The Tension between Self-reliance and Solidarity within a Monetary Union

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European monetary union: the next step

There is a consensus in political debates across Europe that European monetary union has to be further developed in order to resolve the European sovereign debt crisis. However, leading politicians hold differing opinions on how to best approach this issue. Lately, these opinions have begun to diverge more strongly once again, just as they did at the beginning of the debate. On the one hand, there is the concept of federal government, which includes, for example: broad regulation of the financial markets aimed at guaranteeing sustainable stabilisation of the financial system, a new economic governance to strengthen growth in Europe, and most importantly, a new system of fiscal monitoring designed to control national budgets and with the power to oblige member states to make adjustments at an early stage in the future (Merkel 2012; Schäuble 2012).

There is another concept put forward by France and the Southern EU member states and recently outlined in the 'Five Presidents Report' (Juncker 2015). This concept does not chiefly rely on budgetary discipline and competitiveness, or the self-reliance of member states; but is primarily based instead on (further) financial transfers from economically strong EMU members to their economically weak counterparts. The theoretical principles underpinning these concepts differ when assessing the principle of solidarity, and therefore the idea of the transfer union – or in the case of the self-reliance principle, the concept which the EU takes priority.

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Self-reliance in relation to solidarity

There is a relation between self-reliance and solidarity, which can be appropriately described as 'tension' in law. This refers to the relation of addition, alteration and objection (Schmidt-Aßmann 2004, recital 91): on the one hand, states not only need to be self-reliant, but there must also be solidarity between them. For a monetary union in an association of states requires that all members pursue an economic, fiscal and budgetary policy, as well as assuming responsibility for its results. The consisting radius of effect may be supranational and limited in international law; however, the parties involved have to take responsibility for a minimum of substantial decisions in this field, if they are to be considered as 'states' (BVerfGE 123, 356, 358, 362, 406, 408).

At the same time, a monetary union cannot be organised on the principle of self-reliance alone: for example, in emergency situations that can neither be foreseen nor controlled (Art. 122 AEUV), members inevitably have to provide aid to afflicted states. Without solidarity, understood as "standing by each other" (Isensee 1998, 7), self-reliance would lack a basis, whereas in the case of receiving this aid, the ability to decide independently is reduced naturally (Di Fabio 2012a). The principles of self-reliance and solidarity thus reinforce and alter one another.

'Too much' solidarity, on the other hand, leads to the reduction of self-reliance, because adaptions to changed situations (in short: 'Reformations') cannot be carried out politically from a certain point onwards (Sinn 2012a): hence solidarity cannot contradict self-reliance. Therefore, a monetary union needs both principles; however, it has to put them into perspective so as to reach its goal of establishing a sustainable stabilisation of the monetary area.

Incentive compatibility as a decisive factor

It stands to reason to certify this ideal association for the concept of the federal government: capacity building, self-reliance as priority, preventing dependency

on the solidarity aid from other states *via* a control function exercised by the capital market. However, those who support the concept of a transfer union claim that their model of partial joint liability undoubtedly also preserves incentives (Juncker 2015).

Thus, no statement on self-reliance and solidarity in a monetary union can be made without addressing the issue of how budgetary discipline in the respective arrangement ('incentive compatibility') can be ensured. Indeed, incentive compatibility is the determining factor. The central question is whether the law can ensure discipline of its own accord (model of the 'Five Presidents'), or, if additional supervision by uncontrollable markets is required (model of the stability union with federal government).

Experience as safest reference point for making a prognosis

Given that the above-mentioned statements relate to future effects of laws, valuations of the different concepts are effectively prognoses. The safest reference point for the effects of intended laws is always experience, gained nationally and abroad with similar regulations (BVerfGE 50, 334). The legislator has to take these experiences into account when making prognoses (BVerfGE 77, 109). By this measure, it is unlikely that the concept of the 'Five Presidents' can preserve its incentive compatibility, given experiences with European budgetary rules since the launch of the monetary union in general, and since the beginning of the numerous arrangements for the support of uncompetitive and highly indebted Eurozone member states (Issing 2012).

As to the demands of solidarity, experience has shown that every mechanism protecting the debtor states tends to be exploited by all available means (Mestmäcker 2012). Conversely, it has become apparent, as far as rules on the protection of self-reliance are concerned: "experience alone has proven to be reliable, that every radical rule or bond is mitigated, converted or abandoned, when it is supposed to exert a disciplining and integrating effect on politics of sovereign decision makers" (Grimm 1974, 59).

This latter statement was not made by an observer of the efforts to resolve the current sovereign debt crisis, but is a direct quote of a comment made by the senior official of the 'EC-basic issues' department within the Department of Commerce of Bonn from the year 1974. The statement also constitutes a fitting description of past experiences with the rules of the monetary union (Kirchhof 2012). The history of the monetary union can be described as a history of its violations (Handelsblatt of 2 December 2011). EU Commissioner for Economic and Monetary Affairs Olli Rehn abstained from sending a warning to France ('pink slip') early in November 2012, even although France had committed itself, within the scope of an excessive deficit procedure under the terms of a tightened stability pact, to drop its national deficit in the year 2013 below the limit of three percent of its GDP and, even although, according to the latest forecast by the European Commission, it is highly unlikely that France will still be able to achieve this goal (FAZ of 8 November 2012).

The reason for changing the original concepts

Non-open hostility towards other legislations

However, the reason for this is not an open law-hostility. The states, as well as the European Union itself, are aware of the fact, that the Union would not be able to claim to be a 'legal community' *(Walter Hallstein)* when transitioning into the method of an open breach of law. The Union would basically question its own legitimacy. Rather, the states as well as the political entities of the Union, did and will do everything they can to justify the existence of an emergency situation and the intended deviation from the agreed by contractual amendments, additions and interpretations, so as to claim that they remain within the confines of law by modifying the original concept (EuGH, C-370/12, recitals 29).

Failure to accept budgetary discipline enacted by law

The reason why the promised restrictions of budgeting are not implemented lies in the basic fact that legislators have to take note of the preconditions, on which the efficiency of the intended laws depends. However, these preconditions must include the reality in the first place (Schneider 2002, marginal no. 56). Here it becomes apparent that the law alone is barely able to unfold directional force when it comes to the spending behaviour of states. The reason for this is that the requirement, which the efficiency of law depends on, is lacking; in other words, there is no acceptance and hence no willingness of the norm addressee,

i.e. the member states, their governments, and eventually their peoples, to permanently comply with the limited rules for budgeting (Henkel 1977, 492 and 546; Isensee 2010, marginal no. 107).

The modern state as a finance-state, which exercises its reign by deprivation and the allocation of money, sees itself deprived of its opportunity to have an impact and its citizens see themselves as deprived of the ability to shape their own democracy, if the parliament cannot decide financially on its own terms. This assertion applies to the level of the national state, the supranational community, as well as to the intergovernmental agreement; the willingness to comply with the rules concerning fiscal and budgetary policy is always lacking.

At a European Union level, be it in the context of its actions in the form of the supranational community or in the form of the intergovernmental agreement (Schorkopf 2012), the difficulty is that budgetary discipline, in contrast to national states concerned with sovereignty, is not supposed to be enforced in constituent states within a federal state (Beckert and Streeck 2012). If the enforcement of budgetary discipline within a federal state by means of law is not possible – here the German financial adjustment or the financial relations between Northern and Southern Italy can be cited- it becomes clear that the endeavour will be even less successful within an association of states.

For the European Union there is also the fact, that those states attached to monetarism, can still only imagine a monetary union, which *per se* obliges economically strong states, especially the economically strongest, to support weak states with transfers (Beckert and Streeck 2012; Wirsching 2012; Sinn 2012b). This attitude is expressed in repeated demands for the introduction of Eurobonds.

Ultimately, it comes down to the mentality and lifestyle habits of the people in the various states. If the European Union and its members are considered from this point of view, it basically emerges that two incompatible attitudes have been brought together by Union law, to take on the role of state and society within one national economy. The differences culminate in the question of whether the inflationary trend is to be avoided or accepted:

The Northern states of the monetary union insist on a culture of stability, which rejects inflation in principle. The stability culture is characterised by the inclusion of unions in the constitutional frame and by its resulting prohibition of political strikes (Blankart 2011). Unions are only allowed to strike if the aim is to achieve a pay rise, but not for the sake of politically pressuring the government. The central bank is to be independent from the government, in order to prevent it from being forced to finance government debt by purchasing government bonds and by the increase of broad money. Wage increases depend on increases in labour productivity and on the generation of profits. Prices only rise moderately; while inflation is minor. Thus the economies of these states stay competitive and grow.

By contrast, Southern Europe and France possess an inflation mentality. Strikes are not limited to the achievement of tariff aims, but are also used to achieve independent political goals (see again Blankart 2011). The wage claims of the unions do not orientate themselves towards productivity, but aim to distribute what has not even been earned. The state, in its role as public entrepreneur, has to accept the claims of the unions at the end of a conflict. This results in additional expenditure, which the state has to pay for by increasing government debt.

Sooner or later, the state even has to provide private businesses (that are affected in their competiveness by the union's tariff policy) with employment by assigning them public contracts, which again are debt financed. In order to prevent paying ever-increasing interest on state debts in the capital market, the central bank, dependent upon the will of the government, has to increase the broad money and is obliged to purchase the state's debt instruments. The price increases that this causes lead to a deficit in the balance of activities, which the government can eventually only compensate for by currency depreciation. This is where the unions make their appearance again. A cycle of inflation and devaluation arises, which deprives these states of their competitiveness and of their growth potential.

This core conflict between economistic and monetarist states about how the principles of self-reliance and solidarity can be counterbalanced in a monetary union, finds its equivalent in the attitude of these states concerning the question of inflation: those states that adopt the economistic stance and emphasise the principle of self-reliance of the part member states of the monetary union, maintain a

culture of stability; while those that support the monetarist position and prioritise solidarity between the states of the monetary union, accept inflation in principle.

Consequences

Impossibility of finding a solution solely by the law

Thus, the guarantee of 'incentive compatibility' within a transfer union is no question of perfecting immature legal protections; one just cannot argue that the different stability pacts 'simply have to be sharpened' so as to reach the goal of a stable monetary union. Experience has shown that the law alone cannot reach this goal due to a lack of acceptance by its addressees (Di Fabio 2012b). Instead, there is the need for a corrective which exists independently of the will and acceptance of the states. However, within Europe's monetary union only the market can play the part of the corrective, which reacts to escalating debt levels and a state's lack of competitiveness with rising interest rates, thus forcing that state to make adjustments that are within its responsibility (Hentschelmann 2009).

The need for regulation to deal with state insolvency

If one is willing to accept this reality, European monetary union requires a whole new dimension: namely the establishment of rules to govern orderly insolvency and withdrawal from the monetary union for those members that are unable or unwilling to implement necessary reforms in the form of a state insolvency regulation (regarding the necessity of a state insolvency statute – see Zeitler 2012; Issing 2011; Sinn 2011). As long as these rules are missing, 'incentive compatibility' cannot be established within a regulatory union, because states benefiting from aid, although unwilling to implement reforms, cannot be pressured. In other words, support, in whatever form it may take, cannot be declined, if insolvency coupled with withdrawal from the monetary union is to be ruled out. There is a clear lack of consistency, if Union law establishes a monetary union for which it excludes any obligation and hence only allows the accession under the provision of meeting certain criteria on the one hand, and, on the other hand, fails to regulate the loss of membership status in the event of a violation of the above mentioned criteria (Müller-Graff 2010).

The hazard of a transfer union without acceptance

When categorically excluding the possibility of insolvency and of a subsequent withdrawal of member states from the monetary union, one inevitably creates a monetary union that has to force economically strong states to undertake unlimited transfers for the benefit of economically weak states; which is exactly what supporters of a transfer union demand. Such transfers cannot be organised permanently, because they lack a crucial requirement: the acceptance of the citizens of economically strong countries to show solidarity towards economically weak states to such an extent.

The principle of solidarity has been the basic idea of the European integration from the start and is not merely understood as the ideal obligation to respect the legislation of the Union and thus the balance between the advantages und encumbrances affiliated to the membership (EuGH, Slg. 1973, 101, marginal no. 25), but is also substantially exercised by redistribution between economically strong and weak states (Calliess 2011, recital 2).

Yet solidarity in this sense has only occurred to date in terms of the rules of structure- and cohesion – as well as the rules of European social funds (Volkmann 1999), and this only on a scale that is complained about (but ultimately considered bearable) by the 'net contributor' states and in a volume that also has to be repeatedly renegotiated (Zeitler 2012).

However, the member states of the European Union did not promise a financial adjustment, similar to the federal financial adjustment of the constitution. Such a promise would not be compatible with the basic principles of European integration in several ways. Firstly, the federal financial adjustment of the constitution depends on the concept that there has to be an overarching authority that can be held ultimately responsible (Korioth 1997). If a federal state is unable to perform a task due to financial difficulties and a 'federal crisis' arises as a result, the 'Bund' has the final responsibility for the finances of the state as ultima ratio (BVerfGE 86, 264, 116, 387). However, the member states have not bestowed the power on the European Union to cope with such a responsibility. More specifically, they still refuse to hand the power of taxation over to the European Union.

Secondly, the responsibility of the countries for one another, as a part of the constitutional financial adjustment, is based on the idea of federal equality (Korioth 1997). A federal state, which intends to provide every citizen of every state with public services to the same extent and quality (Wendt 2008, marginal no. 95), is only imaginable, if the states are mutually obliged to support one another (Korioth 1997). But the representatives have not agreed to create such federal equality in all member states of the European Union (Häde 1996).

Not only major differences in the economy, society, law and culture of the member states prevents the mere consideration of achieving this goal. But also bringing about federal equality within the Union by transfer payments between member states, similar to the adjustment payments within the constitutional federal state, would contradict the principle of European integration:

The contracts are borne by the idea, that the member states remain politically autonomous and independent, retain their national identity and are committed to the Union (Art. 4 II EUV). The economic and social conditions within the member states are supposed to be improved and adjusted by a mutual market, the economic- and monetary union, communitarisation of further policy fields (Art. 3, 4 AEUV) and by the different redistribution mechanisms of the cohesion policy (Häde 1996); a permanent alimentation of one state by the other would not harmonize with these ideas.

A feeling of togetherness between Europeans, which would carry redistribution over the monetary union and form the premise for it, may arise one day; there may even be an a 'shape shift from national citizen solidarity towards a citizen solidarity between strangers' *(Habermas)* by legal means; however, such a feeling of togetherness does not exist at the moment.

The Union cannot enforce such redistribution by legal means ('major coup') (Fischer 2011) without a far stronger sense of community (Isensee 1998; regarding Europe – see Tomuschat 1987) among the member states of the Eurozone. Sooner or later, the population of formerly economically strong states would refuse to give those states their allegiances that are substantially overwhelmed by the process of such a policy (Di Fabio 2012c). Such a development would not only endanger the 'monetary union' project, but would also destabilise unity in Europe as a whole (Sinn 2012b).

Thus the claim by supporters of a transfer union, that only a monetary union that rules out the possibility of a member's withdrawal is a strong monetary union that enjoys the financial market's trust, is short-sighted. On a permanent basis, this claim is dangerous, because the exact opposite is true: only a monetary union that grants solidarity in order to strengthen the self-reliance of its members, but does not rule out the possibility of insolvency and of withdrawal for states unwilling to implement reforms, can be expected to remain stable in the long run.

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