The Eurozone Crisis and the Transformation of EU Governance

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1. Introduction

The European Union (EU) is a union of states and citizens structured around both inter-states (or intergovernmental) and supra-states (or supranational) institutional relations. Unions of states and citizens are federalised or federalising polities coming out of the aggregation of previously independent territorial units (as is the case with the United States or Switzerland), whereas the other established federalised or federalising polities are the outcome of a process of disaggregation of a previously unitary state (as is the case in Europe, of Germany, Austria, Belgium or Spain, and outside Europe, of Canada and Australia). It is inevitable that the former polities have tried to guarantee the constituting units as much power as possible, in terms both of the policy’s competence and institutional representation. This has been particularly true for the EU, which aggregates historically powerful nation states with rooted cultural and linguistic identities and sophisticated representative and administrative structures. Indeed, the Council of Ministers (now only Council) has been the fundamental institution driving the process of integration since the very beginning, thus strengthened in a later stage by the informal institutional development of the European Council (the institution constituted by the governmental leaders of the member states of the Union). Nevertheless, the existence of supranational institutions – such as the Commission, the European Court of Justice (ECJ) and at a later stage the European Parliament (EP) – has balanced the intergovernmental logic with a European/supranational perspective.

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1 I consider here the countries belonging to the Organisation for Economic Co-operation and Development (OECD).
With the 1992 Maastricht Treaty the intergovernmentalist and supranationalist logics, however, were separately institutionalised. While they interacted within the single framework before 1992, in the period that followed the EU allocated different policies to different institutional frameworks. The single market policies have become more and more managed through the decision-making interaction of supranational and intergovernmental institutions (together forming the supranational EU), while new policies, such as (inter alia) financial and economic policies have come to be controlled exclusively by the intergovernmental institutions (constituting the intergovernmental EU). This institutional differentiation was the expression of two alternative views of the Union, one (the former) interpreting it as a supranational federation in the making and the other (the latter) interpreting it as an international organization (Schimmelfennig 2004) with the features of a confederation of nation states, although pursuing political aims. The 2009 Lisbon Treaty has abolished the distinction between formal pillars, but it has confirmed the substance of the Maastricht Treaty’s compromise. Single market policies continue to be managed through a supranational decision-making regime, while ‘most of the important substantive areas of modern governance remain firmly in the hands of national governments’ (Moravcsik 2007: 34). In the former case, integration is based on law, in the latter case on coordination of member states’ governments.

The Euro-crisis has represented an occasion for assessing the crisis management capability of the intergovernmental EU. The test has been unsatisfactory. The intergovernmental EU has not been able to guarantee an effective decision-making process, nor legitimacy to the latter’s outcome. Indeed, the basis of the intergovernmental institutional framework, constituted by a centralised monetary policy (in the Frankfurt-based European Central Bank or ECB) and decentralised financial, fiscal and budgetary policies (in the member states), has been challenged by the Euro-crisis. Under the financial threat of the Euro’s collapse, the heads of state and government of the EU member states eventually ended up in dramatically redefining the intergovernmental system of economic governance in Europe (and the Eurozone in particular). New radical legislative measures were approved
(from the 2010 European Semester to the 2011 Six-packs and 2012 Two-packs) within the institutional frame of the Lisbon Treaty and new intergovernmental decisions (the 2010 European Financial Stability Facility or EFSF and the European Financial Stability Mechanism or EFSM\(^2\)) and new intergovernmental treaties (the 2011 Treaty on European Stability Mechanism or ESM\(^3\) and the 2012 Fiscal Compact Treaty\(^4\)) were set up outside of the Lisbon Treaty. The new measures and treaties attempted to ameliorate market pressures

\(^2\) At the ECOFIN Council of 9-10 May 2010 was adopted a regulation to create the European Financial Stability Mechanism (or EFSM), as a new EU instrument of law and then, based on Article 122(2) Treaty on the Functioning of the European Union (TFEU). On the margin of that meeting, “the members of the Council from the 17 euro area countries ‘switched hats’ and transformed themselves into representatives of their states at an intergovernmental conference; in that capacity, they adopted a decision by which they committed themselves to establish the European Financial Stability Facility (or EFSF) outside the EU legal framework” (De Witte 2012:2). The EFSF consisted of an executive agreement (not a new formal treaty), a form of private company established under Luxembourg law, authorized to negotiate with its (17) shareholders, and serving the purpose of giving financial support to countries facing a severe sovereign debt crisis. Both EFSM and EFSF ‘have been used simultaneously and cumulatively with respect to Ireland and Portugal’ (De Witte 2012:4) and Greece. The EFSM has been superseded by the ESM.

\(^3\) The Treaty on the European Stability Mechanism (ESM) was signed by all the EU member states on 25 March 2011 on the basis of a European Council decision, taken on 16 December 2010, to amend TFEU Article 136 for authorising the Eurozone member states to establish a specific stability mechanism for their currency. It is an international organization located in Luxembourg, which provides financial assistance to members of the Eurozone in financial difficulty. After several revisions, the ESM was finally established on 27 September 2012 and functions as a permanent firewall for the Eurozone with a maximum lending capacity of €500 billion. It replaces the two previous temporary EU funding programs: the EFSF and the EFSM. All new bailout applications and deals for any Eurozone member state with a financial stability issue will in principle be covered by the ESM, while the EFSF and EFSM continue to handle the transfer and monitoring of the previously approved bailout loans for Ireland, Portugal and Greece. It was finally established on 27 September 2012 and became operative by January 2013, replacing the EFSM.

\(^4\) The term ‘Fiscal Compact Treaty’ is generally used for the sake of simplicity. Indeed, its title is ‘Treaty on Stability, Coordination and Governance in the Economic and Monetary Union’, of which the fiscal compact is only one component. Signed by all the heads of state and government (except the Czech Republic and the United Kingdom) in the meeting of the European Council of 2 March 2012, it entered into force on 1 January 2013.
on the weaker and indebted member states of the Eurozone, but they didn’t work as expected. They were considered ineffective by the financial markets and illegitimate by the affected citizens (as shown by the strikes and riots in the capitals of the indebted EU member states). The Euro-crisis has called into question the intergovernmental EU and, through it, the EU as such.

The chapter is organised as follows: first, Section 2 describes the institutional structure of the intergovernmental EU, thus detecting its performance in the Euro-crisis. Section 3 then analyses the reasons and the implications of the complex and unusual measures introduced in the period 2010–2013 by the intergovernmental EU. Last, Section 4 discusses the strategies for going beyond intergovernmentalism in setting up an effective and legitimate system of economic governance.

2. The Intergovernmental EU in the Context of the Lisbon Treaty

The Treaty of Lisbon came into force on 1 December 2009 (Foster 2010). Although the Treaty of Lisbon scrapped any constitutional symbolism, it has defined (in terms of roles and functions) the EU’s institutional structure (as constitutions do). For a large majority of policies where integration proceeds through formal acts (integration through law), the Lisbon Treaty formalised an institutional structure organised around two distinct legislative chambers and two distinct executive institutions. Celebrating the co-decision procedure as ‘the ordinary legislative procedure’ (TFEU, Article 289), the Treaty has institutionalised a two-chamber legislative branch, consisting of a lower chamber representing the European electorate (the EP) and an upper chamber representing the governments of the member states (the Council). At the same time, by recognising the European Council (which consists of the heads of state or government of the EU member states, chaired by a president elected ‘by a qualified majority’ of them ‘for a term of two and half years, renewable once’, TEU Article 15(5), and which has become for the first time a formal institution of the EU) as the body responsible for

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5 The Lisbon Treaty is constituted of the amendments to two consolidated treaties, the Treaty on the European Union (TUE) of 1992 and the Treaty on the European Community, renamed as TFUE, of 1957, plus the Declaration concerning the Charter of Fundamental Rights considered de facto as a third treaty.
setting the general political guidelines and priorities of the EU, the Treaty has finally transformed it into a political executive of the Union, in charge of defining the strategies of the Union, while confirming the Commission in its role of technical executive of the latter. The Lisbon Treaty has therefore built a four-sided institutional framework for governing the EU policies on the single market, operating under the supervisory role of ECJ together with member states’ constitutional courts. This is the supranational EU, whose process of institutionalisation started with the 1957 Rome Treaty and was largely influenced by the so-called community method (Dehousse 2011: 4).

However, integration through law does not represent the only logic celebrated by the Lisbon Treaty. With the extension of the integration process to policy realms traditionally considered sensitive to the national sovereignty of the member states, such as Common Foreign and Security Policies (CFSP) and the Economic and Monetary Union (EMU),6 the EU has looked to organise the decision-making process by new modes of governance, based on open methods of coordination, benchmarking, mainstreaming, peer review and, more generally, intergovernmental coordination (Héritier and Rhodes 2010; Caporaso and Wittenbrinck 2006; Idema and Keleman 2006). Indeed, integration in this context is based on as voluntary coordination between member states’ governments, with a minor if not insignificant role played by the supranational institutions7.

The Lisbon Treaty’s intergovernmental decision-making regime is based on a different institutional structure than the supranational one (Allerkamp 2009). in that the main decision-making body is represented by the European Council, which sets the overall direction of policy with the Council, transforming those policy’s directions in policy decisions. The Commission is assigned a limited role in the elaboration and decision-making

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6 The EMU is constituted only by those member states whose currency is the Euro.

7 Indeed, it was the 1992 Maastricht Treaty that institutionalised a compromise between those asserting the need to promote integration in policy areas historically at the centre of national sovereignty, such as monetary and economic policy or foreign and security policy, and those unwilling to downsize the powers of national governments in those policy’s realms. The compromise also consisted on one hand, in integrating those policies at the Union level and on the other, in interpreting this integration as voluntary coordination between member states’ governments, with a minor if not insignificant role played by the supranational institutions. Indeed, to distinguish between different models of integration, the Maastricht Treaty set up three distinct institutional pillars or decision-making regimes.
of those policies, although its role is magnified regarding the latter’s implementation. Because integration proceeds through voluntary coordination, the intergovernmental EU has no significant place for the EP and the ECJ. Rather, an important role, in all three phases (elaboration, decision-making and implementation) of the policy’s process, is played by key national policy-makers, with the support of the Council Secretariat which coordinates not only the Council’s activities but also those of the European Council. What we have here is a simplified decision-making regime, based mainly on the European Council and the Council, within which national governments play an exclusive role.

Regarding EMU, the intergovernmental logic is indisputable (Heipertz and Verdun 2010). Although monetary policy was centralised in the ECB, economic and financial policies were left in the hands of national governments. TFEU, article 119, states that ‘the adoption of an economic policy … is based on the close coordination of Member States’ economic policies’, with the Commission allowed to play a technical, but not a political role, in monitoring the economic performance of member states. Consider the crucial excessive deficit procedures of the Eurozone member states (annexed as Protocol number 12 to the Lisbon Treaty, called the Stability and Growth Pact (SGP), as regulated by TFEU, Article 126): here the Council (in its configuration of economic and financial ministers, generally called ECOFIN Council) monopolises the policy’s decision, although the latter is generally based on reports or recommendations of the Commission. According to the special legislative procedure, the Council, acting either unanimously or as a qualified majority, depending on the issue concerned, can adopt legislation based on a proposal by the Commission after consulting the EP. However, while being required to consult the EP on some legislative proposals concerning economic and financial policy, the Council is not bound by the latter’s position. The ECOFIN Council is supported in its activities by an Economic and Financial Committee, whose task (TFEU, Article 134) is to supervise the economic and financial situations of the member states. EMU functions according to a decision-making pattern that Puettter (2012) has defined as ‘deliberative intergovernmentalism’.
In fact, although it is recognised (TUE, Articles 126(6) and 126(7)) that the Commission may initiate a procedure against a member state running an excessive budget deficit, the Commission’s recommendation has however the status of a proposal, because only the ECOFIN Council can take the appropriate measures (that may go from requests of information addressed to the member state that fails to comply with the fines imposed on it). It is thus up to the ECOFIN Council to decide whether or not to proceed along the lines of the Commission’s proposal (as it did not do in 2003, when the Commission proposed opening an infringement procedure against France and Germany, who were not respecting the parameters of the SGP). This is even truer for Eurozone member states, whose main deliberations take place either in the Euro Summit or in the Euro-group (consisting respectively of the heads of state and government and the ministers of economics and finance of the EU member states adopting the common currency, as regulated by Protocol n. 14 annexed to the Lisbon Treaty), with the technical support of the Commission. The Euro-group has the status of an ‘informal institution’, embodying a specific approach to policy-making defined as ‘informal governance’ (Puetter 2006). Protocol n. 14 doesn’t even mention the EP, at least in terms of the institution that should be informed about the decisions made.

Overall, this section has showed that the Lisbon Treaty has formalised two different decision-making regimes or constitutional frameworks. The supranational one that deals with the policies of the single market and intergovernmentalist one that deals with the policies of financial stability (inter alia). The Euro-zone crisis has thus been a test for the intergovernmental EU. The following section will focus on the crisis and the intergovernmental response to it.

3. The Euro-crisis and the Intergovernmental Answer

When the crisis started to hit Greece, there was in place a decision-making regime for structuring the institutional and policy’s answer to financial turmoil. As established by the intergovernmental Lisbon Treaty, the European Council and the ECOFIN Council immediately took centre-stage of the policy-making process, while the Commission was marginalised and the EP was left dormant. Continuous meetings of the European Council and
ECOFIN Council were organised between 2010 and 2013, although none of them was able to stop or contain the crisis. Decisions of great magnitude were taken during those meetings. Some of them, such as the six-pack and the two-pack, were taken through the supranational constitution, given they consisted of regulations and directives approved predominantly through the co-decision or ordinary procedure. However, with the deepening of the Euro-crisis, the EU has shifted decisively in an intergovernmental direction (Fabbrini 2013).

A multiplicity of treaties was set up, as the EFSF thus substituted by the ESM for crisis management and the Fiscal Compact for crisis prevention. Nevertheless, these treaties were not sufficient to appease the financial markets that indeed began demanding higher interest rates for buying public bonds from peripheral Eurozone member states. Market pressures became so powerful that many of these countries with high ratios of public debt to Gross Domestic Product (GDP) had to register the collapse of their incumbent governments. Even the most audacious decisions arrived too late to answer for the market’s pressures and they were perceived as illegitimate by the affected interests. Indeed, it is generally agreed that the reduction of the spread between the Italian, Portuguese and Spanish public bonds and German bonds, finally achieved in the course of 2012, has to be considered as the outcome of the firm position of the ECB ‘to do whatever it takes to save the Euro’,\(^8\) rather than of the decisions taken by the intergovernmental institutions. The latter have created not only a very convoluted system of control of national financial, fiscal and budgetary policies, but have also introduced an extremely intrusive set of rules unevenly constraining Eurozone member states (as would be unacceptable in any federal system). This outcome cannot be explained by the magnitude of the financial crisis: indeed, neither the United States nor other countries, severely hit by the latter, have witnessed a similar institutional and policy transformation. Such institutional intricacy has to be considered the logical outcome of a decision-making regime that is based primarily on national governments’ coordination. Coordination has been shown to be insufficient for solving basic dilemmas of collective action.

\(^8\) As the president of the ECB, Mario Draghi, said at an investment conference held in London on 25 July 2012.
Consider the effectiveness aspect of the intergovernmental decision-making regime. A decision-making regime based on the voluntary coordination of member states’ governments is based on a unanimity’s logic. When unanimous consent is required for taking a decision, then it seems inevitable that the decision-making process will get stuck in interminable negotiations (if not in the veto of an actor aimed to prevent an undesired decision). This might explain why, although the financial crisis was initially circumscribed only to Greece, it gradually began expanding to other Eurozone member states because of the decision-making stalemate produced by divergent strategies for dealing with it. That stalemate was the expression of divergences motivated by the different domestic electoral interests of the various incumbent governments. One has only to think that, for neutralising the British veto on fiscal coordination, it was necessary to move outside of the Lisbon Treaty, setting up a new treaty (the Fiscal Compact Treaty).

At the same time, an intergovernmental decision-making regime cannot guarantee the proper application of a decision taken on a voluntary basis. The enforcement dilemma emerged dramatically with regard to the approval of the new treaties (the ESM and the Fiscal Compact) by their contracting member states. One has only to consider that, in order to avoid jeopardising the entire project by the possible rejection of one or another intergovernmental treaty by a few of their contracting member states, the Fiscal Compact Treaty (Title VI, article 14.2) had to state that it ‘shall enter to force on 1 January 2013, provided that twelve contracting parties whose currency is the Euro have deposited their instrument of ratification’. Twelve, not all the then seventeen member states of the Eurozone. It is the first time (in the European integration experience) that unanimity has been eliminated as a barrier for activating an intergovernmental treaty (that would require, by its own logic, the unanimous consent of all the contracting parties). Anticipating plausible rejection of the Fiscal Compact Treaty, the ESM Treaty had to state (Point 5) that ‘the granting of financial assistance … will be conditional, as of 1 March 2013, on the ratification of Fiscal Compact Treaty by the ESM Member concerned’. This threat was efficacious in cooling down the euro-sceptical mood of Irish voters (in the referendum on the Fiscal Compact held on 31 May 2012) or the anti-
European mood of Greek voters. However, in moving in this direction, the intergovernmental logic had to contradict itself.

Also, an intergovernmental decision-making regime cannot guarantee the respect of the decisions or rules it generates, if that compliance no longer fits the interests of one or other of the voluntary contracting parties. This dilemma emerged dramatically in the case of the disrespect of the rules of the SGP. It became apparent in 2009 that Greece had cheated the other member states’ governments (manipulating its statistical data regarding public deficit and debt) to remain in the Eurozone. However, the same dilemma had emerged in 2003, when France and Germany were saved from sanctions by a decision of the ECOFIN (and in contrast to a Commission’s recommendation) notwithstanding their disrespect for the SGP’s parameters.

In sum, since the beginning of the crisis, the intergovernmental decision-making regime, originally justified by the need to guarantee the political discretionary power of national governments, has ended up by introducing *automatic* legal measures of intervention in member states’ economic governance systems that dramatically curtails their *political* discretion. Those automatic legal measures, imposed by the Commission, have resulted extremely intrusive of the domestic policy-making of indebted member states (but not of course of the creditor member states). The Fiscal Compact Treaty tries to deal with the non-compliance possibility, providing for a binding intervention of the ECJ upon those contracting parties that do not respect the agreed rules. This also applies when the Commission issues a report on a contracting party failing to comply with the rules established by the Treaty. In the latter case, if the Commission, after having given the contracting party concerned the opportunity to submit its observations, still confirms the non-compliance by the contracting party in question, the matter will be brought to the ECJ. Article 17 of the Fiscal Compact Treaty has come to stress that, in order to neutralise a recommendation of the Commission to intervene against a member state breaching a deficit criteria, ‘a qualified majority of the member states (should be) opposed to the decision proposed or recommended’. Thus, for preventing non-compliant behaviour by a contracting party, the
discretion of the ECOFIN Council has been severely restrained, if compared with the rules concerning the SGP institutionalised in the intergovernmental side of the Lisbon Treaty.

Moreover, the intergovernmental institutions (the European Council and the Council) had to recognise the need to rely on third actors (the ECJ or the Commission or the ECB) to keep the contracting parties aligned with the agreed aims of the Treaty, with the implication that a new organisation (set up by the Fiscal Compact Treaty or ESM Treaty) claims to use an institution (such as the ECJ, the Commission or the ECB) of another organisation (the EU of the Lisbon Treaty) to bind its own contracting parties. Certainly, the intervention of the ECJ is justified by TFEU, Article 273, which states: ‘the Court of Justice shall have jurisdiction in any dispute between member states which relates to the subject matter of the Treaties if the dispute is submitted to it under a special agreement between the parties’. Nevertheless, the ECJ, the Commission and the ECB are institutions operating within a legal structure that is also defined by the UK and the Czech Republic, who did not agree upon the Fiscal Compact Treaty that utilises them. Consider now the legitimacy side of the decisions taken by the intergovernmental EU. Throughout the Euro-crisis, the decisions reached by national executives in the European Council or the ECOFIN Council were never discussed, let alone approved, by the EP, the institution representing the European citizens. The lack of legitimacy of those decisions became evident as the crisis deepened and the citizens of the indebted member states had to pay high costs for making the necessary structural adjustment of their country possible. Not only did they have to abide by decisions imposed by impersonal financial markets, but above all by decisions which were imposed by the Council and the European Council where the national executives of the larger member states (they never voted) played a predominant role. In fact, as the financial crisis deepened in the period 2009–2011, the bi-lateral leadership of Germany and France came to be transformed into a compelling directoire of EU financial policy. It was common to read in the press of a ‘Merkozy’ government within the European Council. This directoire has thus become only German after 2012. The intergovernmental EU has not only set up a highly centralised crisis prevention regime, but it has come to operate under the control of the larger and creditor
member states, not the supranational institutions, with the implication that intergovernmental centralisation has been uneven: some member states have retained their political discretion whereas others have not.

In sum, the intergovernmental EU has not satisfied the needs of an effective and legitimate decision-making process. In the throes of the Euro-crisis, it has ended up by creating, paradoxically, an extremely centralised system that overrides national prerogatives, based on the policy’s domination by one group of member states over other member states, unable to control the threats coming from the financial markets, but also devoid of the necessary legitimacy necessary to be accepted by the citizens of the indebted member states.

4. Beyond Intergovernmentalism: The Puzzle of Economic Governance

The Euro-crisis has dramatically challenged the coexistence of the supranational and intergovernmental unions formalised in the Lisbon Treaty. Moreover, the crisis has deepened the divide between the Eurozone and the non-Eurozone member states. It has not only halted the expectation of a gradual convergence of the intergovernmental union into a supranational one, but it has also shaken the idea of the unitary and ever expanding EU. How do we deal with these institutional strains?

Three strategies can be considered. The first strategy consists in rationalising the status quo, preserving the dual constitutional nature of the Lisbon Treaty, albeit fine-tuned on the basis of the measures introduced to manage the Euro-crisis and to prevent similar outcomes in the future. This strategy is made explicit by Article 16 of the Fiscal Compact Treaty assessing that ‘within five years at most following the entry into force of this Treaty … the necessary steps shall be taken … with the aim of incorporating the substance of this Treaty into the legal framework of the European Union’. This article was imposed on the national governments by the EP (Krellinger 2012). Once achieving the main objective (that of making the signatory states introduce – as the majority of them already did, through constitutional or equivalent means – the golden rule of balanced budgets), the Fiscal Compact should become part of the Lisbon Treaty, assuming the characteristics of an enhanced cooperation agreement, not unlike that obtained with the Schengen Agreement originally
signed in 1985 by five (out of nine) member states, thus incorporated into EU law through the 1997 Amsterdam Treaty. In this case, the integration process will continue to be regulated by a single legal framework, with functional internal differentiations concerning specific policies. Financial policy will continue to be controlled by the ECOFIN Council and the European Council, with the Commission playing mainly an implementing role and the EP constrained to play a secondary legislative role. This strategy has the merit of keeping the EU together, but it also has the demerit of leaving unaltered the intrusive and yet ineffective intergovernmental features of the economic governance system, which emerged from the Euro-crisis. Moreover, it leaves unresolved the question of legitimacy, because national governments have not been elected for dealing with European problems, but with domestic ones. The recourse to the enhanced cooperation clause cannot help if the development of a set of systemic (economic, fiscal, budgetary) policies regarding a monetary union of 17 (18, starting in January 2014) member states is at stake. Enhanced cooperation can work regarding a specific and peripheral policy, but it seems ill-fitting for organizing a set of different policies that are central to the integration process (as those constituting the Economic and Monetary Union). An intergovernmental Fiscal Compact, combined with the other measures approved, would end in strengthening the Lisbon Treaty’s intergovernmental constitution. This strategy would move the centre of gravity of the EU to the intergovernmental side, consequently constraining the same functioning of the supranational side. One might argue (Crum 2012) that this transformation would envisage the institutionalisation of an executive federalism model. In any case, the intergovernmental EU that emerged during the Euro-crisis has gone far beyond a ‘confederal constitutional settlement’ (Moravcsik 2007), assuming that there ever was one.

Two alternative strategies have been (or might be) considered for promoting a more effective and legitimate system of economic governance in the EU. Both presuppose the existence of an independent budget of the Union, based no longer on the direct contribution of member states but on Union taxes derived from the activities made possible by the existence of the Union (as argued persuasively by Maduro 2012). A limited (no more than 5 per cent of
the total GDP of the Union) but independent fiscal capacity of the Union would allow the Brussels institutions to pursue anti-cyclical policies compatible with the pro-cyclical ones of balanced budget at the member states level. This distinction of roles should be strengthened by the constitutional recognition of the no bail-out clause, on the basis of which member states ‘are free to fail’ but the Union ‘is also free’ to help member states in financial difficulty through autonomous strategic programmes. At the same time, the ESM might be transformed into a European monetary fund (Pisani-Ferry 2013), governed in a federal manner as the ECB (with no country allowed to have a veto power). In addition, the ECB should become a lender of last resort, as it has been already de facto.

However, as the Four Presidents Report ‘Towards a Genuine Economic and Monetary Union’ of 5 December 2012 stressed, ‘the creation of a new fiscal capacity for the EMU should also lead to adequate arrangements ensuring its full democratic legitimacy’. Here the two strategies diverge. According to what may be called the parliamentary federation strategy, democratic legitimacy can be guaranteed only by the fiduciary relationship between the EP and the Commission. Under a recommendation adopted by the European Commission on 12 March 2013, ‘political parties should nominate a candidate for European Commission President in the next European elections (2014)’. In its Resolution of 22 November 2012 on the elections to the EP in 2014, ‘the EP urges the European political parties to nominate candidates for President of the Commission … expecting those candidates to play a leading role in the parliamentary electoral campaign’. The transfer of the centre of gravity of the EU not only in the supranational side but above all in the relationship between the EP and the Commission implies a downsizing of the role of the European Council, to become again one of the specialised formations of the legislative Council, while executive power should be exclusively allocated to the Commission, whose formation should mainly derive from the results of the elections for the EP. In this strategy, the economic governance of the EU is based on the Commission, with the latter’s president and the commissioner for financial affairs playing a governmental role, because it is legitimated by the outcome of the elections for the EP. Although very popular among European political elites, this strategy
does not consider the powerful constraints within which a union of asymmetrical states has to operate. Any centralisation of power, in the EP or otherwise, has the effect of strengthening the power of larger member states to the detriment of smaller member states. Both strategies of executive federalism and parliamentary federalism are uncongenial with the asymmetrical nature of the EU.

A third strategy might thus be considered for granting legitimacy to the European system of economic governance (which I called compound democracy, Fabbrini 2010). This strategy aims to recompose the intergovernmental and supranational unions within a new constitutional project based on the institutional logic of separation of powers. This project has been finalised to prevent any decision-making centralisation, either in the EP-Council or in the European Council-Council relations. This strategy consists in the formation of a strong executive system balanced by an equivalent strong legislative system. The institutionalisation of an original system of separation of powers at the Brussels level might take different forms. One form might be the following (Fabbrini 2012): it would be necessary to strengthen the role of the president of the European Council, extending his/her legitimation to national electors or parliaments, although maintaining the power of the European Council in selecting the candidates for the office and the collegial nature of the institution. That implies also the strengthening of the coordination between the presidents of the European Council and the Commission, and identifying a Treasury commissioner or high representative, nominated by the European Council with the consent of the legislature, with the tools for managing economic and financial policies. In this strategy, it is the office of the president of the European Council that should become the focus of the process of politicisation, shielding the Commission from it. The Commission has to preserve its civil service and technical nature, maintaining its special relation with the EP. The outcome would consist of a plural executive, yet politically centred around the president of the European Council. At the same time, it would be necessary to strengthen the congressional (that is, checking and balancing) role of the EP, recognising to it the power of legislative initiative. A separate political decision-making system can resort to political decisions, and not only on the automaticity of legal
rules, yet can avoid the trap of centralisation. Political or policy decisions should emerge from the checks and balances between separate (legislative and executive) institutions sharing decision-making power.

5. Conclusion

The three reform strategies would have different implications for the constitutional bases of the EU. The first strategy requires minor constitutional changes, whereas the second and the third imply important constitutional changes – changes which might be recognised as having been already imposed by the Euro-crisis as the formation of new institutions for the Eurozone through the Fiscal Compact (Piris 2012). The Euro-crisis has not only brought to the formation of new institutions but it has also deepened dramatically the distinction of interests and perspectives between the Eurozone and the non-Eurozone member states. Either the parliamentary or the compound union’s perspective implies the recognition of the separation of interests between the Eurozone and the non-Eurozone member states (the UK in particular). At the same time, the latter member states cannot defend a status quo that has already been altered by the measures introduced and the treaties approved for managing the Euro-crisis and preventing a new one. The Eurozone has set up its own institutions (the Eurosummit of the heads of state and government and the Eurogroup of the finance ministers of the Eurozone member states) and is moving in creating a banking union under the supervision of the ECB. The Eurozone and the non-Eurozone areas need to have a reciprocal autonomy for dealing with the different financial challenges they are facing. A contrast between the two areas would worsen the conditions of both. It is thus necessary to find appropriate ways for differentiating the two areas, without breaking their connection in the single market. It remains an open question whether this differentiation might take place in the context of a revised Lisbon Treaty or through the definition of diverse institutional settings.

BIBLIOGRAPHY


