LUISS SCHOOL OF EUROPEAN POLITICAL ECONOMY

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A PROPOSAL FOR EUROPE

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Our conclusion, then, is that political society exists for the sake of noble actions, of living well, not just in order to live and transact business. (III.9)

The political good is justice, and this is the common advantage. (III.12)

Aristotle, ***Politics***

1. Introduction

Several of the provisions and fundamental principles of the European Union are still unrealized but need to be put into effect if the EU is to have a positive, more creative and prosperous future. Restrictive norms have been strictly adhered to and enforced by the most powerful political forces, despite the fact that such policies have caused the damages that we all can see. By contrast, more positive alternative polices have been neglected.

Yet it is precisely these more positive policies which most faithfully reflect the real objectives and constitute the real foundation of the various Union Treaties and laws. Restrictive norms, necessary as they may appear, take on a wholly improper character when they block the Union's fundamental objective of fostering growth and employment.

The preamble of the Maastricht Treaty states that Member States, "in view of further steps to be taken in order to advance European integration … have decided to establish a European Union". The debate as to whether it should be a federation or a confederation of states or a new and different legal entity altogether is in full swing. Frankly, we see this as a rather philosophical debate, which does not seem – at least in the short run - to be a priority compared to the very real need for the adoption of concrete measures to solve the persistent slow growth, high unemployment and other crises afflicting the EU. Concentrating attention on solving these problems would represent a positive step forward towards the construction of our common European home.

European integration should not be seen as a mere working hypothesis to be endlessly debated. In the almost sixty years since the European Community was created by the six founding states, many other countries have joined to create a much wider Union, and Union is a word with a clear and unequivocal meaning.

We believe that nobody has the right to put this Union at risk of dissolution or implosion, or to block its progress or threaten unjustified exits. Neither is it possible to run the EU in an overly restrictive fashion, hobbled by too many constraints and impediments, if we wish to avoid the risk of dangerous political and social storms ahead.

We propose therefore that the EU adopts the following concrete measures to satisfy the widespread desire for a reinvigoration of Europe's anemic economy and to re-emerge from the gravest and most persistent crisis of the last one hundred years. This has to be achieved furthermore without damaging either Europe as a whole or any of its individual Member States.

Re-energizing Europe requires careful analysis of the ways and means of implementing such aims and identifying those provisions enshrined in the various European treaties, which have not been applied as they should be, which acts as an unjustified brake on Europe's exit from the various crises which afflict it at both European and Member State level. Such actions, taken by those who wield effective decision making power within the Union without understanding their consequences, are contrary to the legitimate expectations of ordinary citizens.

2. The Proposal

The European Union should adopt its own investment programme and become an active investor able to purchase on its own account goods and services needed to implement and sustain such investment. These investments should be sizeable and sufficiently large in aggregate to substantially contribute to European investment needs and to compensate for the shortfalls in normal pre-crisis investment volumes, which have been calculated by relevant European bodies. The aim would be to create a useful instrument for achieving both the growth objectives set out in the 2020 Programme and the broader objectives of the EU.

The Union itself should raise the funds required to finance such investments in addition to spending already earmarked in annual budgets. The ECB indicated at the end of January 2015, and repeated in December, that to re-launch the European economy and create jobs on a significant scale the ECB, working with the various NCBs, would need to inject more than one trillion Euro into the EU economy over an 18 month period.

An additional EU investment programme of a similar magnitude would help to absorb and use appropriately the extra liquidity distributed through the banking system by the ECB. The funds would be fully invested in those productive investments deemed to have priority within the framework of the economic programmes agreed by the European Commission and the Council, examined by the European Parliament and by Member States, assisted by European technical bodies, including the EIB.

The Union itself calculates that Europe needs incremental investment of around two trillion euros by 2020 and notes a shortfall of about Euro 600 billion between the quantity of investments normally carried out over a two-year period and those actually made during the last two years of recession. This shortfall, furthermore, refers only to investment in the sectors of transport, energy production and distribution systems, information, telecommunications and data processing and transmission.

To put these and other figures in context, it is worth reminding that the EU population is about 508 million people and its GDP is of some 14.6 trillion, while the population of the euro area is of 338 million people (66.5% of the total) and its GDP of about 10.3 trillion euros (71.1% of the total). The GDP per capita of the euro area (30,760 euros) is somewhat higher than the GDP per capita of the EU (28.780 euros)[1].

[1] Source Eurostat, 2015 figures.

The proposed Union own-account investments should be directed to projects that Member States, regions and local entities are unable to undertake on their own, often due to constraints imposed by their large budget deficits and profound indebtedness. The EU should be empowered to borrow on its own account from credit and financial markets, and through access to liquidity emitted by the BCE, in order to finance this additional investment, as we shall explain later.

The sort of active investment role for the Union as proposed would be similar to that energetically played by the US government, for example, which is assisted by a central bank whose responsibility to foster economic growth is listed as one of its main institutional tasks. This contrasts sharply with the European situation where no one pursues the same functions or, at best, does so with difficulty in a framework in which price stability takes precedence over growth in a context of polemics and interference.

It is essential to recall, furthermore that while the ECB's aim is to keep EU inflation at just under 2%, the actual rate of inflation is at present dramatically lower and languishes close to zero. Empirical evidence confirms, although sheer logic should suffice, that excess liquidity that does not translate into concrete investment (even if quantitative easing is indeed a lesser evil than catastrophic alternatives) mainly stimulates financial sector trading of derivatives and other instruments rather than the real economy and is therefore largely devoid of social and economic usefulness.

Once the proposed Union investment has stimulated economic activity, the recovery has become self-sustaining and the EU action is no longer needed, the Union would sell the investments it created and owns either to the Member States or local authorities where they are located (if or when their current financial straits improve) or to other investors. These tangible Union investments could be converted into financial assets managed by their new owners. This would be a better alternative to the current approach of pursuing European growth through purely monetary measures, which lead to excessive debt and recurring instability; and are often incapable of solving outstanding problems.

A return to growth would also provide a collateral, but non-negligible, advantage. It would induce the various institutions to worry less about external problems such as the slowing down of the U.S. economic locomotive or the negative effects on Europe of the maturing and slowing Chinese economy, and to concentrate on solving Europe's own problems more decisively. Important as it may be, analysis cannot be more important than governing. To live constantly by reacting to events elsewhere trims the wings of initiative. The aim should be to foster a truly European and Eurocentric point of view above and beyond the often myopic viewpoint of singular national States, who often are impotent in a globalized economy.

In order to gain the support of all Member States for this initiative and achieve unanimous approval for action under article 352 of the Treaty on the Functioning of the European Union[2],

[2] Article 352 (.308 Treaty of Nice; 335 Treaty of Rome). 1. Should action by the Union prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers, the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, shall adopt the appropriate measures. Where the measures in question are adopted by the Council in accordance with a special legislative procedure, it shall also act unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament. 2. Using the procedure for monitoring the subsidiarity principle referred to in Article 5(3) of the Treaty on European Union, the Commission shall draw national Parliaments' attention to proposals based on this Article.

Union investments should be made in all Member States - not just in the Euro zone - and roughly in the same proportion, say as GDP.

Union investments would strictly reflect the criteria agreed upon and approved in the various Treaties[3] with regard to member countries' participation to the subscribed capital (not the paid-in capital) of the ECB (as revised from time to time). Such investment would be made, obviously, without the limitations imposed by the indebtedness of Member States, since the resulting growth would stimulate **all** European economies, while ownership of the investments would **remain with the Union**. Such an equitable distribution would be so different from the "I want my money back" approach, whereby every state plays to own advantage, rather than working together, and thus rendering an effective European structural and anti-cyclical investment policy impossible to achieve.

The proposal would have the following advantages.

- The approach could be applied immediately, since it does not entail – in this form - any modification of the Treaties nor any cession of sovereignty by member states.
- Under the proposal, the Union would "provide itself with… means necessary to attain its objectives and carry through its policies", as the Treaties prescribe. It could be started without, at least initially, the need to raise additional taxes, as some suggest, since raising taxes would frustrate the main objective of the proposed investments. The Treaties do not actually prescribe that "means" of the Union refers purely to monetary inflows deriving from tax and other payments by citizens. The Union's means could also include the proposed own investments, generating income.
- Europeans would once again have an all-European investor, the EU itself, able to purchase goods and services on its own account and to make investments in European common goods. There is a precedent as this is how the European Coal and Steel Community and EURATOM were created and operated. These common European goods would be identified as such by the top EU institutions - the Commission, Council and Parliament - assisted by the technical and economic institutions of the Union, in agreement with the Member States. The proposal would reduce the existing lengthy time gaps between the allocation of liquidity and the multiplier effect when investments come into effect and start to stimulate the real economy. Such time lags are among the factors tending to debase the value of the euro and threaten its stability.
- European contracts would be allotted pursuant to international tenders, with fixed and contractually agreed costs and guarantees that works shall be carried out correctly, by first-rate operators, within agreed time scales and with penalties for non-compliance.
- The Union should make payments to contractors in a timely fashion, thus accelerating the velocity of circulation of money and contributing to the welfare of all interested parties.
- The implementation of the scheme would reduce acrimonious debate about the permitted level of flexibility in applying rules that some parties concerned fear would threaten the rule of law and the rigorous observance of norms. It would also lessen the risks related to excessive indebtedness, whether private or public.
- Its implementation would contribute to pursue those objectives of the Union sanctioned by the Treaties and at the basis of sixty years' experience. Pursuing in this way the "welfare of the people" would help dampen anti-European moods deriving from the current mean and myopic approach to the principles of the Union that is crippling their fulfillment.

[3] The criterion was utilized recently in order to define the quotas of the member States of the European Union in the capital, subscribed and paid in, of the European Stability Mechanism.

- The principles of cohesion and solidarity would regain importance, not against some parties (as feared by those who oppose the mutualizing of debts) but in the common interest.
- The scheme would contribute to the" governance of globalization and to the economic and social cohesion in the EU[4]" without dismantling the social security state as some of the austerity programmes imposed on Member States imply.
- It would contribute to making the European system more competitive by assuring a fuller employment of human resources currently unused, with grave social and economic implications. Generations at present excluded from economic activity would be able to participate in the development of Europe and European ideals as propounded by the Treaties. It would amount to a new pact between the generations and ensure for future generations a more modern and adequate material, scientific and technological infrastructure. It would reduce the brain drain from several European countries that enriches Europe's competitors and contributes to the Union's weakness. Should other major economic systems become less dynamic , as is currently the case with China and Brazil, the Union would be able to run an anti-cyclical policy of its own, re-assuming the central role that rightly belongs to it.
- The fact that European markets risk collapse because the Chinese economy does not operate properly, or because the yuan has devalued should be taken as a clear sign that markets have lost faith in Europe's ability to assess situations correctly and take the necessary, autonomous European **decisions**. We moan and complain instead of acting, crippled by having to operate under the burden of over complicated rules and procedures.
- Our proposal would contribute to tackling Europe's problems by improving its fixed capital, not just for the immediate future, but also in the interest of future generations. Once again, the Union would run as the unified internal market of the largest world economic aggregate, rather than a mechanism for the export led growth of some of its members.[5] The second approach benefits only a minority of the members and imposes great costs on all others.
- It would also perhaps contribute to a different assessment of the euro, which is currently blamed for faults related to excessive debt creation and ensuing monetary floods. It could also lead to a more rapid transformation of it into what the Treaties intended the Euro to be, the **only** currency of Europe, the symbol of a strong European economy and not a purely monetary phenomenon. The Euro should be the **only** currency, since a single currency is essential in order to have a single market.
- Even semantically, the proposal would imply thinking of Europe as such and not as a "Euroland", which cannot raise enthusiasm with its insipid Disney flavour.
- The proposal would allow indebted member States to meet their obligations in a framework of growth rather than battling against counter-productive drains to already anemic systems. Instead, Member States now suffer from a punitive approach to reform, seen as possible only in the context of constraint rather than coordination and collaboration, as the Treaties prescribe. Member States themselves must of course carry out the specific reforms required to improve the lives of their own citizens and not worsen them. This means better allocation of scarce resources among current but also future generations. Reform must also take into account objective reality as J.M. Keynes did when he insisted that the scale of reparations that the Allies planned to

[4] See Vincenzo F. Russo, «*I beni pubblici europei*», in *Il finanziamento dell'Europa*, *cit*., pg. 159-191.
[5] See the important article by Innocenzo Cipolletta, «L'Europa cresce se guarda a se stessa», in the Corriere della Sera of 31 January 2015.

impose on Germany after World War I were unsustainable, as they proved to be.[6]. Even former enemy countries such as Germany and Italy were assisted after World War II in order to secure growth and stability in Europe, through the Marshall Plan and other measures to foster reconstruction, an historic example of now forgotten enlightened self- interest and common sense.

- Finally, the proposal responds to the frequent pleas from the ECB for political interventions in the European economy to reduce the undue share of the burden of re-adjustment the ECB has been obliged to assume in the current circumstances of political paralysis and lack of direction.

3. Legal Provisions and the Proposal—Textual and Comparative Aspects

The very persistence of the crisis, its harshness and the difficulties of tackling it are factors which on their own could justify implementing the proposal simply on grounds of sheer necessity. To govern means to face exceptional situations with all necessary means. The Europe 2020 Strategy called back in 2010 "for an intelligent, sustainable and inclusive growth", but remains largely unrealized.[7]

The European Investment Bank (EIB) disburses every year loans equivalent to 0.4% of the Union's GDP despite the fact that the European authorities themselves calculate that the level of investment required by the transport, energy and ICT sectors alone amounts to some two trillion euros. The *shortfall* between the amount of investment required and investments effectively carried out was about 600 billion euros over the last two years alone (around 2% of GDP per year). This puny performance continues despite repeated capital increases for the EIB and any number of pilot investment projects.

It may be useful, however, to examine both those factors that might preclude the proposed approach and those factors, legal or otherwise, which would justify it.

4. How the proposal affects the balanced budget requirement of the Union and fosters the attainment of its objectives

Article 310 (268 TEC) prescribes that

> *Budget revenues and expenditure shall be in balance.*

The following article 311 (269 TEC) adds that

> *The Union shall provide itself with the means required to attain its objectives and carry through its policies.*
>
> *Without prejudice to other revenue, the budget shall be financed wholly from own resources.*

If the objectives of the Union coincide, as they must, with the principles and the preambles of the Treaties, the Union must pursue them with all "means necessary". Nevertheless, if

[6] J.M. Keynes, *The Economic Consequences of the Peace*, 1919.

[7] Notwithstanding the "I want", dated 2010, of the then President of the Commission Barroso. "2010 must mark a new beginning. I want Europe to emerge stronger from the economic and financial crisis. Economic realities are moving faster than political realities, as we have seen with the global impact of the financial crisis. We need to accept that the increased economic interdependence demands also a more determined and coherent response at the political level. The crisis is a wake-up call." Brussels, 3.3.2010, COM (2010). Communication EUROPA 2020, Preface, page 2. This «Preface», consisting in empty declarations not followed by any action contributed to the results that Europe is still painfully living through six years later.

ordinary means are insufficient as it is very clear that they are, then other means should be applied. The current interpretation, whereby 'own resources' is taken to mean "more fiscal pressure," is not reasonable.

The objectives of the Treaties and of European legislation should dictate the interpretation of these provisions, not opposite criteria, as some authorities wish. The main and first premise of Regulation EC no. 1466/97 is that the Stability and Growth Pact "is based on the objective of sound government finances as a means of strengthening the conditions for **price stability** and for **strong sustainable growth conducive to employment creation**." The premise appears groundless - as government finances have achieved neither price stability nor "strong sustainable growth conducive to employment creation." Instead, they have resulted in well below-target inflation, debasement of the common currency, stagnation and rampant unemployment, particularly for the young generations. Rather than stubbornly pursuing the Pact, one should pursue the objectives of the Treaties.[8]

This does not mean that governments should not pursue sound finances, nor that government debt should be shared among all member states collectively (mutualization of debt). Nor does it free the various authorities from the obligation to pursue necessary reforms at central government, regional and local levels. It does mean, however, that new methods and avenues should be explored, as the Union itself declares it wants.

The Union cannot attain its objectives if they are pursued by states already deeply in debt accumulating further deficits, as these threaten the ability to raise funds on financial markets and to achieve financial and political stability. Instead, as proposed, the European Union should seek to achieve its goals through **direct investments** by the Union itself and **owned by it,** whether in financial form or otherwise does not really matter[9]. A valid precedent for this approach can be seen in President Franklin Roosevelt's *New Deal*, which was based on a combination of economic intervention by the state and reforms.

Tackling the problems this way would eliminate the apparent contradiction, or dichotomy, between the provision prescribing a balanced budget (in article 310) and the financing *"wholly from own resources"* (of the second paragraph of article 311) on one side and the first paragraph of article 311 on the other. This contradiction is only apparent in that - comparatively, historically, textually and per the accounting provisions of the Union, while an "in balance" budget is wholly justified for current expenditures and fiscal inflows, the provision does not apply to investments in high priority common goods.

In fact the apparently contradictory requirements are not contradictory in a context where no other body, be it state or institution, can, or wants to, provide the Union, with"the means necessary to attain its objectives and carry through its policies",[10] through the creation of "own resources". We submit briefly a number of elements that legitimize the proposal; the study by Maria Teresa Salvemini recalled here below illustrates in detail some of them.

First of all articles 317 and 318 (formerly articles 274 and 275 of the Nice Treaty and 205 and 205 bis of the Treaty of Rome), integrating articles 310 and 311 cited above. The first requires the Commission to implement the budget with respect to its approved levels of inflows and expenditures on its own responsibility and with due regard to the principles of sound

[8] Giuseppe Guarino, in *Cittadini europei e crisi dell' euro*, Naples, 2014, asserts that the Regulation would be invalid and would represent a" coup d'étât", since it would be in contrast with the Treaties and the Constitutions of the member states, by obliging the states to raise debt only under mechanistic criteria. These considerations too should induce us to look for solutions to the present conundrum.

[9] We shall examine this point later.

[10] See Maria Teresa Salvemini, «*Una nuova visione del debito dell'Unione*», in M.T. Salvemini e F. Bassanini (eds.), *Il finanziamento dell'Europa*, Astrid, Florence, 2010, pg. 303-319.

financial management. Article 318 prescribes that the Commission shall submit annually to the European Parliament and to the Council, in addition to the accounts of the preceding financial year, "a financial statement of the assets and liabilities of the Union". Clearly, for this statement, which refers solely to investment by the Union and related financing, the question of "balance" does not apply. The Treaty expressly provides for indebtedness (liabilities), when debt is linked to the creation of new assets of equivalent size.

Without wishing to analyse accounting principles, it is worth stressing again that while article 317 relates to inflows and out-flows of the Union, which must be in balance, article 318 concerns the Union's Capital Account, its assets and liabilities, here defined, somewhat cursorily, "financial statement", in which the "balance" of assets is given by debt.

5. Political and Legal Legitimacy of the Proposal

Politically, the proposal is justified by its necessity. Furthermore, no important world economy ever adopted the principle of budgetary balance, which a number of Member States have had to adopt under pressure of the European institutions. The United States repealed an attempt to this effect because some major economists considered it an unsound and unnecessary straightjacket.[11]

Moreover, from a legal point of view, one can advance the following considerations.

- The ECSC and EURATOM were institutions that produced public goods. Their accounts, once their institutional functions ended or were transferred to other entities, were merged into the accounts of the EC first and of the Union later. Both were able to finance with debt the production of the goods they managed.
- The accounting principles of the European system of accounts (Sec 95), applicable both to the public sector accounts of member States and to the accounts of the Union, define precisely inflows and expenditures relevant to the calculation of the balance, called "net indebtedness", that must be equal to zero. These do not concern operations regarding the "financial accounts" of the entities in question, because a real or financial asset of the same amount balances indebtedness on the liability side.[12] In practice, whenever the Union used similar procedures in order to create public goods (in some instances of an institutional character), it acquired participations, or credits, of a financial nature. The purchase of real goods would not have a different nature.
- For instance, the European Union participates directly in the capital of the European Bank for Reconstruction and Development (EBRD), even though the EIB and several Member States of the Union and of the EIB are also shareholders.
- The Community issued debt securities to assist Member States that, due to their negative balance of payments, were unable to defend the exchange rate fixed under the European monetary agreement and undertook to repay the monies received.[13] Such a promise represents a much riskier asset than the acquisition of high priority public goods, which contribute to attaining the objectives of the Union as identified in the Treaties.
- Article 122 of the TFEU states that, without prejudice to any other procedures provided for in the Treaties, the Council, on a proposal from the Commission, may adopt appropriate measures to tackle economic difficulties of Member States. If severe difficulties arise in the supply of certain products, notably in the area of energy, or if difficulties caused by natural disasters or exceptional occurrences beyond its control

[11] Among them Kenneth Arrow, Paul Samuelson and Robert Solow, at a conference of the Allied Social Sciences Association in New Orleans in January 1997.
[12] M.T. Salvemini, *op. cit.*, page 308.
[13] M.T. Salvemini, *op. cit.*, pg. 309.

arise or seriously threaten a Member State, the Council, on a proposal from the Commission, may grant, under certain conditions, financial assistance from the Union to the Member State concerned. Also in this case, from a purely "market" viewpoint, the Union would be investing in a much riskier asset than the acquisition of high priority public investment goods which contribute to achieving the objectives of the Union.

- Article 47 of the Treaty on the European Union:

  > *The Union shall have legal personality*,

  and more explicitly article 335 of the TFEU:

  > *In each of the Member States, the Union shall enjoy the most extensive legal capacity accorded to legal persons under their laws; it may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings,*

  both comfort the proposed approach.

- Article 120 (ex 98) and subsequent articles of the Treaties clearly illustrate how the economic policy of the Union is not simply the sum total of the economic policies of the Member States, nor of their coordination. It also shows that such coordination is not a recent innovation but an integral part of the Treaties from the outset. European policy, in order to be such, must transcend, at least partially, the policy of one or more of its Member States.
- Article 123 (ex 101) prohibits overdraft facilities - or any other type of credit facility - with the (European Central Bank or with the central banks of the member states (National Central Banks) in favour of Union institutions, bodies, offices or agencies, central governments, regional, local or other public authorities. It also prohibits such financing for other bodies governed by public law, or public undertakings of Member States as well as the purchase by the European Central Bank or National Central Banks of debt instruments directly from them. An exception is made for publicly owned credit institutions, which, in the context of the supply of reserves by central banks, are given the same treatment by National Central Banks and the European Central Bank as private credit institutions.
- The subsequent article 124 (ex 102) prohibits any measure, not based on prudential considerations, establishing privileged access by Union institutions, bodies, offices or agencies, central governments, regional, local or other public authorities or other bodies governed by public law, or public undertakings of Member States to financial institutions. The provisions of these two articles clearly show, *a contrario*, that the ECB and the NCBs could well purchase debt securities of the Union on the secondary market, on condition that the transaction does not entail a privileged treatment and is not based on considerations other than normal prudential considerations current in the banking and financial sectors. Furthermore, any banking or financial operator, public or private, person or entity with legal personality, willing to do so, might well grant credit to the Union or purchase debt securities of the Union or shares in initiatives of the Union established under company laws.

6. Preambles and Basic Principles of the Treaties

An examination of a number of European provisions not adequately implemented confirms the proposed approach. There is no need to refer point by point to the preambles of the Treaties, starting from the Rome Treaty (the EEC Treaty of 1957) and their successive formulations, and to a number of provisions of the coordinated extant Treaties. One can easily find them on the websites of the Union and in several legislative compendia. Suffice here to recall general provisions concerning the economy and the socioeconomic foundations of the Treaties most severely overlooked, given the primacy attributed to restrictive norms.

Since inception, in 1957, the signatories of the Rome Treaty undertook to lay the foundations of **an ever-closer union among the peoples of Europe,** aimed at ensuring the economic and social progress of member countries by **common action to eliminate barriers** in Europe. They affirmed that the essential objective of their efforts was" the constant improvement of the **living and working conditions** of their peoples," to **guarantee steady expansion, balanced trade and fair competition,** to strengthen the **unity of their economies and to ensure their harmonious development.** They agreed to pursue these objectives **by reducing the differences** existing between the various regions and the backwardness of the less favoured regions. They also called upon the other peoples of Europe who shared their ideals to join in their efforts. This is what actually happened with successive enlargements of the Community and its transformation into the European Union, notwithstanding several institutional and constitutional setbacks, followed by remedial action whenever possible.

These undertakings led to the creation of a common market and a custom union and to the very partial development of common policies. They contributed to a substantial material increase in the homogeneity of norms and jurisprudence of Member States, of which most European citizens are not very aware. They also led to adoption of the euro and the creation of related institutions, which should have been followed by other steps that the Union did not in fact take.

Various preambles and articles of successive Treaties confirmed and enlarged the main principles, which were never officially abandoned even if many citizens are now convinced that this is the case. Therefore, no Member State can pretend – *à la Thatcher* – to have joined the Union based on different assumptions or expectations than those adopted in the EU. Nor should they invoke referenda and threaten "exits" in order to obtain national advantages at the expenses of other Member States and their citizens. We recall here some of them, in the current consolidated text.

Article 1. This Treaty marks a new stage in the process of creating an **ever closer union among the peoples of Europe,** in which decisions are taken as openly as possible and as closely as possible to the citizen.

Article 3.1. The Union's aim is to promote peace, its values and **the well-being of its peoples.**

Article 3.3. The Union shall establish an internal market. It shall work for the **sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment.** It shall promote scientific and technological advance. [The Union] shall promote economic, social and territorial **cohesion and solidarity** among Member States.

Article 3.4. The Union **shall establish an economic and monetary union whose currency is the euro.**[14]

No one should forget that the EU - not some of its Member States – established the economic and monetary union. That although there were *opt outs* and convergence and ratification procedures whereby not all Member States adopted the euro when they joined the Union (or later), the euro is **the only currency** of the Union and **only euro banknotes** issued by the ECB and NCBs have the status of **legal tender** within the Union. That the institutions of the

[14] Please note. Not only monetary, but also economic. An economic Union.

Union "shall lay down the measures necessary for the use of the euro as **the single currency**" (article 133). The Union is not, as it is often assumed, a purely monetary one, but also an economic union.

Member States adopted these provisions on the basis of the assumption (in successive formulations of **Treaties,** all signed and ratified by them) that they were determined to lay the foundations of an **ever closer union** among the peoples of Europe, to ensure through a common action the **social and economic progress** of their States. The Union aims to promote the well-being of its peoples [unequivocally, all of its peoples, all citizens of the Union], in an area without internal frontiers. It shall establish an internal market, and work for a sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress. It shall promote scientific and technological advance, raising the level of people's knowledge through education, instruction and training.

Some might say that such preambles are unenforceable provisions, simple embellishments or, at best, declarations of intent; but this would go against the logic of the Treaties and the fact that such provisions should take priority over national laws and customs, once they have been approved. Moreover, these allegations are not valid as many of the principles have actually been included in cogent, specific rules and enshrined in various articles of the Treaties.

Incidentally, these rules, signed and adopted by all Member States, should lead to retaliation and compensation demands by the remaining Member States in the case of a Brexit or of any other voluntary exit by any non-complying Member States, who had previously agreed, inter alia, to comply with the following provisions:

Article 4.2. Shared competence between the Union and the Member States applies in the following principal areas:

(a) **internal market**;
(b) **social policy**, for the aspects defined in this Treaty;
(c) economic, social and territorial **cohesion**;
(d) agriculture and fisheries, excluding the conservation of marine biological resources;
(e) **environment;**
(f) consumer protection;
(g) transport;
(h) trans-European networks;
(i) energy;
(j) area of freedom, security and justice;
(k) common safety concerns in public health matters, for the aspects defined in this Treaty.

Article 4.3. In the areas of **research, technological development and space**, the Union shall have competence to carry out activities, in particular to **define and implement** programmes; however, the exercise of that competence shall not prevent Member States from exercising theirs.

Article 4.4. In the areas of development cooperation and humanitarian aid, the Union shall have competence to carry out activities and conduct a common policy; however, the exercise of that competence shall not prevent Member States from exercising theirs.

Article 5.1. The Member States shall **coordinate their economic policies** within the Union. To this end, the Council shall adopt measures, in particular broad guidelines for these policies.

Article 5.2. **The Union shall take measures to ensure coordination of the employment policies** of the Member States, in particular by defining guidelines for these policies.

Article 5.3. **The Union** may take initiatives to ensure coordination of Member States' social policies.

Article 6. The Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States [in essential areas].

Article 9. In defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of **a high level of employment**, the guarantee of **adequate social protection**, **the fight against social exclusion, and a high level of education, training and protection of human health.**

Article 145 (125 TEC). Member States and the Union shall, in accordance with this Title, work towards developing **a coordinated strategy for employment and particularly for promoting a skilled, trained and adaptable workforce and labour markets responsive to economic change with a view to achieving the objectives defined in Article 3 of the Treaty on European Union.**

Article 146 (126 TEC). 1. Member States, through their employment policies, shall **contribute to the achievement of the objectives referred to in Article 145** in a way consistent with the broad guidelines of the economic policies of the Member States and of the Union adopted pursuant to Article 121(2).

Article 146. 2. Member States, having regard to national practices related to the responsibilities of management and labour, shall regard promoting employment as a matter of **common concern** and shall coordinate their action in this respect within the Council, in accordance with the provisions of Article 148.

Article 147 (ex 127 TEC).1. The Union shall contribute to a high level of employment by encouraging cooperation between Member States and by supporting and, if necessary, complementing their action. In doing so, it will respect the competences of the Member States. 147. 2. **The objective of a high level of employment shall be taken into consideration in the formulation and implementation of Union policies and activities.**

Article 151 (ex 136 TEC). The Union and the Member States [...] shall have as their objectives **the promotion of employment, improved living and working conditions**, so as to make possible their harmonisation while the improvement is being maintained, **proper social protection**, dialogue between management and labour, the development of human resources with a view to **lasting high employment** and the combating of exclusion.

In order to support further the proposal, we analyse, hereunder, alternative plans under discussion aiming to pursue similar objectives that, based on recent experience, appear wholly inadequate. We overlook here past proposals that - because of mutualisation of pre-existing debts or the creation of double markets of Member States debt securities - were repealed or abandoned.

7. European Project Bonds

In 2012, EIB and the European Commission jointly started a pilot phase for infrastructural projects, called "*Project Bonds*" which aim to stimulate the financing of this type of project by attracting institutional investors, such as pension funds and insurance companies.

The initiative aimed to encourage capital market financing for large-scale infrastructure projects in key sectors such transport (TEN-T), energy (TEN-E) and information and communication technology (ICT), involving joint public and private entities (PPP). As indicated earlier, according to the Commission, the European Union's infrastructure investment needs required to meet the Europe 2020 objectives in these sectors alone could reach as much as 2 trillion euros.

The Project Bond initiative should enable promoters, usually public private partnerships (PPP), to issue investment grade bonds. The scheme launched at the European level, and now reformulated in the so-called Juncker Plan for sums hopefully even higher, - require enhancing the credit quality of senior securities, that is those issued by promoters and not by European Institutions nor Member States, in order to attract more institutional investors.

This would be implemented through loans from the EIB to start the projects or through contingent junior credit lines to be utilized if the cash flows of the projects were insufficient to service senior loans by the investors, subordinated to the loans of the investors. This should lead, according to the Commission, to a more efficient use of EU budgetary resources and to a quicker completion of valid projects. Under the pilot scheme, the EU budget has allocated 230 million[15] euros in guarantees for investments in transport, energy and ICT infrastructure, aiming at a multiplied contribution from capital markets.

The EIB managed the pilot phase, which started in 2010 and is preliminary to the full implementation of the programme. Through the Public Private Partnerships (PPP) scheme, the Union believes it should be possible to fill the gap in otherwise uncovered financial needs. The EIB says that although PPP decreased during the crisis, they still have a substantial role in investments, particularly in transport networks.

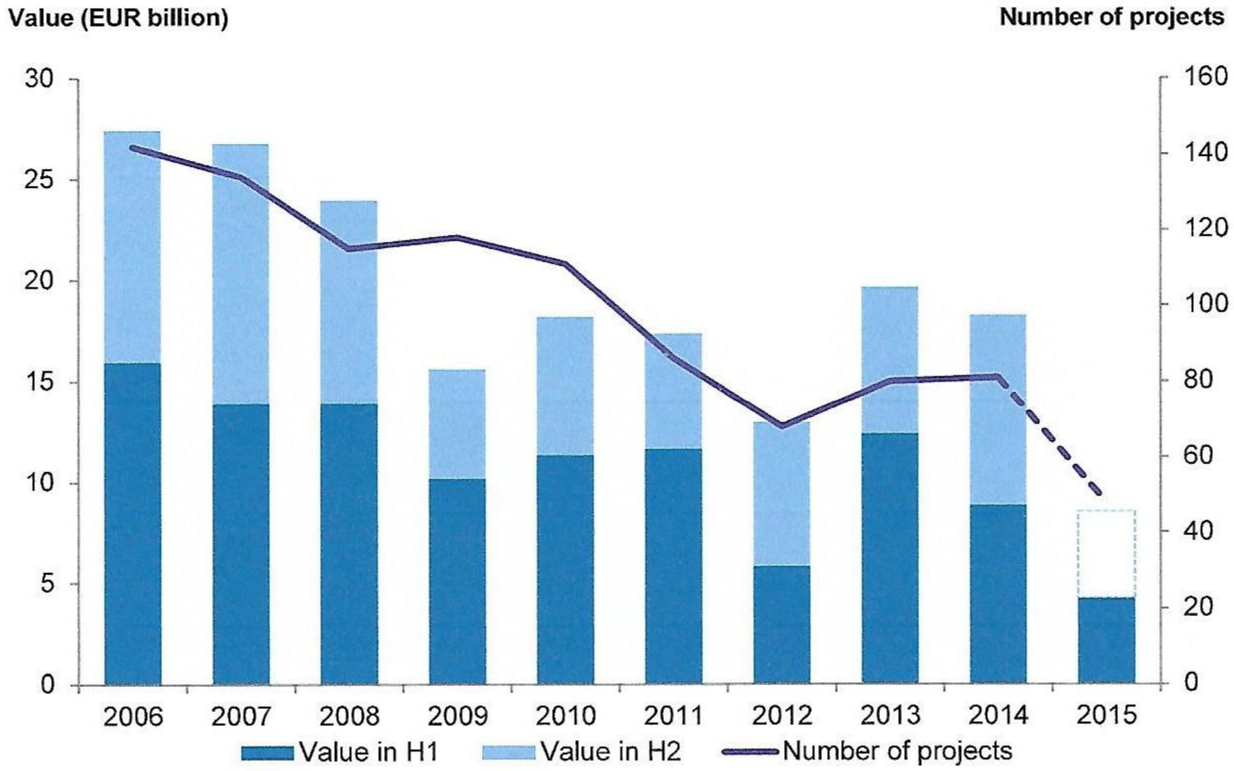
In the 21 years from 1990 to 2010, EIB financed 130 projects of this kind, with some 30 billion euros of credits granted and significant volumes since 1996. With a peak in 2000 of some 3 billion euros, annual amounts ranged between 1.5 and 3 billion annually from 2002 to 2006 followed by new peaks of 3.5 billion in 2008 and 3.75 billion in 2010[16]. In the process, the EIB gained experience and progressively enlarged the geographic areas and sectors involved, while utilizing innovative schemes of *risk sharing* and technical assistance to promoters.

The Bank developed this market by offering funds at competitive rates and making available funds from other sources such as the Union, Member States, banks and entrepreneurs, which it mobilized when granting financial assistance. The Bank believes that its allocation criteria had positive implications both in terms of risks taken and of good management of the projects it financed.

[15] Nota bene: millions, not billions.
[16] Source. EIB, *Project Bond. A Guide*. December 2012.

The following Figure[17] shows the evolution of this type of projects in Europe in the last decade:

Figure 1: The European PPP Market by Value and Number of Projects since 2006



The EIB has gained significant competence in this field and has an important role in EPEC, the European PPP Expertise Centre, a joint initiative of the EIB, the European Commission, Member States of the EU and Candidate States. EPEC favours sharing experience and best practices in PPP amongst its members. It offers assistance and orientation on various fronts, including improving broadband connection, energy efficiency in public sector buildings, and PPP financing through project bonds. Providing better help and technical assistance to public authorities in the development, preparation and presentation of PPP solutions are also amongst the main recommendations of a report prepared in 2012 by the European Policy Centre, a Brussels independent think tank, in cooperation with EIB.

8. Objectives and Realism of the Programme

In assessing the contribution that the EIB can make to the "plans for growth" under discussion, however, it is worth noting that the distribution of loans granted to the Member States roughly reflects their economic weight. It therefore takes into account only partially their existing differences, the divergence between their growth and employment rates and the economic difficulties of some of them;[18] even if no rigid country limits are set.

[17] EPEC, *Review of the European PPP Market. First half of 2015*, September 2015.

[18] Even if with some exceptions; at present Spain is financed more than its quota (14.9% of loans granted as against a 9.70% share), the United Kingdom largely less, probably because his financial system is able to provide funds to investors– whether as share capital or loans - competitively. Poland not only receives substantial credit support from the EIB, but it is also one of the countries financed more from the World Bank, the seventh, to the tune of 7 billion dollars (the largest receiver, Mexico, gets almost twice as much).

Under the pilot scheme, the EU budget grants guarantees for 230 million euros, of which 200 million euros for investments in transport, 10 million for energy and 20 million for communication (allocated to broadband). It aims to multiply the contribution from capital markets through the creation of a risk-sharing plan between the EU and the EIB, utilizing the technical experience of the latter.[19]

But let us look in more detail at its features. The 230 million euros allocated to the pilot phase do not represent additional funds, but come from EU budget resources not utilized by the programmes that should have employed them. These funds are supposed to allow the EIB to finance infrastructural projects, in addition to funds raised in the markets, for a total in excess of 4 billion in the three chosen sectors.

The gap between the amount allocated by the Union to the pilot programme (the 230 million) and the total value of the projects to finance under the scheme (4 billion) is huge, more than seventeen times bigger. Such a target could only be reached if EU funds complemented substantially those raised by the EIB, which cannot exceed Euro 200 million per project for this type of loan. The hoped for multipliers between public expenditure and private would be much smaller without this and look indeed excessive.

The volume of investment contemplated under the pilot scheme is similar to that financed by the Bank for PPP in the past, amounting to a modest share of credits granted annually, equal to around 0.2% of the needs assessed by the Commission itself (Euro 4 billion with respect to Euro 2.000 billion). In general, EIB expects to mobilize third party investment of around one and a half times the volume of its own commitment (a 60-40 ratio). The EIB's claim that granting subordinated loans in connection with bond issues, even if for the whole life of the project, including the construction phase, would offer "*peace of mind*" to institutional investors and drastically improve this 60-40 ratio does not appear realistic.

In the initial period of the pilot programme, between 2012 and 2013, some 9 projects partly financeable through bond issues were identified. Viable transport and energy projects were identified in six member States, including roads and highways in Slovakia, Germany, Belgium and United Kingdom. Investments were also identified to improve the electricity grids in Germany and the United Kingdom and for gas storage projects in Spain and in Italy.

The first experiment of bond enhancing took place in July 2013 in Spain for the Castor project, which would have created underground storage for 30% of Spain's daily consumption of gas. In this case, as EU funds were not available the EIB granted a 200 million loan in support of a bond issue of Euro 1.4 billion. This was a ratio of 1 to 7, well below the ratios suggested by the Juncker plan. The Spanish Government later had to block the project after it discovered seismic problems in the area; possibly due to gas pumping. The EIB does not even mention this fact in its PPP literature.

Only one other bond issue took place with the support of the Union. This entailed a total investment of £350 million, of which the operator raised £305 million through a bond issue supported by the UK government, which also guaranteed income to the operator; while the pilot scheme provided some £50 million, In this case too, the ratio was 1 to 7.

The Interim Report on the pilot phase of the Bond initiative of Europe 2020 for Project financing of the European Commission dated 19 December 2013 underlines that "Over the

[19] The Cooperation Agreement between EIB and the European Commission that defines the risk and profit sharing mechanism for the initiative between the two Institutions was approved by the EIB Council of the 23 October 2012 and was signed on 7 November 2012.

last 12 months, the initiative is up to expectations and is a success with regard to disbursements related to projects. The market has shown interest in the initiative and has given a positive response." In reality, in most cases projects were not actually new but re-financing and the running-in period does not look at all impressive.

The sheer fact that after twenty years of experience, we still need a "pilot scheme" shows that a change of direction whereby EIB credits – albeit supported by the Union – would lose their seniority status, the Bank would change from guaranteed to guarantor and would become a junior lender implies such a turnaround in the current criteria that it would be very painful, if a significant volume of outstanding loans were affected.

At present, subordinate EIB loans and credit lines have a maximum size per transaction of up to the lower of 200 million euros or 20% of credit-enhanced senior debt. Assuming that the ratio between junior EIB/Union debt and senior debt of promoters could be 10 to 50/60 instead of the standard 40 to 60, the two trillion euros in investment needed in the key sectors referred to would imply direct EIB/EU investments of 350/400 billion euros for the period from 2015 to 2020, for a number of projects – given the constraints we have underlined – roughly between 1750 and 2.000.

Handling such volumes is beyond the capacity and available means of the BEI and its 2,000 staff members, and would swamp the normal operations of the Bank. The Bank declares that it will finance only "robust" projects, implying that those it rejects are unsatisfactory.

Analysis would also be needed to determine the point at which the fact that the EIB would pass from a regime in which EIB credits usually enjoy a State guarantee, and have priority with respect to other claims, to a regime in which some of its credits would be junior, would jeopardize both its rating and its funding costs.

Moreover, since money is fungible, and several member states are deeply indebted, it is not at all obvious that further debt is the most efficient way of fostering growth, in particular if projects only reach an acceptable quality mainly through distortive financial incentives. It will be essential that projects produce positive income flows, not only to ensure repayments, but also the profitability of private promoters, builders and other investors involved.[20] It is worth noting in this connection that German highways are toll-free, except for trucks over 12 tons, so that their income flows would be inadequate, unless the Government modified the present policy.

It is up to Member States to correctly employ external technical assistance, including that of the EIB's, and submit only projects that are good enough to attract foreign investment and to reverse the flight of capital and of companies from Member States. Attention also has to be paid to raising the level of skills of the labour force after years of crisis and bad governance.

A brief list of the main recent developments in the PPP market confirms this analysis. While the Juncker plan should be in full swing, the reality is:

- The aggregate value of PPP transactions reaching financial close in the European market in H1 2015 totalled EUR 4.3 billion, only half that achieved in H1 2014;
- Transactions dropped to 24 in H1 2015 from 34 in H1 2024;
- Average transaction size declined 33%, to 178 million euros, compared to H1 2014, and is slightly lower than the average for the previous ten years;

[20] An interim evaluation of the pilot phase took place in 2013 and the final one should have taken place in 2015; should it be positive, the *Project Bond Initiative* would reach its regime in the Connecting Europe Facility (CEF), part of the Multiannual Financial Framework (MFF) for the period 2014-2020. The Interim Evaluation is available on the EUR-Lex website. As of March 2016, I have been unable to trace the final one.

- Only one large transaction closed in H1 2015, accounting for 25% of the overall European market value, and that took place outside the EU, in Turkey, in the healthcare sector. The number of countries involved also declined.

One positive signal comes from the growing role of institutional investors, albeit for just 2.5 billion euros and at very long maturities (on average 30 years). All transactions took place in only three countries, the UK, France and the Netherlands. Transport is always the dominant sector.[21]

9. The Juncker Plan

The investment programme that is supposed to re-ignite European growth took its name from the President of the Commission Jean-Claude Juncker and has to be examined in this broader context. From this angle, it not only contains no innovations, but also seems to be more a policy of announcements and creative accounting than to represent a new start.

The President of the Commission should propose real policy measures capable of solving outstanding problems, instead of just to declare that funds are insufficient, as he did. The proposed investment plan, of 315 billion euros until 2020, compares poorly with the Euro two trillion needed over the next six years in just three key sectors and the investment shortfall in the last two years alone of 600 billion euros, even after various EIB capital increases. This is roughly 50 billion euros per annum, more or less the same as the usual annual disbursements of the Bank, against the 350/400 billion euros of **direct** EU/EIB investments needed. – while only as much as 21 billion euros of public funds (3.5 billion per annum) are called for by the Plan, of which 5 from EIB (800 million per annum) and 16 from the Union (2.7 billion per annum). Furthermore, if the annual budgets of the EU remain the same and loans granted annually by the EIB remain at present levels, the contribution to the Plan of the two entities would have to be deducted from other expenses otherwise possible and from other loans the EIB could otherwise grant.

Immediate support for the Juncker plan, in the form of lip service, came from the German Chancellor Angela Merkel, who added immediately that *"it must be clear to everyone where the projects are in the future*". Wolfgang Schäuble, finance minister of Germany took a similar stand,[22] approving the programme for "more investments in Europe", but asking for a list of projects. "What counts is implementation", he said. "I have had enough of the fact that in Europe we always discuss seemingly pharaonic programmes, but when we draw the line the results are lamentable." He also underlined the need for an adequate regulatory frame for the sectors to finance.

While Berlin highlights delays between approvals and disbursements and underlines that a programme launched by the previous Commission in 2013, providing Euro 6.3 billion to counter youth unemployment did not show results, Germany continues to keep its purse very tight while others ask her to spend. The German reservations are certainly correct; but when the need to revive the economy became obvious, Roosevelt did not ask for lists, he proposed a way out.

Taking into account the technical and quantitative constraints that limit EIB's operations, if 21 billion euros are supposed to mobilize another 300 billion euros (a ratio of 1 to 15), what will probably happen is that projects that would have been financed normally in any case might be accompanied by a EIB/EU blessing, a bit of technical assistance and some minimal real involvement.

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[21] Source: EPEC, *Review of the European PPP Market. First half of 2014* and *Review of the European PPP Market. First half of 2015*

[22] On the *Financial Times* of 29 November 2014.

This would entail some cost or fiscal advantage and permit some investments of highly indebted Member States, which would **not** actually or technically be countable as debt – although they are. A bit of pseudo-financial engineering and creative accounting of this kind would have unpredictable effects on financial markets. If the system does not actually make investments while the ECB floods trillions of euros into the markets, it is not at all clear why it should be convinced to do so because some twenty billion euros of unused funds of the Union and of EIB are diverted to this Plan.

10. Conclusions.

It is a disgrace that the level of efforts made has not achieved the aims set forth in the Treaties. The implementation of relevant provisions – given the depressing background of rampant unemployment and missed growth – should be pursued with much more strength. In order to implement provisions that are not vague hypotheses but reflect the **foundations and basic principles** agreed upon to facilitate our living together in Europe, the Union ought to do "**whatever it takes**", as the President of the ECB once declared in a different but strongly related context.

Among other things, the Union should take forceful structural and anti-cyclical investment measures, like the ones proposed here, that so far neither the Member States nor the Union have applied because of constraints imposed on their action. Instead of "measures for growth", like those invoked by the so called Juncker Plan, involving somebody else's funds and trifling European means, the Union should reconsider in depth its whole budget, both in terms of allocation and dimensions. This should lead to the transfer at the European level of additional resources in volumes commensurate to Europe's collective needs.

European authorities should never consider investment in education, welfare, health and employment merely as "costs". Efforts made to use the funds of the EIB and the EU more efficiently deserve appreciation, as well as measures taken by the ECB and the NCBs, the institution of European stabilization mechanisms and funds, the reiterated and sizable recent capital increases of the EIB and the risk sharing agreements between the Bank and the Union.

All these efforts notwithstanding, throughout the eight years since the start of the crisis the well-being and economic growth of all Member States of the Union has decreased substantially, leaving millions of citizens and unprecedented percentages of the younger generation unemployed. The current crisis is the most severe since the 1930's; but no change of pace has taken place and the measures actually adopted probably deepened, and certainly did not relieve, the crisis.

After an increase of the ECB aggregate accounts from 1.472 billion euros in December 2007 to about 2.000 billion between 2008 and 2010 and to 2.735 billion euros in December 2011, they peaked at some 3,000 billion in 2012. In the face of a raging crisis, this aggregate figure declined to 2.275 billion euros at the end of 2013, a fall of 24.2% in one year and then dropped a further 9.8% to Euro 2.052 billion at the end of 2014, amounting to a reduction of 31.6%, or nearly one third in just two years.[23] This collapse took place despite the fact that the inflation target posited by the ECB, lower than but near to 2%, is much higher than actual

[23] This does not mean that the aggregate accounts of the ECB should be of a given magnitude, nor of three trillion euros; but simply that they decreased by about one trillion while growth tended to zero and inflation was well below target. Furthermore, although invoked "exits from the tunnel" are not materializing, according to some quarters the ECB should already discontinue the measures taken recently, even if the GDP of the European Union is still below the 2007 level. In Italy, we are constantly assessing whether GDP is increasing by 0.1% more or less per annum, while the annual increase is just about 1% and while from 2007 it increased by 6% in Germany, is almost level in Europe and in Italy it is still 11.7% lower. To put the figures in context, see paragraph 2, page 2.

inflation, standing around 0.2%, and just a bit more if external factors like sharply lower oil prices are set aside. Only in January 2015 did the EBC adopt more vigorous measures.

The new, harshly debated planned purchases of State debt securities of Euro 60 billion a month by the ECB starting in March 2015 will still only increase these aggregate accounts over the 18 month period to September 2016 to roughly the same level as four years ago.

Meanwhile the funds paid out or subscribed to the IMF and those for the capital increases of the EIB and the capital of the European Stability Mechanism only led, in the first instance, to an immediate increase in the public debt of the Member States that carried them out. If these are the meager results of the decisions of the European institutions, it is no wonder that many Europeans feel uneasy about their future.

It would be better to make European institutions actually respond to the basic principles of the Union and to its needs rather than rely on spin and unbelievable narratives, and to ensure effective results which actually contribute to improving the welfare of citizens.

The Commission and the EIB admitted that "the months and years to come will clearly be difficult" and that in response "confirm their firm undertaking to explore new ways to assist the Union to accelerate growth and employment". This proposal is an attempt to put flesh on the bones of these words.

Our plea for the Union to become an active investor in its own right comes at a time characterized by low energy and raw material prices and the existence of an army of unemployed or under-employed people and resources. Europe's travails are made worse by the problems of many other economies around the world, including a slow-down and change in the character of the Chinese economy and risks connected with devaluation of the yuan. While this should in fact facilitate the decisions proposed here.

The need for action to counter the forces of disintegration and tensions in our wider neighborhood has never been greater and underlines the urgent need for Europe to gather its forces and invest in a more secure and prosperous future.