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**PROPOSALS FOR INSTITUTIONAL CHANGES IN  
THE MANAGEMENT OF THE EURO AREA:  
EURO AREA TREASURY, EUROPEAN MINISTER  
OF ECONOMY AND FINANCE,  
EUROPEAN MONETARY FUND**

**Abstract:** European Union member states which have been outside the euro area are obliged to join it as soon as they are able to fulfil the necessary convergence criteria. As a result of the financial crisis of 2008 and the consequences following it, euro area member states have adopted additional rules regulating its functioning which make the accession to the euro area even more difficult for those concerned. In addition to this some member states and EU institutions have proposed other measures which have as their aim to establish new institutions and organs involved with the management of the euro area.

The present paper aims at describing three of those institutions (the Euro Area Treasury, European Minister for Economy and Finance, European Monetary Fund) and to evaluate the potential impact of their entry into force on those member states who (as Poland and Czechia) have been outside the euro area. In order to achieve this aim the author analyses proposed changes in more details and provides an assessment.

**Keywords:** European Union, Euro Area, European Monetary Fund.

## Introduction

There are currently nineteen member states of the EU in the euro area. Since Article 3 (4) TEU provides that the EU “shall establish an economic and monetary union whose currency is the euro”, the other seven member states (except Denmark) are also under the obligation to accept the euro as their currency. As has rightly been pointed out in scholarly literature, entering the euro area requires member states to fulfil not only formal criteria provided for in the Treaties (Article 140 TFEU), but also other conditions being the result of the institutional development of the euro area motivated by the global financial crisis of 2008<sup>1</sup>. The extension of euro area entry conditions that have taken place mostly without formal treaty amendment makes accession to the Eurozone more difficult for the member states concerned. In addition, some member states and EU institutions have proposed other measures to be taken in order to further enhance the functioning of the euro area, which potentially may result in making the adoption of the euro for those member states concerned even more difficult.

One of the examples of the proposals aimed at improving the functioning of the euro area is a Reflection Paper on the deepening of the Economic and Monetary Union (Reflection Paper)<sup>2</sup> published by the European Commission on 31 May 2017. Its aim is to take forward the views of the Five Presidents’ Report on completing the Europe’s Economic and Monetary Union<sup>3</sup> (EMU) and to contribute to the debate initiated by the White Paper on the future of Europe of 1.03.2017<sup>4</sup>. Apart from describing achievements so far and identifying the challenges faced by member states, the Reflection Paper also contained a number of proposals for actions to be taken in the coming years. These proposals relate in particular to: guiding principles for the deepening of the EMU, measures for “risk reduction” and “risk-sharing” for a well-functioning financial system, achieving re-convergence in a more integrated economic and fiscal union, strengthening the EMU architecture, and anchoring democratic

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<sup>1</sup> Ondřej Žáček, “How to Get In? Euro Area Entry Criteria In Books and In Action”, *Common Market Law Review* 51, no. 4 (2021), 1141-1172.

<sup>2</sup> COM (2017) 291 final, Brussels, 31.05.2017,

<sup>3</sup> J-C Juncker, D. Tusk, J. Dijsselbloem, M. Draghi and M. Schulz, *Completing Europe’s Economic and Monetary Union*, Brussels, 22.06.2015.

<sup>4</sup> COM (2017) 2025 final, Brussels, 1.03.2017.

accountability<sup>5</sup>. The Commission underscored that a stronger EMU is only possible when member states “accept to share more competences and decisions on euro area matters, within a common legal framework”<sup>6</sup>. For this reason the Commission proposed the strengthening of the original institutional architecture of the EMU by introducing further institutional developments. The Commission’s proposals included a “Euro Area Treasury” (the Treasury), which could be placed under the responsibility of an “EU Finance Minister” or “European Minister for Economy and Finance (EMEF), and the “European Monetary Fund” (EMF). These proposals which were rather general in their exposition in the Reflection Paper, have been further elaborated in the Commission’s Roadmap for deepening Europe’s EMU of 6.12.2017<sup>7</sup> which had as its aim to enhance the unity, efficiency and democratic accountability of the EMU by 2025.

It must be emphasised that the Commission’s proposals for deepening the EMU put in its Roadmap of 2017 have not been met by some member states with great enthusiasm, which has blocked putting them into practice. Nevertheless they have still been discussed in the scholarly literature and considered as a starting point for necessary future modifications and strengthening of EMU’s institutional architecture<sup>8</sup>. As one scholar noted with regard to the EMF “the idea of an EMF has not perished; it is an underground stream and can surface again”<sup>9</sup>. The aim of the present article therefore is to analyse the proposals for establishing the Euro Treasury, the EU Finance Minister and the EMF and to characterise further developments on these issues, which have taken place since they were first published in 2017. It must be added that while preparing the analysis, the Author takes also into account some other documents and statements made by EU and national officials, which create a broader political background for the establishment of the institutions mentioned above such as the 2017 State of the Union Address by the President of the Commission<sup>10</sup>,

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<sup>5</sup> Ibid point 4.

<sup>6</sup> Ibid point 4.5.

<sup>7</sup> European Commission – Press release, 6.12.2017.

<sup>8</sup> Marco Buti, Gabriele Giudice, José Leandro, *Strengthening the Institutional Architecture of the Economic and Monetary Union*, Centre for Economic Policy Research (London 2020), Alicia Hinarejos, “A Possible European Monetary Fund and the Future of the Euro Area”, *Yearbook of European Law* 38, no. 1, (2019),119-152.

<sup>9</sup> Mauro Megliani, “From the European Stability Mechanism to the European Monetary Fund: There and Back Again”, *German Law Journal* 21, no. 4 (2020), 685.

<sup>10</sup> President Jean-Claude Juncker’s State of the Union Address 2017.

the non-paper for paving the way towards a Stability Union by former Finance Minister of Germany Wolfgang Schäuble of October 2017<sup>11</sup>, and the Sorbonne speech of the French President Emmanuel Macron of 26 September 2017<sup>12</sup>.

To achieve its aims the present paper describes the extent of the proposals for establishing three new institutions within the euro area firstly, then it analyses these proposals in more details and evaluates their potential impact and the consequences for those member states who (like Poland or Czechia) are not members of the euro area yet.

## **2. Euro Area Treasury**

### **2.1. Proposals for Establishment**

Among the proposals for institutional changes within the euro area, the Commission's Roadmap of 2017 raised to a priority position the euro area Treasury (*Schatzamt für den Euroraum, Trésor de la zone euro*). The Treasury proposed by the Commission is intended to combine under a single umbrella several competences and functions already existing within the euro area and exercised by the Commission. According to the Reflection Paper, the Treasury could be entrusted with economic and fiscal surveillance of the euro area and of its member states (with the support of the European Fiscal Board<sup>13</sup>), the coordination of issuing a possible European safe asset, and the management of a macroeconomic stabilisation function<sup>14</sup>. The Treasury would also be entrusted with preparing decisions and executing them at the level of the euro area, but the decision-making power would be attributed to the Eurogroup in order to ensure the proper balance of powers. According

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<sup>11</sup> Non-paper for paving the way towards a Stability Union, <http://media2.corriere.it/corriere/pdf/2017/non-paper.pdf> [accessed 31.12.2021].

<sup>12</sup> Sorbonne speech of Emmanuel Macron, <http://international.blogs.ouest-france.fr/archive/2017/09/29/macron-sorbonne-verbatim-europe-18583.html> [accessed 31.12.2021].

<sup>13</sup> The European Fiscal Board is an independent body which shall contribute in an advisory capacity to the exercise of the Commission's functions in the multilateral fiscal surveillance as set out in Treaties, see Commission Decision (EU) 2015/1937 of 21 October 2015 establishing an independent advisory European Fiscal Board, OJ 28.10.2015, L-282, p. 37-40.

<sup>14</sup> Reflection Paper, 28.

to the Reflection Paper, the Treasury could also bring together existing competences and powers that are dispersed across various institutions and place them under the responsibility of the EU Finance Minister.

Proposals for the establishment of the Euro Area Treasury had been reiterated by the Commission in its subsequent documents, but in a slightly restricted form. On 6 December 2017 the Commission published a communication concerning new budgetary instruments for a stable euro area within the Union framework, where it proposed to establish a “stabilisation function at a European level to provide the possibility to activate resources rapidly to deal with shocks that cannot be managed at the national level”<sup>15</sup>. The Commission further elaborated those proposals in its proposal for a regulation on the establishment of a European Investment Stabilisation Function<sup>16</sup>.

In their Meseberg Declaration of 19.06.2018 France and Germany proposed the establishment of a Eurozone budget within the framework of the EU to promote competitiveness, convergence and stabilisation in the euro area<sup>17</sup>. In effect during the Euro Summit of 14.12.2018, member states agreed to mandate the Eurogroup to work on the design, modalities of implementation and timing of a “budgetary instrument for convergence and competitiveness for the euro area, and ERM II Member States on a voluntary basis”<sup>18</sup>.

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<sup>15</sup> Communication from the Commission to the European Parliament, the European Council, the Council and the European Central Bank. New budgetary instruments for a stable euro area within the Union framework (Brussels, 6.12.2017), COM (2017) 822 final.

<sup>16</sup> European Commission: Proposal for a regulation of the European Parliament and of the Council on the establishment of the European Investment Stabilisation Function (Brussels, 31.05.2018), COM(2018) 387 final.

<sup>17</sup> Meseberg Declaration. Renewing Europe’s Promises of Security and Prosperity (19.06.2018) <https://archiv.bundesregierung.de/archiv-de/meta/startseite/meseberg-declaration-1140806> [accessed: 18.11.2021].

<sup>18</sup> Euro Summit meeting (14.12.2018) – Statement, Brussels, 14.12.2018, EURO 503/18.

## 2.2. Assessment of Proposals for Establishment

It must be emphasised that the concept of a treasury may be understood differently and we can identify its three different versions<sup>19</sup>. Firstly the ‘treasury’ may be conceived as the executor of fiscal policy and in this it may be used synonymously with ‘finance ministry’ (as e.g. Department of the Treasury in the USA) or to indicate a part of it (as e.g. DG *Trésor* in France). Secondly ‘treasury’ may relate to a collective decision-making body on fiscal policy, where real decisions are made but not as a traditional government department with a vertical hierarchy. Thirdly, ‘treasury’ may be conceived not as an institution established at the EU level but as a common fiscal policy, i.e. “the power to spend, to levy taxes and to borrow”<sup>20</sup>.

There are several features which the design of Treasury should meet<sup>21</sup>. Firstly, it should execute a euro area mandate according to the euro area interests (similarly as the European Central Bank, the ECB). Secondly, according to the principle of subsidiarity its tasks should, however, be restricted to those only that cannot be properly performed by member state treasuries. Thirdly, the proposed Treasury should acquire genuine powers and rule enforcement capabilities. Fourthly, its decisions should be fully implemented in a timely manner. Fifthly, the legal and institutional setup should be clear and precise enough so as to allow its responsibilities to be understood. Sixthly, the Treasury should be democratically accountable before the European Parliament (EP) and potentially be subject to judicial control of the Court of Justice of the EU (CJEU).

There are many advantages for establishing a Euro Area Treasury<sup>22</sup> but the tendency of the proposals concerning its establishment demonstrates

<sup>19</sup> Lucas Guttenberg, “We don’t Need no Institution: What the Euro Area Requires is not a Treasury but a Common Fiscal Policy”, *Strengthening the Institutional Architecture of the Economic and Monetary Union*, ed. Marco Buti, Gabriele Giudice, José Leandro, Centre for Economic Policy Research (London 2020), 47.

<sup>20</sup> Guttenberg, *ibid*, 48.

<sup>21</sup> Hans-Joachim Klöckers, Sander Tordoior, “Designing a Euro Area Treasury”, *Strengthening the Institutional Architecture of the Economic and Monetary Union*, ed. Marco Buti, Gabriele Giudice, José Leandro, Centre for Economic Policy Research (London 2020), 37.

<sup>22</sup> The Euro Area Treasury would, for example, help to end the ‘doom loop’ as since its establishment euro area banks would hold euro bonds instead of national government bonds as their safe assets, see Jörg Bibow, “A Euro Treasury: Essential, and rather Straightforward”, *Strengthening the Institutional Architecture of the Economic and*

that their substantive scope have been successively narrowed. Originally these proposals provided for the creation of a body performing supervisory, budgetary, and management functions as well as participating in the lawmaking process at the euro area level (preparation of drafts legal acts). Such a broad range of the tasks to be entrusted to the Treasury had been gradually restricted to exercising budgetary functions for the euro area (strictly speaking to the budgetary instrument for convergence and competitiveness for the euro area).

For those EU member states who are not members of the euro area (such as Poland or Czechia) the possible adverse effects of the establishment of such a euro area budget seem to be rather limited, because it would be part of the EU budget coherent with other EU policies, subject to criteria and strategic guidance from euro area member states, adopted according to the legislative procedure provided for in treaties (on a proposal from the Commission) and its size will be determined in the context of a multiannual financial framework<sup>23</sup>.

### **3. European Minister of Economy and Finance**

#### **3.1. Proposals for Establishment**

The responsibility for overseeing the Euro Area Treasury could be placed in the hands of the EMEF, who at the same time would preside over the Eurogroup and Economic and Financial Council configuration<sup>24</sup>. In his State of the Union Address of 2017 President J.C. Juncker underscored the need for an EMEF who is to promote and to support structural reforms in member states building on the work the Commission has been doing within the framework of the Structural Reform Support Service. The tasks of the EMEF shall also include the coordination of all EU financial instruments that the EU can deploy if a member state is in recession or hit by a large crisis. In order not to create a new position President J.C. Juncker proposed that the role of the EMEF should be taken up by the Commissioner in

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*Monetary Union*, ed. Marco Buti, Gabriele Giudice, José Leandro, Centre for Economic Policy Research (London 2020), 44.

<sup>23</sup> Euro Summit meeting (14.12.2018) – Statement, 4.

<sup>24</sup> On the early proposals for creating such a body see: Hans Geeroms, “Why the Eurozone Needs a Minister of Finance and Economic Reform”, *European View* 16 (2017), 219.



charge of economic and financial affairs (possibly at the rank of one of the Vice-Presidents) presiding over the Eurogroup<sup>25</sup>. The EMEF shall be directly responsible before the EP in order to eliminate the accountability gap.

In his Sorbonne speech of 26 September 2017 President Emmanuel Macron reiterated the proposals made by the President J.C. Juncker and added that the newly established EMEF should oversee the future budget of the Eurozone. The possibility of merging the post of a President of Eurogroup with the post of Commissioner for economic and financial affairs was also mentioned by the EP in its resolution on budgetary capacity for the euro area of 16.02.2017<sup>26</sup>.

Among the functions to be entrusted to the future EMEF there has also been a representation of the Eurozone in the International Monetary Fund (IMF) and in particular, in one of its organs, the International Monetary and Financial Committee (IMFC). The Five Presidents' Report notes within this context that the fragmented representation of the euro area by its member states means that the EU is punching below its political and economic weight. For this reason, the proposal for a Council decision on uniform representation of the euro area at the IMF provided that in the IMFC the euro area shall be represented by the President of the Eurogroup, the Commission and the ECB<sup>27</sup>.

The most detailed proposals for the establishment of the EMEF have been put in the Commission's communication of 6.12.2017<sup>28</sup> which in essence reiterates the ideas mentioned before but in a more elaborated form<sup>29</sup>. With respect to its institutional position, the Commission's communication provides that the EMEF is to be an office headed by the person who is at the same time one of the Vice-Presidents of the Commission in charge of Economic and Monetary Union and the President of the Eurogroup which

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<sup>25</sup> President Jean-Claude Juncker's State of the Union Address 2017.

<sup>26</sup> 2015/2344(INI). P8\_TA(2017)0050.

<sup>27</sup> European Commission; Proposal for a Council decision laying down measures in view of progressively establishing unified representation of the euro area in the International Monetary Fund (Brussels, 21.10.2015), COM(2015) 603 final.

<sup>28</sup> COM(2017) 823 final.

<sup>29</sup> Detailed analysis provided by Napoleon Xanthoulis, The Commission's Proposal for a European Minister of Economy and Finance: Institutional Empowerment, Constitutional Tensions and the Ministerial Taboo, CERiM Online Paper 7/2018, 2-27, Zereh Asatryan et al. "Which Role for a European Minister of Economy and Finance in a European Fiscal Union?" *EconPol Policy Report*, 6/2018, 1-31, Michele Chang, "A European Finance Minister – Symbolism Over Substance?", researchgate.net 1-7.



could already be achieved under existing Union Treaties. The EMEF would also be tasked with: pursuing the general interests of the EU and euro area economy and representing it at the global level, strengthening policy coordination and overseeing economic, fiscal and financial rules, proposing and supporting an adequate fiscal policy for the euro area, overseeing the use of EU and euro area budgetary instruments. As a President of the Eurogroup, the EMEF would present and seek consensus on the broad policy direction and the overall strategy for the euro area and ensure the coherent preparation of Euro Summit meetings. In addition to this, the tasks entrusted to the EMEF would include overseeing the work of a planned European Monetary Fund.

### **3.2. Assessment of Proposals for Establishment**

While assessing the proposals on the establishment of the EMEF which have been laid out in various documents it must be noted that the extent of the EMEF's tasks and competences is basically the same, with some noticeable differences relating to its institutional position. In chronologically earlier documents (Commission Roadmap of 3.05.2017), it had been suggested that the EMEF was to perform a triple role of one of the Vice-Presidents of the Commission, President of the Eurogroup and President of the Economic and Financial Council. However, the latter role was not mentioned in the Commission's communication of 6.12.2017, which probably results from the fact that entrusting the role of ECOFIN President to the EMEF would require necessary treaty amendments, something that member states are not ready for.

It should also be noted that the proposals for the establishment of the EMEF have been aimed at concentrating in one hand certain functions already existing at EU level<sup>30</sup>. The proposed EMEF is to increase the coherence, effectiveness and transparency of EU economic policy-making, but it seems, however, that the proposals for the establishment of the EMEF have not taken into account certain adverse consequences resulting from their entry into force. It should be reiterated in this context that merging various competences in the hands of one person, as is in case of the High

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<sup>30</sup> Maria Patrin, "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", ADEMU Working Paper Series, April 2018, WP2018/096, 1-14.

Representative for Foreign and Security Policy, may potentially cause some practical problems with their execution<sup>31</sup> relating even to the physical presence of a person holding the office of the EMEF at various meetings taking place at the same time.

The establishment of the position of the EMEF may also be a cause of potential conflict of interests for the person who holds it because the proposed EMEF is to, on the one hand, represent the interests of all member states of the EU and, on the other, represent the interests of member states of the euro area. It can be easily imagined that the interests of these two groups of member states could be divergent. The communication on the establishment of the EMEF provides, for example, that “the crisis has shown that the architecture and scope of EU public finance do not yet fully capture the specific needs of the euro area”, mentioning at the same time relevant EU and euro area budgetary instruments. These instruments also include also EU Structural Funds and the European Investment Bank, which according to Article 174 TFEU shall in the first place aim at strengthening economic, social and territorial cohesion of all member states but not the convergence of the euro area. That is why the potential benefits resulting from the establishment of the EMEF for those member states which do not have euro as their currency seem to be rather questionable.

The concentration of different functions in the hands of the EMEF may be a cause of yet other conflicts, since the proposed EMEF is to be at the same time one of the members of the Commission, which according to Article 17(1) TEU is supposed to promote the general interests of the EU and the President of the Eurogroup which is to discuss questions related to the specific responsibilities which euro area member states share with regard to the single currency<sup>32</sup>. The merging of such divergent functions could as a result mean that as a member of the Commission, the EMEF would coordinate the surveillance of member states’ fiscal policies and

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<sup>31</sup> Lloyd Bonfield, *The Foreign Affairs’ Power of the European Union: All Hat and No Cattle?*, *Tulane Journal of International and Comparative Law* 20, no. 4 (2011), 123-144.

<sup>32</sup> Protocol (no. 14) on the Eurogroup, OJ 7.6.2016, C-202, p. 283. The consolidation of executive power in the hands of one person has also been criticised by the Economic and Social Committee which called for further reflection and enhancement of the democratic accountability of the proposed EMEF, see Opinion of the Economic and Social Committee on the Communication from the Commission to the European Parliament, the European Council and the European Central Bank – Further steps towards completing Europe’s economic and monetary union a roadmap (COM(2017) 821 final)[...], EESC 2017/05489, OJ 2018, C-262, p. 28-34.

be responsible for ensuring fiscal sustainability, but at the same time as President of the Eurogroup EMEF would head the institution gathering together member states that he would be supposed to control<sup>33</sup>.

There are also some practical problems with the establishment of the EMEF since it may be prevented by the position of some member states who oppose the further transfer of national competences to the EU level and underscore how important it is to maintain the ability of decision taking at the national level<sup>34</sup>.

## **4. European Monetary Fund**

### **4.1. Proposals for Establishment**

According to the Reflection Paper, the proposed EMF and its functioning is to be based on experience gained with respect to the operation of the European Stability Mechanism (ESM), which for its part would become a central instrument to manage potential crises in the euro area and which should be integrated into the EU legal framework<sup>35</sup>. The tasks of the EMF are to encompass at least liquidity assistance mechanisms already in force and possibly the future last resort common backstop of the Banking Union.

More elaborate proposals for tasks and the institutional position of the EMF were put by the Commission in its Roadmap for deepening Europe's Economic and Monetary Union of 6.12.2017. The Commission submitted a proposal for a Council regulation on the establishment of the EMF (EMF Regulation)<sup>36</sup> with an annex on the Statute of the EMF (EMF Statute). According to these documents, the EMF shall succeed and replace the ESM with regard to its legal position and assuming all its rights and obligations<sup>37</sup>. This has been an example of a rather rare situation where

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<sup>33</sup> Patrin, "A European", 8.

<sup>34</sup> In their common opinion of 6 March 2018 finance ministers from several member states do not even mention the EMEF, see; Finance ministers from Denmark, Estonia, Finland, Ireland, Latvia, Lithuania, the Netherlands and Sweden underline their shared views and values in the discussion on the architecture of the EMU, <https://www.government.se/statements/2018/03/finance-ministers-from-denmark-estonia-finland-ireland-latvia-lithuania-the-netherlands-and-sweden> [accessed: 31.12.2021].

<sup>35</sup> Reflection Paper..., 28.

<sup>36</sup> COM(2017) 827 final.

<sup>37</sup> Article 2 of EMF Regulation.

an existing international organisation (ESM) was to be transformed into an organ of another international organisation (the EU)<sup>38</sup>. The proposed EMF is to have legal personality and shall enjoy in all member states the most extensive legal capacity accorded to the legal persons under their laws. Members of the EMF shall be only those EU member states whose currency is the euro<sup>39</sup>.

According to its proposed objectives and tasks, the EMF is to contribute to safeguarding the financial stability of the euro area and “participating member states”<sup>40</sup>. To that end, the EMF in particular shall mobilise funding and provide stability support to the benefit of its member states and provide credit lines and guarantees in support of Single Resolution Board (SRB) for any task assigned to it<sup>41</sup>.

The proposals for the regulation establishing the EMF and for its Statute have set out its organisation and decision-making modes. With regard to its structure, the EMF shall have a Board of Governors and Board of Directors as well as a Managing Director. The Board of Governors is to consist of members (and their alternates) appointed by each EMF member. The Chairperson of the board shall be the President of the Eurogroup. A member of the Commission and the President of the ECB shall participate in the meetings of the Board of Governors as non-voting members<sup>42</sup>.

Each Governor shall have the right to appoint one Director (and one alternate Director) from among people of high competence in economic and financial matters. The Commission may appoint one non-voting member of the Board of Directors and the ECB may appoint one observer.

The Managing Director of the EMF shall be nominated by the Council after consulting the EP for a five-year term of office on the basis of merit from among candidates having the nationality of the EMF member. His/her

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<sup>38</sup> Megliani, “From the European”, 679-683.

<sup>39</sup> Article 2 of the EMF Statute. member states whose currency is not the euro may become a member of the EMF as from the date of entry into force of the decision of the Council taken in accordance with Article 140 (2) TFEU abrogating its derogation from adopting the euro.

<sup>40</sup> Within the meaning of Article 2 of Regulation (EU) no. 1024/2013.

<sup>41</sup> As to the catalogue of these tasks see Article 8 of the Regulation (EU) no. 806/2014 of the European Parliament and of the Council of 15.07.2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) no. 1093/2010, OJ 30.7.2014, L-225, p.1-90.

<sup>42</sup> Article 5 of the EMF Statute.

relevant international experience and high level of skills and knowledge in economic and financial matters shall also be taken into account. His/her tasks include chairing meetings of the Board of Directors, participation in the meetings of Board of Governors, legal representation of the EMF, organisation and appointment of EMF staff.

A proposal for the regulation on the establishment of the EMF provides for an important role of the Council in the process of decision making by the EMF's internal organs, since many of the decisions taken by the EMF's Board of Governors or Board of Directors may enter into force only if they are approved by the Council<sup>43</sup>. According to the Commission the reason for this is the necessity to ensure compliance with the "*Meroni doctrine*" which relates to the extent to and conditions under which EU institutions may delegate their tasks to regulatory agencies<sup>44</sup>. It should also be noted that where the Council approves a decision of the EMF, votes of the Council members representing those member states who do not have the euro as their currency, are to be suspended<sup>45</sup>.

The draft regulation for the establishment of the EMF accentuates its accountability towards the EP and the Council as well as towards national parliaments<sup>46</sup>. With regard to the EP and the Council, the proposal obligates the EMF to annually submit annual a report on the execution of its tasks, together with its annual accounts and financial statement. The report shall also be forwarded to the national parliaments of the EMF members and of the participating member states, who may address their reasoned opinions on it to the EMF.

The EMF Managing Director may be heard by the competent committees of the EP on the execution of the EMF's tasks. The national parliament of an EMF member may invite the Managing Director to participate in an exchange of views in relation to the implementation of the financial stability support.

According to Article 29(1) of the proposal for its Statute, the EMF is to have an autonomous self-financed budget which is not to be a part of the EU

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<sup>43</sup> Article 3 of the EMF Regulation.

<sup>44</sup> COM (2017) 827 final, p. 6, footnote 19.

<sup>45</sup> This however does not relate to decisions taken according to Article 22 of the EMF Statute (credit line or guarantees to the Single Resolution Board) and Article 23 of the EMF Statute (rules applying to the EMF).

<sup>46</sup> Articles 5 and 6 of the EMF Regulation.

budget<sup>47</sup>. The accounts of the EMF shall be audited on the one hand by an internal audit function (established according to international standards) and on the other hand by independent external auditors approved by the Board of Governors. In addition the proposal for the EMF's Statute provides for the establishment of a Board of Auditors to inspect the EMF accounts and to verify the correctness of its operational accounts and balance sheet<sup>48</sup>.

## **4.2. Assessment of Proposals for Establishment**

Since it aims at the creation of a new EU body and it must be entirely and directly applied in all member states, the Commission's proposal on the establishment of the EMF was submitted in the form of a regulation of the Council to be adopted under Article 352 TFEU. The Commission justifies this by underscoring that Article 352 TFEU allows for the integration of the EMS "into the Union framework, as this action is necessary for the financial stability of the euro area and the Treaties have not provided any other legal basis for the EU to reach this precise objective"<sup>49</sup>. The necessity of having a body like the ESM to safeguard the stability of the euro area is further confirmed by Article 136(3) TFEU and by the second recital of the preamble to the ESM Treaty which provides that the ESM is "a stability mechanism to be activated if indispensable to safeguard the stability of the euro area as a whole"<sup>50</sup>.

With respect to its legal character, the Commission's proposals for the EMF Regulation and its Statute highlight the accountability of this body *vis-à-vis* the Council, EP, Commission and the national parliaments of its member states. The proposals however do not provide for the usually applied clauses relating to the liability and responsibility of EU bodies. There is lack of provisions determining which judicial body shall be competent to rule on EMF contractual liability in the EMF's Statute<sup>51</sup>. Similarly there

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<sup>47</sup> It may also be noted that the proposals for the regulation establishing the EMF and its Statute do not provide for participation of the EP in adoption of the EMF's budget.

<sup>48</sup> Article 35 of the EMF Statute.

<sup>49</sup> Proposal for a Council regulation on the establishment of EMF, 5.

<sup>50</sup> Treaty establishing the European Stability Mechanism (consolidated version), [www.esm.europa.eu](http://www.esm.europa.eu).

<sup>51</sup> With respect to other Union bodies their contractual liability shall be governed by the law applicable to the contract in question, see e.g. Article 97 of the Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the

are no provisions regulating the question of the EMF's non-contractual liability. It should be reiterated in this respect that with regard to EU agencies and other bodies it is in principle the CJEU that is responsible to rule on their non-contractual liability<sup>52</sup>. Moreover, it is unclear whether the proposed EMF would be non-contractually liable at all since the proposed EMF Regulation provides in Article 8(5) that the Union budget shall not be held liable for the expenses and losses of the EMF. This seems to be contrary to the judgment of the CJ in *Council v. Chrysostomides* where the CJ confirmed that the term 'institution' within the meaning of Article 340(2) "encompasses not only the EU institutions listed in Article 13(1) TEU but also all the EU bodies, offices and agencies established by or under the Treaties and are intended to the achievement of the European Union's objectives..."<sup>53</sup>. There is, however, the possibility that the non-contractual liability for damages caused by EMF actions could be taken by the Council which would approve most of the EMF's decisions. It is also possible that the damages resulting from EMF's non-contractual liability could be covered from its own budget, however, only to a certain threshold, since according to the Article 8(4) of the EMF Statute: "The liability of each EMF Member shall be limited, in all circumstances, to its portion of the authorised capital stock at its issue price. No EMF Member shall be liable, by reason of its membership, for obligations of the EMF [...]".

Proposals for the regulation establishing the EMF and its Statute equally do not settle the question of non-contractual liability of its officials and other servants. Bearing in mind that according to Article 39 of EMF Statute the Staff Regulations and Conditions of Employment of Other Servants of EU shall apply to the staff of the EMF, it should be deemed that the non-contractual liability of EMF staff members finds its legal basis in the more general provision of Article 340 TFEU<sup>54</sup>. On the other hand, the proposal for the EMF Statute provides in Article 8(5) that the Union

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European Border and Coast Guard and repealing Regulations (EU) no. 1052/2013 and (EU) 2016/1624, OJ 14.11.2019, L-295, p. 1-131.

<sup>52</sup> See e.g. Article 97(5) of the Regulation (EU) 2019/1896.

<sup>53</sup> Joined cases C-597/18 P, C-598/18 P, C-603/18 P and C-604/18 P, *Council of the European Union v. Chrysostomides & Co. LLC*, ECLI:EU:C:2020:1028, para. 80.

<sup>54</sup> Article 340 TFEU provides that "In the case of non-contractual liability, the Union shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties".



budget shall not be held liable for the expenses or losses of the EMF<sup>55</sup>, which in combination with the extensive privileges and immunities of the EMF resulting from Protocol No 7<sup>56</sup>, makes the execution of its liability even more problematic by the interested parties.

There is also a problem of the limited jurisdiction of the CJEU in respect to the decisions taken by the EMF Board of Governors since most of them may enter into force only if they are approved by the Council<sup>57</sup>.

As a result probably the only situation where the CJEU has direct jurisdiction over the actions taken by the EMF is the possibility of adopting a decision to remove its Managing Director if he/she no longer fulfils conditions required for the performance of his/her duties or has been found guilty of serious misconduct<sup>58</sup>.

With the entry into force of a proposed regulation on the establishment of the EMF for those member states which are not members of the EMF there arise some far-reaching consequences. In accordance with Article 38(2) of its Statute, for example, the EMF is to be exempt from any requirement to be authorised or licensed as a credit institution, investment services provider or other authorised licensed or regulated entity under EU law and the laws of its member states. Secondly, despite the proposed EMF having an autonomous self-financed budget which is not a part of the EU budget, its staff members (joining the EMF after entry into force of the EMF Regulation) shall be subject to the Staff Regulations of Officials and Conditions of Employment of Other Servants. This is in contrast with the practice of other EU bodies with their budgets separate from EU budget, where their staff members have been employed according to the rules provided for exclusively for this body, as is, for example, with respect to

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<sup>55</sup> It may also be noted that the proposals for EMF Regulation and EMF Statute do not provide for participation in the EP on the adoption of EMF's budget.

<sup>56</sup> Protocol (no. 7) on the Privileges and Immunities of the European Union, OJ 7.6.2016, C-202, p. 266-272.

<sup>57</sup> Article 3(1) of the EMF Regulation.

<sup>58</sup> Article 7(2) of the EMF Statute.

the European Institute for Security Studies<sup>59</sup>, the EU Satellite Centre<sup>60</sup>, and the European Defence Agency<sup>61</sup>.

In regard to the method for the establishment of the EMF that is to say the regulation, this seems to be in conformity with the position of the EP, which consistently maintains that the 'Union method' is "the only democratic method for legislating which ensures that all interests, especially the common European interests, are taken into account"<sup>62</sup>. The legal basis proposed for the adoption of EMF Regulation (Article 352 TFEU) makes, however, the participation of the EP more limited when compared to the ordinary legislative procedure provided for in Article 294 TFEU.

## 5. Conclusion

The proposals for the establishment of new institutions for the management of the euro area which have been described in the present article, seem to be an example of the practice of EMU's *ex post* institutional framework building, which is intended to safeguard the smooth functioning of political concepts constructed at an earlier stage of development<sup>63</sup>. Such a method of developing new institutions may be regarded as costly but it seems to be the most effective way of achieving pre-planned goals.

Proposals for the establishment of new institutions within the euro area underscore those institutions increasing accountability towards the EP. This however seems to be rather restricted in practice, since the EP plays no role in adopting the EMF's budget or cannot dismiss the planned EMEF

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<sup>59</sup> Article 7(1) of the Council Decision 2014/75/CFSP of 10 February 2014 on the European Union Institute for Security Studies, OJ 12.2.2014, L-41, p. 13-17.

<sup>60</sup> Article 8(5) of the Council Decision 2014/401/CFSP of 26 June 2014 on the European Union Satellite Centre and repealing Joint Action 2001/555/CFSP on the Establishment of a European Union Satellite Centre, OJ 27.6.2014, L-188, p. 73-84.

<sup>61</sup> Article 11(3) of the Council Decision (CFSP) 2015/1835 of 12 October 2015 defining the Statute, Seat and Operational Rules of the European Defence Agency (recast), OJ 13.10.2015, L-266, p. 55-74.

<sup>62</sup> European Parliament Resolution of 16 February 2017 on Possible Evolutions and Adjustments to the Current Institutional Set-up of the European Union (2014/2248(INI)), OJ 18.7.2018, C-252, p. 201-214.

<sup>63</sup> Jarosław Wierzbicki, "Perspektywy wspólnej waluty euro – wyzwania polityczne i instytucjonalne", [Euro's Perspectives as a Common Currency – Current Political and Institutional Challenges, *Studia BAS* 51, no. 3 (2017), 21.

from his/her post. In addition to this, the legal basis for the establishment of new institutions had been found by the Commission in Article 352 TFEU which further restricts the role of the EP in their adoption to its mere consent. It must also be noted that the new institutions proposed seem to operate somewhere below the radar of judicial control by the CJEU. This is particularly true with respect to the Commission's proposal for the regulation establishing the EMF, according to which the EMF seems to escape the CJ's control not only with respect to its non-contractual liability but also to the legality of its decisions taken.

It is rather uncertain whether the proposals for the establishment of the Euro Area Treasury, EMEF and EMF will ever enter into force, which in particular is true with regard to the proposed EMF, since the Council did not reach a common position on the Commission's proposal and, as a result, the 14.12.2018 and 21.06.2019 Euro Summits defined the broad terms of the ESM reform, which maintain the ESM's current structure as an intergovernmental organisation<sup>64</sup>. After a period of prolonged negotiations on 27 January and 8 February 2021, the ESM's member states signed the Agreement Amending the ESM Treaty<sup>65</sup>. Despite this there is still room for a transformation of the ESM into an EU body (EMF) as the Covid-19 pandemic changed the economic environment for all EU member states<sup>66</sup>.

The proposals for institutional changes in the euro area on the one hand provide for a restricted role in the newly created bodies for those member states who have not accepted the euro as their currency and on the other hand require those member states to accept certain new obligations resulting from their entry into force. While it is rather obvious that member states outside the euro area should not take part in the decision-making process within the bodies managing it, this should not be expected that the member states concerned will bear some burdens resulting from their functioning. It may therefore be said that the proposals for institutional changes within the euro area put by the Commission in its Roadmap of 31.05.2017 (and elaborated in various other documents) should be regarded as a starting point for further negotiations in which non euro area member states must carefully protect their own interests.

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<sup>64</sup> European Parliament, The Proposed Amendments to the Treaty Establishing the European Stability Mechanism, In-Depth Analysis, PE 634.357, January 2021, 1.

<sup>65</sup> [www.esm.europa.eu](http://www.esm.europa.eu)

<sup>66</sup> Lucas Guttenberg, "Time to Come Home. If the ESM is to Stay Relevant, it Should be Reinvented Inside the EU", *Hertie School Policy Brief* (2020), 1-5.

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