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The new questions of democracy in the European Union after the economic crisis

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I.

1. The problem and the research questions

The euro crisis, which was started in 2008 and has become acute in 2009, has shocked the whole European Union as a political system. The public debt crisis has shown the structural endogenous problems of the Economic and Monetary Union (Benczes, 2011; Fabbriani, 2015; Crammer, Hobolt, 2015) which made inevitable to avoid or handle any crisis created by the financial or budgetary dysfunctions of the member-states.

The inappropriateness and the lack of use of the control mechanisms – as the preventive and corrective arms of the Stability and Growth Pact or the excessive deficit procedure – together with the missing crisis management tools have created an unstable system. Its previous balanced functioning was only due to the optimistic mood of markets and the favourable global economic environment. When these have been changed by an exogenous shock, the financial crisis of the US, the hidden endogenous problems became real ones (Krugman, 2011), and the EU had to act.

It's important that the European crisis has to be partially differentiated. Two different type of crisis connected to each other have caused serious problems in the EU. In the case of Ireland,

partially of the UK – and of Iceland, from 2016 member of the EEA but not the EU - (LorcaSusino, 2010) the financial problems and the threat of the national bankruptcy were triggered by the US crisis caused by the deregulation (Stiglitz, 2010). Ireland which used to be one of the best performing member-state, the British Royal Bank of Scotland - and also Iceland - disposed over a large amount of the so-called toxic assets. When those assets have lost their values it caused systemic troubles in these countries (ibidem, Lorca-Susino, 2010). To avoid the collapse of the financial sector the governments intervened transforming private debt into public one. The worst case was the Irish one because being a member of the EMU the country lacked the monetary tools to handle the effects of the crisis (Krugman, 2011); in the same time, the ECB respected the prudential rules of the policy not increasing the liquidity or acting as a last-resort creditor. Due to these circumstances the Irish government had to spend public funds to avoid the collapse of the national financial sector. This crisis can be considered as an exogenous one because it was driven by external causes.

The other European crisis is an endogenous one. Since the introduction of the EMU several economic and political obstacles are before the successful functioning of the common currency; the EU cannot be considered as an optimal currency area (Crammer, Hobolt, 2015), neither as an integrated economic or transfer union (Krugman, 2011). The stability of monetary policy is secured only, if also the fiscal policy is functioning well. However the economic policy enters among the supportive ones in the competency framework of the EU (Horváth, Ódor, 2010, 293; TFEU Art n.5) and politically it has to be considered as one of the most important part of the sovereignty of the member-states. Due to these characters the EU was able to create only a negative regularization¹ regarding this field. The tools of this are the maastricht criteria and the above mentioned control mechanisms, the SGP and EDP. Due to the sovereignty, the fundamental principle of democracy - ‘no taxation without representation’ -² and the interests of the actors towards the maintaining of the trust of investors, the fiscal harmonization was not created.³ For this reason different member-states have been indebted over their capacities and

¹ Negative regularization means that EU laws are posing only limits on the space of manoeuvring of the member-states in economics by the maastricht criteria and the Stability and Growth Pact. The directions of the policy development and the positive regulations are elaborated on the national level.

² The fundamental character of the no taxation without representation principle is proven by the fact that also those scholars who argues the existence and the problems of the democratic deficit accept the need for input legitimacy tools and democratic control mechanisms if redistributive decisions are made (Majone, 1998; Moravcsik, 2006).

³ It is well-shown by the fact, the corrective arm of SGP was never activated (Lorca-Susino, 2011, 111-183).

⁴ When the stability of the previously trusted assets was questioned (Stiglitz, 2010), the distrust was spread towards to the other securities.

the limits posed by the convergence criteria. When the US financial crisis exploded, several EU countries had already accumulated unsustainable public debt; and also missed the period of ‘state of grace’ following the introduction of the common currency to modernize their economic structures (Lorca-Susino, 2010 27-80; Desai 2011 85-91). The role of the US crisis in the case of this European one was to bring the investors’ attention towards the treasury bonds.⁴

The emerging economic crisis threatened with the collapse of the common currency and the disintegration of the EU.⁴ Defending its biggest achievement and its own existence the EU started the largest long-range crisis management procedure of its history. However its steps which in most of the cases were right and necessary from the economic aspects, were concerning from the view of democracy and politics.

The democratic character of the European Union is mostly analysed from the point of democratic deficit by the literature.⁵ This is a negative approach which doesn’t define the concept of democracy but describes the lack of popular control in the functioning of the integration. The analysis of the topic is an important area of the political science and the European studies. The EU is fighting against this phenomenon, the difference between the effect of the integration on the daily life of citizens and their disability to control those decisions, since the signing of the Single European Act (Romani, Liakopoulos, 2009, 15). A serious scientific debate was going on regarding this issue. The current paper would like to join this discourse because its relevancy increased again due to the crisis management. According to my views the economic crisis and the answers given to it have to reposition the previous scientific standing-points; the appearance of the redistributive measures make necessary the democratic controls also in accordance with Majone (1998) and Moravcsik (2006).

The thesis seek to answer two general research question; first, can the economic crisis management be considered as a European extraordinary economic legal order or European

⁴ The destiny of the EMU and the EU is linked to each other because the economic cooperation was always the most developed field and engine of the European integration. The introduction of the common currency was the biggest achievement in this field and its ceasing would cause such a big loss in terms of trust, that would easily undermine the future functioning of the Union.

⁵ See: Majone 1998, 2005, 2009, 2014, Moravcsik 2002, 2006, Hix & Follesdal 2006, Hix 2008, Bellamy, 2006, 2011; Scharpf 1997, 2004, 2012; Crammer & Hobolt (eds) 2015, Romani & Liakopoulos 2009 ⁷ About the functional differentiation of social subsystems see Pokol 2003 and Kjaer 2010.

economic emergency power. Second, how these economic emergency powers do affect the democratic character of the European Union.

According to my hypothesis during the crisis management we can detect a process that can be described as European emergency powers. This extraordinary legal process has affected the level of democratic deficit detected in the functioning of the European integration. It means that to the first question we will give a positive answer, in the case of the second one we will have to determine the aggravation of the democratic deficit.

During the crisis management the EU has taken several steps with which the logic of one functional subsystem was overwritten by another one. The political subsystem which logic is based on the democratic elections, was overrun by the logic of economics; the economic reasons have started to dominate politics.⁷

In addition, the steps of crisis management have derogated several times the ordinary decision-making processes what makes it similar to the emergency powers. Also their temporary character enforces this similarity. To prove this statement I will analyze the European crisis management from the aspects of emergency powers.

The economic emergency powers have seriously affected the democratic deficit as well. This effect is proven by the case studies analyzed by the method described in the chapter n.4. According to this, if the step causes enforcement on the supranational level without any de jure power transfer or increases in the quality of representation it - which means increase of the input legitimacy - or creates any shift of competency from the classic polity towards the new governance structures, the democratic deficit has to be considered aggravated.

The current work seeks to give a comprehensive explanation to this phenomenon among its conclusions.

The subject of the thesis can be analyzed from different scientific disciplines, but the current paper is based on the political science, law and European studies.

II.

2. Structure of the thesis

The structure of the thesis can be divided in two main parts; the first describes the theoretical basis, the analytical framework and the fundamental concepts of the analysis.

After the exact definition of the research questions, the basic concepts will be detected and elaborated in this part. The concepts are the legitimacy, the economic emergency powers and the democratic deficit.

After the elaboration of the concepts and the presentation of the state of the art, their relation to each other will be described. The aim of this element is to explain the analytical framework which makes necessary to show the connections between those.

In the next part the methods will be elaborated. I seek to elaborate a complex analytical framework to be able to give satisfying answers to all aspects of both of the research questions. It analyzes the presence of the economic emergency powers in the given crisis management step and all of its aspects regarding the democratic deficit.

After this the subject of the analysis will be elaborated. The crisis management steps will be differentiated in two groups in accordance with their basic aims; between those which goal is to re-establish the previous stability - which means the domination of the conservative character (Ferejohn, Pasquino, 2004; Gross, Ni Aolain, 2006) - and those which seek to correct the endogenous structural problems of the system. Based on this distinction there are short-term and medium or long-term steps.

The second major part of the thesis is the actual application of the elaborated analytical framework on the case studies. I will analyze in details all of the European crisis management steps using the framework under the aspects of the research questions; the acts of the ECB (the Trichet-Draghi letter, Outright Monetary Transactions), the state-saving funds (EFSF, EFSM, ESM), the accepted new treaties (EuroPlus, Fiscal Compact) and the solutions created by the ordinary decision-making (Six Pack, Two Pack, Banking Union).

At the end I will summarize all of the findings of the case studies and answer the research questions.

3. Basic concepts

The theoretical basis of the thesis can be constructed around the following concepts; the legitimacy, the emergency situation and the securitization and the democratic deficit. During the crisis management the popular acceptance and support of the decisions of the political system is always declining because the exceptional times require exceptional and so difficult measures. These measures should be legitimized, which is granted by the securitization.

4. Methods

The thesis uses a qualitative method based on case studies. The case first are analyzed by a descriptive framework. This is based on the analytical framework of the emergency powers and the concept of politics of Lasswell. It means that every step is analyzed by the environment of the act, the actor, the matter of act and the targeted group of the act. Through this descriptive method all of the crisis management steps will be comparable to each other. After this they will be compared and analyzed from the aspects of the three main theoretical concepts; legitimacy, emergency powers and democratic deficit.

III.

5. Hypotheses

On the following pages I will present the main hypotheses of my work.

The first hypotheses states that the euro crisis can be described as an exception or emergency situation. The exact definition of emergency is missing from the literature. According to Schmitt, the exception is what is decided by the sovereign (Schmitt, 2005, 5). Its logical consequence is that the concept of emergency or exception is changing from political system to political system. However these situations are well-defined and described in their constitutions.

The subject of the analysis of one of the most synthetic work in the concept's literature is narrowed to the violent and armed conflicts (Gross, Ni Aolain, 2006, 4-5). Due to the fact that the definition of exception is defined and developed based on the countries' own constitutional traditions and also the extent of decrease of the obstacles before the acting political leader is decided by those, it's difficult to give a general definition of the emergency or exception.

But these extraordinary situation and increase in executive powers can be detected also in the international law, whose use is more appropriate for the scope of this work.⁶ The cause of this is coming from the system of international guarantee system of human rights.

⁶ One of its reason is that the European law is somewhere between the national and the international one, but this justification would be misleading. But the supremacy of the international and European law over the national ones and both of them use standardized interpretation of legal concepts. Thanks for these characters

The concept of emergency is elaborated from the Art. 15 of the European Convention on Human Rights (ECHR Art.15) and some decisions of the European Court of Human Rights and its Commission (Lawless versus Ireland - 332/57 (A/3) ECHR and the Greek case - 12 YB 1, 1969).

The elements of the definition are the following: the danger caused by the situation has to be actual or imminent, due to its exceptional character it is cannot be handled by the ordinary processes, but it would have general effects and on the whole society threatening the organised life of the people.

The European economic crisis was an actual and imminent without questions. The public debt crisis lashed-out in 2009 risked not only with the collapse of the EMU but with the end of the whole EU. The fail of the euro and the monetary union can be considered the actual, the collapse of the EU can be considered as the imminent danger of the crisis. The loose of the common currency would mean the end of the biggest European achievement and also the trust in the prudency and acting capacity of the EU, which ones could easily bring an end to the integration. The first constitutive element is present.

The exceptional character of the situation is proven by the fact that this kind of crisis was never faced before in the EU. The structural errors of the EMU exposed too much the functioning of the policy to exogenous circumstances.⁷ When the global economy is lacking turbulences and the period of conjuncture is going on and the optimistic mood of the markets can be detected, the endogenous threats are not causing problems. The asymmetric structure of the EMU - there is 1 monetary but 28 fiscal policies - together with the no-bail out principle are creating a system with no crisis management methods and tools on the supranational level. In the same time the monetary policy is driven on this level, which makes impossible to handle the dysfunctions on the national one. So the exceptional character is proven by the fact that nor the member-states, nor the supranational actors had any necessary means to avoid the crisis. The national level was not able to do that, meanwhile the European one lacked the competencies and the de jure emergency powers.

there is no need to synthesize the 28 different concepts of emergency, but it is enough to use the concept of the relevant definition of the international humanitarian law.

⁷ See: Benczes, 2011; Fabbriani, 2015; Crammer, Hobolt, 2015; Varga, 2013, 2014; Krugman, 2011

Neither the general effects on the whole society of the euro crisis is really argued. If the EU remains and only the EMU disappears - which is a less likely scenario -, the failure would cause recession in all of the member-states affecting everybody. The Grexit and the return to the drachma would cause systemic bank crises in France and Germany as well because the European financial institutions disposed over an amount of 200 billion euro in Greek treasury bonds - the French ones with 55, the German ones with 32 billions (Lorca-Susino, 2010, 186187).

The most arguable element of the extraordinary situations is the danger on the organised life of the society. However the collapse of the EMU, the general recession, and the possible end of the EU would have brought serious damages to the societies of Europe.

According to the above described elements, the emergency character of the euro crisis is proven.

The steps of the crisis management can be differentiated into two groups; in the short-term and the medium- or long-term steps. This finding should slightly change the previous statement regarding the parallelism between the crisis management and the economic emergency powers. Two of the main character of the latter are the conservative aspect and the temporariness. When the emergency finished there is a return to the previous normality (Ferejohn, Pasquino, 2004; Gross, Ni Aolain, 2006). If during the extraordinary situation the normal legal order has been changed, it cannot be simply considered as use of emergency powers. The application of the short-term steps are perfectly matched with the emergency powers, however there are enduring changes detected as well.

It can be explained by the character of the crisis. During the analyses of crises it is really important to find out if their roots are exogeneous or endogeneous. The emergency measures give solutions for the former ones, re-establishing the normality before the shocks. When the dysfunctions are rooted in endogeneous problems, the emergency powers cannot solve them, but it becomes the obstacle of the successful management, restoring a non-working system.

The euro crisis can be considered such a complex one, where both kind of roots can be found. The US financial crisis - which is a distinct crisis according to my understanding - has brought the investors' attention on the stability of the treasury bonds; which caused a serious loss of trust. This can be considered a clear exogenous cause. However the internal dynamisms and structural problems were also necessary for the economic crisis to bring the integration to the

brink of collapse. The common monetary but national fiscal policies, the harmonization of economies based only on negative regulation and the lack of satisfying control mechanisms were such endogenous problems of the EMU which were threatening the system. The conservative emergency powers cannot give answers to these challenges.

Between these two points there is a grey zone with mixed endogenous and exogenous roots. The accumulation of unsustainable public debt by some member-state, due to the sovereignty in the budgetary policy can be considered as an exogenous cause as well.

I can state that the short-term steps can be considered as extraordinary measures, with conservative character. Here can be enlisted those steps that were trying to avoid the collapse of the banking system or failure of the refinancing of the public debt from the actual dangers. In accordance with this the Greek, bail-outs, the Cypriot bail-in, the conditional loans and the Trichet-Draghi letter are entering into this category.

Contrary to these the medium- and long-term changes can be described as elements of a policy reforms. Their aim is to correct the internal errors, not to restore the previous system. In accordance with this the European Stability Mechanism, the EuroPlus Pact, the Fiscal Compact, the Six and the Two Pack, the European Semester and the Banking Union are entering into this category. This category can be divided into two further subcategories; those reforms which elaborated the crisis-management framework of the EU and those which are created to grant the daily functioning of the economic governance.

Short-term, emergency measures	Medium-term, reform measures related to the crisis management framework	Medium-term structural reforms
Trichet-Draghi letter	OMT	EuroPlus Pact
ECB's bank funding programme	State-saving funds (EFSF, EFSM, ESM)	Fiscal Compact
Greek bail-outs		European Semester
Cypriot bail-in		Six and Two Pack

		Banking Union
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From this aspect that view which consider the enduringness of the power transfers taking place during the crisis management as problem (White, 2015) has to be undermined. Although the European competencies increased during the crisis, but it creates a need for further regulation and democratization, not a return to the previous state.

One of the most significant consequences of crisis management is that the phenomenon of democratic deficit re-emerged. Discussions on the issue of democratic deficit came to a stalemate by the mid-2000s and has been omitted from the focus of scientific research. The euro-crisis as well as the supranational responses given to the euro-crisis must however reopen the debate.

Examining all three - (i) the classical, (ii) the institutional, or (iii) the member state vis-a-vis EU - approaches to democratic deficit, it may be established that the level of democracy in the EU decision-making deteriorated.

The classical approach, which examines the citizens' rights to control through the legitimacy chain, lost its potential excuse stating that the EU controls only regulatory policies and does not influence redistribution (Majone, 1998, Moravcsik 2002). Most elements of the crisis management entailed serious redistributive consequences, however the sphere of the citizens' right to control did not expand - in many aspects it even shrank.

From the perspective of the institutional approach, it may be established that through the crisis management a significant shift in decision-making powers took place towards the more irresponsible governance structures. This also deteriorates the democratic legitimacy.

Regarding the brand new approach of democratic deficit, the deterioration is most noticeable here. During the course of the history of European integration, the sovereignty of the member states was mostly untouched, however during the crisis significant interferences occurred both in terms of policy and politics. Restrictive and austerity economic policies became the main stream of crisis management and were introduced in countries where the current government was opposing those. The bail-in, saving the bank system, in Cyprus was a one-off tax imposed upon Cyprus by Europe, over which the citizens had absolutely no control over, infringing the "no tax without representation" principle.

Distinguishing between the short- and medium-, and long term steps, it may be established that the former paid almost no attention to rectifying the democratic deficit, while the latter measures may be qualified as 'better', they are by no means sufficient.

This practically justifies the thesis in para. 5.3., which states that immediate measures truly derive from economic emergency powers, whereby the logic of democracy and normality are suspended, while for measures serving long-term objectives establishing some kind of input-oriented legitimacy was necessary. It is important to highlight, that even procedures in emergency situations necessitate some form of democratic control, may it be through interm or ex post control mechanisms. These are however still completely missing from the EU's operation.

As such, in case of short term measures a regulatory need, while in case of medium and long term measures an additional democratisational need faces the EU.

6. Case studies

The following cases are analyzed in the thesis:

- Trichet-Draghi letter
- ECB' credit program
- Outright Monetary Transactions
- State-saving funds (EFSF, EFSM, ESM)
- Greek bail-outs
- Cypriot bail-in
- EuroPlus
- Fiscal Compact
- European Semester
- Six and Two Pack
- Banking Union

7. Summary

Banking Union	<i>throughput és output</i>	medium-term reform measure, permanent element of the crisis	there is no democratic deficit
Six and Two Pack	weak input, dominant throughput and output	medium-term reform measure	New and the classic aspects of the democratic deficit are present.
European Semester	insufficient input and strong throughput and output	medium-term reform measure	Strong democratic deficit under all the aspects.
Fiscal Compact	borrowed input (FC), throughput and output new measures)	medium-term reform measure	Classic institutional democratic deficit.
EuroPlus Pact	<i>input (EPP) and weak input and output (EuroGroup, Euro Summit)</i>	medium-term reform measure	Weak democratic deficit; classic and institutional aspects
Cyprus	<i>insufficient output</i>	short-term emergency measure without satisfying legitimacy	Strong democratic deficit under all the aspects.
Greece	only output	short-term emergency measure	Strong democratic deficit under all the aspects, but it is acceptable.
State-saving funds	borrowed input; output	permanent element of the crisis management framework	Strong democratic deficit under all the aspects.
OMT	<i>strong output, reestablished throughput</i>	permanent element of the crisis management framework	Strong democratic deficit under all the aspects.
ECB's bank funding programs	<i>weaker throughput and strong output</i>	emergency measure	there is no democratic deficit
Trichet-Draghi letter	output	short-term emergency measure	Presence of democratic deficit under all aspects

8. The application of the findings of the dissertation

The dissertation based on the present thesis book carries numerous possibilities of application.

First of all, it adds to the debate on democratic deficit within political science and European studies, besides the views of Hix, Follesdal and Bellamy. In my opinion, it approaches various elements of the debate from a fresh perspective, as it integrates the democratic deficit experiences in the relationship between the EU and its member states, which has so far been neglected from mainstream literature.

The research may also prove to be useful for books focusing on the relationship between emergency powers (in particular economic emergency powers) and democracy are in short supply.

The dissertation also indicated a new research area by identifying the European economic emergency powers, which is relevant in its many aspects, as economic crises have always existed and may always occur. As such these may now be comparatively analysed, even with the method described in the present work.

The work may also be used for educational purposes, for MA- and PhD-students specializing in the European Union.

Finally, besides the academic use, publishing the dissertation may be accompanied by a pragmatic use, namely that the decision-makers may find guidance on providing a legitimate framework for economic crisis management. The most significant conclusion of the Eurocrisis management is the fact that crisis management can only be successful if it is founded upon stable legitimacy. The present work may facilitate this.

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