

The EU at a Crossroads

The EU at a Crossroads:

Challenges and Perspectives

Edited by

Despina Anagnostopoulou,

Ioannis Papadopoulos

and Lina Papadopoulou

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PREFACE AND ACKNOWLEDGMENTS

We are pleased to publish this volume of pan-European research papers, which were presented at the Doctoral Colloquium ‘1st Jean Monnet Chair Pan-European Forum of PhD Candidates and Young Researchers on EU Legal Studies’, under the title ‘The EU at a Crossroads: Challenges and Perspectives’.

Europe is at a crossroads. It is an undeniable fact that the EU faces multiple crises, not only in the economic and banking sector, but also in tackling the refugee and humanitarian crisis, in its complex decision-making, and in its democratic functioning. This fact has led to an increasing Euroscepticism that haunts the member states. Though this situation is difficult, it offers a lot of food for thought and research. Young PhD researchers have started researching all these processes all over the EU, and have eagerly responded to our call for papers.

The Doctoral Colloquium was organised on May 8 and 9, 2015 as a joint event of two Jean Monnet Chairs established in Thessaloniki, Greece, at two different Universities: a) the Jean Monnet Chair for ‘New Dimensions in European Legal Studies’ at the Department of International and European Studies of the University of Macedonia, and b) the Jean Monnet Chair for ‘European Constitutional Law and Culture’ at the Law School of the Aristotle University of Thessaloniki.

The Colloquium could not have been realised without the support of the Lifelong Learning Programme 2007-2013 of the European Commission.

The aim of this Doctoral Colloquium was to establish a forum of discussion on the state of affairs and the vital issues of the European integration process. It consisted of a panel of PhD researchers in European studies, and a panel of experienced University professors, the ‘Advisory Scientific Committee’. Their common goal was to explore new and multi-dimensional prospects of European integration, and to provide possible insights or solutions on cutting-edge research questions and controversies.

After the publication of the call for papers, thirteen young PhD researchers were selected to present a part of their research in the Colloquium. We thank them for their participation and the preparation of their contributions, and also for their acceptance of the corrections we have suggested as editors.

We would also like to thank our collaborators for their support in organising the event: the University of Macedonia, the Law School of the Aristotle University of Thessaloniki, the 'Europe Direct' Office at the American Farm School, the 'European Law Students Association' in Thessaloniki, Greece, and the 'Jeunes Fédéralistes'.

We express our gratitude to our panel of experienced researchers: Miguel Gardeñes Santiago, Profesor Titular at the Universitat Autònoma de Barcelona, Spain, Vassilis Hatzopoulos, Professor at the Democritus University of Thrace, Greece, and Iosif Ktenidis, Associate Professor at the Aristotle University of Thessaloniki, Greece. They were the members of the Advisory Scientific Board of the Colloquium, who attended the Colloquium and asked questions to the young researchers after their presentation.

We are also grateful to our keynote speakers: Panayiotis Kanellopoulos, Professor Emeritus, Jean Monnet Chair, University of Piraeus, Greece, Damian Chalmers, Professor at the London School of Economics, UK, Miguel Gardeñes Santiago, Professor Titular at the Universitat Autònoma de Barcelona, Spain, Iuliia Mokshina Sushkova, Dean of the Law Department, Ogarev Mordovia State University, Saransk, Russian Federation, and Vassilis Hatzopoulos, Professor at the Democritus University of Thrace, Greece, Visiting Professor at the College of Europe, Bruges, Belgium.

We would like to thank the one-year trainees of the Jean Monnet Chair at the University of Macedonia, Dimitrios Kaloutsikos, Efrosyni Iliopoulou, Nefeli Douma and George Boskos, for helping us with the organisation of the colloquium. We are also grateful to the following short-term trainees of the same Jean Monnet Chair: Alexandros Doumias, for editing the Youtube presentations, as well as Aikaterini Nikita and Mario Tsekoski, for assisting us with editing the footnotes of the volume upon our instructions. Ms Theofano Mantzari, PhD researcher at the Department of International and European Studies of the University of Macedonia, Thessaloniki, Greece, has undertaken proofreading of parts of the draft book with great diligence. Last but not least, we would like to thank Ms Chrysothea Basia, PhD researcher at the same Department, for her outstanding work in proof reading and reviewing the homogeneity of

the whole text. The correct use of the English terminology and syntax was reviewed by the professional translator James Lillie.

We are also grateful to the Cambridge Scholars Publishing for their excellent cooperation in publishing this book.

Thessaloniki, August 2016

—The Organizing Committee and Co-Editors of the Volume

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STRUCTURE OF THE BOOK

The title of this collective volume refers to the multilevel crisis of the European Union (EU) and the dilemmas regarding its future.

The chapters are organized in four parts. The first part of the book deals with certain constitutional issues of the EU, namely multilevel democratic governance, gender equality, and participatory democracy, and focuses on the impact of the crisis on them. The second part analyses public governance problems, with reference to urban planning as a new policy for the EU, state aid and privatization of public companies, corporate governance principles for public companies, and the EU case law on freedom of establishment of companies. The third part discusses certain issues of the EU internal market and external trade, namely the Europeanisation of labour relations, the relation between EU environmental law and international agreements, the dilemma between regionalism and multilateralism in international trade law, and the Eurasian Economic Union. The fourth part of the book deals with the different perspectives of the Eurozone crisis using as tools political philosophy, economics, political science, administrative science, and law.

The opening chapter of the first part is the introductory speech by *Professor Panayiotis I. Kanellopoulos*, who points out the important achievements of the European Union, e.g. peace, prosperity and solidarity, using as examples the European Welfare State, the internal market and the common currency. He makes a historical trajectory emphasising the stages that the European integration process has passed through. His main point is that globalisation and intense international competition have changed the context of the European integration and have transformed EU policies. The context change has been achieved both by rendering WTO the actual supervisory authority of the markets and by obliging the EU to sacrifice the European Welfare State and social rights in order to reduce production costs. According to his opinion, the fifth EU enlargement in 2004 created many problems in the EU's cohesion because of the varying degrees of productivity and competitiveness between Northern and Southern Europe, which eventually put in doubt the future of the EU monetary union. According to Professor Kanellopoulos, the EU will overcome the crisis if it takes new initiatives, and evolves into its final form, that of a federal state.

Cătălina Antonie aims to explore the complexity of the European institutions and the way they treat the decision-making process based on the enormous interactions that occur in the EU. She uses complexity theory for an interdisciplinary approach of the structural model and the informational process of the EU, seen as a complex adaptive system with interconnected activities and interdependent actors. Antonie discusses the Europeanisation process and the general tendency of the administration to transit from the traditional model of government to the model of governance. She analyses the relevance of the 'New Public Management' model for the understanding of national administrations in the EU, and she describes the basic characteristics of the European public administration system and its interrelations with the several national administrative systems. For Antonie, the improvement of the decisional process can be achieved by focusing on the main features of complexity theory and the properties of a complex adaptive system, such as interconnectivity, interdependence, nonlinearity, co-evolution, and cooperation. For the author, the national administrations have a pertinent and complex influence upon the EU decisional process, being important participants, or agents, to all the decisional levels and in all the steps of the policy cycle. This chapter attempts to answer how the European institutions could change their decisions and proceed with innovations using the continuously developing complexity theory.

Livia di Pietro examines the equality of men and women, an EU constitutional value, which is infringed in case of violence against women. She focuses on the legal regulation of the various manifestations of gender violence in the Spanish and EU legal systems. In the Spanish welfare state, the need for real and effective equality requires that the legislator establishes positive actions when, in specific areas of social reality, men and women are not on a par with each other. In the case of gender violence, the imbalance lies in the fact that it is mostly perpetrated by men against women. At the EU level, it has been established that the Union and the member states shall take into account the objective of equality between women and men when formulating and implementing legislation, and policies, including measures against gender-based violence (*gender mainstreaming*). Likewise, issues related to gender violence, such as harassment related to the gender of a person and sexual harassment at the workplace, have been regulated by the EU. The landmark Istanbul Convention on preventing and combating violence against women and domestic violence can also be used against domestic violence in Spain and the EU, since it has been ratified by all EU member states in the framework of the Council of Europe. However, a binding EU legislation

on gender violence is lacking. The author argues that legislation prohibiting all forms of violence against women needs harmonisation at the EU level. By doing so, an equivalent level of protection for all victims in EU member states would be ensured, and the European Protection Order would operate with greater efficiency.

In his keynote speech, *Professor Ioannis Papadopoulos* describes in detail all the stages of development of the only hitherto successful European Citizens' Initiative (ECI) 'Right2Water' and the reactions of the EU institutional players. Despite the seemingly positive assessment of the European Commission, the stakeholders of the 'Right2Water' initiative themselves remained skeptical, if not directly dismissive, in relation to the planned actions the Commission announced at the follow-up stage, since these actions did not demonstrate the Commission's serious commitment to take a specific legislative initiative. Papadopoulos analyses why one and only, until now, ECI has managed to overcome all the procedural hurdles wrought by EU law and to obtain the Commission's approval. The author argues that the form of a *quasi-judicial reasoning* that the European Commission has used in its follow-up Communication aims to give the impression that the Commission responds only in a *technocratic* fashion to civil society bottom-up calls for a legislative initiative. This fact confirms that the Commission uses strategically this new institution of participatory democracy as a means of enhancing its own institutional influence, and at the same time of strengthening the democratic legitimacy of the EU institutional structure as a whole. However, the simultaneous effort of the European Commission to solidify the ECI as a tool of participatory democracy and to preserve the exclusivity of legislative initiative for itself seems to impinge on, rather than increase, its institutional prestige, and more generally the democratic legitimacy of the Union. In addition, Papadopoulos points out the ambiguity surrounding the nature of this new tool: is it, after all, an agenda-setting tool that poses issues for discussion in the EU political agenda, or is it a part of the right to legislative initiative? He focuses on the institutional tension exercised by the civil society and the European institutions that are the closest to citizens (European Ombudsman, European Parliament). Papadopoulos suggests changes that can make the ECI more functional as a tool of participatory democracy at the follow-up stage of those initiatives that have successfully received at least one million signatures, so that the EU can avoid the legitimisation crisis that plagues Europe lately.

The second part of the book begins with a chapter on the Europeanisation (or not) of urban planning law, which is a sector of national public law. *Adamantia Zisopoulou* argues that there is an informal

urban planning policy already established in the EU as a continuation of the European urban planning history. She explains the reasons for its development and the influence of the existing EU policies on urban planning using arguments based on social urban theories. She emphasises the importance of the European city as a ‘complex system of human activities’ (social city), which contributes decisively to European integration. The author admits that there was no explicit competence of the EU in the field of urban planning. However, she points out that, during the last two decades, the EU shows its intention to develop an urban policy on morphology and functions of the European Cities, based mainly on the environmental and energy policies. The EU also recognises the urban environmental degradation as a negative factor affecting residents’ life quality and health. Even though the EU has delayed the development of an urban agenda due to the lack of a sound legal basis, the concept of territorial cohesion, included in the Lisbon Treaty, may constitute such a legal basis for the implementation of urban interventions and for enhancing national, regional and local urban policies. The development of a truly common European urban policy becomes all the more relevant in view of increasing inequalities within the EU and, most importantly, the pressing housing needs caused by the ongoing migration crisis.

Ilektra Antonaki explores the politically sensitive issue of the privatisation of public utilities. This chapter traces the legal vicissitudes of the debate in the EU over privatisation versus nationalisation of public utilities and companies of a strategic interest. The first section gives a brief overview of how the emergence of Europe’s economic constitution encouraged the policy of privatisation and sought to diminish the public sector in Europe, while at the same time trying to safeguard some core social values. The second section focuses on Article 345 TFEU and the case law of the Court of Justice of the European Union, which has adopted a broad interpretation of ‘restrictions’ to free movement of capital, prohibiting any national rule liable to affect market access of foreign investors. This can be evidenced in the 2013 *Essent* judgment, where the Court held that the prohibition of privatisation of the Dutch electricity and gas distribution system operator infringed the free movement of capital, despite the fact that in principle the EU should remain neutral with respect to national property ownership systems under Article 345 TFEU. She attempts to resolve the conflict between the free movement of capital under Article 63 TFEU and the discretion of the member states to determine their property ownership systems under Article 345 TFEU. She develops an interpretative scheme based on the different approaches that have been adopted by the Court and certain legal scholars, which

demonstrate the degrees of acceptance of state interventionism in the market: (1) the shield interpretation (divided into the ‘maximalist shield’ and the ‘reductionist shield’ interpretations), according to which Article 345 TFEU shields or exempts the property ownership rules from the Court’s internal market scrutiny, and (2) the sword interpretation, according to which Article 345 TFEU does not necessarily mean that national property ownership choices are not subject to the fundamental rules of the Treaty. The author attempts to address the broader question of reconciling capital liberalisation with a ‘highly competitive social market economy’, an objective of the EU under Article 3(3) TEU encapsulating the fundamental coexistence of free competition and social justice.

Ciprian Drumășu discusses the Corporate Governance (CG) model as a leadership and coordination method for public sector entities. CG can serve as a best practice for the EU public sector governance in its quest to prevent cases of fraud, bribery and poor management of public funds. The author analyses CG based on specific international standards originating from the private sector; he analyses the main CG characteristics of the model for private companies (Internal System Control, Risk Management, Internal Audit and External Audit), and proceeds to the analysis of CG characteristics implemented in the public sector of the EU member states. He describes the Public Internal Control (PIC) Network, made up of the European Commission and Internal Control specialists of all EU member states, and the implementation of the ‘Compendium of the public internal control systems in the EU member states 2012’, a common framework for the solutions used by some EU member states on the PIC, risk management, accountability arrangements, internal audit and external audit. Topics such as an Optimal Internal Control environment and a Central Harmonisation Function for all public entities are novel approaches to the challenge that the EU is facing regarding sound public administration in all member states. He argues that the benefits of CG in the short, medium and long term are important, and that this leadership and control model can become a new governance method for public bodies in the European Union member states and a viable solution for the key problems it is faced with.

In his keynote speech, *Professor Miguel Gardeñes Santiago* makes certain critical remarks on the ECJ case law on freedom of establishment of companies, from *Daily Mail* (1986) to *KA Finanz AG* (2016), focusing mainly on the *Centros* case (1999). His aim is to demonstrate the impact of that case law on private international law of companies in the EU. The author first explains Article 54 TFEU and its importance to the underlying problem of company taxation and regulatory competition. He presents the

dogmatic error in the *Centros* judgment, in which the ECJ ruled that a company is allowed by EU law to incorporate in a member state where it does not undertake its main economic activity. In his opinion, the ECJ seems to confuse the right of the founders to form a company and the freedom of establishment of the company itself to establish branches. Professor Miguel Gardeñes Santiago endorses the view that as nationals of a member state would not be established unless they had their main economic activity in the member state of establishment, the same had to be true for companies, though the *Centros* judgment has ruled otherwise. He then discusses the phenomenon of pseudo-corporations and the risk of their being sued in a member state where they do not exercise their main economic activity. He also emphasises the limits imposed by the ECJ case law on the prevention or sanction of fraud and the abuse of the freedom of establishment, pointing out at the *Inspire Art* judgment, where the ECJ has maintained an ex post approach on a case-by-case basis. The author, however, supports the argument that also national preventive measures could be considered as compatible with Article 54 TFEU in order to prevent fraud and abuse of the freedom of establishment. Professor Gardeñes Santiago explains the ECJ's apparent deference towards the law of the member state in which the company is incorporated. He argues that this 'incorporation model' is what the ECJ recognizes in principle as the *lex societatis*, and he analyses the case law regarding its scope (*Überseering*, *Inspire Art* and *Impacto Azul Lda*). He cautions prudence, since the ECJ decides on a case-by-case basis, and suggests the intervention of EU legislation in order to achieve more clarity on which issues are governed by that law. He then proceeds with the analysis of the Court's reconciliation with the 'real seat' model and its case law on the transfer of company seat, examining the *Cartesio* and *Vale* cases. He concludes that the fact that the real seat of the company is not established in the country of incorporation may not be used by another member state in order to refuse the recognition of its legal personality. However, this requirement may be imposed by a member state as a condition that companies formed under its own law should fulfill. The EU can also impose that the member state of the real seat and the one where the main economic activity takes place are the same. He favours a narrow interpretation of the *Centros* doctrine, confined to the field of company law and limited to the formation of the company and not to its functioning. His main conclusion though is that the abovementioned case law does not impose a uniform conflict-of-laws system in the EU modelled on the state of incorporation. However, the *Centros* case has introduced the 'recognition doctrine' as an alternative method to bilateral conflict-of-laws

rules as far as the issue of the valid formation of a legal person is concerned. According to Professor Gardeñes Santiago, this doctrine should be subject to: a) the reservation of the public policy of the forum state (already applied by the ECJ as a general interest objective that may justify restrictions) and b) the condition of a sufficient link between the specific situation and the state of granting a given legal status, in order to avoid fraud. This link is not regarded as a precondition according to the liberal *Centros* approach, but the EU legislator should uphold it in future legislation.

The third part begins with the chapter written by *Vasilios Koniaris*, who analyses the nature, scope and effect of ‘Transnational Company Agreements’ (TCA) in the EU and their potential reinforcement towards a network-based Europeanisation of Labour Relations. Transnational Company Bargaining (TCB) has risen to become a soft tool, albeit in an embryonic stage, which aims at the involvement of social partners at the European level. Despite the intention of the European Commission to leave this area unregulated, significant challenges exist concerning the legal nature of TCB. Researchers support the opinion that the legitimisation of TCB, as a bottom-up process, can be founded on several grounds, such as Articles 115 and 152 TFEU. In the light of recent developments outside the boundaries of the EU, hypotheses tested in this paper demonstrate the existence of a significant trend towards the diversification and diminution of the traditional target of legal and contractual regulation. This seems to break down into a multitude of ‘communities’ or networks, whose boundaries tend to correspond to that of the multinational company. In this respect, it is expected that agents of this trend are the multinationals that operate under a European culture of Labour Relations, European Trade Union Federations that operate on sectoral or cross-sectoral levels, as well as representative associations of European employees, such as the European Works Councils. Yet, all these unions or associations have questionable legitimacy concerning their ability to negotiate on behalf of the employees of the multinational. Koniaris argues that the focus needs to shift from the legal character of TCBS towards the character of the signatories and the specification of their role and competencies. The signatories cannot be characterised as traditional trade unions, since they operate under a network context of cooperation with the management rather than defending their own conflicting interests. Koniaris concludes that TCAs pose unique challenges regarding the role of the actors involved to rebalance the equilibrium between the economic and the social aspect of the EU integration process. The concepts of the ‘Euroworker’ and the ‘European Works Councils’,

among others, are based on the European Social Model, and their scope is dual. On the one hand, they represent the interests of the workplace, and on the other hand, they contribute to the strengthening of the European integration process by creating new identities and new ethics.

Alexandros Katsanos analyses the principle of primacy of international agreements, especially on environmental protection, and its effect on their review of legality on the basis of Article 216(2) TFEU. He discusses the criteria under which the Court of Justice of the European Union recognises the direct effect of the provisions of EU international agreements, i.e. if their provisions are sufficiently clear, intelligible, precise and unconditional. He also examines the ‘treaty friendly interpretation’, under which the EU secondary law must also, as far as possible, be interpreted in conformity with those agreements, when the nature and the broad logic of the latter do not preclude this. He then presents the effect of GATT and WTO agreements which are based on ‘reciprocal and mutually advantageous arrangements’, with emphasis on the *Fediol* and *Nakajima* cases. He continues with the consistent broad interpretation of the EU association agreements, which generally can be invoked before national courts. The author discusses the so-called *Biotechnology* case (2001), where the Court decided that the lack of direct effect of a provision should not preclude the review of legality, provided that the characteristics of the international convention in question allowed it, regardless of its granting direct individual rights. However, in the *Intertanko* case (2008), the Court decided to stick to a restrictive interpretation of the United Nations Convention on the Law of the Sea (UNCLOS). It held that the Convention does not confer rights to individuals, and therefore the ‘nature and broad logic’ of the Convention prevented the Court from examining the legality of EU acts based on its provisions, such as agreements on the environment which serve basic goals of the European Union Treaties. The author then examines the ECJ case law on the Aarhus Convention (*Vereniging Milieudefensie* 2015), and he agrees with the CJEU that the Convention does not really intend to directly grant the citizens environmental rights, but rather to oblige the contracting parties to ensure such a possibility within their national legal orders. He concludes with the dilemma that the European Union will face, whether it will stick to formalities in order to preserve its autonomy, or it will find a more flexible way to integrate international law and contribute to its further evolution.

The dilemma between regionalism and multilateralism has for a long time troubled scholars and practitioners of international trade law. The specific issue has been increasingly gaining importance, especially taking into account the ongoing economic recession and the constant alterations

in the field of international trade. *Stefanos Katsoulis* analyses the divergent views expressed in international scholarship, and concludes that both regional and multilateral trade entails advantages and disadvantages, rendering obsolete the debate over the prevalence of one theory over the other. Katsoulis argues that the provisions of the Agreement Establishing the WTO, in combination with Article XXIV of GATT, as well as with the Trade Policy Review Mechanism and the Dispute Settlement Mechanism, comprise the institutional base for the transformation of regional trade cooperation within the regulatory framework of the multilateral trading system. The EU holds an outstanding position among regional trade agreements (RTAs) worldwide. It has its own international legal personality, a common currency and a single market. After having analysed the different approaches in the ‘multilateralisation of regionalism’, i.e. in the achievement of consistency between multilateral and regional trade, the author presents the EU as an outstanding example of a regional trade agreement. He concludes that the current challenge in international trade relations is to build a new form of multilateral trade governance based on regional cooperation, within the WTO framework and according to multilateral trade agreements. The institutional framework for progressive development in this direction already exists, but the effort will definitely need the political will by the WTO member states themselves in order to proceed with the required mutual concessions, following the example of the EU member states.

Professor Iuliia Sushkova describes the Eurasian Economic Union as an effort to preserve the best aspects of the long history of Europe and Asia and to build upon ‘Eurasianism’. This is the fundamental concept for the development of modern Russia and the neighboring former Soviet Republics, with a growing role in international political and economic relations. The European Union has been a source of inspiration for the establishment of the Eurasian Economic Community (2000) and more recently of the Eurasian Economic Union (2015). Inspired by the European Union in its terminology and organisation principles, the Eurasian Economic Union provides not only free movement of goods and a common trade regime towards third countries, but also free movement of services, capital and labour, common rules and principles of competition, and the regulation of natural monopolies. Professor Sushkova analyses the institutional structure of the Eurasian Union and points out the caution in the establishment of supranational bodies and in giving them the necessary scope of authority. A future challenge for the Eurasian countries is to establish a Eurasian Parliament, resembling the European Parliament, endowed with legislative and oversight powers, and formed on the basis of

direct democratic elections. Thus, for further development of the Eurasian Economic Union, the very reasonable combination of national and supranational features of the EU should be taken into account.

The fourth part of the book begins with the chapter by *Ilias Konstantinidis*. He attempts to apply the so-called civic republican political philosophy, combined with macroeconomic theories, to the unfolding Eurozone crisis. His analysis is centered on the concepts of ‘citizenship’, ‘freedom as non-domination’, and ‘civic economy’, that are central to civic republican thought. Konstantinidis analyses the relations between the ‘individual’ and the ‘community’, and expounds the notion of ‘deliberative democracy’ as a form of cooperation between institutions and civil society in favour of the ‘common good’, as opposed to ‘direct democracy’. Drawing on the lawyer Cass Sunstein and the economist Amartya Sen, he presents the several forms of state intervention in the economy as a form of ‘capacitation’ of citizens so as to give them, or to restore, socioeconomic independence from domination. He also argues that consumerism is a weakened sense of citizenship. Konstantinidis connects the above philosophical analysis to the notion of ‘European citizenship’, as supplementary to national identities. He combines political philosophy, political economy and macroeconomics in his discussion of the Eurozone crisis, which he presents as a productive crisis. In such a crisis, public debt is not due to productive investments, and thus transfers costs, hurts sustainability, and decreases the living standards of the following generations with wrong investments, wrong import-export policies, over-consumption, and over-lending.

Alexandros Kyriakidis dwells on the well-documented subject of the EU democratic deficit. While the existence of the EU democratic deficit is largely accepted, scholars argue over its nature, extent and significance. Such arguments are split across two main theoretical approaches: Input and Output. The aim of this chapter is to evaluate these approaches vis-à-vis the supranational measures undertaken in relation to the Eurozone crisis. Such measures have arguably been extensive, fundamentally changing the EU and Eurozone *modus operandi*. They include a reinforced budgetary discipline, an enhanced fiscal surveillance framework, a better coordination of economic policies, but also a substantial delegation of decision-making authority from the national to the supranational level. Through extensive document analysis, Kyriakidis offers an assessment of the impact of the aforementioned reforms on the different approaches of the EU democratic deficit, in answer to the question as to which approach seems to be more consistent with this new form of the EU/Eurozone governance. While it is demonstrated that both approaches are still

relevant, subject also to their different ontological foundations, the Input aspect has been reinforced throughout the measures implemented at the supranational level against the Eurozone Crisis.

The global economic crisis represents the greatest societal challenge in the era of the globalisation of administrative systems, generating new pressure on states. In this context, there is a trend among scholars to research the effects and changes brought about by the economic turmoil, although a standardised analysis methodology in the field has not been established. The chapter by *Octavian Chesaru* represents an example of such a study. The author analyses the effects of the crisis on the administrative systems in the EU and in the member states, as well as the change processes of public administration as a reaction to new global challenges. After attempting a critical review of the most important theories on administrative systems, the author explains what kinds of changes have been generated by the economic crisis in both objectives and vision, at the EU and national level. He explains the nature of reforms that are necessary in public administration by analysing the coordination of various change processes addressing the political, economic, social and technological challenges the EU administrative systems must deal with. He traces, as a case study, the reform trends in the EU public administration that became apparent during the economic crisis, considered as benchmark examples by the relevant literature: agencification, depoliticisation and professionalisation, reduction of administrative burdens, and development of information technology in the public sector. Chesaru then associates them with the Europe 2020 Strategy.

In the wake of the 2007-08 financial crisis the question that naturally arises is whether the European agencies created to supervise the financial activities are efficient or not. In view of the fact that the financial markets are increasingly more globalised and that states have fewer effective means to control them, the issue of the structure, competencies, and efficiency of supervising agencies becomes crucial. *Jadwiga Glanc* examines in particular the European Securities and Markets Authority (ESMA). She describes the origins of ESMA as an agency that enhances cooperation between national authorities, discusses its growing powers pursuant to a recent decision by the Court of Justice of the European Union, and confronts them with the relevant problems of the financial markets that ESMA has to face. Glanc thinks that in cases of serious financial instability, ESMA's effectiveness in protecting integrating markets may be called into question. The author concludes that given the lack of stable centralised powers and a generalised lack of political will to transfer more powers to the EU level of decision-making, further financial

integration should probably not be encouraged. Therefore, ESMA needs to temporarily postpone the vision of further financial integration in order to ensure stability.

In his keynote speech, *Professor Vassilis Hatzopoulos* analyses the use of EU Agencies (such as ESMA) as one of the means of the ‘New Governance’ model in the EU. The financial and economic crises have triggered various responses from the EU. New institutions and novel governance mechanisms have been set up. Inevitably, these have affected the so-called ‘institutional balance’ of the EU and have rendered previously established principles obsolete. This development is clearly demonstrated by the proliferation of EU Agencies. The EU has been experimenting with Agencies since the mid-eighties, since they develop specific knowledge and permanent capacity on issues which are technical, scientific, sensible or complex. Agencies draw regulatory technical standards, which are eventually adopted in the form of Directives or Regulations; they also develop implementing technical standards, and they can issue guidelines and recommendations, as well as adopt individual decisions addressed to member states. EU Agencies have been flourishing, even though animosity has been developing against them, since they take away powers from national decision-making bodies. Professor Hatzopoulos presents the three waves of creation of EU Agencies, and also presents their different classification types. However, due to the *Meroni* doctrine, powers delegated to these Agencies have always been extremely limited. In order to tackle the existing crises and prevent future ones, the EU has put in place a system where financial institutions are authorised, supervised and resolved centrally; this has been a precondition for the European Stability Mechanism to operate and to bail out failed economies. These Single Supervision and Single Resolution Mechanisms have necessitated the creation of new Agencies with real decision-making powers. The Court of Justice of the EU had no other choice than to uphold the creation of such Agencies, thus revising previously established principles and, more importantly, opening up the way for new, more powerful Agencies.

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INTRODUCTION: MULTIPLE SYSTEMIC CRISES IN THE EUROPEAN UNION

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The European Union (hereinafter EU) is at a crossroads. It will either really evolve into a federation or disband. After several years of intertwined and mutually reinforcing crises, the stakes are extremely high. The crux of the matter is the capacity for responsiveness of the EU political system in the wake of crises: the Union needs to prove that it can effectively react to the confidence crisis plaguing it, due to the widespread impression among European citizens that the sacrifices they are experiencing are not even-handedly distributed. More deeply, the EU needs to show that it still has survival and adaptation reflexes. It must convince the European citizens that it still is capable of satisfying the quest for justice, by demonstrating that it can respond to the basic demands of collective life, and that it has neither abdicated nor been captured by special interests or nationalistic agendas.

A paradox at the heart of the West

In several cases during the last years, the vote, actual or threatened, of a parliament has marked a policy shift,¹ which until not long ago seemed

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¹ Three such examples, only from the period of August-September 2013, are: firstly, the British House of Commons that refused to give approval to David Cameron's government for a military involvement in Syria to deter the Assad regime from using chemical weapons (August 2013); secondly, President Obama who decided to turn to Congress to obtain approval for the same subject, before making a turnabout and halting any military strike against the Assad regime (September 2013); and thirdly, the European Parliament that only endorsed, by a narrow majority, the decrease of the so-called 'first generation biofuels', i.e. crops

rather unthinkable. The great French political scientist Georges Burdeau analysed, in his ten-volume *Treaty of Political Science*,² the distinction between the ‘governed democracy’ (*démocratie gouvernée*) of the 19th century and the ‘ruling democracy’ (*démocratie gouvernante*) of the 20th century. According to Burdeau’s typology, the first coincides with the rise of political liberalism and its principles: parliamentary democracy, rule of law, protection of individual and minority rights, free and rational debate at the basis of collective decisions. In this period, the parliaments of the major Western democracies brought together real power, while deputies enjoyed freedom of conscience and had to be convinced by the use of arguments before offering their vote to the executive.

Following the rise of urbanisation, rapid industrialisation, the labour movement, and mass political parties in the 20th century, the ‘ruling democracy’ was born. The reason was the incapacity of liberal democracies to effectively manage the era’s financial crises and sharp social conflicts, especially after the Great Depression of 1929. Thus, democracies strengthened the executive power and party discipline for the sake of governability, with the thought that these two factors would serve as a counterweight against the fascist and communist regimes, which were then endorsed by broad masses in Continental Europe. This trend continued after the Second World War with the rise of the Welfare State, administrative bureaucracies and large business groups. The EU was created from the top down by administrative elites lacking direct parliamentary legitimacy, with the main task of promoting rapid growth in the torn-apart Continent and consolidating peace on the basis of mutual economic interests of the European states. The ‘ruling democracy’ in the West was operative as long as the two poles of the Cold War stood, and as long as enough prosperity was produced and redistributed to support the purchasing power of an ever expanding middle class.

But today, the multifaceted legitimacy crisis and the citizens’ emotional disengagement from the public sphere have exacted a heavy

which are used as fuel in transport, to only up to 6% of the final energy consumption in transport by 2020, as opposed to the 10% target in the initial legislation, while promoting ‘advanced biofuels’ up to at least 2,5% of energy consumption in transport by 2020, and including an indirect land use change (iLUC) factor in the Fuel Quality Directive methodology as of 2020 (September 2013).

² G. Burdeau, *Traité de science politique*, tome 6 (L’Etat libéral et les techniques politiques de la démocratie gouvernée) (3^{ème} édition LGDJ 1987), and G. Burdeau, *Traité de science politique*, tome 7 (La démocratie gouvernante, son assise sociale et sa philosophie politique) (2^{ème} édition LGDJ 1987).

toll: United Europe has alienated the working classes because it is not perceived as able to protect them from de-industrialisation, workforce decreasing technological developments, and pauperisation. The middle class is continuously squeezed, has lost its orientation, and watches the living conditions of its children fall. All these factors contribute to the rise of the demagogic and populist extreme right that promises simplicity in place of complexity, protectionism vis-à-vis economic liberalisation, and 'national preference' to confront the increase of migratory flows.

The rise of a simplistic populism lays stress upon the democratic political forces across the political spectrum. It puts particular pressure on the center right, part of which succumbs to the temptation of a turn to the right so as to build embankments vis-à-vis the extreme right. However, the result is the opposite: this osmosis uniquely serves as a communicating vessel towards the extreme right. In this landscape, we are recently witnessing a dynamic revival of the 'governed democracy', especially in English-speaking countries. Thus, a rift has been installed in the heart of the Western world: the compromise between political liberalism and its values, on the one hand, and of unregulated globalisation with their managerial elites, on the other, becomes increasingly unstable, generating insecurity and giving a boost to anti-democratic forces. The elites constantly invoke 'urgent economic situations' for their self-legitimation. If this tension is resolved with less democratic accountability, more concentration of wealth and power in the few, and opacity, instead of a revamp of popular sovereignty, it is probable that the EU will soon reach a political boiling point.

Primary and secondary crises in the EU

Each system of governance must incorporate certain precautions – in the form of organs, rules, and practices – for the successful handling of bursting crises, be them structural or conjunctural. This obligation stems from each system's basic aim of self-preservation, without wasting too much energy and resources, and without this effort undermining the justificatory foundations themselves on which the system is based.

The EU, as a complex and gradually evolving political and economic system, has witnessed, throughout these last years, multiple primary crises that, partially at least, feed back into one another. These crises can be divided into those for whom the EU itself is not to blame (exogenous crises), and those for whom the EU has a smaller or larger share of responsibility (endogenous crises). But the management of both exogenous and endogenous crises lies in the same system, which is called *nolens*

volens to solve them effectively and justly, without ultimately differentiating between them as to their political effects. When a system of governance does not appear, in the eyes of its citizens who constantly evaluate it, to cope well with this mission, then it enters into a secondary crisis. This may happen either because the forecasts it has made have proven *de facto* inadequate, or because the predictions are not correctly applied, i.e. without the true intention of collectively overcoming the crises. A secondary crisis is a crisis that arises from the lack of an adequate response by a political system to the primary crises it has to handle and that actually worsens the latter by feeding back into them.

With a dispassionate and scientifically detached glance, this unfortunately seems to be the case with the EU today. Exogenous conjunctural crises³ merge with endogenous structural crises.⁴ To these individual primary crises, which are like tributaries that flow into a large and overflowing river, are also added endogenous but conjunctural crises, such as the so-called 'Brexit' one, i.e. the political and economic threat posed by the exit of Britain from the EU as a result of the referendum of 23 June 2016, which Prime Minister David Cameron decided for purely internal political reasons.

All these primary crises need to be addressed by the existing institutions, rules and procedures of a supranational arrangement that had started as a Common Market and, in many cases, had not anticipated, had delayed, or simply had connived at the quest for mutually acceptable, rational and fair crisis management and resolution mechanisms. It is a fact that the Union has advanced through crises, as described in all the European integration manuals. But in the previous crises, the conjuncture presented itself as more favorable than the contemporary situation, both because there were not so many primary crises combined simultaneously and they did not fold back into one another so vigorously. Moreover, the political will to solve them always remained extremely strong at the 'core' of the Union, which remains the famous Franco-German axis. Is there such a political will today? The following months and years will show.

³ An example is the refugee crisis, for which the EU member states' foreign policies are not to blame. It was rather the explosion of the Middle East due to the catastrophic US invasion in Iraq, as well as the rise of fundamentalist terrorism, with the glorification of brute force by the so-called 'Islamic State' as its latest and worst symptom.

⁴ Such as that which is brought by the suboptimal currency zone called 'Economic and Monetary Union' and by the pro-cyclical, deflationary, and high structural unemployment policies that are caused by the Stability and Growth Pact and the Fiscal Compact.

Yet, there is a growing gap between Germany, an export economy with a rising sense of hegemony in world affairs, on the one hand, and France, a country in economic and social difficulties that witnesses, as a result, the rise of political extremism, on the other hand. This is certainly not a good sign. If one adds to this image the cracking of Europe between the wealthy North and the vulnerable South, and between the tolerant West and the authoritarian East, as well as the political and economic exhaustion of key countries such as Italy and Spain, the omens for the EU future are not good at all.

The democratic deficit of the EU, main cause of the rise of Anti-Europeanism

It is a commonplace to note that the European Union suffers from a ‘democratic deficit’. Indeed, unlike a federation like the United States, European citizens do not have the institutional capacity to elect a European government. This mainly means that they cannot choose, based on political, ideological, and economic criteria, a President of the EU who would be the chief of the executive branch and would choose his/her ministers, drawing up simultaneously the political guidelines of his/her cabinet, within which the ministers must forward their action.

This political representation deficit becomes not only stronger, but also qualitatively more serious during the interminable economic crisis experienced by Europe in recent years than before. The EU is – we tend to ignore it – the largest single economic zone and internal market in the world. However, it is also a geopolitical arrangement that has not really developed political tools to pursue an integrated economic policy. The comparison with the USA in the existing crisis management mechanisms proves it. In North America, the voters had to choose, both in 2008 and in 2012, between two clearly distinct macroeconomic proposals for the exit from the financial crisis, and they made their choice very clearly in favor of the Democrats’ and President Obama’s proposal. The same had happened in 1932, when the American people had chosen by an overwhelming majority the proposal for a New Deal by Franklin Delano Roosevelt, after the Great Depression of 1929 and the precipitation of the economy in a big crunch.

Now, suppose the majority of European citizens want to change the course of European economic policy, turning it from an extreme monetarist version of *ordoliberalismus* (a macroeconomic model that insists on continuous budget cuts to balance the public deficits and a

relatively tight monetary policy because of the fear of hyperinflation)⁵ to a fiscal stimulus as countercyclical policy against the generalized stagnation, or recession, and the increasing unemployment. This would not be possible because there is no transmission belt between the floating policy choices Europeans make and the comprehensive economic philosophy that constantly governs the Union. In other words, European citizens intuitively know that whatever they vote in the European Parliament elections, both the macroeconomic assumptions on which the operation of the euro zone rests and the *intergovernmental* political management of the crisis⁶ – instead of a Union one – will continue seamlessly because of the existing Treaty framework. This diffuse impression has, sadly, proven true: the European Parliament which, as known, is the only EU institution that enjoys direct popular legitimacy through elections, neither has the slightest power to amend or put into question the generalized austerity recipe, nor can push for a shorter transition period towards a Fiscal and Banking Union.

The realisation of this sense of weakness unfortunately leads to the identification of current policies, which are rejected by a clear social majority both in the South and even the North of Europe, with the European Union itself. The unfortunate result is the rise of euroscepticism, even in countries that have traditionally been considered very pro-European, such as Greece and Italy.

A threefold challenge for Europe

Friday, 13 November 2015, was a dreadful day for Paris and Europe: 130 persons were massacred in Paris by Islamist terrorists acting in the name of the so-called ‘Islamic State’. The world was taken by surprise and was completely shocked. Waves of anger and sadness traveled all around the planet. After this horrible event, the Union will undergo perhaps the greatest challenge ever since the foundation of the European Economic Community in 1957, due to the combined effects of terrorism, the ongoing migration and refugee crisis, and the always underlying economic crisis.

⁵ See I. Papadopoulos, ‘The Efficiency of Debt Crisis Management by EU Mechanisms: Lessons from the Greek Case’, in A. Bitzenis, I. Papadopoulos, and V. A. Vlachos (eds.), *Reflections on the Greek Sovereign Debt Crisis: The EU Institutional Framework, Economic Adjustment in an Extensive Shadow Economy* (Cambridge Scholars Publishing 2013) p. 24 at p. 74-75.

⁶ For the problems of Intergovernmentalism, see Introduction, *infra* section ‘The pernicious role of intergovernmentalism and of neo-mercantilism in the Eurozone crisis’.

This challenge, which will probably strain the European integration to its limits, will be threefold: moral, political and economic.

Moral challenge, at first. The modern Western culture actually began in the late Middle Ages with the guarantee of personal liberty from the emerging state. A key principle safeguarding human dignity and self-identity in the West is the free movement of people and the free development of their personality. From this need, Habeas Corpus was born in the 13th century England, according to which any restriction on persons' freedom of movement could be ordered only by an independent judge and only for specific, predetermined reasons in law. Now if the jihadists succeed, with the Paris massacre, the self-annulment of the Western legal culture because of the pressure that the political systems will undergo in favor of extrajudicial detention of terrorism suspects and of 'enemy combatants', without time limits, clear and limited probable cause, procedural safeguards and assistance of counsel; if we, in other words, open one, two, many Guantánamos on European soil, then the jihadists will have solemnly defeated us, even though in the meanwhile the 'Caliphate' will have hopefully been decimated in the Middle East battlefields.

Political challenge, then. Extremist political forces exploit the migration and refugee crisis, with the huge increase in the influx of refugees and migrants, to promote their own nationalist, intolerant and racist agenda, often gaining benefits from the ballot box. The refugee crisis has revealed the weaknesses of a distorted and unjust framework (the Dublin Regulation),⁷ which has for years been imposing on the member state of first entry to shoulder the entire burden of irregularly incoming asylum seekers from third countries. Now we have all realized that the refugee crisis is a pan-European problem. But instead of a Union solution based on solidarity, we can observe constant recriminations between governments, the gradual re-establishment of border controls, and the (re-)building of walls, fences and barbed wires even in the Union's internal borders. This development, coupled with the rise of religious terrorism, creates the fear of a *de facto* abolition of the Schengen Area,

⁷ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the member state responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, *OJ L* [2013] 180/31, 29.6.2013, which repealed Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the member state responsible for examining an asylum application lodged in one of the member states by a third-country national, *OJ L* [2003] 50/1, 25.2.2003.