



Economic and Monetary Union (EMU) in Europe – and Brexit

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Disclosure and disclaimer

- René Smits is Alternate Member, Administrative Board of Review (ABoR), [European Central Bank \(ECB\)](#); Professor of EMU law, [University of Amsterdam](#); Independent Consultant: EMU law, banking regulation, [RS Law & Society Consulting B.V.](#); Assessor, [Belgian Competition Authority](#).
- Nothing that I may say, or omit to say, may be attributed to the ECB, the Single Supervisory Mechanism (SSM), or ABoR, nor may it be considered to have been said, or omitted, with insider knowledge of current developments, which I do not have. I am subject to professional secrecy obligations arising from my role at ABoR.

Overview

1. Brexit reflections : Article 50 and the effect on European integration
2. Economic governance: how is it organised; post-crisis strengthening
3. Banking union: a glimpse
4. Concluding remarks: mistakes and lessons



Robert
Schuman



Jean
Monnet

‘An ever closer union’

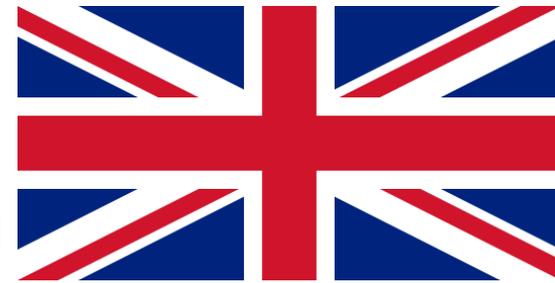
- “ European integration started with Schuman declaration: 9 May 1950: German, French coal and steel under single, supranational authority
- “ European Coal and Steel Community (ECSC) – Defeat of European Defence Community and European Political Community in 1954 in French National Assembly – sector approach: EEC, Euratom: 1957
- “ Supranational organisation: executive Commission, responsible before directly elected European Parliament; qualified majority voting (QMV) in Council of Ministers (State representatives); Court of Justice
- “ Primacy (supremacy) of EU law over national law (*Case 6/64, Costa vs. ENEL*)

“By contrast with ordinary international treaties , the EEC Treaty has created its own legal system which , on the entry into force of the Treaty, became an integral part of the legal systems of the Member States and which their courts are bound to apply. By creating a Community of unlimited duration, having its own institutions, its own personality, its own legal capacity and capacity of representation on the international plane and, more particularly, real powers stemming from a limitation of sovereignty or a transfer of powers from the States to the Community, the Member States have limited their sovereign rights, albeit within limited fields, and have thus created a body of law which binds both their nationals and themselves. (...) the law stemming from the Treaty, an independent source of law, could not, because of its special and original nature, be overridden by domestic legal provisions, however framed, without being deprived of its character as Community law and without the legal basis of the Community itself being called into question”
(Case 6/64, Costa vs. ENEL)

UK's many opt-outs under EU law

- ❑ **Opt-out from single currency** (together with Denmark; other States are legally bound to adopt euro complying with convergence criteria)
[Protocol No. 15 to TFEU]
- ❑ **Opt-out from Schengen border-free travel arrangements** (with Ireland)
[Article 67(2) TFEU and Protocols No. 19 and 20 to TFEU]
- ❑ **Opt-out from the Area of freedom, security and justice** (with Ireland and Denmark)
[Articles 67-89 TFEU; Protocol No. 21 to TFEU]
- ❑ **Clarification of application of Charter of Fundamental Rights of the European Union** (with Poland)
[Protocol No. 30 to TFEU]
- ❑ **Cease to apply as from 1 December 2014 “a large majority of EU acts and provisions in the field of police cooperation and judicial cooperation in criminal matters adopted before entry into force of Lisbon Treaty while choosing to continue to participate in 35 of them”**
[Article 10(4) and (5) of Protocol No 36]
- ❑ **Social chapter** (Major government opt-out revoked by Blair government)

A New Settlement for the United Kingdom within the European Union



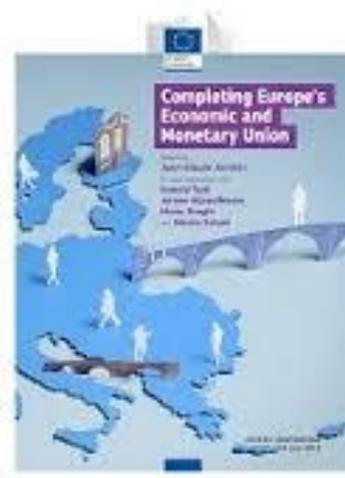
- ❑ Conclusions of the European Council of 18-19 February 2016
- ❑ **Decision of the Heads of State or Government, meeting within the European Council**
 - contents to be reflected in EU law once UK notifies European Council it “has decided to remain a member of the [EU]”; after EU referendum, Settlement lapsed.
- ❑ Special positions for UK in four areas ‘agreed’ (blackmailed):
 1. **Economic governance** – EU is multiple currency area; London’s position
 2. **Sovereignty**: not committed to further political integration
 3. **Social benefits and free movement of persons**: restrictive interpretation of current law and an alert and safeguard mechanism for UK (“a pull factor arising from a Member State’s in-work benefits regime”)
 4. **Competitiveness**, regulatory burden reduction and subsidiarity.

Article 50 TEU

- Provision introduced in latest reform of Treaties (Lisbon Treaty, 2009)
- Procedural: notification to European Council > EU/UK agreement “setting out arrangements for its withdrawal, taking account of the framework for its future relationship with the Union” > ratification by EU (European Parliament consent; Council QMV) and UK
- International agreement with third countries (Article 218 TFEU): Council by QMV plus EP consent BUT: ‘mixed agreements’ affecting issues that do not fall under exclusive EU competence [common commercial policy: Article 3(1)(c) TFEU] require ratification by all national parliaments, sometimes even regional ones [Belgium]: > 30!

Brexit: consequences for European integration

- Grexit, Brexit, Nexit, Frexit, Italexit...? *Front National, PVV, Movimento 5 Stelle*
- Integration of the Euro Area: [Five Presidents' Report](#), 2015
- Future of the UK: Norway option, Swiss, or like Albania?
- European Economic Area (EEA): EU+N,ISL,LI
- Switzerland: 120 bilateral agreements with EU



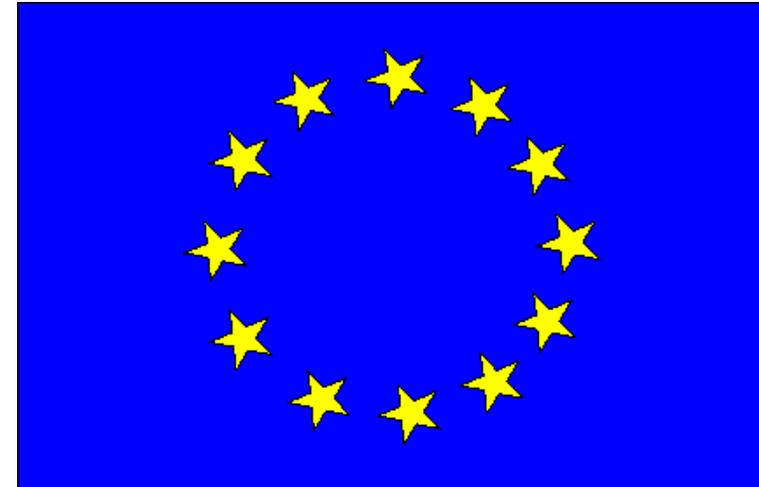
12 August 2016



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[Nicholas Barrett](#), a political journalist who lives and works in Florence, Italy, expressed his bafflement in a [comment first on Facebook](#) and then [on the website of the Financial Times](#), and gone viral on Twitter:

“(...) the younger generation has lost the right to live and work in 27 other countries. We will never know the full extent of the lost opportunities, friendships, marriages and experiences we will be denied. Freedom of movement was taken away by our parents, uncles, and grandparents in a parting blow to a generation that was already drowning in the debts of our predecessors. (...)”



Rage at EU as it is seen as pro-market, liberalising services, opening up traditional economic fiefdoms – instead of advocating different EU policies, many want <out>, relinquishing the EU level of governance.

12 August 2016

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Financial Times, 5 August 2016 11:30 am

Italian beach operators hoist British flag in protest at EU law

Davide Ghiglione in Rapallo

The Union Jack flies at a resort on the Italian Riviera in protest at EU measures to open up competition

Visitors to Italy’s seaside resorts have been greeted by an unusual sight this holiday season, with hundreds of beaches along the Riviera coast flying Britain’s Union Flag in protest against the EU. The Brexit-inspired demonstration is a new front in a decade-long campaign against a drive by the EU to open up competition in services — a threat to those who operate the network of tightly-held seaside concessions on Italian beaches.

A familiar sight on Europe’s beaches, the concession holders rent out umbrellas and sun loungers, operate bars and sell food, often working the same patch for many years. But Mauro Tubino, one of seven operating in Rapallo, 20 miles east of Genoa, says the plans by Brussels threaten their livelihoods.

“We are using [the flag] as a protest against Europe, this Europe that wants to send us packing,” said Mr Tubino, a Union Flag fluttering overhead. Hundreds more concession holders have done the same along the Riviera this week, as Italians begin their traditional August holidays. (...)

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Some players and their contribution



Valéry Giscard d'Estaing
French President 1974-1981
Chairman Convention for the adoption
of the European Constitution 2002-2003



David Cameron
British Prime Minister 2010-2016



Benno Ndulu
Governor, Bank of Tanzania, 2008 <
Initiator, African Economic Research
Consortium
Honorary Fellow, International Institute of
Social Studies, The Hague



The euro is irreversible



- “ Article 50 TEU does not cover Euro Area exit; it doesn’t even contemplate disentanglement of a State from the currency union
- “ No such arrangements are provided for, even though German Finance Minister Wolfgang Schäuble has suggested Greece exit ‘temporarily’
- “ Extent of disentanglement, also for private contracts, much more complex than straightforward transition to EMU provisions: Regulations 1103/97 and 974/98 on the introduction of the euro
- “ EU law is quite clear: adoption of the single currency is “irreversible”
- “ ECB President Mario Draghi: “**Within our mandate**, the ECB is ready to do whatever it takes to preserve the euro. And believe me, it will be enough.”

Economic versus monetary policy

- “ European Union based on attribution of competences: powers not ‘conferred’ to EU remain State powers: exclusive and shared competences
- “ Monetary policy exclusive EU competence for States that have adopted the euro [Article 3(1)(d) TFEU]
- “ Economic policy is not even a ‘shared’ competence [Article 4 TFEU] but needs to be coordinated by Member States with Council (inter-ministerial) adopting measures: Broad Guidelines [Article 5 TFEU]
- “ ECB’s non-standard measures contested for exceeding mandate
- “ Definition of monetary and economic policies in CJEU cases: *Pringle* (C-370/12 on the ESM) and *Gauweiler* (C-62/14 on the ECB’s OMT)
- “ Debate about combating crisis became a legal one, and one pitting German public and academic opinions versus other national perspectives.



2. Economic governance



- Disparity between economic and monetary union elements of EMU
- Reliance on markets disciplining governments
- Prohibitions of monetary financing and privileged access (of public sector to financial sector); 'no bail-out' clause [Articles 123-125 TFEU]
- Principle of an open market economy with free competition, favouring an efficient allocation of resources [Articles 119, 127 TFEU]

Budgetary discipline: Excessive Deficit Procedure

- “ TFEU requires **avoidance of excessive deficits** [Article 126 TFEU; Protocol No. 12]
- “ Defined in qualitative language based on reference values: 3% of GDP for budget deficit; 60% of GDP for government debt
- “ Structural deficit: “[taking] into consideration business cycle swings and filter out the effects of one-off and other temporary measures”
- “ Political assessment: Ecofin Council to decide; State concerned: no vote
- “ Increased pressure on State with excessive deficit: recommendations, notice, sanctions: fine or periodic penalty payment

.... and Stability and Growth Pact

- ❑ On top of Treaty provisions, SGP agreed: Medium-term Budgetary Objective for each Member State, budget **close to balance or in surplus**.
- ❑ Procedures for screening and sanctioning strengthened: Regulations [1466/97](#) and [1467/97](#), as amended (2005, 2011) to introduce almost automatic application
- ❑ ‘Six-pack’ and ‘two-pack’ legislation make imposition of fines quasi-automatic when Commission finds ‘no effective action’ taken: ‘reverse QMV’: Ecofin Council can only reject Commission act by QMV – also impose budget pre-screening by Commission
- ❑ Yet, no sanctions as yet imposed and flexibility recommended: [Making the best use of the flexibility within the existing rules of the Stability and Growth Pact](#), Commission Communication, 2015.

Economic governance strengthening

- “ [‘Six-pack’ and ‘two-pack’ of legal acts](#) and Treaty on Stability, Coordination and Governance ([TSCG](#)), or ‘Fiscal Compact’ make economic governance much stricter and intrusive, foremost for Euro Area States
- “ Especially for (former) ‘programme States’ under surveillance because of risk to financial stability of the Euro Area: [Greece](#), [Portugal](#), [Ireland](#), [Cyprus](#)
- “ Conditionality attached to loans from ‘bail-out funds’ ([EFSM](#), [EFSF](#), [ESM](#)) very detailed economic policy prescriptions: MoUs and EU legal acts – IMF involvement
- “ Not yet joint representation at IMF: [proposed](#) for 2015 ahead of ultimate full IMF membership for Euro Area

Nature of economic governance

- “ Confrontational: norms imposed and dichotomy between centre (Brussels) and national capital, overlooking regional discrepancies
- “ Rules-based vs. discretionary policy-making for Europe as a whole
- “ Austerity and structural reforms; EA/EU-wide investment emerging (‘Juncker Fund’: [European Fund for Strategic Investments](#))
- “ No joint Euro Area budget; EU budget minimal compared to State budgets; no economic stabilisers; hardly inter-State labour mobility
- “ Co-financing unemployment benefit schemes across Eurozone?
- “ Establishing a Euro Area Treasury (Jean-Claude Trichet)?

Banking union: a glimpse - 1

“ GFC response national instead of federal (EU or EA wide)

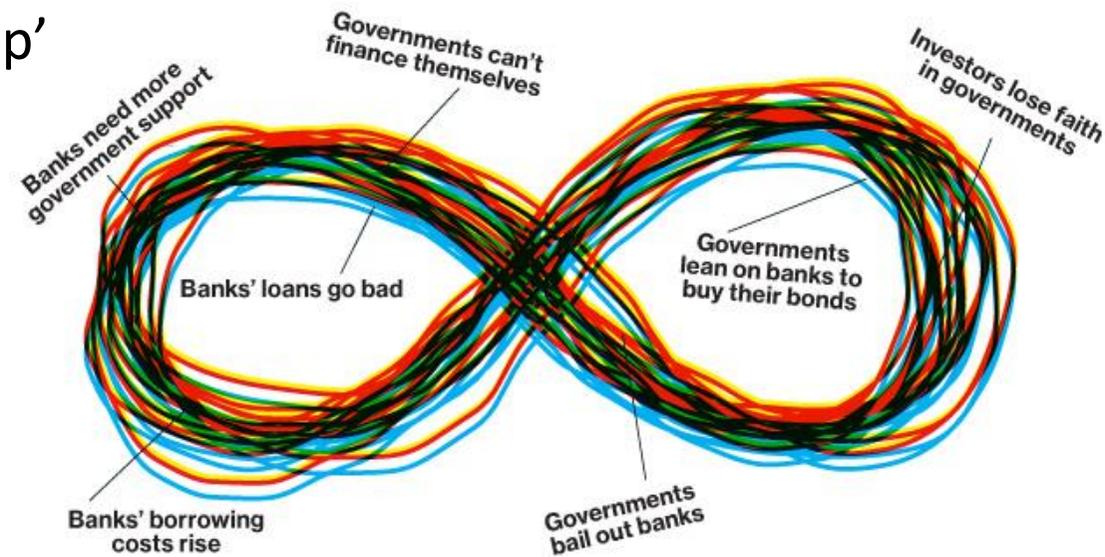
“ Leading to the sovereign-bank ‘doom loop’

“ Euro Area Summit, 29 June 2012:

“We affirm that it is imperative to break the vicious circle between banks and sovereigns.”

“ Banking union:

1. SSM: ECB + NCAs
2. SRM: SRB
3. EDIS



Source: EDIS <http://www.bloomberg.com/news/articles/2012-06-26/a-way-to-break-out-of-europes-doom-loop>



Banking union: a glimpse - 2

- ❑ **Single Supervisory Mechanism (SSM):** ECB directly supervises significant credit institutions and their parent undertakings in entire Euro Area, and is responsible for authorising all banks and shareholdings in all banks across the Eurozone; National Competent Authorities (NCAs) supervise NSIs and assist ECB in prudential role
- ❑ Based on Article 127(6) TFEU: potential own prudential role ECB
- ❑ ECB is responsible for overall functioning of SSM – regulatory powers
- ❑ Single Rulebook (applying across EU, implements Basle and FSB rules) interpreted and applied consistently across Eurozone by ECB



Banking union: a glimpse - 3

- “ **Single Resolution Mechanism (SRM)**: Single Resolution Board (SRB) directly responsible for recovery and resolution planning of all significant credit institutions and parents across Euro Area and, together with European Commission, for resolution of significant institutions, assisted by National Resolution Authorities (NRAs)
- “ Based on SRM [Regulation 806/2014](#) and Bank Recovery and Resolution [Directive 2014/59/EU](#) (BRRD) which implements [FSB Key Attributes of Effective Resolution regimes for Financial Institutions](#)
- “ Resolution costs to be borne by banks and creditors (‘bail-in’ vs ‘bail-out’)
- “ Single Resolution Fund (SRF), merging national compartments of bank contributions based on [inter-governmental agreement](#)

European Deposit Insurance System

- “ Deposit insurance harmonised since 1994 (Directive 94/19/EC)
- “ [Directive 2014/49/EU](#) of 16 April 2014 on deposit guarantee schemes
- “ Effective in 2019 but no single deposit insurance system
- “ [Proposed by Commission](#) and heavily fought by Germany: EDIS

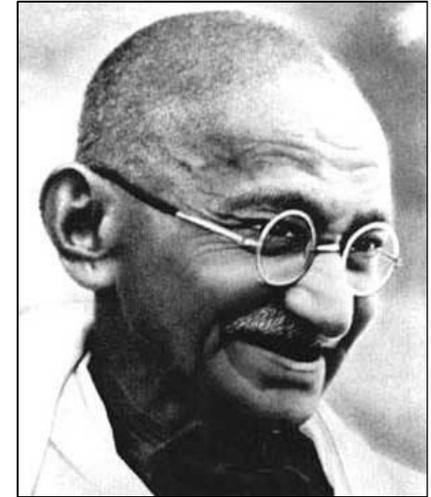
Lessons from the European experience?

Monetary union mistakes:

1. Imbalance between **E** (no central budgetary authority; no effective coordination of economic policies) and **M** (leaving ECB alone to address crisis effectively), in part for sovereignty reasons and in part reflecting:
2. Abundant faith in functioning, and disciplining effects, of markets
3. Single banking supervision and resolution: should've been introduced at start
4. Legitimacy issues: accountability problematic in intergovernmental structuring of crisis mechanisms (ESM), TSGC, Single Resolution Fund
5. Accepting States into currency union that were not ready
6. Ignoring consumers' interest in cash changeover: perceived inflation (*Teuro*: expensive euro) – could have been addressed with advance double pricing
7. Economic policy prescriptions (austerity before structural measures) a mistake

The way forward

- ❑ Working on cultural aspect of European (African) integration
- ❑ Beware of politicians' and media's framing of the story in 'national interest' and misrepresenting of facts
- ❑ Need for pan-European (and, by implication, pan-African) media space and 'binding story'
- ❑ HUMANE policies, effective on the ground instead of on paper
- ❑ Self knowledge of individuals and collective conscience - awareness of plight of others, also when devising policies at continental level



You must be the change you wish to see in the world.