

# Legal Limits to EMU Reforms – assessing the options

# The Commission 2017 Roadmap

- Four proposals
  1. Bring Fiscal Compact into EU Law (Fromage/deWitte)
  2. Amend ESM Treaty & bring it under EU Law
  3. Redeploy & Expand the Budget
    - (e.g. unemployment reinsurance, Steinbach 2017; fiscal stabilization, Leino Sandberg & Saarenheimo 2018)
  4. Minister of Economy and Finance (Patrin, 2018)
- Context
  - Between regulation and solidarity
    - Brunnermeier, James, Landau, *The Euro and the Battle of Ideas*
  - Unity of the EU legal order

# Fiscal Compact Directive

- A softer Article 3 (or a revocation part of the Treaty?)
  - Medium term objective:
    - Treaty: structural deficit max 0.5%
    - Directive: structural deficit max 1%
- Why move from Treaty to Directive?
  - All MS have implemented the Fiscal Compact anyway
  - Treaty requires transposition into EU Law
- Little reconsideration of the regulatory approach
  - e.g. Exclude public investments from calculation of deficits;
  - or deeper reflection as to whether fiscal prudence makes sense

# Key features of ESM

Feature	Comments
International Treaty	Bypasses EU Law accountability; some accountability to national parliaments
Loans to euro-area MS: low interest rates + conditions	General agreement that process helped the Member States and the euro-area (but see below MoUs)
Governance: Board of Governors (finance ministers), unanimity voting/large states have blocking votes	New tasks for COM and ECB: how does this affect these institutions?
ESM is accompanied by the IMF	At request of creditor states (Henning, <i>Tangled Governance</i> , 2017)
Memoranda of Understanding	(1) Trample over fundamental rights, limited judicial review (cf. C-258/14 <i>Florescu</i> ) (2) Circumvents EU competences (health, education, trade union rights)

# COM: Bring ESM into EU Law

Proposal	Comments
Legal basis to do so?	Is EU action necessary?
Council to approve decisions of the Board of Governors	Two institutions largely overlap. Council liability for decisions?
Accountability to EP, Council and Commission	Yes – but issue of absence of national dialogue, late requests ( <b>ESM external review 2017</b> ) remains
EMF has a role in negotiating the MoU with COM	EMF as a ‘unique legal entity’ – meaning what?
<b>Respect right of collective bargaining; social impact assessment</b>	
<b>Sever link to IMF</b>	
<b>Fiscal Backstop to Single Resolution Fund</b>	
<b>Possible stabilization function (French proposal)</b>	Cf. EU budget reform proposals

# ADEMU's ESF (1)

## Proposal

1. State may request funding at any time
2. Funding is subject to a long term contract
  - a) No MoUs
  - b) Flexible repayment rates
  - c) Terms vary with beneficiary's economic performance

## Comments

### Article 125 TFEU

*The EU & MS 'shall not be liable for or assume the commitments of' other MS*

### Modified by Pringle (ESM)

- Funding necessary to safeguard financial stability of Eurozone
- Strict conditionality

# ADEMU's ESF (2)

- **Softening the *Pringle* criteria?**

- Eligibility

- E.g. (1) only well-behaved states may seek funding & (2) as a form of 'precautionary financial assistance' (COM ESM proposal 2017)
- Cf. EU budget proposal – rule of law compliance a condition for obtaining cohesion funds

- Conditionality

- Is enforced self-discipline in the contract enough to be sure the beneficiary's policies will sustain the interests of the EU?
  - Lessons from utilities liberalization (benefits far outweigh the costs, EU legislation required) suggest not!

- **What is the impact of ESF on the rest of EMU governance**

- Do we need a SGP?

- Relationship with existing proposals

- Subsume ADEMU ESF into the European Monetary Fund proposal
- As a 'redistributive' budget?