

## **Yves Mersch: A currency beyond the nation state – the euro and its institutional challenges ahead**

Dinner speech by Mr Yves Mersch, Member of the Executive Board of the European Central Bank, at Société d'Economie Politique, Paris, 16 November 2015.

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Ladies and gentlemen,

I am deeply shocked by what happened here over the weekend. Those atrocious attacks have killed and wounded hundreds of people. I would like to express my solidarity, my compassion, and my sincere condolences to the families and friends of the victims.

Our societies are founded on a social contract. A common understanding of fundamental values and principles, such as democracy, the rule of law and human rights, forms the basis for peaceful coexistence.

Such a social contract need not be constrained to the national level. It can also – and does – exist at the supra-national level. It is on this basis that, in Europe, Member States share sovereignty, most notably as some of us share a “currency beyond the state”.

In my remarks today, I will:

- first, lay out the legal scope for sharing sovereignty; and
- second, elaborate on what this means for further European integration in different policy areas.

The Lisbon Treaty sets out several restrictions regarding the transfer of sovereignty from the national to the European level:

- Sovereignty in the Union rests with the Member States. The Union owes its existence to the Member States, as they confer competences on the Union in order to attain common objectives (Article 1 of the Treaty on the Functioning of the European Union (TFEU)).
- National security remains the sole responsibility of the constituent states (Article 4 Paragraph 2, TFEU).
- The Union is governed by the principles of subsidiarity and proportionality (Article 5 TFEU).

As you can see, the letter and spirit of the Lisbon Treaty do not suggest that the EU should be transformed into a sovereign state called Europe. Nevertheless, some national constitutional courts saw the need to further emphasise that Member States remain viable and independent political entities, coining the term “constitutional identity”.

Constitutional identity assumes that each Member State enjoys the right to democratic self-determination through its own institutions, in particular national parliaments elected by the people.

However, distinguishing between the original, constituent power of the people and the derived, constituted power of the legislator does *not* limit the ability to share sovereignty.

Only a very radical interpretation of constitutional identity would dictate that competences cannot be transferred to another entity without violating the original power of the people. Such an interpretation is based on the antiquated belief that the nation state is the sole locus of legitimacy.

This belief is rooted in the so-called Westphalian model of international relations. It assumes that only the nation state has sovereignty over its territory and domestic affairs. This model

refers to the Peace of Westphalia – a series of peace treaties signed between May and October 1648 in Osnabrück and Münster (in Germany). These treaties ended the Thirty Years' War (1618–48) in the Holy Roman Empire, and the Eighty Years' War (1568–1648), in which the Kingdom of Spain, the Dutch Republic, the Kingdom of France, the Swedish Empire and sovereigns of the free imperial cities were also involved.

The Westphalian model was justified as a means to end the long-lasting wars back in 1648. However, some 300 years later, after two devastating wars, the dangers of a warped understanding of patriotism, i.e. nationalism, became apparent. Overcoming the limits of the nation state was a precondition for a peaceful Europe. Sharing sovereignty rather than sacrificing it has been the preferred method of achieving this.

Indeed, the European approach since then has shown that democratic states can share sovereignty in a number of policy areas without losing statehood.

The EU has developed an identity as a union not only of Member States, but also of citizens establishing a model of transnational democracy with an elected, European Parliament and an independent Court of Justice (the ECJ). EU citizens have ample reason to say, as the incoming President of the ECJ, Koen Lenaerts, once put it: *Civis Europaeus sum*.<sup>1</sup>

The Treaty signed by Member States also confers rights to citizenship which can be claimed in the European courts.

In particular, the euro area has shown that like-minded people and their governments can introduce, manage and safeguard a single currency without having to merge into one overarching federal state. The “currency beyond the state”<sup>2</sup> has revealed as false the widespread belief that a monetary union without a state is not viable.

There is a broad consensus that the design and implementation of monetary policy should be taken out of the political arena to protect citizens' purchasing power from short-term temptations and pressures of the election cycle. This is why monetary policy was transferred to an independent institution, the ECB.

While independent, the ECB is accountable to a democratically elected body, the European Parliament. Our decisions are taken at the European level. They are taken in the interest of Europe. And – as a logical consequence – they are democratically legitimised at the European level. Currently, this democratic control includes parliamentarians from countries that do not share the currency of the Union, which the Treaty explicitly states as being the euro.

This logic cannot, however, be directly applied to all other policy areas.

Deciding on taxation and the allocation of budgetary expenditures is the core competence of national parliaments, and for good reason. Taxation mirrors the people's preferences for the supply of public goods and – just as importantly – their willingness to finance these public goods. Taxation and the allocation of budgetary expenditures, therefore, requires a high degree of democratic legitimacy and parliamentary control at the national level. The concept of a European taxpayer, briefly discussed during the negotiations leading up to the Maastricht Treaty, did not end up being included in the Treaty.

This is currently a national prerogative, but that does not mean that we should shy away from further fiscal integration in the long run. We just need to get it right.

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<sup>1</sup> Lenaerts, K., Cardonnel, P., Rosas, A. and Wahl, N. (2012), “‘Civis Europaeus Sum’: from the Cross-border Link to the Status of Citizen of the Union”, *Constitutionalising the EU judicial system*, Oxford.

<sup>2</sup> Hoeksma, J. (2015), “EU & EMU: Beyond the 2005–2014 Crises Decade”, *Duisenberg School of Finance (DSF) Policy Paper Series*, No 51, April.

One of the ideas currently being discussed is a euro area-wide fiscal stabilisation function. This function could help to better cushion the economy against large macroeconomic shocks that cannot be dealt with at the national level alone. For such euro area stabilisation to work, however, we first need a significant degree of economic convergence and financial integration according to the Five Presidents' Report.<sup>3</sup>

In any case, a fiscal stabilisation function is meant to be just that: a stabilisation function. It should not be misused to introduce a transfer system through the back door.

A fiscal stabilisation function could be managed by a euro-area treasury that would be responsible for those fiscal policy decisions that are more effectively dealt with at the European level than at the national level.

Such a euro area treasury or finance ministry would clearly need a high degree of democratic legitimacy and strong parliamentary control. Any college with powers delegated from intergovernmental forums would hardly satisfy these requirements. In my view, the European Parliament convening in euro area composition would be the right body to undertake this task. It would ensure that the actions of a European finance minister are legitimised at the same level at which decisions are taken.

A high degree of democratic legitimacy also implies that a European finance minister cannot be an unelected technocrat. Under the current institutional framework, he or she certainly cannot be a delegate from the Eurogroup. In an integrated Union, this informal, intergovernmental body lacks its *raison d'être*.

Could a delegate from the European Commission assume this position?

In principle, yes. With the election of its President and the vetting of Commissioners by the European Parliament, the European Commission enjoys a higher degree of democratic legitimacy than various intergovernmental gatherings. However, the Commission is increasingly experiencing tensions between its ever-more political orientation and its role as the guardian of the Treaties. These tensions would need to be solved first. And a "Spitzenkandidat" is not an elected President.

Any such moves towards closer fiscal integration will need time. Some of them require treaty changes for which I currently do not see political willingness. Given the urgency of the crisis, the minimum consensus was therefore to *temporarily* opt for intergovernmental arrangements to increase the Union's resilience. This ought to be a temporary solution to avoid tensions of a political and legal nature between community and intergovernmental institutions.

For instance, the European Stability Mechanism (ESM) was established as an intergovernmental institution that, for tasks such as payments, still requires prior consent from national parliaments. As soon as there is political willingness to change the treaties, the ESM should be made a proper European institution. In the longer run the intergovernmental approach is a dead end.

Let me conclude by summarising my main point.

While legal doctrine is important and necessary, it needs to be free of ideological interference and must not be used for purposes that go beyond its legal nature.

If national courts claim the right to defend national sovereign prerogatives over and above the decisions of their democratically elected representatives, the *legal* doctrine of "constitutional identity" morphs into a *political* question. There is then a risk that sovereignty becomes an ideological concept. Such "sovereignism" clashes with any attempt at further

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<sup>3</sup> "Completing Europe's Economic and Monetary Union", a report prepared by J.-C. Juncker, in close cooperation with D. Tusk, J. Dijsselbloem, M. Draghi and M. Schulz, 22 June 2015.

European integration. It could result in a failure to complete the European integration process.

It should not be used as an excuse to opt for intergovernmental arrangements where supranational solutions would be more conducive to achieving a genuine Economic and Monetary Union. The European integration process has demonstrated that democratic states can share sovereignty in a number of policy areas without losing statehood.

Nevertheless, we need to take into account that some policy areas do need a higher degree of democratic legitimacy and parliamentary control at the national level than others. This reasoning in no way supports those championing a national or constitutional identity. Rather, it illustrates the need for different approaches to the respective policy areas, especially as the concept of constitutional identity has not only hampered deeper integration but risks winding back earlier achievements. As Jaap Hoeksma, philosopher of law put it, “the transition of the EU from an international organisation to a European democracy has proceeded faster than most euro-sceptics” predicted; at the same time, “the quality of this [...] democracy [still] needs more improvements than euro enthusiasts tend to assume”.<sup>4</sup>

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<sup>4</sup> Hoeksma, J., op. cit.