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The Court of Justice and the Financial Crisis: New Treaties, New Competences, Future Prospects

Keynote lecture by
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I. INTRODUCTION

First of all allow me to thank the European Law Institute and especially the President, Sir Francis Jacobs, for the kind invitation to deliver a keynote speech at today's ELI General Assembly. I would also like to assure you that it is indeed an honour to address such a distinguished audience and to thank the organisers for giving me the liberty of choosing the topic of my intervention.

As is widely known, the European Union and its judiciary have undergone a number of reforms over the last few years. During the period starting from the Treaty of Nice and ending with the Treaty of Lisbon, the Court of Justice, in particular, has been transformed as an institution and its case-law is constantly developing in areas that were previously unknown to it as it tries to fulfil its fundamental mission in the context of a changing legal and political landscape. Discussing the Court's case-law in those emerging areas of EU law, such as the area of freedom, security and justice, or the structural reforms it has undergone in recent years would have been an obvious choice as a topic for my speech today. Nevertheless, I had the feeling that it would necessarily mean discussing more about the past; not to mention that, given the expertise of the audience, I would also be preaching to the converted.

I have therefore decided to share with you some thoughts on a matter that would bring me to talk more about the present and the future of the Court of Justice. I think that you will agree with me when I say that the biggest challenge that the EU is facing today is the global financial crisis and, more specifically, the sovereign debt crisis in the Eurozone. In response to this crisis we have witnessed the adoption of a series of regulations and directives, an amendment of the Treaty on the Functioning of the EU (TFEU) and two new treaties, one operating within the current EU structures and one operating outside (or in the margins) of those structures. These developments present us with a wide variety of legal problems and issues that we are only beginning to perceive.

In my intervention today I do not aspire to cover all the legal aspects of the current financial crisis. We would need a multi-day conference in order to do that. Hence, I have decided to focus more on what the role of the law in general and of the Court of Justice in particular should be in the handling of this crisis. I will approach this topic from two angles:

- a more general one in attempting to outline *in abstracto* the relationship between (and respective roles of) politics, law-making and the judicial system in the handling of the Eurozone crisis and to explain how *in concreto* the so-called Community method has been rightly used as the main vehicle in that respect;

- a more specific one by focusing on the ways the Court can be involved in matters pertaining to the crisis both under its competences as they are currently defined and under those that will be established under the Treaty on Stability, Coordination and Governance (TSCG) and the Treaty establishing the European Stability Mechanism (ESM).

II THE FINANCIAL CRISIS, THE COMMUNITY METHOD AND THE EU SYSTEM OF JUDICIAL PROTECTION

There is no doubt that the law has played a vital role in the process of European integration. Thousands of pages of academic writing have been devoted to analysing how the founding Treaties with their subsequent amendments have transformed what appeared at first as a traditional international organisation into an autonomous supranational constitutional legal order. In this process, the contribution of the Court of Justice has been crucial. By performing its mission as defined in the Treaties, the Court has identified and, according to some, shaped the fundamental characteristics of the EU legal order. Indeed, it is hard to imagine whether we would even be talking about the EU today had it not been for the basic principles of EU law as defined by the Court. The principle of primacy of EU law, the doctrine of direct effect of EU law, the protection of fundamental rights within the EU legal order, the principle of State liability and even the doctrine of implied external powers constitute the cornerstones of the EU legal order and define its nature.

The question now arises whether the law and the EU judicial system can play an equivalent role in order to contribute decisively to the progress of European integration in the economic and financial sphere and to Europe's efforts to find the means to deal with the current financial crisis. In fact, it could indeed be argued that as the law and its interpretation by the Court of Justice constituted the driving force in the advancement of what we could call Europe's political integration, it can play an equally significant role in the process of its fiscal and monetary integration and, consequently, in dealing with the current financial crisis.

To analyse this question we need to examine, firstly, the role of the law and legal instruments and, secondly, the role of the Courts in interpreting those instruments.

The role of the law in the context of the financial crisis and the EMU

As regards the role of the law in dealing with the current financial crisis, the question that needs to be answered comprises two parts: first, can the current financial crisis be overcome and an eventual fiscal union be achieved through law? Second, is the current financial crisis also a legal crisis in the sense that it is putting the Community method to the test?

I will start by making a general statement. In my personal view, the law and legal instruments can never be the solution *per se* to such problems. One cannot argue that had the correct legal instruments been identified earlier the current crisis could have been avoided. I will not enter into a discussion of the reasons that led to this crisis. However, as an example, I will mention one of the reasons that has been widely identified. The Economic and Monetary Union is composed of two pillars: the economic pillar and the monetary pillar. One of its characteristics is the imbalance between the two pillars, in other words the fact that the monetary pillar is highly centralised and integrated, given the competences conferred on the ECB, whilst the monetary pillar is primarily intergovernmental and contingent upon national economic policies which are not necessarily coordinated. This imbalance has made it very difficult for the Eurozone to deal with the crisis effectively at the initial stages. However, this imbalance cannot be corrected simply through law. It requires courageous political initiatives and decisions.

This example illustrates the fact that, in such complex economic policy matters, the law can only provide the instruments in order to put into action a possible solution but not the solution itself. The role of the law is, in essence, a supporting role. This statement must not be seen as a lessening of the importance

of the law within the EU legal order in general. It must be understood as meaning that the law as such cannot conceive and produce policies. Therefore, I am not arguing in favour of a *capitis deminutio*, but simply stating the obvious: a financial crisis such as the current one and an eventual fiscal union within the Eurozone cannot be achieved solely through law but requires also bold political decisions and initiatives which, so far as necessary, will be enacted through the appropriate legal instruments.

This supporting role of the law does not make it less important because it remains a condition *sine qua non* for the enactment of the necessary policies and concrete measures. The fact that the law as such is not the protagonist does not make it any less important. Lawyers and jurists are, and must certainly be, at the forefront both at the law-making phase and the later stage of judicial interpretation and judicial control.

The Community method put to the test: has the financial crisis revealed a legal one?

Having clarified that, it is interesting to see whether the current financial crisis has also revealed a legal one. In other words, is the current legal institutional framework of the EU, also known as the Community method, adequate to the purpose of fulfilling its role and contributing effectively to the management of this crisis? In order to answer that question, we need to return briefly to the basics and outline the essential traits of the Community method.

First and foremost, as regards its legal foundations, Article 2 TEU states the common values on which the European Union is founded. Respect for the rule of law features prominently as one of those values. Article 19 TEU entrusts the Court of Justice with the task of ensuring that the law is observed 'in the interpretation and application of the Treaties'. As a supplement to this provision, Article 344 TFEU provides that Member States undertake not to submit 'a dispute concerning the interpretation and application of the Treaties to any method of settlement other than those provided therein'. Thus the Court has exclusive jurisdiction on all disputes between Member States concerning the interpretation and application of the Treaties.

The European legal order has been achieved mainly through the Community method. Under this method the making of laws in the European Union takes place according to certain procedures and the legal consequences of the various acts of the European Union are predictable, as are the consequences for Member States in case of breach of such legislation. By acceding to the European Union, the Member States recognise and accept this system which, of course is complemented by the principles of primacy and direct effect of EU law. The legal basis of the Community method is often compared with its philosophical basis, which is best described by the unofficial EU motto 'unity in diversity'. In other words, the Community method is a reflection of the principle of a fair, equal and non-discriminatory treatment of all Member States which in turn means respect for the pluralism of interests involved with the purpose of reaching the most suitable compromise after considering and synthesising all the positions expressed.

In addition to its legal and philosophical background, the Community method has a strong institutional basis. It is a complex but rather transparent system that guarantees the necessary *'checks and balances'* and represents a 'third way', an alternative to the pure intergovernmental and supranational methods. The main components of the Community method's institutional basis are:

- The monopoly of legislative initiative of the European Commission. This element is of crucial importance because it guarantees that the legislative initiative comes from a collective body

that is entrusted with the task of being 'guardian of the Treaties' and representing the interests of the Union. Thus, the common EU interest is placed in the centre of the legislative process.

- The Council acts as a legislator *par excellence* of the European Union. The fact that, after the Treaty of Lisbon, the Council most frequently operates by qualified majority ensures efficiency in its decision-making while at the same time providing a guarantee that the position of every Member State is taken into consideration.
- The European Parliament has seen its role constantly strengthening over the past few decades. It is now on an equal footing with the Council in the ordinary legislative procedure. This co-decision procedure gives the Community method much-needed democratic legitimacy.
- The Member States are normally required to implement EU legislation. This implementing activity is closely monitored by the Commission and, if the Commission so decides, also controlled by the Court of Justice in infringement proceedings offering even the possibility of the imposition of a fine or a periodic penalty payment.
- The Community method has been proven to have the advantage of adaptability. The Community method as first conceived by the founding treaties has been adapted on several occasions in order to become more functional and efficient in parallel with the advancement of European integration. A few examples include the gradual strengthening of the role of the European Parliament, the expansion of the use of majority voting in the Council and the more precise definition of the role of the European Council.

Having briefly presented the essential characteristics of the Community method, it is interesting to see to what extent it has been an effective tool while dealing with the financial crisis. Naturally, the Union's first response to the Eurozone crisis had to be based on measures adopted using the Community method. The first of those measures was Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European Financial Stabilisation Mechanism. This mechanism provides financial assistance to EU Member States in financial difficulties. The EFSM essentially reproduces for the EU 27 the basic mechanics of the existing Balance of Payments Regulation for non-euro area Member States. Under EFSM, the Commission is allowed to borrow up to a total of €60 billion in financial markets on behalf of the Union under an implicit EU budget guarantee. The Commission then lends the proceeds on to the recipient Member State. This unique lending arrangement means that there is no debt-servicing cost for the Union. All interest and loan principal is repaid by the recipient Member State through the Commission. The EFSM has currently been activated for Ireland and Portugal, for a total amount of up to €48.5 billion (up to €22.5 billion for Ireland and up to €26 billion for Portugal), to be disbursed over 3 years.
The Community method was also used for the adoption of the so-called six-pack. The six-pack is a series of five regulations and one directive, proposed by the Commission and adopted by the Council and Parliament in November 2011. Their main goal is to strengthen economic governance in the EU. They have been characterised as the most significant step in this direction in the last twenty years.

However, these instruments adopted solely by the Community method were not the only legislative texts that were envisaged in order to deal with the crisis.

First of all, the EFSM was conceived as a part of the wider safety net which included the European Financial Stability Facility (EFSF). The EFSF was created by the euro area Member States following the decisions taken on 9 May 2010 within the framework of the Ecofin Council. It is a private entity based in Luxembourg. Its mandate is to safeguard financial stability in Europe by providing financial assistance to euro area Member States. Functioning alongside the EFSM, its purpose is to gather funds guaranteed by the Eurozone Member States, and funding from the International Monetary Fund, and to make such funds available for Eurozone Member States. The EFSM and the EFSF can only be activated after a request for financial assistance has been made by the Member State concerned and a macroeconomic adjustment programme, incorporating strict conditions, has been agreed with the Commission in liaison with the European Central Bank (ECB).

Secondly, the Eurozone Member States proceeded with the establishment of the European Stability Mechanism (ESM) in March 2011 by an international agreement between the Member States of the euro area as an intergovernmental organisation. However, this was only made possible after the adoption of the European Council Decision of 25 March 2011 amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro. This decision was adopted by the simplified procedure provided for in Article 48(6) TFEU. The ratification process of the ESM Treaty has been completed and, since its entry into force on 8 October 2012, it has superseded both the EFSF and the EFSM and has become a permanent mechanism.

Thirdly, I must also mention the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union. Also known as the 'Fiscal Compact', it is intended to enter into force by 1 January 2013. Signed by 25 out of the 27 Member States of the EU as an international agreement, it is intended to achieve (1) tighter fiscal budgetary discipline by the Member States, (2) closer coordination of economic policies of the Member States, and (3) improved management of the Eurozone.

We notice at first glance that the instruments adopted by the Community method were complemented by different types of legislative instruments adopted outside the scope of the method. The question then arises whether this is indicative of a legal crisis alongside the financial crisis and whether the Community method has reached its limits.

Although some would argue that the very existence of instruments adopted outside the Community method is indicative of its inadequacy, I believe that, upon closer examination of the whole body of legislation, the answer to that question must be more nuanced. I will very schematically proceed to certain observations in that respect:

- Firstly, the Community method was used to adopt a very large number of regulations, directives and decisions in response to the financial crisis.
- Secondly, the EFSM and the EFSF were conceived as temporary mechanisms in order to face time-sensitive problems.
- Thirdly, the ESM Treaty, which by its nature could not concern Member States outside the Eurozone, was adopted after a Treaty amendment which provided for an express legal basis for that treaty.
- Fourthly, both the ESM Treaty and the Fiscal Compact include several of the enforcement components of the Community method as previously described. Most importantly, they specifically provide for strict monitoring by the Commission coupled with the involvement of the Court of Justice, which can even lead to the imposition of fines.

- Fifthly, the democratic legitimacy of the ESM treaty and the Fiscal Compact is guaranteed by the ratification procedure of national parliaments which, in some instances, such as in Germany and Ireland, included actions before the highest courts of the Member States.

Taking into account these considerations, it becomes questionable whether we are dealing with a major legal crisis regarding the Community method as a whole. The use of intergovernmental international instruments in a very specific area and during an unprecedented time-sensitive crisis is not likely to result in more frequent deviations from the Community method in general. Furthermore, the Euro and the Eurozone are by their nature opt-in structures and therefore they are bound to include legislative texts not applicable to all EU Member States. In addition, I must underline once more the guarantee that represents the role reserved for the EU institutions such as the Commission, the ECB and the Court of Justice. Lastly, I must also add that, historically, intergovernmental or soft-law instruments adopted outside the scope of the Community method have been known to advance gradually the process of European integration. The Schengen Agreements, the European patent and the Charter of Fundamental Rights are examples of such instruments. In any event, the notion of enhanced cooperation between certain Member States is specifically provided for in Article 20 TEU.

In conclusion, I believe that when assessing the impact of the legislative instruments adopted in response to the financial crisis one must be extremely prudent and certainly not make sweeping generalisations. It will take several years before we can assess and analyse the effects of this body of recent legislation in the European Union as a whole.

III. THE ROLE OF THE COURT OF JUSTICE IN THE CONTEXT OF THE FINANCIAL CRISIS

Moving on now to the next part of my presentation, the question arises as to what the role of the Court is and will be in the context of the financial crisis and the body of legislation adopted in response to it. In order to be as complete as possible, I will first make some general remarks and then proceed to illustrating the case-law or pending cases that highlight the Court's role in its current framework of competences. I will conclude with some thoughts on the new competences of the Court which will be effective upon the entry into force of the ESM Treaty and the Fiscal Compact.

General remarks

I would like to share with you a more general observation. As I mentioned earlier, the Court of Justice has been at the forefront in the process of European integration by defining boldly the essential principles and characteristics of the EU legal order. Nevertheless, the building of an EU legal order and the gradual development of a fiscal union is not the same thing. Since the role of the law in the latter is, as I argued earlier, secondary, the Court's approach must be analogous. And that is true not only for the Court of Justice but also for national courts.

By that statement I do not wish to trigger a debate on judicial activism versus judicial restraint; nor am I advocating that the Court of Justice or the Supreme and Constitutional Courts of the Member States must refrain from fulfilling their duties under the European Treaties and respective national constitutions. I simply believe that the judicial approach in this area must be characterised by two elements: patience and caution.

I say patience in the sense that the Courts should not look for legal issues they wish to rule upon where it is not clear that such issues are raised. The body of legislation adopted in response to the financial crisis will take time to develop its full effects and the courts must therefore be patient and deal with the issues only as and when they specifically arise.

I say caution because the legal analysis of such matters requires the strictest respect of the boundaries of the respective spheres of competence, as defined by the Treaties, adherence to the principle of primacy of EU law and the utmost prudence in the interpretation methods used. What I am trying to say by this is that, given the intensity of the financial crisis and the novel character of the related legislative provisions, courts may be tempted to engage in broad interpretations that could amount to a judicial experimentalism without being able to evaluate the consequences both in the short term and long term. In any event, what I am suggesting should not come as a shock. Both the Court of Justice and national supreme and constitutional courts are no strangers to the prudent case-by-case approach which they apply very frequently and in many areas of law.

The financial crisis within the competence of the EU Courts under the current legislative framework

As the ESM Treaty and the Fiscal Compact provide for new competences for the Court of Justice, a lot of attention has been drawn to those particular provisions. However, the Economic and Monetary Union has existed for quite some time and the Court has already heard cases related to it. I must add at this stage that issues relating to the EMU in general and the financial crisis in particular have been raised both in direct actions before the Court of Justice and the General Court, and in preliminary references.

I would mention first of all the judgement of 13 July 2004 in Case C-27/04 *Commission* v *Council*, where the Court was called on to address implementation of the Stability and Growth Pact. In the context of that pact, excessive deficit procedures were initiated against France and Germany in 2003. On a recommendation from the Commission, the Council found that an excessive deficit existed in both those States. It therefore adopted two recommendations asking them to reduce their deficits and setting a deadline for the adoption of corrective measures (on
the basis of the then Article 104(7) EC). After those periods had expired, the Commission recommended to the Council that it adopt decisions establishing that neither France nor Germany had taken adequate measures to reduce their deficit in response to the Council's recommendations. The Commission thus requested the Council to give the two Member States concerned notice to take measures to reduce their deficit. However, on 25 November 2003 the Council, unable to achieve the majority required for taking that decision, merely adopted conclusions in which it decided to hold the excessive deficit procedures in abeyance and declared itself ready to take a decision under Article 104(9) EC should it appear that the relevant Member State was not complying with the commitments entered into by it.

Faced with what it considered to be a breach of the Treaty rules, in January 2004 the Commission brought an action challenging both the Council's failure to adopt a decision and its conclusions. Firstly, the Court held the action to be inadmissible, considering that the Council's 'inaction' was not an act open to challenge. Secondly, the Court held that the Council's conclusions were adopted in a manner contrary to the procedural rules laid down in Article 104(7) and (13) EC.

This judgment was rendered several years ago and I am not sure whether the legal issues raised are likely to reappear in the same way under the current set of Treaty provisions and regulations. I am mentioning it, first, in order to demonstrate that the Court has dealt with such matters in the past and, se-

cond, because the Court rendered this judgment under an accelerated procedure within six months of its introduction.

At the current stage the financial crisis is present in the Court's docket with the *Pringle* case. Mr Pringle, a member of the Irish Parliament, has opposed the participation of Ireland in the ESM Treaty, claiming that this Treaty would transfer sovereign monetary powers and powers of monetary policy of the State to a new international institution and that any ratification would be unlawful and unconstitutional in the absence of approval by the people of Ireland in a referendum. The case has reached the Supreme Court of Ireland, which made a reference to the Court of Justice. In his action, Mr Pringle claims inter alia:

- that European Council Decision 2011/199/EU, which amended Article 136 TFEU, was unlawfully adopted by the simplified revision procedures under Article 48(6) TFEU because it entails an alteration of the competences of the Union
- that the said decision is inconsistent with the Treaty provisions on the economic and monetary union and general principles of EU law including the principle of legal certainty.

With its preliminary questions, the Supreme Court of Ireland is raising both the issue of the validity of European Council Decision 2011/199/EU and, indirectly, the compatibility of the ESM Treaty with a number of provisions of the TEU, the TFEU and the Charter of Fundamental Rights.

You will of course understand that I cannot comment on this case since it is pending at the moment. I will simply say that, once more, the Court accepted the request, this time from the Irish Supreme Court, to put this case through the accelerated procedure, given its urgency. It may also interest you to know that the Court has also decided to hear this case in its plenary formation.

Lastly, I would also like to mention that there is also one case pending currently before the General Court which is closely related to the financial crisis. A group of holders of Greek government bonds is challenging the private sector involvement in the recent restructuring of the Greek public debt on the basis, most notably, of infringement of the principle of equal treatment because bonds held by the public sector (governments, ECB, national central banks) were exempt from this arrangement.

The competences of the Court of Justice under the Fiscal Compact and the ESM Treaty

In addition to the current and traditional competences of the Court of Justice, the Fiscal Compact and the ESM Treaty provide for a specific role for the Court.

Starting with the Fiscal Compact, Article 3 thereof provides that general government budgets are to be balanced or in surplus. The annual structural deficit must not exceed 0.5 percent of GDP. Countries with government debt levels significantly below the ratio of 60 percent to GDP and where risks in terms of long-term sustainability of public finances are low may reach a structural deficit of at most 1 percent of GDP. Such rules must also be introduced in Member States' national legal systems at statutory level or higher. The rules must contain an automatic correction mechanism that will be triggered in the event of deviation, to be defined by each Member State on the basis of principles proposed by the European Commission.

Article 8(1) of the Fiscal Compact stipulates that '[t]he European Commission is invited to present in due time to the Contracting Parties a report on the provisions adopted by each of them in compliance with

Article 3(2). If the European Commission, after having given the Contracting Party concerned the opportunity to submit its observations, concludes in its report that such Contracting Party has failed to comply with Article 3(2), the matter will be brought to the Court of Justice of the European Union by one or more Contracting Parties. Where a Contracting Party considers, independently of the Commission's report, that another Contracting Party has failed to comply with Article 3(2), it may also bring the matter to the Court of Justice. In both cases, the judgment of the Court of Justice shall be binding on the parties to the proceedings, which shall take the necessary measures to comply with the judgment within a period to be decided by the Court of Justice.'

Furthermore, in Article 8(2) it is stated that '[w]here, on the basis of its own assessment or that of the European Commission, a Contracting Party considers that another Contracting Party has not taken the necessary measures to comply with the judgment of the Court of Justice referred to in paragraph 1, it may bring the case before the Court of Justice and request the imposition of financial sanctions following criteria established by the European Commission in the framework of Article 260 of the Treaty on the Functioning of the European Union. If the Court of Justice finds that the Contracting Party concerned has not complied with its judgment, it may impose on it a lump sum or a penalty payment appropriate in the circumstances and that shall not exceed 0.1% of its gross domestic product. The amounts imposed on a Contracting Party whose currency is the euro shall be payable to the European Stability Mechanism. In other cases, payments shall be made to the general budget of the European Union.'

Given that the Court will sooner or later be called upon to interpret these provisions, my comments will be brief, cautious and indicative of patience. The first observation that can be made on these provisions of the Fiscal Compact is that they include a very comprehensive enforcement mechanism with decisive involvement by the Court of Justice. A second observation is that the Court will have a sort of dual jurisdiction in a procedure which is highly reminiscent of the TFEU infringement procedure. A third observation relates to the legal basis of this mechanism, which is Article 273 TFEU.

It is expected that the Court will be called on to clarify various issues in the context of the TFEU and the Fiscal Compact. One such issue is whether the intended integration of Union institutions under the Fiscal Compact is lawful and compatible with Article 13(2) TEU. The appropriateness of the use of Article 273 TFEU as a legal basis for this mechanism of judicial control will also have to be examined eventually.

Moving on now to the ESM Treaty, Article 37(2) provides that '[t]he Board of Governors shall decide on any dispute arising between an ESM Member and the ESM, or between ESM Members, in connection with the interpretation and application of this Treaty, including any dispute about the compatibility of the decisions adopted by the ESM with this Treaty. The votes of the member(s) of the Board of Governors of the ESM Member(s) concerned shall be suspended when the Board of Governors votes on such decision and the voting threshold needed for the adoption of that decision shall be recalculated accordingly.'

Article 37(3) provides '[i]f an ESM Member contests the decision referred to in paragraph 2, the dispute shall be submitted to the Court of Justice of the European Union. The judgement of the Court of Justice of the European Union shall be binding on the parties in the procedure, which shall take the necessary measures to comply with the judgment within a period to be decided by said Court.'

These provisions are not of course as radical and far-reaching as those of the Fiscal Compact. They in fact bear a much closer resemblance to a traditional arbitration clause. Consequently the range of issues

that can be raised is not as broad as with the Fiscal Compact. Several legal issues pertaining to the compatibility of the ESM Treaty with the TEU and the TFEU will be examined in the *Pringle* case. One can nevertheless observe that the issue of the legal basis of this dispute resolution mechanism will also be an interesting matter, given that it is once again Article 273 TFEU.

IV. CONCLUDING REMARKS

In conclusion, I believe that it is obvious that the financial crisis and the governance crisis in the Eurozone present a series of challenges for the European Union. As we have seen these challenges are quite clearly mainly political in scope. Nevertheless, they will have to be met both by the legislative authorities of the European Union and by the EU Courts. I personally have no reason not to be optimistic. Historically Europe has dealt with crises before and has always managed to find the means to redefine itself and emerge stronger and more integrated following those crises.

However, as I am addressing today the General Assembly of the European Law Institute I would also like to stress the role that the academia and especially the ELI can play in that respect. As we are dealing with new and emerging areas of EU law, the contributions of institutions such as the ELI can be very valuable in the analysis of the legal issues involved. In fact, the ELI is in a unique position to provide such a contribution, given its pan-European structure and the fact that it brings together all the pertinent disciplines and in particular academics, practitioners, judges and researchers. I will therefore bring my intervention to a close by expressing the wish that the ELI will consider including these matters in its agenda in the near future.

I thank you very much for your attention.