

Brexit: consequences for European integration

1. Only a few words on this as I'd like to move on to EMU proper.
2. Sorry, impossible to predict....
3. Leave campaign said: "Take back control", as if EU legislation is imposed by unelected Brussels bureaucrats instead of by bodies either directly elected or indirectly representing citizens, propose by executive responsible before EP.
4. Even outside Union, UK will have to abide by EU rules. As the largest market in the world, the EU sets standards that exporters from Korea to Vietnam abide by. UK exports will need to comply with EU standards, as they do now. Divergence will creep in slowly as UK and EU law will start to diverge.
5. Choice: be around the table and shape rules or exit and, at best, be subject to rules and pay into EU budget: EEA.
6. Swiss option: bilateral agreements with EU on access to single market; Swiss February 2014 referendum against free movement of persons (quotas to be applied: Swiss People's Party's win) still to be implemented.
7. Albania, touted as a possible sovereign choice by Brexiteers, is one of Europe's poorest nations which prepares for... accession to the European Union. EU has "stabilisation and association agreements" with western Balkans nations, with asymmetric preferential treatment for these poor countries on their – long – way to EU membership.
8. In the Euro Area, strengthening of institutions may be on the table: Five Presidents' Report.

1

Some players and their contribution

1. Valéry Giscard d'Estaing: took the initiative to insert an exit clause in the European Constitution, later taken over by Lisbon Reform Treaty into the Treaty on European Union (TEU).
2. David Cameron: sought to put to rest internal Conservative (Tory) party strife on Europe, lambasted Europe for years, blaming Brussels like so many national politicians, and put the in-out question to a referendum, the second EU referendum in Britain (1975, a year after accession (!) the first was held).

1975

Yes 17,378,581 67.23%

No 8,470,073 32.77%

Electorate 40,084,594

Turnout 64.62%

2016

Remain 16,141,241 48.1%

Leave 17,410,742 51.9%

Electorate 46,500,001

Turnout 72.2%

3. Benno Ndulu: Governor, Bank of Tanzania, quoted in the *Financial Times* in respect of monetary union (in East Africa) of the need to consider an exit clause like Article 50 TEU.

The euro is irreversible

1. The irrevocable nature of the transition to the third stage of EMU had been laid down in primary EU law. The relevant Protocol No. 10, attached to the EC Treaty (now: TFEU), has been revoked by the Lisbon Reform Treaty as, in 2009, the transition was considered complete and the insistence on its irrevocable nature obsolete. The Euro Area sovereign debt crisis erupted within months of this revocation.
2. Protocol No. 10, as it then was, read as follows:

PROTOCOL

on the transition to the third stage of Economic and Monetary Union

THE HIGH CONTRACTING PARTIES,

Declare the irreversible character of the Community's movement to the third stage of Economic and Monetary Union by signing the new Treaty provisions on Economic and Monetary Union.

Therefore all Member States shall, whether they fulfil the necessary conditions for the adoption of a single currency or not, respect the will for the Community to enter swiftly into the third stage, and therefore no Member State shall prevent the entering into the third stage.

If by the end of 1997 the date of the beginning of the third stage has not been set, the Member States concerned, the Community institutions and other bodies involved shall expedite all preparatory work during 1998, in order to enable the Community to enter the third stage irrevocably on 1 January 1999 and to enable the ECB and the ESCB to start their full functioning from this date.

This Protocol shall be annexed to the Treaty establishing the European Community.

3. Article 140(3) TFEU also makes clear that adoption of the euro is for good: in respect of the Ecofin Council decision after establishing a Member State's compliance with the convergence criteria, it provides that "the Council shall (...) irrevocably fix the rate at which the euro shall be substituted for the currency of the Member State concerned, and take the other measures necessary for the introduction of the euro as

the single currency in the Member State concerned. (underlining added, RS)”

Economic versus monetary policy

1. ECB non-standard monetary policy measures:

1. *Long-Term Refinancing Operations*
2. *Negative interest rates: “the lower bound”*
3. *Forward guidance*
4. *Collateral widening*
5. *Targeted Long-Term Refinancing Operations*
6. *Emergency Liquidity Assistance*
7. *Asset purchase programmes*
 1. *Covered Bonds Purchase Programme 1*
 2. *Covered Bonds Purchase Programme 2*
 3. *Covered Bonds Purchase Programme 3*
 4. *Securities Markets Programme (SMP)*
 5. *Outright Monetary Transactions (OMT)*
 6. *Asset-Backed Securities Purchasing Programme*
 7. *Public Sector Purchasing Programme*
 8. *Corporate Sector Purchase Programme*

4

2. See my ***A central bank in times of crisis: the ECB’s developing role in the EU’s currency union*** (forthcoming, in Handbook on Central Banking, edited by Rosa Maria Lastra and Peter Conti-Brown)

3. *Pringle* and *Gauweiler* confirmed the powers of the ESM (intergovernmental treaty separate from TFEU) and the ECB (announcing OMT), the latter on the very first reference for a preliminary ruling from the German Constitutional Court (highest courts are bound to request the CJEU for the authoritative interpretation of EU law)

4. Germany's own ordo-liberal economic thinking vs Anglo-Saxon approach

5. Also terms used have different connotations: austerity vs *Sparmaßnahmen* (savings measures)

2. Economic governance

1. Monetary union fully-fledged arm of EMU; economic union underdeveloped but recently strengthened.
2. The arrangements adopted in Maastricht for EMU very much reflect the 1980s prevalent thinking in terms of deregulation and free markets, even adding, in Article 127(1), in fine, the ECB mandate provision: “favouring an efficient allocation of resources”.
3. Free-market thinking went so far as to limit capital controls option in TFEU: a) erga omnes liberalisation (vis-à-vis third countries of capital movements and current transactions/payments [Article 63(1) and (2) TFEU], whilst “measures which constitute a step backwards in Union law as regards liberalisation of the movement of capital to and from third countries” require unanimity in the Ecofin Council, and mere consultation of the European Parliament.
4. NB Anti-terrorist measures like freezing [Article 73 TFEU] and third country sanctions [Article 215 on restrictive measures].

5

Budgetary discipline: Excessive Deficit Procedure

1. Court of Justice excluded from finding fault; it is a *political* assessment
2. Council predominant, with Commission in auxiliary, technical role; this has recently been reversed with the economic governance strengthening.

.... and Stability and Growth Pact

1. Examples of Spain and Portugal

Recommendation for a Council Decision establishing that **no effective action** has been taken by **Spain** in response to the Council Recommendation of 21 June 2013, Brussels, 7.7.2016 COM(2016) 294 final

Recommendation for a Council Decision establishing that **no effective action** has been taken by **Portugal** in response to the Council Recommendation of 21 June 2013, Brussels, 7.7.2016 COM(2016) 293 final

Recommendation for a Council Decision **giving notice to Spain** to take measures for the deficit reduction judged necessary in order to remedy the situation of excessive deficit, Brussels, 27.7.2016 COM(2016) 518 final

7

Recommendation for a Council Decision **giving notice to Portugal** to take measures for the deficit reduction judged necessary in order to remedy the situation of excessive deficit, Brussels, 27.7.2016 COM(2016) 520 final

All four draft legal acts to be found at:

http://ec.europa.eu/economy_finance/economic_governance/sgp/corrective_arm/index_en.htm

2. Valencia fine

Council Decision (EU) 2015/1289 of 13 July 2015 imposing a fine on Spain for the manipulation of deficit data in the Autonomous Community of Valencia, OJ L 198/19, 28 July 2015; Corrigendum to Council Decision (EU) 2015/1289 of 13 July 2015 imposing a fine on Spain for the manipulation of deficit data in the Autonomous Community of Valencia (OJ L 198, 28.7.2015), OJ L 291/10, 7 November 2015.

Decision-making procedures for imposition of a fine when ‘no effective action’ has been taken

Article 126(8) TFEU

Where it establishes that there has been no effective action in response to its recommendations within the period laid down, the Council may make its recommendations public.

REGULATION (EU) No 1173/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 November 2011 on the effective enforcement of budgetary surveillance in the euro area

Article 6

Fines

1. If the Council, acting under Article 126(8) TFEU, decides that a Member State has not taken effective action to correct its excessive deficit, the Commission shall, within 20 days of that decision, recommend that the Council, by a further decision, impose a fine, amounting to 0,2 % of the Member State’s GDP in the preceding year.

8

2. The decision imposing a fine shall be deemed to be adopted by the Council unless it decides by a qualified majority to reject the Commission’s recommendation within 10 days of the Commission’s adoption thereof.

3. The Council, acting by a qualified majority, may amend the Commission’s recommendation and adopt the text so amended as a Council decision.

4. The Commission may, on grounds of exceptional economic circumstances or following a reasoned request by the Member State concerned addressed to the Commission within 10 days of adoption of the Council’s decision under Article 126(8) TFEU referred to in paragraph 1, recommend that the Council reduce the amount of the fine or cancel it.

5. If the Member State has lodged a non-interest-bearing deposit with the Commission in accordance with Article 5, the non-interest-bearing deposit shall be converted into the fine. If the amount of a non-interest-bearing deposit lodged in accordance with Article 5 exceeds the amount of the fine, the excess shall be returned to the Member State. If the amount of the fine exceeds the amount of a non-interest bearing deposit lodged in accordance with Article 5, or if no non-interest-bearing deposit has been lodged, the Member State shall make up the shortfall when it pays the fine

Economic governance strengthening

1. Fiscal Compact: an intergovernmental agreement strengthening budgetary rules, largely copying ‘six-pack’
2. Economic imbalances procedure: looking at other economic developments beyond budgets, competitiveness etc.
3. European Semester: same timeline across Europe for assessing budgetary plans
4. IMF ‘country-based’: Article II (membership):

Article II Membership

Section 1. Original members The original members of the Fund shall be those of the countries represented at the United Nations Monetary and Financial Conference whose governments accept membership before December 31, 1945.

9

Section 2. Other members Membership shall be open to other countries at such times and in accordance with such terms as may be prescribed by the Board of Governors. These terms, including the terms for subscriptions, shall be based on principles consistent with those applied to other countries that are already members.

Banking union: a glimpse - 1

1. German Chancellor Angela Merkel's insistence, banks did not receive an EA- or EU-wide guarantee, but State guarantees and bail-outs.
2. Institutional innovation: Heads of State or Government of Euro Area meet separately. See Article 12 TSCG ('Fiscal Compact').



Banking union: a glimpse - 2

1. The majority of NCAs are central banks; some States have separate supervisory authorities.
2. Own prudential role for ECB was potentially included in the Treaty since 'Maastricht' ('Sleeping beauty' provision) – its use contested in Germany, again..... – Council needs to activate the role by unanimity (of all EU Member States: Article 127(6) not listed among provisions where <outs> don't have the vote: Article 139(2) and (4) TFEU and Paragraphs 4 and 6 of the UK Opt-out Protocol [No. 15]).

11



Banking union: a glimpse – 3

1. European Commission role in resolution because a Treaty basis for resolution powers to be exercised at Union level was lacking; only body with powers to act: the EU executive. Its powers in the area of state aid (Article 107 TFEU) come close to what it needs to do in resolution of banks.
2. Most NRAs are central banks.
3. Quote from the preamble of the intergovernmental agreement: “The SRM Regulation establishes, in particular, the Fund as well as the modalities for its use. The BRR Directive and the SRM Regulation lay down the general criteria to determine the fixing and calculation of ex ante and ex post contributions of institutions necessary for the financing of the Fund, as well as the obligation of Member States to levy them at national level. Nonetheless, the participating Member States who raise the contributions on the institutions located in their respective territories according to the BRR Directive and the SRM Regulation, remain competent to transfer those contributions towards the Fund. The obligation to transfer the contributions raised at national level towards the Fund does not derive from the law of the Union. Such obligation will be established by this Agreement which lays down the conditions upon which the Contracting Parties, in accordance with their respective constitutional requirements, jointly agree to transfer the contributions that they raise at national level to the Fund.”

12

Lessons from the European experience?

1. Other EMU mistakes: SEPA took years post currency changeover
2. Abundant faith: irresponsible faith – *hubris*
3. Legitimacy and accountability: national parliaments set up against each other (as Bini Smaghi rightly noted) – see my: ***From subordinated to prominent: the role of the European Commission in EMU – Reflections on Euro Area democracy.***

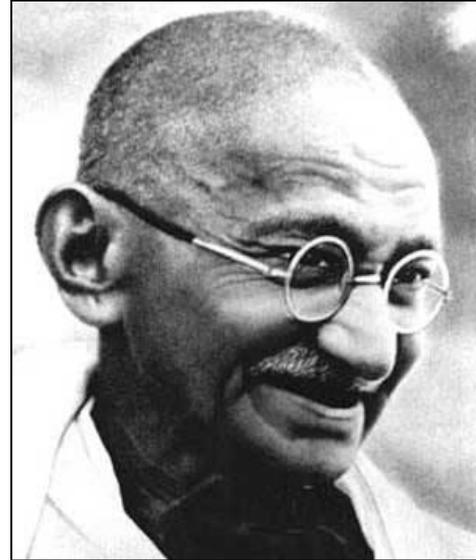
This contribution, based on a Paper for the International Conference on *The Democratic Principle and the Economic and Monetary Union*, held in Rome (Italy) on 22 January 2016, sketches the development of the role of the European Commission in EMU affairs, discusses, in the context of EMU, issues of democracy and legitimacy and puts forward ideas on fostering accountability, representation and transparency, as well as humane outcomes of policies.

4. Accepting Greece on false ground and for political reasons – latter perhaps also the case for Italy?
5. Euro had lost its lure and was widely blamed for price rises in Germany, Italy, NL after cash introduction failed to protect consumers against *gevoelsinflatie*; perceived inflation (inflated conversions for daily recurring household items, e.g. cup of coffee outside):
<https://www.ecb.europa.eu/ecb/educational/hicp/html/index.en.html>

The way forward

1. Beware of the lack of cultural homogeneity (linguistic different conceptions of same phenomena)
2. Invest in language training, also for labour mobility, as a core element of economic and political integration
3. Make sure the facts are presented by politicians and media alike: use of terms like Brussels bureaucrats ('unelected' in spite of democratic appointments and responsibility vis-à-vis EP); implication that national budgets are raised for the benefit of peripheral Member States: ESM funding does not entail budgetary outlays for Member States but joint tapping of markets and on-lending to Greece, Portugal, Ireland, Cyprus, Spain. Receipts of these nations often go back to creditor nations' insurance companies, banks with investments in their sovereign debt.
4. Austerity and structural reforms have taken a huge toll on Portuguese pensioners, Greek people, Irish dispossessed of homes for mortgage arrears, handling of refugees dying by their thousands in Mediterranean where European tourist enjoy the beaches
5. HUMANE: Help Us Make A New Europe – Nuno Ferreira, *The human face of the European Union: Are EU law and policy humane enough?*

14



15

1. Concluding by giving voice to the man who lived and worked here, in Johannesburg: Mohandas Gandhi (Mahatma). His call for non-violent action to bring about change in the world is ever so topical today. I do not profess to live by this call but I do strive, and fail at times.
2. We may not be called to change the course of history, as Gandhi did, using to good use the anger fired here at Pietermaritzburg when he was thrown of a train while in possession of a first-class ticket, as he was not of the 'right' colour. But we may bring some of his spirit, and compassion, into our work on banking regulation and on African and European unity, such unity always respecting the unity of mankind and the oneness of the universe.

