

## [ *Towards a new shape of the Union* ]

JOSEPH H.H. WEILER

### 25 **Democracy without the People: The Crisis of European**

The current crisis is European in nature and will only be solved by European solutions. After sixty years EU Institutions could be expected to provide leadership, ideating the way forward and mobilizing support for it. Reality has dashed that expectation. The crisis of the Euro masks a deeper crisis – a veritable legitimacy crisis of Europe as a whole as well as its Institutions. This paper explores the manifestations and reasons for this deeper legitimacy crisis. The author analyses three forms of legitimacy in their European context (input/process legitimacy, output/result legitimacy and political messianism), and in relation to each shows why, in his view, they are exhausted, inoperable in the current circumstance.

SERGIO FABBRINI

### 46 **Intergovernmentalism and Its Limits: Assessing the European Union's Answer to the Euro Crisis**

The Lisbon Treaty has institutionalized a dual constitution, supranational in the single market's policies and intergovernmental in (among others) economic and financial policies. The system of economic governance set up for answering the euro crisis has been defined and implemented on the basis of the intergovernmental constitution. The euro crisis has thus represented a test for the validity of the intergovernmental constitution of the Lisbon Treaty. Although the measures adopted in the period 2010–2012 are of an unprecedented magnitude, they were nevertheless unable to promote effective and legitimate solutions for dealing with the financial crisis. In the context of an existential challenge, the intergovernmental approach faced a structural difficulty in solving basic dilemmas of collective action.





WIM VAN AKEN, LIONEL ARTIGE

## 84 Reverse Majority Voting in Comparative Perspective: Implications for Fiscal Governance in the EU

The reverse majority voting rule raises two questions: Does RMV effectively strengthen the enforcement mechanism? Second, does the importance of the minority in the RMV procedure suggest a trade-off between the decision-making capacity (effective enforcement) and its legitimacy? To answer these questions this paper compares three cases where three different types of reverse majority voting have been introduced: the dispute settlement mechanism of the World Trade Organisation and reverse consensus; the EU anti-dumping policy and reverse simple majority; and, the reinforced SGP and Fiscal Compact and reverse qualified majority. In each case the authors identify the institutional and procedural setting prior to the introduction of RMV. Subsequently, they discuss the causes for the procedural change and the objectives followed by an impact analysis. The authors focus on the likely impact of the introduced procedure on Council decision-making, the Member States and the Commission.

## [ *Institutions – at the construction site* ]

NICOLAI VON ONDARZA

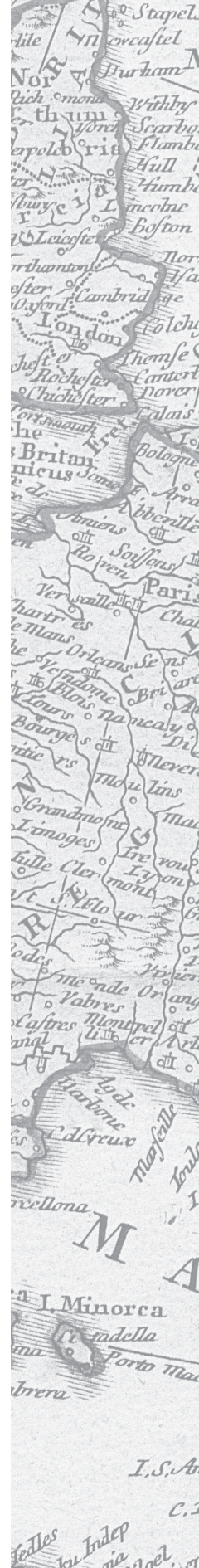
### 132 **Towards a Union within the Union. Institutional Outcomes for the EU of Diversified Integration within the Eurozone**

Recently the EU has increasingly used diversified cooperation forms covering only some Member States, designed as a final integration measure. The Lisbon Treaty has opened many new opportunities in this respect, but first and foremost as part of measures aimed to combat debt crisis the governments of the Member States adopted the Euro Plus Pact (EU-23) and the Fiscal Compact (EU-25), consequently creating new formats of diversified integration around the euro zone. New projects have been launched too. Diversified integration changes the political dynamics and processes within the Union. Those changes and the related fears of „disintegration of Europe” are fully revealed in the discussions carried out during the debt crisis. In this connection it becomes necessary to perform an empirical analysis of real effects of diversified integration for EU institutions and institutional equilibrium within the Union.

ROBERTO CISOTTA

### 163 **What Role for the European Commission in the New Governance of the Economic and Monetary Union?**

In recent years, the European Union has tried to offer credible responses to the financial and economic crisis often outside the EU legal order and with a significant impact on the constitutional framework and on the institutional balance of the Union itself. Many of these reforms concern the Commission, which has been entrusted with new tasks. In some areas – like the new rules on fiscal discipline – the Commission has gained strong powers. The solutions found raise many legal concerns and may alter long-standing balances between institutions. Furthermore, they are clearly inspired by intergovernmentalism and principally conceived within intergovernmental structures. In this context, the Commission still constitutes the last reliable driving force towards a genuine European project and it is called to play a role to safeguard the common interest of EU and of the Eurozone.







HELMUT SIEKMANN

## 188 Disregard for the Legal Foundations of TFEU on the Part of the Member States and the European Central Bank

In the present difficult situation, there have been repeated attempts at dispensing with the binding provisions of primary law. It is pointed out that normativity of law may hamper recovery from the crisis. Does it have to prevail then over the political pragmatism and actual actions of political leadership? Siekmann tries to assess the actions taken by EU Member States and such institutions as ECB and IMF in the times of the debt crisis from the viewpoint of their compatibility with EU law. Having defined precisely what debt crisis we are dealing with, he proceeds to identify and analyse the actions that might be considered as ones infringing the law: aid mechanisms of the EU and the Member States, as well as non-standard measures taken by the ECB and other central banks of the ESBC.

JONATHAN TOMKIN

## 270 Contradiction, Circumvention and Conceptual Gymnastics: the Impact of the Adoption of the ESM Treaty on the State of European Democracy

This paper makes the claim that the legal framework governing the European Stability Mechanism (ESM) is contradictory, conceptually incoherent and may be characterised as a circumvention of Union law. Such circumvention, and the resulting establishment of a significant permanent institution outside and beyond the scope of the Union legal order, represents a challenge to European democracy and to the principle of respect for the rule of law. The paper provides a brief overview of the background and legal framework governing the Treaty establishing the ESM. Then it addresses recent litigation challenging the compatibility of that legal framework with obligations under Union law. Finally, it assesses how the process by which the ESM was established is liable to impact upon the quality of European democracy and the integrity of the Union legal order.

CARLINO ANTPÖHLER

## 299 Establishment of the European Economic Government. The Six Pack as an Example of Supranational Effectiveness

The crisis in Europe brought to political actors the awareness of the need to tighten cooperation in the field of economic and budgetary policies. Therefore they agreed on two regulatory systems: 25 European governments concluded the Fiscal Compact at the intergovernmental level, whereas supranational EU institutions adopted the Six Pack. Comparison of the significance of both solutions enables understanding of the relations between supranational and intergovernmental integration methods within the economic union. An analysis of the Six Pack demonstrated the effectiveness and advantage of supranational regulations. The European institutions were able to support it in accordance with competencies enshrined in Art. 136 TFEU, while the Fiscal Compact largely duplicated the content of the Six Pack. This means that in supranational institutions, a European economic government already exists and it does not have to be established through a treaty amendment.





## [ *Polish voice ad vocem* ]

TOMASZ GRZEGORZ GROSSE

### 342 Eurogroup: Between Sectoral and Political Logic

The Eurogroup is an interesting example illustrating the gradual institutional development taking place within the European political system – from a fully informal institution existing outside European treaties to one officially recognised by the European law. It is an intergovernmental body, whose political significance has greatly increased in recent years. Eurogroup is also an example of wider phenomena emerging in Europe of the times of crisis – of the growing interest in economic governance and increased significance of intergovernmental methods within the euro zone. The author analyses the development of the Eurogroup from both sectoral and political logic perspective. He also reflects on the extent to which geopolitical determinants may influence the Eurogroup and other intergovernmental institutions.



## [ *Essay on Europe* ]

FRANK SCHORKOPF

### 371 Financial Crises as a Challenge for International, European and National Law-making

The pressure on law-making at various levels in the times of a financial crisis is initially manifested in the form of temporary measures of administrative and political nature. Money is the major resource then; therefore states play a central role in the measures undertaken. When a crisis extends, temporary steps are overlaid with measures changing the framework of the existing order with due account taken of the causes of the crisis. They are undertaken mainly at the European and International level and in the institutional area. The complexity of the connections and uncertainty as to the causes of the crisis make the latter a universal challenge for law-making: it constitutes a political motivation but can also create an opportunity for politicians to transform the goals they have long wished to attain into legal forms now, „in the shadow of the crisis”. The discussed challenges related to law-making at many levels during financial crises focus on three issues: guarantees, normativity and responsibility.





## [ Reviews ]

SŁAWOMIR NOWINOWSKI

### 420 The Art of Breaking the Mould

ANDRZEJ HARASIMOWICZ, *Bezpieczeństwo Polski 1918–2004. Granice, system międzynarodowy, siła własna*, Warszawa: Centrum Europejskie UW, 2013.

AGNIESZKA SMOLEŃSKA

### 423 Will National Policy Destroy the European Project?

CARLO BASTASIN, *Saving Europe: How National Politics Nearly Destroyed the Euro*, Washington D.C.: Brookings Institution Press, 2012.

MARCIN SOBALA

### 426 Polish Political Thought and the Transformations of the 20th Century

SŁAWOMIR LUKASIEWICZ, ed., *Towards a United Europe. An Anthology of Twentieth Century Polish Thought on Europe*, Warszawa: Ministerstwo Spraw Zagranicznych RP, 2011.

### 430 [ Contributors ]