing a European Monetary Cooperation Fund*, JO L 89, 5 April 1973, 2-5.

³⁵² EC, *Communication from the Commission to the Council on the progress achieved in the first stage of economic and monetary union, on the allocation of powers and responsibilities among the Community institutions and the Member States essential to the proper functioning of economic and monetary union, and on the measures to be taken in the second phase of economic and monetary union*, 19 April 1973, COM(73)570 final, 27.

³⁵³ CE, Service Juridique de la Commission des Communautés Européennes, *Note à Messieurs les Membres de la Commission*, Confidentiel, 13 avril 1973, PL/maj – JUR/920/73, COM(73)570.

Community should make extensive use of the existing ones.³⁵⁴ Moreover, most of the Commission's propositions were later included in proposals for Council acts to be implemented in the course of the second phase.³⁵⁵

The first phase tried to conceptualize and implement policy actions in a perturbed economic environment that impacted an enlarged Community. As a consequence, special attention should be given to the second phase, which was particularly ambitious.

ii. The Frustrated Ambitions of the Second Step (1974–1976)

Vested with a significant number of objectives, amended at a later stage due to the perturbed economic environment, the second phase was expected to make considerable progress towards the achievement of the EMU. While the Werner Report described the EMU as so advanced that Member States could no longer resort to change in parity,³⁵⁶ the Commission Communication mostly proposed to deepen cooperation on the basis of several principles.³⁵⁷ Although the second phase was first frustrated with the fragilization of the European Monetary Snake, from which France decided to withdraw on 19 January 1974,³⁵⁸ and then compromised by inflationary pressures,³⁵⁹ its ambition was restored via the entry in force of several Council Decisions.

On 18 February 1974, the Council enacted several decisions aiming to strengthen the Community institutional framework in order to attain the EMU. Naturally, this strengthening process was preceded by an ineluctable institutional rationalization. While the role of the *Comités* is undiscussable, their fuliginous multiplication between 1960 and 1964 adversely affected the economic policies coordination process due to overlapping competences. Hence, by merging the *Comité de politique budgétaire*, the *Comité de politique économique à moyen terme* and the *Comité de politique conjoncturelle*, into a newly established *Comité de politique économique*, the Council Decision aimed both

³⁵⁴ *ibid* 8-9.

³⁵⁵ EC, *Draft Council Resolution on the implementation of the second stage of economic and monetary union in the Community; Proposal for a Council Directive on stability and full employment in the Community; Proposal for a Council Decision on the achievement of a high degree of convergence of the economic policies pursued by the Member States of the European Economic Community; Proposal for a Regulation amending Council Regulation (EEC) No 907/73 of 3 April 1973 setting up a European monetary cooperation fund; Decision setting-up an Economic Policy Committee*, JO C 114, 27 December 1973, 33-46.

³⁵⁶ CE, *Rapport au Conseil et à la Commission concernant la réalisation par étapes de l'Union Économique et Monétaire dans la Communauté « Rapport Werner »* (version finale)...*op.cit.*, 27.

³⁵⁷ EC, *Communication from the Commission*...*op.cit.*, COM(73)570 final, 11.

³⁵⁸ Bino Olivi, *Vers l'Union Économique et Monétaire (UEM) : Chronologie*, Annexe I/1, II-C2/MC.mb, 1 October 1979, BO-HAEU, B0-13, 6.

³⁵⁹ EC, *Fifteenth Report on the Activities of the Monetary Committee*, OJ C 23, 14 October 1974, 1; 5-6.

to fluidize, at the *Comité* level, coordination of economic policies initiatives, and to ultimately strengthen the Council powers.³⁶⁰

The strengthening of Council powers was subject to another decision, on the basis of which the Council was allocated the task of holding three sessions per year related to the setting of economic-policy guidelines, as well as the right to issue recommendations to any Member State departing from them.³⁶¹ According to this decision, further specified in Decision 74/121/EEC,³⁶² each Member State should implement short- and medium-term economic policies in accordance with the Council economic-policy guidelines. The first guidelines were released on 27 March 1974.³⁶³ In addition, the strengthening of economic-policy coordination was complemented by adaptation of the short-term monetary support that was originally proposed in the *Plan Barre* and subsequently amended³⁶⁴ in order to support the fragilized European Monetary Snake.³⁶⁵ Consolidation, or at least the maintaining, of the latter rapidly became one of the most sensitive issues of 1974.³⁶⁶ This is was firmly recalled by participating Member States in The Hague on 7 March 1974.³⁶⁷ Nonetheless, in light of the difficulties in fostering policy actions to achieve the EMU, due mostly to the economic environment, the Heads of States/Governments met in Paris on 9 and 10 December 1974.

The Paris Summit, together with the proposal for a regulation amending the EMCF and the Commission guidelines on Community unit of account, ended the year 1974.³⁶⁸ After recalling the disturbances of 1973 and 1974, the Paris Summit stressed, once again, the need to strengthen

³⁶⁰ EC, *Council Decision of 18 February 1974 setting up an Economic Policy Committee* (74/122/EEC), OJ L 63, 5 March 1974, 21-22.

³⁶¹ EC, *Council Decision of 18 February 1974 on the attainment of a high degree of convergence of the economic policies of the Member States of the European Economic Community* (74/120/EEC), OJ L 63, 5 March 1974, 16-18.

³⁶² EC, *Council Decision of 18 February 1974 on stability, growth and full employment in the Community* (74/121/EEC), OJ L 63, 5 March 1974, 19-20.

³⁶³ EC, *Communication from the Commission to the Council concerning the adjustment of the economic policy guidelines for 1974*, 27 March 1974, COM(74)450 final; *Proposal for a Council Decision on the adjustment to the guidelines for economic policy for 1974*, 13 May 1974, COM(74)689 final.

³⁶⁴ CE, *Mémoire de la Commission au Conseil sur la coordination...* op.cit., 12 février 1969, 24.

³⁶⁵ EC, *Resolution of the Council of 18 February 1974 concerning short-term monetary support*, OJ C 20, 5 March 1974, 5 March 1974, 1.

³⁶⁶ EC, *Communication from the Commission to the Council concerning the adjustment of the economic policy guidelines for 1974*, 27 March 1974, COM(74)450 final; *Proposal for a Council Decision on the adjustment to the guidelines for economic policy for 1974*, 13 May 1974, COM(74)689.

³⁶⁷ Bino Olivi, *Vers l'Union Économique et Monétaire (UEM) : Chronologie des principales décisions, directives, déclarations, etc (cadre communautaire)*, 1 Octobre 1979, BO-HAEU, BO-13, 7.

³⁶⁸ EC, *Proposal for Regulation (EEC) of the Council amending Regulation (EEC) No 907/73 of 3 April 1973 establishing a European Monetary Cooperation Fund*, 11 December 1974, COM(74)2106 final; *Guidelines in respect of the Unit of Account*, 13 December 1974, COM(74)2105 final/2.

convergence of economic policies and to set up a common energy policy.³⁶⁹ This redundancy in recommending economic-policy convergence and monetary integration on the one hand, and implementing barely any policy action under the unamendable TEC on the other, led the Commission to refine its EMU objectives in early 1975.

For that purpose, on 8 March 1975, a Study Group chaired by Marjolin presented a report entitled ‘Economic and Monetary Union in 1980’ (“**Marjolin Report**”) that underlined the need for political cohesion and proposed technical measures to be implemented within two years.³⁷⁰ More specifically, after having estimated that the integration efforts made since 1969 were a failure due to the lack of political willingness,³⁷¹ the Marjolin Report proposed measures in light of the existing economic and monetary problems of the Community. As regards economic measures, the Marjolin Report first stated the following:

(...) l’Europe n’est pas parvenue à un degré d’intégration des politiques économiques suffisant pour que l’on puisse parler de politique économique commune.

Hence, the Marjolin Report proposed to set a short-term economic programme, where most of the actions would be decided at the Community level.³⁷² Composed of different sub-programmes, ranging from investment to promotion of financial saving, it stressed again the necessity to define a common economic policy. This need had already been underlined in the first phase of the EEC transition period.³⁷³

As for economic measures, the Marjolin Report also proposed measures of monetary nature that focused mostly on setting monetary policy guidelines, a “Currencies Stabilisation Fund”, which could potentially amend the EMCF, and a European account unit.³⁷⁴ These measures must be perceived as enshrined in vast action, articulated around common economic, monetary and social policies, aimed at achieving the EMU. However, the Marjolin Report did not propose a clear repartition of competences. Nor did it specify the necessity to amend the TEC.³⁷⁵ Thus, despite its significance, the Report did not receive the consideration it deserved during the first European

³⁶⁹ EC, Council, *Meeting of the Heads of State or Government (Summit)*, Paris, 9-10 December 1974, Reproduced from the Bulletin of the European Communities, No 12, 1974, paras 19; 29-33.

³⁷⁰ CE, Commission (DG ECFIN), *Rapport du Groupe de Réflexion « Union Économique et Monétaire 1980 »*, 8 mars 1975, II/675/3/74-F final.

³⁷¹ *ibid* 10.

³⁷² *ibid* 11.

³⁷³ CEE, van Campen, ...op.cit., VC-HAEU, PE0-25.

³⁷⁴ *ibid* 17.

³⁷⁵ *ibid* 29.

Council held on 10 and 11 March 1975, unlike for the preliminary version of the Tindemans Report.³⁷⁶

Submitted to the Council on 29 December 1975, the Tindemans Report gave an overall perspective on the European Union. Naturally, the Tindemans Report considered several aspects of the EMU and formulated some recommendations in that respect.³⁷⁷ It is noteworthy that it not only invited the relaunch of negotiations at Council level or asked the Commission to deliver an annual report on the formulation of a common economic/monetary policy; it mostly articulated its recommendations around the need to strengthen the European Monetary Snake.³⁷⁸ Though the *European Monetary Snake* benefitted from the return of France on 10 July 1975,³⁷⁹ its strengthening was unfortunately already compromised in early 1976. Indeed, Italy, on 1 January 1976, followed by France and Benelux on 15 March 1976, decided to suspend their participation from the European Monetary Snake. Already frustrated, these participations suspensions from the European Monetary Snake negatively ended the second phase of the Werner Plan.³⁸⁰

Compromised since its start and utterly frustrated at the end, this second phase appears as smoothly closing the ambitions of the Werner Report. This assertion being materialised in the third and last phase.

iii. The Third Step (1977-1979): From the Werner Report to the European Monetary System

As mentioned previously, the second phase of the Werner Report ended with the disintegration of the European Monetary Snake and overall, with frustrated results regarding the achievement of the EMU. In the light of these circumstances, the Commission addressed on 5 and 6 December 1977 a Communication to the Council regarding the prospects of the EMU.³⁸¹

After recalling the different steps undertaken since 1969, and their subsequent failures, the Communication of the Commission highlighted the economic weaknesses of the Communities. Of a similar nature to those of 1976, the Commission emphasized the need to implement special policy actions to notably foster economic convergence. To do so, this needed to be articulated around another integration method.³⁸² In that context, after presenting the progressive integration

³⁷⁶ EC, Council, *Note*, 14 March 1975, R/807/75, 4.

³⁷⁷ Tindemans, (Report), 29 December 1975, Bulletin of the European Communities Supplement 1/76.

³⁷⁸ *ibid* 19-22.

³⁷⁹ Bino Olivi, ...*op.cit.*, BO-HAEU, BO-13, 16.

³⁸⁰ *ibid* 17-18.

³⁸¹ EC, *Communication on the Prospect of Economics and Monetary Union*, 17 November 1977, COM(77)620 final.

³⁸² *ibid* 4.

method, the Commission stressed another approach where integration should be accelerated speeded-up and eased through transfer of economic and monetary competences to the Community.³⁸³ Through this combined approach, the Commission emphasized the central element of slowness in the European integration process: the absence of economic/monetary competences conferred on the Community. Such absence of competences favoured divergences in domestic policies and therefore, the allocation of negative spillovers. To remedy these divergences, and to achieve the EMU, the Commission had to annually propose, within the framework of another five-year plan, specific actions.

For that purpose, the Commission addressed on 20 February 1978 to the Council an action programme for 1978.³⁸⁴ This action programme, by focusing on economic convergence, the single market and on the development of structural and social policies for the Community,³⁸⁵ emphasized several urgencies, in particular, the need to strengthen coordination of short-term economic policies, via the achievement of jointly agreed macroeconomic targets, and to achieve monetary cohesion.³⁸⁶ In essence, these policy actions, further explained in March 1978,³⁸⁷ highlighted the need to establish a stabilized economic and monetary area within the Communities.

This urgency to relaunch the EMU project through the stabilization of economic and monetary policies was firmly endorsed when the European Council convened in Copenhagen on 7 and 8 April 1978.³⁸⁸ However, these stabilization actions were finally endorsed when the European Council convened in Bremen, on 6 and 7 July 1978, when Member States agreed with the creation of a stronger monetary system to establish a stable monetary area in Europe. In essence, this launched the creation of the European Monetary System (“**EMS**”).³⁸⁹ Complemented with Decision 78/658/EEC, establishing national economic-policy programmes,³⁹⁰ the EMS should be considered as the main integration project of late 1978 and early 1979. This naturally led the Commission to formulate several propositions.

³⁸³ *idem*.

³⁸⁴ EC, *Communication, Action Programme for 1978*, 14 February 1978, COM (78) 52, 4.

³⁸⁵ *ibid* I.

³⁸⁶ *ibid* 3-5.

³⁸⁷ *Summary account and degree of convergence of the economic policies pursued in the member countries in the Community in 1977*, 13 March 1978, COM (78) 103 final, 3-5.

³⁸⁸ European Council, *Conclusion of the Session of the European Council in Copenhagen*, 7 and 8 April 1978, Reproduced from the European Council Dossier of the European People’s Party, 1990.

³⁸⁹ European Council, *The Results of the European Council in Bremen*, Reproduced from the Bulletin of the European Communities, No. 6/1978, 17.

³⁹⁰ EC, *Council decision of 24 July 1978 on the adaptation of public budgets for 1978 and the preparation of public budgets for 1979 in the framework of the Community’s concerted action (78/658/EEC)*, OJ L 220, 11 August 1978, 27-29.

On 31 October 1978, the Commission addressed important legislative proposals to the Council. First, the Commission proposed a Council Regulation to change, as of 1 January 1979, the value of unit of account used by the EMCF to a newly basket of European currencies: the European Currency Account (“**ECU**”).³⁹¹ This first Commission proposal, which by aiming to set a stabilised monetary area could be considered as foreseeing the advent of the euro, was complemented with a second one proposing to establish the EMS.³⁹² Expected to enter into force on 1 January 1979, the establishment of the EMS aimed to achieve the EMU as no powers for such monetary system were provided in the TEC.³⁹³

This proposal from the Commission, whereby the EMS should establish a European Monetary Fund (transitionally piloted by the EMCF) enabled to receive monetary reserves (ECU) from the Member States,³⁹⁴ received appropriate considerations in the European Council convened in Brussels on 4 and 5 December 1978.³⁹⁵ This was of crucial importance since, on 18 December 1978, the Council adopted the two proposals addressed by the Commission on 30 October 1978.³⁹⁶ Although planned on 1 January 1979, the entry into force of the EMS was nonetheless delayed, due to difficulties regarding its compatibility with the common agricultural policy,³⁹⁷ until 13 March 1979 when central banks of Member States agreed on operational procedures.³⁹⁸

Complemented with two decisions of the Board of the EMCF,³⁹⁹ the above-mentioned agreement completely modified the Community monetary framework. It should be observed that, as well as establishing the EMS, central banks also set up a real exchange mechanism. Based on the ECU, and with a very short-term credit facility, this mechanism imposed contributions from participating Member States. More specifically, participating Member States should contribute to it by transferring 20% of their gold holding and 20% of their dollar reserves.⁴⁰⁰ Importantly, in doing

³⁹¹ EC, *Proposal for a Council Regulation changing the value of the unit of account used by the European Monetary Cooperation Fund*, 31 October 1978, COM (78) 572 final/2.

³⁹² EC, Commission, *Proposal for a Regulation establishing a European Monetary System*, 31 October 1978, COM (78) 572 final/2.

³⁹³ *ibid* Recital para 5

³⁹⁴ *ibid* Recital paragraphs and Article 1.

³⁹⁵ European Council, *Conclusions of the Presidency of the European Council*, 5 December 1978 (Final version of 31 January 1979), para 1 and Annex 1.

³⁹⁶ EC, *Council Regulation (EEC) No 3180/78 of 18 December 1978 changing the value of the unit of account by the European Monetary Cooperation Fund; Council Regulation (EEC) No 3181/78 of 18 December 1978 relating to the European monetary system*, OJ L 379, 30 December 1978.

³⁹⁷ EC, *European Community Information Service (Ottawa), Introduction of European Monetary System delayed. Background Note*, NR (79) 2, 11 January 1979, 1.

³⁹⁸ Agreement between the Central Banks of the Member States of the European Economic Community laying down the operating procedures for the European Monetary System, 13 March 1979.

³⁹⁹ Decisions No. 12/79 and No. 13/79 of the Board of governors of 13 March 1979.

⁴⁰⁰ Agreement between the Central Banks of the Member States...op.cit, Chapter I.

so, the Community favoured monetary cohesion, as requested in the Communication of 1978, while favouring rapprochement of economic policies and monetary integration.

Adjusting eventually its parities on 23 September 1979,⁴⁰¹ the EMS proved to be the most important progress for achieving the EMU. Nonetheless, the failure of the Werner Report should not be attributed to unrealistic ambitions. Rather, it should be attributed to international economic disturbances which, instead of highlighting monetary cohesion, exacerbated divergences in domestic policies. This eventually prevented any significant transfers of monetary and economic competences to the Community.

Highlighting a lack of political cohesion, such divergences suggested to reform the current institutional framework. Naturally, this period deserves careful, but brief, attention.

2. Monetary Integration in the European Union (1980–1988)

The failure of the Werner Plan led policymakers to reform the monetary system by establishing the EMS to ensure monetary stability before revising the Treaties (a) and eventually to relaunch the EMU (b).

a. From Monetary Cohesion Towards the European Union (1980–1986)

The operational success of the EMS (i), along with the failure of the Werner Report, highlighted the need to revise the Treaties so as to, among other objectives, attain the EMU (ii).

i. Establishing a Stable Monetary Area: The EMS (1980–1982)

Vested with the task of laying down the necessary conditions to form the EMU, the EMS proved to be particularly effective and resilient, especially in the oil crises. First mentioned in the European Council convened in Luxembourg on 27 and 28 April 1980,⁴⁰² its resilience was then further emphasized by Jenkins when commenting on its first eighteen months of activity.⁴⁰³ More specifically, after estimating that the EMS constituted the first step for attaining the EMU, Jenkins notably underlined the role played by the EMS in stabilizing domestic currencies.⁴⁰⁴ In particular, due to fewer domestic actions to control inflation, the EMS would have led to further cohesion

⁴⁰¹ EC, *First adjustment takes place in European Monetary System exchange rates*, Press Notice, European Community News No. 34/1979, 25 September 1979.

⁴⁰² European Council, *Conclusions of the Presidency*, 27 and 28 April 1980, 3-4.

⁴⁰³ Jenkins, Speech, *The European monetary system: recent experience and future prospects*, 24 October 1980.

⁴⁰⁴ *ibid* 3.

and greater coordination of economic policies within the Community.⁴⁰⁵ Notwithstanding these beneficial actions, the EMS was not free from difficulties, as mentioned by Jenkins. Indeed, with differences in inflation rates between Member States, some institutional specificities of the future European Monetary Fund and the non-participation of the UK., the first years of the EMS proved to be difficult.⁴⁰⁶

Although nuanced with the political need to resort to the EMS to foster infrastructure investments,⁴⁰⁷ those difficulties raised nonetheless some concerns with regard to the extension of the EMS transitional period.⁴⁰⁸ This was seen as justified when the European Council convened in Luxembourg and concerns were raised on both remaining payment imbalances and the weak position of the Community towards the US.⁴⁰⁹ These concerns were stressed again when the European Council convened in Maastricht on 23 and 24 March 1981 when further convergence was required and best use of EMS mechanisms requested.⁴¹⁰ However, these tensions did not obscure the results of the EMS. In fact, by laying down the necessary conditions for a stabilized monetary area, the EMS incentivized policy makers to devote efforts and attention to reform the Treaties.

ii. Revising the Treaties: The Single European Act (1981–1986)

Similarly to those of the EEC transitional period, the different phases of the Werner Report highlighted the need to confer monetary and economic competences on the Community. This should have been accompanied with the strengthening of its institutional framework to achieve the EMU. Although recommended in different reports, as in the Marjolin Report, hardly any measures were taken until the European Council convened in London on 26 and 27 November 1981. The Italian and German governments, influenced by a resolution of 9 July 1981,⁴¹¹ submitted on 6 November 1981 proposals on the European Union.⁴¹²

⁴⁰⁵ *ibid* 5.

⁴⁰⁶ *ibid* 6-9.

⁴⁰⁷ EC, *Communication from the Commission to the Council and to the European Parliament on Interest subsidies for certain loans granted under the European Monetary System: Council Regulation (EEC) No 1736/79 of 3 August 1979*, 16 April 1980, COM (80) 192.

⁴⁰⁸ EC, European Parliament, *Motion for a Resolution on the European Monetary System*, 19 December 1980, Working Documents, doc. 1-761/80.

⁴⁰⁹ European Council, *Conclusions*, 1 and 2 December 1980, 3-4.

⁴¹⁰ European Council, *Summary by the Presidency of the European Council*, 23 and 24 March 1981, 3-4.

⁴¹¹ EC, European Parliament, *Resolution setting up a committee on institutional problems*, 9 July 1981, OJ C 234, 14 September 1981, 48-49.

⁴¹² European Council, *Conclusions*, 26 and 27 November 1981.

Reaffirming the need to strengthen the institutional framework of the Community, under the auspices of a European Council, and to enhance economic policies convergences, the Italo-German proposal was embedded into a European Act.⁴¹³ Naturally, these necessities found a sound echo at the European Parliament where, on 6 July 1982, a motion for resolution related to the reform of the Treaties and to the achievement of European Union was submitted.⁴¹⁴ The significance of this resolution should be underlined, since it was the first to explicitly request a reform of the Treaties to enhance political cooperation.

Considerably underpinned by the Commission on 25 November 1982, these initiatives were naturally further discussed during the European Council when it convened in Copenhagen on 3 and 4 December 1982.⁴¹⁵ These initiatives found a stronger echo on 19 June 1983 when the European Council pronounced a solemn declaration. Based on the above-mentioned Act and documents, this solemn declaration requested enhanced political cooperation, a strengthened institutional framework and finally, greater convergence in economic policies. These initiatives were to be encompassed within a five-year plan where any progress should be incorporated in an ex novo Treaty.⁴¹⁶ Followed with the adoption of the resolution establishing a new Treaty on the European Union,⁴¹⁷ proposing a refined repartition of economic competences, this solemn declaration surely constituted a major initiative for reforming the Treaties. Finally, this reform of the Treaties was endorsed when the European Council convened in Milan on 28 and 29 June 1985.⁴¹⁸

This political decision, later underpinned in a Communication of the Commission dated of 28 November 1985,⁴¹⁹ led the European Council when it convened in Luxembourg on 2 and 3 December 1985, to adopt specific texts amending the TEC.⁴²⁰ Interestingly, the adoption of those

⁴¹³ EC, European Parliament, Croux, *Interim Report drawn up on behalf of the Political Affairs Committee on the draft European Act submitted by the Governments of the federal Republic of Germany and the Italian Republic*. Working Documents 1982-83, Document 1-648/82, 4 October 1982, see attached Annex, *Draft European Act submitted by the Governments of the Federal Republic of Germany and the Italian Government*, 6 November 1981.

⁴¹⁴ EC, European Parliament, *Resolution on the European Parliament's position concerning the reform of the Treaties and the achievement of European union*, 6 July 1982, OJ C 238, 13 September 1982, 25-28.

⁴¹⁵ EC, *Commission report on European Union to the European Council, Copenhagen, 3-4 December 1982*, 25 November 1982; *Report on European Union from the Ministers of Foreign Affairs to the European Council, Copenhagen, 3-4 December 1982*, Bulletin of the European Communities Supplement 7/82.

⁴¹⁶ European Council, *Solemn Declaration on European Union*, Stuttgart, 19 June 1983, Reproduced from the Bulletin of the European Communities, No. 6/1983.

⁴¹⁷ EC, *Resolution concerning the substance of the preliminary draft Treaty establishing the European Union*, 14 September 1983, OJ C 277, 17 October 1983, 95-117.

⁴¹⁸ European Council, *Conclusions*, 28-29 June 1985, 1-2.

⁴¹⁹ EC, *European Union – Report by the Commission (Communication from the Commission to the European Council 2 and 3 December 1985)*, 28 November 1985, COM (85) 696 final.

⁴²⁰ European Council, *Texts resulting from the European Council in Luxembourg*, 2-3 December 1985.

texts did not lead to an *ex novo* Treaty but rather to a revised version of the TEC. Signed on 17 February 1986 in Luxembourg and on 28 February 1986 in The Hague, and entering into force on 1 July 1987, this revision led to the “*Single European Act*” (“**SEA**”).⁴²¹

Of fundamental importance for the achievement of the internal market, which had to be established by 31 December 1992 according to Article 8A, the SEA also provided for monetary and economic affairs. Indeed, pursuant to Article 20, the SEA inserted a new Chapter I, in Part III, Title II of the TEC, entitled ‘Cooperation in economic and monetary policy’. In that regard, it is worth noting the insertion of Article 102A which aimed, in light of both Article 104 and of the EMS’ success, to ensure convergence of economic and monetary policies. Though not particularly innovative, the Article 102A(2) provided for the application of Article 236 in relation to developments in monetary and economic fields. Naturally, this Article should be read in conjunction with Article 130B on coordination of economic policies. However, the substance of this revision of the TEC, promoting economic and monetary cooperation while requesting further integration since a few decades, foresaw little progress to achieve the EMU. Indeed, as pointed out by Andreotti on behalf of the Italian Government, the revision of the Treaty constituted an “(...) unsatisfactory response to the need for substantial progress (...)”.⁴²² The EMU project would not be relaunched until 1988.

b. Towards the EMU and the European System of Central Banks

The period consecutive to the entry into force of the SEA highlighted a great intellectual effervescence and preliminary considerations on a ‘European System of Central Banks’ (i). This was followed by the relaunch of the EMU (ii).

i. Early Considerations on the European System of Central Banks (1987–1989)

Entering into force on 1 July 1987, the SEA constituted a major revision of the Treaties that was unfortunately not synonymous with significant progress towards achieving the EMU. As suggested above, the wording of Articles 102A and 130B did not provide for economic and monetary integration; rather, these provisions only promoted cooperation in those fields. In that regard, one may observe some similarities with the previously applicable legal framework. Thus, this lack of

⁴²¹ *Single European Act*, Bulletin of the European Communities Supplement 2/86.

⁴²² EC, Council, *Statement made in The Hague on 28 February 1986 on behalf of the Italian Government by Mr Andreotti, Minister for Foreign Affairs*, in *Speeches and statements made on the occasion of the signing of the Single European Act*, 17 and 28 February 1986, 28.

consideration for monetary affairs, as pointed out by Louis,⁴²³ led Padoa-Schioppa to elaborate a set of technical questions that should be addressed to attain the EMU.⁴²⁴ This work from Padoa-Schioppa, complemented with a report ‘revisiting’ the Werner Report,⁴²⁵ invited Louis to perform a thorough comparative analysis of domestic legal and institutional frameworks of Member States’ central banks. In essence, this led the Group « *Système européen de banques centrales* », chaired by Louis, to prepare the draft statutes of a European Central Bank.⁴²⁶

Of crucial importance, these preliminary legal and institutional considerations on a European System of Central Banks started in June 1988 with a complete inventory of regulatory and legal aspects of Central Banks and banking supervisory authorities.⁴²⁷ This inventory allowed the Group “*Système européen de banques centrales*” to draft proposals of articles to be included in the TEC along with the statutes of the ECB. It should be observed that this Group drafted the principles that would later be included in the provisions related to the ECB. This can be illustrated with Article 5, providing for the autonomy of the ECB, or with Article 4 that stated its objectives, among which were monetary and financial stability and the implementation of internal/external monetary policies. All these Articles would be included in subsequent revisions of the Treaties.⁴²⁸ These draft Articles and Statutes of the ESCB, presented with thorough commentaries and explanations,⁴²⁹ are of crucial importance for appreciating early intent of the authors of the Treaties.

However, these early considerations on legal aspects of the future ESCB should not be considered on a standalone basis. Indeed, these considerations were first complemented with the Franz Report⁴³⁰ and then with a seminal report on the EMU Project: the Delors Report.

ii. Relaunching the EMU: The Delors Report

Apart from preliminary thoughts given on institutional and legal aspects of a potential ESCB, the years 1986 to 1988 were propitious for intellectual effervescence in monetary and economic affairs.

⁴²³ Jean-Victor Louis, “Monetary Capacity” in the Single European Act’ (1988) 25 Common Market Law Review 9, 27; 29.

⁴²⁴ Padoa-Schioppa, *Economics and Monetary Union: The main issues*, September 1988, TPS-HAEU, TPS-190.

⁴²⁵ Padoa-Schioppa, *The Werner Report revisited*, September 1988, TPS-HAEU, TPS-190.

⁴²⁶ Louis, *Rapport du Groupe « Système Européen de Banques Centrales » (Banque Centrale Européenne)*, Comité Spinelli et CEPREM, 16 mai 1989, PVD-HAEU, PVD-85, IX

⁴²⁷ Louis, *Questionnaire on key functions and legal structure of central banks and banking supervisory authorities (revised version)*, PVD-HAEU, PVD-84, 10 June 1988.

⁴²⁸ Louis, *Rapport du Groupe...op.cit.*, PVD-HAEU, PVD-85, 30-31.

⁴²⁹ *ibid* 49-98.

⁴³⁰ Franz, European Parliament, *Report drawn-up on behalf of the Committee on Economic and Monetary Affairs and Industrial Policy on the process of European monetary integration*, 22 March 1989, doc. A2-14/89/ Part A, OF-HAEU, PE2-18864, 11-17.

This was mainly due to the strengthening of the EMS. More specifically, as pointed out by the *Comité Monétaire*, the realignment of 12 January 1987 coupled with closer coordination in interest rates policies led Member States, convened in Nyborg in September 1987, to strengthen the EMS.⁴³¹ Combined with the liberalization of capital movements, this strengthening invited Member States to devote special attention to “the longer-term aim of economic and monetary union, to which the Community has been committed since 1971”.⁴³² Moreover, following the decision of the European Council of Hanover to pursue the progressive realization of the EMU, a committee chaired by Jacques Delors was tasked with proposing a plan with concrete stages.⁴³³ Since it is considered to have fulfilled its mandate,⁴³⁴ the Delors Report merits attention.⁴³⁵

Submitted to the Council on 17 April 1989, and solidly grounded on previous initiatives, the Delors Report was not only important for its practical legacy but also for its theoretical contributions to the EMU. Although considering the EMU as the final outcome of the integration process, the Delors Report considered it as “two integral parts of a single whole”.⁴³⁶

The first integral part related to the monetary union. Defined as “a currency area in which policies are managed jointly with a view to attaining common macroeconomic objectives”,⁴³⁷ it involved the formulation of a common monetary policy from which the responsibility would be conferred upon a new institution.⁴³⁸ At first glance, this proposition was not very different from early policy initiatives. However, the Delors Report distinguished itself from previous proposals by providing greater details on institutional aspects. More specifically, after recalling that the monetary system should be “organised in a federal form, in what might be called a European System of Central Banks (ESCB).”,⁴³⁹ the Delors Report displayed significant details on the mandate of the ESCB and its limits. For instance, according to the same paragraph, the mandate of the ESCB was to be twofold: firstly, with the primary objective of price stability, and secondly, with the “(...) support [to] the general economic policy set at the Community level by the competent bodies”.⁴⁴⁰

⁴³¹ EC, Monetary Committee, *Twenty-Ninth Activity Report*, September 1988, 5-6.

⁴³² *ibid* 13.

⁴³³ European Council, *Conclusion of the Presidency*, 27 and 28 June 1988, para 5.

⁴³⁴ European Council, *Conclusion of the Presidency*, 26 and 27 June 1989, 10.

⁴³⁵ Delors, Committee for the Study of Economic and Monetary Union, *Report on Economic and Monetary Union*, 17 April 1989.

⁴³⁶ *ibid* para 21.

⁴³⁷ *ibid* para 22.

⁴³⁸ *ibid* para 24.

⁴³⁹ *ibid* para 32.

⁴⁴⁰ *idem*.

Interestingly, the Delors Committee did not specify the interactions, or frictions, between the two objectives of the ESCB, nor did it explain, or quantify, the concept of price stability. Directly inspired from the mandate conferred on the German *Bundesbank*, the future mandate of the ESCB is not only interesting for the above-mentioned reasons but also for including a second objective of an economic nature. For instance, the mandate preconized by the Delors Committee for the institution, which should be in charge of conducting the common monetary policy of the Community, was not entirely of a monetary nature. This suggests that under the undefined concept of price stability the ESCB would support, through monetary policy channels, the economic-policy objectives set at the Community level. In addition, it may also be inferred, inasmuch as it was similarly interpreted by the *Comité Monétaire* in 1960, that the future common monetary policy would be “subordinated” to general economic policies decided at Community level.

At first sight speculative, this interpretation of paragraph 32 of the Delors Report was nonetheless emphasized by Jacques Delors himself in late 1989. More specifically, on 25 October 1989, Delors declared to the European Parliament:

(...) Troisièmement, la clarté des institutions. Que dit le rapport d'experts, ce qu'on appelle le rapport Delors ? Tout d'abord, il positionne le système européen de banque centrale et, là-dessus, je crois quand même qu'il faut rappeler — car on l'a oublié — un des éléments du rapport. Après avoir souligné l'indépendance nécessaire du système européen de banque centrale, il est indiqué, je cite : « sans préjudice de l'objectif de stabilité des prix, le système devrait soutenir la politique économique générale arrêtée au niveau communautaire par les organes compétents ». **Ce n'est rien d'autre que la primauté d'une politique sur le monétaire, même si le système monétaire est indépendant.** Et cela, je crois, est également un point important à ne pas oublier. C'est ce que j'appellerai une des contreparties politiques.⁴⁴¹

Later mentioned in the Donnelly Report,⁴⁴² the subordination of monetary policies to general economic policies invites further considerations. In that regard, it may be supposed that the ESCB could have potentially supported the Community economic-policy objectives that some Member States for specific reasons, such as budgetary moral hazard or political freeriding, did not fully support due to an uncoordinated economic-policy framework. In other words, the secondary

⁴⁴¹ CE, Débat du Parlement Européen, *Séance du mercredi 25 octobre 1989*, n°3-382, 25 octobre 1989, 137 (own bold emphasis).

⁴⁴² CE, Parlement Européen, Donnelly, *Rapport fait au nom de la commission économique, monétaire et de la politique industrielle sur la recommandation de la Commission au Conseil relative à une décision modifiant la décision 64/300/CEE concernant la collaboration entre les banques centrales des Etats membres de la Communauté économique européenne (COM(89) 467 final – C3-185/89)*, doc A3-87/89, 1^{er} décembre 1989, 16 (own bold emphasis).

objective of the ESCB future mandate aimed to support, or back, the second part of the EMU: the economic union.

The second integral part of the EMU, the economic union was defined by the Delors Report in the light of four basic elements: the single market, consecrating the four freedoms; competition policies; structural policies; and coordination of macroeconomic policy.⁴⁴³ This last element, coordination of macroeconomic policy, is of crucial importance for appreciating economic and monetary differences within the Community. It was defined as:

(...) including binding rules in the budgetary field; and other arrangements both to limit the scope for divergences between member countries and to design an overall economic policy framework for the Community as whole.⁴⁴⁴

Intuitively, this willingness to form an overall economic-policy framework for the Community is reminiscent of ECSC' parliamentary initiatives, such as that of van Campen.⁴⁴⁵ This similarity was further strengthened with the economic institutional framework proposed by the Delors Report. Indeed, while the monetary part of the EMU was considered to be federative,⁴⁴⁶ as for the Federal Reserve System, its economic part was, on the contrary, to be relatively similar to that provided in the TEC.

This integration dichotomy between the “two integral parts of a single whole” was to be enshrined in a new Treaty, with a new repartition of competences under the principle of subsidiarity,⁴⁴⁷ between the Community and the Member States. However, the establishment of the EMU was not to be realized on the sole basis of the entry into force of a new Treaty but through a myriad of legal acts encompassed within a step-by-step plan. The latter, composed of three phases, was to commence after the realization of full liberalization of capital, on 1 July 1990.

Conclusion

This chapter examined the early economic and monetary integration process in Europe in order to appreciate the shaping of the intent of the authors of the Treaties. Based on the analysis of primary resources, this chapter found that considerations on a potential distinction between monetary and economic policies were already present in the transitions phases of the EEC, as within the van Campen Report or the Dichgans Report. These Reports, together with other documents and

⁴⁴³ *ibid* para 25.

⁴⁴⁴ *ibid* paras 27; 19.

⁴⁴⁵ CEE, van Campen, ...*op.cit.*, VC-HAEU, PE0-19.

⁴⁴⁶ Delors, Committee for the Study...*op.cit.* 22.

⁴⁴⁷ *ibid* para 20.

legislative acts, strongly influenced seminal integration initiatives, including the Delors Report. This suggests that the intent of the authors of the Treaties should not be summarized as only the *travaux préparatoires* of the Maastricht Treaty.

Chapter II: The Dissociation of Monetary from Economic Policies: From Maastricht to the Great Financial Crisis

Introduction

In the continuity of the legislative historical analysis made in Chapter I, this chapter attempts to appreciate the intent of the authors of the Treaties. The vision of the EMU proposed by the Delors Committee was the result of a myriad of parliamentary/technical reports that punctuated the history of the Community. However, regardless of its significance, the Delors Report did not shape, on a standalone basis, the current EMU institutional and legal foundations. In that regard, this chapter examines the different phases recommended by the Delors Report to appreciate early premises of the intent of the authors of the Treaties before the Intergovernmental Conference on the EMU of 1991. Indeed, the preparatory period of Phase I, and Phase I itself, were synonymous with considerable intellectual effervescence where parliamentary reports, but not only, dealt with EMU technical aspects for the drafting of the ex-novo Treaty on the European Union.

The Treaty of Maastricht would, by allocating monetary competences to the Community and by setting stringent economic policies coordination, irremediably foster economic and monetary integration. Naturally, the drafting of the TEC 1992, and its subsequent revisions, was subject to a myriad of parliamentary reports which shaped the intent of the authors of the Treaties. For this purpose, and in the continuity of Chapter I, this chapter examines primary resources that pertain to the construction of the EMU in order to appreciate the intent of the authors of the Treaties. This would allow to better comprehend the emergence of the ESCB and the potential delimitation between monetary and general economic policies in the Community.

Hence, this chapter aims to appreciate the intent of the authors of the Treaties, as regards monetary and economic policies, throughout the different phases of the Delors Report (**I**) and, then, to analyse the legal and institutional framework of the EMU prior to the GFC (**II**).

I. The First and Second Phases of the EMU or The Legal Inception of the Distinction

The first phase of the EMU allows an understanding of how the intent of the authors of the Treaties was shaped (**A**), while the second phase was related to the conceptualization of the single monetary policy articulated around the objective of price stability (**B**).

A. Shaping the Intent of the Authors of the Treaty (1990–1993)

Preparing the transition to the second phase, the first phase of the EMU would lead to the ratification of an ex-novo Treaty (1). Naturally, this constitutes a unique opportunity for understanding the intent of the authors of the Treaties (2).

1. Preliminary Intentions in the Preparatory Periods (17 April 1989–4 December 1990)

Commencing significantly before its official start (a), the first phase aimed to foster the convergence of economic and monetary policies while preparing a new Treaty (b).

a. *Phasing the First Phase of the EMU (17 April 1989–1 July 1990)*

Expected to start on 1 July 1990, when the freedom of capital would be completed, the first phase of the Delors Report aimed to create favourable economic and institutional conditions prior to the launch of the second phase. It was prepared significantly in advance. In fact, it started almost immediately after the release of the Delors Report with a preparatory period that would last until the beginning of the first phase. This preparatory period had several objectives. First it aimed to foster economic policies convergence, then to strengthen NCB cooperation and finally to prepare the Intergovernmental Conferences which would lead to an ex-novo Treaty.⁴⁴⁸ Naturally, these objectives deserve special attention.

To achieve the first two objectives of the preparatory period, the Commission first recommended, on 13 October 1989, to amend Decision 64/300/EEC that instituted the *Committee of Governors of the Central Banks of the Member States of the EEC*.⁴⁴⁹ Aiming to strengthen coordination of monetary policies, the revision proposed by the Commission was particularly subtle. While Recital 4 of the Decision provided that monetary policy cooperation should be realized via consultations between NCBs convened “as far as possible” before any NCB decision, the Commission proposed to strengthen cooperation in the monetary field.⁴⁵⁰ Naturally, the Commission proposal was subject to various considerations and comments, including those from the European Parliament. In that respect, the Donnelly Report emphasized the necessity to broaden the mandate of the Committee. In particular, the Donnelly Report suggested that such mandate should encompass a variety of

⁴⁴⁸ For an accurate perspective of the objectives of the first phase of the EMU see Delors Report, para 50.

⁴⁴⁹ EC, *Recommendation for a Council Decision amending Decision 64/300/EEC on co-operation between the Central Banks of the Member States of the European Economic Community*, COM(89) 467 final, 13 October 1989, OJ C 283, 9 November 1989, 8-10.

⁴⁵⁰ Donnelly, *Rapport fait au nom de la commission...op.cit.*, 13.

objectives.⁴⁵¹ Although partially shared by the Economic and Social Committee,⁴⁵² some of the European Parliament recommendations were eventually included in the Council Decision of 12 March 1990. Published on 24 March 1990,⁴⁵³ Council Decision 90/142/EEC significantly amended Article 3 of Decision 64/300/EEC by broadening the tasks and powers of the Committee. In particular, the revised third paragraph of Article 3 henceforth included the objective of the coordination of monetary policies: price stability. Although quantitatively undefined, the objective of price stability was to be influenced through a greater convergence between general economic policies of the Member States.

The strengthening coordination of general economic policies was also the subject of a Council Decision proposal related to the attainment of progressive convergence of economic policies.⁴⁵⁴ Echoing with Council Decision 74/120/EEC, the Commission proposal aimed to repeal such Decision, as it was considered a failure, and to implement a multilateral surveillance framework focusing on macroeconomic, microeconomic, and structural policies.⁴⁵⁵ Unlike for Council Decision 64/300/EEC, the European Parliament proposed relatively few amendments and therefore, mostly agreed with the Commission proposal.⁴⁵⁶ In a similar way, and despite expressing its regrets on the limited implication of the *Economic Policy Committee* regarding economic policies convergence, the Economic and Social Committee agreed with the necessity to repeal Council Decision 74/120/EEC.⁴⁵⁷ However, in its decision of 12 March 1990, the Council decided to adopt a more stringent approach than the one proposed by the Commission.⁴⁵⁸ It decided to include the economic objectives of the Communities in Article 1. Also it decided to assess the different components of the multilateral surveillance framework twice a year and not on a regular basis as proposed by the Commission.

⁴⁵¹ *idem*, see amendments 4-5, 6.

⁴⁵² EC, *Opinion on the proposal for a Council Decision on the attainment of progressive convergence of economic performance during stage one of economic and monetary union and the recommendation for a Council Decision amending 64/300/EEC on cooperation between the central banks of the Member States of the European Economic Community*, OJ C 56, 7 March 1990, 50.

⁴⁵³ EC, *Council Decision of 12 March 1990 amending Council Decision 64/300/EEC on cooperation between the central banks of the Member States of the European Economic Community (90/142/EEC)*, OJ L 78, 24 March 1990, 25-26.

⁴⁵⁴ EC, *Proposal for a Council Decision on the attainment of progressive convergence of economic performance during stage one of Economic and Monetary Union*, COM(89) 466 final, 13 October 1989, OJ C 283, 9 November 1989, 6-8.

⁴⁵⁵ *ibid*, art. 5.

⁴⁵⁶ EC, European Parliament, Cox, *Second Report on behalf of the Committee on Economic and Monetary Affairs and Industrial Policy on the proposal from the Commission to the Council for a decision on the attainment of progressive convergence of economic performance during stage one of Economic and Monetary Union (COM(89) 466 -c3-182/89)*, 31 January 1990, doc A3-21/90.

⁴⁵⁷ EC, *Opinion on the proposal for a Council Decision...* *op.cit.*, 48.

⁴⁵⁸ EC, *Council Decision of 12 March 1990 on the attainment of progressive convergence of economic policies and performance during stage one of economic and monetary union (90/141/EEC)*, OJ L 78, 24 March 1990, 23-24.

Of crucial importance, the strengthening of the coordination of economic and monetary policies could not favour the achievement of the EMU on a standalone basis. As stated in paragraph 18 of the Delors Report, this requested to elaborate a new Treaty that would confer additional competences to the Communities. It should be observed in that regard that following the meeting of Finance Ministers of September 1989 convened in Antibes, which led to the prohibition of monetary financing,⁴⁵⁹ discussions on the new Treaty were held during the preparations of the Intergovernmental Conferences of late 1990. Particularly noteworthy was the parliamentary effervescence surrounding both the design of the EMU and the Intergovernmental Conferences preparations⁴⁶⁰ and notably on 11 October 1989 when questions from Members of the European Parliament on the ECB, and also on monetary sovereignty and the future single currency, punctuated the preparatory period of the first phase.⁴⁶¹

The preparatory period of the first phase was of the utmost importance for launching the technical process aiming to achieve the EMU. In particular, the technical anticipation of economic and monetary policy convergence, through the adoption of the two Council Decisions and of Directive 88/361/EEC,⁴⁶² favoured the realization of the first-phase objectives. Naturally, the unofficial commencement of the first phase invites devotion of special attention on the official one, starting from 1 July 1990.

b. Intergovernmental Conferences Preparations

Although the first phase aimed to foster economic and monetary convergence, and also to enshrine the EMU in a new Treaty, it nonetheless required further considerations. In that respect, this necessity was pointed out by Delors who, on 25 October 1989, estimated that further details should be released in late 1990.⁴⁶³

⁴⁵⁹ EC, *Débat du Parlement Européen...* op.cit., n°3-382/124, 135.

⁴⁶⁰ EC, Parlement Européen, Herman, *Question orale (O-0056/89) de MM. Herman et autres au nom du groupe du Parti populaire européen au Conseil : Union économique et monétaire*, 11 octobre 1989, H-HAEU, PE3-101820 ; Giscard d'Estaing, *Question orale (O-0035/1989) de MM. Giscard d'Estaing et autres, au nom du groupe libéral, démocratique et réformateur, à la Commission : Les perspectives de la mise en œuvre des trois étapes de l'union économique et monétaire suite à la réunion des ministres des Finances de la Communauté les 9 et 10 septembre 1989*, 11 octobre 1989, GDE-HAEU, PE3-10799 ; Colajanni, *Question orale (O-0050/89) de M. Colajanni au nom du groupe pour la Gauche Unitaire Européenne au Conseil : Union économique et monétaire*, C-HAEU, PE3-10814.

⁴⁶¹ EC, Parlement Européen, de la Malene, *Question orale (O-0085/89) de M. de la Malene au nom du groupe du rassemblement des démocrates européens au Conseil : Union économique et monétaire*, DLM-HAEU, PE3-10849 ; de la Malene, *Question orale (O-0086/89) de M. de la Malene au nom du groupe du rassemblement des démocrates européens au Commission : Union économique et monétaire*, DLM-HAEU, PE3-10850.

⁴⁶² EC, *Council Directive 88/361/EEC of 24 June 1988 for the implementation of Article 67 of the Treaty*, OJ L 178, 8 July 1988, 5-18.

⁴⁶³ EC, *Débat du Parlement Européen...* op.cit., n°3-382/124, 135-136.

These details were first disclosed in the Communication released by the Commission on 21 August 1990.⁴⁶⁴ Closely following the considerations developed in the Delors Report, the Commission Communication was not seminal for repeating the three-pillar structure of the first phase. Rather, it derives its significance for being the official contribution of the Commission to the preparation of the Intergovernmental Conferences. Interestingly, the considerations developed in the Communication seem to have been strongly influenced by an interim report of the European Parliament (“**Herman Report**”),⁴⁶⁵ which notably contained some points of divergence with the Delors Report.⁴⁶⁶ The valuable considerations developed in the Herman Report, and in its resolution,⁴⁶⁷ would not only influence the Commission Communication. In fact, it would also influence the revision of the TEC.⁴⁶⁸ In particular, as regards the competences of the ESCB, the prohibition of monetary financing and the coordination of economic policies.⁴⁶⁹

Notwithstanding these contributions from the European Parliament, it would surely be inappropriate to minimise those of the Commission that could not be reduced to its Communication of late August 1990. Indeed, the Commission undertook technical and conceptual analyses on the EMU through the release of different reports, such as the Christophersen Report. Announced by Delors on 25 October 1989, and released in October 1990, the Christophersen Report would constitute, in this early stage of the first phase, one of the most important contributions from the Commission.⁴⁷⁰ In particular, since it contributed to refine considerations developed in the Delors Report, in the Commission Communication of 21 August 1990, and provided clear analyses on the benefits of opting for a price stability objective.⁴⁷¹

In parallel to these significant contributions on the EMU, there were also those related to the preparation of the second Intergovernmental Conference on Political Union. The Commission, similarly than with its Communication of August 1990, contributed to the Intergovernmental

⁴⁶⁴ EC, Communication of the Commission, *Economic and Monetary Union*, 21 August 1990, SEC(90)1659.

⁴⁶⁵ EC, European Parliament, Herman, *Report of the Committee on Economic and Monetary Affairs and Industrial Policy on Economic and Monetary Union*, Part B: Explanatory statement – Opinion of the Committee on Budgets, 25 September 1990, A3-223/90/B, 14.

⁴⁶⁶ *idem*.

⁴⁶⁷ EC, European Parliament, Herman, *Report of the Committee on Economic and Monetary Affairs and Industrial Policy on Economic and Monetary Union*, Part A: Motion for a Resolution, 25 September 1990, A3-223/90/A.

⁴⁶⁸ CE, Parlement Européen, *Analyse comparative du traité d'Union économique et monétaire, approuvée lors du Conseil européen de Maastricht le 10 décembre 1991, et des résolutions du Parlement européen sur l'UEM adoptées respectivement a) le 10 octobre 1990 (résolution Herman), b) le 14 juin 1991 (résolution de juin) et c) le 24 octobre 1991 (résolution d'octobre)*, 17 décembre 1991, PE 155.062.

⁴⁶⁹ *ibid*, 4-6.

⁴⁷⁰ EC, *One market, one money: An evaluation of the potential benefits and costs of forming an economic and monetary union*, European Economy, October 1990, n°44.

⁴⁷¹ *ibid* 20.

Conference through an Opinion dated 21 October 1990.⁴⁷² Promoting the revision of the TEC, the Commission Opinion was articulated around four themes of crucial importance. In particular, it notably emphasized the necessity to establish a Single Community, with a strengthened institutional framework, vested with broader powers that would enhance its effectiveness. Specifically, this was to be realized by broadening the competences conferred upon the Community, by the insertion of the principle of subsidiarity, by a general balance between the institutions and eventually by refining the Community framework for public finances.⁴⁷³ On this point, it may be recalled that the necessity to strengthen the Community institutional framework was not a new idea. Indeed, this was already claimed a long time ago by the European Parliament which during these preparations presented the Colombo Report.⁴⁷⁴

The preparatory period of the first phase, along with that of the Intergovernmental Conferences, would greatly influence the drafting of a new Treaty. On 10 December 1990 and in light of the reports and documents above-mentioned, the Commission presented to the Intergovernmental Conference, convened on 4 December,⁴⁷⁵ a project for an ex-novo Treaty (“**Commission Non-paper**”).⁴⁷⁶

This presents an opportunity here for appreciating the intent of the authors of the ex-novo Treaty. Hence, special attention should be paid to the Commission non-paper. Indeed, serving as first working document, the Commission non-paper would be subject to numerous amendments that would eventually be reflected in the subsequent Treaty projects discussed in the Intergovernmental Conference.

2. *The Intent of the Authors of the Treaty of Maastricht*

The intent of the authors of the Treaties was partially shaped in the course of the Intergovernmental Conference on the EMU (a). The latter led to the adoption of a revision version

⁴⁷² EC, *Commission Opinion of 21 October 1990 on the proposal for amendment of the Treaty establishing the European Economic Community with a view to Political Union*, COM (90) 600, 21 October 1990.

⁴⁷³ *ibid*, 21-25.

⁴⁷⁴ EC, European Parliament, Colombo, *Second Interim Report on the Committee on Institutional Affairs on the constitutional basis of European Union*, 22 November 1990, PE 144.344/fin.

⁴⁷⁵ Conférence des Représentants des Gouvernements des Etats Membres – Union Economique et Monétaire, *Compte-rendu sommaire de la première réunion au niveau ministériel des la Conférence des représentants des gouvernements des Etats membres*, 19 décembre 1990, CONF-UEM 1601/90.

⁴⁷⁶ CE, Commission, *Projet de Traité portant révision du Traité instituant la Communauté Economique Européenne en vue de la mise en place d'une Union Economique et Monétaire*, document de travail, 10 décembre 1990, SEC (90) 2500, 4.

of the TEC, that enshrined the separation of monetary policy from general economic policies of the Member States **(b)**.

a. The Intergovernmental Conference on the EMU

A few days before the inaugural opening of the Intergovernmental Conference, the Commission presented its *Projet de Traité portant révision du Traité instituant la Communauté Economique Européenne en vue de la mise en place d'une Union Economique et Monétaire*.⁴⁷⁷ The first draft policy response since the resolution of 14 September 1983 and of the SEA failure,⁴⁷⁸ the Commission non-paper would constitute one of the most important working documents until mid-April 1991. Therefore, without neglecting the influence of the Herman Report and of the Commission Communication, special attention should be given to the main provisions of the Commission non-paper.

After proposing to substitute the European Communities for a « *Communauté Européenne* », ⁴⁷⁹ already suggested in the Opinion of 21 October 1990,⁴⁸⁰ the Commission non-paper proposed to revise Article 2, enumerating the missions of the EEC, to better reflect the EMU.⁴⁸¹ In that context, the Commission proposed, on the basis of social development, a common currency and eventually a common security and foreign policy, that the Community should progressively establish the EMU.⁴⁸² Deemed to evolve in the Intergovernmental Conference on Political Union,⁴⁸³ the proposed revised missions naturally influenced the revision of its actions. In particular, the Commission non-paper proposed to amend Article 3 by including a subparagraph (g), related to the establishment of a common economic policy, and (g)bis related to the monetary policy of the Community. Influenced by the Delors Report, as regards the objectives of the single monetary policy, and by the Deist Report with respect to the definition of a common economic policy,⁴⁸⁴ the proposed amendments of Article 3 would influence the revision of the second title of the third part of the TEC.

⁴⁷⁷ *idem*.

⁴⁷⁸ EC, *Resolution concerning the substance of the preliminary draft Treaty establishing the European Union*, 14 September 1983, OJ C 277, 17 October 1983, 95-117.

⁴⁷⁹ CE, Commission, *Projet de Traité portant révision du Traité instituant...*op.cit Art. 1.

⁴⁸⁰ EC, *Commission Opinion of 21 October 1990...*op.cit 11-12.

⁴⁸¹ CE, Commission, *Projet de Traité portant révision du Traité instituant la Communauté Economique Européenne en vue de la mise en place d'une Union Economique et Monétaire*, Commentaires, document de travail, 10 décembre 1990, SEC (90) 2500/2, 2-3.

⁴⁸² CE, Commission, *Projet de Traité portant révision du Traité instituant...*op.cit Art. 2.

⁴⁸³ CE, Commission, *Projet de Traité portant révision*, Commentaires...op.cit 2.

⁴⁸⁴ CEE, Deist, ...op.cit., D-HAEU, PE0-135, para 10, see footnote 1.

In that context, and in the light of the proposed Article 3(g), some interesting proposals from the Commission non-paper, related to Chapter I ‘*La politique économique*’, should be mentioned. Under Article 103(1) TEC, Member States should consider their conjuncture policy as of “common interest”. However, it failed to provide any definition, nor any explanations, for this expression. In that respect, the Commission non-paper proposed to revise Article 103(1) by including two new subparagraphs which, under the multilateral surveillance framework of Council Decision 74/120/EEC, would provide for a control of conjuncture policies. These revision propositions related to economic policy provisions were not exclusive to Article 103.

Indeed, apart from proposed revisions to Article 102B C and D, the Commission suggested to include two new provisions, Articles 104 and 104A. Those Articles stipulated the prohibition for both monetary financing and for guarantees from the Community on Member States public debts. Of utmost importance, the prohibition of monetary financing, as proposed under Article 104, should nonetheless be read in conjunction with Article 106A included in a newly proposed Chapter 2 entitled ‘*La politique monétaire*’. In particular, and later analysed in Gauweiler, the Commission explained that the prohibition stated in Article 104 should not prohibit the Eurofed from purchasing public debt instruments if realized within the single monetary policy framework and on the secondary markets.⁴⁸⁵ Although the Commission non-paper could not foresee that its monetary financing explanations would later be subject to legal tensions before the CJEU, it nonetheless markedly enriched the provisions related to the new chapter on monetary policy. This assertion can be illustrated through the proposition to include a new Article 105, related to the single monetary policy, or with Article 106B enumerating the functions and tasks of the Eurofed. It is of note that the Commission non-paper provides for neither a definition of the single monetary policy or for an appropriate monetary strategy. Nonetheless, it provided in Chapter 5 some insights related to monetary policy for the second phase.

Naturally, the propositions formulated in the Commission non-paper received great consideration from Member States. This was until the Luxembourgish Presidency presented, on 15 April and 18 June 1991, and then by the Dutch Presidency on 26 August and 28 October 1991, new projects for an ex-novo Treaty.⁴⁸⁶ The Dutch Presidency project should be perceived as the consensus of

⁴⁸⁵ CE, Commission, *Projet de Traité portant révision*, Commentaires...op.cit 16, To note that the Eurofed is the first expression of the Commission referring to the ESCB.

⁴⁸⁶ Conference of the Representatives of the Governments of the Members States – Economic and Monetary Union –The Presidency, *Proposal by the Presidency to the Intergovernmental Conference on Economic and Monetary Union*, 28 October 1991, UEM/82/91.

Member States' positions on the Commission non-paper. A consensus that started from the inaugural opening of the Intergovernmental Conference by Ireland on 10 January 1991.⁴⁸⁷

Subscribing to the Commission non-paper proposals related to the single monetary policy,⁴⁸⁸ Ireland nonetheless emphasized the need to strengthen coordination of economic policies by prohibiting monetary financing and bail-out.⁴⁸⁹ Naturally, while many proposed amendments related to Articles 103 to 106, Member States also expressed their positions on the objectives and missions of the Single Community, in particular, the proposals formulated by Portugal and France on Article 2,⁴⁹⁰ slightly amending the Commission non-paper proposition, from which Ireland proposed not to depart much.⁴⁹¹ Similarly, in the same session of 15 January 1991, Germany proposed to include a new Article 3(a), providing the ECB with the objective of currency stability only,⁴⁹² while the UK proposed to replace Article 3(g) with "The progressive realisation of the economic and monetary union."⁴⁹³ Logically, these proposed amendments, regarding Articles 2 and 3, significantly influenced those related to the third part of the Commission non-paper.

In that respect, there were a certain number of amendments related to monetary financing, as proposed under Article 104A. Of particular note is the Irish Proposal, referring to the Commission non-paper commentaries on Article 106A,⁴⁹⁴ to refine Article 104A to allow overdraft facilities at commercial terms in the event of liquidity shortage.⁴⁹⁵ In the same vein, the UK's proposition was to strengthen Article 104 by enlarging concerned public entities and to avoid excessive budgetary deficit.⁴⁹⁶ This budgetary deficit request was directly linked to the multilateral surveillance programme, of Council Decision 74/120/EEC, as provided in Article 103. On this point, Article

⁴⁸⁷ Conference of the Representatives of the Governments of the Member States – Economic and Monetary Union – Ireland, Reynolds, *Statement on Ireland's Opening Position and Amendments proposed by Ireland to Title V of Single European Act*, 10 January 1991, CONF-UEM 1604/91.

⁴⁸⁸ *ibid* 5.

⁴⁸⁹ *ibid* 6.

⁴⁹⁰ Conference of the Representatives of the Governments of the Member States – Economic and Monetary Union – Portugal, *Proposal by the Portuguese Delegation*, 15 January 1991, UEM/2/91, p.1 and France, *Proposal by the French Delegation*, 15 January 1991, UEM/3/91.

⁴⁹¹ Conference of the Representatives of the Governments of the Member States – Economic and Monetary Union – Ireland, *Proposal by Ireland for amendments to Article 2 of EEC Treaty*, 15 January 1991, UEM/5/91.

⁴⁹² Conference of the Representatives of the Governments of the Member States – Economic and Monetary Union – Germany, *Proposal by the German Delegation*, 15 January 1991, UEM/4/91.

⁴⁹³ Conference of the Representatives of the Governments of the Member States – Economic and Monetary Union – United-Kingdom, *Articles 2, 3 and 4 - Proposals by the United Kingdom delegation*, 15 January 1991, UEM/9/91, 2.

⁴⁹⁴ CE, Commission, *Projet de Traité portant révision*, Commentaires...op.cit 13.

⁴⁹⁵ Conférence des Représentants des Gouvernements des Etats Membres - Union Economique et Monétaire - Irlande, *Article 104A – Proposition de la délégation irlandaise*, 4 février 1991, UEM/17/91 ; Irlande, *Proposition de modification des documents UEM 15/9 et UEM 18/91 – Délégation Irlandaise*, 19 février 1991, UEM/25/91, 3.

⁴⁹⁶ Conférence des Représentants des Gouvernements des Etats Membres - Union Economique et Monétaire - *Proposition de modification des articles 103 et 104 du document*, UEM/18/91 - Délégation du Royaume-Uni, 19 février 1991, UEM/24/91, 2.

103 received great attention from Member States, which submitted many amendments on conjuncture policy coordination. Interestingly, some amendments proposed to substitute “economic policies” to “conjuncture policy” of the Member States. This substitution may be illustrated with the proposition formulated by Greece where, under Article 103, Member States should consider their economic policies as of common concern and to coordinate them within the Council.⁴⁹⁷ Similarly, the UK proposed to include a new second subparagraph vesting the Council with the task of establishing, on the basis of the coordination provided in Article 103(1), an economic policy framework.⁴⁹⁸

Naturally, amendments on the economic policy provisions proposed by the Dutch Presidency⁴⁹⁹ were further considered in early September 1991 where the *Chairman of the Personal Representatives* proposed to substantially amend Title VI ‘Economic and Monetary Policy’.⁵⁰⁰ Gathering Member States’ positions on Articles 103 and 104,⁵⁰¹ the amendments proposed by the *Chairman of the Personal Representatives* not only concerned economic policy provisions but also internal monetary policy. In particular, in another document, it submitted amendments on most of the provisions of the draft Statute of the ESCB.⁵⁰² Nonetheless, barely any Member States submitted amendments on the objectives, nor on their articulation, of the ESCB. Complemented with the amendments submitted during the Intergovernmental Conference on Political Union, these amendments would naturally influence the Treaty project presented to the European Council, convened on 9, 10 and 11 December 1991, in Maastricht.⁵⁰³

Interestingly, it could be attempted to circumscribe the intent of the authors of the Treaties from the Commission non-paper to the Dutch Presidency Treaty project that has been adopted by the

⁴⁹⁷ Conférence des Représentants des Gouvernements des Etats Membres - Union Economique et Monétaire – Grèce, Proposition de modification de l'article 103 du document UEM/18/91 – Délégation Grecque, 19 février 1991, UEM/23/91, 1-2.

⁴⁹⁸ Conférence des Représentants des Gouvernements des Etats Membres - Union Economique et Monétaire - Proposition de modification des articles 103 et 104...op.cit 1.

⁴⁹⁹ CE, Présidence Luxembourgeoise, *Projet de Traité sur l'Union*, 18 juin 1991, CONF-UP-UEM2008/91. This refers to the Luxemburgish non-paper, presented to the intergovernmental conferences on 10 May 1991 and mostly dealing with amendments related to the Political Union. For comments on the Luxemburgish non-paper see Conférence Intergouvernementale, *Commentaires sur le projet de traité élaboré par la Présidence luxembourgeoise* (finalisés en date du 30/07/1991), 30 juillet 1991, no reference (DORIE).

⁵⁰⁰ Conference of the Representatives of the Governments of the Member States – Economic and Monetary Union – Chairman of the Personal Representatives, *Draft Treaty texts concerning Economic Policy (Art. 102A – 104A) and External Monetary Policy (Art. 109)*, 6 September 1991, UEM/60/91.

⁵⁰¹ *ibid* 2-5.

⁵⁰² Conference of the Representatives of the Governments of the Member States – Economic and Monetary Union – Chairman of the Personal Representatives, *Internal Monetary Policy, the Statute of the European System of Central Banks and the Institutional aspects of EMU*, 6 September 1991, UEM/59/91.

⁵⁰³ Conférence des Représentants des Gouvernements des Etats Membres - Union Politique et Union Economique et Monétaire –, *Projet de Traité sur l'Union Européenne*, 18 décembre 1991, CONF-UP-UEM 2017/91.

European Council on 10 December 1991. In particular, apart from a few amendments submitted by some Member States, provisions related to the single monetary policy were less considered than those related to economic policy. This particular attention of the authors of the Treaties could have potentially resulted from the difficulty to define a common economic policy for the Community, a former issue discussed by van Campen in 1958.⁵⁰⁴ Furthermore, in proposing to include a new chapter on monetary policy, the authors of the Treaties intended to propose an original articulation of monetary and economic policies where the former would be de jure but not de facto dissociated from the latter. This original articulation, crystallized in the price stability objective of the ESCB, undefined and not apprehended in the Intergovernmental Conference, would be definitively enshrined in the TEC 1992.

b. The Treaty of Maastricht or the Separation of Monetary from Economic Policies

Rather technical, the economic and monetary provisions of the TEC 1992 (i), legally differentiated monetary from and economic policies. Logically, this would be enshrined into secondary legislation by the end of the first phase (ii).

i. Dissociating the Indissociable

Entering into force on 1 November 1993,⁵⁰⁵ the revised version of the TEC irreversibly modified the economic and monetary framework of the Community. Inasmuch as it legally disentangled monetary and economic policies, special attention should be given to its economic and monetary provisions.

In that respect, Article 2 provided the Community, through establishing a common market and an economic and monetary union, with the missions of harmoniously promoting a balanced development of economic activities, sustainable and non-inflationary growth, a high degree of economic performance, a high level of employment and of social protection, the raising of living standards, economic and social cohesion, and finally, solidarity among Member States. Assuredly broader than Article 2 of the TEC, these missions were further explained in Article 3 which enumerated the activities of the Communities. Interestingly, Commission non-paper propositions for Articles 3(g) and 3(g)bis were not included in the TEC 1992 but were subject to a specifically dedicated Article 3(a). In that respect, it must be noted that the TEC 1992 included a slightly revised version of the Dutch Presidency project by including the exchange-rate policy in Article 3a(2).

⁵⁰⁴ CEE, van Campen, ...op.cit., VC-HAEU, PE0-25.

⁵⁰⁵ Treaty on European Union, OJ C 191, 29 July 1992.

Furthermore, these economic and monetary activities, which were to be compliant with principles provided in Article 3a(3), were further considered in Title VI 'Economic and Monetary Policy'.

Unlike the TEC enumerating in its second title the different components of an economic policy, the TEC 1992 considered coordination of economic policies more cautiously in Articles 102a to 104c. In particular, in Article 102a TEC 1992 provided that, in the context of the Council broad economic guidelines, Member States should conduct their economic policies with the view of achieving objectives of the Community. It is of note that unlike Article 103A proposed in the Commission non-paper, though in line with the Treaty project of the Dutch Presidency, the TEC 1992 substituted the unexplained expression "of common interest" for "as matter of common concern". Nonetheless, this substitution should not be perceived as weakening the coordination of economic policies. More specifically, this expression should be read in conjunction with Article 103(1) referring to Article 102a itself referring to Articles 103(2), and with Article 103(3) related to the adoption of recommendations in the event of departure from the Council broad economic guidelines.

Naturally, these provisions were to be complemented with Article 104, aligned with the Article 106A proposed in the Commission non-paper that prohibits monetary financing. It is important to note that Article 104 reflected the Commission non-paper commentaries related to the possibility for the ECB to purchase, on secondary market only, instruments of public debt from Member States. Similarly, the TEC 1992 also included in Article 104b the prohibition of bail-out. Logically, these provisions on economic policy were complemented, in a separate chapter, with those related to the single monetary policy.

Established under Article 4, the ESCB was vested, pursuant to Article 105(1), with the primary objective of price stability and, without prejudice to the latter, to support the general economic policies in the Community to achieve objectives stated in Article 2. Furthermore, the ESCB was vested with four basic tasks, stated in Article 105(2), the first one being "to define and implement the monetary policy of the Community". Interestingly, neither the TUE, nor the Commission non-paper comments nor the Statute of the ESCB specified this first basic task of the ESCB. Thus conferring the ESCB with large, but not unjustified, discretion in conducting the single monetary policy. This discretion in the monetary policy arbitrages operated by the ESCB was complemented with the principle of independence of the ESCB enshrined in Article 107. Naturally, the missions and tasks operationalization of the ESCB, were synonyms of significant institutional changes for

which both the TEC 1992, in Articles 109a to 109d, and the Statute of the ESCB (“**Protocol 3**”) provided for.

In that regard, it is of note that the TEC 1992 provided, pursuant to Article 109f, that a European Monetary Institute (the “**EMI**”) should be established on 1 January 1994. Apart from being vested with the tasks of furthering both cooperation among Central banks and coordination of monetary policies, the EMI was above all in charge of preparing the third stage of the EMU. Interestingly, pursuant to Article 109f(3), the preparation of the third stage requested the EMI to “prepare the instruments and the procedures necessary for carrying out a single monetary policy in the third stage;” by 31 January 1996. Eventually, these missions and tasks were further explained in the Protocol, on the statute of the European Monetary Institute (“**Protocol 4**”).

Complemented with Protocol 3, providing for rules and operations related to the functioning of the ESCB, the TEC 1992 profoundly changed the economic and monetary framework formerly provided under the TEC. However, in doing so, the authors of the Treaties dissociated the indissociable: monetary policies from economic policies. Indeed, by transferring Member States’ monetary sovereignty to the Community, for which the ECB should act on behalf of, the TEC 1992 dissociated, but not isolated, monetary policy from other economic policy components. Apparent through two distinct chapters in Title VI, this distinction was naturally emphasized by the independence of the ESCB, provided in Article 107, and by prohibitions stated in Article 104 to 104c.

Although dissociated, monetary policy was nonetheless not isolated from other economic policy components. In particular, by providing that the ESCB shall support general economic policies of the Community, without prejudice to its primary objective, the TEC 1992 irremediably linked the single monetary policy with the coordination of economic policies. Indeed, this second objective was influenced by Article 3(a)(1) that provides for close coordination of economic policies based on the common objectives defined in the broad economic guidelines. This influence was nuanced with the independence granted to the ESCB in conducting the single monetary policy. However, and very importantly, neither the TEC 1992, nor Protocol 3, provided a definition of the single monetary policy, let alone a monetary strategy.

Relatively complex, as it enshrined a de jure but not de facto difference between monetary and economic policy, Title VI of the TEC 1992 was subject to secondary legislation in late 1994.

ii. Secondary Legislation: Clarifying the Intent of Authors

Foreseeing complexities for transitioning to the second phase, the European Council, convened on 21 and 22 June 1993 in Copenhagen, invited the Commission to

(...) present proposals on all the necessary implementing measures relating to the second stage of Economic and Monetary Union, so that they can be adopted by the Council as soon as possible after entry into force of the Treaty and before 1 January 1994.⁵⁰⁶

Since the Commission proposals should pass through all steps of the legislative process in a short time frame, comprised between 1 November 1993 and 1 January 1994, the latter presented on 22 July 1993 its Communication on secondary legislation for the second stage of Economic and Monetary Union.⁵⁰⁷

By proposing three draft regulations and one Council Decision, the Commission Communication not only aimed to prepare the transition towards the second phase. In fact, it also aimed to specify the meaning of some complex provisions, as for Article 104 TEC 1992. In that respect, the Commission highlighted the risk of circumventing Article 104 with outright purchases on secondary markets in Recital 4 of the draft regulation.⁵⁰⁸ To avoid any circumvention of the ban on monetary financing, the Commission proposed to further regulate it. More specifically, it proposed to do so by allowing secondary market purchases if “(...) such transactions are conducted solely for the purpose of implementing monetary policy (...)”.⁵⁰⁹ Of similar nature to the Commission non-paper commentary on Article 106A, this proposition nonetheless raises some doubts regarding its efficacy. Indeed, this second condition was linked to the implementation of the single monetary policy. However, the latter was still not defined.

The definitions regarding the prohibitions provided in Articles 104 and 104b(1) should nevertheless not be viewed on a standalone basis. Instead they should be appreciated in conjunction with the second draft regulation proposal related to the prohibition included in Article 104a TEC 1992.⁵¹⁰ In that regard, the Commission proposed, in Article 1, to define the expression “any measure

⁵⁰⁶ European Council, *Conclusions of the Presidency*, 21-22 June 1993, Copenhagen, 8.

⁵⁰⁷ *Communication from the Commission to the Council and the European Parliament on Secondary legislation for the second stage of Economic and Monetary Union*, 22 July 1993, COM (93) 371 final.

⁵⁰⁸ *Proposal for a Council Regulation specifying definitions for the application of the prohibitions referred to in Articles 104 and 104b(1) of the Treaty establishing the European Community*, in *Communication from the Commission...* op.cit... COM (93) 371 final, 9.

⁵⁰⁹ *idem* Art. 2.

⁵¹⁰ *Proposal for a Council Regulation specifying definitions for the application of the prohibition of privileged access referred to in Article 104a of the Treaty establishing the European Community*, in *Communication from the Commission...* op.cit... COM (93) 371 final 13-20.

establishing privileged access”. For the Commission, such expression should be understood as “(...) any law, regulation or other measure which is not in accordance with the principle of an open market economy with free competition (...)” Lastly, these definitions, which aimed to provide market stability by avoiding any undue intervention from the Community or its Member States, were complemented with several other proposals – first with a third draft regulation related with government deficit,⁵¹¹ and then with a draft Council Decision on financial resources of the EMI.⁵¹² The propositions of the Commission Communication, along with those related to the EMI advisory function and included in the Commission Communication of 22 September 1993,⁵¹³ were rapidly discussed by the Council and the European Parliament. As regards the latter Institution, the *Commission on Economic and Monetary Affairs and Industrial Policy* released two reports on 30th November 1993 related to the propositions formulated by the Commission on Articles 104, 104a and 104b(1).⁵¹⁴ More precisely, the Randzio-Plath Report proposed amendments tightening the definition of privileged access, while the Bofill-Abeilhe Report recommended to amend Article 2 of the draft regulation on Articles 104 and 104b(1) in order to specify the related prohibitions.⁵¹⁵ These modifications which naturally departed from the proposal of the Commission were eventually included in the final version of the Council Regulation of 13 December 1993.⁵¹⁶ Interestingly, the considerations on secondary market purchase to not circumvent Article 104 were no longer included in an Article but in Recital 7 of the regulation.

In the light of the foregoing it can be seen that the first phase dramatically changed the economic and monetary framework of the Community. It is noteworthy that it also contributed to clarify the

⁵¹¹ *Proposal for a Council Regulation on the application of the provisions of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community*, in *Communication from the Commission...* op.cit... COM (93) 371 final, pp. 21-26

⁵¹² *Proposal for a Council Decision on the establishment of the key for the financial resources of the European Monetary Institute*, in *Communication from the Commission...* op.cit... COM (93) 371 final, 35-41.

⁵¹³ *Draft proposal for a Council Decision on the consultation of the European Monetary Institute by the authorities of the Member States on draft legislative provisions*, in *Communication from the Commission to the Council and the European Parliament on Secondary legislation for the second stage of Economic and Monetary Union: Further proposals*, 22 September 1993, COM (93) 436 final; see also European Parliament, Beumer, *Rapport de la commission économique, monétaire et de la politique industrielle sur la proposition de la Commission au Conseil relative à une décision concernant la consultation de l'Institut monétaire européen par les Etats membres au sujet de projets de dispositions législatives*, 5 novembre 1993, A3-0341/93.

⁵¹⁴ European Parliament, Bofill Abeilhe, *Recommendation for the second reading of the common position adopted by the Council with regard to the adoption of a regulation specifying definitions for the application of the prohibitions referred to in Article 104 and 104b(1) of the Treaty establishing the European Community*, 30 November 1993, A3-0382/93; Randzio-Plath, *Draft recommendation for the second reading on the common position established by the Council with a view to the adoption of a regulation specifying definitions for the application of the prohibition of privileged access referred to in Article 104a of the Treaty establishing the European Community*, 30 November 1993, A3-0383/93.

⁵¹⁵ Randzio-Plath, *Draft recommendation for the second reading...* op.cit., A3-0383/93, 5 (see pt. 2); Bofill Abeilhe, *Recommendation for the second reading of the common position...* op.cit A3-0382/93, 5.

⁵¹⁶ *Council Regulation No 3603/93 specifying definitions for the application of the prohibitions referred to in Articles 104 and 104b(1) of the Treaty*; *Council Regulation No 3604 of 13 December 1993 specifying definition for the application of the prohibition of privileged access referred to in Article 104a of the Treaty*, OJ L 332, 31 December 1993, 1-6.

intent of the authors of the Treaties by adopting secondary legislation pertaining to Article 104, 104a and 104b(1) TEC 1992. However, as previously mentioned, the first phase did not provide any information on the single monetary policy. In fact, the latter was to be defined in the course of the second phase.

B. Conceptualizing the Single Monetary Policy (1994–1998)

Aiming to prepare the transition to the last phase, the second phase of the EMU prepared, through the technical action of the European Monetary Institute (a), the operational setting of the ECB and of the ESCB (b).

1. Conceptualizing the Single Monetary Policy

The EMI was tasked with preparing the conditions necessary to establish the ESCB (a), including its monetary strategy (b).

a. The European Monetary Institute

Dissolving the *Committee of Governors of the Central Banks of the Member States of the EEC*, thus relocating European monetary policy decisions in Frankfurt and no longer in Basel, as previously proposed by the Donnelly Report in 1989,⁵¹⁷ the EMI presented original institutional features specified in the Protocol on the Statute of the EMI annexed to the TEC 1992.

In the light of Protocol 4 TEC 1992, referring to Article 109f, one may observe that the EMI had an institutional framework relatively similar to this of the future ESCB. More specifically, pursuant to Article 109f(1), the EMI was managed by a Council. The latter was composed of a President, appointed for a three-year period by the Member States, a Vice-President and the Governors of the NCBs. Similarly to Article 130 TFEU for the ECB, the Council of the EMI was independent under Article 8 of Protocol 4. Moreover, it was to be convened at least ten times a year, as provided in Article 10, and could adopt three types of legal acts pursuant to Article 15. More specifically, the EMI could adopt opinions, recommendations and guidelines related to the preparation of the third phase. Although of non-legally binding nature, opinions and recommendations addressed by the EMI were nonetheless to be appreciated within the context of Article 5 of Protocol 4 related to its advisory function. Indeed, pursuant to Article 109f TEC 1992 and specified in Decision

⁵¹⁷ Donnelly, ...op.cit., doc A3-87/89, 10 (see amendment n°13).

93/717/EC,⁵¹⁸ the EMI was conferred an advisory function on the conduct of monetary policies by Member States and their related effects. It is of note that this advisory function also encompassed any legislative proposals falling within the competence of the EMI.

In that respect, the EMI was to act in accordance with Article 2 of Protocol 3, providing its objectives, and carrying out the tasks provided in Articles 109f of TEC 1992 and 4 of Protocol 4. The tasks and missions conferred on the EMI were classified in two categories. Although monetary policy remained an exclusive competence of the Member States, the EMI was nonetheless tasked with favouring their coordination via its advisory and consultations functions. Additionally, pursuant to Article 4.2, the EMI was conferred different tasks related to the preparation stage of the ESCB. More specifically, the latter was notably to “prepare the instruments and the procedures necessary for carrying out a single monetary policy in the third stage” together with “the rules for operations to be undertaken by the national banks in the framework of the ESCB”. As one may observe, these last two tasks were of fundamental importance inasmuch as they pertained to the definition of the single monetary policy. However, this does not mean that the EMI was not accountable in that regard. Similarly to Article 11.3 of Protocol 4, the EMI was also to report on the preparation stage of the EMI pursuant to Article 7.2.

b. Monetary Strategies for the Single Monetary Policy

Conceptualizing the single monetary policy which would later be conducted by the ECB, or rather preparing several monetary policy strategies to be potentially adopted by the latter, was not an easy task, let alone given the absence of a quantitative definition of its primary objective. The definition of the single monetary policy rapidly raised some considerations, concerns and contributions. In that regard it is interesting to observe that the first considerations on the single monetary policy were not formulated by the EMI, which was to report annually under Article 7.1 of Protocol 4. In fact, they were released by the *Commission on Economic and Monetary Affairs and Industrial Policy* of the

⁵¹⁸ Council Decision of 22 November 1993 on the consultation of the European Monetary Institute by the Authorities of the Member States on draft legislative provisions, OJ L 332, 31 December 1993, 14-15, see also Parlement Européen, Beumer, *Rapport de la commission économique, monétaire et de la politique industrielle sur la proposition de la Commission au Conseil relative à une décision concernant la consultation de l'Institut monétaire européen par les autorités des Etats membres au sujet de projets de dispositions législatives*, 5 novembre 1993, A3-0341/93.

European Parliament. On 27 April 1994, the latter presented a report (“**Fourçans Report**”), later turned into a resolution,⁵¹⁹ related to the objectives and instruments of the single monetary policy.⁵²⁰

Articulating its “views”⁵²¹ around the objective of price stability, for which it notably pointed out that « (...) *un taux d’inflation allant jusqu’ à 2% peut être considéré comme correspondant à la stabilité des prix*”⁵²² the Fourçans Report emphasized the absence of information provided in Protocol 3 of the TEC 1992 on the monetary strategy of the Community.⁵²³ Acknowledging the difficulties of defining a monetary strategy, notably due to differences in monetary transmission channels between Member States,⁵²⁴ the Fourçans Report nonetheless attempted to analyse three of its components. In particular, the inclusion of an intermediary medium-term objective, to satisfy the primary objective of the ESCB, raised some interesting considerations. The Fourçans Report estimated that linking the objective of price stability with a medium-term objective, such as one monetary aggregate, would not only enhance the credibility of the single monetary policy but would also strengthen the independence of the ECB in the event of conflict with economic policy measures.⁵²⁵ This proposition was justified not only with the influence of economic policies (such as fiscal policies) but also with time-lags in monetary policy and exogenous shocks, on inflation level.⁵²⁶ Interestingly, by so proposing, the Fourçans Report inferred the inclusion of an intermediate monetary objective which would allow for distinguishing any monetary policy measures, decided under the primary objective, from economic policy measures. This first element of the single monetary policy was complemented with the analysis of the appropriate level of monetary strategy implementation.

Naturally, the position of the European Parliament did not depart much from the letter of the TEC 1992 and consequently, emphasized monetary policy decentralization. This decentralization at NCB level required the giving of special attention to the different types of instruments that could be implemented by the NCBs. Thus, after first recalling that Protocol 3 did not provide much on

⁵¹⁹ *Résolution sur les objectifs et instruments d’une politique monétaire*, OJ C 205, 25 juillet 1994, 510-511, see also Parlement Européen, Fourçans, *Rapport sur les objectifs et instruments d’une politique monétaire, Partie A : Proposition de résolution*, 27 avril 1994, A3-0319/94/Partie A.

⁵²⁰ Parlement Européen, Fourçans, *Rapport sur les objectifs et instruments d’une politique monétaire, Partie B : Exposé des motifs*, 27 avril 1994, A3-0319/94/Partie B.

⁵²¹ The Fourçans Report made clear that, in light of Article 8 of Protocol 4, it could not present recommendations to the EMI.

⁵²² *ibid* 2.

⁵²³ *idem*.

⁵²⁴ *ibid* 3.

⁵²⁵ *ibid* 3-4.

⁵²⁶ *ibid* 3.

the ESCB instruments, with the exception of Articles 18 and 19, the Fourçans Report analysed five conditions that should satisfy any ESCB instruments.⁵²⁷

It is important to note that some of these conditions, notably the one concerning the effectiveness, were to be considered at a later stage by the EMI when preparing the procedures and instruments necessary for the ESCB to conduct the single monetary policy. Although the European Parliament was limited to the presentation of some “views”, it nonetheless suggested important considerations for designing the monetary strategy of the Community. Indeed, while it informally suggested a quantified primary objective, hitherto undefined, the European Parliament went slightly further than solely presenting its views to the EMI. Nonetheless, its analysis on the inclusion of a monetary aggregate as intermediary objective, that could serve as distinctive feature from economic policy, found similar attention in late works of the EMI.

Tasked with preparing the instruments and procedures necessary for the ESCB to carry out the single monetary policy, as provided in Article 109f(3) TEC 1992, the EMI was, however, not conferred any task related to the definition of its concepts. Interestingly, the EMI suggested the contrary in its annual activity report that it submitted pursuant to Article 11.3 of Protocol 4. Indeed, in presenting a truncated version of Article 109f(3), the EMI stated that tasks related to the preparation of the third stage included, *inter alia*, “(...) the definition of the concepts and framework for conducting the single monetary policy and the preparation of the ESCB's operational rules and procedures.”⁵²⁸ This task did not lead the EMI to propose definitions of some complex concepts, as for price stability. Rather, it led the EMI to formulate monetary strategy proposals for the Community pursuant to Article 7.1 of Protocol 4. In that respect, the EMI presented, in early 1997, its seminal report entitled “The single monetary policy in Stage Three: specification of the operational framework’ where it analysed five monetary strategy proposals.⁵²⁹ In spite of its importance, special attention should instead be given to its background report released in February 1997.⁵³⁰

Considering that monetary policy strategy can be defined “(...) in broad terms, as the set of procedures according to which the central bank decides how to achieve its final objective, price

⁵²⁷ *ibid* 7.

⁵²⁸ EMI, Annual Report for 1994, 1 April 1995, 63.

⁵²⁹ Parlement Européen, Ettl, *Rapport sur le rapport de l'Institut monétaire européen intitulé « La politique monétaire en phase trois – Définition du cadre opérationnel »* 23 mai 1997, A4-0185/97. This report is mentioned by the European Parliament but is not publicly available.

⁵³⁰ EMI, *The Single Monetary Policy in Stage III: Elements of the monetary policy strategy of the ESCB*, February 1997.

stability”,⁵³¹ the EMI carefully analysed, in light of six criteria, two monetary strategies, out of the five proposed in January, that it deemed the most appropriate for the ESCB.⁵³² Although it acknowledged that both strategies would not provide different guidance to the ESCB,⁵³³ the EMI seemed nonetheless to have expressed a slight preference for monetary targeting over direct inflation targeting strategy. More specifically, in the light of the most important criterion, effectiveness, the EMI considered that direct inflation targeting would be less effective due to difficulties in medium-term inflation forecasting and controllability of the final objective.⁵³⁴ Although, the differences between both strategies may be blurred in light of the effectiveness criterion, it cannot be the case when considering the “Consistency with the independent status of the ECB” criterion. In that respect, the EMI developed some interesting considerations. In particular, it considered that monetary targeting strategy would strengthen ECB independence and, as a consequence, allow the latter to delimit its own competence. More precisely, the EMI expressed it as follows:

While there is, de jure, no difference between monetary and inflation targeting strategies in this respect, it can be argued that the risk of interference by the government in monetary policy could be greater if the central bank sets targets for inflation rather than for monetary growth: **by announcing the monetary constraints for other policies, the central bank underlines its own area of competence and thereby strengthens its independence.** In this respect, the view can be taken that monetary targeting might be particularly useful to support independence in an environment which is characterised by a decentralised decision-making process in public finance and other economic policies.⁵³⁵

Interestingly, by proposing to adopt an intermediary monetary aggregate, the EMI, in a similar fashion to in the Fourçans Report, inferred the necessity of implementing an indicator which, in the framework of the single monetary policy, could distinguish monetary policy measures from economic measures and thus strengthen the independence of the ECB. This proposition was extremely opportune since the concept of price stability was undefined and subject to influences from other segments of economic policy. Nonetheless, these monetary policy strategies were to be assessed, and eventually adopted, by the ECB when being established in mid-1998.

⁵³¹ *ibid* 1.

⁵³² *ibid* 6.

⁵³³ *ibid* 7.

⁵³⁴ *ibid* 8-9.

⁵³⁵ *ibid* 11(own bold emphasis).

2. Foundations of the Single Monetary Policy

Founded on a monetary policy framework (a), the single monetary policy was designed around a two-pillar strategy aiming at achieving the objective of price stability (b).

a. The ESCB Monetary Policy Framework

Based on primary law (i), the monetary policy framework of the ESCB was further completed the ‘General documentation on ESCB monetary policy instruments and procedures’ (ii).

i. Legal Aspects of the ESCB Monetary Policy Framework

Previously presented, the legal framework of the ESCB and of the ECB was enshrined in both the TEC 1992 and in its annexed Protocol 3. In that respect, the core ESCB legal framework was provided in Chapter II of Title VI where the ECB, pursuant to Article 106(2), was conferred legal personality. Hence, pursuant to Article 105(2), the ESCB was conferred four “basic tasks” among which was the definition and implementation of the single monetary policy. Of extremely technical nature, the definition of the single monetary policy was to be articulated around the ESCB primary objective of price stability. Although quantitatively undefined in the TEC 1992, the objective of price stability was provided in Article 105(1). Moreover, pursuant to the same Article, the ESCB was to support, without prejudice to its primary objective, general economic policies in the Community.

To perform the tasks and objectives stated in Article 105, and further explained in Articles 3.1, 19.1, 22 and 25.2 of Protocol 3, the ESCB could, by virtue of Article 108a, adopt four different types of legal acts. It should be observed that pursuant to Article 108a(2), the adoption of opinions and recommendations, of non-binding nature, and of decisions, does not impose any publication obligation to the ECB. Paradoxically, the absence of decision publication does not prevent the ECB, as provided in Article 108(3), to impose fines and penalties in the event of non-compliance. Naturally, the possibility for the ECB to adopt legal acts was complemented with its advisory function. As provided in Article 4 of Protocol 3, and in Council Decision 98/415/EC,⁵³⁶ the ECB was to be consulted for “any proposed Community act in its fields of competence” as well as for any draft legislation provisions from Member States which would pertain to its competences. Importantly, pursuant to Article 5 of Protocol 3, the ECB, assisted by NCBs, was tasked with

⁵³⁶ *Décision du Conseil du 29 juin 1998 relative à la consultation de la Banque centrale européenne par les autorités nationales au sujet de projets de réglementation*, JO L 189, 3 juillet 1998, 42-43.

collecting statistical information, and to harmonize such information, in order to duly perform the above-described tasks.

As the single monetary policy was a competence transferred to the Community, and while its implementation was conferred on NCBs, the realization of tasks and objectives conferred on the ESCB was embedded in an innovative institutional framework. In that respect, it must be observed that the ESCB should be governed, pursuant to Article 106(3), by two ECB decision-making bodies, namely, the Governing Council and the Executive Board. As regards the former, composed of members from the Executive Board and of NCBs' Governors, it must be noted that it is tasked with formulating the monetary policy of the Community. Importantly, it must be observed that pursuant to the same Article, the formulation of the monetary policy by the Governing Council also includes “(...) *as appropriate, decisions relating to intermediate monetary objectives, (...)*”.

Echoing with propositions from both the European Parliament and the EMI, the formulation of the monetary policy naturally involved its implementation by NCBs to attain the objective of price stability. In that respect, the action of the Executive Board complements that of the Governing Council. In particular, pursuant to Article 12.1 of Protocol 3, and on the basis of the Governing Council' guidelines and decisions, the Executive Board is charged with implementing the single monetary policy through instructions addressed to NCBs.

Naturally, the implementation of the single monetary policy required to provide the ESCB with the appropriate instruments of monetary policy. In that respect, as previously mentioned, neither the TEC 1992 nor Protocol 3 provided much on the different types of instruments that could employ the ESCB. On that point, pursuant to Article 18.1 of Protocol 3, the ESCB could either resort to open-market operations, via outright transactions, repurchase agreements and lending/borrowing of instruments, or to credit operations (standing facilities) based on adequate collateral. In addition, pursuant to Article 19 of Protocol 3, the ESCB could also require credit institutions to hold minimum reserves and eventually, pursuant to Article 20, adopt other instruments of monetary policy control.

Although providing some information on the ESCB monetary policy instruments, the TEC 1992, and Protocol 3, did not specify much on the ESCB monetary policy framework. However, in late 1998, a few months before being fully operational, the ECB presented its first general documentation.

ii. The General Documentation on ESCB Monetary Policy Instruments and Procedures

A few months following its establishment, on 16 September 1998, the ECB published its first annual ‘General documentation on ESCB monetary policy instruments and procedures’.⁵³⁷ Of fundamental importance, this documentation aimed to complement the applicable legal framework by specifying the ESCB monetary policy framework with a greater level of detail. While it did not provide any quantitative definition of price stability, nor did it present an appropriate monetary strategy), the ECB general documentation nonetheless provided further explanations on the ESCB monetary policy instruments. In particular, it specified the different monetary policy instruments provided in Articles 18 and 19 of Protocol 3.⁵³⁸

As regards open market operations, defined as “pursuing the aims of steering interest rates, managing the liquidity situation in the market and signalling the stance of monetary policy”, the ECB considered five instruments articulated around four types of operations. The latter are: (i) main refinancing operations, (ii) longer-term refinancing operations, (iii) fine-tuning operations and (iv) structural operations.⁵³⁹ The ECB considered repurchase agreements (“**repo**”) as both the main ESCB monetary policy instrument and the most universal one as it could be used for all operations.⁵⁴⁰ Furthermore, within the framework of fine-tuning or structural operations, the ESCB could also resort to outright operations in order to either provide or absorb liquidity in the markets.⁵⁴¹ Absorption of liquidity was nonetheless not exclusive of outright operations as it may also be performed through the issuance of ECB debt certificate or with foreign exchange swaps when respectively considered for structural and fine-tuning operations.⁵⁴² Eventually, when considered within the framework of fine-tuning operations, the ESCB could also absorb liquidity by collecting fixed-term deposits.

Considered in the first subparagraph of Article 18.1 of Protocol 3, open market operations were complemented with standing facilities provided in the second subparagraph. On that basis, the ESCB could use standing facilities either through marginal lending facilities, as to obtain temporary liquidity against eligible assets, or through the deposit facility.⁵⁴³ Importantly, as Article 18.1 of

⁵³⁷ ECB, *The Single Monetary Policy in Stage Three: General documentation on ESCB monetary policy instruments and procedures*, 16 September 1998.

⁵³⁸ *ibid* 4-6.

⁵³⁹ *ibid* 13.

⁵⁴⁰ *idem*.

⁵⁴¹ *ibid* 16.

⁵⁴² *ibid* 16-17.

⁵⁴³ *ibid* 21-22.

Protocol 3 provided that open market operations and standing facilities should be based on adequate collateral, the ECB proceeded to an eligible assets classification. In that respect, the ECB proposed to classify eligible assets either as Tier 1 assets, for which it itself determined eligibility criteria, or as Tier 2 assets for which NCBs determined eligibility criteria.⁵⁴⁴ While the ECB emphasized that no distinction on asset quality was made between these two categories, it nonetheless pointed out that Tier 2 assets could not be used for outright transactions.⁵⁴⁵ Eventually, pursuant to Article 19 of Protocol 3, the ESCB could require institutions to hold minimum reserves to both provide stabilization or money market interest rates and create liquidity shortage.⁵⁴⁶ Agreed by the Governing Council on 8 July 1998, the minimum reserves were subject to further specification from the ECB on 13 October 1998, among which there was a reserve ratio of 2% for some items.⁵⁴⁷

Particularly interesting as it provided clear explanations on ESCB monetary policy instruments, the ECB publication remained nonetheless paradoxical. Indeed, it released important information before the ECB adopted a monetary strategy and clarified the objective of price stability.

b. A Monetary Strategy for the Community

Following the presentation of its monetary policy framework, the ECB would design the single monetary policy around a quantitatively defined objective of price stability (i) and a related strategy (ii).

i. The Objective of Price Stability

A central element of the single monetary policy, as provided in Article 105 TEC 1992, the ESCB primary objective of price stability was not quantitatively defined until the establishment of the ECB. As previously mentioned, both the European Parliament, through notably the Fourçans Report,⁵⁴⁸ and the EMI pointed out the need to quantitatively define price stability. In particular, the EMI, when presenting the two potential monetary strategies for the Community, declared that “(...) it will be useful for the ESCB to announce to the public a definition of price stability, with a view to enhancing transparency and credibility”.⁵⁴⁹ Naturally, following the presentation of its first general

⁵⁴⁴ *ibid* 39.

⁵⁴⁵ *Idem*.

⁵⁴⁶ *ibid* 52.

⁵⁴⁷ ECB, *The use of a minimum reserve system by the European System of Central Banks in Stage Three; final specification*, press release, 13th October 1998; *Council Regulation (EC) No 2531/98 of 23 November 1998 concerning the application of minimum reserves by the European Central Bank*, OJ L 318, 27 November 1998.

⁵⁴⁸ Parlement Européen, A3-0319/94/Partie B...op.cit 2.

⁵⁴⁹ EMI, *The Single Monetary Policy in Stage III*...op.cit 12.

documentation, the ECB published, on 13 October 1998, a press release related to the monetary strategy for the Community.⁵⁵⁰

Releasing some information about the first and second pillars of the monetary strategy of the Community,⁵⁵¹ this press release provided, above all, important considerations on price stability, among which was its quantitative definition. In that respect, the Governing Council adopted the following definition: “Price stability shall be defined as a year-on-year increase in the Harmonised Index of Consumer Prices (HICP) for the euro area of below 2%.”⁵⁵² Rather laconic, the definition proposed by the ECB deserves some considerations. More particularly, as a first remark, it may be noticed that the use of HICP, as a price stability measure, did not come as a surprise. On 23 October 1995, the Council adopted a regulation aiming to harmonize indices of consumer prices.⁵⁵³ In particular, by defining HICP in Article 2 as “the comparable index of consumer prices produced by each Member State”, the Council Regulation notably aimed to compare inflation, in the view that “(...) to the achievement of economic and monetary union, a consumer price index will be needed for the Community as a whole”.⁵⁵⁴

To contribute to the attainment of the EMU, the adoption of HICP requested further statistical refinements which were rapidly implemented before the establishment of the ECB.⁵⁵⁵ Importantly, the HICP, while focusing on the euro area on a whole, was deemed to be the most appropriate price measure for maintaining price stability over the medium term.⁵⁵⁶ This mentioning of the medium term was, according to Angeloni and others, a clear partial reference to time-lags occurring in the implementation of the monetary policy.⁵⁵⁷ Although distinct from the monetary strategy,⁵⁵⁸

⁵⁵⁰ ECB, *A stability-oriented monetary policy strategy for the ESCB*, press release, 13 October 1998.

⁵⁵¹ Otmar Issing (ed), ‘The ECB and the Foundations of Monetary Policy’ in *The Birth of the Euro* (Cambridge University Press 2008) 99–100, Cambridge Core. Here Issing refers to the first Monthly Bulletin of the ECB which specifies on the press release of 13 October 1998.

⁵⁵² ECB, *A stability-oriented monetary policy strategy for the ESCB*...op.cit para 2.

⁵⁵³ *Council Regulation (EC) N° 2494/95 of 23 October 1995 concerning harmonized indices of consumer prices*, OJ L 257, 27 October 1997, 1-4.

⁵⁵⁴ *idem* recital 8.

⁵⁵⁵ *Commission Regulation (EC) No 1749/96 of 9 September 1996 on initial implementing measures for Council Regulation (EC) No 2494/95 concerning harmonized indices of consumer prices*, OJ L 229, 10 September 1996, pp. 3-10; *Commission Regulation (EC) No 2214/96 of 20 November 1996 concerning harmonized indices of consumer prices: transmission and dissemination of sub-indices of the HICP*, OJ L 296, 11 November 1996, pp. 8-29; *Commission Regulation (EC) No 2454/97 of 10 December 1997 laying down detailed rules for the implementation of Council Regulation (EC) No 2494/95 as regards minimum standards for the quality of HICP weightings*, OJ L 340, 11 December 1997, 24-25.

⁵⁵⁶ ECB, *A stability-oriented monetary policy strategy for the ESCB*...op.cit para 2.

⁵⁵⁷ Ignazio Angeloni and others (eds), ‘The ECB Strategy: Defining Price Stability’ in *Monetary Policy in the Euro Area: Strategy and Decision-Making at the European Central Bank* (Cambridge University Press 2001) 73, Cambridge Core.

⁵⁵⁸ *ibid* 65.

this objective of price stability was to be attained through a finely designed strategy for which the press release introduced some elements.

ii. The Two Pillars of the Monetary Strategy

The ECB press release of 13 October 1998 not only provided a quantitative definition of the ESCB primary objective of price stability but also briefly introduced key elements of its monetary strategy. In particular, the Governing Council decided, in light of the objective of price stability, to articulate its monetary strategy around two elements.⁵⁵⁹ Later called “pillars”, these two elements, further specified on 19 January 1999,⁵⁶⁰ deserve careful, but brief, attention.⁵⁶¹

Naturally, with a first monetary pillar, the ECB agreed to provide money with a future “prominent role” through notably the “announcement of a quantitative reference value for the growth of a broad monetary aggregate”.⁵⁶² Serving the attainment of the objective of price stability, the reference value for the growth of a broad monetary aggregate also aimed to signal price stability risks arising from any deviation.⁵⁶³ More specifically, according to the ECB, any deviation of monetary growth from the reference value will invite the Governing Council to analyse its causes. In the event that it would entail risks to price stability, the latter would have to adapt its monetary policy.⁵⁶⁴ As announced in October 1998, the operationalization of the first pillar requested to define, and to specify, the reference value for the monetary aggregate.⁵⁶⁵ In that respect, the Governing Council agreed, on 1 December 1998, to use M3 (Broad money) for reference value.⁵⁶⁶ By announcing the use of M3 as reference value for monetary growth, for which clarifications were formulated in early 1999,⁵⁶⁷ the ECB also announced that its derivation should be based “on assumptions about the medium-term trend in both real GDP growth and growth velocity”.⁵⁶⁸

Notwithstanding the above, the use of M3 as reference value for monetary growth aggregate was not, as underlined by Issing, synonymous with exclusive reliance by the ECB.⁵⁶⁹ Indeed, while the ECB would monitor developments in M3, it would nonetheless also, on an ongoing basis, assess

⁵⁵⁹ ECB, *A stability-oriented monetary policy strategy for the ESCB*...op.cit para 3.

⁵⁶⁰ ECB, *The stability-oriented monetary policy of the Eurosystem*, Economic Bulletin Issue 1, 19 January 1999.

⁵⁶¹ Issing (n 551) 99.

⁵⁶² ECB, *A stability-oriented monetary policy strategy for the ESCB*...op.cit para 3.

⁵⁶³ idem.

⁵⁶⁴ ECB, *The stability-oriented monetary policy of the Eurosystem*,...op.cit 49.

⁵⁶⁵ ECB, *A stability-oriented monetary policy strategy for the ESCB*...op.cit para 3.

⁵⁶⁶ ECB, *The quantitative reference value for monetary growth*, press release, 1 December 1998.

⁵⁶⁷ ECB, *The stability-oriented monetary policy of the Eurosystem*,...op.cit., p. 21; *Euro area monetary aggregates and their role in the Eurosystem's monetary policy strategy*, Economic Bulletin Issue 2, 16 February 1999, 29-46.

⁵⁶⁸ ECB, *The quantitative reference value for monetary growth*...op.cit.

⁵⁶⁹ Issing (n 551) 109.

“(…) developments in other monetary aggregates, in the various components of M3, and in the counterparts to all these aggregates in the consolidated MFI balance sheet (…).”⁵⁷⁰ Naturally, developments in M3 were not the only focus of the ECB which, as previously mentioned, also based its monetary strategy on a second pillar.

As a second element of its monetary strategy, the Governing Council agreed on adopting a second pillar of economic nature.⁵⁷¹ More specifically, in parallel to the first pillar, the ECB announced that it would proceed to a “(…) broadly-based assessment of the outlook for price developments (…).” by notably resorting to “(…) a wide range of economic and financial variables as indicators (…).”⁵⁷² Briefly introduced on 13 October, the second pillar was further specified by the ECB in early 1999, notably on the different variables. In that respect, the ECB announced that it would consider the following:

(…) , wages, the exchange rate, bond prices and the yield curve, various measures or real activity, fiscal policy indicators, price and cost indices and business and consumer surveys.⁵⁷³

By analysing inflation forecasts, the ESCB aimed at assessing the appropriateness of its monetary strategy. In that regard, it also underlined the necessity to analyse each of these variables to inform the Governing Council of the macroeconomic stance.⁵⁷⁴

In the light of the announced monetary strategy, based on a two-pillar approach, it may legitimately be wondered why the ECB decided not to adopt either an inflation or a monetary targeting monetary strategy as proposed by the EMI in early 1997. Indeed, while the technical difficulties of implementing an inflation targeting strategy were clear,⁵⁷⁵ the rejection of monetary targeting is not. Such strategy would have allowed the ECB to clearly delimit its competence and to strengthen its independence. According to Issing, the choice not to opt for a monetary targeting strategy, implemented by the German *Bundesbank* since 1975, mostly resulted from a potential change in the stable relationship between money and prices after introducing a common currency.⁵⁷⁶ This would have potentially led to a structural break enjoining the ECB to change, a few months after starting

⁵⁷⁰ Otmar Issing (ed), ‘The ECB and the Foundations of Monetary Policy’ in *The Birth of the Euro* (Cambridge University Press 2008) 109, Cambridge Core; European Union, ECB, *The stability-oriented monetary policy of the Eurosystem*, ...op.cit 49.

⁵⁷¹ ECB, *A stability-oriented monetary policy strategy for the ESCB*...op.cit para 3.

⁵⁷² *idem*.

⁵⁷³ ECB, *The stability-oriented monetary policy of the Eurosystem*,...op.cit 49.

⁵⁷⁴ *idem* 50.

⁵⁷⁵ Issing (n 551) 90–93.

⁵⁷⁶ *ibid* 94.

implementing it, its monetary strategy.⁵⁷⁷ Consequently, the ECB decided that its monetary strategy could not rely upon a “(...) single indicator variable or intermediate target (...)”.⁵⁷⁸

Later specified, the monetary strategy of the Community, based on two pillars, was implemented by the ESCB in the course of the last phase. Due to some difficulties, the latter deserves special attention.

II. Completing the EMU in Crisis Times

Articulated around the objective of price stability (**A**), the single monetary policy highlighted its interlinkages with other economic policy components that were eventually exacerbated in crisis times (**B**).

A. Designing the Single Monetary Policy Around Price Stability (1999–2007)

Starting officially on 1 January 1999, the last phase of the EMU was not only marked by the transition from the conceptualization of the single monetary policy to its implementation (**1**) but also with the revision of the Treaties (**2**).

1. From Conceptualization to Implementation of the Single Monetary Policy

While designing the single monetary policy proved to be complex, its early implementation (**a**) highlighted natural interactions with other economic policy components (**b**).

a. Early Implementation of the Single Monetary Policy

While the conceptualization of the single monetary policy was a highly technical task, its implementation in the early stage of the third phase was conditioned upon some elements (**i**) crucial to the preservation of monetary policy transmissions channels (**ii**).

i. Euro Markets and the Single Monetary Policy

The second phase was synonymous with considerable progress as regards the conceptualization of the single monetary policy and for the preparation of the ESCB. However, it was marked by lack of convergence. This notably led the Council, on the basis of Article 109j(3) TEC 1992, to postpone

⁵⁷⁷ *ibid* 94–95.

⁵⁷⁸ ECB, *The stability-oriented monetary policy of the Eurosystem*,...op.cit 50.

the start of the last phase to 1 January 1999.⁵⁷⁹ Notwithstanding this postponement, it is of note that the last phase started slightly earlier than planned. On 31 December 1998, the Council adopted a regulation, published the same day, that enshrined the irrevocable fixation of conversion rates between Member States currencies and the euro.⁵⁸⁰ Of fundamental importance for monetary stability, as *conditio sine qua non* of the euro, the Council Regulation announced the changeover weekend to the euro. Starting on 1 January 1999, date of entry into force of the irrevocable fixation of conversion rates, the changeover to the euro ended on 3 January with the opening of euro area markets in euro on 4 January.⁵⁸¹ On the same day, the ESCB started implementing the single monetary policy by announcing its first main refinancing operations.⁵⁸²

Nonetheless, the establishment of the euro led to significant changes in the euro area. These changes should not be summarized as the redenomination in euro of the public debt instruments of Member States and of euro market transactions. In fact, the changeover also imposed the structuring of European markets and the minimization of monetary instability from non-participating Member States. Importantly, as regards the last point, not all Member States decided to adopt the euro. In particular, Denmark, the UK and Sweden decided not to join the EMU and thus not to adopt the single currency. Logically, any domestic currency fluctuations, not to say devaluation, may negatively impact the stability of the single currency, impair the single monetary policy and eventually, endanger the single market. In order to ensure price stability in the non-participating Member States and to provide equal treatment to those willing to adopt the euro, the European Council decided to implement a European Rate Mechanism (“**ERM II**”).

Effective from 1 January 1999, ERM II was built upon the EMS exchange-rate mechanism (consequently repealed) and on Article 109j and its relevant Protocol.⁵⁸³ Technically, ERM II aimed to define a central rate against the euro for non-euro Member States, included within a fluctuation band of plus/minus 15% in order to appropriately foster convergence. An indispensable feature of the European monetary framework, inasmuch as it also preserves the effectiveness of the single

⁵⁷⁹ *Décision du Conseil du 13 décembre 1996 arrêtée conformément à l'article 109 J paragraphe 3 du traité sur l'entrée dans la troisième phase de l'Union économique et monétaire*, JO L 335, 24 décembre 1996, 48-49.

⁵⁸⁰ *Council Regulation (EC) No 2866/98 of 31 December 1998 on the conversion rates between the euro and the currencies of the Member States adopting the euro*, OJ L 359, 31 December 1998

⁵⁸¹ ECB, *The changeover to the euro*, Economic Bulletin 1, 19 January 1999, 23-24.

⁵⁸² *idem*.

⁵⁸³ European Council, *Resolution of the European Council on the establishment of an exchange-rate mechanism in the third stage of economic and monetary union*, 16 June 1997, OJ C 236, 2 August 1998, 5-6.

monetary policy, the adoption of the euro also required the structuring of financial markets around specific infrastructures (“**FMI**s”).

It is noteworthy that the redenomination in euro of transactions, alongside with the implementation of the first measures of monetary policy, required the establishment of an unified payment and settlement system. This was realized on 4 January 1999 with the setting of the Trans-European Automated Real-time Gross Settlement Express Transfer System (“**TARGET**”). More specifically, TARGET acted in parallel with a few domestic payment systems and aimed to support the single monetary policy by processing large-volume payments under national RTGS.⁵⁸⁴ In particular, TARGET, considered as “(...) crucial for a sound currency, the conduct of monetary policy, market functioning, and financial stability”,⁵⁸⁵ allowed the transmission of central bank money to credit institutions.⁵⁸⁶ In doing so, TARGET contributed to the good transmission of the single monetary policy in the euro area by executing payments. This last point is of fundamental importance for the implementation of the single monetary policy in the early stage of the last phase. It is also crucial in order to understand its redistributive effects. As a key element of the effectiveness principle, the transmission channels of monetary policy require special attention.

ii. Transmission Channels of the Single Monetary Policy

As previously stated, the determination of the monetary strategy for the Community by the ECB, on the basis of EMI proposals, was performed against a range of different principles, with effectiveness being the most important.⁵⁸⁷ It should be recalled that the effectiveness of the single monetary was formerly considered by the Fourçans Report through a focus on monetary instruments,⁵⁸⁸ by the EMI,⁵⁸⁹ and eventually by the ECB. In that context, the effectiveness of the single monetary policy should be apprehended as the most suitable process for attaining the objective of price stability. In that respect, the transmission of monetary policy to the real economy, and its effects on prices development, was a key issue for the effectiveness of the single monetary policy when entering the third phase. In particular, the implementation of the first monetary operations, combined with limited information on their transmission in the euro area, led the ECB

⁵⁸⁴ ECB, *Target and Payments in Euro*, Economic Bulletin 11, 11 November 1999, 42-46.

⁵⁸⁵ ECB, *TARGET Annual Report 2019*, 20 May 2020, 3.

⁵⁸⁶ ECB, *Target and Payments in Euro*...op.cit 42.

⁵⁸⁷ ECB, *The stability-oriented monetary policy of the Eurosystem*...op.cit 44.

⁵⁸⁸ Parlement Européen, A3-0319/94/Partie B...op.cit 7.

⁵⁸⁹ EMI, *The Single Monetary Policy in Stage III*...op.cit 7-8.

to set up an expert network in charge of analysing the transmission of the single monetary policy.⁵⁹⁰ Importantly, almost two years after being established, the Eurosystem Monetary Transmission Network notably emphasized the prominence of the interest-rate channel in the monetary policy transmission along with some domestic differences regarding the bank-lending channel.⁵⁹¹

Naturally, the interest-rate channel prominence in transmitting the single monetary policy in the euro area did not come as a surprise. As pointed out by Angeloni and others, the interest-rate channel is considered as the “(...) conventional way in which monetary policy is presumed to operate in a large, fairly closed economy with a developed financial system (...)”.⁵⁹² More specifically, the conventionalism of the interest-rate channel involves a change of lending and deposits rates consecutive to a change in monetary market interest rates itself induced by a change in the policy interest rate by the ECB.⁵⁹³ However, and also mentioned by the Eurosystem Monetary Transmission Network, the interest-rate channel should not be considered as the unique channel through which the single monetary is transmitted. Apart from the bank funding and lending channel which by affecting the amount of loans available directly impact spending and investment, the ECB cautiously identified the main monetary channels throughout the years.⁵⁹⁴ In that respect, from monetary and exchange-rate channels to asset price and wealth channels, and passing by balance sheet and profitability and bank capital channels, or eventually by risk-taking and expectations channels,⁵⁹⁵ the transmission of the single monetary policy is ensured via many channels – all aiming to attain the objective of price stability. Nonetheless, price stability is not only influenced via the single monetary policy but also through other economic policy components.

b. Price Stability and Other Economic Policy Components

Discussed in the first chapter, monetary policy interacts with several other economic policy components, among which are employment (i) and fiscal policies (ii), themselves affecting the objective of price stability and impairing the effectiveness of the single monetary policy.

⁵⁹⁰ Ignazio Angeloni and others, ‘Introduction’ in Anil K Kashyap and others (eds), *Monetary Policy Transmission in the Euro Area: A Study by the Eurosystem Monetary Transmission Network* (Cambridge University Press 2003) 1–2, Cambridge Core.

⁵⁹¹ I Angeloni and others, ‘Monetary Policy Transmission in the Euro Area: Where Do We Stand?’ in Anil K Kashyap and others (eds), *Monetary Policy Transmission in the Euro Area: A Study by the Eurosystem Monetary Transmission Network* (Cambridge University Press 2003) 410–12, Cambridge Core.

⁵⁹² *ibid* 383.

⁵⁹³ ECB, Beyer and others, *The transmission channels of monetary, macro- and microprudential policies and their interrelations*, Occasional Paper Series, No 191, May 2017, 13.

⁵⁹⁴ *ibid* 15.

⁵⁹⁵ *ibid*, 13-15.

i. Employment Policy and the Single Monetary Policy

Signed on 2 October 1997, ratified on 19 November 1997, and eventually entering into force on 1 May 1999, the Treaty of Amsterdam (“**TEC 1997**”)⁵⁹⁶ dramatically fostered economic coordination in the field of social and employment policies. It should be recalled that, pursuant Article 104 TEC, Member States should already ensure a high level of employment. This obligation was later transformed into a Community objective under Article 2 TEC 1992 and of the Union under Article B TEU. Logically employment policies again gained considerable importance with the TEC 1997.

Along with the revision of Community and Union objectives, socially coloured, the TEC 1997 significantly revised the TEC 1992 by adding notably a new Title Via related to employment. In particular, pursuant to Article 109n TEC 1997, Member States should develop a coordinated employment strategy aiming to attain the objectives set in the Council broad economic guidelines. Nonetheless, as for other economic policy components, the coordination process stated in Article 109n did not lead to transfers of competences to the Community. Pursuant to Article 109p, the Community should contribute to the objective of a high level of employment while respecting competences of the Member States. Naturally, the Community support for the objective of high employment may raise some interrogations with respect to probable interactions with the single monetary policy.

Effectively, monetary policy may influence, through some specific transmission channels⁵⁹⁷ or if considered as a specific objective as for the FED, the level of unemployment in the area covered. Logically, any potential ECB support for employment, as a body of the Community, raised some considerations.

In that respect, the European Parliament, via the Harrison Report, had already underlined the future effects of the single monetary policy on real economic indicators, including the employment rate.⁵⁹⁸ Naturally, monetary policy interlinkages with other economic policy components, or to say the extent to which the ECB may support employment, were also considered by the EMI during

⁵⁹⁶ Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts - Final Act, OJ C 340, 10 November 1999.

⁵⁹⁷ On that point see notably, ECB, Ampudia and others, *Monetary policy and household inequality*, Discussion Papers, No 2170, July 2018; Federal Reserve Act of 1913, 12 USC 225a, as added by act of November 16, 1977 (91 Stat. 1387) and amended by acts of October 27, 1978 (92 Stat. 1897); Aug. 23, 1988 (102 Stat. 1375); and Dec. 27, 2000 (114 Stat. 3028).

⁵⁹⁸ European Parliament, Harrison, *Report on the impact of monetary policies on the real economy, inflation, interest rates, growth and employment within the third phase of EMU, and the economic function of convergence criteria*, 18 November 1996, A4-0374/96, 8-11.

the second phase. However, these considerations were raised again, and in a more urgent way, when the European Council, convened in Cologne on 3–4 June 1999,⁵⁹⁹ addressed its conclusions on the European Employment Pact. Consecutively to the latter, and only a few days after their release, the ECB rapidly clarified the limits of the single monetary policy support to the objective of a high level of employment, and more generally to employment policies. In particular, the ECB expressed the following:⁶⁰⁰

In this context, the best contribution monetary policy can make to fostering employment growth and reducing unemployment in the medium and long term is to maintain price stability. An environment of price stability reduces the inflation risk premia in long-term interest rates, thereby helping to reduce the cost of financing productive investment. It also facilitates the investment decisions of economic agents (firms, households and governments) by stabilising their expectations. Furthermore, it prevents costs from being incurred when inflation or deflation exacerbates the distortions created by tax and benefits systems. Overall, it creates favourable conditions to support the long-term growth potential, which is necessary to foster employment over the medium term.

In the light of the above, it may intuitively be understood that the ECB reaffirms its commitment towards its primary objective of price stability. In the meantime, it also suggests that the transmission of the single monetary policy, through appropriate transmission channels, may also support general economic policy in the Community. Naturally, in light of the TEC 1997, and of natural interlinkages between every economic policy component, this statement appears as intuitive. Nevertheless, it may also be wondered whether the objective of price stability is not too largely defined in that respect. Indeed, redistributive effects of monetary policy, under normal or stress times, may have stronger impact on other economic policy components, including fiscal policies.

Underlined at the very beginning of the Community, monetary policy interlinkages with fiscal policies, or vice versa, merits some discussion.

ii. Fiscal Policy and the Single Monetary Policy

Part of the general discussion related to the formulation of a common economic policy, natural interlinkages between monetary and fiscal policies have been, since early times of the Communities, a highly sensitive topic. In that regard, following the entry into force of the TEC, the European

⁵⁹⁹ European Council, *Presidency Conclusions*, Cologne, 3 and 4 June 1999.

⁶⁰⁰ ECB, *The European Employment Pact*, Economic Bulletin, Issue 6, 15 June 1999, 30-31.

Parliament formulated some interesting considerations related to the articulation of monetary, financial and fiscal policies around the objective of price stability provided in Article 104. In particular, the van Campen Report of 1962, proposing a theoretical distinction between monetary policy and other economic policy components,⁶⁰¹ emphasized the role played by fiscal policies in the attainment of price stability in the Communities. More specifically, the van Campen Report stated:⁶⁰²

(...) Les deux groupes de mesures économiques ont pour but d'assurer un niveau élevé de l'emploi et de la croissance économique, un niveau stable des prix et une balance des paiements équilibrée.

Ce n'est donc pas à la seule politique monétaire qu'il incombe d'assurer la stabilité du niveau des prix et l'équilibre de la balance des paiements. Les politiques financière et budgétaire sont également responsables de la réalisation de ces deux objectifs (...).

According to the van Campen Report, the responsibility conferred to fiscal policy resulted from the high share of public revenues allocated to national budgets.⁶⁰³ More specifically, their management, finely coordinated with monetary policies, contributed to the attainment of price stability during the expansion phase of the business cycle.⁶⁰⁴ Despite different economic conditions at time of the adoption of the van Campen Report, which discussed the adoption of a common monetary policy,⁶⁰⁵ similar considerations were also raised when conceptualizing the single monetary policy. Indeed, by adopting the Harrison Report on 18 November 1996, the European Parliament again underlined natural interlinkages between monetary and fiscal policies. In particular, by assuming money non-neutrality, inasmuch as monetary policy operations may influence real variables via the interest-rate channel,⁶⁰⁶ the Harrison Report invited to consider a better-balance policy mix between monetary and fiscal policies,⁶⁰⁷ the latter being justified on the assumption of impairment of the single monetary policy effectiveness by fiscal and/or institutional vacuum.⁶⁰⁸

Considered in Article 104c TEC 1992, and its related Protocol on the excessive deficit procedure, the necessity to coordinate Member States' fiscal policies was first proposed by the European

⁶⁰¹ CEE, van Campen, ...op.cit. VC-HAEU, PE0-313, paras 9-10.

⁶⁰² *ibid* para 10.

⁶⁰³ *ibid* para 12.

⁶⁰⁴ *idem*.

⁶⁰⁵ *ibid* paras 45-53.

⁶⁰⁶ Harrison, ...op.cit A4-0374/96, 8-9.

⁶⁰⁷ *Resolution on the impact of monetary policies on the real economy, inflation, interest rates, growth and employment in the third stage of EMU, and economic function of convergence criteria*, OJ C 380, 16 December 1996, para 4.

⁶⁰⁸ *ibid* paras 4-5.

Council in 1995.⁶⁰⁹ When convened in Dublin in 1996, the latter, agreed on main principles of the Stability and Growth Pact (“SGP”).⁶¹⁰ Later convened in Amsterdam in June 1997, the European Council adopted a resolution whereby it agreed on the SGP.⁶¹¹ The latter being composed of a set of preventive rules,⁶¹² entering into force on 1 July 1998 but with effective obligations (stability and convergence programmes) from 1 March 1999, and of a set of corrective rules,⁶¹³ entering into force on 1 January 1999. Undoubtedly the SGP was firmly encroached in the last phase of the EMU. Interestingly, such encroachment corresponds to the dynamics of the third phase and may be explained through the objectives set for the SGP. More specifically, the adoption of the SGP notably aimed to support price stability and, therefore, the single monetary policy as well. This price stability orientation of Member States’ fiscal policies coordination was affirmed by the European Council convened in Amsterdam in mid-1997 when it notably stated:

(...) the importance of safeguarding sound government finances as a means to strengthening the conditions for price stability and for strong sustainable growth conducive to employment creation. It is also necessary to ensure that national budgetary policies support stability oriented monetary policies.⁶¹⁴

Logically, natural interlinkages between monetary and fiscal policies, articulated around price stability, an objective shared by these policies but differently defined, suggested complex interactions. More specifically, they also suggested negative spillovers on monetary policy resulting from potential domestic deflationary fiscal policies. Therefore, natural interlinkages between monetary and fiscal policies requested, so as not to impair price stability, the further strengthening of surveillance and coordination of general economic policies in the Community. Not specifically dedicated to this objective, the Treaty of Lisbon participated in the strengthening of the EMU by including price stability within the objectives of the Union.

2. *Price Stability Under the Treaty of Lisbon*

Retained as an objective of the Union under the Treaty of Lisbon (a), price stability became a guiding principle for Member States economic policies coordination (b).

⁶⁰⁹ European Council, *Conclusions of the Presidency*, 15 and 16 December 1995, Madrid, Part B, Annex 1.

⁶¹⁰ European Council, *Conclusions of the Presidency*, 13 and 14 December 1996, Dublin, 2.

⁶¹¹ European Council, *Resolution of the European Council on the Stability and Growth Pact*, OJ C 236, 2 August 1997.

⁶¹² *Council Regulation (EC) No 1466/97 of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies*, OJ L 209, 1-5.

⁶¹³ *Council Regulation (EC) No 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure*, OJ L 209, 2 August 1997, 6–11.

⁶¹⁴ *Resolution of the European Council on the Stability and Growth Pact*, OJ C 236, 2 August 1997.

a. Price Stability and the Union: An Objective

Although not directly aimed to substantially change the structure of the EMU, the Treaty of Lisbon, signed on 13 November 2007 and entering into force on 1 December 2009,⁶¹⁵ brought subtle, but considerable, changes. The Treaty of Lisbon revised the objectives of the Community that were formerly provided in Article 2 TEU. In particular, it retained, under Article 3(3) TEU, price stability as an objective of the Union. Such mention, that some may recall from a proposition formulated by Ireland during the IGC on EMU,⁶¹⁶ or as a clarification of the non-inflationary growth objective provided in Article 2 TEC 1997, in fact finds its origins in the ICG for the draft Treaty establishing a Constitution for Europe.⁶¹⁷

According to Servais and Ruggeri, the introduction of price stability as an objective of the Union arrived at a late stage of the IGC negotiations and, eventually, in Article I-3(3) of the Treaty establishing a Constitution for Europe.⁶¹⁸ Interestingly, it may be observed that the reasons justifying retaining price stability as an objective Union strongly echo with considerations previously developed in the van Campen Report of 1962. Indeed, according to the ECB, stressing the importance of retaining price stability in Article I-3(3), Member States influence price stability through both the determination of their fiscal policies and by the setting of economic conditions.⁶¹⁹ Naturally, it may be argued that, according to Article 98 TEC 1997, referring to the objectives provided in Article 2, Member States should conduct their economic policies with a view to achieving the objective of non-inflationary growth and therefore, to a certain extent, to price stability.

However, one should note that, at that time, the objective of non-inflationary growth corresponded to only one of the two dimensions of price stability. By defining price stability as a year-to-year price increase of below but close to 2%, the ECB not only encompassed inflation but also deflation.⁶²⁰ Importantly, this inflation asymmetry, enshrined in primary law, could engender negative spillovers impacting the effectiveness of the single monetary policy. In particular, the single monetary policy effectiveness could have been adversely affected by the adoption of

⁶¹⁵ *Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union*, OJ C 83, 30 March 2010, 1-389.

⁶¹⁶ Conference of the Representatives of the Governments of the Member States – Economic and Monetary Union – Ireland, *Proposal by Ireland for amendments to Article 2 of EEC Treaty*, 15 January 1991, UEM/5/91.

⁶¹⁷ Dominique Servais and Rodolphe Ruggeri, 'The EU Constitution: Its Impact on Economic and Monetary Union and Economic Governance' in Paolo Zamboni Garavelli and others (eds), *Legal aspects of the European System of Central Banks: liber amicorum Paolo Zamboni Garavelli* (Europ Central Bank 2005) 45.

⁶¹⁸ *ibid.*

⁶¹⁹ ECB, *Monthly Bulletin*, August 2004, 59.

⁶²⁰ Angeloni and others, 'The ECB strategy: defining price stability' (n 557) 71.

deflationary fiscal policies. This situation, not covered by the objective of non-inflationary growth, would have invited the ESCB to mitigate any adverse effects under Article 105(1) TEC.

Therefore, in retaining price stability as an objective of the Union, the Treaty of Lisbon reduced price stability risks arising from deflationary fiscal policies and ensured the effectiveness of the single monetary policy. Indeed, as pointed out by Servais and Ruggeri, the objective of price stability should serve as guiding principle in the determination of Member States economic policies but also in their coordination.⁶²¹

b. Member States Economic Policy Coordination and Price Stability

As briefly discussed, the mention of price stability in Article 3 TEU had a significant impact on the coordination of economic and employment policies of the Member States. In that context, Article 2(3) TFEU, and then Article 5, provide for close coordination of Member States economic policies within the Council. This coordination was notably précised in Title VIII ‘Economic and Monetary Policy’ where Article 119(1) provides that, for the purposes set out in Article 3 TEU, the activities of the Member States and the Union shall notably include the adoption of an economic policy based on the close coordination of Member States’ economic policies, on the internal market and on the definition of common objectives. Moreover, as previously mentioned, price stability, under Article 119(3), shall serve as a guiding principle for the activities of the Union and of the Member States. This naturally encompasses the coordination of economic policies. Similarly to Article 98 TEC 1997, Article 120 TFEU provides that Member States shall conduct their economic policies with a view to contributing to the achievement of the objectives stated in Article 3 TEU (among which is price stability) within the context of the Council broad economic guidelines. Interestingly, as just mentioned, the Council broad economic guidelines not any more concerned with the objective of non-inflationary growth but with the objective of price stability, that is far more stringent. Thus, in the event that a Member State would have departed from the broad economic guidelines, and more specifically from the objective of price stability, the Commission could address a warning to the concerned Member State while the Council, on the basis of a Commission proposition, could address a recommendation to the Member States.⁶²²

It is noteworthy that from the Maastricht Treaty to the Treaty of Lisbon, the objective of price stability gained significantly in importance. This not only concerned the single monetary policy but

⁶²¹ Servais and Ruggeri (n 617) 46.

⁶²² TFEU, Art. 121(4).

also the economic policies of the Member States. More specifically, in promoting price stability as an objective of the Union, the Treaty of Lisbon enshrined into primary law natural interlinkages between monetary and economic policies. However, such enshrinement also coincided with the beginning of the GFC where special economic measures and non-standard measures of monetary policy would be implemented to mitigate any adverse effects under the objective of price stability.

As will be presented and analysed in the following chapter, the measures implemented would exacerbate the redistributive effects of the single monetary policy. Such exacerbation would generate legal tensions articulated around the demarcation between monetary and economic policies. Thus, prior to turning to the Chapter III, it seems opportune to briefly present the measures that would later be at issue.

B. The EMU in Crisis Times

The GFC, later followed by the European sovereign debt crisis, exacerbated the asymmetric structure of the EMU, along with its incompleteness, requiring the adoption of specific economic policy (1) and monetary policy measures (2).

1. Economic Policy Measures in Crisis Times

Embedded into a doom-loop, Member States adopted extraordinary measures to mitigate any material negative impact on the real economy (a). Moreover, such a crisis also highlighted the need to revise the Treaty of Lisbon to establish a permanent source of financial assistance (b).

a. Economic Measures Against Financial and Economic Crisis

Arising from multiple causes,⁶²³ among which was the tightening of economic conditions and financial innovation, the GFC adversely affected several systemic financial and credit institutions located in the Union. This situation enjoined Member States to restore the confidence and the proper functioning of the financial sector. In that context, the Member States agreed, within the premises of the Ecofin Council convened on 7 October 2008, to provide immediate responses to the financial turmoil.⁶²⁴ In particular, by agreeing to common principles, and in line with the applicable state aid framework, the latter underlined the recapitalization, via extraordinary public financial support, of vulnerable systemically relevant financial institutions and to further protect

⁶²³ Jacques de Larosière and others, 'Report from the High-Level Group on Financial Supervision in the EU' (February 2009) 7–12.

⁶²⁴ Council of the European Union, *Immediate responses to financial turmoil*, Ecofin Council, 7 October 2008, 13930/08 (Press 284).

depositors.⁶²⁵ These common principles, further refined by the Ecofin Council on 12 October 2008,⁶²⁶ and endorsed by the European Council convened in Brussels on 15–16 October 2008,⁶²⁷ aimed to stabilize Member States banking sectors by ensuring the provision of liquidity, additional capital and the facilitation of funding. In essence, Member States could either act by injecting liquidity in financial/credit institutions or by providing them with state guarantees.⁶²⁸ Targeting the liability side of the bank's balance sheet, these measures were then complemented with others targeting the asset side, notably via asset relief schemes.⁶²⁹

Complemented with measures aiming to mitigate material negative effects on the real economy, such as with the European Economic Recovery Plan,⁶³⁰ or with domestic discretionary fiscal measures,⁶³¹ economic policy measures nonetheless came at a considerable fiscal price for Member States. According to the ECB, Member States measures to the financial sector had, over the period 2008–2014, a negative net fiscal cost on the euro area estimated as +4.7% of debt-to-GDP.⁶³² Although indicating a severe degradation of Member States public finances, the net fiscal cost of these measures represented nonetheless a limited part of the debt-to-GDP increase. Indeed, over the same period, debt-to-GDP increased by 27% according to the ECB.⁶³³ Naturally, this considerable increase in government debt was not homogeneously spread within Member States. In that respect, some countries were more severely affected than others. In particular, Ireland, Greece and Spain were, with an increase among the most severely affected by the GFC with respectively an increase of 96%, 56.5% and 50.5% of debt-to-GDP.⁶³⁴ Naturally, these considerable increases in government debts, along with the aggravation of public deficits, estimated at -32.1% for Ireland in 2010,⁶³⁵ raised some concerns about fiscal and financial sustainability in the euro area. Therefore, in the course of the European sovereign debt crisis, Member States revised the TFEU

⁶²⁵ *ibid* 2-3.

⁶²⁶ Council of the European Union, *Declaration on a concerted European Action Plan of the Euro Area countries*, Ecofin Council, 14 October 2008, 14239/08.

⁶²⁷ European Council, *Conclusions of the Presidency*, Brussels, 15-16 October 2008.

⁶²⁸ Communication from the Commission, *The application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis*, OJ C 270, 25 October 2008.

⁶²⁹ Maria Grazia Attinasi, 'Euro Area Fiscal Policies: Response to the Financial Crisis' in van Riet Ad (ed), *Euro Area Fiscal Policies and the Crisis* (Occasional Paper Series 109, European Central Bank 2010) 13–14.

⁶³⁰ Communication from the Commission to the European Council, *A European Economic Recovery Plan*, 26 November 2008, COM (2008) 800 final

⁶³¹ Antonio Afonso and others, 'Euro Area Fiscal Policies: Response to the Economic Crisis' in van Riet Ad (ed), *Euro Area Fiscal Policies and the Crisis* (Occasional Paper Series 109, European Central Bank 2010) 23.

⁶³² ECB, ECB Economic Bulletin, Issue 6, 2015, 79.

⁶³³ *idem*.

⁶³⁴ https://ec.europa.eu/eurostat/databrowser/view/sdg_17_40/default/table?lang=en

⁶³⁵ <https://ec.europa.eu/eurostat/databrowser/view/tec00127/default/table?lang=en>

in order to establish a permanent financial assistance programme, namely, the European Stability Mechanism.

b. The European Stability Mechanism

Following the impact of the GFC, and the temporary support from both the European Financial Stabilization Mechanism and the European Financial Stability Facility to some Member States, the European Council, convened on 16 and 17 December 2010, agreed to establish a permanent financial assistance programme.⁶³⁶ Following European Council Decision 2011/199/EU amending Article 136 TFEU, the ESM eventually entered into force on 1 May 2013.

Aiming to provide stability and financial assistance to distressed euro Member States, but also to complement the TSCG by “fostering fiscal responsibility and solidarity within the economic and monetary union”, the legal framework of the ESM was naturally enshrined within a specific Treaty (“**ESM Treaty**”).⁶³⁷ In that respect, and as an important legal feature, it is of note that, pursuant to Article 12(1), financial support granted to an ESM Member is subject to strict conditionality. Ranging from macroeconomic adjustment programmes to continuous respect of pre-established eligibility conditions, the strict conditionality of ESM support depends on the financial situation of the ESM Member.

It is of note that such support is further specified in the relevant Memorandum of Understanding (“**MoU**”) concluded between the distressed Member States and the ESM. Interestingly, since the former should solicit the latter to obtain financial assistance, the ESM procedure described in Article 13 highlights some similarities with that of the IMF. On that point, it is worth noting that the ESM, pursuant to the same Article, closely operates with the IMF, for statistical and technical purposes, the ECB and the European Commission. Interestingly, it is not the ESM which signs the MoU with the distressed Member States. In fact, it is the Commission which does so on the behalf of the ESM. Specifying the conditionality of its support, as per Article 12(1), the ESM financial assistance may take the form of several instruments described in Articles 14 to 18. Naturally the latter, being precautionary assistance, loans for financial institutions recapitalisation, loans to the ESM Member and primary/secondary market support facilities, were of great use during the sovereign debt crisis. Indeed, the ESM intervened for some Member States among which were Spain, Ireland, Greece, Cyprus and Portugal.

⁶³⁶ European Council, *Conclusions of the Presidency*, Brussels, 16-17 December 2010, pts. 1-3.

⁶³⁷ Treaty Establishing the ESM, signed on 2 February 2012.

Established outside the European institutional architecture, although very much involved in the process, the ESM raised some concerns with respect to the side-effects of its programme over the single monetary policy. Nonetheless, before entering into the details of the Pringle case, attention should be paid on the ECB responses to the GFC.

2. *Monetary Policy Measures in Crisis Times*

To mitigate the adverse effects of the crisis, and to achieve price stability, the ECB adopted several non-standard measures of monetary policy, among which were the OMT (a) and the PSPP Decisions (b).

a. *The Outright Monetary Transaction Programme*

As examined in Chapter I, economic and monetary measures interact with each other to a great extent, especially in crisis times. In that regard, the ECB adopted a series of non-standard measures of monetary policy that aimed, under the objective of price stability, to mitigate the adverse effects of the crisis. More specifically, on 2 August 2012, the ECB discussed some policy options that could “(...) address the severe malfunctioning in the price formation process in the bond markets of euro area countries”.⁶³⁸ According to the ECB, the “exceptionally high risk premia observed in government bond prices” tended to impair the monetary policy transmission mechanism.⁶³⁹ Thus to restore the latter, and to ensure the singleness of the monetary policy of the Union, the ECB adopted on 6 September 2012 several decisions regarding outright transactions on secondary sovereign bonds markets.⁶⁴⁰ Though examined in greater detail in Chapter III, the OMT Decision should nonetheless be briefly presented.

First, it is important to note that the ECB did not formally adopt a decision for the OMT programme. Instead, it only prepared a draft decision and a possible ‘guideline for the implementation of Outright transactions’ that were not disclosed, except in the written observations submitted by the ECB to the CJEU in Gauweiler.⁶⁴¹ Therefore, the technical features of the OMT programme cannot be found in a legislative act but rather in the ECB press release of 6 September 2012, the so-called “OMT Decision”. In that regard, it should be first observed that the activation of the OMT programme would have been conditioned to the participation of an EFSF/ESM programme. Such activation would not have been automatic but considered to the

⁶³⁸ ECB, *Introductory statement to the press conference (with Q&A)*, Press Conference, 2 August 2012.

⁶³⁹ *idem*.

⁶⁴⁰ ECB, *Technical features of Outright Monetary Transactions*, Press Release, 6 September 2012.

⁶⁴¹ CJEU, *Written explanations of the European Central Bank*, C-62/14, 25 August 2014.

extent to which it is needed from a “monetary policy perspective”. Furthermore, should the ESM programme be terminated, or if the ESM Member State does not comply with the latter, or if the monetary objective pursued is attained, the OMT programme should be ended. However, the ECB benefits from a full discretion regarding the “start, continuation and suspension” on the OMT programme. As a second feature, it is of note that the OMT programme focused on “(...) the shorter part of the yield curve, and in particular on sovereign bonds with a maturity of between one and three years”. This feature was naturally followed by another one that aims at sterilizing the liquidity created by the OMT programme. Eventually, to implement the OMT programme, the ECB announced accepting a pari passu rank and to publish the aggregate holdings, average duration and breakdown by country on a regular basis.

Second, although the OMT programme was never activated, it was nonetheless the object of a reference for a preliminary ruling made by the FCC to the CJEU in 2014. Particularly technical, the ruling will be examined in Chapter III, after having presented the technical features of the PSPP.

b. The Public Sector Purchase Programme

To mitigate the “(...) downside risks to the medium-term outlook on price developments”, which impairs the single monetary policy, the ECB decided to expand the asset purchases by means of Decision ECB/2015/774.⁶⁴² Sharing some technical features with the OMT programme, and notably the safeguards identified in Gauweiler, the PSPP aimed at purchasing eligible marketable debt securities on secondary markets.⁶⁴³ However, the two programmes differ on many points. First, unlike the OMT programme, the PSPP has a broader scope of eligible instruments. Indeed, the PSPP could purchase instruments with a maturity comprised between 2 years and 30 years and 364 days.⁶⁴⁴ Moreover, those purchases should respect a blackout period following their issuance on the primary markets.⁶⁴⁵ Unlike the OMT programme, the PSPP also provided specific purchase limits not to be exceeded. More specifically, for the first six months, the ECB could not purchase more than 25% of an issue (by ISIN) and, without time restriction, more than 33% of an issuer’s outstanding securities.⁶⁴⁶ Finally, the PSPP included a specific allocation of portfolio, with 12% to be invested in securities issued by international organizations and 88% by domestic governments.⁶⁴⁷

⁶⁴² ECB, *Decision (EU) 2015/774 of the European Central Bank of 4 March 2015 on a secondary markets public sector asset purchase* (ECB/2015/10), OJ L 121, 14 May 2015, 20-24, Recital 3.

⁶⁴³ *ibid* Recitals 4-7; Article 1.

⁶⁴⁴ *ibid* Article 3(3).

⁶⁴⁵ *ibid* Article 4.

⁶⁴⁶ *ibid* Article 5.

⁶⁴⁷ *ibid* Article 6.

Similarly to the OMT Decision, the PSPP Decision would be subject to complex legal tensions before the CJEU. Since the latter, but also this regarding the ESM, pertain to the distinction between monetary and economic policies, special attention should be given to those judgments.

Conclusion

In the continuity of the preceding chapter, this chapter attempted to appreciate the intent of the authors of the Treaties as regards monetary and economic policies. In that regard, careful cautious attention was first given on (the preparatory period of) the first phase of the EMU that led to the ratification of the TEC 1992. The latter, which enshrined the separation between monetary and economic policies, was examined with a great level of detail found in primary resources. However, the vagueness of the terms of the TEC 1992, further specified by means of secondary legislation, led the EMI to first define the single monetary policy of the Union. The research on this period suggests that the Union, when choosing its monetary strategy, was aware of the interactions between these two policies. These interactions were further examined and show that they even pertain to the primary objective conferred on the ESCB. Finally, this chapter briefly presented the economic measures and non-standard measures of monetary policy that aimed to mitigate the effects of the crisis but that ended before the CJEU.

Part II: The Distinction between Monetary and Economic Policies: A Legal Analysis

On the basis of the intent of the authors of the Treaties, this part aims at analysing the three cases where the CJEU had to distinguish monetary from economic policies (**Chapter III**) to then propose some recommendations on the necessity of such distinction (**Chapter IV**).

Chapter III: A Court Delimitation of Monetary from Economic Policies

Introduction

This chapter examines the three cases where the CJEU had to determine whether a measure of monetary policy constitutes a measure of economic policy, or *vice versa*. For this purpose, this chapter confronts the legislative history analysis made in the first part of this thesis. Indeed, since the CJEU systematically employed intentionalism as a method of interpretation, this chapter confronts its reasoning with some elements, examined in the preceding chapters, that shaped the intent of the authors of the Treaties. Furthermore, to shed new lights on the reasoning of the Courts in *Pringle*, *Gauweiler* and *Weiss* and others, this Chapter cautiously examines the written observations submitted by the parties to the proceedings. Eventually, this Chapter will examine the recent judgment issued by the FCC on 5 May 2020.

In essence, this Chapter is motivated by the fact that, consecutively to the GFC, the CJEU had to define what a measure of monetary policy might constitute under Union law (**I**). However, such interpretation was not favourably welcomed by the FCC which declared the PSPP *ultra vires* (**II**).

I. The Delimitation of Monetary and Economic Policies by the CJEU

Following extraordinary economic measures, taken to mitigate adverse effects within the euro area, the CJEU had to distinguish economic from monetary policies under Union law (**A**). Similarly to the *Pringle* case, the CJEU in *Gauweiler* had then to assess whether a non-standard measure of monetary policy constitutes a measure of economic policy (**B**).

A. Economic or Monetary Policy?: The *Pringle* case

Inviting the CJEU to appreciate what a monetary policy constitutes under Union law (**1**), the *Pringle* case also invites to further considerations (**2**).

1. *Distinguishing Economic from Monetary Policies*

Initiated in mid-2012, the legal actions of Mr. Pringle invite to examine the arguments developed before domestic jurisdictions (a) before considering the preliminary ruling provided by the CJEU (b).

a. *The Pringle Case Before the Domestic Jurisdictions*

In light of its jurisprudential importance, an analysis of the issues raised before the CJEU first invites to consider of the arguments presented to the jurisdiction of first instance (i) and then to the referring court (ii).

i. The High Court Judgment

On 13 April 2012, Mr Pringle commenced an action in the High Court against the Government of Ireland, Ireland and the Attorney General.⁶⁴⁸ In his plenary summons, Mr Pringle initially claimed the incompatibility under domestic and Union laws of Decision 2011/199/EU and of the ESM Treaty.⁶⁴⁹ In that regard, the plaintiff, in a notice of motion returnable in the course of the proceedings on 26 June 2012, sought an order amending the general endorsement of claims on the plenary summons and the reliefs sought in the statement of claim.⁶⁵⁰ On 27 June 2012, the plaintiff produced a written summary of its claims to the court. In the light of the jurisprudential importance of the claims addressed to the court, further details on the arguments and main conclusions should be considered.

After considering the different provisions of the ESM Treaty pertaining to the claims presented to the court, Justice Laffoy first examined the compatibility of the ESM Treaty with Union Law. It must be recalled that the plaintiff first alleged the incompatibility of Articles 14 to 19 of the ESM Treaty with Union law. In particular, Mr Pringle claimed the incompatibility of Articles 14, 15 and 18 of the ESM Treaty with Articles 123, 125 and 127 TFEU, as presented in the previous chapter.⁶⁵¹ According to the plaintiff, instruments stipulated in Chapter 4 of the ESM Treaty would violate provisions stated in Titles I and VIII TFEU due to alteration of competences conferred on the Union. By contrast, the defendants argued the compatibility of these ESM provisions with the prohibition of overdraft facilities stipulated in Article 123 TFEU. According to the defendants, the

⁶⁴⁸ [2012] IEHC 296, 17 July 2012.

⁶⁴⁹ *ibid* para 1.

⁶⁵⁰ *ibid* para 8.

⁶⁵¹ *ibid* para 60.

scope of Article 123 includes the ECB and central banks of the Member States but not the ESM.⁶⁵² After alleging the compatibility of Article 125 TFEU, prohibiting the Union and the Member States to commit for other Member States liabilities, the defendants contended that ESM stability support does not interfere with monetary policy.⁶⁵³ Since it directly relates to the identification of a monetary policy vis-à-vis an economic policy, cautious attention should be paid to the arguments presented by the parties to the court on that matter.

For the plaintiff, the extent to which Ireland committed to the ESM, of about one-third of domestic revenues for 2011,⁶⁵⁴ necessarily entailed a transfer of budgetary and monetary power contrary to domestic and Union laws.⁶⁵⁵ In this instance, it may be inferred from the plaintiff's arguments, spread over different parts of the judgment, an interference of the ESM financial stability support with the single monetary policy.⁶⁵⁶ By contrast, the defendants argued that the financial stability support granted by the ESM is a funding arrangement neither interfering with the ESCB objectives nor with the tasks conferred on the ECB.⁶⁵⁷ However, the rationale behind the defendants' argument appears counterintuitive. In the view of the defendants, the ESM funding arrangement would not interfere with the performance of the tasks described in Article 127(2) TFEU since it will not "(...) alter the overall money supply in the euro area (...)" but rather "(...) distribute it within the euro area (...)".⁶⁵⁸ Nonetheless, as mentioned in the previous chapter, the effectiveness of the single monetary policy depends on its transmission to the real economy. In particular, in defining its monetary strategy, the ESCB identified different monetary transmission channels necessary for implementation of the single monetary policy. Therefore, should the ESM financial stability support the redistribution of money supply, it would naturally encroach upon Article 127(2)(1). Indeed, the redistribution of money supply is to be considered a part of the single monetary policy process and of the exclusive competence of the Union therefor.

Notwithstanding the defendants' arguments, notably those concerning the definition of a monetary policy,⁶⁵⁹ one should also observe the contradictory reasoning of Justice Laffoy. After considering the inappropriateness of arguments developed by the defendants on what constitutes a monetary

⁶⁵² *ibid* para 62.

⁶⁵³ *ibid* para 64.

⁶⁵⁴ *ibid* para 29.

⁶⁵⁵ *ibid* para 16(b).

⁶⁵⁶ In that respect please read paragraph 64 in conjunction with paragraphs 30 and 75.

⁶⁵⁷ See notably para 64.

⁶⁵⁸ *ibid* para 64.

⁶⁵⁹ *ibid* para 30.

policy,⁶⁶⁰ Justice Laffoy did not disregard these considerations when examining the above-mentioned matter.⁶⁶¹ Hence, in the view of Justice Laffoy, the ESM financial stability support does not encroach upon the definition, and implementation, of the single monetary policy.⁶⁶² Finally, after examining the other submissions, Justice Laffoy concluded on the compatibility of the ESM Treaty with the Irish Constitution and EU Treaties.⁶⁶³

Accordingly, Justice Laffoy assessed the plaintiff's claims regarding the validity of Decision 2011/199/EU vis-à-vis domestic and Union laws. In essence, Mr Pringle claimed the incompatibility of the simplified revision procedure enshrined in Article 48(6) TEU with the revision of Article 136 TFEU as proposed by Decision 2011/199/EU. According to the plaintiff, a revision of Article 136 TFEU should be realized via the ordinary revision procedure provided in Article 48(1)–(5) TEU since it increases the competences conferred on the Union.⁶⁶⁴ Moreover, it would follow from the invalidity of Decision 2011/199/EU under Union law its incompatibility with Article 29.4 of the Irish Constitution. In examining the plaintiff's grounds, Justice Laffoy started recalling the settled body of case-law of the CJEU on the review of EU acts by domestic courts,⁶⁶⁵ and considered the observations of the EU institutions on this matter. In that regard, Justice Laffoy emphasized the favourable opinions issued by the European Parliament, the European Commission and by the ECB on the compatibility of the establishment of the ESM with the EU Treaties.⁶⁶⁶ In particular, all the above-mentioned institutions considered it to be valid to revise Article 136 via the simplified revision procedure, as it would not increase competences conferred on the Union. In that regard, it should also be recalled that pursuant to Article 4 of Protocol 3 TFEU and to Decision 98/415/EC, the ECB should indeed be consulted for “any proposed Community act in its field of competence”.

In that respect, should Decision 2011/199/EU be considered, at least by Justice Laffoy, as falling within the scope of monetary affairs? Assuredly not, as it would later be considered. After considering the opinions issued by the institutions, Justice Laffoy examined the defendants' responses to the plaintiff's arguments. The defendants considered that the revision of Article 136 did not increase competences conferred on the Union but “merely serve[d] to confirm a competence that the

⁶⁶⁰ *ibid.*

⁶⁶¹ *ibid* paras 64, 68, 75-76.

⁶⁶² *ibid* para 76.

⁶⁶³ *ibid* paras 90; 140.

⁶⁶⁴ *ibid* paras 8-9 ;152.

⁶⁶⁵ *ibid* para 143.

⁶⁶⁶ *ibid* paras 154-159.

Member States retain”.⁶⁶⁷ Agreeing with the defendant’s position, Justice Laffoy concluded on the “complete validity” of Decision 2011/199/EU with Union and Irish laws.⁶⁶⁸

In the light of the foregoing considerations, Justice Laffoy finally assessed whether the court should, on the basis of Article 267 TFEU, make a reference for a preliminary ruling to the CJEU. In that respect, it must be recalled that the plaintiff, in his amended written summary, provided the High Court with a set of proposed preliminary questions to be submitted to the CJEU.⁶⁶⁹ On that basis, and after considering her conclusions on previous issues, Justice Laffoy decided to examine only the plaintiff’s question pertaining to the validity of Decision 2011/199/EU.⁶⁷⁰ However, the question analysed by Justice Laffoy consisted rather of examining whether postponement of Decision 2011/199/EU would “(...) affect the effect and operability of the ESM Treaty pending the entry into force of the decision”.⁶⁷¹ As recalled by Justice Laffoy, paragraph 2 of Article 48(6) TEU stipulated that a European Council Decision “shall not enter into force until is approved by the Member States in accordance with their respective constitutional requirements”.⁶⁷² This led to the question of the valid entry into force of the ESM Treaty in the event of a Member State’s failure to comply with the requirements stated in Article 2 of Decision 2011/199/EU.⁶⁷³ In the light of the importance of this question, Justice Laffoy considered that it should be referred to the CJEU.⁶⁷⁴

As all of his claims were dismissed by Justice Laffoy, the plaintiff immediately appealed to the Supreme Court against the judgment issued by the High Court on 17 July 2012. However, before briefly presenting the issues addressed to the Supreme Court, the crucial importance of the judgment issued by the High Court should be underlined. The importance raised by this question with respect to the demarcation between monetary and economic policies should be noted. In particular, as it may have been observed in the arguments developed in the judgment, two issues emerged therefrom.

Firstly, in arguing that the ESM financial stability support encroached upon monetary policy, the plaintiff raised the issue of what constitutes a monetary policy. As mentioned in the first chapter, the issue of distinguishing monetary from economic policy is particularly old. In that regard, it

⁶⁶⁷ *ibid* para 161.

⁶⁶⁸ *ibid* paras 163 ; 181.

⁶⁶⁹ *ibid* paras 33-35.

⁶⁷⁰ *ibid* para 186.

⁶⁷¹ *ibid* para 194.

⁶⁷² *ibid* para 195.

⁶⁷³ *idem*.

⁶⁷⁴ *ibid* paras 196-197.

should naturally be recalled that in 1962, van Campen drafted a seminal report suggesting a theoretical distinction between monetary and economic policies by their instruments.⁶⁷⁵ On that point, it is interesting to note that the High Court did not mention the absence of a monetary policy in the EU Treaties. Nor did it really attempt to consider what constitutes a monetary policy is. Rather, Justice Laffoy, as mentioned in the previous paragraphs, concurred with the defendants' approach on this specific matter. In that respect, the defendants did not really define, although they attempted to,⁶⁷⁶ what a monetary policy is, but apprehended it through its objectives and tasks. Since the ESM neither pursued a price stability objective nor had tasks similar to those listed in Article 127(2) TFEU, it could not constitute a monetary policy measure. By concurring so, but also by disregarding any redistributing effects of the ESM financial stability support, the High Court would pave the way to complex observations and arguments before the CJEU.

Secondly, when examining the validity of Decision 2011/119/EU, the High Court had to also appreciate the repartition of competences between the Union and its Member States within the framework of the EMU. However, to assess whether the repartition of competences is respected, a clear frontier between the monetary and economic policies should be drawn. Hence, any obscure definition of what constitutes a monetary policy vis-à-vis an economic policy tends to complexify the interdependency between these two issues.

The judgment of the High Court will give rise to highly complex considerations and observations, brought first before the Supreme Court of Ireland, and then before the CJEU.

ii. The Supreme Court Judgment

On 19 July 2012, Mr Pringle appealed the judgment issued by the High Court on 17 July 2012 to the Supreme Court of Ireland.⁶⁷⁷ In the light of the urgency and importance of the issues claimed by the appellant, the Supreme Court decided to grant an early hearing on the sovereignty claim.⁶⁷⁸ It is of note that the sovereignty claim refers to the alleged delegation of sovereignty, resulting from the imprecise powers and functions of the ESM and from the extent to which Ireland financially committed to it.⁶⁷⁹ Moreover, the examination of this claim by the Supreme Court was naturally followed by other claims. Particularly those related to the alleged incompatibility of both Decision

⁶⁷⁵ CEE, van Campen, ...op.cit., VC-HAEU, PE0-313, para 9.

⁶⁷⁶ [2012] IEHC 296, 17 July 2012, para 30.

⁶⁷⁷ [2012] IESC 47, 31 July 2012.

⁶⁷⁸ *idem*, section III, para 5.

⁶⁷⁹ [2012] IEHC 296, 17 July 2012, para 16.

2011/199/EU and the ESM Treaty with Union law and to the injunction claim. Indeed, it should be recalled that the appellant requested the High Court to restrain the Irish Government from ratifying the ESM Treaty until the finalization of these proceedings.⁶⁸⁰

In the light of the arguments developed by the parties, the Supreme Court decided to reject the sovereignty and injunction claims and to make a reference for a preliminary ruling to the CJEU with respect to the other issues. In substance, and which will be further developed in the following sub-sections, the Supreme Court of Ireland referred to the CJEU two issues of law. First, it referred to the CJEU a question regarding the validity of Decision 2011/199/EU in the light of the use of the simplified revision procedure provided in Article 48(6) TFEU. This first issue also raised the necessity to examine whether the proposed amendment of Article 136 TFEU does not violate Union law, in particular its general principles. Second, the Supreme Court referred to the CJEU a question of interpretation of specific EU Treaties provisions, notably those governing the EMU, in the context of the possibility for a Member State of the eurozone to ratify an international agreement. This second issue also raised the need to examine whether a Member State might ratify the ESM Treaty upon the entry into force of Decision 2011/199/EU, if held to be valid.⁶⁸¹

As mentioned previously, the issues raised by Mr Pringle in his claims, now turned into preliminary questions addressed to the CJEU, were of crucial importance, not only for the stability of the eurozone but also for distinguishing monetary from economic policies, on which the integration degree of the EMU depends. Hence, it may be perceived that the questions referred by the Supreme Court of Ireland to the CJEU were of very complex nature. This complexity is further reinforced by the impossibility of acceding to the original written submissions and oral evidence presented to the jurisdiction of first instance and to the referring court during the proceedings. To obtain a clear understanding of these issues, and notably of that of demarcation of monetary from economic policies, the analysis of the CJEU judgment will be made on the basis of primary sources. This means on the basis of the written observations of the parties notified to the CJEU along with those of the Member States and European Institutions participating in the proceedings.

⁶⁸⁰ *ibid* para 25.

⁶⁸¹ [2012] IESC 47, 31 July 2012, all questions referred to the CJEU are presented in section VI.

b. The CJEU in Pringle

In *Pringle*, the CJEU developed seminal jurisprudential considerations pertaining to the demarcation of monetary from economic policies in both the first (i) and second (ii) questions referred by the Supreme Court of Ireland.

i. The First Question

After considering whether it has jurisdiction for this issue of law,⁶⁸² the CJEU examined the validity of Decision 2011/199/EU under Union law.⁶⁸³ For that purpose, the CJEU decided to first examine whether the treaty amendment proposed by Decision 2011/199/EU solely pertains to the provisions of Part III TFEU or to its first part as well. In particular, this required to consider whether the Decision did not alter the repartition of competences by encroaching upon the exclusive competence of the Union in the area of monetary policy and its competence in coordination of economic policies. To appreciate the responses delivered by the CJEU, it seems opportune to consider the arguments developed by the parties in their written observations.

In a manner similar to that before the High Court, the appellant submitted that the proposed amendment of Article 136 TFEU via Article 48(6) TFEU was not valid. According to him, the use of simplified revision procedure could not be valid inasmuch as it amended provisions other than those contained in Part III TFEU.⁶⁸⁴ It is of note, in that regard, that most of the arguments of the main parties to the proceeding are to be appreciated in the context of the second question. In substance, the appellant submitted that since the action of the ESM would adversely affect price stability, it will necessarily fall within the exclusive competence of the Union.⁶⁸⁵ Moreover, as the coordination of economic policies of the Member States should take place within the Union, this amendment would also encroach upon the shared economic competence of the Union.⁶⁸⁶ Contrariwise, the respondents submitted that Decision 2011/199/EU deals solely with Part III TFEU and therefore could not amend provisions included in Part I TFEU.⁶⁸⁷

This view was shared and submitted to the Court by many Member States and European institutions, including the European Council itself. Indeed, according to the very EU institution that issued Decision 2011/199/EU, the amendment proposed by Article 48(6) TFEU neither

⁶⁸² CJEU, *Pringle*, C-370/12, EU:C:2012:756.

⁶⁸³ *ibid* para 45.

⁶⁸⁴ CJEU, *Written observations of Thomas Pringle – Appellant in the main proceedings*, C-370/12, paras 5.16-20.

⁶⁸⁵ *ibid* paras 3.21-3.29.

⁶⁸⁶ *ibid* para 5.19.

⁶⁸⁷ CJEU, *Written observations of Ireland*, C-370/12, 14 September 2012, doc. 914758, para 24.

increases nor decreases the exclusive competence in the area of monetary policy, conferred on the Union.⁶⁸⁸ The rationale behind this argument was that the mechanism provided in the amended Article 136 TFEU constitutes an instrument of budgetary funding, not of monetary policy.⁶⁸⁹ In that regard, the European Council provided some considerations with respect to the meaning of the amended Article 136 TFEU and therefore, to the nature of the ESM financial support. In particular, the European Council emphasizes the reconciliation of the euro area stability with monetary and price stability by Article 136(3) TFEU.⁶⁹⁰ Although not particularly underpinned in these observations,⁶⁹¹ it is interesting to note that these considerations contribute to the demarcation of monetary from economic policies. However, the European Council did not embark on a legal analysis of what constitutes monetary policy. This was made by the CJEU when examining the first question referred by the Supreme Court of Ireland.

After recalling the exclusive competence of the Union in the area of monetary policy, the CJEU examined whether Decision 2011/199/EU encroaches upon this competence.⁶⁹² In its analysis, it first noticed the absence of a definition for monetary policy in the TFEU.⁶⁹³ This legal vacuum led the CJEU to consider what constitutes a monetary policy under primary law. The CJEU disregarded the observations of the European Council and of some Member States, such as those of the Slovak Republic.⁶⁹⁴ Instead, the CJEU considered that a monetary policy should be identified in the light of its objectives rather than of its instruments.⁶⁹⁵ It should be recalled that under primary law, the ESCB primary objective of price stability is not defined. Nor is defined its support to the general economic policies in the Union. Such definition, or explanation, could indeed not be found in the Treaties but rather in the parliamentary reports or *travaux préparatoires* of the Intergovernmental Conference for the EMU. However, the absence of a definition of the single monetary policy did not prevent the CJEU from comparing its objective with that of the ESM. Consequently, the reasoning of the CJEU is rather laconic: since the ESM aims to safeguard the stability of the euro area, it is not part of the objective of price stability.⁶⁹⁶ By considering monetary policy so, the CJEU

⁶⁸⁸ CJEU, *Written observations by the European Council in Case C-370/12*, C-370/12, 14 September 2012, doc. 914718, paras 39; 41.

⁶⁸⁹ *ibid* para 41.

⁶⁹⁰ *ibid* para 33.

⁶⁹¹ *ibid* paras 41-47.

⁶⁹² *ibid* para 52.

⁶⁹³ *ibid* para 53.

⁶⁹⁴ CJEU, *Written observations submitted to the Court of Justice by the Slovak Republic*, C-370/12, 13 September 2012, doc 0849/Os/2012/AC, paras 18-20.

⁶⁹⁵ CJEU, *Pringle*, C-370/12, EU:C:2012:756, para 53.

⁶⁹⁶ *ibid* para 56.

totally disregarded the side-effects of the ESM financial stability support on monetary and price stability.

Turning to the instruments used to attain the objective of financial stability, the CJEU considered that the instruments used by the ESM do not fall within monetary policy.⁶⁹⁷ In that context, the CJEU apprehended the ESM financial stability support as falling under the economic area rather than under the monetary one. Therefore, the amendment proposed to Article 136 via Decision 2011/199/EU did not encroach upon the exclusive competence of the Union for monetary policy.⁶⁹⁸ Neither did it encroach upon the shared competence of the Union for economic policy, nor did it lead to an increase/decrease of the competences conferred on the Union.⁶⁹⁹ Therefore, the CJEU held Decision 2011/199/EU to be valid under Union law.⁷⁰⁰

Most of the considerations related to the demarcation of monetary from economic policies were to be found in the second question referred to the CJEU. In that context, it seems opportune here to present the limb of the second question pertaining to this issue of law.

ii. The Second Question

After considering the validity of Decision 2011/199/EU under Union law, the CJEU had to analyse whether Member States of the euro area were entitled to enter into and ratify the ESM Treaty.⁷⁰¹ In essence, the question referred by the Supreme Court of Ireland requested the CJEU to interpret Articles 4(3) and 13 TEU and Articles 2(3) TFEU, 3(1)(c) and (2) TFEU, 119 to 123 TFEU and 125 to 127 TFEU along with the general principles of effective judicial protection and legal certainty.⁷⁰² Similarly to the first question, it seems opportune to restrict the presentation of the CJEU interpretation to the provisions of the TFEU on the monetary policy. In that context, further details on the observations of the parties to the proceedings should be given before considering those of the CJEU.

In the view of the appellant, the ESM Treaty encroached upon the exclusive competence of the Union with regard to the monetary policy. In particular, the appellant submits that the financial support granted by the ESM, as a capital injection to Member States or direct recapitalization of

⁶⁹⁷ *ibid* para 57.

⁶⁹⁸ *ibid* para 63.

⁶⁹⁹ *ibid* paras 70 ; 75.

⁷⁰⁰ *ibid* para 76.

⁷⁰¹ *ibid* para 77.

⁷⁰² *ibid* para 77.

financial/credit institutions, would adversely affect price stability by increasing money supply.⁷⁰³ According to the appellant, this would fall within the exclusive competence of the ECB to “(...) *regulate the availability and supply of money in the eurozone*”.⁷⁰⁴ Contrarily, the defendants claimed that since the ESM Treaty provided for a funding arrangement, it could not fall within the scope of Article 3(1) TFEU.⁷⁰⁵

In that regard, the defendants made an analogical reasoning when interpreting Article 127 TFEU. According to the defendants, the appellant’s arguments on Article 127 TFEU should be rejected for the same reasons as those mentioned for Article 119(2) TFEU, where Ireland embarked on an analysis of what constitutes a monetary policy. It is interesting to note that Ireland considered that:

(...) monetary policy is part of broader economic policy and deals with the setting and management of interest rates and the money supply by policy makers usually at central bank.⁷⁰⁶

In the view of the defendants, monetary policy would distinguish itself from other economic policies through its primary objective of price stability, and the operations implemented to achieve it.⁷⁰⁷ In this instance, since the ESM aims to provide funding to distressed Member States of the euro area via its own lending operations, it does not interfere with monetary policy.⁷⁰⁸

This observation should be appreciated in conjunction with the argument submitted to the High Court with respect to the redistributive effects of the financial stability support granted by the ESM. According to the defendants, the ESM financial stability support does not influence the amount of money supply in the euro area but rather redistributes it.⁷⁰⁹ This conjunction of observations invites the consideration of the extent to which the economic side-effects on the monetary policy may resist against the exclusive competence of the Union in the area of monetary policy.

It should be observed that some Member States participating in the proceeding submitted written observations on this issue. For instance, Germany submitted that it is not because some economic policy components indirectly affect the euro exchange rate that they should fall within the scope

⁷⁰³ CJEU, *Written observations of Thomas Pringle – Appellant in the main proceedings*, C-370/12, para 3.25.

⁷⁰⁴ *ibid* para 3.28.

⁷⁰⁵ CJEU, *Written observations of Ireland*, C-370/12, 14 September 2012, doc. 914758, para 78.

⁷⁰⁶ *ibid* para 52(1).

⁷⁰⁷ *idem*.

⁷⁰⁸ *ibid* para 52(2).

⁷⁰⁹ [2012] IEHC 296, 17 July 2012, para 11.

of monetary policy.⁷¹⁰ Similarly, Italy submitted that the ESM does not pursue the objective of price stability via monetary policy instruments but “contributes to it only indirectly by means of financial policy instruments”.⁷¹¹ In addition, the European Commission submitted that the financial stability support granted by the ESM would not be inconsistent with the single monetary policy.⁷¹² Rather, it would facilitate monetary policy transmission by minimizing distortions on the bond market.⁷¹³ Although those considerations were underpinned to a limited extent, they were in fact at the core of the interpretation provided by the CJEU on this issue of law.

The CJEU examined this limb of the second question referred by the Supreme Court of Ireland in a similar way as it did with the first question. The CJEU first recalled its analysis of what constitutes a monetary policy under primary law,⁷¹⁴ and then compared again the objective of price stability with that of the ESM. It, thus, naturally appears that since the objectives stated in Article 3 of the ESM Treaty do not relate to price stability, the ESM activities do not fall within the exclusive competence the Union in the area of monetary policy. Moreover, although the activities of the ESM might have indirect effects on inflation, they nevertheless constitute measures of economic policy.⁷¹⁵ Therefore, the CJEU held that neither Article 3(1)(c) nor Article 127 prevent a Member State of the euro area from ratifying the ESM Treaty.⁷¹⁶

It is interesting to notice that the reasoning of the CJEU to the first and second questions are identical, and therefore rather laconic. In that regard, it raises a multitude of observations, which would later be reconsidered by the CJEU when examining the Gauweiler and Weiss and others cases. In this context, a few observations should be made with regard to the analysis of the CJEU on what constitutes a monetary policy.

2. *Some Observations on Pringle*

The interpretation given by the CJEU on what constitutes a monetary policy **(a)** raises some observations, notably when considering the side-effects **(b)** of the ESM financial stability support.

⁷¹⁰ CJEU, *Observations of the Federal Republic of Germany*, C-370/12, 14 September 2012, para 39.

⁷¹¹ CJEU, *Observations of the Federal Republic of the Italian Republic*, C-370/12, 14 September 2012, doc n° Ct.30855/12 para 25.

⁷¹² CJEU, *Observations of the European Commission*, C-370/12, 13th September 2012, sj.f(2012)1243325, 23, para 76.

⁷¹³ *idem*.

⁷¹⁴ CJEU, *Pringle*, C-370/12, EU:C:2012:756, para 94.

⁷¹⁵ *ibid* para 97.

⁷¹⁶ *ibid* para 98.

a. The Definition of Monetary Policy

Embarking on an interpretation of what constitutes a monetary policy constitutes under Union law was surely not an easy task for the CJEU, let alone when restricting its analysis to primary law. It should be recalled in that regard that, as developed in the preceding chapters, the construction of the EMU was a long and complex process. So was the conceptualization of the single monetary policy around the objective of price stability by the EMI. It is under these historical considerations that the appellant first assessed the criticality of price stability and of the prohibition of monetary financing.⁷¹⁷ In particular, the appellant considered some parliamentary reports and preparatory documents of the Intergovernmental Conference on the EMU to support his analyses.⁷¹⁸ Nonetheless, in interpreting Articles 3(1)(c), 119 and 127 TFEU, the CJEU did not consider any *travaux préparatoires*, parliamentary report or secondary legislation to appreciate what constitutes a monetary policy under Union law. Instead, the CJEU opted for a black letter analysis, sharply contrasting with the observations of the Member States participating to the proceedings, as well as with the “views” provided by the Advocate General.

In the view of Advocate General Kokott, the absence of a definition of the concept of monetary policy under Union law requested the examination of the provisions of Title VIII TFEU.⁷¹⁹ According to her, the provisions covered in the chapter on monetary policy mostly describe the “tasks, powers and organisation” of the ESCB.⁷²⁰ In that regard, the Advocate General concluded on defining what constitutes a monetary policy through its tasks, not by its primary objective.⁷²¹ Since the tasks conferred on the ESM do not pertain to those of the ESCB pursuant to Article 127(2) TFEU, the ESM financial stability support cannot be part of monetary policy.⁷²² As observed by De Witte and Beukers,⁷²³ such a definition of the concept of monetary policy was also partially shared by Member States participating in the proceedings. For instance, Cyprus⁷²⁴ and Greece⁷²⁵ also examined monetary policy in the light of the tasks defined in Article 127(2) TFEU. Other

⁷¹⁷ CJEU, *Written observations of Thomas Pringle – Appellant in the main proceedings*, C-370/12, paras 2.1-2.8.

⁷¹⁸ *ibid* paras 2.4 ; 3.18.

⁷¹⁹ CJEU, View of Advocate General Kokott of 26 October 2012, *Thomas Pringle v Government of Ireland and Others*, C-370/12, EU:C:2012:675, para 78.

⁷²⁰ *ibid* para 79.

⁷²¹ *ibid* para 80.

⁷²² *ibid* paras 81-82.

⁷²³ Beukers Thomas Witte Bruno De, ‘The Court of Justice Approves the Creation of the European Stability Mechanism Outside the EU Legal Order: Pringle’ [2013] *Common Market Law Review* 805, 830.

⁷²⁴ CJEU, *Observation of the Republic of Cyprus*, C-370/12, 14 September 2012, para 53.

⁷²⁵ CJEU, *Written observations of the Hellenic Republic*, C-370/12, 13 September 2012, paras 18; 24.

Member States such as France⁷²⁶ and Slovakia⁷²⁷ opted for a broader approach by also considering the objective of price stability. However, the CJEU did not consider what constitutes a monetary policy through the four basic tasks enumerated in Article 127(2) TFEU. Rather, it considered it through the objective of price stability. In so doing, one could have legitimately expected from the CJEU a rather complex interpretation of what price stability constitutes under Union law.

As developed in the previous chapters, the objective of price stability is at the inception of the EMU. This objective does not originate from the Intergovernmental Conference on the EMU of 1991. Instead, it is deeply rooted in the early times of the European project when it was considered by parliamentarians such as van Campen and Bousch. Naturally, these considerations influenced seminal initiatives such as those of Werner and Delors which eventually led to the TEC 1992. As noticed previously, Article 105(1) TEC 1992 vested the ESCB with the primary objective of price stability. However, it did not quantitatively or qualitatively define what price stability constitutes under Union law. Rather, it conferred the conceptualization of the single monetary policy on the EMI. In the absence of a definition of price stability, the EMI enjoined the ECB to announce a “definition of price stability, with a view to enhancing transparency and credibility”.⁷²⁸ This was indeed realized on 13 October 1998 when the ECB presented its strategy for conducting the monetary policy of the Union.⁷²⁹ Hence, it is from the absence of definition of price stability in the TEC that could be derived the margin of discretion of the ESCB for conducting the single monetary policy.

As may be seen, the intellectual and legislative history is particularly rich in that respect. However, it was totally disregarded by the CJEU. In the view of the Court, the objective of price stability should be compared with that of the ESM as provided in Article 3 of the ESM Treaty. In disregarding any historical aspects of the legislative and intellectual process which led to the definition of price stability by the ECB, the CJEU opted for an original approach. In essence, the CJEU compared the ESM objective with the undefined concept of price stability to appreciate whether it is part of the also undefined concept of monetary policy. Logically, the objective of the ESM could not be similar to an objective undefined under primary law.

⁷²⁶ CJEU, *Observations of the French Republic*, C-370/12, 14 September 2012, para 67.

⁷²⁷ CJEU, *Written observations submitted to the Court of Justice by the Slovak Republic*, C-370/12, 13 September 2012, doc 0849/Os/2012/AC, paras 18-20.

⁷²⁸ EMI, *The Single Monetary Policy in Stage III...* op.cit 12.

⁷²⁹ ECB, *A stability-oriented monetary policy strategy for the ESCB*, press release, 13 October 1998.

Moreover, the CJEU briefly considered whether the ESM instruments of financial stability might be considered as instruments of a monetary policy measure. It should be recalled that the instruments are the second element forming part of the definition of what a policy monetary constitutes under Union law.⁷³⁰ In examining this issue of law, the CJEU did not assess whether the ESM financial stability support mentioned in Decision 2011/199/EU, and then instruments considered in the ESM Treaty, are encompassed within the scopes of Articles 18.1, 19 and 20 of Protocol 4 TFEU. Nor did it consider the explanations given annually by the ECB on the functioning of its monetary policy instruments in its general documentation. Rather, the CJEU emphasized that the grant of financial assistance to a Member State does not fall under the exclusive competence of the Union in the area of monetary policy.⁷³¹ This assertion holds when considering the wording of Decision 2011/199/EU. However, such wording may be tempered when examining some of the instruments that might be granted by the ESM pursuant to the ESM Treaty. For instance, direct recapitalization of a systemic institution under Article 15 of the ESM Treaty may be the subject of a complex discussion. Indeed, if the failing institution holds a significant share of sovereign bonds of the distressed Member State, would the injection of liquidity via its direct recapitalization not alleviate the public debt burden of this Member State? Similarly, if the institution has a large market share for payment services, would its direct recapitalization not participate in restoring monetary policy transmission channels? In the view of the CJEU, since the ESM is not entitled to set key interest rates or to issue euro currency, its financial assistance support could not be monetary policy.⁷³²

Lastly, in defining what constitutes a monetary policy through its objective, and then its instruments, the CJEU tends to minimize any legal risks, especially those regarding interpretation of the tasks conferred on the ESCB pursuant to Article 127(2) TFEU. Although the ESM financial support would not influence the money supply in the euro area, it could nonetheless redistribute it. As suggested previously, such distributive effect of the ESM financial support could encroach upon Article 127(2) TFEU, in particular on the first task related to implementation of the single monetary policy by the ESCB. In that respect, should the ESM financial stability support be considered as a monetary policy measure since it would indirectly encroach on the implementation of the single monetary policy? Assuredly not. However, the indirect effects of the financial stability support granted by the ESCB should not be neglected by the CJEU.

⁷³⁰ CJEU, *Pringle*, C-370/12, EU:C:2012:756, paras 53; 56; 96.

⁷³¹ *ibid* para 57.

⁷³² *ibid* para 96.

In that regard, it is interesting to note that the CJEU briefly considered the notion of indirect effects when examining the two first questions. Thus, in the light of the jurisprudential analysis delivered by the CJEU, a brief presentation of these redistributive effects seems opportune.

b. Indirect Effects of Economic Policy

As suggested in the previous paragraph, the demarcation of monetary from economic policies was not an easy task for the CJEU, particularly with regard to indirect effects. The CJEU did not ignore indirect effects of the ESM financial stability support on the single monetary policy. Indeed, in examining whether Decision 2011/199/EU encroaches upon the exclusive competence of the Union for monetary policy, the CJEU considered the indirect effects of the ESM support on the single monetary policy. More specifically, after comparing the objectives of the ECB and of the ESM, the CJEU held that “(...) an economic policy measure cannot be treated as equivalent to a monetary policy measure for the sole reason that may have indirect effects on the stability of the euro.” While it is difficult to find the legal basis that would support such a consideration, it is however not difficult to identify from where it originates. Attention should be paid to the view delivered by Advocate General Kokott.

Advocate General Kokott concluded that the concept of monetary policy should be defined by its tasks. In that respect, the Advocate General had to consider, as submitted to the Court by the appellant, whether the activity carried out by the ESM indirectly affected money supply. The outcome of such assessment was an important element to determine whether such activity fell within the scope of Article 127(2).⁷³³ After considering the fact that the ESM is not a commercial bank,⁷³⁴ the Advocate General observed that “(...) not every form of economic policy can be treated as equivalent to monetary policy solely because it may indirectly affect the price stability of the euro”.⁷³⁵ In her view, a finding to the contrary would infer that all parts of an economic policy would be reserved to the ESCB.⁷³⁶

According to Advocate General Kokott, this observation originates from the submissions of Germany. However, this seems to be a rather extensive interpretation of the written observations

⁷³³ CJEU, View of Advocate General Kokott of 26 October 2012, *Thomas Pringle v Government of Ireland and Others*, C-370/12, EU:C:2012:675, para 84.

⁷³⁴ *idem*.

⁷³⁵ *ibid* para 85.

⁷³⁶ *idem*.

submitted by Germany to the CJEU. More specifically, Germany submitted the following observation:

Not every area of policy that related to competition and the economic situation in the euro area and therefore indirectly affects the trend in the euro exchange rate falls within the scope of the (exclusive) competence for monetary policy.⁷³⁷

Therefore, it appears that Germany had a much narrower approach than that adopted by the Advocate General. As discussed in the previous chapter, the stability of the exchange rate is not the only means of achieving price stability. Hence, the Advocate General tends to generalize the written observation submitted by Germany. Obviously, it is not to say that such interpretation is incorrect or incomplete. Instead, it is of note that it strongly influenced the reasoning of the CJEU on this matter. Suffice to notice the resemblance with the relevant paragraph of the judgment.

Consequently, the interpretation adopted by the CJEU raises some issues with respect to the demarcation between monetary and economic policy. For instance, when defining what constitutes a monetary policy under Union law, the CJEU emphasized the indirect effects of an economic policy measure on monetary policy. Nonetheless, this reasoning transformed this issue of law to an issue of economics. Indeed, while the issue of defining what constitutes a monetary policy is resolved, its distinction from economic policy via indirect effects still remains. In that regard, how should the indirect effects of a policy be legally defined? At first glance, this issue may seem irrelevant. However, it is a key element for distinguishing economic from monetary policies under Union law (or vice versa). This would naturally be considered in future cases brought before the CJEU, starting with *Gauweiler*.⁷³⁸

B. Monetary or Economic Policy?: The *Gauweiler* judgment

In *Gauweiler*, the CJEU had to interpret whether a non-standard measure of monetary policy constitutes a measure of economic policy (1). Much more complex than *Pringle*, the judgment issued for *Gauweiler* invites some observations (2).

1. Distinguishing Monetary from Economic Policies

In reaction to the adoption of the OMT decision by the ECB on 6 September 2012, several legal actions were initiated against its validity under Union law. This invites the consideration of the

⁷³⁷ CJEU, *Observations of the Federal Republic of Germany*, C-370/12, 14 September 2012, para 39.

⁷³⁸ CJEU, *Gauweiler*, C62/14, EU:C:2015:400.

arguments developed before and by the FCC (a) to then analyse the judgment issued by the CJEU (b).

a. The FCC, European Integration and the OMT Decision

The *Gauweiler* judgment did not constitute the first opportunity for the FCC to become acquainted with issues of law pertaining to European integration (i). However, the jurisprudential importance of this case necessitates the consideration of the analysis delivered by the FCC (ii).

i. The FCC and the EMU

The FCC has rather extensive experience in assessing the compatibility of Union law with the German Constitution. However, it is not to consider here the different Solange cases which forged the constitutional identity of Germany throughout the years.⁷³⁹ Instead, it is to appreciate the analyses delivered by the FCC after examining issues of law pertaining to economic integration in the Union. As mentioned in the previous chapters, the creation of the EMU was a long process which eventually culminated with the entry into force of the Maastricht Treaty. Therefore, one must first consider the decision of 12 October 1993 issued by the FCC on the compatibility of the Maastricht Treaty with the German Basic Law.⁷⁴⁰ For a clear understanding of the legal issues, a brief presentation of the proceedings is required.⁷⁴¹

In the view of the complainants, the Maastricht Treaty would violate their fundamental rights and constitutional guarantees equivalent to fundamental rights enshrined in the German Basic Law.⁷⁴² In particular, the complainants submitted that the Maastricht Treaty, and the German Act of Consent, would violate Articles 1, 2, 5, 9, 12, 14, 20, 21, 38 and 93 of the German Basic Law.⁷⁴³ However, it is of note that the complainants mostly focused on the violation of Article 38. In that respect, the complainants submitted that the right of democratic representation in the Federal Parliament, enshrined in Article 38, would be violated by the transfer of national competences to institutions of the European Communities.⁷⁴⁴ This naturally referred to the expansion of

⁷³⁹ Paul Craig and Grainne de Burca, *EU Law: Text, Cases and Materials* (5th edn, Oxford University Press 2011) 272–83.

⁷⁴⁰ 2 BvR 2134/92, 2 BvR 2159/92.

⁷⁴¹ For a complete analysis of the Maastricht decision see Stephan Hobe, ‘The German State in Europe After the Maastricht Decision of the German Constitutional Court’ (1994) 37 *Ger Yearb Int Law* 113.

⁷⁴² 2 BvR 2134/92, 2 BvR 2159/92. – Translation made by von Bogandy and made on the translation of Wegen et al, 33 *J.L.M.* 388 (March 1994), 7-8.

⁷⁴³ *idem*.

⁷⁴⁴ *ibid* 7-8; 11.

competences requested to establish the EMU, as provided in the Protocol on the Transition to the Third Stage of Economic and Monetary Union.⁷⁴⁵

After examining the admissibility of the claims submitted by the complainants, the FCC considered that only the claim pertaining to Article 38 was admissible. However, the FCC did not concur with the analysis submitted by the complainants on this issue of law and declared it unfounded.⁷⁴⁶ Indeed, in the view of the FCC, Article 38 would not be violated by the Treaty of Maastricht since the concept of democracy enshrined in the Basic Law is not incompatible with a community of states formed under international law.⁷⁴⁷ In that regard, the FCC appreciated the democratic foundations of the Union. In particular, the FCC stated that “(...) democratic foundations upon which the Union is based are extended concurrent with integration, and that a living democracy is maintained in the Member States while integration proceeds.”⁷⁴⁸ In that context, the FCC noted that if too many powers were conferred on the Union, the individual democracy at Member States level would be weakened. This notably requests the German Federal Parliament to retain some powers in that respect.⁷⁴⁹ In the light of the foregoing, it is interesting that the FCC held that Article 38 would be violated if competences conferred on the European Communities would not be sufficiently delimited.⁷⁵⁰ In the view of the FCC, any amendment to the integration programme stipulated in the Maastricht Treaty would no longer be covered by the Act of Consent. Hence, any legal instruments issued in that respect would be considered *ultra vires*.⁷⁵¹ This led the FCC to rule that the Maastricht Treaty, as ratified by the Act of Consent, was subject to parliamentary accountability, notably as regards the transition to the third phase of the EMU.⁷⁵² Thus, the Federal Parliament would have to assess whether the stability criteria is achieved before entering the last phase of the EMU.⁷⁵³ In the view of the FCC, if the objective of monetary stability is not achieved, the EMU will depart from the original intent of the Maastricht Treaty.⁷⁵⁴ This is very important when appreciating this statement in the light of the *ultra vires* possibility described above.

As may be perceived from the above, the Maastricht Decision of the FCC raised complex issues of law pertaining to economic and monetary integration within the Union. However, this decision

⁷⁴⁵ *ibid* 11.

⁷⁴⁶ *ibid* 16.

⁷⁴⁷ *ibid* 17.

⁷⁴⁸ *ibid* 19.

⁷⁴⁹ *idem*.

⁷⁵⁰ *idem*.

⁷⁵¹ *ibid* 20.

⁷⁵² *ibid* 26.

⁷⁵³ *ibid* 28.

⁷⁵⁴ *ibid* 29.

should not be considered as the only landmark case in that field. On 31 March 1998, the FCC issued another decision pertaining to the introduction of the euro.⁷⁵⁵ In that case, the complainants submitted that the participation of Germany to the EMU, as of 1 January 1999, would violate their fundamental rights enshrined in Article 38(1) of the German Basic Law.⁷⁵⁶ As a consequence, according to the complainants, Germany should postpone the effective entry into force of the EMU.⁷⁵⁷ However, as for the Maastricht Decision, the FCC did not concur with the analyses submitted by the complainants.⁷⁵⁸ Similarly, on 7 September 2011, the FCC issued another decision related to the financial assistance measures granted to Greece in the wake of the European sovereign debt crisis.⁷⁵⁹

In the light of the foregoing, it is important to note the acquaintance of the FCC with issues of law pertaining to European integration in general and to monetary integration in particular. The analyses made by the FCC in each decision are of crucial importance for appreciating complex issues of law, such as those submitted in Gauweiler.

ii. An FCC Analysis of the OMT Decision

In 2013, Mr Gauweiler, Mr Huber, Mr Bandulet, Mr von Stein (“**complainants**”) and *Die Linke* (“**applicant**”) commenced different actions in the FCC against the ECB Decision establishing the OMT programme, the Federal Government of Germany and the German *Bundestag*.⁷⁶⁰ Initiated on the basis of Article 93 of the German Basic Law, the four constitutional complaints and the *Organstreit* proceedings (applicant) are rather complex. In essence, the complainants and the applicant claimed that the OMT Decision constituted an ultra vires act which the Federal Government and the German *Bundestag* should act against.⁷⁶¹ In particular, the complainants and the applicant submitted that the OMT Decision did not constitute a measure of monetary policy⁷⁶² but rather a measure of economic policy.⁷⁶³

⁷⁵⁵ DE:BVerfG:1998:rs19980331.2bvr187797.

⁷⁵⁶ *ibid* paras 51-52.

⁷⁵⁷ *ibid* paras 97-98.

⁷⁵⁸ *ibid* para 73 ; 76-77.

⁷⁵⁹ DE:BVerfG:2011:rs20110907.2bvr098710. For an analysis of the case see: Susanne K Schmidt, ‘A Sense of Déjà Vu? The FCC’s Preliminary European Stability Mechanism Verdict’ (2013) 14 German Law Journal 1, 9–10, Cambridge Core.

⁷⁶⁰ BVerfG, Order of the Second Senate of 14 January 2014, 2 BvR 2728/13, DE:BVerfG:2014:rs20140114.2bvr272813, please note that the complainants mentioned above actually represented several thousands of other ones.

⁷⁶¹ *ibid* paras 1, 5.

⁷⁶² *ibid* para 5.

⁷⁶³ *idem*.

The ECB did not concur with the submissions of the complainants and of the applicant.⁷⁶⁴ It is also of note that the *Bundesbank* joined the proceedings. However, it did not join to support the validity of the OMT Decision. Rather it joined the proceedings to contest the objective pursued by the ECB via the OMT programme.⁷⁶⁵ In the light of the constitutional significance of this case, the FCC decided to make a reference for a preliminary ruling to the CJEU. Naturally, as with the Maastricht Decision of 1993, the FCC also interpreted the validity of the OMT Decision with the German Constitution and Union law. However, for a clear understanding of the analysis delivered by the FCC in this case, notably as regards the demarcation between monetary and economic policies, it is necessary to briefly present the submissions of the parties to the proceedings.

In the view of the complainants and of the applicant, the OMT Decision constituted an ultra vires act because it was not covered in the mandate conferred on the ECB pursuant to Articles 119 and 127 TFEU.⁷⁶⁶ In addition, it would also violate the prohibition of monetary financing enshrined in Article 123 TFEU and explained in Chapter II of this thesis. In that regard, the complainants and the applicant notably submitted that the purchase of bonds was only permitted via monetary policy measures, whereas the OMT Decision, due its technical features, constituted a measure of economic policy.⁷⁶⁷ According to the complainants and the applicant, the selectivity criteria applied by the ECB for purchases of government bonds and the activation of the OMT upon participation of the ESM/EFSF programmes emphasize the economic nature of the OMT programme.⁷⁶⁸ In that context, according to the complainants and the applicant, the OMT Decision would affect the competence of the *Bundestag* for the Federal budget.⁷⁶⁹ Finally, the complainants and the applicant claimed the violation of Articles 20 and 79 of the German Basic Law that notably protect “(...) against an erosion in the process of European integration”.⁷⁷⁰

By contrast, the ECB submitted statements whereby it did not concur with the observations submitted to the Court by the complainants and the applicant. In the view of the ECB, the disruption of the monetary policy transmission mechanism, impairing the implementation of the single monetary policy, justified to establish the OMT programme.⁷⁷¹ In that context, the OMT Decision intended to neutralize interest spreads resulting from unfounded fears of investors against

⁷⁶⁴ *ibid* paras 7-12.

⁷⁶⁵ *ibid* paras 13-15.

⁷⁶⁶ *ibid* para 5.

⁷⁶⁷ *idem*.

⁷⁶⁸ *idem*.

⁷⁶⁹ *idem*.

⁷⁷⁰ *idem*.

⁷⁷¹ *ibid* para 6.

the euro.⁷⁷² For the ECB, the OMT transactions are based on Article 18.1 of Protocol 4 (open-market operations) and do not circumvent the prohibition of monetary financing enshrined in Article 123 TFEU.⁷⁷³ The German *Bundesbank*, in charge of implementing the single monetary policy in Germany, did not concur with the economic reasons justifying the OMT Decision. For the *Bundesbank*, the disruption of monetary policy transmission mechanism is questionable.⁷⁷⁴ In particular, it submitted that such disruption should be permitted if Member States do not comply with the assistance provided by the ESM/EFSSF.⁷⁷⁵ It is on the basis of those submissions that the FCC delivered its analysis before making a reference for a preliminary ruling to the CJEU.

After considering the different legal provisions pertaining to the case, the FCC decided to first examine the validity of the OMT Decision. In the view of the FCC, any transgression by the ECB of its mandate would notably encroach upon the competence conferred on Member States for economic policy.⁷⁷⁶ According to the FCC, this would lead to consider the OMT Decision as an ultra vires act of which it would have to refrain implementation.⁷⁷⁷ It is important to consider that if the OMT decision were to be considered ultra vires by the FCC, this would not be on the basis of a violation of the primary objective conferred on the ECB. Rather, in implementing such programme, the ECB would transgress its second objective: the support of general economic policies. Indeed, in the view of the FCC, the ECB “may only support the general economic policies of the Member States”.⁷⁷⁸ To recall, Article 127 TFEU confers on the ECB the objective to support the general economic policies *in* the Union and not *of* the Member States. Nonetheless, this signifies for the FCC that the ECB is not entitled to:

pursue its own economic policy. If one assumes – subject to the interpretation of the Court of Justice – that the OMT decision is to be qualified as an independent act of economic policy. It manifestly violates the distribution of powers.⁷⁷⁹

This statement from the FCC is of crucial importance not only for this case but also for subsequent ones. Indeed, the FCC conditions the validity of the OMT Decision upon its legal qualification, either as a monetary or as an economic policy measure. Hence, if the OMT Decision were to be qualified as an economic policy measure, it would necessarily encroach upon the budgetary

⁷⁷² *idem*.

⁷⁷³ *ibid* para 11.

⁷⁷⁴ *ibid* para 13.

⁷⁷⁵ *idem*.

⁷⁷⁶ *ibid* para 33.

⁷⁷⁷ *ibid* paras 33 ; 44.

⁷⁷⁸ *ibid* para 39.

⁷⁷⁹ *idem*.

competence of the Member States.⁷⁸⁰ In the view of the FCC, if the OMT Decision were to be held ultra vires for the reasons presented above, alongside with a potential violation of Article 123 TFEU, the German *Bundestag* and the Federal Government of Germany should refrain from implementing this programme.⁷⁸¹ This would be justified on the need to protect the European integration programme agreed upon by Germany.⁷⁸²

As suggested previously, the FCC did not restrict its analysis to domestic consequences arising from a potential interpretation of the CJEU on the economic nature of the OMT Decision. In fact, the FCC delivered its own interpretation of the compatibility of the OMT Decision with Union law.⁷⁸³ In that regard, the FCC considered the OMT Decision incompatible with Articles 119 and 127 TFEU and with the provisions of Protocol 4.⁷⁸⁴ Indeed, according to the FCC, the OMT Decision does not constitute a measure of monetary policy but rather an economic one.⁷⁸⁵ To support this interpretation, the FCC recalled the absence of definition of monetary policy in the EU Treaties and the subsequent interpretation made by the CJEU in *Pringle* in that respect.⁷⁸⁶ While basing its interpretation on paragraph 53 of the *Pringle* judgment, the FCC nonetheless markedly departed from the interpretation made by the CJEU. Indeed, in the view of the FCC, the delimitation of monetary policy is to be considered in the light of the objective pursued by the measure at issue but not.⁷⁸⁷ More specifically, for the FCC, a measure of monetary policy is to be delimited by its immediate objective, the instruments used to achieve this objective, and its link to other provisions.⁷⁸⁸

Naturally, it is on the basis of such interpretation of *Pringle* that the FCC will qualify the OMT Decision as a measure of economic policy. In that regard, special attention should be devoted to the interpretation of what the OMT Decision constitutes under Union law in the view of the FCC.

After examining the mandate conferred on the ECB in the light of the three criteria mentioned of the previous paragraph, the FCC considered that it would not likely cover the OMT Decision.⁷⁸⁹ In the view of the FCC, this preliminary interpretation on the economic nature of the OMT

⁷⁸⁰ *ibid* para 41.

⁷⁸¹ *ibid* para 49.

⁷⁸² *ibid* paras 49-54.

⁷⁸³ *ibid* paras 55-100.

⁷⁸⁴ *ibid* paras 55 ; 56-83.

⁷⁸⁵ *ibid* para 64 (among others).

⁷⁸⁶ *ibid* para 61.

⁷⁸⁷ *ibid* para 63

⁷⁸⁸ *idem*.

⁷⁸⁹ *ibid* para 69.

Decision is supported by a careful examination of its technical features. First, the FCC held that the immediate objective pursued by the ECB via the OMT programme is not of monetary nature.⁷⁹⁰ For the FCC, the neutralization of spreads on government bonds to safeguard the “current composition of the euro currency area” falls within the scope of Article 140 TFEU.⁷⁹¹ Therefore, the OMT Decision is to be considered as a measure of economic policy for which the ECB has not been conferred any competences. Before turning to the examination of selectivity criteria, it should be observed how the FCC assessed the immediate objective pursued by the ECB via the OMT programme. Indeed, the FCC barely considered the statement produced by the ECB to justify the neutralization of spreads.⁷⁹² In fact, it mostly relied upon “(...) the convincing expertise of the Bundesbank (...)” to understand the rationale behind these spread levels.⁷⁹³ This not only emphasize a national preference for the *Bundesbank* but also tensions within the ESCB.⁷⁹⁴

Second, the FCC observed that the OMT Decision might not be a measure of monetary policy due to its targeted approach (selectivity). For the FCC, the instruments of the single monetary policy, enumerated in Protocol 4 and described in the general framework of the ESCB, are to be applied uniformly in the euro area.⁷⁹⁵ In the view of the FCC, neutralization of spreads of some Member States would be detrimental to government bonds of other Member States.⁷⁹⁶ Additionally, the condition that the OMT programme would be activated upon the participation of the distressed Member States in the ESM/EFSF programme, led the FCC to consider it as an act of economic nature.⁷⁹⁷ Finally, the FCC held that in implementing the OMT programme the ECB would exceed its support of the economic policy in the Union.⁷⁹⁸ In conclusion, the FCC interpreted, as for the purchase of government bonds on secondary markets,⁷⁹⁹ the OMT decision as not compatible with Union law. However, before analysing the preliminary rulings made by the FCC to the CJEU, it seems opportune to make brief observations on this decision.

⁷⁹⁰ *ibid* para 72.

⁷⁹¹ *idem*.

⁷⁹² *ibid* para 71.

⁷⁹³ *idem*.

⁷⁹⁴ It is interesting to read the ECB reaction to this argument, see CJEU, *Written explanations of the European Central Bank*, C-62/14, 25 August 2014, para 60.

⁷⁹⁵ *ibid* para 73.

⁷⁹⁶ *idem*.

⁷⁹⁷ *ibid* paras 74-78.

⁷⁹⁸ *ibid* para 82.

⁷⁹⁹ For an analysis of this limb of the FCC Decision see Thomas Beukers, ‘The Bundesverfassungsgericht Preliminary Reference on the OMT Program: “In the ECB We Do Not Trust. What About You?”’ (2014) 15 *German Law Journal* 343, 355–57.

Similarly to the judgment issued by the High Court of Ireland in *Pringle*, it appears evident from this decision that the demarcation of monetary from economic policies remains a crucial issue of law. However, here stops the similarity between the two judgments. While the High Court of Ireland had to appreciate whether the ESM financial support is a measure of monetary policy, the FCC had to consider the opposite. Nonetheless, any analogical reasoning from the FCC is further complexified by the intrinsic nature of the OMT Decision. In fact, the FCC interpreted whether the OMT Decision constituted an act of economic policy on the assumption that it was not a standard measure of monetary policy. However, and apart from the conditionality attached to the OMT Decision, the issue would have been rather to consider whether a non-standard measure of monetary policy, by its unconventionality, in fact constitutes an act of economic policy.

Naturally, as considered by Beukers,⁸⁰⁰ it may be argued that the FCC examined the nature of the OMT Decision on the basis of the interpretation by the CJEU in *Pringle*. However, the CJEU did not examine the validity of Decision 2011/199/EU in light of three equally ranked criteria. Rather, it emphasized the primacy of the objective criterion over the others. The instruments used to achieve this objective being secondary to the examination of the CJEU. Although crucial, this observation did not constitute the only interpretative departure of the FCC from the judgments issued by the High Court of Ireland or by the CJEU.

In that regard it should be observed that the FCC did not examine the OMT Decision only in the light of the applicable legal framework. In fact, by giving preference to the statement delivered by the *Bundesbank*, the FCC judged the economic expertise, and margin of appreciation, conferred on the ECB. In doing so, the FCC performed an extensive judicial review which seems to go far beyond tasks traditionally conferred upon constitutional courts. Naturally, this extensive judicial review has been subject to various analyses and comments from the academia. In that regard, the analyses undertaken by Goldmann regarding the standard of judicial review in that decision⁸⁰¹ and by Gerner-Beuerle and others with respect to the economic nature of the OMT Decision.⁸⁰²

Similarly to *Pringle*, the issues raised by the complainants and the applicant in their claims, now turned into preliminary questions addressed to the CJEU, were of crucial importance. Not only were they essential for delimiting monetary from economic policies but also for understanding the limits imposed on the ECB's support to general economic policies in the Union. However, as it

⁸⁰⁰ *ibid* 345.

⁸⁰¹ Goldmann (n 58).

⁸⁰² Gerner-Beurle and others (n 53).

may be perceived from this decision, the questions referred by the FCC to the CJEU were of very complex nature. This complexity is further reinforced by the impossibility to accede to the original written submissions and oral evidence submitted to the FCC. To obtain a clear understanding of these issues, and notably of that of demarcation of monetary from economic policies, the analysis of the CJEU judgment will be made on the basis of primary sources. This means in the light of the written observations of the parties submitted to the CJEU along with those of the Member States and European Institutions participating in the proceedings.

b. The CJEU in Gauweiler

In *Gauweiler*, the CJEU slightly refined its position regarding the demarcation between monetary and economic policies (i). This also invited the CJEU to assess whether the OMT programme may circumvent the prohibition stated in Article 123(1) TFEU (ii).

i. Distinguishing Monetary from Economic Policies

After considering the admissibility of the preliminary ruling made by the FCC,⁸⁰³ the CJEU examined whether the OMT Decision constitutes a measure of monetary or economic policy under Union law.⁸⁰⁴ For that purpose, the CJEU decided to first examine the powers conferred on the ESCB to then appreciate the delimitation of monetary policy and the proportionality of the measure at issue. Naturally, this requested the CJEU to appreciate very complex arguments not always of legal nature. To obtain a clear understanding of the examination conducted by the CJEU in that regard, it seems opportune to consider the arguments developed by the parties in their written observations.

As previously mentioned, not all submissions from the applicants were based on legal or on economic arguments. Nor were some submissions proposing an interpretation of the OMT Decision under Union law. Instead, as it was flagrant with those of Mr Bandulet,⁸⁰⁵ some applicants interpreted the economic nature of the OMT Decision in the light of German Law.⁸⁰⁶ This naturally brought confusion to already complex issues of law. That being said, the applicants were in unison in denying the monetary nature of the OMT Decision. To underpin their submissions, they first analysed the mandate conferred on the ESCB to then appreciate the demarcation of monetary from economic policies drawn by the CJEU in *Pringle*. For instance, in the view of *Die Linke*, price

⁸⁰³ CJEU, *Gauweiler*, C-62/14, EU:C:2015:400, paras. 17-31.

⁸⁰⁴ *ibid* paras 32-92.

⁸⁰⁵ CJEU, *Observations of Bandulet, Hanke, Nilling, Schachtschneider and Starbatty*, C-62/14, 27 May 2014, n°965630, 4-10.

⁸⁰⁶ CJEU, *Observations of Dr. Peter Gauweiler*, C-62/14, 12 June 2014, n°66726, paras 8-13.

stability, a primary objective conferred on the ECB, is to be considered as being part of economic policy,⁸⁰⁷ but a special part of economic policy which rather suggests a “currency competence”.⁸⁰⁸ Nonetheless, the objective of price stability distinguishes itself from other objectives of economic policy by the tasks conferred on the ESCB pursuant to Articles 127(2) and 282(1) TFEU.⁸⁰⁹ Similarly to *Die Linke*, Mr Huber also proposed an interpretation of the objective of price stability in the light of the second objective conferred on the ECB, the support for general economic policies in the Union.⁸¹⁰ More specifically, in the view of the Mr Huber, this secondary objective should not be interpreted as conferring a mandate for economic policy on the ECB.⁸¹¹

As mentioned above, these preliminary considerations on the mandate of the ECB naturally led the applicants to appreciate the demarcation of monetary from economic policies in light of the criteria identified in *Pringle* by the CJEU. In essence, for the applicants, the OMT pursues an objective of monetary nature but only indirectly.⁸¹² For instance, Mr Gauweiler submitted that lowering interest rates of distressed Member States’ government bonds participates only indirectly in the restoration of monetary policy transmission channel.⁸¹³ The absence of direct monetary objective transforms the OMT Decision into a measure of economic policy.⁸¹⁴ Such conclusion is further underpinned with the analyses of the applicants on the technical features of the OMT Decision.

In that respect, the applicants submitted that the activation of the OMT programme upon participation, and then upon compliance, to an ESM/EFSF programme infers a direct economic policy objective.⁸¹⁵ More specifically, in the view of *Die Linke*, the conditionality attached to the OMT Decision goes far beyond the ESCB support for general economic policies in the Union. In fact, it would rather support the ESM economic policy than those in the Union.⁸¹⁶ Moreover, in the view of Mr Gauweiler, the selective approach of the OMT programme emphasizes its economic nature since the single monetary policy should not be discriminatory.⁸¹⁷ It is noteworthy that this

⁸⁰⁷ CJEU, *Observations of Die Linke*, C-62/14, 2 June 2014, 2-3.

⁸⁰⁸ *idem*.

⁸⁰⁹ *ibid* 2.

⁸¹⁰ CJEU, *Observations of Roman Huber*, C-62/14, 24 June 2014, 10-11 to be read in conjunction with p. 13

⁸¹¹ *idem*.

⁸¹² CJEU, *Observations of Die Linke*, C-62/14, 2 June 2014, 4-5; *Observations of Dr. Peter Gauweiler*, C-64/14, 12 June 2014, n°66726, para 15.

⁸¹³ CJEU, *Observations of Dr. Peter Gauweiler*, C-62/14, 12 June 2014, n°66726, paras 15; 21-23.

⁸¹⁴ *ibid* para 22 ; *Observations of Roman Huber*, C-62/14, 24 June 2014, 13.

⁸¹⁵ CJEU, *Observations of Dr. Peter Gauweiler*, C-62/14, 12 June 2014, n°66726, para 43; *Observations of Die Linke*, C-64/14, 2 June 2014, 6-9.

⁸¹⁶ CJEU, *Observations of Die Linke*, C-62/14, 2 June 2014, 7-8.

⁸¹⁷ CJEU, *Observations of Dr. Peter Gauweiler*, C-62/14, 12th June 2014, n°66726, paras 33-35.

last argument did not end the submissions of Mr. Gauweiler. This applicant also claimed that purchases of government bonds issued by distressed Member States would redistribute risks.⁸¹⁸ This redistribution, and any risk materialization, was not a task of monetary policy, according to Mr Gauweiler.⁸¹⁹

Contrariwise, the Federal Government of Germany, acting as defendant in the main proceedings,⁸²⁰ did not really concur with the submissions of the applicants. In fact, it would be more accurate to say that it did not deal with their submissions but rather with the interpretation of Union law given by the FCC in its decision. In that regard, the Federal Government of Germany submitted nuanced, not to say diplomatic, submissions to the CJEU. For instance, the Federal Government of Germany claimed that the FCC rightly interpreted the mandate of the ESCB and the demarcation criteria identified by the CJEU in Pringle.⁸²¹ However, its approach was much more nuanced as regards the secondary objective conferred on the ESCB. More specifically, in the view of the Federal Government of Germany:

(...) [the FCC] must, however, agree that this does not provide any justification for ‘a guiding design of economic policy’ that can be derived by the ESCB.⁸²²

Nevertheless, the Federal Government of Germany did not consider the OMT as not valid under Union. However, its validity did not derive from a thorough analysis of the technical features of the OMT Decision. Rather the Federal Government submitted that the OMT Decision is not yet a decision issued by the Governing Council of the ECB but a press release only,⁸²³ thus preventing any thorough legal analysis by the Federal Government of Germany.⁸²⁴ In essence, the Federal Government of Germany did not enter into complex observations. In fact, it just contented to highlight the principle of sincere cooperation, enshrined in Article 4(3) TEU, to request cooperation between the CJEU and the constitutional courts.⁸²⁵

It is not because the defendant eluded, or briefly appreciated, the demarcation between monetary and economic policies that Member States and European institution parties to the proceedings did so. In particular, the ECB provided a thorough analysis of the OMT Decision.⁸²⁶ In that regard, it

⁸¹⁸ *ibid* paras 36-38.

⁸¹⁹ *idem*.

⁸²⁰ CJEU, *Observations of the Federal Government of Germany*, C-62/14, 6 June 2014.

⁸²¹ *ibid* paras 20-23.

⁸²² *ibid* para 24 – google translate.

⁸²³ *ibid* para 25.

⁸²⁴ *idem*.

⁸²⁵ *ibid* paras 29-33.

⁸²⁶ CJEU, *Written explanations of the European Central Bank*, C-62/14, 25 August 2014.

should be first observed that the ECB not only based its submissions on the OMT Decision of 6 September 2012, the press release. In fact, it submitted its observations on the basis of this Decision and also on the draft OMT Decision and a possible “guideline for the implementation of Outright transactions”, as of November 2012.⁸²⁷ In this respect, the objectives of the draft decision should have been the transmission and uniformity of the single monetary policy.⁸²⁸ This precision is important because, in assessing the delimitation of monetary policies, the ECB interpreted the validity of those objectives under Union law. In particular, the ECB submitted that, as mentioned in Chapter II of this thesis, the transmission of the single monetary policy is necessary to achieve price stability,⁸²⁹ such objective being intrinsically linked to financial stability.⁸³⁰ According to the ECB, the attainment of price stability does not request to be realized directly or indirectly,⁸³¹ as with the OMT Decision. Thus, in the view of the ECB, the OMT Decision (including the draft decision and the guideline) would be in conformity with its mandate.⁸³² This conclusion was underpinned by the ECB when analysing the technical features of the OMT.

It was in the light of those submissions that the CJEU analysed the validity of the OMT Decision of 6 September 2012 with Union law. In that regard, the CJEU did not take into account the draft OMT Decision and guidelines mentioned by the ECB in its observations. Hence, after considering the powers conferred by the EU Treaties on the ESCB, the CJEU appreciated the monetary nature of the OMT Decision.⁸³³ For that purpose, the CJEU first held that:

(...) to determine whether a measure falls within the area of monetary policy it is appropriate to refer principally to the objectives of that measure. The instruments which the measure employs in order to attain those objectives are also relevant.⁸³⁴

Although claimed to be based on paragraphs 53 and 56 of the *Pringle* judgment, the reasoning of the CJEU is nonetheless slightly different. More specifically, in *Pringle*, the CJEU estimated that to determine whether a measure constitutes a measure of monetary policy, special attention should be paid to its objectives rather than to the instruments employed. Here, in *Gauweiler*, the CJEU tends to nuance this hierarchical ranking between the objectives and instruments of the measure at

⁸²⁷ *ibid*, paras. 24-25 – please note that I have not been able to accede to those drafts. Nonetheless, some legal details are released in paras 26 and 27.

⁸²⁸ *ibid* para 26. The paragraph refers to the second recital of the draft decision.

⁸²⁹ *ibid* para 44.

⁸³⁰ *ibid* para 51.

⁸³¹ *ibid* para 52-53.

⁸³² *ibid* para 71.

⁸³³ CJEU, *Gauweiler*, C62/14, EU:C:2015:400, paras 46-65.

⁸³⁴ *ibid* para 46.

issue. Naturally, this was in the light of these two criteria that the CJEU determined whether the OMT Decision constituted a measure of monetary policy, as explained below.

To determine whether the OMT Decision falls within the mandate conferred on the ESCB, the CJEU first recalled its objectives. The latter was notably to “(...) safeguard both ‘an appropriate monetary policy transmission and the singleness of the monetary policy’.”⁸³⁵ In the view of the CJEU, those objectives contribute to the realization of the primary objective conferred on the ESCB. In particular, the necessity to restore the monetary transmission channels, to ensure the effectiveness of the single monetary policy, is deemed to pertain to the objective of price stability.⁸³⁶ In that respect, the crucial importance of the interpretation delivered by the CJEU should be underlined. Indeed, in interpreting so, the CJEU concurred with the observations submitted by the ECB.⁸³⁷ In particular, in stating that the restoration of the monetary transmission channels pertains to the objective of price stability, the CJEU acknowledged that the primary objective conferred on the ESCB may be attained either directly or indirectly. This emphasizes the large discretion octroyed to the ECB regarding its arbitrages and operational choices. Moreover, this interpretation did not constitute the only interesting analysis made on the objectives of the OMT Decision.⁸³⁸

Indeed, it is noteworthy that the CJEU made an analogical reasoning regarding the indirect effects produced by the OMT Decision. More specifically, the CJEU held:

(...) a monetary policy measure cannot be treated equivalent to an economic policy measure merely because it may have indirect effects on the stability of the euro area.⁸³⁹

This interpretation is an analogy of paragraph 56 of the Pringle judgment, itself deriving from an interpretation of the German observations by Advocate General Kokott. More specifically, this analogy seems also to echo the explanations provided by the ECB on interlinkages between the objective of price stability and that of financial stability. One will recall that, in the view of the ECB, these two objectives “(...) represent mutually reinforcing monetary policy goals”.⁸⁴⁰ In the light of

⁸³⁵ *ibid* para 47.

⁸³⁶ *ibid* para 50.

⁸³⁷ CJEU, *Written explanations of the European Central Bank*, C-62/14, 25 August 2014, paras 52-53.

⁸³⁸ CJEU, *Gaumeiler*, C62/14, EU:C:2015:400, para 68.

⁸³⁹ *ibid* para 52.

⁸⁴⁰ CJEU, *Written explanations of the European Central Bank*, C-62/14, 25 August 2014, para 51.

the foregoing, the CJEU held that the objectives of the OMT Decision, along with the instruments it employs,⁸⁴¹ fall within the mandate conferred on the ESCB.⁸⁴²

According to the CJEU, the monetary nature of the OMT Decision cannot be recalled into question by its technical features. In that regard, the CJEU motivated its analysis in the light of the selectivity and conditionality features attached to the OMT Decision. As regards the selectivity of the OMT programme, the CJEU held that the EU Treaties do not prescribe the ESCB to implement measures applicable to all Member States.⁸⁴³ This interpretation should be understood as the possibility to use targeted measures to ensure the uniformity of the single monetary policy, as observed by Poland notably.⁸⁴⁴ Similarly to this first technical feature, the CJEU also held that the activation of this programme upon compliance with the EFSF/ESM programmes does not transform the OMT Decision into a measure of economic policy.⁸⁴⁵ More specifically, the CJEU interpreted the conditionality of the OMT Decision in the light of the second objective conferred on the ECB. In essence, for the CJEU, the conditionality of the OMT Decision should be understood as a support for the general economic policies in the Union, activated upon disruption of the transmission mechanism.⁸⁴⁶ Finally, the difference of objectives pursued by the OMT Decision and the ESM are decisive according to the CJEU.⁸⁴⁷

In the light of the foregoing, the CJEU retained the monetary nature of the OMT Decision. As it may be perceived from the above, the interpretation delivered by the CJEU, and the submissions of the parties to the proceedings, were far more complex than those for Pringle. This would invite the drawing of some comments after the presentation of the second question addressed to the CJEU by the FCC.

ii. The OMT Decision and Article 123(1) TFEU

After appreciating the monetary nature of the OMT Decision, the CJEU had to assess its compatibility with Article 123(1) TFEU. As mentioned in the previous chapters, the prohibition of monetary financing was a long process which started in 1989 and eventually culminated with the

⁸⁴¹ CJEU, *Gauweiler*, C62/14, EU:C:2015:400, para 54.

⁸⁴² *ibid* para 56.

⁸⁴³ *ibid* para 55.

⁸⁴⁴ CJEU, *Written observations of the Republic of Poland*, C-62/14, 18 June 2014, paras 36-37; see also, *Written observations of the Kingdom of the Netherlands*, C-62/14, 12 June 2014, para 42; *Written declarations of the European Parliament*, C-62/14, 11 June 2014, n° SJ-0294/14, para 45.

⁸⁴⁵ CJEU, *Gauweiler*, C62/14, EU:C:2015:400, para 57.

⁸⁴⁶ *ibid* paras 59 ; 62.

⁸⁴⁷ *ibid* para 64.

entry into force of the Maastricht Treaty. In that regard, it should be recalled that many amendments to Article 104A of the Commission non-paper, and then to the proposal of the Dutch Presidency, led to enshrine the prohibition of monetary financing in Article 104 TEC 1992. This was then further explained in the seventh recital of Council Regulation 3603/93 which notably provides that “(...) purchases made on the secondary market must not be used to circumvent the objective of that Article.”⁸⁴⁸ Hence, in asking the CJEU to determine whether the OMT programme does not circumvent Article 123(1) TFEU, the FCC reopened the debate on monetary financing. To obtain a clear understanding of this issue of law, brief attention should first be given to the observations submitted by the parties to the proceedings.

For the applicants, or rather for the FCC, the purchase of government bonds of distressed Member States circumvents the prohibition of monetary financing enshrined in Article 123 TFEU. For Mr Huber, relying upon the interpretation of the FCC, the ECB would circumvent this prohibition due to the characteristics of the instruments it employs. More specifically, the possibility to hold the government bonds until maturity and the haircut to be applied in case of restructuring constitute, among others, indicators of monetary financing.⁸⁴⁹ Similarly to Mr Huber, Mr Gauweiler concurred with the interpretation made by the FCC on this issue of law.⁸⁵⁰ In particular, according to Mr Gauweiler, the use of collective action clause would lead to a debt waiver beneficial to the relevant distressed Member States but not permitted under the applicable legal framework.⁸⁵¹ It is of note that *Die Linke* did not submit any observations in that respect.

As for the question pertaining to the demarcation between monetary and economic policies, the Federal Government of Germany submitted rather nuanced observations to the CJEU. In essence, the Federal Government of Germany invited to the CJEU to interpret “(...) Art. 123 in such a way that a collision with essential elements of the constitutional order of the Member States was avoided.”⁸⁵² This nuanced position from the Federal Government of Germany was not followed by other parties to the proceedings, and in particular by the ECB.

⁸⁴⁸ Council Regulation No 3603/93 specifying definitions for the application of the prohibitions referred to in Articles 104 and 104b(1) of the Treaty; Council Regulation No 3604 of 13 December 1993 specifying definition for the application of the prohibition of privileged access referred to in Article 104a of the Treaty, OJ L 332, 31 December 1993, 1-6.

⁸⁴⁹ CJEU, *Observations of Roman Huber*, C-62/14, 24 June 2014, 14-15.

⁸⁵⁰ CJEU, *Observations of Dr. Peter Gauweiler*, C-62/14, 12 June 2014, n°66726, paras 45-56.

⁸⁵¹ *ibid* paras 51-52.

⁸⁵² CJEU, *Observations of the Federal Government of Germany*, C-62/14, 6 June 2014, para 40.

According to the ECB, Article 123(1) TFEU indeed prohibits the ECB and the NCBs from purchasing government bonds on primary markets.⁸⁵³ This prohibition is justified for preserving the singleness of the monetary policy and for ensuring budgetary discipline.⁸⁵⁴ However, for the ECB, the wording of this Article is clear enough to understand that indirect purchases, on secondary markets, are not prohibited.⁸⁵⁵ Otherwise, the authors of the Treaties would have provided so.⁸⁵⁶ Thus, in the view of the ECB, the purchase of distressed government bonds is not prohibited and does not circumvent Article 123(1) TFEU.⁸⁵⁷ On that last point, it is of note that neither the absence of quantitative limitation nor any technical features could suggest circumvention of this Article.⁸⁵⁸ In particular, the argument that the ECB would intervene in the market logic since it can hold these bonds till their maturity, could not lead to monetary financing, according to the ECB.⁸⁵⁹

In the light of those submissions, the CJEU first started to appreciate the aim of Article 123(1) TFEU along with that of Recital 7 of Council Regulation 3603/93. Hence, after mentioning the conclusions of the Advocate General,⁸⁶⁰ the CJEU held that the OMT programme should have specific safeguards to not circumvent Article 123(1) TFEU.⁸⁶¹ In that regard, the CJEU held that the imposition of a sufficient period of time between the issuance of the instrument and its purchase and the absence of forward guidance constitute sufficient safeguards.⁸⁶² It is of note that the CJEU then appreciated the indirect effects of these purchases on budgetary policies of the Member States. More specifically, the CJEU considered that the guarantees of the OMT programme (selectivity, conditionality, selling of instruments at any time) “(...) limit its impact on the impetus to follow a sound budgetary policy”.⁸⁶³ Hence, in the light of these considerations, the CJEU held that the OMT programme does not circumvent Article 123(1) TFEU.⁸⁶⁴

In the light of the foregoing, the CJEU considered that the OMT Decision of 6 September 2012 is valid under Union law.⁸⁶⁵ Far more complex than *Pringle*, both in the observations submitted by

⁸⁵³ CJEU, *Written explanations of the European Central Bank*, C-62/14, 25 August 2014, paras 113-115.

⁸⁵⁴ *ibid* para 115.

⁸⁵⁵ *ibid* para 119.

⁸⁵⁶ *idem*.

⁸⁵⁷ *ibid* para 120.

⁸⁵⁸ *ibid* paras 121-150.

⁸⁵⁹ *ibid* paras 137; 139.

⁸⁶⁰ CJEU, Opinion of Advocate General Cruz Villalón of 14 January 2015, *Gauweiler and others*, C-62/14, EU:C:2015:7, para 227.

⁸⁶¹ CJEU, *Gauweiler*, C62/14, EU:C:2015:400, paras 103-105.

⁸⁶² *ibid* paras 106.

⁸⁶³ *ibid* paras 115 ; 116-121.

⁸⁶⁴ *ibid* para 121.

⁸⁶⁵ *ibid* para 127.

the parties and in the judgment, the Gauweiler judgment constitutes a landmark case for distinguishing monetary from economic policies. Naturally, this merits observations.

2. *Some Observations on Gauweiler*

In Gauweiler, the CJEU refined the identification criteria of what constitutes a monetary policy under Union law (a). This naturally deserves some observations, notably when considering the redistributive effects of the OMT decision in the light of the prohibition of monetary financing (b).

a. *The Delimitation of Monetary Policy in Gauweiler: A Jurisprudential Evolution*

Embarking on an analysis of what constitutes a monetary policy was not an easy task for the CJEU in Pringle. In that regard, it could be argued that the identification criteria held by the CJEU could have greatly facilitated the analysis of the OMT Decision. However, this interpretation should not be taken as such. In Pringle, the CJEU delimited a measure of economic policy with a standard measure of monetary policy. By contrast, in Gauweiler, the CJEU had rather to analyse whether a non-standard measure of monetary policy constitutes a measure of economic policy. One may argue that the difference between standard and non-standard measures of monetary policy should not entail any interpretative differences from the CJEU. In fact, these two types of measures should not lead to distinct legal categories, according to the European Commission.⁸⁶⁶ Notwithstanding this, standard and non-standard measures of monetary policy are very different, at least by their effects and instruments employed. This naturally invited the CJEU to undertake a far more complex analysis than in Pringle. Naturally, this was first reflected in the identification criteria used by the CJEU to assess whether the OMT Decision indeed constitutes a (non-standard) measure of monetary policy.

To recall, the CJEU ruled in Pringle that a monetary policy should be identified in the light of its objectives rather than of its instruments.⁸⁶⁷ As previously mentioned, the CJEU held in the Gauweiler case that in order to identify a monetary policy, one should “principally” refer to the objectives of that measure but that the instruments it employs are also “relevant”. One may consider that it constitutes an almost imperceptible change between the two interpretations. However, this is not the case. In fact, in acknowledging the relevance of the instruments employed by the measure at issue, the CJEU tends to adapt this criterion identified in Pringle to non-standard

⁸⁶⁶ CJEU, *Observations écrites de la Commission Européenne*, C-62/14, 12th June 2014, sj.f(2014) 2085550 para 59.

⁸⁶⁷ CJEU, *Pringle*, C-370/12, EU:C:2012:756, para 53.

measures of monetary policy. It is of note that what renders a standard measure of monetary policy “unconventional” is more the instruments it employs rather than the objective itself. This is of crucial importance when considering the measures of monetary policy implemented by the ESCB since 2008. That being said, this enhancement of the instrument criterion used to identify a measure of monetary policy is not the only significant departure made by the CJEU in that regard. In fact, such departure also concerned the main identification criteria – the objective of the OMT Decision.

The CJEU interpreted the objective pursued by the OMT Decision in a very different manner than for Decision 2011/199/EU. In *Pringle*, the CJEU laconically compared the objectives pursued by the ESM and by the ESCB.⁸⁶⁸ Since Decision 2011/199/EU aimed to grant financial assistance, its objective could not be assimilated to that of price stability, regardless of any indirect effects. Similarly to *Pringle*, the CJEU analysed whether the objectives pursued by the OMT Decision aimed at price stability. In that regard, as previously mentioned, the CJEU ruled that the restoration of the transmission mechanism “(...) may be regarded as pertaining to the primary objective laid down in Article 127(1) TFEU.”⁸⁶⁹ In appreciating so, the CJEU made an important clarification regarding the primary objective conferred on the ESCB. For instance, and in accordance with the observations submitted by the ECB,⁸⁷⁰ the CJEU acknowledged that Article 127(1) TFEU does not request the ECB to implement measures that directly aim to achieve price stability. In fact, it can also be achieved indirectly.⁸⁷¹ Naturally, this interpretation should be appreciated in the light of the large, but not unjustified, discretionary power conferred on the ECB for its operational arbitrages.

However, one may argue that this interpretation tends to obscure the fine frontier that the CJEU demarked between monetary and economic policy. Indeed, as mentioned in the previous chapter, the ECB uses various transmission channels to achieve its primary objective. This necessarily entails side-effects that may differ in magnitude according to the channel and to the instrument employed to achieve price stability. It is not to say that the CJEU nuanced the distinction between monetary and economic policy by recalling the large discretionary power conferred on the ECB. Instead, it is to suggest that, in ruling that the Treaties do not impose a specific way for the ECB to achieve its objectives, the CJEU neglected redistributive effects of non-standard monetary policies.

⁸⁶⁸ *ibid* para 56.

⁸⁶⁹ CJEU, *Gauweiler*, C62-14, EU:C:2015:400, para 50.

⁸⁷⁰ CJEU, *Written explanations of the European Central Bank*, C-62/14, 25 August 2014, paras 52-53.

⁸⁷¹ *idem*.

Notwithstanding the above, it is not because the CJEU neglected those indirect effects that it did not consider them when analysing the first limb of this reference for a preliminary ruling. The CJEU made an interesting analogy with *Pringle*. To recall, in *Pringle*, the CJEU ruled that a measure of economic policy cannot be equivalent to a measure of monetary policy due to its indirect effects. This interpretation was the result of the extensive interpretation of the written submissions of the Federal Government of Germany by Advocate General Kokott.⁸⁷² Similarly, in *Gauweiler*, the CJEU ruled that a measure of monetary policy cannot be equivalent to a measure of economic policy as a consequence of its indirect effects. This analogy makes sense when considering the interactions between the objectives of price stability and of financial stability, as notably described by the ECB. However, this also clearly limits the possibility to clearly delimit monetary from economic policy. In fact, it appears paradoxical to determine identification criteria and then to nuance them by not delimiting the indirect effect of one policy on the other. Naturally, this paradox invites the drawing of some observations on the second limb of the reference for a preliminary ruling made by the FCC to the CJEU.

b. Indirect Effects of Monetary Policies or Monetary Financing?

As may be perceived throughout this thesis, indirect or redistributive effects of a policy on another are particularly complex to appreciate. This particularly holds in crisis times when extraordinary measures of economic policy and non-standard measures of monetary policy are taken to mitigate any adverse effects on the real economy. Naturally, this complexity is further increased when indirect effects are not to be analysed from an economic perspective but from a legal one.

In that regard, the CJEU already had the opportunity to legally assess such effects in *Pringle*. However, it did not define what might constitute indirect effects under Union law. Nor did it define the scope of such effects. This lack of clarity makes sense under economic theory but, as mentioned above, seems paradoxical from a legal perspective. As one may observe, this paradox was further emphasized when considering whether the OMT decision did not infringe Article 123(1) TFEU. Indeed, an underlined question was to assess whether a non-standard measure of monetary policy, legit according to the identification criteria of the CJEU, does not lead to monetary financing due to its indirect effect on budgets of distressed Member States. This naturally invites the drawing of a few observations.

⁸⁷² CJEU, View of Advocate General Kokott of 26 October 2012, *Thomas Pringle v Government of Ireland and Others*, C-370/12, EU:C:2012:675, para 85.

As mentioned previously, the prohibition of monetary financing was first agreed upon by Finance Ministers convened in Antibes in September 1989.⁸⁷³ This first political agreement naturally influenced the *travaux préparatoires* undertaken during the Intergovernmental Conference on the EMU in late 1990. In fact, the prohibition of monetary financing was already included in the first working document of the Intergovernmental Conference. Indeed, this was explicitly mentioned in Articles 104A(1) and 106A(2) of the Commission non-paper. These two provisions aimed at avoiding any adverse effects of monetary financing on monetary stability.⁸⁷⁴ By contrast to Pringle, the CJEU did not disregard the historical aspects of the prohibition of monetary financing. However, the interpretation made by the CJEU on those historical aspects is slightly different than that presented in the previous chapter of this thesis. More specifically, for the CJEU, the prohibition of monetary financing is laid down “(...) to encourage the Member States to follow a sound budgetary policy (...)”.⁸⁷⁵ In so interpreting, the CJEU utterly disregarded the aim of such interpretation: to ensure monetary stability via sound domestic budgetary policies. This is of fundamental importance in order to understand the ruling of the CJEU regarding the compatibility of the OMT Decision with Article 123(1) TFEU.

Indeed, basing its analysis on this historical interpretation, the CJEU ruled that the OMT programme would circumvent Article 123(1) TFEU if “(...) that programme were such as to lessen the impetus of the Member States concerned to follow a sound budgetary policy.”⁸⁷⁶ In the light of this consideration, it is interesting to note that the CJEU did not take into account any adverse impact on monetary stability. Nor did it really appreciate the indirect effects that the OMT programme may produce on domestic budgets. In that regard, the CJEU ruled:

Moreover, the conduct of monetary policy will always entail an impact on interest rates and bank refinancing conditions, which necessarily has consequences for the financing conditions of the public deficit of the Member States.⁸⁷⁷

Although one may not contradict this assertion, it seems nonetheless paradoxical to limit this assessment to the impetus of Member States to follow sound budgetary policy and to the safeguards to the Decision at issue. Indeed, one may legitimately wonder whether it is more the effects of the

⁸⁷³ Parlement Européen, I...op.cit., n°3-382/124, 135.

⁸⁷⁴ CE, Commission, *Projet de Traité portant révision du Traité instituant la Communauté Economique Européenne en vue de la mise en place d'une Union Economique et Monétaire*, Commentaires, document de travail, 10 décembre 1990, SEC (90) 2500/2, 11-13.

⁸⁷⁵ CJEU, *Gaumeiler*, C62-14, EU:C:2015:400, para 100.

⁸⁷⁶ *ibid* para 109.

⁸⁷⁷ *ibid* para 110.

measure at issue or the incitation to follow a sound budgetary policy that should constitute an appropriate indicator.

Similarly to Pringle, the Gauweiler judgment underlined the difficulties to cautiously delimit monetary from economic policies and to define what indirect effect may legally constitute. Although the FCC concurred with the Gauweiler judgment,⁸⁷⁸ and thus did not declare the OMT Decision ultra vires, it would soon make another reference for preliminary ruling to the CJEU. Naturally, the Weiss and others case will relate to another non-standard measure of monetary policy, the PSPP.

II. Indirect Effects of Monetary Policy: The Weiss and others Case

Again the CJEU had to appreciate the delimitation of monetary from economic policies in the Weiss and others case (A). The ruling of the court, which disregarded the economic effects of the measure at issue, would lead the FCC to declare the PSPP ultra vires (B).

A. The Weiss and others Case

In the light of its interpretations on the PSPP, the reference for a preliminary ruling made by the FCC (1) needs to be briefly presented to obtain a clear understanding of the judgment issued by the CJEU (2).

1. *The FCC Analysis of the PSPP Decision*

The analysis of the FCC on the PSPP Decision (a) merits some observations before turning to the judgment issued by the CJEU in Weiss and others (b).

a. *Revisiting the Identification Criteria of Monetary Policy: An FCC Analysis*

In 2017, Mr Weiss, Mr Gauweiler, Mr Lucke, and Mr von Stein (“**complainants**”)⁸⁷⁹ commenced different actions in the FCC against Decision ECB/2015/774 (as amended), the Federal Government of Germany, the *Bundesbank* and the German *Bundestag*.⁸⁸⁰ As for the Gauweiler decision, these four constitutional complaints, initiated on the basis of Article 93 of the German Basic Law, are particularly complex, especially those pertaining to the demarcation between

⁸⁷⁸ BVerfG, *Judgment of the Second Senate of 21 June 2016 - 2 BvR 2728/13 -*, paras 1-220, DE:BVerfG:2016:rs20160621.2bvr272813.

⁸⁷⁹ These four complainants in fact represented several thousands of complainants.

⁸⁸⁰ BVerfG, *Order of the Second Senate of 18 July 2017 - 2 BvR 859/15 -*, paras 1-137, DE:BVerfG:2017:rs20170718.2bvr085915.

monetary and economic policies. In essence, the complainants claimed the incompatibility of Decision ECB/2015/774 with Union law. In particular, they submitted that the PSPP Decision circumvents the prohibition laid down in Article 123(1) TFEU and constitutes a measure of economic policy rather than a monetary one.⁸⁸¹

By contrast, neither the ECB nor the *Bundesbank* concurred with the submissions of the complainants.⁸⁸² Similarly to the Gauweiler decision, the jurisprudential significance of the issues at law led the FCC to make a reference for a preliminary ruling to the CJEU. Naturally, as for the Gauweiler and the Maastricht Decisions, the FCC also interpreted the validity of the PSPP Decision with Union law. In that regard, it seems opportune to briefly present the submissions of the parties to the proceedings to obtain a clear understanding of the analysis delivered by the FCC in this case.

In the view of the complainants, the PSPP Decision circumvents the ban on monetary financing enshrined in Article 123(1) TFEU. According to them, there would be no difference between purchases of government bonds on primary market and from commercial banks that directly purchased them from the Member States.⁸⁸³ This claim was supported by the absence of circumvention safeguards as identified by the CJEU in Gauweiler. More specifically, by providing forward guidance on the decision to purchase and the volume of that purchase, the ECB would have distorted the market-pricing process and generated favourable expectations for some Member States.⁸⁸⁴ In the view of the complainants, the market-pricing process is not guaranteed by the imposition of a sufficient period of time between the issuance of the financial instrument and its purchase by the ESCB.⁸⁸⁵ Additionally, these complainants also claimed that some technical features of the PSPP,⁸⁸⁶ along with the possibility to purchase instruments from European institutions or internal organizations, emphasize circumvention of Article 123(1) TFEU.⁸⁸⁷ Further to this submission, the complainants also submitted that the PSPP Decision did not constitute a measure of monetary policy. Rather, it would constitute a measure of economic policy due to some of its effects, notably the redistributive ones.⁸⁸⁸ Finally, the complainants considered that the PSPP

⁸⁸¹ *ibid* paras 30 ; 32-42.

⁸⁸² *ibid* paras 32-42.

⁸⁸³ *ibid* para 25.

⁸⁸⁴ *ibid* para 26.

⁸⁸⁵ *ibid* para 27.

⁸⁸⁶ *ibid* para 28.

⁸⁸⁷ *ibid* para 29.

⁸⁸⁸ *ibid* para 30.

established a risk-sharing mechanism that violates the principle of democracy enshrined in the German Basic Law.⁸⁸⁹

The ECB did not concur with the arguments and claims submitted by the complainants to the FCC.⁸⁹⁰ The ECB mostly claimed that the technical features of the PSPP do not circumvent the prohibition laid down in Article 123(1) TFEU. Similarly to the ECB, the *Bundesbank* claimed the validity of Decision ECB/2015/774 with Union law. In particular, it submitted that the monetary stimulus provided under this programme aims to stimulate economic activity in order to swiftly attain the objective of price stability.⁸⁹¹ Notwithstanding this, the *Bundesbank* did not have a firm view on the neutrality of such programme in the long term. Indeed, any prolonged duration of the PSPP could produce “side-effects”, according to the *Bundesbank*.⁸⁹² Naturally, one of these side-effects was the blurring of the distinction between monetary and fiscal policy.⁸⁹³ It is on the basis of those submissions that the FCC delivered its analysis before making a reference for a preliminary ruling to the CJEU.

After recalling that any exceedance of the mandate conferred on the ECB would inevitably lead to declare the PSPP Decision ultra vires,⁸⁹⁴ thus precluding its implementation by the *Bundesbank*,⁸⁹⁵ the FCC analysed whether it circumvented Article 123(1) TFEU. The FCC adopted a less affirmative wording than in the *Gauweiler* decision. More specifically, the FCC did not state that the PSPP violated the ban of monetary financing but rather first considered that it “(...) may nevertheless be in violation of Art. 123 AEUV (...)”.⁸⁹⁶ According to the FCC, this would be justified on the basis of the absence of specific safeguards against the circumvention of monetary financing.⁸⁹⁷ More specifically, in the view of the FCC, the modalities announced for the purchase of government bonds, along with those that may be deduced from the practice, create a de facto (but not a legal) certainty for market operators.⁸⁹⁸ This de facto certainty was further supported by a virtual one that exists between market operators.⁸⁹⁹

⁸⁸⁹ *ibid* para 31.

⁸⁹⁰ *ibid* para 32.

⁸⁹¹ *ibid* para 40.

⁸⁹² *ibid* para 42.

⁸⁹³ *idem*.

⁸⁹⁴ *ibid* para 62.

⁸⁹⁵ *ibid* para 73.

⁸⁹⁶ *ibid* para 80.

⁸⁹⁷ *idem*.

⁸⁹⁸ *ibid* paras 81-90.

⁸⁹⁹ *ibid* para 91.

Although significant, the announcement of purchase modalities was not the only safeguard analysed by the FCC. For instance, the FCC also considered whether the PSPP provided for a minimum period of time between the issuance of the bonds and their purchase by the ECB. In that regard, the FCC considered it impossible to perform a judicial review of those minimum periods due to their non-disclosure by the ECB.⁹⁰⁰ In the same vein, after appreciating the potential consequences from holding the bonds until maturity, the FCC considered the purchases of bonds with negative yields.⁹⁰¹ According to the FCC, the purchase of such instrument would “(...) provide relief for national budgets and thus creates incentives to take out loans”.⁹⁰²

After expressing its doubts on the compatibility of the PSPP Decision with Article 123(1) TFEU, the FCC analysed whether such Decision indeed constitutes a measure of monetary policy. For that purpose, and similarly to the Gauweiler decision, the FCC appreciated the legal applicable framework along with the pertaining judgments of the CJEU. At first sight, such appreciation did not differ much from that in the Gauweiler decision, with the exception of the principles and criteria identified by the CJEU in *Pringle* and *Gauweiler*. However, this should not be considered as such. In fact, the FCC presented its own interpretation of those judgments and of the applicable framework. For instance, the FCC still considered that to identify a measure of monetary policy one should take into account the objective, the instruments used to achieve this objective, and its link to other provisions.⁹⁰³ This extensive interpretation of the criteria identified in *Pringle*, already mentioned in the *Gauweiler* decision,⁹⁰⁴ was the object of an interesting evolution. More specifically, in presenting those criteria, the FCC notably considered that “(...) what must be taken into account is not only the objective pursued but also the means chosen and its effects.”⁹⁰⁵ As discussed previously, the indirect effects of a measure of monetary policy on an economic one, or vice versa, is of fundamental importance to appreciate their respective boundaries under Union law. Thus, by briefly mentioning the relevance of the effects to identify the nature of the measure at issue, the FCC not only distinguished its interpretation from that of the CJEU. In fact, it basically underlined the core issue of the delimitation of monetary policies. Notwithstanding this, this did not constitute the only interesting element of the applicable framework presented by the FCC.

⁹⁰⁰ *ibid* paras 94-95.

⁹⁰¹ *ibid* para 99.

⁹⁰² *idem*.

⁹⁰³ *ibid* para 108.

⁹⁰⁴ DE:BVerfG:2014:rs20140114.2bvr272813, para 63.

⁹⁰⁵ DE:BVerfG:2017:rs20170718.2bvr085915, para 109.

In that respect, the FCC reinterpreted the second objective conferred on the ECB. According to the FCC, this mandate “(...) is limited to supporting, without prejudice to the objective of price stability, the general economic policy of the European Union”.⁹⁰⁶ As previously mentioned, this secondary objective does not refer to the general economic policy of the European Union. Rather, it relates to the general economic policies *in* the Union. Though the FCC mentioned that it relates to the “(...) general economic policy of the Member States at the level of the European Union (...)”, one should understand this interpretation as strictly limiting the support objective of the ECB. This is of fundamental importance for understanding the analysis delivered by the FCC. Indeed, it was on the basis of such interpretation of the applicable legal framework that the FCC assessed whether the PSPP Decision constituted a measure of monetary policy.

According to the FCC, the PSPP Decision could not be qualified as a measure of monetary policy but as an economic one.⁹⁰⁷ In its view, the PSPP Decision pursued the primary objective of price stability.⁹⁰⁸ In particular, the FCC considered that increasing liquidity to commercial banks “(...) may be regarded as viable intermediate step en route to influencing the price increase.”⁹⁰⁹ Additionally, as it could not depart from the interpretation given by the CJEU in *Pringle* and *Gauweiler*, the FCC considered that the instrument chosen by the ECB was covered by Protocol 4.⁹¹⁰ Inasmuch as these criteria were those identified by the CJEU in *Pringle*, and reaffirmed in *Gauweiler*, the FCC should have thus considered the PSPP Decision as a measure of monetary policy. However, this was not the case due to the third criteria identified by the FCC: the effects of the measure at issue.⁹¹¹ More specifically, in the view of the FCC, effects that are “(...) intended or deliberately accepted, and (...) are at least comparable in weight to the monetary policy objective pursued” cannot be considered as indirect.⁹¹² For the FCC, these economic effects should have enjoined the ECB to balance them with the monetary effects pursued.⁹¹³ However, the lack of quantitative data on those effects, along with the absence of statement of reasons from the ECB, made it difficult for the FCC to assess the proportionality of the PSPP Decision.⁹¹⁴

⁹⁰⁶ *ibid* para 113.

⁹⁰⁷ *ibid* para 114.

⁹⁰⁸ *ibid* paras 114; 117.

⁹⁰⁹ *ibid* para 117.

⁹¹⁰ *ibid* para 118.

⁹¹¹ *ibid* paras 119-121.

⁹¹² *idem*.

⁹¹³ *ibid* paras 122-123.

⁹¹⁴ *idem*.

Finally, after having appreciated the economic nature of the PSPP Decision, the FCC analysed whether its risk-sharing mechanism would violate Articles 123 and 125 TFEU, 4(2) TEU and 79(3) of the German Basic Law.⁹¹⁵ As mentioned earlier, the FCC decided to suspend the proceeding on the basis of paragraph 33(1) of the FCC Act to make a reference for a preliminary ruling to the CJEU. However, before turning to the latter, it seems opportune to make brief observations with regard to this decision.

b. A Few Observations on the FCC Reference for a Preliminary Ruling

Similarly to the Gauweiler decision, the delimitation of monetary from economic policies still appears as a crucial issue of law, especially when it comes to non-standard measures of monetary policy. This naturally brings complexity to already complex issues of law. However, one should not derive all the complexity of this decision from the technical features of the PSPP Decision. Rather, this complexity should be understood as arising from the interpretation of Union law given by the FCC, that some consider flawed.⁹¹⁶ In that regard, the interpretation of the criteria previously identified by the CJEU in *Pringle* and *Gauweiler* is fundamental. Indeed, in revisiting such criteria by putting the emphasis on the economic effects of the measure at issue, which one should balance with the monetary ones, the FCC highlighted the key issue of the demarcation between monetary and economic policies. Since indirect effects of a measure on another had already been appreciated by the CJEU, the FCC made a nifty reasoning by considering direct rather than indirect effects of the PSPP Decision. For Dawson and Bobić, the difference between indirect and direct effects is logical but diverges from the centre of gravity test identified by the CJEU.⁹¹⁷ This divergence is not the only point of concern that one may have when considering the distinction between direct and indirect effects. For instance, as previously mentioned, the judicial review performed by the FCC on these effects seems to go far beyond any traditional task conferred on constitutional courts. In short, the judicial review made by constitutional courts should not transform them into market regulators.

Notwithstanding this, indirect and direct effects of a non-standard measure of monetary policy still appear to be of crucial importance to distinguish monetary from economic policies. As for the *Gauweiler* decision, the questions referred by the FCC to the CJEU were particularly complex, as

⁹¹⁵ *ibid* paras 124-131.

⁹¹⁶ Andrej Lang, 'B. National Courts Ultra Vires Review of the ECB's Policy of Quantitative Easing: An Analysis of the German Constitutional Court's Preliminary Reference Order in the PSPP Case.' [2018] *Common Market Law Review* 923, 945-49.

⁹¹⁷ Mark Dawson and Ana Bobić, 'A. Court of Justice Quantitative Easing at the Court of Justice – Doing Whatever It Takes to Save the Euro: Weiss and Others' [2019] *Common Market Law Review* 1005, 1019-20.

explained above. Similarly to the other decisions presented, this complexity was further reinforced by the impossibility to accede to the written observations submitted by the parties to the FCC. Thus, to obtain a clear understanding of these issues of law, the analysis of the CJEU judgment will be made on the basis of primary sources. More specifically, this analysis will be based on the written observations submitted to the CJEU by the parties to the proceedings.

2. *The CJEU and Weiss and others*

In *Weiss and others*, the CJEU would retain the monetary nature of the PSPP while disregarding its economic effects (a). This naturally invites some observations (b).

a. *The Judgment of the CJEU in Weiss and others*

In *Weiss and others*,⁹¹⁸ the CJEU slightly refined its positions regarding the demarcation between monetary and economic policies (i) and on the ban of monetary financing (ii).

i. Delimiting Monetary Policy: The Indirect Effects

After declaring the admissibility of the reference for a preliminary ruling made by the FCC,⁹¹⁹ and the compliance of the PSPP Decision with Article 296 TFEU, the CJEU analysed whether it constitutes a measure of monetary policy under Union law.⁹²⁰ As for *Gauweiler*, the CJEU decided to first examine the powers conferred on the ECB to then appreciate the delimitation of monetary policy and the proportionality of the measure at issue. The CJEU had to appreciate very complex observations submitted by some parties to the proceedings. Not all of them were based on legal arguments but rather on economic doctrine or econometrical studies.⁹²¹ Thus, to obtain a clear understanding of the interpretation delivery by the CJEU in that respect, it seems opportune to briefly present and appreciate the written observations submitted by the parties.

As mentioned previously, the applicants submitted that the PSPP Decision should not be qualified as a measure of monetary policy under Union law. Rather, it should be considered as measure of economic policy. Naturally, this assertion was based on different but complementary submissions. For instance, in the view of Mr Lucke, the economic nature of the PSPP mostly derives from its “disproportionate” economic and fiscal policy effects.⁹²² Resorting to the conclusions reached by

⁹¹⁸ CJEU, *Weiss and Others*, C-493/17, EU:C:2018:1000.

⁹¹⁹ *ibid* paras 17-26.

⁹²⁰ *ibid* paras 45-100.

⁹²¹ CJEU, *Observations of Mr. Lucke*, C-493/17, 21st November 2017, n°1065330, para 61.

⁹²² *ibid* paras 46-47.

Heinemann,⁹²³ the applicant claimed a disproportion of government bonds holdings in favour of some Member States, the latter being Spain and Italy with, respectively, 18.6% and 17.7% of government bonds purchased, with the average being 14.4%.⁹²⁴ This appetite for Spanish and Italian bonds would result from technical features of the PSPP and from the high level of public debt indebtedness of those Member States, according to the applicant.⁹²⁵ Additionally, the fiscal effects of the PSPP would be particularly significant, as “(...) the purchases of the ESCB for each individual euro country have been sufficient to cover the new deficits that have accumulated since then.”⁹²⁶ Further, according to Mr Lucke, the PSPP is considered to have distorted the credit default swap market and thus would have violated the open-market economy objective enshrined in Article 119(2) TFEU.⁹²⁷ Similarly to Mr Lucke, Mr Weiss also claimed that some Member States received preferable treatment via the PSPP.⁹²⁸ In that regard, it should be observed that Mr Weiss not only claimed that the PSPP has disproportionate side-effects⁹²⁹ but also that the ECB has not been vested the right to define the price stability target.⁹³⁰ In the view of Mr Weiss, the quantitative definition of price stability cannot be solely defined by the ECB.⁹³¹ This naturally inferred a strict interpretation of the mandate conferred on the ECB pursuant to the Treaties, according to this applicant.⁹³²

In the light of the foregoing, one may observe the lack of legal arguments in the observations submitted by the applicants to the CJEU. As just mentioned, the applicants mostly resorted to economic doctrine, though cherry-picked, and to a distorted legal interpretation of the mandate conferred on the ECB. Similarly to these applicants, the *Bundesbank*, acting as defendant in the main proceedings, submitted economic observations rather than legal ones.⁹³³ More specifically, after explaining the general context of the EMU,⁹³⁴ the *Bundesbank* provided economic explanations to support the validity of the PSPP Decision under Union law. The latter being, in the view of the *Bundesbank*, a measure of monetary policy.⁹³⁵

⁹²³ *ibid*, the analysis of Prof. Heinemann is attached to the submissions of Mr. Lucke. However, I have not been able to retrieve it and therefore cannot make any further analysis on this document.

⁹²⁴ *ibid* para 49. This is expressed in terms of domestic GDP.

⁹²⁵ *ibid* para 53.

⁹²⁶ *ibid* para 57.

⁹²⁷ *ibid* para 70.

⁹²⁸ CJEU, *Opinion of Mr Weiss*, C-493/17, 15 November 2017, n°1065028, 1.

⁹²⁹ *ibid* 18-20.

⁹³⁰ *ibid* 10.

⁹³¹ *ibid* 11.

⁹³² *idem*.

⁹³³ CJEU, *Written observations of the German Bundesbank*, C-493/17, 30 November 2017.

⁹³⁴ *ibid* paras 2-8.

⁹³⁵ *ibid* para 12.

Naturally, it is not because the *Bundesbank* submitted only economic statements that Member States or European Institutions participating in the proceedings did so. For instance, the European Commission analysed with great consideration the need to complement the identification criteria of a monetary measure with its direct/indirect effects, as claimed by the FCC.⁹³⁶ According to the Commission, the CJEU should not appreciate the indirect effects of the measure at issue as an identification criteria of its monetary nature.⁹³⁷ This was notably in the light of the definition proposed by the FCC and deemed too formalist by the Commission. In essence, this definition, which takes into account intermediary steps to attain price stability, would disregard side-effects that result from monetary impulsions.⁹³⁸ In the view of the Commission, the notion of direct effects reached by the FCC should be disregarded as well. Indeed, since spillovers from monetary impulsions are foreseeable, and thus minimizable, the FCC cannot propose such categorization according to the Commission.⁹³⁹ In the light of these considerations, the Commission claimed the compatibility of the PSPP Decision with the mandate conferred on the ECB.⁹⁴⁰ This conclusion was also reached by Member States participating in the proceedings, as for Italy. Indeed, in the view of Italy, the ECB did not exceed its mandate by implementing the PSPP as it satisfies the criteria established by the CJEU.⁹⁴¹ In that regard, it is important to mention that Italy did not share the very restrictive approach taken by the FCC to appreciate the mandate of the ECB. In fact, one should take into account “the precise meaning” of the relevant provisions and “provide concrete evidence, both in fact in law” when claiming a breach.⁹⁴²

Naturally, it was on the basis of those submissions that the CJEU analysed the validity of the PSPP Decision with Articles 119(2), 127(1) and 282(2) TFEU. For that purpose, after recalling the powers conferred on the ESCB,⁹⁴³ the CJEU examined whether the PSPP Decision falls within the ambit of monetary policy. In that regard, the CJEU first recalled the criteria identified in *Pringle* and then refined in *Gauweiler*, namely, the objective pursued by the PSPP and the instruments employed to attain that objective.⁹⁴⁴ Logically, one may not expect any significant interpretative departure in that regard. However, this was not the case when the CJEU analysed the objective pursued by the PSPP Decision. Here, the CJEU did not restrict its analysis to verifying whether the PSPP indeed

⁹³⁶ CJEU, *Observations de la Commission Européenne*, C-493/17, 29 novembre 2017, paras 131-133.

⁹³⁷ *ibid* para 131.

⁹³⁸ *idem*.

⁹³⁹ *idem*.

⁹⁴⁰ *ibid* paras 137 et seq

⁹⁴¹ CJEU, *Written observations of the Italian Republic*, C-493/17, 5 December 2017, ct. 36290/2017, paras 90-93.

⁹⁴² *ibid* paras 84-85.

⁹⁴³ CJEU, *Weiss and Others*, C-493/17, EU:C:2018:1000, paras 46-52.

⁹⁴⁴ *ibid* para 53.

contributes to price stability.⁹⁴⁵ In fact, it also brought some precisions regarding the primary objective itself.

More specifically, the CJEU recalled that the authors of the Treaties decided to define the objective of price stability qualitatively but not quantitatively.⁹⁴⁶ Naturally, one may not object to the intent of the authors of the Treaties in that respect, especially when considering Chapter II of this thesis. However, unlike in *Gauweiler*, the CJEU did not document its originalist interpretation. To recall, in *Gauweiler*, the CJEU partially based its interpretation on the prohibition of monetary financing upon the Commission non-paper of the Intergovernmental Conference for the EMU.⁹⁴⁷ By contrast, in the *Weiss and others* case, the CJEU analysed whether the ECB manifested an error of assessment when quantitatively defining price stability on the sole basis of the intent of the authors of the Treaties.⁹⁴⁸ It appears evident that this interpretation aimed to clarify the concerns expressed by Mr Weiss in its submissions. However, as it may be noticed, the intent of the authors of the Treaties is a difficult notion to appreciate. Especially, when it is not supported by any explanations or documents.

The CJEU analysed some of the most crucial parts of the delimitation of monetary policy in the light of the intent of the authors of the Treaties. For instance, the CJEU appreciated the indirect effects of the PSPP, on both the balance sheets of commercial banks and on the financing of some Member States, through this prism. In that regard, the CJEU notably held the following:

Accordingly, within the institutional balance established by the provisions of Title VIII of the FEU Treaty, which includes the independence of the ESCB guaranteed by Article 130 and Article 282(3) TFEU, **the authors of the Treaties did not intend to make an absolute separation between economic and monetary policies.**⁹⁴⁹

As held by the CJEU, it is evident that some effects deriving from a measure of monetary policy might also be sought via economic policy.⁹⁵⁰ However, in ruling that the authors of the Treaties did not intend to make an absolute separation between these two fields, the CJEU tended to blur their respective delimitations by not addressing those effects. In that regard, it is worth noting that the CJEU recalled that a measure of monetary policy might not be qualified for its indirect effects as a

⁹⁴⁵ *ibid* para 57.

⁹⁴⁶ *ibid* para 55.

⁹⁴⁷ CJEU, EU:C:2015:400, para 100.

⁹⁴⁸ CJEU, *Weiss and Others*, C-493/17, EU:C:2018:1000, para 56.

⁹⁴⁹ *ibid* para 60 (own bold emphasis).

⁹⁵⁰ *ibid* para 59.

measure of economic policy.⁹⁵¹ However, the CJEU did not concur with the notion of direct effects reached by the referring court. More specifically, after recalling that a measure of monetary policy would necessarily “(...) entail an impact on interest rates and bank refinancing conditions (...)”, the CJEU held that financial and monetary easing measures to attain price stability might have such effect.⁹⁵² Thus, should measures having those foreseeable and accepted effects be prohibited, the ESCB will be deprived to use its “available means” to attain price stability.⁹⁵³ Therefore, the CJEU did not retain the direct and indirect effects classification reached by the FCC. Finally, after having appreciated the monetary nature of the PSPP Decision, the CJEU held that the instruments employed to attain that objective were included in Article 18(1) of Protocol 4.⁹⁵⁴

Similarly to Gauweiler, the CJEU assessed the proportionality of the PSPP Decision after having ruled its monetary nature. In that context, the CJEU performed a suitability test before turning to the necessity one. As regards the suitability of the PSPP, the CJEU first appreciated the economic environment, prone to deflation, to hold that the ECB did not err in assessing its appropriateness to attain price stability.⁹⁵⁵ The analysis of the economic environment surrounding the PSPP also served to assess its necessity. In that regard, and in short, the CJEU ruled that the foreseeable effects of the PSPP, along with its technical features proved not to do what is necessary to achieve price stability.⁹⁵⁶ Eventually, the CJEU appreciated the risk analysis performed by the ECB to mitigate they were deemed disproportionate to achieve price stability.⁹⁵⁷ In that regard, the CJEU recalled that the ECB did not implement, or announce, a risk-sharing mechanism within the ESCB and that the only instruments susceptible to losses are these of intergovernmental organizations.⁹⁵⁸ Therefore, the CJEU held that the PSPP Decision was proportionate to the objective pursued.⁹⁵⁹

As may have been observed from the above, the interpretation given by the CJEU, along with the submissions of the parties to those proceedings, were particularly complex. In fact, they were far more complex than those of the Gauweiler judgment due to indirect/direct effects generated by the PSPP on economic policy. This complexity invites observations after having presented the question on monetary financing referred by the FCC to the CJEU.

⁹⁵¹ *ibid* para 61.

⁹⁵² *ibid* paras 65-66.

⁹⁵³ *ibid* para 67.

⁹⁵⁴ *ibid* para 68.

⁹⁵⁵ *ibid* paras 74 ; 75 ;78.

⁹⁵⁶ *ibid* paras 86-92.

⁹⁵⁷ *ibid* para 93.

⁹⁵⁸ *ibid* paras 97-99.

⁹⁵⁹ *ibid* para 100.

ii. The PSPP Decision and the Ban on Monetary Financing

After retaining the monetary nature of the PSPP Decision, the CJEU had to assess its compatibility with Article 123(1) TFEU. Similarly to Gauweiler, the FCC reopened the debate on the ban of monetary financing by asking the CJEU to determine whether the PSPP circumvents such prohibition. While this prohibition of monetary financing has already received great consideration, the issue in the Weiss and others case also invited the Court to take into account the indirect effects of the PSPP. Thus to obtain a clear understanding of the interpretation delivered by the CJEU, brief attention should first be given to the observations submitted by the parties to the proceedings.

For the applicants, the purchase of government bonds of Member States via the PSPP circumvented the ban on monetary financing enshrined in Article 123 TFEU. More specifically, in the view of Mr Weiss, imbuing its submissions with FCC considerations,⁹⁶⁰ the PSPP did not satisfy the safeguards identified by the CJEU to avoid such circumvention.⁹⁶¹ In particular, for Mr Weiss, the design of the PSPP suggested a de facto certainty for market participants that government bonds would be purchased from the ESCB on the secondary markets.⁹⁶² This in turn provided certainty to Member States that those bonds would be purchased on the primary markets.⁹⁶³ Moreover, for Mr Weiss, the absence of information regarding the minimum period to respect between instrument issuance and purchase on the secondary market also constituted a circumvention indicator.⁹⁶⁴ For this applicant, even if the minimum period had been respected, the de facto certainty of market participants would mitigate the related effects.⁹⁶⁵ Further, Mr Weiss also submitted that the possibility to hold the bonds until maturity and the purchase of bonds with negative yield constituted similar indicators of circumvention.⁹⁶⁶ As regards bonds with negative yields, the applicant considered that it provided “wrong incentives” to Member States to pursue a sound budgetary policy.⁹⁶⁷ In that regard, Mr Lucke also shared this observation. In fact, it was the main observation submitted by this applicant to the CJEU regarding the compatibility of the PSPP Decision with Article 123(1) TFEU. For Mr Lucke, mostly basing its submissions on the considerations of the FCC and on econometrical studies, the PSPP reduces Member States’

⁹⁶⁰ CJEU, *Opinion of Mr Weiss*, C-493/17, 15 November 2017, n°1065028, 8.

⁹⁶¹ *ibid* 9.

⁹⁶² *ibid* para 10. Here Mr. Weiss based its analysis on paragraph 91 of the *Gauweiler* decision of the FCC.

⁹⁶³ *idem*.

⁹⁶⁴ *idem*.

⁹⁶⁵ *idem*.

⁹⁶⁶ *ibid* 11-12.

⁹⁶⁷ *ibid* 11.

incentives to pursue a sound budgetary policy.⁹⁶⁸ More specifically, in the view of Mr Lucke, the PSPP would have “(...) covered the budget deficit of all over countries over the years 2015 to 2017 by a factor of 3.3.”⁹⁶⁹ Since the PSPP has markedly improved the refinancing conditions of some Member States, namely the most indebted, it incentivizes Member States to follow a sound budgetary policy but a distorted one.⁹⁷⁰

As for the question pertaining to the demarcation between monetary and economic policies, the *Bundesbank* did not concur with those submissions. However, the submissions of the *Bundesbank* in that regard were very much limited to the design of the PSPP.⁹⁷¹ In fact, the *Bundesbank* did not really provide any legal argument supporting the compatibility of the PSPP with Article 123(1) TFEU. As for the demarcation between monetary and economic policies, it is not because the *Bundesbank* eluded legal arguments that Member States and European institutions parties to the proceedings did so. For instance, Greece, after recalling the applicable legal framework including Council Regulation 3603/93, estimated that the PSPP Decision satisfied the safeguards identified by the CJEU in *Gauweiler*.⁹⁷² In particular, Greece notably submitted that the blocking period between instrument issuance and purchase on the secondary market was sometimes longer than those provided in the PSPP Decision.⁹⁷³ Moreover, Greece also submitted that there was no de facto certainty that the ESCB would purchase those bonds.⁹⁷⁴ It is also of note that Finland shared the same observation, though more radically. In its view, the design of the PSPP would give far less certainty to potential buyers than that of the OMT.⁹⁷⁵ In short, the Member States parties to the proceedings submitted the validity of the PSPP Decision with Article 123(1) TFEU.⁹⁷⁶

As for the question related to the monetary nature of the PSPP, it was on the basis of those submissions that the CJEU assessed whether such decision indeed circumvented Article 123(1) TFEU. In that context, after recalling the applicable legal framework and its settled body of judgments, the CJEU first assessed whether the PSPP generated a de facto certainty for market operators. This notably requested the CJEU to assess the technical features of the PSPP. In that regard, the CJEU ruled that the blackout period, though not publicly announced, limits certainty

⁹⁶⁸ CJEU, *Observations of Mr. Lucke*, C-493/17, 21 November 2017, n°1065330, paras 78; 81.

⁹⁶⁹ *ibid* para 83.

⁹⁷⁰ *ibid* paras 84-85.

⁹⁷¹ CJEU, *Written observations of the German Bundesbank*, C-493/17, 30 November 2017, paras 12-23.

⁹⁷² CJEU, *Written observations of the Hellenic Republic*, C-493/17, 21 November 2017, para 10.

⁹⁷³ *idem* para 10(4). To note that the blocking period was provided in ECB non-public guidelines.

⁹⁷⁴ *ibid* para 12.

⁹⁷⁵ CJEU, *Written observations of the Republic of Finland*, C-493/17, 27 November 2017, para 23.

⁹⁷⁶ In that regard see also, CJEU, *Written observations of the Republic of Portugal*, C-493/17, 29 November 2017, para 29.

for market operators.⁹⁷⁷ Further, the CJEU noted that the ESCB implemented specific safeguards regarding the volume of purchase, the allocation of that amount among the NCBs, a diversification in securities purchased, and the limit of 33% of bonds issuance from a Member State.⁹⁷⁸ In the light of the foregoing, the CJEU ruled that there is no de facto certainty for market operators regarding ESCB purchases on secondary markets.⁹⁷⁹

As one may observe, the first part of this interpretation strictly followed that delivered in Gauweiler. However, this was not exactly the case when appreciating whether the PSPP gave the right incentives to Member States to pursue a sound budgetary policy. This requested the CJEU to take into account the indirect effects, the lack of certainty for market operators and the safeguards of the PSPP.⁹⁸⁰ In the light of those elements, the CJEU held that the PSPP did not reduce the impetus of Member States to pursue a sound budgetary policy.⁹⁸¹ Therefore, after positively ruling on the holding bonds of until maturity and on the purchase of bonds with negative yields,⁹⁸² the CJEU held that the PSSP Decision is valid under Union law.⁹⁸³

As one may notice, the Weiss and others case is relatively complex. This complexity not only derives from the technical features of the PSPP or from the observations submitted by the parties. In fact, it mostly arises from the interpretation made by the CJEU on some delicate issues of law, the indirect effect being one of them. Naturally, this invites some observations.

b. Some Observations on the Weiss and others Case

In the Weiss and others case, the CJEU used an originalist interpretation to delimit monetary from economic policy (i) that had significant impact for assessing the proportionality of the PSPP (ii).

i. The Intent of the Authors of The Treaties in Delimiting Monetary Policy

As mentioned earlier, the demarcation between monetary and economic policy is not easy to objectively define. Especially, due to the natural interlinkages between these two fields that have been separated as two distinct competences. In Pringle and Gauweiler, the CJEU identified some criteria to provide basic delimitations between them. This notably invited the CJEU to briefly appreciate the intent of the authors of the Treaties by mentioning the Commission non-paper when

⁹⁷⁷ CJEU, *Weiss and Others*, C-493/17, EU:C:2018:1000, paras 114-116.

⁹⁷⁸ *ibid* paras 117-126.

⁹⁷⁹ *ibid* para 127.

⁹⁸⁰ *ibid* paras 129-143.

⁹⁸¹ *ibid* para 144.

⁹⁸² *ibid* paras 145-157.

⁹⁸³ *ibid* para 158.

addressing the compatibility of the OMT Decision with Article 123(1) TFEU. This originalist interpretation gave clear insights on the intent of the authors of the Treaties when considering the prohibition on monetary financing. Similarly to Gauweiler, the CJEU resorted to an originalist interpretation when considering the most delicate issue raised to retain the monetary nature of the PSPP – its indirect/direct effects. However, unlike for Gauweiler, the CJEU did not document the intent of the authors of the Treaties when dealing with Weiss and others. Naturally, this invites to consideration as to what may have been the intent of the authors of the Treaties when separating monetary from economic policies. As stated previously, the intent of the authors of the Treaties is a very complex notion to appreciate. However, Chapters I and II of this thesis are of great help in that respect.

The intent of the authors of the Treaties should not only be found in the Intergovernmental Conferences on the EMU. In fact, as it has been shown in Chapter I, such intention may find its origins in the early attempts to establish ‘monetary unions’ in the 19th century. It is of note that some of those monetary unions were notably considered in some parliamentary reports dealing with European integration, as with the Dichgans Report of 1966.⁹⁸⁴ The Dichgans Report was one of the very first parliamentary reports pointing out the redistributive effects of monetary policy.⁹⁸⁵ Though it distinguished itself from the van Campen Report on the demarcation between monetary and economic policies.⁹⁸⁶ As said previously, these reports punctuated the first and second transition periods of the EEC and thus influenced the economic integration process taking place in Europe. In a concrete way, they influenced other reports and initiatives that led notably to the Werner Report and to the successive *Plan(s) Barre*. As explained in great detail in Chapter I of this thesis, the failure of the Werner Report led to reconsider the EMU through other initiatives. This notably included the Marjolin Report, and later on, the Delors Report, which would eventually lead to the adoption of the Maastricht Treaty.

This short historical reminder, explained in detail in Chapters I and II, highlights the complexity in circumscribing with precision the intent of the authors of the Treaties. However, as stated previously, it was without any explanations of such intent that the CJEU appreciated the indirect effects of the PSPP. In that respect, the CJEU simply ruled that “(...) the authors of the Treaties did not intend to make an absolute separation between economic and monetary policies.”⁹⁸⁷

⁹⁸⁴ EEC, Dichgans, ...op.cit., HD-HAEU, PE0-645, 12, para 51.

⁹⁸⁵ *ibid* para 8.

⁹⁸⁶ CEE, van Campen, ...op.cit., VC-HAEU, PE0-313, paras 9-10.

⁹⁸⁷ CJEU, *Weiss and Others*, C-493/17, EU:C:2018:1000, para 60.

This interpretation on the intent of the authors of the Treaties invites two general observations. First, as observed by Advocate General Wathelet,⁹⁸⁸ the notion of indirect effects was not defined by the CJEU. Nor was it defined under primary or secondary law. Thus, when the Court appreciated the indirect effects of the PSPP with the intent of the authors of the Treaties, it basically analysed an undefined notion in the light of a subjective one. It is not to say that the CJEU did not correctly analyse the indirect effects through the intent of the authors of the Treaties. Rather, it suggests that this type of interpretation provided some flexibility to the Court to appreciate complex elements of economic nature for which it was necessarily limited. Second, one may find doubtful to appreciate the indirect effects of the PSPP via the intent of authors of the Treaties, especially, when such intent is related to the delimitation of monetary policy. Indeed, the CJEU never identified indirect effects of a measure at issue as one of the criteria determining the monetary nature. In fact, as mentioned above, this was considered by the FCC, not the CJEU.⁹⁸⁹ Thus, there are two separate elements to consider for appreciating the intent of the authors of the Treaties – the demarcation between monetary and economic policies and the notion of indirect effects.

As mentioned previously, it was not the CJEU that assessed for the first time the demarcation between monetary and economic policies. Actually, its origins are deeply rooted in a few parliamentary reports that were adopted during the transition periods of the EEC. In that regard, unlike the Maastricht Treaty, it should be recalled that the EEC Treaty did not provide for a separation of monetary from economic policies. In fact, as mentioned in Chapter I of this thesis, monetary policy was considered as one component of economic policy rather than an independent one. This notably explains why the EEC Treaty only briefly mentioned monetary policy in Articles 104, related to the balance of payments, and 105 that established the *Comité Monétaire*. It is of note that such indivisibility of monetary from economic policy, as mentioned by Dichgans,⁹⁹⁰ persisted until the release of the Delors Report in April 1989. It is important to recall in that respect that the Delors Report not only proposed to establish a federal system of central banks, that “(...) might be called a European System of Central Banks.”, but also suggested a twofold mandate to be

⁹⁸⁸ CJEU, Opinion of Advocate General Wathelet of 4 October 2018, *Weiss and others*, C-493/17, EU:C:2018:815, para 112.

⁹⁸⁹ DE:BVerfG:2017:rs20170718.2bvr085915, para 109.

⁹⁹⁰ EEC, Dichgans, ...op.cit., HD-HAEU, PE0-645, para 8.

conferred on the latter.⁹⁹¹ The second objective of this mandate was clarified by Delors himself before the European Parliament on 25 October 1989.⁹⁹²

Since this secondary objective was later inserted in Article 105(1) TEC 1992, this clarification should be considered as the original intent of the authors of the Treaties in that respect. In fact, it allows to better understand the original meaning of the secondary objective conferred on the ESCB. For instance, in the light of the clarification made by Delors, the secondary objective should be interpreted as the contribution to the attainment of economic objectives set at Union level to the extent to which such support is not detrimental to price stability. In essence, this means that the ESCB shall pursue economic objectives without prejudice to price stability. At first sight, this interpretation may be understood as not differing much from the wording of Article 119(2) TFEU. However, it is not the case, especially when considering the criteria identified by the CJEU in *Pringle* and *Gauweiler*. More specifically, it appears difficult to rule that a measure is of monetary nature if it pursues an economic objective that is not detrimental to price stability. In that context, the ESCB legally pursues two objectives, namely, a monetary and an economic one. Thus, the question which appears is to determine which objective has the most important preponderance. Naturally, this invites to first appreciate the indirect/direct effects of the measure at issue before turning to its proportionality.

Similarly than for the demarcation between monetary and economic policies, it would be incorrect to affirm that it was the CJEU that discovered the redistributive effects of a measure of monetary policy. In fact, such effects are very well known by economists and therefore have been subject to a plethora of articles. From a legal perspective, or rather from a parliamentary perspective, these effects have been briefly discussed during the transition periods of the EEC. This could be interpreted as a contribution to the shaping of the intent of the authors of the Treaties in that regard. However, this is not the case. In fact, indirect effects are by no means related to the intent of the authors of the Treaties.

As mentioned previously, the intent of the authors of the Treaties is a very complex to appreciate, especially when the CJEU did not document or explain what such intent may be as regards the delimitation of monetary policy in general and its indirect effects in particular. This naturally led

⁹⁹¹ Delors, Committee for the Study of Economic and Monetary Union, *Report on Economic and Monetary Union*, 17 April 1989, para 32.

⁹⁹² Parlement Européen, Débat du Parlement Européen, *Séance du mercredi 25 octobre 1989*, n°3-382, 25 octobre 1989, 137.

the drawing of some observations on the proportionality test performed by the CJEU in Weiss and others.

ii. The Proportionality Test of the CJEU

Similarly to Gauweiler, but unlike Pringle, the CJEU assessed the proportionality of the PSPP to first determine its suitability and then its necessity to achieve “the objectives of monetary policy”. This assessment has recently received great consideration from academia due to the domestic consequences it entailed.⁹⁹³ In that context, and before turning to the Gauweiler judgment that the FCC delivered on 5 May 2020, brief but special attention should be given to the proportionality assessment of the PSPP.

As mentioned previously, the CJEU first assessed whether the PSPP is suitable to achieve its “monetary objectives”. In essence, this referred to both the primary and secondary objectives conferred on the ESCB. In this very case, the objective claimed by the ESCB was to mitigate deflation risk via easing monetary and financial conditions within the eurozone.⁹⁹⁴ To recall, in Gauweiler, the CJEU confirmed the ECB submission that the objective of price stability does not need to be attained directly. In fact, it can be achieved indirectly via the restoration of the monetary transmission channels. The main issue in this suitability test is the extent to which the CJEU may concretely assess whether a measure of monetary policy, or deemed as such, may achieve price stability – indeed, to what extent the CJEU may fully appreciate complex economic arguments for which the ESCB benefits from a large discretion. That degree of judicial review may explain the rather laconic assessment of the CJEU in that respect. While the necessity test is far more underpinned, it almost disregarded the indirect effects that the PSPP might have on economic policy. In that regard, apart from appreciating the risk of losses that might entail the PSPP, the CJEU only mentioned the “(...) foreseeable effects” of the PSPP.⁹⁹⁵ Similarly than for the suitability test, the competence of the Court to assess these effects may be relatively limited. However, this constitutes a strong limitation in the assessment performed.

⁹⁹³ Sven Simon and Hannes Rathke, “‘Simply Not Comprehensible.’ Why?” (2020) 21 German Law Journal 950, 952–53, Cambridge Core; Isabel Feichtner, “The German Constitutional Court’s PSPP Judgment: Impediment and Impetus for the Democratization of Europe?” (2020) 21 German Law Journal 1090, 1095–96, Cambridge Core.

⁹⁹⁴ CJEU, *Weiss and Others*, C-493/17, EU:C:2018:1000, paras 74-76.

⁹⁹⁵ *ibid* para 81.

Although the CJEU held that Decision 2015/774 was a measure of monetary policy compatible under Union law, such ruling was not particularly well received by the referring court. This invites the consideration of the judgment issued by the FCC on 5 May 2020.

B. Weiss and others: The Delimitation of Monetary Policy and the Limits of European Integration

By declaring the PSPP ultra vires in Germany, the FCC provoked a legal seism within the European Union (1) that deserves considerations (2).

1. The Weiss and others Judgment of the FCC

Consecutively to the judgment issued by the CJEU on 11 December 2018, and following oral hearing conducted on 30 and 31 July 2019, the FCC delivered its judgment on the validity of Decision 2015/774 under both Union law and the German Basic Law.⁹⁹⁶ Considered as a legal storm, the judgment issued on 5 May 2020 by the FCC put the question of the demarcation between monetary and economic policies at the very heart of the European legal order. In fact, as could have been expected since the Maastricht Decision,⁹⁹⁷ the FCC declared the judgment of the CJEU “(...) simply not comprehensible so that, to this extent, the judgment was rendered ultra vires.”⁹⁹⁸ It is noteworthy that while the FCC considered many parts of the Weiss and others judgment incomprehensible, it nonetheless declared it ultra vires for the proportionality test conducted by the CJEU.⁹⁹⁹ To obtain a full understanding of the judgment issued by the FCC, it seems opportune to briefly present it.

As stated previously, the FCC conducted oral hearings on 30 and 31 July 2019 with expert third parties and the original complainants to the main proceedings.¹⁰⁰⁰ The complainants filed a motion to amend their original submissions notified within the framework of the judgment issued by the FCC on 21 June 2016.¹⁰⁰¹ In essence, the complainants claimed the inaction of the Federal Government and of the *Bundestag* to act against the PSPP that exceeds the mandate conferred on

⁹⁹⁶ BVerfG, *Judgment of the Second Senate of 05 May 2020 - 2 BvR 859/15 -*, paras 1-237, DE:BVerfG:2020:rs20200505.2bvr085915.

⁹⁹⁷ See for example Franz C Mayer, ‘To Boldly Go Where No Court Has Gone Before. The German Federal Constitutional Court’s Ultra Vires Decision of May 5, 2020’ (2020) 21 German Law Journal 1116, 1117; 1120, Cambridge Core.

⁹⁹⁸ *ibid* para 116.

⁹⁹⁹ *ibid* paras 116-117.

¹⁰⁰⁰ *ibid* para 82.

¹⁰⁰¹ *ibid* para 87.

the ESCB and thus violates Article 38(1) of the German Basic Law.¹⁰⁰² These claims were declared admissible by the FCC.¹⁰⁰³ Thus, after recalling the domestic applicable legal framework, including the ultra vires review,¹⁰⁰⁴ the FCC analysed the validity of the PSPP under the latter. In that context, the FCC ruled that both the Federal Government and the *Bundestag* violated Articles 38(1), 20(1)–(2) and 79(3) of the German Basic Law.¹⁰⁰⁵ Such violation would result from the inaction of the Federal Government and of the *Bundestag* to act against the PSPP and for having “(...) neither assessed nor substantiated that the measures provided in these decisions satisfy the principle of proportionality.”¹⁰⁰⁶ In essence, for the FCC, the PSPP Decision exceeds the competences conferred on the ESCB and thus should be rendered ultra vires.¹⁰⁰⁷ This conclusion was not altered by the judgment issued by the CJEU in *Weiss and others*. In fact, since it did not fully appreciate the principle of proportionality and disregarded the economic effects of the PSPP, the FCC rendered ultra vires the CJEU judgment.¹⁰⁰⁸ As one may have legitimately expected, the ultra vires of the FCC was directly targeted against the delimitation of the single monetary policy held in *Weiss and others*.

The interpretation delivered by the CJEU in that respect was considered “untenable” in the view of the FCC.¹⁰⁰⁹ In essence, the untenability in the interpretation of the CJEU results from the lack of consideration it gave on the relevant effects of the PSPP.¹⁰¹⁰ According to the FCC, the acceptance of the announced objectives of the PSPP, while disregarding its economic effects, confers the ECB with the right to delimit its own competences.¹⁰¹¹ More specifically, for the FCC the

(...) CJEU allows asset purchases even in cases where the purported monetary policy objective is possibly invoked to disguise what essentially constitutes an economic and fiscal policy agenda.¹⁰¹²

¹⁰⁰² *ibid* paras 89-90 ; 97.

¹⁰⁰³ *idem*.

¹⁰⁰⁴ *ibid* paras 109-112.

¹⁰⁰⁵ *ibid* para 116.

¹⁰⁰⁶ *idem*.

¹⁰⁰⁷ *ibid* para 117.

¹⁰⁰⁸ *ibid* paras 116 ; 119.

¹⁰⁰⁹ *ibid* paras 117 ; 141.

¹⁰¹⁰ *ibid* paras 123, 127, 133, 135-136.

¹⁰¹¹ *ibid* paras 136-137; 156.

¹⁰¹² *ibid* para 137.

This entails considerable consequences in the view of the FCC. In particular, it “rendered meaningless” the proportionality test since the CJEU could not balance monetary and economic effects of the PSPP.¹⁰¹³

In the view of the FCC, the principle of proportionality is of fundamental importance for delimiting monetary and economic policies. For instance, it constitutes “(...) a necessary step in the delimitation of competence”, according to the FCC.¹⁰¹⁴ However, after recalling the different steps of the principle of proportionality, applied by domestic courts and by the CJEU,¹⁰¹⁵ the FCC held that the proportionality test in Weiss and others is neither suitable to assess the limits of the ECB nor to “(...) weight the encroachment upon the competences of the Member States.”¹⁰¹⁶ More specifically, the FCC considered that the proportionality test at issue neither weighted the PSPP contribution to the objectives announced, nor the relevant provisions of the TSCG, nor the “reversal effects discussed in public finance research”. Nor did it assess its economic and social effects.¹⁰¹⁷ In short, the proportionality test performed by the CJEU did not correspond to the FCC’s understanding of the principle of proportionality. This led the FCC to declare that the CJEU failed to properly conduct its judicial review of the PSPP Decision.¹⁰¹⁸

The FCC declared the PSPP ultra vires and, to the extent to which it failed to assess its proportionality, the Weiss and others judgment of the CJEU as well. Interestingly, in the light of the above, the FCC decided to conduct its own proportionality assessment of the measure at issue.¹⁰¹⁹ Logically, as could be deduced from paragraphs 124 to 126 of this judgment, the FCC did not limit its proportionality assessment to the suitability and necessity tests. Rather, it placed the emphasis on the economic effects of the PSPP. In particular, the FCC stated:

This requires that the programme constitute a suitable and necessary means for achieving the aim pursued; **it further requires that the programme’s monetary policy objective and its economic policy effects be identified, weighed and balances against one another.**¹⁰²⁰

In that context, it is of note that the FCC first started to assess the suitability of the PSPP to attain its announced objectives. In short, the FCC concurred with the conclusions reached by the

¹⁰¹³ *ibid* para 138.

¹⁰¹⁴ *ibid* para 139.

¹⁰¹⁵ *ibid* paras 124-126.

¹⁰¹⁶ *ibid* para 140.

¹⁰¹⁷ *ibid* para 139.

¹⁰¹⁸ *ibid* para 142.

¹⁰¹⁹ *ibid* para 164.

¹⁰²⁰ *ibid* para 165 (bold own emphasis).

CJEU.¹⁰²¹ However, this was naturally not the case when it analysed the necessity of the PSPP and its economic effects. Unlike the long developments of the CJEU, the FCC merely analysed the necessity of the PSPP.¹⁰²² In fact, the FCC mostly focused on the third element of its definition of the principle of proportionality: the balancing of (negative) economic effects of the PSPP with the objectives it pursued.¹⁰²³ More specifically, in the view of the FCC, the PSPP positively distorts interest rates that benefit Member States and thus improves their refinancing conditions.¹⁰²⁴ This naturally entails fiscal policy effects that might “(...) result in ‘monetary dominance’, with the ESC determining fiscal policies of the Member States.”

Additionally, the FCC considered that the PSPP significantly improved balance sheets of commercial banks by transferring risky products to the ECB.¹⁰²⁵ Further to that, the FCC also considered that the PSPP increases “risks of losses for private savers” due to potential risks of creating real-estate and stock-market bubbles.¹⁰²⁶ In that regard, the FCC refrained from weighting those effects with the objectives of the PSPP. In fact, it just pointed out the need to not disregard them.¹⁰²⁷ Eventually, the FCC considered that the PSPP distorts market conditions, by allowing unviable companies to stay in the market, and the length of the programme makes the ESCB dependent on Member States.¹⁰²⁸

For the FCC, the ECB should have weighted and balanced those effects with the objectives pursued by the PSPP. The FCC did not claim that the ECB did not proceed to such balancing; rather, it claimed that it is not “ascertainable” that it was done. According to the FCC, the absence of balancing violates Articles 5(1) TEU and 127(1) TFEU and, as a consequence, renders the PSPP ultra vires.¹⁰²⁹ As a consequence, the Federal Government and the *Bundestag* shall take actions to ensure compliance with Treaties while the *Bundesbank* shall refrain from implementing and executing the PSPP.¹⁰³⁰ This last point was effective following a three-month period granted to the ECB to provide a “comprehensive and substantiated” proportionality assessment to the FCC.¹⁰³¹

¹⁰²¹ *ibid* para 166.

¹⁰²² *ibid* para 168.

¹⁰²³ *ibid* para 169.

¹⁰²⁴ *ibid* para 170.

¹⁰²⁵ *ibid* para 172.

¹⁰²⁶ *ibid* para 173.

¹⁰²⁷ *idem*.

¹⁰²⁸ *ibid* paras 174-175.

¹⁰²⁹ *ibid* paras 176-178 ; 232.

¹⁰³⁰ *ibid* paras 233-234.

¹⁰³¹ *ibid* para 235.

This judgment delivered by the FCC triggered a legal seism within the European legal order. Indeed, the ultra vires ruling of the FCC raises a myriad of legal questions, notably related to constitutional law. However, the triggering element of such crisis still remains the demarcation between monetary and economic policies. Thus, such judgment invites the formulation of brief but specific observations before turning to the concluding chapter of this thesis.

2. *Some Observations on the FCC Judgment*

When analysing both Pringle and Gauweiler, the demarcation between monetary and economic policies is not an easy task for the CJEU. The difficulty of such a task was further strengthened by limited considerations on the redistributive effects of one policy on another. It is not to say that the approach adopted by the CJEU was incorrect but rather that such appreciation of indirect effects, and the rejection of direct effects, is economically complex and legally unstable. However, by declaring the PSPP ultra vires, with therefore no legal force in Germany, the FCC put the distinction between monetary and economic policies at the very heart of the European legal order.¹⁰³² This naturally constitutes a landmark case that deserves observations, notably on the redistributive effects.

Redistributive effects of a measure of a monetary policy are complex to appreciate. Logically, those effects are far more difficult to understand for lawyers than for economists. In that context, the FCC attempted to appreciate the economic effects through its own understanding of the principle of proportionality. The FCC emphasized the different methodologies and understanding of the principle of proportionality by different domestic courts and the CJEU.¹⁰³³ As said by the FCC, the CJEU in “(...) recent decisions show a tendency to merge the elements of appropriateness and necessity”,¹⁰³⁴ taking into account that the CJEU “(...) does not necessarily attach the same meaning to these terms as German terminology and doctrine.”¹⁰³⁵ In that regard, since the methodology differs, one may evidently expect divergent views with respect to the outcome of the proportionality assessment.

However, one may also observe that the FCC was very cautious when it appreciated indirect effects of the PSPP. In fact, it limited itself to claim the existence of those effects while not really weighting

¹⁰³² The PSPP, and by the extent the Weiss and others judgment, would have been declared following a three months period granted to the ECB for justifying its proportionality. After this period, it was not declared as such.

¹⁰³³ *ibid* paras 124-126.

¹⁰³⁴ *ibid* para 126.

¹⁰³⁵ *idem*.

and balancing them with the objectives of the PSPP. This renders its own proportionality assessment slightly devoid of sense, especially when enumerating the different economic effects. The absence of justification from the FCC, in an already long judgment, renders its assessment not very comprehensible, as claimed for that of the CJEU. Notwithstanding, the necessity to fully appreciate the redistributive effects of a measure of monetary policy still appears to be the key element for drawing a frontier between these two competences. This entails great consequences for the European integration process.

Behind the principle of conferral, one should understand the dynamics of the European integration process. As previously presented, notably when discussing the Delors Report, the EMU is founded over two limbs which complement each other. However, the economic limb of the EMU may be prone to some lack of coordination between Member States, especially, when a crisis occurs. Thus, the ECB support of the general economic policies in the Union may favour coordination or at least mitigate any adverse effects arising from the lack of coordination. However, this naturally tends to blur the distinction between monetary and economic policies and thus fosters economic integration. In that regard, the respect of the principle of conferral, and hence the delimitation of monetary policy, still appears to be a fundamental issue.

Conclusion

This chapter examined the three cases where the CJEU had to determine whether a measure of monetary policy constituted a measure of economic policy, or vice versa. For this purpose, it confronted the reasoning of the Court with some historical elements examined in the first part of this thesis. In that regard, this chapter found that the CJEU oversimplified the intent of the authors of the Treaties in all three cases. Indeed, while in *Pringle* and *Gauweiler* the intent of the authors of the Treaties was justified by the *travaux préparatoires* to the TEC 1992, it was content to simply affirm it in *Weiss* and others. In that respect, this chapter tended to demonstrate that the CJEU resorted, to a wrong extent, to intentionalism and therefore misperceived the intent of the authors of the Treaties. This chapter highlighted that the Court systematically employed intentionalism to distinguish monetary from economic policies, including when dealing with its redistributive effects. Moreover, by examining the written observations of the parties to the proceedings, this chapter shed new lights on *Pringle*, *Gauweiler*, and *Weiss* and others. In particular, it considered some extensive interpretations, such as that of Advocate General Kokott in *Pringle*, and some observations that influenced the reasoning of the Court. In essence, it helped to better understand the interpretation of the CJEU on the distinction between monetary and economic policies. Finally,

this chapter concluded by analysing the recent judgment issued by the FCC which, due to its significance, suggests further consideration of a legal demarcation line between monetary and economic policies.

Chapter IV: The Necessity to Distinguish Monetary from Economic Policies

Introduction

This chapter examines the necessity to draw a legal demarcation line between monetary and economic policies. For this purpose, it seems opportune to first analyse the justifications and limitations of that distinction before turning to some methodological considerations. Although intentionalism is considered as the most appropriate method for drawing a distinction, other interdisciplinary methods should nonetheless be examined (I). On the basis of such analysis, this chapter investigates how intentionalism could contribute to draw a demarcation line between monetary and economic policies (II). Finally, the chapter examines the possibility to specify the intent of the authors of the Treaties by means of an act of secondary law.

I. To Distinguish Monetary from Economic Policies: Some Considerations

The following subsection explores the necessity to draw a demarcation line between monetary and economic policies (A) and the appropriate methodology to do so (B).

A. Should Monetary Policies be Legally Separated?

In the light of the principle of conferral, and of the current economic downturn, it is important to legally distinguish these two policies (1), even though such enterprise presents some limitations (2).

1. *Justifications for a Distinction*

A legal distinction between these two policies appears to be of crucial importance when considering the principle of conferral (a) and the non-standard measures of monetary policy recently adopted by the ECB (b).

a. *A Distinction Motivated by the Principle of Conferral*

As examined throughout this thesis, the construction of the EMU was a long process that eventually culminated with the Maastricht Treaty that enshrined the separation of monetary from economic policies. This examination led to consider what was the intent of the authors of the Treaties before confronting it with the reasoning of the CJEU in *Pringle*, *Gauweiler*, and *Weiss* and others. However, it should be observed that, regardless of this legislative history analysis, a fundamental question remains: Is a legal distinction between monetary and economic policies necessary? In that regard, one could argue that the CJEU definitely settled the question in *Weiss* and others. Others could say that the recent judgment delivered by the FCC, along with the current

economic downturn, tend to suggest the opposite. In that context, special attention should be given to some important aspects of that distinction, starting with the principle of conferral.

The separation operated by the TEC 1992 should not only be appreciated through a textualist approach. For instance, the rationale behind the creation of two separate chapters under Title VI TEC 1992 is to reflect the repartition of competences between the Union and its Member States. The latter follows the asymmetric structure of the EMU. More specifically, while the Union is conferred an exclusive competence for monetary policy pursuant to Article 3(1)(c) TFEU, economic policy still remains under the competence of the Member States. However, the latter should be coordinated at the Council pursuant to Article 5(1) TFEU. Such repartition of competences is, to a certain extent, protected under the principle of conferral provided in Article 5(1) and (2) TEU. In essence, this principle prohibits the Union from acting beyond the limits of the competences conferred by the Treaties.

However, due to natural interlinkages between monetary and fiscal policies, and even with employment policies, the respect of the principal of conferral has been put at risk in the last few years. Especially when it came to redistributive effects of non-standard measures of monetary policies for which the CJEU refrained its judicial review due to broad discretion of the ECB. Naturally, this led the literature to assess the permeability of these two competences but not only.¹⁰³⁶ In fact, it constituted the main concern of the FCC in several decisions pertaining to monetary policy.¹⁰³⁷ More specifically, the recent FCC judgment should not only be understood as an interpretative divergence between a domestic court and the CJEU on the principle of proportionality. Instead, it should also be perceived as a potential violation of the principle of conferral due to the absence of a clear demarcation between monetary and economic policies.

In the light of the foregoing, a legal distinction between monetary and economic policies appears fundamental to respect the principle of conferral and to minimize any legal risks arising from a divergent interpretation of a domestic constitutional court. This is particularly opportune when

¹⁰³⁶ Sacha Garben and Inge Govaere, 'The Division of Competences between the EU and the Member States: Reflections on the Past, the Present and the Future' in Sacha Garben and Inge Govaere (eds), *The Division of Competences between the EU and the Member States: Reflections on the Past, the Present and the Future* (Modern Studies in European Law, 1st edn, Hart Publishing 2017) 11, Bloomsbury Collections; Christiaan Timmermans, 'The Competence Divide of the Lisbon Treaty Six Years After' in Sacha Garben and Inge Govaere (eds), *The Division of Competences between the EU and the Member States: Reflections on the Past, the Present and the Future* (Modern Studies in European Law, 1st edn, Hart Publishing 2017) 27, Bloomsbury Collections; Waibel (n 52).

¹⁰³⁷ BVerfG, *Judgment of the Second Senate of 05 May 2020 - 2 BvR 859/15 -*, paras. 123, 134, 136; 142-143; 156; 158; 160; *Judgment of the Second Senate of 21 June 2016 - 2 BvR 2728/13 -*, paras. 181; 184-186; *Judgment of 12 October 1993 - 2 BvR 2134/92, 2 BvR 2159/92 -* Translation made by von Bogandy based on the translation of Wegen et al, 33 .I.L.M. 388 (March 1994), 22 -23 (this pertains less to monetary and economic competences).

considering the non-standard monetary policy measures adopted by the ECB to mitigate adverse effects of the pandemic under the objective of price stability.

b. Current Monetary Policies Measures: A Further Motive

On 24 March 2020, the ECB adopted Decision 2020/440 in reaction to the “exceptional economic and financial circumstances associated with the spread of coronavirus disease 2019 (COVID-19)”.¹⁰³⁸ More specifically, this economic shock led the ECB to launch the Temporary Pandemic Emergency Purchase programme (“**PEPP**”) that includes the assets eligible under the Asset Purchase Programme (“**APP**”) but acting separately with a total envelope of EUR 750 bn.¹⁰³⁹ Although the two programmes share some similarities, the PEPP nonetheless differs strongly from the APP, starting with its objectives. Indeed, while the APP aims at enhancing the transmission of the single monetary policy,¹⁰⁴⁰ the PEPP aims at mitigating the risks produced by the pandemic in terms of the economic outlook and these related to price stability.¹⁰⁴¹ These differences in objectives are in fact acknowledged by the ECB, which also underlines the necessity of a “high degree of flexibility” for the PEPP.¹⁰⁴²

In the light of the objective pursued by the PEPP, one could already anticipate future legal tensions before the CJEU. It should be recalled that the PSPP, which is a subprogram of the APP, already led the FCC to declare it ultra vires due to its potential economic effects. Thus, it may legitimately be wondered whether the PEPP would not trigger another constitutional crisis if its redistributive effects were to be too pronounced in the view of a domestic constitutional court. This assumption, partially shared by Bobić and Dawson,¹⁰⁴³ is further strengthened by some features of the PEPP, including its length. Indeed, Decision 2020/440 stipulates, in Recital 4, that the PEPP will be terminated when the ECB will “(...) consider that the COVID-19 crisis phase is over, but in any event before the end of 2020.” However, how to assess when the pandemic will be over? Should it be considered from a health perspective or when the economic activity reaches pre-crisis levels? In the light of the current situation, this absence of clear indication on the length of the PEPP appears normal. However, it also entails serious legal risks. The FCC already argued in Weiss and

¹⁰³⁸ *Decision (EU) 2020/440 of the European Central Bank of 24 March 2020 on a temporary pandemic emergency purchase agreement (ECB/2020/17)*, OJ L 91, 25 March 2020, 1-4.

¹⁰³⁹ *ibid* Recital 3.

¹⁰⁴⁰ *ibid* Recital 2.

¹⁰⁴¹ *ibid* Recitals 3-4.

¹⁰⁴² *ibid* Recital 3.

¹⁰⁴³ Ana Bobić and Mark Dawson, ‘COVID-19 and the European Central Bank: The Legal Foundations of EMU as the Next Victim?’ (*VerfBlog*, March 2020).

others that the length of the PSPP makes the ESCB dependent on Member States.¹⁰⁴⁴ In the same vein, the duration of the PSPP could engender some side-effects, among which the blurring of the distinction between monetary and fiscal policies, according to the *Bundesbank*.¹⁰⁴⁵

Additionally, the PEEP could also raise concerns regarding a potential violation of Article 123 TFEU related to monetary financing. More specifically, the PEPP provides for a flexibility in the distribution of purchase, including among jurisdictions. The use of target measures has been considered, notably in the observations of Poland in Gauweiler, as ensuring the uniformity of the single monetary policy.¹⁰⁴⁶ However, this flexibility might be prone to interpretation, notably from the FCC. This is also mentioned by Busch who considers that the absence of restrictions makes the PEPP “(...) even more vulnerable to new legal proceedings brought before the German Constitutional Court.”¹⁰⁴⁷ In that context, a legal distinction between monetary and economic policies appears fundamental. It is so not only for ensuring legal certainty but also for minimizing any interference with the action of the ECB, thus respecting its independence enshrined in Article 130 TFEU.

Although the legal risks associated with the design of the PEPP are considerable, one could nonetheless argue that they are limited to this specific measure of monetary policy. However, this should not be considered as such. The ECB started in June 2018 to normalize its single monetary policy, by scaling down the APP, with the aim to end purchases by the end of 2018.¹⁰⁴⁸ However, as previously mentioned, the deterioration of the economic outlook in early 2019 led the ECB to adopt other non-standard measures of monetary policy, including the TLTRO-III.¹⁰⁴⁹ Moreover, due to the economic consequences of the pandemic, the ECB adopted the Pandemic Emergency Longer-Term Refinancing Operations (“**PELTROs**”) on 30 April 2020.¹⁰⁵⁰ Such economic necessity to provide accommodative monetary support suggests a “new normal” situation rather than a normalization process. It is naturally not to affirm or dispute that the monetary policy should

¹⁰⁴⁴ BVerfG, *Order of the Second Senate of 14 January 2014*, 2 BvR 2728/13, paras 174-175.

¹⁰⁴⁵ *ibid* para 42.

¹⁰⁴⁶ CJEU, *Written observations of the Republic of Poland*, C-62/14, 18 June 2014, paras 36-37.

¹⁰⁴⁷ Danny Busch, ‘Is the European Union Going to Help Us Overcome the COVID-19 Crisis?’ (2020) 15 *Capital Markets Law Journal* 347, 359.

¹⁰⁴⁸ ECB, Praet, *Providing monetary policy stimulus after the normalisation of instruments*, Speech, 27 March 2019.

¹⁰⁴⁹ ECB, *Press release of 7 March 2019*; Decision (EU) 2019/1558 of the European Central Bank of 12 September 2019. amending Decision (EU) 2019/1311 on a third series of targeted long-term refinancing operations (ECB/2019/28), OJ L 238, 16 September 2019, 2-5.

¹⁰⁵⁰ ECB, *ECB announces new pandemic emergency longer-term refinancing operations*, Press release, 30 April 2020.

be normalized or not; rather, it is to underline the legal risks associated with such a prolonged period of unconventional monetary policy.

In the light of the foregoing it appears necessary to distinguish clearly monetary from economic policies. This is not only justified in the light of the principle of conferral but also to minimize any legal risks before the CJEU, as recently highlighted in Weiss and others. However, to be realistic, any proposal for distinguishing these two policies should consider its intrinsic limitations.

2. Limitations to a Distinction

While monetary and economic policies should be clearly distinguished, or at least legally clarified, such proposition is nonetheless subject to some limitations. As mentioned by several authors,¹⁰⁵¹ and also discussed in Chapter I of this thesis,¹⁰⁵² monetary policy is a constituent of a larger economic policy. While a legal distinction makes sense in the light of the principle of conferral, it is not the case in economics. In that regard, special attention should be given to the potential limitations that a legal distinction faces to avoid, as rightly said by Hinarejos, being “arbitrary”.¹⁰⁵³

In Chapters I and II, special attention was given to the distinction between these two policies in the light of the construction process of the EMU. More specifically, such examination led to consider how the mandate conferred on the ECB and its single monetary policy was conceptualized. In particular, some special considerations were made on the nature and interactions of the two objectives that form the mandate of the ESCB. The latter are of very different nature and may, to a certain extent, complexify the distinction between monetary and economic policies. The ESCB was conferred, pursuant to Article 127(1) TFEU, a primary objective of price stability.

Although it is also an objective of economic policy pursuant to Article 119(3) TFEU, price stability nonetheless constitutes the monetary objective of the ESCB. In essence, the ESCB has been conferred the exclusive competence for monetary policy to attain an objective that is also shared with the Member States. In that regard, one may argue that such a common objective is justified by the fact that Member States should refrain from adopting economic policies that could adversely affect the single monetary policy. However, it was notably in the light of the objective of price stability that the CJEU defined what constitutes a monetary policy under Union law.¹⁰⁵⁴ Thus, by

¹⁰⁵¹ Waibel (n 52) 101.

¹⁰⁵² EEC, Dichgans, ... op.cit., HD-HAEU, PE0-645, para 8.

¹⁰⁵³ Hinarejos (n 51) 575.

¹⁰⁵⁴ CJEU, *Pringle*, C-370/12, EU:C:2012:756, para 53.

adopting a large legal interpretation, should a measure of economic policy be considered as encroaching upon the exclusive competence of the Union for monetary policy if it aims at achieving the objectives stated in Article 119(3) TFEU? The primary objective conferred on the ESCB could already be a limitation to a clear legal distinction between these two policies. Nonetheless, any sharp distinction is further limited by the second objective of the ESCB.

Without prejudice to price stability, the ESCB shall also support the general economic policies in the Union. In that regard, this objective should be considered as of monetary nature to the extent to which it contributes to price stability. That being said, as claimed by the ECB in *Gauweiler*,¹⁰⁵⁵ and then ruled by the CJEU, there is no basis under primary law that obliges the ESCB to directly attain price stability. Nor should the single monetary policy be uniformly implemented in the euro area to achieve this primary objective.¹⁰⁵⁶ In fact, the ECB could legally support distressed Member States via its monetary support and its redistributive effects, though the latter should not fall within the scope of Article 123 TFEU. In that context, and in light of the indivisibility of monetary policy with other constituents of economic policy, the ECB necessarily encroaches upon the competence of the Member States for economic policy, although the latter should be coordinated at the Council within the framework of the Broad Economic Policy Guidelines.

Interestingly, it seems that the authors of the Treaties, or at least the original intent behind this secondary objective, supported this observation. Delors himself declared to the European Parliament that such support should be considered as the primacy of politics on monetary policy. As considered when examining the Delors Report, but also those of the *Comité Monétaire*, the role of the cooperation of monetary policies was to elaborate a common economic policy that fosters integration. In fact, one may also interpret the second objective of the ESCB as backing the second “integral parts of a single whole”.¹⁰⁵⁷ This constitutes another special limitation to a clear legal distinction between monetary and economic policies. More specifically, this could strongly limit any economic integration efforts made via the monetary action of the ECB. However, this is not the only limitation. Any attempt to legally distinguish monetary from economic policies entails a risk to violate the independence conferred on the ECB pursuant to Article 130 TFEU. Also, it would not only deprive the ECB to use the means provided by the Treaties to attain its objective

¹⁰⁵⁵ CJEU, *Written explanations of the European Central Bank*, C-62/14, 25 August 2014, paras 52-53.

¹⁰⁵⁶ To recall, it is the possibility to use targeted monetary policy measures that aims to have a uniform single monetary policy but that could be more focused on specific jurisdictions.

¹⁰⁵⁷ Delors, Committee for the Study of Economic and Monetary Union, *Report on Economic and Monetary Union*, 17 April 1989, *ibid* para 21.

of price stability, as ruled by the CJEU in *Weiss and others*.¹⁰⁵⁸ In fact, it could also limit the action of the ECB to mitigate any adverse effects, under the objective of price stability, that could arise from a crisis.

In essence, any sharp legal distinction between monetary and economic policies could produce adverse effects. However, such distinction still appears necessary in the light of the current times. Thus, some methodological considerations should be given to appreciate to what extent these policies might be legally distinguished while minimizing the above limitations.

B. Some Methodological Considerations for a Distinction

Although other methodologies could be opportune (1), this thesis postulates that intentionalism is the most appropriate method for legally distinguishing these two policies (2).

1. The Inappropriateness of Interdisciplinary Methodologies

The importance of law in macroeconomic affairs led a few authors to assess its relevance for monetary policies (a), while others preconized a '*Law & Macroeconomics*' approach (b).

a. The Relevance of Law in Macroeconomic Affairs

Although a demarcation line between monetary and economic policies appears necessary, one may question the relevance of law in that regard. While the TEC 1992 separated monetary from economic policies by transferring the exclusive competence for monetary policy to the Union, such separation does not make sense in economics. In fact, as mentioned when examining the transition phases of the EEC, monetary policy is an indissociable component of economic policy A specific component that aims at fostering economic integration in the Union. In that regard, the *Comité Monétaire* considered in 1960 that the coordination of monetary policy aimed at supporting conjuncture policies,¹⁰⁵⁹ from which should emerge at a later stage a common economic policy for the Union.¹⁰⁶⁰ Although primary and secondary legislations accompanied the formation of the EMU, as cautiously examined in the first part of this thesis, one may question if macroeconomics in general, and monetary economics in particular, are impermeable to law. In concrete terms, considering the redistributive effects of these policies, how can law realistically dissociate something that may not economically be distinguished? Naturally, to answer this question, one

¹⁰⁵⁸ CJEU, *Weiss and Others*, C-493/17, EU:C:2018:1000, para 67.

¹⁰⁵⁹ CEE, *Deuxième rapport d'activité du Comité Monétaire*, 1^{er} février 1960, II/729/60-F, HAEU, CM2/1960-508, para 4.

¹⁰⁶⁰ CEE, van Campen, ... op.cit., VC-HAEU, PE0-25, para 21.

could potentially turn to interdisciplinary methodologies, including the ‘Legal Analysis of Economics’ one.

By mentioning ‘Legal Analysis of Economics’, one might think that it actually refers to Law and Economics, a movement that has pervaded legal interpretation for a few decades. But this is not the case. As mentioned by Chapman, there is a wrong asymmetry between Law and Economics which mostly refers to economic analysis of law than an equal partnership between the two disciplines.¹⁰⁶¹ Although Chapman legally analysed an economic problem,¹⁰⁶² which re-balances Law and Economics,¹⁰⁶³ this methodology should not be considered as particularly innovative. As stated by Frerichs when quoting Desautels-Stein, the Law and Economics movement rather finds its origins in a Legal Analysis of Economics approach than in an Economic Analysis of Law one.¹⁰⁶⁴ In fact, the latter can be traced in the late works of Commons, who published his seminal “The Legal Foundations of Capitalism”, and of Hale.¹⁰⁶⁵ Nonetheless, the Legal Analysis of Economics was rapidly replaced by the Economic Analysis of Law which currently pervades most fields of law, and notably competition law. However, as mentioned when considering Chapman, the Legal Analysis of Economics did not totally disappear. In fact, it recently re-emerged to consider the role of law in monetary affairs.

As a reaction to Pringle and to a few decisions issued by the FCC, Cottier and Satragno inquired the potential of law and legal methodology in monetary affairs.¹⁰⁶⁶ According to them, the relevance of law in monetary affairs is limited to the definition of its objectives and allocation of competences since the latter are “ruled by policies”.¹⁰⁶⁷ This relative permeability to law could result from three specific reasons, according to Cottier and Satragno. First, monetary affairs are not market-driven

¹⁰⁶¹ Bruce Chapman, ‘Legal Analysis of Economics: Solving the Problem of Rational Commitment’ (2004) 79 *Chicago-Kent Law Review* 471, 471–72.

¹⁰⁶² *ibid* 483–94.

¹⁰⁶³ *ibid* 495.

¹⁰⁶⁴ Sabine Frerichs, ‘Studying Law, Economy and Society: A Short History of Socio-Legal Thinking’ (Legal Studies Research Paper, University of Helsinki March 2012) 26; Justin Desautels-Stein, ‘The Market as a Legal Concept: Classic Liberalism, Modern Liberalism, Pragmatic Liberalism’ in Ugo Mattei and John D Haskell (eds), *Research handbook on political economy and law* (Edward Elgar Publishing 2015) 36–37.

¹⁰⁶⁵ Frerichs (n 1051) 26; Justin Desautels-Stein, ‘The Market as a Legal Concept’ (2012) 60 *Buffalo Law Review* 387, 424; John R Commons, *Legal Foundations of Capitalism* (Routledge 1995); Wesley Mitchell, ‘Commons on the Legal Foundations of Capitalism’ (1924) 14 *The American Economic Review* 240; Jeff Biddle and others, ‘The Historicism of John R. Commons’ in *Methodology of the Social Sciences, Ethics, and Economics in the Newer Historical School: From Max Weber and Rickert to Sombart and Rothacker* (Studies in Economic Ethics and Philosophy, Springer 1997); Neil Duxbury, ‘Robert Hale and the Economy of Legal Force’ (1990) 53 *The Modern Law Review* 421 JSTOR.

¹⁰⁶⁶ Thomas Cottier and Lucia Satragno, ‘The Potential of Law and Legal Methodology in Monetary Affairs’ in Thomas Cottier and others (eds), *The Rule of Law in Monetary Affairs* (Cambridge University Press 2014).

¹⁰⁶⁷ *ibid* 411;416;420.

but a public monopoly.¹⁰⁶⁸ Second, the independence conferred to central banks “(...) forms a self-contained system, deliberately detached from government intervention.”¹⁰⁶⁹ For the authors, there is a need to provide “limited and well-defined treaty-making powers to central banks” to notably adapt their mandate in crisis times.¹⁰⁷⁰ Third, there would potentially be a misperception of the relevance of law in monetary affairs. The latter is considered only in its regulatory dimension.¹⁰⁷¹ Therefore, in the light of these three reasons, and considering the Dworkin theory of law,¹⁰⁷² Cottier and Satragno claim that regulatory theory could encompass law, economics and policy into a single set of principles and rules.¹⁰⁷³ In essence, under regulatory theory, one should not distinguish from a legal analysis of monetary economics in that particular case, the authors postulate that law should:

(...) seek to define principles, factors and circumstances to be taken into account when defining interest rates and in defining the amount of money available in a system, and related activities (such as quantitative easing and forward guidance).¹⁰⁷⁴

Although attractive, the potential of law and legal methodology in monetary affairs, as proposed by Cottier and Satragno, seems not realistic. It is not to say that is unrealistic because it is incorrect but rather to say that it cannot be realistically implemented. In fact, as examined throughout the first part of this thesis, the single monetary policy was shaped upon a specific legal framework aiming to achieve the objectives of the Union. Although the latter does not specify all aspects of the single monetary policy to ensure a broad discretion to the ECB, it is still very much developed. Therefore, any attempt to strengthen the role of law in monetary affairs, or to propose a legal analysis of monetary economics, entails the risk of further regulating it inappropriately. This could greatly affect both the independence of the ECB and the structure of the financial markets. Such approach and methodology cannot be considered appropriate for drawing a distinction between monetary and economic policies.

Considering that the Legal Analysis of Economics approach is not realistic, one could wonder whether the Economic Analysis of Law would be more suitable? In other terms, could a legal distinction be drawn on the basis of economic considerations? This question deserves attention.

¹⁰⁶⁸ *ibid* 416.

¹⁰⁶⁹ *ibid* 417.

¹⁰⁷⁰ *ibid* 419.

¹⁰⁷¹ *ibid* 419–20.

¹⁰⁷² *ibid* 421.

¹⁰⁷³ *ibid* 425.

¹⁰⁷⁴ *ibid* 432.

b. The (Ir)relevance of Law&Macroeconomics

As previously mentioned, Law&Economics has pervaded almost all fields of law for many decades. In fact, according to Gelter and Grechenig, its intellectual origins can be traced in German-speaking countries in the 19th century.¹⁰⁷⁵ However, this first approach did not last for long and re-emerged, at a later stage, in the US before emigrating in Europe.¹⁰⁷⁶ As discussed earlier, that the dominant approach in Law&Economics is the Economic Analysis of Law rather than the Legal Analysis of Economics. Interestingly, although the economic analysis of law pervades most fields of law, including public international law,¹⁰⁷⁷ has almost exclusively employed microeconomics tools hitherto.¹⁰⁷⁸ That being said, methods in Law&Economics should not be summarized to microeconomics. Other sub-movements have recently emerged, including Behavioral Law&Economics or Law&Finance,¹⁰⁷⁹ which resort to other quantitative or qualitative tools. However, until very recently, little attention has been really paid to Law&Macroeconomics, let alone to Law&Monetary Economics.

In that regard, as a consequence of the GFC, some authors started investigating the emergence of a Law&Macroeconomics approach. According to Listokin, the latter should be referred to as the study of “(...) how law affects these aggregate variables of interest, and how fluctuations in these aggregate variables affect law.”¹⁰⁸⁰ In this author’s view, also shared by others,¹⁰⁸¹ Law&Macroeconomics could be of great interest and use in crisis times.¹⁰⁸² Notably when one considers the legal limitations on the mandate of the ECB that is currently expanding in the economy.¹⁰⁸³ Although this methodology appears attractive, and particularly opportune to draw a distinction, a fundamental question remains: What are the macroeconomic tools to analyse this legal issue? While microeconomics provides basic tools, often quantitatively illustrated by basic econometrics models, the use of macroeconomic tools seems far more complex to apply. To date,

¹⁰⁷⁵ Martin Gelter and Kristoffel Grechenig, ‘Law and Economics, History Of’ in Alain Marciano and Giovanni Battista Ramello (eds), *Encyclopedia of Law and Economics* (Springer New York 2019) 1249.

¹⁰⁷⁶ *ibid* 1249–50.

¹⁰⁷⁷ Alan O Sykes, ‘The Economics of Public International Law’ (Working Paper, John M. Olin Program in Law and Economics, Coase-Sandor Institute for Law and Economics - The University of Chicago Law School 2004).

¹⁰⁷⁸ Anna Gelpern and Adam J Levitin, ‘Considering Law and Macroeconomics’ (2020) 83 *Law and Contemporary Problems* i, iv–vii; Bruno Meyerhof Salama, ‘The Art of Law & Macroeconomics’ (2012) 74 *University of Pittsburgh Law Review*, 141.

¹⁰⁷⁹ Afef Boughanmi and Nirjhar Nigam, ‘Law and Finance’ in Alain Marciano and Giovanni Battista Ramello (eds), *Encyclopedia of Law and Economics* (Springer New York 2019) 1254–60.

¹⁰⁸⁰ Yair Listokin, ‘Law and Macro: What Took so Long?’ (2020) 83 *Law and Contemporary Problems* 141, 144.

¹⁰⁸¹ Steven A Ramirez, ‘The Emergence of Law and Macroeconomics: From Stability to Growth to Human Development’ (2020) 83 *Law and Contemporary Problems* 219, 221; Bruno Meyerhof Salama, ‘Macroeconomic Analysis of Law versus Law and Macroeconomics’ (2020) 83 *Law and Contemporary Problems* 181, 194–95.

¹⁰⁸² Listokin, ‘Law and Macro: What Took so Long?’ (n 1080) 151–52.

¹⁰⁸³ *ibid*.

only the IS/LM model has been considered in Law&Macroeconomics.¹⁰⁸⁴ It is not to say that such model is inappropriate for analysing this legal issue. Rather, considering the sophistication of other macroeconomic models, it is to wonder how Law&Macroeconomics could appropriately explore this issue via the IS/LM model. It appears difficult to assess the redistributive effects of the single monetary policy by including a legal variable in a macroeconomic model, as Listokin did with the IS/LM model.¹⁰⁸⁵

In that context, although attractive, the Law&Macroeconomics appears to be not mature enough to propose a legal demarcation line between monetary and economic policies. Therefore, one should rather turn to the methodology employed throughout this thesis: intentionalism.

2. *An Intentionalist Approach?*

As mentioned earlier, and employed throughout this thesis, intentionalism refers to the search of the original intent of the legislature for statutory interpretation. More specifically, according to Ekins, intentionalism aims to “(...) to reach a conclusion about what were or were not the meanings the legislature intended to convey and/or the ends (or purposes) it intended to pursue by means it intended to be followed.”¹⁰⁸⁶ Although particularly such methodology being old,¹⁰⁸⁷ thus making Levin to consider it as surely being the “original legal theory of interpretation”,¹⁰⁸⁸ intentionalism has also been the object of some sub-movements. For instance, some authors emphasize the role of legislative history to appreciate the legislative intent;¹⁰⁸⁹ others, like Ekins,¹⁰⁹⁰ tend to reject that role. Even those promoting a legislative history approach to intentionalism may disagree with regard to the scope of that approach. Intense debate took place, notably in the US., related to the use of committee reports (among other non-legislative documents).¹⁰⁹¹ As can be perceived throughout the preceding chapters, this thesis has employed the most extensive approach

¹⁰⁸⁴ Yair Listokin, ‘A Theoretical Framework for Law and Macroeconomics’ (2019) Forthcoming American Law and Economics Review, 59–65; Yair Listokin, ‘Law and Macroeconomics: The Law and Economics of Recessions’ (2017) 34 Yale Journal on Regulation 791.

¹⁰⁸⁵ Yair Listokin, ‘A Theoretical Framework for Law and Macroeconomics’ (2019) 21 American Law and Economics Review 46, 59–61.

¹⁰⁸⁶ Richard Ekins, *The Nature of the Legislative Intent* (Oxford University Press 2012) 1.

¹⁰⁸⁷ *ibid* 1–3.

¹⁰⁸⁸ Hillel Y Levin, ‘Intentionalism Justice Scalia Could Love’ [2015] Constitutional Commentary 89, 91.

¹⁰⁸⁹ Kent Greenwalt, ‘The Place of Legislative History, and Purpose v. Specific Meanings’ in *Statutory and Common Law Interpretation* (Oxford University Press 2012).

¹⁰⁹⁰ Richard Ekins, ‘Intentions in Interpretation’ in *The Nature of the Legislative Intent* (Oxford University Press 2012) 268–70.

¹⁰⁹¹ Charles Tiefer, ‘The Reconceptualisation of Legislative History in the Supreme Court’ [2000] Wisconsin Law Review 205, 208–09; 221–30; George A Costello, ‘Average Voting Members and Other “Benign Fictions”: The Relative Reliability of Committee Reports, Floor Debates, and Other Sources of Legislative History’ (1990) 1990 Duke Law Journal 39 JSTOR.

to legislative history. It did not limit its analysis to the *travaux préparatoires* of the TEC 1992, as did the CJEU in *Gauweiler*.¹⁰⁹² Instead, it has cautiously examined parliamentary reports, meeting minutes and other original documents that shaped the intent of the authors of the Treaties in the long term. In that regard, this approach to intentionalism presents a clear advantage over other legal theory of interpretations.

One could argue that textualism could minimize legal uncertainty regarding a misperception of a legislative historical approach to a distinction between monetary and economic policies. It was on the basis of that methodology that the CJEU first distinguished these two policies in *Pringle*.¹⁰⁹³ In fact, by ruling that the TFEU “(...) refers, in its provisions relating to that [monetary] policy, to the objectives, rather than to the instruments, of monetary policy”, the CJEU used a textualist approach. However, the latter rapidly showed its interpretative limits in *Gauweiler* and *Weiss* and others by disregarding the redistributive effects of non-standard measures of monetary policy. Similarly to textualism, any teleological approach seems not suitable, regardless of its interpretative modes. If one looks at the purpose of this distinction, as enshrined in the TEC 1992, one could surely find the attainment of the EMU. In fact, the single monetary policy support to the economic limb of the EMU could be the aim. Although the purpose of that distinction and the intention of the authors of the Treaties could be relatively similar, it nonetheless stands out by its complexity and paradox.

In that context, this thesis postulates that intentionalism seems the most suitable approach to draw that distinction for several reasons. First, drawing a distinction based on economic theory would be inappropriate. While both disciplines can easily interact, as it has been examined previously, it cannot be so in this very situation. Precisely, the necessity to distinguish these two policies does not result from an economic issue, even though the expansion of the mandate conferred on the ESCB may impact some segments of the economies of the Member States via its redistributive effects. Rather, it is an issue that arises from a specific legal situation: an asymmetric institutional design enshrined in the Treaties. In that respect, the lack of distinction raises more legal questions, and tensions, than economic problems per se.

In the light of the foregoing, intentionalism could potentially permit to draw a distinction that would realistically minimize any legal risks while avoiding being arbitrary. Specifically, the intellectual richness of the construction of the EMU, considered in the first part, allowed to

¹⁰⁹² CJEU, *Gauweiler*, C-62/14, EU:C:2015:400, para 100.

¹⁰⁹³ CJEU, *Pringle*, C-370/12, EU:C:2012:756, para 53.

appreciate specific events, legislative or political acts that influenced the intent of the authors of the Treaties. This fertile ground, where the CJEU can blithely cherry-pick, constitutes a formidable opportunity and surely the most appropriate methodology to draw a distinction.

Although the preceding paragraphs underlined the suitability of this methodology, notably when compared to other legal and interdisciplinary interpretative methods, a significant problem still remains. Regardless of any interpretative method, only the CJEU can distinguish these two policies. Considering the wording of the Treaties and the standard of judicial review of the CJEU, a potential solution to draw a distinction could be to specify the intent of the authors of the Treaties. Naturally, this proposition invites observations.

II. Specifying the Intent of the Authors of the Treaties

Although only the CJEU is competent to appreciate the intent of the authors of the Treaties to draw a distinction **(A)**, the latter could also be specified by a legislative act **(B)**.

A. The CJEU and Intentionalism

Though the CJEU could draw a distinction based on the intent of the authors of Treaties **(2)**, its limited standard of judicial review in monetary affairs prevents it from doing so **(1)**.

1. The Standard of Judicial Review of the CJEU

As mentioned earlier, the standard of judicial review of the CJEU is necessarily limited when assessing technical matters falling within the scope of expertise of the ESCB. More specifically, in *Gauweiler*, the CJEU acknowledged the broad discretion conferred on the ESCB “(...) to make choices of a technical nature and to undertake forecasts and complex assessment.”¹⁰⁹⁴ It is of note that such discretion for complex economic assessment is not exclusive to the single monetary policy. In fact, for the past few decades, the CJEU has developed a settled body of case law in various areas of law, including notably competition law, granting broad discretion to the Commission.¹⁰⁹⁵ Similarly to the Commission, the ESCB was also granted in *Gauweiler* a broad

¹⁰⁹⁴ CJEU, *Gauweiler*, C-62/14, EU:C:2015:400, para 68 – see also paras 74, 81, 91.

¹⁰⁹⁵ ECJ, Judgment of the Court (Fifth Chamber) of 11 July 1985, *Remia BV and others v Commission of the European Communities*, C-42/84, EU:C:1985:327, para 34; Judgment of the Court (Sixth Chamber) of 17 November 1987, *British-American Tobacco Company Ltd and R. J. Reynolds Industries Inc. v Commission of the European Communities*. Joined cases C-142/84 and 156/84, para 62; Judgment of the Court of 31 March 1998, *French Republic and Société commerciale des potasses et de l'azote (SCPA) and Entreprise minière et chimique (EMC) v Commission of the European Communities*, C-68/94 and C-30/95, EU:C:1998:148, para 223; Judgment of the Court (Fourth Chamber) of 8 July 2010, *Afton Chemical Limited v Secretary of State for Transport*, C-343/09, EU:C:2010:419, para 28.

discretion with respect to complex economic assessments.¹⁰⁹⁶ In that context, the Court therefore applies a limited standard of judicial review of ECB decisions. Precisely, it should content itself with ascertaining whether the ESCB made a manifest error of assessment with regard to measures of monetary policy. However, it refrains from complex economic considerations. According to Advocate General Wathelet in *Weiss and others*, using an analogy with *Afton Chemical*,¹⁰⁹⁷ this limited standard of judicial review means that the “(...) judicature cannot substitute its assessment of scientific and technical facts for that of the legislature on which the Treaty has placed the task”.¹⁰⁹⁸ Though the CJEU did not give practical guidance regarding the broad discretion conferred on the Commission,¹⁰⁹⁹ it seems difficult to request the Court to further analyse elements of monetary nature. However, this does not mean that the CJEU cannot (re)-interpret complex terms of the TFEU on the basis of the intent of the authors of the Treaties. While the CJEU is limited to assessing the compatibility of an ECB Decision with Union law, it is not prevented from examining some delicate points if they refer to provisions enshrined in primary law. For instance, it could further specify the definition, or identification criteria, of the single monetary policy on the basis of the intent of the authors of the Treaties.

Regardless of any interactions between such approach and the standard of judicial review of the CJEU, one could easily observe the reluctance of the latter to employ intentionalism as a method of interpretation. However, while the CJEU has a limited use of intentionalism, it nonetheless systematically employed it in all cases pertaining to the single monetary policy. This observation invites considerations.

2. *A Limited Intentionalist Approach of the CJEU: Except for Monetary Policy*

Unlike other Courts, as with the US Supreme Court,¹¹⁰⁰ the CJEU has until recently barely resorted to intentionalism in order to interpret Union law.¹¹⁰¹ According to Miettinen and Kettunen, the

¹⁰⁹⁶ Juliane Kokott and Christoph Sobotta, ‘Judicial Review and Institutional Balance with Regard to European Monetary Policy’ in *Shaping a new legal order for Europe: a tale of crises and opportunities* (ECB Legal Conference 2017, 2017) 108–09.

¹⁰⁹⁷ CJEU, *Afton Chemical Limited*, EU:C:2010:419, para 28.

¹⁰⁹⁸ CJEU, Opinion of Advocate General Wathelet of 4 October 2018, *Weiss and others*, C-493/17, EU:C:2018:815, para 116.

¹⁰⁹⁹ Tony Reeves and Ninette Dodoo, ‘Standards of Proof and Standards of Judicial Review in European Commission Merger Law’ (2005) 29 *Fordham International Law Journal* 1034, 1061.

¹¹⁰⁰ Tiefer (n 1091).

¹¹⁰¹ Chris Koedooder, ‘The Pringle Judgment: Economic and/or Monetary Union?’ (2013) 37 *Fordham International Law Journal* 111, 123; Samuli Miettinen and Merita Kettunen, ‘Travaux to the EU Treaties: Preparatory Work as a Source of EU Law’ (2015) 17 *Cambridge Yearbook of European Legal Studies* 145, 145–46, Cambridge Core.

limited resort to intentionalism by the CJEU is rather old.¹¹⁰² For instance, in *Reyners*, the Court prevailed textualism over intentionalism when examining Article 55 TEC.¹¹⁰³ Such preference for textualism, and therefore mentioning of intentionalism, occurred as a reaction to the observations of the main defendant to the proceedings, Belgium.¹¹⁰⁴ While the Court laconically rejected intentionalism, Advocate General Mayras nonetheless expressed a stronger opinion. For him, the use of intentionalism in that case was inadequate when considering the *travaux préparatoires* for the Treaty of Rome.¹¹⁰⁵ The intent of the authors of the Treaties was particularly clear according to him.¹¹⁰⁶ For *Miettinen and Kettunen*, the CJEU later turned to an examination of the *travaux préparatoires*, and thus to intentionalism, for a few areas of law, including economic policy.¹¹⁰⁷ In that regard, as examined in Chapter III, the CJEU made references to the *travaux préparatoires* for the TEC 1992 in both *Pringle* and *Gauweiler*.¹¹⁰⁸

As previously mentioned in Chapter III, that intentionalist appreciation conducted by the CJEU was rather laconic, or even misperceived. For *Van Der Luis*, the Court was even “unconvincing” when it examined the compatibility of the OMT Decision with Article 123(1) TFEU.¹¹⁰⁹ Although that approach is prone to criticism, one should nonetheless observe that the CJEU systematically resorted to intentionalism. While the CJEU analysed the *travaux préparatoires* to examine the compatibility of Decision 2011/199/EU with Article 125 TFEU in *Pringle*,¹¹¹⁰ or with Article 123(1) TFEU in *Gauweiler*,¹¹¹¹ it also appreciated the intent of the authors of the Treaties in *Weiss and others*.¹¹¹² It is thus interesting to note that for each case pertaining to monetary policy, the CJEU (partially) delivered its judgments on the basis of the intent of the authors of the Treaties. Inasmuch as the CJEU systematically employed intentionalism, should the latter not be relevant to draw a distinction between monetary and economic policies? Considering its systematic approach to intentionalism, should the latter be more legitimate than textualism in that respect? In that

¹¹⁰² *Miettinen and Kettunen* (n 1101) 151. Here the authors specifically examine the *travaux préparatoires* to the Treaty of Rome but does not opt for a larger perspective by including specific historical mentions. In that case, I resort to intentionalism when mentioning their work while the intentionalism conceived in this thesis is much broader.

¹¹⁰³ CJEU, Judgment of the Court of 21 June 1974, *Jean Reyners v Belgian State*, C-2/74, EU:C:1974:68, p. 641. Please note that *Miettinen and Kettunen* also quotes this case in their article.

¹¹⁰⁴ *ibid* 635.

¹¹⁰⁵ CJEU, Opinion of Advocate General Mayras delivered on 28 May 1974, *Jean Reyners v Belgian State*, EU:C:1974:59, 666.

¹¹⁰⁶ *idem*.

¹¹⁰⁷ *Miettinen and Kettunen* (n 1101) 153–54.

¹¹⁰⁸ *Miettinen and Kettunen* (n 1100) 154. Chapter III does not mention the reference to the *travaux préparatoires* since the latter was pertaining to Article 125 TFEU.

¹¹⁰⁹ Marijn Van Der Sluis, ‘Similar, Therefore Different: Judicial Review of Another Unconventional Monetary Policy in *Weiss* (C-493/17)’ [2019] *Legal Issues of Economic Integration* 263, 284.

¹¹¹⁰ CJEU, *Pringle*, C-370/12, EU:C:2012:756, paras 135-136.

¹¹¹¹ CJEU, *Gauweiler*, C-62-14, EU:C:2015:400, para 100.

¹¹¹² CJEU, *Weiss and Others*, C-493/17, EU:C:2018:1000, paras 55; 60; 92; 94.

regard, for Koedooder, the Court in Pringle “added legitimacy” to its analysis of Article 125 TFEU by “(...) emphasizing the original intent of the authors of the Treaty of Maastricht”.¹¹¹³ However, this legitimacy cannot be deduced only from the *travaux préparatoires*. Instead, as employed in this thesis, the Court resorted to the rich legislative history that shaped the intent of the authors of the (successive) Treaties to obtain this legitimacy. Naturally, it is not to say that the CJEU should trace that intent in the *travaux préparatoires* of the *Convention Monétaire* for the LMU, since it was later mentioned in the Dichgans Report.¹¹¹⁴ Instead, it is to say that the CJEU should broaden its intentionalist approach to resolve this legal issue.

However, as previously mentioned, the CJEU has a limited standard of judicial review for examining technical matters falling within the scope of expertise of the ESCB. Though the latter is different that its intentionalist approach, both necessarily imbricate. In other words, if the Court extensively reviews an act of the ECB on the basis of the intention of the authors of the Treaties, it will necessarily touch upon its standard of judicial review. In that context, any intentionalist approach might seem compromised to draw a distinction, unless that intent is legally further specified.

B. Specifying the Intent of the Authors of the Treaties to Draw a Distinction

Although revising the mandate conferred on the ECB should be deemed the first best solution, its impracticalities (1) invite to consider the possibility to specify the intent of the authors of the Treaties by means of an act of secondary law (2).

1. Revising the Mandate of the ECB: A Complex Task

Though revising the mandate conferred on the ESCB seems rather innovative, or radical, it should not be considered as such. The literature already examined this possibility in reaction to the GFC and to the European Sovereign Debt Crisis. For instance, Stiglitz considered that the inflation-only mandate of the ESCB cannot (...) respond[s] to every problem in the same way [and] is not going to lead to growth with stability and full employment.”¹¹¹⁵ Surely inspired by the mandate conferred on the FED to solve this issue, the author emphasized that “the most important reform for the ECB is to broaden its objectives to include an employment goal.”¹¹¹⁶ More recently, Lastra and

¹¹¹³ Koedooder (n 1101) 123.

¹¹¹⁴ EEC, Dichgans, ...op.cit., HD-HAEU, PE0-645, 12, para 51.

¹¹¹⁵ Joseph E Stiglitz and others, ‘Rewriting the Rules of the European Economy’ (Foundation for European Progressive Studies March 2019) 40.

¹¹¹⁶ *ibid* 15; 44.

others also mentioned the need to revise the Treaties after having considered different aspects and measures aiming at mitigating adverse effects of the pandemic.¹¹¹⁷ In contrast, other authors did not specifically concur with the need to amend the mandate of the ECB. For instance, Fratzcher considered that there is no specific evidence that an amended mandate would be more successful than the current one.¹¹¹⁸ Similarly, van't Klooster argued that a revision of the mandate conferred on the ESCB, in order to include an emergency clause, would be “unpromising”.¹¹¹⁹ Although the literature converged on the difficulties, or impracticalities, to amend the Treaties to change the mandate of the ESCB, it seems opportune to draw some observations.

Any attempt to revise the mandate conferred on the ESCB would necessarily trigger a revision procedure of the Treaties. Behind this simple observation should not be underestimated the complexity of such a process. As pointed out by Stiglitz: “ (...) changing an EU treaty is a long haul, even under the best of circumstances.”¹¹²⁰ Considering that Article 127 TFEU is encompassed in Part III of the TFEU, one could naturally argue that the latter could be amended via the simplified revision procedure introduced by the Lisbon Treaty. However, there is little chance that this procedure could be implemented. More specifically, it could legitimately be thought that any attempts to draw a distinction between monetary and economic policies, to respect the principle of conferral, would necessarily entail a change in the repartition of competences between the Union and its Member States. However, it seems difficult to predict the degree of such change. In that context, the ordinary revision procedure provided in Article 48 TEU would be applicable. In the light of the length and complexity of the ordinary revision procedure, where the possibility not to convene a convention before an IGC appears limited, the latter seems unrealistic, especially when one considers the acrimonious discussions held in the IGC. As a consequence, any proposal to draw a distinction based on an ordinary revision of the Treaties seems strongly compromised, not to say unrealistic.

Second, a revision of the mandate conferred on the ESCB would not be particularly fruitful when one considers the intent of the authors of the Treaties. As examined in the first part of this thesis,

¹¹¹⁷ Rosa M Lastra and others, ‘The ECB’s Mandate: Perspectives on General Economic Policies’ (Monetary Dialogue, June 2020, European Parliament June 2020) 21. Here Lastra and others does not directly claim that a revision of the Treaties should focus on the mandate but, rather, that a revision should be done due the absence of risk mutualisation between Member States and the legal risks that face the recent measures of monetary policy adopted by the ECB.

¹¹¹⁸ Marcel Fratzscher, ‘Rules Versus Human Beings, and the Mandate of the ECB’ (2016) 62 CESifo Economic Studies 68, 86.

¹¹¹⁹ Jens van't Klooster, ‘Democracy and the European Central Bank’s Emergency Powers’ (2018) 42 Midwest Studies in Philosophy 270, 286–87.

¹¹²⁰ Stiglitz and others (n 1115) 44.

the intent of the authors of the Treaties was relatively clear in that regard. It is of note that it was the object of cautious technical work, notably from the Spinelli Committee,¹¹²¹ that undoubtedly influenced the Delors Report which in turn influenced the drafting of TEC 1992. In short, there could not be any doubt regarding the intent of the authors of the Treaties with respect to the mandate conferred to the ESCB. Therefore, any attempt to revise it, by including another objective, would be in contradiction with that intent. As mentioned in Chapters II and III, its necessary vagueness may be the subject of various interpretations and sometimes of legal tensions. Such vagueness was explained by Delors himself before the European Parliament on 25 October 1989.¹¹²²

It follows from the foregoing that any ordinary revision of the Treaties to amend the mandate of the ESCB appears unrealistic. It is not so because it entails a lengthy and complex procedure that would inevitably raise political consideration. Instead, it is so because the intent of the authors of the Treaties was relatively clear on that point and could be easily understood, as documented throughout this thesis. Although it seems the first best solution in order to minimize any future legal tensions surrounding the recent non-standard measures of monetary policy, this thesis rather postulates to specify the intent of the authors of the Treaties. Such possibility could be realized by means of an act of secondary law.

2. *Specifying the Intent of the Authors of the Treaties*

This thesis postulates that a legal distinction between monetary and economic policies may be drawn on the basis of the intent of the authors of the Treaties. More specifically, after having examined the necessity of that distinction and the appropriateness of intentionalism, this thesis claims that the intent of the authors of the Treaties should be further specified. However, considering the limited standard of judicial review of the CJEU and the difficulties to revise the mandate of the ESCB, this thesis proposes that the intent of the authors of the Treaties should be specified by means of an act of secondary law. At first sight, this proposition might seem subjective or even unrealistic. However, it has already been used in the past. As examined in Chapter II, the Council has already had the possibility to specify the meaning of some complex provisions of the TEC 1992 by means of two regulations. Before turning to the main proposition, it seems opportune to briefly recall in what context these two acts of secondary law were enacted.

¹¹²¹ Louis, *Rapport du Groupe « Système Européen de Banques Centrales »* (Banque Centrale Européenne), Comité Spinelli et CEPREM, 16 mai 1989, PVD-HAEU, PVD-85.

¹¹²² CE, Débat du Parlement Européen, *Séance du mercredi 25 octobre 1989*, n°3-382, 25 octobre 1989, 137.

As examined in detail in Chapter II, the period that followed the ratification of the TEC 1992 invited the Union to prepare the transition to the second stage of the EMU. For that purpose, the European Council, convened in Copenhagen in June 1993, invited the Commission to present legislative proposals.¹¹²³ Although it faced a short time frame, comprised between 1 November 1993 and 1 January 1994, the Commission nevertheless presented on 22 July 1993 its Communication on secondary legislation for the second stage of the Economic and Monetary Union.¹¹²⁴ As previously mentioned, the Commission Communication not only aimed to prepare the transition to the second stage of the EMU. In fact, it also aimed to specify the meaning of some complex provisions, including Articles 104, 104a and 104b(1) TEC 1992, by means of two draft regulations.¹¹²⁵ These two proposals, specifying the definitions for monetary financing and privileged access to financial institutions, were rapidly examined by both the Council and the European Parliament. This notably led to include in the final version of those acts¹¹²⁶ some considerations developed in the Randzio-Plath and Bofill-Abeilhe Reports.¹¹²⁷

By specifying definitions for the application of monetary financing, Council Regulation 3603/93 also specified the intent of the authors of the Treaties, which one may find in the Meeting of Finance Ministers of September 1989 in Antibes.¹¹²⁸ More importantly, it facilitated the examination of the validity of the OMT Decision with Article 123(1) TFEU. Examined in Chapter III, following the mention made on the intention of the authors of the Treaties in Gauweiler, the CJEU in the latter based its reasoning upon Recital 7 of this Regulation.¹¹²⁹ In that context, considering the legislative historical analysis made in the first part, this thesis postulates that a distinction between monetary and economic policies could be made on a similar basis as that of Council Regulation 3603/93.¹¹³⁰ However, the legal basis to do so differs markedly.

¹¹²³ European Council, *Conclusions of the Presidency*, 21-22 June 1993, Copenhagen, 8.

¹¹²⁴ *Communication from the Commission*...op.cit., COM (93) 371 final.

¹¹²⁵ *Proposal for a Council Regulation specifying definitions for the application of the prohibitions referred to in Articles 104 and 104b(1) of the Treaty establishing the European Community; Proposal for a Council Regulation specifying definitions for the application of the prohibition of privileged access referred to in Article 104a of the Treaty establishing the European Community in Communication from the Commission*...op.cit., COM (93) 371 final, 9; 13-20.

¹¹²⁶ *Council Regulation No 3603/93 specifying definitions for the application of the prohibitions referred to in Articles 104 and 104b(1) of the Treaty; Council Regulation No 3604 of 13 December 1993 specifying definition for the application of the prohibition of privileged access referred to in Article 104a of the Treaty*, OJ L 332, 31 December 1993, 1-6.

¹¹²⁷ Bofill Abeilhe, *Recommendation for the second reading of the common position*...op.cit., A3-0382/93; Randzio-Plath, *Draft recommendation for the second reading*...op.cit., A3-0383/93.

¹¹²⁸ EC, *Débat du Parlement Européen*...op.cit., n°3-382/124, 135.

¹¹²⁹ CJEU, *Gauweiler*, C-62-14, EU:C:2015:400, para 101.

¹¹³⁰ To note that Claey's, in a very different way, suggests that in light of the Weiss and others judgment, policymakers could further specify the definition of monetary financing by means of Article 125(2) TFEU. See Claey's, 'The European Central Bank in the COVID-19 crisis: Whatever it takes, within its mandate' Bruegel Policy Contribution, May 2020, issue n°9, p.8, ft. 14

While Council Regulations 3603/93 and 3603/94 were based upon Articles 104a(2) and 104b(2) TEC 1992, Article 127 TFEU does not provide for a similar legal basis. In order to specify the definition of Article 127 TFEU, a revision of the Treaties should be requested. However, since it would not increase or decrease the competences of the Union, it seems plausible to resort to the simplified revision procedure enshrined in Article 48(6) TEU, which was used for the ESM. The revision proposed to Article 127 TFEU would be to include a seventh paragraph similar to Article 125(2) TFEU which would provide as follows:

The Council, on a proposal from the Commission and after consulting the European Parliament, may, as required, specify definitions for the application of the prohibitions referred to in Articles 123 and 124 and in this Article.

Given that this wording is similar in Articles 104a(2) and 104b(2) TEC 1992, a basic proposal may potentially be as follows:

The Council, on a proposal from the Commission and after consulting the European Parliament, may, as required, specify definitions for the application of the basic tasks referred to in this Article.

The proposed seventh paragraph would mostly focus on Article 127(2) and not on 127(1) TFEU. Any revision of the mandate conferred on the ESCB would be very complex. Furthermore, as pointed out by Fratzcher,¹¹³¹ it is not sure that another mandate would better succeed. However, little attention has been paid to the definition of the basic tasks conferred on the ESCB, while the latter has been referred to in Pringle, Gauweiler, and Weiss and others.¹¹³² In essence, the aim of this proposition would be to further specify the definitions of Article 127(2)(1) which refers to the definition and implementation of the monetary policy of the Union. The rationale behind this targeted revision is relatively straightforward. In Pringle, the Court acknowledged that the TFEU did not define what constitutes a monetary policy under Union law.¹¹³³ However, instead of clearly defining monetary policy it proposed identification criteria based on a textualist approach. Consequently, it became possible to identify a measure of monetary policy on the basis of some criteria but not against a specific definition. Therefore, to draw a distinction between monetary and economic policies, it could suffice to define what the monetary policy of the Union is in the sense of Article 127(2)(1) TFEU.

¹¹³¹ Fratzscher (n 1118) 86.

¹¹³² CJEU, View of Advocate General Kokott, C-370/12, EU:C:2012:675, para 89; *Observation of the Republic of Cyprus*, C-370/12, 14 September 2012, para 53; *Written observations of the Hellenic Republic*, C-370/12, 13 September 2012, para 18; 24; *Gauweiler*, C-62-14, EU:C:2015:400, para 37 ; *Weiss and Others*, C-493/17, EU:C:2018:1000, para 49.

¹¹³³ CJEU, *Pringle*, C-370/12, EU:C:2012:756, para 53.

In a similar legislative fashion than for Council Regulations 3603/93 and 3604/93, the Commission could propose a legislative proposal specifying the definition of the “monetary policy of the Union”, in a Communication. To minimize legal tensions before the CJEU, and to facilitate its interpretation, such a definition should be based upon cautious examination of legislative history. Therefore, intentionalism remains a central element of this proposition for the reasons examined above but not only. In both *Gauweiler* and *Weiss and others*, the FCC mentioned the necessity to respect the “integration agenda” laid down in the Act of Approval to the Maastricht Treaty. In that context, a definition of the single monetary policy would minimize legal tensions before the CJEU while ensuring the principle of conferral, if based on the intent of the authors of the Treaties.

Conclusion

This chapter examined the necessity to draw a legal demarcation line between monetary and economic policies. After having appreciated the arguments in favour of such a necessity, and confronted them with potential limitations, it examined which method of interpretation would be better suited. More specifically, this chapter first examined the relevance of the Legal Analysis of Economics or Law&Macroeconomics and then considered the use of intentionalism. Considering the appropriateness of intentionalism to draw that distinction, this chapter analysed the extent to which it was employed by the CJEU. While the CJEU has a limited standard of judicial review for technical matters falling within the scope of expertise of the ECB, the ECB systematically employed intentionalism in *Pringle*, *Gauweiler*, and *Weiss and others*. However, due to its standard of judicial review, this chapter had to investigate the possibility of further specifying the intent of the authors of the Treaties to draw that distinction. For this purpose, it considered whether a change in the mandate conferred on the ESCB, via the ordinary revision procedure, could be opportune. However, after having considered the complexity of the procedure and the clear intent of the authors of the Treaties regarding the mandate of the ESCB, this chapter found this proposition untenable. Therefore, based on a synthesized understanding of this thesis, this chapter proposed to further specify the intent of the authors of the Treaties by an act of secondary legislation. The central proposition of this thesis is that a simplified revision of Article 127 TFEU, by means of an act of secondary law, could permit the specification of key terms, similar to Council Regulation 3603/93, to draw a demarcation line.

Conclusion

This thesis investigated the necessity to draw a legal demarcation line between monetary and economic policies. Although a distinction may not be possible from an economic standpoint, inasmuch as monetary policy is an indissociable component of economic policy, it has nonetheless been challenged three times before the CJEU. Those sensitive judgments led the literature to consider that any distinction would either be “doomed to failure” or “arbitrary”, and highlighted the current tensions surrounding the latter. However, the recent judgement issued by the FCC, declaring the PSPP ultra vires and the Weiss and others judgment, put the distinction between monetary and economic policies at the heart of the European legal order. In that regard, further research on such a distinction appeared to be of crucial importance. It appeared fundamental not only to respect the principle of conferral but also to ensure legal certainty regarding the recent non-standard measures of monetary policy adopted by the ECB to mitigate the current economic downturn. In the light of the foregoing, this thesis aimed at answering the following research question: In light of the intent of the authors of the Treaties, how should monetary and economic policies be legally distinguished to respect the principle of conferral? For this purpose, and similarly to the CJEU in Pringle, Gauweiler, and Weiss and others, this thesis employed an intentionalist methodology to answer this research question. More specifically, to appreciate the intent of the authors of the Treaties, this thesis examined primary resources found in the Historical Archives of the European Union and in the Archives of the European Parliament, among others. To fully appreciate these documents in order to answer the research question, this thesis followed a chronological structure organized around two parts, themselves divided into two chapters.

The first part aimed at retracing the legislative history that contributed to the intent of the authors of the Treaties before analysing the conceptualization, and early implementation, of the single monetary policy. In that regard, Chapter I examined the commencement of the economic and monetary integration process in Europe to appreciate its influence on the intent of the authors of the Treaties. Based on a meticulous legislative historical analysis, this chapter found that considerations on a potential distinction between monetary and economic policies appeared early in the integration process. Indeed, this chapter found that parliamentary delegates of the Council of Europe, but also Members of the European Parliament, proposed to distinguish monetary from economic policies. In particular, the chapter found that the considerations developed in the van Campen Report of 1962 may, to a certain extent, echo with the reasoning of the CJEU in Pringle, Gauweiler, and Weiss and others. Moreover, by researching and analysing these key documents, this chapter chronologically highlighted their influence on the integration process and, therefore,

on the intent of the authors of the Treaties. This suggests that the latter is much more complex, and paradoxical, than claimed by the CJEU when it mentioned the *travaux préparatoires* to the TEC 1992.

In that regard, Chapter II examined the *travaux préparatoires* to the TEC 1992 in order to appreciate the intent of the authors of the Treaties. More specifically, after analysing all preparatory documents, including drafts proposals from the Member States, this chapter again highlighted the complexity, and contradictions, inherent to that intent. The TEC 1992 that legally separated, without isolating, monetary and economic policies was examined in detail. This examination showed that the vagueness of some provisions of the TEC 1992 led the legislator to further specify the intent of the authors of the Treaties by means of acts of secondary law. Then by analysing the conceptualization of the single monetary policy, this thesis showed that the Union was aware of the interactions between monetary and economic policies when it chose its monetary strategy among the three proposals of the EMI. In that regard, this chapter further analysed these economic interactions that became legal interactions articulated around the objective of price stability. The primary objective of the ESCB, it also appeared to be an objective of economic policy, thus shared with the Member States. These legal interactions, becoming potential sources of legal tensions, led to consider extraordinary economic measures and non-standard measures of monetary policy that have been adopted in order to mitigate adverse effects of the GFC.

The examination of those measures was then deepened in the second part of this thesis. More specifically, Chapter III examined the three cases where the CJEU had to determine whether a measure of monetary policy constituted a measure of economic policy, or *vice versa*. For this purpose, it confronted the historical analysis made in Part I with the reasoning of the CJEU in *Pringle*, *Gauweiler* and *Weiss* and others. In that regard, this chapter showed that the CJEU employed, to a wrong extent, intentionalism and, as a consequence, misperceived the intent of the authors of the Treaties. Indeed, while the CJEU in *Pringle* and *Gauweiler* justified the intent of the authors of the Treaties in the light of the *travaux préparatoires* to the TEC 1992, it did not underpin such intent in *Weiss* and others. Additionally, by examining the written observations submitted by the parties to the proceedings, this chapter shed new light on these three cases. In particular, it contextualized the interpretation on indirect effects delivered by Advocate General Kokott in *Pringle* and the influence of explanations submitted by the ECB in *Gauweiler*. Such examination also allowed to better understand the reasoning of the CJEU in *Weiss* and others and, to a certain extent, the judgment issued by the FCC on 5 May 2020. By concluding on this judgment, this

chapter briefly introduced the necessity to further consider a legal demarcation line between monetary and economic policies to notably respect the principle of conferral.

Chapter IV examined the necessity for, and possibilities of, drawing a legal demarcation line between monetary and economic policies. For this purpose, it first examined, and weighted, the justifications and limits of a possible distinction. More specifically, after having found that a distinction is needed to respect the principle of conferral and to ensure legal certainty regarding recent measures of monetary policy, this chapter examined a few limitations, including the objective of price stability. Considering the necessity for a distinction, this chapter then examined which methodology would be the most appropriate to draw a demarcation line. Inasmuch as this thesis found that this distinction should aim at resolving a legal issue, and not an economic one, this chapter considered interdisciplinary methodologies ill-suited, before appreciating intentionalism. In the light of the appropriateness of intentionalism to draw that distinction, this chapter examined the extent to which it was employed by the CJEU. The CJEU systematically employed intentionalism in *Pringle*, *Gauweiler*, and *Weiss* and others. However, due to the limited standard of judicial review of the CJEU, this chapter had to investigate whether the intent of the authors of the Treaties could be further specified to draw that distinction. For this purpose, it considered whether the mandate conferred on the ESCB should be amended via the ordinary revision procedure to reflect that intent. However, after having considered the complexities and difficulties of the revision procedure, this chapter found this proposition unsuitable.

Therefore, based on a synthesized understanding of the findings of the first three chapters, this thesis proposed that further specification of the intent of the authors of the Treaties by means of an act of secondary law. More specifically, this thesis postulates that a distinction between monetary and economic policies, which minimizes the limitations previously considered, could be drawn if the intent of the authors of the Treaties is specified as with Council Regulation 3603/93 and 3604/93. In essence, it suggests that a simplified revision of Article 127 TFEU, aiming at clarifying Article 127(2)(1) TFEU, could be a potential solution to respect the principle of conferral while minimizing legal tensions before the CJEU. Although too briefly considered, this thesis suggests that further research should be devoted to the drawing of a legal demarcation line between these two policies based on the intent of the authors of the Treaties.

Bibliography

Books and Articles

Afonso A, Checherita C, and Tranbandt M, 'Euro Area Fiscal Policies: Response to the Economic Crisis' in van R Ad (ed), *Euro Area Fiscal Policies and the Crisis* (Occasional Paper Series 109, European Central Bank 2010).

Angeloni I, Kashyap AK, and Mojon B, 'Introduction' in AK Kashyap, B Mojon, and I Angeloni (eds), *Monetary Policy Transmission in the Euro Area: A Study by the Eurosystem Monetary Transmission Network* (Cambridge University Press 2003).

Angeloni I, Kashyap AK, Mojon B, and Terlizzese D, 'Monetary Policy Transmission in the Euro Area: Where Do We Stand?' in AK Kashyap, B Mojon, and I Angeloni (eds), *Monetary Policy Transmission in the Euro Area: A Study by the Eurosystem Monetary Transmission Network* (Cambridge University Press 2003).

I Angeloni, O Tristani, O Issing, and V Gaspar (eds), 'The ECB Strategy: Defining Price Stability' in *Monetary Policy in the Euro Area: Strategy and Decision-Making at the European Central Bank* (Cambridge University Press 2001).

Allemand F, "Le "Plan Barre I" ", Dans ALLEMAND, Frédéric, L'Union Économique et Monétaire: Origine, Fonctionnement et Futur' [2013] Sanem: CVCE.

Attinasi MG, 'Euro Area Fiscal Policies: Response to the Financial Crisis' in van R Ad (ed), *Euro Area Fiscal Policies and the Crisis* (Occasional Paper Series 109, European Central Bank 2010).

Baroncelli S, 'Chapter 8: Monetary Policy and Judicial Review' in F Fabbrini and M Ventoruzzo (eds), *Research Handbook on EU Economic Law* (Research handbooks in European Law series, 2019).

Bergman M, Gerlach S, and Jonung L, 'The Rise and Fall of the Scandinavian Currency Union 1873–1920' (1993) 37 *European Economic Review* 507.

Beukers T, 'The Bundesverfassungsgericht Preliminary Reference on the OMT Program: "In the ECB We Do Not Trust. What About You?"' (2014) 15 *German Law Journal* 343.

Biddle J, Samuels WJ, and Koslowski P, 'The Historicism of John R. Commons' in *Methodology of the Social Sciences, Ethics, and Economics in the Newer Historical School: From Max Weber and Rickert to Sombart and Rothacker* (Studies in Economic Ethics and Philosophy, Springer 1997).

Bogart EL, *Direct and Indirect Costs of the Great World War* (Carnegie Endowment for International Peace 24, Second (revised) edition, Oxford University Press 1920).

Bossuat G, 'Chapitre XIX. Le Printemps Précaire de l'OECE: L'union Européenne Des Paiements' in *La France, l'aide américaine et la construction européenne 1944-1954* (Institut de la gestion publique et du développement économique 1997) vol II.

Bottex A, 'La Mise En Place Des Institutions Monétaires Européennes (1957-1964)' (1999) 18 *Histoire, Économie et Société* 753.

Boughanmi A and Nigam N, 'Law and Finance' in A Marciano and GB Ramello (eds), *Encyclopedia of Law and Economics* (Springer New York 2019).

Broadberry S and Harrison M, 'The Economics of World War I: An Overview' in M Harrison and S Broadberry (eds), *The Economics of World War I* (Cambridge University Press 2005).

Busch D, 'Is the European Union Going to Help Us Overcome the COVID-19 Crisis?' (2020) 15 *Capital Markets Law Journal* 347.

Chapman B, 'Legal Analysis of Economics: Solving the Problem of Rational Commitment' (2004) 79 *Chicago-Kent Law Review* 471.

Claeys, 'The European Central Bank in the COVID-19 crisis: Whatever it takes, within its mandate' Bruegel Policy Contribution, May 2020, issue n°9

Commons JohnR, *Legal Foundations of Capitalism* (Routledge 1995).

Comte de Las Cases, 'Chapitre Premier' in *Le Mémorial de Sainte-Hélène* (Bibliothèque de la Pléiade, Gallimard 1956).

Costello GA, 'Average Voting Members and Other "Benign Fictions": The Relative Reliability of Committee Reports, Floor Debates, and Other Sources of Legislative History' (1990) 1990 *Duke Law Journal* 39.

Cottier T and Satragno L, 'The Potential of Law and Legal Methodology in Monetary Affairs' in T Cottier, R Lastra, C Tietje, and L Satragno (eds), *The Rule of Law in Monetary Affairs* (Cambridge University Press 2014).

Craig P, 'EMU, the European Central Bank, and Judicial Review' in N Walker and P Beaumont (eds), *Legal Framework of the Single Currency* (Hart Publishing 1999).

Craig P and Burca G de, *EU Law: Text, Cases and Materials* (5th edn, Oxford University Press 2011).

Craig P and Markakis M, 'Gauweiler and the Legality of Outright Monetary Transactions' (2016) 41 *European Law Review* 4.

Dawson M and Bobić A, 'A. Court of Justice Quantitative Easing at the Court of Justice – Doing Whatever It Takes to Save the Euro: Weiss and Others' [2019] *Common Market Law Review* 1005.

De Musset A, 'Le Chant Des Amis' in *Poésies complètes* (Poésies complémentaires, Bibliothèque de la Pléiade, Gallimard 1933) vol 12.

Desautels-Stein J, 'The Market as a Legal Concept' (2012) 60 *Buffalo Law Review* 387.

Desautels-Stein J, 'The Market as a Legal Concept: Classic Liberalism, Modern Liberalism, Pragmatic Liberalism' in U Mattei and JD Haskell (eds), *Research handbook on political economy and law* (Edward Elgar Publishing 2015).

Dickerson R, 'Statutory Interpretation: Dipping into Legislative History' (1983) 11 *Hofstra Law Review* 1125.

Duxbury N, 'Robert Hale and the Economy of Legal Force' (1990) 53 *The Modern Law Review* 421.

Einaudi L, 'A Historical Perspective on the Euro: The Latin Monetary Union (1865–1926)' (2018) 16 *DICE Report* 3.

Einaudi LL, 'From the Franc to the "Europe": The Attempted Transformation of the Latin Monetary Union into a European Monetary Union, 1865-1873' (2000) 53 *The Economic History Review* 284.

Ekins R, *The Nature of the Legislative Intent* (Oxford University Press 2012).

Ekins R, 'Intentions in Interpretation' in *The Nature of the Legislative Intent* (Oxford University Press 2012).

Faugère AP, *Le Zollverein Ou l'union Des Douanes de La Prusse et Des États Allemands, de 1819 à 1841* (Firmin Didot Frères, Fils et Compagnie 1859).

Feichtner I, 'The German Constitutional Court's PSPP Judgment: Impediment and Impetus for the Democratization of Europe' (2020) 21 *German Law Journal* 1090.

Feld LP, Fuest C, Haucap J, Schweitzer H, Volker W, and Wigger BU, 'Dismantling the Boundaries of the ECB's Monetary Policy Mandate: The CJEU's OMT Judgement and Its Consequences' (Research Report, Kronberger Kreis-Studien 2016), Research Report.

Flandreau M, 'The Economics and Politics of Monetary Unions: A Reassessment of the Latin Monetary Union, 1865–71' (2000) 7 *Financial History Review* 25.

Flandreau M, 'The Bank, the States, and the Market: An Austro-Hungarian Tale for Euroland 1867-1914' in FH Capie and GE Wood (eds), *Monetary Unions: Theory, history, public choice* (Routledge International Studies in Money and Banking 2003).

Fournier de Flaix E, 'Le Problème Monétaire (Suite et Fin)' (1888) 29 *Journal de la société statistique de Paris* 179.

Fratzscher M, 'Rules Versus Human Beings, and the Mandate of the ECB' (2016) 62 *CESifo Economic Studies* 68.

Frerichs S, 'Studying Law, Economy and Society: A Short History of Socio-Legal Thinking' (Legal Studies Research Paper, University of Helsinki March 2012), Legal Studies Research Paper.

Garben S and Govaere I, 'The Division of Competences between the EU and the Member States: Reflections on the Past, the Present and the Future' in S Garben and I Govaere (eds), *The Division of Competences between the EU and the Member States: Reflections on the Past, the Present and the Future* (Modern Studies in European Law, 1st edn, Hart Publishing 2017).

Gelpern A and Levitin AJ, 'Considering Law and Macroeconomics' (2020) 83 *Law and Contemporary Problems* i.

Gelter M and Grechenig K, 'Law and Economics, History Of' in A Marciano and GB Ramello (eds), *Encyclopedia of Law and Economics* (Springer New York 2019).

Gerner-Beurle C, Kucuk E, and Schuster E, 'Law Meets Economics in the German Federal Constitutional Court: Outright Monetary Transactions on Trial' (2014) 15 German Law Journal 281.

Goldmann M, 'Adjudicating Economics? Central Bank Independence and the Appropriate Standard of Judicial Review' (2014) 15 German Law Journal 265.

Greenwalt K, 'The Place of Legislative History, and Purpose v. Specific Meanings' in *Statutory and Common Law Interpretation* (Oxford University Press 2012).

Hartmann P and Smets F, 'The First Twenty Years of the European Central Bank: Monetary Policy' (ECB Working Paper, European Central Bank December 2018), ECB Working Paper.

Harrison M, 'The Economics of World War II: An Overview' in M Harrison (ed), *The Economics of World War II: Six Great Powers in International Comparison* (Studies in Macroeconomic History, Cambridge University Press 1998).

Henderson WO, *The Zollverein* (Cambridge University Press 1939).

Henderson WO, 'The German Zollverein and the European Economic Community' [1981] *Zeitschrift für die gesamte Staatswissenschaft / Journal of Institutional and Theoretical Economics* 491.

Hilbers P, 'Interactions of Monetary and Fiscal Policies: Why Central Bankers Worry About Government Budgets' in IMF (ed), *Current Development in Monetary and Financial Law*, vol 4 (Current developments in monetary and financial law / Legal Department, International Monetary Fund 2005).

Hinarejos A, 'The Courts and the Crisis' in *The Euro Area Crisis in Constitutional Perspective* (Oxford University Press 2015).

Hinarejos A, 'Gauweiler and the Outright Monetary Transactions Programme: The Mandate of the European Central Bank and the Changing Nature of Economic and Monetary Union: European Court of Justice, Judgment of 16 June 2015, Case C-62/14 Gauweiler and Others v Deutscher Bundestag' (2015) 11 *European Constitutional Law Review* 563.

Hobe S, 'The German State in Europe After the Maastricht Decision of the German Constitutional Court' (1994) 37 *German Yearbook of International Law* 113.

O Issing (ed), 'The ECB and the Foundations of Monetary Policy' in *The Birth of the Euro* (Cambridge University Press 2008).

Jonung L, 'The Scandinavian Monetary Union: 1873-1924' in PL Cottrell, G Notaras, and G Tortella (eds), *From the Athenian Tetradrachm to the Euro* (Studies in European Monetary Integration, Asghate, 2007).

Keller W and Shiue CH, 'The Trade Impact of the Zollverein' [2013] Centre for Economic Policy Research.

Klooster J van't, 'Democracy and the European Central Bank's Emergency Powers' (2018) 42 *Midwest Studies in Philosophy* 270.

Koedooder C, 'The Pringle Judgment: Economic and/or Monetary Union?' (2013) 37 *Fordham International Law Journal* 111.

Keynes JM, 'Chapter 6: Europe after the Treaty' in *The Economic Consequences of the Peace* (Wordsworth Classics of World Literature, Wordsworth 1919).

Keynes JM, 'Chapter 7: Remedies' in *The Economic Consequences of the Peace* (Wordsworth Classics of World Literature, Wordsworth 1919).

Keynes JM, *The Economic Consequences of the Peace* (Wordsworth Classics of World Literature, Wordsworth 1919).

Kokott J and Sobotta C, 'Judicial Review and Institutional Balance with Regard to European Monetary Policy' in *Shaping a new legal order for Europe: a tale of crises and opportunities* (ECB Legal Conference 2017, 2017).

Lang A, 'B. National Courts Ultra Vires Review of the ECB's Policy of Quantitative Easing: An Analysis of the German Constitutional Court's Preliminary Reference Order in the PSPP Case.' [2018] *Common Market Law Review* 923.

Lastra R, 'Chapter 2: Central Banking Law' in *International Financial and Monetary Law* (2nd edn, Oxford University Press 2015).

Levin HY, 'Intentionalism Justice Scalia Could Love' [2015] *Constitutional Commentary* 89.

Listokin Y, 'A Theoretical Framework for Law and Macroeconomics' (2019) *Forthcoming American Law and Economics Review*.

Listokin Y, 'A Theoretical Framework for Law and Macroeconomics' (2019) 21 *American Law and Economics Review* 46.

Listokin Y, 'Law and Macro: What Took so Long?' (2020) 83 *Law and Contemporary Problems* 141.

Listokin Y, 'Law and Macroeconomics: The Law and Economics of Recessions' (2017) 34 *Yale Journal on Regulation* 791.

Louis J-V, "'Monetary Capacity" in the Single European Act' (1988) 25 *Common Market Law Review* 9.

Mayer FC, 'To Boldly Go Where No Court Has Gone Before. The German Federal Constitutional Court's Ultra Vires Decision of May 5, 2020' (2020) 21 *German Law Journal* 1116.

Meyerhof Salama B, 'Macroeconomic Analysis of Law versus Law and Macroeconomics' (2020) 83 *Law and Contemporary Problems* 181.

Meyerhof Salama B, 'The Art of Law & Macroeconomics' (2012) 74 *University of Pittsburgh Law Review*.

Miettinen S and Kettunen M, 'Travaux to the EU Treaties: Preparatory Work as a Source of EU Law' (2015) 17 *Cambridge Yearbook of European Legal Studies* 145.

Mitchell W, 'Commons on the Legal Foundations of Capitalism' (1924) 14 *The American Economic Review* 240.

Neri S and Siviero S, 'The Non-Standard Monetary Policy Measures of the ECB: Motivations, Effectiveness and Risks' (Occasional Papers, Questioni di Economia e Finanza, Banca d'Italia March 2019), Occasional Papers.

Øksendal LF, 'The Impact of the Scandinavian Monetary Union on Financial Market Integration' (2007) 14 *Financial History Review* 125.

Papot, 'Impossible n'est pas français » Napoléon, 1808' (2013) *Historia*

Ramirez SA, 'The Emergence of Law and Macroeconomics: From Stability to Growth to Human Development' (2020) 83 *Law and Contemporary Problems* 219.

Reeves T and Dodoo N, 'Standards of Proof and Standards of Judicial Review in European Commission Merger Law' (2005) 29 *Fordham International Law Journal* 1034.

Ryan J and Loughlin J, 'Lessons from Historical Monetary Unions - is the European Monetary Union Making the Same Mistakes?' (2018) 15 *International Economics and Economic Policy* 709.

Scheller HK, 'Le Comité des gouverneurs des banques centrales de la CEE et l'unification monétaire européenne' (2011) 30e année *Histoire, économie & société* 79.

Schmidt SK, 'A Sense of Déjà Vu? The FCC's Preliminary European Stability Mechanism Verdict' (2013) 14 *German Law Journal* 1.

Servais D and Ruggeri R, 'The EU Constitution: Its Impact on Economic and Monetary Union and Economic Governance' in P Zamboni Garavelli, European System of Central Banks, and Europäische Zentralbank (eds), *Legal aspects of the European System of Central Banks: liber amicorum Paolo Zamboni Garavelli* (Europ Central Bank 2005).

Simon S, 'Direct Cooperation Has Begun: Some Remarks on the Judgment of the ECJ on the OMT Decision of the ECB in Response to the German Federal Constitutional Court's First Request for a Preliminary Ruling' (2015) 16 *German Law Journal* 1025.

Simon S and Rathke H, "'Simply Not Comprehensible.'" Why?' (2020) 21 *German Law Journal* 950.

Stiglitz JE, Stetter E, Dougherty C, Griffith-Jones S, Ortiz I, Capaldo J, Gabor D, and Schratzenstaller-Altzinger M, 'Rewriting the Rules of the European Economy' (Foundation for European Progressive Studies March 2019).

Sykes AO, 'The Economics of Public International Law' (Working Paper, John M. Olin Program in Law and Economics, Coase-Sandor Institute for Law and Economics - The University of Chicago Law School 2004), Working Paper.

Talia K, 'The Scandinavian Currency Union, 1873-1924' (Stockholm School of Economics 2004).

Tiefer C, 'The Reconceptualisation of Legislative History in the Supreme Court' [2000] *Wisconsin Law Review* 205.

Timini J, 'Currency Unions and Heterogeneous Trade Effects: The Case of the Latin Monetary Union' (2018) 22 *European Review of Economic History* 322.

Timmermans C, 'The Competence Divide of the Lisbon Treaty Six Years After' in S Garben and I Govaere (eds), *The Division of Competences between the EU and the Member States: Reflections on the Past, the Present and the Future* (Modern Studies in European Law, 1st edn, Hart Publishing 2017).

Van Der Sluis M, 'Similar, Therefore Different: Judicial Review of Another Unconventional Monetary Policy in Weiss (C-493/17)' [2019] *Legal Issues of Economic Integration* 263.

Waibel M, 'Monetary Policy: An Exclusive Competence Only in Name?' in S Garben and I Govaere (eds), *The Division of Competences between the EU and the Member States: Reflections on the Past, the Present and the Future* (Hart Publishing 2017).

Wendel M, 'Paradoxes of Ultra-Vires Review: A Critical Review of the PSPP Decision and Its Initial Reception' (2020) 21 *German Law Journal* 979.

Witte Bruno De BT, 'The Court of Justice Approves the Creation of the European Stability Mechanism Outside the EU Legal Order: Pringle' [2013] *Common Market Law Review* 805.

Treaties

Traité de Paris, 30 mai 1814, Paris

Acte du Congrès de Vienne, 9 juin 1815, édition officielle et collationnée avec le texte de l'instrument original déposé aux Archives de la Chancellerie de Cour et d'État, available at <https://gallica.bnf.fr/ark:/12148/bpt6k91227n/f1.image>

Acte sur la Constitution Fédérative de l'Allemagne, 8 juin 1815, Annex IX to Acte du Congrès de Vienne

Convention Monétaire conclue à Paris, le 23 décembre 1865 entre la France, la Belgique, l'Italie et la Suisse, in *Recueil des traités de la France*, vol 9, publiée sous les auspices du Ministère des affaires étrangères par M. Jules de Clerq, A. Durand et Pedone-Lauriel, 1880, available at <https://gallica.bnf.fr/ark:/12148/bpt6k96073g/f471.image>

Protocole n°1 de la Conférence tenue à Paris, le 20 novembre 1965 entre la France, la Belgique, l'Italie et la Suisse, pour la conclusion d'une Convention Monétaire, in *Recueil des traités de la France*

Annexe 1 au Protocole n°1 in *Recueil traités de la France*

Protocole n°2 de la Conférence réunie à Paris, le 27 novembre 1865 entre la France, la Belgique, l'Italie et la Suisse, pour la conclusion d'une Convention Monétaire, in *Recueil des traités de la France*

Protocole n°5 de la Conférence réunie à Paris, le 21 décembre 1865 entre la France, la Belgique, l'Italie et la Suisse, pour la conclusion d'une Convention Monétaire, in *Recueil des traités de la France*

The Compromise (Ausgleich) of 1867, concerning the mailers common to all countries of the Austrian monarchy and the manner of treating them, Law of 21 December 1867, in James Harvey Robinson and Charles Beard, *Readings in Modern European History*, vol 2, New York: Ginn and Company, 1909, available at <https://saleemcc.instructure.com/courses/451/pages/the-compromise-ausgleich-of-1867>

Constitution of the German Reich, 16th April 1871

Treaty of Economic, Social and Cultural Collaboration and Collective Self-Defence, 17th March 1948, Brussels

Convention de Coopération Économique Européenne, 16th April 1948, Paris

Statute of the Council of Europe, 5th May 1949, London

Treaty establishing the European Coal and Steel Community, 18th April 1951, Paris

Traité établissant la Communauté Economique Européenne, 25 mars 1957, Rome

Single European Act, OJ L 169, 29th June 1987, pp. 1–28

Treaty on European Union, OJ C 191, 29th July 1992, Maastricht

Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts - Final Act, OJ C 340, 10th November 1999

Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, OJ C 83, 30th March 2010, pp.1-389

Treaty Establishing the ESM, signed on 2 February 2012

Regulations

Regulation (EEC) No 907/73 of the Council of 3 April 1973 establishing a European Monetary Cooperation Fund, JO L 89, 5th April 1973, pp. 2-5

Proposal for a Regulation amending Council Regulation (EEC) No 907/73 of 3 April 1973 setting up a European monetary cooperation fund, JO C 114, 27th December 1973, pp. 33-46

Proposal for Regulation (EEC) of the Council amending Regulation (EEC) No 907/73 of 3 April 1973 establishing a European Monetary Cooperation Fund, 11th December 1974, COM(74)2106 final

Proposal for a Council Regulation changing the value of the unit of account used by the European Monetary Cooperation Fund, 31st October 1978, COM (78) 572 final/2

Proposal for a Regulation establishing a European Monetary System, 31st October 1978, COM (78) 572 final/2

Council Regulation (EEC) No 3180/78 of 18th December 1978 changing the value of the unit of account by the European Monetary Cooperation Fund, OJ L 379, 30th December 1978, p.1

Council Regulation (EEC) No 3181/78 of 18 December 1978 relating to the European monetary system, OJ L 379, 30th December 1978, p.2

Proposal for a Council Regulation specifying definitions for the application of the prohibitions referred to in Articles 104 and 104b(1) of the Treaty establishing the European Community, in Communication from the Commission to

the Council and the European Parliament on Secondary legislation for the second stage of Economic and Monetary Union, 22nd July 1993, COM (93) 371 final

Proposal for a Council Regulation specifying definitions for the application of the prohibition of privileged access referred to in Article 104a of the Treaty establishing the European Community, in Communication from the Commission to the Council and the European Parliament on Secondary legislation for the second stage of Economic and Monetary Union, 22nd July 1993, COM (93) 371 final

Proposal for a Council Regulation on the application of the provisions of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community, in Communication from the Commission to the Council and the European Parliament on Secondary legislation for the second stage of Economic and Monetary Union, 22nd July 1993, COM (93) 371 final

Council Regulation No 3603/93 specifying definitions for the application of the prohibitions referred to in Articles 104 and 104b(1) of the Treaty, OJ L 332, 31st December 1993, pp. 1–3

Council Regulation No 3604 of 13 December 1993 specifying definition for the application of the prohibition of privileged access referred to in Article 104a of the Treaty, OJ L 332, 31st December 1993, pp. 1-6

Commission Regulation (EC) No 1749/96 of 9 September 1996 on initial implementing measures for Council Regulation (EC) No 2494/95 concerning harmonized indices of consumer prices, OJ L 229, 10th September 1996, pp. 3-10

Commission Regulation (EC) No 2214/96 of 20 November 1996 concerning harmonized indices of consumer prices: transmission and dissemination of sub-indices of the HICP, OJ L 296, 11th November 1996, pp. 8-29

Council Regulation (EC) No 1466/97 of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies, 2nd August 1997, OJ L 209, pp. 1-5

Council Regulation (EC) No 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure, OJ L 209, 2nd August 1997, pp. 6–11

Council Regulation (EC) N° 2494/95 of 23 October 1995 concerning harmonized indices of consumer prices, OJ L 257, 27th October 1997, pp. 1-4

Commission Regulation (EC) No 2454/97 of 10 December 1997 laying down detailed rules for the implementation of Council Regulation (EC) No 2494/95 as regards minimum standards for the quality of HICP weightings, OJ L 340, 11th December 1997, pp. 24-25

Council Regulation (EC) No 2531/98 of 23 November 1998 concerning the application of minimum reserves by the European Central Bank, OJ L 318, 27th November 1998, pp. 1-3

Council Regulation (EC) No 2866/98 of 31 December 1998 on the conversion rates between the euro and the currencies of the Member States adopting the euro, OJ L 359, 31st December 1998, pp. 1-2

Directives

Proposal for a Council Directive on stability and full employment in the Community, JO C 114, 27th December 1973, pp. 33-46

Deuxième directive du Conseil en date du 18 décembre 1962 complétant et modifiant la première directive pour la mise en œuvre de l'article 67 du traité (63/21/CEE), Extrait du Journal Officiel des Communautés Européennes, n° 9, 22 janvier 1963, HAEU, CM2/1962-449

Proposition de directive du Conseil pour la communication à la Commission des données statistiques afférentes aux mouvements de capitaux à destination et en provenance des pays tiers (66/226/CEE), JO P 066, 7 avril 1966, pp. 969-970

Council Directive 88/361/EEC of 24 June 1988 for the implementation of Article 67 of the Treaty, OJ L 178, 8th July 1988, pp. 5-18

Decisions

Décision concernant la coordination des politiques de conjoncture des États membres, 9 mars 1960, OJ, 9 mai 1960, extrait n°31/1960, HAEU, CM2/1960-728

Décision du Conseil du 15 avril 1964 créant un Comité de politique économique à moyen terme (64/247/CEE), JO P 064, 22 avril 1964, pp. 1031-1033

Décision du Conseil du 8 mai 1964 concernant la collaboration entre les services compétents des administrations des États membres dans le domaine de la politique budgétaire (64/299/CEE), OJ P 077, 21 mai 1964, pp. 1205-1206

Décision du Conseil du 8 mai 1964 concernant la collaboration entre les banques centrales des États membres de la Communauté économique européenne (64/300/CEE), JO P 077, 21 mai 1964, pp. 1206-1207

Décision du Conseil du 8 mai 1964 concernant la collaboration entre les États membres en matière de relations monétaires internationales (64/301/CEE), JO P 077, 21 mai 1964, pp. 1207-1208

Décision du Conseil du 17 juillet 1969 relative à la coordination des politiques économiques à court terme des États membres (69/227/CEE), JO L 183, 25 juillet 1969, pp. 41- 42

Décision du Conseil du 6 mars 1970 relative à la procédure en matière de coopération économique et monétaire (70/192/CEE), JO L 59, 14 mars 1970, p. 44

Décision du Conseil du 22 mars 1971 relative au renforcement de la coordination des politiques économiques à court terme des États membres de la Communauté économique européenne (71/141/CEE), JO L 73, 27 mars 1971, pp. 12-13

Décision du Conseil du 22 mars 1971 portant mise en place d'un mécanisme de concours financier à moyen terme (71/143/CEE), JO L 73, 27 mars 1971, pp. 15-16

Décision du Conseil du 22 mars 1971 relative au renforcement de la collaboration entre les banques centrales des États membres de la Communauté économique européenne (71/142/CEE), 27 mars 1971, n° L 73, p. 14

Proposal for a Council Decision on the adjustment to the guidelines for economic policy for 1974, 13th May 1974, COM(74)689 final

Proposal for a Council Decision on the achievement of a high degree of convergence of the economic policies pursued by the Member States of the European Economic Community, JO C 114, 27th December 1973, pp. 38-40

Council Decision setting-up an Economic Policy Committee, JO C 114, 27th December 1973, pp. 45-46

Council Decision of 18 February 1974 on the attainment of a high degree of convergence of the economic policies of the Member States of the European Economic Community (74/120/EEC), OJ L 63, 5th March 1974, pp. 16-18

Council Decision of 18 February 1974 on stability, growth and full employment in the Community (74/121/EEC), OJ L 63, 5th March 1974, pp. 19-20

Council Decision of 18 February 1974 setting up an Economic Policy Committee (74/122/EEC), OJ L 63, 5th March 1974, pp. 21-22

Council decision of 24 July 1978 on the adaptation of public budgets for 1978 and the preparation of public budgets for 1979 in the framework of the Community's concerted action (78/658/EEC), OJ L 220, 11th August 1978, pp. 27-29

Decisions No. 12/79 and No. 13/79 of the Board of governors of the European Monetary Co-operation Fund, 13th March 1979

Proposal for a Council Decision on the attainment of progressive convergence of economic performance during stage one of Economic and Monetary Union, COM(89) 466 final, 13 October 1989, OJ C 283, 9th November 1989, pp. 6-8

Council Decision of 12 March 1990 on the attainment of progressive convergence of economic policies and performance during stage one of economic and monetary union (90/141/EEC), OJ L 78, 24th March 1990, pp. 23-24

Council Decision of 12 March 1990 amending Council Decision 64/300/EEC on cooperation between the central banks of the Member States of the European Economic Community (90/142/EEC), OJ L 78, 24th March 1990, pp. 25-26

Proposal for a Council Decision on the establishment of the key for the financial resources of the European Monetary Institute, in Communication from the Commission to the Council and the European Parliament on Secondary legislation for the second stage of Economic and Monetary Union, 22nd July 1993, COM (93) 371 final, pp. 35-41

Draft proposal for a Council Decision on the consultation of the European Monetary Institute by the authorities of the Member States on draft legislative provisions, in Communication from the Commission to the Council and the European Parliament on Secondary legislation for the second stage of Economic and Monetary Union: Further proposals, 22nd September 1993, COM (93) 436 final

Council Decision of 22 November 1993 on the consultation of the European Monetary Institute by the Authorities of the Member States on draft legislative provisions, OJ L 332, 31st December 1993, pp. 14-15

Décision du Conseil du 13 décembre 1996 arrêtée conformément à l'article 109 J paragraphe 3 du traité sur l'entrée dans la troisième phase de l'Union économique et monétaire, JO L 335, 24 décembre 1996, pp. 48-49

Décision du Conseil du 29 juin 1998 relative à la consultation de la Banque centrale européenne par les autorités nationales au sujet de projets de réglementation, JO L 189, 3 juillet 1998, pp. 42-43

Decision (EU) 2015/774 of the European Central Bank of 4 March 2015 on a secondary markets public sector asset purchase (ECB/2015/10), OJ L 121, 14 May 2015, pp. 20-24

Decision (EU) 2020/440 of the European Central Bank of 24 March 2020 on a temporary pandemic emergency purchase agreement (ECB/2020/17), OJ L 91, 25 March 2020, pp. 1-4

Decision (EU) 2019/1558 of the European Central Bank of 12 September 2019 amending Decision (EU) 2019/1311 on a third series of targeted long-term refinancing operations (ECB/2019/28), OJ L 238, 16 September 2019, pp. 2-5

Recommandations

Conseil de l'Europe, Assemblée Consultative, Recommandations au Comité des Ministres, « *Rôle du Conseil de l'Europe dans le domaine économique, compte tenu des organisations internationales existantes, ainsi qu'il est prévu aux articles 1 (c) et 23 (b) du Statut* », Session ordinaire de 1949 (Séance du 5 septembre 1949), doc n°71

Council of Europe, Committee of Ministers, Recommendation (c) *Action to be taken in the economic field between Member States of the Council of Europe and between the latter and other nations*, Second Session, 3rd-5th November 1949 (4th November 1949), Ministry of Foreign Affairs (Paris), doc 458

Recommandation de la Commission au Conseil sur la collaboration entre les Banques centrales de la Communauté Économique Européenne, in *Communication de la Commission au Conseil sur la coopération monétaire et financière au sein de la Communauté économique européenne*, 19 juin 1963

Recommandation de la Commission en vue d'une décision du Conseil relative à l'organisation de consultations au sein de la Communauté sur les politiques nationales en matière de mouvements de capitaux en provenance des pays tiers (66/227/CEE), JO P 066, 7 avril 1966, pp. 970-971

Recommendation for a Council Decision amending Decision 64/300/EEC on co-operation between the Central Banks of the Member States of the European Economic Community, COM(89) 467 final, 13th October 1989, OJ C 283, 9 November 1989, pp. 8-10

Opinions

Economic and Social Committee, *Opinion on the proposal for a Council Decision on the attainment of progressive convergence of economic performance during sate of one economic and monetary union and the recommendation for a Council Decision amending 64/300/EEC on cooperation between the central banks of the Member States of the European Economic Community*, OJ C 56, 7th March 1990, p. 50

Commission Opinion of 21 October 1990 on the proposal for amendment of the Treaty establishing the European Economic Community with a view to Political Union, COM (90) 600, 21st October 1990

European Council

European Council, *The Results of the European Council in Bremen*, Reproduced from the Bulletin of the European Communities, No. 6/1978

European Council, *Conclusions of the Presidency of the European Council*, 5th December 1978 (Final version of 31 January 1979)

European Council, *Conclusions of the Presidency*, 27th and 28th April 1980

European Council, *Conclusions*, 1st and 2nd December 1980

European Council, *Summary by the Presidency of the European Council*, 23rd and 24th March 1981

European Council, *Conclusions*, 26th and 27th November 1981

European Council, *Conclusions*, 28th and 29th June 1985

European Council, *Texts resulting from the European Council in Luxembourg*, 2-3 December 1985

European Council, *Conclusion of the Presidency*, 27th and 28th June 1988

European Council, *Conclusion of the Presidency*, 26th and 27th June 1989

European Council, *Conclusion of the Session of the European Council in Copenhagen*, 7 and 8 April 1978, Reproduced from the European Council Dossier of the European People's Party, 1990

European Council, *Conclusions of the Presidency*, 21st and 22nd June 1993, Copenhagen

European Council, *Conclusions of the Presidency*, 15th and 16th December 1995, Madrid

European Council, *Conclusions of the Presidency*, 13th and 14th December 1996, Dublin

European Council, *Presidency Conclusions*, Cologne, 3rd and 4th June 1999

European Council, *Conclusions of the Presidency*, Brussels, 15-16th October 2008

European Council, *Conclusions of the Presidency*, Brussels, 16th-17th December 2010

Foreign legal acts

Richard Nixon, Proclamation 4074 – *Imposition of Supplemental Duty for Balance of Payments Purposes*, 15th August 1971, Online by Gerhard Peters and John T. Woolley, The American Presidency Project

Richard Nixon, Executive Order 11615 – *Providing for Stabilization of Prices, Rents, Wages, and Salaries*, 15th August 1971, Online by Gerhard Peters and John T. Woolley, The American Presidency Project

Federal Reserve Act of 1913, 12 USC 225a, as added by act of November 16, 1977 (91 Stat. 1387) and amended by acts of October 27, 1978 (92 Stat. 1897); Aug. 23, 1988 (102 Stat. 1375); and Dec. 27, 2000 (114 Stat. 3028).

Case-Law

Court of Justice of the European Union

Judgment of the Court of 21 June 1974, *Jean Reyners v Belgian State*, C-2/74, EU:C:1974:68

Judgment of the Court (Fifth Chamber) of 11 July 1985, *Remia BV and others v Commission of the European Communities*, C-42/84, EU:C:1985:327

Judgment of the Court (Sixth Chamber) of 17 November 1987, *British-American Tobacco Company Ltd and R. J. Reynolds Industries Inc. v Commission of the European Communities*. Joined cases C-142/84 and 156/84

Judgment of the Court of 31 March 1998, *French Republic and Société commerciale des potasses et de l'azote (SCPA) and Entreprise minière et chimique (EMC) v Commission of the European Communities*, C-68/94 and C-30/95, EU:C:1998:148

Judgment of the Court (Fourth Chamber) of 8 July 2010, *Afton Chemical Limited v Secretary of State for Transport*, C-343/09, EU:C:2010:419

Judgment of the Court (Fourth Chamber) of 8 July 2010, *Afton Chemical Limited v Secretary of State for Transport*, C-343/09, EU:C:2010:419

Judgement of 27 November 2012, *Thomas Pringle v Government of Ireland and Others*, C-370/12, EU:C:2012:756

Judgment of the Court (Grand Chamber) of 16 June 2015, *Peter Gauweiler and Others v Deutscher Bundestag*, C-62/14, EU:C:2015:400

Judgment of the Court (Grand Chamber) of 11 December 2018, *Weiss and Others*, C-493/17, EU:C:2018:1000

Opinions of Advocate General

Opinion of Advocate General Mayras delivered on 28 May 1974, *Jean Reyners v Belgian State*, EU:C:1974:59

View of Advocate General Kokott of 26 October 2012, *Thomas Pringle v Government of Ireland and Others*, C-370/12, EU:C:2012:675

Opinion of Advocate General Cruz Villalón of 14 January 2015, *Peter Gauweiler and Others v Deutscher Bundestag*, C-62/14, EU:C:2015:7

Opinion of Advocate General Wathelet of 4 October 2018, *Weiss and others*, C-493/17, EU:C:2018:815

Written observations of the parties to the proceedings

CJEU, *Observations of the European Commission*, C-370/12, 13th September 2012, sj.f(2012)1243325

CJEU, *Written observations of the Hellenic Republic*, C-370/12, 13th September 2012

CJEU, *Written observations submitted to the Court of Justice by the Slovak Republic*, C-370/12, 13th September 2012, doc 0849/Os/2012/AC

CJEU, *Written observations of Thomas Pringle – Appellant in the main proceedings*, C-370/12

CJEU, *Written observations of Ireland*, C-370/12, 14th September 2012, doc. 914758

CJEU, *Written observations by the European Council in Case C-370/12*, C-370/12, 14th September 2012, doc. 914718

CJEU, *Observations of the Federal Republic of Germany*, C-370/12, 14th September 2012

CJEU, *Observations of the Italian Republic*, C-370/12, 14th September 2012, doc n° Ct.30855/12

CJEU, *Observations of the Republic of Cyprus*, C-370/12, 14th September 2012

CJEU, *Observations of the French Republic*, C-370/12, 14th September 2012

CJEU, *Written explanations of the European Central Bank*, C-62/14, 25th August 2014 (translated from German to English by DocTransaltor)

CJEU, *Observations of Bandulet, Hankel, Nilling, Schachtschneider and Starbatty*, C-62/14, 27th May 2014, n°965630 (translated from German to English by DocTransaltor)

CJEU, *Observations of Dr. Peter Gauweiler*, C-62/14, 12th June 2014, n°66726 (translated from German to English by DocTransaltor)

CJEU, *Observations of Die Linke*, C-62/14, 2nd June 2014 (translated from German to English by DocTransaltor)

CJEU, *Observations of Roman Huber*, C-62/14, 24th June 2014 (translated from German to English by DocTransaltor)

CJEU, *Observations of the Federal Government of Germany*, C-62/14, 6th June 2014 (translated from German to English by DocTransaltor)

CJEU, *Written explanations of the European Central Bank*, C-62/14, 25th August 2014 (translated from German to English by DocTransaltor)

CJEU, *Written observations of the Republic of Poland*, C-62/14, 18th June 2014 (translated from German to English by DocTransaltor)

CJEU, *Written observations of the Kingdom of the Netherlands*, C-62/14, 12th June 2014 (translated from German to English by DocTransaltor)

CJEU, *Written declarations of the European Parliament*, C-62/14, 11th June 2014, n° SJ-0294/14 (translated from German to English by DocTransaltor)

CJEU, *Observations écrites de la Commission Européenne*, C-62/14, 12th June 2014, sj.f(2014) 2085550

CJEU, *Opinion of Mr Weiss*, C-493/17, 15th November 2017, n°1065028 (translated from German to English by DocTransaltor)

CJEU, *Observations of Mr. Lucke*, C-493/17, 21st November 2017, n°1065330 (translated from German to English by DocTransaltor)

CJEU, *Written observation of the Hellenic Republic*, C-493/17, 21st November 2017, (translated from German to English by DocTransaltor)

CJEU, *Written observations of the Republic of Finland*, C-493/17, 27th November 2017, translated from German to English by DocTransaltor)

CJEU, *Observations de la Commission Européenne*, C-493/17, 29 novembre 2017

CJEU, *Written observations of the Republic of Portugal*, C-493/17, 29th November 2017 (translated from German to English by DocTransaltor)

CJEU, *Written observations of the German Bundesbank*, C-493/17, 30th November 2017 (translated from German to English by DocTransaltor)

CJEU, *Written observations of the Italian Republic*, C-493/17, 5th December 2017, ct. 36290/2017 (translated from German to English by DocTransaltor)

Domestic jurisdictions

Germany

BVerfG, *Judgment of 12 October 1993* - 2 BvR 2134/92, 2 BvR 2159/92 – Translation made by von Bogandy and made on the translation of Wegen et al, 33 .I.L.M. 388 (March 1994)

BVerfG, *Order of the Second Senate of 31 March 1998* - 2 BvR 1877/97 -, paras. 1-101, DE:BVerfG:1998:rs19980331.2bvr187797

BVerfG, *Judgment of the Second Senate of 07 September 2011* - 2 BvR 987/10 -, paras. 1-142, DE:BVerfG:2011:rs20110907.2bvr098710

BVerfG, *Order of the Second Senate of 14 January 2014*, 2 BvR 2728/13, DE:BVerfG:2014:rs20140114.2bvr272813

BVerfG, *Judgment of the Second Senate of 21 June 2016* - 2 BvR 2728/13 -, paras. 1-220, DE:BVerfG:2016:rs20160621.2bvr272813

BVerfG, *Order of the Second Senate of 18 July 2017* - 2 BvR 859/15 -, paras. 1-137, DE:BVerfG:2017:rs20170718.2bvr085915

BVerfG, *Judgment of the Second Senate of 05 May 2020* - 2 BvR 859/15 -, paras. 1-237, DE:BVerfG:2020:rs20200505.2bvr085915

Ireland

Pringle -v- The Government of Ireland & Ors [2012] IEHC 296 (17 July 2012)

Thomas Pringle v The Government of Ireland, Ireland and the Attorney General [2012] IESC 47 (19 October 2012)

Resolutions

Buron, Conseil de l'Europe, Assemblée Consultative, Proposition de Résolution, « *Rôle du Conseil de l'Europe dans le domaine économique, compte tenu des organisations internationales existantes, ainsi qu'il est prévu aux articles 1 (c) et 23 (b) du Statut* ». Session ordinaire de 1949 (Séance du 23 août 1949), doc n°10

Philip, Conseil de l'Europe, Assemblée Consultative, Proposition de Résolution, « *Rôle du Conseil de l'Europe dans le domaine économique, compte tenu des organisations internationales existantes, ainsi qu'il est prévu aux articles 1 (c) et 23 (b) du Statut* ». Session ordinaire de 1949 (Séance du 23 août 1949), doc n°12

Mackay, Conseil de l'Europe, Assemblée Consultative, Proposition de Résolution, « *Rôle du Conseil de l'Europe dans le domaine économique, compte tenu des organisations internationales existantes, ainsi qu'il est prévu aux articles 1 (c) et 23 (b) du Statut* ». Session ordinaire de 1949 (Séance du 23 août 1949), doc n°18

Bonnefous, Conseil de l'Europe, Assemblée Consultative, Proposition de Résolution, « *Rôle du Conseil de l'Europe dans le domaine économique, compte tenu des organisations internationales existantes, ainsi qu'il est prévu aux articles 1 (c) et 23 (b) du Statut* ». Session ordinaire de 1949 (Séance du 23 août 1949), doc n°29

de Valera, Conseil de l'Europe, Assemblée Consultative, Proposition de Résolution, « *Rôle du Conseil de l'Europe dans le domaine économique, compte tenu des organisations internationales existantes, ainsi qu'il est prévu aux articles 1 (c) et 23 (b) du Statut* ». Session ordinaire de 1949 (Séance du 24 août 1949), doc n°22

Council of Europe, Consultative Assembly, Committee on Economic Question, *Resolution on European Monetary Reform*, Session December 15-16th 1949, 16th December 1949, AS/EC (49) 12

Conseil de l'Europe, *Resolution adopted by the Committee of Ministers at its 8th Session*, May 1951

Communauté Européenne du Charbon et de l'Acier, Assemblée Commune, *Résolution relative au Rapport général de la Haute Autorité sur l'activité de la Communauté du 10 août 1952 au 12 avril 1953 et sur l'Etat prévisionnel général pour l'exercice 1953-1954*, OJ 10, 21 juillet 1953, pp. 156–157

Communauté Européenne du Charbon et de l'Acier, Assemblée Commune, *Proposition de résolution relative aux questions de transports*, 14 mai 1954, doc n°19

Résolution adoptée par les ministres des Affaires étrangères des États membres de la CECA, Messine, 2 juin 1955

Communauté Européenne du Charbon et de l'Acier, Assemblée Commune, *Résolution relative aux problèmes de transport dans la Communauté*, JO A 13, 10 juin 1955, p. 777

Communauté Européenne du Charbon et de l'Acier, Assemblée Commune, *Résolution à l'adresse du Conseil spécial de Ministres et de la Haute Autorité, relative à la résolution adoptée par les ministres des Affaires étrangères des États membres de la Communauté européenne du charbon et de l'acier réunis à Messine les 1er et 2 juin 1955*, JO A 17, 23 juillet 1955, p. 845

Communauté Européenne du Charbon et de l'Acier, Assemblée Commune, *Résolution à l'adresse du Conseil spécial de Ministres relative à la politique générale d'expansion et à l'évolution de la conjoncture*, JO A 17, 23 juillet 1955, p. 846

Draft Council Resolution on the implementation of the second stage of economic and monetary union in the Community, JO C 114, 27th December 1973, pp. 33-46

Parlement Européen, *Résolution relative à la coordination des politiques monétaires dans le cadre de la C.E.E. et Résolution sur la coordination des politiques budgétaires et financières*, Procès-verbal de la séance du mercredi 17 octobre 1962, OJ 116, 12 Novembre 1962, pp. 2264-2266

Parlement Européen, Illerhaus, *Résolution relative à la présentation par la Commission de la C.E.E., d'un rapport sur les résultats atteints pendant la deuxième étape et d'un programme d'action pour la troisième étape de la période transitoire*, JO P 053, 24 mars 1966, pp. 773-774

Parlement Européen, *Résolution sur l'activité future de la Communauté dans le domaine de la politique monétaire et la création d'une union monétaire européenne*, JO P 232, 16 décembre 1966, pp. 3911-3912

Résolution sur la position du Parlement européen à l'égard des problèmes fondamentaux de la politique européenne et communautaire, en prévision de la conférence des chefs d'État ou de Gouvernement des États membres de la Communauté adoptée par l'assemblée lors de la session extraordinaire du 3 novembre 1969, 4 novembre 1969, 1766/69 (ASS 1090)

Résolution du Conseil et des représentants des gouvernements des États Membres du 22 mars 1971 concernant la réalisation par étapes de l'union économique et monétaire dans la Communauté, JO C 28, 27 mars 1971, pp. 1-4

Résolution du Conseil et des représentants des gouvernements des états Membres du 21 mars 1972 relative à l'application de la résolution, du 22 mars 1971, concernant la réalisation par étapes de l'union économique et monétaire dans la Communauté, JO C 38, 18 avril 1972, pp. 3-4

Resolution of the Council of 18 February 1974 concerning short-term monetary support, OJ C 20, 5 March 1974, 5 March 1974, p. 1

European Parliament, *Motion for a Resolution on the European Monetary System*, 19 December 1980, Working Documents, doc. 1-761/80

European Parliament, *Resolution setting up a committee on institutional problems*, 9 July 1981, OJ C 234, 14th September 1981, pp. 48-49

European Parliament, *Resolution on the European Parliament's position concerning the reform of the Treaties and the achievement of European union*, 6 July 1982, OJ C 238, 13th September 1982, pp. 23-28

Resolution concerning the substance of the preliminary draft Treaty establishing the European Union, 14 September 1983, OJ C 277, 17th October 1983, pp. 95-117

Résolution sur les objectifs et instruments d'une politique monétaire, OJ C 205, 25 juillet 1994, pp. 510-511

European Parliament, Harrison, *Resolution on the impact of monetary policies on the real economy, inflation, interest rates, growth and employment in the third stage of EMU, and economic function of convergence criteria*, OJ C 380, 16th December 1996, para. 4

Resolution of the European Council on the Stability and Growth Pact, OJ C 236, 2nd August 1997, pp. 1-2

Resolution of the European Council on the establishment of an exchange-rate mechanism in the third stage of economic and monetary union, 16th June 1997, OJ C 236, 2nd August 1998, pp. 5-6

Reports

Rapport de la majorité de la Commission du Conseil national sur la question monétaire (14 janvier 1860), Feuille Fédérale Suisse, Vol 1, mercredi 2 février 1860, Archives Fédérales Suisses, réf n°10 059 149

Council of Europe, Consultative Assembly, Committee on General Affairs, Confidential, *Report of the Committee on General Affairs (Submitted by Mr. Mackay) prepared pursuant to the Resolution of the Assembly passed in August 1949*, 3rd Session, undated, AS/AG (50) 5

Bardoux, Conseil de l'Europe, Assemblée Consultative, Commission des Affaires Générales, Confidentiel, *Projet de Pacte de l'Union Européenne*, 3eme session, 27 février 1950, AS/AG (50) 2

République Française, 'Rapport de La Délégation Française Sur Le Traité Instituant La Communauté Européenne Du Charbon et de l'Acier et La Convention Relative Aux Dispositions Transitoires Signés à Paris Le 18 Avril 1951' (Ministère des Affaires Étrangères October 1951).

European Coal and Steel Community, High Authority, *Report on the Situation of the Community*, 10th January 1953

European Coal and Steel Community High Authority, *The Activities of the European Community: General Report of the High Authority (10th August 1952 to 12th April 1953)*, 11th April 1953

Communauté Européenne du Charbon et de l'Acier, Assemblée Commune, *Rapport fait au nom de la Commission du Marché Commun sur les Chapitres III et IV (pages 29 à 97), traitant de l'évolution et de l'établissement du marché commun du charbon, du minerai de fer et de la ferraille, du Rapport général de la Communauté (1952-1953), ainsi que des mesures et décisions préparatoires relatives à l'établissement du marché commun de l'acier*, Session ordinaire 1953, 9 juin 1953, document n°8

European Coal and Steel Community High Authority, *The Activities of the European Community: Second General Report of the High Authority* (13 April 1953 to 11 April 1954), 11th April 1954

Communauté Européenne du Charbon et de l'Acier, Assemblée Commune, van der Goest van Naters et Wigny, *Rapport fait au nom du Groupe de Travail sur le Marché Commun et l'Euratom*, Session ordinaire, doc n°14, AC 2226

Kapteijn, Communauté Européenne du Charbon et de l'Acier, Assemblée Commune, *Rapport fait au nom de la Commission des Transports sur le chapitre III, §3, chiffres 89-95 du Deuxième Rapport général sur l'activité de la Communauté (13 avril 1953-11 avril 1954), traitant des problèmes du transport au sein de la Communauté*, Session ordinaire de 1954, 10 mai 1954, doc n°14

Van der Goest van Naters, 'Le Développement de l'intégration Économique de l'Europe' (Assemblée Consultative, Communauté Européenne du Charbon et de l'Acier July 1955).

Comité Intergouvernemental créé par la Conférence de Messine, *Rapport des Chefs de Délégation aux Ministres des Affaires Étrangères*, Bruxelles, 21 avril 1956

van Campen, Assemblée Parlementaire Européenne, *Rapport fait au nom de la Commission des investissements, des questions financières et de la politique à long terme sur les chapitres du sixième Rapport général sur l'activité de la Communauté (C.E.C.A) qui relèvent de la compétence de la Commission*, Session de juin 1958, 11 juin 1958, doc n°22, VC-HAEU, PE0-19

Comité Monétaire, *Premier rapport d'activité du Comité Monétaire*, 28 février 1959, 622/2/59-F, HAEU, CM2/1959-598

van Campen, Assemblée Parlementaire Européenne, *Rapport fait au nom de la Commission des investissements, des questions financières et de la politique à long terme sur certaines questions concernant la politique économique à long terme, les finances et les investissements, soulevées à propos des premiers rapports généraux de la Communauté Économique Européenne et de la Communauté Européenne de l'Énergie Atomique*, 3 décembre 1958, doc n°54, VC-HAEU, PE0-25

Communauté Économique Européenne, Comité Monétaire, *Deuxième rapport d'activité du Comité Monétaire*, 1er février 1960, II/729/60-F, HAEU, CM2/1960-508

Deist, Assemblée Parlementaire Européenne, *Rapport fait au nom de la commission de la politique économique à long terme, des questions financières et des investissements sur les problèmes posés par une politique de conjoncture commune dans la Communauté économique européenne*, 10 mai 1960, doc n°23, D-HAEU, PE0-135

Communauté Économique Européenne, Comité Monétaire, *Troisième rapport d'activité du Comité Monétaire*, 14 avril 1961, II/1660/1/61-F, HAEU, CM2/1960-1021

Bousch, Parlement Européen, *Rapport fait au nom de la commission économique et financière sur la coordination des politiques budgétaires et financières*, 7 mai 1962, doc n°19, EB-HAEU, PE0-314

Communauté Économique Européenne, Commission (DG ECFIN), *Rapport général pour le colloque sur la programmation Européenne*, 14 novembre 1962, II/965I/62-F, HAEU, CM2/1962-139

van Campen, Parlement Européen, *Rapport fait au nom de la commission économique et financière sur la coordination des politiques monétaires dans le cadre de la C.E.E.*, 7 avril 1962, doc n°17, VC-HAEU, PE0-313

Communauté Économique Européenne, Comité Monétaire, *Cinquième rapport d'activité du Comité Monétaire*, 5 avril 1963, OJ P 090, 17 juin 1963, HAEU, CM2/1963-339

Vals, Parlement Européen, *Rapport fait au nom de la commission économique et financière relatif à la communication de la Commission de la C.E.E. au Conseil (doc. 72) sur la coopération monétaire et financière au sein de la Communauté économique européenne*, 10 janvier 1964, doc n°103, V-HAEU, PE0-403

Communauté Économique Européenne, Comité Monétaire, *Septième rapport d'activité du Comité Monétaire*, Confidentiel, 12 février 1965, 430/II/65-F, HAEU, CM2/1965-373

European Parliament, Dichgans, *Report drawn up on behalf of the Economic and Financial Committee on the future activities of the Community in the field of monetary policy and on the establishment of a European monetary union*, Working Document, 28th November 1966, doc° 138, HD-HAEU, PE0-645

Dichgans, Parlement Européen, *Rapport fait au nom de la commission économique et financière sur l'activité future de la Communauté dans le domaine de la politique monétaire et la création d'une union monétaire européenne*, 28 novembre 1966, doc n° 138, HD-HAEU, PE0-645

Communauté Économique Européenne, Conseil, *Programme de politique économique à moyen terme (1966-1977)*, 67/265/CEE, JO P 079, 25 avril 1967, pp. 1513-1567, HAEU, CM2/1967-439

European Communities, Commission, *The Communities' Work Programme: Programme for the next three years*, 20th March 1969, Supplement to Bulletin n°4-1969 of the European Communities, Secretariat General of the Commission

Communautés Européennes, Conseil, *Second programme de politique économique à moyen terme*, 69/157/CEE, OJ L 129, 30 mai 1969

Communautés Européennes, Commission, *Rapport au Conseil et à la Commission concernant la réalisation par étapes de l'Union Économique et Monétaire dans la Communauté « Rapport Werner » (version finale)*, supplément au Bulletin II – 1970 des Communautés européennes, 8 octobre 1970

European Communities, Commission, *Consequences of the present situation for the common agricultural common agricultural policy*, 15 September 1971, Reproduced from Bulletin of the European Communities, Supplement 6/71 pages 7-33, SEC (71) 3271 final

European Communities, Commission, *Report of the Working Party examining the problem of the enlargement of the powers of the European Parliament "Report Vedel"*, Bulletin of the European Communities Supplement No. 4/72

Communautés Européennes, Comité Monétaire, *Treizième Rapport d'Activité du Comité Monétaire*, 16 février 1972, HAEU, CM2/1972-583

European Communities, Monetary Committee, *Fifteenth Report on the Activities of the Monetary Committee*, OJ C 23, 14th October 1974

Communautés Européennes, Commission (DG ECFIN), *Rapport du Groupe de Réflexion « Union Économique et Monétaire 1980 »*, 8 mars 1975, II/675/3/74-F final

Tindemans, *European Union (Report)*, 29 December 1975, Bulletin of the European Communities Supplement 1/76

Summary account and degree of convergence of the economic policies pursued in the member countries in the Community in 1977, 13th March 1978, COM (78) 103 final

Croux, European Parliament, *Interim Report drawn up on behalf of the Political Affairs Committee on the draft European Act submitted by the Governments of the federal Republic of Germany and the Italian Republic. Working Documents 1982-83, Document 1-648/82, 4 October 1982*, see attached Annex, Draft European Act submitted by the Governments of the Federal Republic of Germany and the Italian Government, 6th November 1981

European Communities, Commission, *Commission report on European Union to the European Council*, Copenhagen, 3-4 December 1982, 25th November 1982

European Communities, Commission, *Report on European Union from the Ministers of Foreign Affairs to the European Council*, Copenhagen, 3rd-4th December 1982, Bulletin of the European Communities Supplement 7/82

Padoa-Schioppa, *Economics and Monetary Union: The main issues*, September 1988, TPS-HAEU, TPS-190

Padoa-Schioppa, *The Werner Report revisited*, September 1988, TPS-HAEU, TPS-190

Louis, *Rapport du Groupe « Système Européen de Banques Centrales »* (Banque Centrale Européenne), Comité Spinelli et CEPREM, 16 mai 1989, PVD-HAEU, PVD-85

Franz, European Parliament, *Report drawn-up on behalf of the Committee on Economic and Monetary Affairs and Industrial Policy on the process of European monetary integration*, 22nd March 1989, doc. A2-14/89/ Part A, OF-HAEU, PE2-18864

European Communities, Monetary Committee, *Twenty-Ninth Activity Report*, September 1988

Delors, Committee for the Study of Economic and Monetary Union, *Report on Economic and Monetary Union*, 17th April 1989

Donnelly, Parlement Européen, *Rapport fait au nom de la commission économique, monétaire et de la politique industrielle sur la recommandation de la Commission au Conseil relative à une décision modifiant la décision 64/300/CEE concernant la collaboration entre les banques centrales des Etats membres de la Communauté économique européenne*, (COM(89) 467 final – C3-185/89), doc A3-87/89, 1er décembre 1989

European Parliament, Herman, *Report of the Committee on Economic and Monetary Affairs and Industrial Policy on Economic and Monetary Union*, Part A: Motion for a Resolution, 25th September 1990, A3-223/90/A

European Parliament, Herman, *Report of the Committee on Economic and Monetary Affairs and Industrial Policy on Economic and Monetary Union*, Part B: Explanatory statement – Opinion of the Committee on Budgets, 25th September 1990, A3-223/90/B

European Communities, Commission (DG ECFIN), *One market, one money: An evaluation of the potential benefits and costs of forming an economic and monetary union*, European Economy, October 1990, n°44

European Parliament, Colombo, *Second Interim Report on the Committee on Institutional Affairs on the constitutional basis of European Union*, 22th November 1990, PE 144.344/fin.

European Parliament, Cox, *Second Report on behalf of the Committee on Economic and Monetary Affairs and Industrial Policy on the proposal from the Commission to the Council for a decision on the attainment of progressive convergence of economic performance during stage one of Economic and Monetary Union*, (COM(89) 466 -c3-182/89), 31st January 1990, doc A3-21/90

Parlement Européen, *Analyse comparative du traité d'Union économique et monétaire, approuvée lors du Conseil européen de Maastricht le 10 décembre 1991, et des résolutions du Parlement européen sur l'UEM adoptées respectivement a) le 10 octobre 1990 (résolution Herman), b) le 14 juin 1991 (résolution de juin) et c) le 24 octobre 1991 (résolution d'octobre)*, 17 décembre 1991, PE 155.062

Parlement Européen, Beumer, *Rapport de la commission économique, monétaire et de la politique industrielle sur la proposition de la Commission au Conseil relative à une décision concernant la consultation de l'Institut monétaire européen par les autorités des Etats membres au sujet de projets de dispositions législatives*, 5 novembre 1993, A3-0341/93

European Parliament, Bofill Abeilhe, *Recommendation for the second reading of the common position adopted by the Council with regard to the adoption of a regulation specifying definitions for the application of the prohibitions referred to in Article 104 and 104b(1) of the Treaty establishing the European Community*, 30th November 1993, A3-0382/93

Randzio-Plath, Draft *Recommendation for the second reading on the common position established by the Council with a view to the adoption of a regulation specifying definitions for the application of the prohibition of privileged access referred to in Article 104a of the Treaty establishing the European Community*, 30th November 1993, A3-0383/93

European Monetary Institute, *Annual Report for 1994*, 1st April 1995

Parlement Européen, Fourçans, *Rapport sur les objectifs et instruments d'une politique monétaire*, Partie A : Proposition de résolution, 27 avril 1994, A3-0319/94/Partie A

Parlement Européen, Fourçans, *Rapport sur les objectifs et instruments d'une politique monétaire*, Partie B : Exposé des motifs, 27 avril 1994, A3-0319/94/Partie B

European Parliament, Harrison, *Report on the impact of monetary policies on the real economy, inflation, interest rates, growth and employment within the third phase of EMU, and the economic function of convergence criteria*, 18th November 1996, A4-0374/96

European Monetary Institute, *The Single Monetary Policy in Stage III: Elements of the monetary policy strategy of the ESCB*, February 1997

Parlement Européen, Ettl, *Rapport sur le rapport de l'Institut monétaire européen intitulé « La politique monétaire en phase trois – Définition du cadre opérationnel »* 23 mai 1997, A4-0185/97

European Central Bank, *The Single Monetary Policy in Stage Three: General documentation on ESCB monetary policy instruments and procedures*, 16th September 1998

European Central Bank, *The stability-oriented monetary policy of the Eurosystem*, Economic Bulletin Issue 1, 19th January 1999

European Central Bank, *The changeover to the euro*, Economic Bulletin 1, 19th January 1999

European Central Bank, *Euro area monetary aggregates and their role in the Eurosystem's monetary policy strategy*, Economic Bulletin Issue 2, 16th February 1999

European Central Bank, *The European Employment Pact*, Economic Bulletin, Issue 6, 15th June 1999

European Central Bank, *Target and Payments in Euro*, Economic Bulletin 11, 11th November 1999,

European Central Bank, *Monthly Bulletin*, August 2004

Aghion P, Cohen É, and Pisani-Ferry J, 'Politique Économique et Croissance En Europe' (Conseil d'Analyse Économique 2006).

Larosière J de, Balcerowicz L, Issing O, Masera R, Mc Carthy C, Nyberg L, Pérez J, and Ruding O, 'Report from the High-Level Group on Financial Supervision in the EU' (February 2009).

European Central Bank, *ECB Economic Bulletin*, Issue 6, 2015

Economic and Financial Affairs, 'Fiscal Sustainability Report 2018' (European Economy Institutional Paper, European Commission January 2019).

‘World Economic Situation and Prospects 2018 - Update as of Mid-2018’ (UNCTAD, United Nations 2018), UNCTAD.

‘IMF Fiscal Monitor: Capitalizing on Good Times’ (World economic and financial surveys, International Monetary Fund April 2018), World economic and financial surveys.

Economic and Financial Affairs, ‘Fiscal Sustainability Report 2018’ (European Economy Institutional Paper, European Commission January 2019).

‘Global Economic Prospects: Darkening Skies’ (International Bank for Reconstruction and Development / The World Bank January 2019).

‘World Economic Outlook Update: A Weakening Global Expansion’ (International Monetary Fund January 2019).

‘Growth Slowdown, Precarious Recovery’ (World Economic Outlook, International Monetary Fund April 2019), World Economic Outlook.

‘Chapter 1: Fiscal Policy for a Changing Global Economy’ (Fiscal Monitor, International Monetary Fund April 2019), Fiscal Monitor.

‘Chapter 1: Vulnerabilities in a Maturing Credit Cycle’ (Global Financial Stability Report, International Monetary Fund 10 April 2019), Global Financial Stability Report.

‘World Economic Situation and Prospects as of Mid-2020’ (United Nations 13 May 2020).

European Central Bank, *TARGET Annual Report 2019*, 20th May 2020

‘Global Economic Prospect’ (World Bank June 2020).

‘A Crisis Like No Other, An Uncertain Recovery’ (World economic outlook update, International Monetary Fund June 2020).

Lastra RM, Alexander K, Whelan K, Gagnon JE, Kirkegaard JF, Wilcox DW, Collins CG, and others, ‘The ECB’s Mandate: Perspectives on General Economic Policies’ (Monetary Dialogue, June 2020, European Parliament June 2020), Monetary Dialogue, June 2020.

‘Fiscal Monitor: Policies for the Recovery’ (World economic and financial surveys, International Monetary Fund October 2020).

Communications

Communication de la Commission au Conseil, Confidentiel, Coordination des politiques de conjoncture des États membres, s/0180 rév, HAEU, CM2/1960-727

Communication de la Commission au Conseil sur la coopération monétaire et financière au sein de la Communauté économique européenne, 19 juin 1963

Communication by the Commission to the Council and the Member Governments, Information Memo, P-69/64, October 1964

Communication on the Prospect of Economics and Monetary Union, 17th November 1977, COM(77)620 final

Communication, Action Programme for 1978, 14th February 1978, COM (78) 52

Communication from the Commission to the Council and to the European Parliament on Interest subsidies for certain loans granted under the European Monetary System: Council Regulation (EEC) No 1736/79 of 3rd August 1979, 16th April 1980, COM (80) 192

European Union – Report by the Commission (Communication from the Commission to the European Council 2nd and 3rd December 1985), 28th November 1985, COM (85) 696 final

Communication from the Commission to the Council and the European Parliament on Secondary legislation for the second stage of Economic and Monetary Union, 22nd July 1993, COM (93) 371 final

Communication from the Commission, *The application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis*, OJ C 270, 25th October 2008

Communication from the Commission to the European Council, *A European Economic Recovery Plan*, 26th November 2008, COM (2008) 800 final

Communication de la Commission au Conseil au sujet de l'élaboration d'un plan par étapes vers une union économique et monétaire, COM(70)300, Supplément au Bulletin n°3 – 1970 des Communautés européennes

Communication from the Commission to the Council on the progress achieved in the first stage of economic and monetary union, on the allocation of powers and responsibilities among the Community institutions and the Member States essential to the proper functioning of economic and monetary union, and on the measures to be taken in the second phase of economic and monetary union, 19th April 1973, COM(73)570 final

Communication from the Commission to the Council concerning the adjustment of the economic policy guidelines for 1974, 27th March 1974, COM(74)450 final;

Communication of the Commission, Economic and Monetary Union, 21st August 1990, SEC(90)1659

Declarations and Statements

Winston Churchill, *Speech delivered at the University of Zurich*, 19th September 1946

Schuman Declaration, 9th May 1950, Paris

Déclaration du 8 mai 1964 des représentants des gouvernements des États membres de la Communauté économique européenne réunis au sein du Conseil relative à l'organisation de consultations préalables entre les États membres en cas de modifications des parités de change de leurs monnaies (64/306/CEE), Extrait du Journal Officiel des Communautés Européennes, n°78, 22 mai 1964, HAEU, CM2/1965-371

Déclaration du 1 avril 1965 des représentants des gouvernements des États membres de la Communauté économique européenne réunis au sein du Conseil portant mesures d'application de la déclaration du 8 mai 1964 des représentants des gouvernements des États membres de la Communauté Économique Européenne réunis au sein du Conseil relative à la procédure de consultation préalable à toute modification de parité de change, Très secret, exemplaire n°9, HAEU, CM2/1965-371

République Française, *Rencontre des 6 Pays de la Communauté à la Haye – Déclaration de G. Pompidou*, Président de la République Française, 1 décembre 1969, DORIE

Federal Republic of Germany, *Déclaration d'introduction présentée le 1er décembre 1969 à la Haye par le Chancelier de la République fédérale d'Allemagne lors de la Conférence au sommet de la C.E.E.*, 1 décembre 1969, traduction officielle, DORIE

Grand-Duché de Luxembourg, *Déclaration faite par Monsieur Pierre Werner, Président du Gouvernement Luxembourgeois et Ministre des Finances lors de la séance du 2 décembre 1968 de la Conférence du sommet à la Haye*, 2 décembre 1969, DORIE

Richard Nixon, *Address to the Nation Outlining a New Economic Policy: "The Challenge of Peace."*, 15th August 1971, Online by Gerhard Peters and John T. Woolley, The American Presidency Project

Jenkins, Speech, *The European monetary system: recent experience and future prospects*, 24th October 1980

European Council, *Solemn Declaration on European Union*, Stuttgart, 19th June 1983, Reproduced from the Bulletin of the European Communities, No. 6/1983

European Communities, Council, *Statement made in The Hague on 28 February 1986 on behalf of the Italian Government by Mr Andreotti, Minister for Foreign Affairs*, in *Speeches and statements made on the occasion of the signing of the Single European Act*, 17th and 28th February 1986

Council of the European Union, *Declaration on a concerted European Action Plan of the Euro Area countries*, Ecofin Council, 14th October 2008, 14239/08

Lagarde C, 'A Delicate Moment for the Global Economy: Three Priority Areas for Action' (Speech, International Monetary Fund 2 April 2019), Speech.

Memorandums

Memorandum submitted by the Netherlands Delegation, 29th July 1947, Paris

Mémorandum de la Commission sur le Programme d'action de la Communauté pendant la 2ème étape, 24 octobre 1962, COM (62) 300, HAEU, CM2/1962-139

Mémorandum de la Commission au sujet de la politique susceptible d'être poursuivie au sein de la Communauté pour faire face aux problèmes économiques et monétaire actuels, 5 décembre 1968, SEC (68) 3958 final

Mémorandum de la Commission au Conseil sur la coordination des politiques économiques et la coopération monétaire au sein de la Communauté, 12 février 1969

Mémorandum de la Commission au Conseil relatif au maintien des conditions d'une croissance équilibrée dans la Communauté, 9 juillet 1969, COM (69) 650

Memorandum on the Organization of Monetary and Financial Relations within the Community, 12th January 1972, English text reproduced from the Bulletin of the European Communities, No.1, 1972, COM(72) 50

Travaux préparatoires

Communiqué final de la Conférence des Chefs d'États et de Gouvernements des 1^{er} et 2 décembre 1969 à la Haye, 9 décembre 1969, PE 23 461/F, DORIE

Gaston Thorn, *Schéma de l'intervention de Monsieur Gaston Thorn, Ministre des Affaires Étrangères du Grand-Duché de Luxembourg*, Rencontre informelle des Ministres des États Membres de la Communautés et des États adhérents ainsi que de représentants de la Commission, Luxembourg, 26 et 27 mai 1972

Sir Alec Douglas Home, *Schéma de l'intervention de Sir Alec Douglas Home, KT, MP. Ministre du Royaume-Uni pour les Affaires Étrangères et du Commonwealth*, Rencontre informelle des Ministres des États Membres de la Communautés et des États adhérents ainsi que de représentants de la Commission, Luxembourg, 26 et 27 mai 1972

Walter Scheel, *Schéma de l'intervention de Monsieur Walter Scheel, Ministre des Affaires Étrangères de la République Fédérale d'Allemagne*, Rencontre informelle des Ministres des États Membres de la Communautés et des États adhérents ainsi que de représentants de la Commission, Luxembourg, 26 et 27 mai 1972

Meetings of the Heads of State or Government: Paris 19-21 October 1972, *Looking to the "Summit" of Ten: Preparations up to August 1972*, Reproduced from the Bulletin of the European Communities, No. 8, 1972

Meetings of the Heads of State or Government: Paris 19th-21st October 1972, *The First Summit Conference of the Enlarged Community: Conclusion of the Preparatory Work, Official Invitation, Communiqué, Reactions of the European Institutions*, Reproduced from the Bulletin of the European Communities, No. 1^o, 1972

European Communities, Council, *Meeting of the Heads of State or Government (Summit)*, Paris, 9th-10th December 1974, Reproduced from the Bulletin of the European Communities, No 12, 1974

Communautés Européennes, Commission, *Projet de Traité portant révision du Traité instituant la Communauté Economique Européenne en vue de la mise en place d'une Union Economique et Monétaire*, document de travail, 10 décembre 1990, SEC (90) 2500

Communautés Européennes, Commission, *Projet de Traité portant révision du Traité instituant la Communauté Economique Européenne en vue de la mise en place d'une Union Economique et Monétaire, Commentaires*, document de travail, 10 décembre 1990, SEC (90) 2500/2

Conference of the Representatives of the Governments of the Member States – Economic and Monetary Union – Ireland, Reynolds, *Statement on Ireland's Opening Position and Amendments proposed by Ireland to Title V of Single European Act*, 10th January 1991, CONF-UEM 1604/91

Conference of the Representatives of the Governments of the Member States – Economic and Monetary Union – Portugal, *Proposal by the Portuguese Delegation*, 15 January 1991, UEM/2/91, p.1 and France, *Proposal by the French Delegation*, 15th January 1991, UEM/3/91

Conference of the Representatives of the Governments of the Member States – Economic and Monetary Union – Germany, *Proposal by the German Delegation*, 15th January 1991, UEM/4/91

Conference of the Representatives of the Governments of the Member States – Economic and Monetary Union – *Ireland, Proposal by Ireland for amendments to Article 2 of EEC Treaty*, 15th January 1991, UEM/5/91

Conference of the Representatives of the Governments of the Member States – Economic and Monetary Union – *United-Kingdom, Articles 2, 3 and 4 - Proposals by the United Kingdom delegation*, 15th January 1991, UEM/9/91

Conférence des Représentants des Gouvernements des Etats Membres - Union Economique et Monétaire - *Irlande, Article 104A – Proposition de la délégation irlandaise*, 4 février 1991, UEM/17/91

Conférence des Représentants des Gouvernements des Etats Membres - Union Economique et Monétaire – *Grèce, Proposition de modification de l'article 103 du document UEM/18/91 – Délégation Grecque*, 19 février 1991, UEM/23/91

Conférence des Représentants des Gouvernements des Etats Membres - Union Economique et Monétaire - *Proposition de modification des articles 103 et 104 du document UEM/18/91 - Délégation du Royaume-Uni*, 19 février 1991, UEM/24/91

Conférence des Représentants des Gouvernements des Etats Membres - Union Economique et Monétaire - *Irlande, Proposition de modification des documents UEM 15/9 et UEM 18/91 – Délégation Irlandaise*, 19 février 1991, UEM/25/91

Communautés Européennes, Présidence Luxembourgeoise, *Projet de Traité sur l'Union*, 18 juin 1991, CONF-UP-UEM2008/91.

Conférence Intergouvernementale, *Commentaires sur le projet de traité élaboré par la Présidence luxembourgeoise (finalisés en date du 30/07/1991)*, 30 juillet 1991, (DORIE)

Conference of the Representatives of the Governments of the Member States – Economic and Monetary Union – *Chairman of the Personal Representatives, Internal Monetary Policy, the Stature of the European System of Central Banks and the Institutional aspects of EMU*, 6th September 1991, UEM/59/91

Conference of the Representatives of the Governments of the Member States – Economic and Monetary Union – *Chairman of the Personal Representatives, Draft Treaty texts concerning Economic Policy (Art. 102A – 104A) and External Monetary Policy (Art. 109)*, 6th September 1991, UEM/60/91

Conference of the Representatives of the Governments of the Members States – Economic and Monetary Union – *The Presidency, Proposal by the Presidency to the Intergovernmental Conference on Economic and Monetary Union*, 28th October 1991, UEM/82/91

Conférence des Représentants des Gouvernements des Etats Membres - Union Politique et Union Economique et Monétaire –, *Projet de Traité sur l'Union Européenne*, 18 décembre 1991, CONF-UP-UEM 2017/91

Oral Questions

Parlement Européen, Herman, *Question orale (O-0056/89) de MM. Herman et autres au nom du groupe du Parti populaire européen au Conseil : Union économique et monétaire*, 11 octobre 1989, H-HAEU, PE3-101820

Giscard d'Estaing, *Question orale (O-0035/1989) de MM. Giscard d'Estaing et autres, au nom du groupe libéral, démocratique et réformateur, à la Commission : Les perspectives de la mise en œuvre des trois étapes de l'union économique et monétaire suite à la réunion des ministres des Finances de la Communauté les 9 et 10 septembre 1989*, 11 octobre 1989, GDE-HAEU, PE3-10799

Colajanni, *Question orale (O-0050/89) de M. Colajanni au nom du groupe pour la Gauche Unitaire Européenne au Conseil : Union économique et monétaire*, C-HAEU, PE3-10814

de la Malene, *Question orale (O-0085/89) de M. de la Malene au nom du groupe du rassemblement des démocrates européens au Conseil : Union économique et monétaire*, DLM-HAEU, PE3-10849

de la Malene, *Question orale (O-0086/89) de M. de la Malene au nom du groupe du rassemblement des démocrates européens au Commission : Union économique et monétaire*, DLM-HAEU, PE3-10850

Newspapers

Davies C, 'ECB Considers Options to Combat Low Inflation', Financial Times (April 2019).

Jones C, 'ECB Faces Stimulus Pressure over Falling Inflation Outlook', Financial Times (Frankfurt am Main, 15 April 2019).

Shalal A, 'Global Debt Hits Record High of 331% of GDP in First Quarter: IIF', Reuters (July 2020).

Press releases

European Commission, Press Notice, *First adjustment takes place in European Monetary System exchange rates*, European Community News No. 34/1979, 25th September 1979

European Central Bank, *The use of a minimum reserve system by the European System of Central Banks in Stage Three: final specification*, press release, 13th October 1998;

European Central Bank, *A stability-oriented monetary policy strategy for the ESCB*, press release, 13th October 1998

European Central Bank, *The quantitative reference value for monetary growth*, press release, 1st December 1998

Council of the European Union, *Immediate responses to financial turmoil*, Ecofin Council, 7th October 2008, 13930/08 (Press 284)

European Central Bank, *Technical features of Outright Monetary Transactions*, Press Release, 6 September 2012

European Central Bank, *Press release of 7 March 2019*

European Central Bank, *ECB announces new pandemic emergency longer-term refinancing operations*, Press release, 30th April 2020

Meetings minutes

Communauté Européenne du Charbon et de l'Acier, *Débat de l'Assemblée Commune, Compte rendu in extenso des séances*, Séance du 28 février 1953, édition de langue française

Communauté Européenne du Charbon et de l'Acier, *Débat de l'Assemblée Commune, Compte rendu in extenso des séances*, Session extraordinaire de janvier 1954, édition de langue française

Communauté Économique Européenne, *Extrait du procès-verbal de la 21ème session du Conseil de la C.E.E., tenue à Bruxelles le 5 mai 1959*, Annexe II, doc. 209 f/39, HAEU, PE0-3420

Communauté Économique Européenne, *Extrait du procès-verbal de la 84ème réunion du Comité des Représentants Permanents, tenue à Bruxelles, les 21, 22 et 25 janvier 1960*, doc n° 28/60, HAEU, CM2/1960-727

Communauté Économique Européenne, *Extrait du procès-verbal de la 85ème réunion du Comité des Représentants Permanents, tenue à Bruxelles, le 28 janvier 1960*, doc n° 60/70, HAEU, CM2/1960-727

Communauté Économique Européenne, *Extrait du procès-verbal de la 91ème réunion du Comité des Représentants Permanents, tenue à Bruxelles, le 26 février 1960*, doc n° 101/60, HAEU, CM2/1960-727

Communauté Économique Européenne, *Extrait du procès-verbal de la 93ème réunion du Comité des Représentants Permanents, tenue à Bruxelles, le 4 mars 1960*, doc n° 103/60, HAEU, CM2/1960-727

Communauté Économique Européenne, Conseil, Session du Conseil du 12 décembre 1968, SEC (68) 4212, 19 décembre 1968, quoted in Bino Olivi, *Vers l'Union économique et monétaire*, BO-HAEU, BO-13

Communautés Européennes, Commission, *Conférence de presse de Monsieur Rey, Président de la Commission des Communautés Européennes*, 14 octobre 1969, Compte-rendu sténographique, PP/500/69-F, DORIE

Parlement Européen, *Débat du Parlement Européen*, Séance du mercredi 25 octobre 1989, n°3-382, 25 octobre 1989

Compte-rendu sommaire de la première réunion au niveau ministériel de la Conférence des représentants des gouvernements des États membres, 19 décembre 1990, CONF-UEM 1601/90

Notes

Council of Europe, Consultative Assembly, Committee on Economic Questions, Confidential, *Note by the Secretariat on the plans submitted by MM. Stikker, Petsche and Pella*, 19th August 1950, AS/EC I (2)

Communauté Économique Européenne, *Note du Président du Comité des Représentants Permanents*, Annexe, 24 février 1960, HAEU, CM2/1960-727

Communautés Européennes, Service Juridique de la Commission des Communautés Européennes, *Note à Messieurs les Membres de la Commission*, Confidentiel, 13 avril 1973, PL/maj – JUR/920/73, COM(73)570

European Communities, Council, *Note*, 14th March 1975, R/807/75

European Communities, European Community Information Service (Ottawa), Introduction of European Monetary System delayed, *Background Note*, NR (79) 2, 11th January 1979

Archives and Databases

Historical Archives of the European Union, Florence, Italy

Archives of the European Parliament, Luxembourg, Luxembourg

Archives of European Integration, University of Pittsburgh available at <https://aei.pitt.edu/view/>

Gallica, Bibliothèque Nationale de France available at <https://gallica.bnf.fr/accueil/en/content/accueil-en?mode=desktop>

Documentation et Recherche sur les questions Institutionnelles Européennes (DORIE), available at https://ec.europa.eu/dorie/search.do;jsessionid=W18X4H0ujFFSoBp7BrBqMgf5Yth_2dPd1ki6cqbyxFIOr2vGTAs!-2142749860

Eurostat, available at <https://ec.europa.eu/eurostat/data/database>

Miscellaneous

Spaak, *Letter sent to M. Paul Van Zeeland*, 9th September 1949 in Council of Europe, Second Session, 3rd-5th November 1949, Ministry of Foreign Affairs (Paris), doc 458

Communautés Européennes, *Commission, Projet d'aide-mémoire de la Commission destinée à la Conférence des Chefs d'État et de Gouvernement*, 18 novembre 1969, DORIE

Bino Olivi, *Vers l'Union Économique et Monétaire (UEM) : Chronologie*, Annexe I/1, II-C2/MC.mb, 1 October 1979, BO-HAEU, B0-13

Agreement between the Central Banks of the Member States of the European Economic Community laying down the operating procedures for the European Monetary System, 13th March 1979

Bino Olivi, *Vers l'Union Économique et Monétaire (UEM) : Chronologie des principales décisions, directives, déclarations, etc (cadre communautaire)*, 1 Octobre 1979, BO-HAEU, BO-13

Guidelines in respect of the Unit of Account, 13th December 1974, COM(74)2105 final/2

Louis, *Questionnaire on key functions and legal structure of central banks and banking supervisory authorities (revised version)*, PVD-HAEU, PVD-84, 10th June 1988

European Central Bank, *Introductory statement to the press conference (with Q&A)*, Press Conference, 2 August 2012

Bobić A and Dawson M, 'COVID-19 and the European Central Bank: The Legal Foundations of EMU as the Next Victim?' (*VerfBlog*, March 2020).

