Saving the Euro, Saving Europe: The Role of Law and Institutions

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Outline

- **March 6**: The Institutional Dimension: Underlying weaknesses of the monetary Union and Institutional Reactions

- **April 3**: The Legal Dimension: The Decisions of the European Court of Justice and the German Constitutional Court

- **April 9**: The Perspectives: Toward a Genuine Economic and Monetary Union: Positions and Perspectives.
The Institutional Dimension

• I. The Causes of the Crisis

• II. The Institutional Reactions

• III. Where are we?

• IV. Was do the developments mean for the conceptualization of the integration process? Do we need a new narrative?
I. The Causes of the Crisis

- 1993: Conscious introduction of an asymmetrical construction: Monetary union without effective economic governance
  - Supranationalization of monetary powers
    - Article 3 Para. 1 lit. c) of the TFEU: Exclusive power of the EU
  - Weak economic coordination
    - Article 119 et sub. TFEU
  - Awareness of the problems and dangers
    - Integration process was always characterized by compromises
    - Limited political willingness of the some Member States to accept further transfers of power
  - Wait and see-approach
  - 1997: Addition of a “Growth and Stability Pact”
I. The Causes of the Crisis

- Divergent economic development after 1993
  - Economic Reforms (Netherlands, Germany etc.)
  - Loss of competitiveness in the South; use of cheap money
  - Problems of good governance

- No enforcement of treaty rules
  - Resistance on the part of Germany and France
  - ECJ judgement in 2004

- No macro economic supervision - political unwillingness to raise the voice

- The role of the “markets”
  - No deterrent effect of the “no bail out” clause
  - Misconception of the risk of governmental bonds
I. The Causes of the Crisis

• The outbreak of the crisis in late 2009
  • High public sector wages and pension commitments; high structural deficits; steady increase in sovereign debt
  • Low growth rates, loss of competitiveness, negative demographic outlook
  • Property bubbles: bailout of banks; transfer of private debts to sovereign debt
  • Government responses to slowing economies post-bubble
  • Downgrade of rating status
  • Lack of transfer mechanisms
II. The Institutional Reactions (I)

Financial Guarantees

- Greek Aid Package
  - May 2010: Bilateral Aid, EFSM, IMF (€ 110 bn)
  - October 2011: Second program (€ 130 bn), conditioned on further restructuring measures and a debt restructure agreement (guarantees by EFSF)
  - Total write off: € 107 bn
  - “Voluntarily” bond swap; 53.5% nominal write-off, partly in short-term EFSF notes, partly in new Greek bonds with lower interest rates and a prolonged maturity (11–30 years)
  - November 2012: Agreement to lower interest rates and to prolong debt maturities; Greece was provided with additional funds (€10bn) for a debt-buy-back program (by EFSF)
II. The Institutional Reactions (I)  
Financial Guarantees

• The European Financial Stability Facility
  • 9 May 2010
  • Private Institution aiming at preserving financial stability by providing financial assistance to Eurozone states in difficulty
  • Emissions of bonds are backed by guarantees given by the Eurozone Member States in proportion to their share in the paid-up capital of ECB
    • Original lending capacity: € 440 bn, accompanied by the ESFM (€ 60bn) and the IMF (up to € 250 bn)
    • Expiration: June 2013
  • Help programs: Greece (€ 144,6 bn), Irland (€ 17,7 bn) Portugal (€ 26 bn)
II. The Institutional Reactions (I)

Financial Guarantees

• The European Stability Mechanism
  • Completion of ratification process: 27 September 2012; start of operations: 8 October 2012
  • International Organisation located in Luxembourg; aimed at the provision of financial assistance to Members of the Euro Zone in financial difficulty; permanent “firewall” for the Eurozone
  • Maximum lending capacity of € 500bn
    • Replacement of EFSF and EFSM
  • Requirement of conditionality; ratification of the “Fiscal Treaty”
II. The Institutional Reactions (I)

Financial Guarantees

• The European Stability Mechanism (II)
  • Five different kinds of support programs; currently: no direct bank recapitalization packages
  • Help programs: Spain (up to € 100 bn, currently € 41 bn, further negotiations); Cyprus (negotiations)
  • Italy/France: too big to fail
II. The Institutional Reactions (II)

Support by the ECB

• The Intervention of the European Central Bank
  • Since 2010: purchase of government and private debt securities of distressed countries (€ 219 bn)
  • New policy regarding the necessary credit rating for loan deposits
  • Expansion of “Long Term Refinancing Operations” (LTRO). In December 2011, the ECB loaned €489 bn to 523 banks for a period of 3 years at a rate of 1%
II. The Institutional Reactions (II)

Support by the ECB

• The Intervention of the European Central Bank (II)
  • 6 September 2012: OMT support program
    • Free and unlimited amount of yield-lowering bond purchases on the secondary market
    • Conditions: Eurozone Member State must suffer from stressed bond yields at excessive levels; it must be within a EFSF-/ESM support program; it must still have complete market access; the State must comply with the terms of the Memorandum of Understanding.
II. The Institutional Reactions (I)
Financial Guarantees

• The Effects of the Approach: A Case Study
  • Greece has fallen into a severe recession
    • Decline of Greek GDP in 2011 with −6.9%; industrial output ended 28.4% lower than in 2005
    • Unemployment rate: 7.5% in September 2008; 26% in September 2012; Youth unemployment: 22.0% to 57.6%
    • Reduction of the primary deficit: €24.7bn (10.6% of GDP) in 2009 - €5.2bn (2.4% of GDP) in 2011
  • Slow imposition of structural reforms
  • Pro: No incentive for structural reforms without external pressure; con: dangerous path into a deflationary situation, danger of a political crisis

• Financial institutions as ultimate beneficiaries of the program
II. The Institutional Reactions (III)
Abstract and concrete conditionality

• The Conditionality of the Guarantee programs
  • The problematic role of the “Troika”

• March 2011: Reform of the Stability and Growth Pact; Adoption of six legal instruments (“six pack”); aim: “preventive” oversight over budgetary policies (with sanctions); “reactive” control (with sanctions); macroeconomic surveillance; harmonization of budgetary statistics.
II. The Institutional Reactions (III)
Abstract and concrete conditionality

- The Fiscal Treaty
  - Plurilateral treaty of 25 of the Member States, possibly to be integrated into the treaties after 5 years
    - Balanced budget: general budget deficit of less than 3%, medium term structural budget deficit of less than 0.5% (if the debt ratio is below 60% of GDP: 1%).
    - “Debt break”: If debt-to-GDP ratio exceeds 60%, Member States shall reduce the exceeding amount at an average rate of at least one twentieth (5%) per year
    - “Automatic correction mechanism”
  - Implementation through provisions of binding force and permanent character, preferably constitutional
    - Judicial control of implementation, but not of adherence to those rules
III. Where are we?
The political discussion

- The Crisis is not yet over!

- Common Perception: A German (or a French-German) “Directoire”
  - Germany’s “first best solution”: independence and autonomy of all Eurozone Member States
  - “Second best solution”: Conditional guarantees putting Member States in the position to regain their autonomy
    - No unconditional transfers, no mutual bonds
    - “No taxation without representation”
  - Acceptance of the necessity to increase the amount of transfers; however, no such agreement before the a change of political culture in the affected Member States
III. Where are we?  
The political discussion

- The call for “solidarity”
  - Idea of European Integration
  - Reciprocity (Single Market gains; crisis profits)
  - The emergence of nationalism

- No political agreement on the necessity to deepen the level of supranational economic governance (“Economic Government”)

- No agreement on the necessary steps even among the supporters of a tighter economic union

- The Member States have bought time, and it has been made clear that no solution will be possible without fiscal “discipline”. Will this be enough?
IV. Reconceptualization of the Integration Process

• Necessity of a reconceptualization of the European integration process

• The old narratives – both enshrined in the Treaty and forming the basis for the juridical conception of the EU - are in need of a revision
IV. Reconceptualization of the Integration Process

• The Current Narrative:
  • Trajectory to a federal entity
    • Creeping federalization; the EU as emerging state-like power
    • Constitutionalization of the EU („multilevel constitutionalism“; „constitutional quality of the Treaties“)
  • Conceptions of hierarchy; conceptions of supremacy and pre-emption
  • Majoritarian decision making on the EU level
IV. Reconceptualization of the Integration Process

• The Current Narrative:
  • Decision making through the Community method
    • European Commission – European Parliament – Council
    • Unclear role of the Member State parliaments (Art. 12 TEU)
  • Continuing insistence on the exceptional role of “flexibility“ (Art. 326 TFEU)
IV. Reconceptualization of the Integration Process

- The Current Narrative:
  - Reliance on a permissive consensus in the population
  - Rationalization of the integration process
  - Insincerity of steps to strengthen democratic legitimacy ("Bread and Circuses")
    - Subsidization
    - Horizontal integration of EU citizens through EU citizenship
    - But no effective democratic control over the Brussels decision making process
  - History of referenda has deterrent effect
  - In many Member States: No serious political force objecting the expansion and deepening of European integration
IV. Reconceptualization of the Integration Process

- Today: The narrative of an “ever closer union” of a group of 27 (and soon more than 30 Member States) has lost its luster. Was will replace it?
  - Emergence of a muddy and strange entity
  - Hybrid solutions between federal and national, between supranational and intergovernmental settings
  - Environment of variable geometry
  - Efficiency and democratic legitimization? How to control such an entity?
IV. Reconceptualization of the Integration Process

- Powers, competencies and strategies: The need for a discussion about the “finalité”!
  - Improvement of economic governance
    - Fiscal Discipline
    - Growth and Competitiveness
  - No redistribution of the consequences of past aberrations and sins
  - Introduction of new transfer mechanisms
    - Pan-European unemployment insurance, pan-European social welfare systems
  - Debt write off
  - But: Will this be enough to cause an economic turnaround? Will the affected citizens be willing not only to change deep-enshrined normative conceptions about the (fiscal) role of their government, but also to soldier on during years of recession?
IV. Reconceptualization of the Integration Process

- Empirical and normative legitimacy of federal or quasi-federal European governance
  - Wide variations between the Member States
  - Wide variations as to where such governance will be tolerated
    - Transfer mechanisms? Debt redemption? Cultural integration? The pursuit of the idea of (pan-European) justice?
  - More flexibility needed
- The Cameron strategy might be helpful in provoking a debate
IV. Reconceptualization of the Integration Process

- Democratic Conceptualization of the EU
  - The Claim of the European Commission and the European Parliament
  - “Community method” as default method
  - In sensitive areas: “Union method” of intergovernmental cooperation
    - Unanimity
    - Control by Member State parliaments
    - Uncertainty as to the role of the European Parliament
  - ESM and Fiscal Treaty: no aberrations
  - “Sensitivity” as a dynamic concept
    - Democratic trust the is constructed via democratic ‘praxis’
    - No European “demos” without governance praxis; however, this needs time, and the events of the last years have certainly not inspired trust
IV. Reconceptualization of the Integration Process

• EU Decision Making Process
  • Necessity to increase responsivity
  • Politicalization of the decision making process
  • Possible solutions: Direct election of Commission president? First-past-the-post EP elections?
  • Necessity to abandon the “one way street”-mentality
  • Creation of political trust within the electorate
IV. Reconceptualization of the Integration Process

- Will the EU institutions accept this new narrative?
- Will it be too complex?
- Can it ignite a political fire among the citizens?
Thank you!