

Legal and Institutional Dimensions of EMU Intensive Workshop

22-23 October 2015

Within the framework of ADEMU project, the Law Department held a two-day intensive workshop, organized by Claire Kilpatrick, Giorgio Monti, Päivi Leino-Sandberg and Thomas Beukers.

The workshop participants actively engaged in interdisciplinary discussions on the legal and institutional dimensions of EMU, clustered around four thematic sessions.

Session 1 examined the role that constitutional courts play in the review of legislation enacted in response to the Eurozone crisis. The session discussed two strands of case-law: the first comprises cases where national constitutional courts are used by those objecting to austerity measures imposed by the European institutions where national courts test the compatibility of welfare cuts with rights granted by national constitutions. A second strand of case law, dominated perhaps by the German Constitutional Court shows the challenges put on the various 'rescue' measures from the perspective of debtor countries. Taken together these two strands show the relevance of national law in determining the legality of interventions to safeguard economic and monetary union.

Session 2 examined the legal design of the overall new E in EMU package, including the Macro-economic Imbalance Procedure, the preventive and corrective arms of fiscal discipline, the Broad Economic Policy Guidelines and the European Semester. After considering the legal sources developed on the basis of the key Treaty provisions, the participants discussed legal dilemmas and difficulties with the current EMU package. These included: whether the Treaty basis for the measures permitted their adoption; whether the complexity of the package raised rule of law concerns; fundamental rights compliance; and the acceptability of international agreements between Member States such as the Fiscal Compact. Finally, by looking at the operation of the package to date, the session raised important questions as to its normativity and effectiveness.

Session 3 analysed the legal and institutional aspects of risk-sharing mechanisms at EU level, such as the European Stability Mechanism, the prospects for Euro-bonds and EU fiscal stabilization mechanisms. The session highlighted the problems of legal liability, solidarity, as well as the feasibility and legal reforms required by each of the risk-sharing mechanisms discussed.

Session 4 mapped out the major legal and institutional aspects of the Banking Union and explored the 'narrative' behind it: it examined the legislator's intention of using banking union to break the link between the sovereign and its banks. The session participants further identified the major legal risks in the Banking Union design and future operation, with a particular emphasis on the Single Supervisory Mechanism (SSM) and the Single Resolution Mechanism (SRM). The discussions identified the following concerns: (i) how far the Treaty provides a sound legal basis for SSM and SRM, (ii) how far the enforcement bodies have been conferred powers that are consistent with European Law, for example whether the European Banking Authority or the Single Resolution Board are properly

constituted to act as European agencies; (iii) whether the complex relationship among the various institutions can create problems, for example the dual role of the ECB as a bank regulator and as the source of monetary policy; (iv) how far the resolution scheme is credible and robust, in particular in light of the thin resources available in the single resolution fund; (vi) the kinds of challenges that could be made against bail-in procedures by shareholders or bondholders who consider the bail-in excessive.

Based on the challenges identified and area of interest, each participant will prepare a **policy statement** which sets out the legal issues of one of the above thematic sessions in ways comprehensible to non-lawyers.

Policy statements will be presented by the Law Faculty to Economists participating in the project on **Friday 11 and Saturday 12 December 2015**.