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From Economic Crisis to Identity Crisis: The Spoliation of EU and National Citizenships[1]

Vassilis Hatzopoulos*

For a long time, the debate was about whether the European Union could promote social or political rights, by giving Europeans a greater voice in their destiny, by promoting a European social model or even by promoting a budgetary virtue which would enable a vibrant future for social democracy. Now, the question is whether the European Union is compatible with anything but a shrunken citizenship for any of its citizens.[2]

1. Introduction

The relationship between European citizenship and national citizenship is a sweet-sour one. If European citizenship is 'destined to be the fundamental status of the nationals of the Member States',[3] and despite the consistent (?) efforts of the Court of Justice of the EU (CJEU, the Court) to give it autonomous status in relation to any other EU or national concept, it nonetheless relies heavily upon national citizenship.

Normatively, the former depends on the latter, given that there is no autonomous system or criterion for attributing EU citizenship, but it is automatically attributed to 'every person holding the nationality of a Member State'.[4] Materially, however, the relationship is more ambivalent. On the one hand the EU citizenship adds up to national citizenship by giving extra rights to the nationals of Member States, both to those moving abroad (right of entry, stay, non-discrimination and so on) and to those static in their Member State of origin (access to EU documents, right of communication with the Institutions and so on). On the other hand, those free movers who, in the name of EU citizenship, claim social benefits in other Member States, may be seen as 'intruders' in the web of rights and obligations composing the citizenship of the Member States concerned. Contrary to civil and political rights, social rights attributed to the citizens of any given Member State, have a cost and

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[2] Greer, S. (2013) 'European citizenship in crisis: Citizenship rights and austerity politics', http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2214868, accessed 2 May 2017, p. 19.

[3] Case C-184/99, *Grzelczyk*, EU:C:2001:458, para. 31; and constantly thereafter.

[4] An affirmation which should be qualified in view of the Court's judgment in Case C-135/08, *Rottmann,* EU:C:2010:104; see also van Eijken, H. (2010), 'European Citizenship and the Competence of Member States to Grant and to Withdraw the Nationality of their Nationals', *Utrecht Journal of International and European Law,* **27** (72), 65-69; and more extensively see the discussion of this case by Davies, G., D. Kochenov, M. Dougan, O. Golynker, D. Kostakopoulou, G.-R. de Grout, A. Selingand J. Shaw in 'Has the European Court of Justice Challenged Member State Sovereignty in Nationality Law?' under the EUDO Citizenship programme, http://eudo-citizenship.eu/commentaries/citizenship-forum/citizenship-forum-cat/254-has-the-european-court-of-justice-challenged-member-state-sovereignty-in-nationality-law?showall=1&limitstart, accessed 2 May 2017.

need be financed by virtue of arrangements which correspond to delicate ideological, political, technical and financial choices. The EU citizen claiming access to the benefits of another Member State is a 'free rider' to such national citizenship systems. Under this perspective EU citizenship is openly antagonistic with national citizenship. As Giubboni has put it, 'the active or expansive use of the principle of European transnational solidarity becomes tense—and, therefore, needs to be balanced—with the defensive use of the principle of national social solidarity'.[5]

Symbiotic or antagonistic, national and EU citizenships have in common the fact that they gravely suffered from the financial and economic crises of the last eight years and, even more so, from the governance instruments put in place by the EU to tackle those. Since the main argument of the present is that the two kinds of citizenship have suffered alike, they are going to be examined jointly, in respect of the way they have been affected by the recent EU anti-crisis measures. The analysis will follow the classic Marshall taxonomy, according to which citizenship entails civil, political and social rights.[6]While distinct from economic rights as such and from the EU Internal Market and EMU, the above citizenship rights may be directly affected, both positively and negatively, from the EU economic rules. While the Internal Market has, up to some point, underpinned the development and strengthening of citizenship rights, the EMU, for its part has been, and is being, clearly detrimental.

2. Civil rights in a contracting economy?

According to Marshall civil citizenship rights are mostly 'negative rights' in the sense of free speech, mobility, free association, and more generally freedom to pursue one's activity without being hindered from government restrictions. Such rights constitute the very heart of the EU. This was, to a large extent, true for the Rome Treaty of 1957 and remains true, with some nuances, for the current Lisbon Treaty-based setup of the EU. The four fundamental freedoms, the right to move or set up shop in any other Member State, the free movement of capital, mutual recognition and the (legislated) application of the country of origin principle (especially in the digital economy), completed by the general prohibition of discrimination, have been the core of EU citizenship well before the concept itself was introduced by the Maastricht Treaty. It is no coincidence that the early jurisprudence of the CJEU strictly associated – and limited – EU citizenship to free movement rights.[7] It is also true that, even after having recognized its autonomous, non-economic, nature, the Court has repeatedly used citizenship in order to complement the economic freedoms of EU citizens, where the scope of application of the relevant Treaty provisions was uncertain.[8]

In view of the above, the EU has been characterized as 'an uncommonly successful machine for the simultaneous production of supranational integration and transnational civil citizenship rights'.[9]

The international financial crisis, followed by the euro-zone fiscal crisis, have caused unemployment to climb to unprecedented heights. Although crisis-hit countries, such as Greece, Portugal, Cyprus and Ireland have been the most severely afflicted,

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[5] Giubboni, S. (2013), 'European Citizenship and Social Rights in Times of Crisis' LPF working paper 2/2013, Centro Einaudi, http://www.centroeinaudi.it/images/abook_file/WP-LPF_2_2013_WeL_Giubboni.pdf, p.12, accessed 02 May 2017.

[6] Marshall, Thomas Humphrey (1950), *Citizenship and Social Class and other essays*, Cambridge: Cambridge University Press.

[7]Case C-378/97, *Wisjenbeek,* EU:C:1999:439.

[8] See e.g. cases such as Case C-76/05, *Schwarz*, EU:C:2007:492 and Case C-382/02, *Neukirchinger,* EU:C:2010:498.

[9]Greer, cited above note 2, p. 5.

others, such as Italy, Spain and France, have also been affected. Here and there the recipe followed has been to deregulate the labour market in order to render it more flexible. As it has been put, 'flexicurity policies, which were already controversial, seem to have vanished into thin air, to be replaced by a return to absolute flexibility'.[10] More importantly, the Memoranda of Understanding signed by Member States receiving EU bail-out funds invariably contain obligations to deregulate most of the remaining activities, to open up regulated professions and to liberalize the pursuance of most economic activities. In this respect the OECD toolkit[11] and technical aid from the World Bank have been instrumental in pushing through reforms way more ambitious than the ones put in place in order to implement the Services Directive.[12] Hence, for example, in Greece, long-standing regulations concerning i.a. lawyers, notaries public, architects, accountants, tourist guides, open-air market sellers and over a hundred other low/medium nuisance activities (such as grocery shops, small supermarkets, coffee shops, fast foods, restaurants and so on) have been struck down or, at least, made more rational. Several of these new rules were necessary in order to combat rent-seeking and to rationalize artificially fragmented markets, while others were imposed only on behalf of the (neo)liberal ideology they embody. Similar measures have been adopted in other 'programme' Member States, as well as in States wishing to 'modernize' their economies.

One way or the other, by striking down government regulation, the measures adopted in view of facing the crisis – or at least in order to fulfill the requirements imposed by the international lenders under the principle of conditionality – seem to be strengthening civil citizenship of EU citizens. Under this perspective EU citizenship would be enhancing national citizenship and civil rights altogether. This finding, however, hardly corresponds to reality.

For 'programme' countries, the above liberalizing reforms come as part of a wider package of measures of an essentially fiscal nature. Such measures typically include direct tax increases, wage and pension cuts, reduction of unemployment and other benefits, drop of healthcare expenditure, budget cuts in education and research and occasionally VAT increases. The most extreme example of all the above is Greece, where disposable income has dropped by 27.5 per cent between 2008 and 2016,[13] pensions have dropped by almost as much,[14] money dedicated to education and research has been cut by more than 35 per cent,[15] healthcare expenses have been reduced by almost 40 per cent[16] and VAT has been increased to the upper cap of 24

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[10] Laulom, S. e.a (2012), 'How has the crisis affected social legislation in Europe?' *ETUI Policy Brief*, **2**, 1-6, http://dial.uclouvain.be/pr/boreal/object/boreal:120500, p.5, accessed 02 May 2017.

[11] See https://www.oecd.org/competition/assessment-toolkit.htm, accessed 02 May 2017.

[12] European Parliament and Council Directive 2006/123/EC on services in the internal market [2006] OJ L 376/36.

[13] See http://www.macropolis.gr/?i=portal.en.macroeconomy.4601, accessed02 May 2017.

[14] Ibid.

[15] During the period 2009-2015; see http://www.efsyn.gr/arthro/apori-menei-i-dimosia-paideia, accessed 02 May 2017.

[16] The deterioration of healthcare has been documented early on, see Kentikelenis, A. e.a. (2011), 'Health effects of financial crisis: omens of a Greek tragedy' *The Lancet*, **378** (9801), 1457-1458; these authors find i.a. that a) suicides rose by 17 per cent between 2007-09, 25 per cent between 2009-10 and again 40 per cent between 2010-11, b) funding of public hospitals fell by 40 per cent during the same period, c) HIV infections rose by 52 per cent between 2010-11, together with drug addiction and prostitution and d) Greeks seeking free care by Médecins du Monde rose from 3-4 per cent before the crisis to 30 per cent in 2011; for a more recent account see Economou Ch. ea (2014), 'The Impact of the financial crisis on the health system and health in Greece', WHO/European Observatory, http://www.euro.who.int/__data/assets/pdf_file/0007/266380/The-impact-of-the-financial-crisis-on-the-health-system-and-health-in-Greece.pdf, accessed on 02 May 2017; see, more recently, the dramatic findings in Smith, H., 'Patients who should live are dying: Greece's public health meltdown', *The*

per cent, including for most basic goods and services. Similar trends- maybe not all at the same time and of the same degree- have been observed in most other Member States.[17]

All the above, in combination with the global conjecture, result in anemic if not negative economic development in most EU Member States. This, combined with unprecedented levels of unemployment,[18]especially among the young,[19] makes the enjoyment of civil rights quite theoretical. For, when a fourth of the population of a country lives under the threshold of poverty,[20] one in every second/third young person is unemployed and the economy is hopelessly retracting for six years in a row,[21] the abolition of regulatory hurdles to economic activity offers little relief; economic activity and, more generally, (most) civil rights are restricted by objective economic factors, unconnected to regulation. Therefore, even if, on paper, citizenship civil rights are favoured by the solutions followed/imposed by the EU in order to tackle the crisis, on the ground, reality gives the exactly opposite result, at least in the majority of EU Member States. The fact that in few Member States, notably in Germany, the Netherlands and the Scandinavian countries, all the above numbers are (more) favourable, thus creating two opposing words within the EU, further frustrates the idea of an EU citizenship offering equality of rights and opportunities to all EU citizens. This feeling of externally imposed suffering, lack of opportunity and social injustice stands for the rise of anti-systemic, ethnocentric to xenophobic political parties in all the Member States worst touched by the crisis: Syriza (currently in government) and the Golden Dawn in Greece, Podemos in Spain, the Five Stars Movement and the Northern League in Italy, the Portuguese Communist Party (currently in government), and the National Front in France.[22] Needless to say that these parties are anti-EU and do little to promote the idea of a European identity, let alone a European citizenship.

If the above erosion of EU citizenship is true for 'static' EU citizens (who do not move to any other Member State), things are much worse for those who do move abroad (free movers). Citizenship was supposed to empower citizens of a Member State to claim rights of entry, stay and equal treatment within the territory of any other Member State. The Court, for its part, has gone at great lengths, and has even been accused of activism,[23] for strengthening the rights of moving EU citizens at the expense of national welfare systems (especially, but not exclusively, of the receiving

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Guardian 1/1/2017, https://www.theguardian.com/world/2017/jan/01/patients-dying-greece-public-health-meltdown, accessed on 02 May 2017.

17 See e.g., for healthcare, Morgan, D. and R. Astolfi,(2015),'Financial impact of the GFC: health care spending across the OECD', *HEPL* **10**(1), 7-19; and for a more general discussion of the crisis's impact on healthcare see Appleby, J. e.a. (2015), 'The global financial crisis and health care',*HEPL***10**(1), 1-6.

18 Greece 23.4 per cent, Spain 19.5 per cent, Croatia 12.9 per cent, Cyprus 12.1 per cent, Italy 11.4 per cent, Portugal 11 per cent, France 10.5 per cent, are all above the Eurozone average which is 10.1 per cent; source Eurostat, August 2016, available at http://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics, accessed02 May 2017, well above that of the US which is around 5.6 per cent.

19Greece 49.8 per cent (down from 58.3), Spain 46.2 per cent (down from 55.5), Croatia 43 per cent (down from 50), Portugal 32.8 per cent (down from 38.1), Cyprus 29.5 per cent (down from 38.9), Slovakia 26.2 per cent (down from 33.7), France 25.9 per cent (up from 24.9), Belgium 25.4 per cent (up from 23.7), Bulgaria 22.4 per cent (down from 28.4), all above the Eurozone average which is as high as 21.9 per cent; same source as above.

20 See http://ec.europa.eu/eurostat/statistics-explained/index.php/File:At-risk-of-poverty_rate_before_and_after_social_transfers,_by_country,_2014.JPG, accessed02 May 2017.

21 See 'Greece economic outlook' (2016), http://www.focus-economics.com/countries/greece, accessed02 May 2017.

22It is true that anti-systemic parties also flourish in Member States less touched by the crisis; however, the crisis has been pivotal for their development there as well; see the following para.

23 See e.g. Tryfonidou, A. (2012) 'Redefining the outer boundaries of EU Law: The Zambrano, McCarthy and Dereci trilogy', *European Public Law,***18** (3) 493-526.

Member State).[24] This, together with the fact that the Lisbon Treaty has mainstreamed several social objectives, strengthened legal bases in this field and made the EU Charter of Fundamental Rights compulsory, had nurtured high expectations for the development of the EU social model.[25] The crisis, however, has brutally reversed this trend. 'Rich' Member States (with Germany and the UK on the forefront) try to curb social tourism[26] and, in the process, openly question basic free movement *acquis*.[27] The Court itself has validated such restrictive practices in *Dano*[28] (concerning the UK), *Alimanovic*[29] (concerning Germany) and *Garcia Nieto* (also concerning Germany).[30] It is worth noting that such retractions have come to be recognized in the aftermath of the expiration of the transitional periods limiting the mobility of citizens from new Member States.[31]

The above clear retraction of citizenship rights,[32] however, has not been enough to avert a Brexit vote in the UK referendum of June 2016. It is no secret that one of the most powerful arguments used by the Brexit campaigners has been the cost for the NHS and for the UK social services, in general, of EU citizens lawfully established in the UK.[33] If Brexit marks the rejection, by the British, of the very concept of EU citizenship, it also poses a psychological limit to any future attempt to deepen the civil (let alone the social) rights of EU citizens moving to another Member State.

Hence, if the structural reforms promoted in order to ease the crisis could enhance, in the medium/long term, civil rights of EU citizenship, in the short term they are having the exact opposite effect, both for static and for moving EU citizens. Such 'short term' effects, may not be as 'short' as the term indicates and may even be irreversible: when/if Brexit does materialize, EU citizenship, and all rights attached thereto, will be definitively foregone for the British – and correlatively for all EU citizens in the UK.

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[24]See, among many Davies, G. (2006), 'The Process and Side-Effects of Harmonisation of European Welfare States',*Jean Monnet working paper*, **2** (06) available at http://www.jeanmonnetprogram.org/wp-content/uploads/2014/12/060201.pdf, accessed02 May 2017;for a relative negation of the character of the Court's activism, see, by the same author, (2012), 'Activism relocated. The self-restraint of the European Court of Justice in its national context', *JEPP*, **19** (1) 76-91.

[25] See, among many, Hatzopoulos, V. (2005), 'A (more) social Europe: A political crossroad or a legal one-way? Dialogues between Luxembourg and Lisbon', *CMLRev*, **42** (6), 1599-1635; on the same wavelength see more recently Damjanovic, D. (2013), 'The EU market rules as social market rules: Why the EU can be a social market economy', *CMLRev*, **50** (6), 1685-1718.

[26] In particular the UK government has introduced stricter eligibility measures and has cut down on welfare benefits, in order to reduce its appeal to putative free movers from poorer Member States; see Hewitt, Gavin (2013) 'Clash over EU migrants and benefits', *BBC News*, http://www.bbc.co.uk/news/world-europe-25117119, accessed02 May 2017; this in turn has provoked a similar debate in Germany, see Pop, Valentina (2013) 'German conservatives stir up "welfare tourism" row', *EU observer*, http://euobserver.com/social/122339, accessed02 May 2017.

[27] See e.g. Watt, Nicholas (2012) 'David Cameron "prepared to halt immigration of Greeks into UK"', *The Guardian,*http://www.theguardian.com/uk/2012/jul/03/david-cameron-immigration-greece-uk, accessed02 May 2017.

[28]Case C-333/13, *Dano*, EU:C:2014:2358.

[29]Case C-67/14, *Alimanovic*, EU:C:2015:597.

[30] Case C-299/14, *García-Nieto and Others,* EU:C:2016:114.

[31] On the broader issue of free movement, citizenship and the new Member States see Reich, N. (2005), 'The Constitutional Relevance of Citizenship and Free Movement in an Enlarged Union', *ELJ*, **11**(6), 675-698.

[32] For this retraction of citizenship rights see Barnard, Catherine (2017), 'The day the clock stopped: EU citizenship and the single market' in Koutrakos, P. and J. Snell (eds), *Research Handbook on the Law of the EU's Internal Market*, Cheltenham UK and Northampton US: Edward Elgar, pp. 102-115; see also Urska S. and M. Rask Madsen 'Did the Financial Crisis Change European Citizenship Law? An Analysis of Citizenship Rights Adjudication Before and After the Financial Crisis' 22:1 ELJ (2016) 40-60.

[33] See e.g. Helm, T. (2016) 'Brexit camp abandons £350m-a-week NHS funding pledge', *The Guardian*, https://www.theguardian.com/politics/2016/sep/10/brexit-camp-abandons-350-million-pound-nhs-pledge, accessed 02 May 2017.

3. Political rights in a universe dominated by non-elected, non-accountable supranational bodies?

The second set of rights attached to citizenship are, according to Marshall, political rights. Political rights entail the 'right to participate in the exercise of political power, as a member of a body invested with political authority or as an elector of the members of such a body'. EU citizens enjoy political rights essentially at the national level and, subsidiarily, at the EU level. The EU responses to the crisis, however, encroach simultaneously upon national and EU political rights. The empowerment of those EU bodies which bear no democratic legitimation (such as the ECB), the creation of new fully unaccountable bodies within the EU (such as the ESM) and the conferral of important steering powers to non-EU bodies (such as the IMF) serve an important blow to both national and EU citizenships. This is true for 'programme' Member States and all other Member States alike. The latter are affected both when they are going through a crisis, as well as during 'normal' times. Hence, here again (as with civil rights), the responses to the crisis may be impairing citizenship in a permanent and profound manner.

a. The exception: Member States under a programme

When the fiscal crisis in the euro area erupted in 2010, the EU lacked the necessary mechanisms and experience to tackle it. Article 126 TFEU was not adequately designed to deal effectively with large scale fiscal crises. Moreover, the 'no bail-out clause' of Article 125 TFEU, another element of the fiscal discipline arsenal, seemed to pose an insurmountable obstacle to any direct funding of the public deficit of another Member State. Partly because of these reasons, partly for other, more political, reasons, the participation of the IMF in 'salvaging' 'bankrupt' Member States (Greece, Ireland, Portugal and Cyprus) has been judged indispensable. Hence, the IMF, for the first time in its history, has been called to participate in a programme for a Member State of the euro area.

The IMF's key policy instrument is the conditional loan, i.e. a loan which ceases being disbursed as soon as the beneficiary government fails to fulfil the IMF-imposed conditions. Such conditions typically are of a fiscal and a structural nature and are supposed to renew the country's access to the markets. Since they are destined to convince commercial banks to start lending money to the country concerned, very often IMF conditions reflect the choices of such banks.[34]

Conditionality has been used by the EU itself, but only vis-à-vis non Member States.[35] Conditionality is applied in the framework of accession negotiations, the European Neighbourhood policy and other similar relations, where the EU offers technical assistance, capacity building, funding and prospects of closer cooperation against the undertaking, by beneficiary states, to perform specific tasks. By its inception, conditionality runs counter the principles of sincere cooperation, mutual trust and solidarity enshrined in the EU Treaties and should not be allowed to govern the relationships between Member States. Indeed, conditionality is deemed necessary in the relations with third countries specifically because all the above principles may not be granted outside the Union. Conditionality applied at the vertical level, i.e. between the Union and its Member States, also modifies the relations

[34] Gould, E. (2006), *Money Talks: The International Monetary Fund, Conditionality and Supplementary Financiers,* Stanford: Stanford University Press.
[35] See, among many, Grabbe, H. (2002), 'European Union Conditionality and the Acquis Communautaire', *International Political Science Review*, **23** (3), 249-268.

between those, thus affecting the institutional balance (if one ever existed):[36] it offers the EU an unedited means of dictating and forcing the implementation of policy choices to the Member States. With the participation of the IMF in the bailout of EU Member States, the principle of conditionality made its entry into the EU legal order; as it will be discussed in what follows it is here to stay.

The IMF is a global institution issued from the Bretton Woods Conference (1994) and comprises 189 countries. Needless to say, EU citizens have no direct say whatsoever over the IMF's decisions. The USA is the single most powerful player in IMF decision-making with 16.7 per cent of votes, almost three times up from the second country (Japan). Germany, the UK, France and Italy may have some leverage (with 5.39, 4.09, 4.09 and 3.06 per cent, respectively), while all other Member States, especially the ones of the periphery are insignificant players. What is more, the national representatives of Member States at the IMF are not subject to any kind of democratic selection or other legitimation procedure. To make things worse, given that the IMF's objective is to help states gain access to lending by private Banks, it very often designs its own policies to reflect the Banks' preferences. Moreover, those Banks (public or private) which are exposed to debt of the state concerned by the IMF programme, may find their way to the Fund's decision-making through their national representatives, if they come from one of the 'big' IMF states. All in all, while being completely inaccessible to European citizens (especially those who do not come from Germany, France, the UK or Italy) and their democratic institutions, the IMF often reflects the interest of Banks and other financial institutions.

The ECB, while being a European Institution, has been designed to be unaffected by politics, at the image of the Bundesbank.[37] It has its President and Governing Board appointed by the European Council acting by qualified majority - thus offering big Member States the possibility of forming blocking minorities. Once in office its members are granted personal independence (Article 11 of the Statute of the ESCB and the ECB). It has been argued that they are hardly accountable to anybody and that 'their future career prospects are the main things that outsiders can affect (eg lucrative private sector positions)'.[38]The European System of Central Banks (ESCB), for its part, which has supervisory functions, is composed by the ECB and the Eurozone's central banks, the Governors of which are chosen outside the national political arena (although they are typically accountable to their national parliaments). What is more, the ESCB's, and therefore also the ECB's, primary objective is to maintain price stability; other Treaty objectives may only be pursued 'without prejudice to the objective of price stability' which is paramount.[39]

The only European Institution participating in the 'troika' which may pursue a different – i.e. non-monetary – agenda, is the EU Commission. But, again, this is a body which is supposed to be technocratic and independent from national governments, while being indirectly accountable to the European Parliament (which has an active role in approving the nomination of its members and, in truly exceptional circumstances,

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[36] It should be noted that the concept of 'institutional balance' is perceived by most authors as a dynamic one. See Jacqué, J.-P. (2004), 'The principle of institutional balance', *CMLRev*, **41** (2), 383-391 and Prechal, S. (1998), *Institutional balance: a fragile principle with uncertain contents* in Blokker, N. e.a. (eds), *The European Union after Amsterdam*, The Hague: Kluwer Law International, pp. 273-294.
[37] It has been noted that while traditionally the problem was to make sure that governments do not meddle with the operations of central banks, in these crisis years the issue is how to tame the ECB from intervening in internal politics, see Beukers, T. (2013), 'The new ECB and its relationship with the Eurozone Member States: Between Central Bank independence and Central Bank supervision', *CMLRev*, **50** (6), 1579-1620.
[38]Greer, cited above note 2, p. 8.
[39] See Article 127 (1) TFEU.

impeaching the Commission as a body). What is more, the Commission comprises several Directorates General, each pursuing its own agenda and, occasionally, speaking one against the other; but only the one on 'Financial Stability, Financial Services and Capital Markets Union' is directly represented in the troika.

In view of the above, it becomes clear that the more power the troika is granted, the worse it is for the political rights of EU – and Member States' – citizens. Indeed, the decisive role played by those non-democratic and unaccountable Institutions in reshaping the economic policies, and ultimately, the social contracts of 'programme' Member States, has actively alienated the relationship between political power and individual people, that is, political citizenship. This broken citizenship nexus is being evidenced by the outcomes of national elections: anti-systemic, populist 'communist' parties leading government coalitions in Greece and Portugal, or blocking the formation of a government for over a year in Spain, the rise of populist ultra-right, neo-nazi party in Greece and of Marine Lepen in France, the (almost) failed Italian referendum, all show that the way people relate to their polities and to one another has been deeply affected.

This phenomenon has been aptly described by Snell as follows:[40]

We tend to assume that citizens disgruntled with current policies can indeed vote for the opposition in the next general election. However, the various constrains imposed by European rules on national economic and fiscal policy may render the opposition incapable of pursuing policies which are substantially different. Change within the system is impossible. In such circumstances, it may be attractive and even rational to turn to extreme options that promise to change radically or overthrow the entire system.

The above examples are drawn not only from Member States openly following an Economic Adjustment Programme (i.e. Greece, Portugal) but also from others which, whilst not directly under a conditionality regime had to implement, nonetheless, unpopular reforms under strong pressure from the same Institutions and from Banks (Spain, Italy and France). This should be particularly alarming in view of the fact that, under the new rules adopted for tackling the crisis, the decisive oversight of non-democratic and non-accountable Institutions over national economic and social choices, has been institutionalized and made permanent.

b. The norm: fiscal coordination post crisis

In order to deal with the Greek, Irish and Portuguese crises, the EU has put in place several mechanisms. After the European Financial Stabilisation Mechanism (EFSM),[41] and the European Financial Stability Facility (EFSF),[42] nowadays, the European Stability Mechanism,[43] with a budget of 700 billion euros, is supposed, together with the ECB and the Commission, to be able to tackle any ongoing and future crisis.[44] More importantly, however, the EU has enacted a set of rules and procedures in order to prevent future crises. For this purpose, EU primary and secondary law, in the form of 'six-pack' and 'two-pack', has been complemented by

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[40] Snell, J., (2016) 'The Trilemma of European Economic and Monetary Integration, and its Consequences', *ELJ* **22** (2), 157-179, 176.

[41] An interim body with a budget of 60 billion euros; Council Regulation (EU) 407/2010 establishing a European financial stabilization mechanism [2010] OJ L 118/1.

[42] A private company having as its shareholders the Eurozone Member States, incorporated under Luxembourg law; its budget was of 780 billion euros.

[43] An intergovernmental organization created by virtue of a Treaty signed by the Eurozone Member States, having its seat in Luxembourg.

[44] Thus making the participation of the IMF unnecessary.

the Treaty on Stability, Coordination and Governance (TSCG, the Fiscal Compact), a traditional international agreement concluded by most EU Member States (but for the UK, Hungary and Croatia) and some non-Member States.[45]

The 'six pack' consists of three Regulations and a Directive in the field of fiscal policy[46] and two more Regulations in the field of macroeconomic imbalances;[47] the 'two-pack' adds two more Regulations to enhance effective supervision.[48] The legislation creates a complex framework of coordination, mutual and centralized supervision, also known as 'the European Semester'; it also allows for fines to be imposed on Member States violating budgetary rules and/or following bad statistical practices.[49]The system is supposed to put in place debt-brakes and entrusts the Commission with the task of monitoring the Member States' performance against specific economic indicators. It also demands independent budgetary estimates agencies in the Member States. By its nature and objective, the system put in place favours beforehand surveillance by technocratic bodies over *ex post* accountability by democratic means and procedures.

The TSCG, for its part, requires signatory Member States to put in place 'debt-brakes' in order to make sure that *structural* deficit does not exceed 0.5 per cent (or, under specific conditions, 1 per cent) of GDP. Signatory parties are required to implement such brakes through provisions having 'binding force and permanent character, preferably constitutional' and to set up independent 'budgetary discipline' bodies. Hence, the TSCG 'constitutionalizes' a highly contestable economic theory, strongly criticized by most Nobel prized economists, while, in practice, making Keynesian aggregate demand management unconstitutional in the Member States! Governments, irrespective of their political ideology and economic/social programmes are constrained to follow this basic economic choice; they are also asked to modify accordingly their constitutions, each reflecting a particular constitutional history and the corresponding sensitivities. By the same token national governments are made subject to guidance, instructions and scrutiny by national and supranational non-accountable bodies. At the national level the new 'budgetary discipline' bodies will be active both in controlling expenditure and in defining what

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45 On the legal, institutional and political implications stemming from the form and the content of the Fiscal Compact, see Calliess, C. (2012), 'From Fiscal Compact to Fiscal Union? New Rules for the Eurozone' in Barnard, C. e.a. (eds),*Cambridge Yearbook of European Legal Studies 2011-2012,* vol. 14, Oxford, UK and Portland, Oregon, US: Hart Publishing, pp. 101–118.

46 European Parliament and Council Regulation (EU) 1175/2011 amending Council Regulation 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies, [2012] OJ L 306/12; Council Regulation (EU) 1177/2011 amending Regulation 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure, [2011] OJ L 306/33; European Parliament and Council Regulation (EU) 1173/2011 on the effective enforcement of budgetary surveillance in the euro area, [2011] OJ L 306/1; Council Directive 2011/85/EU on requirements for budgetary frameworks of the Member States [2011] OJ L 306/41.

47 European Parliament and Council Regulation (EU) 1176/2011 on the prevention and correction of macroeconomic imbalances, [2011] OJ L 306/25https://en.wikipedia.org/wiki/Sixpack_(European_Union_law) - cite_note-EIP_regulation-11; European Parliament and Council Regulation (EU) 1174/2011 on enforcement action to correct excessive macroeconomic imbalances in the euro area, [2011] OJ L 306/8.

48 European Parliament and Council Regulation (EU) 473/2013 on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the euro area, [2013] OJ L 140/11; European Parliament and Council Regulation (EU) 472/2013 on the strengthening of economic and budgetary surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability, [2013] OJ L 140/1.

49 For a comprehensive description of this new framework see, among many, Hinarejos, A. (2013), 'Fiscal federalism in the European Union: Evolution and future choices for EMU', *CMLRev*, **50** (6), 1621-1642; Ruffert, M. (2011), 'The European debt crisis and European Union law', *CMLRev,* **48** (6), 1777-1806.

*structural*deficit is. In the latter task they shall be aided – if not guided - by their peers (from bigger Member States), as they shall be operating as a network, and by Eurostat, the EU agency for statistics. Then, the Commission will be monitoring the aforementioned indicators and proposing 'brakes' as necessary. Finally, the CJEU will have the right to impose fines to non-conforming Member States. As Greer puts it, '[i]t may not be a good idea for democracy to decide to run a structural deficit of more than 0.5% of GDP; in the EU it is illegal'.[50] And all the mechanisms, administrative, political and judicial, will be put to work to make sure that no Member State opts for the only economic policy that has a proven record of dealing with economic crises! Under these conditions, the futility of voting in national elections for a change of government, or in the EU Parliament for a different political majority, becomes all too visible; hence the high level of abstentions. Similarly, given that the basic economic and, hence, political, choices ensue from the implementation of the TSCG and are secured through the bodies and mechanisms described above, it is easier for voters to consider that all political parties 'are the same' and, hence, to vote for parties and politicians who are inexperienced, if not bluntly incompetent and dangerous. Further, the realization that the austerity measures which empoison voters' everyday lives – and for which they have not voted, nor indeed have voted against - stem from their States' participation to the Eurozone and the EU, transforms the '…exit' scenario, otherwise embraced by the extreme right/left parties, into the main guarantor of democracy. All the above developments, already visible in most Member States, clearly weaken the political rights stemming from national citizenship, as well as the way these rights are being exercised. This weakening, however, is in no way compensated by some strengthening of political rights at the EU level. On the contrary, the non-democratic EU Institutions (the ECB, Commission and Court) are entrusted with the task of designing, implementing and monitoring policies which have been pre-determined outside the political arena. This not only has the effect of weakening EU citizenship but, most strikingly, of making it undesirable since the EU is perceived as shifting political power from national democratic bodies to supranational technocratic ones! Hence the British have voted against it and other Europhobic parties are on the rise.

c. The role of the ECB

Outside the formal fiscal coordination mechanism put into place after the crisis, the unclear (and questionable) role of the ECB should also be stressed. The ECB's President had announced, in September 2012, that it would do 'whatever it takes' to stabilize the euro; what it does take is that the ECB proceeds to 'Outright Monetary Transactions', i.e. buying treasury bonds from troubled banks, subject to government compliance with conditionalities set by the rest of the EU. Given that for those Member States which are not under a programme the conditions with which they have to comply are all but clear, in actual fact the ECB offers itself wide discretion to second guess Member States' economic policies. As a commentator has put it, '[w]hat the ECB is doing, in essence, is setting itself up as the shadow government of Italy, Spain, Portugal, and perhaps Ireland. If the governments of those countries do what Draghi wants, Draghi will provide them with generous subsidy. If the governments of those countries don't do what Draghi wants, he'll use a monetary

[50] Greer, cited above note 2, p. 16. This is all the more shocking, as the same author points out, given that 'in 2010, when many countries were dealing with the effects of a revenue collapse and financial crisis, they all ran far higher structural deficits: the United States (8%), the UK (7.9%), Spain (7.5%), the Netherlands (5.7%), Ireland (8.6%) and Greece (7.4%). Even parsimonious Germany (3.1%) and Italy (3.6%) were very delinquent by this standard (IMF data)'.

laser to destroy their budgets'.[51] To paraphrase that into a well-known tune 'whatever Draghi wants, Draghi gets'…

The OMT has come under fire before the CJEU in the famous *Gauweiler* case; the first ever preliminary question sent by the German Constitutional Court.[52] The argument put forward was that the OMT was not covered by the ECB's mandate and that it materialized economic rather than monetary policy. And despite the fact that the German Court in its question branded the threat of disavowing the CJEU's judgment if the latter decided in favour of the legality of the OTM, the CJEU in a 'judgment of institutional empowerment'[53] clearly stood by the ECB. In so doing, the CJEU put the stress on the *intent*, rather than on the *effects* of the projected measure (which has, in any event, not been implemented) and has expressly made conditional the legality of the scheme upon full compliance, by the Member States concerned, with the structural adjustment programme to which it is subject; this would preclude the OMT programme from being an incentive to dispense with fiscal consolidation.[54]

This is problematic in at least two ways. First, although the content of conditionality is voluntarily left ambiguous, it is easy to assume that the general direction that Member States should follow is the same as that imposed under the 'programmes': welfare cuts, labour market reforms and the like. Second, a clear shift takes place here concerning the powers of the ECB: while it has been created as a non-political body specifically because it would be restricted to exercising monetary – as opposed to macroeconomic – policy, it is now using these supposedly technocratic powers in order to impose specific political choices. As Tridimas and Xanthoulis have put it, 'whilst allowing for institutional discretion, the interdependence between economic and monetary policy works mostly to the advantage of the ECB whose powers to pursue monetary policy objectives may have substantial and widespread spillover effects in economic policy'.[55]

Other than the OMT, the ECB has also used other atypical instruments, such as the Securities Markets Programme (SMP), has occasionally eased its collateral requirements or has threatened to cut-off liquidity to banks; at the same time it has accepted national central banks providing emergency lending assistance (ELA), under the conditions set out in Article 14.4 of the Statute of the ESCB.[56] All of the above have been associated with some form of conditionality which the Member State concerned had had to comply with.

Last but not least, the ECB may affect Member States' economic policies, through a) its participation in different policy fora, such as Euro-summits (and the informal

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51 See Yglesias, M. (2012) 'The European Central Bank's Ongoing Power Grab', *Slate*, http://www.slate.com/blogs/moneybox/2012/09/05/european_central_bank_bond_purchase_plan_it_makes_sense_once_you_see_it_s_an_ecb_power_grab.html, accessed02 May 2017.

52 Case C-62/14, *Gauweiler,* EU:C:2015:400; see i.a. the special issue **23** (1) of the *Maastricht Journal of European and Comparative Law* (2016) where over fifteen scholars and practitioners discuss the importance and the implications of this judgment; despite the doubts expressed by some of the commentators, the German Court did follow the CJEU in holding the OMT compatible with the TFEU and the German Constitution; see BVerfGe, 21 June 2016, 2 BvR 2728-2731/13 and 2BvE 13/13.

53 Expression taken by Tridimas, T. and N. Xanthoulis (2016), 'A legal analysis of the *Gauweiler* case: Between monetary policy and constitutional conflict' in the abovementioned special issue of the *MJ*, 17-39, p. 31.

54 *Gauweiler*, para. 120; see also Tridimas and Xanthoulis, cited above note 53, p. 29.

55 Tridimas and Xanthoulis, cited above note 53, p. 33.

56See, Gortsos, C. (2015) 'Last-resort lending to solvent credit institutionsin in the euro area: a detailed presentation of the Emergency LiquidityAssistance (ELA) mechanism', in: ECB Legal Conference 2015 – *From Monetary Union to Banking Union, on the way to Capital Markets Union: New opportunities for European integration, European Central Bank* (December 2015), pp. 53-76, available at http://ssrn.com/abstract=2688953, accessed 02 May 2017.

summits of EU leaders preparing those); b) its status as observer in ESM (and before that in the EFSF);c) its general consultative functions under the TFEU and the six/two packs and d) its power to authorize and supervise significant banks headquartered in the Eurozone, under the Single Supervisory Mechanism.[57] Last but not least, its role as member of the troika should not be overlooked.[58]

Hence, if in the EMU the 'M' is the ECB's exclusive competence the 'E' is also quite strongly impacted by the Bank's choices. This discreet but effective power-grab operates at the expense of directly elected and/or immediately accountable bodies at the national level, thus violating simultaneously the attribution of powers, the democratic principle and the principle of subsidiarity. It need not be stressed that all the aforementioned principles are direct tributaries of citizenship, which is thereby, also, affected.

d. And few words on the European Stability Mechanism (ESM)

The ESM has been created by an international treaty between the Eurozone Member States 'as an intergovernmental organization under public international law' having a seat agreement with Luxembourg. Its Board of Governors is composed of the Finance Ministers of the participating Member States and decides either by a qualified majority of 80 per cent (votes being proportional to the respective capital subscriptions) or by unanimity. It also has a Chairperson. Its structure and way of operating directly resembles that of the IMF, and indeed, the ESM has been characterized as a regional copy of the former.[59] It is fully intergovernmental (although the disputes between the members of its Board of Governors may be settled before the CJEU), and it is completely exempt from any parliamentary control or other political accountability. Such limitation of the democratic principle enshrined in Article 10(2) TEU is typically justified by a high degree of expertise and objectivity; it has, so far, operated in favour of the Commission, the ECB or some other EU Agency (which are somehow subject to the EU checks and balances). As Ruffert has put it, '[i]n terms of theory and practice of democracy, such compensation may already be considered as doubtful, but what is scarcely acceptable is the replacement – in a field of exclusive EU competence! – of parliamentary decision and independent expertise by the opaque process of Council or even Heads of State or Government negotiations'.[60]

While the ESM's main task is to intervene as a last recourse, in order to bail-out indebted Member States (and under the Direct Recapitalisation Instrument (DRI) also troubled banks), for which the 'brakes' and the other preventive measures and fines have not worked, it is also likely to assume a more regular role, by formulating economic policy goals and orientations, just like the IMF. It is worth noting, in this respect, that the Eurogroup's recent decision to 'facilitate' the Greek debt,[61] was

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[57] See, Gortsos, C. (2015), *The Single Supervisory Mechanism (SSM): Legal aspects of the first pillar of the European Union*, Athens, Nomiki Bibliothiki.

[58] On all these functions of the ECB and the way it becomes political see Beukers, cited above note 37; for a different, more favourable analysis, see Zilioli, C. (2016), 'The ECB's Powers and Institutional Role in the Financial Crisis' in the special issue of the *MJ* cited above note 52, 171-184.

[59] Ruffert, cited above note 49, p. 1789; the same author notes (p. 1790) that in Europe, where the level of integration is substantially higher than that at the global level, with all the implications for democratic accountability, 'it is more than anachronistic to design a European institution according to the model of the IMF'.

[60] Ibid*,* p. 1790.

[61] See Guarascio, Francesco and Alastair Macdonald (2016), 'Euro-zone grants Greece short-term debt relief; no deal with IMF', *Reuters*, http://www.reuters.com/article/us-eurozone-greece-eurogroup-idUSKBN13T0ZN, accessed 02 May 2017.

adopted on the basis of a proposal drafted by the ESM, whereby Greece had to accept further structural reforms.

The discussion of political rights under the crisis could be usefully concluded by reference to Snell's 'trilemma'.[62] Drawing on Rodrick's writings,[63] Snell claims that 'you cannot have at the same time a well-functioning EMU, mass politics and nation states' and that 'if we want monetary integration we have to choose whether to scale down national sovereignty or to abandon commitment to mass politics'.[64] According to him, during the early period of EMU mass politics and national sovereignty were preserved at the price of an ailing monetary union, while the response to the crisis has strengthened the monetary union at the expense of mass politics (hence the appointment of technocratic governments, the dismissal of referenda etc); the way forward would be, according to Snell, to maintain a strong EMU and promote mass politics at the EU level, at the expense of the nation state.[65] While this latter option would substitute national with EU citizenship political rights, the current situation simply curtails national political rights without offering any compensation.

4. Social rights in the era of austerity and flexicurity?

Reforms imposed under either the Economic Adjustment Programmes, or the Fiscal Compact are both short term – essentially fiscal- and long term – essentially structural. Fiscal measures go essentially in the direction of imposing welfare expenditure cuts, direct and indirect tax increases as well as, in some cases, special levies. Structural reforms typically include pro-'competitiveness' policies such as labour law deregulation, opening up the transport markets, administrative changes, and privatization of remaining state service providers.[66] Structural reforms are often necessary and useful, but are, in general, more difficult to implement. As Greer puts it, 'it is far easier to see Portugal comply with the call for cuts in health expenditures and taxes than it is to see it complying with the requirements for clinical guidelines, electronic prescriptions and such that richer countries under less pressure have implemented badly. The result is … a large-scale disaster for health care access and health outcomes'.[67] Similarly, pension cuts, imposed on all southern Member States, are much more dramatic that most IMF/ECB/Commission officials may assume, 'given the frequency with which pension income is redistributed through extended families in a coping strategy common around the Mediterranean during hard times'.[68]

The personal and family drama of the hundreds of thousands of people who are jobless or, even worse, do have a job but still cannot manage to cross the poverty line, may not be accounted for in any academic paper. Since citizenship is about belongingness – or, indeed, exclusion – the compilation of such personal dramas is, nonetheless, essential to understand the crisis's impact on citizenship. It is not the place here to expound the vigour with which the crisis has hit the middle and lower

62 See above note 40.

63 Rodrik, D., (2000) 'How Far Will International Economic Integration Go?' **14**, *Journal of Economic Perspectives,* 177-186; and more extensively, by the same author, (2011) *The Globalization Paradox: Why Global Markets, States, and Democracy Can't Coexist*, Oxford, OUP.

64 Snell, above fn 40, 158 and 159.

65 Ibid.

66 It should be noted, however, that the idea has been put forward that 'the austerity policies and structural reforms currently underway are not in any way linked to the euro crisis, contrary to the assertions of the great majority of national and European political leaders, but are programmed into the genes of a specific vision of monetary union', see Degryse, C. e.a. (2013), 'The Euro crisis and its impact on national and European social policies',ETUI Working Paper, http://www.etui.org/Publications2/Working-Papers/The-Euro-crisis-and-its-impact-on-national-and-European-social-policies, accessed02 May 2017, p. 16.

67 Greer, cited above note 2, p. 11.

68 Ibid.

classes. Some quantitative elements have been given above[69] and various studies may complement, or indeed, give an even more gloomy view.[70] More than quantitative data, however, qualitative developments show how social welfare has been eroded in all Member States; to a degree such that the idea that the welfare state, as we know it, is coming to a close, is being convincingly discussed.[71]

Since the beginning of the crisis, the number of people below the poverty line has increased dramatically in all 'programme' countries[72] while in Greece it has almost hit an unprecedented (in the EU 15) 40 per cent.[73] Impoverishment has gone hand in hand with increasing income inequality in all 'programme' Member States.[74] In the EU Social Justice Index for 2015, Greece scores 28th, Italy 25th, Spain 23th, Portugal 20th and Ireland 18th, all well above the EU average and all in retraction compared to the previous year.[75] It is worth noting that in Greece the 2011 tax reform reduced the taxable yearly income from 12.000 to 5.000 euros, that is, below the poverty line, set at 550 euros, per month, per person![76] Poverty and inequality negatively affect all the society in all Member States, but have a clear north-south and old-young distinction. In South-East Europe, in particular, children and the younger generation risk becoming a 'lost generation'.[77]

Another recent study concerning access to healthcare in selected countries from the entire EU notes that 'even [in the rare cases] where a country's health services have hardly experienced any cuts (such as all services in Luxembourg, and nursing home healthcare in Latvia), it has still been possible to identify impacts of the crisis on access to healthcare'.[78] Hence, this report finds that the crisis has led to a) reduced availability of healthcare services, because of the closure of facilities, the severely cut, capped and delayed budgets, reduced reachability (because of cuts in opening hours, public transport and so on), stuff cuts and migration of healthcare personnel

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69 See above notes 13 to 21.

70 Hence, for instance, while in the text above we have used the more moderate estimates concerning the decline of disposal income in Greece, other, more contextual analyses point to a decrease of almost 50 per cent; see Petmesidou, M. (2013), 'Is Social Protection in Greece at Cross-Roads?', *European Societies,* **4** (15),597-616.

71 Petmesidou, M. and A. M. Guillén (2014), 'Can the Welfare State as we Know it Survive? A View from the Crisis-Riden South European Periphery', *South European Society and Politics* **19** (3), 295-307.

72 Petmesidou, M. (2013) 'Austerity and the spectre of "immiseration" on the periphery of Europe', *CROP Poverty Brief*, http://www.crop.org/viewfile.aspx?id=479, p. 2-3, accessed02 May 2017.

73 See, for more recent data, Rodgers, Lucy and Nassos Stylianou (2015), 'How bad are things for the people in Greece?', *BBC News*, http://www.bbc.com/news/world-europe-33507802, accessed02 May 2017.

74 Petmesidou, cited above note 72, p. 3; for a lengthier discussion of the relationship between unemployment and poverty see Gutierez, R. (2014), 'Welfare Performance in Southern Europe: Employment Crisis and Poverty Risks', *South European Society and Politics* **19** (3), 371-392; see also Matsaganis, M. and C. Leventi (2014), 'The Distributional Impact of Austerity and the Recession in Southern Europe', *South European Society and Politics* **19** (3), 393-412.

75 Schraad-Tischler, D. (2015) 'European economic and debt crisis: Children and young people are hardest hit', *Bertelsmann-Stiftung*,http://www.bertelsmann-stiftung.de/en/topics/aktuelle-meldungen/2015/oktober/european-economic-and-debt-crisis-children-and-young-people-are-hardest-hit/, accessed02 May 2017.

76 Petmesidou, cited above note 70, p. 603.

77Schraad-Tischler, D., cited above note 75; this report finds that 'in Spain, Greece, Italy and Portugal alone, the number of children and young people who are threatened by poverty or social exclusion has increased by 1.2 million since 2007, from 6.4 to 7.6 million. They live in households with less than 60 per cent of the median income, suffer from serious material deprivation or grow up in effectively non-earning households. Moreover, many EU citizens between 20 and 24 years of age find themselves in precarious circumstances. In this age group, 5.4 million (17.8 per cent) are neither employed nor in education or training… Only in Germany and Sweden has the outlook for this age group improved in recent years'.

78 Dubois, H. and D. Molinuevo (eds) (2014), 'Access to healthcare in times of crisis', Office of the European Union, http://www.eurofound.europa.eu/publications/report/2014/quality-of-life-social-policies/access-to-healthcare-in-times-of-crisis, p. 1, accessed02 May 2017.

and diminished awareness of how to use the healthcare system; and b) reduced coverage for healthcare services, because of loss of insurance coverage in general or of coverage for specific services in particular, increase of out-of-pocket payments. At the same time the needs of individuals for healthcare services have increased because of i.a. increased mental health problems, unhealthier eating habits and cuts in preventative health services.[79]

Unemployment, especially among the young is extremely high in all 'programme' countries,[80] while the number of long-term unemployed (and thus, more difficult to integrate into the labour market and more at risk of losing any security net and being marginalized) has also been on the rise.[81] At the same time brain drain is taking its toll in all countries touched by the crisis: a recent study showed that from those emigrating from Ireland, Italy, Greece, Portugal and Spain, 88 per cent hold a university degree and, of these, 50 per cent hold a Masters degree, while another 11.7 per cent hold Ph.Ds.[82]

Those who do have an employment are not immune to the crisis either. Despite the vivid contestation of the idea that liberalization of the labour market eases unemployment,[83] both the structural reforms pushed through in the 'programme' countries and the general policy orientations given to Member States in the framework of the 'fiscal compact', strongly points in that direction.[84] Hence, under the impact of the crisis governance, several protective labour laws are being struck down and employment conditions, the same as unemployment benefits, become increasingly insecure.[85] In an independent but concomitant way, the EU Court, in the name of the free market, has imposed a *transnational* brake to *national* collective negotiations and collective actions.[86] In doing so, however, the Court, while recognizing it verbally, has in fact denied the fundamental nature of the right to strike: 'what the Court has accomplished is not a balancing-act between two equally-footed rights, but a much more traditional scrutiny of compatibility between national rules and Community law… Thus, the recognition of the right to strike as a EU fundamental right is concretely (and paradoxically) resolved in its "de-fundamentalization"'.[87]

Increasing poverty and inequality, unstable and uncertain employment, high and permanent unemployment and deteriorating health, form altogether a good recipe for the alienation of individuals and their exclusion from the status of citizen; exclusion

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79 See the Eurofound report, cited above in note 78, p. 12-19; for a less 'apocalyptic', but still pessimistic analysis see Petmesidou, M. e.a. (2014), 'South European Healthcare Systems under Harsh Austerity: A Progress-Regression Mix?' *South European Society and Politics* **19** (3), 331-352.

80 See above notes 18 and 19.

81 See e.g. for Greece Rodgers and Stylianou, cited above note 73.

82 Gropas, R. and A. Triantafyllidou (2014), 'Emigrating in times of crisis. Highlights and new data from an e-survey on high-skilled emigrants from Southern Europe and Ireland', http://globalgovernanceprogramme.eui.eu/wp-content/uploads/2014/03/SURVEY-REPORT-Emigrating-in-times-of-crisis.pdf, accessed 02 May 2017. It is also worth noting that favourite destinations for these emigrants are Germany, the UK (pre-Brexit), the Netherlands, Switzerland, USA, Canada and Belgium.

83 See ETUI working paper, cited above note 66.

84 See above note 5.

85 See also Moreira, A. e.a. (2015), 'Austerity-Driven Labour Market Reforms in Southern Europe: Eroding the Security of Labour Market Insiders' *European Journal of Social Security* **17** (2), Special Issue: Welfare States under Strain in Southern Europe: Comparing Policy and Governance Changes in Portugal, Greece, Italy and Spain, 202-225.

86 Case C-438/05, *Viking*, EU:C:2007:772 and Case C-341/05, *Laval*, EU:C:2007:809.

87 Passages taken by Giubboni, cited above note 5, p. 17, himself drawing from Faro, Lo (2011), 'Toward a De-fundamentalisation of Collective Labour Rights in European Social Law?', in M.-A. Moreau (ed.), *Before and After the Economic Crisis. What Implications for the 'European Social Model'?*, Cheltenham, UK and Northampton, MA, US: Edward Elgar, pp. 203-216.

which at the bottom end takes the form of social marginalization, while at the top end the form of emigration. Both outcomes are immediately prejudicial to the way the individuals concerned experience their national citizenship. The same outcomes are also indirectly prejudicial to EU citizenship, since the increased flows of EU citizens from poorer countries towards rich ones, combined withthe rights such free movers enjoy according to the CJEU's individualistic case law,[88] often backfire at the expense of free movers and citizenship itself; Brexit, is the extreme example, but not the only one, where local societies react against 'citiz-intruders'.

Such a reaction is not altogether unjustifiable from a purely normative viewpoint. As Giubboni puts it

[t]he seemingly unstoppable spill-over of the anti-majoritarian logic of transnational opening to outsiders, that is typical of the fundamental freedoms guaranteed by the Court's case law, in fact, challenges the capability of the Member States to maintain adequate levels of social protection and distributive justice within their borders at the same time as the new economic and monetary Constitution of the Union, in responding to the financial crisis, imposes increasingly severe and pervasive supranational constraints on the national democratic Welfare State systems. Union law deprives Member States of decisive levers of political-democratic control over their welfare systems, without being able to compensate for such a partial loss in delivering distributive social justice at a supranational level.[89]

Hence, Giubboni rejoins Scharpf in finding that the asymmetry between negative and positive integration is dangerously widened, thus leaving a hiatus more important than before. This acquires special significance for the entire European construct at a time where, to stick to Scharpf's taxonomy, the crisis has spectacularly cropped output legitimacy', while the institutional response to it has considerably diminished the, already ailing, 'input legitimacy' of the EU.[90]

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88 For which see above notes 23-24.

89 See above note5, p. 19.

90 On the limited capacity of the EU to promote positive, as opposed to negative, integration in the social field see Scharpf, F. (2002), 'The European social model: Coping with the challenges of diversity', *JCMS*, **40**, 645–670 and more recently, by the same author, (2011), 'Monetary Union, fiscal crisis and the preemption of democracy', *LSE 'Europe in Question' Discussion Paper Series; LEQS Annual Lecture Paper 2011*, www.lse.ac.uk/european_Institute/LEQS/LEQSPaper36.pdf, accessed 02 May 2017. It should not be forgotten that the idea that the EU enjoys more output than input legitimacy has also been put forward by Majone, G. (1998), 'Europe's "Democratic Deficit": The Question of Standards', *ELJ,* **4** **(**1),5-28 and Moravcsik, A. (2004), 'In Defence of the "Democratic Deficit"': Reassessing Legitimacy in the European Union', *JCMS*, **40** (4), 603-624; this distinction, however, has been subject to criticism, see i.a. Gaus, D. (2010), 'Two kinds of democratic legitimacy for the EU? Input and output legitimacy as a case of conceptual misformation', http://www.uio.no/english/research/interfaculty-research-areas/democracy/news-and-events/events/conferences/2010/papers/Gaus-TwoKindsOfDemocraticLegitimacy-2010.pdf, accessed02 May 2017.

[88]Davies, Gareth, (2015) 'Democracy and Legitimacy in the Shadow of Purposive Competence', ELJ, **21** (1), 2-22, 2.

The above ugly outlook is not likely to get any better under the current constitutional setup of the EU, given that its purpose-oriented competences ‘prevent meaningful democratic processes from taking place because they render certain goals non-negotiable, and thereby pre-empt essential choices of policy direction’, while, at the same time, reducing its emotional appeal.[91]

Under this perspective, the stakes are much higher than the mere enjoyment of EU citizenship – it is the very European integration project which is called into question.

5. Conclusion

This chapter looked into the newly set economic governance of the EMU (and the EU) and the way it has affected citizenship, both at the national and at the EU level. In Member States under financial supervision drawn into detailed structural and economic reforms and subject to the conditionality principle, as well as in all other Member States bound by the Fiscal Compact, the six-pack/two-pack and the European Semester, citizenship is being eroded both internally and externally. All three components of citizenship, according to Marshall, are losing: *civil rights*suffer from the irrational tax burden imposed on certain categories of the population and the ensuing retraction of the national economies; *political rights* are offered a big blow from the transfer of crucial decision making powers to unelected and unaccountable institutions such as the ECB or the IMF; and *social rights*, together with the welfare state on which they are based, succumb to the ‘golden rule’ of balanced budgets and other ‘fiscal consolidation’ measures.

Hence, the EU and more particularly the EMU and its rules have the effect of directly affecting the rights that citizens draw from their national citizenships, within their own Member States. Given that national identity, shaped through national citizenship, is strongly embedded in the Member States, citizens intuitively distance themselves from the factors that question their identity. Hence, the rise of euroscepticism.

Things are even worse in relation to European citizenship. The fact that Brexit has been successfully campaigned on the reduction of the benefits and rights the EU Court and legislature have progressively recognized in favour of EU citizens, is only the tip of the iceberg. The rise of ultra-right parties in most other Member States directly undermines the ‘easiness’ with which an EU national should be received in any host Member State. The unhappy management of the migrant crisis only adds up to the suspicion towards anything non-national.

All in all, it may be said that while the Treaty of Lisbon and the EU Charter of Fundamental Rights, underpinned by the (occasionally activist) case law of the CJEU, have promoted, in a peremptory manner, an idealistic vision of EU citizenship, the EU management of the financial and economic crises have served a discrete but severe blow to it.

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