Call for signatures for a Coalition of the Willing of EU Member States to issue common bonds

The Corona Crisis has inflicted unknown pain, at least in our generation, on our societies. We not only mourn the untimely death of many fellow citizens ones. We are also poised to potentially the biggest crisis of capitalism since the dark 1920s. This demands unconventional political answers in Europe and in the EU.

In July 2020 the governments of EU member states have arrived at the agreement to raise 750 bn. Euro on the financial markets to support the economies in distress. Indeed, this is breakthrough insofar as the economic power of the various states has been bundled to for achieving common aims. However, the 340 bn. grant component of the 'Recovery Fund' amounts not to more than 0,7 %GNP which seems by far too little to match the necessities.
Moreover, at the end of September 2020 we can't be sure if the fund will really be fully implemented. Its legal bases is at least disputable, and with the last Ultra Vires judgment of the Union mightiest national Court (German constitutional court) we have definitely not reached the safety of the shores

Transform! europe therefore puts forward the idea of a coalition of the willing issuing commons bonds. The memorandum we propose aims at exerting political pressure on the self-proclaimed 'frugal states' and inciting a debate on how to raise additional funds for the socio-ecological transformation, as the climate change does not stop just because there is a Corona Virus around.

We would therefore be grateful to you if you would like to sign this memorandum.

transform! europe, June 2020

Memorandum of the *transform! europe* working group on the economic crises:

For a "coalition of the willing for Eurobonds"

The Corona crisis has hit the EU economies with unimaginable force. Even in July 2020, nobody knows how deep the cuts in the social systems and loss of productive forces will actually be. In cases of such severe insecurity, the precautionary principle must guide the policy-makers' decisions. The economic consensus is overwhelming: Social System, firms and value chains require much direct support.

In May 2020, the European Commission published its proposals for a Recovery Fund of € 750 billion. After doing some maths on the timing of the financial resources' allocation, Zsolt Darvas of Bruegel think tank published an article on 10 June. Eurointelligence evaluated the findings as follows: "This is a hugely *important issue. In our own calculations, we assumed an equal distribution over four years. But the reality is that the spending will be back-loaded, thus reducing the counter-cyclical impact of the programme."*[1] *Zsolt Darvas summarises the results of his research as follows: "…less than a quarter of the € 438 billion in grants planned under the new EU recovery instruments is expected to be spent in the next two and a half years, when recovery needs will be greatest."*

On 21st July 2020, the Council of the EU ended its four-day long emergency negotiations after having cut down the grants from € 500 billion to only € 390 billion. The already meagre numbers got worse under pressure of the so-called frugal states. What is especially concerning here is that microeconomic thinking led to massive cuts in exactly those political fields of the EU budget that are clearly future oriented (climate, research and health).

After this extraordinary Council meeting, we have to state that the EU faces the concrete risk of fragmentation and dissolution. Postponing massive support for the social and health system and to the economy is political madness. The negotiations on the Recovery Plan and the next Multiannual Financial Framework (MFF) will keep politicians busy until at least early autumn 2020. Whatever the negotiations will yield: we already know now that the financial resources are not enough to solve the Covid Crisis, and especially not the climate crisis.

It is time for a fundamental change in the EU regarding financing of public tasks. For this reason, transform! europe proposes an alternative solution which envisages faster support of and, above all, greater financial resources to Corona-afflicted countries than those currently under negotiation by the EU.

A Common Currency without a proper central bank – the fate of the Eurozone: With no lender of last resort, the Eurozone is a unicorn in the world of monetary areas. Every Member State (MS) is left to fend for itself on the market. Any bond issued by a MS is guaranteed only by its own national tax base and self-owned assets; there is no national bank to fall back on.

The European Court of Justice (ECJ) emphasises openly that this is no accident:

> *"The prohibition laid down in Article 125 <u>TFEU</u> [Treaty on the Functioning of the European Union, the 'no-bail-out clause'] <u>ensures that the Member States remain subject to the logic of the market</u> when they enter into debt, since that ought to prompt them to maintain budgetary discipline. <u>Compliance with such discipline contributes at Union level to the attainment of a higher objective</u>, namely maintaining the financial stability of the monetary union."*[2]

The European Central Bank (ECB) can only support its member States by buying their already-sold bonds in the so-called secondary market. This secondary market is the "capitalist market", the real financial market. In the current discussion on Eurobonds, the ECB would be the primary buyer; hence, the bond would not enter the secondary market and would therefore be exempt from the law of supply and demand or, plainly speaking, speculative attacks.

There are two official arguments against allowing the ECB to act as a regular national bank:

[1] Zsolt Darvas: Three-quarters of Next Generation EU payments will have to wait until 2023, Bruegel, 10 June 2020.
[2] Judgment of the Court, 27 November 2012, Thomas Pringle v Government of Ireland and Others, Case C-370/12

Beware the printing machine: The first argument is that national banks could come under pressure by populists to issue new money, this could cause high inflation. This argument dates back to the 1980s. The broad consensus today is that the risk of inflation has, for the foreseeable future, disappeared in the Global North.

Moral misconduct leads to poverty: The second argument is a purely moral one, which economists word-mincingly call the “moral hazard” argument. The rich do not trust the poor to adequately use resources due to their supposed lack of a rigorous work ethic. What was introduced as workhouses in early capitalism in the 1830 in Britain received an update in form of the European “Troika” in the post-Lehman Brothers crises: an institution for overseeing the poor, who lack the moral fibre to be trusted with the resources the rich provide them with.[3] The most prominent example of this moral high ground might be the statement of the Dutch Eurogroup chairperson Jeroen Dijsselbloem:

"During the euro crisis, the countries of the north of the Eurozone showed solidarity with the countries in crisis [...]. As a social democrat, I think that solidarity is extremely important. But whoever benefits also has duties," adding that: "I can't spend all my money on booze and women and then ask for your support."[4]

Every country on its own: In the fourth quarter of 2019, before the Corona crisis hit Europe, the state debt levels in the Eurozone during the 4th Quarter of 2019 looked like this for some of the Member States (MS) according to statista.com:[5]

- Italy € 2,4 trillion
- France € 2,38 trillion
- Germany € 2,06 trillion
- Spain € 1,19 trillion
- Belgium € 467 billion
- Greece € 331 billion
- Portugal € 250 billion
- Ireland € 204 billion

On 25 April 2020, nine heads of EU Member States wrote a joint letter to the President of the European Council in Belgium, Charles Michel, arguing in favour of so-called “Corona bonds” as a “mutualised asset”.[6]

[3] See the chapter „The Attitude of the Bourgeoisie Towards the Proletariat” in Friedrich Engels Condition of the Working Class in England for a striking parallel between these two institutions.
[4] Dijsselbloem in hot water after Eurozone nations 'booze and women' charges, 22 March 2017, Deutsche Welle.
[5] https://de.statista.com/statistik/daten/studie/198377/umfrage/staatsverschuldung-in-der-europaeischen-union
[6] Wolfgang Münchau: Go-it-alone eurozone ‚coronabonds’ are with the risk, Financial Times, 29 March 2020

Nine MS make up an interesting market: Corona bonds are not the same as regular Eurobonds[7]. But just to paint the picture of a potential Eurobond market: if Corona bonds were issued, a market of € 6,89 trillion would emerge. It would be much harder for market actors not to have these bonds in their portfolio than, for example, Belgium's stand-alone bonds.

The nine Member States have more than double the German GDP: The nine states have 213 million citizens; in 2019,[8] their total GDP amounted to nearly € 8 trillion, to which Germany alone contributed a GDP of € 3,86 trillion, almost half of the total GDP acting as "background" to a common bond.[9]

This common bond market of around € 7 trillion might look more interesting vis-à-vis the state debt market of the US (US$ 24 trillion) or the Japanese debt (US$ 13 trillion).

What could the legal base for a common Corona bond look like?

One of the first reactions of financial "frugal" actors will be to claim that Corona bond issued by a "coalition of the willing" would have no legal ground according to The Treaty of Lisbon or might even infringe upon EU law. We must therefore examine this law and its interpretation to judge whether there is a potential legal basis for Corona bonds.

Never just one article: on 7 April, Prof. Alberto Alemanno (@alemannoEU) wrote on Twitter about the "legal base hunting" regarding the legal interpretation of the Lisbon Treaty. He said that he learned in the last years that there is never one fixed clear legal base for a progressive action.

Generally, we should be aware that there is no such thing as "the" Lisbon Treaty. The interpretation of legal texts resembles the work of biblical exegesis.

Read the Lisbon Treaty like the Bible: In January 2019, the European Parliamentary Research Service (EPRS) published a very useful study: "Unlocking the potential of the EU Treaties- An article-by-article analysis of the scope for action".

After speculation about possible treaty changes, the authors nevertheless arrive to a solution: "However, given that the ordinary procedure for revision of the Treaties is cumbersome and lengthy, and that the simplified procedure cannot be used to broaden EU competences, it makes sense to explore possibilities for unlocking the full potential of the existing Treaties as they stand now."

The focus of their study lies on "either unused or under-used" legal bases for EU-level action. Considering the potential impact on the subject at hand, we have to take their ideas on the interpretation of legal texts seriously.

[7] Eurobonds would pool a certain portion of the borrowings needed by the MS, again guaranteed by all of them in conjunction. The issuing of common Eurobonds usually does not mean that member states would stop issuing national bonds to cover their needs.
[8] http://statisticstimes.com/economy/european-countries-by-gdp.php
[9] http://statisticstimes.com/economy/european-countries-by-gdp.php

The four ways to interpret a legal text: It is obvious that laws and treaties must be interpreted. Usually a legal form is interpreted first according to its wording (grammatical interpretation), secondly from its context (systematic interpretation), thirdly by its purpose (teleological interpretation) and lastly based on preparatory legislative materials of the law and its historical genesis (historical interpretation).

The changing context of the Lisbon Treaty: After describing this legal standard knowledge, the authors of the EPRS study emphasize that "… it must be remembered that the Treaties should not be read independently from their changing context. A 'static interpretation', sticking to the 'original' intent of the drafters, would quickly find itself out of touch with the changed context, both within the EU and in the wider world. The treaties, including the legal bases for EU action, should therefore be interpreted dynamically, in order for the EU to be able to address new challenges."[10]

Taking this open view towards the historical process and social relations, let us pick up some of the relevant articles in the treaties, which can frame an alternative narrative to the hawkish organic intellectuals of the DM-Block.

Art 3 Treaty of the European Union: First, let us look at the Article 3 of the Treaty of the European Union. According to Art. 3 the Union:

> *"shall work for the <u>sustainable development</u> of Europe based on <u>balanced economic growth</u> and price stability, a highly competitive <u>social</u> market economy, aiming at <u>full employment</u> and <u>social progress</u>, and a <u>high level of protection and improvement of the quality of the environment</u>. It shall promote scientific and technological advance."*

The "Maastricht Criteria" are tucked away in the 12th Protocol: the "Reference Criteria" do <u>not</u> appear in the treaty texts proper. They are mentioned only in the 12th protocol annexed to the Treaty of the Functioning of the European Union.[11] It is easy to understand that there is a clear hierarchy of political goals between Article 3 of the TFEU and the "reference criteria" mentioned only in the 12th Protocol to this treaty.

Three articles as possible direct legal basis for Corona bonds: Regarding our subject, there seem to be at least three possible legal bases we can refer to when arguing in favour of a Corona bond issued by a "coalition of the willing".

Article 122 b TFEU: [12]

> *"Where a Member State is in difficulties or is seriously threatened with severe difficulties caused by natural disasters or exceptional occurrences beyond its control, the Council, on a proposal from the*

[10] EPRS: Unlocking the potential of the EU treaties- an article-by-article analysis of the scope for action, January 2019, p.1.
[11] Protocol (No 12) on the excessive deficit procedure.
[12] On Art 122 TFEU Sebastian Grund et al. base their claim, in: Sharing the fiscal burden of the crisis - a pandemic solidarity instrument for the EU, VoxEU, 05 April 2020.

Commission, may grant, under certain conditions, Union financial assistance to the Member State concerned. The President of the Council shall inform the European Parliament of the decision taken."

Article 168 / 1 TFEU also supports the idea:

" A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

Union action, which shall complement national policies, shall be directed towards improving public health, preventing physical and mental illness and diseases, and obviating sources of danger to physical and mental health. Such action shall cover the fight against the major health scourges, by promoting research into their causes, their transmission and their prevention, as well as health information and education, and monitoring, early warning of and combating serious cross-border threats to health."

The strongest grounds may be found in the "solidarity clause" of Article 222 TFEU on which also the European Commission base the Recovery Fund:

"The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster. The Union shall mobilise all the instruments at its disposal, including the military resources made available by the Member States, to:

(b) assist a Member State in its territory, at the request of its political authorities, in the event of a natural or man-made disaster."

Technical steps the coalition of the willing needs to take in order to issue the bonds

Start with an international treaty: The Member States of the coalition of the willing would need to sign an international treaty that is compatible with the duties specified by the Lisbon Treaty, especially regarding the monetary union.[13]

The Member States could issue self-backed mutualised bond and "then challenge the European Central Bank to buy these securities as part of its pandemic emergency purchasing program".[14] The ECB will then have to depart from its current practice of buying already issued bonds, i.e. on the secondary market. In this scenario, the ECB will be offered the bonds at the time of their issuance. Of course, if the issuers choose to sell the bonds on the market (i.e. to private investors), then these in turn can offer them to the ECB in the current framework of the Pandemic Emergency Purchase Programme.

The four steps to be taken: Shahin Vallée (senior fellow at the German Council on Foreign Relations) proposes the following steps:

After invoking the solidarity clause in Art 222, "the coalition of the willing should establish

- a Coronavirus Solidarity Fund with exceptional contributions from member states;

[13] Martin Sandbu: Europe need not wait for Germany, Financial Times, 16 August 2011.
[14] Wolfgang Münchau: Go-it-alone eurozone ‚coronabonds' are with the risk, Financial Times, 29 March 2020.

- second, the coalition must task the commission with creating a Coronavirus Agency to coordinate the member states and transform the fund into a vehicle for delivering financial assistance;
- third, it must provide the fund with its own financial resources by taking a portion of VAT, and using climate transition taxes on carbon emissions or air travel; and
- finally, it must permit the fund to borrow to fund current efforts to stem the crisis, support neighbouring and developing countries and finance the economic recovery across the union”.[15]

Finally, he reaffirms for safety's sake: “These measures are all legal under existing EU treaties”.[16]

Does the Corona bond add to the national debt or not? If the bond is issued by the state, it adds to the national public debt. If it is issued by some other institution and given to a Member State, e.g. as a grant, then it does not. However, if it is given as a loan, then it increases public debt.

No way to escape national debt? Wolfgang Münchau clearly states that, “Legally a mutualised debt instrument between a group of sovereign states would still count as national debt. The repayment obligation would be shared.” Münchau further adds: “This would not reduce the debt load of vulnerable member states in a way a properly designed EU-wide instrument could.”[17]

Thus, if the bond is traded on the bond market, then, in practical terms, this means that state A has to pay back the part of the common debt of state B if state B is not able to, i.e. if state B defaults. However, if the bond is taken up by the ECB, then it may be kept indefinitely, i.e. it has no fixed maturity date (perpetuity), thus reducing the risk of default.

On the potential use of “Enhanced Cooperation Framework” contained in the EU Treaties The question is one of legal feasibility. Initiating an enhanced cooperation requires a minimum of nine countries that file a request to the Commission. Additionally, if the Commission accepts the request, then the Council has to approve the proposition by a qualified majority (hence reducing the possibility of a veto from financially “hawkish” Member States). This framework was designed for overcoming paralysis stemming from the opposition and veto from one state or a small group of states.

Article 10/1 of the Lisbon Treaty states: “Enhanced cooperation shall aim to further the objectives of the Union, protect its interests and reinforce its integration process. Such cooperation shall be open at any time to all Member States…”

Article 10/2 states: “The decision authorising enhanced cooperation shall be adopted by the Council as a last resort, when it has established that the objectives of such cooperation cannot

[15] Shahin Vallée: Europe needs a coronabonds coalition of the willing to prevent economic disaster, New Statesman, 6 April 2020.
[16] It would be interesting to discuss the overlapping between this proposal and the Franco-German proposal for the fund of 500 billion euro.
[17] Wolfgang Münchau: Go-it-alone eurozone ‚coronabonds’ are with the risk, Financial Times, 29 March 2020.

be attained within a reasonable period by the Union as a whole, and provided that at least nine Member States participate in it."

It seems that nothing in the Articles 280 A to 280 I of the Treaty on the Functioning of the European Union precludes enhanced cooperation in the area of common debt issuing.

Enhanced cooperation was also used for developing a European financial transaction tax in 2012-2015, even though this proposal is now in limbo. One advantage of using enhanced cooperation for the issuance of bonds by a coalition of the willing would be to include the creation of a common safe asset within the EU Treaties and EU law. Furthermore, politically speaking, it would force the Commission to take sides in this debate (i.e. to allow a coalition of the willing to mutualize debt or to oppose it) as well as the Member States in the Council. Therefore, the parsimonious "frugal" MS, and especially Germany, would have to state publicly whether they are opposed to any form of debt mutualisation, or whether they are only against their country participating in such mutualisation.

Cities go their own way: In the UK we find another interesting example of public bonds that are issued by lower-level public institutions (at a municipal level, in this case) due to the failure of the higher-level institutions (central government) to adequately fund them. These are the "munibonds" issued by the "UK Municipal Bonds Agency" which was founded 2014 as City Councils became "increasingly frustrated about the charges imposed on them by the DMO [an arm of the Treasury]".[18]

Spain's proposal of perpetual bonds shows the way: Perpetual bonds, once issued and taken into the portfolio of the national bank (the ECB, in our case) stay there without ever being repaid, but can, if necessary be redeemed. George Soros explains how this works and how quickly great quantities of money could be raised with relatively low costs.

George Soros knows how to avoid rising taxes: Soros reminds his readers that Britain first issued consolidated bonds ('Consols') in 1752, the USA did it in 1870 to pay for its accumulated in the Civil War.[19] If the EU would issue a € 1 trillion Consol with a coupon of 0,5%, this would cost € 5 billion service per year, and "this would give € 5 billion a two-hundred fold leverage"".[20] As George Soros would surely be one of the big investors of this new bond and would happily receive his due share at 0,5% per year, he is keen to add that "there is no need to find new sources of revenue."

Rating agencies - back from the ashes: The rating agencies are back again. Fitch, Moody and Standard & Poor returned to the spotlight at the end of April 2020, when they decided on the rating of Italian sovereign bonds.[21] These agencies pose a serious threat to any alternative economic proposals as they

[18] Patrick Jenkins and Jim Pickard: Cash-strapped councils to raise billions with new municipal bonds, Financial Times, 1 February 2015.
[19] George Soros: Spain is leading the way on perpetual bonds, Financial Times, 22 April 2020.
[20] Ibid.
[21] Tommy Stubbington and Miles Johnson: Fitch cuts Italy's credit rating to one notch above junk, Financial Times, 29 April 29 2020.

wield an unchecked power and remain accountable only to their shareholders – which are themselves largely financialised multinational enterprises.

Every bond issue receives a rating, our hypothetical "coalition of the willing" bonds included. This poses a serious challenge not only to any plan to issue such bonds, but also to other bonds issued by individual countries. If the new Corona bond received a bad rating, this would also have an impact on the other bonds. Hence, whatever dreams may rest upon these Corona bonds, they must be serviced and spent according to the internally acknowledged ways. The transformative impact of these bonds could then seem to be debatable, particularly given the power of the US-based rating agencies.

> <u>*The need for public rating agencies in the EU:*</u>
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> *The return of the "big three" rating agencies raises the issue of ratings in general, and the need for alternative ratings. During the post-2008 sovereign debt crisis, there were political and scientific discussions about the creation of a Eurozone rating agency in order to reduce the dependency on the "big three", and some policy papers were released on the matter. The project stalled and is currently at a standstill (like the financial transaction tax). However, it is necessary that radical Left tries to revive it. Such a rating agency would of course be a public one, financed by funds from the EU budget and whose ratings would be based on a mix of traditional accounting criteria and social and environmental criteria (green/brown taxonomy, etc.). The creation of such an agency would provide the EU with alternative ratings that could be incorporated in the collateral framework of the ECB (thus contributing to a radical Left Green New Deal) but also counterbalance the ratings of the "big three" with regards to Corona bonds or any mutualized debt issued by a coalition of the willing. Therefore, in the absence of a Treaty change removing the prohibition of monetary financing, a new agency could exert political pressure on the ECB for re-assessing its collateral framework, and for incorporating Corona bonds in its asset purchases (PEPP but also PSPP which is not subject to short-term termination) based on these alternative ratings.*

<u>Some more general thoughts on the political strategy behind the Corona bonds</u>

States come and go, productive forces stay: Even if the immediate financial impact of the Corona bonds does not go as far as we hope, it would still be the right thing to try. The central problem of the EU is that it is built on capitalism. At its heart, capitalism is the social mechanism of competition based on capital exchange. In this context solidarity can only be a "healing" mechanism, a mechanism that is introduced *a posteriori* to compensate society for market outcomes. Obviously, the real driving force is profit accumulation by the powers that be. In a global capitalist system, it is clearly difficult to ignore the rules of this system; however, one can try to adapt the rules to one's circumstances.

The powerhouse in Northwest Europe: The strongest productive forces are situated in Northwestern Europe, largely congruent with what Roger Brunet calls the Blue Banana , the thousand year old growth region of Europe (from Milan, via the Rhine Valley and the Netherlands up to London). It does not matter if this region belongs to one Empire or is split into different states[22] – the productive factors (machines, human and social knowledge) are located there. Since the Allied Forces allowed the West German State to "swallow" the small socialist East German state following the Second World War, large parts of this "Blue Banana" are once again under the control of a single governance structure. That makes it much easier for the local capitalists to use the state apparatus in their own favour. Thus, attacking the powers-that-be today in Europe means attacking the German elites.

You cannot argue with the German state apparatus: The last crises amply proved that arguing with the German centre-right or even centre-left parties, whether it is through their ministries or more generally their economic representatives, does not work. It seems that the German elites can only react towards external pressure.

Germany's two vulnerable points: Germany is vulnerable to two external shocks: first, due to its mercantile export imperialism, to lack of external economic demand; second, to political fear of seeming to act in an "un-European" way. The latter vulnerability has its historical roots in the Second World War experiences of its neighbours. Germany's capitalist faction can thus only further their own goals inasmuch as they can manage to discursively sell them as "*verallgemeinert*" – as common European interests. Germany cannot act alone on the international level.

Learning the lessons of past struggles: this might be the only chance for the European Union Member States outside the economic centre: to challenge Germany politically by attacking its sources of profit internationally, not only economically, but also politically, thus exploiting Germany's second weak point as described above. Here, the Corona bonds might be the weapon of choice. A look at the European map clearly draws a line in the sand: all Southwestern European States were against Germany when they signed the letter of the nine state. If this group "in itself" would become a group "for itself" by issuing bonds, and took action, the political fall-out for the German capital might be so serious that a U-turn towards more collaborative behaviour vis-à-vis its southern neighbours might be the only answer. This might be the only chance to avoid the risk of fragmentation and dissolution of the EU.

[22] We can extrapolate this as a politico-economic summary from: Brendan Simms: Europe: The Struggle for Supremacy, from 1453 to the Present, London, 2013.