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The Hague, 18 January 2013

Request for information on the embedding of democratic control in the reform of economic governance in Europe to combat the economic and financial crisis

By letter of 6 November 2012, reference 151553.01u, the president of the Senate of the States General submitted a request to the Advisory Division of the Council of State, pursuant to section 21a of the Council of State Act, for information on the embedding of democratic control in the reform of economic governance in Europe to combat the economic and financial crisis.

In its letter the Senate requests information about parliamentary involvement in and scrutiny of legislation in the fields of financial/economic and monetary governance in Europe, specifically its introduction and application. The Senate is concerned both about the present situation and about the possible implications for democratic involvement in and control over developments that are now under discussion.

The request should be viewed against the background of the potentially far-reaching proposals of the President of the European Council, Herman Van Rompuy, which are designed to give fresh impetus to the economic, fiscal and political integration of the European Union. They were presented and discussed in the European Council on 13/14 December 2012.

The request raises a number of specific questions and issues:

- What safeguards are needed to maintain in the future – both procedurally and substantively – the rights and powers of the Dutch parliament, in particular the right to approve and amend the budget?
- What possibly new democratic safeguards will necessary if sovereignty is transferred? Or, to put it another way, are remedies available for redressing the democratic deficit? How does the Council assess the existing rights and powers of the European Parliament in this context?
- The Senate would particularly like to receive an appraisal of arrangements such as the ‘conference’ created in article 13 of the Fiscal Stability Treaty from the

perspectives of subsidiarity, effective democratic control, citizen representation and the interinstitutional balance of power.

1. Introduction

The questions raised by the Senate focus on democratic involvement in and control over the introduction and application of legislation in the fields of financial/economic and monetary governance in Europe. The Advisory Division will accordingly confine its analysis to the operation of the Economic and Monetary Union (EMU). The Senate asks in particular how the newly agreed (and yet to be agreed) rules on the coordination of fiscal policy in the Union and the euro area should be incorporated into the budgetary procedures in the Netherlands.

The Senate has requested that the information should deal both with the present state of affairs and with the developments now being debated. In view of the deadline set by the Senate for providing this information, it does not expect any discussion of the proposals as such. Nor would this be possible. The developments affecting the governance of the EMU are still in full swing. Proposals and positions on the governance of the EMU have now been submitted by various parties, including the European Commission¹ and the Dutch government.² The debate will also be influenced by reactions from both inside and outside the European Union. This report cannot therefore be viewed separately from this context and will therefore focus on the more abstract issues.

On 5 December 2012 the President of the European Council Herman Van Rompuy presented a report entitled 'Towards a Genuine Economic and Monetary Union'.³ The report advocates a stage-based approach. Stage 1 concerns the period to the end of 2013 and involves consolidation of the existing decisions and introduction of the European Commission's proposals which are currently under negotiation. The main

¹ Communication from the Commission 28.11.2012, A blueprint for a deep and genuine economic and monetary union, Launching a European Debate (COM(2012) 777 final).

² Letter to the president of the House of Representatives of the States General of 30 November 2012 concerning the government's position on the future of Economic and Monetary Union (Parliamentary Papers, House of Representatives, 2012/13, 21 501-20, no. 704).

³ Van Rompuy et al., Towards a Genuine Economic and Monetary Union, 5 December 2012.

aim of stage 2, which covers the period 2013-2014, is to implement the proposal that 'arrangements of a contractual nature' should be concluded annually between the individual member states and the European institutions on the fiscal and economic policy to be pursued. Stage 3 relates to the post-2014 period, i.e. the period after the European elections of that year and the inauguration of a new European Commission, and focuses primarily on the development of a separate budget for the euro area.

The European Council of 13/14 December 2012 decided to proceed with stage 1 and requested all institutions concerned to take the necessary decisions. As regards stage 2 the Council requested its president – Herman Van Rompuy – to put forward further proposals for implementing the idea of contractual arrangements for consideration at the June 2013 meeting of the European Council. No conclusions about stage 3 were adopted by the European Council. For a more detailed description of the measures that have already been adopted or are still in the pipeline the Advisory Division would refer to the annexe to this report.

Against this background the Advisory Division deals first of all in its report with the development of parliamentary involvement in and scrutiny of European decision-making both at European and at national level (section 2). It then goes on to discuss the assessment framework within which the issue of democratic involvement and control should be viewed (section 3). Afterwards it briefly outlines the developments in the Economic and Monetary Union (section 4) and analyses the increasing complexity of the EMU framework (section 5). It then examines how parliamentary involvement in and scrutiny of the EMU is currently evolving (section 6). Finally, it makes some concluding remarks and summarises its answers to the specific questions raised by the Senate (section 7).

2. Development of parliamentary involvement in and scrutiny of European decision-making

In the past, parliamentary involvement in and scrutiny of European decision-making has been based implicitly on the principle of a strict distinction between the national and European tiers of government. In other words, the national parliaments have played their role within the national legal order and the European Parliament has

played its role within the European institutional system. Each member state has been entirely free to decide how democratic influence and control should be exercised in respect of the positions taken by the government concerned in the European decision-making process. Democratic involvement and control therefore takes very different forms in the 27 member states. But parliamentary involvement may also differ over time within the member states. For example, in the Netherlands the involvement of both houses of parliament has grown over the years. Most recently, the House of Representatives has greatly increased its influence by introducing the scrutiny reservation at the time of the approval of the Treaty of Lisbon.

It is often argued⁴ that the answer to the question of where the focus of democratic involvement should lie, namely at national or at European level, depends on how decisions are taken in Europe. If they require unanimity, each member state can in principle exercise full control and its national parliament can therefore also exercise its scrutinising role to maximum effect in relation to the government. In the case of majority decision-making, however, what is in theory absolute control over decision-making is lost not only by the member state in the Council of the European Union but also by the national parliament. This is why, according to this view, the switch from unanimity to qualified majority voting should be accompanied by greater powers of scrutiny for the European Parliament. The loss of parliamentary involvement at national level should, as it were, be offset at European level. In the successive treaty changes,⁵ the switch to (qualified) majority voting has therefore in most cases resulted in the introduction of some form of right of codecision for the European Parliament. For its part, the Dutch parliament gave up its right to approve certain decisions in the field of Justice and Home Affairs in the then third pillar when this was 'communitised' in the Treaty of Lisbon.

Although there has been much discussion in recent decades about a greater role for the national parliaments in the European decision-making process, this led initially only to a few procedural changes such as improvements to the provision of information. For example, Protocol no. 1 to the Treaty of Lisbon on the role of national parliaments in the European Union assumes that the national parliaments play their role only within

⁴ In the Netherlands, for example.

⁵ From the Single European Act up to and including the Treaty of Lisbon.

the national legal order. The preamble expressly states that 'the way in which national Parliaments scrutinise their governments in relation to the activities of the European Union is a matter for the particular constitutional organisation and practice of each Member State'. And although article 12 of the Treaty on European Union (TEU) states that national parliaments contribute actively to the good functioning of the Union, it is evident from the list of ways in which the national parliaments do this that this concerns mainly activities within the national legal order or, in the case of interparliamentary cooperation, merely the exchange of information. However, a new departure from this principle can be found in article 12 (b) of the TEU, which refers to Protocol no. 2 on the application of the principles of subsidiarity and proportionality. The yellow and orange card procedure introduced in that Protocol gives the national parliaments for the first time the possibility of directly influencing Community decision-making. In particular, the European Commission must review a proposal if a given number of national parliaments are of the opinion that a proposed juristic act is not compatible with the principle of subsidiarity. Recently, this procedure resulted for the first time in the withdrawal of a proposal by the European Commission.⁶

Hitherto, European decision-making has been based on another principle, namely that member states have exclusive control over taxation. The European Parliament admittedly has powers in relation to the expenditure of the European Union, but not in relation to revenue. Accordingly, article 311 of the Treaty on the Functioning of the European Union (TFEU) provides that the EU system of own resources will 'not enter into force until it is approved by the Member States in accordance with their respective constitutional requirements'. The European Parliament merely has a right to be consulted on such matters.

Parliamentary involvement in and scrutiny of decision-making in the context of Economic and Monetary Union is in keeping with the usual pattern in which the role of the national parliaments is confined to the national legal order, and that of the European Parliament to the legal order of the European Union. The European Parliament has a right of codecision in many cases, but in others it only has to be

⁶ This concerns the proposal for a Directive of the European Parliament and of the Council on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services (COM(2012) 131 final); see http://www.eerstekamer.nl/eu/edossier/e120011_eu_voorstel_handhaving.

consulted or even merely informed. The same is true of the national parliaments. However, the measures recently taken to manage the financial and debt crisis have raised new issues about the democratic aspects of this system. These are dealt with below.

3. Assessment framework for the report

The questions raised by the Senate focus on democratic involvement in and control over financial/economic and monetary governance. The report deals in this connection with the safeguards for the powers of the Dutch parliament, in particular its right to approve and amend the budget. It is also about democratic safeguards in the transfer of sovereignty and about the democratic deficit. Other matters covered include subsidiarity, democratic control, citizen representation and the interinstitutional balance of power. These diverse concepts require further analysis here.

Only certain basic criteria exist for democratic involvement and control. In general, these terms refer to the involvement of citizens, either directly or through representative bodies, in legislation, governance and control over the actions of the authorities. The usual gauge of democratic participation is the extent to which general representative bodies constituted on the basis of general elections are involved in and scrutinise these processes. But the manner and extent of this involvement and scrutiny, and hence the related institutional arrangements, differ from democracy to democracy.

It follows that there is no hard-and-fast criterion. The Advisory Division will therefore take the existing institutional arrangements in the Netherlands and the European Union as its starting point in answering the Senate's questions on democratic involvement and control. At national level the framework for these arrangements has been laid down in the Constitution, constitutional practice and organic laws (Government Accounts Act 2001). The involvement of the two houses of the States General in the adoption of the budget (right to approve and amend the budget) and the levying of taxes and regulation of the monetary system is governed by special provisions in articles 104, 105 and 106 of the Constitution. At European level the principles for democratic involvement are contained primarily in Title II of the TEU.

The Division would make the following observations about these frameworks.

a) *The national framework*

Article 105 of the Constitution provides that the estimates of the state's revenues and expenditures must be laid down by act of parliament. As the procedure for passing acts of parliament is also contained in the Constitution, the two provisions together regulate the right of the States General to decide, together with the government, on the state's revenues and expenditures. The involvement of the States General in passing budget legislation must be seen in the context of its comparable involvement in the levying of taxes (article 104) and the regulation of the monetary system (article 106).

Debating and passing budget legislation is a central element of the involvement of the two houses of the States General in government policy. This is not only because they have the power to authorise specific expenditure,⁷ but certainly also because it provides a basis for debating and assessing government policy. However, their involvement in passing budget legislation is only part of their democratic involvement. Such involvement is increasingly reflected in a continuing debate between the government and the States General on policy proposals, policy implementation, particular decisions, the approach to specific topical issues, and international consultation and agreements. In this sense, the right of the States General to approve and amend the budget is much broader in practice than in strictly formal terms. The substantive right is based not so much on the involvement of the two houses of the States General in the legislation but on the right of the two houses to receive information from the government and to be consulted by the government on the budgetary implications of general government policy. This right may be exercised at any given moment, in other words before or after decisions are taken. If necessary, the information can be provided to parliament on a confidential basis.⁸

⁷ Neither the States General nor an individual citizen can derive a specific claim from this right; Supreme Court, 5 October 1849, W 1058 (De Bourbon); Supreme Court, 8 May 1877, W 4119.

⁸ Michal Diamant & Michiel van Emmerik, 'Parlementair budgetrecht onder vuur?' (Parliamentary right to approve and amend the budget under fire?), *Nederlands Juristenblad* 2011/1535.

Another important element of democratic involvement is an ongoing public debate on government policy, on the consequences or lack of such policy and on public sentiment about this. The last but by no means the least important element of democratic involvement is the rule that the government and the individual ministers and state secretaries need to retain the confidence of both houses of the States General in the exercise of their office. This rule implies that the policy pursued by a government or individual ministers or state secretaries requires the support of a majority; in other words, any objections to the policy or to the minister or state secretary concerned are not so grave that a majority of the States General votes in favour of a motion of no confidence in the minister or state secretary or the government as a whole.

In any debate on sovereignty and fiscal law it is important to realise that the legislator has only limited freedom to adopt the budget. International obligations, domestic obligations, claims, rights, economic developments, the prevailing mood on the financial markets and other factors can substantially limit the scope for change, either legally or practically. Economic/financial and monetary policy is largely dictated by the extent to which the Dutch economy is intertwined with the European and global economies.⁹ Another important limitation concerns the nature of the decisions to be taken. Decisions to shore up a bank or intervene in monetary transactions are taken not by act of parliament but on the basis of delegated or individual powers in mutual consultation and after negotiation, and for which the government is accountable only *ex post facto*.

Nonetheless, even in the case of far-reaching individual or delegated powers the States General can always hold a minister or the government accountable for the manner in which a power is exercised, for the functioning of the implementing authorities or independent institutions or for the functioning of the system as a whole, and may, if desired, require the government to put forward proposals for altering the system. Against this background, the Advisory Division has made observations in its report on the bill approving the ESM Treaty about the limited scope for national parliaments to scrutinise the functioning of the ESM, and about the need for

⁹ On this point see Kortmann: *Constitutioneel recht* (Constitutional law), 2012, p. 190.

parliamentary approval not only of the ESM Treaty but also of any amendment of (i.e. increase in) the ESM's authorised capital.¹⁰

b) *The European framework*

Article 10 (1) of the TEU provides that the 'functioning of the Union shall be founded on representative democracy'. Article 10 (2) then explains that the representation of citizens takes place through the direct election of the European Parliament and that the member states are represented in the European Council and in the Council of the European Union by their governments, which are 'themselves democratically accountable to their national Parliaments, or to their citizens'. Article 12 of the TEU provides that national parliaments contribute actively 'to the good functioning of the Union'. In addition to these parliamentary elements of democratic legitimacy, the more social aspects are dealt with in article 11 of the TEU. This article provides, among other things, that the European institutions must provide citizens and representative associations with information and must maintain a dialogue and hold consultations with them about the Union's actions.

These principles in Title II of the TEU form the framework for implementation of democratic involvement in and control over European decision-making. Naturally, this is an entirely individual framework which is not really comparable with the frameworks in each of the separate member states. The Council of the European Union, each of whose members enjoys the confidence of and is scrutinised by his or her own parliament, also plays an important role. In the European Union too, democratic involvement is in fact broader than the formal involvement of the Council and Parliament alone. In most cases the European Commission now consults civil society organisations and experts in the member states before making a definite proposal for a directive or regulation. Similarly, the debates in the European Parliament are not confined to decisions but are in principle broader.

However, debate within the Union and in the European Parliament does focus strongly on the introduction of legislation. This is because the European Union, in particular the European Commission, has only a limited responsibility for implementing policy and legislation. This has largely continued to be the responsibility of the member states,

¹⁰ Parliamentary Papers, House of Representatives, 2011/12, 33 221, no. 4.

even in cases involving the implementation of common policy. In other cases, responsibility for administrative decision-making has been assigned by treaty to independent institutions. For example, the member states decided in the Maastricht Treaty that responsibility for monetary policy should be assigned to the European Central Bank (ECB), while the related fiscal and economic policy has remained in the hands of the member states. In fact, this was an arrangement which, from the perspective of democratic involvement, did not differ all that greatly from the situation that already existed in individual member states, particularly the Netherlands. As long as the ECB was able to confine itself to its statutory remit and the governments of the member states were scrutinised at national level by their parliaments, this arrangement prompted few questions. However, the inability of the mechanisms to ensure the proper functioning of the EMU and achieve the necessary convergence of national fiscal and economic policy and subsequently to adopt an effective and vigorous response to the crisis made it necessary for the ECB to take exceptional emergency measures. In taking these measures the ECB was obliged to stretch its own mandate to the limit in order to preserve the EMU. In the longer term, however, this situation is undesirable. As the Council and the member states failed to take adequate measures in time and the ECB had to fill this gap, democratic scrutiny of this action is inadequate. This is another reason why this situation should be ended quickly. However, this requires administrative mechanisms at EU level, which are necessary to ensure that the EMU operates effectively and to provide a degree of democratic involvement which is both necessary and possible in view of the nature of the decisions that must be taken.

c) *Public support*

Although the Lisbon Treaty has greatly enhanced parliamentary involvement, in particular the involvement of the European Parliament, this does not mean that public support for Europe is assured.

The significant social impact of the decisions currently being taken as part of the measures to tackle the financial and economic crisis in the Union or in other connections (ESM) makes it even more imperative to ask whether these decisions actually command democratic support. Some member states are being compelled to take far-reaching measures in order to gain control of their public finances and improve their economic structure. In other member states taxpayers (for the time being this

mainly concerns the national debt) could potentially be asked to provide support for fellow member states in serious financial difficulties and for financial institutions at a moment when they themselves are having difficulty putting or keeping their own budgets and national debt in order. The measures that must be taken by member states have not been imposed by diktat of the Union or other member states, but are the consequence of the situation in which they find themselves as a result of their own policies and the obligations they had already accepted under the Stability and Growth Pact. The obligations to which some member states and taxpayers are subject under the ESM have been expressly accepted by each of the member states concerned in accordance with the requisite national procedures. Each of the member states concerned was aware that the economic damage and financial consequences of withholding support from a few member states would be many times greater than the financial liabilities resulting from the ESM Treaty.

Although parliamentary involvement in decision-making has broadened as a consequence of the Lisbon Treaty and although the additional obligations in the member states have been regulated by treaty, the measures and decisions that are being taken in the context of the crisis are giving rise to feelings of concern and unease. This also highlights another dimension of the debate on democratic involvement, namely that of democratic alienation. This is a phenomenon that is occurring at present in many democracies where a growing number of citizens feel increasingly unable to identify with the decisions taken by the legislature or government, no matter how much the democratic procedures are observed. This is particularly pronounced in respect of the decisions taken in the European Union, despite the institutional measures to strengthen the democratic involvement of the European Parliament. This feeling is reflected in the turnout percentages for elections to the European Parliament, which are due in part to a lack of familiarity with the functioning of the European Union. It cannot be assumed that the sense of alienation felt by many citizens in relation to the Union will be reduced by greater parliamentary involvement and control, or by other institutional arrangements (referendums).

In this context all the Advisory Division can do is to draw attention to this phenomenon. Finding an adequate answer is not about introducing new or more institutional arrangements but about political conviction and powers of persuasion. As such it falls

outside the scope of this report. Nonetheless, democratic alienation is one of the factors making it ever more difficult to take the necessary measures to ensure the proper functioning of the EMU. This situation therefore poses a threat to the stability of the EMU. If the EMU is to be continued, citizens will have to be convinced of its necessity. For this purpose there will at least have to be a clear prospect of a resolution to the crisis and of a stable EMU. For the time being providing such a prospect is no mean political feat. But without sufficient political and public support, the far-reaching measures necessary to ensure the functioning of the EMU are unlikely to be sustainable.

4. Development of the EMU

When the EMU was introduced in the Maastricht Treaty, provision was made for monetary policy to be regulated at European level, mainly by the European Central Bank (ECB) and the European System of Central Banks (ESCB). By contrast, fiscal and economic policy, while coordinated, are ultimately determined by the individual member states. The crisis has clearly demonstrated that this discrepancy causes tensions and even poses a serious threat to the stability and continued existence of the EMU.

The ECB determines interest policy for the euro area as a whole. In the 10 years since the introduction of the euro, this has resulted in economic divergence rather than convergence between the countries of the euro area. Various member states neglected to adjust their economic policy, and the instruments at European level were too weak to influence this policy effectively. At the same time, the member states of the EMU can no longer use the exchange rate mechanism to restore balance. It has also become apparent in respect of fiscal policy that the instruments available under the Stability and Growth Pact to maintain the necessary fiscal discipline in the member states are insufficient. The crisis has also shown that both the various financial systems and the banks and governments are so closely interwoven that financial instability in one country can potentially jeopardise the stability of the other members of the euro area.

It is therefore hardly surprisingly that ways have been sought since the start of the crisis to strengthen the coordination of the fiscal and economic policy of the member

states at European level and create new stability mechanisms (EFSF and ESM), not only in order to rescue countries from financial problems but also to guarantee the stability of the euro area as a whole. For this purpose the heads of state and government of the European Union, particularly those of the euro area, have set in motion two developments.

First, they have taken a series of measures that have greatly increased joint European control and influence over national fiscal policy and the macroeconomic policies of the participating countries. This development has not yet been completed. The plans presented and discussed at the European Council of 13 and 14 December will in any event entail the introduction of a stricter framework for the fiscal policy and structural economic policy of the member states.

Second, in addition to temporary facilities, a permanent fund (ESM) has been created to provide financial support to euro area countries (and, in due course, also directly to their banks) if they get into difficulties. It follows that the 'no bailout' clause in the TFEU has been rendered largely inoperative in practice.¹¹ This form of financial solidarity may have far-reaching consequences for taxpayers. Nor is this the end of the changes, because there is also a debate on a banking union and possibly, in due course, a separate budget for the euro area.

It is apparent, incidentally, that not all member states of the European Union are willing or able to participate in these developments to an equal extent. This will inevitably affect how economic governance is organised on a European scale, both in terms of effectiveness and of public support.

¹¹ This clause is contained in article 125 of the TFEU and states – in brief – that neither the Union nor the individual member states will provide financial assistance to a member state that is in financial difficulties. In the Pringle case, however, the Court of Justice held that Union law did not preclude member states whose currency is the euro from concluding and ratifying the Treaty establishing the European Stability Mechanism (judgment of 27 November 2012 in case C-370/12).

5. Complexity of European economic governance

If the measures taken and yet to be taken are viewed from the perspective of parliamentary involvement and scrutiny, three aspects should be taken into account: (i) the extent to which the European and national decision-making processes are becoming ever more intertwined, (ii) the complex legal structure of the governance of the euro area, and (iii) the geographical application of European legislation.

a) As noted in the annexe, the agreements made in the context of the European Semester and the future two-pack may have a major impact on national budgetary procedures and the determination of macroeconomic policy. In particular, it is apparent that the Dutch budgetary procedure, in which the public debate begins on the third Tuesday in September and continues in both houses of parliament into the new year, does not mesh with the European Semester. In addition, the financial consequences of the European safety net arrangements, such as the ESM or a future European crisis mechanism for banks, may be considerable. For the functioning of the EMU and crisis mechanisms, closer and more mandatory coordination of the fiscal policy of the member states and of banking supervision will be necessary, as will a more effective crisis policy. The scope for national parliaments to formulate or scrutinise policy will therefore be limited in practice. Although fiscal policy and banking supervision (including, in due course, crisis mechanisms) are at present regulated at national level and, moreover, public funds of the member states are (for now) being used to tackle the European crisis, the closely intertwined nature of our countries and banks means that an effective European approach is necessary – and this creates a tension. Strengthening the EMU will therefore inevitably have major consequences for the role of national parliaments. Given the close relationship between the European and national decision-making processes, ways will have to be sought of giving effect to democratic involvement and control in a manner that does justice to the reality of this tension.

b) Some of the decisions, for example those in the six-pack, form part of the (secondary) law of the Union itself, while others (such as the ESM) are regulated in international agreements. One consequence is that the part regulated by international agreements is not subject to parliamentary involvement or scrutiny at European level.

The European Parliament does not, after all, have any powers in the context of either the ESM or the Fiscal Stability Treaty.¹² Parliamentary involvement and scrutiny in respect of the implementation of these international agreements therefore take place exclusively within the context of the national legal systems. Moreover, the European Parliament has hitherto had only a modest role in implementing secondary legislation of a Community nature.

In its advisory reports on the ESM¹³ and the Fiscal Stability Treaty¹⁴ the Advisory Division has already voiced its concern that the introduction of these instruments involves the adoption of an approach that falls outside the autonomous legal order and institutional framework of the EU. Even if the ESM can still be regarded as a necessary external addition to the institutional framework of the EU, the Fiscal Stability Treaty is not a complementary but a parallel structure, with legal obligations that to a large extent overlap those of the EU legal framework. These ad hoc arrangements illustrate the search for new decision-making mechanisms that meet the need for effective decision-making in tackling the crisis. However, they lead to a no-man's-land as far as parliamentary involvement is concerned: the European Parliament's role is limited or non-existent and although the national parliaments are formally involved, they find themselves playing catch-up in practice as a result of the mechanisms necessary to ensure the effectiveness of the measures taken.

c) As part of the European legislation is applicable only to the member states that belong to the euro area, this poses problems for parliamentary involvement and scrutiny. Hitherto, the principle that the institutions are indivisible has been generally observed in the European Union. Only in the functioning of the Council has an exception sometimes been made, in that voting entitlement has at times been restricted to those member states that participate in the EMU or a form of enhanced cooperation under article 20 of the TEU.¹⁵ In all cases, however, the decision-making actually occurs not in, say, the Euro Group but in the Council, i.e. in the presence of all member

¹² This is despite the fact that under article 12 (5) of the Fiscal Stability Treaty the president of the European Parliament may be invited to be heard.

¹³ Parliamentary Papers, House of Representatives, 2011/12, 33 220, no. 4 and Parliamentary Papers, House of Representatives, 2011/12, 33 221, no. 4.

¹⁴ Parliamentary Papers, House of Representatives, 2011/12, 33 319, no. 4.

¹⁵ That article sets out the conditions and procedures for enhanced cooperation arrangements.

states. In view of the far-reaching consequences of the decisions already taken and yet to be taken for the member states concerned, it is debatable whether the principle of the indivisibility of the institutions can still be maintained in all cases. For example, the entire European Parliament, including members elected in non-euro area countries, decides on legislation that is applicable only to the member states that form part of the EMU. Initially this situation could be defended on the ground that ultimately all member states of the European Union would participate in the EMU, but since the temporary nature of the derogations now seems to be giving way to a more permanent separation between member states that do and do not participate in the euro, this argument seems less and less tenable. Indeed, maintaining the principle could actually undermine the democratic legitimacy of the decisions. After all, it could be said that this amounts to 'representation without taxation'. No more than rudimentary provision is made in the treaties for this reality of a 'variable geometry' Europe.

6. Parliamentary involvement and scrutiny in the EMU

It is apparent from the above that the decisions on the governance of the EMU and parliamentary involvement in it are complex and varied. The European Parliament and the national parliaments are involved to varying degrees: sometimes both are involved and sometimes neither. A major factor is the nature of the decisions taken in the context of the EMU. A traditional feature of EU policy is that it concerns general rules binding on all member states or citizens which are implemented in the member states by national authorities, whether or not after transposition into national legislation. In the case of the EMU, however, other types of decisions and decision-making processes are becoming more common. European consultations serve increasingly as a forum for political and administrative decision-making on current fiscal and structural economic policy and issues that play a role in the financial markets in Europe. The capacity to take timely decisions on the use of instruments in the context of crisis management, particularly where they entail different obligations or consequences for various member states, constitutes an important part of this. The EU's traditional instruments, which are intended mainly to introduce generally binding rules, are not always suited for this purpose. This is also true of the manner of parliamentary involvement in decision-making. As was the case in the national context, the emphasis will increasingly be on parliamentary scrutiny and accountability rather than codecision. As the European

Commission noted in its communication of 28 November 2012, national vetoes or rights of codecision are not the obvious solutions when the very aim is to enhance administrative capacity in the sense of the capacity to take decisive action.

This means that in order to design a more effective system of EMU governance it will be necessary to seek alternative instruments and procedures which do justice both to the specific context of the decisions necessary for the proper functioning of the EMU and to adequate parliamentary involvement. Examples would be parliamentary instruments that are more suited to administrative action, such as accountability instruments and the rule that ministers and state secretaries need to retain the confidence of the legislature. In view of the importance of vigorous action, especially where it is necessary to take crisis measures in respect of countries and financial institutions, it would be logical to develop such forms of parliamentary involvement in a European context, whether this concerns the involvement of the European Parliament or of national parliaments. The emphasis will be less on codecision by parliaments and more on the accountability of the decision-making bodies and scrutiny of their actions. The exercise of the parliamentary right to receive information will be a major factor in this connection.

An important criterion in the precise choice of instruments of democratic control and accountability will be how parliamentary influence can be exercised effectively. This will depend partly on the stage of the decision-making process in which the control or accountability takes place. Ex post facto control and accountability, where the ultimate sanction is a motion of censure, is feasible only if there are sufficient opportunities during the previous decision-making process for the parliaments (both national and European) not only to discover the policy intentions of officials but also to formulate their reaction to them.

The design of the future parliamentary involvement in an economic, fiscal and banking union will also have to distinguish between crisis situations where emergency administrative measures have to be taken without delay and periods of reasonable stability. In crisis situations it is logical that government should take the lead and that the requirements of democratic control, time for public deliberation and disclosure can be less well safeguarded in advance. In periods of reasonable stability, however, these

criteria should be strictly applied. In addition, a distinction should be made between the annual coordination of fiscal and structural economic policy in the context of the European Semester and the use of the member states' public funds. There is therefore no need for a single uniform approach. In the case of fiscal and structural economic policy it would make sense to use the existing institutional frameworks within the EU, whereas national parliaments should logically have a more important role in relation to the use of (national) budget funds. Forms of cooperation between the European Parliament and national parliaments are also conceivable, particularly since not all member states have the euro as their currency. The various possible lines of development and the design of parliamentary involvement and the related advantages and disadvantages are discussed below.

a) *European Parliament*

The European Parliament can best exercise its role as scrutiniser and co-legislator in the fields regulated within the EU's institutional framework, such as fiscal and structural economic policy and the banking supervision rules. The European Parliament's powers in the field of legislation are already considerable. Even in those areas in which it only has the right to advise, the European Parliament exercises more influence because the decision-making procedure is often linked to decisions on which it has a right of codecision. Formally speaking, there cannot be said to be a democratic deficit in such cases. Nonetheless, special consideration must be given to the scrutinising role of the European Parliament in the implementation of new and existing rules in the fiscal and economic spheres. This can be achieved by means of either an interinstitutional agreement as provided for in article 295 of the TFEU or practical work agreements with the Commission and/or the Council, as has occurred in the case of the Economic Dialogue (between the European Commission and the European Parliament) in the context of the European Semester, or by means of formal rules. It is important for the further coordination of fiscal and structural economic policy to be embedded in the institutional structure of the European Union, with its democratic safeguards, since from a democratic perspective parallel (intergovernmental) structures of the kind established in the Fiscal Stability Treaty are undesirable as a permanent solution. Although national parliaments are formally involved in such cases, they often find themselves playing catch-up in practice on account of the mechanisms necessary for safeguarding effectiveness. In such cases it is preferable for decision-making to take place within the

institutional structure of the European Union, with a strong role for the European Parliament.

The advantage of greater involvement of the European Parliament is that it would take place within the existing framework of the European Union. On the other hand, the conferral of additional formal powers on the European Parliament does not automatically mean that citizens from the member states would recognise or acknowledge this as an expression of democratic legitimacy. Reference has already been made above to the fact that in practice people are now having even greater difficulty in identifying with Europe.¹⁶

b) *National parliaments at national level*

i) As noted in the annexe, the European Semester involves the adoption of specific objectives within the EU for the fiscal and economic policy of the individual member states. The consequence of the European Semester in its present form for national parliaments is that their codecision role will cease and they will instead be responsible for scrutinising the government in respect of those elements to which the agreements on objectives relate. The focus for the States General will therefore involve scrutiny of the positions taken by the Netherlands in the European Union. This process is not in itself new, but now also extends to fiscal and structural economic policy. In practice, this means that parliament's involvement in the government's contribution to the European Semester must be improved. One consequence of the European Semester is that the budgetary cycle will have a different rhythm than in the past. It is particularly significant that the government has to submit a stability programme to the European Commission in the spring. Consequently, the political decisions on next year's budget will to a large extent now have to be taken in the spring rather than the autumn. The parliamentary procedures for processing the bills for the adoption of the budgets (and the accompanying proposals such as the Tax Plan) will, in essence, therefore be more in the nature of an elaboration and formalisation of agreements already made. The procedure for the 2013 budgets, in particular the Spring Agreement, is an indication of things to come. The importance of the presentation of the budgets for the following

¹⁶ See the advisory report of the Advisory Council on International Affairs entitled 'The Netherlands and the European Parliament: Investing in a New Relationship', no. 81, November 2012.

year, which takes place on the third Tuesday in September, will therefore diminish. This trend may be expected to accelerate. How these changes are incorporated into national budgetary processes is a matter for the individual member states. The Advisory Division considers that the Senate and House of Representatives of the States General would be well advised, in carrying out their co-legislative and scrutinising tasks, to take account of this change in the budgetary cycle and make arrangements about this with the government.

If the European Council definitely decides next year in the context of the European Semester that the individual member states should conclude contracts with the EU on the policy to be pursued, the formal approval of such contracts by the national parliaments should be part of the national procedure, no matter what form or legal character those contracts ultimately have. Clearly, however, the scope for amending or rejecting contracts will be very limited at that stage, given that the option of not concluding a contract at all does not exist. The debate between the States General and the government in the course of preparing for the consultations with the Commission about the contracts is therefore of essential importance.

ii) In addition, national parliaments play a role in the use of the member states' public funds, first by putting a maximum on any contributions from such funds and subjecting them to parliamentary approval and, second, by scrutinising how such funds are actually used (wholly or partly). Until such time as there is an EU budget with sufficient own resources (and concomitant EU taxes) to allow for the financing of financial instruments, these funds will have to be found at national level. Reference should be made here in particular to article 105 of the Dutch Constitution and to various constitutional provisions in other member states which play an important role in the use of national public funds. The Advisory Division would also refer in this connection to the judgments of the German Federal Administrative Court of 12 September 2012 and the French Constitutional Council of 9 August 2012 on whether the ESM breaches constitutional rules in these two countries. Given the different constitutional provisions and constitutional traditions of the member states concerned, it seems obvious that the use of financial resources will be subject to the close involvement of and scrutiny by national parliaments.

As the European institutional structure makes no provision for this as yet, it is understandable that a (complementary) intergovernmental structure has been chosen for the time being for the ESM. At the same time, the ESM is playing an important role in EMU crisis management and is therefore not independent of these structures. The growing importance of the ESM, for example in relation to the financial sector (recapitalisation), means that it is becoming ever more closely interwoven with the instruments available within the EU frameworks. Against this background, it would be advisable ultimately to arrange for it to be integrated into the institutional framework of the European Union. In so far as the use of public funds of the member states forms part of the mechanisms, however, national parliaments will have to retain a special position. But it will be necessary to ensure that these instruments are designed in such a way that decisive and effective action can be taken in crisis situations.

How national parliaments are involved in decisions that have significant financial consequences for the member states is, in principle, a matter to be decided by the member states themselves: this involves, after all, scrutiny of the national governments. However, the independent involvement of national parliaments in European decision-making, as formalised in the Lisbon Treaty, could also conceivably be extended by making specific provisions at European level to regulate the direct involvement of national parliaments in decisions that have significant financial consequences for member states. This is examined below.

c) *Parliamentary body specially for the euro area*

Application of the principle that the European Parliament scrutinises European institutions, in particular the Commission,¹⁷ and is involved in European legislation and that national parliaments scrutinise their national governments and are involved in national legislation does not always produce a satisfactory solution in terms of parliamentary involvement and scrutiny. As more far-reaching decisions on fiscal and structural economic policy are taken at European level, growing friction will be caused by the fact that the European Parliament as a whole is deciding on measures that apply only to the euro area member states. Equally, however, the way in which the role of national parliaments has been formulated in the European decisions taken pursuant to Protocol no. 1 to the Lisbon Treaty, namely in the manner referred to in article 13 of the

¹⁷ Article 17 (6) and (8) of the TEU and article 234 of the TFEU.

Fiscal Stability Treaty (and once again endorsed by the European Council of 13/14 December), is not truly satisfactory. Although a conference in which the parliaments together discuss budgetary policies and other issues covered by the Fiscal Stability Treaty will admittedly improve the exchange of information, it will not result in greater involvement in decision-making.

The scope for improving this unsatisfactory situation will be limited if the options are confined to the existing institutions. A third possibility has therefore been raised in the debate on the issue of democratic involvement and control, namely the establishment of a new parliamentary body specially for the euro area. Any such development would mean abandoning both the fundamental principle of the unity of the European institutions and the policy objective of achieving convergence between the euro area and the other member states of the European Union. A parliamentary body specially for the euro area would institutionalise still further the split between the European Union and the euro area and thus widen the gap between them. Such a step should therefore be considered only if divergence becomes unavoidable on account of the parliamentary powers that must be exercised. This concerns powers which must be exercised at Community level for the euro area but which, in view of their nature, cannot be exercised by the European Parliament without this causing fundamental friction between euro area and non-euro area members.¹⁸ Such a step would involve creating a forum for the euro area in which the president of the Euro Summit (established in article 12 of the Fiscal Stability Treaty) could render account. At present the holder of this office is not accountable to any institution whatever. It would also be possible to arrange for the European Commissioner for Economic and Monetary Affairs to be accountable to this body. It should be noted, however, that the European Commissioner could then be confronted with a motion of censure.

The establishment of a parliamentary body of this kind would in any event necessitate a treaty amendment or a new treaty between the euro area members. It has been suggested that it is already possible to arrange on a voluntary basis for the European Parliament to function exclusively with the members from the euro area countries. However, it is doubtful whether this is politically and legally feasible. It would require the consent of all members of the European Parliament and would imply that those

¹⁸ An example would be the right to approve and amend the budget.

who do not take part in the decision-making agree to refrain from exercising some of the responsibility for which they have been elected. Moreover, such an arrangement would abandon the principle of the institutional unity of the European Parliament and create in practice a different parliament.

The composition of a parliamentary body specially for the euro area could take four different forms: a newly elected body, a body consisting of the members of the European Parliament elected in the euro area countries, a body formed by members of national parliaments from those countries, or a cross between the last two of these possibilities. Even if this body were to be composed solely of members of national parliaments, it would be a new Community body and not an interstate body. It would therefore have to form opinions and reach binding decisions in accordance with the rules for the purpose.

Although a newly elected body would have the merit of directly involving citizens, it may well be seen by the same citizens as merely serving to increase complexity. Given the low participation rate in the elections for the European Parliament, it is debatable whether this option would meet a need. It would therefore seem logical to choose a different alternative.

A euro area parliamentary body composed of the members of the European Parliament from the countries concerned would be an attractive option since although it would formally constitute a new institution, its members would already have been elected and it would therefore also be connected with the European Parliament. As already noted, however, citizens already have difficulty identifying with the European Parliament.

The third possibility for the composition of a parliamentary body of this kind would be for the national parliaments to designate members from among their number. A fourth variant would be a combination of the two previous forms, in other words a parliamentary body composed partly of members designated by the national parliaments and partly of members of the European Parliament elected in the euro area countries. This approach would reflect the growing links between European and national decision-making and could possibly help to reduce the distance between democratic involvement at national and European level. It would also to some extent

build on Protocol no. 2 to the Lisbon Treaty, on the basis of which the national parliaments have already obtained an independent role in European decision-making.

Once again, it is debatable in the case of these last two arrangements whether an extra body would not make things even more complex for citizens. Such arrangements would also require the solution of some very difficult issues, such as how decisions are made (by country, by individual member or by weighted vote) and the role and designation of the members designated by the national parliaments (mandate and duty of consultation) and whether they should reflect the composition of the national parliament as a whole or be designated by the majority of that parliament. Moreover, each country which has a bicameral parliamentary system would have to decide whether one or both of its houses of parliament should be involved.

7. Conclusion

a) *General*

The crisis has revealed the need for far-reaching measures if it is decided that the EMU should continue to exist. This will involve the far-reaching 'Europeanisation' of fiscal policy, structural economic policy and banking supervision. This also means that Europe must have substantial financial buffers for crisis management in respect of countries and banks. As long as the European Union does not have sufficient own resources, these buffers will consist of the public funds of the member states. Decision-making structures must be created that allow effective governance of the EMU, especially in crisis situations. Where institutional structures already exist within the EU they should be used for decision-making. This will, in principle, create an institutional balance, with important roles for the European Parliament, the European Court of Auditors and the Court of Justice of the European Union. The introduction of parallel structures, as occurred in the case of the Fiscal Stability Treaty, is therefore undesirable in the long term. However, it would be advisable to ensure that both decision-making processes and the manner in which democratic control is exercised are suitable for the type of decisions concerned. It is unavoidable that there will be reduced emphasis on codecision and greater emphasis on accountability and scrutiny.

In so far as the EU itself lacks sufficient funds, the decision-making mechanisms should be designed in such a way as to reflect the need for national parliaments to be adequately involved where national public funds are being used, partly – in the case of the Netherlands – in view of article 105 of the Constitution as well as the case law of the supreme constitutional courts in certain other member states. However, this will have to be done in such a way as to ensure effective decision-making on the use of these funds, particularly in crisis situations.

Hybrid forms in which both national parliaments and the European Parliament are involved and which amount to no more than information sharing merely make the situation unclear. An example of this is the conference referred to in article 13 of the Fiscal Stability Treaty. A role for national parliaments at European level is therefore worthwhile only if this is accompanied by specific powers within the European decision-making process, in particular in the euro area.

No matter how parliamentary involvement is organised, this will not automatically generate public support. The introduction of new or changed structures is not the only way of redressing a democratic deficit. It should be remembered that given the radical nature of what is required if the EMU is to function properly, the proposals must command sufficient political and public support. This support cannot be taken for granted and must be earned, in keeping with article 11 of the TEU. The European elections of 2014 will be an important barometer in this respect and will to some extent determine the progress of stage 3 of Van Rompuy's proposals.

For the Dutch parliament the step towards effective governance of the EMU means that the framework for budget compliance will be determined largely at EMU level. If the right to approve and amend the budget is to be exercised with optimum effect, the House of Representatives and the Senate will have to focus their attention on the positions taken by the Netherlands in the various forums. This process is not new in itself, but will now also extend to fiscal policy, structural economic policy and financial supervision policy. In practice, this means that the political decisions on the budget for the subsequent year will for the most part be brought forward from the autumn to the spring.

b) The questions raised

In view of the above and in answer to the Senate's specific questions, the Advisory Division would summarise its answers as follows.

1. The safeguards needed to maintain procedurally and substantively the rights and powers of the Dutch parliament, in particular the right to approve and amend the budget, are threefold. First, parliament should be able to make arrangements with the government to adjust the timetable of the budgetary process, bringing it into line with the European Semester. Second, the contractual arrangements between the government and the European institutions which may take effect in stage 2 of Van Rompuy's plans should be approved annually by parliament. This should occur after consultation between parliament and the government about its contribution in the European Commission. Finally, parliament should have the right to approve the provision

of loans in the context of the European Stability Mechanism (ESM) and any other crisis mechanisms, and to monitor their use.

2. The democratic safeguards that are necessary when sovereignty is transferred to the European Union will have to be sought initially in the powers of the European Parliament. Democratic involvement should, after all, take place as much as possible at the level at which the decision-making takes place. Where the decisions involve legislation, the European Parliament should have a right of codecision. But where they are in the nature of administrative decisions, there should be accountability to the European Parliament. Ultimately this duty of accountability should be capable of resulting in the resignation of the European Commission or individual Commissioners.

However, a solution will have to be found for cases in which either legislation or administrative decisions apply only to the euro area member states. From the perspective of democratic involvement it would be undesirable for members of the European Parliament representing non-euro area member states to decide on such matters. This problem could be solved by adjusting the decision-making rules in the European Parliament, but the establishment of a separate parliament for the euro area is also a possibility. This possibility would institutionalise a departure from the principle of the unity of the European Union and should therefore be considered only if divergence becomes unavoidable in view of the parliamentary powers that must be exercised. A new parliamentary body as envisaged here could consist of members of the European Parliament elected in the euro area countries or of members of the national parliaments of these countries, or of a combination of these two types of members of parliament.

All of these solutions would have advantages and disadvantages and would in any event necessitate a treaty amendment or a new treaty between the euro area members. For a proper assessment this idea must be given further consideration and fleshed out in more detail.

3. The Advisory Division considers that an arrangement such as the conference created in article 13 of the Fiscal Stability Treaty would not be a lasting solution, as any such conference would merely be of a deliberative nature.

The Vice President of the Council of State

Annexe to the report of the Advisory Division of the Council of State on the embedding of democratic control in the reform of economic governance in Europe to combat the economic and financial crisis (no. W01.12.0457/I)

How have the stricter rules adopted hitherto worked in practice and what changes are still in the pipeline?

The agreements with which the EU member states must comply are contained in various legal instruments. The main ones are formed by the 'six-pack', a package of five regulations and one directive.¹⁹ Some of the regulations concern government finances and others macroeconomic policy. The rules in question are being implemented in the context of the European Semester.²⁰ The European Semester is a timeline which runs from January to July and within which the economic policy coordination procedures are completed one by one. This allows maximum influence to be exerted over the national budgetary process in the second half of the year (the National Semester). In brief, the European Semester takes the following form.

- It starts with the presentation of the European Commission's Annual Growth Survey (AGS). For practical reasons this is published in the previous November (and not in January, as was originally the case). The AGS sets out the policy plans, priorities and objectives in the fiscal and economic fields for the EU as a whole. The AGS is based on the multi-year Integrated Policy Guidelines (a combination of the Broad Economic Policy Guidelines under article 121 (2) of the TFEU and the Employment Guidelines under article 148 (2) of the TFEU).

¹⁹ The six-pack consists largely of changes to existing rules: Council Regulation (EC) no. 1466/97 of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies (OJ L 209), as last amended by Regulation (EU) no. 1175/2011, Council Regulation (EC) no. 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure (OJ L 209), as last amended by Regulation no. 1177/2011, as well as Regulation (EU) no. 1173/2011 of the European Parliament and of the Council of 16 November 2011 on the effective enforcement of budgetary surveillance in the euro area (OJ L 306), Regulation (EU) no. 1174/2011 of the European Parliament and of the Council of 16 November 2011 on enforcement measures to correct excessive macroeconomic imbalances in the euro area (OJ L 306), Regulation (EU) no. 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances (OJ L 306), and Council Directive 2011/85/EU of 8 November 2011 on the requirements for budgetary frameworks of the member states.

²⁰ Section 1-A of Council Regulation (EC) no. 1466/97.

- The AGS is first discussed in the Council of Ministers (EcoFin) and then adopted by the European Council in March.
- Using the AGS as their guide, the member states submit their stability or convergence programmes (i.e. the budget plans of the euro area and non-euro area countries) and their national reform plans (structural reforms) before the end of April.
- Before the end of May the Commission evaluates the national programmes on the basis of the AGS and draws up country-specific recommendations and recommendations for the euro area as a whole.
- The Commission's recommendations are politically approved by the European Council in June and then finally adopted by the Council of Ministers (EcoFin), also in June.

Since introducing the six-pack the Commission has proposed two new draft regulations – the ‘two-pack’ – to tighten up these rules even further for the euro area countries.²¹ Under these proposals the national programmes would have to be submitted before 15 April and the draft budget before 15 October. This would enable the Commission to comment directly on the national budgets. Where a member state gets into difficulties the Commission would also obtain the power to put it under surveillance. These proposals are now the subject of negotiation in the Council and the European Parliament.

In its Communication of 28 November 2012 the European Commission proposed that these instruments should be expanded still further, for example by introducing a new macroeconomic imbalances procedure under which the member state concerned would conclude a contract with the Commission about reforms in exchange (if necessary) for financial support.²² In the Commission's view, this would be the embryo

²¹ Proposal for a Regulation of the European Parliament and of the Council on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the member states in the euro area (COM(2011) 821), and Proposal for a Regulation of the European Parliament and of the Council on the strengthening of economic and budgetary surveillance of member states experiencing or threatened with serious difficulties with respect to their financial stability in the euro area (COM(2011) 819).

²² Communication from the Commission of 28 November 2012, A blueprint for a deep and genuine economic and monetary union, Launching a European Debate (COM(2012) 777).

of a future separate budget for the euro area. This proposal has also been included in Herman Van Rompuy's plans.

In addition to these standard procedures the six-pack also contains the special procedures applicable to member states that have – or are in danger of having – an excessive national debt or an excessive macroeconomic imbalance.²³ These rules, which have been adopted and are being implemented in a Community framework, have been strengthened further in the Fiscal Stability Treaty,²⁴ an intergovernmental agreement stipulating that:

- the member states will in certain cases accept the proposals of the European Commission, including sanctions, unless a qualified majority of them oppose the proposals (reverse QMV); and
- the member states will enact a provision under their national law obliging them to maintain a structural balance on the budget.

The final element of these arrangements is the European Stability Mechanism,²⁵ an intergovernmental body which can be deployed if, despite all the procedures of the six-pack and the Fiscal Stability Treaty, a country nonetheless gets into such financial straits that it needs support. The ESM has a lending capacity of €500 billion, of which the Dutch share is just over €40 billion.

²³ Council Regulation (EC) no. 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure (OJ L 209), as last amended by Regulation no. 1177/2011.

²⁴ The Treaty on Stability, Coordination and Governance in the Economic and Monetary Union between the Kingdom of Belgium, the Republic of Bulgaria, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, Hungary, Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland and the Kingdom of Sweden, done at Brussels on 2 March 2012 (Dutch Treaty Series 2012, 51).

²⁵ The Treaty establishing the European Stability Mechanism between the Kingdom of Belgium, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Grand Duchy of Luxembourg, Malta, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic and the Republic of Finland, done at Brussels on 2 February 2012 (Dutch Treaty Series 2012, 28).

In its Communication of 28 November 2012, the European Commission proposed the introduction of short-term eurobills in the medium term (to be followed at a later stage by euro bonds) and also the establishment of a redemption fund and a budget for the euro area.²⁶ Neither of the first two elements is part of Van Rompuy's plans, but the last one is.

The ideas for a banking union put forward by the president of the European Council Herman Van Rompuy will be developed in a Community context. These ideas are based on but go much further than the European Banking Authority (EBA) and the European Systemic Risk Board (macroprudential surveillance) previously established as a result of the financial crisis. The plans envisage that the banking union should in due course consist of three essential elements: European banking supervision, a European crisis management system (resolution of bankrupt banks and/or recapitalisation) and a joint deposit guarantee scheme. At the request of the European Council, the Commission has made a specific proposal for European supervision by the ECB of all banks of the 17 euro area countries. The EBA will remain responsible for framing joint rules (Single Rulebook) for the entire EU of 27 member states. The ECB will be responsible for matters such as issuing and revoking bank permits and ensuring compliance with capital, leverage and liquidity requirements. The ECB carries out its duties in cooperation with the national regulators. Agreement on supervision was reached in the EcoFin Council of 12 December 2012.

The Commission has already submitted two proposals for common rules for bank resolution and the deposit guarantee schemes (DGSs), but these merely entail partial harmonisation of national systems.²⁷ The establishment of a European authority for the resolution of banks that have ceased to be viable and a truly European DGS still faces many difficulties, but the European Council of 18/19 October has given the green light

²⁶ Communication from the Commission of 28 November 2012, A blueprint for a deep and genuine economic and monetary union, Launching a European Debate (COM(2012) 777).

²⁷ Proposal for a Council Regulation conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (COM(2012) 511) and Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) no. 1093/2010 establishing a European Supervisory Authority (European Banking Authority) as regards its interaction with Council Regulation (EU) no. .../.... conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (COM(2012) 512).

to continue exploring this possibility. Van Rompuy's plan envisages the establishment of these institutions in stage 2 (2013-2014).