From cohesion to dilution: How far has the European Union reached or how much more does it have to accomplish?

Submitted in fulfilment of the requirements of the degree of Master of Laws (LLM) in Transnational and European Commercial Law & Alternative Dispute Resolution (Dissertation) in the Faculty of School of Economics and Business Administration at the International Hellenic University

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DECLARATION

I, Stavroula Ioannidou, declare that this Dissertation is my own, unaided work. It is submitted in fulfilment of the requirements of the degree of Master of Laws (LLM) in Transnational and European Commercial Law & Alternative Dispute Resolution (Dissertation) in the Faculty of School of Economics and Business Administration at the International Hellenic University. It has not been submitted before for any degree or examination in this or any other university.
I dedicate this Dissertation in memory of my beloved father Theocharis Ioannidis, who passed away after the completion of this essay. For all your special love, pride and confidence you had in me, for your endless support during my studies and for always inspiring me to be the best I can, thank you Dad. I love you.
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ABSTRACT

This dissertation follows the evolution of the European Union, from the first attempts to cooperate and attain common goals, to its present situation. The fundamental principles and objectives of the Union form the foundation of this thesis. Subsequently, the implications and the impact of the financial crisis, which emerged to Europe, led to a severe deterioration of long established social rights and distrust to national governments and European Union institutions, as well.

As it addresses audiences that share an interest in European monetary policy during the crisis, it focuses on the case of the Greek debt restructuring and the private sector involvement (PSI), the levy that was imposed on Cypriot bank accounts and the passing of European legislation regulating the confiscation of depositors throughout the European Union, whenever a bank is in need for recapitalization and the bail-in of shareholders' and bondholders' is not sufficient. The infringement of Constitutional provisions both in Greece and Cyprus through these interventions, mainly decided by the present leadership of the Union, is discussed.

Moreover, there is an introduction of the related provisions to property right of the Charter of Fundamental Rights of the EU (2000/C 364/01) and of the European Convention on Human Rights (ECHR) and the derogation of the European Union from its fundamental principals, values and objectives, as they are illustrated by the present status-quo in the Eurozone. The conclusive part of this dissertation is engaged with suggestions for harmonized integration, promotion of democratic principles and activities, coordination of economies in the Eurozone and safeguarding of fundamental human rights.
ABBREVIATIONS

BIT = Bilateral Investment Treaty
CAC = Collective Action Clauses
EC = European Community
ECB = European Central Bank
ECHR = European Convention on Human Rights
ECJ = European Court of Justice
ECOFIN = Economic and Financial Affairs Council
ECON = Economic and Monetary Affairs Committee
ECtHR = European Court of Human Rights
ECU = European Currency Unit
EFC = Economic and Financial Committee
EFSF = European Financial Stability Facility
EFSM = European Financial Stabilisation Mechanism
EHRR = European Human Rights Reports
EMS = European Monetary System
EMU = European Monetary Union
EP = European Parliament
ESCB = European System of Central Banks
ESM = European Stability Mechanism
EU = European Union
ICMA = International Capital Market Association
ICSID = International Centre for Settlement of Investment Disputes
IIF = Institute of International Finance
IMF = International Monetary Fund
MiFID = Markets in Financial Instruments Directive
NCB = National Central Bank
OECD = Organisation for Economic Cooperation and Development
PSI = Private Sector Involvement
SMP = Securities Market Program
TFEU = Treaty on the Functioning of the European Union
From cohesion to dilution: How far has the European Union reached or how much more does it have to accomplish?

1. INTRODUCTION

The unification of countries in Europe into a political and an economic institution, such as the European Union (EU) as it has evolved over the years up until now, has been an enduring ambition and a commitment for many decades. This recurring project was set forth in the late 1960s and since then has passed through different stages, depending on the historic events of each period. Particularly the process of the monetary unification and the adoption of a single currency for the Member States of the EU (which through the various phases has been addressed with different names), under the auspices and the permanent control of one banking institution, the European Central Bank (ECB), is a phenomenon with interplaying economic and political characteristics.

It is commonly accepted that the monetary consolidation had great impact in economic policies, both in a European and global level, and has created new balances and trade relations, in quantity and in quality. One could say that the whole financial system has been placed into a new path. The euro has largely reduced the trade costs and has amplified capital movement. The Member States have abnegated their own monetary policy, which was engaged in exchanging rates between currencies and it depended on different economic schemes. The differentiation in interest rates is now greatly constricted and the exchange rates are common for all the countries that have adopted the euro.

The ECB designates the monetary policy for the Member States, that constitute the Eurozone, and is considered to be a dominant player in the operation of the global economy. The basic task of the ECB is to define and implement this monetary policy, with primarily one objective: to maintain price stability within its area, keeping inflation below but close to 2% over the medium term and preventing deflation. So far, the ECB has been very successful in achieving its main purpose, since it has kept the average around 2%, lower than the average standards in the Bundesbank\(^1\) era for Germany. In addition, the ECB has the legal mandate to conduct foreign exchange operations, to guard the foreign reserves of the European System of Central Banks (ESCB)\(^2\), to promote smooth operation of the financial market infrastructure, to authorize the

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1 The Deutsche Bundesbank is the central bank of the Federal Republic of Germany.
2 The ESCB comprises the European Central Bank and the national central banks of the EU Member States
issuance of euro banknotes, to monitor the banking sector and to contribute in maintaining a stable financial system. The eruptive increase of euro-denominated bonds, the alliances in national stock exchanges and the mergers of domestic bank institutions during the Euroarea have developed a true European financial market.

Furthermore, the European Monetary Union (EMU) can be observed from a political perspective because the initiative to create such a union, the requirements that were set to be fulfilled in order for one state to become a Member, the evolution of the EU institutions and the appointment of the presiding representatives in each body and office are, mainly, features of political nature. Political parties and leaders made these decisions according to their respective national constitutional limitations and through parliamentary proceedings or through the conduct of referendums and they involved large scale negotiations and delegations. The development of this consolidation provides the ability to formulate and implement foreign, social and environmental policies on a European scale.

The monetary unification is an ongoing process, as it constantly evolves due to political changes in each Member State and the assimilation of the European integration on the way people think and live in this unified society, especially now that they are experiencing the dramatic changes that came into view with the emergence of the financial crisis. The economic and monetary consolidation has been a high priority for the related States in the EU’s history because it appeared to be an environment that, eventually, would lead to expiation of hostility between coterminous nations, it would enhance political and financial stability and it would guarantee prosperity, employment and continuing growth for the countries involved and their population. But as it will be deployed later, political and economic obstacles, differentiation in the level of commitment to the completion of the Union, disagreement concerning the economic priorities and the patterns that should be followed, and the recent turbulence in the international financial and political field have created a frustrating framework for the EMU.

2. THE ROAD TOWARDS THE EMU

The transition from individual states to the EMU and the Euroarea consists of four stages or phases. The turmoil in the markets by 1969 that led to the revaluation of the German mark and the devaluation of the French franc created a currency instability and jeopardized the common price

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3 The data of this section are drawn from the European Commission's website http://ec.europa.eu/economy_finance/euro/emu/road/index_en.htm
system of the common agricultural policy of the European Community (EC), as it was then into force.

a) PHASE 1: The Werner Report

During the post-war period the economic market field in Europe, North America and Japan was regulated by the Bretton Woods system, according to which, gold and the United States dollar provided the standards for all monetary transactions and secured a stable financial and currency framework. Under these conditions, the Treaty of Rome in 1957 had nothing to contribute concerning the financial component, but further political progress was desired. The Barre Report in 1969 set an economic and monetary union as first priority for the political leaders of Europe and a “High Level Group” was formed under Pierre Werner4 with the task to draft a report suggesting how this union could be completed by 1980. The “Werner Report” was introduced in October 1970 setting as basic objectives of the EMU the irreversible convertibility of currencies for the Member States, the creation of a stable exchange rates mechanism or a single currency, if possible and free capital movement. The whole process would comprise coordination of economic policies, commonly accepted frameworks for budgetary policies, management of reserves and interest rates control on a Community level, all set in a three stage process, eventually leading to the EMU.

b) PHASE 2: From the Werner Report to the European Monetary System (EMS)

The effort to keep exchange-rate fluctuations in narrow margins considered as a prerequisite that the exchange-rate against the US dollar would remain stable, and when that failed in August 1971, the Member States of the soon to be EMS, adopted the so called “snake in the tunnel”. This mechanism concerned fluctuations of currencies (the snake) of the countries participating, inside narrow limits against the dollar but it was a short-lived operation due to oil crises and austerity policies. In 1979 the EMS was introduced under the concept of stable and adjustable exchange-rates related to the newly adopted European Currency Unit (ECU).

c) PHASE 3: The Delors Report

The EMS retained its primary goal to keep exchange-rates stable for the sake of economic

4 Prime Minister of Luxembourg at the time
growth, the import of investments and the protection of trade, along with the decrease of inflation and its permanent control. The free movement of goods, services, capital and people was adopted in 1985 with the European Commission's White Report on the completion of the Internal market, which set out the strategy of removing all remaining barriers and would eventually lead to the desired single market. In 1988 a Committee for the study of economic and monetary unification was set up presiding Jacques Delors⁵, producing a report in April 1989, known as the Delors Report, which determined the monetary union goal as a full liberalization of capital movements, concise integration of financial markets, irreversible convertibility of currencies, irrevocable fixation of exchange-rates and the likely adoption of a single currency, replacing the old national currencies.

**d) PHASE 4: From Maastricht to the euro and the Euroarea**

A three-stage preparation period was recommended by the Delors report that was accepted by the European leaders. The Treaty on the EU was signed at Maastricht⁶ in 1992, where the European Council was held and it set the “convergence criteria” to be fulfilled for any member state aspirant. Ten years of preparations led to the launch of the euro on January 1999, whereas the establishment of the Euroarea and the operation of monetary policy forwarded to the ECB. The issuance of euro coins and banknotes took place on January 2002. It should be mentioned that while the convergence criteria were not always met, still, the leaders of the EU considered sufficient the fact that the candidate countries met the “spirit” of this unique creation.

**3. THE FUNDAMENTAL PRINCIPLES, VALUES AND OBJECTIVES OF THE UNION**

The Treaty on EU, as declared in Article A of the common provisions “marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen”. The promotion of peace, the Union's values and the well-being of its people, the advancement of economic and social progress in a balanced and sustainable manner, the assertion of the Union's identity on the international scene, the strengthening of the Member States nationals' protection of rights and interests are introduced as fundamental objectives of the Union. Furthermore, the reinforcement of economic and social

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⁵ Jacques Lucien Jean Delors (born 20 July 1925) is a French economist and politician, the eighth President of the European Commission (1985-1995)

⁶ Known as the Maastricht Treaty (Official Journal 92/C 191/01)
cohesion, the promotion of a high level of employment, the boost of scientific and technological advance, sustainable development and protection of the environment, the introduction of close cooperation on justice and home affairs and the maintenance of the “acquis communautaire” were acknowledged as equally important.

Moreover, the Union is founded on certain values, which are common to the Member States. Respect of human dignity, liberty, democracy, equality, the rule of law, fundamental freedoms, human rights, including people belonging to minorities, has been of high importance throughout the evolution of the EU, as recorded to the Treaties of the Union. All EU Member States societies are characterized by pluralism, tolerance, justice, solidarity, equality and non-discrimination; a State that does not honor these values cannot become an eligible candidate for admission.

It should be underlined that, in several points of the Treaties, the European leaders proclaimed their desire to unify the Member States' economies and to ensure their harmonious development, provided that concerted actions had to be taken so as to guarantee steady expansion, balanced trade and fair competition, convergence of economic performance, affirming that the essential objective of all this process and effort was and is the constant improvement of the living and working conditions of their people. The definition of the principles and the guidelines for the common foreign and security policy, the decisions on common strategies, the adoption of joint actions and common positions and the strengthening of systematic cooperation between Member States in the conduct of policy were set in order to obtain the aforementioned objectives.

All in all the fundamental values, principles and the main objectives of the EU as reflected in the texts of the Treaties highlight the desire of the Member States and their citizens to create a common future, a common destiny while securing their national identities, history and particular elements, under the condition that they are mutually respected.

4. THE DEBT CRISIS AND THE EU'S RESPONSE

After the collapse of "Lehman Brothers" and before Greece's sovereign debt crisis, the EU did not apply a collective response to this situation, as the Maastricht Treaty had not anticipated such a mechanism. The EU institutions had the ability to draw precautionary measures, but no instruments for organizing immediate and efficient centralized operations were provided. The first

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7 [http://europa.eu/about-eu/basic-information/decision-making/treaties/index_en.htm](http://europa.eu/about-eu/basic-information/decision-making/treaties/index_en.htm)

8 Lehman Brothers Holdings Inc. was a global financial services company. Prior its bankruptcy in 2008, Lehman was the fourth-largest investment bank in the USA.
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reactions concerned a combative wave of hostile political statements by European leaders against Greece, on its high and unsustainable budget deficits. Articles in the press suggesting that Greece should sell its islands or Acropolis and other ancient monuments were ordinary. Within a period of few months, an eruptive atmosphere had been cultivated among the European community.

The debt crisis, nevertheless, was not just a Greek case, as it appeared to be in the beginning. Ireland, Spain, Portugal and Italy faced a severe financial crisis, as well. Governments in Greece, Spain and Portugal adopted an austerity policy in an exertion to bring, by 2013, their public deficits within the 3 percent margin that the Stability and Growth Pact requested. Fierce measures were imposed on Greece in 2010 and with the mutual agreement of the EU, the International Monetary Fund (IMF) and the Greek government, such measures were expanded in a large scale, in order for Greece to be provided with a supportive package. Soon enough, austerity policy became a guide to peripheral countries, as well, though the adopted measures were different in character and extent. A Memorandum, signed by the EU, IMF and the Greek government passed by the Greek Parliament in a compulsive manner, included clauses dictating that Greece would do everything necessary in order to achieve its financial balances; it also suggested measures regarding major cuts in public spending and whopping taxes and forced Greece to adopt regimes for labour market that were nowhere else to be found in the EU, along with a commitment to proceed in large privatizations. As declared in the preamble of the decision of Council “there is an extremely urgent need for Greece to take decisive action, on an unprecedented scale...” and continues below that “The very severe deterioration of the financial situation of the Greek Government has led the euro area Member States to decide to provide stability support to Greece, with a view to safeguarding the financial stability of the euro area as a whole... The lenders have decided that their support shall be conditional on Greece respecting this decision. Greece is expected to carry out the measures specified in this Decision in accordance with the calendar set out herein”.

Similar but lighter measures were imposed on Spain and Portugal, while Spain chose to keep the intensity in low levels, in order to recover sooner from the deep recession that such a policy would surely generate. Portugal attended the path in between Greece and Spain. Nevertheless, all austerity measures addressed the sector of employment and it became apparent, even for a total unfamiliar, that the ultimate aim was not only to confine public spending, but to reduce significantly

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9 The International Monetary Fund (IMF) is an organization of 188 countries, working to foster global monetary cooperation, secure financial stability and reduce poverty around the world [http://www.imf.org/external/about.htm](http://www.imf.org/external/about.htm)

10 Memorandum for Greece is governed by a unique special status and the arrangement includes a loan facility agreement and the Council's Decision of 10/05/2010 by the EU, the law 3845/2010 by the Greek Parliament and the Stand by Arrangement by the IMF (“The Greek Memorandum in european, global and national legal order” by P. Glavinis, 2010 in page 82)
the cost of labour in the public sector, in the foreground, and in the private sector consequently. Salaries and pensions decreased on an impressive level, laws on employment contracts and massive layoffs dramatically altered, severe augmentation of age limits in pension terms were introduced, placing, thus, the workforce in an unprecedented tough spot. The capital was largely facilitated and a redistribution of income was launched, on the burden of working people, while Greece, Portugal and Spain, the most unprivileged and unequal countries of the Eurozone are confronted with the consequences of the strategy selected by the aforementioned heads of the EU.

5. THE GREEK DEBT RESTRUCTURING
a) GENERAL OVERVIEW

The large amounts of debt that certain EU countries accumulated over the years render the present financial status a sovereign debt crisis. The sustainability of these states' debt is a major concern for the free market and an event of default remains always a risk. It should be noted that the sovereign bonds market forms a significant funding source for the industrialized countries in the present financial reality. In the above mentioned situation of huge accumulated sovereign debt, it becomes apparent that investors eschew from purchasing bonds issued by these states.

Regarding Greece, the supportive package that had been provided by the IMF and the EU proved insufficient. The Greek debt needed restructuring and the Greek government had to negotiate with its creditors in order to obtain a mutually accepted solution.

b) THE PRIVATE SECTOR INVOLVEMENT (PSI)\textsuperscript{11}

The first PSI was agreed in July 2011, it concerned a 21% reduction of the Net Present Value of the Greek bonds and took place with a swap of old Greek bonds, that were replaced by new ones of longer maturity and medium coupons. This version of the PSI failed because: a) it was only bonds maturing up to 2020 that were participating, leaving out 61 billion serving until 2057, b) the coupons granted on the new bonds remained high and provided no gain regarding the needs of Greece for direct cash flow, 3) the swap had a voluntary character, sacrificing therefore the participation of the creditors and mainly 4) the ECB was excluded from this project. The reason why ECB was left from the scheme lies on the fact that it had obtained Greek bonds of 45-50 billion

\textsuperscript{11} PSI Launch Press Release here http://www.minfin.gr/portal/en/resource/contentObject/id/7ad6442f-1777-4d02-80fb-91191c606664

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while striving to grant stability for the Greek bond market. If the ECB had participated in the PSI, it would bear losses that should be raised afterwards by its shareholders, the National Central Banks (NCBs) of the Member States of the Eurozone. Not only would such a situation result to a severe wound of the estimation of the ECB, but a great collection of taxpayers' money would be necessary, principally from countries of the North. On the other hand, ECB would violate Article 123 of the Treaty on the Functioning of the EU (TFEU)\(^\text{12}\) if it proceeded in printing money with the intent to bailout countries of the Eurozone.

On October 2011 the representative of the Institute of International Finance\(^\text{13}\) (IIF), Charles Dallara, was forced by the EU’s leadership to accept, on behalf of the bondholders, a 53.5% “haircut”\(^\text{14}\) in the face value of the Greek bonds. Mr. Dallara objected on the voluntary nature of such a large “haircut” but this didn't prevent the inevitable. The PSI+ included all the Greek bonds and insisted on the volitional nature because a compulsory restructuring would amount to an event of default. It was a manifest desire of the European leadership to avoid a Greek bailout burdening their taxpayers as well as a Greek default. The Commissioner Olli Rehn\(^\text{15}\) accurately stated “We all know what to do, we just don't know how to do it and get re-elected”. The replacement bonds were made up of a collection of short-dated bonds issued by the European Financial Stability Facility (“EFSF”)\(^\text{16}\) and bonds governed by English law, issued by Greece, with longer term maturities ranging between 11 and 30 years in length.

One additional aspect of the arrangement provided that part of the money saved by the PSI, would be distributed to banks in order to recapitalize them, as they suffered great losses from the whole endeavor. With this manipulation the EU Council, in a way, bribed the financial institutions so as to ensure their involvement in the “haircut” and the political leaders of the Euroelite gained a significant access and control over the banking system.

\(\text{12}\) Accordingly Article 12 of the statute of the European System of Central Banks and of the European Central Bank prohibits direct financing by the ECB to Member States of the EU

\(\text{13}\) The Institute of International Finance, Inc. (IIF), is a global association of financial institutions including most of the world’s largest commercial and investment banks, as well as insurance companies and investment management firms

\(\text{14}\) The margin or difference between the actual market value of a security and the value assessed by the lending side of a transaction

\(\text{15}\) Olli Ilmari Rehn (born 31 March 1962) is a Finnish politician, currently serving as European Commissioner for Economic and Monetary Affairs and Vice President of the European Commission

\(\text{16}\) The European Financial Stability Facility (EFSF) was created by the euro area Member States in 2010 within the framework of the Ecofin Council with the mandate to safeguard financial stability in Europe by providing financial assistance to euro area Member States. It served as a temporary rescue mechanism and as of 1 July 2013, the EFSF does not engage in new financing programmes. The ESM is now the sole and permanent mechanism for responding to new requests for financial assistance by euro area Member States [http://www.efsf.europa.eu/about/index.htm](http://www.efsf.europa.eu/about/index.htm)
c) THE RETROACTIVE COLLECTIVE ACTION CLAUSES (CACs)\(^\text{17}\)

In reality, this exchange was facilitated because the Greek government compelled Greek sovereign bondholders to bear the exchange through the activation of the so-called collective action clauses (“CACs”), retroactively applied to the existing sovereign bonds. CACs provide that a bondholders’ majority is able to change certain terms of a specific bond arrangement, including those concerning maturity, the repayment of the initial principal capital and the specified interest.

Whereas every country has developed a certain regime providing for bankruptcy cases in the private sector and undertakings, unfortunately, there is no common ground concerning sovereign debt situations. The insertion of CACs in sovereign bonds was addressed as an expeditious and efficient instrument to achieve debt restructuring for States. The implementation of CACs in European bonds was introduced in April 2003 by the Economic and Financial Committee (EFC). Notable to say that Greece and Italy are the only two Member States of the EU that refused to implement CACs in their domestic bond issuance, mainly because this would influence the price and liquidity of their bonds, thus it would proliferate the borrowing cost.

When PSI was already complete, the Greek government decided to amend Greek legislation concerning CACs and actually implement what the rest of the Eurozone countries attended by late 2003. In order to compel all remaining holders of bonds issued under Greek law to swap their securities, the CACs were activated through legislation hastily passed for that purpose in February 2012, which allowed this to have retroactive effect\(^\text{18}\). The bonds issued under Greek law and purchased without the terms of CACs changed in an unfair manner. The legislative regime gave the right to a qualified majority of bondholders to participate to the restructuring of the Greek debt and to modify the contractual claims of the minority without the latter’s concession, even before the passing of the statute by the Greek parliament and the enactment of this law. This ruse led to the participation of 95.7% of Greece’s creditors in the debt “haircut”, which covered €197 billion of the total of €206 billion in Greek government bonds. It is manifestly controversial for the CACs to have been applied retroactively and to change the terms of existing bonds; it should be noted that the International Capital Market Association (“ICMA”)\(^\text{19}\) considered the language used in the Greek CACs to be broadly consistent with a new CAC model, that was recently published by the EFC.

\(^\text{17}\) A collective action clause (CAC) allows a majority of bondholders to agree to a debt restructuring and this agreement becomes legally binding on all holders of the bond, including those who vote against the restructuring

\(^\text{18}\) Law 4050/2012 introduced by the Greek parliament on 23 February 2012 (thereafter Greek Act)

\(^\text{19}\) The International Capital Market Association (ICMA) is a unique organisation that affects the global capital market and represents a broad range of capital market interests including global investment banks, smaller regional banks and more.
d) THE GREEK CONSTITUTION ON RETROACTIVE FORCE OF LAWS

The Greek Constitution regulates the matter of retroactive force of law dually. On the one hand, certain provisions deal with retroactive laws with specific content and substance, such as Article 7 par. 1 regarding the principle of no retroactive force of penal laws, Article 78 par. 2 on the prohibition of laws imposing tax or other economic burden retroactively beyond the financial year prior to the year of enforcement of the tax. In addition, Article 107 par. 2 permits the one-time issuance of law, adjusting the terms of pause or review of agreements concluded during the dictatorship.

On the other hand, Article 77 par. 2 contains a general and significant rule: "A statute which is not truly interpretative shall enter into force only as of its publication". By this norm the Greek Constitution brings forward a barrier to the legislative practice and clarifies that, when the provisions of a law are new, concerning their substance and content, and are not addressed for the interpretation of an already existent regime which was vague or ambiguous, the courts and the administration are not allowed to convey retroactive meaning, even if such a clause is contained.

The principle of non retroactive force of laws derives from the rule of law principle and more specifically from the principle of legal security. The justification is primarily found in the admission that, a retroactive law subverts rights or legal conditions that already existed prior to its issuance, which led one person to make a certain decision, abide by one attitude and honor specific living and financial choices. The legitimate expectations, that any citizen has from the applicable laws and the prospect that upon such conditions his choices will be realized, emanate from the need of legal certainty and the implementation of rule of law. The essential commodity that is protected, thus, is the reliance of citizens in a perspective of non-rollover of already established rights or

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20 This model is mandatory for all sovereign debt securities, for maturities exceeding one (1) year and issued after the 1st of January 2013, but does not purport to be applied on a retroactive basis
21 Article 7 par. 1: “There shall be no crime, nor shall punishment be inflicted unless specified by law in force prior to the perpetration of the act, defining the constitutive elements of the act. In no case shall punishment more severe than that specified at the time of the perpetration of the act be inflicted”
22 Article 78 par. 2: “A tax or any other financial charge may not be imposed by a retroactive statute effective prior to the fiscal year preceding the imposition of the tax”
23 Article 107 par. 2: “A statute, to be promulgated once and for all within three months of the date of entry into force of this Constitution, shall specify the terms and the procedure for the revision or cancellation of administrative acts approving investments in application of legislative decree 2687/1953 and issued in any form whatsoever, or agreements contracted on investment of foreign capital between April 21, 1967 and July 23, 1974, with the exception of those pertaining to the registration of ships under the Greek flag”
prebuilt legal conditions and relationships.

In this legal framework whenever a necessity appears, such as new social changes, the legislator shall intervene to pre-existing legal conditions and relationships provided that:

a) Retroactive effect is serving and facilitating the universality and unity of an intended social and political transformation,
b) The good of legal certainty, protected by the principle of non retroactive force of laws and the good of social equity, protected vice-versa, come into collision whenever the retroactive intervention results to onerous effects, not when it produces favourable impact for those concerned,
c) Rights and legal relationships or conditions vested and protected by the Constitution must not be upturned. Article 17 protecting property and ownership excludes any onerous retrospective intervention of the legislator against the holder of that right, save the specifications provided in Article 17.

e) i. NATURAL PERSONS INVOLVED IN THE PSI

The restructure of the Greek debt was certainly not the first, neither the last occurrence of sovereign debt mitigation through a so called "haircut". The unique features of this project concern that: a) it was the largest government debt restructuring in history, concerning almost 78% "haircut" of the face value of the Greek bonds, repayment of the initial capital after 30 years and the world’s largest liability management transaction ever and 2) it even involved natural persons, who were innocent retail investors holding Greek bonds purchased in the primary market, that represented a somewhat 5% or 10 billion in the total debt. The individuals in the Greek territory are about 15.000, 9.000 of whom invested amounts up to 100.000 euros. These people were namely depositors with no prior investment experience, who declare that they were misled by trained bank personnel; they were reassured that the transaction entailed privileged time deposits with higher interest rate, guaranteed by the Greek Public, which is under the permanent monitoring and control of the EU, rather than a financial instrument inherent with severe economic risks.

The Greek Act forcing implementation of CACs in the terms of the pending Greek sovereign securities, provided verbatim:

"The provisions of this Article aim to protect the supreme (overriding) public interest, are mandatory rules effective immediately, prevail any contrary legislation of general or special provisions".
This reveals the effort of the Greek government to strengthen the regime and erect it in a status of “overriding mandatory provisions” closely related to Article 9 of the Rome I Regulation\textsuperscript{24}.

ii. DIFFERENTIATION OF INVESTOR AND CONSUMER

It is essential, thus, to distinguish between an individual who decides to purchase an investment product, such as sovereign bonds and bears a great level of market risk and investors who engage in such speculations by profession. In the MiFID II Impact Assessment\textsuperscript{25} the EU introduced the notion of the “mass affluent” in an attempt to evaluate the costs and benefits of the present MiFID investor protection reclamation. There is large diversification between Member States regarding investment schemes, household assets, the level of investment expertise and knowledge which renders regulation of investor’s protection, from the consumer's point of view, quite difficult.

The core of this troublesome exercise lies in the distinction between the “prudent saver” and the “lusty opportunist” who engages in speculation and asset accumulation. It should be mentioned that in the 2008 Optem Report\textsuperscript{26} for the EU on disclosure, household investors were categorized as either “prudent savers who sought “safe” investments and might be seen as similar to consumers, or gamblers, ready to bear the market risks”.

Regarding the sovereign bond market one would emphasize that the majority of private investors are institutional investors supplied with experienced risk analysts and highly paid experts. These kinds of investors possess huge resources of capital, are accurately informed on the risks of non-payment and engage in the ordinary way in such transactions. It is natural for them to undergo the consequences of their decision. But it is debatable if the same should apply to innocent retail investors who decide to entrust their savings, or part of it, to financial securities, issued by an EU Member State for example; this is the reason why this concerns led to the need for a new regime which provided such a distinction between investors.

In this point two closely connected features should be mentioned, equally important regarding the assessment of this topic. Greece is an EU Member State and the Greek bonds were, according to the European legislation, under the auspice and control of the EU institutions and the ECB, and 2) for many years the Greek government provided forged deficit statistics presenting a

\begin{footnotesize}
\textsuperscript{24} Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) \\
\textsuperscript{26} Pre-contractual information for financial services Qualitative study in the 27 member states Summary Report
\end{footnotesize}
lower debt than the actual one and thus had misinformed the public on the actual risks involved in the Greek sovereign bonds market. These two factors indicate that, apart from the Greek governments who participated in this fraud and should, obviously, be held accountable for that, nevertheless, the EU also bears responsibility for its failure to monitor and prevent this situation, as it should according to Article 121TFEU paragraph 4\textsuperscript{27} and Article 126TFEU, especially paragraph 11 which holds that: “As long as a Member State fails to comply with a decision taken in accordance with paragraph 9, the Council may decide to apply or, as the case may be, intensify one or more of the following measures: — to require the Member State concerned to publish additional information, to be specified by the Council, before issuing bonds and securities”. The reluctance of the European political leaders to undergo control of their national finances by the institutions of the EU, has resulted in losses for thousands of individuals who did not have “a say” in this policy.

6. SPECIFIC ISSUES ABOUT THE PSI

Certain important factors concerning the PSI contrivance should be underlined. The first one is about the inequality of treatment, as the restructuring process included only the private sector, while public debt was excluded. All Greek bonds held by the European financial institutions along with the ones owned by the NCBs fall in this category. One could argue, though, that the public sector acquired these bonds in order to provide liquidity to Greece as part of the Securities Market Program (SMP) during the conduct of ECB’s monetary policy. Nevertheless, the truth is that, just before the exchange, the EU governments bailed out, not only the ECB in terms of the SMP, but also all NCBs who had bought Greek bonds for investment and not for monetary purposes.

Secondly, European leaders decided that the “voluntary” path for the PSI would be the best one. In other words, they assessed that they had enough political power so as to push the bondholders to accept the losses. As soon as they realized that this was not the case, they referred to the old standard “L’État, c’est moi” (I am the state)\textsuperscript{28}. The original Greek bonds did not include CACs and Greece decided to retrospectively introduce them after the commencement of the restructuring. The so-called retroactive CACs were nothing more than a deception. Greece under

\textsuperscript{27} Article 121 par. 4: “Where it is established, under the procedure referred to in paragraph 3, that the economic policies of a Member State are not consistent with the broad guidelines referred to in paragraph 2 or that they risk jeopardising the proper functioning of economic and monetary union, the Commission may address a warning to the Member State concerned. The Council, on a recommendation from the Commission, may address the necessary recommendations to the Member State concerned. The Council may, on a proposal from the Commission, decide to make its recommendations public”

\textsuperscript{28} This quote attributed, by some, to Louis XIV, King of France, as addressed to the Parliament of Paris (April 13, 1655) remains disputed.
the blessings of the EU exercised its sovereign power not to pay its creditors and passed the Law 4050/2012, under which contract law was left out and “Public Interest” with “mandatory provisions” became the core of the whole scheme. Article 9 of EU 593/2008 was engaged, thus implementing European legislation.

For that subversion to bear a minimum of legitimization and striving to displace the blame into the banks, the heads of EU suggested a vote of the bondholders, which took place and is highly criticised by analysts and commentators. On one hand the Greek institutional bondholders who represented the 35% of the eligible bonds were either bribed (through recapitalization for the banks) or constrained (fiduciaries of the pension funds revealed that they were menaced). European banks were also offered a preferential status once they agreed to take part in the restructure. On the other hand, the IIF representatives were besieged by their respective governments. Non-banks, pension funds, insurances, non-European investors, innocent retail investors lost 78% of their money on the spot, due to this unilateral conversion of the bonds' agreement.

It should be borne in mind that the Greek debt restructuring was a perception conceived by politicians, merely by the Euroelite who made false promises to their electors that banks would pay for the bad decisions they took when undertaking risky investments and who concealed the fact that recapitalizations of banks would actually take place with taxpayers' money. And when European leaders declared that the restructuring would occur on a voluntary basis, they were obviously lying. Mario Draghi29 questioning the rationale of private sector involvement, stated “the PSI was, I would say, an understandable political response to the indignation of the people of Europe in the face of selfish behaviour by some governments, when making their fiscal policy and their budgetary policy. But this had several, serious unintended consequences, and we are living through them now” while Roger McCormick30 correctly emphasized “The eurozone needs stability and the EU needs to restore investor confidence, and this agreement should provide more time”.

7. EXPROPRIATION OF BONDHOLDERS

A critical assessment needs to be made regarding whether the “overriding mandatory provisions” as referred in the Greek Act, which retro-effectively activated the CACs and the exchange of bond debt in such a fashion, qualifies as a “forced expropriation”. The argument of the

29 Mario Draghi (born 3 September 1947) is an Italian economist and banker, serving as President of the European Central Bank
30 Roger McCormick is the Director of the Sustainable Finance Project at London School of Economics and Political Science, and a Visiting Professor at LSE
voluntary character of the “haircut”, as decided by the abovementioned qualified majority of bondholders, could not be legally sufficient, because the consent that was necessary for the activation of CACs was provided long before the enactment of the respective law. Furthermore, this law does not regulate in a general manner and for indefinite cases, on the contrary the Greek State is the sole part which benefits from the provisions of the regime on this specific situation, which, after all, was the only objective of the statute. It is generally accepted that when States choose to engage with investors on a contractual basis, they waive their sovereign power for that purpose and accept the application of general principles of private law for any dispute arising from these contractual claims. Latter rulemaking that allows avoidance of contractual obligations of the State based on its sovereign power is unacceptable from the perspective of justice.

a) BILATERAL INVESTMENT TREATIES (BITs)

Bilateral Investment Treaties are treaties agreed between two states under which they mutually agree to protect private foreign investments from expropriation, setting strict conditions on that matter and providing adequate compensation, in case it occurs. BITs form the basis of individual contractual claims and recoupment and regulate non-discrimination of the foreign investor, fair and equitable treatment compared to nationals or other third parties (a third state or its nationals). The investment qualified to be protected under a BIT is usually a direct investment, in the host state's territory, which includes the acquisition of assets held in that country or the acquisition of shares. Whether sovereign bonds can be assessed as direct investment, safeguarded by BITs, or not, is unclear.

b) ABACLAT AND OTHERS V. ARGENTINE REPUBLIC

In Abaclat and Others v. Argentine Republic31 the same query was addressed. The Arbitral Tribunal at the International Centre for Settlement of Investment Disputes (ICSID) decided on claims of over 180,000 individuals and corporations against Argentina that originated from sovereign bonds. A BIT signed between Argentina and Italy in 1990 set the basis. In December 2001 Argentina declared default on its sovereign bonds and later on invited investors on exchange offers. In 2005 the “Emergency” Law was enacted, which put an end to the exchange procedure and

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31 Abaclat and Others v. Argentine Republic, ICSID Case No. ARB/07/5 (formerly Giovanna a Beccara and Others v. The Argentine Republic)
no bonds could be exchanged furthermore.

c) SOVEREIGN POWERS

One significant point in Abaclat, closely related to the Greek case, was about the contractual nature of the investors’ claims against Argentina. The tribunal founded that “… with respect to a BIT claim an arbitral tribunal has no jurisdiction where the claim at stake is a pure contract claim … because a BIT is not meant to correct or replace contractual remedies …” and continued that “… where the equilibrium of the contract and the provisions contained therein” were “unilaterally altered by a sovereign act of the Host State” the claim cannot be perceived as a pure contract claim. An exception is applied, according to the forum, whenever “… the circumstances and/or the behavior of the Host State appear to derive from its exercise of sovereign State power. Whilst the exercise of such power may have an impact on the contract and its equilibrium, its origin and nature are totally foreign to the contract.”

Such circumstances were found in the Argentine Emergency Law of 2005. As for Greece, the enactment of the retrospective CACs through the Greek Act satisfies those exceptional requirements well. With the introduction of this law, Greece gained advantages founded on its sovereign powers, albeit the unilateral alteration of the contract terms had no legal basis.

d) THE NOTION OF INVESTMENT

The meaning of investment was also dealt by the tribunal in the Argentine case, a fact with equal importance for Greek bond investors. In order for the BIT to be relevant to the claims deriving by the bonds, these claims should qualify as investment claims according to the BIT. Following a wide approach, the tribunal proceeded in the interpretation of the wording in the BIT, where in Art. 1 it is held that “investment shall mean, in compliance with the legislation of the receiving State and independent of the legal form adopted or of any other legislation of reference, any conferment or asset invested or reinvested by an individual or corporation of one Contracting Party in the territory of the other Contracting Party, in compliance with the laws and regulations of the latter party”. In addition, Article 1 provides an enumeration of investment examples, such as “bonds, private or public financial instruments or any other right to performances or services having economic value, including capitalized revenues”. The rationale of the tribunal was founded
first on “… rights and values which may be endangered by measures of the Host State, such as an expropriation, and therefore deserve protection”. Matching the objective of the BIT to secure the protection of investors and in light of the wording of Art. 1, the panel decided that the Argentine sovereign bonds qualified as an investment protected under the relevant BIT.

Another aspect of the matter was whether bond purchases formed an investment “in the territory of the other Contracting Party” as usually required in BITs. Argentina argued that this was not the case with its sovereign bondholders, because the investment concerned investors and banks as intermediaries, thus no money was ever transferred from investors to Argentina. This objection was not accepted by the tribunal as it referred to the financial nature of investment criteria, specifying as substantial “… where and/or for the benefit of whom the funds are ultimately used, and not the place where the funds were paid out or transferred.”

The above mentioned conclusions of the tribunal constitute a significant weapon supporting that similarly the Greek sovereign bonds qualify as investment, under the BITs that Greece has signed with other states, the nationals of which might be holders of Greek sovereign debt through bonds and who were forced to accept a “haircut” on their initial capital and the revenues and an elongation of the maturity. For this category of investors, as discussed below, there is a possibility to appeal to the ICSID under the related provisions.

e) GREEK BONDHOLDERS

The opportunity, though, to resort to ICSID arbitration under the relevant BITs applies only to the nationals of other countries, not to Greek bondholders, provided that Article 25 of the ICSID Rules of Procedure for Arbitration Proceedings on Jurisdiction of the Centre recognizes jurisdiction only for disputes arising between a Contracting State and a national of another Contracting State32.

32 Article 25: (1) The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally.
(2) "National of another Contracting State" means:
(a) any natural person who had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration as well as on the date on which the request was registered pursuant to paragraph (3) of Article 28 or paragraph (3) of Article 36, but does not include any person who on either date also had the nationality of the Contracting State party to the dispute; and
(b) any juridical person which had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration and any juridical person which had the nationality of the Contracting State party to the dispute on that date and which, because of foreign control, the parties have agreed should be treated as a national of another Contracting State for the purposes of this Convention.
Under these findings, Greek bondholders are not entitled to exercise this tool and are left with the only option to resort to Greek courts. Indeed, a great number of natural persons, individuals who had trusted the Greek state with their money, appealed to Greek justice, claiming that the "haircut" led to a dramatic impairment of their property and was imposed on them without having participated in any negotiation.

The unconstitutionality of the "haircut" lies firstly on the retroactive effect stemming from the implementing PSI law and secondly on the fact that the property protection provisions of the Greek Constitution could form the legal basis for challenging the dramatic reduction of the face value of the bonds. The Greek Constitution, as amended in 2008, visualizes an effort to keep balance between the need for respect and protection of private property rights with the state's commitment to secure the public interest on economic level. According to the constitutional provisions, private property rights cannot be invoked contrary to the public interest (Art 17.1)\(^33\) and following that private economic activities should not grow to the disadvantage of human dignity and freedom, or in a way that the national economy is damaged (Art 106.2)\(^34\), it continues clarifying that a state should not intervene with private property, even if the protection of public interest is the ultimate goal, unless a full compensation is paid (Art 17.2)\(^35\).

Notable to say the Greek Constitution secures the protection of property rights in a broad sense, as these rights derive from contractual and real property transactions. This approach is consequent to the Protocol 1, Article 1 of the European Convention on Human Rights (ECHR) which safeguards all property rights and interests\(^36\).

The State Council in vast majority concluded that the controversial PSI procedure lies within the limits of the Greek Constitution, a decision that was highly criticized in the legal community. The full operative part is unavailable as the decision is, so far, not officially published, but it became apparent that the Court classified the involvement of small Greek debt bondholders in the bond swap as constitutionally accepted, on public interest grounds, which were invoked indefinitely. Furthermore, the State Council judges ruled that the procedure took place in a fair manner and under objective criteria, without infringement of the Constitution, such as Article 4

33 Article 17 par.1: "Property is under the protection of the State; rights deriving therefrom, however, may not be exercised contrary to the public interest"

34 Article 106 par.2: "Private economic initiative shall not be permitted to develop at the expense of freedom and human dignity, or to the detriment of the national economy"

35 Article 17 par.2: "No one shall be deprived of his property except for public benefit which must be duly proven, when and as specified by statute and always following full compensation corresponding to the value of the expropriated property at the time of the court hearing on the provisional determination of compensation. In cases in which a request for the final determination of compensation is made, the value at the time of the court hearing of the request shall be considered"

36 As it will be introduced subsequently
concerning equality of citizens. From the beginning it was considered as a risky venture to request Greek judges to decide in favour of the individual debt bondholders and against the Greek State, while the worst financial crisis is plaguing the country.

1) THE EUROPEAN LAW ON EXPROPRIATION

It is very likely that investors who suffered a “haircut” in their bonds during the operation of the Greek debt restructuring consider the reduction of their property as an expropriation and all relative legal provision protecting property rights will be useful. Article 17 of the Charter of Fundamental Rights of the EU (2000/C 364/01), holds on the Right to Property that:

"Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest."

This article is based on Article 1 of the Protocol to the European Convention of Human Rights (ECHR):

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

It is helpful to examine what has been defined as property up until now in order to define expropriation. The rights referred in article 1 are fundamental and common to every EU Member State's constitution. The general rules applicable when we examine whether or not a violation of Article 1 has occurred, were set out in James v United Kingdom37. One issue addressed regarded whether the deprivation was justified on ‘public interest’ grounds. States enjoy considerable power when applying that feature. The court held that the national authorities' decision shall be respected, save the case it is proven ‘manifestly without reasonable foundation’. One should keep in mind that courts are generally unwilling to challenge the state’s argument on what actually constitutes public interest, thus it is inevitable that not many successful challenges to measure on this ground have

37 James and others v The United Kingdom - 8793/79 [1986] ECHR 2 (February 21, 1986)
been recorded.

Furthermore, the court considered if there is a reasonable relationship of proportionality between the means employed and the objective pursued, holding that there should be a ‘fair’ balance between safeguarding the general interests of the society and the need to secure and protect the individual’s fundamental rights. Such a balance is by no means fair when the applicant is subject to ‘an individual and excessive burden’. The seizing of one's property without a reasonable compensation for the loss, is apparently a disproportionate intervention and a breach of Article 1 is established.

In Stran Greek Refineries and Stratis Andreadis v. Greece38 the European Court of Human Rights (ECtHR) adjudicated in favour of the applicants in their compensation claim for a violation of Article 1, Protocol 1 of the ECHR. The right to the peaceful enjoyment of possessions was infringed, according to the Court, because the State interfered with an arbitral award and therefore interfered with the applicants' property right.

It was not argued that the Greek Republic, when exercising its sovereign power, did not have the discretion to terminate a contract, arranged during the dictatorship of 1967-1974, as it considered to be of the best interest of the country, but the ECtHR pointed out that a compensation should have been provided. Under these findings, a recognition of the superior state interest taking precedence over individuals' contractual claims was reflected, always taking into account the need to secure a fair balance in the underlying contractual relationship.

8. BANK DEPOSITS CONFISCATION

a) THE CASE OF CYPRUS

Soon after the Greek PSI, Cyprus found itself in a difficult bail-out situation. It should be pointed out that the Greek PSI took place with no forecast for recapitalization of the Cypriot banks, which were heavily exposed to Greek debt bonds and the "haircut" generated extra losses for banks in Cyprus. The Cypriot government, at the time, did not realize the noose they were agreeing to bear. On March 2013, the finance ministers of the Eurozone, in response to the need of Cyprus' bail-out, introduced a levy on bank deposits held in the Cypriot banks, applying both to national and foreign depositors. This decision, certainly, came across fierce oppositions from academics,

economists, politicians inside and outside the EU, media, experts and apparently Cypriot citizens.

Cyprus needed a €17 billion bailout for matured government debt, government deficits and for financial system support. The IMF, the ECB and the European Commission (EC), or so called Troika\(^{39}\), offered €10 billion, a relatively big amount compared to the size of Cyprus' economy\(^{40}\). The reasoning why the island’s needs and the Troika’s amount are so different is twofolded. First, Cyprus needed €7 billion for the recapitalization of the banking sector, an amount that neither Germany nor the other Eurogroup countries were willing to pay. The basic argument was that such saving of the banking sector would secure wealthy non-EU depositors in Cypriot banks from the collapse of their banks, which appeared to be a moral issue.

On the other hand, the IMF assessed that participation in the programme would result to an unsustainable debt for Cyprus, havind the Greek precedent in mind. The Cypriot banking sector surpassed the country’s GDP, principally consisting in depositors of €66.7 billion, reflecting 71% of the liabilities. 40% were Cypriot residents, 34% non-residents domiciled in Cyprus, 19% Greeks and 7% from the rest of the world. The depositors bail-in plan seemed ideal to the IMF as the Cypriot banking system had this special features. The Eurogroup, therefore, asked Cyprus to raise on its own the €7 billion needed for the banking rescue and though the Cyprus government made several suggestions that excluded the participation of depositors, it became clear to the Cypriot deputation that only considerations affecting depositors, were to be assessed. The outcome was that all depositors in all Cypriot financial institutions were stricken. For deposits over the insured €100,000 there would be a 9.9% diversion of their deposits into shares of the troubled banks, which would actually assume their deposits for the sake of their recapitalization. Surprisingly, 6.75% of insured depositors were also affected.

In April 2013 Nicos Anastasiades, the Prime Minister of Cyprus, asserted «Regrettably, this fundamental EU principle was not respected. On the contrary, decisions reached beforehand by the interested parties were coercively imposed». He added, «I sincerely hope that this precedent in relation to Cyprus is not going to be applied elsewhere in Europe, although, as it is well known, the main raison d’etre of a precedent is that it can serve the purpose of establishing norms and guidelines to be repeatedly and universally applied».

The legislative contrivance in Cyprus' case was that the European leadership refrained from legislating on bank deposits confiscation, at that time, on EU level, where Cyprus would implement

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39 “Troika” is referred to the enhanced cooperation between the IMF, the European Commission and the ECB in staff-level program discussions with governments, on the policies that are needed to put their economies back on the path of sustainable economic growth

40 56 per cent of 2012 GDP
the provisions of such a regime as an EU Member State. On the contrary the heads of Europe brilliantly rolled over the responsibility to legislate on the levy to the Cyprus government which was clearly extorted to pass with a thin majority such a regime through its Parliament in order to get the rescue package. In Eurogroup negotiations, the German Finance Minister Wolfgang Schaeuble had warned Cyprus that "unless there was a bail-in, there would be no bailout". 

b) THE RIGHT TO PROPERTY UNDER THE CYPRIOIT LEGISLATION

The Constitution of the Republic of Cyprus, compatible with all European regimes regarding the right to property, protects this concession in Article 23. As examined in a previous chapter, on the Greek "haircut", the right to property is enshrined in Article 1 Protocol 1 of the ECHR as the right to peaceful enjoyment of possession and thereafter Article 17 par. 1 of the European Charter of Fundamental Rights (as stated above). Article 52 par. 3 of the Charter provides that the scope of this right is the same as the one protected by the ECHR.

When passing the relevant statute Cyprus was actually carrying the burden to transpose the Eurogroup Decision into its legal order. Save the fact that such a Decision has no binding effects, Cyprus bears all liability and prospective for sanctions for any infringement of its own Constitution's provisions safeguarding the right to property when it enforced the levy on its 'own' initiative. But if the Economic and Financial Affairs Council (ECOFIN) had reached a decision before the Cypriot legislation, the national legislation would certainly fall within the scope of Article 51 of the Charter and the outcome would be entirely different. Regarding the field of application of rights protected under the Charter, it is most useful to visit the ECJ’s very recent Judgment of 26/2/2013 in C-617/10 Åkerberg Fransson.

42 It is commonly known as the Ecofin Council, or simply "Ecofin" and is composed of the Economics and Finance Ministers of the Member States, as well as Budget Ministers when budgetary issues are discussed.
43 "20 That definition of the field of application of the fundamental rights of the European Union is borne out by the explanations relating to Article 51 of the Charter, which, in accordance with the third subparagraph of Article 6(1) TEU and Article 52(7) of the Charter, have to be taken into consideration for the purpose of interpreting it (see, to this effect, Case C-279/09 DEB [2010] ECR 1-13849, paragraph 32). According to those explanations, ‘the requirement to respect fundamental rights defined in the context of the Union is only binding on the Member States when they act in the scope of Union law’.
21 Since the fundamental rights guaranteed by the Charter must therefore be complied with where national legislation falls within the scope of European Union law, situations cannot exist which are covered in that way by European Union law without those fundamental rights being applicable. The applicability of European Union law entails applicability of the fundamental rights guaranteed by the Charter.”
9. THE SOLIDARITY LEVY

The President of the Eurogroup of Eurozone Finance Ministers, Jeroen Dijsselbloem stated on March 16, 2013, that: "As it is a contribution to the financial stability of Cyprus, it seems "just" to ask a contribution of all deposit holders". On the 18th of the same month, he stated among others the following, on behalf of the Eurogroup: “The Eurogroup continues to be of the view that small depositors should be treated differently from large depositors and reaffirms the importance of fully guaranteeing deposits below €100,000. The Cypriot authorities will introduce more progressivity in the one-off levy...provided that it continues yielding the targeted reduction of the financing envelope and, hence, not impact the overall amount of financial assistance up to €10 billion.”

Mr. Dijsselbloem on behalf of the Eurogroup Ministers actually announced that it was “just” for “all” depositors to participate in the Solidarity Levy. This illustrates that the Euroleadership had no consideration for the small depositors, who up until then felt secured by the deposit insurance scheme, on cases of banks' financial difficulties. German Finance Minister Wolfgang Schaeuble announced in the German daily paper "Bild" that "Cyprus is and will remain a special one-off case," and "Savings accounts in Europe are safe". It is very curious now that he, who persisted on the Big Hit on depositors mostly, passed responsibility to the Commission, the ECB and the Cypriot government for the disastrous result, when he stated: ”We would obviously have respected the deposit guarantee for accounts up to €100,000,”...“But those who did not want a bail-in were the Cypriot government, also the European Commission and the ECB, they decided on this solution and they now must explain this to the Cypriot people.”

European officials tried their best to stress that Cyprus' bailout was a unique case - after Eurogroup chairman's, Jeroen Dijsselbloem, suggestion that this scheme would provide a model for similar crises in the future. "Together in the Eurogroup we decided to have the owners and creditors take part in the costs of the rescue - in other words those who helped cause the crisis," Mr. Schaeuble stated.

10. EUROPE IS PRACTICING FOR THE "HAIRCUT" COMMUNITY

The EU veritably left all others behind in introducing the deposits' confiscation. On April 24, 2013 the Economic and Monetary Affairs Committee (ECON) of the European Parliament (EP) voted on a proposal for a Directive on bank recovery and resolution. As a basic feature of the
reformed EU banking legislation, there was a debate in the ECOFIN on deposit cuts conducted in May, and on the 20th of the same month a group of lawmakers in the EP’s Economics Committee overwhelmingly held that, from 2016, within the EU, large depositors could suffer losses, provided that the respective bank, where the account is held, needs a rescue, exactly as the scenario in Cyprus took place. With this decision depositors of more than €100,000 are renamed as “investors”, although they do not participate in bank profits as bondholders or shareholders do. The EP along with the countries of the EU stipulate the regime, under which regulators could impose damages on creditors and proceed with other measures as well, during a bank bailout, suggesting the formation of national resolution funds backed up on bank contributions. The fundamental provisions are:

1. Deposits under €100,000 would be safeguarded.
2. A bank that has exhausted other avenues such as shareholders and bondholders, shall "obtain access" into accounts with more than €100,000.
3. The new bank bail out system will become effective in 2016.
4. A national resolution fund based on bank contributions system is introduced. Certain experts promote a Europe-wide resolution fund and the European Commission will address such a proposal, but Germany seems to resist.
5. A separation in reliable and risky bank depositors is addressed. The terms of the foreclosings are based on the category of the depositor.

There is also the small print of the agreement. According to EU sources, there is a window: Not even depositors with amounts lower than €100,000 are considered secured. The justification of the whole project derives from the reluctance of the European leaders to impose additional weights on taxpayers, when a need to rescue banks occurs, when the other possible bail-in options (stocks, bonds, unsecured deposits over €100,000) are not sufficient, thus the small depositors will be called in to "bail-in".

11. a)THE STATUS QUO OF THE EUROZONE

After examining the Greek debt restructuring, the bank depositors "haircut" in Cyprus and the confiscation regime that is about to apply in the EU, two conclusions can be drawn. The EU lead who was responsible for these operations showed no political sense and consideration and such policies lack any sense of justice or moral compassion, towards the countries that needed assistance. The burden was, to a considerate extent, rolled over to innocent citizens, for the most part not the
wealthy ones, although extensive attempts have been made, to illustrate that all Greek debt bondholders were investors of great wealth and all, or most of, the depositors in Cyprus were Russian oligarchs who had transferred laundered money to the Cypriot banks. One could point out that the videos of people protesting outside the Greek Parliament and the State Council, as well as the Cypriots banging on bank doors, who were denied access to their bank accounts, do not prove anything else, but human suffering. The only concern of the politicians in Eurozone is whether the payable amount “yields the targeted reduction of the financing envelope”. Europe was by no means founded on such pillars and will certainly not accord on this formula for a long time.

The term “Solidarity Levy” is a typical example of the cynicism featuring the EU’s current political leadership. The term ‘solidarity’ was contemplated earlier when this thesis assessed the fundamental principals and values of the EU, but at the time it was introduced in the EU, it had a completely different meaning. In general, the principles of justice, equality and non-discrimination seem to have lost ground with the new generation of politicians, who are facing a severe financial turmoil, on the one hand, but are still flaunting dangerous tactics and harsh measures on people.

Some of the main objectives of the Treaty on EU refer to “justice” and “solidarity” but the provisions sound to millions of citizens of the Eurozone like long forgotten benedictions. According to the Treaty Article 5 TEU and the Protocol on the application of the principles of subsidiarity and proportionality, the European Union must act within the limits of the powers conferred upon it by the Treaties and of the objectives assigned to it therein.

Confiscating savings in bank accounts and denying people access to their property without warning introduces a new era for the EU and the whole world in the future and will certainly cause immense harm to citizens' willingness and trust to save, invest and build wealth. Subsequently, this strict accounting culture which is applied, will hit not only savings and investment but future economic growth all over Europe.

One final aspect of this part concerns the rule of law. When one refers to a society governed by the "rule of law", not only he entails the laws, the regimes governing enforcement of provisions or terms of contracts, security instruments and the like, but primarily he indicates the society whereby such laws are expected to be dignified and all parties are accountable for the obligations

44 Article 2: “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail”.

Article 3: “The Union shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child. It shall promote economic, social and territorial cohesion, and solidarity among Member States”.
they assume. Every deposit and every sovereign bond represents an agreement concluded by certain parties (individuals, legal entities, a State or an association of States) which is supposed to be performed on a voluntary basis. If a dispute arises, it is reasonable and legitimate that a mechanism for an impartial and quick resolution exists. As far as banks are concerned, a depositor entrusts his property, his money, to the bank with a legitimate expectation to be paid back by the bank as he was promised in the respective banking agreement. Likewise, a bondholder, who confides his property to a state or an entity, abides that the claims deriving from the relative contract shall be respected and gratified, exactly as stipulated in the contract. The precedents addressed in this thesis, are put to the test in relation with the principals of justice, rule of law, social justice and protection, solidarity and non-discrimination.

Benjamin Friedman in his book "The Moral Consequences of Economic Growth" provides a significant opinion that in times when civil and political rights supersede, it is when economic growth springs.

b) REALITY IN THE EU AS MEASURED

While 2012 brought a Nobel Peace Prize for the EU for its role in "the advancement of peace and reconciliation, democracy and human rights in Europe", reality in the Eurozone appears quite different. Severe social, political, economic and constitutional impairments occurred during the crisis, which compromised and imperiled fundamental rights, which up till now were fully respected.

The impact of the financial turmoil is illustrated a) in the unemployment rate, which in the EU affected about 26 million people (December 2012 – Eurostat\textsuperscript{45} data), b) in labour market conditions, which were highly damaged, trampling all progress attained in recent years (Organization for Economic Cooperation and Development "OECD"\textsuperscript{46} figures) and c) in the rate of almost 24.2% of EU population that came at risk of poverty or social exclusion in 2011, which amounts to 116 million citizens. In addition, lower income led to poorer health results, as provided by the European Commission, whereby one third of EU citizens stated that by December 2011 they had great difficulties to cover their medical expenses and healthcare in general.

\textsuperscript{45} Eurostat is the statistical office of the European Union situated in Luxembourg. Its task is to provide the European Union with statistics at European level that enable comparisons between countries and regions
\url{http://epp.eurostat.ec.europa.eu/portal/page/portal/about_eurostat/introduction}

\textsuperscript{46} The mission of the Organisation for Economic Co-operation and Development (OECD) is to promote policies that will improve the economic and social well-being of people around the world \url{http://www.oecd.org/about/}
Furthermore, some EU states are experiencing social unrest, protests, anti-migrant movements by political entities, decreasing trust in governments, extremist ideologies and xenophobic spirit. In times of austerity and long-term unemployment, social rights become more important and the commitment to safeguard these rights is contested. Notable to say, the crisis affected in great extent the way EU residents view one another, impoverishing solidarity. As illustrated in Pew Global Attitudes Survey\(^47\), only 27%-48% of respondents in the Chech Republic, Germany, France, Italy, Poland, Spain and the United Kingdom see Greece favourably as a State, whereas several proposals have been made in many EU States that Greece should be expelled by the euro currency and the EU\(^48\).

12. CONCLUSIVE THOUGHTS AND PROPOSALS FOR THE FUTURE

It was, certainly, a severe fault of the heads of the EU, past and present, to assume that economic integration would lead to political integration effortlessly. Another mistake was to force the pace of integration, mostly with the EMU and, now to use the financial crisis as a way to achieve the political unification in the EU, through coordination in fiscal and social policies. Nevertheless, it is clear, now more than ever, that "the EMU rests upon a relatively strong "M" and a weak "E".\(^49\)

The adoption of the Treaty on Stability, Coordination and Governance in the EMU ("Fiscal Compact") by the Heads of State or Government of Member States in the Eurozone could be a suitable measure to introduce a new fiscal arrangement and coordinate a stronger economic environment. In addition, the Treaty Establishing the European Stability Mechanism (ESM) as a permanent mechanism, takes over the tasks, which up until now the European Financial Stability Facility (EFSF) and the European Financial Stabilization Mechanism (EFSM) were fulfilling and provides financial assistance to Eurozone Member States who are being threatened by significant financing problems. Thus ESM is considered, from this point of view, indispensable for safeguarding financial stability in the Eurozone area.

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\(^{47}\) Pew Research Center is a nonpartisan fact tank that informs the public about the issues, attitudes and trends shaping America and the world. It conducts public opinion polling, demographic research, media content analysis and other empirical social science research. Pew Research does not take policy positions. It is a subsidiary of The Pew Charitable Trusts. [www.pewresearch.org/about/](http://www.pewresearch.org/about/)

\(^{48}\) "2012 has been another very bad year for Europe. After five years of economic crisis, recession has returned, unemployment has reached levels not experienced in nearly two decades and the social situation is also deteriorating" European Commission, Directorate-General for Employment, Social Affairs and Inclusion (2012), "Employment and social developments in Europe" 2012, Brussels.

\(^{49}\) "The evolution of the European Central Bank" by Rosa M. Lastra, pg. 1272, HeinOnLine Citation: 35 Fordham Int'l L.J. 1260 2011-2012
It should be noted that, though the present financial crisis has deep roots, nevertheless it should not lead to a spirit of total catastrophism. It is essential for the EU to adopt contingency plans for internal or external cases of financial shocks. Furthermore, it should be clear that the respective Member States are responsible for their own debts and a specific control mechanism should be established in order to assess the balance sheet, not only of the countries dealing with financing problems, but of each of the EU members. This process could include adequate central sanctions of governments with excessive expenditures long before the situation becomes irreversible.

As we now live in a "two-speed Europe", the wealthy North and the poor South, there have been several proposals to support economies of the South by helping them attract important investments and establish efficient arrangements for monitoring tax collection. It is common place that the countries of the North have developed remarkable administrative policies and good governance, valuable instruments that play a significant role in their economy. The transmission of the "know how" to the weaker Southern countries would provide a long-term assistance, while the funding of one country's deficit solves the problem only temporarily. The fiscal strategy of the Union has to set high priorities: research and development, innovation and education. These should be the basic actions for the future, for increasing competitiveness and economic growth.

A key aspect of the present situation in the EU is the fragile character of the supranational institutions, which, compared to their national similar, lack independence and social acceptance. While the European treaties acknowledge each institution’s competencies and declare them independent of any political interference, the reality is not so. The bodies operating in the EU are quite dependent on the European political leadership, especially the so called Euroelite of the North and the absence of a European government, including a supranational Ministry of Finances, is noticeable. Provided that such a democratic government of the Union could not be formed under the European treaties, we are facing repeated efforts of certain countries to lead the way for the others and impose their policies and decisions.

In certain occasions, there have been suggestions to confront the EU’s democratic shortage through the operation and the transfer of more competencies to the EP. It is very disappointing that the strengthening of its role coincides with a steady decline of the voters' participation in the European elections and the shriveling of the European project by the majority of the population. One important aspect of this acknowledgment is the excess of the competencies provided in the

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50 See also in the Appendix, the Opening address by Herman Van Rompuy, President of the European Council, to the Brussels Economic Forum 2010 "Lessons from a crisis"
European institutions by the legislative regimes. The European integration objective obtained an elitist temper\textsuperscript{51} and Germany engaged in imposing a conservative recipe of austerity to the Member States facing trouble with the financial turmoil, claiming that the survival of Europe is identical to the survival of the euro-currency\textsuperscript{52}.

Under these considerations the Group of the Progressive Alliance of Socialists and Democrats in the EP assigned the conduction of a survey about the European democracy to DEMOS\textsuperscript{53}. Assessment of specific elements of the problem and proposals to avoid democratic backsliding in the EU are included in a 250 pages report called "Backsliders" and subtitle "Democracy in Europe can no longer be taken for granted". The democratic challenge is the core of the initiatives that should be taken. The EU is founded on the attempt to surpass the divergences between the Member States and the objective to enjoy a common future where democracy shall be promoted, the rule of law shall prevail and citizens' rights shall be protected. The European Commission must realize its duty as the upholder of democracy and the promoter of pluralism and good governance throughout Europe.

Democratic considerations should mainly focus on the participation of citizens in the European elections and their contribution to decision making. It should be clarified that people in the EU have the right to be active, to feel equal and to express their opinions and objections through an innovative parliamentary procedure. The EP should closely cooperate with the National Parliaments in their legislative mandate and political debates should be accepted and respected. Citizenship should be a material right enjoyed by all Member States' people in the same manner, not a theory for academic purposes.

Furthermore, equally important to the protection and promotion of European democracy is the accomplishment of the EU population's expectations, as laid down in the Preamble of the Charter of Fundamental Rights of the EU, where the rule of law and universal values are in the spotlight. In the heart of the EU's activities lies the creation of "an area of freedom, security and justice". The Charter has become legally binding and the protection of fundamental rights in the EU "has been taken to a new level" but a regular examination whether the Member States comply in practice with the goals set by the treaty, to which they are bound and to what extent, should be a high priority. In the situation where one Member State is repeatedly violating the fundamental principles and objectives of the Union, for instance by infringing citizens' rights, harsh measures

\textsuperscript{51} Majone G. 2009:22-35 “Europe As The Would-Be World Power: The EU At Fifty”, Cambridge University Press
\textsuperscript{52} "Wenn der Euro scheitert, scheitert Europa" as the German Chancellor Angela Merkel stated
\textsuperscript{53} Demos is Britain's leading cross-party think-tank \url{http://www.demos.co.uk/about}
should be introduced. Article 6 of the Lisbon Treaty, which provides for EU liability if it fails to protect human rights and safeguard democracy throughout its jurisdiction, connects the EU, the Council of Europe and the ECtHR. It remains to be seen whether the individual holders of Greek sovereign bonds and the Cypriot savers who suffered a “haircut” on their property will be compensated for their losses in their respective national courts or the ECtHR.

Finally, the European Union Agency for Fundamental Rights should be enhanced with extra powers. Qualitative and quantitative data should be gathered and analyzed on a regular basis, measuring the respect for fundamental rights and enforcement of democratic commitments in each Member State of the Union. The institutions of the EU should observe this process and experts should assist in the imposition of this regulatory framework.

As many as 146 million people could be at risk of poverty by 2025, if austerity in the EU continues at the same pace, the international aid group Oxfam reported in September 2012. This is the latest project to a growing debate in the EU on the impact of its crisis-fighting austerity measures, and whether it should continue further with fiscal consolidation or growth-boosting spending. Nobel laureate and former World Bank economist Joseph Stiglitz, who wrote the foreword of this report, stated: “The wave of economic austerity that has swept Europe ... is at risk of doing serious and permanent damage to the continent’s long-cherished social model”. The report upholds that it could take as much as 25 years for Europeans to regain “the living standards they enjoyed five years ago”.

In conclusion, it should be every EU citizen's and political leader's commitment to fulfill what Natalia Alonso, the head of Oxfam’s EU Office invited:

"We’re calling on European governments to champion a new economic and social model that invests in people, strengthens democracy and pursues fair taxation,”...“Governments could raise billions for public services, such as health and education, by taxing the wealthiest and cracking down on tax dodging”.

54 established in 2007
55 Oxfam is an international confederation of 17 organizations networked together in more than 90 countries, as part of a global movement for change, to build a future free from the injustice of poverty http://www.oxfam.org/en/about
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• The Treaty on European Union or TEU (the Maastricht treaty)
• The Treaty on European Union (92/C 191/01)
• Greece – Memorandum for economic and financial policies, May 3, 2010
• Treaty on the functioning of the European Union
• The statute of the European System of Central Banks and of the European Central Bank
• Law 4050/2012
• Greek Constitution as amended in 2008
• ICSID Rules of Procedure for Arbitration Proceedings on Jurisdiction of the Centre
• European Convention on Human Rights
• Charter of Fundamental Rights of the EU (2000/C 364/01)
• The Constitution of the Republic of Cyprus
• Treaty on Stability, Coordination and Governance in the EMU ("Fiscal Compact")
• Treaty Establishing the European Stability Mechanism (ESM)
In September 1929, a New York investment firm placed an advertisement to attract savings. It briefly told the history of the Mississippi Bubble -- wild speculation in the early 18th century -- and then said: "Today, it is inexcusable to buy a 'bubble' -- inexcusable because unnecessary. For today every investor has at his disposal facilities for obtaining the facts." These facts would substitute the "sound principles of investment" for the "hazards of speculation", so said the ad. The men and women who believed this and rushed in to invest their savings -- they were disappointed quickly, just one month later, by the great October 1929 stock market crash.

It is a pleasure and an honour to give the opening address of this 2010 edition of the Brussels Economic Forum. Judging by the program, it looks like you are going to have a very stimulating day and a half.

Some of you may recognise the advertisement I just referred to. One finds it in the recent book by Carmen Reinhart and Kenneth Rogoff, This Time Is Different: Eight Centuries of Financial Folly (2009). The book is widely acclaimed and rightly so. The title is ironic, of course. The author’s central claim is that the risk of financial crises has been systematically underestimated throughout history, until today. Every generation of economists and policy makers believes it has
ended the cycle of boom and bust. The reasons and words may vary, from "today we have the facts" (in 1929), to "now we have securitized debt" (in 2007). But the refrain is the same: "This time is different". Every generation believes that. And, well…, more than one generation has been disappointed in this belief. The book surely makes for sobering reading. Why do I mention it? Because it helps us to put things into perspective. In the light of this long history of financial follies, one can "de-dramatise" today's discussion on the public debt crisis.

Accidentally, the recent events have put into question the very title of this conference: "strategies for a post-crisis world"… That looks a bit optimistic today. Are we already after the crisis? Maybe not. Or not yet. I prefer to speak about the ‘post-recession’. By all means, the timing of today's and tomorrow's Forum is apt: after a tense period, culminating in the weekend of 7 to 9 May, the European Union has itself bought time. Time for reflection and time for action. Let us use it well -- politicians, economists -- all of us. Before we are ‘post-crisis”, we need to get there.

Therefore I should like today to share some thoughts on the current crisis of public debt. I will do so in three points.

Firstly: how did the European Union deal with this crisis?

Second issue: what lessons should we draw from this crisis, in terms of economic policy?

Third issue: what lessons should we draw, in general political terms? What does it mean for the state of European integration?

A final preliminary remark. We are gathered here at an economic forum. So I could talk balance of payments, and balance of trade, and structural growth.

However, in front of such a distinguished audience of experts, this could be inappropriate. As the saying goes: "You don't serve pasta to the Italians"…! I do abstain from serving "pasta" with a little regret, though. As you may know, I am an economist by training; my first jobs were at the Belgian Central Bank and teaching economics at the university. Then, however, I went into politics. To continue the cooking metaphor, I left the pasta for "sausage making"... (For those of you unfamiliar with the image, it was Bismarck who once said: "Laws are like sausages, it is better not to see them made.")

Let’s get to the first issue: how did the European Union deal with the crisis? I should like to
focus on the facts, not to the perception. In my judgment the EU did reasonably well. We stumbled, but we did not fall. The EU works under a lot of political constraints. These are often underestimated by outside observers. In any political system, there is a difference between coming up with a plan, and getting it adopted by a parliament and accepted by the public. (Just think of the American health care plan!)

In the European Union, the difficulty is even bigger. We are not a single state. In the case of the Euro zone, we are dealing with 16 governments and 16 parliaments, with very different public opinions. Moreover, at the start of the Greek crisis, we did not have the instruments. The Treaties don’t provide instruments to deal with a debt crisis. The founders of the Economic and Monetary Union were convinced that the Stability and Growth Pact would suffice to keep budget deficits low. The implementation was deficient. Member States gave the wrong signal in 2005 when they softened the Pact. Economic growth and the absence of significant ‘spreads’ worked as a drug. Notwithstanding the absence of instruments, we were able to develop them. We built a lifeboat at sea. Anybody who ever tried, knows this is not easy!

From the start, the European Council had a double guideline: responsibility and solidarity. These were the two guiding principles to which all Heads of State and Government of the Euro zone subscribed. Responsibility, by the Greek government. Solidarity, by the others, in order to protect Greece (and indirectly themselves). I also stress that, during the process, we kept all our commitments towards Greece. Let me recall the facts:

• In February, we agreed on the principle to take action to safeguard the euro's stability and to help Greece.

• In March, we agreed on the mechanism.

• It was only in April, on the 23rd, that Greece for the first time asked for support.

• A week later, on 2 May, a deal was reached, and one week later, on 7 May, the support mechanism was effectively triggered.

All along, the European Union did what it promised, and when it was needed.

Now, in the final stage, between 2 and 7 May, we were no longer just talking about Greece, but about the risk of contagion to other countries. It was a very serious threat to the stability of the euro and the financial system. That’s why we decided, in a special meeting of the Heads of State and Government from the Euro zone on 7 May, to use “the full range of means available” to protect
the euro. These were no empty words. During the following 48 hours, all institutions and Member States assumed their responsibility:

- The Commission rapidly made a proposal;
- The finance ministers agreed on an impressive safety mechanism for the Euro zone – the 750 billion euro package --, before the opening of the Asian markets;
- The Central Bank, independently, changed its policy with regard to sovereign bonds;
- Two Member States immediately announced extra cuts to reduce their deficits.

One should consider these actions as one, common European effort. Taken as a whole, they clearly show the Union is able to act. To act decisively. I think this was widely recognised. Still, one hears critical assessments. For instance, the EU was only able to act when confronted with imminent collapse. Or, the EU only bought time. Listening to some commentators, one gets the impression we are living the biggest crisis since the Second World War, or even the First one.

Last week, one observer urged European leaders to use the Churchillian language of “blood, toil, tears and sweat” in order to convey a sense of urgency. Well, it is not exactly the outbreak of the Second World War... We are not in the monetary Armageddon. Verbal inflation will not bring back confidence. It is a political duty to keep a sense of proportion. We are certainly in a critical moment; one can call it "unprecedented" and "historical". But crises are always unprecedented, that is the whole point. Therefore I am glad that the EU has been able to deal with this one. It took time, the coordination was difficult, but it is the result that counts.

Another line of critique dismisses the safety mechanism for the euro as “only buying time”. This disdain is odd. In economic thinking, time is a cost. But not so in politics! In politics, like in human life in general, time is the most precious good. Politicians try to shape it, in order to get things done.

Every radical change, such as Greece is now embarking upon, requires time and respite; a temporary protection from the pressure of events, in order to better face them afterwards. The Union has now created this breathing space, which did not exist before. The safety mechanism gives the Greeks time to put the house in order. Therefore the loans are conditional. Conditionality is key in this matter. I am confident they will surmount this crisis. Not only the Greeks must use this time. So should the Union as a whole.

As President of the European Council, I urge all actors to focus now on the steps ahead. I
just said that during the crisis, we stumbled, but did not fall. In the situation, that was not bad. However, we have now reached the point where stumbling itself could be dangerous. I think we are all aware of that. Therefore we need prudence as much as ‘courage’. The next steps will determine the fate of our Economic and Monetary Union.

This brings me to the second issue of my talk: What lessons should we draw from this crisis, in terms of economic policy? Quite clearly, the key priorities are fiscal sustainability, avoiding that public debt spins out of control, and being able to deal more effectively with financial trouble. Simply put, our two main missions are improving crisis prevention and crisis management. In fact, these are the two subjects of the Task Force on Economic Governance which the European Council has asked me to chair. I should like to take this opportunity to briefly comment upon it. This will give you the state of play on the issue. The Task Force consists of representatives of all 27 Member States - mostly Ministers of Finance -, plus Commissioner Rehn from the Commission, President Trichet from the Central Bank and Prime-minister Juncker from the Eurogroup, and myself as chairman. All key actors are around the table.

Last Friday we had our first meeting. I could feel a sense of urgency and a spirit of cooperation. Everyone shared the will to go forward together. I was impressed how quickly the state of thinking has evolved on the issue of public debt in a few weeks, not just in Brussels but also in the capitals. We hope to conclude a comprehensive agreement in October. In view of our fundamental and farreaching purpose, that shows a certain ambition. We already found agreement on the four main objectives.

Firstly, we should reach greater budgetary discipline. All agreed on the need to strengthen the Stability and Growth Pact. A lot of proposals are on the table. They concern both the preventive and the corrective side of the Pact. I will not go into the details here, but they include stronger warning procedures and new types of sanctions. In the context of a stronger Stability Pact, one aspect may be of particular interest to you, as economists. So far, the focus has been almost exclusively on the maximum public annual deficit, the famous 3 percent of GDP. Much less attention has been paid to the level of public debt (the famous 60 percent). Public debt in the Euro zone is now 85 pct on average. It is as if we were looking at Member States’ fiscal positions through the keyhole of the annual deficit, forgetting the bay window of public debt. This needs to be corrected.

I add another remark. The Keynesian approach during the recession of 2008-2009 became in
countries all over the world an excuse not to attach sufficient attention to sustainable public finances. As Belgian prime minister, I was rather cautious. In 2010, Belgium will have the lowest budget deficit in Western Europe.

The second objective is a reduction of the divergences in competitiveness between the Member States. This is vital, especially for the euro area. The Stability Pact remains the cornerstone of European economic policy coordination. However, sound budgetary policies are necessary but not sufficient to ensure competitiveness. We could have known this from the start, but it took this crisis to hammer down the point.

Over the years, competitiveness in some Member States has improved thanks to wage moderation and productivity improvement. Others have accumulated important losses of competitiveness and balance of payments deficits on the current account. If one had taken a close look at the figures of these current accounts, the problems of some countries could have been predicted. But this was not a ‘Maastricht’ criterium.

These imbalances are a particular problem for members of the Euro area. Their loss of competitiveness can easily be covered -- until it is too late. Countries can no longer devalue, but keep advantage of low interest rates. In this respect, membership of the Euro zone acted as a "sleeping pill" for some economies. Nobody wants a "rude awakening" by the market forces. One idea therefore is to develop indicators of competitiveness. They should function as an early warning, a wake-up call. Some have proposed to go further, with corrective measures for those who do not act when the red light flashes. Now, going from crisis prevention to crisis management, I come to the third and fourth objectives on which our Task Force broadly agrees.

Third objective: We need to have an effective crisis mechanism in order to be able to deal with problems such as those of today in the Eurozone. The general crisis mechanism that was put into place two weeks ago (i.e. the 750 billion euro package), will function for three years. The question is whether, and if so under which conditions, it should be developed into a permanent fixture of the system.

Fourth objective: We need to strengthen the institutional cooperation and coordination, in order to be able to act quicker and more efficiently when problems arise. In the Greek crisis, we did build a lifeboat at sea, but we can clearly not go on improvising like this. Therefore I intend to put proposals on the table of the Task Force for better coordination between the main actors.

These are our four central priorities.
A concluding remark on these economic policy lessons. A quick-witted mind might wonder, if you have perfect crisis prevention, why would you need better crisis management? Would it not be smarter to put all the cards on prevention? I do not think so. Again, crises are essentially unpredictable. Surely in the world of credit and financing, where credibility and confidence play key roles. Confidence is about emotions and psychology, just as much as about market value and economics. This should imply some modesty. To quote Rogoff and Reinhardt once more:

“Economists do not have a terribly good idea of what kind of events shift confidence and how to concretely assess the confidence vulnerability.”

In short: if we are serious about a European economic policy, we should do whatever we can to avoid the type of crisis we already know. That is what we did during the credit crisis of 2008-2009, when we avoided all the mistakes that were made in the 1930’s because we knew them (for instance: this time, unlike then, we stayed away from protectionism, by safeguarding the European internal market). But we should also be able to deal with unforeseen circumstances. Not if, but when they arrive.

I now come to the third and final issue I should like to address. What lessons can we draw from the crisis in political terms? What does it mean for the state of European integration? It is a huge subject of course, so just some quick remarks. In a way, the old cliché holds: every crisis is an opportunity. It creates a possibility to act. To do things we were unable to do. Today, one can already feel acceleration in the pace of events. But here again, a sense of proportion is in order. I do not belong to those who are cheering with a European flag and who are almost thanking the markets for obliging the European Union to take a step forward on political integration. European integration is not a goal in itself. I would rather not have had this crisis, and I am sure the Greek people and most taxpayers in the Union would agree.

However, now that we are at this juncture, as a Union, it would be irresponsible not to draw the right lessons. That is what the work of the Task Force is about. Beyond the specific rules, however, we are clearly confronted with a tension within the system, the infamous dilemma of being a monetary union and not a full-fledged economic and political union. This tension has been there since the single currency was created. It was known to the diplomats and to the experts; it proved ammunition to euro’s critics. However, the general public was not really made aware of it (at least not by those responsible). The dilemma remained invisible. Nobody ever told the proverbial man in the street that sharing a single currency was not just about making peoples’ lives...
easier when doing business or travelling abroad, but also about being directly affected by economic developments in the neighbouring countries. That being in the “Euro zone” means, monetarily speaking, being part of one “Euro land”. Today, people are discovering what a “common destiny” in monetary matters means. They are discovering that the euro affects their pensions, savings, and jobs, their very daily life. It hurts.

In my view, this growing public awareness is a major political development. It forces the governments to act. What will they do? We will take those steps towards stronger economic coordination, as currently under discussion in the Task Force. It is necessary and it will be done. Moving forward will be delicate, because beyond the economics, fundamental political issues are at stake. Take the discussion on public deficits: all Member States want the others to play by the rules, they ask for sanctions, but at the same time they are not per se willing to have “Brussels” look anytime into their books...

I expect the steps forward to allow us to better deal with the fundamental dilemma, but not to eliminate it. Getting rid of it would require some federal jump, in which the centre would take precedence over the parts; that is not going to happen. Instead, Europe will stay in the realm of squaring the circle, between the Union and the Member States – but no doubt at a higher level! In this respect, the European Council has an important role to play. Alongside the Commission and the Central Bank, it is responsible for the Union’s economic governance. As the body where the Heads of State and Government of the Member-States gather to deal with common European issues, it is particularly capable of squaring this circle.

It can assume responsibility for European decisions in front of national parliaments and public opinions, not at a technical level, but at a political one. In the first proposals on the table of the Task Force, one sees other attempts to square the circle. Take the German idea to integrate the European deficit and debt rules into national legislation: it is a way of making visible that European rules are not just “from Brussels” – and therefore easy scapegoats –, but that they are self-imposed by each Member-State to the benefit of all. The same is true of the suggestion to hold national finance ministers accountable in their own national parliaments for the examination of the stability programs of their Euro zone partners. This may have disadvantages, but it would make visible that within the Euro zone, economic and fiscal policies of the partners are not just a matter of foreign affairs and old style financial diplomacy, but that they are, in a way, domestic affairs. These are encouraging shifts.
Let me conclude with the most important point. It brings us beyond the crisis, back to the main issue of your Forum. The point is quite simply this: we cannot solve our budgetary problems without more structural economic growth. Without growth, we risk a negative spiral. In the short term, the acceleration of fiscal consolidation will hamper growth in the Euro zone as a whole only marginally. I am even convinced that lower deficits will enhance consumer confidence and stimulate economic growth.

Moreover, the EU 2020 strategy remains absolutely important. The fiscal strategy has to prioritise R&D, innovation and education. They are key for the future, for increasing competitiveness. Therefore political leaders will be confronted with a reform programme in the budgetary field as in the socio-economic domains. All this will not be easy to achieve, but it is vital. The European Union and all Member States still have a long way ahead, but I am confident that all have the political will to do what needs to be done.

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