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Does euro tax policy require a new treaty?

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- We will **not deal with the tax policies for the 21 century**.
- We will **deal with the institutional framework necessary to run a common EU currency.**
- The institutional framework necessary to support the common currency is also essential to maintain the internal market.

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- The "summa divisio" in tax matters: the internal market and EMU (€ zone)
- The legal framework of the EU treaties for the internal market and EMU
- The economic framework for the internal market and EMU
- A new institutional EU framework for two different EU objectives

Division Internal Market & EMU

- Art. 3 TEU has two distinct economic objectives:

- Establishing an internal market with free movement of goods, persons and capital and free and fair competition (art. 3.3 TEU & art. 26 TFEU)

- Establishing an economic and monetary union, whose currency is the euro (art. 3.4 TFEU)

Division Internal Market & EMU

- Economic & legal requirements for the internal market:

  free movement & free and fair competition.

- This requires **abolition of all obstacles** to cross-border movements of goods, persons, capital and business establishments and **equal treatment** between domestic and foreign products, persons, capital and enterprises.

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Division Internal Market & EMU

- Economic & legal requirements for the internal market **do not require** in tax matters:

- European or national taxes levied exclusively for a European budget or full uniformity or harmonisation of the major national taxes.

- MS still continue their own economic and budgetary policy, with **emphasis on national social and economic preferences,** implemented by exercising national fiscal powers.

Division Internal Market & EMU

- The result is a single market with competitive differences in prices and costs:

- The rules for cross-border movements of, services, persons, capital and businesses are the same, but the competitive position of economic agents is different and determined by national economic and social preferences and conditions, reflected in national tax policies.

- MS freely decide monetary & budgetary

Division Internal Market & EMU

- Economic & legal requirements for EMU and a common currency **do require**:

- A common currency, **governed by a common central bank (ECB)**, disposing of the power to determine (1) interest rates and (2) the volume of money and (3) the power to intervene in the financial markets and to act as a lender of last resort for banks and Member States.

Division Internal Market & EMU

- Economic & legal requirements for EMU and a common currency **do require** :

- A common separate and autonomous EU fund under control of the ECB to allow the ECB to exercise its functions and to back up its monetary operations.
- That function could also be fulfilled by a common and separate economic budget for the € zone in order to conduct a common economic policy supporting the € currency.

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Division Internal Market & EMU

- Economic & legal requirements for EMU and a common currency **do require**:

- Autonomous Eurozone (EZ) revenue by way of national taxes that are automatically and directly transferred to the EZ, or EZ taxes directly levied by the EZ to support a common EZ fund and a common EZ budget.

- **This requires power of the EZ to raise its own revenue, independently from the MS.**

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Division Internal Market & EMU

- Economic & legal requirements for EMU and a common currency **do require**:
- Separate national or EU taxes which flow directly and automatically to the EZ fund or treasury, shall be levied **on a uniform basis at uniform rates**.

- **But** EMU has still room for **substantial national taxes** with different basis and rates, although there will be an overarching economic & social policy of EMU, which will gradually and partially equalize national social models in the MS

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Legal Framework Internal Market

- The legal framework for the internal market is well established in EU treaties and secondary legislation:

- Art. 3 TFEU: exclusive competences: customs union, competition rules for the internal market, common commercial policy.
- Art. 4 TFEU: shared competences: internal market, economic, social & territorial cohesion, argiculture & fisheries, environment, consumer protection, trans-EU networks, transport &

Legal Framework Internal Market

- Art. 113: power to **"harmonise indirect taxes** if necessary for the establishment of the internal market".

- Art. 115: indirect power to **harmonise other taxes** if necessary for the establishment of the internal market.

- **No power to levy taxes** (except customs)

- Major remaining obstacle: **unanimity rule**

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Legal Framework Internal Market

- Competence ECJ: interpretation & enforcement of EU treaties and EU legislation:

- **Enforcement of the fundamental freedoms** is limited by the concept of free and fair competition in the internal market. ECJ has **no power to intervene for social or economic reasons** in the material tax rules, or the national fiscal policy of the MS.

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Internal Market: adequate legal framework?

- The legislative and jurisprudential legal framework for the functioning of the internal market seem adequate, except for : **unanimous voting requirement for taxation.**

- Unanimous voting is not necessary to protect national sovereingty because EU cannot levy taxes or amend national taxes except for the functioning of the internal market.

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Legal Framework for EMU

- Art. 3.1 TFEU: **monetary policy of the € is exclusive competence of EU!!**

- **Common provisions** for economic and monetary policy **for euro and non-euro MS**:
  - Economic policy: art. 120-127
  - Monetary policy: art. 127-133
  - Institutional provisions: art. 134-135.

- **Exclusive provisions for € MS**: art. 136-138.

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Legal Framework for EMU

- Art. 121 TFEU: “MS shall regard **their** economic policies as a matter of common concern and shall coordinate them with the Council” (not with the Commission).

- Instruments of coordination monitoring recommendations and multilateral surveillance with excessive deficit procedure (maximum deficit 3% GDP and maximum debt 60% GDP).

Legal Framework for EMU

- **<u>Prohibition of financial solidarity</u>**:
- Art. 122: Council upon proposal of the Commission may provide aid in case of national disasters or exceptional circumstances.
- Art. 123: Overdraft or credit facilities of any type by the ECB in favour of EU institutions or any level of government of the MS shall be prohibited.
- Art. 125: EU or any MS shall not be liable for any debt of any other MS.

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Legal Framework for EMU

- ECB is organised within the framework of the European System of Central banks (ESCB) which in principle also operates for non-euro MS.

- Art. 127.1: Primary obejctive of ECSB is **price stability**, not employment or economic growth.
- ECB has the power to issue bank notes.
- ECB shall not take any instructions, neither from the EU, nor from any MS, **i.e. is completely independent**
- No explicit power on interest rates

Specific Provisions for €

Art. 136: Council shall adopt specific measures:

- To strengthen coordination and budgetary discipline of euro-MS.
- To set out policy guidelines that are compatible with those for the EU as a whole, i.e. including non-euro states!
- To allow the euro-MS to set up the **European Stability Mechanism (ESM)** that can be activated to guarantee the stability of the eurozone as a whole (added 25.03.2011)

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Specific Provisions for €

Art. 137: specific protocol for euro-MS:

- Euro MS meet informally with a standing invitation for the ECB and the Commission.
- The meeting elects a president.
- No special rulees for decision making. All decisions are taken by consensus.

Specific Provisions for €

Art. 138: international representation of the €

- Council shall, on a proposal from the Commission, adopt a decision establishing a common position to secure the euro’s place in the international monetary system.
- Council shall, on a proposal from the Commission, adopt measures to ensure a unified representation of the euro in international financial institutions.

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EMU & €: adequate legal framework?

- No euro-treasury to back up European Stability Mechanism & monetary policy of ECB.

- No power to levy euro-taxes, or to transfer some or part of national taxes to a euro-treasury. Power to spend ESM money rests still with national parliaments (see: D, Fi, Nl, Sk).

- ECB acted on 06.09.2012 to intervene indirectly in international financial markets to support € by Outright Monetray Transactions (OMT).

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EMU & €: adequate legal framework?

- No decision making structure in euro-group. Consensus model is too slow in times of crisis and <u>formally</u> depends on national parliaments.

- EU and national constitutional challenges to ECB market interventions (BverfGE and ECJ).

- No clear delimitation of powers between euro-group and Commission and EU as a whole. Commission is still in charge of budgetary discipline of euro-MS.

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EMU & €: adequate legal framework?

- Disconnect in fiscal and budgetary competences between MS & EU:
- National parliaments are competent for national budgets and taxes, but not for EU issues.
- EU parliament is competent for EU issues, but not for national budgets and taxes.

Economic Framework Internal Market

- Competition is the essence of the internal market. Design and enforcement of competition rules only need a rather modest budget for the administration of competition rules.

- EU may need more money for regional subsidies, but this is a question of budgetary volume not of they way to provide money to EU institutions.

- Conclusion: economic framework for the internal market is satisfactory.

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Economic Framework EMU

- Fiscal sovereignty (taxing and spending power) rests squarely with the MS: **97% of all taxes levied and all revenue spent in the EU is under full control of the MS.**

- EU budget (2011) = **141,9** bill. € = 1,12% EUGDP

  EU budget (2014) = **145,6** bill. € = 1,04% EUGDP

- Budget all MS (2009) = **5.989** bill. € = 50,7% EU GDP

  Budget all MS (2014) = 48,1% EU GDP

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Economic Framework EMU

- Total spending power of EU MS is **45 x** bigger than total spending power of EU. **EU lacks critical bugetary mass to enforce a common monetary policy for the €. EU tail is wagging MS dog.**

- The European Stability Mechanism (ESM) disposes of a total capital of 700 bill. €. with a maximum intervention ceiling of 500 bill.€. It has disbursed 220 bill. € in loans.Total interventions of all EU funds for euro-zone states already amounted to 411 bill. €

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Economic Framework EMU

- Very slow economic integration of euro-zone MS. MS maintained their different taxing and spending patterns & different models of social protection.

- Income and wealth taxes % GPD (2014):
  D 11,9 – F 12,6 – Nl 10,8 – Irl 13,6
  DK 34 – Sw 17,7 – No 17,7
- Social security contributions % GDP (2014):
  D 16,5 – F 19,1 – Nl 15,5 – Irl 5,9
  DK 1,1 – Sw 4,7 – No 9,9

Economic Framework EMU

- Economic and social disparities between MS are no excuse for failure of EMU.

- See US, Brasil, China, India and Russia with much greater regional economic and social disparities, but common economic government and one single currency.

EMU: adequate economic framework?

- Economic framework is **inadequate**:
- Budgetary mass to maneuver in crisis is too small.
- Procedure to maneuver in crisis is too slow and undemocratic.
- Coordination of economic and social policies of MS is effected indirectly by budget control of MS and not through direct spending by EU.

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Which Institutions for Internal Market?

- Achieving the internal market for tax purposes does **not need major treaty amendments**. Only qualified majority voting is needed for tax rules facilitating the internal market.

- However: **immigration and free movement of persons is new challenge for internal market.**

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Which Institutions for EMU?

Achieving EMU and common currency requires major treaty amendments:

- Consolidation of national governments debt in EZ.
- Steps to free the budgetary mass of all euro-MS as the ultimate guarantee for euro-MS debt.
- Increasing capital in ESM and streamlining and accelerating decision making.
- Streamlining and accelerating decision making in euro-group.

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Which Institutions for EMU?

Achieving EMU and common currency requires major treaty amendments:

- Creating a central euro-budget with critical mass controlled by central EU institution to conduct common economic policy.
- Holding all decision making bodies politically accountable before a democratic parliamentary institution.
- Extending ECB powers to conduct interest policy and to directly intervene in markets.

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Which Institutions for EMU?

- Can we achieve these results within the framework of existing EU treaties, or do we need a new framework that is specific for the euro-zone? I.e. two treaties: one for the internal market and one for the common currency?

- Can the Commission continue to serve as the central organ for determining policies for euro-MS and for non-euro-MS? Possibility of conflict of interest on behalf of one single commissioner? (banking union, FTT)

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Which Institutions for EMU?

- Can we have two central European organs: the Commission for the internal market and a new central organ for the euro-zone?
- Can the Council of Ministers act as the forum where the two central organs should meet, discuss and make recomendations?

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Which Institutions for EMU?

- Who is to exercise democratic control on the central organ controlling the common euro-budget of taxing and spending: the Council of Ministers, the European parliament or national parliaments?
- Can we have one parliament with two different roles: national role or European role and role for the internal market or for EMU? Can we split roles in the same parliament?
- Which taxes as euro-taxes: FTT, CCCTB?

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Which Institutions for EMU?

- Who repesents the EU in international fora where questions of international trade and/or monetary policy are discussed? Should the euro-group have an exclusive representation in monetary matters like the EU commission has in international trade? What about the € representation in the IMF and the World Bank?

- These question should be resolved before the next euro-crisis.

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Which Institutions for EMU?

Big bang approach: Federal EU

- Establishment of an EU federation would theoretically save the € and practically destroy the EU.

- Transfer of 20-25% of total taxing and spending volume to EU would be tantamount to a revolution and a massive transfer of competences which would destroy the political and administrative structures of the MS.

Which Institutions for EMU?

Gradual approach

- Extending the powers of the ECB to all the policy aspects of an effective central bank, including a mandate to guarantee long term economic growth.

- Gradually extending the financing of the ESM with financing from autonomous EU taxes (CCCTB), which would gradually (10 years) phase out contributions decided by MS. Studying eventual merger the ESM and the ECB.

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Which Institutions for EMU?

Gradual approach

- Gradually providing an increasing budget for this new organ of central economic policy and endow it with a critical budgetary mass for economic intervention, which over a period of 10-15 years could increase to maximum 10 – 15% of eurozone GDP. This would constitute the central budget for supporting economic and monetary policy.

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Which Institutions for EMU?

Choice in the gradual approach

- Making a department of the Commission for the eurozone politically accountable to the European parliament and during a transition period (10-15 years) also to the Council of Ministers in accordance with normal democratic rules.
- When the financing of central organs is organised by way of autonomous EU taxes, establish a euro-zone tax administration to collect these taxes.

Which Institutions for EMU?

Choice in the gradual approach

- Establishing a new structure outside the existing Commission with economic and budgetray powers that would be ecxlusively competent for the common currency with normal democratic rules.
- Start pragmatically with intergovernmental procedures for a common decision making platform for a common budget and economic policy and gradually integrating these procedures either in the Commission or in a seprate decision making structure.

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Which Institutions for EMU?

Procedure to be followed

- Art. 136 TFEU allows € MS in Council to take specific measures for the proper functioning of EMU. On this basis a paragraph was added permitting the establishment of the ESM.
- Another paragraph could be added allowing for the establishment of a central organ of economic government granting the power to levy euro-zone taxes and allowing the transfer of euro-zone or national taxes to that organ to execute its policy

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Which Institutions for EMU?

Procedure to be followed

- The gradual process of institutional development should be incorporated in a new treaty that would be submitted for approval according to the constitutional rules of each euro-MS. Rejection of the treaty would mean leaving the euro-zone, because approval of the treaty would amount to a gradual but significant transfer of fiscal and budgetary sovereignty.

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Which Institutions for EMU?

What the euro-MS need is not a full fledged federal state. The establishment of the common market after 1957 was also a gradual process. What we need is a gradual development towards a sui generis EU construction with a democratic decision making mechanism allowing for a minimal degree of solidarity permitting us together to maintain the € and with it the critical political weight to defend worldwide our common political, social and economic values.

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CONCLUSION

THAT INEVITABLY MEANS THAT WE WILL HAVE AN EU "A DEUX VITESSES"

€ AND NON-€

THANK YOU

AND GOOD LUCK!

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