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## The New EU Governance: New Intergovernmentalism, New Supranationalism, and New Parliamentarism

by Vivien A. Schmidt



### ABSTRACT

Contemporary analysts differ over which EU actors are the main drivers of European integration and how they pursue it. "New intergovernmentalists" focused on political leaders' deliberations in the Council clash with "new supranationalists" centred on technical actors' policy design and enforcement in the Commission and other EU bodies, while both ignore "new parliamentarists" concerned with the European Parliament. This essay argues that only by considering the actions and interactions of all three main actors together can we fully understand the "new" EU governance and its problems. It uses in illustration the EU's crises of money, borders and security. The essay also suggests that it is best to think about the future of EU governance not in terms of any hard core but rather as a "soft core" of member-states clustered in overlapping policy communities. It additionally proposes ways of reinforcing EU-level capacity for policy coordination with national-level decentralisation to address problems of democracy and legitimacy.

*European Union | EU institutions | European Commission | European Council | European Parliament | Eurozone crisis | Economic governance | Migration | CSDP*



## The New EU Governance: New Intergovernmentalism, New Supranationalism, and New Parliamentarism

by Vivien A. Schmidt\*

### Introduction

EU governance has changed significantly since the 1990s, and along with it the debates among experts about “who are the drivers of European integration?” or, more simply, “who is in charge?” The traditional debates pitted the “intergovernmentalists” – who insisted that the member-states pursuing national and/or domestic interests were in charge – against the “supranationalists” – who maintained instead that EU supranational actors drove integration via institutional dynamics of spillover and entrepreneurialism. While this divide continues today, the main protagonists in the recent debates are the “new” intergovernmentalists – who insist that the more actively engaged, consensus-seeking member-state governments in the (European) Council have retaken control – versus the “new” supranationalists – who continue to see EU-level institutional actors such as the Commission and the European Central Bank (ECB) as driving integration through their greater role in policy design and enforcement. The one view shared by both sides is that of the declining significance of the European Parliament and the co-decision mode of policymaking known as the “Community method.” For another set of analysts, whom we shall call the “new parliamentarists,” this is a mistake.

The benefit of these debates is that the different sides lend major insights into the changing powers and responsibilities of “their” EU actors vis-à-vis the other EU actors. The drawback is that they are naturally more focused on demonstrating the significance of their EU actor than on shedding light on the overall picture. What they miss by only assessing the institutional positions, ideas and actions of any given EU actor, however, is how the interactions among all such EU actors, through their discussions, deliberations and contestations, together serve to drive European integration.

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The main focus of this paper is on the new ways in which experts have explained contemporary EU governance – including new intergovernmentalism, new supranationalism and new parliamentarism – in order to demonstrate that the actions and interactions of these EU actors together make up the “new” EU governance. The paper will further argue, however, that although the analyses of the different elements that make up the new “normal” represent a major innovation, there is one central flaw in all such approaches to EU governance: the almost exclusive focus on the EU level leaves out the effects on the national level.

While EU governance may have developed a new normal in which all institutional players have gained differentially enhanced powers and responsibilities, national government has gone to a new “abnormal.” The very existence of EU governance, whereby decisions formerly taken at the national level have moved up to the EU level, can put pressure on national democracy and legitimacy – particularly when citizens feel unable to influence EU decisions. Once one takes this into account, the direction for further reform may look very different from one in which we consider the EU level alone. Rather than only proposing deeper integration to make the new EU governance work better, we would do well to think simultaneously of new ways to decentralise and/or deconcentrate power and responsibility to the national level. The final section of this paper briefly sketches out some such ideas to build toward a new normal for national government while reinforcing the new normal for the future of EU governance.

## 1. “New” intergovernmentalism or “new” supranationalism

The buzz lately has been all about the EU’s “new intergovernmentalism.”<sup>1</sup> In this view, the EU’s political leaders in the European Council have become much more legislatively active than they have been in the past, taking on an unprecedented leadership role that they exercise through consensus-seeking deliberation and the creation of *de novo* regulatory bodies.<sup>2</sup> This involves much more shared authority and joint control at the EU level than was considered possible in the “old” intergovernmentalism, whether in the original “realist” view – in which member states’ bargaining focused on protecting national sovereignty while building Europe – or the revisionist “liberal” view – in which member-states’ bargaining served as a conduit for domestic socio-economic interests.

For the new intergovernmentalists, the mistake of the old intergovernmentalists is to have assumed that the process is all about the pursuit of power and national interest through interest-based bargaining in the Council. Instead, new

<sup>1</sup> Christopher J. Bickerton, Dermot Hodson and Uwe Puetter (eds.), *The New Intergovernmentalism. States and Supranational Actors in the Post-Maastricht Era*, Oxford, Oxford University Press, 2015.

<sup>2</sup> Uwe Puetter, *The European Council and the Council. New Intergovernmentalism and Institutional Change*, Oxford, Oxford University Press, 2014; Sergio Fabbrini, *Which European Union? Europe after the Euro Crisis*, Cambridge, Cambridge University Press, 2015.

intergovernmentalists maintain that the post Maastricht Treaty decision-making process in the Council of the early 1990s needs to be understood in terms of member-states seeking to arrive at consensual agreements through deliberation.<sup>3</sup> A prime example would be the Eurozone crisis consensus forged by Chancellor Merkel, in which all member-states bought into her story of excessive public debt (if only reluctantly) and her insistence that therefore the rules of the Stability and Growth Pact (SGP) needed to be reinforced in exchange for any loan bailouts or bailout mechanisms.

Proponents of the new intergovernmentalism also argue that member-states' new activism has sidelined the old supranationalism, in which bureaucratic entrepreneurialism and institutional creep had increasingly empowered the traditional supranational actors in the European Commission and the European Court of Justice (ECJ). They contend that the member-state governments in the Council, rather than legislating new supranational powers for the Commission, instead deliberately created *de novo* EU bodies and instruments outside the main EU institutions in efforts to maintain control. Such efforts involved not only keeping the Commission out of those bodies but also putting the member-states *qua* member-states *in*, for instance by ensuring their representation on the governing boards. Examples of such *de novo* bodies include the world's most independent monetary authority, the ECB; new financial entities such as the temporary European Financial Stability Facility (EFSF) and the permanent European Stability Mechanism (ESM); and new administrative bodies such as the European External Action Service (EEAS), the head of which sits in both the Council and the Commission; as well as a new President for the European Council. The new intergovernmentalists also find a blurring of the lines between "high" and "low" politics, with the European Council often taking up day-to-day technical issues or conversely delegating far-reaching decisions to the Council of Ministers or senior expert committees.<sup>4</sup> An example would be the Eurozone finance ministers negotiating with the Greek Finance Minister on resolving the third Greek crisis.

Other analysts take a different view of the developments in EU governance. They point to the emergence of a new supranationalism in which the old supranationalism of leadership by the EU supranational technical actors such as the Commission and the ECJ may indeed have diminished, much as the new intergovernmentalists argue. But in exchange, these new supranationalists contend that the Council enabled *all* supranational technical actors – whether the Commission, the European Central Bank, or other *de novo* bodies – to gain even greater powers of enforcement than in the past, and this through the very rules passed by the more active (new) intergovernmental political leaders. Moreover, in an ironic twist, according to the new supranationalists, these selfsame technical

<sup>3</sup> Uwe Puetter, *The European Council and the Council*, cit.

<sup>4</sup> Christopher J. Bickerton, Dermot Hodson, and Uwe Puetter, "Conclusions: The Post-Maastricht Period and Beyond", in Christopher J. Bickerton, Dermot Hodson and Uwe Puetter (eds.), *The New Intergovernmentalism*, cit., p. 304-328.

actors have themselves developed and proposed to the intergovernmental political leaders the policy initiatives they themselves then enforce. In the Eurozone crisis, for example, the new supranationalists have argued that the European Commission is “the unexpected winner of the crisis.” Having long prepared the ground for the European Semester before proposing it to the Council in 2010, the Commission gained unprecedented oversight authority and enforcement powers with regard to member-state governments’ budgets.<sup>5</sup> Similarly, the Banking Union, prepared in consultation with experts and negotiated by the ECB, has given it unprecedented supervisory authority and resolution powers over member-state banks.<sup>6</sup>

Along with this greater power and authority, according to the new supranationalists, come both an unprecedented autonomy of action (especially the ECB) and discretion in applying the rules (in particular the Commission). The ECB’s autonomy is apparent in the Eurozone crisis, as it progressively reinterpreted its mandate, going from a narrow view focused on fighting inflation and insisting that it could not be a lender of last resort (LOLR) to doing almost everything that a LOLR does. Similarly, in the European Semester, the Commission has exercised increasing flexibility over time in its interpretation of the rules, whether through derogations of the rules for individual member-states (e.g., France and Italy) or recalibrating the calculations (e.g., Spain on its structural deficit).<sup>7</sup> In other words, supranational actors have used their autonomy or discretion in ways that in many cases go against the policy preferences of national governments in the Council, and most notably those of Germany.<sup>8</sup>

Although these two “new” accounts of EU governance take opposing views of who is in control, they actually may be reconcilable if one accepts that both intergovernmentalism and supranationalism have gained in importance as they have changed in substance. While new intergovernmentalism shows conclusively that the intergovernmental political leaders in the European Council have become much more active in initiating and deciding legislation, new supranationalism demonstrates equally persuasively that supranational technical actors have gained new competences that enable them to achieve their goals in new ways – whether they sit in the Commission or in *de novo* bodies.<sup>9</sup>

<sup>5</sup> Michael W. Bauer and Stefan Becker, “The Unexpected Winner of the Crisis: The European Commission’s Strengthened Role in Economic Governance”, in *Journal of European Integration*, Vol. 36, No. 3 (2014), p. 213-229.

<sup>6</sup> Renaud Dehousse, *The New Supranationalism*, Paper prepared for the ECPR General Conference, Montreal, 26-29 August 2015, <https://ecpr.eu/Filestore/PaperProposal/281383a5-0285-4417-a613-eed8cd5d36bd.pdf>.

<sup>7</sup> Vivien A. Schmidt, “Reinterpreting the Rules ‘by Stealth’ in Times of Crisis”, in *West European Politics* (forthcoming).

<sup>8</sup> Renaud Dehousse, *The New Supranationalism*, cit., p. 4.

<sup>9</sup> John Peterson, “The Commission and the New Intergovernmentalism: Calm within the Storm?”, in Christopher J. Bickerton, Dermot Hodson and Uwe Puetter (eds.), *The New Intergovernmentalism*, cit., p. 186-187.

Part of the problem with taking one side or the other in this debate about “who leads European integration” or “who is in charge” is not only that good arguments can be made for both sides. It is also that it is very hard to choose a side because the actors themselves are in constant interaction, whether it is supranational actors persuading intergovernmental actors to take action or intergovernmental actors threatening supranational ones in order to constrain their action. It is not just that the Commission or the ECB may supply the ideas that the Council then decides upon, which may result in greater enhancement of supranational actors’ ability to act autonomously or with discretionary authority – as with the Banking Union, when ECB President Draghi engaged in a “charm offensive” with Chancellor Merkel over the course of a year, seeking to persuade her to agree to the Banking Union even as he sought to isolate the Bundesbank.<sup>10</sup> It is also that the member-states – inside or outside the Council – may raise political objections or threaten legal action in order to constrain such technical actors’ autonomous or discretionary action. A case in point is how Northern Europeans in the Council have time and again brought the Commission to task for its increasingly flexible application of the stability rules to Southern Europe, or the way the Bundesbank has taken the ECB to court on its reinterpretation of its mandate, as in the case of Open Monetary Transactions (OMT).

Separating out new supranationalism from new intergovernmentalism is thus more complicated than one might think. Analytically, they can be dissected as distinct phenomena. Empirically, however, they are thoroughly intertwined and complementary. In certain areas, it may even become very difficult to differentiate which is which. For example, in the arena of Common Security and Defense Policy (CSDP), decisions taken at the EU level through consensus-oriented deliberation are intergovernmental in the sense that they involve national representatives (the ambassadors of the COPS and COREPER), but they are supranational in that they engage the member-states in a kind of cooperation that merges national security identity and action into a supranational one, thereby making for supranational intergovernmentalism – or is it intergovernmental supranationalism?<sup>11</sup>

## 2. “New” parliamentarism: The European Parliament as a potential equal partner?

The one substantive view that the new intergovernmentalists and supranationalists hold in common is that they dismiss the role of the European Parliament and see the co-decision process of the Community Method as the great loser in the shift to the new EU governance. But rather than focusing on the question of whether co-decision is no longer the *sine qua non* of processes of deeper integration, we would do better to consider what may be afoot. In place of what we might call

<sup>10</sup> Peter Spiegel, “If the Euro Falls, Europe Falls”, in *Financial Times*, 15 May 2014.

<sup>11</sup> See Chapter 2 in Jolyon Howorth, *Security and Defence Policy in the European Union*, 2nd edition, Basingstoke and New York, Palgrave Macmillan, 2014.

the old parliamentarism, in which the EP depended for increasing influence on its role in the Community Method, there may very well be a new parliamentarism developing, even if it is not as yet a match in terms of increased powers for the new intergovernmentalism or the new supranationalism.

The EP has gained increasing influence in decision-making in a range of ways. Although the Community Method may have been supplanted to some extent by the increase in intergovernmental and supranational policymaking, the EP remains a player through its greater involvement in intergovernmental negotiations – generally at the invitation of intergovernmental and supranational actors (as intergovernmentalists have themselves been quick to point out).<sup>12</sup>

Moreover, where the Community Method continues, the EP's legislative powers of co-decision have enabled it to come in earlier and earlier in attempts to influence the Commission on policy, with the credible threat that if it is not informed of the process, it can veto the initiative or slow the process – as in the case of the dispute settlement process for TTIP. Additionally, in the context of the Community Method, the EP's continued importance can be seen not only in the highly technical areas that require specialised expertise, but also in public interest areas such as roaming charges for cell phones and tax equity in the "luxileaks" affair. Even in the case of Eurozone governance, a policy area in which the EP has been singularly devoid of competence, it nevertheless became involved via the Community Method when it was asked to legislate on the stability rules, including the "Six Pack" and the "Two Pack."

Even where the EP is completely left out of the decision-making process, however, it can still play a role, having increasingly become the "go-to" body for other EU actors concerned about their political legitimacy. These actors include the ECB, with the President required to go to the EP four times a year to explain ECB actions and listen to the responses; the Commission, which pledged to increase the EP's role in Eurozone governance in order to increase the legitimacy of its decisions in the European Semester;<sup>13</sup> the High Representative and Commission First Vice President, who are required to go to the EP to inform them of developments in foreign and security policy and listen to their responses; and even EU leaders in the Council – most notably on 7 October 2015, when Chancellor Merkel and President Hollande came together to speak to the European Parliament on the refugee crisis, the first time that the leaders of the two leading countries came to the EP since 1989.

<sup>12</sup> Christine Reh et al., "The Informal Politics of Legislation: Explaining Secluded Decision Making in the European Union", in *Comparative Political Studies*, Vol. 46, No. 9 (September 2013), p. 1112-1142; Christopher J. Bickerton, Dermot Hodson and Uwe Puetter, "The New Intergovernmentalism and the Study of European Integration", in Christopher J. Bickerton, Dermot Hodson and Uwe Puetter (eds.), *The New Intergovernmentalism*, cit., p. 1-48.

<sup>13</sup> See the speech delivered on 24 September 2015 by Commissioner Pierre Moscovici, "After the Greek Pyschodrama: What Improvements for the EMU?", in *Jacques Delors Institute Tribune*, 30 September 2015, <http://www.delorsinstitute.eu/011-21955>.

More generally, we also need to take note of the EP's growing exercise of voice, with increasingly noisy demands for accountability from both supranational and intergovernmental actors. The EP has enhanced its exercise of oversight over these actors not only through the increasing numbers of hearings and expert testimony, but also in its committee reports. In the Eurozone crisis, these have explicitly criticised Council and Commission actions, whether for the Troika's "lack of appropriate scrutiny and democratic accountability as a whole" or for the Eurogroup's "failing to give clear and consistent political pointers to the Commission and for failing to shoulder their share of responsibility in their capacity as final decision-taker."<sup>14</sup>

Finally, equally important has been the EP's self-empowerment through the "Spitzenkandidat" in the 2014 EP elections, as the EP effectively anointed the leader of the winning political party Commission President. This could be conceived as having increased the EP's own powers at the expense of European Council autonomy, but also in favour of Commission autonomy through its now double accountability to the EP and the Council. The fact that the Commission has been calling itself "political" – although not "politicised," in response to Council accusations of not applying the rules – suggests that the Commission is fully aware of the value of its connection to the EP, and may be seeking to rebuild its old supranational powers as it continues to develop its new supranationalism along with its political legitimacy.

But be careful what you wish for. The increasing politicisation of the EP has its downside, with the growing presence of the political extremes in the chamber. With approximately a fifth of the EP controlled by the extremes, the thinning centre has had to form the equivalent of a "grand coalition" to ensure the necessary super-majorities for the passage of important legislation. For the moment, extremist groups have little power in the EP, since they have no control over major committees and use the EP more for their own electoral purposes than to try to exert influence. But this could change, in particular if the EU is not able to solve its three major crises – of the euro, borders, and security – any time soon.

### 3. The problems of the new EU governance

But if we are indeed seeing the rise of a new intergovernmentalism, a new supranationalism, and a new parliamentarism, then it may very well be that the institutional balance, after an initial tilt toward the intergovernmental and then the supranational, may be rebalancing itself. The new EU governance may very well be one in which each institutional actor has gained in EU-level competences even as their interrelationships have been recalibrated in view of the changes in practices. The intergovernmental actors, including the European Council and the Council, are more active in exercising leadership; the supranational actors,

<sup>14</sup> "Parliament slams Troika, calls for a 'European Monetary Fund'", in *EurActiv*, 14 March 2014, <http://eurac.tv/jBh>.

including the ECB and the Commission, are more active in suggesting legislation for intergovernmental exercise of leadership and more powerful in enforcing it; and the parliamentary actors, mainly the EP, are more active in exercising oversight and political correctives to intergovernmental and supranational actors.

But while EU governance may have developed a new normal in which all institutional players have gained differentially enhanced powers and responsibilities, problems remain. In intergovernmental decision-making, the Council suffers from the unanimity rule for treaties, which makes it difficult to forge consensus and alter existing treaties. It also means that lowest-common-denominator agreements are most likely where the issues are most challenging.<sup>15</sup> In supranational decision-making, the Commission and the ECB are hemmed in by the sub-optimal treaties and rules agreed upon by the Council, with insufficient flexibility or discretion to take the steps needed to make the policies work as they should. (For example, it took the ECB six years to engage in the quantitative easing that the Fed and the Bank of England had pursued immediately; it took the Commission five years and a new leadership to insist on its discretionary flexibility.) And in parliamentary decision-making, the EP lacks the institutional power to balance out the other institutions as well as the representativeness needed to be seen as fully legitimate politically.

Even more problematic for the EU today is that even as all EU-level institutions have been strengthened through the new EU governance, national-level government has weakened, and along with it national democracy and legitimacy. As decision-making in policy area after policy area has moved up to the EU level, European integration has increasingly encroached on issues at the very heart of national sovereignty and identity, including money, borders and security. The problem, however, is not so much that EU policies have encroached on national ones, but that citizens have had little direct say over these matters, let alone been engaged in EU-wide political debates about the policies. The fragmented nature of European “democracy” has meant that while the policies are decided at the EU level, generally in an apolitical or technocratic manner, politics remains national. National democracies as a result have increasingly become the domain of “politics without policy,” whereas the EU level appears as “policy without politics” – however “political” (or politically charged) the policies may actually be.<sup>16</sup>

Despite the fact that EU-level debates are becoming more politicised, whether in the Council among member-state leaders or in the EP among the different political parties, they are still a far cry from the contentious left-right debates at the national level. And as national citizens have had less and less direct influence over the policies that affect them the most, they have expressed their political concerns with the situation at the only level at which they are able: the national. Citizens

<sup>15</sup> See Fritz W. Scharpf, *Governing in Europe. Effective and Democratic?*, Oxford, Oxford University Press, 1999.

<sup>16</sup> See Chapters 1 and 4 in Vivien A. Schmidt, *Democracy in Europe. The EU and National Politics*, Oxford, Oxford University Press, 2006.

have increasingly made their displeasure heard through protests and the ballot box, leading to the rise of the populist extremes, with Eurosceptic and anti-EU messages, and the increasing turnover of sitting governments. National governments ruled by mainstream parties, moreover, have found themselves caught more and more between wanting to be responsive to citizens' electoral expectations and needing to take responsibility for the EU's collectively agreed rules and decisions.<sup>17</sup> As a result, national governments confront dual challenges: from populism at the national level and from technocracy at the EU level.

Once one takes into account the impact of the EU on national democracy, the direction for further reform of EU governance may look very different from one in which we were to consider the EU level alone. Rather than only proposing deeper integration to make the new EU governance work better, we would do well simultaneously to think of new ways to decentralise and/or deconcentrate power and responsibility to the national level for the sake of national democracy and legitimacy.

#### 4. What future for the new EU governance?

Recently, some member-states have argued for a "core Europe" centred around the Eurozone (and lately also Schengen), in which a compact group of member-states would deepen their policy integration while being surrounded by a larger circle of member-states constituting a looser group united by the Single Market. Proponents have talked about establishing a Eurogroup Finance Minister, a Eurozone Parliament, and a Eurozone treasury. The problem with such a proposal is that it fails to deal with the reality of an already highly differentiated EU,<sup>18</sup> plus it fails to consider the potentially negative consequences on the future of European integration of a euro-centred EU.

Rather than thinking of the EU as made up of one "hard core" in a two-speed Europe, I argue here that it would be better to think of the EU as it already is. The EU is made up of a range of policy communities constituted by clusters of member-states that, through their overlapping memberships in policy communities, creates a *soft core* encompassing a large majority of member states.<sup>19</sup> That soft core is not only united by all member-states' participation in the single market. It is also held together by a common set of institutions encompassing the Council, the

<sup>17</sup> Peter Mair, *Ruling the Void. The Hollowing of Western Democracy*, London, Verso, 2013.

<sup>18</sup> See, e.g., Frank Schimmelfennig, Dirk Leuffen and Berthold Rittberger, "The European Union as a System of Differentiated Integration: Interdependence, Politicization and Differentiation", in *Journal of European Public Policy*, Vol. 22, No. 6 (2015), p. 764-782.

<sup>19</sup> Vivien A. Schmidt, "Changing the Policies, Politics, and Processes of the Eurozone in Crisis: Will This Time Be Different?", in David Natali and Bart Vanhercke (eds.), *Social Policy in the European Union: State of Play 2015*, Brussels, European Social Observatory (OSE) and European Trade Union Institute (ETUI), 2015, p. 33-64, <http://www.etui.org/Publications2/Books/Social-policy-in-the-European-Union-state-of-play-2015>.

Commission, and the EP as well as by the continuous interactions among member-state representatives in those institutions – including sitting at the same table in the Council, administering together in the Commission and other supranational institutions, and debating with one another in the Parliament.

With the exception of the all-encompassing single market, the EU is essentially made up of clusters of member-states in overlapping policy communities with variable boundaries in terms of membership. That variability affects the Eurozone, with nineteen member-states “in” and all but two (UK and Denmark) of the rest required by Treaty to join, and with variable membership in the various instruments of Eurozone governance (including the UK in the European Semester and the Six Pack); the Schengen area, with the UK and Ireland “out” but Switzerland, Norway and Iceland “in”; the Common Security and Defence Policy, with a Danish opt-out and all others opting in; and the Charter of Fundamental Rights, with UK and Polish opt-outs. Importantly, the number and variability of the EU’s policy communities are likely only to increase over time as a result of enhanced cooperation in a range of areas, with potential “regional clusters” of member-states in areas such as security, energy and immigration.<sup>20</sup>

Given the established reality of an EU made up of highly differentiated but overlapping memberships in many policy communities, projecting a future for EU integration based on hard-core membership in the Eurozone policy community alone is problematic in a number of ways. First, there is no guarantee that any such hard core could work effectively, given the divisions in economic policy preferences between Northern and Southern Europe. There is also little certainty that a smaller hard core would be able to come to agreement more readily than the larger EU membership, in particular if the unanimity rule were maintained. Second, why assume that a cluster of member-states that takes the lead in one policy area (the Eurozone) will have the ability, let alone the will or imagination, to lead in the others (e.g., security or immigration)? In fact, deeper integration in one area could instead produce an even higher degree of differentiation without integration in other policy areas. This is already the case for transport, communications and infrastructure. But it could even engender fragmentation and the risk of disintegration in areas such as energy, the environment, migration, mobility and asylum.<sup>21</sup>

Finally, creating any such “hard-core Europe” could also permanently alienate member-states that resist euro membership, such as the UK, Denmark and Sweden. For the UK, a hard-core Europe would be especially problematic, assuming that the British vote to remain in the EU. The British might very well ask, “why stay in the EU?” if the Eurozone were to become the central focus of EU integration as a whole, with a hard core of member-states led by Germany and France in which

<sup>20</sup> Natalie Tocci, “Imagining Post-Crisis Europe”, in Nathalie Tocci (ed.), *Imagining Europe: Towards a More United and Effective EU*, Roma, Nuova Cultura, 2014, p. 199-220 (IAI Research Papers 15), <http://www.iai.it/en/node/2154>.

<sup>21</sup> Ibid.

insiders with dedicated institutions then set the trajectory for the remaining outsiders. If the UK were to feel itself fully marginalised from a significant role in EU governance, anti-EU forces would be likely to push for yet another referendum on “Brexit” (British exit from the EU) – and win.

The EU could retain its appeal, however, if the Eurozone were to be seen as one of the EU’s many overlapping policy “communities,” all of which would be coordinated by supranational actors in the Commission and other bodies, and in any one of which a duo or trio of member-states could take leadership – say, the UK with France on security and defence. Seeing the future of EU integration as a differentiated process of member-state participation in different policy communities would also allow for each policy community to be deepened by constituting its own special system of governance – including having its own special ministers, funding, and joint EP-National parliament groupings. But in addition to such deepening, in order to ensure against integration *à la carte*, all member-states would need to be able to exercise their voices across policy communities, even if voting might be restricted to participating member-states.<sup>22</sup> This is also necessary to ensure that potential future members of any of the more deeply integrated policy communities are not just informed of possible developments, but also have their say, even if they will only be able to vote formally once they participate.

In two of the three crisis policy areas – migration and security – the EU has so far done very little of the institution-building and law-making required for deeper integration. CSDP is arguably the least developed, given that when member-states do choose to cooperate in large-scale military operations they have tended to prefer to do so under NATO or UN flags. With regard to migration, in contrast, there are proposals on the table, including a common border and coast guard and a common asylum system. But beyond these initiatives, this policy area is likely to be characterised by differentiated integration into distinct “immigration zones,” with one such zone likely to contain a small core of member-states who have agreed to go much farther on common immigration policies and shared institutions.

The Eurozone is different since it has already deepened its integration significantly, with dedicated oversight processes such as the European Semester, dedicated institutions such as the European Stability Mechanism (ESM) and Banking Union, and even more institutions envisioned, such as a European Treasury, a Finance Minister, and Fiscal Union. Such deepening – when viewed not as the centre of a hard-core Europe but as the first of the developing policy communities of a soft core Europe, could be seen as a template for the future of EU governance.

But there is one caveat. What the Eurozone needs, rather than centralised governance by restrictive rules and sanction-triggering numbers, is to coordinate macroeconomic governance while decentralising microeconomic governance

<sup>22</sup> Vivien A. Schmidt, “Re-envisioning the European Union: Identity, Democracy, Economy”, in *Journal of Common Market Studies*, Vol. 47, Annual Review (September 2009), p. 17-42.

to the benefit of the member-states. For example, why not make macroeconomic governance by the ECB more flexible, say, by using the Maastricht criteria as general guidelines for variable yearly targets, depending upon the Eurozone's employment as well as inflation prospects? Moreover, rather than demanding that all member-states meet the same yearly targets (e.g., of deficit and debt), why not set differential country-specific targets (depending upon where the member-states are in their economic cycle, and whether they are over-heating and therefore need to contract, or are contracting and need to expand)? And rather than continuing to have such targets decided in a top-down process, why not make the process more bottom-up, by coordinating oversight at the EU level while using the existing national institutional architecture of the European Semester in a more decentralised manner?<sup>23</sup> This would make Eurozone governance more democratically legitimate, especially if national parliaments were brought in both nationally and at the EU level, via consultation with the EP. Finally, in order to ensure greater EU democratic legitimacy, all decisions should be debated at the EU level with the Council and the EP.

More generally, moving from the reform of Eurozone governance to EU governance, in order to be sufficiently democratic and legitimate any future soft-core Europe would need to ensure that its many policy clusters are governed in a manner that allows for as much decentralisation and deconcentration of decision-making to the benefit of the member-states as possible. But even this would not be enough to guarantee the ultimate effectiveness of EU governance, or its legitimacy.

To make EU governance truly workable, the institutional decision-making rules also require revision. Among these, the unanimity rule for intergovernmental decision-making needs to be abandoned and replaced by "constitutional" treaties amendable by 2/3 or 4/5 majorities. Moreover, many of the current treaty-based laws should become ordinary legislation, amendable by simple majority through the Community Method.<sup>24</sup> Thus, for example, while the Lisbon Treaty should remain a constitutional treaty, the various treaties involving the Eurozone, such as the Stability and Growth Pact or the Fiscal Compact, should become ordinary legislation – much like the Six Pack and the Two Pack. This means that they would be open to amendment through political debates and compromise, and subject to the Community Method of co-decision.

In the case of new legislation, moreover, whether ordinary or constitutional, opt-outs for individual member states should be allowed for exceptional reasons, such as when a member-state's government, citizens, and/or parliament rejects the initiative (e.g., the UK and Denmark on the Single Currency). But any such opt-out could be subject to denial by qualified majorities in cases where the opt-out would

<sup>23</sup> For details, see Vivien A. Schmidt, "Changing the Policies, Politics, and Processes of the Eurozone in Crisis", cit.

<sup>24</sup> See Dieter Grimm, "The Democratic Costs of Constitutionalisation: The European Case", in *European Law Journal*, Vol. 21, No. 4 (July 2015), p. 460-473.

unfairly advantage the member-state and/or threaten the viability of the policy itself (e.g., in the case of the Irish low corporate tax).<sup>25</sup> Alternative accommodations would then need to be made for the member-state in question.

Finally, for any of this to work, the EU also requires greater legitimacy. This means not only that the EU needs more effective performance – by solving the major challenges centred around the Eurozone crisis, the refugee crisis, and the security crisis – and better procedural quality – by being more accountable, open, and inclusive. It also needs greater citizen participation and representation.<sup>26</sup> At the EU level, this means more open debates within and between the Council and the EP, to ensure greater democratic politicisation of the European public sphere. This has actually increasingly developed during the Eurozone crisis, as intergovernmental political leaders in the Council have defended or contested the stability policies (e.g., Schäuble for stability, Renzi for flexibility). For the EP, a greater presence depends upon whether it manages to increase its own political legitimacy in future elections, with greater EU citizen awareness of and participation in the elections.

But given the fact that politics will remain focused at the national level for many years to come, a range of added measures would be necessary to give citizens a sense that they have a say. National parliaments would need to be better integrated into the policymaking process, way beyond the yearly EP-national parliament meetings established in the Lisbon Treaty. Greater decentralisation of policymaking – in and beyond Eurozone governance – could additionally help ensure greater direct involvement for the social partners and citizen groups. More direct citizen access is also necessary, not just through the ineffective petition-based European Citizens' Initiative but also through better openings to public interest groups via pluralist processes. Only by bringing the people into governance processes at the EU and national levels, while countering technocratic beliefs in the benefits of top-down hierarchy, can EU governance become more effective and legitimate while enabling its member-state governments to respond more effectively to the sirens of populism.

That said, no amount of democratic access and accountability can make up for failed policies. But by enabling the EU to move forward through the variable deepening of its different policy communities, it has a better chance of solving the current crisis-related problems that have encouraged citizens to turn away from mainstream national parties in favour of populist extremes.

*Updated 27 April 2016*

<sup>25</sup> Fritz W. Scharpf, "After the Crash. A Perspective on Multilevel European Democracy", in *MPIfG Discussion Papers*, No. 14/21 (December 2014), [http://www.mpifg.de/people/fs/publ\\_en.asp#DiscussionPapers](http://www.mpifg.de/people/fs/publ_en.asp#DiscussionPapers).

<sup>26</sup> See Vivien A. Schmidt, "Democracy and Legitimacy in the European Union Revisited: Input, Output and 'Throughput'", in *Political Studies*, Vol. 61, No. 1 (March 2013), p. 2-22; and Vivien A. Schmidt, "Reinterpreting the Rules 'by Stealth' in Times of Crisis", cit.

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