ARTICLES

RE-CONCEPTUALIZING AUTHORITY AND LEGITIMACY IN THE EU
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THE DICHOTOMY BETWEEN "INPUT LEGITIMACY" AND "OUTPUT LEGITIMACY" IN THE LIGHT OF THE EU INSTITUTIONAL DEVELOPMENTS

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ABSTRACT: The *Article* deals with the complex legitimacy problem that arose in the aftermath of the Eurozone's sovereign debt crisis. This crisis has triggered a "twin legitimacy deficit", with output legitimacy undermined, in terms of the EU's capacity to react through European-wide redistributive policies, and the input legitimacy of national representative institutions severely limited under the strict conditionality put in place by the new governance system and by the "command-and-control relationship" imposed. The case law of the Court of Justice, in cases like *Pringle* (Court of Justice, judgment of 27 November 2012, case C-370/12) and *Gauweiler* (Court of justice, judgment of 16 June 2015, case C-62/14), has revealed the same paradox. On the one hand, we have witnessed the imposition by an "unaccountable technocracy" (or the self-imposition by Member States) of a series of automatisms that limit the autonomy of national governments. On the other hand, the "command-and-control" style of intervention is also meant to impose a structural convergence amongst very different national economies and can be considered as illegitimate. Technocratic and intergovernmental dominance has further worsened the disconnection between the EU and its citizens also from the input legitimacy perspective, favouring a sort of populist backlash against the Union.

KEYWORDS: twin legitimacy deficit – Eurozone crisis – conditionality – technocratic dominance – intergovernmentalism – accountability.

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I. The dichotomy's original purposes

In the last decade of the 20th century, the old dichotomy between "government by the people" and "government for the people" was adapted to the EU institutional system and re-shaped as opposition between an *input legitimacy*, grounded on political representation, and an *output legitimacy*, namely the capacity of governmental policies of solving common problems of the governed. Such operation was meant to react against the longstanding thesis of the EU's democratic deficit, namely a legitimacy's gap of institutional assessment *vis-à-vis* that of national constitutional democracies. Fritz Scharpf and Giandomenico Majone among others, objected that the core governing functions of the EU do not need an input legitimation, given the strong output legitimacy they are provided with.[1]

Although diverging from the neoliberal thesis, according to which European integration should be confined to removing national barriers to the free movement of goods, services, capital and persons, the notion of the EU as a "regulatory state" committed to the definition and enforcement of rules promoting economic efficiency, without significant taxing and spending powers that would allow it to pursue policies of redistribution,[2] relies on the Pareto's assumption that rules aimed at promoting efficiency will improve general welfare without violating significant interests. In this perspective EU policies are, again, not in need of (input-oriented) democratic legitimation. Instead, their (output-oriented) legitimacy needs to be protected against political intervention.

My intention is to verify whether, and if so to what extent, the input/output dichotomy can be used as an analytical tool for understanding the evolution of the EU institutional assessment, particularly in the aftermath of the Eurozone's crisis.

II. The distinction between redistributive and regulatory policies

The input/output dichotomy has raised criticism on theoretical grounds. For Richard Bellamy, "[d]emocratic expertise has supplied the main argument for the non-majoritarian account of 'output' democracy. This case turns on a distinction between 'redistributive' and 'regulatory' policies and argues that majoritarian or counter-majoritarian measures may be appropriate for the former but are unnecessary or even pernicious for the latter".[3] However, "most 'purely' technical decisions raise normative issues and are often less clear-cut empirically than is claimed [.....]. Even policy decisions

[1] G. Majone, *Europe's Democratic Deficit: the Question of Standards*, in *European Law Journal*, 1998, p. 5 *et seq.*, and F. Scharpf, *Governing in Europe: Effective and Democratic?*, Oxford: Oxford University Press, 1999, p. 6 *et seq*.

[2] G. Majone, *Regulating Europe*, London: Routledge, 1996.

[3] R. Bellamy, *Democracy Without Democracy? Can the EU's Democratic 'Outputs' be Separated from Democratic 'Inputs' Provided by Competitive Parties and Majority Rule?*, in *Journal of European Public Policy*, 2012, p. 8.

that rest on reasonably well-attested natural scientific arguments cannot be decided by scientific experts alone".[4]

On the other hand, he admits that the contention that the EU deals mainly with issues that are neither best handled by democratic politics nor electorally salient "contains a kernel of truth", namely that each EU Member State "has its own internal systems of social justice for which its citizens are co-responsible through their equal participation within majoritarian systems of democracy. To the extent that the wealth and survival of these States depend on co-operation with other States, it seems appropriate to share the costs and benefits of these arrangements equitably".[5] In this perspective, "the non-majoritarian and counter-majoritarian mechanisms of the EU can be legitimized so long as their scope and operation is controlled by the majoritarian systems of the member states – with them taking over this role from the ECJ. However, when removed from such control, they cannot offer pan-European decision-making with anything but spurious and ineffective democratic credentials".[6]

The theoretical underpinnings of Bellamy's critique would require further inquiry, particularly in the light of Scharpf's clarification that "the *input-oriented* tradition" reflects the ideals of participatory democracy whose "starting point is the Rousseauian equation of the common good with the 'general will' of the people", whereas "[i]n the *output-oriented* tradition" going back to Aristotle's and Montesquieu's arguments favoring "mixed constitutions" and canonized by the Federalist Papers, the common interest was seen to be as much threatened by the potential "tyranny of the majority" as it was in danger of being corrupted by self-interested governors.[7]

I will instead concentrate on Bellamy's arguments against the pretention of governing society through expertise. While indeed affecting the Commission's ideology for a long while, such pretention should be distinguished from the fact that EU policies are regulatory rather than redistributive. When the input/output dichotomy was firstly prospected, it corresponded to a distribution of policies between the EU and its Member States that was famously depicted in terms of "Keynes at home, Smith abroad",[8] namely to the assignment to the EU of regulatory policies, and to Member States of the redistributive ones. In the previous decades, such distribution was sufficiently clear-cut, with the effect that the internal market's performances could be measured as such, as well as those of the Welfare State within each national context.

[4] *Ibidem*, p. 9.

[5] *Ibidem*, p. 15.

[6] *Ibidem*, pp. 15-16.

[7] F. SCHARPF, *Problem-Solving Effectiveness and Democratic Accountability in the EU*, in *MPIfG Working Paper*, no. 01, 2003, www.mpifg.de, p. 3.

[8] R. GILPIN, *The Political Economy of International Relations*, Princeton: Princeton University Press, 1987, p. 355.

Under the Maastricht Treaty, the before mentioned distribution of policies was maintained, notwithstanding the EU acquired the features of a political enterprise that deeply affected its relationship with the Member States. Such change was promptly noted by those who had firstly used the input/output dichotomy for prospecting the EU's legitimacy issue.

Majone recognized that at least since the 1990s "the problem of the democratic deficit could no longer be ignored or minimized", especially because the Commission was increasingly provided with a variety of functions, in addition to its regulatory tasks, which greatly rendered difficult to evaluate the overall quality of its performance, and therefore to enforce political accountability.[9] And Sharpf noted that, although the EU "is known to be in charge of limited competencies and it lacks a 'government' in the sense of a politically visible center of power that could be held politically accountable for unsatisfactory states of affairs", a constitutional asymmetry was emerging between the legal constraints following from European liberalization and competition rules and national social-protection rules. These conflicts, he added, "will pale in comparison to the political crises that will arise if the Commission and the Court should be allowed to continue in applying European competition law to the core areas of welfare state services which traditionally had been farthest removed from the market".[10] On the other hand, it might be noted that the enforcement of regulatory policies, whenever requiring national intervention, depends on whether these policies put at risk electoral consent. Think at the 2000 Lisbon Strategy, whose ambition consisted in making Europe by 2010 "the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion". That Strategy was supported from an ambitious design of governance, the "Open Method of Coordination", that relied on processes rather than on formal acts, on soft law rather than on hard law, and on coordination, peer review, networks and heterarchy rather than on centralised hierarchical tools of compliance. But it also appeared clear that, contrary to the Maastricht constraints, the bulk of the whole design depended on the Member States discretionary power in engaging in internal structural reforms of the welfare sectors.[11]

Twenty years later, the EU's delay *vis-à-vis* China and the US is widely held in developing a "knowledge-based economy". It is therefore difficult to deny that the Lisbon Strategy failed because of the resistance of national governments in investing in technological development, requiring regulatory policies, at the expenses of the traditional welfare's redistributive policies.

[9] G. MAJONE, *Dilemmas of European Integration*, Oxford: Oxford University Press, 2005, p. 38.

[10] F. SCHARPF, *Problem-Solving Effectiveness*, cit., p. 15.

[11] R. COLLIAT, *A Critical Genealogy of European Macroeconomic Governance*, in *European Law Journal*, 2012, p. 18.

III. The financial crisis and the emergence of an EU "twin legitimacy deficit"

With the financial crisis, the celebrated EU economic efficiency proved to be more vulnerable than ever. Measures adopted for contrasting that crisis generated a slow but continuous process of fiscal integration whose effects were however controversial. As Francesco Nicoli puts it:

> "On the one hand, fiscal integration is not sufficiently developed yet to re-establish European-wide output legitimacy. On the other hand, the first elements of the new economic governance aimed to constrain domestic behaviour and increase the power of insulated institutions in fiscal matters, generating a democratic deficit. In other words, current EU anti-crisis measures, while having limited European-wide redistributive effects (no output legitimacy at EU level), greatly reduce the space of action on economic policy of national lawmakers, constraining their capacity of enacting redistributive policies at domestic level. By doing so without successfully addressing the crisis, the EU has both reduced its output legitimacy and hindered the input legitimacy of national governments, contributing to the rise of Eurosceptic parties in several countries. In other words, the crisis has created a 'twin legitimacy deficit' of European integration: not sufficient redistributive policies to achieve output legitimacy, but sufficient progress towards insulated decision making on fiscal policy to fail to reach input legitimacy. While 'performance deficit' drove the neofunctional stage of integration towards the construction of insulated institutions, democratic deficit is likely to be the driving force of the post functional phase of integration".[12]

I share Nicoli's view about the "twin legitimacy deficit", related to the outputs no less than to inputs, now affecting European integration. I would rather add that an understanding of such deficit should take into account the transformations occurred within the EU institutional scenario, and the economic governance in particular.

Since the Maastricht Treaty, it was widely held that that governance was affected from a structural asymmetry between the quasi-federal powers of the European Central Bank (ECB) and the weak co-ordination of the Member States' political economy. And some added that such asymmetry was problematic not because it contradicted the usual distribution of powers between governments and central banks within nation-states, but because of the shortcomings it engendered within the EU itself.[13] In the post-crisis European Monetary Union's governance, such asymmetry has generated a paradox that can be caught in the Court of Justice case law. To that end, I will compare *Pringle* with *Gauweiler*. Although going back, respectively, to 2012 and to 2015, these de-

[12] F. Nicoli, *Democratic Legitimacy in the Era of Fiscal Integration*, in *Journal of European Integration*, 2017, p. 393.

[13] See recently C. Joerges, C. Kreuder-Sonnen, *European Studies and the European Crisis: Legal and Political Science between Critique and Complacency,* in *European Law Journal*, 2017, p. 15.

cisions still appear particularly meaningful for exposing the before mentioned asymmetry, nor have been contradicted in the following case law.

IV. *Pringle* and *Gauweiler* as symptoms of the contradictory response to the financial crisis

In *Pringle*,[14] the Court of Justice held that the European Stability Mechanism (ESM) Treaty was compatible with EU law, in particular with the no-bail-out clause of Art. 125 of the TFEU, because it created a financial rescue mechanism for Eurozone States facing major sovereign debt problems, without directly assuming their debts, but rather granting loans to those countries. While adopting a literal reading of Art. 125, the Court of Justice added that the reason why the grant of financial assistance by the stability mechanism is subject to strict conditionality under para. 3 of Art. 136 TFEU "is in order to ensure that that mechanism will operate in a way that will comply with European Union law, including the measures adopted by the Union in the context of the coordination of the Member States' economic policies".[15] On the other hand, the Court stated that the conditionality prescribed "does not constitute an instrument for the coordination of the economic policies of the Member States, but is intended to ensure that the activities of the ESM are compatible with, inter alia, Article 125 TFEU and the coordinating measures adopted by the Union".[16]

However, the very Court's admission that the additional paragraph to Art. 136 TFEU was introduced with the aim of legitimizing a mechanism whose legal basis were strongly disputed under EU law proves that it consisted in establishing an emergency rule, such as that of making financial support dependent on loan agreements specifying not only the *level* of cuts to be made, but also *in what areas* they are to be made by a Member State.[17] To say that the mentioned provision makes renders "strict conditionality" compatible with the coordination of national economic policies obliterates thus a crucial point. As it has been observed:

> "The *Pringle* judgment endorses a shift in the EU's monetary constitution from crisis prevention to crisis management, when bailout funds are only granted in conjunction with the imposition of strict conditionality on beneficiary states. By making the imposition of strict conditionality a constitutional requirement, the Court has imported a concept with controversial reputation into EU law. This constitutional shift in the narrow sense also has constitutional implications in a broader sense; the imposition of strict conditionality is sure to change the constraints within which the political bargaining of the beneficiary states take place".[18]

[14] Court of Justice, judgment of 27 November 2012, case C-370/12, *Pringle*.

[15] *Ibidem*, para. 69.

[16] *Ibidem*, para. 111.

[17] J.White, *Authority after Emergency Rule*, in *The Modern Law Review*, 2015, p. 590 *et seq*.

[18] P.-A. Van Malleghem, *Pringle: A Paradigm Shift in the European Union Monetary Constitution*, in *German Law Journal*, 2013, pp. 163-164.

Furthermore, the Court denied that the ESM was in breach of the general principle of effective judicial protection as enshrined in Art. 47 of the Charter of Fundamental Rights of the European Union, since "the Member States are not implementing Union law, within the meaning of Article 51(1) of the Charter, when they establish a stability mechanism such as the ESM where, as is clear from paragraph 105 of this judgment, the EU and FEU Treaties do not confer any specific competence on the Union to establish such a mechanism".[19]

The Court's approach to the interplay between EU law and an international instrument as the ESM Treaty was thus clearly formal and led to a contradiction. While confining its scrutiny to the mere ascertainment of the Member States' purpose of legitimizing emergency measures through an amendment to the TFEU, the Court admitted the irrelevance of EU primary law (such as the Charter's provisions) *vis-à-vis* those measures, being enacted by international instruments. Alternatively, it had to admit that the amendment was not reconcilable with foundational principles of the European project such as equality, mutual respect and co-operation, transformed "into command-and-control relationships".[20] Such admission would amount to challenge the European Council, which the Court did not dare to do.

In *Gauweiler and Others*,[21] the Court of Justice answered to the first German Constitutional Court's preliminary reference. The judgement has appeared "complaisant with respect to admissibility. What might have been read as a sharp threat to disobey, was benevolently and correctly, as it turned out, interpreted as provisional hypotheses. The answers given on the merits, however, were not quite as accommodating".[22]

The Court of Justice affirmed that the OMT program "is intended to rectify the disruption to the monetary policy transmission mechanism caused by the specific situation of government bonds issued by certain Member States",[23] and that it could not be "treated as equivalent to an economic policy measure" to the extent that it interfered only indirectly in the field of economic policy.[24] Nor the fact that the ECB made implementation of the programme conditional upon the European Financial Stability Facility (EFSF) or with ESM macroeconomic adjustment programs brought the Court to a different conclusion: the purchase of government bonds on the secondary market subject to a condition of compliance with a macroeconomic adjustment programme could indeed

[19] *Pringle*, cit., para. 180.

[20] C. JOERGES, *The Overburdening of Law by Ordoliberalism and the Integration Project*, in J. HIEN, C. JOERGES (eds), *Ordoliberalism, Law and the Rule of Economics*, Oxford: Hart Publishing, 2017, p. 196.

[21] Court of Justice, judgment of 16 June 2015, case C-62/14, *Gauweiler and Others*.

[22] G. LÜBBE-WOLF, *Trasnational Judicial Interactions and the Diplomatization of Judicial Decision-Making*, in C. LANDFRIED (ed.), *Judicial Power. How Constitutional Courts Affect Political Transformations*, Cambridge: Cambridge University Press, 2019, p. 246.

[23] *Gauweiler and Others*, cit., para 55.

[24] *Ibidem*, para. 59.

be regarded as falling within economic policy when the purchase is undertaken by the ESM, with the difference, however, that the latter "is intended to safeguard the stability of the euro area, that objective not falling within monetary policy", while the ECB may use that instrument "only in so far as is necessary for the maintenance of price stability",[25] and "is not intended to take the place of that of the ESM in order to achieve the latter's objectives but must, on the contrary, be implemented independently on the basis of the objectives particular to monetary policy".[26]

On the other hand, the Court held that, when it makes choices of a technical nature and undertakes forecasts and complex assessments, the ECB "must be allowed [...] a broad discretion", subject to a proportionality test only for the obligation "to examine carefully and impartially all the relevant elements of the situation in question and to give an adequate statement of the reasons for its decisions".[27] Unsurprisingly, the conclusion was that the ECB's analysis of the economic situation of the euro area was not "vitiated by a manifest error of assessment".[28]

Pringle and *Gauweiler* differ both for their origins and for the issues at stake. The Irish Supreme Court had rejected the "sovereignty claim", while the Federal Constitutional Court of Germany (FCC) maintained that its assumption of an EU *ultra vires* act was intrinsically connected with an identity review. Moreover, the ESM's compatibility with EU law raised the general issue of whether and to which extent EU institutions could participate in an agreement with states outside the confines of the EU;[29] the OMT's compatibility with EU law regarded instead a single soft law measure,[30] although posing a general question such as that of the definition of the boundaries between monetary and economic policy under EU primary law. Finally, the before mentioned decisions differ for their consequences. *Pringle* said the final word on the possibility for the CJEU of checking the legal constraints set up by the ESM Treaty, both because, according to the Irish Supreme Court's ruling, it would have no effect on the Irish constitutional order, and because of the scope of the decision. *Gauweiler*, to the contrary, leaved entirely open the possibility of further judicial scrutiny not only to the interaction which the FCC sought to establish with the Court of Justice, but also to the fact that the ECB might take other decisions affecting the monetary/economic policy divide, as *Weiss* would clearly demonstrate.[31]

[25] *Ibidem*, para. 64.

[26] *Ibidem*, para. 65.

[27] *Ibidem*, para. 69.

[28] *Ibidem*, para. 74.

[29] P. Craig, *Pringle and Use of EU Institutions outside the EU Legal Framework: Foundations, Procedure and Substance*, in *European Constitutional Law Review*, 2013, p. 263 *et seq*.

[30] J. Alberti, *Challenging the Evolution of the EMU: The Justiciability of Soft Law Measures Enacted by the ECB Against the Financial Crisis Before the European Courts?*, in *Yearbook of European Law*, 2018, p. 627.

[31] Court of Justice, judgment of 11 December 2018, case C-493/17, *Weiss and Others*.

Pringle and *Gauweiler*, it might be argued, differ for the Court of Justice's approach as well. While in *Pringle* the Court tends to ignore the substantial consequences on EU law of the ESM treaty's adoption, *Gauweiler* reflects, to the contrary, a substantial approach with the aim of putting under the label of "monetary policy" all the tasks that the ECB decided to acquire beyond the TFEU's letter. However, contextually considered, these cases reveal the paradox resulting from the measures adopted in the Eurozone as institutional responses to the crisis, namely the claim of national governments to create a system based on automatisms, and the discretionary powers acquired by the ECB beyond the maintenance of price stability.

It is this double contradiction that characterizes the Eurozone's crisis management. Therefore, the issue at stake does not only consist in what is left of the powers of the Member States in the sphere of economic policy, on the presumption that *Gauweiler* has legitimized the ECB as "an extremely powerful actor", and that "Europe's 'economic constitution' and its entire constitutional configuration has been replaced by the discretionary decision-making powers of an unaccountable technocracy".[32] This is just one side of the coin. The other one consists of the imposition of structural convergence of the Southern with the Northern economies of the Eurozone: and "command-and-control interventions, which are guided by the presumption that one size will fits all, are accompanied by the risk of destructive effects. The imposition of changes with disintegrative impact is not only unwise; it is also illegitimate".[33]

It is against this uncomfortable background that we should evaluate the Court of Justice's approach. Its deference toward the Member States and the EU institutions on the one hand, and toward the ECB on the other hand, simply adhered to the contradictory developments that took place in the EMU in the aftermath of the financial crisis. Given the fact that such crisis precipitated the euro crisis, *Pringle*'s rule that the EU institutions can participate in an agreement with states outside the EU confines, provided that such involvement is compatible with the Lisbon Treaty, nor alters the essential character of the powers conferred on the institutions by that Treaty, was "premised on the need to legitimate whatever action was required by EU institutions within whatever institutional forum to stave off the impending collapse of Greece, Portugal and Ireland, with devasting effects for the entire EU".[34] *Gauweiler*'s relying on the technical nature of the ECB choices with a view to justify "a broad discretion" regarding the use of the public sector purchase programme (PSPP) reveals as well the Court of Justice's need to legitimate the action of EU institutions *vis-à-vis* the euro crisis.

[32] C. JOERGES, *The Overburdening of Law by Ordoliberalism and the Integration Project*, cit., p. 198 *et seq*.

[33] C. JOERGES, *Comments on the Draft Treaty on the Democratisation of the Governance of the Euro Area, in European Papers*, 2018, Vol. 3, No 1, www.europeanpapers.eu, p. 80.

[34] P. CRAIG, *Pringle and the Use of EU Institutions*, cit., p. 268.

Also others admit that "both cases demonstrate an overburdening of the law and the judiciary in times of political crisis and conceptual paucity. It is an understandable reasoning of the Court not to take a legalistic stance which could have provoked far-reaching political consequences for which the judicial system is not the legitimate author", although adding that the Court "sanctified extra-legal emergency measures constitutionally and thus contributed to normalising discretionary authority in the new (anti-)constitutional constellation".[35]

V. The pivotal role of national governments in deepening the Eurozone's accountability deficit

On the other hand, the crisis management provoked an enduring disconnection between EU institutions and citizens even from an input legitimacy perspective. For Schmidt:

> "as the crisis evolved from 2010 through 2014, and as EU institutional actors became increasingly concerned about continued poor economic performance and growing political volatility, they slowly began to reinterpret the rules and recalibrate the numbers, albeit mostly without admitting it in their communicative discourse to the public. Instead, they generally continued to insist that they were sticking to the rules even as, behind closed doors in their coordinative discourses of policy construction, they were debating, contesting, and compromising on rules (re)interpretation. The increasing disconnection between what EU actors have said and what they have done has also contributed to major divides in public perceptions of their actions, generally splitting Northern and Southern Europe but also, within them, the winners and the losers of European economic integration".[36]

Furthermore, according to Majone:

> "As the crisis intensifies, all the proposed ad hoc solutions tend to aggravate the democratic deficit of the EU. It is not only the citizens that are being excluded from the debate about the future of the eurozone; most national governments are forced to accept the solutions proposed by a few leaders representing the major stockholders of the ECB. Thus, the risk of a complete normative failure – a default rather than a simple deficit of democracy at the European level – is by now quite concrete. Indeed, the mechanisms recently set up in the hope of resolving the eurozone crisis clearly reveal a willingness to sacrifice democratic legitimacy in order to rescue the monetary union. More than this, the very idea of European integration, as conceived by the founding fathers, is threatened by the latest developments".[37]

[35] C. Joerges, C. Kreuder-Sonnen, *European Studies and the European Crisis*, cit., p. 20.

[36] V. Schmidt, *The Eurozone Crisis of Democratic Legitimacy. Can the EU Rebuild Public Trust and Support for European Economic Integration?*, in *European Commission Discussion Paper 15*, 26 September 2015.

[37] G. Majone, *From Regulatory State to a Democratic Default*, in *Journal of Common Market Studies*, 2014, pp. 1221-1222.

However, we should be aware that the "increasing disconnection" was not provoked by all EU actors. The opinion that the Lisbon Treaty would put the premises for the emergence of a true parliamentary form of government was practically vanished by the dominant role that the European Council acquired due to the fallout of the global financial crisis. Such role was not without costs for national governments, pushing them to the center of the EU institutional stage. For a long time, they had preferred to remain behind it. Given the dispersal of power affecting the EU institutional arrangement, national governments were able to leave to the EU the burden of hard choices, starting with those concerning the national budget, without paying electoral costs. Rulers dislike being held accountable. It was arguably in their own interest both to maintain the EU system as it is, with no chance of identifying accountable rulers behind the blue sky and the stars, and to let people believe the media tale of "Brussels" as a seat of inaccessible technocracy.

Although clearly artificial, the divide between national politics and supranational technocratic governance permeated the popular imagination, hiding the dilemma between the adoption of long-term policies that require time to be understood by citizens and are not without risks in terms of electoral approval, and the mere administration of the present, with the related dismissal of politics. While regularly preferring the latter, the national governments' condition is to lay the blame of the European malaise on the "obscure and unelected" officials of Brussels.[38]

At the time of the Lisbon Treaty's enactment, national governments were still attempting to hide behind the EU flag for fuelling popular distrust at home against "Europe". And yet, they were sawing off the branch they were sitting on. It was the Eurozone crisis that increased the dominance of inter-governmentalism,[39] to the point of pushing national governments to the centre stage. The old game was over. The European Council's crucial role in the adoption of financial measures aimed at reducing national expenditures for the citizens' welfare could no longer be denied.

Even the ESM, which was created through an international law agreement without the formal participation of the Union, represents "an intergovernmental experiment": although its international nature has partially shielded the ESM from judicial and political accountability, "the extreme institutional proximity" between the Eurogroup and the Board of Governors established by the ESM suffices to demonstrate the subsistence of a "gap in the judicial and political accountability of ESM-based conditionality programmes".[40]

[38] C. Pinelli, *The Discourses on Post-National Governance and the Democratic Deficit Absent an EU Government*, in *European Constitutional Law Review*, 2013, p. 184.

[39] O. Cramme, *The Worrying Inevitability of EU Intergovernmentalism*, in *Policy Network*, 9 December 2012, www.ucl.ac.uk.

[40] F. Pennesi, *The Accountability of the European Stability Mechanism and the European Monetary Fund: Who Should Answer for Conditionality Measures?*, in *European Papers*, 2018, Vol. 3, No 2, www.europeanpapers.eu, p. 512.

As for the Commission's proposal to transform the ESM into "a unique legal entity under EU law" called European Monetary Fund (EMF), it reflects a contradiction between the aim of linking its decision-making governance to the "robust accountability framework of the Union together with a full-fledged judicial control",[41] and the fact that the EMF would succeed the ESM "with its current financial and institutional structures essentially preserved".[42] It is true that "[o]nce the Mechanism becomes an EU body, then it will always be possible to further increase its accountability, whereas further, incremental improvements would be impossible as long as it is an international organisation".[43] Such hopeful developments require however time, as if the current crisis of the EU could still be managed by ordinary means.

VI. Conclusion

Here we are then. Apparently, the financial crisis transformed the input/output legitimacy distinction into a dilemma between technocratic governance and populism. A different conclusion may however result while looking at how the need for fiscal integration was viewed as a response to the Eurozone crisis. The technocracy vs. populism dilemma may rather be a symptom of the before mentioned "twin legitimacy deficit", which demonstrates per se that the EU cannot longer rely on the success of its economic performances for compensating the lack of democratic credentials *vis-à-vis* the European citizens. Its legitimacy appears today seriously eroded with respect to the output no less than to the input.

The main reason for this decay lies in the fact that expectations for the EU performances are clearly disproportionate for an institutional assessment that lacks a true government. Responses to the financial crisis have further exacerbated that gap in the Eurozone, with the European Council's dominance and its insistence in recurring to automatisms for ensuring fiscal integration as an alternative to a supranational governance in the field of fiscal policy. It is this dominance, rather than technocracy, that bars further developments of the European enterprise, as the citizens' increasing malaise toward the EU suffices to demonstrate.

[41] Proposal for a Council Regulation on the establishment of the European Monetary Fund, COM (2017) 827 final, p. 3.

[42] *Ibidem*, p. 5.

[43] F. Pennesi, *The Accountability of the European Stability Mechanism*, cit., p. 545.