EMERGENCE AND EVOLUTION OF THE ECONOMIC AND MONETARY UNION: OVERLOOK AT THE DECISION-MAKING PROCESS AND THE LEGAL INSTRUMENTS USED (FROM THE MAASTRICHT TREATY TO THE PRESENT DAY)

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Abstract

While in the previous study we presented the premises of the emergence of what is the economic and monetary Union today, and we demonstrated that in this process the European Council had a fundamental role to play even before it was enshrined in primary Community law, whose manifestation of will takes the form of public international law acts, in the present study we will address the economic and monetary Union after its consecration in the Maastricht Treaty. Normally, this approach should lead us to analyze the institutional structure of EMU in accordance with the Treaties on which the European Union is founded, but, apparently paradoxically, careful analysis shows that even after the said consecration, the mixed use of instruments of international law to fill possible gaps in union law has not been completely abandoned.

Keywords: *European Union, Economic and Monetary Union, Euro, Maastricht Treaty, Lisbon Treaty, European Central Bank, excessive deficit, stability, growth.*

1. Maastricht Treaty and the establishment of the Economic and Monetary Union. Current institutional framework of the EMU

Undoubtedly, one of the most important moments in the development of Community construction (in the middle, Union) since the end of the 20th century is the signing, followed by its entry into force, of the Maastricht Treaty. Of course, this is neither the place nor the time to discuss this Treaty in depth, but what we want to explain, as a follow-up to the previous study and before we discuss its implications for EMU, is the context of its emergence. More specifically, we want to remember two of the historic crucial moments preceding the appearance of that Treaty, namely the break-up of the Soviet block of influence and the unification of Germany, which is the latter putting France in the face of possible future economic dominance of Europe By Germany, which, like a possible German resurgence after the second World War, could only be managed and accepted within a supranational framework defined in the first case by the European Coal and Steel Community and, secondly, by the Economic and Monetary Union. These connections further underscore the fact that "*the accelerated opening up of the world economy following the end of the cold War and the collapse of the communist block was accompanied by unprecedented mobility of the law itself*"[1], together with the anchoring of law in the social and political realities of its time, without the understanding of which the evolution of law cannot be explained either.

Given the fact that the decision-making process within the Economic and Monetary Union, in its aspects involving the institutions of the Council, the European Parliament and even the European Central Bank, has a pronounced technical character and is still the subject of another research, we consider it more appropriate to present, in these lines, the general features of the composition and functioning of the European System of Central Banks, with each of its components, the distribution of competencies and the relations between them.

Thus, the Maastricht Treaty provided for the establishment of a European System of Central Banks and a European Central Bank (following a transitional process that involved the establishment of a European Monetary Institute and its subsequent transformation into the European Central Bank). As an application of the principle of conferral, both the ESCB and the ECB could act only within the limits set by the Treaties.

A particularly important feature of the new European Central Bank was its independence, enshrined from the outset in the Treaty which provided that "*in the exercise of its powers and in the performance of the tasks and duties conferred upon it* (…) *the national central bank and no member of any of their decision-making bodies may seek or accept instructions from the Community institutions or bodies, the governments of the Member States or any other*

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[1] Monica Florentina Popa, *Tipologiile juridice între pragmatism și ciocnirea civilizațiilor (Legal Taxonomies between Pragmatism and the Clash of Civilizations)*, Revista de Drept Public Magazine, No. 1/2016, Universul Juridic Publishing House, Bucharest, 2016, pp. 58-67.

body [and] *the Community institutions and bodies and the governments of the Member States are to respect this principle and not to try to influence the members of the decision-making bodies of the ECB or of the national central banks in carrying out their mission*"[2]. The ESCB was, and is still, "*made up of the European Central Bank and the central banks of the Member States* [the national central banks]. *The main objective of this System* [was] *to maintain price stability. The ESCB* [supported] *the general economic policies of the Community in order to contribute to the achievement of the objectives of the Community* (…). [Also], *the ESCB* [acted] *in accordance with the principle of an open market economy in which competition is free, promoting an efficient allocation of resources and respecting the principles set out in the* (…) *Treaty*"[3].

From that moment on, given the fact that the changes brought about by the successive reforms that have taken place since the entry into force of the Maastricht Treaty to date are minimal, we prefer to present the provisions under our study directly in their current form, so as not to it made our research unnecessarily difficult to read. For the same reason, in those cases where the provisions of the TEU / TFEU and the Protocol on the Statute of the ESCB duplicate each other, we will refer to only one of these instruments.

As for the missions of the ESCB, they are, in today's wording of its Statute, those mentioned in art. 127 (2) TFEU, "respectively to define and implement the monetary policy of the Union, to conduct foreign-exchange operations consistent with the provisions of Article 219[4], to hold and manage the official foreign reserves of the Member States [and] to promote the smooth operation of payment systems"[5].

Thus, as regards the ECB, the Treaties and the Statute state that "[t]he European Central Bank, together with the national central banks, shall constitute the European System of Central Banks (ESCB) [while] [t]he European Central Bank, together with the national central banks of the Member States whose currency is the euro, which constitute the Eurosystem, shall conduct the monetary policy of the Union"[6].

As for the European Central Bank, it shall be consulted on any draft Union act as well as on any draft regulation at national level and may issue opinions in the areas in which it has responsibilities. The ECB shall also decide on the representation of the ESCB in the field of international cooperation on tasks entrusted to the ESCB. Both the ECB and the national central banks, subject to the agreement of the ECB, are empowered to participate in international monetary institutions. The ECB also "*lays down the general principles for financial market and credit operations carried out by itself or by national central banks, including those relating to the communication of the conditions under which they are willing to participate in such operations. For the purposes of applying this Article, the Council shall define, in accordance with the procedure laid down in Article 41*[7]*, the basis for calculating the minimum required reserves and the maximum permissible ratio between those reserves and their basis of calculation, as well as the corresponding penalties for non-compliance*"[8]. Moreover, "*in accordance with any regulation adopted by the Council pursuant to Article 127 (6) of the Treaty on the Functioning of the European Union, the ECB may carry out specific tasks relating to the prudential supervision of credit institutions and other financial institutions, with the exception of insurance undertakings. In accordance with Article 132 of the Treaty on the Functioning of the European Union, the ECB shall adopt: regulations, to the extent necessary for the fulfillment of the tasks set out in the first indent*

[2] Art. 7 of the Protocol regarding the on the Statute of the European System of Central Banks and of the European Central Bank, attached to the Treaty on European Union, Official Journal C 191, 29/07/1992 P. 0001 – 0110.

[3] Idem.

[4] 1. By way of derogation from Article 218, the Council, either on a recommendation from the European Central Bank or on a recommendation from the Commission and after consulting the European Central Bank, in an endeavour to reach a consensus consistent with the objective of price stability, may conclude formal agreements on an exchange-rate system for the euro in relation to the currencies of third States. The Council shall act unanimously after consulting the European Parliament and in accordance with the procedure provided for in paragraph 3. The Council may, either on a recommendation from the European Central Bank or on a recommendation from the Commission, and after consulting the European Central Bank, in an endeavour to reach a consensus consistent with the objective of price stability, adopt, adjust or abandon the central rates of the euro within the exchange-rate system. The President of the Council shall inform the European Parliament of the adoption, adjustment or abandonment of the euro central rates.

2. In the absence of an exchange-rate system in relation to one or more currencies of third States as referred to in paragraph 1, the Council, either on a recommendation from the Commission and after consulting the European Central Bank or on a recommendation from the European Central Bank, may formulate general orientations for exchange-rate policy in relation to these currencies. These general orientations shall be without prejudice to the primary objective of the ESCB to maintain price stability.

3. By way of derogation from Article 218, where agreements concerning monetary or foreign exchange regime matters need to be negotiated by the Union with one or more third States or international organisations, the Council, on a recommendation from the Commission and after consulting the European Central Bank, shall decide the arrangements for the negotiation and for the conclusion of such agreements. These arrangements shall ensure that the Union expresses a single position. The Commission shall be fully associated with the negotiations.

4. Without prejudice to Union competence and Union agreements as regards economic and monetary union, Member States may negotiate in international bodies and conclude international agreements.

[5] Art. 127 alin. (2) TFEU.

[6] Art. 282 alin. (1) TFEU.

[7] In accordance with Article 129 (4) of the Treaty on the Functioning of the European Union, the Council, acting on a proposal from the Commission and after consulting the European Parliament and the ECB or on a recommendation from the ECB and after consulting the European Parliament and the Commission, shall adopt the provisions referred to in Articles 4, 5.4, 19.2, 20, 28.1, 29.2, 30.4 and 34.3 of this statute.

[8] Art. 18 of the Protocol (no. 4) on the Statute of the European System of Central Banks and of the European Central Bank.

of Article 3.1[9]*, Articles 19.1*[10]*, 22*[11] *or 25.2*[12] *and in the cases provided for in Council acts referred to in Article 41*[13]*; the decisions necessary for carrying out the tasks entrusted to the ESCB in accordance with the Treaties and the Statute of the ESCB and of the ECB; recommendations and opinions*"[14].

The ECB may also decide whether to publish its decisions, recommendations and opinions.

Also, regarding the decision-making process, it may be interesting to mention that "[i]n accordance with Article 129(4) of the Treaty on the Functioning of the European Union, the Council, either on a proposal from the Commission and after consulting the European Parliament and the ECB or on a recommendation from the ECB and after consulting the European Parliament and the Commission, shall adopt the provisions referred to in Articles 4, 5.4, 19.2, 20, 28.1, 29.2, 30.4 and 34.3 of this Statute"[15].

From an organizational point of view, according to the Statute, „[t]he ESCB shall be governed by the decision-making bodies of the ECB"[16], namely The Board of Governors and the Executive Committee (according to art. 9 of the Statute) and the General Council (according to art. 44 of the same Statute). We will carry on our paper by presenting each one of them.

2. The decision –making bodies of the ECSB and their functioning

2.1. President and Vicepresidents

According to the Statute, "[t]he President or, in his absence, the Vice-President shall chair the Governing Council and the Executive Board of the ECB [and] [w]ithout prejudice to Article 38[17], the President or his nominee shall [also] represent the ECB externally"[18] He or, in his absence, the Vice-President shall also chair the General Council, the work of which he shall prepare.

2.2. The Executive Board

It consists of a president, a vice-president and four other members, "appointed by the European Council, acting by a qualified majority, from among persons of recognised standing and professional experience in monetary or banking matters, on a recommendation from the Council after it has consulted the European Parliament and the Governing Council"[19] for a term of 8 years, which may not be renewed. From a procedural point of view, it should be noted that each member of the Executive Committee present at the meetings has one vote, the Committee deciding by a simple majority of the votes cast. In the event of a tie, the President shall decide. Several matters relating to the voting procedure applicable to the Executive Board may also be determined by the Rules of Procedure of the ECB and its decision-making bodies.

With regard to the prerogatives of the Executive Committee, according to the Statute, it "*is responsible for the day-to-day administration of the ECB*"[20], "*implements the monetary policy in accordance with the guidelines and decisions adopted by the Governing Council*"[21] framework in which it provides the necessary instructions to the national central banks and, where appropriate, the "*decisions on intermediate monetary targets, reference interest rates and the establishment of reserves under the ESCB, and lays down guidelines for their application*"[22]. The Executive Board may also be delegated "*certain powers by decision of the Governing Council*"[23] It is also "*responsible for the preparation of Governing Council meetings*"[24]

[9] Definition and application of the Union's monetary policy

[10] Subject to Article 2, the ECB shall be empowered to impose on credit institutions established in the Member States the obligation to make minimum minimum reserves with the ECB and national central banks in accordance with monetary policy objectives. The Council of Governors may adopt regulations for the calculation and determination of minimum reserves. In the event of non-compliance with this obligation, the ECB has the right to charge penalty interest or to impose other sanctions with similar effect.

[11] The ECB and the national central banks may provide facilities, and the ECB may adopt regulations to ensure the efficiency and soundness of clearing and payment systems within the Union and in its relations with third countries.

[12] In accordance with any regulation adopted by the Council pursuant to Article 127 (6) of the Treaty on the Functioning of the European Union, the ECB may carry out specific tasks relating to the prudential supervision of credit institutions and other financial institutions, with the exception of insurance institutions.

[13] In accordance with Article 129 (4) of the Treaty on the Functioning of the European Union, the Council, acting on a proposal from the Commission and after consulting the European Parliament and the ECB or on a recommendation from the ECB and after consulting the European Parliament and the Commission, shall adopt the provisions referred to in Articles 4 , 5.4, 19.2, 20, 28.1, 29.2, 30.4 and 34.3 of this statute.

[14] Art. 25 and 34 of the Protocol (no. 4) on the Statute of the European System of Central Banks and of the European Central Bank (ECB Statute as follows).

[15] Art. 41 of the ECB Statute.

[16] Art. 8 of the ECB Statute.

[17] The ECB shall be legally committed to third parties by the President or by two members of the Executive Board or by the signatures of two members of the staff of the ECB who have been duly authorised by the President to sign on behalf of the ECB.

[18] Art. 13.1 of the ECB Statute.

[19] Art. 283 TFEU and art. 11 of the ECB Statute.

[20] Art. 11.6 of the ECB Statute.

[21] Art. 12.1 of the ECB Statute.

[22] Idem.

[23] Idem.

[24] Idem.

2.3. The Governing Council

As regards the Governing Council, it shall „*comprise the members of the Executive Board of the ECB and the governors of the national central banks of the Member States whose currency is the euro*"[25] Within the Governing Council, each member shall have one vote, but from the date on which the number of members of the Board of Governors exceeds twenty-one, each member of the Executive Committee shall have one vote and the number of governors with voting rights shall be fifteen, the vote shall be taken in accordance with a procedure laid down for that purpose by the Statute. According to the Statute, the right to vote is exercised in person, but the rules of procedure establishing the internal organization of the ECB and its decision-making bodies may provide that members of the Governing Council may exercise their right to vote by teleconference. The same rules may also provide that a member of the Board of Governors who is unable to attend meetings of that Board for a long period may appoint an alternate as a member of the Board of Governors. Other matters relating to the functioning of the Governing Council include the establishment of a quorum for voting by two-thirds of the members with the right to vote, in the event of failure to do so The statutes shall also establish the confidentiality of meetings, provided that the same Board of Governors may make public the outcome of its deliberations.

In addition, "*the Governing Council shall adopt rules of procedure which establish the internal organization of the ECB and its decision-making bodies*"[26][,] *shall exercise the advisory functions referred to in Art. 4*[27] [,] *shall adopt the decisions referred to in Article 6*[28], [and] *shall be the sole power to authorize the issue of euro banknotes within the Union*"[29].

The Governing Council may decide, by a two-thirds majority of the votes cast, to use other operational methods of monetary control which it considers appropriate, in compliance with Article 2 (on Objectives).

2.4. The General Council

The General Council "shall be constituted as a third decision-making body of the ECB"[30]. It is composed of "the President and Vice-President of the ECB and the Governors of the national central banks"[31] noting that the other members of the Executive Committee as well as the President of the Council (who may propose motions for deliberation to the General Council) "may participate, without having the right to vote, in meetings of the General Council"[32].

Its prerogatives are exhaustively listed by art. 46 of the Statute. Of these, we mention the fulfillment of the missions mentioned in art. 43[33], contributing to the performance of the advisory functions referred to in Articles 4 and 25.1[34], when collecting the statistical information mentioned in art. 5, when drawing up the ECB's activity reports referred to in Article 15, [35]when establishing the norms necessary for the application of art. Article 26 of the Staff Regulations (entitled 'Financial accounts'), the adoption of the measures necessary for the application of Article 29 (concerning the Allocation Schedule for the subscription of capital), the establishment of the arrangements applicable to the staff of the ECB and contribute to the currencies of the Member States which are subject to a derogation in relation to the euro, as provided for in Article 140 (3) of the Treaty on the Functioning of the European Union, while being informed by the President of the ECB of the decisions of the Governing Council. The General Council shall also adopt its own rules of procedure, the secretariat of which shall be provided by the ECB.

Finally, after analyzing the governing bodies of the ESCB and their functioning, we will also analyze the framework of relations between the European Central Bank and the other Union institutions involved

[25] Art. 10.1 of the ECB Statute.
[26] Art. 12.3 of the ECB Statute.
[27] In accordance with Article 127(4) of the Treaty on the Functioning of the European Union: (a)
the ECB shall be consulted: on any proposed Union act in its fields of competence; by national authorities regarding any draft legislative provision in its fields of competence, but within the limits and under the conditions set out by the Council in accordance with the procedure laid down in Article 41; (b) the ECB may submit opinions to the Union institutions, bodies, offices or agencies or to national authorities on matters in its fields of competence.
[28] Regarding international cooperation.
[29] Art. 16 of the ECB Statute.
[30] Art. 44.1 of the ECB Statute.
[31] Art. 44.2 of the ECB Statute.
[32] Idem.
[33] The ECB shall take over the former tasks of the EMI referred to in Article 141(2) of the Treaty on the Functioning of the European Union which, because of the derogations of one or more Member States, still have to be performed after the introduction of the euro. The ECB shall give advice in the preparations for the abrogation of the derogations specified in Article 140 of the Treaty on the Functioning of the European Union.
[34] In accordance with Article 127(4) of the Treaty on the Functioning of the European Union: (a) the ECB shall be consulted: on any proposed Union act in its fields of competence; by national authorities regarding any draft legislative provision in its fields of competence, but within the limits and under the conditions set out by the Council in accordance with the procedure laid down in Article 41; (b) the ECB may submit opinions to the Union institutions, bodies, offices or agencies or to national authorities on matters in its fields of competence.
The ECB may offer advice to and be consulted by the Council, the Commission and the competent authorities of the Member States on the scope and implementation of Union legislation relating to the prudential supervision of credit institutions and to the stability of the financial system.
[35] The ECB shall draw up and publish reports on the activities of the ESCB at least quarterly.

in the decision-making process, such as the European Parliament and the Council of the European Union.

3. Relations between the ECB and the other Union institutions

According to art. 284 TFEU, "[t]he President of the Council and a Member of the Commission may participate, without having the right to vote, in meetings of the Governing Council of the European Central Bank [while] [t]he President of the Council may submit a motion for deliberation to the Governing Council of the European Central Bank"[36] Also, "[t]he European Central Bank shall address an annual report on the activities of the ESCB and on the monetary policy of both the previous and current year to the European Parliament, the Council and the Commission, and also to the European Council. The President of the European Central Bank shall present this report to the Council and to the European Parliament, which may hold a general debate on that basis. The President of the European Central Bank and the other members of the Executive Board may, at the request of the European Parliament or on their own initiative, be heard by the competent committees of the European Parliament"[37].

4. Continued use of the mixed use of public international law and European Union instruments. Excessive deficit procedure

Despite the enshrinement of Economic and Monetary Union in the primary law of the European Union and, alongside it, the institutional aspects necessary for its functioning, the subsequent realities of Union and world economic life have shown the inadequacy of the rules laid down in the Treaties on which the Communities were founded, respectively on which the Union is founded (at present) and have brought up to date the need to supplement them with elements of public international law.

In this direction, our analysis starts from the provisions of the former article 104c of the Treaty establishing the European Community (resulting from the revisions made by the Maastricht Treaty), the current art. 126 of the TFEU, which stipulates, in a seemingly simple way, that "*Member States shall avoid excessive government deficits*"[38]. In order to clarify the notions used by him, art. 104c of the TEC and the current art. 126 TFEU referred, respectively, to the Protocol on the excessive deficit procedure, annexed to the Treaties and drawn up on the occasion of the same Maastricht Treaty. It, in turn, states that the values in question are "*3 % for the ratio of the planned or actual government deficit to gross domestic product at market prices* (...) [and] *60 % for the ratio of government debt to gross domestic product at market prices*"[39].

However, this enshrinement of the prohibition of excessive deficits and the significance of the terms used in the rules imposing the ban in question only seemingly simplifies economic governance in the European Union. Precisely because a number of important procedures had not yet been set up at the Madrid European Council in December 1995, it (through the Conclusions of that meeting) confirmed the crucial importance of establishing adequate budgetary discipline in the third stage of Economic and Monetary Union, and at the meeting of the European Council in Florence in 1996, it reiterated the above-mentioned goal of reaching an agreement on the main elements of the Stability and Growth Pact. More specifically, it stated that the fact that the avoidance of excessive deficits in the third stage of EMU is a clear obligation established by the Treaties. The conclusions of that European Council meeting also emphasized the importance of maintaining good economic governance, seen as a means of strengthening the preconditions for ensuring sustainable development and a source of job creation. The European Council also considered it necessary for national budgetary policies to support stability-oriented monetary policies, as adherence to the objective of a budget positioned in close proximity to the coordinates established by the Treaties or even with a surplus would allow Member States to cope with cyclical effects of the economy fluctuations, without the budget deficit reaching the 3% reference value[40].

4.1. Convergence criteria – defining elements of economic sustainability

The convergence criteria, also known as the Maastricht criteria, are a number of relevant macro-economic indicators, against which an objective assessment can be made of the level of sustainable economic convergence of a Member State. According to article 140 TFEU, "*at least once every two years, or at the request of a Member State with a derogation, the Commission and the European Central Bank shall report to the Council on the progress made by the Member States with a derogation in fulfilling their obligations regarding the achievement of economic and monetary union. These reports shall include an examination of the compatibility between the national legislation of each of these Member States, including the statutes of its national central bank, and Articles 130 and 131 and the Statute of the ESCB and of the ECB*"[41]. Equally, for objective assessment purposes, the same Article defines the four criteria under which

[36] Art. 284 alin. (1) TFEU.
[37] Art. 284 alin. (3) TFEU.
[38] Art. 126 alin. (1) TFEU.
[39] Art. 1 of the Protocol (No 12) on the excessive deficit procedure.
[40] In accordance with the Resolution of the European Council on the Stability and Growth Pact, Official Journal of the European Communities, no. C236 / 1 of 02.08.1997.
[41] Art. 140 alin. (1) TFEU.

the degree of sustainable convergence of each state is analyzed, namely:

1. *the achievement of a high degree of price stability; this will be apparent from a rate of inflation which is close to that of, at most, the three best performing Member States in terms of price stability*;

2. the sustainability of the government financial position; this will be apparent from having achieved a government budgetary position without a deficit that is excessive as determined in accordance with Article 126(6)[42]*;*

3. the observance of the normal fluctuation margins provided for by the exchange-rate mechanism of the European Monetary System, for at least two years, without devaluing against the euro;

4. the durability of convergence achieved by the Member State with a derogation and of its participation in the exchange-rate mechanism being reflected in the long-term interest-rate levels[43].

As regards the periods of time included in the analysis of the four criteria, additional information is provided for in a Protocol annexed to the Treaty. Protocol 13 thus clarifies the manner in which the macro-economic indicators used in the application of the four convergence criteria are defined and calculated.

In particular, the criterion of price stability is explained in the first Article of Protocol No 13 on the convergence criteria. Thus, sustainable price stability in a Member State is determined when the average inflation rate, during the one-year period preceding the review, shall not exceed by more than 1,5% the inflation rate of no more than three member states that have achieved the best results according to this criterion. In this analysis, the rate of inflation shall be calculated on the basis of the change in the latest available annual average of the harmonized Index of Consumer prices (HICP) as compared to the previous annual average, While the inflation rate of up to three Member States will be calculated as the unweighted arithmetic average of the inflation rate of the three countries with the lowest inflation rates (unless extreme values exist). If the price evolution in one country is significantly lower than those recorded by the other Member States as a result of the accumulation of country-specific factors, that value shall be considered to be extreme and shall not be taken into account.

The second criterion, which concerns the sound nature of public finances, is explained by Article 2 of Protocol 13. Thus, the criterion stated implies that, at the time of the examination, the Member State is not in the power of excessive deficit, as defined in Article 3(1) of the Treaty. Article 126 (6) of the Treaty.

On the application of the criterion for participation in the exchange-rate mechanism of the European Monetary System, it shall be deemed to be fulfilled where the member state examined has not exceeded the normal fluctuation margins provided for by the mechanism and has not experienced serious tensions for a period of at least two years prior to the examination. At the same time, it must be a condition that the examined state has not deliberately devalued its currency's exchange rate against the euro. The analysis of serious tensions actually implies examining the degree of deviation of exchange rates from the euro in the ERM II. The main indicators used in this analysis are exchange rate volatility against the euro, short-term interest differentials (compared to the euro area) and their evolution, but also an analysis of the extent to which currency interventions and international financial assistance programs have served to stabilize the currency[44].

Last but not least, the fourth criterion relating to the level of long-term interest rates is applied by comparing the average nominal interest rates recorded by the State in the last year before the review, with the average interest rate of no more than three member states that have achieved the best results in the field of price stability. Thus, the average nominal interest rate for the Member State may not exceed by more than 2 percentage points the arithmetical average interest rate for the three Member States that perform best according to price stability. In practice, the non-weighted arithmetic average of the long-term interest rates of the same three Member States used to calculate the benchmark for the price stability criterion will be calculated. It should be noted that interest rates are calculated on the basis of long-term government bonds or comparable securities, taking into account differences in national definitions.

Table 1: Convergence criteria/Maastricht criteria

No.	Criterion	Method for the calculation	Explanation
1.	Price stability	The inflation rate will be measured according to the prices of consumption	Price stability will translate into an average inflation rate over the 12-month period prior to the review not exceeding by more than 1.5% the average inflation rate in the 3 EU Member States with the most stable prices.
2.	Stability of public finances	Two relevant macroeconomic indicators will be analyzed: Government debt and deficit	The excessive deficit procedure has not been initiated

[42] Which states that „*the Council shall, on a proposal from the Commission, and having considered any observations which the Member State concerned may wish to make, decide after an overall assessment whether an excessive deficit exists*".

[43] Art. 140 alin. (1) TFEU.

[44] According to European Central Bank- Convergence Criteria.

3.	Exchange rate stability	The evolution of the exchange rate under the Exchange Rate Mechanism will be analyzed	ERM over a period of 2 years
4.	Durability of convergence	The long-term interest rate will be analyzed	12 months before the review, the long-term interest rate should not exceed the average of the top 3 EU countries by more than 2%, with the best performing according to this criterion

Source: Based on data provided by the European Commission

If the convergence criteria are satisfied, the Member State examined will have access to the euro area on the basis of a relatively simple procedure. Thus, the European Commission, on the basis of the Convergence report, will submit the proposal to the Ecofin Council, which, following consultations with the European Parliament, as well as with the Heads of State and Government of the Member States, will decide whether this decision is appropriate. In a favorable case, Ecofin will consult the ECB on the exchange rate at which the replacement of the euro by the national currency will take place.

Of the 12 Member States that joined the EU in 2003 and 2007, only 7 adopted the euro: Slovenia (2007), Cyprus and Malta (2008), Slovakia (2009), Estonia (2011), Latvia (2014) and Lithuania (2015). Totally, the euro area has 19 Member States, totaling some 338 million citizens. The rest of the States, with the exception of Denmark, whose Accession Treaty provides for a number of non-participation periods, are in the process of joining the euro area without, however, having any specific timetable, as they were previously defined and explained.

In this respect, the data in Table 2 are relevant:

Table 2: Degree of convergence achieved by non-euro area Member States

Member State	Price stability	Stability of public finances	Stability of exchange rate	Durability of convergence
Bulgaria	2.6% (> 1.8% average)	Deficit/surplus: +2% Public debt (at the end of 2019): 20.2% of GDP	Since 29 June 2018 the Bulgarian authorities have expressed their intention to include the leva in ERM II. During the reference period (1 April 2018 to 31 March 2020), Cursulam 1,95583 BGN/1 EUR	Between April 2019 and March 2020, long-term interest rates (12 months) were on average 0,3%, net of the reference rate (2,9%).
Czech Republic	2.9% (> 1.8%)	Deficit/surplus +0.3% Government debt (at the end of 2019) <60% (30.2%)	In the two-year reference period (1 April 2018 to 31 March 2020, the Czech koruna did not participate in ERM II but was traded under a flexible exchange rate regime. Rate as at 31 March 2020: 27,312 kroons per euro (7,7% less than average April 2018)	Between April 2019 and March 2020, long-term interest rates stood at 1,5% on average, the 2,9% reference value for the convergence criterion on interest rates.
Croatia	0.9%(<1.8%)	Deficit/surplus +0.4% Government debt > 60% (end of 2019-72.7%)	During the 2-year reference period (1 April 2018 to 31 March 2020), the Croatian kuna did not participate in the ERM II but was traded under a closely controlled exchange rate regime. Since July 2019, Croatian authorities have expressed their intention to include kuna in ERM II. Exchange rate as of 31 March 2020: 7,6255 kunas/euro (2,8% less than the average level of April 2018).	Between April 2019 and March 2020, long-term interest rates stood at 0,9% on average, thus remaining well below the 2,9% reference rate.
Hungary	3.7% (>1.8%)	Deficit/surplus 2% Government debt (at end 2019) 65.5% >60%	Between 1 April 2018 and 31 March 2020, the Hungarian Forint did not participate in ERM II but was traded under a flexible exchange rate regime. Exchange rate on 31 March 2020: 360,02 forints for one euro, 15,5% more depreciated compared to the average level in April 2018.	Between 1 April 2018 and 31 March 2020, the Hungarian Forint did not participate in ERM II but was traded under a flexible exchange rate regime. Exchange rate on 31 March 2020: 360,02 forints for one euro, 15,5% more depreciated compared to the average level in April 2018.
Poland	2.8% (>1.8%)	Deficit/surplus -0.7% Public debt (end of 2019) 45.7% < 60%	In the period from 1 April 2018 to 31 March 2020, the Polish zloty did not participate in ERM II but was traded under flexible exchange rate arrangements. Rate on 31 March 2020: 4,5506 zlots for one euro, 8,5% more depreciated	In the reference period April 2019 to March 2020, Poland's long-term interest rates were on average 2,2 %, lower than the 2,9 % reference rate

			compared to the average level in April 2018.	
România	3.7% (>1.8%)	Excessive deficit procedure initiated in April 2020 (deficit >3%). Deadline for correction: 2022 The budget deficit in 2019: -4.4% Government debt (December 2019): 35.3%	In the two years analyzed (April 1, 2018 and March 31, 2020) the Romanian leu did not participate in the MCS II, but was traded under a flexible exchange rate regime with controlled flotation. Exchange rate on March 31, 2020: Lei 4,8238/ euro, 3,7% more depreciated compared to the average level in April 2018.	Between April 2019 and March 2020, Romania's long-term interest rates stood on average at 4,4% > the 2,9% reference rate in line with the convergence criterion on interest rates.
Sweden	1.6% (<1.8%)	Deficit/surplus +0.5% Government debt: 35.1%	In the 2-year reference period (1 April 2018 to 31 March 2020), the Swedish krona did not participate in ERM II but was traded under flexible exchange rate arrangements. Exchange rate on 31 March 2020: 11,0613 kroons/euro, 6,6% more depreciated compared to the average level in April 2018.	Between April 2019 and March 2020, long-term interest rates in Sweden were on average -0,1%, thus remaining well below the 2,9% reference rate.

Source: Based on data provided by the ECB[1]

Table 3: Government debt evolution in Q3-2020 compared to Q3-2019

Member state	Government debt - Q3 2019	Government debt – Q3 2020
Bulgaria	20.5%	25.3%
Czech Republic	31.5%	38.4%
Croatia	74.4%	86.4%
Hungary	67.2%	74.3%
Poland	47%	56.7%
Romania	35.2%	43.1%
Sweden	35.2%	38.4%

Source: Processing based on Eurostat data

In the context of activity restrictions imposed by the Covid 19 pandemic, during 2020 Member States experienced a deterioration of the relevant macroeconomic indicators in the convergence process. Thus, without exception, the stability of public finances has been severely affected, so that both budget deficits and public debt have increased. Table 3 provides comparative data on the level of government debt in the third quarter of 2020 compared to the similar period of the previous year.

The impact of the pandemic was also felt in what was the volatility of the exchange rate in terms of the depreciation of national currencies against the euro. Long-term interest rates are starting to experience significant fluctuations since April 2020 as a result of the impact of the pandemic on the financial markets. It is therefore easy to understand that the process of joining the euro area will be delayed by the continuing economic effects of the health crisis.

4.2. Public international law instruments related to Economic and Monetary Union

In order to better fulfill the objectives of the EMU, at the Dublin meeting of December 1996, the members of the European Council called for the preparation of a Stability and Growth Pact, in accordance with the principles and procedures established by the Treaties and which could in no way be amended, neither the criteria for participation in stage III of EMU, nor the fact that Member States remained responsible for national budgetary policies, subject, however, to compliance with the conditions laid down by primary law of the European Union[1].

Thus, the Stability and Growth Pact, which provides for both preventive measures and sanctions, consists of a European Council Resolution and two Council Regulations, one on strengthening budgetary surveillance and surveillance of economic policy coordination, and another on to accelerate and clarify the implementation of the excessive deficit procedure[2].

The resolution contained obligations for the Member States, the Commission and the Council. Even if we do not analyze those that fell to the Member States in our research, those relating to the Commission and the Council will be presented below.

Thus, the Commission exercises its right of initiative enshrined in the Treaties in a manner that facilitates the strict, timely and efficient implementation of the Stability and Growth Pact; presents, without delay, the necessary reports, opinions and recommendations to enable the Council to take decisions (...) (enshrined in the Treaty provisions on the avoidance of excessive deficits), which will facilitate the effective operation of the early warning mechanism

[1] European Central Bank- Convergence Raport 2020
[1] According to the European Council Resolution on the Stability Pact and Growth
[2] *** Stability and growth pact, www.eurlex.europa.eu, f.a., accessed 21.03.2021.

and the rapid and strict launch the excessive deficit procedure; undertakes to draw up, without delay, a report on the existence of a risk of an excessive deficit whenever the existing or projected deficit of a State exceeds the 3% of GDP reference value; undertakes that, in the event that the Commission considers that a deficit exceeding 3% of GDP was not classified as excessive and that its opinion differs from that of the Economic and Financial Committee, it shall submit to the Council the reasons for its position and that, at the request of the Council (...), it draw up a recommendation to the Council on a decision on the existence of an excessive deficit[3] in a Member State

For its part, the Council stated its commitment to rigorously and timely implement all elements of the Stability and Growth Pact that fell within its competence (...), to consider the deadlines for the application of excessive deficit procedures as maximum deadlines and, in particular, to recommend that excessive deficits be corrected as soon as possible after their occurrence, and in no case later than one year after their identification, unless special circumstances exist; was called upon to always impose sanctions in the event that a participating Member State does not comply with the obligation to take the necessary measures to put an end to an excessive deficit situation, on the recommendation of the Council; was urged to always consider imposing a non-interest-bearing deposit creation whenever it decided to impose sanctions on a participating Member State (...); was urged to always convert a non-interest-bearing deposit into a fine applicable to the Member State concerned, two years after the decision to impose sanctions in accordance with (the provisions of the Treaties on the prohibition of excessive deficits), unless considers that the identified excessive deficit has been corrected; respectively always state in writing the reasons for a decision not to act at any stage of the procedures applicable to the excessive deficit or the supervision of budgetary discipline, provided that there is a Commission recommendation to act and, in the same situation, to make public the votes cast by the representatives of each Member State[4].

Following these recommendations of the European Council, the Council adopted. Regulation (EC) No 146/97 of 7 July 1997 on the acceleration and clarification of the implementation of the excessive deficit procedure and Regulation (EC) No 1466/97 of 7 July 1997 on the strengthening of budgetary surveillance and the surveillance and coordination of economic policies.

Later, in 2005, the Stability and Growth Pact was revised, with the amendments being made to "allow it to take better account of national circumstances and to add additional elements of economic reasoning to the rules imposing obligations on Member States"[5].

To these, in 2011 were added, against the background of the sovereign debt crisis affecting the Eurozone, the measures within the "Package of Six", respectively: Regulation (EU) no. Regulation (EC) No 1173/2011 of the European Parliament and of the Council of 16 November 2011 on the effective application of budgetary surveillance in the euro area; Regulation (EC) No 1174/2011 of the European Parliament and of the Council of 16 November 2011 on implementing measures to correct excessive macroeconomic imbalances in the euro area;. Regulation (EC) No 1175/2011 of the European Parliament and of the Council of 16 November 2011 amending Regulation (EC) No Council Regulation (EC) No 1466/97 on strengthening the surveillance of budgetary positions and the surveillance and coordination of economic policies; Regulation (EC) No 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances; Council Regulation (EC) No 1177/2011 of 8 November 2011 Amending Regulation (EC) No 1467/97 accelerating and clarifying the application of the excessive deficit procedure and Council Directive 2011/85 / EU of 8 November 2011 on requirements relating to the budgetary frameworks of the Member States.

However, against the background of the economic and financial crisis that has hit the humanity since 2008 and the debt crisis that has ravaged the Eurozone as a result, in 2012, to the EU monetary policy edifice based on the TFEU (which, following the entry into force of the Maastricht Treaty, replaced by the TEC in 2009), including the Protocol on the excessive deficit procedure, the Stability and Growth Pact and the derivative instruments mentioned, another element was added, this time a public international law agreement. Specifically, it is the Treaty on Stability, Coordination and Governance within the Economic and Monetary Union.

In that Treaty, the Contracting Parties have agreed, "as Member States of the European Union, to strengthen the economic pillar of economic and monetary union by adopting a set of rules aimed at promoting budgetary discipline by means of a budgetary pact, Strengthening the coordination of their economic policies and improving governance in the euro area, thereby supporting the achievement of the European Union's objectives of sustainable growth, employment, competitiveness and social cohesion"[6].

As regards the possibility of new members being admitted, the Treaty in question, although primarily addressed to euro area Member States, can be considered to be open or at least semi-open, "*it shall apply in full to the contracting parties whose currency is the euro* (…) *and to the other contracting parties to*

[3] In accordance with the Resolution of the European Council on the Stability and Growth Pact.
[4] Idem.
[5] www.ec.europa.eu, *History of the Stability and Growth Pact*, f.a., accessed 09.11.2019.
[6] Article 1 of the Treaty on Stability, coordination and governance in the Economic and Monetary Union (TSCG as follows).

the extent and under the conditions laid down in article 14"[7].

Most interestingly, the Treaty in its Article 2 sets out its relationship with the instruments of European Union law. In particular, it States that "*it shall apply and be interpreted by the Contracting Parties in accordance with the Treaties on which the European Union is founded, in particular Article 4(3) of the Treaty on European Union, and in accordance with the law of the European Union, including procedural law where secondary legislation is required [and] applies in so far as it is compatible with the Treaties on which the European Union is founded and with EU law* (...) *without prejudice to the competences of the Union to act in the field of economic union*"[8].

With regard to matters of an institutional nature, article 10 of the Treaty stated that "in accordance with the requirements laid down in the Treaties on which the European Union is founded, the Contracting Parties were prepared to make use, whenever appropriate and necessary, of specific measures for the Member States whose currency is the euro, as laid down in Article 136 of the Treaty on the Functioning of the European Union, and enhanced cooperation as provided for in Article 20 of the Treaty on European Union and Articles 326-334 to 300 of the Treaty on the Functioning of the European Union, as regards issues that are essential for the smooth functioning of the euro area, without prejudice to the internal market"[9] In the same idea, for comparative assessment purposes aimed at "the best practices and cooperation toward closer economic policy coordination, the contracting parties shall ensure that all major economic policy reforms they plan will be discussed ex ante and, where appropriate, coordinated between the parties. That coordination shall involve the institutions of the European Union in accordance with European Union law"[10]

From the decision-making point of view, article 12 of the Treaty States that "the Heads of State or Government of the Contracting Parties whose currency is the euro shall meet informally at euro area summits, together with the President of the European Commission. The President of the European Central Bank shall be invited to attend these meetings [and] the President of the Euro Summit shall be designated by the Heads of State or Government of the Contracting Parties whose currency is the euro by simple majority at the same time as the election of its President by the European Council and for the same period of office"[11].

As regards euro area meetings, they "shall be organized when necessary and at least twice a year so that the Contracting Parties whose currency is the euro discuss issues related to their specific responsibilities with regard to the single currency, other issues related to euro area governance and its rules, as well as strategic guidelines for the delivery of economic policies with a view to increasing convergence in the euro area"[12]. In the same idea, "the Heads of State or Government of the Contracting Parties, other than those whose currency is the euro, which have ratified this Treaty, shall also participate in the discussions at the Euro Summit on the competitiveness of Contracting Parties, changing the overall architecture of the euro area and the fundamental rules that will apply to it in the future and, where appropriate and at least once a year, in discussions on specific issues related to the implementation of this treaty on stability, coordination and governance in the economic and monetary union"[13].

From the point of view of the relations between the Summit provided for by the Treaty and the institutions of the Union, it should be noted that "*the President of the Euro Summit shall ensure the preparation and continuity of euro area summits, in close cooperation with the President of the European Commission. The body in charge of preparing and following up the results of the Euro Summit shall be the Eurogroup and its Chair may be invited to attend these meetings for that purpose*"[14]. In the same vein, "*the President of the European Parliament may be invited to be heard. The President of the Euro Summit shall report to the European Parliament after each Euro Summit*"[15], while "*the President of the Euro Summit shall closely inform contracting parties other than those whose currency is the euro and the other Member States of the European Union on preparation and results of euro area summits*"[16]. We also consider it important to note that "*as provided for in Title II of the Protocol (No 1) on the role of national parliaments in the European Union annexed to the Treaties of the European Union, the European Parliament and the national parliaments of the Contracting Parties will jointly decide to organize and promote a conference of representatives of the relevant committees of the European Parliament and of the representatives of the relevant committees of national parliaments, in order to discuss budgetary policies and other matters covered by this Treaty*"[17].

[7] Art. 2 of the TSCG.
[8] Art. 3 of the TSCG.
[9] Art. 10 of the TSCG.
[10] Art. 11 of the TSCG.
[11] Art. 12 of the TSCG.
[12] Idem.
[13] Idem.
[14] Idem.
[15] Idem.
[16] Idem.
[17] Idem.

5. Conclusions

In the conclusion of this study, we note that, since its inception, the political and legal construction that led to the establishment of Economic and Monetary Union has faced and had to overcome the inadequacy of the legal bases identified in the institutive or amending Treaties. Although complex and not always linear (being defined, as the whole evolution of the Union construction, of crises and failures which, far from undermining the project arising from Robert Schuman's Declaration, defined and consolidated it[18]), the progress of economic and monetary Union once again shows that "*from the point of view of the evolution of competences within the Communities and the European Union, (...) initially, the responsibility of the European Community involved only in economic and commercial matters. As the EU becomes a political partner, Member States give it more powers, realizing that certain issues are better coordinated at supranational level*"[19]. This supranational nature implies, of course, some sovereignty sharing but, in the economic field that our study touches and not only, "*the question is* [always] *that of the first national sovereignty and that of the economy*", which essentially depends on political will. However, this has not always been done by means typical to European Union law, but also by using the public international law creatively and as an expression of the said political will. And it is precisely in this political will that, we believe, lies the future of Economic and Monetary Union, because the financial crisis that the world experienced in 2008-2012 demonstrated that the eternal problem of "*the quest for legal and ethical grounding of the decisions to be made by public authorities in case of a crisis continues unabated*"[20], particularly in an area where technical and cold criteria and the desiderate of macroeconomic stability are faced with the need to safeguard the values on which both the Union and the societies of which it is composed, of which human dignity must always be at the forefront.

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[18] For further details, see Augustin Fuerea, *Manualul Uniunii Europene*, *Ediția a VI-a revizuită și adăugită*, Editura Universul Juridic, București, 2016, passim.

[19] Mihaela Augustina Dumitrașcu, Oana Mihaela Salomia, *Dreptul Uniunii Europene II, Curs universitar*, Editura Universul Juridic, 2020, p. 56.

[20] Monica Florentina Popa, *Ce nu poate să facă analiza economică în drept - capcane și implicații practice" (What the economic analysis of law can't do - pitfalls and practical implications)*, paper presented within the International Business Law Conference, november 13th 2020 (*Perspective ale dreptului afacerilor în mileniul al treilea*), Bucharest, 2020, available at www.businesslawconference.ro, 2020, accessed 20.03.2021.