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THE CITIZENS OF EUROPE  
AND  
THE CRISIS OF THE EURO

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**I**  
**TO THE READER**  
**(PREFACE)**

1. This is a collection of recent works of mine on the European Union and the single currency, the euro. The centerpiece is the essay “The ‘Truth’ about Europe and the euro”. The accompanying works are supplementary, or go further into selected aspects. I hope they represent my last word on the subject.

Let the reader beware. He will meet with difficulty. The argument is based on the European Union treaties and on international law, on acts of the European Union or constitutional laws and applications under national law – all unequivocally acts of law. *Nevertheless, these essays cannot be classed as essays in jurisprudence.*

2. The subject matter here comprises legal tender currency, economic policy, government budgets, gross domestic product, public debt and deficits, interest rates, employment, economic growth, inflation, price stability and more. All these notions form part of economics. But again, as with jurisprudence, *this is not an essay in economics.*

3. The reason is that while both legal and economic elements needed to be carefully weighed and assessed, *the actual subject of research* is the factors behind the overall development of two entities, the European Union as a whole and within it the euro area, or parts of them, and the effects produced by that movement. Since the essays deal with the “factors” causing the development and their effects, my working methods and criteria necessarily differ from those of positive law and economics. They will be specified as the work proceeds.

4. The results will seem unexpected, surprising, startling. They were so for me as well. The project required unremitting hard work. The reader will not be favoured by an easy, discursive style. The rigor of the argument will not allow a rapid or casual reading. Neglect of a detail can lead you astray from the path of argument. To avert still greater difficulty, in the place of such more technical dualities as “right/power”, “right/possibility”, “obligation/power”, “obligation/possibility,” prescribed conduct and other conduct, I have deliberately chosen to use the terms most currently used, namely “power” and “duty” or obligation.

5. In the past, I have devoted a good number of essays and treatises to the European Union and the euro. These most recent works have brought in new factors that alter my earlier conclusions, at least in part.

II  
**THE METHOD**  
**(AN AFTERWORD)**

6. The theme of the European Union and the euro is especially well suited to the application and exploitation of a particular method of inquiry of mine, whose origins go back to the circumstances and characteristics of the environment where my scholarly activity began but whose perfection would take a bit of time.

I was named special assistant to the constitutional law chair at the Faculty of Law of the University of Naples on 16 January 1944: fully seventy years ago. First let me take this occasion – not the first and hopefully not the last – to express my gratitude to my mentor, Professor Alfonso Tesaro, to whose generosity and paternal affection I owe a good deal of what I have accomplished in the course of my life. He was one of the sharpest exegetes of law I have ever encountered in my long and varied experience as professor and lawyer. At the same time, he was a scholar of fruitful intuition. These were qualities that his jovial character and estimable personality kept him from ever flaunting.

I was proud of my academic role. In my view, it obliged me to observe events around me, break them down into cause and effect, and analyze them as the subject of scientific research. At that time – just months after the armistice between Italy and the Allies – Naples was a veritable crucible of ideas. Young people hotly debated politics, literature, art, cinema, social mores, all in the spirit of freedom, with independence and commitment. For my part, I judged that thanks to the professional capability stemming from my academic post, I had to seize, assess and memorize every sign, even the smallest, whether of substance or form, that might be relevant to the fundamental choices the nation would have to make. Two years later, when this first phase ended, it was easy to demonstrate, using the material I had gathered, that the process whereby Italy, alone in Europe, had relatively quickly and for the most part peacefully achieved two extraordinary accomplishments –transition from Fascism to democracy and from monarchy to republic – was certainly not the fruit of mere happenstance. It was the product of the deep-lying causal factors and their intelligent deployment, which meant that each action found its cause in the action preceding it. My essay, published in 1946, was entitled “Two years of

Italian constitutional experience”.<sup>1</sup> The novelty of its method and its arguments was noted at the time.

*From that moment on, this peculiar method would be the prime characteristic of practically all of my research work.*

7. Looking back, I find in two early monographic pieces<sup>2</sup> the basis of my current considerations concerning European institutions. I began to deal with the question of dissolving Parliament before the matter was decided by the new Italian Constitution, about to be promulgated. I looked at the historical experiences of France and England, and of Italy and Germany during the times of parliamentary rule. I drew out types and models among which the lawmakers could select the one best suited for the purposes they had in mind, considering the concrete circumstances in which the system would operate. The essay’s character as a piece of legal scholarship was contested, which might have meant starting over from scratch. Instead, I demonstrated that two great nineteenth-century German jurists, Savigny and Jhering, of apparently opposed schools, nevertheless both reached the same conclusion. Legal science is not limited to the identification, interpretation, application and systematization of existing laws. It also embraces the creation of new norms based on analysis of structures and their relations. Errors in identifying or in using the factors will be reflected in the effects of the norms enacted. Much later, in 1995, I would describe constitutional law (and the same goes for other areas of study) as a “predictive” science.<sup>3</sup>

The volume on dissolution of Parliament, written in 1948, makes a series of affirmations. The components of a system are not all of equal importance, the substantial structures sustain the whole, the superficial structures depend upon it. This criterion can also be used for the examination of a complex system introduced but not yet practiced. The method enables us to foresee the impact of any new set of rules on the existing ones. If uniformity between the new rules and the substantive situation already in being (the material constitution) is lacking, this method can assist us in choosing the rules that will be indispensable or useful.

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<sup>1</sup> “Due anni di esperienza costituzionale italiana,” *Rassegna di Diritto Pubblico*, Naples, 1946, pp. 61-76; reprinted in G. Guarino, *Dalla Costituzione all’Unione Europea. Del fare diritto per cinquant’anni*, Naples, Jovene, 1994, Vol. I, pp. 9-24.

<sup>2</sup> *Lo scioglimento delle Assemblee parlamentari* (The dissolution of Parliament), Naples, Jovene, 1948; and *Potere giuridico e diritto soggettivo* (Legal power and individual rights), Naples, Jovene, 1949.

<sup>3</sup> “E’ proponibile una scienza giuridica predittiva?”, *Rivista di diritto pubbliche scienze politiche*, Giannini Editore, No. 3-4/95.

8. To counter the charge that my methods were not those of legal scholarship but of political science, I took up an issue that had been dealt with by the great German classical jurists of the nineteenth century and that has been recently resumed in Italy by talented students of private law. The question was whether the definition of individual rights should comprise chiefly the protection of legitimate interests or the dominion of the will.

I dealt with the theme in a totally new way. In the matter of individual situations, there is a conceptual space within which there may coexist only the limited number of figures or “forms” that the space itself can contain. If in defining a form one uses more space than necessary, the excess is taken away from other forms. To avoid subjectivity in definitions, therefore, you must identify minimum “forms”. Set one beside the other, they occupy the entire space. As examples, the whole notes of the octave number 7, the letters of the alphabet anywhere from 20 to 40 depending on the language, the numbers in the decimal system 9 (or ten including the zero), those in a binary system just two; and so on. In this way I brought “minimum forms” into my conceptual baggage.

A reading of “The Truth” suffices to show the contribution of the two “forms” called “power” and “duty” to a clarification of the differences between the rules laid down in the Treaty on European Union and those surreptitiously imposed instead by Regulation 1466/97. The forms are the key to interpreting any and all rules – past, present or future, especially, in the latter case, when designing a construction. It is thanks to these considerations that I can now clearly delineate the differences between the EU Treaty rules and the 1997 Regulation that was enforced in its place, and set out the reasons, based on cause and effect, why the Regulation has produced persistent and worsening depression, as the statistics implacably confirm.

9. Moving from theoretical premises to the influence of the environment, we can see the difference between the conditions under which my relations with my Italian environment developed and those that I would have encountered in any other country, including our European partners. Here in Italy, the environment spontaneously surrounded or rather engulfed me. I had a professional position that obliged me to pay attention to it. Europe and the rest of the world were far off; I had no way of foreseeing when I would be able to frequent them. But an opportunity soon arose: a fellowship offered by the French government. I applied and was accepted. Living for nearly a year in Paris, with a forty-day spell in England, opened my eyes to broader horizons. Two more unexpected events were crucial. First the prime minister, Antonio Segni, commissioned Professor Paolo Sylos Labini and myself to study the effects in several countries (the US, Mexico and Canada) of differing rules on the oil industry. Next, not long

afterward, as a result of that study, I was named to the management committee of the private International Association for the Promotion and Protection of Investment abroad. For three years I sat on the board with top managers of the world's greatest financial and oil corporations, one for each country. I served as Italy's representative. This was a global observatory. Serving on the Association board, I did not abandon the capacity I had already acquired of analyzing cause-and-effect relationships. I studied the behavior of the top officers of some of the world's greatest corporations, with their conflicting interests. Some were interested in the protection of physical assets (oil reserves and the legal rights to them), others in financial assets. In practice, the function of the Association turned out to be mutual surveillance, i.e. making sure that nothing in its press releases or formal statements worked to the advantage of the other side. Nor did I fail to note the singular fact that while all the other countries were represented by a top manager in one of the two key global industries of the day – oil and finance – both of Italy's representatives lacked powers and responsibilities relating to the Association's tasks: neither Guido Carli nor myself held any important position at the time. Our contributions to the discussion were listened to with interest by the other members and appreciated for their relevance and objectivity. I began to see how a legal organism, once created, can evolve beyond the purposes imagined by its founders.

After these two initial experiences, I would never lose the habit of extending my gaze to the world scene. I would serve as adviser to political bodies and political leaders in Colombia, Malta, Morocco and Greece. I would attend the Washington assembly that approved the text of the International Arbitration Convention. I would be invited to explain the Italian system of state holding companies in an unusual series of countries (Costa Rica and Poland, for instance, and also, when I was minister for industry, to authoritative Chinese officials). I seized every chance, taking advantage of important contacts, to visit far-away countries, not only the United States but China, the Soviet Union, New Zealand, Guatemala, and Mongolia. In Novosibirsk, with the Italian Ambassador to the USSR as interpreter, I met with Tatyana Zaslavskaya, who would be the main drafter of the radical reform plans that went under the name of *Perestroika*. I gave an account of the encounter in *La Repubblica*, 10 August 1985. I had the impression that such sweeping reforms were far from mature at the time. Before returning to Rome I was given a confidential message, which I quickly transmitted to Prime Minister Giulio Andreotti, in which the new Soviet Communist Party Secretary Mikhail Gorbachev expressed his intention to make Rome his first visit to the West and meet with Pope John Paul II (it turned out to be his second western trip, as Gorbachev's visit to London had been scheduled long before).

10. My involvement with European issues dates far back in time. As a young academic, impassioned but junior, I prompted an even more junior student of mine – whose brothers would prove to be my lifelong friends – to conduct a historical-juridical investigation of the uses of the power to dissolve Parliament in Italy under the Albertine Statute. The essay was published before he graduated. Renato Giordano would have certainly had a brilliant academic career. But he was powerfully attracted to the idea of European federalism and wanted to help construct it. Renato was very close to Altiero Spinelli, who introduced him to Jean Monnet, a sponsor and future president of the European Coal and Steel Community. Monnet took Renato on as a member of his secretariat, and he became a close, reliable, authoritative collaborator.

Owing to health problems that would cause his premature death, Giordano was transferred to Rome. He explained to me the divergence between Spinelli, to whom he remained loyal, and Monnet. They shared the same objective – European political union – but Spinelli wanted it to be instituted immediately, while Monnet did not think the time was ripe. He was for a gradual, step-by-step process. First common institutions would be formed in the sectors where a good enough degree of cohesion had been reached. When the areas covered by these sectoral institutions came to dominate, the circle would be closed and the institutions capped by a top-level political body. It was Monnet's program that was followed. The Coal and Steel Community was soon followed by Euratom, the atomic energy community. A European Defence Community was designed, but it was premature – it would have made political union simply indispensable. De Gaulle's "Non!" was firm and definitive. Monnet's path to union was blocked, and for all time. Nevertheless, the creation of the Common Market (the European Economic Community) with the Treaty of Rome in 1957 was a significant advance. The full implementation of the design would take another decade. The economic benefits of the EEC for its member countries were unquestionable.

I myself had to learn more about a number of aspects of the Community. I suggested to another of my students, Giovanni Motzo, who was interested in an academic career, to take up a position, temporarily, with the Community. The EEC was a new, original institution, whose practical functioning would make a most interesting subject of study. Motzo became the immediate assistant of the Director for Legal Affairs. He put me in touch with a number of capable young Italian functionaries with positions in other Directorates-General. I had a number of occasions to go to Brussels and cultivate these relationships. When he came back to Italy, Motzo became an eminent academic. He served as Minister for Relations with Parliament in 1995.

11. As for myself, in 1948, thanks to the generosity of my professor, I gave a course on the new republican Constitution at Naples, the first such course in Italy. At the same time I gave a course at Sassari, where I taught constitutional law. Against the prevalent opinion that the Constitution was nothing but a “book of dreams,” I held that this was not the case. The Constitution, I argued, would cast a gradually tightening net around Italian society, and within this constrictive mechanism the opposing political parties, which were combatting one another fiercely, would be induced to coexist and work together. We would face difficulties, but appropriate action by the people heading our policy-making bodies would help to overcome them. A decade later, I had the chance to celebrate the results achieved in an article entitled “Ten years of life under the Constitution: Balance sheet and predictions”.<sup>4</sup> My reasoning on this matter was akin to that of Jean Monnet concerning the European Community, except that in Italy political power was already constituted, internal to the system.

12. To get back to the European question, it was possible to make predictions only once the single aspects were sufficiently well established. This happened, earlier than in any other sector, in the area of relations between the bureaucratic organization of the Community and the political organization of the member states. In *Adesso*, a publication now, I fear, long defunct, I wrote in 1968: “The Community institutions have long seemed to be the decisive step towards a united Europe. But today, with regret, we must recognize that they are instead the prime obstacle to the construction of Europe.”<sup>5</sup>

This was not a “prophecy” but a reasonable prediction. Its accuracy was confirmed in 1972. Designated by Altiero Spinelli, I was named to the Vedel Committee to study problems in connection with Britain’s admission to the EEC. Everything had already been decided. The opinions voiced by the committee members were not recorded in the minutes, the votes taken were not reported. Nor was my European experience as government minister any different. At Council meetings, no more than three minutes were allotted to each intervention. The conclusions had already been decided, by the bureaucracy.

13. In 1983 I observed that starting in the 1950s Italy had created a peculiar “self-referential mechanism” originating in the principles of liberty

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<sup>4</sup> “Dieci anni di vita costituzionale: bilancio e previsioni,” *Amministrazione civile*, Rome, pp. 7-12; also in *Dalla Costituzione all’Unione Europea*, op. cit., Vol. II, pp. 313-322.

<sup>5</sup> “Il partito dell’Europa,” *Adesso*, No. 38, 1968.

and the welfare state regime introduced by the Constitution.<sup>6</sup> The basis of the mechanism was a geographically uniform economic demand that was expected to continue to expand gradually but constantly. The main driving force of the mechanism was the public debt, which, thanks to the ban on exports of capital, was held domestically. The State's creditors were and would remain legal persons that were Italian or resident and operating in Italy. Most of them were "households", whose wealth was increasing regularly. Just as regularly, they invested in public bonds. Italian growth benefited from the EEC. The economy consisted of three main components. Small and medium-sized enterprises, mainly manufacturers and of craft or artisanal origin, made their place in the world (the so-called Italian economic miracle). The great public corporations, which were relatively efficient owing to the employment of powers modeled on the private sector, served also for tasks in substitution of general government. The third element was the main private firms, operating in relatively sheltered compartments of the market. I concluded, however, that this mechanism was degenerating and that we were already feeling the initial effects of the constraints to which the European member states had subjected themselves for years with a view to achieving a single currency. Our governing class was showing signs of sclerosis.

14. The European Treaty called the "Single European Act" was signed on 28 February 1986. It would be succeeded on 7 February 1992 by the Maastricht Treaty on European Union. The Single Act took effect formally on 1 July 1987, but its concrete application involved the transposition of 330 directives, many of which would require specific implementing measures. As a practical matter, implementation was not completed until 30 June 1993.

The two treaties – the Single Act and Maastricht – were to enable the Union to take its decisive leap forward. But there was an error of perspective. Prime importance was attached to the single currency. But the Single Act would have greater, more incisive and more immediate impact on existing arrangements.

15. At the time I was engaged on a task analogous to what I had done back in 1948 as anticipatory interpreter of the Italian Constitution. In 1987 I had an official position. I was head of the European affairs division of the Christian Democratic Party, Italy's largest and one of the strongest among its sister parties in Europe.

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<sup>6</sup> "Economia ed istituzioni. Il modello italiano e le sue condizioni di sviluppo," *Diritto dell'impresa*, 1983, p. 197 ff.; reprinted in *Dalla Costituzione all'Unione Europea*, op. cit., Vol. IV, pp. 37-77.

I organized a seminar for all the parliamentary groups in the Chamber of Deputies to examine and discuss the Single European Act, held on 12 May 1988. I gave a broad introductory report.<sup>7</sup> But we lacked the explanatory documentation. We had not yet received the Cecchini Report, and we would have to wait until 1990 for the fundamental report “One money, one market”. Pending the adoption of the necessary directives, like myself the other speakers did no more than describe the substance of the rules and the main features of the system introduced by the Single Act.

16. By the time of the next occasion, however, everything had changed. There had been no lack of alarm bells in advance. On 11 October 1991, before the signature of the Treaty on European Union, I gave the introductory report to the sixth national conference of the Italian association of constitutional law scholars in Ferrara. The written version was published as “Public law and private law in the economy: Sovereignty between the Constitution and Community institutions.”<sup>8</sup>

The conference was attended by a number of Constitutional Court justices, representatives of the main organizations of the magistracy, most of Italy’s constitutional scholars. Without forethought, as spontaneously as in the last chapter of my ancient work on the dissolution of the Parliament, I based my remarks on Kirchmann’s maxim that “one word by the legislature can send entire libraries to be pulped.” Back then, together with Massimo Severo Giannini I was considered to be one of the founders, in Italy, of the study of public law in the economy. I was quite melodramatic: one by one I cited all the legal principles and acts that made up the Italian legal system, each followed by the interjection “Throw it out!” I could see the surprise in the faces of my authoritative listeners.

But this was no longer the time for softening the tone. It was the time for responsible talk, loud and clear. In an essay published in June 1992 but written some months earlier, I set out what to my mind had to be done.<sup>9</sup> I had taken off my “positive legal scholar” hat and put on that of the “prescriptive jurist” – which I have worn ever since. On 28 June 1992, to my surprise, I was named Minister for Industry. That 1992 essay of mine in fact set out a program of government. I kept to it. But I had to admit that my melodramatics at the Ferrara conference had served no purpose. My

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<sup>7</sup> “L’atto unico europeo e la dinamica del processo di integrazione comunitaria,” in *Europa 1992: le libertà e le regole*, Il Mulino, Bologna, 1988; reprinted in *Dalla Costituzione all’Unione Europea*, op. cit., Vol. IV, pp. 195-239.

<sup>8</sup> “Pubblico e privato nella economia. La sovranità tra Costituzione ed istituzioni comunitarie”, *Quaderni Costituzionali*, No. 1, April 1992.

<sup>9</sup> “Verso l’Unione economica e monetaria. Di alcune rilevanti modificazioni degli assetti istituzionali interni”, in 1989, *Rivista di Diritto Pubblico e Scienze Politiche*, Naples, 1993, pp. 5-51; also in *Dalla Costituzione all’Unione Europea*, op. cit., Vol. IV, pp. 426-475.

proposals caused a stir that lasted only the space of a few days. *No one followed me or my recipe. The same could happen today.*

17. In 1997 my book “Towards Europe, or the End of Politics” came out.<sup>10</sup> From today’s perspective, a foresighted prediction indeed! I described what Italy was losing and what an enormous amount it would continue to lose. How our fantastical hopes would prove illusory. I described in advance what later effectively came to pass. The book is out of print now, but it shouldn’t be hard to get a copy.

18. At a hearing before the Budget and Treasury Committee of the Italian Senate on 26 January 2006 I presented a report that I had already given at a *Nexus* conference on 26 October 2005, entitled “Is the public debt a soluble problem?”<sup>11</sup> I appended a series of statistics. Sheet No. 10 was a graph, included in an interview with me published recently (*Liberio*, 17 November 2013). Starting with the debt/GDP ratio in 2005, I plotted the ratio for the years to come under a variety of assumptions concerning GDP growth. I considered the extreme case hypothesized as quite implausible: average annual growth of just 0.5%. On this assumption, the debt would have amounted to 130% of GDP. The fact is, actual performance was worse! The ratio was 133% last year, because the effective growth rate was lower than my most pessimistic hypothesis. You don’t need a crystal ball to tell your fortune.

19. Antonio Castro, the reporter who interviewed me for *Liberio*, demanded “Tell us the truth, Professor. You put the blame on Regulation 1466/97.” He was perfectly right. Predictions are inevitably flawed, erroneous, if they fail to consider some decisive factor (because it is unknown). It simply couldn’t be taken into account. Another essay of mine in 2006, entitled “The Eurosystem: Analysis and Prospects,”<sup>12</sup> was checked by six eminent economists and four equally eminent jurists, four authoritative politicians and experts in finance. Not one of them called Regulation 1466 to my attention. None of them knew about it. The essay precisely outlined the characteristics of the persistently depressive state of the economy. No one else had done so. Even today, many observers rush to deny its importance.

At the time, I still did not know about the Regulation, did not even guess at its existence. So I attributed the depression to the European

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<sup>10</sup> *Verso l’Europa, ovvero la fine della politica*, Milan, Mondadori, 1997.

<sup>11</sup> “Il debito pubblico è un problema risolvibile?”

<sup>12</sup> *Eurosistema. Analisi e prospettive*, Milan, Giuffrè, 2006.

Commission's erroneous interpretation and application of the Treaty on European Union, Article 104C. Essentially, my point was correct. There was in fact an error on the part of the Commission. It had affected the performance of individual countries above all in the early application of the Treaty. It was certainly an influential factor. But it was only a tributary cause. By itself it could not have explained the unexpected, sharp decline in the economic performance of the euro-area countries, which set in immediately after the inception of Stage Three of Monetary Union.

To see how things really stood, we would have to wait until the true causal factor was finally discovered. For the time being, back in 2006, we could only consider aspects that were already established. The last two pages of the essay on the "Eurosystem" set them forth.<sup>13</sup> National sovereignty had been "amputated" twice: first when the fundamental decisions on economic growth and development, the natural and central object of popular sovereignty, had been turned over to an automatic mechanism no longer subject to modification; and then when it was established that Member States violating the threshold of normal and acceptable ratios of public debt to GDP would procure the resources for the payment of interest on the excess debt not through sovereign decision but as a "prime obligation". In reality, the violation of national sovereignty had its specific cause, namely Regulation 1466/97. But the essay, even without identifying that cause, did show that the violation of sovereignty would be more severe and more extensive than you might have thought.

20. The identification of the cause was a true "discovery". A number of attempts were made. Today I couldn't say when I finally became certain of it. I must have mentioned it at an Italo-German conference at Villa Vigoni on Lake Como (22-25 July 2012), for in the written version of my remarks there ("The Euro: Twenty years of Depression") Regulation 1466 plays a central role.<sup>14</sup> But I made another step forward on the occasion of a debate held in the pleasant holiday locality of Punta Ala in Tuscany, on 19 August of the same year. Other participants were Francesco Papadia, a director of the European Central Bank, David Lane, former Rome correspondent of *The Economist*, and Giovanni Lamioni, President of the Grosseto Chamber of Commerce.

At conference time, a magnificent sun would just be setting over the Tyrrhenian Sea. How could I possibly expect to hold an audience that was cultured, to be sure, but on holiday with abstract legal considerations concerning such concepts as illegitimacy and nullity? Instead, I struck on the idea of splitting the entire period since 1991 into distinct phases, each

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<sup>13</sup> *Ibid.*, pp. 187-188.

<sup>14</sup> "Euro: venti anni di depressione (1992-2012)", *Nomos*, No. 2., 2012.

beginning with some specific event. I reworked the statistics for each phase. This demonstrated unmistakably that the economic decline steepened markedly from the first of January 1999, when the euro was launched as the currency of the euro area, if not yet as cash in people's pockets. The date also coincided with the entry into force of Regulation 1466 (of 1997). That was the date, with the beginning the Stage Three under the Treaty, from which the qualifying member states, having met the requirements for the single currency, would begin to reap the promised fruits. The efforts made over four decades, since the Hague Summit in 1969, had been strenuous indeed. But instead it was exactly in 1999 that the "sorrowful times" for the peoples and citizens of the euro area had begun! Nor was any doubt possible. The specific causal factor had finally been identified: Regulation 1466/97, an act whose entry into force coincided with the date when the economic decline became manifest. The question whether the Regulation was illegitimate, or illicit and hence null – which is certainly the proper term legally speaking – could be set aside. *The exegetic-systematic legal scholar gave way definitively to the creative-predictive jurist.* I supplemented my original legal exegesis with a statistical analysis whose results appeared irrefutable. I added a formal-systemic analysis (of the elementary forms), demonstrating that the Regulation's provisions inevitably produced depression and would continue to do so as long as the principle of budget balance was not jettisoned. The proof is given in the essay "The Truth about Europe and the Euro".

21. These premises entail a good many further consequences – foremost, that I was right in anticipating that the Regulation regime had struck, and would continue to strike, at the heart of democracy. After this bird's eye flyover, I also see why I have persisted with such tenacity in my inquiries on the topic of the euro. There are several reasons. If my initial demonstrations are now shown not to be correct, this is because I had not yet discovered the true causal factor, and that would be the case until it did materialize. Once the cause was identified, the argument in terms of elementary "forms" (as in the 1949 essay cited above) spotlighted the Regulation's divergence from the Treaty: in the place of two "powers," it imposed two "duties" on the member states. This argument also enabled me to explain why the Regulation inevitably generates depression and *cannot* produce growth.

Let me add two more reasons. As I observed above, at this stage of the argument I see four fundamental forms: right, duty, power, and possibility. These constitute the material base of any legal construct, from the simplest to the one that is most complicated of all, the "world" order. The principles of the theory of forms date back to my 1948 essay, and their application to the EU and the euro area proved highly useful in covering the utterly decisive "last mile" of my inquiry into the factors that have so

severely damaged the functioning of the Union. This is a question of interest not just to us, the citizens of Europe, but to people in all the other continents.

Also relevant are the quotations from the 1948 work on the dissolution of Parliament. They refer to the damages, and the repercussions for European citizens, produced by the Regulation's illicit alteration of the rules laid down in the Treaty on European Union. Now we can explain it.

22. I was hesitant, in this note to the reader, to include these autobiographical passages. The reader will surely see that the experiences cited and analyzed were not set out for "practical" reasons but for purposes of inquiry. Almost unaware, I had become a sort of "reporter" of the "bio-juridical" world. My attention to the euro was spurred by two mutually reinforcing considerations. First was every citizen's duty to contribute, according to his ability, to the common good. This duty applies especially to people holding academic positions. We cannot retreat to our ivory tower while the house burns.

This primary obligation was interwoven, from my very first teaching post, with the professional duty not to neglect anything of potential use to the inquiry and to extend the sphere of useful knowledge. It is something of a coincidence that from the tangled skein of my experiences I found in a seven-decades-old work a thread – fine but strong, like silk – that would mark the entire course of my professional life.

23. Perhaps I am entitled to expect a judgment, on the part of readers, of reliability. If a series of predictions of mine have proven accurate – those of 1991 on Economic and Monetary Union and the significant changes to domestic institutions, those of 1997 on Europe, those of the 2005 *Nexus* Conference and Senate hearings on the course of the debt/GDP ratio, and those of 2006 on the Eurosystem – might not the considerations set forth in "The Truth about Europe and the Euro" and successive essays also be correct?

I would like to conclude with a question. How is it possible that in the face of a factor that has put Europe at the bottom on the rankings in economic growth – after centuries or millennia of absolute primacy – people have not been moved to seek out the cause? Everyone is clamoring for growth, but no one says how to attain it. The impediment to growth is the very same factor that causes depression. Why haven't we begun a "dragnet" to unearth it? What prevents it? Who or what are we afraid of? Or must we conclude that this deafening silence is further proof that the automaton consisting of *EU+euro* is endowed with a mechanism of self-defense that makes it impossible to escape from the cage? If that were so – and it is

likely – then this attempt to unlock the cage with a mere pamphlet would have to be judged an act of audacity bound to fail.

At this point, we need to take another step forward. We need to set all these reflections on laws and institutions aside and turn the floor over to the citizens of Europe. Some of their powers are still intact, as will be shown in the brief essay that closes this volume.

### III

## **THE “TRUTH” ABOUT EUROPE AND THE EURO 1/1/1999: COUP D’ETAT 1/1/2014: REBIRTH!?**

### Premise

A united Europe was the grand ideal set out, in the immediate aftermath of World War I, by a number of enlightened minds; in Italy, these included Luigi Einaudi and Don Sturzo, among others. Just before the outbreak of World War II, Lionel Robbins took up the theme again in his Geneva lectures. Altiero Spinelli, during his years of political confinement under Fascism, drew up the Ventotene Manifesto for a free and united Europe. Robert Schumann and Jean Monnet, endorsing the European federalist goal in 1950, proposed a step-by-step approach to its achievement. The plan called for the creation of Community bodies in specific sectors, which would be set side by side, eventually covering the entire sphere of common interests. The Treaty of Paris (1952) instituted the European Coal and Steel Community, an initial step that was followed by others. This first stage concluded with the European Economic Community (the Common Market), a marvelous construction that would make an enormous contribution to common development.

A new, second stage initiated at the 1969 summit in the Hague. Masses of liquidity in private hands, shifting from currency to currency, were distorting exchange rates and complicating the management of the four largest European economies, France, West Germany, Britain and Italy. The 1969 summit approved the proposal of Raymond Barre of France, vice president of the European Commission; this proposal was then incorporated in what was known as the Werner Plan. The idea was to arrive via a three-stage process at fixed exchange rates – functionally, a single currency – by around 1990. In 1986 and 1992 two related treaties were signed, the Single European Act and the Maastricht Treaty on European Union. The original plan for the Maastricht Treaty underwent significant amendments in the course of the negotiations.

A good many of the principles and the hopes created over the decades are still very widely held.

In drafting this essay, I am of a two-fold persuasion. First, in order to grasp the reality of the European Union and the euro area one must discard the baggage – rich and historically important though it may be – that is the fruit of earlier ideas and disciplines. One must clear one’s mind and look

without blinders at what has happened in Europe since 1999. Second, to deal with Europe's current problems it is necessary to frame them not only in the European but in the global context. Europe, that is, is one component of the global economic system.

In the course of my studies on European issues, after countless examinations and re-examinations, I began to glimpse utterly unanticipated conclusions. To avoid emotional reverberations, I have held rigorously, in analysis and in exposition, to the systematic-formal method, identifying the legal forms utilized, the resulting movements, the series of causes and effects. I have not named the persons involved. The judgments bear strictly on the acts formally – legally – adopted.

These reflections and conclusions do not refer to single countries. The reference is in general to member countries without a derogation and they apply in the same manner to these member states. The consequences discussed are those that the euro-area rules entail for the European Union as a whole and for the “world” system.

1/1/1999

An obscure coup d'état

1. An expression employed even in formal European acts, including the recent “Fiscal Compact” (Article 1.1), is “Economic and Monetary Union” (EMU). Yet the Monetary Union has not been achieved. The Economic Union has not been created. The currencies in circulation that were “legal tender” within the European Union numbered thirteen on the launch date, the 1<sup>st</sup> of January 1999. One, the euro, was the common currency of eleven states. The British pound and the Spanish peseta were “national currencies”. Today the currencies are twelve: the euro plus eleven national currencies.

The Economic Union has not been created. The Single European Act and the Treaty on European Union, the two accords that are credited with having done so, actually do no more than forge a “single market”. This is a vast economic area in which the dominant principles are those of free enterprise and the broadest possible economic opening. Today, most of the world's trade is governed by rules based on these same principles of private initiative, hence on free enterprise in open markets. In practice, there is a “single” market at global level. But no one would venture to call this an “economic union”.

2. The “common market” was the primary subject of the Act, supplemented by the Treaty. The latter governs new matters; in particular, it

laid down general rules for economic activity and member state budgets, hence implicitly on the single currency.

3. The rules that would affect the institution of the “single currency” were dealt with in the final months of discussion on the Treaty. At this point many of the key points had already been fixed. The currency would be common not to all the EU member states but only to those that submitted to a specific discipline. This decision derived from the United Kingdom’s refusal to give up its own currency, the pound sterling. Without Britain the Union would be born mutilated. Britain was offered an “opting out” clause, with the possibility, if it qualified, of adopting the euro at any time. Granted to the UK, the clause could hardly be denied Denmark. And it was also granted, de facto and without a formal derogation, to Sweden, the first country to join the European Union after the stipulation of the Treaty. Article 109(k) ultimately envisaged two distinct categories of member state, those forming part of the euro area, called “member states without a derogation” and those not belonging to the area, “member states with a derogation”. Article 109K of the Maastricht Treaty specifies the articles that apply only to states without a derogation.

As Britain had announced that it would not give up the pound, so Germany announced that it would join the Union and adopt the single currency only if this closely resembled the Deutschemark. The mark was Germany’s historic currency, used in the Federal Republic (West Germany) since its constitution. Applying a policy guideline in effect from its foundation, the government, assisted by the Bundesbank, held strictly to anti-inflationary standards to guarantee the lasting value of money and consequently the harmonious, balanced, sustained growth of the economy.

The objective of monetary stability implied, in the judgment of Bundesbank President Otto Pöhl, which was shared by Commission President Jacques Delors, and then endorsed by the representatives of all the other countries, that all member states would be subject to ceilings on their annual budget deficit (3 per cent of GDP) and on their stock of public debt (60 per cent of GDP). The Italian and British delegations took an active part in the final discussion.

Before agreement was reached on the characteristics of the single currency, measures were adopted that would determine the entire architecture of the system. The participating member states would remain sovereign. They would waive not their sovereignty but its exercise, in very broad areas that would be specified in advance. The powers of the Union would be only those specifically contemplated by the Treaty. The resources of the Union, apart from customs duties and some other minor revenue, would consist in funds transferred by the member states (called “own

resources”). The Union’s budget would have to be balanced every year. It followed that the Union could not run a deficit, could not borrow. In the matters under its jurisdiction, the Union would issue regulations and directives with binding effect on the member states. Clauses of the Treaty, supplementing the Single European Act, would prohibit government aid to enterprises and prevent the formation of dominant market positions.

The Act had enshrined the freedom of movement not only of goods but also of persons, plus freedom of establishment, and the free movement of capital, including at short term. The Union would promote the liberalization of international trade with the generalized abolition of customs tariffs. The EU directive on the free circulation of short-term capital had been adopted by the Commission and transposed by the member countries even before the completion of the design for the Union.

4. This was the framework, with a good many fixed points, within which the national delegations set out to insert the rules that would directly or indirectly shape the new currency. The discipline would have to reflect that governing the Deutschemark in three fundamental respects.

i) It would have as objective that of promoting throughout the Community economic growth as defined in Article 2 of the Treaty: “harmonious and balanced development of economic activities, sustainable and non-inflationary growth respecting the environment, a high degree of convergence of economic performance, a high level of employment and of social protection, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States.”

ii) The task of promoting growth would be assigned separately to each member state, which would do so in its own interest and in that of the Union, by means of its own economic policy (Treaty, Articles 102A and 103).

iii) The member states would have to be endowed with the means and/or instruments necessary to pursue the growth objectives. But here the framers (the “system architects”) had to recognize that in principle the means used by the countries outside the European Union – that is, all Europe’s future competitors – were precluded, de facto, by the fixed points already settled and no longer amendable. Yet these points, given the prohibitions enacted, indicated the only possible approach, which would necessarily have to be taken: debt. For if there are factors to be capitalized on and one lacks resources to invest, borrowing is indispensable to seize the opportunities, which may not recur.

If in its ordinary operation the system does not produce resources, if all chances of seizing productive opportunities are precluded, growth itself is impeded. Debt – borrowing – should be permitted in observance of the

so-called “golden rule,” namely that the investment financed by debt be reasonably expected to produce returns greater than its overall cost. When they were adopted, the ceilings of 3 per cent of GDP for the deficit and 60 per cent for the public debt could have been based on the historical experience of such major economies as Germany and the United States. They were approved: 3 per cent and 60 per cent constituted the limits that would guarantee the “stability” of the currency and the economy.

5. This is where the Italian delegation’s proposal, backed also by Britain, comes in. Delegation head Guido Carli, the Italian Treasury minister, in his memoirs (*Cinquant’anni di storia italiana*, Bari, Laaterza, 1993,p. 406 ff.), attributes it to his own “stubbornness”. It was unthinkable to make the fate of an economy depend on conditions that would be ascertained on predetermined dates. These conditions might be undone overnight, they might depend on exceptional circumstances, they might theoretically be the result of inaccurate or erroneous data. Accordingly, three amendments were approved, two on the indents of Article 2(a) and the third on Article 104C(2). The definitive version of Article 104C(2) established that the examination of compliance with the budgetary discipline would be “on the basis” of two criteria, specified respectively in points (a) and (b). Thus in interpreting and applying the reference values, these two criteria must be taken into account. The amendments, however, require taking into account the tendency to approach the ceiling value and of any exceptional or temporary causes for the overshoot.

The system architects had been given the assignment of creating, through abstract rules, a currency that corresponded to the German mark, that guaranteed the member states, and hence the Union, lasting, harmonious, sustainable growth like that achieved by Germany over the previous forty years. The framers kept to this model. They executed their assignment precisely. They designed a project whose implementation could and would ensure lasting, sustainable growth. The member states would generate growth in their exercise of the most typical policy-making activity, namely “economic” policy. The architects were aware that growth would be favored by two productive factors: the physical elimination of customs stations, which preparatory studies estimated would have a growth effect of between 2 and 6 per cent depending on the country’s location, and the elimination of transaction costs between the single-currency countries, which was supposed to generate an addition 0.7 percentage points per year of growth.

Now the political power to take on debt was added, up to the limits laid down in Protocol 6, to be interpreted and applied according to the binding criteria of Article 104C of the Treaty. This should have been sufficient.

6. So the formal rules governing the single currency were adopted. The next step was a transitional period in which to create conditions among the member states qualifying for the euro sufficiently homogeneous to prevent the strong from prevailing over the weak when the third stage of regular application began. The rules for the transitional period of convergence are given in Protocol 5. The reference values taken were the averages for two important variables (inflation and the interest rate on long-term government bonds) of the three best performing member states. Limits to deviation from these values were set (1½ percentage points for inflation, 2 points for long-term interest rates). Before 1 July 1998 an examination was to be conducted under an agreed procedure to assess the results achieved, and the countries meeting the requirements admitted to the “euro” group.

The examination was held on 3 May 1998. Eleven countries passed. A twelfth, Spain, was classed as admitted with a derogation; it was admitted without a derogation the next year.

7. The expression “coup d’état” is used to describe events in which fundamental aspects of a country’s constitutional system are modified in violation of the constitutional norms themselves.

Historically, coups are ordinarily effected by armed force: in ancient times, assassinating the sovereign, possibly also by poison. On 1<sup>st</sup> January 1999 a coup d’état was carried out against the EU member states, their citizens, and the European Union itself. The “coup” was not executed by force but by cunning fraud. This may appear to be quite a “stunning” declaration. Objectively speaking, it is. Outright non-belief is perhaps the most natural, comprehensible reaction to such an assertion. To demonstrate its truth, we must specify: a) which constitutional powers of the member states and which fundamental features of EU law were overturned in the “coup”; b) the acts by which the “coup” was effected and who carried it out; and c) what the “cunning fraud” consisted in.

8. a<sup>1</sup>) We give separate answers for the member states and for the Union. The Treaty on European Union does not envisage any specific procedure for amendment. Given that it is a multilateral, international pact, it should have been the Union’s duty, and that of its governing organs, to enforce it and see to its enforcement. They should not have allowed its fundamental features to be altered in the absence of a new Treaty. The rules introduced by fraud, instead, are the subject of a regulation provided for in the Treaty as a function of a single, specific task: adopting general guidelines for the coordination of the “economic policies” of the member states (Articles 102A and 103). The constitutional law of the member states

was violated in that the domestic constitutional rules for treaty ratification were not followed. Member states' sovereignty was violated in that they were deprived of the "exclusive" function to be performed, singly or as a group, of promoting the growth of the EU and the euro area by means of their own "economic policies". The member states' constitutions were violated in that obligations and conduct were imposed on their governing bodies that are not contemplated in the national constitutions.

b<sup>1</sup>) The coup was carried out by means of Regulation 1466/97. As noted, the Regulation was drafted under a procedure (specified in Articles 103(5) and 189C of the Treaty) that in the very moment in which it was used was also violated, in that it was used for a purpose different from the only one contemplated.

In no way can the procedure referred to in Articles 103(5) and 189C of the Treaty be properly used to modify fundamental provisions of the Treaty. Having done so suggests the possibility not of mere illegitimacy but of absolute lack of power. The acts adopted are, consequently, not illegitimate but null, non-existent.

b<sup>2</sup>) The individual persons responsible for the coup and the fraudulent means for its performance are unknown. We do not know either who had the idea or who materially drafted the text of the Regulation. An enquiry by the European Parliament might yet identify them. The formal responsibility for the "coup" rests with the MEMBERS OF THE COMMISSION AND THE HEADS OF THE UNION BODIES AND THE MEMBER STATE GOVERNMENTS THAT TOOK PART IN EACH OF THE PHASES OF THE PROCEDURE FOR THE DRAFTING OF REGULATION 1466/97.

c<sup>1</sup>) The fundamental provisions that were illegally altered by Regulation 1466/97 differ between the Union and the member states.

As for the Union, there was a radical and irreversible alteration of the primary purpose, consisting in pursuit of growth with the characteristics and by the procedures specified in Articles 2 and 3 of the Treaty, and in having abrogated, insofar as the entire matter is regulated in a completely different way, Article 104C, which contains the rules governing the means by which the member states could discharge their obligation to promote growth.

As for the member states, the illegitimate change consists in having deprived them, with the abrogation of Articles 102A, 103 and 104C of the Treaty and of other related articles – by means of totally different rules governing the entire matter (Regulation 1466) – of the only political powers assigned to them with a view to the economic management of the Union.

c<sup>2</sup>) Despite its apparent innocuousness, Regulation 1466 not only modified the overarching rules of the Union and the member states, but it affected the fundamental character of the Union, the characteristic without

which the member states' participation is not legitimate, namely its democratic nature. And this may be the assertion that engenders the greatest non-belief of all.

9. It all began with the suspicion on the part of some of the stronger member states that some of the weaker, in order to pass the examination, might try to use false data. This is a plausible explanation of the origin of Regulation 1466. The Regulation was supposed to provide the remedy in the event that some member state managed to pass the examination without actually meeting the standards. This remedy would not, however, produce a cure. Instead it would cause severe damage; damage that would prove to be irremediable.

Add that at the end of 1996 the performance of the EU member states was grounds for concern. The debt/GDP ratio in the largest countries had risen to levels and at speeds that were unforeseen. The French public debt had risen from 35 to 58.7 per cent of GDP, the German debt from 40 to 59.8 per cent, the Italian from 100.8 to 116.8 per cent. A slowdown in GDP had been expected for the transitional period, but the deterioration was worse than forecast. The actual ability of the rules to attain their objectives began to be doubted; in particular, the effective correspondence of the new currency to the old mark was called into question. It was decided to overcome all uncertainty by reinforcing "stability," making the latter the object of a general constraint.

The demonstration that the democratic nature of the Union was suppressed is all the more indispensable in this light; it must be analytical, precise, detailed. It will be confirmed by the practical effects produced.

10. In what does the "fraudulent" design leading to Regulation 1466/97 consist?

The procedure used had never been used, and never could have been used according to its original scope, insofar as Regulation 1466 erased the member state "economic policies" that, under Articles 102A and 103 of the Treaty, constituted its presupposition.

The procedure leading to the Regulation began in November 1996. The first act published appeared in the *Official Journal* on 6 December. At that time the member states were totally focused on the admission examination for the euro, to be conducted by 31 December (Article 109J). The examination was then postponed to 1998. The new single currency sparked great hopes. No attention was paid to Regulation 1466. This was an act that did not affect the examination. It related to a later period. The text

specified its entry into force on 1 July 1998. The members would deal with it in due course, assuming they had passed the euro exam.

The text of the Regulation was reassuringly worded. It promised, in Article 3(1), strong, sustainable growth conducive to employment creation. If you wanted to quibble, this “strong” growth was something more, and different, from what Article 2 of the Treaty required and promised.

11. The Regulation procedure ended with the Council resolution of 7 July 1997. The member states took part in the Council with ministerial-level representatives authorized to commit their respective governments (Article 146 of the Treaty). If the member states might conceivably be excused for not having paid enough attention to the text of the Regulation at the time of the Council’s first resolution, before November 1996, in 1997 they should not have been able to ignore the fate that would befall them once they passed the examination. But in fact they failed to take an interest.

One suspects that a role in this was played by an astute choice of dates. The Regulation was adopted, as noted, on 7 July 1997. This was the period when the Commission would begin to inspect the documentation submitted by the member states for the examination. On 25 March 1998 the Commission issued its proposal to admit eleven of the twelve applicants. Spain was postponed to the next year. The Council of Heads of State and Government endorsed the Commission proposal. Regulation 1466 itself set the date of its entry into force at 1 July 1998 (Article 13).

For what reason were the member states asked to adopt the Resolution before the examination was conducted and its results known, if it was to apply only to the states that would be admitted? “Dear Member State” (one can almost hear the application whisper), “if you don’t sign now, your admission to the euro could be problematic.” WAS THIS PIECE OF BLACKMAIL DUE TO THE ACCIDENTAL SERIES OF DATES OR DELIBERATE?

12. Every currency, always, rests upon a legal order. It can be that of the free market, that of a collectivist economy, or that of a mixed economy. These diverse types nevertheless have an element in common. THE MANAGEMENT OF THE CURRENCY IS ALWAYS ASSIGNED TO THE HIGHEST POLITICAL AUTHORITY. In the free-market regime, the political authority is flanked by the head of the central bank. The euro is the first instance of a currency for which, under the Treaty, the highest political authorities, though participating in monetary management, are not exclusively responsible for it. Instead an abstract set of rules would play a dominant role in the management of the currency. The specificity of the new

single currency would derive from the discipline to which the Treaty subjects it.

The currency governed by Regulation 1466/97 entered the market on 1<sup>st</sup> January 1999. If it is found that the rules laid down in the Regulation are different from, indeed opposed to, those of the Treaty, then we can only conclude that the euro in being since that date is a different currency from the one provided for in the Treaty. The currency envisaged and regulated in the Treaty is the only “genuine” euro. And as it was not launched either on the established date or on any other later date, the “genuine euro” is a currency that was never born. The currency that has usurped its name, been presented as if it were that of the Treaty and accepted as such by the markets is a “false” money, a counterfeit that, concealing its real nature and identity, has stolen those of the genuine euro.

13. The difference between the Treaty and Regulation 1466 turns on the constraint that is central to the rules. The Treaty sets an objective, growth in accordance with Article 2, whose attainment is entrusted to the economic policies of the individual member states, each of which was to take account of the concrete, specific conditions of its own economy. As the means to this end, economic policies could use, as necessary, debt up to the limits allowed by Article 104C, to be interpreted and applied by the criteria set in the indents and in paragraphs 2 and 3 of point 2 of that article.

THE REGULATION ABOLISHES ALL THIS. THE MEMBER STATES’ ECONOMIC POLICIES ARE CANCELLED. AS A CONSEQUENCE, EVERY POSSIBLE CONTRIBUTION BY MEMBER STATES IS CANCELLED. The role assigned to the growth objective by the Treaty (Articles 102A, 103 and 104C), to be attained by the political activity of the member states, in compliance with Articles 2 ff. of the Treaty, is cancelled. The growth objective is eliminated and replaced by an outcome, namely budgetary balance in the medium term. Under the Treaty, the member states were to attain the growth objective, autonomously evaluating their countries’ limits, conditions and structures. The degree of attainment would necessarily differ from country to country and, within each country, from year to year. The outcome with which the Regulation replaces the objective was in principle the same for all countries and all years. If the existing structures or the monetary conditions were not such as to allow growth, the economic policy of the individual member state would have taken this into account. On the contrary, UNDER THE REGULATION IF STRUCTURES OR CONDITIONS WERE SUCH AS TO IMPEDE THE “OUTCOME” OF BUDGETARY BALANCE, THEN THE STRUCTURES HAVE TO BE MODIFIED AND THE CONDITIONS ALTERED. THE STATE CANNOT EVADE THE PEREMPTORY OBLIGATION OF BUDGETARY BALANCE. In short, the relationship between money and reality is turned upside-down.

According to the Regulation, it is the real world that must adapt to the currency.

14. We could stop here. For the purposes of demonstrating that the currency that entered the market on 1<sup>st</sup> January 1999 was a different currency from that planned by Pöhl, Delors or Carli, the foregoing is sufficient. The currency as governed by the Treaty was deemed by the man directly responsible and the main user, President Pöhl, to correspond to the pre-existing German mark. Logically speaking, then, the “euro” in circulation today, insofar as it is governed by rules in conflict with that Treaty, cannot be deemed to be similar to the old mark.

15. Doubts should have arisen at once over the ability of the euro instituted by the Regulation to produce economic growth. The mark had been a factor of growth. The “false euro” eliminated the powers and means that the member states could and should have used to generate growth. Nor did the Regulation institute any other powers or means in their place. The growth effect, which would supposedly follow as the natural consequence of the obligation imposed permanently and indistinctly on all the member states, was simply asserted “axiomatically”. There was no confirmation of its validity in any actual historical experience. The public debt of the United Kingdom during the century of the industrial revolution and British imperial expansion exceeded the previous or contemporaneous debt of any other country. The public debt of the United States soared from 40 per cent of GDP in 1939 to over 100 per cent in 1945. Fifteen million unemployed found jobs. The United States emerged from the war as the world’s greatest political, military, economic and scientific power.

If historical demonstrations are lacking, if objectively testable cause-and-effect arguments are not adduced, then belief in the axiomatic objective rests necessarily and solely on results. Since 1999, fifteen years have passed: a period that in present historical conditions can be considered long more than medium-term.

The statistical outturns are unequivocal. Italy, Germany and France, in the four decades from 1950 to 1991 were the top three Western countries in terms of growth, with average annual GDP expansion of 4.36%, 4.05% and 3.86%, respectively (based on harmonized data from Maddison), ahead of the United States (3.45%) and Britain (2.08%). In the six years before the Maastricht Treaty (1987-1992), owing to the restrictive effects of the last phase of implementation of the Werner Plan, the three countries had growth rates of 2.68%, 2.05% and 2.91%. These results proved to be better than those achieved during the six-year transitional period of convergence (1.34%, 1.32% and 1.40%). In the fifteen years of the euro, since 1999, the

averages have been 0.38%, 1.36% and 1.38%. Starting in 2000 the three European countries, in addition to the benefits of the physical elimination of customs stations, should have benefited from the elimination of transaction costs within the euro area and also from the expansion of the Union (thirteen new members) and the euro area (five additional members). Yet an unimpeachable source on the countries with the least economic growth in the decade from 2000 to 2010 puts Italy as third-worst, Germany as tenth-worst and France as fourteenth-worst (*Pocket World in Figures, The Economist*, 2013, p. 30). And more significantly still, no fewer than twelve European Union countries figure among the worst thirty-five.

In the same rankings for the previous decade, 1990-2000, not a single European country figured. One must conclude that some crucial factor in the economic depression in Europe, and in the euro area in particular, must have begun to operate just before or just after the turn of the century. Theoretically, this factor could be internal to the euro area or the EU just as easily as external. But another statistic rules out the “external” hypothesis. The average growth rate for world GDP from 1975 to 1995 was 2.8% (*Human Development Report*, 1999). World population in 1997 was 5.7 billion; today it is over 7 billion. The world’s economic growth rate from 2004 to 2013 was better than 4%, topping 5% in 2006 (5.3%), 2007 (5.4%) and 2010 (5.1%). The entire world is now marked by sustained rapid growth in all continents. In the euro area, the average growth rate from 1991 to 2003 was 2.2%. For 2013 there will be a contraction of 2% (see also the *Economic Report of the President*, 2013, p. 452).

So the cause is internal to Europe. The new factor that came into play in 1999, or just before or after, is the market entry of the “false” euro governed by Regulation 1466/97 on 1<sup>st</sup> January 1999. There is no doubt. Regulation 1466 is the prime, indeed the sole, cause of the economic depression in the single member states and in the entire euro area since that date.

The de facto installation of a new regime:

The suppression of democracy

16. There is one further, distinct direct effect of Regulation 1466, more significant than any other. This is the suppression of “democracy”. At the highest level, individual freedom is guaranteed. Legally, social rights are also guaranteed. But individual freedom and social rights are only preconditions for democracy, necessary but not sufficient. A regime can be called democratic only if individuals, together forming a single community,

can together, in conditions of absolute equality, influence the political guidelines relating to the exercise of sovereignty or at any rate carrying priority. Given the current conditions of development, basic economic guidelines must be deemed to carry such priority.

Citizens can exert influence directly or indirectly. In large communities, the rule is indirect influence through voting. The vote must be given in conditions of equality, on the same day (possibly with exceptions for persons in particular conditions), under the same procedures, in known and predetermined places.

REGULATION 1466/97 ABOLISHED THE ONLY SPHERE OF POLITICAL ACTIVITY SUBJECT TO THE INFLUENCE OF THE CITIZENS OF THE INDIVIDUAL MEMBER STATES, NAMELY THE AREA OF ECONOMIC POLICIES THROUGH WHICH EACH MEMBER STATE COULD AND SHOULD HAVE TAKEN PART IN THE PURSUIT OF GROWTH IN ITS OWN INTEREST AND THAT OF THE UNION. The political jurisdiction of the member states, embodying a power, was not replaced by any other of equal political nature. Instead, member states were subjected to the obligation to achieve a specifically defined result (a balanced budget) as a matter of priority, and the same for all. Its attainment implies obligations and duties on an individual basis, subject to powers of surveillance, controls and directives, and with prescribed characteristics and objectives.

With the suppression of any sphere of political decision, the corresponding sphere of expansion of the democratic principle vanishes.

The lines of march of the Union and its members are traced out. In the component of the general conditions of development that influences all the others, and which is accordingly to be considered as carrying absolute priority, namely the economy, “governments have to do their homework”. The democratic institutions envisaged by the constitutional order of each country no longer serve any purpose. Political parties can exert no influence whatever. Strikes and lockouts have no effect. Violent demonstrations cause additional damage but leave the predetermined policy directives unscathed. Demonstrative actions such as camping out atop construction cranes for days or weeks on end, even the extreme gesture of suicide to protest against the indignity of being unable to pay one’s workers or to provide for the needs of one’s family, are totally without effect.

Grumbling, idle chatter are free, unrepressed, but first they weaken, then disappear. They are highly effective, instead, in combating authoritarian regimes, even overturning them (even anti-regime jokes have their weight!). But in the EU+euro regime, these are private freedoms, shorn of all public impact. You can’t overthrow a government if, as regards the

basic economic questions, the government does not exist. Words, and deeds, are vain; they fall in a void.

17. The elimination of this level of political power and action has an additional consequence. The lack of a general political power, and its lack in all the aspects bearing on sovereignty and fundamental principles, means that all the acts of the decision-making bodies and their heads are subject to rules, single or in combination, that define their nature and object, that determine whether, how and when they can be realized. The system proves to be made up of single constrictive circumstances, bearing on conduct from which the movement of individual parts or the whole organism derives.

It follows that as guidelines and the overall movement of the system are removed from the sphere of “political,” i.e. free, decision, the system is self-protecting. The only developments possible derive from the set of predetermined patterns of behavior. The organism has become an automaton. A supercomputer can perform calculations possible in no other way. But in order to do so, it must be designed and programmed for that purpose. The EU+euro area machine has options. But these are options that can only be exercised within spheres, under conditions, on a calendar and by procedures that are directly or indirectly predetermined. If errors were made in designing the machine and the machine does damage, the damage will continue to be produced as long as the machine works. It will keep working, and keep on doing damage, until it implodes.

18. Every effect, once produced, is transformed into the cause of other effects. The effects of Regulation 1466, given their importance and duration, underlie several distinct series of causes which themselves produce effects at every level that are independent but also to some extent cumulative and interwoven.

A first effect flows from the procedures used to get the Regulation adopted, all of which were designed to prevent perception of the vast scope of its innovations. In force as of 1 July 1998 (Article 13), it was to be applied only starting 1 January 1999. The stability programmes had to be presented before 1 March (Article 4). If the intention was to prevent the diffusion of awareness of the Regulation, the mission was accomplished 100 per cent. Even today the existence, the nature and the effects of the Regulation are not generally known to the heads of the offices whose powers in the single member states are affected. One presumes that the ministers at the Council that approved the Commission’s proposal on 18 October 1996 (*Official Journal C/368/96*) and approved the definitive text on 7 July 1997 were not even marginally aware of the scope of their vote in representation of their governments.

Once the economic slump began to take hold after January 1999, no one thought of Regulation 1466, whose rules, and then principles, have remained in effect for fifteen years. As the original cause was unknown, like the additional causes arising year by year consequent to the cumulative effects, there arose additional effects that are now plain to see. Economists around the world, including an array of Nobel laureates, bombard us with advice and recipes. Euro-area and European Union experts do likewise. But not knowing and being unable to locate the cause – a highly singular and unforeseeable cause, to be sure – all they do is set out the results they would like to achieve (the usual laundry list: more jobs, support for firms, demand stimulus, easing the tax burden, relaunching economic growth, and so on). No one explains how to get there, with what means.

But someone must be responsible. It being impossible to get to the true origin of our ills, blame is placed always on the usual suspects: the politicians, waste, health spending, the inefficiency of government, red tape, tax evasion, etc. And since it is the government that should but does not eliminate these ills, ultimately it is always government that is held responsible. The previous governments and then, nor could it be otherwise, the government currently in office. But the government, poor thing, until the country is freed from the cage in which it is locked with the restoration of sovereign political powers, can do nothing whatever.

19. The effects produced by earlier effects turned into causes are countless. First of all, great confusion. Then, the diversity of effects between one country and another. Germany, which had the currency after which the euro was to be patterned, and which was taken as the model for convergence, suffered no new harm from stability. Probably forgone profits did more damage, but this is less easily perceptible. And this is enough for Germany to be deemed responsible for the constrictive measures to which the other countries are subject. The result is envy, resentment, even hatred. On the other side, Germany looks at the weaker countries with a sense of superiority, suspicion, even contempt. The European treaties exalt cohesion. It has not been achieved. And if the current regime persists, it probably never will be.

With calls for action flooding in from all around the world, the European Union's decision-making bodies could hardly remain inert. Growth, as the result of budget balance imposed by universal norms, was the effect of an axiom. This is analogous to the practice of medicine right up to the end of the 18<sup>th</sup> century: lacking the instruments to determine the origin of maladies, in the presence of grave symptoms of unknown cause, doctors ordered purges and blood-letting. If the first application brought no relief, the cure was intensified, and then again and yet again. This is what is happening now in Europe. Since the expected growth has not been realized,

it is deduced that the stability principle has not been applied with the requisite rigor. So in the wake of the first Regulation a second was issued (Regulation 1055/2005), then a third (Regulation 1175/2011), and finally the Fiscal Compact. Ultimately, to be sure that the prescription is followed, it is provided that structural changes can be prescribed and imposed from outside – simply depriving the government of its powers in favor of a sort of special administrator!

20. In the fifteen years since January 1999, a series of new treaties have been ratified and gone into effect: Nice, Amsterdam, Lisbon. The treaties are full of emphatic assertions. A string of new bodies have been created (abundance was fashionable). De facto, the rules continued to be those laid down in Regulation 1466/97 as amended by its successors. Where possible, the Regulation was further strengthened with carefully placed words, but always avoiding excessive visibility. In fifteen years a body of hundreds of acts has been built up, at the level of new rules or implementation, with the participation of a good number of people responsible for European functions both in the Union itself and in the member countries. Many politicians and administrators have advanced their careers. They have been heads of the offices with primary responsibilities and powers at European or domestic level. Their presence in positions connected with the Union or the euro is reassuring, inspiring hope and trust: one more obstacle to understanding how matters actually stand!

One additional effect – last but certainly not least – of this tangle is a “power vacuum”. The vacuum is filled by institutions and administrators at European and national level positioned so as to take advantage. So we have the heads of Community bodies giving unrequested lessons to the governments of member states. The same is done, and at times with still greater authority, by the heads of other member state bodies. In every country administrative entities, especially at the highest levels, expand into contiguous areas, sometimes even to lower levels.

The confusion is great, the noise is deafening. But the political automaton of Europe and the euro continues to produce a steady flow of negative results and, with tranquility and indifference, proceeds undisturbed, inexorably along the course that has been imposed upon it.

21. Let me make one final remark on what happened on 1<sup>st</sup> January 1999. Political theory distinguishes between two types of event: the de facto installation of a new government (i.e. a change in the wielders of the highest public power) and the de facto institution of a new regime.

What we call “democracy” is (and must be) the basic principle of the regime of the member states of the European Union. Democracy was

suppressed in 1999 in the euro area and in the states without a derogation. In these member states, the right and power to help determine growth through economic policy action was cancelled, their citizens denied the power to affect the obligations to which their country, hence they themselves, are subject. In the euro area as such, this power is non-existent because no political body is envisaged with responsibility before all the citizens of the communities that make it up.

What happened can only be termed the “de facto institution of a new regime”, as in France in 1789 or Russia in 1917. But with a difference. The French Revolution, asserting the principles of individual liberty and freedom of enterprise, unleashed enormous latent energies. The collectivist Bolshevik Revolution created constraints even more stringent than the old shackles it was intended to eliminate. The French and Russian revolutions, introducing new regimes, also imposed a new type of political ruler. The revolution of the “false euro,” embodying the principle of stability, has forged a self-referential regime. In the Soviet Union, self-referentiality embraced most of the organization, but not the top leadership. Furthermore, the Soviet regime proclaimed the seizure of power by the proletariat. The stability regime, by contrast, lacks a top political authority and, the objective of growth having been set aside, what rules, as an unfathomable and absolute deity, is an abstract principle which generates an inexorable movement to depression and in the end, perhaps, implosion.

22. Another consideration needs to be pondered carefully. It could tell against the tardy application of the rules on the single currency laid down in the Maastricht Treaty and now in the Lisbon Treaty on the Functioning of the European Union. With hindsight we can now see that the requirement that the new currency resemble the Deutschmark was vitiated by an “error”: it took account of internal but not of external stability. The German national community was tightly cohesive. For nearly a century Germany had had the strongest and most advanced welfare state in the world. Cooperative agreements between businesses and workers were in effect both at the level of central political bodies and in institutional form within enterprises. No account was taken of the external environment, which until that time had been stable. External stability had reigned for half a century and more. It appeared to be natural, and destined to endure. Actually, it was the product of highly particular historical circumstances, the division of the world into two hostile blocs: the free world, with its free market regime, and the collectivist bloc grouping the countries whose organization was to varying degree patterned after the USSR. Within the Soviet bloc, international relations and regulations were themselves rigid to an extent.

It was external stability that guaranteed internal stability, which constituted not only the objective but at the same time the prerequisite for

the success of the German economy and the German currency. But just in the years when the Single European Act and the Treaty on European Union were signed, that external stability began to waver. By 1999 it would be entirely gone. Today, the state of the outside world is the exact contrary of stability.

23. Adam Smith contended that the twofold event consisting in the discovery of the Americas and the opening of the sea route to the Indies was the greatest revolution in the history of the world. And he was right. Yet the revolution now under way, as it has evolved in the last three decades, has broadly surpassed that predecessor in terms of innovation, breadth of results, and the speed with which they have come.

What has happened in the world since around 1982? It all began with information technology. Silicon Valley, where this innovation arose, had used it to develop the “star wars” defense project. The Department of Defense sensed its strategic importance and its potential to restore US technological primacy, which had weakened from the position of absolute dominance in the aftermath of World War II.

The Reagan Administration backed this project, and within the span of a couple of decades nothing would be the same as before. A few of the countless developments will be mentioned below (detailed treatment would take us far off course). But one recent, highly significant manifestation perhaps deserves pride of place. While billions of people live and struggle around our planet, a tiny group of men and women are living together in an orbiting space station. They live there for fixed but increasingly long periods of time. They come from a wide variety of countries. They coexist peacefully and in orderly fashion. Space shuttles regularly bring new astronauts or cosmonauts to take the place of those who have completed their missions. They bring supplies. “Earthlings” have created a minuscule satellite, a tiny planet that orbits the Earth and is in “human” contact with it. This is an utterly extraordinary novelty.

24. The factors of growth, hence of the great revolution now under way, form distinct series. Their effects are consolidated, crossed, integrated, as is always the case when several factors are at work in the same environment. In this case the number of factors is enormous and the environment is the entire globe.

A first causal chain involves changes among individuals and their communities. All people, wherever they are, can now have ready access to all kinds of information – cultural, scientific, technical, political, social, and so on. Everyone can communicate, with a vast range of instruments, all around the world in real time. Every kind of relationship – scientific, work,

or other – can benefit from organizational and productive cooperation between persons in locations far removed from one another. You can travel freely almost everywhere. Goods are shipped around the world in massive volume at great speed. Thanks to these and other transformations, lifestyles and customs have been radically altered everywhere and very largely standardized. This affects consumption, hence production, products, services, and the human footprint on particular territories and on the globe itself.

25. A separate causal chain bears on institutions. A very active part has been played by an institution whose origins date back to the 1960s and which has gained steadily in importance. A protagonist in its own right in the current transformations, this institution goes by the name “international finance”. It is a system that operates outside the control of central banks. The persons that make it up have not all been precisely identified. It includes “funds” instituted by national governments and known as “sovereigns”, but not pursuing specific public aims. It would appear that these institutions and their instruments can be grouped under the umbrella term “derivatives”. International finance is charged with an infinite range of responsibilities. Its specific “purpose” is profit. What it makes is reinvested. International finance includes illegal groups trafficking in drugs, human beings, women and children, organs, and so on, to invest and launder their massive gains. Of late, a new product – electronic money – has gained a certain currency. Its issuers and managers remain unknown.

International finance presumably played a role of some importance – but one that it has successfully concealed – in drafting the new rules for the EU and the euro: in particular as regards the principles of freedom of enterprise, the elimination of governmental powers in the economic sphere, the opening of markets, the reduction of customs tariffs, and more. And international finance was decisive in making available to the markets the massive resources necessary for an enormous volume of investment.

At institutional level, one of the greatest – and unforeseen – novelties was the opening to the market of some Chinese coastal regions in 1978, soon to be followed by others. This was the decision of Deng Xiaoping, the leader who managed, after Mao, to get all power into his own hands. Signs of this reawakening had gone before. Beginning in the early 1980s, as decades earlier Mao’s “Long March” to power had taken place, China began a “great march” to economic development and growth. Now with a population of 1.3 billion, China has achieved economic growth rates of 9 per cent and more, shooting up the international rankings from number 98 (mid-level development) in 1997 (*Human Development Report*, 1999) to become the world’s second largest economy today.

In 1990 the two Germanies were united. In 1991 the Soviet Union imploded. In 1986 the Single European Act was signed, to be followed in 1992 by the Treaty on European Union. A relatively neglected clause, but one whose influence on the global transformation would be substantial if not decisive, was Article 110, which reads that “the Union shall contribute to the harmonious development of world trade, the progressive abolition of restrictions on international trade and the lowering of customs barriers.”

The European Union’s message was received. In the 1994 Uruguay Round, the complex negotiations for uniform customs duties on most goods traded internationally were concluded. On 1<sup>st</sup> January 1995 the World Trade Organization came into being.

26. We have already mentioned the availability of sufficient liquidity for any volume of investment and the general lowering of customs barriers. Another factor was the transformation of the former Soviet republics into independent states. These new countries had a considerable quantity of residual nuclear fuel, as well as reserves of oil and other raw materials. Meanwhile former colonies in Asia and much of Africa had gained their own independence. It was soon realized that these countries possessed enormous wealth, not only oil but also “rare” materials, whose exploitation and consequent high prices were the fruit of amazing scientific innovations. The new states also had extensive territory, suitable for the production of agricultural commodities of interest to other countries, above all China.

In addition these newly independent countries, and also China and India, had apparently inexhaustible reserves of extremely cheap manpower. Another factor, and no secondary one, in the process was the emergence of the rich Gulf states where the world’s oil greatest oil reserves were found. In the past they had made little local use of these resources, both for cultural reasons and for lack of labor. In the new global atmosphere, they drastically changed their approach and engaged in gigantic urban projects that changed their culture and lifestyles. They were able to draw on the enormous reserves of cheap labor around the globe, above all South and East Asia.

27. As we have reiterated, every effect produced by antecedent causes becomes the immediate and necessary cause of further effects. The brief foregoing remarks on the broad outlines of the “great revolution” of which the world is simultaneously the architect and the user, comprise three distinct series of effects. The first is the radical transformation of economic geography. *The Economist’s* “World in Figures” (2013, p. 30) lists the 54 fastest-growing economies in the decade 2000-2010. These are countries – beginning with No. 1 (Equatorial Guinea, with an average annual growth rate of 17.0%) – whose very names may be unfamiliar to some. The next

nine countries have average rates of 9%, the first six topping 10% and the others ranging from 8% to 9%. The list includes China (sixth) and India (twentieth). The only European country on the list is Albania (5.5%), one of the continent's handful of non-EU members. The Americas contribute three fast-growth economies (Panama, Peru and the Dominican Republic). All the others are in Africa or Asia.

Turning to the second series of indirect effects, we see that the new technologies have been exploited also by terrorist groups (the attacks on the World Trade Center and the Pentagon on 11 September 2001) and mass movements featuring not only religious but other ideologies, with actions that have revolutionized entire regions (the "Arab spring") and that, at global level, may taken on terrorist characteristics.

The third series of side effects comprises the modification of the political geography of the world, like that of its economic geography. With the implosion of the USSR, the United States – which had already regained world primacy in innovation and military power in the 1980s – "proclaimed" itself to be the world's sole superpower. And in that period it truly was. The US abused this power. Forgetting the lesson of Vietnam, it became embroiled in conflicts in Asia. American prestige was compromised. Nor was that the most important problem. For decades now the United States has run a balance-of-trade deficit, balancing the current account by selling dollars, which have been purchased and held as reserves all over the world. The dollar is the currency that central banks have long preferred in building up their reserves. Since the end of World War II the main holders of dollar reserves had been three solid US allies, Germany, Japan and Italy. For a few years now, however, the leading creditor has been China, America's main competitor. In 2011, China's reserves amount to \$2,087,326 million dollars (*Economic Report of the President*, 2013, p. 451).

The two countries, debtor and creditor, are bound together. The creditor has an interest in not devaluing its claim. The debtor wants to make sure nothing happens to induce the creditor to sell. Now add the fact that the same ideological and other pressures that drove Europe to tie itself to the principle of budget stability have led the United States, whose debt/GDP ratio, probably for reasons of defense spending, has risen to 107.7% (*Economic Report of the President*, 2013, p. 418), to set its own debt ceiling. For different reasons, the United States finds itself in difficulties analogous to those of the euro area. The United States and China are flanked by other countries of respectable size and economic power, some allied with the one, some with the other.

This world geography, given present circumstances, can hardly be considered reassuring.

28. Now let us put all the factors together, side by side. Abundant liquidity, masses of cheap labor, the race to control raw materials, some “rare”, and farmland. Demand, goods and liquidity, and the related interests, shift rapidly from place to place, sector to sector. Variations in exchange rates among the main currencies are reflected in commercial and productive sectors that are neither adjacent nor related. No one can know the moves of all the others. The role that Europe is now playing in the world, as others have observed, is far removed from its tradition. Europe is the leading buyer of American goods and services. It is the market where US multinationals make their greatest profits. It is the principal foreign investor in the US (*Economic Report of the President*, 2012, p. 131 ff., and 2013, p. 46). If the European economy is sluggish or, worse, in a permanent slump, then both the American and the Chinese economies will slow down. And the contagion will spread to other countries. For centuries if not millennia the exporter of civilization, Europe is now appreciated as the prime importer of other countries’ goods and services.

To buy, you must produce. Europe’s capacity to do so is unquestionable. Simply as an example, Europe is the world’s leading exporter of manufactures. A detail makes these reflections still more interesting. Germany, France and Italy, though beginning at different times and from different initial conditions, are three countries that realized the welfare state model extensively and also those that achieved the highest growth rates from 1950 to 1991. The welfare state formula, unwittingly, has overturned Marx’s prophecy of the proletarianization of the bourgeoisie; instead it is the proletariat that has turned bourgeois. In a well developed welfare state the borderline between the two groups becomes blurred. Economic welfare and the related lifestyles that the proletariat aspired to, those of the middle and lower-middle classes, have now largely been attained.

It can be taken for granted that on 1 November 1993, when the Maastricht Treaty went into force, the three main continental countries were still under the effect of the glorious advance of the previous four decades. At that time some 70 per cent of the population of France, Germany and Italy had a standard of living on a par with the middle and lower-middle class. This corresponded to some 130 or 140 million household spending units. Middle-class spending units and the like are the natural market for durable goods for individual and household use and for mass consumer products, especially foods and minor manufactures, plus day-to-day services.

Turning to the import statistics, we find that the sectors in which European imports from the US and China fell most sharply between 2009 and 2011 were farm products and manufactures, with declines of 21 per cent in imports from the US and 30 or 31 per cent in those from China. For the

United States, one must also consider the decrease in the profits of American multinationals in the European mass consumer market. Other sectors too have felt the impact of the decline. The impoverishment of European beneficiaries of the welfare state has repercussions on the US and Chinese economy. Who would have imagined it?

29. Let us pursue another, totally different reflection. The role assigned to Europe in the global concert, namely that of prime purchaser, is distressing. But in the present situation it may also have a positive side. International finance, fearing a general slowdown in world trade, may have an interest in not weakening Europe any further, given the relative importance of European demand for both the United States and China. This might be the reason for the easing of the financial markets' pressure on the EU government securities, including at long term, at a time when these countries' economic performance would warrant the contrary. This is pure hypothesis. But it refers to a sector whose very nature precludes the possibility of obtaining reliable data. So it is a hypothesis that could well prove, in the end, to be correct.

30. A single objective may attract interests larger than it can accommodate. The creation and bursting of speculative bubbles cannot be ruled out. The world has developed conditions, indeed a general climate, that could be compared, on a larger scale, to the saga of the American West. But then there was a US federal government. Undesirables could be kept out. Now there are uncontrolled forces capable of suddenly roiling the waters. And there is no central government.

The two-power system of US and China, with the convergence of Brazil, Russia, India and others, does not appear to have the strength to impose a return to order in the event of unexpected rupture. A link is missing.

### What to do?

31. It is hard to say. There is one obstacle that can be considered decisive. Other, related obstacles are added.

The decisive obstacle is the direct consequence of the lack of a political authority at the highest level. The EU and the euro area constitute a complex political "automaton". The administrators, at all levels including the highest, must observe and enforce the rules. This is what the top officials

should have done between 1996 and 1999. They did not. Unfortunately, they are doing it now. They are obliged to.

To escape from automaton status a new coup d'état would be required to create a new (democratic) regime or at least to belatedly restore the one abrogated in 1999. This appears unlikely.

32. One obstacle, already mentioned, could be the involvement of the current holders of high office in the Union and in the member states in the passage of the acts by which the 1999 coup was carried out (but given the time that has elapsed since, this should mean a fairly limited group of persons), or in the adoption and issue of implementing rules or acts deriving from Regulation 1466/97 and its successors, or who applied it, when it was their institutional duty to prevent its adoption or to undo its effects. And this is probably a large group.

The question needs to be examined not only for the European Union as such but also, perhaps primarily, for the single member states without a derogation. Yet past involvement in the approval or execution of illegal acts on the part of those holding high public office in the member states could be transformed from obstacle to favorable factor. Many people, especially in recent years, have been influenced by precedent, believing in good faith that they are obliged to follow it. Discovering the “truth” and stimulated by the present positions of authority, they themselves may step forward as the leading actors of an innovative restoration.

33. The stricken state of the economy has affected the governing class and common conduct. Today's governing class feels the lack of political prospects, given the “automaton” status of political action. Will anyone be prepared to raise the flag of “revolution,” i.e. to do what has to be done to open to doors to the future (rebirth)? Yes, it is possible. In 1945 Britain, America and the Soviet Union continued to be governed by the architects of victory. Germany, Italy and also to some extent France had a new governing class. Some of these men were unknown, initially. They would discharge their collective responsibility with success and prestige. It is great historical emergencies that create great leaders, not great men who forge events. When the prospects are there, an experienced politician, a young but already successful leader, or even a totally new figure can play the role of protagonist.

34. Can the system be liberated from its automaton status, legally?

The nature of *automaton* is bound up with the peculiarities of the particular system. To disentangle the components, we must first identify the prime principal in effect before the system was turned into an automaton and compare it with that in place afterward. The prime principal is to be deduced from the rules in effect. What is the “legal” order now in force? It is the Lisbon Treaty on the Functioning of the European Union, signed on 13 December 2007 and in effect as of 1 December 2009. This is the supreme, highest source of law. It abrogates all earlier legislation not compatible with it, of equal or lower rank. With immediate effect it precludes the observance of lower-ranking subsequent acts, if incompatible. It prevails over all subsequent acts. Articles 120, 121 and 126 of the Lisbon Treaty literally transcribe Articles 102A, 103 and 104C of the Maastricht Treaty.

It is not enough, however, to have precisely defined existing law. It is further necessary that there be formed a solid, widespread general conviction on this point. It follows, to begin with, that no public legal agent at whatever level must let himself be unduly influenced by false idols or undue respect. Impositions, suggestions, even simple expressions of opinion that derive from legal principles or the application of norms and acts not traceable to the Lisbon Treaty must be firmly rejected. One must be implacable in demanding that any and every act or expression of opinion on the part of functionaries of the Union or of single member states who undertake initiatives or make statements concerning member states other than their own specify in formal and precise fashion the Treaty clause upon which they consider their action to be based. If this indication is not correct, they must be firmly asked to recognize the error, and the possibility of establishing legal liability must be left open.

After fifteen years of widespread, dominant illegality, the first and absolutely necessary step must be to bring all public actions back into the sphere of observance of legality.

### How to do it?

35. Restoring democracy and propagating belief in the necessity of returning to legality are necessary steps. But time is of the essence. Decisions are needed, but if they are tardy they may no longer be sufficient, possibly not even suitable.

All the member states, including those with a derogation, may be interested in the question. The seventeen countries without a derogation are implicated most directly. They could decide to put their sovereignty in common by creating a new political entity for the management of a new, specially created common currency. No provision of the Treaty on the

Functioning of the European Union prohibits this. The member states retain full sovereignty. They can make full and free use of it, providing only that they not violate European law. The common currency created by these states would be legal tender within the Union, like the national currencies of individual member states, such as sterling or the Swedish krona. The original Treaty on European Union and its successors make no distinction between the currencies of the member states without a derogation on the basis of the size or characteristics of their economies.

There are two problems, however. The first is urgency. If agreement is not reached quickly, it could easily come too late. The list of countries that are getting alarmingly near the breaking point is lengthening. An implosion, of one or of more countries, would exacerbate the divisions.

The second problem is the failure to achieve “cohesion”. Germany, the member state with the largest population and the strongest economy, did not have to undergo any significant changes to its makeup. It was one of the three economies forming the model on which the others were to converge. It has suffered considerable harm in the form of forgone profit. The other countries, whose forgone profit has generally been minimal, have undergone significant new, emerging damage.

To some extent the difference in outcomes has damaged relations. The optimal solution will be reached. But it will take time.

36. This result, while theoretically attainable by the seventeen euro-area countries, could be reached faster and more easily, in practice, by a smaller group. There would still be difficulties, but of a different sort. The individual euro-area countries, if they decided to act on their own, would be vulnerable to the pressures of the markets and also that of non-EU countries aspiring to gain economic or political control over them. The minimum, presupposing the formation of a common political authority, would be an economy large enough to respond adequately to outside pressures. Theoretically, one might suggest an aggregate GDP that would rank sixth or seventh in the world.

There are three countries without a derogation for which the distance from the point of no return has shortened alarmingly. Obviously, no names will be named here. But we can talk about Italy. For the country to reach the point of no return, a considerable distance still has to be traveled, or at least so one hopes. Together with another three hypothetical euro-area economies, we would have an entity ranking tenth in the world in population and probably fourth in GDP. Including France, it would be fifth or sixth in population and second only to the US in GDP.

### 37. Why Italy and why France?

Italy has been a beacon of civilization for millennia. First, all of Rome united all of Europe, for centuries, under its empire. Then, in the course of the later Middle Ages, though divided and partially subject to foreign powers, Italy gained a position of cultural pre-eminence first with Humanism and then with the Renaissance, accompanied by an exceptional economic flowering and also, in some of Italy's states, military and political power as well. Save for marginal episodes in a period of authoritarianism, Italy never sought to prevail over neighboring countries by force of arms.

France has been the European country best known throughout the world for a thousand years and more now. King Louis IX was already known in Mongolia when the Dutch Franciscan William of Rubruck asked permission to present himself to Möngke Khan, heir to Genghis Khan, in the King's name. He visited the Khan in Karakorum in 1253, decades before Marco Polo's first voyage. Was it pure chance that the court jeweler was French? Or that the jeweler's son served as interpreter in a debate between Rubruck, the local Muslim leader, and the representative of indigenous religions?

France was among the first countries to get word of the perilous approach of Tamerlane, who was at first a de facto ally, for having defeated and taken prisoner the feared enemy of the Crusaders, the Ottoman ruler Beyazit, but nevertheless remained a potential threat. Tamerlane sent an ambassador to the King of France: he too had sensed the need to know more about the strength of his probable next adversary before adventuring towards Europe. In the end he chose to move against China, but died before getting there.

Peter the Great of Russia visited France in person to study its administrative organization. This was the origin of the czarist bureaucracy, which centuries later would produce collectivism. Marie Thérèse of Austria, in her turn, sought to learn from the great institutions of France: the Academy, theaters, museums, and administration. This would be the pattern for the Habsburg administration, renowned for its efficiency even in the non-Germanic parts of the empire.

Until Napoleon Bonaparte, France had never used military force to occupy neighboring states. An exception was the Angevin reign in southern Italy. But other powers too had invaded and taken over parts of Italy: Frederick Barbarossa, Spain with its centuries-long domination of the South, and the Habsburgs in the North. Napoleon's pan-European dream failed. But he left his indelible mark in the introduction of the system of civil law, the Civil Code adopted by most of Europe, whose rules governing relations between private parties replaced those of the "common law," heir to the

Justinian Code, itself the descendant of Roman law, which ruled all of Europe for centuries.

In the course of its history France was governed for considerable periods by foreigners: the Italian cardinal Mazarin and two important queens Catherine and Marie de Medici. Three of France's historical personages, who ruled at length, de facto, as potent prime ministers, were also honored with the cardinal's cap, a privilege that no other European state could boast: Mazarin and Richelieu, of course, but also a third, De Fleury, first preceptor and later, as a practical matter, prime minister to Louis XV, who may have been no less important than Richelieu or Mazarin for the long period of peace that he managed to secure for the country.

Defeated in the Franco-Prussian war in 1870, France demonstrated its civic, cultural and political primacy in the Universal Exposition that came shortly thereafter. Until it was supplanted by New York after World War II, Paris was the world's great city *par excellence*. These may be small things, but they demonstrate well enough France's capability to represent Europe. To say nothing of the contributions of Schumann, Monnet, Barre and Delors to the European construction.

38. Step by step, we near the objective. If a select group of countries succeeded in creating a single political power to manage the single currency, this would be trail-blazing. Others would soon join, and eventually all. The initial aggregation of a small group would facilitate experimentation with organizational forms, leading to the definitive choices.

The next step requires overcoming further difficulties. Earlier, we posed the question whether under the Maastricht and now the Lisbon Treaty a member without a derogation, which passed the original admission test for the euro, if it finds it in current circumstances to be in its interest to do so, may ask on an individual basis to be shifted from the "no derogation" to the "derogation" rules. The answer is "yes". Admission to the euro depends on a voluntary decision. The country acquires a right that it can waive. No term is specified for the status of country with a derogation, which is open not only to countries that do not satisfy the eligibility requirements but also to those that meet the requirements but do not want membership. It is hard to see how the with-derogation regime could be denied to countries that participated enthusiastically in the single currency but then realized that they had not reaped the benefits the Union had promised, i.e. growth as specified in Article 2 of the Treaty.

Shifting to the with-derogation regime requires solving problems of application, above all setting the exchange rate between the new common currency and the euro. These are familiar problems; they arise whenever a new state is admitted to the European Union. And the process of

determining the exchange rate for a currency common to several euro-exempt states would also provide the proper forum for friendly resolution of the question of compensation to each exempt state for the damage done by the illegal imposition of rules on the euro that violate those agreed to with the stipulation of the Treaty on European Union.

There is another, harder problem as well. “Democracy” requires equality between all those who share in influencing the exercise of political power, which is responsible for the common currency and the common economy. At election time, with equal voting rights, all citizens participate in a single entity, the same for everyone. In that moment, as regards the policy orientation that will emerge and to which they will be subject, all implicitly and necessarily will have left their old political entity to enter the common one, which is by definition everyone’s. With the vote, which fully corresponds to the democratic principle, the citizen is no longer part of his original nation. Instead, all citizens take part in the consolidation of the new, European nation. Some national identities in Europe are relatively recent. They are the fruit of struggle and sacrifice. Discarding them is no easy matter, even for the sake of a historic advance. Other identities within Europe, they too the fruit of struggle and sacrifice, are more apparent than real. The example of the Roman Empire is emblematic. Some of the greatest emperors were not Roman, not even Italian. The new identity, at a higher level, does not erase the old one; it supplements it.

#### By way of conclusion

39. By way of this series of steps we have now come to the conclusions. For clarity, let us recapitulate.

The European system is based on a set of precisely defined pillars:

- a) Member states retain their identity and their sovereignty.
- b) The Union has no political authority at the highest level.
- c) A huge single market was formed, based on the principles of free enterprise, free movement of all components, opening to world trade and to all sources of stimulation.
- d) The Union’s principal objective is harmonious and balanced development of economic activities, sustainable and non-inflationary growth respecting the environment and a series of other criteria specified in Article 2 of the Treaty on European Union.
- e) A new currency would be created (it would be the “euro”) to produce results equivalent to those of the German mark. Unlike the mark, the new currency would not be managed by a political government flanked

by an authoritative central bank. An appropriate legal system to guarantee the new currency's equivalence to the mark would have to be "invented". The system was that resulting from the combination of Articles 102A, 103 and 104C of the Treaty on European Union.

f) The EU member states were not obliged to adopt the new currency. They would be divided into two groups, those governed by the euro rules and those retaining their old currencies. The latter were defined as "states with a derogation". The Treaty articles not applying to them were specified. The states without a derogation were those that would institute the euro as their currency. All the general rules of the Treaty would apply to them.

g) Adoption of the euro was voluntary. The euro would be the "common" currency of the states accepting it. To be admitted, member states would have to undergo a process of "convergence" and a final examination to verify and ratify the achievement of sufficient convergence.

h) The states adopting the euro have the right to request and to be granted coverage by the with-derogation regime, especially where the request is motivated by serious dissatisfaction with the way in which the Union and the euro area have been managed and the resulting damage.

i) The examination for admission to the euro was carried out on 3 May 1998. Eleven countries qualified and a twelfth, given with-derogation status, would be admitted the next year. The European Union now numbers 28 members, 17 in the euro area and 11 with derogation.

#### More by way of conclusion

#### A) OBSERVATIONS ON THE FORMAL PLANE:

a<sup>1</sup>) The launch of the common currency of the eleven countries that qualified was scheduled for 1<sup>st</sup> January 1999. That was the date on which the full regime, that enshrined in Articles 102A, 103 and 104C of the Treaty on European Union, would apply.

a<sup>2</sup>) On that date, the launch of the euro, the currency governed by the Treaty, did not happen. The currency regulated by the Treaty on European Union, for which the German government had fought so vigorously and whose adoption it had made a condition for its own adherence, was never born.

a<sup>3</sup>) Instead, under the name "euro", generating the fallacious impression that this was the currency created and regulated by the Treaty on European Union, a currency subject to different rules was created and introduced to the market as legal tender in the states without a derogation.

a<sup>4</sup>) The regime of the currency introduced on 1<sup>st</sup> January 1999 is set out in an EU regulation (Regulation 1466/97), adopted by the procedure governed by Articles 103(5) and 189C of the Treaty on European Union. The procedure used provided for no authority whatever to modify the Treaty, and the object was totally different. Regulation 1466, in the very moment in which it availed itself of Article 103, violated it, by using it for improper object and purpose.

a<sup>5</sup>) The discipline laid down in Regulation 1466 is not just but diametrically opposed to those of Treaty Articles 102A, 103 and 104C . It replaces an “objective” – growth with the characteristics and for the purposes specified in Article 2 – with an “outcome”, namely budgetary balance to be attained in the medium term by a specified route.

a<sup>6</sup>) The modification that the Regulation introduced with respect to the Maastricht Treaty consisted, on the formal plane, in abrogating the right-cum-power of each member state to contribute to growth of the Union by its own autonomous “economic policies”. In its place, the Regulation puts an obligation/obligation on the member state to achieve budgetary balance in the medium term and through a predetermined program. The drafters of these rules failed to realize the consequences that would follow from founding the system upon an obligation instead of a power.

a<sup>7</sup>) By abrogating the objective of growth, Regulation 1466 actually eliminated all political action from the system.

a<sup>8</sup>) The European Union has no top-level political authority, much less a political summit with general powers. As regards the member states, their power to contribute to growth with distinct economic policies has been abrogated, no political power has been attributed to them, least of all in the priority sphere of the economy and the currency.

a<sup>9</sup>) We can detail some of the main consequences of having altered the basis of one of the key pillars of the system, namely the economy and the currency, switching from a “political power” to an “obligation/obligation”.

a<sup>9.1</sup>) The Treaty announced (more properly, we should say “guaranteed”) to the member states economic growth in keeping with the dictates of Article 2 of the Treaty. The function of generating growth, in their own national interest and that of the Union, was assigned to the member states. They were to achieve this by their own, distinct economic policies, which the EU would simply coordinate with overall guidelines (Articles 102A and 103). The only instrument that the member states could use to generate growth would be borrowing within the limits established by Article 104C in its final version, corresponding to the modifications, cited repeatedly above, in paragraph 2(a) and 2(b) of the article.

Regulation 1466/97 abrogated Articles 102A, 103 and 104C of the Treaty on European Union by regulating the entire matter differently or, de

facto, replacing them. In this way it abrogated the Treaty rules designed to produce growth and envisaged no other “power” to do so.

a<sup>9.2</sup>) With the elimination of the ability of the members without a derogation to effect autonomous economic policy choices for growth, their citizens are deprived of all ability to influence the economic policy decisions to whose effects they are subject. The cardinal principle of the European Union is democracy. No state can qualify for membership if its order is not democratic. With the presupposition of a complete system of individual rights and freedoms and adequate social protection, democracy consists in the power of the citizens to affect, by their votes, directly or indirectly, the government decisions that they will be subject to. In present circumstances, priority value must be attributed to economic and currency affairs. Regulation 1466 has abrogated the democratic regime in the entire sphere of economic policy and currency management.

a<sup>9.3</sup>) The Treaties of Amsterdam (Articles 98, 99 and 104) and Lisbon (Articles 120, 121 and 126) literally reproduce Articles 102A, 103 and 104C of the Treaty on European Union. They too have remained unapplied. In their place, the Union has applied Regulation 1055/2005, Regulation 1175/2011, and now, finally, the Fiscal Compact, all patterned after Regulation 1466 but also exacerbating its rigidities.

a<sup>9.4</sup>) The Union is liable to its member states for the damage done by the application of Regulation 1466/97 or any act implementing it. The heads of EU bodies and the functionaries who took part in adopting and/or applying them or who, having the duty to do so, failed to prevent their application, are liable to the union. This liability can be enforced directly by member states and by their citizens, singly or in groups.

a<sup>9.5</sup>) What applies, under point a<sup>9.4</sup>) above, to EU bodies and their heads and employees, also applies, independently, to the heads of constitutional and administrative bodies of single member states who took part in the adoption of Regulation 1466/97 or the successor acts that also caused the abrogation or disapplication of the member state powers referred to in Articles 102A, 103 and 104C and others of the Treaty on European Union and the corresponding articles of subsequent treaties, or who participated in the adoption of acts constituting the execution and application of the Regulation and its related acts.

a<sup>9.6</sup>) The constitutional or ordinary courts of each country will enforce the foregoing liabilities within their jurisdictions.

a<sup>9.7</sup>) Insofar as Regulation 1466/97 modified/violated the Treaty on European Union without the power to do so (the procedure laid down in Article 103(5) and Article 189C of that Treaty) – and the same goes for the clauses of the Amsterdam and Lisbon treaties corresponding to those articles – it is to be considered vitiated not by illegitimacy but by radical and

absolute legal nullity/inexistence. This conclusion extends also to the acts that apply or derive from the Regulation. All the heads of bodies of the EU or the member states who participated in the adoption and/or application of the Regulation and/or its implementing acts are to be considered liable for the damage caused by this nullity.

a<sup>9.8</sup>) In short, whether one follows the argument of the violation of democratic principles or bases one's case on the absolute lack of power to modify the Treaty on European Union and its successors without recourse to amendment by a new treaty, one reaches the same, identical conclusion.

## B) OBSERVATIONS ON THE ECONOMIC PLANE

b<sup>1</sup>) Regulation 1466/97 has not produced economic growth. Objective statistics (*Pocket World in Figures*, 2013, p. 30, published by *The Economist*) show that the three largest continental economies, Italy, Germany and France, ranked among the worst-performing economies – respectively third, tenth and fourteenth from the bottom – during the decade 2000-2010; no fewer than twelve European Union countries figure among the worst thirty-five. The same ranking for the previous decade had not a single European country among the worst performers. One infers that there has to be a “single” original cause for the slump common to the entire euro area, that it must be internal to the area, and that it must have emerged around the year 2000. The only factor that corresponds to these conditions is the introduction of the euro under Regulation 1466.

b<sup>2</sup>) It was easy to foresee that the principle of medium-term budget balance would result in depression, for three separate reasons.

b<sup>3</sup>) First, the Regulation eliminated the power to go into debt (to borrow), which the Treaty on European Union had maintained, albeit subject to a ceiling, as the sole, indispensable instrument to achieve growth. Abrogating it, the Regulation failed to put any other instrument or means of equivalent nature and equal effect in its place.

b<sup>4</sup>) Second, there is no empirical experience to support the prediction of growth upon which the Regulation is based. There are economies that have gotten good results under policy guidelines based on stability, but all these precedents involve currencies whose management was entrusted to a political power, flanked by a central bank (like the Deutschemark). The “euro” would be the first (and certainly the only) experience of a currency whose management was governed by rigid rules, unalterable regardless of changes in the internal or external environment.

b<sup>5</sup>) And finally, proper assessment of the results of the six-year period of convergence 1992 through 1997 would have sufficed. The precepts applied then, constrictive but less rigid than those of Regulation 1466/97, caused a lowering of the growth rates of the single member countries that was readily appreciable by comparison with the period immediately preceding the Treaty.

### C) FURTHER CONSEQUENCES – DAMAGES

40. The system ruled by Regulations 1466/97, 1055/2005 and 1175/2011 eliminated the economic policy powers of the individual member states and did not provide for any other political (hence, freely decided) contribution on their part to economic growth and monetary management. The system was transformed into a perfect *automaton*. The legal provisions that directly or indirectly governed the conduct of the policy bodies of the Union and the member states were totally prescriptive in nature. Powers and/or rights were all framed as cases consisting in obligation/power or obligation/right. The legal source behind every conduct is always a “prescription”. If an error in planning is committed, the decision-making bodies of the Union and the member states do not have the power or the authority to remedy it. They cannot even refrain from the prescribed conduct when its effects are clearly harmful. Indeed, it is their duty to put such conduct into practice. The system protects its own identity.

41. The damage provoked directly year after year by Regulation 1466/97 and its successors (Regulations 1055/2005 and 1175/2011) and finally by the so-called Fiscal Compact has itself caused additional, cumulative damage due both to the combination of each successive year’s damage with that of previous years and to the possible concatenation of causes at every level. Now, at the end of 2013, the situation is totally different from what it was in 1999. Restoration of the original situation is out of the question.

42. The effects that flow from the accumulation and/or concatenation of causes include, notably, the production and diffusion within each state of ruins, consisting in productive factors destroyed or rendered totally or partly unserviceable. These “ruins” take the form of the jobless young, the long-term unemployed, laid-off workers, firms going out of business, the destruction and dilapidation of material structures such as schools, museums, libraries, hospitals, research institutes, the dilapidation of the historical and artistic heritage, the dysfunctions of technical public services and the public administration in general. And the list could continue.

43. The effects on individuals or single institutions are compounded by the collective effects.

a) Confusion of ideas, a radicalization of differences, lack of mutual trust, intolerance, outright hatred.

b) The lack of consensus on the existence and identity of a single, common original cause creates room for hope, followed by painful disillusion, hence also depression.

c) The worst damage of all is the power vacuum. It becomes ever harder to imagine how this can be filled. Many expand illicitly within it.

d) Given the automaton-like and self-protective nature of the system, to overthrow it or simply to change or adapt it would require another coup d'état – something to be avoided. Creating a new regime, as we shall see, is a delicate and complex operation. It cannot be left to chance. This would only compound the harm. It could bring into being conditions that are no longer reversible.

e) The recurrent ideas of fiscal federalism, banking federalism and eurobonds are deceptive. If implemented in the absence of an equal, hence democratic power, these projects would simply mean the acquisition of greater power for some of the major countries at the expense of the minor. In the present state of confusion and broad disillusion, this sort of result, obtained in indirect fashion, could only do still more harm.

f) In keeping with the findings of our investigation, analysis is necessarily oriented to the search for a political way out that can lead quickly to acceptable solutions. Speed is of the essence, because things could precipitate. Where total public debt in a country exceeds a given limit, implosion could ensue.

g) The debt limit mentioned just now has nothing to do with GDP ratio or the balanced-budget principle. It is related to the annual cost of the total debt and its relationship with the predictable rate of GDP growth over the years immediately following. The limit would be reached when the effective total cost of the debt during the year, net of any primary budget surplus, corresponded to a growth rate that is utterly improbable or impossible in the absence of new and unforeseen factors. If any such phenomenon were not nipped in the bud, blocked at the outbreak of the very first symptoms, the distance to the breaking point would be reduced year by year, at an increasing pace, to the point of implosion. We cannot preclude the possibility that such a danger is already present in one or more member states.

h) The crucial question, inevitably, is whether or not there exists a point of no return. Hopefully, the issue will be the subject of far-ranging and

profound reflection. If the hypothesis were to be confirmed, the consequences would be fundamental.

i) The inapplicability of the balanced-budget rule – whether one derives this from the abrogation of the “democratic regime” or from the total lack of power consequent to the legal inexistence of Regulations 1466/97, 1055/2005 and 1175/2011 – leads to one and only one conclusion: that the norms now in force are those of the Lisbon Treaty, in effect from 1 December 2009, in that these are in conformity with the original Treaty on European Union.

The member states are therefore empowered to run yearly deficits of up to 3% of GDP and accumulate total public debt of up to 60%, and more where the extra debt is due to exceptional and temporary circumstances.

If for a member state, lacking resources as a consequence of protracted subjection to the balanced-budget principle, it is impossible to stimulate economic growth without contracting a sufficient amount of debt, then the violation of the 3% limit should be ascribed to an exceptional cause, namely the obligation to balance the budget, which is also a temporary cause in that it will vanish as soon as the depressive effects first weaken and then cease.

j) Here, however, the looming problem of the feared breaking point comes into play. In this case borrowing would be advisable only if the investment resulting from the additional debt can produce GDP growth such as to result in a gradual reduction of the cost of the debt.

If the preconditions were lacking, or if the forecasts proved mistaken, then the utilization of the borrowing capacity guaranteed by the application of Article 104C, read in conformity with the binding contents of that article, could turn out to be a tragic irony.

#### D) THE AUTOMATON – AND THE CHINK IN ITS ARMOR

44. We have pointed out that the system created by the imposition of budgetary balance is an automaton and that it is self-protecting. But in the old Italian proverb, “the devil makes the pots but not the lids”, and we believe we have found the chink in its armor, the tool for legitimately forcing the cage open. After the possibility of “opting out” invented to keep the United Kingdom as a member, the negotiations on the text of the Treaty on European Union went on the divide the member states into two groups, of equal dignity: those without a derogation (those of the euro) and those with a derogation (those that still had their own currency). We have raised the question of whether a state without a derogation can transfer to the with-

derogation group and answered it affirmatively. This implies one immediate consequence: namely that one “political” power for member states does exist, not perhaps policy power directed to growth as such but the power to recover that power. The individuals who make up the national communities can (must) put pressure on their governments, according to the specific constitutional order deriving directly or indirectly from their votes, to demand that the country be assigned the status of member state with a derogation. This is the indispensable step towards regaining “democratic” power and exercising it.

## E) AND THE RETRIEVAL OF POLITICS

45. We have found the tool. Can we use it? Powers can be fruitfully exercised only if objective conditions, domestic and external, allow it. For our purposes here, this condition for an economy, in terms of size, is represented by its ability to respond adequately to external impulses and pressures and its inverse capability to exert pressure to adapt the external environment to its own necessities. These conditions are unlikely to be realized if the state is small, if its economy is poor or, worse, exhausted. It would be overwhelmed by the volatile, potent impulses from the outside environment. Another state could gain economic and even political control over its weaker counterpart.

46. What one country by itself is unable to do could be within the grasp of a number of states that decided to act as a group. Several states in concert could request transfer to the with-derogation regime. They could agree to create a common currency and also a common political power to manage it. This new currency would circulate within the single market in the same fashion as those of the present states with a derogation.

What is the minimum adequate size of these combined economies to be able to safely confront the other currencies within the European Union and above all the massive movements of the world market? The decisions to be taken are political. No one can take over the powers of decision of the national communities and the governments of the single member states. But some statistical data may be helpful. We set out two hypotheses, not purely abstract ones.

47. The aggregation of four Mediterranean states including Italy would produce a population of 127 million and GDP of \$3,998 billion. This entity would be tenth in the world in population and fourth in GDP, behind the United States, China and Japan.

48. Adding France would bring the total population to 189 million and GDP to \$6,558 billion. This would be sixth in population and second in GDP, behind the United States but ahead of China, Japan and Germany.

These results, especially the latter, are enticing indeed.

49. If all the euro-area countries together were to request with-derogation status, we would have a population of 328 million and GDP of \$12,076 billion: third in population and again second, but just behind the US, in GDP.

#### F) EUROPE AND THE WORLD

50. Now one final, general consideration, in connection with the position set out at the beginning, bearing on Europe and the world. An error, perhaps not exactly pardonable, was made in 1991. It was repeated, in aggravated form, in 1999. A third repetition would be truly unforgiveable. It could jeopardize Europe's future for what could prove to be an extremely long time to come.

In 1991 the formation of the extensive economic area of Europe thanks to the Single European Act was at an advanced state of realization. The Treaty on European Union, enshrining the principle of opening of external frontiers and the universal reduction of customs duties, lent impetus to the unchaining of forces operating at world level whose pressure was already perceptible.

The conclusion of the Uruguay Round and the institution of the WTO, events in which the EU played a leading role, completed the work of unleashing the engine of world economic activity in the decades to follow. Unaware of the changes that it was helping to bring about, the EU, with the Treaty, began to move in what was actually the opposite direction. It set the objective of creating a currency to be managed not by a political authority, as in all the countries of the world, but instead governed by a set of abstract, immutable, rigid rules.

In 1999 a thorough examination of the statistics available would have been enough to grasp the new reality. The volume of the worldwide flows of trade and finance was at a peak, larger, faster and more volatile than ever imagined. Europe, instead, was going the other way. It assigned

the management of its economy to a highly constrictive set of norms that brought rigidity instead of flexibility.

The depressive effects that have emerged in the years since have been severe, embracing the euro area with side effects throughout the Union.

At global level, Europe's demonstrable, recognized role is that of purchaser of goods and services, especially from the two largest economies, the United States and China, with implications spreading to other economies from which Europe is also a direct importer. If the European slump were to continue or worsen, the upshot would be an alteration of the world's political and economic "governance".

In fact, what is at stake here is precisely global political and economic governance. The principal forces operating around the world are autonomous, some of them extremely powerful even on a standalone basis. In fundamental respects their activities escape the supervision and the control of governments, including those of the largest states, both individually and as a system. Illicit forces, whose power is based on violence, infiltrate the financial system and even the nerve-centers of national states. The system of national states, each controlling a part of the Earth's territory and together covering the entire globe, serves the purpose of countering the force of economic flows with their enormous volumes, extreme variability and hence unpredictability. The main national powers have grown in size, and so have a good number of other countries.

At present the global political system hinges on a duopoly, the United States and China. Economic dominance has shifted gradually from the North Atlantic area to the South Atlantic and the Pacific and Indian oceans. Within the duopoly the role of the United States could diminish in importance. One senses the importance of a crucial missing link: Europe.

51. The world is a unified, interconnected system. What happens in one region or economic sector is reflected in all the others. The political role of Europe having been annulled, its economic role has been reduced to that of principal "purchaser". Hence the inadequacy of global political governance, which in turn affects economic relations. At the global level there is no certainty of obtaining the sort of sustained, harmonious, balanced growth that Europe proposed but has failed to achieve. Cracks in the edifice are beginning to show. The seas, formerly calm, or rough – even very rough – could suddenly, on the heels of a typhoon or an earthquake, swell to tsunami proportions.

It is urgent to strengthen the world's political governance as a counterweight to the excessive pressures from the economy. In these circumstances "political action" – not only in the management of the currency but in that of the entire system – cannot be considered an "optional" for Europe. But we must not delude ourselves. Europe cannot

recover its mission in the world unless it attains a size and a configuration adequate to the task. The “solution” is the transformation of the entire European Union into a political entity. But the time factor has to be taken into account. As we have said and repeated, time is of the essence. If the citizens of Germany were truly convinced of the desirability of integrating their national identity into another, higher one – that of Europe – the result would be at hand. This political entity would be immediately joined by all or nearly all the countries of the euro area, and even of the entire European Union. If the citizens of Germany are not prepared for this step, a grouping of the other main continental countries including France (which could and should take responsibility for external relations) would bring us close to the goal.

Is it too great a stretch of the imagination to think that Italy could initiate an aggregation that would be then joined by France, which would lead it in the subsequent stages? “Power to the imagination” – *l’imagination au pouvoir*: Has this not been the slogan of several generations? “Imagination” is the source of all scientific discoveries and all inventions, from the greatest to the smallest, and of all historic events. Imagination stimulates. Results are obtained when the right paths are traced and followed. The paths cannot be invented. If the objective is new, finding them demands study and more study.

52. One practical suggestion, if I may be permitted, is that we begin to think about and discuss the constitutional organization of a united Europe. In the early 1940s Italians debated the proper post-Fascist institutions. *The Federalist* is perhaps the greatest example of political analysis of the present and future conditions from which to deduce the techniques for governing the great new federal state, an institution that would be unprecedented also in its dimensions.

Europeans came to their date with destiny in 1991 totally unprepared on these matters. Yet the solution could be less difficult than we think. For thousands of years Europe – all of Europe – was the reign of autonomous local powers. Once the central architecture has been designed, the need is to set quantitative limits within which local powers, in compliance with the general principles, can decide independently on the forms and levels of their own entities.

Let imagination begin to be exercised!

Rome, 21 October 2013

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#### IV

#### “WE CAN GO OVER THE 3% DEFICIT CEILING”\*

**Q. Professor Guarino, what do you think of the municipal property tax? Can the second instalment be suspended?**

A. Yes, it can. Indeed, the tax could be abrogated outright!

**Q. A surprising answer.**

A. Let me explain. A new and welcome fact has emerged.

**Q. What?**

A. The European Commissioner for Monetary Affairs has urged Italy not to overstep the 3% deficit ceiling.

**Q. What is so new or different in that?**

A. I have closely examined the European acts governing this matter since November 1, 1993, when the Maastricht Treaty on European Union went into effect. These are, in order, the Maastricht Treaty, Regulation 1466/97, the Amsterdam Treaty (in effect as from May 1, 1999), Regulation 1055/2005, the Lisbon Treaty on the Functioning of the European Union (in effect since December 1, 2009), and the so-called Fiscal Compact. The deficit limit of 3% of GDP is contemplated only in the three Treaties, all with the same identical wording.

**Q. What’s strange about that? Enforcing the Treaty is one of the Commission’s primary duties.**

A. What is new is that this is the first time since January 1<sup>st</sup> 1999 that the Commission has referred – implicitly, but unmistakably – to the EU Treaty and one of its provisions.

**Q. So what has the Commission’s reference value been for the past fifteen years instead?**

A. To avoid complications, please let me defer the answer on this point.

**Q. So in your opinion, the limit to observe is the 3% ceiling? Yet the Minister for the Economy and Finance, Fabrizio Saccomanni, makes no**

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\* *Il Messaggero*, 12 November 2013.

**secret of the fact that at least this year the government will have trouble doing so.**

A. The Commission's reference to the 3% ceiling is important. For it contains the implicit – but unquestionable – acknowledgement that the norm now in effect is that of the Lisbon Treaty, Article 126. For while the Commission's reference to the Treaty is correct, the citation is not exact. The 3% limit is actually specified in Protocol 5 of the Maastricht Treaty on European Union and recalled in the successor treaties. However, the Protocol contains only a part of the overall norm. The full rules are set out in Article 104C(2a), first and second indents, of the Maastricht Treaty.

**Q. What does that article say?**

A. That the reference value is to be applied in observance of the criteria dictated by Article 104C itself.

**Q. Namely?**

A. That the 3% limit can be legitimately overshoot if a tendency to approach the ceiling value is under way (paragraph 2a) or if the overshoot is “exceptional and temporary”. It is deemed to be exceptional where the overshoot is the effect of a factor that the member state could not avoid.

**Q. Are these the circumstance of our present case?**

A. The first, maybe. The second, definitely.

**Q. This is starting to get interesting. Can you explain more clearly? The question could be decisive for the fate of the government, and even more for the future of Italy, the euro area, and the entire European Union. In present conditions, are these two indents of Article 104C applicable to Italy?**

A. I would say so, with some doubt on the first indent. In 2011 Italy's accounts were not in order. Now they are. The case for the tendency to approach the limit is tenable. And the premises for the second indent's relevance seem unquestionable.

**Q. What makes you say so?**

A. Since January 1999 the Commission has enforced rules opposed to those of the Treaty. The Treaty on European Union assigned the member states an objective, namely economic growth, and gave them the power to do so by conducting their own economic policy and the further power, as an essential

instrument of economic policy, to borrow (to indebt themselves) up to the limit laid down in Article 104C. The Commission, instead, has enforced Regulation 1466/97. The two powers contemplated in the Treaty, namely independent economic policy and the capacity for debt, were suppressed. And in place of the objective of growth, Regulation 1466 imposed upon the member states the attainment of a defined result, i.e. a balanced budget in the medium term, plus the further obligation to follow a predetermined path, established in a programme devised by the Commission.

**Q. What does this difference in rules have to do with the suspension or possibly even the abrogation of the municipal property tax?**

A. Simple. If since January 1999 member state governments have not been exercising powers but only complying with specific obligations, they are not responsible for the adverse conditions in which they now find themselves. The responsibility lies with those who have imposed the obligations. In practice, the European Union.

**Q. Do you think that in the present circumstances Italy could benefit from going above the 3% deficit ceiling?**

A. This is a decision for government and Parliament. There is a good range of arguments in favour. If the overall cost of the debt exceeds the predictable GDP growth rate during the year, then the country is nearing a point at which, unless new, unexpected productive factors emerge, it will not be possible to reverse the trend. The debt/GDP ratio will deteriorate faster and faster, to the point of implosion.

**Q. Is this the situation Italy is in now?**

A. To be realistic, we're getting near it. But Italy is not the only important country in this situation. Since the date when the Treaty rules were set, the debt/GDP ratio has worsened by 33 percentage points in Italy, but by more than 55 points in France.

**Q. In these circumstances, is it realistic to say the country can go further into debt without risk?**

A. It is possible if we observe the "golden rule" that we can borrow where there is a good chance that the investment made on the basis of the new debt will generate, within a reasonably brief period, benefits greater than the annual cost of the debt itself, allowing also for the increasing incidence of past debt.

**Q. Do you believe such an outcome is possible for Italy and, by obvious extension, any other euro-area country in similar circumstances?**

A. For Italy, I haven't the slightest doubt. The essential condition for triggering a process of growth and development is the existence of unutilized productive factors. These are unemployed workers and firms forced to close by the deepening depression. A great unutilized factor is the fame of the Italian "economic miracle," which even today sustains Italy's characteristic export products worldwide. Another productive factor is constituted by the innate capacity of small and medium-sized enterprises, originating in artisanal and craft businesses, to rise again. In the past, Italy has had more of these businesses than any other country. It still has an enormous number. The cost of money is now so low that it can hardly fall any further, owing in part to the decline in demand. The ECB has done its part and is calling on the European Union as such to do its part, stimulating growth. Europe is the leading importer of US products, the second-leading importer of Chinese goods behind the US. Given their economic importance, the decline in European purchases from these countries obviously impacts on the world economic balance.

**Q. Could Italy, by borrowing, go so far as to abolish the municipal property tax?**

A. We have to. If we allow the depression to continue, to worsen, we are heading inevitably for implosion. Borrowing in order to prompt growth can get the economy moving again. Only with an adequate injection of fresh resources can there be a significant reduction in labour costs and an expansion of demand to make for the efficacy of the measures of stimulus already being taken. The list could be extended. But it is essential not to neglect the immediate benefit that would come from the elimination of a negative factor that otherwise could result in a government crisis whose consequences, in today's circumstances, could be serious indeed.

## AUSTERITY IS A BLUFF, THE 3% CEILING CAN BE VIOLATED\*

**Q. You are the author of the essay “The Truth about Europe and the Euro”. The text is ample in scope. What part of those reflections do you consider most important?**

A. I did my studies at Naples at a time when that university’s Faculty of Law was the best in Italy. I was taught that in any dispute in which “law” is involved, the starting point must be the precise determination of the “norm” that applies. To questions such as why the euro area has been in a general and ever deeper depression for fifteen years; or how many more years will the euro continue to exist in the markets; or whether the municipal property tax must be retained, or abrogated, or instead moderated merely by a suspension of the instalments falling due now; or, if errors have been made, what and by whom; or whether the current wave of anti-euro feeling is populist or instead justified – we can only answer reliably if we start from the right “norm”.

**Q. That seems straightforward enough. The European Treaty now in force is the fairly recent Lisbon Treaty. Duly ratified under the member states’ constitutional procedures, it went into effect on 1 December 2009.**

A. That’s right.

**Q. So what is the point?**

A. The point is that on January 1<sup>st</sup>, 1999, the date when the euro should have been launched under the rules laid down in the Treaty on European Union (the Maastricht Treaty), a single currency was in fact launched, but the rules governing it are not those of the Maastricht Treaty (repeated in its successor treaties) but instead those of EU Regulation 1466/97.

**Q. How could this happen?**

A. The Regulation was introduced with astute procedures that kept people from seeing its scope and the effects it would have.

**Q. How do the Treaty’s rules differ from those of Regulation 1466/97, carried forward and aggravated by subsequent acts, namely Regulations 1055/2005 and 1175/2011 and the so-called Fiscal Compact?**

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\* *Il Mattino*, 15 November 2013.

A. The EU Treaty entrusts an objective of economic growth to the member states. As necessary instruments, it assigns them the sovereign power to conduct their own economic policy and the separate and distinct power to borrow (to indebt themselves) up to the limit of the Maastricht parameters, namely an annual budget deficit of 3% of GDP and total public debt of 60%.

**Q. And the Regulations and the Compact?**

A. In place of the objective of growth, Regulation 1466 and its successor acts impose upon the member states the attainment of a defined result, i.e. a budget in surplus or nearly balanced, plus the further obligation to follow a predetermined path, established in a programme devised by the Commission.

**Q. What are the consequences?**

A. Just what you would have expected! It is not enough just to say “growth”. You have to have the means to produce it. If the instruments are eliminated, as the Regulations and the Compact have done, growth will not come.

**Q. So the depression cannot be ascribed to Maastricht and its successor treaties but only to the Regulations and the Fiscal Compact?**

A. Exactly.

**Q. What can we do now?**

A. My essay, “The Truth about Europe and the Euro” treats the question extensively. But I imagine what your readers, jobless workers, businessmen forced into closure, and citizens in general want is to learn what any member state can and should do today.

**Q. Namely?**

A. Not much, but the essential. The European Union, under the Treaties, has no powers other than those expressly assigned to it. The Commission and the other European bodies are bound to the scrupulous application of the Treaty. Whatever is not explicitly attributed to the Union falls under the power of the member states. Acts of the Union that are not authorized by the Treaty are radically illegitimate.

**Q. Which means what?**

A. The Commission has proven to be quite unreliable in this matter. From January 1<sup>st</sup>, 1999, it has imposed a set of rules that are diametrically opposed to those of the Treaty. From today onward member states must be careful not to ratify, sight unseen, whatever order or impulse comes down from the Commission or any other European authority.

**Q. What should they do?**

A. One simple thing. Demand that the Commission, in any act addressed to the member states, specify the Treaty clause that it intends to apply. This is an elementary principle, an essential component of the “state of law”.

**Q. And if the EU does not specify the norm, or specifies it wrongly?**

A. Then its order must be “returned to sender”.

**Q. Will that be enough?**

A. Compliance with the principles is obligatory for the governments and all the authorities of the member states. If the heads of national authorities failed to observe these principles, they would be liable to the sanctions laid down in their national constitutions.

**Q. Can you give us an example of what you mean?**

A. The Commission, speaking through its Commissioner for Economic and Monetary Affairs, has asked the member states, and Italy in particular, not to overshoot the 3% deficit ceiling.

**Q. Isn't that the figure specified in the Lisbon Treaty?**

A. Not exactly. The 3% figure is cited in Protocol 5 of the Treaty on European Union. The full rules are laid down in Article 104C, now Article 126 of the Lisbon Treaty. Article 126(2a), first and second indents, says that the 3% ceiling can be exceeded in the case of exceptional and temporary circumstances, hence circumstances that are not within the control of the member state but due to an obligation that the state cannot avoid.

**Q. In our case, and not just for Italy but for every member state, the “exceptional circumstance,” in your view, consists in the imposition of a set of rules that are responsible for the depression to which we are all condemned.**

A. Let me draw the conclusions. Every member state enjoys the right to take on debt, up to the limits set by the so-called “golden rule” – that is, if and

insofar as the investment realized thanks to the additional debt covers its additional cost.

**Q. Is this the basis of your assertion that Italy could suspend or even abrogate its municipal property tax?**

A. Just so.

**Q. The consequences would appear to be important.**

A. And that's not all. In setting the deficit ceiling at 3% of GDP, the Commission has implicitly but unquestionably acknowledged that the rule to apply is that of the Treaties. This is an acknowledgement that the Commission absolutely cannot retract. But if that is so, then why has it condemned the member states, for fifteen years now, to obligations that have produced economic depression? Who is liable for the extremely severe damage to the member states, to national communities, and to the citizens?

VI  
“ITALY SHOULD NOT LEAVE THE EU BUT CREATE A NEW  
CURRENCY”\*

The European Union with the euro should be seen “as a fatal disease.” The diagnosis is that the balanced-budget obligation and the Fiscal Compact have forged an “automaton” that is totally directed from outside the nation. A system that has “suppressed democracy in the Member States” and triggered a recessive process that has dragged the major European economies (Italy, France and Germany too) down to levels of growth and competitiveness equal to those of the countries of the third world.

Giuseppe Guarino, 91 years young, is ready for revolution (intellectual revolution, needless to say). As a sophisticated legal scholar, Professor Guarino has dissected the Treaty on European Union and then read (or re-read) the EU Regulations (which should not, in theory, have the same binding force as the fundamental Treaty but which, in practice, are what imposes the 3% budget-deficit guillotine on us). Specifically, Regulation 1466/97 – which the ministers of the day approved “perhaps without really understanding it” – imposes the mechanical austerity of a European Union that is now spinning into a spiral of deflation, low growth and flagging exports.

To escape, to break these fetters, “is possible” in Mr. Guarino’s view. How? With a holy alliance whereby Italy, Spain, Greece and Portugal would move not to leave the European Union but to abandon the euro as their currency. And together to create another currency. This derogation, which the Treaty expressly envisages, offers perhaps the sole way out of the constrictive, suffocating accountant-style EU Regulations. This is simply the derogation allowed, when the euro was created, to the United Kingdom and other states that belong to the EU and the free trade area but that under the derogation have retained their own currencies.

**Professor Guarino, Europe is looking creaky. The very foundations of the Union appear to be cracking under the strain of an ever-worsening crisis. Poverty is increasing, unemployment is more and more widespread, growth is failing, GDP is stagnant. The Union and the euro were touted as a sort of magic wand, and instead ...**

“I am a lawyer, a legal scholar, but I have always had a penchant for statistics. Because the numbers do not lie. Just look at the economic indicators for the last fifteen years. A decade-and-a-half ago, France, Germany and Italy were among the world leaders in growth and

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\* *Libero*, 17 November 2013.

competitiveness. Now, we are among the tail-enders in these same rankings. If back then our term of comparison was the United States, now we are grouped with countries like Haiti, the Ivory Coast and Eritrea. The situation could hardly be clearer.”

**The comparison is pitiless: we are in the same league as countries that have been at war (or civil war) for decades or that have suffered almost Biblical natural disasters. These are not the data of vigorous, lively economies but of states in the throes of post-war crisis. Are we ourselves caught up in an undeclared financial war with effects more devastating than bombardment?**

“The likening of today’s euro-area economies to those of countries in profound crisis is appropriate, fitting, disheartening. But we cannot escape, because while ‘the devil makes the pots but not the lids,’ at the same time the Regulation is strangling us with the 3% deficit ceiling and yet the Treaty allows derogations for exceptional circumstances. But these exceptional circumstances may not last forever. So we have to seize the time, apply for the derogation, leave the euro but not the European Union and its free-trade area, ally with the other PIGS countries and create a new currency.”

**A suggestive hypothesis. But can it be realized? Will they let us?**

“Going by the text of the Treaty, the option of asking for a derogation, hence abandoning the euro for another currency, is envisaged. All you have to do is ask. And this new economic entity, aggregating our four member states, would have a population of 127 million and a GDP of \$3.998 trillion. It would be the world’s tenth-largest country by population and fourth in GDP, trailing only the US, China and Japan. If France too were to join, we would have 189 million inhabitants and a GDP of \$6.558 trillion: sixth in population and second in GDP, overtaking China, Japan, and Germany to stand behind the US alone.”

**OK, let’s say these four derelict European states request a derogation, abandon the euro and create another currency. What would happen then?**

“A new political and economic entity would arise, restoring responsibility for economic, fiscal and industrial policy to the single nations – a power now externally exercised by virtue of the Regulation approved and underwritten perhaps too light-heartedly. But mainly, this new entity would not have debt and would be in a position to take up the urgent challenges of competitiveness and growth. We have near-zero interest rates, extremely low inflation, and record unemployment. Escaping from Brussels’ budget constraints, and so able to borrow and invest to start the flywheel of true

growth turning, we could again compete with the world's top economies, not play defense.”

**Anti-euro feeling is mounting, “thanks” to a recession whose imminent end has been announced repeatedly but which continues to cramp us in a tunnel of recession that we must traverse yet which seems itself to lengthen as we proceed. Next spring, in the European elections, anti-euro parties are expected to turn in impressive results. Will this lend centrifugal impetus to a system that, in your words, is an automaton leading to self-destruction?**

“As a long-time academic, my task is to study and make my findings available to all those who want to use them. My role ends there. Anti-euro feeling is the product of a bureaucratic process that was understood poorly and managed still worse. In practice, this mechanism has suppressed democracy, and as long as it stands it will continue to produce negative results. The rigid track along which we are running condemns us simply to do our homework (3% deficit ceiling and in the medium-term a balanced budget) or be sent to stand in the corner.”

*The interview is over. The Professor is expecting guests – today is his 91<sup>st</sup> birthday – otherwise he would gladly go on for hours to explain and underscore the fruits of this work. He taught law to Francesco Cossiga, Mario Draghi, Luca Cordero di Montezemolo, Domenico De Sole. He headed a couple of ministries (in the governments of Amintore Fanfani and Giuliano Amato) and directed a series of public corporations. But his intellectual and physical vigour make him seem still young. A revolutionary in his proposition. Unhinging the “untouchability” of membership in the euro, refusing to resign himself to galloping recession, is a youthful instinct. Happy birthday”.*

VII  
GIUSEPPE GUARINO AGAINST THE EURO COUNTERFEIT\*

**Q. In order to rekindle economic growth, the idea is to reduce the public debt. Sales of public assets could bring in some €12 billion. Is this enough? Would it be useful?**

A. I have my doubts. The interest payments on the general government debt relate to the entire outstanding amount, regardless of the date of issuance.

**Q. What was this interest in 2013?**

A. In 2012 it came to €86.717 billion, or 5.5% of that year's GDP. This year the interest liability is slightly less.

**Q. Why isn't it a good idea to act to lower the total debt right away?**

A. Such a move is worthwhile if it brings the debt down enough to obviate the need for additional measures in future years. But if the forecast is for average GDP growth that is less than the total cost of the debt, the ratio of debt to GDP will resume increasing.

**Q. You have spoken of a “point of no return”. What does that mean?**

A. If the expected rate of GDP growth during the year and the years following is lower than the expected rise in the cost of interest payments, the debt/GDP ratio will rise. In 2006, at a hearing in the Senate, I showed a table that projected, starting with the debt ratio of 2005, that if the GDP growth rate were 0.5%, Italy's ratio of debt to GDP would go to 130% in 2013. The average growth rate was actually less – and the debt ratio has risen to 133%. The point of no return is when the annual cost of the debt exceeds the predictable rate of growth in the years ahead and no extraordinary factors that can invert the tendency are to be seen.

**Q. Italy's public debt existed in 1991 as well. You were a part of the governing class that helped to swell it. How did this come about?**

A. This observation is common but not correct.

**Q. In what sense?**

A. You have to distinguish between domestic debt and external debt. Until 1992 Italians were not allowed to hold capital abroad. The creditors of the

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\* *LETTERA43.IT*, 4 December 2013.

Italian State were almost exclusively Italian: households (the citizens), banks, firms. The welfare state freed households from the cost of health care, education, social assistance, and retirement saving. Home ownership was more widespread in Italy than in practically any other country. The economy was sustained by domestic demand, the fruit of the country's very high household saving rate. Saving was growing and was quite uniform geographically. The unspent portion of savings was allocated mainly to government bonds. At maturity, this paper was generally rolled over, frequently the interest earnings were plowed back into the investment. In 1992 the liquidity available to Italian households was fully one fourth greater than the total public debt.

**Q. What brought this workable system down?**

A. As domestic liquidity had expanded, the oil crisis of 1978/1992 increased the volume of international liquidity. Yields were high, compounded by the mirage of concealing one's wealth from the tax authorities. The fear of sanctions was not enough to block the flight of capital. The European directive on the free movement of capital, including short-term capital, was one of the first of the 330 directives needed to realize the European single market. This instant transformation of Italy's debt from domestic to external was what caused the system – which had produced Italy's postwar “economic miracle” – to collapse.

**Q. Couldn't the domestic system have been modified before this tsunami struck?**

A. It isn't easy to modify structures that have developed as the outcome of lengthy processes. Cultural barriers and the vested interests that are created are hard to overcome. This phenomenon is still present today. In these conditions, under the influence of popular beliefs and important interests, and in the conviction of doing the right thing, patterns of conduct are adopted that only make matters worse. Italy was one of the first countries to apply the directive on the free movement of capital. The deadline for its implementation was 30 June 1993; this would have given us enough time to “adjust” our system.

**Q. But after the entry into effect of the Maastricht Treaty on European Union, something – indeed, a great deal – was done.**

A. When the Treaty was signed in 1992, Italy's public debt amounted to 100.8% of GDP. Over the next three years it rose to 124.3%. By the sixth year it was down to 116.8%. Between 1992 and 2005 public asset sales – mainly the privatization of publicly owned corporations – amounted to some €128 billion (at 2013 prices). In 2004 the debt ratio was down to 106.5%.

**Q. In many cases these assets were disposed of at fire-sale prices – like Telecom.**

A. The authorities figured that bringing in less cash but immediately was more advantageous than continuing to pay interest at rates that had brought the average cost of the debt to 10% in 1995, jeopardizing Italy's qualification for the euro.

**Q. Who bought these assets?**

A. Except for Nuova Pignone in Florence, which after being sold to General Electric developed internationally, most of the large privatized banks and industries were purchased by Italians.

**Q. Our capitalists without capital!**

A. The growth of all of Italy's leading private enterprises had been based on domestic demand. Now faced with international competition, they supposed that they could become stronger by acquiring firms whose activity could be integrated with those already in their possession. But combining two weaknesses does not always produce strength. Growth expectations were disappointed. In many cases the buyers had to sell again.

**Q. And Italian savers?**

A. A good part of them invested in securities, financial “derivatives,” that promised high yields. And at first there were steadily increasing gains. When the international derivatives bubble burst, households lost a good deal, in some cases nearly their entire investment.

**Q. As far back as the 1960s people saw the need to complete the process of European integration with the creation – to be realized by 1990 or so – of a huge common market and Monetary Union. The definition of the European community as the Economic and Monetary Union is found also in the latest Treaties (on EMU). What did the European countries hope to obtain?**

A. Two benefits were certain. The integration of the individual national economies into a huge single market would eliminate import and export duties and the cost of the waiting time at national borders required for customs checks. And the use of a single currency would drastically lower transaction costs.

**Q. Were these benefits sufficient?**

A. Absolutely not. Article 2 of the Maastricht Treaty on European Union (repeated in the successor Treaties as well) sets the objective that the member states are pursuing: “harmonious and balanced development of economic activities, sustainable and non-inflationary growth respecting the environment, a high degree of convergence of economic performance, a high level of employment and of social protection, the raising of the standard of living and quality of life.” The member states waived the exercise of a good part of their national sovereignty, and in return they were to gain, from the Union, the type of growth defined in Article 2.

**Q. How was this to be obtained? Whose task was it to be to ensure such growth? What instruments did this design make available?**

A. This task could only be for the member states. The Union cannot borrow or create debt. Its own, direct resources – customs duties – are scanty. It covers its expenses with resources paid in by the member states under the Treaty.

**Q. So growth was the task of the member states. Using what resources?**

A. The rules of the Single European Act and the more general rules of the Union precluded practically all the resources that non-member states can draw on. Only two possibilities remained, i.e. independent economic policy in all non-monetary matters and contracting debt. The Treaty on European Union allowed both to the member states, only requiring that in utilizing them the members complied with the precautionary principles specified.

**Q. What precautionary principles?**

A. The Union had a direct interest in the member states’ success in producing economic growth. This was the only way they could provide it with the needed resources. So the Union retained the power to set overall guidelines of coordination. In the event of a deviation, by a special procedure the Union could issue a recommendation, but without binding effect. As for borrowing, this was not only possible but, in the right circumstances, indispensable to exploit idle or underutilized productive factors. To safeguard the principle of non-inflationary growth, the Treaty set limits that the member states could not overstep: an annual budget deficit of 3% of GDP and total public debt of 60%. In interpreting and applying this principle, member states and the Union were supposed to comply with binding standards.

**Q. Were these two instruments sufficient to produce growth?**

A. In the course of the 20<sup>th</sup> century the United States doubled its output while complying with these limits, overstepping them only during wartime.

**Q. The promised growth never came. Why?**

A. The creation of the European Union and the euro currency area was a most complex operation. There was no historical precedent. The rules designed to produce growth were to go into effect at the start of the third, definitive stage, on January 1<sup>st</sup>, 1999, when the euro was launched. The second stage was preparatory to the third. As a result, a proper judgment on the performance of the rules dictated by the Treaty on European Union should take account only of the fifteen years that have elapsed since that date.

**Q. Is there some second-stage rule that warrants special mention?**

A. Definitely. In the years between the Treaty's entry into force and the third stage of Monetary Union, the member states were subjected to a series of restrictive rules. If they failed to comply, they would not qualify for the single currency. There were two conditions bearing on objective data for the period already past, to be judged at the time of the "admission" exam: the inflation rate and the rate of interest on long-term government bonds. For each of these parameters the requirement set a maximum allowable divergence during the pre-admission period from the average for the three best-performing members: 1.5 percentage points for the former, 2 points for the latter. This was a gap that the weaker countries could recoup, in the competition. In the third stage, from January 1999 on, the euro-area economies, in a single market and with a single currency, would be in competition with one another – full and fair competition. If sufficiently uniform conditions were not created, the stronger economies would dominate the rest. The rules of the transitional stage, therefore, were supposed to bring about sufficiently uniform conditions to avert this danger. The third stage, with the launch of the common currency and the onset of competition under fair conditions, is the only valid touchstone for judging the adequacy of the Treaty rules.

**Q. You have presented statistics showing that the outcome has been devastating for most of the euro-area countries.**

A. In a ranking of the 38 slowest-growing economies in the world between 2000 and 2010, the eurozone counts no fewer than 13 entries. The performance of our three largest economies is striking, disappointing in the extreme: Italy is third, Germany eleventh, and France fourteenth. Let me repeat: these are not the best performers of the decade but the worst. The same rankings for the previous decade, 1990-2000, do not include even one

euro-area country. The cause of this generalized plunge into deepening depression must necessarily date to 1999 or 2000.

**Q. What event do you have in mind?**

A. There is really only one, coinciding with the launch of the euro. The fact is that starting in January 1999, instead of the rules laid down in the Treaty for the third stage of Monetary Union, the EU applied a different, indeed diametrically opposed, set of rules, introduced as of the same date by Regulation 1466/97. The Regulation was applied until 27 June 2005, when it was replaced by Regulation 1055/2005, itself in force until replaced by Regulation 1175/2011 on 16 November 2011. These Regulations were followed by an atypical act known as the Fiscal Compact, whereby, failing to gain the votes necessary to modify the current Lisbon Treaty, the obstacle was circumvented by a non-European, international treaty. The initiative was taken by the Commission, which in doing so overstepped the powers assigned to it under the Treaty.

While the EU authorities were proposing and applying the Regulations, the Amsterdam Treaty went into effect (on January 1<sup>st</sup>, 1999). The successor Lisbon Treaty went into effect on December 1<sup>st</sup>, 2009). Both literally reproduced the wording of the original Maastricht Treaty, Articles 102A, 103, 104C and Protocol 5, containing the rules governing the euro.

The consequence: The Commission proceeded as if the Treaties did not exist. It imposed the rules that are responsible for the economic depression that has gripped Europe for a decade-and-a-half now. The rules that were so carefully designed by the framers of the Treaty on European Union to foster growth were never put into practice.

**Q. This account of events sounds just incredible. Apart from the economic statistics, are there formal, systemic elements underpinning these extremely grave conclusions of yours?**

A. The Treaty on European Union, and now the Lisbon Treaty, which reproduces the relevant passages word-for-word, assigns the economic growth function to the member states and gives them two powers: independent economic policy and the power to contract debt up to the ceiling set in Protocol 5, to be interpreted by the binding criteria laid down in Article 104C, now Article 126 of the Lisbon Treaty. Regulation 1466/97, and – in aggravated form – its successor acts, eliminated these two powers. Nor have they been replaced with other powers. In their place we have two duties or obligations. One, the same for all member states, is to have, in the medium term, a government budget in surplus or near balance. The second, which varies from state to state, is to achieve this result in strict compliance with a programme devised, for each member state, by the EU authorities themselves.

**Q. What consequences have these changes had?**

A. Many. Some of them extremely serious. And utterly unpredictable.

**Q. Namely?**

A. If growth does not come naturally as the result of pre-existing favourable conditions, then it has to be prompted, stimulated. In this case, two distinct factors are indispensable. First, that there be available factors for mobilization in sufficient quantity. And second, that the state, where it lacks sufficient resources, be able to raise them by borrowing. The Regulations eliminated member-state economic policy and abrogated their capacity to borrow, to raise resources by contracting debt, even up to the ceilings set by Article 104C of the Maastricht Treaty (Article 126 of the Lisbon Treaty). None of the euro-area states that are now in trouble had a balanced budget in 1999. The steadily intensifying deterioration of their economies depends on the ban on borrowing, even though the other requirement – unutilized productive factors – is satisfied. These factors are the very factors that the depression has idled, if they remain vital or recoverable. But the resources were lacking. Every favourable occasion has been wasted. The potential resources – and the consequences – are right before our eyes: the unpredictably enormous number of unemployed and underemployed workers in the euro area and in all of the member states without derogation, the companies driven out of business, the worsening performance of government and of public assets, the decline in services, difficulty in dealing with exceptional events, and so on.

**Q. And the second consequence?**

A. This one is the gravest. If all the powers of the member states in economic affairs have been abrogated, then the cause of the results is the system applied. In our case, the set of abstract rules enforced starting in 1999. The EU authorities monitor their effective application by the member states with extreme strictness. In turn, they themselves are subject to explicit rules of conduct. The outcome is that the citizens of the member states no longer have any power to affect the rules under which they live. “Democracy” does not consist solely in a series, however long and specific, of rights and freedoms. And even supplementing these freedoms with a set of social rights does not produce “democracy.” Democracy requires that citizens can transmit to government, which responds, indications and guidelines on the rules that it intends to apply. The necessary assumption is that the governing class must have powers whose exercise the citizens themselves can affect. In economic matters, which in today’s historical context are decisive with respect to every other sphere of social life, since

January 1999 the euro-area member state governments have no powers but only obligations. Democracy, the founding principle of every member state constitution, a sine qua non for admission to the Union under the Treaties, has thus been suppressed, utterly rooted out, in the euro area.

What is left of democratic institutions is just names and symbols. The substance is gone. No national referendum has the power to abrogate the rules laid down in the EU Regulations. Political parties are supposed to enable citizens to participate in national politics by the democratic method. Instead, they have been turned into aggregations of groups battling to seize what is in practice a non-existent power. The trade unions are impotent. Individual actions and mass demonstrations, even illegal ones, have no effect whatever. Even an atomic bomb, to take an absurd hypothesis, would be useless. Meanwhile, there is ever-broadening scope for corruption, illegality, mere words.

**Q. Does that complete the list of consequences?**

A. There is one more, which by itself demonstrates the perils inherent in the system applied since 1999. If certain premises are in place, in any legal system the consequences, even if they have not been evaluated, cannot fail to follow.

The principle of the balanced budget in the medium term has been imposed, with general rules, on all the euro-area member states. The conditions of these countries are not identical. Some had had budgets in or near balance for some time, others were far from that situation. The fact that the requirement to achieve budget balance was not relevant, de facto, for the former meant that their situation was similar, or actually identical, to that of the latter. In horse racing, if I am not mistaken, it is the best horses who are handicapped by having to carry extra weight, in order to equalize the chances of winning. The principle of the Regulation is the exact opposite: the weaker economies, not the stronger, are saddled with the handicap of extra weight. This violates the essential conditions for fair competition. All in all, it has made it harder for the weaker countries to attain budget balance. This means that the Union has enforced a rule at odds with the principle of competition. Regulation 1175/2011 stated that in the past, errors had been made, but it described the error as insufficient rigour. In this way, it fertilized and brought to bloom a seed found already in Regulation 1466/97. The universal obligation of medium-term budget balance and the specific obligation of every member state to achieve it by the programme laid down for it could not, alone, have produced economic growth. The new Regulation asserted that the member states that were behind, in order to run with the best, would have to have a configuration identical or at least similar to those of the best. Starting with structures.

**Q. What do they mean by “structures”?**

A. Here, there are two distinct planes, of form and substance. Which do you prefer?

**Q. Let's start with substance. It's less familiar.**

A. Economic systems, and all the more so states, are organisms, which though different can be likened to men and all other living species. Every organism has components, large and small alike, that are always in motion. In every successive moment, every entity is different from what it was a moment earlier. Every entity resembles but also necessarily differs from every other entity of the same species. Differing in configuration, the individuals of a species are made up of organs or systems of organs that are present in all the other individuals as well. These are structures. In every organism the individual organs and component systems correspond to those that make up the other individuals of the species. But they are necessarily different.

These considerations also go for the Union and its member states. The elementary entities, and the same applies at the higher levels as well, reciprocally affect one another. They are never identical to the corresponding organs or systems in the other entities. For an organ transplant, the organ donated is never identical to the one it replaces. Differences are inevitable. All one does is to make sure they are not incompatible.

The structures of organisms, such as states or economies, can be seen as corresponding to the organs of the human body and the systems that compose every species. From individual to individual they are never identical. If we insert the structure of one economy or one state into another, we are likely to cause damage. Eliminating the pre-existing structure creates a void. If the pre-existing structure is replaced by one patterned after another system, there is no telling when, or even if, full integration with contiguous or related pre-existing components will be achieved. The damage of demolition is immediate, the hypothetical benefit necessarily only in the future. And in any case uncertain. The damage from the elimination of long-standing, complex structures is never narrowly circumscribed. National configurations are the product of centuries of history, at least, and every component is intertwined with the others. These are knots that are hard to untie.

**Q. And on the formal plane?**

A. Regulation 1175/2011 cites as authority for its provisions Article 121(6) of the Lisbon Treaty. But as we have summarily shown above, the Regulation totally confirms rules that simply do not correspond to the three Treaties (Maastricht, Amsterdam and Lisbon). It contains provisions that

conflict with the powers conferred upon member states by the Treaties as essential instruments to generate growth. Regulation 1175 seeks to legitimate itself by reference to Article 121(6) of the Lisbon Treaty. But the citation is mistaken. The Article does not allow the Regulation to modify the Treaty in a fundamental point, as it does. The original provision on member states' power to contract debt and the limits to it was Article 104C of the Maastricht Treaty on European Union, now transposed into Article 126 of the Lisbon Treaty. The rules consist in three parts. The first part, embodied in paragraph 1 and paragraph 2a and 2b, is the substance of the rules, based on distinct ratios of deficit and debt to GDP. A second part, in Article 104C(2), last paragraph, refers to Protocol 5, whose sole subject is the determination of the reference values, including the definition of the terms used. And a third part, set out in Article 104C, paragraphs 3 to 11, of the Maastricht Treaty, lays down the rules on surveillance and sanctions. Article 126(11) of the Lisbon Treaty gives the Council the power to take appropriate measures that replace that protocol, using the special legislative procedure with prior consultation with the European Parliament and the European Central Bank. The power given to the Council is only that of replacing the protocol. The content of the protocol is limited to the specification of "reference values" (last sentence of paragraph 1). The reference to ratios of debt and deficit to GDP and the binding criteria for interpreting and applying them (in letters (a) and (b) of paragraph 2) are governed exclusively by Article 104C of the Maastricht Treaty (now Article 126 of the Lisbon Treaty on the Functioning of the European Union). This is quite a different thing from the specification of the reference values, which is the only power assigned to Protocol 5.

**Q. There is still a good deal to be said. But we suppose you would answer as in the old serial novels: continued in the next episode.**

## VIII

### EX-MINISTER GUARINO WRITES TO REHN

“No lessons from an accomplice in the violation of the EU Treaties”\*

Rome, 5 December 2013

Dear Commissioner Rehn,

In the last few days I have read, in reputable newspapers like *La Repubblica* and *La Stampa*, some statements attributed to you. Yesterday you met with Italy's prime minister. The exact contents of the discussions have not been reported, owing to the accumulation of new problems and the lack of formal clarity that has characterized relations between the EU and its member states for such a long time now. A question comes to mind. You are quoted as anticipating what the Union could do. Is this legitimate? Is it correct? Is it useful? I believe not. Anticipating measures not yet formally taken upsets the relationship of a member state government with its citizens, undermines confidence and trust in the government, and affects market decisions.

This has become a habit in relations between the EU and the member states. It provokes confusion. In the grave situation afflicting many of the member states without derogation, the eurozone and the Union itself, it is indispensable to adhere to the Treaty in effect and only to the Treaty. It is the duty of the European Commission to comply with and to enforce the Treaty. It is the right of the member state to demand its scrupulous application.

If I am not mistaken, you took up your position as European commissioner on 22 November 2004. It is likely – I should say, certain – that on taking office you were not informed that between 1996 and the 1<sup>st</sup> of January 1999 the decision-making bodies of the Union, in an illegitimate and substantially fraudulent action, replaced as from that date the legal rules for the new single currency laid down by the Maastricht Treaty on European Union with different, indeed contrary, rules, namely those of Regulation 1466/97. Let me summarize, for clarity, the divergences between the two sets of rules. The Treaty, in a clause that can be defined in legal terms as “essential,” binds the system to a specific objective, namely promoting “harmonious and balanced development of economic activities, sustainable and non-inflationary growth respecting the environment” and “a high level of employment and of social protection” (EU Treaty, Article 2). Economic growth and development was the compensation offered by the Union in exchange for the member states' waiver of sovereignty with the adoption of the euro. The Maastricht Treaty entrusted the attainment of this objective to the member states, which were to pursue it, in their own interest and in that of the Union, using two specific powers. Each member state would have its own “economic policy,” whose scope extended to all the aspects of

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\* *Il Foglio*, 6 December 2013.

community life, including economic matters, that did not depend on the rules governing the currency. The Union would merely coordinate the member states, with general guidelines. At the same time the member states were endowed with a second power bearing specifically on the monetary sector, namely that of contracting debt up to limits that were intended to ensure that growth would not be inflationary.

Regulation 1466/97 was followed by Regulation 1055/2005 and Regulation 1175/2011. Both were patterned after Regulation 1466, but aggravating its rules. The dates of these two Regulations suggest that you yourself took part in the proposal and the adoption of both, and that you are therefore co-responsible for them.

During the same years that the 2005 and 2011 regulations were added to the original Regulation 1466, the Maastricht Treaty was supplanted first by the Amsterdam and then by the Lisbon Treaty, the latter going into force as of 1 December 2009. As regards the matter of interest here, these treaties reproduce the text of the original Treaty on European Union. Don't you think it absurd that despite the entry into force of two new treaties the Commission, of which you have been a member for a decade, with increasingly responsible positions, persisted in applying a set of Regulations whose orientation was diametrically opposed to those treaties?

Since on January 1<sup>st</sup>, 1999, only a few member states – perhaps only one – had a balanced budget, it should have been clear that all the others could attain the objective only if they were allowed to use the indispensable instruments: concretely, the powers assigned to the member states by the Treaty. But the universal obligation to balance the budget had suppressed those powers. It was easily predictable that the three regulations would produce not growth but depression. And the statistics, unequivocal and pitiless, confirm it. In the decade from 1990 to 2000, not a single EU country was among the lowest-growth countries in the global rankings. In the decade following the introduction of the balanced-budget constraint, from 2000 to 2010, the 35 worst-performing economies include Italy (third from last), Germany (eleventh), France (fourteenth), and ten other euro-area economies.

The conclusion is that the depressive factor that has gripped the eurozone and the Union overall began to work its effects in 1999 or 2000. Only one such factor is to be found, namely the balanced-budget constraint imposed as a general rule for euro-area countries. This is the common factor in what is now a 15-year depression in the countries of Europe. The effects are plain for all to see. A generalized, worsening depression, unemployment, firms going out of business, falling demand, deterioration of the territory and of cultural and environmental goods, a sense of impotence, institutional inefficiency, rising corruption and illegality. And the list could continue.

I am convinced that the men at the heads of the bodies that conducted the surreptitious substitution of the Regulation's provisions on the euro for those of the Treaty were not aware of the consequences that

would follow. Perhaps the gravest of these consequences is the one that has been most thoroughly ignored. Eliminating member states' powers in monetary and economic affairs, the Regulations have essentially suppressed the conditions of "democracy". The foundation of democracy is periodical elections in which citizens affect the guidelines of the government policies to which the citizens themselves will be subject. But influencing a government is meaningless if the government itself has been shorn of all power. Heads of government in member states who acquiesce in the application of the Regulation regime instead of the provisions of duly ratified Treaties could, despite themselves, be involved in national trials for violation of the Constitution. This liability extends to European Commissioners.

Even in circumstances of progressive, general depression, in the configuration produced by the surreptitious application of the Regulations, the men with powers and responsibilities within the Union and the member states remain subject to the conduct imposed on them; they cannot deviate. With time, the application of the Regulations becomes habitual. But formal law is decisive. If there is a higher-ranking source of law, it must rule. This is an absolute duty, especially where correct application of the Treaty is the only way to get out of the cage in which we are imprisoned, to restore that regime of human liberty, progress and democracy for which the Treaties were stipulated. The person whose individual conduct violates the Treaty is fully responsible for it.

To go by the newspaper accounts, you referred to the 3% deficit ceiling, the necessity to comply with the requirement of budget balance year by year, the obligation to take "structural" measures. Not one of these obligations is envisaged in the Lisbon Treaty, in force since 1 December 2009. Article 126(2a), second indent, establishes that the 3% borrowing limit can be exceeded if the overshoot is "only exceptional or temporary". "Exceptional" (and by implication also "temporary") status subsists when the overshoot is due to "events outside the control of the Member State." In our case, this event can be defined as the obligation of budget balance imposed on all member states, supplemented by the obligation to comply with the programme approved by the Commission, separately for each member state. Article 126 has not a single clause that can be read as direct or even indirect support for the authority to issue specific instructions to a member state. And as for "structural" measures, there is no mention whatever, either direct or indirect.

Are you willing to take responsibility for illegitimate acts that generate such a grave liability? A full account of the relevant European institutional and legal framework is given in "The 'Truth' about Europe and the Euro," available on my website and reprinted in Italian, at the initiative of *Il Foglio*, the daily that hosts this open letter. My lengthy academic, professional and political experience leads me to suggest that you should

subject the argument and conclusions of that essay to the most searching critique.

I am available to you and your staff for any further explanation or explication you may wish. My own responsibility is different but perhaps not less onerous than your own. If it is demonstrated that my arguments and conclusions are erroneous – due to incompleteness or inaccuracy in the statistics or legal documents used, or logical flaws in the argument – I will so acknowledge publicly and immediately. This is the heaviest sanction that can be levied on an aged and, if I may be permitted, respected academic like myself.

I hope to have the occasion to meet you in person. With my cordial best wishes for fruitful work.

Yours sincerely,

Giuseppe Guarino

## IX

### “AN ILLEGAL REGULATION THAT BLOCKS GROWTH”\*

**Q. Thank you, Professor Guarino, for agreeing to this interview.**

A. No, really, thank you. After my essay “The Truth about Europe and the Euro,” which you can find on my website, and which was published in instalments, at their own initiative, by *Il Foglio* and *Formiche*, an online daily based in the North of Italy, I’ve had a whole series of requests for interviews. In each case I’ve tried to see why my interviewer might be interested in the question. And this has spurred me to try to clarify, for my own purposes, some of concepts and logical consequences that I had neglected. So, again, thank you.

**Q. What, in your opinion, are the interests in this matter for a nationwide trade union?**

A. First, let me say I’ve never belonged to a trade union or had to do with trade union activities, just as I have never belonged to a political party. But I can say that since coming of age not a day has passed that did not begin, for me, with a reading of the main daily newspapers. From the first I taught my students that the daily newspaper itself is a source of “constitutional law”. The papers give you an idea of what is building. Legal manuals set out what has already been established. Based on this superficial, but constant and prolonged, knowledge, I have become convinced that the strength of Italy’s national trade unions has changed nature repeatedly over the years, almost always in parallel with changes in the general situation – political, economic, social.

**Q. Today, to be sure, some serious reflection is required. We realize we are operating in an atypical, unprecedented environment, a dangerous one given its persistent opacity and obscurity.**

A. On these premises I suppose we could entitle this conversation “The depression, its causes, and the role of the unions”.

**Q. But the reasons for action, though not systematic or codified, are those set out in your essay.**

A. [No one can possibly know the current situation better than you. The unemployment rate in Italy in 1980 was 4.4% (one of the lowest in the world), and in 1990 still only 7.0%. It rose sharply between 1987, when the Single European Act was signed, and 1992, when the Maastricht Treaty on

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\* Interview in *Conquista del Lavoro*, 12 December 2013.

European Union was signed. In 1993, the Single Act having just come into effect, it was 10.2%, and by 1998 it had risen to 12%. Since then it has not come back down. Youth unemployment and the numbers of laid-off workers still formally on the books have risen to incredible heights. Up until 1990 most Italian families could also count on the supplementary income represented by pensions, free public education, health care, and home ownership (the percentage of home owners was the highest in the world) and more.

Turning to the productive economy, from 1950 to 1990 – exactly the years of what is now dismissed as the “First Republic” – Italian GDP growth averaged 4.36% per year, the fastest in the world (second was Germany, third France, fourth the United States, fifth Britain) – Italy’s “economic miracle”. In the six years leading up to the Treaty on European Union, not counting the years of German unification, the average was 2.36%. During the six years of “convergence” to qualify for the single currency, 1993-1997, it slipped to 1.34%. In the three largest euro-area countries, Italy, Germany and France, growth in the entire period from 1999 through 2013 averaged respectively 0.38%, 1.36% and 1.38%. Italy represents a limiting case, but Germany has not done all that much better. For the decade running from 2000 to 2010, average GDP growth was 0.4% per year in Italy, 0.9% in Germany and 1.1% in France. The presence of an exceptional economic depression is unquestionable. During those same years – indeed, starting a decade earlier – the world economy scored average annual growth of 5%!

**Q. So what is unprecedented today is this generalized depression, which has corkscrewed down over the years. There is still no consensus on the cause. Could it lie with the unification of the markets under the Single European Act, signed in 1987 but whose implementation was not completed until 1993? Or the Maastricht Treaty on European Union, signed 7 February 1992? One or the other of these treaties or, as legal scholars say, the two in combination?**

A. This is a widespread view, but one that in my opinion is not exactly right. The cause or causes have to be identified precisely. Otherwise, we set up false targets, we engender populism, we fail to find the right remedy. Starting back in the 1970s the process that would lead to the single market and the single currency was not powered by the grand ideals that had originally given rise to the European Community. Rather, it was imposed by a state of necessity. The oil crisis had created a mass of international liquidity. Once the new price of fossil fuels was consolidated, this liquidity shifted into the foreign exchange market, focusing especially on the four main European currencies, drawing profits from the changing exchange rates that this money itself fostered by switching from one to another. It altered the balance of payments, affecting national economic policies. At

summit in the Hague in 1969 a project that would come to be known as the Werner Plan was launched. The idea was to gradually narrow exchange rate disparities and eventually, by the 1990s, institute a regime of fixed exchange rates, the equivalent of a single currency. Studies conducted by a committee of high-level economists and technicians, sponsored by the European Commission and promoted above all by Jacques Delors, predicted that the Single European Act plus the European Union would produce palpable benefits for its members, thanks to the elimination of the costs of customs barriers under the Act and of monetary transactions under the Treaty.

**Q. Errors may have been made in finalizing the details of the system.**

A. Honestly, I have to rule that out. The Maastricht Treaty gave the Union the objective of sustained, harmonious, non-inflationary growth, respecting the environment, which was supposed to create jobs and improve the living conditions of working people (Article 2). In essence, the growth that the Union pledged to foster was what the member states were to receive in return for forgoing the exercise of their sovereignty in monetary and other, related affairs.

**Q. But just wanting growth is not enough. It has to be produced. Maybe there were errors in selecting the instruments for this, or in the way it was to be realized.**

A. We can confidently rule out any such errors. The “system architects” were Jacques Delors, the Commission President, Otto Pöhl, head of the Bundesbank, and Guido Carli, Italy's Treasury Minister. The rules they introduced were logically consistent and fundamentally complete, and they took historical experience into account. The idea that the Union could be in the nature of a nation-state was discarded. It would not have the power of taxation. Its resources would come, aside from external customs duties, from the member states themselves, under the Treaty rules. The Union's budget was to be strictly in balance. It could not issue debt or borrow. Accordingly, the task of promoting economic growth could be assigned to the member states alone. They would see to this through their own distinct and independent economic policies, extending to every sphere save the monetary. The Union would play a merely coordinating role. By means of recommendations, not binding acts, it would issue guidelines for coordination. The specific rules governing monetary affairs were to consist in limits to the member states' power to borrow, with two distinct ceilings in relation to the country's GDP: an annual deficit of no more than 3% and total public debt of at most 60%. These limits were designed to ensure that growth would be “non-inflationary”. The member states would be allowed to overstep them in special cases governed by binding criteria, to which the Union was to adhere in its oversight (Treaty on European Union, Article

104C). The annual borrowing ceiling could be exceeded in exceptional, temporary circumstances produced by external factors beyond the individual State's control. The 3% deficit and 60% debt ceilings corresponded to the historical experience not only of Germany but also of the United States. For over a century the US had observed these limits, save in wartime, and had doubled its GDP.

The rules for growth were to apply starting on January 1<sup>st</sup> 1999, the launch date of the new single currency, the “euro”. Member states that wanted to use the new money would have to achieve, through their own autonomous policy action, conditions of relative uniformity among their economies. This was a necessary precaution, precisely specified in the Treaty, because if the system were to facilitate the formation of dominant positions the strong economies would crush the weaker. There would be a special testing process, and only those that passed would be admitted to the new currency. The applicants numbered 12, those accepted 11. The twelfth was deferred for a year. For nearly twenty years, by then, the world economy had been growing at an exceptionally fast pace. If the Treaty rules had been applied, the EU member states, and those of the euro in particular, would have contributed to and taken full advantage of that growth.

**Q. What do you mean, “if they had been applied”? If the rules were laid down in the Maastricht Treaty and if they were well designed, applying them was not optional but mandatory. How could the Commission and the other decision-making bodies of the Union shirk the duty of enforcing the Treaty?**

A. Yet that is just what happened. Let me add that over the years two new treaties were adopted, the Amsterdam Treaty of 1 May 1999 and the Lisbon Treaty on the Functioning of the European Union of 1 December 2009, which repeated but amended the text of the Maastricht Treaty on European Union. The Lisbon Treaty is the one now in force. And its provisions relating to the single currency are not being applied.

**Q. Let me ask again: How is it possible that the EU authorities have shirked this fundamental duty and no one has noticed, or protested?**

A. In fact, there is something of the incredible here. The EU decision-making bodies have had recourse to the procedure set out in Article 103(5) and Article 189C of the Treaty, which govern enforcement of the harmonization guidelines coordinating member state economic policies, to work what amounts to a radical alteration of fundamental Treaty provisions. This was the procedure used to approve Regulation 1466/97. The euro was officially launched as scheduled on January 1<sup>st</sup> 1999, but under different rules from those laid down in the Treaty. Instead of the Treaty rules, those of Directive 1466 held sway. This regime was not just different but

diametrically opposed to that of the Treaty: an unbelievable act of illegality that has lasted for fifteen years now!

**Q. You mean the famous Maastricht parameters have never actually been applied. Could you explain how Directive 1466 differs from the Treaty? Is it suited to producing economic growth? Has it done so?**

A. Let me answer these questions separately.

a) First, for the purposes of growth the Treaty gave member states two powers: that of conducting their own economic policy for sustained, harmonious, balanced and non-inflationary growth, as prescribed in Article 2 of the Treaty; and that of borrowing, up to the ceiling, and even above it in exceptional, temporary circumstances. Regulation 1466 of 1997 replaced these with two duties: the obligation of having, in the medium term, budgets in surplus or near balance; and that of achieving the result of budget balance on the basis of a programme approved by the Union, member state by member state. Now, a duty is the opposite of a power. All the more so, two duties are the contrary of two powers.

b) Second, the Regulation could not have produced economic growth: it would only produce depression. The member states with balanced budgets in January 1999 were few indeed, perhaps there was only one. Those running deficits, in order to attain the prescribed result, would have to swim upstream. They could have done so if they had had sufficient idle productive factors to utilize. They would have needed an equally adequate amount of resources. In fact, idle factors were abundant in most countries: the unemployed, first-job seekers, laid-off workers on benefits, public goods of all sorts from public works (highways, bridges, tunnels) to land and buildings, environmental and cultural goods, unfinished works and goods that were beginning to deteriorate for lack of ordinary and extraordinary maintenance. Plus those damaged by natural disasters (earthquakes, landslides, floods).

The factors for exploitation, then, were abundant, and in fact they required urgent intervention. But the resources were lacking, and the member states were implicitly prohibited by Regulation 1466 and its successors from procuring them by issuing debt on the market. The ban on borrowing prevented these countries from seizing growth opportunities, such as those created by the increasing demand for typical Italian export products in the emerging economies. The effect of the budget constraint could only be spreading depression. And this was perfectly predictable. In 2006, at a hearing in the Senate, I showed a slide projecting that if the GDP growth rate were 0.5%, Italy's ratio of debt to GDP would rise from 110% that year to 130% in 2013. The average growth rate was actually less – and the debt ratio has risen to 133%.

c) Third, the statistics for the period since 1999 (the balanced-budget rule of Regulation 1466, which dates to 1997, began to be applied from January 1<sup>st</sup> 1999) confirm the depression – widespread and intensifying – in the euro area. From 2000 to 2010 Germany had a growth rate of 0.9%, France of 1.1%, and Italy of 0.2%. For 2013, the respective rates were 0.6%, 0.2% and minus 1.9%. Thanks to these results, the three countries scored the sixth-, eleventh-, and third-worst performances in the world for the decade 2000-2010, and nine other euro-area countries are also among the worst. For the preceding decade (1990-2000), none of the future euro-area economies figured in this negative “honour roll”. These data too confirm that the causal factor in the unexpected, widespread, intensifying economic recession of the euro area is the euro itself. Its introduction coincides with the relegation of thirteen euro countries, including the three largest, among the world's worst performing economies in 2000-2010.

**Q. From these answers, it would appear that as long as the medium-term balanced-budget principle remains, the depression will continue. Its direct repercussions are flanked by indirect effects. What can you tell us about these?**

A. You've touched the sore point, all right, and one that is destined to become ever sorer. The indirect effects are all the more dangerous in that some are not readily detected.

**Q. Such as?**

A. First and foremost is the complete elimination of the government function, i.e. the right to exercise political power. The European Union lacks any such power. That is, it is shorn, a priori, of the character of “nation-state”. This was decided from the very start. The decision-making bodies of the Union have appropriated, de facto, powers that they do not have, such as the non-application of the Treaties and the imposition, criticized, of indisputable damage. An extraordinary “revolution”, or “coup d'état”, or “de facto imposition of a new regime” has been carried through (the third expression is the most accurate). The additional powers taken on by the authorities, seemingly political, are actually totally implicit in the balanced-budget obligation. The bodies of the Union too have their “homework” to do, namely applying the principle by which they themselves are bound.

The member states' power to govern was abrogated with the elimination of two powers, that of setting independent economic policy and that of borrowing (creating debt). States could continue to exercise their sovereignty in all spheres but that of monetary policy. However, the monetary sphere exerts a crucial influence on all the others. Specifying the

consequences of the balanced-budget obligation, on which the Commission insists, enables it to bring into the monetary sphere a whole series of matters that are properly the jurisdiction of other sectors, such as the bureaucratic structure of the administration, employment relationships, and tax rules.

Since EU bodies do not have – and as long as the Treaties remain, cannot have – any political duty or responsibility, so the governments of the euro-area countries, insofar as they comply with the regulations, are in reality no longer governments properly so called, even if they may not realize it. Their only function is to “do their homework”, to use the term popularized by an Italian prime minister in a phrase that may have seemed to be a provocation but was actually perfectly accurate. The prime minister who pronounced this phrase is the same man who in 1996 and 1997, as Italian member of the Commission, took part in the drafting and then the approval of Regulation 1466/97.

d) Fourth, from the three points set out above, it follows that all the consequences that have come down since January 1999 are to be attributed to the system instituted, de facto, as from that date. The system is self-protecting. To clear away the presence of this system, two legal courses have been identified, corresponding to two national powers that the Union has not managed to abrogate. One is of apparently limited efficacy, but with the advantage that a member state can resort to it immediately. The second, with more radical effect, would take longer to implement. The first consists simply in each member state's right-cum-power to demand that the EU authorities apply and strictly enforce the Lisbon Treaty (now in force), and only the Treaty. The second consists in the power of the states that have renounced derogation (a requirement for accession to the euro) to switch to the general group of states with derogation. These currently number eleven. By joining the group with derogation, the member state regains the power to have a currency of its own. These countries can then join with others to forge common political bodies for the management of a new currency. This second alternative opens the road to political Union. Additional countries could join the original core group; in the end, all probably would. The European dream would be realized. The first of the two alternatives set out here is favoured by current circumstances that could well vanish.

e) These considerations relate to the operational sphere. Perhaps even more important are the “formal/institutional” implications, which are essentially three in number. If the powers of the member states and of the Union itself, in the present situation, consist essentially in “doing their homework”, complying with these prescriptions has the further consequence of making the system self-protecting. It blocks any effort at change. The system becomes a robot, an automaton. If the design does not provide for special devices (like those of nuclear reactors, activated to shut it down in

case of danger), the system will go its way, no matter what happens. An old saying has it that “The world is round, and around it spins.” And you can't get off. In the same way, you can't get off the automaton consisting of EU+euro. For the Earth, over the millennia, and over the centuries, changes have occurred. Men, animals and plants have simply had to submit, adapt, or, as in the case of some prehistoric beings, succumb. The same holds for the “cage” of the EU+euro. In this context, an unexpected phenomenon has been detected within the EU-eurozone system, a factor of harm. It has been present for fifteen years now, and the effects are spreading and worsening. The system EU plus eurozone is not just the simple “cage” it appears to be but a special cage that gradually contracts. The damage that it continues to do may lead to implosion. This is what happened to the Soviet Union, as to the Roman Empire thousands of years ago or the Chinese Empire centuries back. The danger for the eurozone is nearing, and the pace could accelerate.

f) These de facto conditions entail two paradoxically contrary consequences on the formal-systemic plane. First, if the effects are to be ascribed to the system as such, then no blame attaches to the successive governments in office since January 1999 for the depression, economic stagnation, massive unemployment, firm closings, institutional and environmental regression, and so on. No matter what they might have done, it could never have been enough to alter the main causal factor even marginally. Disparities between countries would exist, to be sure, but only as the consequence of their original structural features and their cumulative effects.

Today, however, things stand differently. The situation has changed radically. It has now become clear for all to see, in the Italian adage, that “the devil has made the pot but not the lid”. The pot, here, is represented by the balanced-budget constraint. The lid is the two powers mentioned, namely to demand the immediate application of the Treaty and only the Treaty and to go over, possibly in concert with other countries, to the status of member states with derogation, staying in the Union and creating a new, separate currency. Obviously, given the system's capability for self-defence, the EU decision-making bodies would strenuously resist any effort to use either of these powers. But this resistance could be overcome if, in order to escape from the “cage” or temporarily suspend or attenuate its effects, the government leaders of the member states succeeded in demonstrating that the law is on their side and that, in fact, if they failed to do as announced they themselves would be liable to severe sanctions.

For the people exercising the functions of government within the member states, the gravest, immediate consequence is the complete suppression of democracy, which is the founding principle of every single member state of the European Union and at the same time the necessary

condition for admission to EU membership itself. The essence of democracy is the power of citizens to take part, through regular elections in conditions of absolute equality, in the choice of governments, and hence to count in the policy decisions that affect their lives as individuals and as members of the national community. If the government is deprived of all power, this simply removes the assumption on which citizens' right to influence policy choices is based.

The regime thus instituted is clearly worse than autocracy, despotism or even totalitarianism. Dissent is possible, but the citizens' dissent, however manifested, leaves the shell of the automaton-like system unscathed. Now, however, the identification of legal powers to get us out of the cage, or at least attenuate or suspend its effects, alters the scenario. A government that has learned of the existence of powers that can get its nation out of the straitjacket yet does not use them becomes itself complicit in the suppression of democracy. The heads of government and administration who take part, even by silence, in enabling the automaton to prevail are themselves liable to the accusation of violation of the Constitution. The idea that citizens can use this legal liability to make sure that existing powers are exercised in timely and effective fashion is no mere abstract hypothesis.

**Q. Professor Guarino, so far you have just set out, perhaps in somewhat simpler form and a bit more elaborated, the conclusions of some of your recent essays. Can you tell us what there is, in your thesis, of specific interest to a national trade union like the CISL?**

A. As we know, and as you have had occasion now to confirm, in moments of severe crisis anyone who espouses a thesis is duty-bound to set forth a full, detailed proof. If errors relating to essential points are detected, the thesis has to be abandoned. So far my arguments have been fairly widely publicized but not contested or refuted. Mere statements of opinion bearing on complex, delicate matters, however, are a clear danger. They confuse ideas, lead public opinion astray.

This somewhat lengthy premise serves to underscore the responsibilities and the power of a major trade union in the current crisis. While I am convinced of the soundness of the premises, at this point I can only set out reasonable hypotheses.

Common experience teaches that the mere formal endowment with a power is not sufficient for its effective exercise. If your own power is likely to have the effect of blocking or overturning others, then you need strength enough to prevail. My conclusion is that we can get out of the cage, or prevent it for the moment from being made still more restrictive, by the exercise of legal powers. In fact, there is no other way. In the absence of

powers guaranteed by the Treaties, there is no other way of obtaining the result desired, not even on the absurd hypothesis of an atomic bomb. This legal path would certainly meet with rigid opposition on the part of the Commission. This is the first obstacle. A factor that can help to overcome it is the powerful support of a united public opinion. One cannot help being struck by the fact that the very EU authorities who accused Greece of falsifying the books one year in order to show a balanced budget, and who continue to recall this fact, have taken it upon themselves not to violate just one rule but surreptitiously to institute a whole set of rules that are unquestionably harmful, and to keep them in place for fifteen years. A double standard, perhaps? All the top policy-makers of the Union and of the member states who have collaborated in this should show the good sense to be silent until they can demonstrate that they know the content of the Treaty and that the Regulations they have passed and applied are in compliance with it.

Since 1991 we have had three successive treaties on the specific matter we are interested in here: the Treaty on European Union, known as the Maastricht Treaty, and then the Amsterdam and Lisbon treaties. The rules governing the euro are repeated in all three. The fundamental rule is in Article 104C of the Maastricht Treaty, which corresponds to Article 126 of the Lisbon Treaty, which is now in force. Article 104C(2a), second indent, introduces the binding rule that a member state may violate the deficit limit if the overshoot is exceptional and temporary and if the ratio remains in any case close to the ceiling value.

The criteria of being exceptional and temporary are satisfied if the overshoot is due to an external factor whose effects the member state had no way of avoiding. And what cause could be more exceptional than the depression in which the States without derogation are now mired, provoked by the illegal imposition of the requirement to attain a result not envisaged in the Treaty, namely a balanced budget in the medium term, with the further obligation to pursue this result by means to be approved by the Commission itself for each state? The budget overshoot pursuant to Article 104C(2a), second indent, should be deemed justified if it can be shown that there are conditions propitious to the growth of the economy. Essentially, it is the right-cum-duty of Italy's top policy-makers to demand the application of the Treaty. If they failed to do so, they would share the responsibility for a serious violation of democracy in this specific case.

The institutional approach has long lost sway among economists. Many have trouble accepting the idea that the principles underlying so much of what happens in the global market, now that it is almost entirely open, cannot serve to the same extent or with the same certainty to explain what happens in a systemic automaton. This is why the ECB is different from the

US Federal Reserve. Positivist legal scholars have not the slightest interest in the formal characteristics of “bio-juridical organisms”. Their task is to examine the “substance” of the laws. They derive principles; linking these together, they form systems. This is a fundamental function. The Union, the euro area, and the member states are beings in constant motion. The motion is produced by cause-and-effect relations. The substance of the norms can certainly be utilized to trace this movement. But even more useful are the “forms” into which this substance must necessarily fit. There are four elementary forms of law. The presence of one or another reveals the factor from which a given conduct originates and what effects, in what direction, it will have. If we do not know the primary causal factor of a phenomenon that has persisted for years and years, we are easily convinced that it is difficult to remove. We try to find the parties responsible. Everyone sees the culpability as lying with others, and in the end the blame is placed on abstract or quasi-abstract entities: the past regime, bureaucracy, the governing class, the judges, Europe. How well off we were when we had our dear old lira! And if we seek some human responsibility, you can bet that it will be assigned to the most important person in the dominant country. Expressing an opinion is easy. Anyone can do it. When beliefs are consolidated, though, it is hard to alter them. What is sure is that we generate confusion, the indirect but grave effect of the primary cause.

No less obdurate is the obstacle consisting in interests. Blame is put on international finance, financiers, the bankers, speculators, and so on. But more than these vested interests, the obstacle consists in the thousands, millions, of individual positions, small or large. If the future is confused and uncertain, everyone will tend to defend his own position, his own interest, however small. He holds on to his assets for dear life, for if he loses them there is no assurance of regaining them in the future. This goes for daily life, for work, for politics. Everyone turns cautious, no one is willing to risk. This is a perfectly natural, understandable reaction. This type of conduct on the part of millions and millions of people is interwoven, overlapping at all levels. A rigid barrier forms, an obstacle that even the most potent force would have trouble dismantling.

The cultural barrier and the interest barrier are significant not only as obstacles. They become billions of components that can no longer be an active force.

Then consider the solidity conferred on any idea that has enjoyed consensus for a good period of years. Today, many people would be ready to protest against the consequences of the balanced-budget principle, even to deny the evidence of the principle itself. It has been applied for fifteen years now and no one has called it into question. Regulation 1466/97 itself is

virtually ignored in treatises on European law, including some of the most recent and authoritative.

The obstacle of individual interests is different. Given the general confusion, with no agreement on the cause of our difficulties, here too we find a broad tendency to hold tight to whatever position one may have attained, lest we not be able to find another. No one sticks his neck out. Again, as we said, in difficult times this is an understandable attitude, actions that are of little importance singly but that number in the millions. This is a barrier with no weak points. If some components give way, others take their place immediately. Learning from the fate of those who have fallen, the new arrivals fiercely defend their own interests.

**Q. What about professional associations or unions, whose specific function is to defend their members' interests?**

A. These are the intermediate bodies within civil society. They can certainly make a positive contribution. But there is a limit. These bodies tend to be organized hierarchically. Hierarchy is indispensable if the power structure itself is solid and united. Today the fragmentation induced by a depression whose causes are generally unknown and whose duration and intensity are unpredictable has shattered the hierarchical identity of these intermediate social bodies. The base now often moves totally independently of the leadership. This is analogous to what is happening within the political parties. The traditional parties are split into a series of groups locked in a power struggle whose object – power – is in reality non-existent. They too, given the uncertainty of the future, tend to act in defence of their own self-interest. The outlook is not brilliant.

**Q. You still haven't talked about unions.**

A. Now is the time.

Going ahead with our analysis, we find that the only class in today's society that is sufficiently homogeneous is the class of working people. There is at least some uniformity among quite diversified operational sectors. An exception, but not inevitably, is constituted by the higher levels. Trade unions could be the social body with the most direct interest in determining the primary cause of the depression. For the pain has been inflicted on millions of jobless workers, young people unable to find work, those laid off, those threatened with imminent dismissal, pensioners, workers who fear their companies will fail, those whose wages or pensions have been reduced, recipients of survivors benefits, patients who see health services curtailed. And the list could go on and on.

If a plausible or convincing hypothesis were to gain broad acceptance, it could be used to mobilize the force consisting in millions of people with similar interests. A force that could convey courage, authority and enthusiasm on the government, and more generally on the entire structure of national leadership. A powerful weapon that would confer conviction upon the demand that the European Union strictly observe and apply the Treaties; that would put the government in a position to draw on the powers of the Lisbon Treaty in practice. A force sufficient to stimulate and to handle, with energy and independence, what would certainly be a difficult phase and to seize the time to enact a policy of short-term revival of the economy or to launch a process of political recomposition in Europe, through a two-step transition: exit from the euro, remaining a member of the EU, and bringing together an initial group of countries prepared to create a new common currency, to be managed by a common political organization.

**Q. There are two possible dangers here: the politicization of the trade unions and the aggravation of conflict within enterprises, or between unions, or between a union confederation and its components. In a delicate situation like the present, this would only compound the damage.**

A. Every option between alternative courses implies a certain amount of risk. This consideration, however, applies to free, discretionary choices, i.e. political choices. Our formal-systemic analysis has brought out elements of constriction, of duty, which trade unions cannot ignore.

a) Most of the people who have borne the brunt of the depression, directly or indirectly, belong to the class of payroll employees. These are the men and women whom unions must represent, whose welfare they must defend. To help remove the cause of the depression or at least attenuate its virulence thus forms part of the union's institutional mandate. Opposition to a law limiting the right to strike, which is enshrined in the Constitution (Article 40) would certainly fall within that mandate. But the balanced-budget rule is far more harmful than a hypothetical anti-strike law, because it has created conditions in which strikes are without effect. De facto, it has annulled the right to strike. The fact is that even a general strike involving millions of workers, unless it degenerates into rebellion, can have no effect on the obligation imposed upon the government to achieve the result of a balanced budget. This, with respect to the trade unions, is the counterpart of the elimination, in politics, of the preconditions (the existence of a government with true political powers) for the specific function of political parties, the instrument whereby citizens participate democratically in determining national policy (Article 49 of the Constitution).

The trade unions thus have the right-cum-duty to help overturn a law, not only national but European, that strips the right to strike of all real efficacy.

b) For a trade union acting to maintain stability, to eliminate the depressive effects of the budget constraint, the other side is not the employers, nor the government, not even the European Union as such. Rather, it is a system of abstract rules containing the regime of an institution that acts as an automaton. Consequently, there is simply no risk of a trade-union conflict. Rather, the union would join with the government in a “battle for the law”. When the unions take the initiative, it is likely that other groups will join.

c) We have the historical precedent of what happened in Italy starting in the mid-1950s. The unions fought for the full implementation of the welfare state as envisaged in the Constitution. The parties of the opposition, and then of the governing majority, joined them. The institution of the welfare state had the extraordinary effect of an accelerating rise in demand throughout the entire nation. Productive initiative was spurred even in the most remote parts of the country. This was the origin of the extraordinary development of Italy's typical export products and the Italian economic miracle. The action for the practical application of the Constitution was not a class struggle but a “battle for the law”. In the same way, today it would not be a class struggle but a battle for the law if trade unions acted to spur the government to demand that the EU authorities strictly observe and enforce the Lisbon Treaty on the Functioning of the European Union.

**Q. Aren't you contradicting yourself here? Earlier, you said that your “certainties” were limited to the interpretation and the application of the European Treaty. Now, in appealing to the trade unions, you would appear to be going beyond the setting out of “reasonable hypotheses”.**

A. Yes, the contradiction does exist. I apologize. But the contradiction is also evidence that I am not pursuing some predetermined goal. The contradiction stems from having changed my point of observation. If I were considering matters from within the trade union movement, I would have no claim to talk other than to formulate hypotheses. The reflections stimulated by our conversation today have shifted the point of observation within our formal-systemic analysis, bringing out a specific role for trade unions to play in respect of the core question, namely the distribution of powers and obligations, rights and duties.

I am grateful for this last question. It is my duty to add that notwithstanding my own certainty concerning the operation of the system

EU+euro, if the trade union movement wanted to adopt such a thesis it would have to subject the conclusions to the strictest, most rigorous possible verification. No one has a monopoly on the truth. And just as I have now acknowledged a contradiction in my own positions, I am ready to recognize, if someone so demonstrates, that I am in error. Such a demonstration, however, cannot consist in the statement of a contrary opinion, but in the specific indication of erroneous facts or acts, or logical flaws in my argument.

Thank you again.

X  
ANNUL THE AGREEMENT<sup>15</sup>

**Q.** Professor Guarino, for some time now you have been proclaiming a series of uncompromising theses on Europe and the euro. So far, your views seem to be isolated, but perhaps now they are gaining some following. Can you briefly summarize them for us?

**A.** The Maastricht Treaty on European Union, whose norms are reiterated in the Amsterdam and Lisbon treaties, set for the Union the objective of “harmonious and balanced development of economic activities, sustainable and non-inflationary growth respecting the environment, a high degree of convergence of economic performance, a high level of employment and of social protection, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States.”

The objective of growth being set, the task of fostering it is assigned to the individual countries, each with its own economic policy and with its own power of borrowing, up to the Maastricht ceiling. The Union was simply to coordinate these national economic policies with overall guidelines, to be adopted in the form of recommendations, i.e. non-binding acts.

The obligation of fostering growth was to go into effect for all the Member States that adopted the euro as their common currency starting January 1<sup>st</sup> 1999.

**Q.** What happened on that date?

**A.** The new single currency was in fact launched – not, however, under the rules of the Treaty but under quite a different set of rules laid down by Regulation 1466/97, an act utterly and absolutely incapable of modifying a multilateral Treaty ratified by all the member states.

**Q.** What are the differences?

**A.** The Treaty regime installed at Maastricht and reaffirmed at Amsterdam and Lisbon was directed to the objective of economic growth. It assigned this task to the member states and for the purpose gave each of them two “powers”, namely the power to conduct economic policy, covering every aspect of the economy save monetary policy, and that of borrowing (creating debt) up to the limits, to apply in accordance with binding criteria, established by Article 104C of the Treaty on European Union (reiterated as Article 126 of the Lisbon Treaty on the Functioning of the European Union). Regulation 1466/97 annulled these two powers and

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<sup>15</sup> Interview with *Milano Finanza*, 4 January 2014.

cancelled the “objective” of economic growth and development, replacing the objective with a “result” and the powers with two duties or obligations, namely achieving a balanced budget in the medium term and doing so by means of a program laid down for each country by the EU authorities.

**Q.** What have the consequences of these two substitutions been?

**A.** Above all, starting on January 1<sup>st</sup> 1999 we have had a steadily widening and deepening economic depression. The number of unemployed, the firms driven out of business, the interruption of public works projects, the deterioration of infrastructures, the general climate of confusion, all offer devastating testimony. No less serious have been the institutional consequences. Democracy consists in the power of citizens to influence, through elections and political parties, the policy decisions to which they will be subject. If the nation is deprived of the power to determine its own economic policy or to create debt, the very prerequisite for democracy is cancelled. The responsibility for the damage done can be traced to the obligations placed both on member states and on the decision-making bodies of the Union.

**Q.** You have said repeatedly that you don’t want to “name names” in order to avoid the risk that delicate decisions may be distorted by personal resentment.

**A.** True enough. But it’s been two months since I raised the question, and the names of the people responsible are an open secret. They are the members of the Santer Commission, which was in office both when Regulation 1466/97 was proposed and when it was adopted, in 1997. There were twenty members of that Commission, including two Italians: Mario Monti, whose duties bore directly on the content of the Regulation, and Emma Bonino, whose tasks were not directly relevant. In addition there were the ministers representing the various member states who took part in the Councils that approved first the initial proposal and then the adoption of the Regulation. Nor can the members of the Commission that succeeded the Santer Commission on 16 September 1999 be deemed free of liability. It is unthinkable that they failed to realize that they were enforcing rules in clear contrast with the Maastricht and Amsterdam treaties and therefore totally illegal.

**Q.** Can the present-day holders of top constitutional and political offices also be held responsible?

**A.** Good question. The answer can avoid confusion and damage. The heads of constitutional offices, under our Constitution, all have their own specific powers and duties. The President of the Republic does not have direct

responsibility for economic and monetary policy. In this sphere he carries out tasks of oversight, but acting in accordance with the decisions of the specifically competent authorities, namely the Prime Minister and the Treasury Minister. President Giorgio Napolitano, on 12 November 2011, accepted the resignation of Prime Minister Silvio Berlusconi and named Mario Monti as life senator and designated him to form a government as prime minister. The competent authorities, whose indications were to be followed, were the outgoing Treasury Minister Giulio Tremonti and Monti himself, premier-designate and also the new Treasury Minister.

**Q.** Can't we say that now, the question having been explicitly raised two months ago, everything is changed?

**A.** It would be institutionally correct for the President of the Republic, upon learning of the problem, to put the matter to the Prime Minister and the Treasury Minister and to ask that it be settled promptly, prudently and clearly, assuming responsibility for the response.

**Q.** What do you think of the amendment to Article 81 of the Constitution?

**A.** The Fiscal Compact, as I have made clear on a number of occasions now, can be ignored completely. The Compact itself specifies that it is applicable only within the limits set by the Treaties on European Union. And since it is not compliant with any of them, from Maastricht to Amsterdam to Lisbon, it simply does not apply.

As for our Constitution, the new text of Article 81 was drafted wisely indeed. It allows the State to incur debt "in the case of exceptional events". And certainly the surreptitious, illegal imposition of the principle of balanced budgets in the medium term qualifies as such an event, for which the single member states are not responsible and whose result has been unexpected damage. As now worded, Article 81 corresponds to the amended version of Article 104C of the Treaty on European Union, which was proposed by the Italian delegation and approved unanimously by the other member states.

**Q.** As dean of Italian constitutional scholars, do you have any additional suggestions?

**A.** Yes: the greatest possible prudence in enacting major new legislation and passing constitutional amendments. When the Constitutional Court rules a law unconstitutional, this makes it ineffective for the future, of course. But it not does validate it for the past, either. Every time the question may arise, even in derivative fashion, for past cases, every court, including administrative tribunals, must recognize the judgment of unconstitutionality

and rule accordingly. This may raise questions that are delicate in the extreme.

## XI THE CITIZENS OF EUROPE

Every individual belonging to the human species is by that fact what we may call a “bio-juridical” organism. “Bio” as in “biological,” “juridical” in that every single individual, naturally and unconsciously, draws on experience to create a personal code of conduct, modifying it, as necessary, on the occasion of single actions. In an organism composed of multiple individuals, the personal code is combined with an external, collective code of conduct. This engenders behavior that would not occur if the group and the discipline that it accepts and imposes did not exist. Intrinsic to the “group” organism are the creative function and the creative capacity. This group organism comprises a smaller, governing organism, whose function is to set the direction and mode of the developments in which the group’s identity takes material form. “Democratic” organisms are defined as those in which, either directly or through pre-set procedures, all the members of the group participate in the governing body. The prerequisite for such participation is that individuals enjoy full, and equal, individual freedom, sufficiently uniform material conditions, and perfect equality in participation in decision-making.

The European Union is bound to the democratic principle. Consistently with that premise, all the individuals who make up the Union are called “citizens” in that they are empowered to take part in choosing the members of the common governing body.

Article 9 of the current Lisbon Treaty on the Functioning of the European Union gives the individuals who belong to the Union two distinct citizenships, in connection with their participation directly in the Union and in their single member states. For purposes of the democratic principle, the way in which citizens take part in decisions at the highest level, which affect all Europeans, should be a matter of perfect indifference. Certainly, the prerequisite would be satisfied if all the citizens of the Union participated directly in determining the makeup and the policies of the EU’s top bodies (which would constitute a Political Union). It would also be satisfied if this result were attained via participation in the decisions of the single member states, all of which are guaranteed participation in conditions of parity in the Union’s decisions at highest level. This was the solution opted for in the Maastricht Treaty, reiterated in the Lisbon Treaty. Citizens, exercising democratic powers fully guaranteed by the member states’ legal orders singly and together, influence the decisions of their national government, and through it, on a par with the citizens of the other member states, the decisions of the Union and the euro area.

This system, spelled out in the Lisbon Treaty and its predecessors, was based on assumptions that were undone on January 1<sup>st</sup> 1999, as “The Truth” demonstrated and the essays following it confirm. That was the day on which the member states’ power to set economic policy and to create debt was eliminated. Since then, the function of the member state governments has consisted solely in fulfilling two obligations, namely achieving a balanced budget in the medium term and doing so by way of a route set for each single state by the European Union’s authorities.

The powers of national governments in the design of the Treaties constituted the middle link necessary for the citizens of the single member states (and hence also of the Union) to be able to affect the decisions at the top. With the abrogation of the two powers assigned to the member states by the Treaties, the only alternative means of ensuring the democratic operation of the Union and the euro area was to enable individual citizens to directly influence the EU and euro-area organisms delegated to make economic policy decisions.

Theoretically, they could have worked through the European Parliament. Except that Parliament has no general competence for economic policy. What, then? All we can do is recognize that Article 10 of the Lisbon Treaty, with its solemn declaration that “the functioning of the Union shall be based on representative democracy”, has been twice-violated. First, because the democratic principle, which all the member states are supposed to observe (Article 2) is utterly lacking. With regard to the fundamental matter of economic policy, with its manifold repercussions on fiscal, financial and social policy, and public policy in general, the governments have no “powers” but only “duties”. And second, because the European Parliament, the sole body in which European citizens are represented as such, lacks general competence for the economy, finance, taxes, and related matters.

At this point, the European system has to be downgraded. *It is not democratic*. But at the same time it cannot be called autocratic or dictatorial. In autocracy and dictatorship (as is discussed in “The Truth”), the top leadership is “human”. If a justified protest is raised, that is, there exists a person or a group of people who may have an interest in taking it under consideration. If the human summit is lacking, then no response is possible save the reaction provided for and regulated in the system of sanctions. What reacts is not the organism but a mechanical organization.

A final aspect remains. As the earlier essays in this volume have observed, as regards the member states the “devil” may have made the pot, but he neglected the lid. The EU member states still have two powers, namely to insist that the decision-making bodies of the Union comply with the Treaty and to ask for their status to be switched to that of member with derogation (from the euro), possibly joining with other countries in the same

condition to form a new common currency, but one to be subject to a political power, also common. Countries are reluctant to avail themselves of these powers. The political environment has been so pulverized and worn down by our protracted depression that no leader has the courage to take a step, for fear of being supplanted by the others. They fail to see that if the government's only task is to fulfill "obligations" there is no point in holding on to their "power", because all positions of real power have been suppressed.

The powers that remain to citizens, however, can be used to prod governments. Each and every citizen of Europe, through the power of the vote, in their own states, can demand that the government that represents them be implacable in requiring that the Union authorities rigorously observe the Treaties, or else that it seize every opportunity offered by the Treaty to get out of the cage we are in.

Another possibility is legal action against the Union for breach of contract (Lisbon Treaty, Article 288). Citizens may undertake litigation either individually or as a class action. This is largely unexplored territory, with potentially interesting prospects. Article 126 of the Lisbon Treaty (Article 104C of the Maastricht Treaty) exempts the member state from responsibility for overstepping the deficit ceiling when this is due to causes not under its control. European citizens have undergone the hard, bitter consequences of the rules laid down in Regulation 1466/97 – implemented, what is more, in fraudulent fashion – with no possibility of avoiding or controlling them. The responsibilities of the Union would seem to be undeniable. Nor can the jurisdiction of the national courts be ruled out a priori. The harm done here does not stem from errors made in the exercise of legitimate powers. Rather, the charge here is the exercise of powers that are null and failure to observe the primary obligation of obeying and enforcing the Treaties.

Finally, it is always possible – especially in the case of complex organisms transformed against their nature into automatons – that profound, unforeseen structural conditions may arise and, in contact with abstract rules, provoke unexpected results contrary to those abstractly planned. The citizens and nations of Europe, with the powers left to them, must be prepared, when necessary, to make full use of them.

Peaceful demonstrations are always legitimate (the right of assembly!). Violence is to be shunned, even when it is in reaction to rulers' illegitimate use of power. However, in demonstrating legitimately, citizens must not direct their protests at the wrong target, such as the governments now in office in high-debt countries. Since national governments have only duties and obligations, not powers, replacing the current government with another would change nothing whatever. Like their predecessors, they would be unable to take any measures of immediate effect. The only place

where a peaceful protest might be heard and lead to reconsideration is the seat of the Union's "non-government", the capital of Europe. There, in full respect for the Treaties, citizens from all the member countries of the Union could unite in action for the objective of economic growth as well as for the totally neglected aim of cohesion.

All hope is not lost. How many times, in the course of history, have organisms on the brink of catastrophe been saved at the last minute! All we need is a good dose of knowledge, intuition, lucid intelligence, calm and courage.

XII  
ACTS OF LAW REFERRED TO

A

TREATY ON EUROPEAN UNION  
(MAASTRICHT)

ARTICLE 2

*“The Community shall have as its task, by establishing a common market and an economic and monetary union and by implementing the common policies or activities referred to in Articles 3 and 3a, to promote throughout the Community a harmonious and balanced development of economic activities, sustainable and non-inflationary growth respecting the environment, a high degree of convergence of economic performance, a high level of employment and of social protection, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States”.*

ARTICLE 102 A

*“Member States shall conduct their economic policies with a view to contributing to the achievement of the objectives of the Community, as defined in Article 2, and in the context of the broad guidelines referred to in Article 103(2). The Member States and the Community shall act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the principles set out in Article 3a”.*

ARTICLE 103

1. *“Member States shall regard their economic policies as a matter of common concern and shall coordinate them within the Council, in accordance with the provisions of Article 102a”.*
2. *“The Council shall, acting by a qualified majority on a recommendation from the Commission, formulate a draft for the broad guidelines of the economic policies of the Member States and of the Community, and shall report its findings to the European Council. The European Council shall, acting on the basis of the report from the Council, discuss a conclusion on the broad guidelines of the economic policies of the Member States and of the Community. On the basis of this conclusion, the Council shall, acting by a qualified majority, adopt a recommendation setting out these broad guidelines. The Council shall inform the European Parliament of its recommendation”.*

3. *“In order to ensure closer coordination of economic policies and sustained convergence of the economic performances of the Member States, the Council shall, on the basis of reports submitted by the Commission, monitor economic developments in each of the Member States and in the Community as well as the consistency of economic policies with the broad guidelines referred to in paragraph 2, and regularly carry out an overall assessment”.*

#### ARTICLE 104 C

1. *“Member States shall avoid excessive government deficits”.*  
2. *“The Commission shall monitor the development of the budgetary situation and of the stock of government debt in the Member States with a view to identifying gross errors. In particular it shall examine compliance with budgetary discipline on the basis of the following two criteria:*  
*(a) whether the ratio of the planned or actual government deficit to gross domestic product exceeds a reference value, unless*  
*- either the ratio has declined substantially and continuously and reached a level that comes close to the reference value;*  
*- or, alternatively, the excess over the reference value is only exceptional and temporary and the ratio remains close to the reference value;*  
*(b) whether the ratio of government debt to gross domestic product exceeds a reference value, unless the ratio is sufficiently diminishing and approaching the reference value at a satisfactory pace.*  
*The reference values are specified in the Protocol on the excessive deficit procedure annexed to this Treaty”.*

#### ARTICLE 109 J, PARAGRAPH 4

*“If by the end of 1997 the date for the beginning of the third stage has not been set, the third stage shall start on 1 January 1999. Before 1 July 1998, the Council, meeting in the composition of Heads of State or of Government, after a repetition of the procedure provided for in paragraphs 1 and 2, with the exception of the second indent of paragraph 2, taking into account the reports referred to in paragraph 1 and the opinion of the European Parliament, shall, acting by a qualified majority and on the basis of the recommendations of the Council referred to in paragraph 2, confirm which Member States fulfil the necessary conditions for the adoption of a single currency”.*

#### ARTICLE 109 K, PARAGRAPH 3

*“A derogation referred to in paragraph 1 shall entail that the following Articles do not apply to the Member State concerned: Articles 104c(9) and (11), 105(1), (2), (3) and (5), 105a, 108a, 109, and 109a(2)(b). The*

*exclusion of such a Member State and its national central bank from rights and obligations within the ESCB is laid down in Chapter IX of the Statute or the ESCB”.*

**PROTOCOL 5**  
(on the excessive deficit procedure)

The high contracting parties, desiring to lay down the details of the excessive deficit procedure referred to in Article 104c of the Treaty establishing the European Community, have agreed upon the following provisions, which shall be annexed to the Treaty establishing the European Community:

1. *“The reference values referred to in Article 104c(2) of this Treaty are:
  - 3% for the ratio of the planned or actual government deficit to gross domestic product at market prices;
  - 60% for the ratio of government debt to gross domestic product at market prices”.*
2. *“In Article 104c of this Treaty and in this Protocol:
  - government means general government, that is central government, regional or local government and social security funds, to the exclusion of commercial operations, as defined in European System of Integrated Economic Accounts;
  - deficit means net borrowing as defined in the European System of Integrated Economic Accounts;
  - investment means gross fixed capital formation as defined in the European System of Integrated Economic Accounts;
  - debt means total gross debt at nominal value outstanding at the end of the year and consolidated between and within the sectors of general government as defined in the first indent”.*
3. *“In order to ensure the effectiveness of the excessive deficit procedure, the governments of the Member States shall be responsible under this procedure for the deficits of general government as defined in the first indent of Article 2. The Member States shall ensure that national procedures in the budgetary area enable them to meet their obligations in this area deriving from this Treaty. The Member States shall report their planned and actual deficits and levels of their debt promptly and regularly to the Commission”.*
4. *“The statistical data to be used for the application of this Protocol shall be provided by the Commission”.*

**B**

COUNCIL REGULATION (EC) No 1466/97 OF 7 JULY 1997

#### ARTICLE 1, PARAGRAPH 1

1. *“This Regulation sets out the rules covering the content, the submission, the examination and the monitoring of stability programmes and convergence programmes as part of multilateral surveillance by the Council so as to prevent, at an early stage, the occurrence of excessive general government deficits and to promote the surveillance and coordination of economic policies”.*

#### ARTICLE 3, PARAGRAPH 2, (A)

*“A stability programme shall present the following information:  
(a) the medium-term objective for the budgetary position of close to balance or in surplus and the adjustment path towards this objective for the general government surplus/deficit and the expected path of the general government debt ratio”.*

#### ARTICLE 5, PARAGRAPH 1

*“Based on assessments by the Commission and the Committee set up by Article 109c of the Treaty, the Council shall, within the framework of multilateral surveillance under Article 103, examine whether the medium-term budget objective in the stability programme provides for a safety margin to ensure the avoidance of an excessive deficit, whether the economic assumptions on which the programme is based are realistic and whether the measures being taken and/or proposed are sufficient to achieve the targeted adjustment path towards the medium-term budgetary objective. The Council shall furthermore examine whether the contents of the stability programme facilitate the closer coordination of economic policies and whether the economic policies of the Member State concerned are consistent with the broad economic policy guidelines”.*

#### ARTICLE 5, PARAGRAPH 2

*“The Council shall carry out the examination of the stability programme referred to in paragraph 1 within at most two months of the submission of the programme. The Council, on a recommendation from the Commission and after consulting the Committee set up by Article 109c, shall deliver an opinion on the programme. Where the Council, in accordance with Article 103, considers that the objectives and contents of a programme should be strengthened, the Council shall, in its opinion, invite the Member State concerned to adjust its programme”.*

#### ARTICLE 6, PARAGRAPH 2

*“In the event that the Council identifies significant divergence of the budgetary position from the medium-term budgetary objective, or the adjustment path towards it, it shall, with a view to giving early warning in order to prevent the occurrence of an excessive deficit, address, in accordance with Article 103 (4), a recommendation to the Members State concerned to take the necessary adjustment measures”.*

#### ARTICLE 13, PARAGRAPHS 1 AND 2

*“This Regulation shall enter into force on 1 July 1998”.*

*“This Regulation shall be binding in its entirety and directly applicable in all Member States”.*

#### C

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Document A gives the text of the articles of the Maastricht Treaty on European Union that set out the *objective* of economic growth, which should have gone into effect on the first of January 1999.

Document B gives the text of the articles of Regulation 1466/97 setting out the rules mandating the *result* of a governmental budget in surplus or near balance in the medium term, *which was applied starting on the first of January 1999* in place of the provisions of the Treaty.

The reader can readily determine for himself whether the two sets of rules laid down in document A and document B are identical or different.

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