The Representation of the EU in the International Monetary Fund (IMF)

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1. Introductory Remarks: the Legal Framework

The International Monetary Fund (IMF) is the main international organization (IO) in the financial and monetary field. By its establishment in 1944, a new International Monetary System was introduced, and in the succeeding decades the IMF institutional changes have always mirrored the evolutions of the world economic order. From a legal point of view, the IMF has expanded its competences, namely from the monetary to the economic field in a broader sense\(^1\), and to the development aid policy domain\(^2\).

The most important event in the monetary filed of the last decades is the birth of the Euro in 1999. Many authors predicted that it would have surely influenced the IMF institutional structure

\(^1\) Namely in the macroeconomic surveillance, technical and financial assistance fields.

and its functioning. Ten years after that event, major reforms in the IMF structure concerning the European Union (EU) and its currency are still to come.

More specifically, the 27 EU countries are currently represented in many different constituencies at the IMF, in spite of the adoption of the Euro – that makes quite all regulatory aspects of money a matter of EU law, at least for the countries that have entered the Euro Area – and of the need to speak with a single voice in such an important IO.

In fact, while the EU competence in the monetary policy is widely considered exclusive, it merely coordinates Member States’ action, as far as economic policy is concerned. According to the European Court of Justice (ECJ) case-law on the parallelism of internal and external competences (the “ERTA doctrine”) one can imagine only weak EU external powers for economic matters. It may be wondered whether this legal framework is liable to affect the effectiveness and the unity of the EU representation in International economic Organizations and Fora. In the case of the IMF, the expansion of the fields of activity – as just pointed out – makes more difficult to solve the EU’s representation problem, as, in principle, a unique EU seat could be imagined only if it had full competence in all those fields of activity. Moreover, according to the Articles of Agreement (the Founding Charter of the IMF), being a State is a mandatory requirement to enter the Fund.

This paper aims to assess whether a single seat solution could be considered viable and formally possible, given the present competence division between the EU and its Member States, and the relevant praxis of the IMF.

The current arrangements governing the EU’s representation in the IMF were set up in an informal way. Despite article 111, par. 4 European Community (EC) Treaty provision – that provided a specific procedure to set up external representation for the EC and to establish “common positions on matter of particular interest for the economic and monetary union” – the European Council (Luxembourg, 1997; Vienna, 1998) chose a “pragmatic solution”. The current representation system will be briefly presented (infra, following §), but it can already be pointed out that such a solution seemed to be a provisional one (although one can observe it has been working for more than ten years), trying not to modify too much the institutional structure of the main

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4 See now art. 3, c) of the Treaty on the Functioning of the European Union (TFEU), that explicitly states the exclusivity of EU competence in the monetary field.
5 See ECJ judgment, march, 31st 1971, case 22/70.
7 See now art. 138 TFEU.
financial IOs on the eve of the adoption of the Euro. In fact, no one could imagine the innovations the new currency would have provoked within the International Monetary System in the following years, so waiting to observe the new balances could have appeared opportune before taking any new decision.⁹

The current system of coordination is aimed to ensure the constant involvement of the European Central Bank (ECB) and of the political Institutions, and the respect of their prerogatives, granted by the Treaties. The effectiveness of this kind of settlement is to be verified.

In addition, the potential overlap between the exercise of competences of Member States (still members of the IMF), of the ECB (in many cases acting on behalf of the Euro Area) and of the EU in itself is to be examined.

2. The EU’s representation in the IMF – current settlement

As it has been already pointed out, the 27 EU countries are currently represented in many different constituencies at the IMF.¹⁰

Since the origin of the IMF, five Executive Directors have been appointed by the five States holding the highest quotas: United States, United Kingdom, Germany, France and Japan. Three other Countries have gained the right to appoint an Executive Director: Saudi Arabia, Russia and China. The other Executive Directors are elected by each constituency, so an agreement has to be reached among the Countries represented therein. Each Director expresses the view of the constituency has elected him. This mechanism implies that the EU Member States, being represented in different constituencies at the IMF, could not be able to grant expression to the positions of the EU at the Executive Board.

This mechanism does not ensure a deep impact to the view of the EU on the IMF decision making process and one may consider the whole group of EU’s Member States as underrepresented, given its role in international trade and finance. Nevertheless, the United States and other Countries often accuse the EU of overrepresentation, because of the quota detained, considering the EU group as a whole.¹¹

¹⁰ Each Country can choose its own constituency on a voluntary basis. Nevertheless, a change of constituency implies a quite complex procedure and re-assessment of the whole structure.
¹¹ Information about quota distribution and the composition of the Executive Board is available on-line: www.imf.org; see also tables in L. BINI SMAGHII, A single EU seat in the International Monetary Fund?, in K.E. JØRGENSEN (ed.), The
The influence every Country can have on decisions is thus really little, so two main forms of cooperation among Countries can be observed within the IMF. Cooperation within constituencies is obviously the first choice for Countries. Every Member of the IMF usually tries to have some influence on the vote of the constituency in which it is represented, but the State holding the highest quota (in each single constituency) usually tends to become the leading one. As some EU Member States hold the highest quota in their constituency, it may be considered that they have a chance to achieve consensus on issues discussed at the Board. By this way, the impact of the EU could grow and it would go far beyond the quota attributed to its Members. However, consensus is not very easy to achieve and different attitudes among Members of the same constituency towards many issues could undermine the EU’s chance to have a greater voice.

Secondly, also “cross-constituency” cooperation arrangements could be reached. Some international Fora, such as the G-7/8, the G-10 and the G-20, try to achieve consensus on major issues discussed at the Board. The main issues are usually discussed by the Finance Ministers and central bank governors of G-7 in meeting taking place the day before the spring and annual meetings of the IMF (and the World Bank). Sometimes this International Fora lobbying seems to be more effective than the coordination among the EU Members.

The relationships of the EU system of coordination with the one existing within the International Fora could be quite complex. It has to be considered the double membership (EU and G-7/8, G-10 or G-20) of some Countries and the possible “overlap of loyalties” they could have to deal with. Nonetheless, the two coordination systems should not be regarded as incompatible. A way to make the EU coordination process consistent with the G-7/8 (and maybe G-10 and G-20) one should be set up, in order to obtain a deeper impact on the IMF decision process. Otherwise, a conflict between two opposite strategies could arise and undermine the achievement of consensus.

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European Union and International Organizations, London-New York, 2009, p. 61 ss., espec. 63; this article is the updated version of an older one, by the same Author: A Single EU Seat in the IMF?, in Journal of Common Market Studies, 2/2004, p. 229 ss.; reference in the following pages will be made to the first and more recent one.

12 See L. Bini Smaghi, A single EU seat in the International Monetary Fund?, cit., p. 64.

13 L. Bini Smaghi, A single EU seat in the International Monetary Fund?, cit., p. 72, reckons that the sum of votes of all the constituencies in which an EU Member State is represented should be of 44% of the total, nearly 12% more than the sum of the quota directly held by them. However, by excluding the cases in which their vote in their constituency is less than a third of the total, or in which they may have political problems to reach consensus with other Members on EU’s position, that sum would reach only 33% of the total: nearly the same value of the voting rights directly held by them.

14 According to L. Bini Smaghi, A single EU seat in the International Monetary Fund?, cit., p. 65, this groups hold high shares of voting rights (44,35% for the G-7, 51,42% for the G-10 and 64,65% for the G-20), and their real impact would increase, if their Members are able to influence the vote of the constituency in which each of them seats (45,52% for the G-7, 62,12% for the G-10 and 80,84% for the G-20).

15 See L. Bini Smaghi, A single EU seat in the International Monetary Fund?, cit., p. 64.
among the Board (or bring to *suboptimal* solutions)\(^\text{16}\). The representation of the EU (or the Euro Area) as such in International Fora and coordination meetings in order to ensure deeper impact to EU’s positions on Fora decision making processes have to be warmly welcomed\(^\text{17}\).

3. **Coordination among EU Member States within the IMF**

EU Countries sometimes have divergent views on issues discussed at the IMF, for a variety of reasons\(^\text{18}\). New fields of activity of the IMF do not always fall within EU exclusive competence (like in the development cooperation field). In monetary affairs, only EU Members that have entered stage three of the economic and monetary union are bound by tight rules on coordination (they will have to sustain EU positions: see *infra*), while the other EU Countries can conduct their own policy. In fact, art. 142, TFEU, first sentence, according to which “[e]ach Member State with a derogation shall treat its exchange-rate policy as a matter of common interest” seems not to deprive them of the right to negotiate independently about a series of issues that could be discussed within the IMF\(^\text{19}\).

Specific arrangements had been informally reached to ensure proper coordination and representation for the EU as such and not just for Member States. Also the ECB has always been eager to gain a foothold in the EU representation delegation in the IMF, as money emission and

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\(^\text{16}\) L. BINI SMAGHI, *A single EU seat in the International Monetary Fund?*, cit., p. 73 writes: “(...) EU cooperation cannot be an alternative to G-7 cooperation, since EU countries alone do not have a majority in the Fund. Cooperation with the other major shareholders, in particular the United States and Japan, will always be needed. EU cooperation is, rather, a way to increase the weight of EU countries within the G-7 coordination process, and to increase the weight of the G-7 itself. EU cooperation must thus be consistent with G-7 cooperation. It requires willingness to compromise with non-EU countries, something that not all EU countries are always able to achieve”.

\(^\text{17}\) For example, see the final documents of EU Heads of State and Government informal meeting of November, 8, 2008 (preparing EU positions for the succeeding week G-20 meeting of Washington) and of the Berlin summit (February, 22, 2009) of Heads of State and Government of the EU Member States also Members of the G-20 (preparing EU positions for London G-20 meeting, April, 2, 2009).

\(^\text{18}\) See L. BINI SMAGHI, *A single EU seat in the International Monetary Fund?*, cit., p. 68 ss.

\(^\text{19}\) EU Countries with a derogation will have to take into account the obligations stemming from the exchange-rate arrangement between them and the Euro Area (Exchange Rate Mechanism 2, “ERM 2”, based on a European Council Resolution). However, the EU has exclusive competence in the area of monetary policy “for the Member States whose currency is the Euro” (art. 3, e TFEU). EU Member States whose currency is not the Euro could be only indirectly bound by international obligations contracted by the EU (in the monetary field). For instance, if a new general agreement on exchange-rate was signed by the EU, but not by its Member States with a derogation, it would provoke in any case some effects on these States (a similar result could be achieved by adopting a decision *ex* art. IV, *Articles of Agreement*). In fact, the new exchange-rate of the Euro would indirectly bind also the currency of these States, by virtue of ERM 2. Nevertheless, these obligations would stem from the new agreement only once it had been signed; in the negotiations aimed to reach such an agreement, EU Member States not taking part in stage three should be consider free to negotiate bearing in mind only their own interest, and without any direct connection with the position of the EU.
exchange-rate policy of the euro (in the absence of agreements signed, or of general orientations, ex art. 219 TFEU) are the prerogatives of the ECB in the EU legal order (art. 127 TFEU).

As stated by the Presidency Conclusions of the Vienna European Council (December 1998), “[t]he ECB, as the Community body competent for monetary policy, should be granted observer status at the IMF board. The views of the European Community/EMU on other issues of particular relevance to the EMU would be presented at the IMF board by the relevant member of the Executive Director's office of the Member State holding the euro Presidency, assisted by a representative of the Commission”.

On December, 21st, 1998, observer status at the IMF Board was granted to the ECB\textsuperscript{20}. The main issues in which the EU is involved concern: monetary policy and Euro exchange-rate surveillance, bilateral surveillance on single country policies (art. IV), role of the Euro in the international financial system and multilateral surveillance (discussions concerning communications published on the World Economic Outlook, reports on international capital markets and on economy development and international markets). In these discussions, we can see an external projection of the internal (within the EU) allocation of competence: the Eurogrup Presidency and the ECB representative are both involved in discussions on the exchange-rate policy\textsuperscript{21}; the latter acts alone in discussions concerning monetary policy in the Euro Area.

Statements are made by the President of the EURIMF Committee, sitting in Washington. Representatives of EU Member States and of the ECB compose the Committee\textsuperscript{22}. A Commission representative takes part in the meetings, too, especially the ones with art. IV consultations on the agenda. As stated by the Ecofin Council, since 2007 the president of the EURIMF has to be elected for two years among Member States’ representatives, in order to ensure close and constant contact with IMF officials.

Even the IMF body praxis has been adapting to the EU internal allocation of competences: art. IV consultations are carried out with representatives of the ECB, of the Commission, of the Economic and Financial Committee and of the Eurogoup on issues falling within the EU sphere of

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\textsuperscript{20} Decision n. 11875 (99/1), December, 21\textsuperscript{st} 1998, of the IMF Executive Committee, substituted by decision n. 12925 (03/1), December, 27\textsuperscript{th} 2002, modified by decision n. 13414 (05/01), December, 22\textsuperscript{nd} 2004, available on-line: www.imf.org. See also: EUROPEAN CENTRAL BANK, Monthly Bulletin, January 2001, p. 61.
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\textsuperscript{21} According to art. 219 TFEU, the decision making process for agreements on the exchange-rate policy of the Euro (and for general orientations for exchange-rate policy) is in the hands of the Council (but only the Countries whose currency is the Euro have a voting right in these deliberations), with the ECB holding a foothold in all the procedures. In the absence of agreements or general orientation, the ECB takes overall responsibility for conducting the exchange-rate policy of the Euro (see art. 127 TFEU).
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\textsuperscript{22} The EURIMF is a coordination body settled in 1998: cfr. L. BINI SMAGHI, A single EU seat in the International Monetary Fund?, cit., p. 66-7, espec. footnote n. 13.
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competence. Meanwhile, consultations are still conducted with Member States representatives, as far as national competences are concerned.

Eurogroup, Commission and ECB representatives are also involved in multilateral consultations within the IMF on global imbalances. Statements on behalf of the Euro Area in the Executive Board are made by the EURIMF president.

In the IMF summer and spring meetings, the finance Minister of the Country holding the Presidency of the EU Council speaks on behalf of the EU. The speech is normally prepared by the economic and monetary committee, discussed and approved by the Ecofin Council (in informal meetings, where central banks governors are also present).

Assessing the effectiveness of this complex structure is not very easy.

According to a part of the legal doctrine, two models of coordination between Member States and the EU can be put in place, as far as relationships with other IOs are concerned. Member States could be simply bound to act in the interest of the EU within another IO (trustee-model). Otherwise, a previous coordination between Member States and the EU (both members of the IO concerned, with or without full rights) could be set up, in order to establish who holds the competence on specific issues to be discussed within the IO concerned (coordination model). These assessments could have external effects, having to be taken into account by the IO concerned (as established in the FAO agreement).

The model adopted for the representation in the IMF can be considered a hybrid. The EU is not still a Member of the IMF, but its Institutions play a key role in many situations. The internal competence division between Member States and the EU (and between the ECB and political Institutions) is always relevant, and it is regularly taken into account by the IMF bodies.

To sum up, the complex settlement has turned out to be a probably too complicated one. The due respect to the internal (of the EU Institutions) and external (of the EU and Members States) competence division could bring to multiplication of coordination procedures and bodies.

In addition, the impact of the EU on the IMF decision process is largely unsatisfactory.

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24 L. BINI SMAGHI, A single EU seat in the International Monetary Fund?, cit., p. 66-7 tells that since 2001 a sub-committee (the SCIMF) within the economic and monetary committee has been working on issues concerning the IMF. Representatives of the finance ministers, of the central banks governors, of the Commission and of the ECB compose the SCIMF. Also a representative of the EU Presidency takes part in the committee, in order to ensure coordination with the work of the EURIMF in Washington.

25 See also ECJ advisory opinion, march, 19th 1993, case 2/91.

4. A single EU seat solution?

A single seat solution would probably simplify the relationships between the EU and the IMF. Membership is restricted only to “States” by the Articles of Agreement and this is the first obstacle. However, according to a part of the legal doctrine, the States whose currency is the Euro do not still have the powers connected with monetary sovereignty. The EU should be ready to become full Member of the IMF. Nevertheless, to grant a full member status to the EU in the IMF, an amendment of the Articles of Agreement would be necessary, but, according to some authors, the EU should already to be considered as a “State”, pursuant to the Articles of Agreement, because of the competences it has been endowed with.

If a single EU seat in the IMF was created, France, Germany and the United Kingdom would probably be forced to renounce to appoint an Executive Director. Moreover, the EU as such would probably lose some of the voting rights it holds at the moment. In fact, the constitution of an EU single seat would bring to a revision of quota allocation, to ensure fair representation and to give developing Countries the chance to increase their quotas. There would be a reshuffle of constituencies composition, too. In any case, the EU single representative would have a veto power on all the most important decisions of the IMF (to be adopted with the 85% of the voting rights), as the US representative currently has.

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27 The IMF proved to be less reactive to the raising of “regionalism” than IOs working in the trade sector: GATT and then WTO. The EU’s relationships with the latter are managed in very different and more effective way than the ones with the IMF. Moreover, a de facto succession of the EU in the position of Member States (as recognized by the ECJ in the GATT; see: ECI judgment, December, 12, 1972, 21-24/72. (International Fruit III)) seems not a viable solution for the IMF (also because EU’s partners in the IMF are not likely to recognize such a change without a formal negotiation (and an amendment of the Articles of Agreements) and a regular admission procedure). See J. LEBULLENG, La projection externe de la zone euro, in Revue Trimestrielle de Droit Européen, 4/1998, p. 459 ss., espec. 472; J.-V. LOUIS, Les relations extérieures de l’Union économique et monétaire, cit., p. 101; A. VITERBO, Monetary Regionalism: A Challenge to the IMF, in Italian Yearbook of International Law, XVI, 2006, p. 139 ss., espec. p. 153 ss.


30 See: M. SKALA, C. THIMMANN, R. WOLFINGER, The Search for Columbus Egg: Finding a New Formula to Determine Quotas at the IMF, European Central Bank Occasional Paper 2007, n. 70; L. BINI SMAGHI, A single EU seat in the International Monetary Fund?, cit., p. 74. To determine the EU quota, the inter-EU trade should not be considered. In addition, the fixed quota held by each IMF Member would be calculated only once for the single EU seat, and not for every EU Member (like in current settlement). Finally, US accusations of EU overrepresentation and the need to grant...
To deal with legal difficulties, many solutions – each one with some drawbacks – have been proposed.

The 27 EU Countries could join a single constituency. France, Germany and the United Kingdom would have to renounce to appoint an Executive Director, but this right is established by the Articles of Agreement for the five Countries with the highest quota. Thus, as an amendment of the founding charter would have to be negotiated by the EU with the other IMF partners. At the same time, a new quota distribution would certainly be negotiated.

In this first scenario, the Member States would deserve direct representation in the IMF and the right to negotiate within it in the areas of national competence. Also the accountability mechanisms would remain the same within the national legal order. In the EU legal order, accountability is assured by procedures referred to each Institution\textsuperscript{31}. The USA would keep on detaining the highest quota of the IMF, but in the Executive Board the EU representative (the representative of the EU constituency) would probably have the highest voting rights share\textsuperscript{32}.

Apart from the need to amend the Articles of Agreement, this solution can be achieved by an agreement to be reached by the 27 EU Countries, even informal, and also outside the EU legal order. Thus, such an agreement should be totally governed by international law. Otherwise, article 138, par. 2 TFEU procedure – aimed to allow the Council “to take appropriate measures to ensure unified representation within the international financial institutions and conferences” – could be used. From the point of view of the EU external relations law, this settlement could be regarded as something similar to the trustee model: the Member States would be charged to sustain the EU position within the IMF, but this obligation would not have any direct external relevance or effect on the IMF institutional structure\textsuperscript{33}. Obligations for Member States, especially the ones whose currency is the Euro, would arise in almost any case on monetary matters – as in the current situation –, while would have to be formally established as far as other fields of competence are concerned, following procedures spelled out by the TFEU\textsuperscript{34}.

despite developing Countries a larger representation should be taken into account. See also: S. CAFARO, I criteri di voto nelle istituzioni di Bretton Woods: critiche e proposte di riforma, in Studi in onore di V. Starace, Napoli, 2008, I, p. 3 ss., spec. 10 ss.
\textsuperscript{31} For example, for the ECB see art. 284 TFEU.
\textsuperscript{32} L. BINI SMAGHI, A single EU seat in the International Monetary Fund?, cit., p. 74-6.
\textsuperscript{33} Apart from already existing effects, like the adaptation of the working praxis of the IMF bodies, and other of the same kind.
\textsuperscript{34} For example, see art 138, par. 1 TFEU: “In order to secure the euro's place in the international monetary system, the Council, on a proposal from the Commission, shall adopt a decision establishing common positions on matters of particular interest for economic and monetary union within the competent international financial institutions and conferences. The Council will have to act after consulting the European Central Bank.”. See: R. BASSO, Sulle relazioni esterne della Comunità europea in materie riguardanti l’Unione economica e monetaria, in RDI, 1/2001, p. 110 ss., spec. p. 130.
A second option has been proposed: conferring the competence to manage all relationships with the IMF on the EU\(^{35}\). An amendment of the TFEU would be necessary, and relevant institutional changes should be put in place also within the IMF governing bodies. Since the Maastricht Treaty, Member States have always deserved to themselves some key competences – especially in economic policy – and this attitude is not likely to change soon, so such a solution seems to be not viable.

Another type of arrangement has been proposed is based on the joint participation\(^{36}\) of Member States and the EU in the IMF, the latter being endowed with a *sui generis status* and maybe without quota attribution. The EU as such would be represented in various bodies and have the right to intervene in discussions. The model of this settlement is clearly the agreement for the EU membership in the FAO\(^{37}\). This kind of solution is unlikely to bring to real improvements in the EU-IMF relations management, as Member States and the EU would keep on having separate competences and needing a complicated coordination structure as in the current situation. The EU would certainly gain visibility, but this kind of improvement could turn out to be quite slight\(^{38}\).

Finally, according to an author, the ECB in itself should be considered entitled to become member of the IMF\(^{39}\). This theory cannot be accepted. It is clear that the EU in itself has the competence related to monetary and exchange rate policy (for the Countries who have entered stage three of the economic and monetary union), as it is now clearly stated by art. 3, c) TFEU. Central banks governors and their representatives usually join national delegations of many IMF Members, but the State in itself is the only legal person under international law. The same happens with the ECB officials who come in contact with IMF bodies and join EU *internal* coordination committees:

\(^{35}\) L. BINI SMAGHI, *A single EU seat in the International Monetary Fund?*, cit., p. 76.
\(^{36}\) In general terms, joint participation of the EU and Member States is considered the most correct solution by some authors, because of the shared nature of competences involved; see: M. DONY, *Les relations extérieures de l’Union économique et monétaire*, cit. p. 241 ss.
\(^{37}\) The WTO and EBRD (the European Bank for Reconstruction and Development) model can be considered as possible variation on this solution. Please see: J.-V. LOUIS, *L’Union européenne et sa monnaie*, espec. P. 297.
the ECB exercises powers granted to it by the treaties, also in the field of external relations, but form the IMF point of view, the only subject that could become ‘relevant’ is the EU as such.

In conclusion, one can say that an “IMF membership clause” in the treaties – that Member States are not keen to approve – seems not to be necessary, in order to allow the EU to obtain a single seat at the IMF. Other possibilities have been explored in this paper and the available legal tools could offer viable solutions. Apart from the need to negotiate with the other IMF Members to reach a more effective settlement, the EU Countries should cooperate on a broader basis within the IMF. An European constituency could be the first step forward, while a full membership for the EU could be obtain in future. The achievement of this target would result from a quantum leap, under still not predictable conditions.

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41 The new wording of art. 138 TFEU (compared with art. 111, par. 4 EC Treaty) offers new possibilities for the Council to act in order to ensure a closer coordination in IOs and fora and a unified EU representation.