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

Dragoș–Adrian BANTAȘ[*]
Diana Elena CĂPRIȚĂ[**]

Abstract

As we write this, the Economic and Monetary Union seems to have overcome the crisis that has affected its credibility since 2009, continuing to present itself as the most successful monetary integration initiative in the world. This impression cannot be considered unfounded, as although economic and monetary unions existed before (such as those between England and Scotland in the 18th century, Belgium and Luxembourg or, ultimately, between the former British colonies that made up the United States of America), the Economic and Monetary Union to which we refer is the only such construction that brings together a number of 27 states, of which 19 have adopted a single currency (Euro), 27 states between which there have been and can still be found numerous differences in language, culture, level of development and values of the main economic indicators. Like any legal construction of this magnitude, Economic and Monetary Union did not emerge suddenly, but is the result of several decades of efforts, creative interpretations of the Community / Union and public international law, including an original but no less efficient use of mixed legal instruments. To these aspects we will refer in the approach we submit to your attention, consisting of two researches that address the evolution of Economic and Monetary Union from its premises to the present. Thus, in the first of these, which is the subject of this study, we will refer to the main moments that defined the development of the future Economic and Monetary Union even before its consecration at the level of European Union primary law, using, in the absence of other legal grounds, both a set of provisions of primary law which led, by way of interpretation, to the possibility of establishing a monetary cooperation between Member States, and a number of instruments specific to public international law rather than Community law but which, nevertheless, by way of the member states voluntarily assuming the application of their provisions, have produced the desired effects in the legal order of the Communities, notwithstanding the absence of an obligation to that effect.

Keywords: *European Union, Economic and Monetary Union, Euro, Werner Report, the snake, the European Monetary System, the ECU.*

1. Introductory considerations

Whether we support the Union project or not and whether we sympathize with the Economic and Monetary Union project or not, both of them are the realities that define not only the framework for the development of international relations, but also, in more and more situations, the legal relations between the subjects of law (public and private alike) in the Member States. And perhaps not only that, because the existence of the European Union, its economic force, its political role and, above all, its legal personality each have legal and / or political effects, including on third countries which, in their external action and even in their internal affairs, not only cannot ignore the existence of the Union, but also find themselves, in no few situations, forced to establish relations with it.

This reality, however, has one more defining characteristic: it is unique in human history. Of course, empires existed, expanded and collapsed before, but they were built and maintained only by armed force. State unions also existed before. Some of them have evolved from personal or other types of unions to federal or unitary states and time has proven them sustainable. Most, however, felt apart. There was also an example in which a large number of state entities formed a confederation and then a federal state, and they are still a successful example today. We are referring, of course, to the United States of America. But those states, when they began the journey that would turn them into a single federal state, shared a common past, a common language, and a set of similar socio-economic conditions. However, an example in which 27 states with such different historical, linguistic, social, economic, political conditions, as those that today make up the European Union managed to build up a construction with characteristics so close to a federal state of their own wills, without the use of force, we do not consider to be identifiable outside the Union. For this reason, the way in which these states have reached today's level of integration and, in this context, the way in which 19 of them have come to share the same currency may seem almost incomprehensible without the use of evolutionary analysis.

In this sense, it seems essential to remember that, although the process of establishing the European

[*] PhD in Intelligence and National Security („Carol I" National Defence University) and PhD Candidate in European Union Law, „Nicolae Titulescu" University of Bucharest (e-mail: adrian.bantas@gmail.com).
[**] PhD in Economics Bucharest Academy of Economic Studies. (e-mail: diana.caprita@gmail.com).

Communities was initially justified by security concerns, in the view of the Founding Fathers, it was never limited to them, but has always had a political finality, and we could even say a federal one. Or, as the literature states, "*the history of European integration is marked by two main political aims: the first focuses on the internal functions of integration, such as creating favorable conditions for economic and social development or equalizing living and working conditions in the Member States. The second is characterized by the affirmation of the European identity and the role of Europe in the world, being understood the fact that the European action oriented towards the outside must presuppose the existence of an economic force and an internal political stability. These two dimensions have been present since the beginning of the integration process, but have never been equivalent, neither in European policy, nor in the thinking or the action of the Member States. They are successive stages, as economic integration must sooner or later lead to political integration*"[1].

Beyond the use of the historical method of legal research, illustrated by the aforementioned references to the evolutionary analysis of the emergence and development of Economic and Monetary Union, our research cannot carry on, given the many economic aspects it addresses, without the use of the economic approach to law or, as understood in the specialized doctrine, the "*may include any analysis of the law, of its institutions and norms, which uses the conceptual instruments of the science of economics*"[2].

In this framework, which from the very beginning was intended to be integrative, in the sense of transferring more and more state competences to the supra-state level, we must also understand the emergence of an Economic and Monetary Union that finds its true role only in such a context, being almost inconceivable within a classical international, cooperative organization.

2. Emergence of the economic and monetary union project – main premises

The analysis of the emergence and development of Economic and Monetary Union, carried out within the natural limits of a scientific article, cannot in any case aspire to the status of an exhaustive presentation, nor do we intend to do so. However, in order to be at least reasonably complete, it must include some indispensable references to the political-economic-legal system in the context of which the project of this Union was developed, since its imperatives also gave rise to legal solutions that gave birth to the current EMU.

2.1. The post-war world and the Bretton Woods system

Thus, the post-war world was governed, from a monetary point of view, by the effects of the Bretton Woods Agreements, concluded by the representatives of 44 states, allied in the war effort against the Axis powers, on the occasion of the United Nations Financial and Monetary Conference that took place New Hampshire (United States), July 1-22, 1944.

Of course, a detailed analysis of the provisions of the Bretton Woods Agreements is not one of the objectives of our approach. However, we find it useful to note that, in addition to the establishment of the International Monetary Fund and the World Bank, the provisions of the agreements in question "*once implemented (in a gradual process completed in 1958), required the connection of the value of the US Dollar with that of gold. Moreover, the value of all the other currencies in the system was, in the same idea, related to that of the American Dollar*"[3].

For the operation of this system, "Member States (...) have agreed on (...) permitted fluctuations (of each currency) of up to 1%, relative to the value of the Dollar. States were required to monitor and maintain the exchange rates of their currencies, an objective achieved mainly by using their own currencies to buy or sell dollars, as appropriate. Therefore, the Bretton Woods System minimized the volatility of international monetary exchange (...)"[4].

Around the same time, a number of states on the European continent were laying the foundations for a series of agreements that, while not decisive in this regard, have at least contributed to building a culture of cooperation in the area under analysis. These, as the specialized doctrine put it, "*had as their initial purpose that of liberalizing payments between the states of the old continent and of building a system of multilateral agreements between central banks*"[5]. In this regard, "*the first Agreement on Intra-European Payments and Compensation was signed in 1948, the European Payments Union was established in 1950, and the European Monetary Agreement was formulated in 1955*"[6].

The common feature of all these agreements was, from our perspective, that they can be seen as specific to the public international law, as they functioned and

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[1] Mihaela-Augustina Dumitrașcu, Evoluția Comunităților Europene de la integrare economică la integrare politică – implicații asupra ordinii juridice comunitare, Analele Universității București, Seria Drept, nr.III/2006, Editura C.H. Beck, București, 2006, pp. 29-56.

[2] 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.

[3] James Chen, Bretton Woods Agreement and System, www.investopedia.com, updated 05.09.2019, accessed 26.10.2019.

[4] Ibidem.

[5] Gerhard Maier, Monetary Co-operation in Europe, Intereconomics magazine, Vol. 23, No 1/1988, pp. 3-7.

[6] Ibidem.

instituted mechanisms typical of it and therefore they do not make the transition to an entity with a specific specific decision-making process, similar to that of the Member States.

Back the gold standard and the dollar's exchange rate, experts could argue for or against its existence, but from our perspective, what is interesting is that, "*in 1971, concerned that the gold reserve of the States United States was no longer enough to cover the amount of dollars in circulation, President Richard M. Nixon announced the temporary suspension of the convertibility of the dollar into gold*"[7], a suspension that ultimately remained final, as "*from 1973, the Bretton Woods system it collapsed, making the states free to choose whatever exchange method they would want for their currencies, except to link their exchange rate to the price of gold. For example, states became free to link their exchange rates to those of other states or to the value of a coin basket, or to allow them to fluctuate freely, leaving their value in relation to other currencies to be determined by market forces*"[8].

2.2. Relevant provisions for the establishment of Economic and Monetary Union in the Treaty establishing the European Economic Community

As regards the Treaty establishing the European Community, first of all, we see as relevant the fact that it contained, in its Article 2, the objectives (missions) of the Community, established as follows: "*establishing a Common Market and progressively approximating the economic policies of Member States, to promote throughout the Community a harmonious development of economic activities, a continuous and balanced expansion, an increased stability, an accelerated raising of the standard of living and closer relations between its Member States*"[9]. In order to achieve these objectives, art. 3 TEEC provided, inter alia, "*the application of procedures which shall make it possible to co-ordinate the economic policies of Member States and to remedy disequilibria in their balances of payments*"[10] as well as "*the establishment of a European Investment Bank intended to facilitate the economic expansion of the Community through the creation of new resources*"[11].

In the same idea, art. 6 TEEC stipulated that "Member States, acting in close collaboration with the institutions of the Community, shall co-ordinate their respective economic policies to the extent that is necessary to attain the objectives of this Treaty"[12] and that "the institutions of the Community shall take care not to prejudice the internal and external financial stability of Member States"[13]

Furthermore, art. 105 TEEC provided that "in order to facilitate the attainment of the objectives stated in Article 104[14], Member States shall coordinate their economic policies. They shall for this purpose institute a collaboration between the competent services of their administrative departments and between their central banks"[15]. The respective coordination of economic policies was ensured, according to art. 145 TCEE, by the Council.

Also, art. 107 of the same Treaty provided that "Each Member State shall treat its policy with regard to exchange rates as a matter of common interest"[16] and that "if a Member State alters its exchange rate in a manner which is incompatible with the objectives laid down in Article 104 and which seriously distorts the conditions of competition, the Commission may, after consulting the Monetary Committee, authorise other Member States to take for a strictly limited period the necessary measures, of which it shall determine the conditions and particulars, in order to deal with the consequences of such alteration"[17].

As regards the institutional framework created by the Treaty establishing the European Economic Community, it consisted of an Assembly (the forerunner of the current European Parliament), a Council, a Commission and a Court of Justice, which were responsible for carrying out the tasks set by the Treaty in order to achieve the objectives also set by it. Between these institutions a permanent dialogue was carried on, organized, according to the specialized doctrine, "*on the basis of collaboration and not of subordination, each of the institutions exercising its own functions within a complete decision-making system of a pre-federal nature*"[18]. In addition, a Monetary Committee was added to the institutions concerned, composed of two members appointed by each Member State, in order to "*keep under review the monetary and financial situation of Member States and of the Community and also the general payments system of Member States and to report regularly thereon to the Council and to the Commission* (...) *and to formulate opinions, at the request of the Council or*

[7] James Chen, *op.cit*.
[8] Ibidem.
[9] Art. 2 of the Treaty establishing the European Economic Community (TEEC as follows).
[10] Art. 3 lit. (g) TEEC.
[11] Art. 3 lit. (j) TEEC.
[12] Art. 6 alin. (1) TEEC.
[13] Art. 6 alin. (2) TEEC.
[14] *Each Member State shall pursue the economic policy necessary to ensure the equilibrium of its overall balance of payments and to maintain confidence in its currency, while ensuring a high level of employment and the stability of the level of prices*.
[15] Art. 105 alin. (1) TEEC.
[16] Art. 107 alin. (1) TEEC.
[17] Art. 107 alin. (2) TEEC.
[18] Augustin Fuerea, *Manualul Uniunii Europene, Ediţia a V-a revizuită şi adăugită după Tratatul de la Lisabona*, Universul Juridic, Bucharest, 2011, p. 35.

of the Commission or on its own initiative, for submission to the said institutions”[19].

From all these facts and treaty provisions we can conclude that, although the Treaty establishing the European Economic Community established an institutional and regulatory framework conducive to the coordination of the economic policies of the Member States, it did not include neither the legal basis for establishing an Economic and Monetary Union, nor the means to achieve that coordination. But, as we will see during this study, these obstacles were overcomed thanks to the fact that “*the drafters of the TEC have set up a <<valve>> through which to cover possible new areas of community cooperation; we are talking about art. 352 (ex 235), which states: <<If EC action is required for the achievement of one of the objectives of the EC within the framework of the functioning of the common market, without unanimously, on a proposal from the Commission and after consulting the European Parliament, shall take appropriate action* >>”[20] and through the creative use of instruments of public international law, in conjunction with those specific to Community law (at that time, of the European Union, after the entry into force of the Treaty of Lisbon).

At the end of this section, we would also like to mention that a Committee of Governors of the Central Banks of the Member States of the EEC Member States was added to the above institutional framework, starting with 1964 (by Decision of the Council of Ministers of 8 May 1964), in order to promote the cooperation between them, by organizing consultations and facilitating the exchange of information on monetary policies and other relevant measures, with a special focus on lending and foreign exchange markets. The committee met mainly in Basel, at the headquarters of the Bank for International Settlements, which provided logistical support and secretarial services. In accordance with its Rules of Procedure, the Committee could adopt opinions by a majority of its members, divergent views being allowed, and could draw up memoranda to be sent to the entities concerned.

3. Difficulties in identifying alternatives to the Bretton Woods system. The Monetary Snake

Before actually starting this section, we would like to point out that almost all the moments highlighted in it take place against the background of the oil shocks of 1970-1980, with their multiple causes (OPEC actions between 1973-1974, the Iranian Revolution, etc.), which not only supported the development of monetary cooperation at Community level, by highlighting the potentially catastrophic consequences of major and untimely monetary fluctuations, but can also be seen by the modern observer as an almost perfect argument in favor of the importance of the globalization process on the evolution of legal systems, a phenomenon that “*is not* (...) *unidirectional, coming only from the western civilization, but a multidirectional one, of reciprocity,* [in which] (...) *several tendencies* [can be identified (...) *coming from the western world, Islam and Asia* "[21].

So, the United States' renunciation of the gold standard and the turmoil it has created have necessitated the development of a new cartel to make up, as far as possible, for the instability caused by the act in question. In this context, during the year 1971, a temporary agreement was negotiated and concluded (known as the Smithsonian Agreement, after the headquarters of the Smithsonian Institution in Washington, where it was signed) “*between the ten most developed nations in the world, namely Belgium, Canada, France, Germany, Italy, Japan, the Netherlands, Sweden, the United Kingdom of Great Britain and Northern Ireland, respectively the United States*”[22].

A brief overview of the main provisions of the Agreement in question could include, in our opinion, that it “*devalued the US dollar by 8.5% against gold, lowering the price of an ounce of gold from US $ 35 to US $ 38* [while] *the other G10 states* [listed above] *agreed to revalue their currencies accordingly against the dollar*”[23].

Also, along with the appreciation of the other major currencies, in addition to the US Dollar, the Smithsonian Agreement introduced “*the establishment of a margin for their fluctuation in relation to the Dollar of +/- 2.25%. However, they could create significant fluctuations between the currencies of the currencies of the EEC Member States that were parties to that Agreement, which could reach a maximum of 4.5%, which* (…) *created major risks for common policies such as the CAP. To address this issue, the EEC Member States have decided to reconfigure their monetary policy concerns towards reducing the links of their currencies with the US Dollar and at the same time reducing intra-Community fluctuation margins*”[24].

To this end, the Governors of the central banks of the Member States of the European Economic

[19] Art. 105 TEEC.

[20] Augustina Dumitrașcu, *Federalism în Europa – privire generală asupra acestei perspective*, paper presented within the “*Pregătirea economică şi juridică a specialiştilor – premisă esenţială a integrării României în Uniunea Europeană*” Symposium, Ars Docendi Publishing House, Bucharest, 2002, pp.93-98.

[21] Monica Florentina Popa, *Tipologiile juridice între pragmatism şi ciocnirea civilizaţiilor (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.

[22] James Chen, *Smithsonian Agreement*, www.investopedia.com, updated 18.06.2018, accessed 28.10.2019.

[23] Ibidem.

[24] Angelos Delivorias, *A history of European monetary integration*, European Parliamentary Research Service, www.europarl.europa.eu, 2015, p. 3.

Community signed the so-called *Basel Agreement* on 24 April 1972, which laid the foundations of the mechanism known as the *snake in the tunnel*. Under it, "*Member States' currencies could fluctuate (like a snake) within tight limits against the US Dollar, and Member States' central banks could buy or sell any amount of other Member States' currencies, subject to the margin of fluctuation of 2.25%. The Member States that have participated in this mechanism since its inception have been France, Germany, Italy, Luxembourg and the Netherlands, and Denmark, Norway and the United Kingdom have joined soon*"[25].

Thus began the first of the three stages identified by the author Liviu C. Andrei, of monetary integration in the Community and, subsequently, Union, respectively: "*The Monetary Snake, the European Monetary System and, finally, the single currency*"[26].

What we observe from the presentation of this mechanism is, first of all, the fact that it was established by an instrument of public international law, namely an agreement between the Governors of the participating Member States (thus placing itself somewhat outside the Community law at the time) and, secondly, both the lack of common obligations imposed to all Member States (as evidenced by the absence of Belgium) and the possibility of accession to the provisions of the Agreement by States not then part of the European Communities, namely Norway.

Despite its theoretical viability, we can retrospectively say that the system in question, established by the Smithsonian Agreement and the Basel Agreement was not a successful one. For example, "*in mid-1972, the German mark, the Dutch guilder, the Belgian franc and the pound sterling fell prey to a speculative attack that pushed their exchange rates to the allowed limits. Consequently, on 23 June, the British Government decided to suspend the application of the exchange rate margin mechanism and to allow the exchange rate of its currency to fluctuate freely on the market, which meant that the pound was leaving the tunnel in practice. Subsequently, in January 1973, Italy, which was in a similar situation as the United Kingdom, also abandoned the* snake in the tunnel *mechanism, although the State concerned had obtained a derogation from the intervention arrangements provided for in The Basel Accord, allowing it, first of all, not to make repayments on the basis of the composition of the monetary reserves for the credits it had already obtained through the short-term support mechanism, although the procedure in question would have forced Italy to make gold transfers at its official exchange rate and, secondly, by allowing its central bank to use US dollars for further market interventions, instead of the currencies of the EEC Member States*"[27].

"At the same time, the economic situation in the United States continued to deteriorate, necessitating a further 10% depreciation of the dollar on February 13, 1973. This devaluation and the strong and widespread fluctuations it caused marked the irrevocable collapse. of the Bretton Woods System in March the same year"[28].

It is also noteworthy that "the depreciation of the dollar led to the closure of foreign exchange markets within the Community. In the light of these difficulties, the Commission has reaffirmed its position in favor of an international monetary system based on fixed but adjustable currency parities, the convertibility of national currencies and an effective adjustment tool, and therefore proposed a system in which national currencies of Member States fluctuated in unison against the dollar. Consequently, the Council met on 3 successive occasions, on 4, 8 and 11-12 March 1973, to discuss monetary issues"[29].

Following these meetings, the Council adopted a Statement agreeing to the following decisions (NB): "to maintain the maximum variation in the exchange rate of the German mark, the Danish krone, the guilder, the Belgian franc, the Luxembourg franc and the French franc within the limit of 2.25% and, respectively, to release the National Banks of the Member States from the obligation to intervene in order to maintain the fluctuation margins against the US dollar"[30].

What we notice in this act and in its content is its mixed and innovative character at the same time, which could almost be considered sui generis. More precisely, it is an act adopted by an institution of the European Communities (Council), but which is not found in the enumeration from art. 43 pt. 2 TEEC, which listed the acts which the institutions of the Union could adopt, namely *regulations*, *directives* and *decisions*. In other words, we can consider that we are at most facing a complementary source of Community law, the binding legal force of which can be called into question. Rather, its legal basis could be found in art. 105 of the Treaty establishing the European Economic Community, which stipulated that "*in order to facilitate the fulfillment of the objectives provided in art. 104*[31], *Member States shall coordinate their economic policies (...) and, to this end, lay the foundations for cooperation between the relevant administrative structures and*

[25] Ibidem.

[26] Liviu C. Andrei, Dalina Maria Andrei, *The European Union between the Monetary „Snake" and the Common Currency*, Revista Economică Magazine, „Lucian Blaga" University of Sibiu, Supplement No. 3/2009, Sibiu-Chișinău, 2009, pp. 26-32.

[27] Elena Rodica Dănescu, *The difficulties of the monetary snake and the EMCF*, www.cvce.eu, 07.07.2016, accessed 28.10.2019.

[28] Elena Dănescu, *Pierre Werner and Europe: The Family Archives Behind the Werner Report*, Palgrave Macmillan, 2018, p. 312.

[29] Elena Rodica Dănescu, *The difficulties of the monetary snake and the EMCF*, op. cit.

[30] www.cvce.eu, *Statement by the Council of the EC on the international monetary crisis*, Official Bulletin of the European Communities, No. 3/March 1973, 20.12.2013, accessed 28.10.2019.

[31] *Each Member State shall pursue the economic policy necessary to ensure the equilibrium of its overall balance of payments and to maintain confidence in its currency, while ensuring a high level of employment and the stability of the level of prices.*

between their central banks”[32]. Even so, the establishment or elimination of obligations for central banks goes beyond the concept of consultation, but as long as the states and the Central Banks have assumed the obligations of that act as obligations, they have produced in practice the binding legal effects that they could theoretically not have had. In other words, in this case, the political will of the Member States and the institutions within them has created obligations where the law would have been insufficient to impose them.

In this situation, Germany, France, Denmark and the Benelux states decided to allow their currencies to fluctuate freely in the *snake*. At the same time, the Italian pound, the pound sterling and the Irish pound were too weak to do so, and therefore the Member States decided to allow them to fluctuate separately, instead of entering the *snake* mechanism, until economic conditions would have allowed this. As a result of these developments, a stable monetary area was established between the Benelux states, France and Germany, which also encouraged non-member states (at least then), such as Norway (which has retained its non-member status to this day), and Sweden to join the Snake, soon followed by Austria, which unilaterally decided to submit to the same mechanism[33].

4. Establishment of the European Monetary fund

However, the year 1973 did not pass without any progress in terms of economic and monetary integration. More specifically, the Resolution adopted by the Council of Ministers on 22 March 1971 provided for the establishment of a European Monetary Cooperation Fund. Subsequently, on 21 March 1972, the Council of Ministers requested the Monetary Committee and the Board of Governors of the Central Banks to draw up, by 30 June 1972 at the latest, a report on the organization, operation and status of a European Monetary Cooperation Fund. Under this mandate, the Committees concerned set up a group of experts to draw up a report on the main options available to policy makers for setting up the Fund. The draft, adopted by the Council and the Commission, was the basis for reaching a consensus on the need for a meeting of the Ministers of Finance and Foreign Affairs of the nine Member States of the Community, held in Rome from 10 to 11 September 1972, for the establishment of the European Monetary Co-operation Fund, even since the start of the first stage of Economic and Monetary Union.

At the Meeting of the Heads of State and Government in Paris from 19 to 21 October 1972, they also reached an agreement, as set out in the *Conclusions* of that meeting, on the establishment of the EMCF by 1 April 1973 at the latest. and, which is of interest from the perspective of the decision-making process, the aforementioned Fund to be administered by the Board of Governors of the Central Banks of the Member States. Generally speaking, the objectives and prerogatives of the Fund were to develop accounting procedures for operating of credit and intervention mechanisms, under foreign exchange mechanisms, as well as to manage the various short- and medium-term support mechanisms. In practice, the Fund's transactions were conducted through the Bank for International Settlements, and no control mechanisms were introduced over its capital movements, in particular over transactions in Eurodollars on that occasion.

5. The role of the European Council in deepening and building the mechanisms preceding the Economic and Monetary Union

The Heads of State and Government of the Member States of the European Union have agreed, on the basis of preparatory acts carried out by the Council, the Monetary Committee and the Board of Governors of the Central Banks, on the establishment of a European Monetary System with effect from 1 January 1979.

The objective of the system in question was to contribute to greater monetary stability within the Community. The system should also be seen, in the view of the same Heads of State and Government, as a “*fundamental component of a more comprehensive strategy to ensure sustainable development and stability, the gradual return to full employment, the harmonization of employment levels, living and reducing regional disparities within the Community*”[34]. Moreover, the European Monetary System was to “*facilitate the convergence of the development of Member States’ economies and give a new impetus to the process of building the European Union*”[35]. To this end, “*the Council expected the European Monetary System to have a stabilizing effect on international relations in the economic and monetary fields*”[36] and to serve, at the same time, the interests of ”*industrialized and developing countries*”[37].

With regard to the proper functioning of the European Monetary System, it seems of interest to specify that, in accordance with the Resolution of the European Council of 5 December 1978, annexed to the Conclusions of this meeting and which therefore takes over its legal value, which however, in the absence of a

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[32] Art. 105 alin. (1) TEEC.
[33] For further details see www.cvce.eu, *The difficulties of the monetary snake and the EMCF*.
[34] Statement from the Paris Summit (19 to 21 October 1972), Bulletin of the European Communities. October 1972, No 10. Luxembourg: Office for official publications of the European Communities, p. 14-26.
[35] Idem.
[36] Idem.
[37] Idem.

consecration in Community primary law, it remains that of a legal act of public international law, it was composed of a scriptural monetary unit called ECU (European Currency Unit), an Exchange Rate Mechanism, under which the exchange rate currency exchange rate of the participating States was expressed in ECU, and an intervention mechanism, related to the Exchange Rate Mechanism, which obliges the participating States to ensure that the fluctuation margins of the exchange rate of their currencies are kept within a limit of +/- 2, 25% of the ECU.

As for the decision-making process that made it possible to fulfill these obligations, it presupposed, at least as regards the exchange rate adjustment, the common agreement of the participating States and the Commission and the mutual consultations within the Community institutional framework on the most important exchange rates policy decisions between the participating States and third countries.

In other words, the decision-making process within the SME had, we might say, a mixed character, of public international law (through the provisions related to the need for the agreement of the Member States, on matters not enshrined at least in the primary law of the Communities at that time, but also of Community law, by using the institutional framework provided by the Institutional and Amending Treaties.

Consultations could also be held within Community institutions, bodies, offices and agencies, including the Council, whenever deemed necessary.

As it progresses, the European Council Resolution continues in a different register, shifting the preponderance to the use of Community law instruments. Specifically, for the implementation of the decisions set out in Annex A (of the aforementioned Resolution), the European Council requested the Council to examine by 18 December 1978 at the latest, the Commission's proposals for a Regulation amending the unit of account used by the European Monetary Cooperation Fund (in ECU), on the Regulation allowing the European Cooperation Fund to receive monetary reserves and issue ECUs to the monetary authorities of the Member States, of the proposal for a Regulation on the impact of the European Monetary System on Common Agricultural Policy etc. and also calls on the Commission to issue, within a reasonable time, a proposal for an act amending the Council Decision of 22 March 1971 establishing a medium-term financial assistance mechanism to allow the Council to take a decision on those proposals by not later than 18 December 1978. The European Council also requested the Central Banks of the Member States to amend their Agreement of 10 April 1972 on the reduction of fluctuations in the currencies of the countries of origin in order to comply with the provisions of the Resolution under consideration and to amend the mechanisms for the short - term monetary support mechanism by 1 January 1979 at the latest.

Therefore, we are dealing with a decision-making process with a character that we can characterize as mixed or sui generis, in which international agreements specific to public international law, concluded between states or between structures within states, coexist with legal acts of institutions in order to build together an innovative but effective system for achieving the proposed objectives. Moreover, a new element seems to us to be the imposition, by agreement of the Heads of State and Government of the participating States, of obligations on the Community institutions, which they might have considered unfounded under primary Community law (consisting of the institutive and amending Treaties), but those institutions have chosen not to do so and to assume their fulfillment, in a manner similar to natural obligations, giving them legal effects by their own will.

Pursuant to the Conclusions of the Meeting of the European Council of 5 December 1978, on 13 March 1979, the Representatives of the Central Banks of the Member States of the European Economic Community concluded an Agreement on the Functioning of the European Monetary System in Basel (Switzerland) on 13 March 1979 (in other words, another instrument of public international law).

Regarding the decision-making process, the main aspects of its content which we consider useful should be the communication, by each participating Central Bank, to the Secretariat of the Board of Governors of a pivot rate of its currency, expressed in ECU, the Committee on informing the other central banks of that exchange rate, and those relating to the setting of mandatory intervention rates, expressed in national currencies, to the same Secretariat.

Therefore, even in this situation, we are witnessing the same mixed use of instruments of public international law and institutions of Community law and, therefore, of the decision-making processes specific to these two paradigms.

The following Conclusions addressing the issue of Economic and Monetary Union are those of the European Council in Hanover of 27-28 June 1988. It reaffirms that, with the adoption of the Single European Act, Member States have confirmed the objective of the progressive achievement of an Economic and Monetary Affairs and, in this context, the representatives of the Member States, meeting within the European Council, decided to examine, at the next meeting of the European Council, in Madrid in June 1989, the means of achieving the objective of this Union. To this end, they decided to entrust a special Committee set up to study and propose a series of concrete steps leading to the achievement of EMU, (...) chaired by Jacques Delors, President of the European Commission. The Heads of State and Government also agreed to invite the Presidents or Governors of the Central Banks of the Member States to take part, in their personal names, in the work of the Committee, together with three

personalities appointed by common accord of the Heads of State or Governments[38].

The report resulting from the Committee's work, also known as the "Delors Report", addresses a wide range of issues, covering both economic and monetary issues.

From its inception, the Report noted that a possible Economic and Monetary Union would imply complete freedom of movement for persons, goods, services and capital, as well as an irrevocably fixed exchange rate between national currencies and, finally, a single currency. They would also imply a common monetary policy, would require a high degree of compatibility between economic policies and would involve a high degree of convergence in a number of other policy areas, in particular fiscal policy. Those policies needed to be geared towards ensuring price stability, balanced growth, convergence of living standards, ensuring a high level of employment and external balance. In practice, Economic and Monetary Union would be the end result of the process of progressive economic integration in Europe[39].

However, the Report also stated that even after achieving the objective of Economic and Monetary Union, the Community would continue to be made up of individual states with a number of different economic, social, cultural and political characteristics. The existence and maintenance of such a plurality would mean maintaining a degree of autonomy in economic decision-making at national level and ensuring a balance between Community and State competences. For this reason, (**and we would like to emphasize the following statements**), it would not be possible to take the example of the federal states, but it would be necessary to develop an innovative and unique approach[40].

But the authors of the Delors Report also pointed out the lack of sufficient legal grounds in the institutive and amending Treaties in order to achieve the aforementioned objectives.

Thus, the Report in question stated that, although the Treaty of Rome, as amended by the Single European Act, provided the legal basis for many of the stages necessary for economic integration, it is not sufficient for the creation of an Economic and Monetary Union. Achieving this goal would require new arrangements, which could only be established through the revision of the Treaties and subsequent amendments to national legislation. For this reason, EMU should be enshrined in a Treaty that clearly sets out the necessary functional and institutional arrangements, as well as the provisions on their gradual implementation[41].

In roughly the same vein, the Report noted that in view of the aspects already provided for in the Treaties, the need for a transfer of decision-making powers from Member States to the Community as a whole could arise in particular in a Monetary union that would imply a single monetary policy, and the responsibility for formulating this policy should be assigned to a single institutional decision-making center. In the economic field, a wide range of decisions would remain reserved for national and regional authorities. However, given their potential impact on the internal and external economic situation of the Community and their implications for the conduct of a common monetary policy, such decisions should be placed within a specially agreed macroeconomic framework and should be subject to rules, regulations and mandatory procedures[42].

The Report further specifies that the management of Economic and Monetary Union would require an institutional framework to enable the adoption and implementation of policies at Community level, in those areas which would be of direct relevance to the functioning of EMU, which should ensure an efficient economic management, properly anchored in the democratic process. Economic and Monetary Union would also necessitate the creation of a new monetary institution, placed within the framework of the Community institutions (...), and the formulation and implementation of common policies in non-monetary areas, as well as the coordination of policies remaining under national competence would not only require a new institution, but a review and, possibly, a restructuring of existing Community institutions, bodies, offices and agencies, including any delegations of powers. Also, a new monetary institution would be necessary because a single monetary policy cannot result from independent decisions or actions of the various central banks. Moreover, day-to-day monetary policy operations can only respond quickly to changing market conditions when they are decided centrally. Given the political structure of the Community and the advantages of making existing central banks part of a new system, the Community's domestic and international monetary decision-making process should be organized in a federal form, as far as possible. called the European System of Central Banks. This new system should have the full status of a Community institution and should act in accordance with the provisions of the Treaty, consisting of a central institution and national central banks. Finally, in the last stage of EMU, the ESCB, acting through the Council, would be responsible for the formulation and implementation of monetary policies, as well as for the management of the exchange rate of the single currency in relation to those of third countries. The Central Banks of the Member States would also be entrusted with the implementation of those policies, in

[38] According to www.cvce.eu, Report on economic and monetary union in the European Community, 30.06.2014, accessed 10.11.2019.
[39] Idem.
[40] Idem.
[41] Idem.
[42] Idem.

accordance with the guidelines established by the ESCB Council and the instructions issued by the central institution[43].

As regards the structure and organization of the ESCB, they should, in accordance with the Delors Report, have had a federal structure, which would best correspond to the political diversity of the Community, with the establishment of an ESCB Council, composed of the Governors of the Central Banks and of members of an Executive Committee, appointed by the European Council and who were to be responsible for formulating and implementing monetary policy decisions, in accordance with the voting arrangements laid down in the Treaty, of a Committee to monitor developments in the field of monetary policy and to supervise the implementation of the common monetary policy, as well as in the national central banks, which were to carry out various monetary operations in accordance with the decisions of the ESCB Council[44].

Significant emphasis was placed on the independent status of the ESCB. Specifically, the Report stated that the ESCB should be independent of instructions issued by national governments and Community institutions, bodies, offices or agencies, to that end, members of the ESCB Council (both Governors and members of the Committee) should be provided with appropriate safeguards, but also made responsible, in the form of an annual report submitted by the ESCB to the European Parliament and the European Council; moreover, the President of the ESCB could be invited to report to these institutions. The supervision of the administration of the System was to be carried out by independent Community institutions, bodies, offices or agencies, such as, for example, a supervisory board or a committee of independent auditors[45].

The Report further emphasized the need to develop legally binding rules and procedures in the field of budgetary policies, involving upper limits of budget deficits for Member States, excluding access to credit from central banks or other forms of financing, monetary policy, restrictions on lending in non-EU currencies, definition of general coordinates of medium-term fiscal policies, including limits and financing of budget deficits.

With regard to the prospects for the establishment of a single currency, the Committee expressed in its Report that although a monetary union does not necessarily require a single currency, it would be a beneficial feature of such a Union (...), being, at the same time), of the opinion that the ECU had the potential to develop into such a single currency, which would involve its transformation from a basket to a currency in itself. Moreover, the irrevocable setting of exchange rates would imply the absence of a discontinuity between the ECU and the single currency, as well as the fact that payment obligations contracted in ECU could be paid at the same value in that currency, until the moment of their maturation[46].

Also from a procedural point of view, the Report recommends revising the 1974 Council Decision on achieving economic convergence, inter alia to clarify that the task of coordinating economic policies would belong to the Council, in the ECOFIN formation, and that convergence between economic and monetary policies would be facilitated by the participation of the Chairman of the Board of Governors of the Central Banks in the meetings of the Council. It was also proposed to establish a multilateral mechanism for monitoring economic developments and compliance with agreed indicators, with the possibility of formulating recommendations for their correction.

In conclusion, in our view, from all the proposals made by the Delors Report, one can see the transition it wanted to make from a system based on the coordination of the action of Member States and central banks through instruments of international law complemented by instruments of law, using the Community institutional infrastructure, but the implementation of which was largely based on the good faith of the States concerned, to a Community system based on instruments of Community law (legal acts of the Community institutions, including newly established ones) , such as the ESCB, with binding legal force and adopted following a series of decision-making procedures that would have important similarities with those specific to federal states.

As regards the Delors Report, it was approved by the Commission and submitted to the European Council on 12 April 1989[47] for consideration at its meeting in Madrid, scheduled for June 1989.

In its Conclusions, the members of the European Council reaffirmed their determination to progressively build the projected Economic and Monetary Union, mentioned in the Single European Act, with a view to completing the construction of the Internal Market and achieving the strongest economic and social cohesion possible. In this context, the European Council recommended using the Delors Report as a basis for future developments in the field and decided that the first stage of achieving Economic and Monetary Union should begin on 1 July 1990.

To this end, the European Council called on the Council, in the General Affairs and ECOFIN formations, as well as on the Commission, the Board of Governors of the Central Banks and the Monetary Committee to adopt the legal acts necessary to start the first stage of EMU and to draw the coordinates of the later stages. We note, therefore, that the decision-making process involves, in the same way as before, the

[43] Idem.
[44] Idem.
[45] Idem.
[46] Idem.
[47] Pierre Gerbet, *The Delors Report*, www.cvce.eu, 08.07.2019, accessed 30.10.2019.

European Council, the Community institutions and the Member States, in particular their Central Banks, but given the consecration of the European Council in the Single European Act, its conclusions can no longer be considered only acts of public international law, but have thus acquired a Community component.

6. Conclusions

In the face of this unique and not at all simple course of the future Economic and Monetary Union, before consecrating its legal bases in the primary Community law, we can ask ourselves what was the legal nature of this construction, as long as it does not seem to belong completely to the public international or Community law. Looking at this inextricable picture, some observers might place it somewhere in the middle of the distance between "*the absence of codifications* [specific to Brican law and a true] *mass codified by abstract general principles*"[48] contained in a multitude of instruments of different natures and legal forces. In any case, without being able to establish with certainty what this legal construction consisted of, the absence of its express enshrinement in the basic constitutional charter of Community law at the time prevents us from considering it of a federal nature, even if in practice it tended towards a such a *modus operandi*. In order to be able to draw such a parallel, we will have to wait for the reforms carried out by the Maastricht Treaty and the new configuration of the Economic and Monetary Union enshrined in it.

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