The Influence of European Monetary Integration on the Internal European Relationships

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I. INTRODUCTION

For many Europeans, the euro[1] is approaching rapidly. On 1 January 2002, the currency in the form of bank notes and coins in many ""Member States of the European Union will be changed into euros. For the banks in these Member States, the euro has been present since 1 January 1999. For the people in the Netherlands, for instance, this meant that their bank balance at first sight appeared to be halved because of the exchange rate.[2] Now, several shops already label the prices of their products in both the national currency and the euro in order to familiarize the customers with euros. All this is the most visible part of the process towards a European Economic and Monetary Union (EMU). The EMU is part of the process of

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1. From 1 January 1999 forward, the common currency under the European Monetary Union is labeled "euro." Previously, the currency unit was called "ecu."
2. The average exchange rate is about 2.20 Dutch guilders against 1 euro.

European Integration and thus of the European Union (EU). It has even heralded as the most important development in European integration since the European Economic Community was created.[3] However, not all Member States of the EU participate in this process. Some, such as the United Kingdom and Denmark, have opted out. Others, namely Greece and Sweden, were not allowed in because their economic situation did not meet the requirements set in the Treaty on European Union as closed in Maastricht in 1993. Apparently, Sweden purposely failed to meet the requirements by not fulfilling all legal requirements in time[4] while Greece on the other hand aims to meet the requirements in 2001.[5]

Possible economic and financial consequences of the EMU for all these Member States receive the most attention in politics and in literature. However, there are several legal and institutional consequences as well. This Article will focus on these latter consequences. For two reasons, the EMU system leads, and will lead in future, to changes in the internal relationships within the EMU. Firstly, the idea of monetary integration as part of economic integration gives rise to a closer relationship between the participating Member States and a closer tie to the EU. Secondly, the diversification of Member States according to their status in the EMU leads to complicated relationships between one and another, differing per Member State and per subject.

Thus, this Article will deal with these changes in the internal European relationships brought by the EMU. The emphasis will be on the monetary aspects, rather than the combination of the economic and monetary aspects; as they have been reflected in the label "economic and monetary union," because the issuing of a common currency and the creation of a European Central Bank appear to cause most of the upheaval in the Member States. The central questions addressed will be: how has the EMU affected these relationships, and how do the Member States relate to each other and to the EU because

3. Jean-Victor Louis, *Perspectives of the EMU After Maastricht*, *in* FINANCIAL AND MONETARY INTEGRATION IN THE EUROPEAN ECONOMIC COMMUNITY. LEGAL, INSTITUTIONAL AND ECONOMIC ASPECTS 1 (Jules Stuyck ed., Deventer/Boston 1993).

4. For this reason, Sweden is sometimes considered to belong to the group of Member States opting out (*see* N.S. Groenendijk, *De euroforie voorbij*, *in* 6/7 OPENBAAR BESTUUR 2-4 (1998); and J.A. Usher, *Legal Background of the Euro*, *in* 1 SEW 15 (1999)). However, because there was no formal declaration on this issue as there was for the United Kingdom and Denmark, Sweden is legally a Member State which did not meet the requirements. In the press, it has been suggested that Sweden plans to hold a referendum on this issue in the near future.

5. R. Smits, *Het begin van de muntunie: besluitvorming en regelgeving*, *in* SEW 4 (1999).

of the EMU? These questions will be answered against the background of the constitutional and institutional legal aspects of the EU.

A. General Remarks

Before it is possible to answer these central questions, several preliminary remarks need to be made. Firstly, it is important to stress the importance of the consequences of the EMU for everyday life in the Member States of the European Union. Whereas the general citizen was not confronted with European integration in daily life until recently, the introduction of a common monetary unit used for all financial transactions will make that integration much more apparent. In addition, this system affects the relationships amongst the Member States of the EU, as well as between the Member States and the EU because not all Member States participate in the EMU. The fact that not all Member States participate in the EMU process, makes this system resemble that of closer cooperation which was introduced into the European system in the Treaty of Amsterdam. This resemblance will be discussed later on.

Secondly, the EMU is presently in the second of three stages, in accord with the Treaty establishing the European Community.[6] The Treaty itself starts with the assumption that the EMU has already been created and regulates the way in which the established EMU functions in practice. In addition, there are transitional provisions[7] which set out a gradual establishment of the EMU. All elements of the stages are covered in these elaborate transitional provisions.

As a final remark, it is necessary to note that the European Community and the European Union are international organizations based on treaties. Although a large number of tasks and powers were transferred from the Member States by the Member States to the EC, the Member States still possess the core of the powers, partly because they retained many powers, and partly because they closed the treaties. This means that under the EMU system, the emphasis will always remain with the Member States because they decide both whether they wish to fulfil the EMU requirements and when and how the final stage of the EMU will begin.[8]

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6. This structure will be discussed below.
7. Art. 116 (ex Art. 109e) to 124 (ex Art. 109m) EC.
8. For further information on the relationship between the EC and its Member States, see F.A.N.J. GOUDAPPEL, POWERS AND CONTROL MECHANISMS IN EUROPEAN FEDERAL SYSTEMS (Deventer 1997).

In this Article, the influence of the EMU will be discussed in the following manner. First, the history of EMU will be briefly described. Thus, it will be possible to understand the position of EMU among all other elements of European integration. In addition, the main players in the EMU system will each be discussed separately and in connection with each other. The discussion will enable us to obtain an overview of the present system of EMU. Secondly, it will be necessary to position EMU in the context of the European Political Union (EPU) and the European Economic Community (EEC), as EMU has been given form and substance in the Treaties of Maastricht and Amsterdam together with EPU. Thirdly, for the central part of this Article, attention will be paid to the relationships between the Member States and the EU for effectuating EMU tasks. A division will be made for this purpose depending on the position of each Member State in relation to EMU. Finally, different scenarios for the future of EMU will be described and evaluated.

B. History of European Monetary Union

The history of the EMU officially begins with the Treaty of Maastricht, in which this system of monetary union was laid down. However, monetary union is closely linked with economic union, a process which was started in Europe with the creation of the European Economic Union and which came into force in 1957. Monetary union has always been considered to be the next step to economic union in the process of economic integration.[9] This concept was already in the original text of the Treaty in Art. 3 EC, in which it was stated that "the application of procedures by which the economic policies of the Member States can be coordinated and disequilibria in their balances of payments remedied," indicating that coordination and integration of monetary policies was needed.[10] Still, there was no obligation to arrive at a common monetary policy. A first attempt to come to an EMU was undertaken in the early seventies. In 1971, the forming of an EMU was made a political goal of the EC on the basis of the so-called Werner Report,[11] and 1980 was set as the date for it. However, because of strong monetary instability, this attempt fell

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9. SIDEEK MOHAMED, EUROPEAN COMMUNITY LAW ON THE FREE MOVEMENT OF CAPITAL AND THE EMU 233-41 (Stockholm 1999).

10. *See also* Usher, *supra* note 4, at 12.

11. Horst Ungerer, *Political Aspects of European Monetary Integration*, EUI Working Paper EPU 93/2, at 8-9 (Badia Fiesolana 1993).

through.[12] Notable with hindsight is that all Member States would have participated in this first EMU.

However, this development did not keep the Member States from maintaining the will to form a monetary union. The common system of exchange rates, introduced earlier and commonly known as the "snake," continued to exist. The main core of it was formed by the stable German Mark. However, not all Member States participated in this system. In fact, participation differed over the years, depending on the stability of the monetary situation of each Member State.[13] In addition, the Commission[14] started a second attempt at forming a monetary union in 1988/1989.[15] This initiative, the Delors Report,[16] formed part of the Intergovernmental Conference that amalgamated in the Treaty of Maastricht which was closed in 1992.

The new EC-Treaty, as established in Maastricht, prescribed the creation of the EMU in three stages, set out in transitional provisions added to the text of the Treaty.[17] The stages ensured that the EMU requirements would be met gradually by all participating Member States, thus easing the transition. The first stage had already begun by the Delors report and was set to end at 31 December 1993. Art. 116 (ex 109e) EC describes the requirements to be met by the Member States by that date. In essence, it was prohibited for national central banks to have overdraft facilities or any other type of credit facility,[18] or to have any measure establishing privileged access to financial institutions.[19] In addition, the Commission issued a report regarding price stability and sound public finances for all Member States.[20]

The second stage, which lasted from 1994 to 1998, was the most important one because it set the requirements which Member States had to meet in order to be allowed into the third stage. Foremost, it contained the establishment of the European Monetary Institute

12. R. BARENTS & L.J. BRINKHORST, GRONDLIJNEN VAN EUROPEES RECHT 404-05 (8th ed., Alphen aan den Rijn 1998).

13. It is noteworthy that under the present system, the Transitional Provisions of the EC-Treaty state that "the currency composition of the ECU basked shall not be changed" (Art. 118, ex 109g EC).

14. BARENTS & BRINKHORST, *supra* note 12, at 406-07.

15. The Delors report on Economic and Monetary Union in the Community, as published in 1989.

16. Ungerer, *supra* note 11, at 15-17.

17. The final situation of the EMU within the EC forms the basic text of the Treaty.

18. Art. 101 (ex 104) EC.

19. Art. 102 (ex 104a) EC.

20. Art. 116 (ex 109e) sub 2(b) EC.

(EMI),[21] which would be transformed into the European Central Bank in the third stage. The tasks of the EMI can be summarized as monitoring and strengthening the progress of the coordination and integration of the monetary policies of the Member States.[22]

For the end of the second stage, the EC-Treaty set out the requirements which Member States had to meet in order to be allowed to participate in the third stage. There were four criteria, which not only had to be met by 1 January 1999, but which also will have to be met in future by both the Member States in derogation and by possible new Member States in order to participate in the EMU system in the next stage. These criteria are:[23]

(1) price stability, measured from the rate of inflation;
(2) sustainability of the government financial position through a budget position without an excessive deficit;
(3) observance of normal fluctuation margins in the exchange-rate mechanism;
(4) durability of convergence as reflected in the long-term interest-rate level.

In addition, it was necessary to have an independent national central bank.[24] The Council checked all of these requirements for each of the Member States at its meeting in May 1998.[25]

The third and final stage, consists of the replacement of the EMI by the European Central Bank (ECB) and the creation of a European System of Central Banks (ESCB), both of which are meant to play a crucial part in the EMU.[26] Furthermore, the third stage leads to the transition of the EMU system as has been given form and substance in the EC-Treaty.

C. *The Institutions Involved in the EMU*

In the present text of the Treaty establishing the European Community,[27] the monetary union falls under the heading of the

21. Art. 117 (ex 109f) sub 1 EC.
22. Art. 117 (ex 109f) sub 2 EC.
23. Because this Article aims at a discussion of legal and institutional structures, economic details will therefore be left out except when necessary for a correct comprehension of the system.
24. Art. 121 (ex 109j) sub 1 EC.
25. 2088th meeting of the Council, Brussels, 2/3 May 19998, 8170/98 (Press 124), C/98/124.
26. Art. 123 (ex 109l) sub 1 EC.
27. Hereinafter EC Treaty. It includes the texts of the Treaties of Maastricht and Amsterdam. The Treaty on European Union is a separate text; the European Community forms the first pillar of the European Union.

"economic and monetary policy."[28] This means on the one hand that the institutions involved in the EMU are also involved in the European Community (EC) because the EMU forms part of the EC. On the other hand, it means that several special institutions were created for the EMU structure.

It is easy to find the new institutions in the Treaty as they have been set apart in the text. In the first place, there are the ESCB and the ECB. The ESCB is not an institution comparable to the Commission or the Council: it has not been given legal personality and it has no decision-making powers.[29] Rather, it is a legal form of cooperation,[30] yet it forms the heart of the EMU structure. Its central objective is to maintain price stability. In fact, price stability is the "very essence" of the EMU.[31] While maintaining price stability, the ESCB has to support the general economic policies in the Community.[32] These objectives are to be reached through the exercise of the following tasks:

- to define and implement the monetary policy of the Community;
- to conduct foreign exchange operations consistent with the provisions of Article 111;
- to hold and manage the official foreign reserves of the Member States;
- to promote the smooth operation of payment systems.[33]

In addition, the ESCB has several consultative tasks.[34] For the exercise of these objectives and tasks, the ESCB is composed of the ECB and the national central banks of the Member States participating in the EMU. The governors of these national central banks are the representatives in the ESCB, not representatives of the government. The governors of the national central banks of Member States with a derogation do thus not participate in the ESCB. However, they do have a seat on the ECB General Council but not a vote in the actual decision-making process.[35] The ESCB has its own decision-making bodies, namely the Governing Council and the

28. Title VII (ex Title VI) of the Treaty establishing the European Community.
29. Louis, *supra* note 3, at 6.
30. See BARENTS & BRINKHORST, *supra* note 12, at 416, for this label.
31. Matthias J. Herdegen, *Price Stability and Budgetary Restraints in the Economic and Monetary Union: The Law as Guardian of Economic Wisdom*, COMMON MKT. L. REV. 14 (1998).
32. Art. 105 (ex 105) sub 1 EC.
33. Art. 105 (ex 105) sub 2 EC.
34. Art. 105 (ex 105) sub 4 EC.
35. DANIEL GROS & NIELS THYGESEN, EUROPEAN MONETARY INTEGRATION 468 (Harlow 1998).

Executive Board.[36] For the daily functioning of the ESCB, the Statute of the ESCB annexed to the EC-Treaty governs.[37]

The ECB was officially created in 1999, as the successor to the EMI described above. The ECB is the central institution for the EMU and has legal personality.[38] It is located in Frankfurt, Germany, and consists of the Executive Board of the ECB and the Governors, as laid down in Art. 112 (ex 109a) EC. In addition, the President of the Commission and a member of the Council of Ministers may participate in its meetings, but they do not have the right to vote.[39] This participation is reciprocal as the President of the ECB can be invited to participate in the meetings of the Council.[40]

The main objective of the ECB is to exercise the tasks of the ESCB,[41] most importantly to maintain price stability. It must be noted here that questions arise regarding the possible democratic deficiencies with regard to the definition of price stability and to the institutional structure of the EMU.[42] This is closely linked to the independence of the ECB as such and to the political decisions linked to this independence.[43] This independence is modelled on the system of the German *Bundesbank*.[44] The tasks of the ECB can be divided into two categories—exclusive rights, and consultation rights. The most eye-catching of the exclusive rights is the right to issue banknotes.[45] The accompanying coins, however, are issued by the Member States subject to the ECB's approval of the quantity issued.[46] It is noteworthy that the splitting of the right of coinage in this way is highly unusual. For the exercise of its tasks, the ECB has been given

36. See Art. 112 (ex 109a) EC for the composition of the Governing Council and the Executive Board.

37. Art. 107 (ex 106) EC.

38. Art. 107 (ex 106) sub 2 EC.

39. Art. 113 (ex 109b) sub 1 EC.

40. Art. 113 (ex 109b) sub 2 EC.

41. Art. 110 (ex 108a) sub 1 EC.

42. Joseph H.H. Weiler, *L'Europe: du pain et des jeux?*, *in* EUROPEAN INSTITUTE WORKING PAPERS NO. 95/19, THE STATE "UBER ALLES," DEMOS, TELOS AND THE GERMAN MAASTRICHT DECISION 37 (Florence 1995).

43. Fabian Amtenbrink, *The European Central Bank—democratically accountable or unrestrained?*, *in* NEDERLANDS JURISTENBLAD 72-78 (1999).

44. Peter A. Hall & Robert J. Franzese, Jr., *Mixed Signals: Central Bank Independence, Coordinated Wage Bargaining, and European Monetary Union*, INT'L ORG., Summer 1998, at 526. It has to be noted that other provisions, like objectives of the ESCB, also relate closely to the system of the German *Bundesbank*, see Jean-Victor Louis, *The Project of a European Central Bank*, *in* FINANCIAL AND MONETARY INTEGRATION IN THE EUROPEAN ECONOMIC COMMUNITY; LEGAL, INSTITUTIONAL AND ECONOMIC ASPECTS 17 (Jules Stuyck ed., Deventer/Boston 1993).

45. Art. 106 (ex 105a) sub 1 EC.

46. Art. 106 (ex 105a) sub 2 EC.

the power to issue binding decisions and regulations, the latter having general application in all Member States.[47] Noteworthy also is that the text of this provision does not make a distinction between Member States participating in the EMU system and Member States not participating since it reads "directly applicable in *all* Member States." However, because the provisions concerned with the rules in force once the EMU came into being are only applicable in the Member States participating in the EMU, it is plausible that only these participating Member States are subject to the ECB regulations.

For these binding decisions and regulations, the normal EC provisions for EC decisions and regulations are valid. In addition, the ECB can, like the EC itself, deliver nonbinding recommendations and opinions.[48]

The embedding of the EMU in the structure of the EC indicates that the *Member States* play an important role in the monetary system,[49] as do *the Council and the Commission*. (The role and position of the Member States will be discussed below.) The Council and the Commission, two of the four central EC institutions,[50] are involved in two ways in the EMU system. First, they have played, and still play, a role in the crucial decisions in the forming stages of the EMU, as these stages have been described above. According the Transitional Provisions, all prescribed decisions have to be made by the Council on recommendation by the Commission. The most prominent example can be found in Art. 121 (ex 109j) EC, in which the procedure is set out for assessing whether a Member State fulfils the conditions to participate in the third stage of the EMU. The Commission (and the EMI) report to the Council, forming the basis of the Council's decisions. Another example is the procedure for derogation of the system by a Member State as set forth in Art. 122 (ex 109k) EC. Again, the Commission makes recommendations to the Council.

Secondly, the Council and the Commission have functions and tasks when the EMU has fully come into force, both for decisions surrounding the EMU and for a system of checks and balances within the EMU. For instance, the Statutes of the ESCB can only be amended by the Council after consulting the Commission and

47. Art. 110 (ex 108a) sub 2 EC.
48. Art. 110 (ex 108a) sub 2 EC.
49. See the general remarks above.
50. The other two are the European Parliament and the Court of Justice of the European Communities.

receiving recommendations from the ECB.[51] In addition, the President of the Council and a member of the Commission may participate in the meetings of the Governing Council of the ECB. However, they do not have the right to vote.[52]

The Council is also regularly advised by another new EMU institutions, namely the Monetary Committee. The Monetary Committee consisted of members appointed by the Member States and the Commission, two members by each. Its main task was "to keep under review the monetary and financial situation of the Member States and of the Community and the general payments system of the Member States."[53] The Economic and Financial Committee is the successor to the Monetary Committee in the third stage of the EMU. It is composed in the following way: "The Member States, the Commission and the ECB shall appoint no more than two members of the Committee."[54] Its main task resembles that of the Monetary Committee. In addition, it may deliver opinions both at the request of the Council or the Commission and on its own initiative.

As indicated above, there is an important position reserved for the national central banks in the EMU system. In the first place, this is evident in the requirement that the national central banks have to be independent, both from their respective Member States and from the European Community. Independence is considered a very important element and is required not only of the national central banks but also of the ECB.[55] The banks' independence was examined by the Council at the end of the second stage, and Sweden failed to meet this test. Secondly, the national central banks, together with the ECB, form the ESCB,[56] which is one of the most important decision-making bodies of the EMU system. Thirdly, the Governors of the national central banks serve as members of the Governing Council of the ECB.[57] Thus, the national central banks play a double role in the ESCB: they maintain independent positions within the ESCB while also providing several of the members of the Governing Council of the ECB which likewise has its own position in the ESCB.

51. Art. 107 (ex 106) sub 5 EC.
52. Art. 113 (ex 109b) sub 1 EC.
53. Art. 114 (ex 109e) sub 1 EC.
54. Art. 114 (ex 109e) sub 2 EC.
55. Art. 108 (ex 107) EC.
56. Art. 107 (ex 106) sub 1 EC.
57. Art. 112 (ex 109a) sub 1 EC.

II. MONETARY UNION AND POLITICAL UNION

Separate attention has to be paid to the way in which the EMU functions within the structure of the European Community and the European Union. It is not without reason that the provisions for the EMU form part of the EC-Treaty. The intention of the Treaty of Maastricht was to give a new impulse to the process of European integration, to the forming of an ever closer union.[58] These terms reflect the main intention and goal of the European Community and European Union. In fact, the goal of reaching an economic and monetary union is set out in Art. 2 EC, together with the goal of establishing a common market. In Maastricht, initial steps were taken to form two new additional structures, namely a monetary union and a political union.

The political union has been given form and substance in the European Union. Both the EU and the EMU depend on the institutions of the original European Community for their institutional structure. In this way, a close link between the three systems is established. They are interrelated as the EC, of which the EMU forms part, likewise forms part of the pillar structure of the EU. Because the EC forms the first and most important pillar, the EC is at the core of the EU.[59]

It is no coincidence that the EMU is part of the process of European integration, and of the EPU in particular. It is commonly acknowledged that a political union cannot be reached without a strong form of monetary integration. This has been formulated as follows:

> - To all those who see a link between EMU and political union, a common monetary policy requires and eventually leads to common decision-making on budget matters.
> - In the other view, any move toward political union and hence to the surrender of national sovereignty in fiscal matters is not wanted; therefore a full-fledged monetary union, because it requires some binding coordination of fiscal policies, is not possible or desirable either.[60]

The fact that the overall objective of the European (Economic) Community has been to achieve greater integration of the economic systems in order to prevent war in future,[61] means that monetary

58. As it was laid down in the Preamble to the EC Treaty.
59. BARENTS & BRINKHORST, *supra* note 12, at 24-25.
60. Ungerer, *supra* note 11, at 17.
61. *Id.* at 5.

integration, and especially a common denomination, is necessary in order to achieve this objective.

III. Relationships Between the EU and the Member States Under EMU

Now that the details of the EMU system have been described, it is possible to discuss the relationships that now develop between the Member States and the European Union. In this respect, there are three categories of Member States that need to be distinguished. First, there are the Member States which participate in the third stage of the EMU according to the provisions in the EC Treaty. Secondly, there are those Member States which have opted out of the system at an earlier time. Lastly, there are Member States which did not meet the requirements of the third stage. The first category is the least interesting for the present discussion because it means that these Member States participate in each aspect of the EMU. The other two categories of Member States presently participate in (almost)[62] all other aspects of the EC and the EU apart from most elements of the decision-making process concerning the EMU. This inevitably leads to differences in the relationships between these Member States and the EU, especially when compared to the relationships that the fully participating Member States have with the EU.

In what is to follow, separate attention will be paid to the position of the Member States opting out and of those which were not allowed in. Before addressing those positions, however, it is necessary to discuss other, comparable, situations in the European institutional structure. This section will also examine the position of the Member States participating in the third stage of the EMU. In this way, it will be possible to compare these three different kinds of positions and to consider them within the appropriate context.

A. *Relationships in General*

Thus, before the distinct characteristics of the nonparticipating Member States' relationships within the European system can be discussed, attention needs to be paid to the relationships in general which are created by the EMU. As described above, the institutions, the Member States and the ECB, as well as the national central banks, all play a role in the determination of these relationships. These

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62. For United Kingdom, it has to be noted that that it has opted out of several social provisions as well in a separate Protocol.

relationships in general can be divided into two categories: (1) those of closer cooperation or flexibility as laid down in the Treaty of Amsterdam, and (2) the relationships of the Member States participating in the third stage.

1. Closer Cooperation

An important aspect of developments concerning the EMU system is the new system of closer cooperation, also referred to as "flexibility" or "*Europe à la carte*." It was introduced in the European constitutional system in the Treaty of Amsterdam, but early examples can also be found in the Treaty of Maastricht. Our example of this flexibility is the Member States' ability to opt out of the EMU system. Other examples are the exclusion of some Member States from the Social Paragraph and the Schengen Agreement,[63] which originated as a separate treaty among several Member States, and was incorporated into the Treaties through the Treaty of Amsterdam. The principle of closer cooperation is laid down in the Arts. 43 to 45 EU. It is meant to enable developments to go ahead without all Member States necessarily participating for various reasons. Art. 43 EU (ex K.15) states:

> 1. Member States which intend to establish closer cooperation between themselves may make use of the institutions, procedures and mechanisms laid down by this Treaty and the Treaty establishing the European Community provided that the cooperation:
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> (a) is aimed at furthering the objectives of the Union and at protecting and serving its interests;
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> (b) respects the principles of the said Treaties and the single institutional framework of the Union;
>
> (c) is only used as a last resort, where the objectives of the said Treaties could not be attained by applying the relevant procedures laid down therein;
>
> (d) concerns at least a majority of Member States;
>
> (e) does not affect the "acquis communautaire" and the measures adopted under the other provisions of the said Treaties;
>
> (f) does not affect the competences, rights, obligations and interests of those Member States which do not participate therein;
>
> (g) is open to all Member States and allows them to become parties to the cooperation at any time, provided that they comply with the basic decision and with the decisions taken within that framework;

63. Stefano Bartolini, *Intégration européenne et États-nations. Une "division du travail" est-elle possible?*, *in* EUROPEAN INSTITUTE WORKING PAPERS NO. 98/1, EXIT OPTIONS, BOUNDRAY BUILDING, POLITICAL STRUCTURING 29 (Florence 1998).

> (h) complies with the specific additional criteria laid down in Article 11 of the Treaty establishing the European Community and Article 40 of this Treaty, depending on the area concerned, and is authorised by the Council in accordance with the procedures laid down therein.
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> 2. Member States shall apply, as far as they are concerned, the acts and decisions adopted for the implementation of the cooperation in which they participate. Member States not participating in such cooperation shall not impede the implementation thereof by the participating Member States.

The importance of this new possibility of closer cooperation is significant even though it was brought into the EC system after the EMU system was created. As the EMU is often considered to be one of the most prominent examples of flexibility since it already had all necessary elements incorporated,[64] it will probably need to refer to Art. 43 EU for future development.[65] In order to further develop the system of the EMU in the future, it will be necessary to follow the same procedure as it is prescribed in the procedure for flexibility. The EMU provisions themselves contain regulations for opting-in by one of the nonparticipating Member States. Still, the closer cooperation provisions prescribe the position of these nonparticipating Member States once a system like that of the EMU has been established. These Member States do not participate in the decision-making process within the EMU;[66] the participating Member States themselves work out the details of their closer cooperation.

In addition, the respective position of the European institutions within the European structure appears to change under closer cooperation.[67] The position of the European Parliament in relation to the Council and the Commission shifts, as does the position of the Council itself to the Commission. Because the governments of the Member States are represented in the Council,[68] the working of the provisions on closer cooperation indirectly leads to a shift in the Member States' position in respect to the Commission and the European Parliament. When, under closer cooperation, the position

64. J.W. de Zwaan, *Het Verdrag van Amsterdam, een overzicht*, *in* NEDERLANDS TIJDSCHRIFT VOOR EUROPEES RECHT, Feb. 1998, at 38.

65. W. van Gerven, 'Europa, wat nu?', Het 'So-lange'-rapport van WRR en EBN, *in* 7/8 SEW 249-50 (1996).

66. All Member States, however, can participate in the decision-making process leading to closer cooperation in a specific field.

67. Flora Goudappel, *The Influence of Flexibility on the Institutional Balance of the European Community and the European Union*, *in* FLEXIBILITY IN CONSTITUTIONS. FORMS OF CLOSER COOPERATION IN FEDERAL AND NON-FEDERAL SETTINGS 85-94 (A.A.M. Schrauwen ed., Amsterdam 1999).

68. Art. 203 EC.

of the Council, and thus of the Member States, is strengthened against that of the other EU institutions, the participating Member States develop a stronger position than the nonparticipating Member States in the EU.

2. "First Wave" Member States

The eleven Member States[69] of the EU that did fulfil the requirements for the third stage of the EMU and that have entered the EMU system, now fully participate in all aspects of the EMU. This means that they participate in more elements of European integration than the other four Member States. They are one step ahead of the others, and have the possibility to further increase this head start through the system of closer cooperation. Thus, they are able to develop monetary measures amongst themselves within the EMU framework without any need for the nonparticipating Member States' consent. The EMU can be considered both a separate development in the European integration process and the premier example of closer cooperation as it has been made possible for other areas of European policies through the Treaty of Amsterdam.

On the other hand, although the above indicates that the first wave Member States have taken steps towards a full economic integration, they have simultaneously brought themselves into a position in which they are more dependent on the European structures than they were previously. Moreover, they are more dependent than the other four Member States. The first wave Member States have transferred more powers to the European level, in particular to the ECB. In this way, they have transferred to a new institution their sovereign power to decide their own monetary policy. For several of these Member States, the changes brought by this transfer are twofold. Firstly, not all Member States were used to having an independent national central bank, let alone an independent European Central Bank. Secondly, they were used to politics playing a role in defining the national monetary policy.

This further transfer of parts of the traditional national sovereignty also raises the issue of a possible European democratic deficit. The national parliaments and the European Parliament both argue that a further transfer of national sovereign powers to the European level is undesirable because there exists a lesser form of

69. The Netherlands, Belgium, Luxembourg, Germany, Finland, Austria, France, Spain, Portugal, Republic of Ireland, Italy.

democratic control, or checks and balances, in the EU system than there is at the national level. Proposed solutions concentrate primarily on elaborating on the powers the European Parliament presently possesses. Thus, the transfer of monetary powers to the ECB means that a new element is added to a possible democratic deficit.

Overall, it can be said that participating in the EMU system means that a Member State has more European institutions to deal with than nonparticipating Member States. More powers have been transferred to the EU and more European influence has been allowed in national policy decisions. On the other hand, the participating Member States have gotten closer to European integration by creating the EMU, as a monetary union is often considered a necessary prerequisite to full economic integration. Since there are some Member States that do not participate in the EMU process, the participating Member States do not make decisions with them in all European matters. Thus, the relationship between the participating Member States among themselves will inevitably become closer than their relationship with the nonparticipating Member States.

It needs to be added that participation in the EMU system appears to be irreversible. The EC-Treaty does not contain any provisions concerning a later check of the economic situation of the Member States once they have entered the system. Thus, no solution exists in the event that the economic situation of a Member State changes.

B. Member States Opting Out

As stated in the introduction, two Member States have opted out of the final stages of the EMU system. For these Member States, there truly is a *Europe à la carte* because they have chosen to adopt the elements which best suited them.[70] Of these two Member States, Denmark appears not to plan to enter the system at short notice. According to the British government and public opinion, the United Kingdom does not appear too intent to enter the system either. However, the Bank of England, i.e., the central bank of the United Kingdom, distinctly describes the categories of "first wave" and "second wave" Member States at its website. It can be concluded from the website that the Bank of England assumes that the United

70. F. Tuytschaever, *Omtrent EMU, gedifferentieerde integratie en de externe betrekkingen van de EG*, *in* SEW 316 (1997).

Kingdom will join the EMU as part of the so-called "second wave." However, in January 2000, the President of the ECB, Mr. Duisenberg, told the press that he did not expect the United Kingdom to opt in over the next years. Still, British Prime Minister Blair has said to the press that he expects his country to participate "when the time is right."

It is often said that the underlying reason for opting out is a differing opinion about the desired degree of European integration.[71] It is well known that the United Kingdom and Denmark do not want European integration in the future to lead to a federal form of government and thus to a close form of cooperation. It has to be noted that the Treaty does not foresee the possibility for later withdrawal,[72] it is something that could only have been negotiated beforehand. This may perhaps leave the possibility for future new Member States to negotiate an opting-out before they become a Member State. However, since new Member States generally have to accept the *acquis communautaire*,[73] future Member States will probably also have to accept the EMU provisions. This does not mean that they can immediately participate in the monetary union; these new Member States will also be required to fulfil the requirements for participating in the EMU system as laid down in the Treaty.

As far as the relationships between the Member States opting out and the EU is concerned, it is obvious that these Member States do not participate in all European decision-making because they are left out of the decision-making process concerning the EMU. In addition this fact plays a part in practice because they have shown they are not willing to participate in a further European integration process at this time. It is inevitable that such a fact influences European relationships and politics generally.

In a legal sense, this means that on one hand, these Member States have exercised their sovereign power in the Treaty-making process by opting out. On the other hand, this results in nonparticipation in part of the integration process. Thus, the relevant Treaty provisions do not have any direct value for the Member States opting out, which leads to inequality. The participating Member

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71. M.G. Bos & H.J.A. van Merrienboer, *Nederland en de Intergouvernementele Conferentie: kleur bekennen over gedifferentieerde integratie*, *in* 3 SEW 79 (1996).

72. MOHAMED, *supra* note 9, at 258-59.

73. I.e., what is already acquired by the EU as basic part of the legal system.

States are bound by stricter regulations than the nonparticipating Member States.

C. *Member States with a Derogation*

In order to complicate matters, there are also two Member States (Sweden and Greece) which did not fulfil the requirements in time to be allowed to participate in the EMU.[74] This phenomenon is commonly referred to as *derogatio*,[75] or as "pre-ins."[76] Since the Transitional Provisions in the EC-Treaty allow for the possibility for these Member States being allowed into the system at a later stage, the position of these Member States can be considered to be a good example of multispeech integration.[77] This notion explains in general that for each Member State, there exists a possibility not to participate, or not to be allowed to participate at that moment, in certain aspects of European integration. Instead, such a Member State can choose later entry. At present, the EMU is the only example of multispeed integration actually set forth in the EC-Treaty. Other instances may be offered in future through the system of closer cooperation or flexibility.

Because a Member State like Greece strives to meet the criteria for becoming a member of the EMU, it can easily be argued that it already needs to comply with EMU regulations without even being a part of the relevant decision-making process. The reason for this is that it plans on being obliged to fulfil these requirements in the near future. This leads to the odd situation that the Member States with a derogation do not participate in all aspects of the European decision-making process (namely not in the EMU part of it) but still comply with all regulations. In addition, the Member States with a derogation have not yet transferred the relevant powers to the European level, most notably the powers of the national central bank. Again, this leads to unequal positions among the different Member States. European integration involuntarily takes place at a different speed for them than for other Member States and less of their national sovereignty has been transferred to the European level.

For future Member States, the regulation described here opens possibilities for a smoother transfer into the European system. They

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74. As was already mentioned in the Introduction, Greece aims to fulfill the requirements in 2001, while Sweden decided not to participate.

75. *See* Art. 122 (ex 109k) EC.

76. Usher, *supra* note 4, at 15.

77. Tuytschaever, *supra* note 70, at 315.

will need to comply with the strict requirements for admittance into the EMU. Due to the multispeed integration, it is not necessary for them to fulfil all economic requirements at once as set in the EC-Treaty. The EMU part will only apply to them in the future. The transfer of part of the sovereign monetary powers will only take place when the economic requirements are fulfilled, thus enabling these new Member States to adapt their legal system to the European demands in a more gradual manner.

IV. Future Possibilities

Most of the legal literature on the EMU concentrates on the implications of the EMU for the future. This concerns different aspects of possible future developments. Firstly, enlargement of the EU as such leads to questions concerning the EMU, some of which have already been discussed in this Article. Secondly, the aim of the development of economic and monetary integration is being questioned. Lastly, implications are discussed in literature of other aspects of European integration for the EMU.

An important aspect of the future of both the EMU and the EU in general, is the possible expansion of the number of Member States, to include additional, mostly Middle and Eastern European Member States. These Member States, commonly referred to as being in the "waiting room," bring the institutional structure of the EU to the forefront. Similar discussions can be held concerning the EMU. However, as has already been described above, it has been decided that membership of the EMU will not take place on short notice. They will of course have to accept the *acquis communautaire*. Only when such Member States are sufficiently involved in the common market as such, will they be able to become a member of the EMU structure.[78]

The main question for the future is what the process of European economic and monetary integration leads to. Does it lead towards a federal system? Does it lead to the surrendering of national sovereignty in fiscal matters?[79] The central issue appears to be the main reason for Member States (especially the United Kingdom, Denmark and Sweden) to opt out in one way or another. For other Member States, it is an important reason for participating in the

78. Groenendijk, *supra* note 4.
79. Ungerer, *supra* note 11, at 17.

EMU.[80] In this way, the political desirability of the EMU strongly influences the relationship between the different Member States themselves, and with the EU.

Another possible future development may be increased importance of the provisions on closer cooperation. However, the nonparticipating Member States are left behind in all further elements of the decision-making process in which closer cooperation is involved. When they join later on, they have to accept all decisions taken in the meantime. For the EMU, the experience with flexibility will be reciprocal: flexibility will influence the developments in the EMU system, while the experience with the EMU system will influence the developments concerning flexibility.

V. CONCLUSIONS

It is proven in this Article that in many different ways, the position of the nonparticipating Member States differs from that of the participating Member States. This is especially true when one considers the position of the Member States opting out in relation to the European Union. This latter category of Member States, specifically, has placed itself more or less outside the process of European (economic and monetary) integration. For Greece, this happened involuntarily. Noteworthy, in respect of the EMU, is the amalgamation of politics, law and economics, which is not uncommon for European issues. Each of the three fields influences the other two in a substantial way.

Returning to the central questions in this Article, the following conclusions can be drawn. The EMU has affected the relationships between the Member States in such a way that the nonparticipating Member States appear to lag behind in the process of European integration. This will specifically influence these relationships in the future. Because of the EMU, some Member States participate in more aspects of the European decision-making process than others do. Thus, when the nonparticipating Member States join the EMU later on, they will have to accept decisions they were not involved in reaching. In addition, it must be noted that the transfer of monetary sovereignty to the European level has a great influence on the way a Member State deals with the European Monetary Union.

80. *Id.* at 20.