

Luís Máximo dos Santos: Closing address - Bank of Portugal Legal Seminar

Closing address by Mr Luís Máximo dos Santos, Vice-Governor of the Bank of Portugal, at the Bank of Portugal Legal Seminar, Lisbon, 3 December 2018.

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Allow me to begin my closing address by thanking the speakers for accepting Banco de Portugal's invitation. Their addresses have helped this seminar achieve its objective: to be a time of reflection, at the highest level, on the reform of the Economic and Monetary Union (EMU) at a critical time for the future of the European Union.

Two words of thanks are due: to the Minister for Foreign Affairs for making time in his schedule to share with us his stimulating reflections; and to Professor Jean-Victor Louis, who has honoured us with his presence as keynote speaker.

I have long admired Professor Jean-Victor Louis, whose work on European law – in particular on the EMU and the external relations of the European Union – has inspired several generations of scholars, impressed by its depth and clarity. Consulting his work has always been instrumental in shining a light on the complex – and at times even somewhat tortuous – world of Community law initially and then of European Union law, following the Maastricht treaty.

In addition to his exceptional academic work, Professor Jean-Victor Louis has been a key player in the development of the EMU as Head of the Legal Service of Banque Nationale de Belgique, a post which he still holds today in an honorary capacity.

On behalf of Banco de Portugal, thank you very much for being here.

I would also like to thank all those who agreed to join this Seminar, on such a key issue for our country and for the whole of Europe.

Last but not least, I am grateful to all who, at Banco de Portugal, and in particular in the Legal Services Department, have made this event a reality in a very short period of time.

1. The European Central Bank (ECB) was established on 1 June 1998, after the European Council unanimously decided, on 2 May 1998, that 11 Member States, including Portugal, met the requirements necessary to adopt the single currency on 1 January 1999. The ECB replaced the European Monetary Institute (EMI), which had marked the beginning of the so-called second stage of the EMU when it was created on 1 January 1994.

This Seminar was also a way for Banco de Portugal to celebrate the twentieth anniversary both of the ECB and of Banco de Portugal's participation in the European System of Central Banks (ESCB) and the Legal Committee (known as LEGCO), which has played a crucial role in developing the EMU.

On 7 July 1998, the ECB approved the Rules of Procedure, which laid down the establishment of ESCB committees – composed of representatives of the ECB and of the national central bank of each participating Member State – to assist in the work of the ESCB. The Legal Committee is one such committee.

The committees established under this regulation assist in the work of the decision-making bodies of the ECB, specifically the Executive Board and the Governing Council and are composed of representatives of each of the national central banks and the ECB. Different committees have different compositions, depending on whether matters fall within the field of competence of the Eurosystem, the ESCB or – since 2014 – the Single Supervisory Mechanism.

The establishment of these committees was the expression of a true conceptual system that was behind the preparatory work conducted on the monetary pillar during stage three of EMU. This committee structure – different from the technical committee procedure present in other European decision-making bodies – invokes the idea of a participatory decision-making process which benefits from the sharing of experience and know-how among national central banks, under the aegis of the ECB.

The ECB's Legal Committee is a genuine example of the identity of the Eurosystem and the ESCB. Taking over from the Working Group of Legal Experts, which operated under the EMI, LEGCO is a committee with privileged insight due to its cross-cutting nature, whose assistance is invariably requested by all other Eurosystem committees, the Executive Board and the Governing Council of the ECB.

This is also the reason why, 20 years after its creation, it is no exaggeration to say that this committee acts as a repository that is a vital tool to understand and interpret developments in the Eurosystem and the ESCB, and will certainly be called upon during the implementation of potential reforms.

2. Regardless of one's opinion on the merits of the European Monetary Union, the creation of the ECB was a major historical landmark – which had a significant effect on Europe and each of its countries and a profound impact on international monetary relations and consequently on the economy and international politics.

Several generations of Banco de Portugal employees have participated in the construction of EMU at different times: first, during the technical negotiations on the Treaty of Maastricht; then, during the implementation of the three stages of EMU, and, in the past 20 years, in the performance of the tasks entrusted to Banco de Portugal by the European treaties, European Union law and Portuguese law.

This work was and remains crucial for the country, having already produced a wealth of institutional experience that is renewed every day.

By reflecting on how far we have come and how far we have to go in reforming the EMU, this Seminar has also intended to pay tribute to all Banco de Portugal employees who over the years have dedicated their efforts and knowledge to this mission.

The work that led to the developments observed 20 years ago – which we are celebrating today – was a pioneering effort undertaken by many with true idealism. Indeed, although the construction of monetary unions had been tried in the past, nothing could compare to the ambition and complexity of building the European Monetary Union.

The overall atmosphere over this historical period was marked by a clear sense of optimism and a good deal of confidence on the part of the European Union and the countries that belonged to the Union or wished to join it. Not that there were no problems, but there was a feeling that these could be solved one way or another.

In retrospect, these feelings may – undoubtedly – seem exaggerated. However, at the time, the European Union – composed of 15 Member States following the 1995 enlargement – was cohesive and united, firmly believing in its project, and willing to assimilate and achieve a balanced management of the divergences arising from its diversity.

Nonetheless, as the 21st century progressed, this state of mind gradually disappeared, culminating in a complete reversal in the past 10 years, following the global financial crisis.

3. In response to the crisis, several measures were adopted to enhance the coordination of the fiscal policies of the Member States (partly through purely intergovernmental instruments) and

the banking union project was launched. Nevertheless, six years after its launch, the project remains incomplete both in terms of the so-called third pillar – the European Deposit Insurance Scheme – and as regards certain aspects that are essential to enhance the soundness and coherence of the Single Resolution Mechanism, notably in the crucial matter of the financing of resolution measures and the consequences of winding-up institutions.

In reality, as Peter Praet – member of the Executive Board of the ECB – mentioned a few days ago, “it is abnormal that the supervision responsibility is collective but the consequences, if something goes wrong, go back to the national authorities.”

4. As can be seen in the revealing title of Professor Jean-Victor Louis’ address, reforming the EMU and the European Banking Union is a very difficult task. I would add that it is as difficult as it is necessary, given that the changes that have been introduced so far – although generally positive – are not enough to ensure the long-term sustainability of the EMU and to guarantee the financial stability of both the Union and the countries that belong to it.

There is no time to lose. We have the duty to prevent the next crisis from finding us in the current situation, only halfway there and possibly having already exhausted a number of tools.

The debate has long been underway and there is a need to refocus it around what really matters, overcoming non-existent issues that only lead to paralysis. Indeed, as Professor Jean-Victor Louis clearly demonstrated, in a view shared by many, establishing a relationship of priority between reducing and sharing risks is a true argumentational fallacy on a number of levels.

The main challenges are known: to complete the banking union; to incorporate the European Stability Mechanism into European law (overcoming its intergovernmental character); to find a way of providing the EMU with a ‘fiscal capacity’; and to create a capital markets union are crucial steps to enhancing the stability of the EMU.

Divergences have been listed and possible paths have been identified. Now we must have the courage to make decisions. But we must also be aware of the divisions between and within Member States and, for this reason, we must be realistic. What I mean by realism is having the ability to implement solutions which will *effectively* address the problems that have been identified in the functioning of the EMU, but in a spirit of compromise and mutual understanding.

The worst thing we could do would be to pretend we are reforming the EMU while leaving key issues with no prospect of a solution. Notwithstanding the gradual approach that has historically characterised the Union, we must take concrete steps to solve the imbalances that exist within the Union. If we don’t, the EMU might even be jeopardised eventually.

The EMU is not an end in itself. It was designed to contribute to improving the lives of EU citizens and to strengthen the role of the European Union – and consequently of each EU Member State – in the world. These are the key assumptions that, if realised, give it strength and legitimacy.

Indeed, the EMU must not be perpetuated out of fear of the consequences of its failure. History has shown that nothing sound and lasting is built on fear.

It is therefore vital that the reform of the EMU is a success. Whatever the outcome of this process, this period requires, and will continue to require, intense and difficult work by several institutions – including Banco de Portugal – both in terms of ensuring policy choices and on a strictly technical level.

As they progress, negotiations on the reform of the EMU will highlight sensitive legal and institutional issues, specifically on the appropriate distribution of power between the Union and Member States and on the balance of powers between the various European institutions. This should not surprise us, given that one of the objectives of the European integration process since

the beginning has been to create an 'economic community' supported by a 'community of law', which is how it has always seen itself.

One of the objectives of this Seminar was to contribute to a better perception of this fact, an objective which I believe has been fully achieved.

Thank you for your attention.