re:constitution
Working Paper

Daniela Dobre

The Eurogroup in the Shadow of the (European) Rule of Law

working papers, Forum Transregionale Studien 40/2025

re:constitution - Exchange and Analysis on Democracy and the Rule of Law in Europe
c/o Forum Transregionale Studien e. V., Wallotstr. 14, 14193 Berlin

Daniela Dobre
The Eurogroup in the Shadow of the (European) Rule of Law
Working Papers, Forum Transregionale Studien 40/2025
DOI: https://doi.org/10.25360/01-2025-00071

Design: Plural | Severin Wucher

The Forum Transregionale Studien is an institutional platform for the international cooperation between scholars of different expertise and perspectives on global issues. It is funded by the Berlin Senate Department for Higher Education and Research, Health and Long-term Care.

Working Papers are available in open access via *perspectivia.net*, the publication platform of the Max Weber Stiftung.

re:constitution - Exchange and Analysis on Democracy and the Rule of Law in Europe
is a joint programme of the Forum Transregionale Studien and Democracy Reporting International, funded by Stiftung Mercator.

Abstract

The legal framework of the European Monetary Union (EMU) reveals a persistent imbalance between economic and monetary policy competences. While the European Central Bank exercises authority over monetary policy, individual Member States (MS) retain control over budgetary decisions, thereby creating structural risks to economic stability within the EMU. This paper examines the legal status of the Eurogroup, considering its prominent role during major economic crises, and the enduring challenges related to legal accountability in the EU's economic governance. The paper argues for the need to subject the Eurogroup to EU legal standards rather than intergovernmental arrangements. To this end, it advances the hypothesis that recognising the Eurogroup as an institution within the EU legal order—at least for the purpose of legal accountability mechanisms under Article 340 TFEU—could mark an indirect step forward in upholding the value of the rule of law within the EU and reinforcing supranational democratic legitimacy. Given the Eurogroup's informal and intergovernmental character, such recognition would address the dissonance between its lack of formal binding acts and the substantial political weight its decisions exert, which often translate into de facto binding effects. While the COVID-19 pandemic may have suggested a decline in the Eurogroup's constitutional relevance, MS' reluctance to reform the European Stability Mechanism – whose Governing Council is identical in membership to that of the Eurogroup – together with a renewed push toward fiscal sustainability, underscores the potential resurgence of the Eurogroup's political protagonism, particularly in light of ongoing needs for budgetary coordination and the ambition to strengthen the euro's international role.

Keywords: Legal status of the Eurogroup, Eurogroup accountability, EU economic governance, Rule of Law in the EU

Suggested Citation:

Daniela Dobre, "The Eurogroup in the Shadow of the (European) Rule of Law", re:constitution Working Paper, Forum Transregionale Studien 40/2025, available at https://reconstitution.eu/working-papers.html

The Eurogroup in the Shadow of the (European) Rule of Law

Daniela Dobre[1]

Introduction

The Economic and Monetary Union (EMU) is a unique legal framework. The division between its economic and monetary pillars, as determined by the principle of conferral in Article 5 of the Treaty on European Union (TEU), is distinctive yet opens the European Union (EU) to systematic vulnerabilities. Since 1999, the European Central Bank (ECB) has managed the single currency and monetary policy of the eurozone Member States (MS). Although Article 119 of the Treaty on the Functioning of the European Union (TFEU) grants the EU a role in coordinating economic decisions, individual MS retain control over budget and fiscal policies.[2]

Admittedly, since the EMU's inception, economists have expressed concern and issued warnings about its potential instability because of this asymmetry.[3] The EMU does not meet the conditions of an optimum currency area, i.e., a geographical area in which States put together their currencies in order to benefit from a shared one;[4] thus, this legal construction emerged as a natural object of inquiry. The financial crisis of 2007-8 further intensified EMU's asymmetric features, to the point of bringing it to the brink of collapse. Soon, the economic crisis evolved into a democratic crisis,[5] marked by the exceptional use of conditionality mechanisms imposed by the "Troika" (i.e., the Commission, the ECB, and the International Monetary Fund) on debtor states—an approach that, despite its provisional character, left a lasting imprint on the EU's economic governance.

---

[1] Postdoctoral Research Fellow of the University of Granada. E-mail: danieladobre@ugr.es.
I am grateful for the helpful feedback provided by the peer reviewers of this Working Paper, as well as by my re:constitution colleagues during the Fellow Talk held on 12 March 2024. I am especially thankful to Matteo Bonelli, Marco Dani, Claire Debucquois and Hoai-Thu Nguyen for their valuable comments and constructive criticism, and to Miguel Azpitarte Sánchez and Fernando Losada Fraga for very valuable help in the early phases of this project. I am solely responsible for any mistakes or inaccuracies.

[2] See, Rosa María Lastra and Jean-Victor Louis, "European Economic and Monetary Union: History, Trends, and Prospects", *Yearbook of European Law*, vol. 32, no. 1, 2013, 57-206.

[3] See, e.g., Anna J. Schwartz, "International Financial Liberalization and Exchange Rate Policies", *Cato Journal*, vol. 13, 1993, 273. Paul Krugman, "Lessons of Massachusetts for the EMU", in: Francisco Torres and Francesco Giavazzi (eds.), *Adjustment and Growth in the European Monetary Union*, Cambridge: Cambridge University Press, 1993, 241-260.

[4] Robert A. Mundell, "A Theory of Optimum Currency Areas", *The American Economic Review*, vol. 51, no. 4, 1961, 657-665. See more recently Markus K. Brunnermeier, Harold James, and Jean-Pierre Landau, *The Euro and the Battle of Ideas*, Princeton: Princeton University Press, 2016. In Spain, see the contribution from a constitutional law informed perspective on the "external" aspect of currency and the significance of optimal currency area theory for the EMU, Miguel José Arjona Sánchez, *El euro, entre la nostalgia postmoderna al oro y un supra-federalismo europeo. Un debate constitucional,* Pamplona: Aranzadi, 2022.

[5] For an illustrative constitutional and socio-legal analysis, see Anuscheh Farahat and Xabier Arzoz (eds.), *Contesting Austerity. A Socio-Legal Inquiry*, Ebook: Hart - Oñati International Series in Law and Society, 2021.

Indeed, the euro crisis prompted significant material changes to the Treaties and opened new research areas for legal scholars. Since then, they have explored the conceptual basis for austerity, its impact on representative democracy and structural transformations within the EU legal order and its Economic Constitution.[6] This includes a shift towards intergovernmentalism, increased discretion in monetary policy, and increased litigation over macroeconomic issues. In contrast to the highly regulated monetary pillar, which underwent judicial scrutiny during the economic crisis, the economic pillar has deviated further from supranational decision-making mechanisms.[7]

After a decade of transformations, the Covid-19 pandemic opened new avenues for European decision makers. Emergency reforms strengthened the key features of the EMU, particularly highlighting the roles of EU executive actors, including the Commission, the European Council, and the Council.[8]

These successive crises have not only exposed but also deepened the structural imbalances within the EMU. They have reconfigured the institutional landscape of the European economic governance, bringing to the fore executive-driven, informal, and sometimes opaque mechanisms of coordination. Among these, the Eurogroup has assumed a central—albeit legally undefined—role. Against this backdrop, the present paper turns to the Eurogroup as a privileged lens through which to examine the unresolved tensions between effective economic coordination and the foundational values of the EU legal order, particularly the rule of law. Although the Eurogroup lacks formal binding powers under EU law, its decisions shape the contours of national economic policy in ways that are politically decisive and often materially coercive. This paper contends that such influence, when exercised outside clear legal frameworks and without institutional accountability, risks eroding the principle of legality, which is integral to the European understanding of the rule of law.

First referenced in the European Council Resolution of 13 December 1997, the Eurogroup's status was further defined by the Lisbon Treaty, which outlined meeting arrangements for Eurozone ministers in Protocol No. 14. The Protocol allows the participation of the

[6] Thomas Biebricher and Frieder Vogelmann, *The Birth of Austerity: German Ordoliberalism and Contemporary Neoliberalism*, Rowman & Littlefield International, 2017. Josef Hien and Christian Joerges (eds.), *Ordoliberalism, Law and the Rule of Economics*, Oxford: Hart Publishing, 2018. Michael Ioannidis, "Europe's New Transformations: How the EU Economic Constitution Changed During the Eurozone Crisis", *Common Market Law Review*, vol. 53, no. 5, 2016, 1237-1282. Luis Ignacio Gordillo Pérez, "Constitución económica, ordoliberalismo y Unión Europea. De un derecho económico nacional a uno europeo", *RDUNED. Revista de Derecho UNED*, no. 23, 2018, 249-283.

[7] Alicia Hinarejos Parga, *The Euro Area Crisis in Constitutional Perspective*, Oxford Studies in European Law, Oxford: Oxford University Press, 2015. Francesco Saitto, "Il Bundesverfassungsgericht e l'Europa: Istanze 'controdemocratiche', principio di responsabilità e difesa della democrazia rappresentativa alla luce del caso OMT", *Costituzionalismo.it*, 2016, https://www.costituzionalismo.it/il-bundesverfassungsgericht-e-leuropa-istanze-controdemocratiche-principio-di-responsabilita-e-difesa-della-democrazia-rappresentativa-alla-luce-del-caso-omt/ (Last accessed: 4 August 2025). Menelaos Markakis, *Democracy, Legitimacy, and Accountability in Euro Crisis Management*, in: *Accountability in the Economic and Monetary Union: Foundations, Policy, and Governance*, Oxford Studies in European Law, Oxford: Oxford University Press, 2020 (online edn, Oxford Academic, 21 May 2020). Joana Mendes, "Law and Discretion in Monetary Policy and in the Banking Union: Complexity Between High Politics and Administration", *Common Market Law Review*, vol. 60, 2023, 1579-1622.

[8] Deirdre Curtin, "Challenging Executive Dominance in European Democracy", *The Modern Law Review*, vol. 77, no. 1, 2014, 1-32. Diane Fromage, "Towards Increasing Unity and Continuing Executive Predominance within the E(M)U Post-COVID?", *Legal Issues of Economic Integration*, vol. 47, no. 4, 2020, 369-388.

Commission and the ECB in Eurogroup meetings and establishes a President elected by the Member States.

Taking the sovereign debt crisis as a case study—one whose dynamics illustrate the structural difficulties of a monetary area that does not qualify as optimal, and where centralised monetary authority is not matched by a corresponding fiscal decision-making power—the Eurogroup's central role in coordinating politically, responses to systemic shocks, underscores its enduring significance within EU economic governance, even as it continues to operate outside the Union's formal institutional framework.

This paper adopts an institutionalist and materialist perspective to examine the Eurogroup's legal nature and its position within the architecture of the EMU. It asks whether the Eurogroup can be said to derive its legitimacy from primary law, whether it functions as a core element of the EMU's constitutional configuration, and whether its institutional weight is on par with that of formally recognised EU bodies. In addressing these questions,[9] the paper aims to clarify the legal indeterminacy surrounding the Eurogroup and to explore possible pathways for its alignment with EU constitutional principles—above all, the rule of law.[10] The inquiry also seeks to reflect on broader normative concerns, such as the need to ensure the institutional accountability of informal decision-making bodies and to safeguard legal certainty within an increasingly complex supranational legal order.

1. The Birth of the Eurogroup in an Incomplete EMU

The EMU is inherently asymmetric, reflecting its incompleteness. Eurozone Member States transferred their monetary authority to the ECB, sharing a single currency and monetary policy since 1999, but retained control over economic policy, including budget and fiscal matters. The Treaties give the EU only a coordinating and monitoring role in national budgets (Article 119 TFEU).

Although the monetary pillar is highly juridified and centralised around the independent ECB, economic decision-making remains largely intergovernmental. This intergovernmentalism has intensified since the financial crisis, exemplified by macroeconomic conditionality. The euro's political uniqueness is based solely on the monetary stability function of the ECB.[11] Indeed, the ECB does not have a fiscal counterbalance or a centralised finance minister.

In the absence of such a unified direction for economic policy, the Eurogroup—an informal body of eurozone finance ministers—has emerged as a potential counterbalance to monetary

[9] For a similar proposal referring to Banco de España, see Luis Alberto Pomed Sánchez, *Régimen jurídico del Banco de España*, Madrid: Tecnos, 1996 (building on Manuel García Pelayo, "El status del Tribunal Constitucional", *Revista Española de Derecho Constitucional*, vol. 1, no. 1, January-April 1981, 11-34).

[10] See Cristina Fasone, Adriano Dirri and Ylenia Guerra (eds.), *EU Rule of Law Procedures at the Test Bench: Managing Dissensus in the European Constitutional Landscape*, Cham: Springer Nature, 2024. Diane Fromage, "The Parliamentary Accountability of EMU Decisions: Between Informality and Fragmentation", *European Papers - A Journal on Law and Integration*, vol. 2021, no. 3, 2022, 1415-1435. Regarding the legal meaning of the informal sources of law, see recently the work of Vincenzo Desantis, *Le linee guida nel "sistema" delle fonti del diritto*, Napoli: Editoriale Scientifica, 2023.

[11] See, Klaus Tuori, *The European Central Bank and the European Macroeconomic Constitution*, Cambridge: Cambridge University Press, 2022.

authority. First referenced in a European Council resolution on 13 December 1997, the Eurogroup was formalised by the Lisbon Treaty, with Article 137 of the TFEU stating that "arrangements for meetings between the ministers of the Member States whose currency is the euro shall be laid down in the Protocol on the Eurogroup". Protocol No. 14 includes provisions for the participation of the Commission and the ECB in meetings and establishes a President elected by the MS for two and a half years.

Eurogroup meetings have led to major political decisions that shape Member States' economic policies since the financial crisis. At the peak of the sovereign debt crisis, Eurogroup President Dijsselbloem announced a new guiding principle for EU banking regulation, i.e., the transition from bail-out to bail-in. On 16 March 2020, Eurogroup President Centeno expressed the second (in)famous "whatever it takes" in the EU's recent history: "We will do whatever it takes and more, to restore confidence and support a rapid recovery. Whatever further coordinated and decisive policy is needed, we stand ready to take it. This includes fiscal measures to support growth and employment".[12]

In legal terms, this statement turned into the implementation of the "Pandemic Crisis Support" within the European Stability Mechanism (ESM), defined as "a credit line designed to support ESM Members in the financing of healthcare costs related to the Covid-19 crisis […] amounting to up to 2% of their GDP at very low interest rates".[13] While it is true that no Member State ultimately activated this instrument—largely due to the lingering stigma associated with ESM programmes during the Eurocrisis—its creation illustrates the Eurogroup's central role in coordinating and operationalising key elements of the EU's financial response architecture.

Further, since 2021, the ESM has been the common backstop to the Single Resolution Fund. Although this reform is still going through a ratification process, it aims to "shield governments from being forced to rescue failing banks".[14] Importantly, the Governing Council of the ESM, established by an international treaty, has the same membership as the Eurogroup. This institutional overlap reinforces the Eurogroup's structural relevance within the EU's economic governance framework, particularly as it relates to providing financial stability tools under strict conditionality and with potential macroeconomic implications for Member States.[15]

[12] See at: Mário Centeno, "Remarks following the Eurogroup meeting of 16 March 2020", 16.03.2020, at https://www.consilium.europa.eu/en/press/press-releases/2020/03/16/remarks-by-mario-centeno-following-the-eurogroup-meeting-of-16-march-2020/ (Last accessed: 4 August 2025).
See also: Mario Draghi, "Verbatim of the remarks", 26.7.2012, at https://www.ecb.europa.eu/press/key/date/2012/html/sp120726.en.html (Last accessed: 4 August 2025).

[13] See: ESM, "ESM's role in the European response to Covid-19", at https://www.esm.europa.eu/content/europe-response-corona-crisis (Last accessed: 4 August 2025).

[14] See: Nicoletta Mascher, Rolf Strauch, Andres Williams, "A backstop to the Single Resolution Fund now!", at https://www.esm.europa.eu/blog/backstop-single-resolution-fund-now#:~:text=On%20Monday%2C%20euro%20area%20ministers,by%20the%20beginning%20of%202022 (Last accessed: 4 August 2025).

[15] Allow me to refer, for a more detailed analysis of the role of the ESM in the architecture of EU economic governance and its function in compensating for the lack of a centralised fiscal counterpower to the ECB: Daniela Dobre, *La independencia del Banco Central Europeo: Fundamentos constitucionales de un régimen jurídico en transformación*, Navarra: Aranzadi, 2025.

This complex interplay between Eurogroup decisions and the operational mechanisms of the ESM underlines the structural relevance of both bodies in the EU's financial and institutional response to crises. It is against this backdrop that the legal nature of the Eurogroup has come under scrutiny.

For the purposes of this paper, the most recent Eurogroup interpretation by the Court of Justice of the EU (CJEU) in the *Chrysostomides* case[16] serves as the premise to further explore its legal status in the context of EU economic governance.[17]

The CJEU case concerns the Cyprus economic crisis and the ESM's legal structure that facilitated implemented measures. The manner in which Eurogroup declarations established conditions for granting ESM financial aid was a significant concern. Cyprus, in contrast to other bailout countries like Ireland, Spain, Portugal, and Greece, had a banking sector that was particularly vulnerable because of its shadow economy and ties to money laundering. In 2012, more than half of Cyprus's bank deposits originated from Russian entities, and its substantial investments in Greek government bonds bound Cyprus's finances to Greece, which was on the verge of collapse. Private investors, including Cypriot banks Laiki and Bank of Cyprus (BoC), suffered losses of up to 50% from Greece's debt swap with government bonds. Due to high sovereign debt and risk premiums, Cyprus could not access debt markets and requested financial help from the ESM.

The ESM, created by euro area states through a treaty, conditionally disburses funds to members when conventional financing is insufficient, potentially endangering the euro area. Capital is derived from Member States' contributions, and voting rights are proportionate to these contributions. Financial assistance is allocated by the ESM's Board of Governors (chaired by the President of the Eurogroup), which includes financial government members. In the *Chrisostomyides* cases, the ESM oversees adherence to a Memorandum of Understanding (MoU) agreed upon between the affected state and the "Troika". The ESM Board and the Cypriot Parliament approved the MoU on April 24, 2013. The Eurogroup has requested specific restructuring and resolution measures for the financial assistance to be approved.

Although the ESM Treaty does not formally give the Eurogroup a role in granting financial assistance, Regulation No. 472/2013 highlights its role by mandating enhanced surveillance for EU Member States facing severe financial difficulties—automatic for those receiving ESM assistance. The contested actions of the Eurogroup, including a 25 March 2013 declaration and conditionality agreement, proposed measures like a tax on bank deposits, bank restructuring and internal recapitalisation, impacting Cypriot appellants' assets.

The Eurogroup's acts present two key dimensions that require clarification. First, the conceptual shift in bank resolution during the Cyprus crisis is significant. Second, the strong

[16] CJEU, Judgment of 13 July 2018, *K. Chrysostomides & Co. and Others v. Council and Others*, T-680/13, EU:T:2018:486. CJEU, Judgment of 16 December 2020, *K. Chrysostomides & Co. and Others v. Council and Others,* Joined Cases C-597/18 P, C-598/18 P, C-603/18 P and C-604/18 P, EU:C:2020:1028.

[17] However, ongoing ESM reforms face significant obstacles, leading to potential stagnation, as demonstrated by the Italian parliament's rejection in December 2023. In the wake of the pandemic, there has been a shift towards a more supranational and politically guided economic governance, with the Eurogroup, the European Commission and the Council playing central roles. This shows that the EU's economic governance framework is undergoing continuous transformation.

democratic opposition to the preconditions for ESM assistance must be emphasised. At EU level, negotiations between Troika and Cyprus addressed for the first time the question of who should bear the costs of resolving "too big to fail" institutions.

Indeed, Cyprus's financial situation posed a unique challenge. A brief theoretical analysis of the proposed solutions is crucial for understanding the specific efforts to prevent the collapse of certain eurozone members. Under the bail-in principle, shareholders and creditors of non-viable banks absorb losses, thus explaining the controversial actions of the Eurogroup, and the strong democratic resistance of the Cypriot state regarding the preconditions for ESM assistance in March 2013. However, the threat of economic collapse soon became closer and real. In fact, Cypriot banks closed for 10 days as parliament debated Troika's proposed tax on all bank deposits, including the guaranteed ones. The legislature initially rejected the bill but later passed a revised version that focused on restructuring the BoC and closing Laïki. Of the €17 billion requested, €7 billion came from a national bail-in, and €10 billion came from the ESM, including €2.5 billion for bank recapitalisation.

The *Chrysostomides* judgments address appeals from the Council of the EU, BoC and Laïki shareholders and depositors (*Chrysostomides* and others) against the General Court's dismissal of their damages claim under Article 340 TFEU. The claimants argued that their losses were linked to the specific ESM conditionality imposed by the Eurogroup measures, asserting that Cyprus merely implemented this conditionality. The General Court appeared to recognise the Eurogroup as an EU 'institution' within the meaning of Article 340(2) TFEU, although it ultimately dismissed the action for a lack of a causal link between the alleged damage and the Eurogroup's actions (i.e., the Eurogroup statement of 25 March 2013). On appeal, the Council challenged this interpretation, arguing that the General Court had erred in law by treating the Eurogroup as an 'institution' under Article 340 TFEU.

2. Some Basic Notions on the Legal Responsibility of European Institutions in the Economic Governance of the EU

2.1 Overview of the CJEU case law

According to the CJEU case law, the only legal remedy concerning the ESM at EU level is an action for damages under Article 340 TFEU (second paragraph). This requires clarification of the current situation. Given the institutional overlap between the Eurogroup and the ESM's Governing Council, examining the legal remedies available in relation to ESM decisions also sheds light on the broader legal and structural position of the Eurogroup within the EU economic governance.

2.1.1 Legality of the ESM and EU Institution Participation

It is worth recalling that the CJEU confirmed the ESM's legality under EU law, flexibilising Article 125 TFEU's co-responsibility clause with two limitations.[18] The first addresses the

[18] CJEU, Judgement of 27 Nov. 2012, *Pringle*, C-370/12, ECLI:EU:C:2012:756. See also: Jean-Victor Louis, "Guest Editorial: The No-Bailout Clause and Rescue Packages", *Common Market Law Review*, vol. 47, no. 4, 2010, 971-

"moral hazard" of financial assistance as follows: (i) the member state remains responsible to creditors; (ii) conditionality promotes sound budgetary policies; and (iii) assistance protects euro area stability.[19] The second concerns national democracy:[20] (i) each member state participates on the basis of its ESM Treaty contributions; and (ii) national parliaments are involved.

The CJEU also addressed the question on the legality of the EU institutions' participation in the ESM.[21] The Court found, in this regard, that the roles of the Commission and the ECB did not undermine their EU powers since they lack autonomous decision-making authority and their actions bind only the ESM.[22] However, both Institutions must adhere to EU law. As far as the Commission is concerned, it has a legal duty to safeguard the general interest of the Union and to ensure that the agreements concluded by the ESM are compatible with EU law.[23] For its part, the ECB's tasks under the ESM are compatible with the primary law because, through these tasks, the ECB supports the general economic policies of the Union (pursuant to Article 282(2) TFEU).[24] In addition, according to case-law, the ESM is not based on the ECB's exclusive responsibility for price stability.[25]

2.1.2 Challenging Eurogroup Measures under the ESM: Procedural Routes

After confirming the ESM's compatibility with EU law, the CJEU outlined the procedural route for challenging acts within the ESM. The Court rejected actions for annulment under Article 263 of the TFEU, stating that the Commission and ECB's acts lack "autonomous decision-making powers" and do not have binding legal effects on applicants.[26] In the case of *Mallis*, the CJEU ruled that Eurogroup statements during the Cyprus bailout could not be challenged

986; Paul Craig, "*Pringle*: Legal Reasoning, Text, Purpose and Teleology", *Maastricht Journal of European and Comparative Law*, vol. 20, no. 1, 2013, 3-11, esp. 7-10.
In Spain, see, inter alia, Miguel Azpitarte Sánchez, "El capitalismo sin mercado financiero y sus consecuencias sobre el Estado constitucional. Crónica política y legislativa del año 2012", *Revista Española de Derecho Constitucional,* no. 100, January-April 2014, 151-179, 154 ff.; Augusto Aguilar Calahorro, "La decisión Pringle en el proceso de constitucionalización de la Unión Europea", *Revista Europea de Derecho Constitucional*, no. 101, May-August 2014, 337-380, esp. 354 ff.

[19] *Pringle*, C-370/12.

[20] Miguel Azpitarte Sánchez, "New Forms of Government Induced by Crisis Management", in: Anuscheh Farahat and Xabier Arzoz (eds.), *op. cit.*, 43-58.

[21] See, Steve Peers, "Towards a New Form of EU Law: The Use of EU Institutions outside the EU Legal Framework", *European Constitutional Law Review*, no. 9, 2013, 37-72. On the use of the Commission and the CJEU (although not through the ESM), see: Alberto de Gregorio Merino, "El Derecho de la Unión y el Tratado de Estabilidad, Coordinación y Gobernanza en la Unión Económica y Monetaria", *Revista de Derecho Europeo*, no. 45, January-March 2013, 27-60, esp. 55-59; José Martín y Pérez de Nanclares, "El nuevo Tratado de Estabilidad, Coordinación y Gobernanza en la Unión Económica y Monetaria: reflexiones a propósito de una peculiar reforma realizada fuera de los Tratados constitutivos", *Revista de Derecho Comunitario Europeo*, no. 42, May-August 2012, 397-431, esp. 414-419.

[22] *Pringle*, C-370/12, para. 161.

[23] *Pringle*, C-370/12, para. 164.

[24] *Pringle*, C-370/12, para. 165.

[25] *Pringle*, C-370/12, para. 60.

[26] CJEU, Judgement of 20 Sept. 2016, *Joined Cases C-105/15 P to C-109/15 P, Mallis and Others v. Commission and ECB*, ECLI:EU:C:2016:702, para. 51. See also: General Court, Order of 27 Nov. 2012, *Case T-215/11, Anotati Dioikisi Enoseon Dimosion Ypallilon (ADEDY) and Others v. Council* [known as 'Adedy I'], ECLI:EU:T:2012:627, para. 84. General Court, Order of 27 Nov. 2012, *Case T-541/10, Anotati Dioikisi Enoseon Dimosion Ypallilon (ADEDY) and Others v. Council* [known as 'Adedy II'], ECLI:EU:T:2012:626.

through annulment. The Eurogroup only publishes its statements, and the Commission's and ECB's participation does not transfer responsibility or make these statements legally binding.[27] Therefore, Article 263 of the TFEU does not define the Eurogroup as an EU institution.[28] The closing of this procedural route has sparked debate on the potential applicability of Article 340 of the TFEU. In this regard, the European Court of Justice (ECJ) built on the legal rule previously established in the case of *Pringle*: for the Commission's and the ECB's participation in the ESM to be considered lawful, their acts must be compatible with EU law. In this regard, it is not sufficient that they lack decision-making power within the ESM.

The ECJ argued that the Commission is the "guardian of the Treaties of the Union" under Article 17 TFEU. It should therefore refrain from signing a MoU in respect of which it has doubts as to its compatibility with EU law. Furthermore, the ECJ has also extended the obligation of the ECB to comply with Union law in the context of activities which are not covered by the EU Treaties.[29]

In conclusion, according to the CJEU case law, the only available procedural channel to challenge the acts of the European institutions adopted in the framework of the ESM is the action for non-contractual liability of the Union under Art. 340 TFEU. To establish liability in a specific case, several conditions must be fulfilled, namely "the unlawfulness of the conduct alleged against the EU institution, the fact of damage and the existence of a causal link between the conduct of the institution and the damage complained of".[30]

2.2 Can the Eurogroup Incur Liability under Article 340 TFEU?

The *Chrysostomides* judgments were the first decisions in the EU legal framework on actions seeking damages directly against the Eurogroup's actions. These judgments not only challenge the Eurogroup's status under Article 340 of the TFEU but also call for a larger discussion on the role of the Eurogroup within the E(M)U's institutional framework.

Indeed, both Luxembourg courts agree that annulment and damage actions are distinct remedies with different purposes.[31] Action under Article 340 of the TFEU seeks compensation for damage caused by a Union institution, while annulment seeks to exclude the measure from the supranational legal order.[32] In accordance with the compensatory function of the former - intended to ensure effective judicial protection also against acts that cannot be challenged by means of an action for annulment[33] - the acts of the Eurogroup in the context under consideration are challengeable under Art. 340 TFEU but cannot be annulled under Art. 263

[27] *Mallis,* Joined Cases C-105/15 P to C-109/15 P, para. 57.
[28] *Ibid.*, para. 61.
[29] CJEU, Judgement of 20 Sept. 2016, Case C-8/15, *Ledra Advertising v Commission and ECB*, ECLI:EU:C:2016:701, para. 59. See Paul Dermine, "The End of Impunity: The Legal Duties of Borrowed EU Institutions under the European Stability Mechanism Framework ECJ 20 September 2016, Case C-8/15 to C-10/15, Ledra Advertising et al. v. European Commission and European Central Bank", *European Constitutional Law Review*, vol. 13, no. 2, 2017, 369-382.
[30] *Ledra,* Case C-8/15, para. 64.
[31] *K. Chrysostomides & Co. and Others v. Council and Others*, Case T-680/13, para. 109.
[32] *Ibid*. *K. Chrysostomides & Co. and Others v. Council and Others,* Joined Cases C-597/18 P, C-598/18 P, C-603/18 P and C-604/18 P, paras. 78-83.
[33] *K. Chrysostomides & Co. and Others v. Council and Others*, Case T-680/13, para. 111.

TFEU. This is particular due to the informal nature of the Eurogroup's statements, which lack legal effect and are thus insufficient to significantly change the applicant's legal position.[34]

Article 340 of the TFEU (second paragraph) provides that "the Union shall make good any damage caused by its institutions or by its servants". Indeed, the fundamental challenge in the legal argumentation has been to determine whether the term 'institution' used in this provision also covers the Eurogroup. To this end, it was necessary to determine, in application of the case law of the ECJ, whether this body was "established by the Treaties and has the task of contributing to the achievement of the objectives of the Union".[35]

2.2.1 The Eurogroup as an EU institution under Article 340 TFEU?

The General Court recognised the Eurogroup as a Union institution established under Article 137 of the TFEU and Protocol No. 14. Indeed, the Eurogroup's textual mention in these provisions has a constitutive function. According to the General Court, the legal life of the institution begins with the founding treaties, since the legal provisions establish, inter alia, "the existence, the composition, the procedural rules and the functions of the Euro Group".[36]

However, the creation of an EU body by primary law alone is not sufficient for non-contractual liability under Article 340 of the TFEU. Instead, the body should also contribute to the Union's objectives. The General Court affirmed that Article 1 of Protocol No. 14 and Article 119(2) of the TFEU satisfied this requirement, as they outline the role of the Eurogroup in managing euro-related responsibilities. It follows that the Eurogroup "is a body of the Union formally established by the Treaties and intended to contribute to achieving the objectives of the Union. The acts and conduct of the Euro Group in the exercise of its powers under EU law are therefore attributable to the European Union".[37]

Importantly, according to the Court, "any contrary solution would clash with the principle of the Union based on the rule of law, in so far as it would allow the establishment, within the legal system of the European Union itself, of entities whose acts and conduct could not result in the European Union incurring liability".[38]

Despite confirming the general possibility of invoking Art. 340-TFEU against the Eurogroup's acts, the General Court immediately took a step backward. Building on the case law established in *Mallis*, the Court found that the statements of the Eurogroup in the context of the Cyprus bailout had no binding effect. Indeed, given the general wording of these statements, the Court concluded that no specific legal obligations were imposed on the Republic of Cyprus.[39] In any event, Eurogroup statements are defined by their informal

[34] Giacomo Rugge, "The Euro Group's Informality and Locus Standi before the European Court of Justice:*Council v. K. Chrysostomides & Co. and Others*", *Heidelberg Journal of International Law*, vol. 81, no. 4, 2021, 917-936.
[35] *K. Chrysostomides & Co. and Others v. Council and Others*, Case T-680/13, para. 112; *K. Chrysostomides & Co. and Others v. Council and Others,* Joined Cases C-597/18 P, C-598/18 P, C-603/18 P and C-604/18 P, paras. 78-83 (building on the case-law in Judgement 10 April 2002, Case T-209/00, *Lamberts v. Defensor*, ECLI:EU:T:2002:94, para. 49).
[36] *K. Chrysostomides & Co. and Others v. Council and Others*, Case T-680/13, para. 113.
[37] *Ibid.*
[38] *Ibid.*, para. 114.
[39] *Ibid.*, para. 115.

nature.[40] Therefore, the Eurogroup did not "request" the Republic of Cyprus to take measures affecting the assets of the appellants by the statement of 25 March.[41]

Finally, with regard to the conditionality agreement, the General Court considered that, although it was concluded in the context of a Eurogroup meeting, the finance ministers of the MS of the euro area participated "in their capacity as members of the ESM Board of Governors", thus again raising the argument that no obligations were directly imposed on Cyprus by the Eurogroup.[42]

2.2.2 The Eurogroup, an intergovernmental and informal body outside the scope of EU law

Following the reasoning of Advocate General Pitruzzella,[43] the ECJ holds that the General Court erred in law by holding that the Eurogroup was constituted by the founding Treaties and that its task was to contribute to the achievement of the objectives of the Union.[44] On the one hand, the General Court wrongly identified the provision formally constituting the Eurogroup. Instead, this function is attributed to the European Council Resolution of 13 December 1997. On the other hand, the powers exercised by the Eurogroup do not fall within the legal order of the Union, since they are in fact "responsibilities which they [finance ministers] owe solely on account of their competence at national level".[45] According to the ECJ, this is due to the intergovernmental and informal nature of the Eurogroup, and its "formalised […] existence" […] "does not alter [such nature] in the slightest".[46]

The informal nature of the Eurogroup is justified, according to the ECJ (and the Advocate General), by the need to endow EMU "with an instrument of intergovernmental coordination but without affecting the role of the Council – which is the fulcrum of the European Union's decision-making process in economic matters – or the independence of the ECB".[47] Any contrary assessment would therefore jeopardise the competences of these two institutions within the EU and, above all, the specific "institutional balance" of EMU. Importantly, this balance is characterised by its "asymmetry" (given the division of competences between monetary and economic policy) and "complexity".[48]

The ECJ further emphasised the lack of legally binding effect of the acts of the Eurogroup, as this body "lacks the power to punish a failure to comply with the political agreements".[49] According to the Court, only the acts of the Union institutions concretising and implementing the Eurogroup's political agreements are legally binding. This definition of the Eurogroup does

[40] *Ibid.*, para. 117 (In line with the case law established in *Mallis*, cited above).
[41] *Ibid.*, para. 118.
[42] *Ibid.*, paras. 132-133.
[43] Opinion of Advocate General Giovanni Pitruzzella delivered on 28 May 2020, ECLI:EU:C:2020:390. The methods of interpretation that were used in the Opinion were: literal interpretation (paragraph 93), interpretation according to the original intention of the drafters of the Treaty of Lisbon (paragraphs 96 and 100), systematic interpretation (paragraph 97) and teleological interpretation (paragraph 101).
[44] *K. Chrysostomides & Co. and Others v. Council and Others,* Joined Cases C-597/18 P, C-598/18 P, C-603/18 P and C-604/18 P, paras. 97-98.
[45] *Ibid.*, para. 89.
[46] *Ibid*., paras. 87, 80.
[47] *Ibid.*, para. 88. Opinion of Advocate General Giovanni Pitruzzella, para. 86.
[48] Opinion of Advocate General Giovanni Pitruzzella, para. 44.
[49] *K. Chrysostomides & Co. and Others v. Council and Others,* Joined Cases C-597/18 P, C-598/18 P, C-603/18 P and C-604/18 P, para. 93.

not infringe the principle of the 'Union of law', since individuals have a remedy under Article 340 TFEU against acts adopted by the Council, the Commission or the ECB on the basis of the political agreements of the Eurogroup.[50]

Indeed, "any infringement [of Union law] by the political agreements reached within the Eurogroup may give rise to non-contractual liability of the Union". However, legal liability is attributed to the Commission, whose compulsory participation in Eurogroup meetings is formalised in Protocol No. 14. According to the case law established in *Ledra*, the Commission retains the role of the "guardian of the Treaties".[51] This role also applies to the activities involving the Eurogroup.[52]

3. The Position of the Eurogroup in the Constitutional Structure of the Union

3.1 Relative Legal Invisibility of the Eurogroup within the EU legal order

The CJEU judgments leave no doubt that the Eurogroup has no legal or even constitutional relevance in the EU legal order. The Eurogroup is a body "outside the institutional framework of the European Union",[53] which de facto positions itself outside the supranational legal order itself. However, at least two original EU pieces of law explicitly refer to this body.

The legal argumentation of the General Court remains open to criticism. Indeed, its premise was that the creation of a politically relevant body such as the Eurogroup could only occur through legal means (the EU founding treaties). This premise conditions the General Court's conclusions: if the origin of the Eurogroup lies in legal acts, the body itself is *legal* ab initio, even though its acts have only political effects. On the other hand, the ECJ admits from the outset the possibility of looking beyond the legal limits to find the constituent moment of the Eurogroup, specifically in the field of political acts (the resolution of the European Council of 13 December 1997).

Immediately afterwards, however, the ECJ uses positivist arguments to further construct its ratio decidendi: the Eurogroup cannot be legally constituted under Art. 340 TFEU, since it "lacks the power to punish a failure to comply with the political agreements".[54] This reasoning ignores the exceptional political-economic reality to which these agreements were applied, since it is clear that the only alternative for Cyprus in the event of rejecting the conditionality agreement was the collapse of its national economy.[55]

Furthermore, Advocate General Pitruzzella recalled that the Eurogroup should be framed within the "complex constitutional architecture of EMU" and consequent CJEU case law.[56] This is a case law in which the Court "has always sought to maintain the delicate constitutional and

[50] *Ibid.*
[51] *Ibid.*, para. 96.
[52] *Ibid.*
[53] *Ibid.*, paras. 84, 87.
[54] *Ibid.*, para. 93.
[55] See, in this regard, Robin Gadbled, "Towards a theoretical framework for studying "pressure" in the EU constitutional order", *re:constitution Working Paper, Forum Transregionale Studien 12/2023*, DOI: https://doi.org/10.25360/01-2023-00002 (Last accessed: 4 August 2025).
[56] Opinion of Advocate General Giovanni Pitruzzella, para. 61.

institutional balance arising from the decisions taken by the Member States".[57] In other words, the exceptional context of crisis measures, including Eurogroup actions, seem to become an essential criteria of judicial interpretation at EU level. Thus, it may be argued that judicial deference towards the Member States' agreements is a deliberate choice of the ECJ.[58]

Contrary to the ECJ, the General Court answered the key procedural question in the affirmative, using the existential duality of the Eurogroup to immediately release this institution from legal accountability, even for the limited purposes of Article 340 of the TFEU. According to the General Court, the informal meetings at which the conditionality agreement for Cyprus was adopted fell within the scope of responsibility of the ESM board of governors, not the Eurogroup. Thus, the 'principle of the Union of law' is counterbalanced by the informal nature of the Eurogroup, with the ESM Governing Council externalising legal responsibility to national finance ministers themselves, following the classical accountability mechanisms of International Public Law. The consequence is the blurring of any legal responsibility within economic governance of the EU, to be seen only at the national level or, ultimately, before the ECtHR.[59]

Finally, the informal and intergovernmental nature of the Eurogroup is explained in terms of the institutional balance of powers within the EMU. According to the ECJ and the Advocate General, its formal recognition as an institution of the EU would automatically jeopardise both the independence of the ECB and the position of the Council of the Union as central decision-making bodies in economic policy matters. However, the Eurogroup's origins are not explained by the need to preserve the ECB's independence but by enhanced cooperation among euro area Member States, which in turn is a consequence of the single monetary policy. The Eurogroup is a forum that reflects the possibility of integration at different speeds and differs from the ECOFIN Council in that it has fewer members. Ultimately, this number corresponds to the higher level of integration achieved by the MS. However, it does not follow that the Eurogroup needs informality as a conditio sine qua non to achieve this specific objective. In sum, the informal nature of this body cannot be a logical consequence of the ECB's independence or of the negotiation requirements within the EU framework of enhanced economic cooperation.[60]

---

[57] *Ibid.*, para. 55.

[58] Some authors named this judicial attitude "deference" (Alicia Hinarejos, "The Role of Courts in the Wake of the Eurozone Crisis", in: Mark Dawson, Henrik Enderlein, and Christian Joerges (eds.), *Beyond the Crisis. The Governance of Europe's Economic, Political and Legal Transformation*, Oxford: Oxford University Press, 2015, pp. 112-136, p. 113), other authors have called it "pragmatism" (Catherine Barnard, "The Charter, the Court - and the Crisis", *University of Cambridge Faculty of Law Research Paper*, no. 18, 2013, 13. Available at: https://ssrn.com/abstract=2306957, Last accessed: 4 August 2025)..

[59] Despite repeated application of its doctrine of national margin of appreciation. This is evidenced by the case law of the European Court of Human Rights (ECtHR) on the protection of the right to property against "national" crisis management measures. Among others see: ECtHR, Judgement of 7 May 2013, *Koufaki and Adedy v. Greece*, Nos. 57665/12 and 57657/12; ECtHR, Judgment of 14 May 2013, *N.K.M. v. Hungary*, No. 66529/11; ECtHR, Judgement of 21 July 2016, *Mamatas and Others v. Greece*; ECtHR, Judgement of 8 October 2013, *Da Conceição Mateus v. Portugal* and *Santos Januário v. Portugal*, Nos. 62235/12 and 57725/12; ECtHR, Judgement of 1 September 2015, *Da Silva Carvalho Rico v. Portugal*, No. 13341/14.

[60] Menelaos Markakis and Anastasia Karatzia, "The Eurogroup and Effective Judicial Protection in the EU: *Chrysostomides*", *EU Law Live*, June 2020, 4. Available at: https://ssrn.com/abstract=3672304 (Last accessed: 4 August 2025).

3.2 The Eurogroup's political accountability

The constitutional question can also be phrased in terms of the mechanisms of accountability associated with the Eurogroup within the EMU. "Accountability" here refers to the ability of one actor to demand explanations from another, with the possibility of discussion and consequences.[61]

In fact, the political accountability of the Eurogroup through supranational mechanisms is also very limited. According to the ECJ, the Eurogroup cannot be equated with a Council formation, thus excluding the accountability of the Eurogroup to the European Parliament (EP). Moreover, the Commission's participation in the meetings of the Eurogroup is not a guarantee or even a clear possibility for questions or debates. The Eurogroup is also a preparatory body for the Euro Summit,[62] but accountability to the European Council is unclear because of the general nature of the summit agreements, making it difficult to establish benchmarks for political accountability.[63]

Furthermore, the Eurogroup overlaps with the ESM's board of governors and, as an intergovernmental body, is accountable to national parliaments. The German Federal Constitutional Court stressed that finance ministers must ensure that their ESM actions do not interfere with national budgetary competences.[64] However, as the Cyprus case showed, even parliamentary rejection may not prevent the adoption of ESM measures if no alternative financing is available.

In short, an open debate on the Eurogroup's actions becomes de facto impossible if one is to accept that its essence is informality. Furthermore, the CJEU's reasoning in *the Chrysostomides case* reveals a tacit assumption referring to yet another essential characteristic of the Eurogroup: confidentiality.[65] In fact, what gives this body its existential significance is not so much its informality but the strict confidentiality of its discussions. This element has been defined as a fundamental stimulus for honest debate among the member states of the single currency and for the exchange of views with the ECB.[66] For example, the fact that press

[61] Building on Mark Bovens, "Two Concepts of Accountability: Accountability as a Virtue and as a Mechanism", *West European Politics*, vol. 33, no. 5, 2010, 946-967.

[62] Institutionalised by an international treaty: Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, Article 12.4.

[63] Craig, "*Pringle*: Legal Reasoning", at 7-10.

[64] According to the Federal Constitutional Court, Germany's participation in the ESM depends on the codification of its contribution to the ESM Treaty. Otherwise, there would be a 'blank' transfer of power, violating Article 38.1 of the Fundamental Law. According to the Court, the budgetary function of the *Bundestag* reflects the constitutional state's ability to shape itself democratically. The transfer of powers to any institution connected to the EU (or to the EU itself) must maintain Parliament's autonomy to determine state income and expenditure, both now and in the future. See BVerfG, 2 BvR 1390/12 (paras. 111 and 178 to 185); established case law in 2 BvR 859/155, dated May 5, 2020 (para. 227).

[65] As Advocate General Pitruzzella notes, "[m]atters such as fiscal or budgetary strategies or economic growth prospects do not always demand immediate decisions, but instead call for a regular dialogue and an ongoing exchange of views that enables each minister to develop, in complete confidentiality, an analysis of the situation in his or her Member State, with an eye to its European context, and thus of the possible choices he or she may be facing" (Opinion in case *Chrysostomides*, para. 87).

[66] Uwe Puetter, "Governing Informally: The Role of the Eurogroup in EMU and the Stability and Growth Pact", *Journal of European Public Policy*, vol. 11, no. 5, 2004, 854-870, esp. 858, 861.

summaries following informal Eurogroup meetings do not reflect the elements actually discussed can be explained by the same reasoning used to defend the body's opacity.

In conclusion, the Eurogroup's informal—political and confidential—nature converts the lack of transparency into an intrinsic feature of both the Eurogroup and the EMU. Additionally, it is worth noting that the immunity privileges and secrecy of information within the ESM framework shield the actions of Eurozone finance ministers from public scrutiny.[67]

In this sense, for instance in 2017, the EP called for greater transparency and the 'institutionalisation' of Eurogroup meetings. In response, the Eurogroup launched an online register of public documents.[68] However, a brief review shows that these documents are too generic to enable meaningful democratic scrutiny.[69]

4. What is the Legal Nature of the Eurogroup?

This paper has addressed the controversy surrounding the Eurogroup's limited legal accountability, raising a key constitutional question: how should the Eurogroup's legal status be conceptualised? While the CJEU did not resolve this issue in the *Chrysostomides* case, instead affirming the Eurogroup's lack of legal relevance within the EU constitutional framework, its proclaimed institutional irrelevance is difficult to reconcile with its actual political influence. The Eurogroup's importance to the EMU is undeniable, having played a pivotal role during the 2008 financial crisis and, at least partially, in the Covid-19 pandemic, particularly in coordinating economic policies and financial assistance measures. While the pandemic may have suggested a temporary decline in the Eurogroup's prominence, MS' reluctance to reform it, together with a renewed push toward fiscal sustainability, underscore the potential resurgence of the political protagonism of the Eurogroup— a kind of protagonism driven by pressing needs for budgetary coordination and ambitions to strengthen the euro's international role. Importantly, the overlap between the Eurogroup and the ESM's Governing Council—identical in membership—reinforces the Eurogroup's structural relevance within the economic governance of the EU. Through this institutional link, the Eurogroup is closely connected to the design and implementation of financial stability tools under strict conditionality, compensating in part for the absence of a centralised fiscal counterpower to the ECB. In a system where monetary decision making power is highly centralised and juridified, but economic governance remains intergovernmental, the Eurogroup operates as a crucial node of political and economic coordination, even if its legal contours remain ambiguous.

Against this backdrop of institutional ambiguity and political prominence, scholarly debates have increasingly turned to the Eurogroup's procedural features and its evolving role within

[67] ESM Treaty, Articles 35 and 36.

[68] European Council of the EU, "Document register", available at https://www.consilium.europa.eu/en/documents-publications/public-register/ (Last accessed: 4 August 2025).

[69] "Decisions taken in the Eurogroup, the Economic and Financial Committee, the 'informal' Ecofin Council meetings, and Euro summits must be institutionalised, if necessary, and be transparent and accountable", European Parliament Resolution of 14 September 2017 on transparency, accountability and integrity in the EU institutions [2015/2041(INI)], para. 55.

the EU's constitutional architecture. Some scholars emphasise the Eurogroup's confidentiality as key to smooth decision making,[70] while others have focused on its political and legal accountability[71]. More broadly, the Eurogroup is defined as an institution that "emerged in practise before being legally codified".[72]

Despite these discussions, concrete proposals to strengthen the Eurogroup's legal status and accountability remain underdeveloped. A possible path forward could lie in conceptualising the Eurogroup as a legal institution, drawing on the institutionalist doctrines of García Pelayo and Santi Romano.[73] This approach invites analysis along at least three dimensions: whether the Eurogroup is established by primary law, whether it constitutes a fundamental component of the EU's constitutional structure, and whether it stands in parity with other Union institutions.

Although the *Chrysostomides* case leaves room for varying interpretations of these criteria, the explicit mention of the Eurogroup in Article 137 TFEU and the existence of Protocol No. 14 confirm its establishment in primary law. Functionally, the Eurogroup is a key actor within the EMU and plays an essential role in the European integration—its absence would disrupt the effective functioning of the Union. In fact, the stability of the euro depends on the enhanced coordination of Member States' economic policies, underscoring the Eurogroup's critical role in EMU governance.

Moreover, the Eurogroup's central involvement in managing the 2008 financial crisis (and partially the Covid-19 crisis) illustrates its concrete influence on euro area policies. While it may not fully meet the criterion of institutional parity—being formally a preparatory body for the Euro Summits—this status does not negate its independent legal existence.[74]

Conclusions

The EMU remains a structurally asymmetric construct, with a centralised and juridified monetary pillar juxtaposed against a largely intergovernmental economic policy framework. This paper has examined the Eurogroup as a central—yet legally ambiguous—actor within this setting. The analysis has shown that the Eurogroup's role in shaping national fiscal trajectories and economic conditionality—especially during systemic crises—raises fundamental questions about its compatibility with the values underpinning the EU legal order, particularly

[70] Puetter, "Governing Informally", 858.

[71] See, Paul Craig, "The Eurogroup, Power and Accountability", *European Law Journal*, vol. 23, 2017, 234-249, esp. 244-245. Manuel López Escudero, "L'Eurogroupe échappe au contrôle juridictionnel de la Cour de justice: l'arrêt *Chrysostomides*", *Annuaire de Droit de L'Union européenne* 2020, 2021, 91-123. Markakis and Karatzia, "The Eurogroup and Effective Judicial Protection".

[72] Agustín Menéndez, "In this issue", *European Law Journal*, vol. 23, no. 3-4, 2017, 154-156.

[73] Manuel García-Pelayo, "El 'status' del Tribunal Constitucional", *Revista Española de Derecho Constitucional*, vol. 1, no. 1, 1981, 11-34. Santi Romano, *The Legal Order*, London: Taylor & Francis, 2017.

[74] Romano, *The Legal Order*, 2017, 18. Defining the Eurogroup as a legal institution requires accepting premises of legal pluralism, in turn asking for an identification of the Eurogroup's legal order. Indeed, "[t]here are as many legal orders as institutions" (*ibid.,* p. 50). In this regard, the Eurougroup could either be fully integrated into the EU's legal framework or exist as an independent entity. According to S. Romano, "Indeed the institution is an objective legal order" (*ibid*., p. 16). This would mean that the Eurogroup is a simple institution within a complex institution (or "institution of institutions", the EU). *Ibid*., p. 68.

the rule of law, understood here as requiring transparency in decision-making and legal accountability for the Eurogroup's informal yet politically influential role in shaping Member States' (fiscal) behaviour.

First, the Eurogroup's informal and intergovernmental nature reveals the tension between effective economic coordination and democratic oversight. Despite being a key forum for economic governance in the euro area, its lack of formal institutional status within the Treaties hinders the establishment of clear legal responsibility and institutional accountability. While the CJEU in the case *Chrysostomides* confirmed the Eurogroup's position outside the EU's institutional framework, this formal invisibility stands in contrast with the body's political influence—both historically, during the euro crisis, and in current debates around economic governance of the EU.

Second, although the pandemic response marked a shift toward more EU-level instruments—such as the Recovery and Resilience Facility—this evolution does not render the Eurogroup obsolete. On the contrary, Member States' reluctance to reform it, combined with the partial return of fiscal sustainability and the need for enhanced coordination in light of new economic and geopolitical pressures, suggests that the Eurogroup's political protagonism may well intensify in the coming years. In fact, the ambitions to strengthen the international role of the euro may point toward new institutional challenges that will likely involve the Eurogroup. As such, the current legal ambiguity surrounding its status remains a problem of institutional coherence and legal accountability within the supranational legal order.

Third, this paper has argued that the Eurogroup's partial detachment from legal norms and supranational judicial oversight poses a structural risk to the (European) rule of law. The problem does not lie in the issuance of binding legal acts—since the Eurogroup generally does not produce such acts—but in the fact that its decisions, often framed as "political agreements," exert de facto binding effects on Member States without being subject to judicial review or democratic scrutiny. In this sense, the Eurogroup challenges a core value of the Union: the rule of law, which is intrinsically linked to the principle of legality. When political decisions with significant distributive and coercive effects are taken outside the EU's legal framework and without legal accountability, the risk is not merely theoretical—it directly affects citizens' rights and undermines trust in the protective mechanisms of the EU's constitutional order.

Fourth, this paper has proposed a conceptual re-evaluation of the Eurogroup as a legal institution. Drawing on institutionalist theories, this approach should assess whether the Eurogroup is (i) established by primary law, (ii) constitutes an integral part of the EU's constitutional architecture, and (iii) holds a comparable institutional status to other Union bodies. Although the CJEU rejected this interpretation, the explicit references in Article 137 TFEU and Protocol No. 14 provide a textual foundation for such a view. In addition, the Eurogroup's identical composition with the ESM's Governing Council and its central role in designing and enforcing financial conditionality further underscore its functional significance within the current governance framework.

Finally, this paper highlights the need to enhance the Eurogroup's legal visibility and political accountability—not simply as a matter of formal coherence within the EU legal order, but as

a prerequisite for better aligning EMU with the EU's foundational value of the rule of law. Recognising the Eurogroup's legal nature—at least for the limited purpose of enabling non-contractual liability under Article 340 TFEU—could represent an indirect yet meaningful step toward reintegrating informal governance structures into the supranational legal order. Such a move would affirm that even flexible and intergovernmental coordination mechanisms must remain subject to the constitutional principles that legitimise the exercise of authority within the EU.

Forum Transregionale Studien e.V.
Wallotstraße 14
14193 Berlin
T: +49 (0) 30 89001-430
office@trafo-berlin.de
www.forum-transregionale-studien.de