

**Democratic Legitimacy at National Level
and Solidarity
between Financially Unequal Member States.
Two Structural Problems
of European Integration***

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Abstract

Democracy and solidarity are fundamental values of the European Union and key components of the European legal and political culture. Nevertheless, there are aspects of these fundamental values which constitute structural problems of the path towards European integration. The crucial issue in the pillar of democracy is that democratic legitimacy is organized - and is therefore sometimes guaranteed and sometimes disputed - primarily at national level, at the level of the political systems of the Member States, without sufficient counterweight to democratic legitimacy at the level of the EU itself. The constantly renewed mandates of the national govern-

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ments of many Member States are in clash with the current political direction of the EU, particularly in the area of economic policy, which - since the Maastricht treaty - derives from the primary law of the Union itself. The fact that they are all ultimately subject to the current policy does not mean that there are no problems of democratic legitimacy. As far as the pillar of solidarity between Member States is concerned, the economic crisis of the last decade has shown that when solidarity (e.g. in the form of rescue programs) is organized between economically uneven Member States (in terms of e.g. fiscal status, growth and competitiveness, size of per capita income), the expression of solidarity does not prevent the reproduction of inequalities between Member States.

MY approach towards fundamental European values and, in particular, towards the pillars of democracy and solidarity, will be somewhat subversive since, apart from a general reference to the values of the European Union, I will deal in particular with two major problems which are linked to these values and constitute structural issues of the European integration:

First of all, there is the democratic legitimacy (at national level) of choices that hinder the European integration and, *secondly*, the solidarity between Member States that are economically unequal. I believe that this approach will help us to gradually move from the high level of values to the more specific, practical and demanding level of intergovernmental relations and lasting bargaining at the heart of the European integration.

The European Union as a Union of Values and the Constitutionalization of the Founding Treaties

The primary picture is, of course, that of the European Union as a union of values¹, though this involves a rather high amount of rhetoric and a much smaller amount of specific regulatory content. Since the European Union aspires to strong statehood characteristics and advanced stages of integration, it is reasonable to refer to concepts of constitutional origin, that refer to the national constitution as a text that not only organizes the exercise of state power, but also offers legitimacy. Only, legitimacy at national level is created through a complex and long historical process, and not merely through a declaration, a rhetoric. It is, therefore, obvious that the European Union's reference to its values, this self-referential invocation of values, has an ideological element. The declaration of sensitivity, the emphasis on the existence of guarantees in relation to democracy, the rule of law, the welfare state, social cohesion, environmental sensitivity, in fact produces or seeks legitimacy. The values of the Union are, however, primarily the common denominator of the constitutional values of the Member States², which has been sub-

¹ From the recent, extremely rich bibliography, see LAURENCE POTVIN-SOLIS (dir.), *Les valeurs communes dans l'Union européenne* Propos Préliminaires, Bruylant / Collection Colloques Jean Monnet, 2014 and SIMON LABAYLE, *Les valeurs de l'Union européenne*, Thèse en cotutelle, Doctorat en droit, Université Laval / Université Aix-Marseille, 2017.

² See also ARMIN VON BOGDANDY, *Founding Principles of EU Law: A Theoretical and Doctrinal Sketch*, *Revus* (2010), 12, 35-56 and FAUSTO DE QUADROS, *L'identité constitutionnelle de l'Union*

stantially supported and strengthened by the Council of Europe and, in particular, the ECtHR case law.

Since the establishment of the Union by the Maastricht Treaty³ a gradual increase of the expressly provided values has been noted in the primary law of the European Union, in the Treaty texts. After all, the European Union at that time was entering the most ambitious field, namely the economic and monetary union, and the debate on European integration became much more intense. That's when the "ideological" homogeneity of the policies pursued by the governments of the Member States - regardless of their particular political leanings - begun, with the finalization (through the imperative fiscal and macro-economic objectives that were set) of the legally adopted political choices regarding the economic and, above all else, the monetary union⁴. Consequently, the selection of excluded policies that were not harmonized with the agreed objectives was also finalized. This development entailed a major retreat on part of the European social democracy, *i.e.* a recession in the conflicts among the traditional political families within the European Union and not only among the Member States of the European Union⁵.

européenne et les valeurs communes, *in*: L. POTVIN-SOLIS (dir.), *op. cit.* (footnote 1).

³ See also EVANGELOS VENIZELOS, *Transformations of the State and the European Integration. Lessons from the economic crisis: The Greek case*, Polis, 2016, p. 33 *et seq.*

⁴ See also EVANGELOS VENIZELOS, *op. cit.* (footnote 3) p. 33 *et seq.*

⁵ EVANGELOS VENIZELOS, *op. cit.* (footnote 3), p. 115 *et seq.*

We reach thus the Treaty of Lisbon, with its explicit reference to the values of the Union in Article 2 TEU⁶: human dignity, the rule of law, human rights, freedom, equality, democracy, the protection of the rights of persons belonging to minorities - this particular wording is very important; it is not a collective protection of minorities but one of self-determination and individual rights. And all these are explicitly defined in Article 2 TEU as values common to the Member States in a society (hence, here is implied a typology of European societies, of the societies of the Member States) characterized by pluralism, non-discrimination, tolerance, justice, solidarity, equality between men and women.

We observe that in Article 2 TEU a core of values is formed, that could be compared to the core of Article 110 of the Greek Constitution, *i.e.* unamendable provisions which primarily include the fundamental values and principles of the constitutional order⁷.

In the following article (Article 3 TEU) we have a record of the Union's aims, its action criteria, its priorities and principles which are, in a way, a specification of the principles of Article 2. In the Charter of Fundamental Rights, the chapter titles also refer to the principles of Article 2 of the TEU: dignity, freedom, equality, solidarity, justice.

⁶ From the recent bibliography, see GÜNTER WILMS, *Protecting Fundamental Values in the European Union Through the Rule of Law: Articles 2 and 7 TEU from a legal, historical and comparative angle*. European University Institute, Robert Schuman Center for Advanced Studies, 2017 with many references to the preparatory work, comparative examples and relevant case law.

⁷ In more detail: EVANGELOS VENIZELOS, *The Limits of the 1975 Constitution Revision*, Paratiritis, 1984.

The reference to values and principles always raises the great question of whether they are normative in nature, whether they constitute rules of law highly abstractive, if they produce legal consequences, if they are justiciable and enforceable in terms of their normative content. In other words, what is - in practice - the effect of the interpretative reference to values and what importance they have for the regulatory coherence of all the primary as well as the secondary law of the Union. These are issues that are occasionally concerned by the CJEU case law⁸.

Of course, all these are not just the result of the political voluntarism of the authors of the Treaties. There are two major processes that shape the historical, institutional and ideological *acquis* of the European Union and of its values as a result. The first process is the one beginning at the end of World War II, continuing throughout the Cold War and ending with the fall of actually existing socialism, linked with the great EU enlargement towards the countries of Central and Eastern Europe as well as with the unification of Germany. Europe becomes larger and is unified as Western Europe in terms of values. Countries that were outside the core of Western Europe during the Cold War accede and abide by the Western concept of values. Besides, this hegemony of Western values is not only European; it is global, through a series of international texts at the level of the United Nations.

The second is the process that links the European integration to the constant presence of a rolling large coalition that

⁸ See also list of relevant decisions in: GÜNTER WILMS, *op. cit.* (footnote 6) p. 105 *et seq.*

guides it politically⁹. Europe as a historical and institutional *acquis* belongs to all political families of the democratic spectrum. All of them have, in one way or another, participated in different phases or participate in the process of European integration. Therefore, ideological references are needed, that are wide enough to cover the entire democratic spectrum at the level of European political parties. Before reaching the European parties, we have the national political parties, so we are talking about the major European political families. (Conservatives, Christian Democrats, Social Democrats-Socialists- Labor, Liberals, Ecologists later on, etc.) We see this constantly in the way in which national governments are shaped. The current German example is a very good one, we see how it is equally acceptable to discuss the formation of a “Jamaica” type government with Christian Democrats and Christian Socialists, Liberals and Greens, and that of a grand coalition government with Christian Democrats, Christian Socialists and Social Democrats.

I will not refer here to the historical stratification of EU values. This was a major discussion, especially during the preparation of the Treaty establishing a Constitution for Europe¹⁰; an interesting discussion on the Christian roots, the invocation of Thucydides, the references to ancient Greek civilization, to Roman civilization, to Christianity from the Middle Ages to the Protests, to the religious wars, the Augsburg Confession, the Peace of Westphalia, the Enlightenment, the French Revolution and the *laïcité*, the experience of World

⁹ EVANGELOS VENIZELOS, *op. cit.* (footnote 3), p. 59 *et seq.*

¹⁰ See also for example VLAD CONSTANTINESCO, Les valeurs dans le traité établissant une Constitution pour l'Europe, in: L. POTVIN-SOLIS (dir), *op. cit.* (footnote 1), pp. 47-69.

War I and World War II, actually Existing Socialism, the Cold War, the Social Democratic Euphoria and the welfare state, environmental sensitivity, and so on.

Certainly, even if these values were not explicitly recorded in the text of the Treaties, the practical results would have been, in my view, almost the same. In any case, there exist the common constitutional traditions of the Member States, while the implementation of the substantive provisions of the European Convention on Human Rights, irrespective of the outcome of the outstanding issue of the accession of the European Union to the Convention is guaranteed in the EU legal order. There exists, therefore, a single European constitutional area¹¹.

The crucial question is whether, in order to preserve the cohesion of values of the European Union, we should prefer a minimalist or maximalist approach, if the margin of discretion of the Member States is small or large in relation to the definition of the content of these values¹². In other words, if the principle of subsidiarity also applies to values. If European values are defined by priority by each Member State at its own level, which is closer to the issue and closer to the citizens, or whether there is pan-European sensitivity and an *acquis* from which Member States cannot deviate.

This is why the mechanism of Article 7 TEU has now been put in place, requiring European vigilance regarding respect

¹¹ In more detail: EVANGELOS VENIZELOS, *The Maastricht Treaty and the European Constitutional Area*, Ant. Sakkoulas, 1994.

¹² This was the focal point of the lecture of the President of the German Federal Constitutional Court Professor Andrea Vosskuhle in Thessaloniki (27.11.2017) and Athens (28.11.2017). See also GÜNTER WILMS, *op. cit.* (footnote 6), p. 57 *et seq.*

for values by Member States. The vigilance is exercised by the other Member States, the Commission, the Parliament, the Council and ultimately the European Council. This vigilance leads to warnings when there is a risk of serious offense, to the finding that there is a serious offense and to penalties up to suspension of voting rights in the Council and the European Council¹³.

Therefore, it is not easy for a Member State to ignore this new element of the Article 7 mechanism, which is already in action on account of the situation created in Poland regarding justice¹⁴, while there is a major concern about the events in Hungary in relation to justice, the media and higher education, but also about the milder approach to Hungary com-

¹³ See also GÜNTER WILMS, *op. cit.* (footnote 6), p. 57 *et seq.*

¹⁴ European Commission - Commission recommendation of 20.12.2017 regarding the rule of law in Poland complementary to Commission Recommendations (EU) 2016/1374, (EU) 2017/146 and (EU) 2017/1520. - Proposal for a Council Decision on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law, Brussels, 20.12.2017.

Of particular interest are the opinions of the *Commission for Democracy through Law* (Venice Commission), Strasbourg, 11.12.2017. On the draft act amending the act on the Supreme Court, proposed by the President of Poland, on the draft act amending the Act concerning the organization of ordinary courts. Adopted by the Venice Commission at its 113th Plenary Session (8-9 December 2017). See SIMON LABAYLE, *Respect des valeurs de l'Union européenne en Pologne: première application du nouveau cadre pour renforcer l'Etat de droit*, European papers vol. 1, 2016, No 3, pp. 1283-1288.

pared to that towards Poland, despite the pressures of the European Parliament¹⁵.

Even more important is the fact that the values of the EU are now under the challenge of the economic crisis, a challenge not only for the welfare state, social security systems or labor relations, but also a challenge for the decision-making mechanisms. They are additionally under the test of the refugee and migration crisis, which is transformed into an identity crisis for many Member States and their respective societies and has a decisive influence on the election results¹⁶.

The values of the EU are also under the test of a security crisis (both external and internal security), due to the fact that war conflicts in North Africa and the Middle East are now affecting Member States as a problem of internal security through terrorism and asymmetric threats. All these are related to the rise of the extreme right, which is not a new phenomenon. Let us not forget that the first European Parliament report on this issue was made by the late Dimitrios Evrigenis as early as 1984.

The Conflict between National Democratic Legitimacy and European Values

The fundamental value, the “value of values” highlighted in Article 2 but also in the preamble of the TEU is Democracy; not only democratic legitimacy but also the value of Democ-

¹⁵ See also for example, the *European Parliament* resolution of 16 December 2015 on the situation in Hungary.

¹⁶ See below the references to the principle of solidarity.

racy¹⁷. However, the main problem that we are called upon to address is how democratic legitimacy is linked at the national level with the proclamation of democracy as a fundamental principle at EU level. This problem occurs in two forms: an extreme and a current one.

The extreme form - with which I would like to begin, as it is the essence of the issue - is the democratically legitimized violation of EU values at national level. The problem arises when Member States flagrantly violate EU values, citing recent national democratic legitimization, namely the recent outcome of a referendum or the recent outcome of national parliamentary elections. There is always an appeal to a recent national democratic mandate in the case of Hungary, Poland and, in the past, Austria which initiated the issue in the 1990s.

Therefore, the major issue is the possible conflict between national democratic legitimacy and EU values. This leads to a distortion of the notion of democracy, as democracy is not understood in this case as a democracy of values, but simply as a majoritarian democracy. Some people seem to believe, even today, that the majority is the one that prevails, regardless of the substantive content of its decisions. It is therefore important to emphasize that democracy, understood as just the principle of majority, facilitates national constitutional populism, which is very often an aspect of the wider phe-

¹⁷ See also the concise, yet thorough presentation by STEFANO MICOSSI, *Democracy in the European Union*, CEPS Working Documents No 286 / February 2008 and VIVIEN A. SCHMIDT, *Democracy and Legitimacy in the European Union*, E. JONES / A. MENON / ST. WEATHERILL (eds). *The Oxford Handbook of the European Union*, 2012 and *ead.*, *Democracy in Europe: The EU and National Politics*, Oxford University Press, 2007.

nomenon of nationalist populism. This goes obviously against the concept of Europe as a Union of values and undermines the prospect of European integration.

But there is also the current form of the problem, a simpler, milder form. This consists of the existence of democratically legitimized national strategies which ignore or underestimate the European dimension and seek to be promoted in the framework of lasting intergovernmental negotiation at the heart of European integration. A Member State does not need to violate judicial independence or academic freedom to create a conflict between national democratic legitimacy and European values; it is sufficient for the government of a Member State to invoke the national democratic results in order to impede the functioning of the Union's institutions and the intergovernmental negotiation that lies at the heart of Europe. We see examples of this constantly.

In January 2015, in Greece, we saw a new government citing the still fresh national electoral mandate to challenge what had been agreed with the European partners by previous democratically legitimate governments. The partners had a fresh or at least valid democratic mandate at national level, too. After all, the 27 electoral cycles are constant. Every once a while there are national elections, there are national referendums, there are fresh mandates. So the invocation of the national democratic mandate is rebuttable. The rest of the governments also have a national democratic mandate, they all have a national democratic mandate, because this is the legitimization basis of the Council and the European Council. Therefore, citing a national constitutional mandate does not lead anywhere for a Member State's government, since it has an obligation to incorporate this mandate into the institu-

tional logic of European integration. This is provided by Article 28 of the Greek Constitution, in its interpretative statement, following the 2001 amendment, as well as in the respective provisions of the national constitutions of other Member States serving as the basis for their participation in European integration¹⁸.

The problem lies in the fact that representative democracy operates at EU level in a very specific way, far from the full content of the representative system at state level: direct European Parliament election, nomination of the President of the Commission, approval of the members of the Commission. Additionally there are some elements of direct, or rather, consultative democracy provided for in Article 11 of the TEU, but these do not include the referendum or popular legislative initiative¹⁹. Thus, the “volume” of democratic legitimacy produced at national level is much larger than the “volume” of democratic legitimacy produced at a purely EU level. If we add the regional and local levels, the volume produced in

¹⁸ See more specifically EVANGELOS VENIZELOS, *op. cit.* (footnote 3) p. 60. For the interpretative statement added to Article 28 with the 2001 amendment, EVANGELOS VENIZELOS, *The Amendment Acquis. The constitutional phenomenon in the 21st century and the contribution of the 2001 amendment*, Ant. Sakkoulas Publishing, 2004, p. 212 *et seq.*

¹⁹ Cf. MICHAEL SHACKLETON, Transforming Representative Democracy in the EU? The Role of the European Parliament, *Journal of European Integration*, 2017 39: 2, 191-205 and CHRISTINE BERTRAND, La démocratie participative dans le système institutionnel de l'Union européenne, *Siècles, Cahiers du Centre d'histoire "Espaces et Cultures"*, 37/2013. From the Greek Bibliography, LINA PAPADOPOULOU, Articles 10, 11 and 12 TEU: “The Erection of European Democracy after the Treaty of Lisbon”, www.constitutionalism.gr, 3.9.2012.

Member States is even larger. This creates the so-called “democratic deficit” of the EU.

One cannot underestimate the steps taken to establish and strengthen the democratic principle in the institutional structure of the Union, with key points the direct election of the European Parliament, the strengthening of Parliament’s legislative powers and the rules introduced by the Treaty of Lisbon concerning the appointment of the President of the European Commission. These rules are close to the institutional structure of parliamentarism and the principle of ‘declared confidence’. However, the fundamental and clear distinction between the government and the parliamentary majority that supports or even tolerates it, and the opposition, does not exist in the institutional structure of the Union. The composition and functioning of the Council and the European Council, even the composition of the Commission, combined with the agreed institutional distribution of critical positions among European political parties and Member States, do not make it possible for the institutional shape of a representative parliamentary democracy to appear. Intergovernmental characteristics do not only exist where they are institutionally provided for, but they are also against the functioning of Community characteristics.

The main issue, of course, is the political deficit at both national and EU level²⁰, since now the Treaties limit the range of political solutions that are directly and safely (as far as results are concerned) in line with the fiscal, financial and macroeco-

²⁰ See SABINE SAURUGGER, *Crise de l’Union européenne ou crises de la démocratie? Politique Etrangère*, 2017/1. THIERRY CHOPIN, *La fracture politique de l’Europe: Crise de légitimité et déficit politique*, Promoculture larcier, 2015, Préface de PH. POIRIER.

economic objectives of the EU as a single economic entity - however, this practically means the objectives of all Member States, especially those of the members of the Eurozone. Alternative policies are to a large extent blocked once such a specific fiscal and macroeconomic policy framework has been agreed. Since a Member State has accepted the monetary union, the ECB's competence to pursue monetary policy, the objectives of the Stability Pact, the fiscal rule with strict limits as to government deficit and debt, anti-inflationary objectives, the whole body of authorities and the mechanisms of economic governance of the EU and the Eurozone, has obviously accepted a political range of tolerable choices that lead to the set goals. This range is limited in relation to what an intellectual may think, a political party may propose or a national political conjuncture may highlight as a need. In other words, the conflict between the "locked" European policies that have been shaped, especially since the Maastricht treaty and the new challenges (journalistic, fiscal, financial, challenges linked to the refugee crisis, challenges linked to the security crisis, the fourth industrial revolution) are very likely to create a political deficit that could also turn into a democracy deficit. There is, therefore, a problem of legal exclusion of possible political solutions that could bring democratic legitimacy first of all at national level, and possibly at European level.

The nation state is therefore always the critical level of democratic legitimacy. Indeed, the very future of European integration is decided at national level, as major - or rather the most critical - political decisions are almost always made intergovernmentally, and amendments to the Treaties take place in accordance with the national constitutional processes

of the Member States. The enthusiasm for the theory of the European *demos* as the political and institutional subject for the adoption of a “European Constitution” has drastically subsided after the failure of the TCE. It is therefore of the utmost importance to treat the Member States and their constitutional processes as a necessary and crucial element of European integration, and not as its enemy, since otherwise the classic and lasting conflict on the question of sovereignty and the competences of the Union may be recycled.

Versions of Solidarity in the TEU and the TFEU - Solidarity as a European Value in Times of Financial Crisis

The same problems, to a lesser extent, are also covered by the reference in Article 2 TEU to the value of solidarity²¹. Now, there are many forms of solidarity in the provisions of the TEU and the TFEU:

- Concerning the relations with the rest of the world, there is, the Union’s obligation to contribute, *inter alia*, to solidarity and mutual respect among peoples, as expressly provided in Article 3 (5) TEU. This reference must be combined with the principle of sincere cooperation in Article 4 (3), according to

²¹ See, overall approach in CHAHIRA BOUTAYEB (dir), *La solidarité dans l’Union européenne. Éléments constitutionnels et matériels*, Paris, Dalloz, YVES BERTONCINI, *Solidarity within the European Union: Political Foundations*, Notre Europe, *Tribune*, 5.1.2012. See also PR. PAVLOPOULOS, *The principle of solidarity in the context of Primary European Law*, Speech by the President of the Republic at the 20th anniversary of the foundation of the Hellenic Observatory of the LSE.

which “the Union and its Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties”²².

- We have solidarity within each Member State, namely the reference to the welfare state²³ and social cohesion (Article 2 TEU). We have solidarity of generations (Article 3 TEU) and the solidarity chapter of the Charter of Fundamental Rights. We have a reference to economic, social and territorial cohesion (Article 3 (3) of the TEU), although social benefits’ “tourism” is forbidden, as the CJEU has deemed in its interpretation of Article 34 of the Charter of Fundamental Rights.

- We have solidarity among Member States in the implementation of immigration policies, as ruled by the recent CJEU decisions, rejecting the complaints of Slovakia and Hungary against the Council regarding the quota of immigrants resettling from Italy and Greece²⁴. So we have the soli-

²² See also ELEFThERIA NEFRAMI, *Le principe de coopération loyale comme fondement identitaire de l’Union européenne*. *Revue du Marché Commun et de l’Union Européenne*, 2012, pp. 197-203.

²³ From the recent bibliography, A.W.M. GERRITS, *Solidarity and the European Union: From the Welfare State to Eurocrisis in*: ERNST HILLEBRAND / ANNA MARIA KELLNER (eds), *Shaping a Different Europe, Contribution to a Critical Debate*, 2014, p. 63 *et seq.*

²⁴ *Court of Justice of the EU*, Judgment in joined cases C-643/15 and C-647/15 *Slovakia and Hungary vs. Council*. Also, the comment by Daniela Obradovic, *Cases C-643 and C-647/15: Enforcement of solidarity in the EU migration policy*, 1.10.2017. See ESIN KUCUK, *Solidarity in EU Law: An Elusive Political Statement or a Legal Principle with Substance?*, *Maastricht Journal of European and Comparative Law*, 1.12.16 and *id.*, *The Principle of Solidarity and Fairness in*

ilarity of Article 80 TFEU with regard to asylum policies and Article 67 (1) and (2) TFEU on the control of external borders, combined with the CJEU case law.

- We have solidarity in the framework of the Common Foreign and Security Policy and the Common Security and Defense Policy (Article 24 (2) and (3) and Article 32 of the TEU on mutual political solidarity). We have the notorious solidarity clause, similar to that of the North Atlantic Treaty (Article 42 (7) of the TEU) in the event of an armed attack against a Member State. We have an assistance clause corresponding to Article 51 of the UN Charter²⁵.

- We have solidarity in the supply of energy (Articles 122 and 194 TFEU).

- We have solidarity as a version of cohesion policies (Articles 174 and 178 TFEU).

- We have the solidarity clause in Article 22 and 222 TFEU in the event of a terrorist attack or a natural or man-made disaster, *i.e.* police and political solidarity.

Sharing Responsibility: more than window dressing?, *European Law Journal*, vol. 22, issue 4, July 2016, p. 448-469.

²⁵ See also, JACQUES KELLER-NOELLET, Common Security and Defense Policy, the Solidarity Clause of the Treaty of Lisbon, *Think Global - European Act*, p. 328 *et seq.* ELEFThERIA NEFRAMI, Le principe de coopération loyale comme fondement identitaire de l'Union européenne, *in*: CHAHIRA BOUTAYEB (dir), *op. cit.* (footnote 21), pp. 139-156.

- We have solidarity regarding the financial crisis and the bail out (Articles 122, 136 and 143 TFEU)²⁶. Article 136 was after all revised in order to set up the EFSF and the ESM, *i.e.* in order to form rescue schemes that did not exist when needed in the first plan to rescue the Greek economy in May 2010, so the hybrid of the Greek Loan Facility, which is intergovernmental with the accounting aid of the European Commission, was formed. However, in the famous *Pringle* case, the CJEU made it clear that there is the capability, but no solidarity commitment to lend to Member States in need of assistance in order for them to refinance their debt. This is an action based on the Treaty establishing the ESM as a transnational organization adjacent to the EU legal order but outside its scope. In light of the Cypriot crisis, the European Commission, in line with the decisions of EGC and the CJEU, is potentially responsible (in this case, there was no liability), because it is a member of the ESM as an EU institution, but the ESM itself is not part of the Union's legal order.

It is obvious that the reality of solidarity is much more complicated than the optimism of rhetoric declarations. We cannot underestimate solidarity as a foundation of European unification, but in truth we have the theoretical image of the institutionally equal and bound by solidarity Member States, as opposed to the reality of the constantly reproduced inequalities among the Member States. On the one hand, political inequalities exist among Member States that are small, Member States that are large, Member States that belonged to Western Europe and Member States which belonged to East-

²⁶ In more detail EVANGELOS VENIZELOS, *op. cit.* (footnote 3) where there is further reference to bibliography and case law.

ern Europe, Member States which have major military and international politics activity because they are members of the UN Security Council and Member States that are neutral and do not participate in NATO. On the other hand, economic inequalities among Member States that are net contributors and Member States that are net recipients in intra-Union transactions is a completely different thing. *A fortiori*, in support programs, it is different being a lender Member State from being a debtor Member State.

The picture is idyllic when it comes to the historical *acquis* of European integration - peace, solidarity, convergence, single market, common currency. But when we reach the level of hard negotiations, we need to see what solidarity means *e.g.* between Germany, which has colossal trade surpluses and some Southern European countries that have large deficits. With a small to medium-size business in Germany borrowing at a quarter of the rate that a similar company borrows in Greece for example.

This is also the major problem the reconstruction of the Greek economy faces. Apart from old inequalities there are also new ones: there are always the fiscally "virtuous" and the fiscally "prodigal" countries, but now we also have Deauville's warning²⁷. It is a reminder to the markets that they cannot lend to all the Eurozone members on the same terms and thus at the same rate. There is no single Eurozone risk. There is national risk. So when markets are lending to Member States, they need to know that there is a chance of a dead end and there lurks the need for measures such as bail ins. This reminder is what led the first Greek program to a

²⁷ See ASHOKA MODY, The Ghost of Deauville, VOX CEPR's Policy Portal, 7.1.2014.

dead end, and now everything is carried out at the level of the economic governance of the Eurozone and the EU, through the prism of Deauville. This is a catalytic intervention in the functioning and the prospect of Eurozone's economic governance. Even if the so-called "European Safe Asset"²⁸ is accepted as a substitute for the old Eurobond debate, this will not change national interest rates. The ESM is currently borrowing at very satisfactory rates, and therefore it can lend, for example, to Greece at low interest rates and make arrangements concerning its debt. But when the Member State itself borrows, it will borrow under the reminder of Deauville.

So neither the banking union nor the monetary union overturn tax inequalities, money cost inequalities, developmental inequalities, and that brings us closer to the reality of solidarity. There is solidarity, but it is solidarity between financially unequal Member States.

Final Remark

Let us return from the issue of solidarity to the issue of democracy and from the issue of democracy at national level let us go to the real question of sovereignty and the constant question of what limitations each Member State is willing to accept on its sovereignty, and for what benefit. The answer to this question requires a major historical evaluation that can only be made retrospectively. The question that can be answered in the meantime concerns the role of the Member

²⁸ See European Commission, Reflection Paper on the Deepening of the Economic and Monetary Union, COM(2017) 291 of 31 May 2017.

State in the process of European integration and whether it will be perceived as an obstacle towards European integration or as its driving force²⁹. The first concept is superficial and defensive. The latter is a fairer assessment of the contribution made so far by the Member States to the shaping of the European *acquis* and it faces the prospect of European integration realistically, but also optimistically.

²⁹ In more detail see EVANGELOS VENIZELOS, *op. cit.* (footnote 3) p. 187 *et seq.*