

ADEMU WORKING PAPER SERIES

A European Finance Minister: Form follows function, but is it legal?

*A legal analysis of the European Commission's proposal to create a
European Minister of Economy and Finance*

Maria Patrín[‡]

April 2018

WP 2017/096

www.ademu-project.eu/publications/working-papers

Abstract

In December 2017, the European Commission presented a communication on the creation of a European Minister of Economy and Finance, proposing to merge the functions of the European Commissioner in charge of economic and monetary policy with the position of the Eurogroup's President. This paper reviews the legal framework in which the European Finance Minister would operate and highlights the legal and institutional implications of the Commission's proposal. It analyses the potential impact of the new institutional arrangements on the Commission's collegial organization, on the inter-institutional balance of the Union and on the accountability relations between the Commission and the European Parliament. The paper ultimately questions the Commission's assumption that the proposed changes could be implemented without modifying the Treaties and raises some fundamental issues regarding the impact of the reform on the democratic legitimacy of the Union in the absence of Treaty revision.

Keywords: European Minister of Economy and Finance, European Commission, Economic and Monetary Union, Eurogroup, collegiality, institutional reform, Treaty revision, accountability, democratic legitimacy.

JEL Codes:

[‡] PhD researcher, European University Institute

Acknowledgments

This project is related to the research agenda of the ADEMU project, "A Dynamic Economic and Monetary Union". ADEMU is funded by the European Union's Horizon 2020 Program under grant agreement N° 649396 (ADEMU).

..

The ADEMU Working Paper Series is being supported by the European Commission Horizon 2020 European Union funding for Research & Innovation, grant agreement No 649396.

This is an Open Access article distributed under the terms of the Creative Commons Attribution License Creative Commons Attribution 4.0 International, which permits unrestricted use, distribution and reproduction in any medium provided that the original work is properly attributed.



1. Introduction

In the framework of its package on *Deepening the Economic and Monetary Union* (EMU), the European Commission presented on 6 December 2017 a *Communication on a European Minister of Economy and Finance*.¹ The Communication proposes to concentrate scattered EMU functions in the hands of a single authority and lays down the main steps to achieve this objective. The central idea is to merge the function of the Commissioner in charge of economic and monetary policy with the position of President of the Eurogroup, similarly to what already happens with the High Representative of the Union for Foreign Affairs and Security Policy, who is the Commission's Vice President and Chair of the Foreign Affairs Council. This short paper discusses the legal and institutional implications of the Commission's proposal. It analyses the potential impact of the new institutional arrangements on the Commission's internal organization and on the inter-institutional balance of the Union. It further enquires whether the proposed changes could be implemented without modifying the Treaties, as argued by the Commission.

The Commission's proposal, which takes the form of a Communication (non-legislative instrument), is a first attempt to sketch out the main features of an ambitious institutional reform and is not entirely developed in all its consequences. It is very short - only eight pages long – and it is part of a wider EMU package of which it does not represent the most important element.² Arguably, it constitutes a thought exercise to launch the debate on an important issue, which, the Commission knows, will spur quite some controversies. Therefore, an in-depth analysis of the legal arrangements proposed proves challenging at this stage: the devil is in the details but precisely the details are often missing in the Commission's communication. Yet, a number of critical points can be identified and discussed in a

¹ European Commission, *Communication from the Commission to the European Parliament, the European Council, the Council and the European Central Bank: A European Minister of Economy and Finance*, COM(2017) 823 final, Brussels, 6/12/2017.

² European Commission, *Communication from the Commission to the European Parliament, the European Council, the Council and the European Central Bank: Further steps towards completing Europe's Economic and Monetary Union: A Roadmap*, COM(2017) 821 final, Brussels, 6/12/2017. The proposal for a Finance Minister is only one among different proposals, including: a proposal for establishing a European Monetary Fund, a proposal to integrate the Treaty on Stability, Coordination and Governance into the Union legal framework, and the introduction of new budgetary instruments for the euro area.

preliminary analysis. In this paper I highlight five main issues that in my opinion would need further consideration if the Commission's proposal for a European Finance Minister is ever to be implemented. They encompass legal and institutional questions mainly related to the compatibility of the merging of the Commission's and Eurogroup's functions with the current Treaty framework. More concretely, these questions touch upon: i) the Commission's identity as a collegial institution; ii) a potential conflict of interest in the functions of the newly created Minister; iii) the accountability mechanism of the Minister towards the European Parliament; iv) the need to institutionalise the Eurogroup; and v) the administrative structure underpinning such a new institutional role.

2. Background: The idea of a European Finance Minister

The Commission's proposal follows on from the initiative of the Commission's President Jean-Claude Juncker, who, in his 2017 State of the Union speech, called for the creation of a European Minister of Economy and Finance, with the tasks of promoting and supporting structural reform in the Member States³. Juncker's proposal does not come as a surprise. Although the term Minister has been used only recently, the idea of a European EMU Authority is not new and has been floating around for some time. Back in 2015, the *Five Presidents Report* proposed to strengthen the Eurogroup with a full-time Presidency and to eventually introduce a Euro-area Treasury.⁴ More recently, the Commission's *Reflection Paper on the deepening of the Economic and Monetary Union* mentioned the need to find a "new balance" between the Commission and the Eurogroup and the possibility of merging the functions of a permanent Eurogroup chair with those of the EMU Commissioner.⁵ The issue was also extensively covered by the media, especially following declarations from the French Commissioner Moscovici who explicitly showed interest for the new role⁶.

To be sure, the idea to strengthen the role of the EMU Commissioner in the area of fiscal surveillance and budgetary oversight dates back to before Juncker's times. It was for the first time formulated in 2011 at the height of the financial crisis. The Dutch Government first, and

³ Jean Claude Juncker, *State of the Union Address 2017*, Brussels, 13 September 2017

⁴ Jean-Claude Juncker, Donald Tusk, Jeroen Dijsselbloem, Mario Draghi and Martin Schulz, *Completing Europe's Economic and Monetary Union*, Brussels, 22/06/2015

⁵ European Commission, *Reflection Paper on the deepening of the Economic and Monetary Union*, Brussels, 31/05/2017

⁶ Ryan Heath, Pierre Moscovici: [Finance commissioner should also run Eurogroup](#), Politico, 14/06/2017

the then Commission's President Barroso subsequently, proposed to create a Super Commissioner in charge of fiscal policies, with the exclusive powers to veto national budgets. Interestingly, the proposal initially found significant support in the Council. The conclusions of the European Council of 23 October 2011 referenced the creation of a super-commissioner, stating: "In this context, we welcome the intention of the Commission to strengthen, in the Commission, the role of the competent Commissioner for closer monitoring and additional enforcement".⁷ The initiative eventually fell through as a consequence of the changing relations between France and Germany after the election of François Hollande (and the end of the so-called Merkozy era).⁸

In some regards the Dutch proposal was even more radical than the current Commission's initiative, in that it granted extraordinary powers to one Commissioner only, over - and independently of - the will of his fellow college members, thus clearly jeopardizing the principle according to which the college of Commissioners must adopt decisions jointly. From this point of view, it is surprising that the proposal, in addition of gathering a broad consensus among Member States, was also supported and sponsored by the Commission's President himself. Arguably, there are several commonalities between the Super-Commissioner initiative and the current proposal of a European Finance Minister. They both aim at centralizing the management of EMU affairs creating a new institutional function within the Commission, and they both maintain that this could be achieved within the current Treaty framework. Today, as in 2011, the Commission appears willing to operate a drastic reform of its institutional setting without quite acknowledging the impact that this would have on its overall role and functioning. Both the Commission's Roadmap and the Communication on the Finance Minister indeed insistently repeat that the reform would not require changing the Treaties.⁹ Is it really so?

In October 2015 a policy paper developed by E. Enderlein and J. Haas for *the Jacques Delors Institute* analysed in quite some details the possibility of creating a European Finance Minister and sketched out a viable proposal of how this idea could be implemented from a legal and

⁷ European Council, *Conclusions of 23/10/2011*, Brussels, 30 November 2011.

⁸ For more information and a detailed analysis of the negotiations on the Super-Commissioner see Y. Karagiannis and M. Guidi, Institutional change and continuity in the European Union: The super-commissioner saga, in *Acta Politica*, 2014, Vol. 49, 2, 174–195

⁹ European Commission, COM(2017) 823 final, p.2; European Commission, COM(2017) 821 final, p. 10.

political perspective, looking at the tasks, functions and accountability structure of such an institutional innovation. According to Enderlein and Haas the European Finance Minister “should be ‘double-hatted’, i.e., she should be simultaneously a member of the European Commission and chair of the Eurogroup”.¹⁰ Yet this would also require changes in the accountability relations with the European Parliament, in the form, they argue, of a joint committee consisting of delegates from national parliaments and the European Parliament. However the two authors unequivocally observe that “It is clear, that any solution coming close to our proposal would require a change of the European Treaties”.¹¹

In its present proposal, conversely, the Commission seems to think that the creation of a European Finance Minister would be unproblematic from a primary law perspective. It inserts the Finance Minister in the continuity of the reform of the Commission’s college implemented by Juncker at the beginning of his mandate, which strengthened among else the role of the Vice President in charge of EMU policy coordination. In this respect the increasing powers attributed to Vice-Presidents under the Juncker Commission and the growing importance of EMU related matters would represent first steps in the direction of creating a dedicated post.¹² However, the institutional changes contained in the Commission’s proposal are far-reaching and bear significant consequences for the institutional architecture of the Commission and its inter-institutional relations. The next section of the paper therefore reviews the legal consequences of the reform proposed by the Commission and assesses whether the new position would be compatible with EU primary law.

3. Form and function of a European Finance Minister. Is it legal? Does it require Treaty revision?

The Commission’s proposal aims at increasing the coherence, effectiveness and transparency of EU economic policy-making. In order to reach that aim, the Finance Minister’s role would follow the principle according to which “form follows function”¹³ - a sort of soft version of the Machiavellian “the end justifies the means” – in the sense that the institutional features of

¹⁰ E. Enderlein and J. Haas, *What would a European Finance Minister do? A proposal*, Jacques Delors Institute, Berlin, October 2015, Policy Paper 145, p. 4

¹¹ E. Enderlein and J. Haas (2015), p. 14.

¹² European Commission, *Communication from the President to the Commission. The Working Methods of the European Commission 2014-2019*, C(2014) 9004, 11 November 2014.

¹³ European Commission, COM(2017) 821 final, p. 10

the new position would be shaped on the basis of the functions she is called on to perform to strengthen EMU. The Finance Minister would thus combine existing functions at the EU level, simplifying the EMU governance and streamlining decision-making procedures. To do so she would be at the same time a member (possibly a Vice-President) of the Commission and a permanent Chair of the Eurogroup. The responsibilities of the Finance Minister would include strengthened policy coordination and oversight of economic, fiscal and financial rules, centralised management of euro-area budgetary instruments (e.g. support for structural reform) and oversight of the work of the European Monetary Fund (once established). Overall, she would be in the position to better pursue the general interest of the euro-area as a whole and to ensure more coherent external representation.

Arguably, this model is inspired by the High Representative for Foreign Policy, who is Vice-President of the Commission and permanent Chair of the Foreign Affairs Council, effectively belonging to the Commission and to the Council at the same time. The precedent provides an obvious test case and an example upon which to develop the features of the new position. Yet, the Communication does not even mention once the High Representative and one is inclined to think that the omission is deliberate. The double role of the High Representative was agreed by Treaty revision, its role and functions are spelled out in the Treaties and the administrative reform underpinning it was the result of an inter-institutional political bargain that led to the creation of the *European External Action Service (EEAS)* as a special administrative apparatus shared between the Council and the Commission. Nothing of this kind is envisageable today. The Commission very clearly sets out its view on the legal framework of the proposal: in the introduction to the Communication the last sentence reads: “In particular, the Communication describes the added value of an ultimate merger of the function of Commission Vice-President in charge of the Economic and Monetary Union with that of President of the Eurogroup, and it highlights that this could already be achieved under the existing Union Treaties.”¹⁴ In the absence of a realistic perspective of changing the Treaties, institutional reform is confined to the possibilities offered by the current Treaty framework. The Commission’s proposal thus plays with the flexibility provided by that framework and is keen on remaining within its boundaries. The High Representative surely provides a model for the Finance Minister. Yet, it also represents a dangerous parallel,

¹⁴ European Commission, COM(2017) 823 final, p.2.

precisely because its creation was enshrined in Treaty provisions and accompanied by a new administrative structure, which is what the Commission seems to be keen to avoid, or at least to keep out of the debate, at this stage. But how far can the means go to justify the end without breaching that very democratic principle that the Commission aims to strengthen through its action?

At a closer look the arguments put forward by the proposal in order to avoid Treaty changes are not entirely convincing. According to the Commission, the merging of the positions of Commission member and Eurogroup chair does not require Treaty revision because the rules for electing the President of the Eurogroup are not in principle incompatible with the position being taken up by a member of the Commission. Protocol n° 14 on the Eurogroup, annexed to the Treaties, only states that “The Ministers of the Member States whose currency is the euro shall elect a President for two and a half years, by a majority of those Member States”.¹⁵ Furthermore, back in 2011 the European Council directly acknowledged the possibility of establishing a full-time President based in Brussels, yet a final decision on the matter was postponed to the end of the current Eurogroup President’s mandate. In conclusion, the Commission points out in a footnote that Eurogroup Ministers would only have to change their *Working Methods*, which currently foresee that the President shall be a national Finance Minister. No other impediment seems to exist: “The Minister would not create a new supranational bureaucratic layer, nor would the Minister impinge on national competences”.¹⁶

This might well be true in relation to the Eurogroup. But what about the Commission? The proposal entrusts to a second, rather enigmatic, footnote (footnote 18) the only comment about the compatibility of the merging with the Treaty provisions on the Commission: “The Commission participates in the work of the Eurogroup, as is foreseen in Protocol n° 14 to the Treaties. Art. 17(1) TEU lays down the mission of the Commission to promote the common interest of the Union, which it does in all its activities. It is thus Union primary law that makes it clear that there is no incompatibility between the tasks of a Member of the Commission

¹⁵ *Treaty on European Union* - Protocol (No 14) on the Euro Group, Official Journal 115, 09/05/2008 P. 0283 – 0283.

¹⁶ European Commission, COM(2017) 823 final, p.5.

and involvement in the work of the Eurogroup”.¹⁷ Arguably, however, there is a sizeable difference between “being involved” in the work of the Eurogroup and presiding it. Whereas the former is unproblematic from a primary law perspective, it may well be the case that taking up the Chairmanship of the Eurogroup might require further adjustments. It is no coincidence that institutional changes of this kind have in the past been agreed during Treaty negotiations. As already noted, this was the case for the Vice-President for Foreign Affairs/High Representative. Equally, other reforms, such as the strengthening of the powers of the Commission’s President vis-à-vis the college, were preceded by a revision of the Treaties.

In the rest of the paper I will argue that the wide-ranging changes proposed by the Commission will have a significant impact on the Union’s institutional balance, both within the Commission’s college and between the Commission and the other institutions. In particular, I will focus on five problematic points, related to i) the principle of collegiality; ii) the conflict between Commission’s and Eurogroup’s functions; iii) the accountability relation with the European Parliament; iv) the informal nature of the Eurogroup; and v) the Finance Minister’s administrative ‘Services’.

i) The principle of collegiality

The creation of the European Finance Minister would have significant consequences for the internal balance of the college. Art. 17.6 TEU states that the Commission should act efficiently, consistently and collegially under the guide of its President. The President provides the political direction to the work of the Commission and is responsible for the allocation of tasks within the college. There is little doubt that the introduction of an EMU Vice-President who would also be the Eurogroup President would greatly affect the power balance within the college. Contrary to foreign policy, which remains solidly in the hands of the Member States, we are dealing here with core Union competences in which the Commission’s powers have been continuously growing in importance in recent times. Especially when it comes to budgetary supervision, the Commission is already performing very sensitive tasks and enjoys a great deal of autonomy in managing these tasks. It is likely that the transformation brought

¹⁷ European Commission, COM(2017) 823 final, p.7. It is interesting to note that the most salient legal issues are confined to footnotes.

about by the merging of Commission's and Eurogroup's functions would distort the internal collegial decision-making of the Commission. Internal decisions of the college on issues pertaining to key EU competences would need to be shared with another, external institution. The leverage of the college, and possibly of the Commission's President himself, on the new super Minister would arguably be limited.

ii) *Interest of the Union or interest of the Member States? Conflicting functions of a double-hatted Minister*

By the mere fact of being double-hatted, a new European Finance Minister would affect inter-institutional relations. Despite what the Commission argues, the merging of the Commission's and the Council's functions in a policy area such as EMU could lead to a short-circuit in the balance of interests on which the Union is founded. By centralising the management of currently dispersed EMU functions and tasks, the position would ensure more consistent decision-making in the euro-area, however at the expenses of the separation of powers between the institutions. In other words, the Commission, who is the guardian of the Treaties and represents the Union's interest, would also be the Chair of the institution who represents the interest of the Member States. In an article recently published in *Politico*, Guntram Wolff warns precisely against this danger: "To make matters worse, in Juncker's vision, the finance minister would serve as Commission vice president, Eurogroup chairman and head of the eurozone's portion of the EU budget. This unduly mixes the role of the Commission with that of the European Council, upsetting the fine balance between community interests and national interests on which the EU is built."¹⁸

The European Minister of Finance would be responsible for the oversight and control on national budgets, and on the European Monetary Fund, which would provide financial support to Member States in need. "As a member of the Commission, the Minister would coordinate the surveillance of Member States' fiscal policies, ensuring fiscal sustainability and applying the Stability and Growth Pact with the economic reading that the rules foresee".¹⁹ Yet the Minister would be at the same time the Head of the institution gathering together the Member States that he would be supposed to control. It is questionable therefore whether

¹⁸ Guntram Wolff, [Why Europe doesn't need a finance Minister](#), Politico, 12/03/2017

¹⁹ European Commission, COM(2017) 823 final, p.4

he would be able to easily manage his double function of President of the Eurogroup and of watchdog of the financial solidity of Member States' public finances. More importantly, such a change would hardly be possible and even desirable in the absence of an agreement at the level of primary law. Doesn't it stretch too far the current institutional framework enshrined in the Treaties? The Union's Treaties provide for a certain degree of flexibility to adjust to political change, yet they do not allow for a complete reform of the principles and rules that are at the core of the Union's institutional balance.

iii) Accountability mechanisms and relation with the European Parliament

One of the objectives of the new institutional arrangement is allegedly to strengthen the democratic accountability of the Economic and Monetary Union. To this effect the proposal establishes that the "Minister would be accountable towards the European Parliament on all issues related to its functions and would also be available for dialogues with national Parliaments".²⁰ Whereas the relation with the national Parliaments would be based on dialogue and information exchange, the Minister, as a member of the college, would be formally responsible in front of the European Parliament.

The form of accountability that binds the Commission to the Parliament, however, is collective. The collegial nature of the Commission requires that the college of Commissioners be appointed and dismissed as a whole and does not formally foresee any form of individual accountability. Over the time, the institutional practice has introduced several elements that allow for some sort of control over single Commissioners. One of these practices is mentioned in the Commission's communication and is the habit to submit Commissioner-candidates to hearings before the vote of approval of the Parliament.²¹ Another one consists in the power of the President of the Commission to force the resignation of college members,²² especially when the request comes from the Parliament.²³

²⁰ European Commission, COM(2017) 823 final, p.7

²¹ European Commission, COM(2017) 823 final, p.7

²² TEU, Art. 17(6)

²³ *Framework Agreement on relations between the European Parliament and the European Commission*, OJ L-304/47, 20/11/2010, Art. 5. "If Parliament asks the President of the Commission to withdraw confidence in an individual Member of the Commission, he/she will seriously consider whether to request that Member to resign, in accordance with Article 17(6) TEU"

Despite these arrangements, the political responsibility of the Commission towards the Parliament remains collective according to the Treaties. It is therefore surprising that the Commission's proposal hints in the opposite direction. Between the lines it points to a form of individual accountability of the Finance Minister towards the Parliament. This is also the consequence of a legal difficulty: in the presence of a double-hat arrangement it is problematic to assume that the decisions of the Finance Minister will engage the whole Commission, if they are to be attributed not exclusively to the college but involve an external institution. Here again the collegial nature of the Commission's decision-making proves problematic in view of a clear and transparent accountability relation between the Finance Minister and the Parliament. On the one hand, in the absence of a form of individual accountability, it is hard to see how the democratic control of the Parliament over the EMU would be improved. At the end of the day, from a formal point of view, the Minister would be responsible to the Parliament as every member of the Commission is, and this would not increase in any fashion parliamentary oversight of EMU decision-making. On the other hand, admitting such a form of individual accountability infringes collegiality rules and it is questionable whether it can be envisaged under the current Treaty regime.

iv) *The informal nature of the Eurogroup*

The Eurogroup has been established as - and still is - an informal body. The Commission's *reflection paper on EMU* in May 2017 alluded to the possibility of eventually turning the Eurogroup into a Council configuration.²⁴ Conversely, no mention of this step is to be found in the current EMU package of December 2017. Yet this is no marginal issue. Would the official Finance Minister of the Union preside over an informal institution? How would this be combined with the very formal role of Vice-President of the Commission? Arguably, the creation of a Finance Minister would necessarily lead to the institutionalisation of the Eurogroup. This in turn, however, would raise the question of the relation between the newly formalised Eurogroup and the Ecofin Council, and, more importantly, of the relation between the latter and the Finance Minister. In any event, such a development would again require Treaty revision.

²⁴ European Commission, *Reflection Paper on the deepening of EMU* (2017), p. 27.

v) *The Finance Minister's "Services"*

Finally, it is worth briefly addressing the administrative structure that would support the work of the European Finance Minister. As we know, when the High Representative was created with the Treaty of Lisbon the EEAS - a fully new apparatus - was added. The EEAS merged personnel from the Member States and the Commission in an unprecedented administrative restructuring. In the present case, conversely, the Commission's proposal reassures Member States and EU citizens of the fact that no additional structures will be created or duplicated: "The European Minister would be supported in the preparation of the Eurogroup meetings by the permanent Chairman of the Economic and Financial Committee/Eurogroup Working Group and a Secretariat building on all available expertise"²⁵. The related footnote explains that Eurogroup meetings are already partly prepared by Commission staff and that therefore this system could provide the model for the Minister's support.

However, as a member of the Commission, the Minister would also be responsible for a number of Commission's Directorate Generals (e.g. *Economic and Financial Affairs - Ecfm* and *Financial Stability, Financial Services and Capital Markets Union - Fisma*), which would be in charge, *inter alia*, of monitoring, assessing and intervening on the financial and fiscal stability of the Member States. Arguably, such a function of fiscal surveillance and budgetary control requires a high degree of autonomy and independence from the influence of the Member States. How would this type of work be integrated in the preparation of the Eurogroup side of the Minister's work? What relation would the Eurogroup Secretariat have with the whole system of services and DGs hosted within the "single administration", that is the Commission?²⁶

In other words, it is difficult to envisage how the establishment of a fully-fledged Eurogroup Secretariat within the Commission's administrative ranks would be compatible with the functions that the Minister as a Vice-President of the Commission would be called upon to exercise. It is therefore rather curious that the Commission maintains that only few marginal changes would be required to the current structure. Assuming that a convenient arrangement

²⁵ European Commission, COM(2017) 823 final, p.7

²⁶ Art. 21 of the Commission's Rules of Procedure states that the different DGs and services shall form a single administrative service. European Commission, *Rules of Procedure of the Commission*, C(2000) 3614, Art. 21.

might be possible, further reflection on how this would be implemented in practice are certainly required.

4. Conclusions

The Commission's proposal for the creation of a European Finance Minister raises a number of challenges. Although the idea was repeatedly discussed in the last years, the Commission's package on EMU and the related Commission's *Communication on a European Minister of Economy and Finance* represent the first concrete steps in the process. Bearing in mind that this is only the first attempt to lay down a vision for the future Minister, this paper has reviewed the Commission's proposal to assess the legal framework in which the new position would operate and its potential shortcomings. Leaving aside the political feasibility of such a project, the paper has identified five main issues requiring further reflection. First, it is questionable whether the special powers granted to the EMU Commissioner would be compatible with the principle of collegiality. Second, there is a conflict of interest implicit in the double-hatting of the European Minister, as EMU Commissioner and Chair of the Eurogroup— as watchdog of the financial stability of the Member States and main representative of the interest of those Member States. Third, the accountability relation between the Minister and the European parliament is not entirely clear: especially, it is not clear whether a form of individual accountability could be envisaged. Fourth, as of now the Eurogroup is an informal body: how would an official Minister preside over an informal institution? Finally, further thought is needed to clarify and explain how the organization of the administrative services supporting the Minister would work in practice.

Ultimately, these five points add up to a single main question: can a European Finance Minister be created in the absence of Treaty revision? Does the Commission's vision comply with EU primary law? This paper raises several doubts in this regard. Yet, this is no marginal legal cavil: it entails a substantial question on the legal instruments used to legitimately implement change at the Union's level. When we say that a certain institutional reform cannot be implemented without Treaty change we also admit that this reform touches upon some core principles and structures on which the Union is founded. It is not merely a change in the practice, but it implies important choices on the form that the Union should take or we would like it to take.

In this respect, the Commission's Communication raises a fundamental constitutional issue. The insistence on the fact that the position does not (or shall not?) require Treaty change points to a deep mistrust towards the constitutional foundations of the Union. The Commission - and arguably also many Member States and other institutions in Brussels - tends to consider the Treaties as a constraint. Yet, the constitutional value of the Treaties lies in their authority to distribute power and attribute functions to the Union's institutions, and those institutions are not supposed to do this on their own. Yet, admittedly, the Commission's proposal for a European Minister of Finance precisely aims to change the inter-institutional distribution of powers and functions, and this without any constitutional mandate. Interestingly, this would happen in the name of "further strengthening democratic accountability"²⁷. However, by bypassing the key democratic tool of the Union, the Treaties, the proposal risks undermining the EU democratic foundations rather than strengthening it. In other words, it creates a short-circuit between the Commission's objective – strengthening democracy and legitimacy – and the instruments it wants to use it to achieve it – an institutional reform that affects the democratic and legitimating functions of the Treaties. This reflects the Union's current constitutional paradox, whereby constitutional reform is desperately needed but, since Treaty revision seems an almost impossible endeavour, reform has to pass through alternative solutions, which however tend to further undermine the legitimacy of the Union.

The paper does not intend to prove that a European Finance Minister is not possible nor desirable. It rather contends that it is not as easily possible as argued by the Commission. The new position would have important repercussions on the institutional architecture of the Union and on its interinstitutional balance. The Commission tends to minimize this impact, noting that it would be unproblematic from a primary law perspective. However, such an institutional innovation hides important political choices on the form of the Union itself. It touches upon the institutional role of the Commission as representative of the Union's interest, the accountability relation with the European Parliament and the relation with the Council in a sensitive policy area such as EMU. For these reasons at the very least it deserves thorough analysis and discussion. Above all, it deserves an honest recognition from the part

²⁷ European Commission, COM(2017) 823 final, p. 1

of all institutional players of the consequences that it would have on the Union, especially if the reform wants to increase the democratic legitimacy of EMU policy-making.