European currency union and rule of law[1]

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Currency union as a common destiny

The introduction of the euro did not transform the European Union (EU) into an indissoluble community of fate. In the history of monetary and currency policy there have been no cases in which the introduction of a common currency has decided the political fate of a nation or family of nations.[2] The common market as a legal regulatory system is restricted to the realisation of the four so-called basic freedoms, it constitutes an anti-trust supervisory authority for business to ensure intra-community competition, as well as a subsidisation authority for member states and is based on a customs union. It has not, to date at least, merged the economies of the member states into an integrated economy; and even if it were to lead to the development of a European economy, this would not necessitate a common currency economically or legally.

Contrary to expectations, responsibility for a common monetary policy signed over to the EU in Maastricht has not led to a convergence of economic developments in the member states. Indeed, the introduction of the euro has led to growing economic divergence among member states, resulting in the currency union's present malaise. The introduction of the common currency was no qualitative leap forward in terms of political integration with a view to creating an inalienable unity. This is proven both by the tireless overhasty efforts on the part of the currency zone's member states to prevent its disintegration, and by the growing disinclination to join the currency zone as a "community of fate" on the part of the ten member states that do not yet belong to the common currency. The establishment of a currency union without the parallel establishment of a real economic union, due to a lack of willingness to relinquish state sovereignty at the Maastricht conference, led to a certainty from the outset on the part of two member states, not to mention a large number of private highly critical observers, that the Maastricht economic and monetary union had too many constitutional weaknesses to link the member states and their peoples any more closely than the common market and the other policies of the European Union already had done.

Crisis of the currency union and the European Union as a community of law

Assistance for Greece and the euro bailout package – violations of the law

The currency union crisis has now engulfed the EU as a community of law. To preserve the currency union and the euro as a status symbol of integration, the EU bodies of the European Union and its member states, in cooperation with the European Central Bank (ECB), are trying to master the crisis by offering expensive financial support conditional to their compliance with draconian austerity measures that are difficult for the member states to implement; instead of the legally viable and economically sensible option of letting economically weak members states with excessive levels of debt take some time out. There is little awareness of the effects of these measures on the EU as a community of law.

The financial support for Greece, or the so-called European bailout package (ESFS) and – to an even greater degree – the announced set-up of a permanent stability mechanism (ESM) as well as various "first aid" measures on the part of the ECB aim to provide relief for member states that are already hopelessly indebted and slow their accumulation of

[1] Forthcoming in "Basic issues related to the European Union – Symposiums, 20 years of the Centre for European Business Law at the University of Bonn", 2012.

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[2] See Plumpe (2011). Feuilleton background ("It is said that peace in Europe would be in danger if the euro were to fail. However, Europe's fate does not depend on its monetary system. Not once has the break-up of a currency union led to an economic catastrophe in the past. A plea against mutterings about a crisis.").

further debts. Regardless of whether they are considered legal instruments or legally equivalent actions on the part of the EU, or whether they are classified as bundled in the framework of the bilateral support measures taken by member states and coordinated by the EU, these measures violate the "No bailout clause" of article 125 TFEU as a constitutional supporting pillar of the Maastricht currency union. The so-called "No bailout clause" is not merely a disclaimer, as this would not make any sense within a confederation of states, since the member states of a confederation are not liable for each other in any case; it serves to safeguard the currency union and the stability of the euro as a common standard currency for the member states just like the three percent annual debt ceiling and the 60 percent upper debt ceiling. The Council could have at most deviated from the no bailout clause to a limited extent based on article 352 of the TFEU – the successor of the more well-known article 235 of the EC Treaty and/or 308 EC; but it would have needed the European Parliament's consent to do so, which it was not certain to receive.

The authorisation to financially support member states in cases of natural catastrophes and catastrophe-like events embodied in article 122 paragraph 2 TFEU, which the Council resorted to, does not justify a suspension of the no bailout clause. The government debt crisis is a governance crisis, not an event resembling a natural catastrophe; and it was caused by misconduct on the part of state leaders which individual states must accept responsibility for. The comprehensive authority that a state takes upon itself is sufficient from a legal point of view both to tax its citizens and to reduce or to cut activities of the state which have financial effects. A member state that has agreed to the EU's value system on joining the union has to be held responsible for misconduct in terms of its economic and budgetary policy. The no bailout clause does not even justify action if the threat of state bankruptcy is caused by a global economic crisis. Economic crises are events that governments should be able to handle. The regulation (EU) Nr. 407/2010 "on the introduction of a European financial stability mechanism", which is based on article 122 paragraph 2 TFEU, or the so-called first part of the euro bailout package, represents a flagrant violation of EU law. The Council's authorisation of action of article 122 TFEU in the case of catastrophes and similar situations does not imply and justify an authorisation to take out loans on the capital market any more than the Council's authorisation to take action in the field of agricultural policy, customs policy or other areas. Any support provided in catastrophes and other similar cases must be financed by the EU's budget set up by the European Parliament and Council as a common budgetary authority, and if necessary from a supplementary budget.

In 2010, the EU budget did not provide enough financial resources (– i.e., up to the amount of 60 billion Euro-) for aiding member states being that are confronted with a natural catastrophe or a similarly severe situation. To raise the wanted amount of 60 billion Euros, the member states had no other choice than to breach the EU law and raise the money on the capital market.

ECB and the European system of central banks (Eurosystem) – legal infringements

The measures taken by the ECB and - acting within the European system of central banks - by some national central banks in the context of the currency union crisis are not consistently in line with EU law. The ECB and the European system of central banks are responsible for a monetary policy that is primarily obliged to guarantee the stability of the euro as a common currency of the member states.[3] Although these measures cannot be justified in terms of monetary policy, they offer relief via purchasing or accepting as securities when granting central banking money on the strength the bonds of economically underperforming member states that are rated as junk bonds by the rating agencies According to the regulations of the Maastricht Treaty, it is explicitly prohibited for the ECB and the national central banks acting within the European system of central banks to directly purchase government bonds.[4] The purchase of government bonds on the so-called secondary market, which is not explicitly forbidden in the same way, should not facilitate the sale or issue of new bonds on the part of economically weakened member states. With their ill-advised monetary policy measures the ECB and the European system of central banks are subsidizing individual banks and protecting them from insolvency. In cases where the banks with which they share the power to create money are threatened by illiquidity, central banks can come to the latter's aid for monetary policy reasons through the general or

[3] See critical articles by Seidel (2012) and Rill (2011).
[4] Art. 123 TFEU

special allocation of central bank funds. However, they cannot protect insolvent banks from bankruptcy, even if the latter can prove that they are "system-relevant" or "systemic".[5] Insofar as the ECB and the central banks within the European system illegally buy, or even lend against government bonds from states that have accumulated excessive debts due to their higher inflation rates and long-term current account deficits and are threatened by insolvency, they are violating the no bailout clause of article 125 TFEU, which also applies to them. Neither the ECB, the national central banks, the Council, the Commission and nor the member states can invoke a derogation. The "stabilisation of the financial markets" may be considered a secondary task of the central bank according to the economic and currency law of other states by virtue of its close links to monetary policy, but despite the fact that the financial market occasionally behave in a dysfunctional way and are capable of torpedoing a central bank's monetary policy, the stabilisation of the financial markets is not generally accepted as a secondary task to the ECB or the European system of central banks. The "stabilization of the financial markets", especially saving banks from a payment default, is an area of economic policy attributed to member states in Maastricht and it was not explicitly transferred at any point, and especially not in Maastricht or later Lisbon, to the EU or the European Parliament and the Council as the European Union's co-legislators, or directly to the ECB or the European system of central banks.

According to the principle of conferred powers as a key constitutional principle of the EU, which precludes a gradual transfer of sovereignty to the EU, a specific transfer act would have been required to transfer responsibility for this area of economic policy to the EU. According to article 127, paragraph 5 TFEU, which outlines the tasks of the ECB and/or the European system of central banks, responsibility for stabilising the financial system lies with other, currently still national "authorities", which are also responsible for supervising the financial markets. The ECB and/or the European system of central banks are only authorised to a limited degree to contribute to "the smooth implementation of the measures taken by the authorities responsible to stabilise the financial system". The relevant regulation of paragraph 6 of article 127 TFEU does not empower the EU legislator to entrust the ECB with sole supervision of the credit institutions; on the contrary the ECB, alongside the national supervisory authorities and a union supervisory authority if necessary in the future, is only entrusted "with special tasks related to the supervision of credit institutions".[6]

In addition to violation of the no bailout clause, the ECB can also therefore be charged with breaching its competences. The national central banks, on the other hand, have only breached their competences if they have acted in the framework of the European central bank system, but not if they have exercised the competences explicitly attributed to them in Maastricht. In addition to previous actions, the Council and the Commission can be charged with breaching their competences in providing financial assistance to Greece and the bail-out package, insofar as the latter represent legal acts or their equivalent on the part of the EU. The member states, on the other hand, cannot be reproached for breaching their competences insofar as they have acted autonomously.

Finally, the ECB can be charged with violating the prohibition of the so-called monetary financing of national budgets[7], another main pillar of European currency union. Though this was not necessary in monetary terms, the ECB purchased government bonds of member states prone to insolvency and it directly or indirectly did so by using the central bank money.

The ECB and/or the European system of central banks – which is really responsible for currency policy[8] - is only a so-called lender of last resort for financial institutes, and not for member states or other private businesses. Whether or not the legislator gave them this role in Maastricht or later on, and whether it has indeed given them the facilities

[5] See recently Radtke (2010).

[6] This interpretation of article 126, 127 TFEU – formerly article 105 EC – corresponds to its origins. In the draft of statutes for the European Central Bank System produced by the central bank presidents as members of the so-called Delors Committee, the ECB's fourth task is outlined in article 3 as follows:
- To participate as necessary in the formulation, co-ordination and execution of policies relating to prudential supervission and the stability of the financial system.
The Maastricht conference did not approve this proposal and reduced the fourth task of the "system" to:
- Supporting the smooth functioning of the payment system (article 105)
The weakened regulations of paragraphs 5 and 6 of article 105 were added at the Maastricht conference.

[7] Article 123, 124 TFEU.

[8] Contrary to widespread false assumptions, monetary policy was signed over to the European system of central banks in Maastricht, not to the ECB; see article 127 TFEU.

required to fulfill this role. It is no question that the constitutional legislator of the EU has not even incidentally in Maastricht or later assigned the function of a "lender of last resort" to the European Central Bank or to the European system of central banks and that the legislator has endowed the European central bank and the European system of central banks with appropriate instruments to master their additional function. In the case that the European central bank and the European system of central banks would have been entrusted with the function of a "lender of last resort" they would not be authorised, to independently extend this principle to other areas, simply with a view to the regulations in other states.[9]

European Stability Mechanism (ESM) – an infringement?

With the permanent ESM, which is still to be set up, the EU and its participant member states would violate the no bail out clause of article 125 TFEU in a similar way as they did when helping Greece and setting up the euro rescue umbrella in the case that the no bailout clause was not to be considered as repealed with the amendment to the Lisbon Treaty decided upon by the EU in the form of the insertion of e a new paragraph in article 136 TFEU relating to the treaty on the ESM. Similarly, the EU would exceed its competences with measures to implement the stability mechanism, insofar as these regulations were not to give it responsibility for stabilizing the financial markets. The same would apply to several infringements by the ECB and the national central banks acting in the framework of the European system of central banks, insofar as ratification of the proposed regulations on the ESM does not fundamentally redesign the Maastricht currency union, and specifically does not remove the no bailout clause, does not address the competency deficit as far as stabilizing the financial markets is concerned, and above all, does not at least restrict the ban on the ECB and the European system of central banks financing state budgets. The suspension of the no bailout clause, the remedying of the competence deficit and the limitation of the ban on the financing of state budgets are not explicitly covered by the regulations, but are expressly desired by member states. It merely remains questionable whether such regulations can retroactively legitimize the violations already committed by EU bodies, the ECB and the member states in their provision of financial assistance for Greece and their approval of the euro bailout package at the legislator's whim, i.e. whether the redesign of the Maastricht Treaty should take effect retroactively.

The two tier regulations for setting up a permanent ESM consist of an amendment agreement in the framework of EU treaty law, which takes the form of the insertion of a third paragraph in article 136 TFEU of the authorisation of the seventeen states of the currency area obliging them to sign a parallel, fully negotiated and purely international treaty on the set up of the ESM. After the adoption of the amendment to the Lisbon Treaty and thus the setting up of an authorisation to adopt the stipulations of the ESM Treaty as they are (tel quel), which is linked to a legal obligation for the seventeen member states to take action, member states could no longer dispose on the stipulations of the ESM Treaty. By virtue of the way that they are linked, both treaties represent a unified body of regulation, which, regardless of the artificial divisions within it, must raise the question of whether it changes the contractual statutes of the Maastricht currency union in an acceptable way.

The EU assumes that the amendment to article 136 TFEU, which is reduced to a mere authorisation to conclude a contract, should not be subject to the normal process of changing union treaty law, which involves establishing a convention, holding an intergovernmental conference and the participation of the European Parliament, which presupposes public attention, but will be applied according to the so-called simplified amendment process outlined in article 48 paragraph 6 TEU. The simplified amendment process merely requires a unanimous decision by the Council and its acceptance by the member states in accordance with their constitutional requirements. However, this process should not be applied in an unrestricted manner, especially not for an "amendment to provisions of the third part of the Treaty on the Functioning of the European Union - which includes the regulations on economic and currency union - insofar as an intended amendment of union treaty law will lead to an "extension of the responsibilities" of the EU "in the framework of Treaties on transferred responsibilities (article 48 paragraph 6 sentence 1 TEU). The planned addition of a third paragraph to article 136 TFEU through its link to the treaty via the ESM and its incorporation as a binding authorisation

[9] See Heinsohn and Steiger (1999).

aims at and will achieve an amendment to union law to that effect. Should the rules of the international treaty on the set-up of the ESM, which amount to an extension of the European Union's competences and a partial suspension of the Maastricht currency union rules, be integrated into a single rather than a divided project to amend treaty law, there would be no doubt that the simplified amendment process could not be used. The simplified amendment process will ensure that the constitution of the currency union is changed as quickly and discretely as possible, and will ensure the legitimization of the violations already committed. However, the Council and member states are not entirely free to decide which one of the two processes of amending union treaty law is to be applied, Fears that the contract to amend article 136 TFEU and its ties with the ESM Treaty as the subject of the member states´ and the Councils` authorisation to act are not in line with union law are unfounded insofar as the ESM treaty changes the EU's structure in such a way that the ban on accepting liability for the debts of other member states is lifted, the no bailout clause for the budgets of other member states is at least limited, the competence deficit is removed and the self-responsibility of member states as one of the main principles of the Maastricht Currency Union is replaced by a system of reciprocal fiscal support. The Council and the member states have committed a violation of the Treaty, which the planned inclusion of the rules of the international ESM treaty in union treaty law does not warrant, and thus renders the ESM ineffective.

For the German Parliament and the German Bundesrat as ratifying legislators, the artificially divided treaty as a unified planned regulation represents a case of article 23 paragraph 1 sentence 1 of the German Constitution. The EU will be fundamentally changed by the regulation. The provisions of article 79 paragraph 2 of the Constitution are also fulfilled. Through the treaty, which provides for Germany's permanent participation in the ESM and involves Germany to a large extent giving up its control over taxing and spending without any possibility of withdrawal, Germany's Constitution as a sovereign state will be changed from a material point of view and its Constitution will thus be changed. The ratification of the regulation, i.e. of both treaties, requires a two thirds majority vote in the Bundestag and the Bundesrat.

Exiting the currency union

A member state cannot be forced to leave the currency union against its will. That is true even if its economy is suffering from excessively high inflation rates, recurring current account deficits and has accumulated high debt levels and can only return to efficiency and competitiveness by reintroducing its own currency, performing an absolute haircut and with support on the part of the EU in the form of financial assistance mechanisms and economic aid.[10] Union law makes no explicit provision for either the expulsion or the voluntary exit of member states. At the same time, membership of the currency union is not compulsory and does not deny a member state the option of voluntarily or temporarily exiting the union if this is the only way for it to recover economically. A voluntary exit from the currency union, which is now widely seen as an admissible and unwritten EU law, does not depend on the agreement of the other member states. Nor can the other member states refuse an exiting state help with measures designed to implement its exit such as, for example, the temporary closure of stock markets to prevent speculation resulting from the reintroduction of its own currency, the then legally permissible provision of financial assistance or support in the form of capital flow controls.

From a strictly legal point of view, a member state can neither "exit" not "join" a currency union. The currency union is no association of states that a state can "join" and "enter". Behind the currency union lies the EU's responsibility to shape a common monetary policy for the member states. Like fishing policy, for example, monetary policy is a so-called exclusive competence of the EU, which, unlike agricultural policy, for example, is not accompanied by any policy-making at a national level. Regardless of this classification, however, the scope of monetary policy can be territorially expanded or limited by an act passed by the legislator. This kind of territorial restriction was applied, for example, when Greenland as a part of territory of Denmark as a member state of the EU was retroactively, i. e., after the adoption of the fishing policy - a so-called exclusive policy like the monetary policy – by Denmark for its whole territory, Greenland included, has later been excluded from the European Union's exclu-

[10] Moreover, in view of the situation of the interests of the member states in the Council a qualified majority vote in favour of exclusion could not be reckoned with. The conditions for a majority decision do not exist.

sive policy. There was never any talk of Denmark's partial exit from the "fishing union" of the European Economic Community.

Regardless of the fact that member states are represented on the board of governors of the European System of central banks, the euro is a foreign currency for them. Unlike a national currency, the euro as a foreign currency is not an economic accounting device tailor-made for an individual member state; in other words unlike a national currency, it is no "measurement and assessment system" that measures the economic competitiveness of an economy compared to that of all other economies competing with it. Unlike a national currency, the monetary policy of the ECB and/or the European System of European central banks is not exclusively oriented towards the economy of a specific country. Since it can only be designed uniformly, the EU's monetary policy can only reflect the diverging economic concerns of individual member states to a very limited degree. For the individual member states are not territorial parts of an integrated European economy that can be compared to one of the national economic bodies. The economic bodies of the member states have neither given up their different structure related to their national sovereignty not lost their involvement in the Common Market to date.

In spite of several joint responsibilities borne by the EU in the field of so-called economic and social cohesion (fund policy), economic policy remains the responsibility of the member states, even after Maastricht and Lisbon. The ECB and/or European system of central banks thus shapes monetary policy - understood as a conceptually designed state policy tailored to support an economy - for an economy that does not exist. Regardless of the expectations that were falsely placed in it at the Maastricht conference, the EU's monetary policy has not led ipso facto to converging economic development in all member states, as shown by the government debt crisis afflicting several members of some member states. On the contrary, the currency union has tended to increase economic divergence and has proven counter-productive for the Common Market rather than having an integrative effect. The community currency is increasingly having the economic effect of a "foreign currency" in individual member states, albeit to differing degrees.

According to union law, a member state of the currency zone that can only survive economically outside the currency zone, has a right to demand that the Council - composed of heads of state and government - remove the country from the territorial scope of monetary policy. The member state does not need to take the complicated detour of exiting the EU as such and rejoining it without belonging to the currency union, which is deemed as the only legally correct way by an ECB Advisory Opinion. The member state wishing to take time out can demand that the other member states do not prevent it from realizing its desire to exit, do not withhold their approval of the legal acts required and after it has reintroduced its own currency and an indispensable haircut, cannot deny it the potentially differentiated financial assistance and economic development assistance according to the treaties of Rome and Maastricht. If necessary, the member state can reintroduce its own currency independently by exercising its legislative sovereignty and view the related violation of union law that should have primacy as legitimized by the emergency situation. In the face of another member's desire to leave the euro the other member states cannot declare that the euro as a worldwide trade, investment and reserve currency can only be saved if that state continues to remain a member and by accepting their fiscal financial assistance.

A gap in legal protection at a European level – the highest national courts as guardians of the European legal and constitutional structure

A large number of treaty violations have been committed by EU bodies and member states in the course of efforts to control the European currency crisis. If infringements of treaties that were committed upon the founding of the currency union, i.e. related to the admission of new members to the currency zone, are added to this figure, then it is even higher. Not only the Council's decision regarding Greece's admission to the currency union, but also its decisions regarding one or two other admissions would not have stood up to an examination in court. At the time that the admission decisions were taken the so-called Maastricht criteria (or whether the candidates for admission fulfilled them) were not at the Council's disposition, meaning that the decisions taken by heads of state and government, even if within a limited period of time and only by EU bodies and its member states, and not by private persons, could not have been challenged in the European Court of Justice.

The fact that no appeal was made did not compensate for several legal deficits; the decisions taken at the time merely became no more challengeable). In the future, these decisions could only be checked in the course of an so-called nearby-control procedure before the European Court of Justice according to article 277 TFEU and declared illegal, with highly limited implications, in such cases before the European Court of Justice, which are unlikely to be initiated, or at least there are no signs of this at present. There were no rescission actions at the time because all of the EU's bodies, as well as all member states with a right of action supported the admissions decisions for political reasons. The limited legal protection provided by union law is still far from effective against the treaty violations committed in the course of the currency crisis. It suffers from the fact that in cases of violation of so-called objective union law, which includes laws on economic and currency union, only EU bodies as well as member states have the right to take legal action, and not private individuals. The interaction of all bodies with the right to take legal action results in no recourse to the European Court of Justice. With regard to the treaty violations that occurred in the context of the EU's bailout measures, the European Parliament, which has the right to take legal action, did not participate as far as possible and/or did not need to participate. Moreover, in one case where it believed its right to participate had been violated, the European Parliament consciously refrained from bringing any action via a majority vote out of loyalty to the other bodies and member states.

In the member states legal protection in comparable cases is also limited by the fact that private individuals quite simply do not have any right to take action against the public authorities by asserting the breach of so-called objective law by the public authorities. They must prove that they are affected by the infringement of a subjective law or in terms of a legally protected individual interest, if they wish, for instance, to have a court examine an objective legal violation on the part of the central bank in a monetary decision. At a member state level, however, not all of the institutions, bodies and political powers with the right to take legal action are consistently involved in decisions that should be challenged. A system of political competition ensures the verification of objective law violated by the public authorities in a large number of cases. Additional rights to take legal action held by associations and ombudsmen, as well as individual cases brought before the Constitutional Court in Germany, in particular and the favourable case law of the German Constitutional Court, complete legal protection. The "Convention for the future of Europe" drawn up in the drafting of the treaty "on a Constitution for Europe" - subsequently abandoned - and later in the drafting of the Lisbon Treaty, the intergovernmental conference deliberately refused to grant EU citizens the right to lodge individual constitutional appeals before the European Court of Justice following the example of the Strasbourg convention for human rights and basic freedoms and German individual cases brought before the Constitutional Court. There is no basic right to currency and price stability enshrined in either EU law or national constitutional law.

The gap in legal protection arising from the interaction of all bodies of the European does not materially remove the violations, as the legal principle "nullum ius sine actore" - without rights to action there is not law – and national law is not recognised by Union law. However, the de facto gap in legal protection that arises creates a loss in trust in the EU as a community based on the rule of law. The complete overthrow of the European Court of Justice as a born "guardian of EU law", which is to be feared from the perpetual interaction of EU bodies, will negatively impact the rule of law in the European Union. It may have implications that are difficult to assess on the process of European integration should citizens turn to their highest national courts as the guardians of the EU's legal and constitutional structure.

Since its ruling in 1993 the German Constitutional Court is now exercising its right to examine the EU's legal instruments (regulations, Directives and decisions), as well as the case-law of the European Court of Justice to see whether they remain within the EU's regulatory competences. In cases where these competences are breached and there are so-called "ultra vires" or "transgressing legal instruments" ("ausbrechende Rechtsakte" in German), the German Constitutional Court considers itself empowered to declare these instruments as ineffective in Germany. The highest courts of other member states have already sympathized for some time with the case law of Germany's Constitutional Court, which has been condemned by EU bodies and member states in various crises, because it does not respect the basic principle of the absolute primacy of Union law over national law, including

national jurisdiction and thus does not respect the uniform application of EU law. In addition to EU-wide recourse to constitutional courts and/or highest national courts in member states, following the example of Germany's Constitutional Court, the possibility of greater recourse to Germany's Constitutional Court resulting from the debacle of the currency union cannot be ruled out in the future.

After the ratification of the Treaty on the establishment of a permanent ESM by the Bundestag and the Bundesrat, Germany's Constitutional Court will soon be faced with the question of whether it should once again define the "hard core" of state jurisdiction considered as "not accessible to integration" in its decision on the Lisbon Treaty, which should not be hollowed out by the transfer of rights to the European Union. The Bundestag's "responsibility for integration" emphasised by Germany's Constitutional Court but only effective nationally and only constraining the independent contribution of the German government at a European level offers no protection from "ultra vires" action on the part of EU bodies. Germany´s Constitutional Court could not attribute monetary policy to the hard core of state functions being not accessible to integration in its last judgment on the Lisbon Treaty, because earlier in its judgment on the Maastricht Treaty the Court has declared the transfer of the currency policy to the European level to be in line with German Basic Law, but only under certain conditions.

However, with this decision Germany's Constitutional Court did not rule out the option of reviewing currency policy instruments and monetary policy action taken by the EU to ascertain whether it respects the limits of this responsibility transfer. While the ECB violates the ban on financing the public budgets of member states with central bank loans and on financing assistance for member states with liquidity problems by buying both the sovereign bonds of these members and lending against the expenditure of central bank money, without monetary policy reasons to justify its actions, a long-term devaluation related to these measures could lead to income transfers between population groups within individual member states, that are not controllable and could have socio-politically unacceptable consequences that damage democracy.

Decisions of this scope do not constitutionally rest with a currency and central bank, but should be taken by a parliamentary legislator. In the context of the impending case to be brought before Germany´s Constitutional Court by the expected claim of an "Organ" of Germany´s constitutional system as well as by claims of individuals which both probably would challenge the constitutionality of the measures in question taken by the European central bank and some national banks, the question may arise of whether these measures, i.e. the ECB´s purchases and the acquisition of such bonds by the central banks involved in this initiative, can be classified as "ultra vires", and whether it can be rendered ineffective in Germany. According to the traditional attitude of Germany´s Constitutional Court it will not come to recourse to the European Court of Justice by way of a preliminary ruling by Germany´s Constitutional Court.

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