

EXECUTIVE POWER IN THE EUROPEAN UNION: THE IMPLICATIONS OF THE EURO CRISIS

Sergio Fabbrini

Sergio Fabbrini is Director of the School of Government and Professor of Political Science and International Relations at the LUISS Guido Carli University of Rome, where he holds a Jean Monnet Chair. He was the Editor of the Italian Journal of Political Science from 2003 to 2009. He is Recurrent Visiting Professor of Comparative Politics at the Department of Political Science and Institute of Governmental Studies, University of California at Berkeley. Among his recent publications, *Compound Democracies: Why the United States and Europe Are Becoming Similar*, Oxford, Oxford University Press 2010 (second updated edition) and, *Which European Union? Europe After the Euro Crisis*, Cambridge, Cambridge University Press, 2015.

Address: sfabbrini@luiss.it

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Introduction

The euro crisis has brought to the full affirmation of the intergovernmental approach to economic governance. Indeed, in the negotiations that led to the 1992 Maastricht Treaty emerged a clear alternative perspective to the Community method (characterized by the Commission's monopoly of legislative initiative and legislative co-decisional power of the Council and the European parliament or EP on Commission's proposals) for dealing with the new issues of foreign, security and economic policies (*inter alia*). That perspective had an intergovernmental character and soon acquired the form of a specific constitutional model or decision-making regime. Since the Maastricht Treaty, the member state governments accepted to Europeanize those issues traditionally close to national sovereignty, but at the same time they decided that their Europeanization would have not implied the strengthening of the supranational institutions (the Commission, the European Court of Justice or ECJ and the EP). Those policies have thus come to be decided within the circuit of the Council of Ministers or Council and the informal European Council. The intergovernmental decisions have taken the form of political, rather than legal, acts. If the Community method has epitomized the principle of integration through law, the intergovernmental method has advanced the alternative project of an integration based on voluntary policy coordination between national governments within Brussels' intergovernmental institutions. The intergovernmental constitution was thus fully institutionalized by the 2009 Lisbon Treaty that has finally recognized the European Council as formal executive institution of the EU, chaired by a permanent president elected by the latter's members.

This intergovernmental perspective is not sceptical of the European integration process, as it is the view of the supporters (like the United Kingdom or UK) of the EU as a single market or better as an economic community. Post-Maastricht intergovernmentalism has recognized that integration should proceed without going however in the supranational direction. On the contrary, integration should consist in *pooling* national sovereignties within intergovernmental institutions, whereas the Community method has stressed the necessity of *sharing* national sovereignties within a larger

supranational regime. The decision-making power should not be in the hands of each member state, but in those of the institutions that coordinate the action of the member state governments (the European Council and the Council). At the same time, the decision-making power should be exercised through the consensus of all national governments constituting the European Council and the Council (Puetter 2014).

Since economic policy (and specifically the Economic and Monetary Union or EMU) has been assigned, by the Lisbon Treaty, to the control of the intergovernmental constitution, the euro crisis has been a formidable test of its capability (Dinan 2011). Institutionally, the test has worked as expected. The intergovernmental constitution has reduced the national prerogatives of euro-area member states in crucial realms such as economic, fiscal and budgetary policies without, at the same time, rebalancing this reduction with an increased role of supranational institutions. The reduction of the prerogatives of national governments has been offset by an increased transfer of prerogatives to the institutions coordinating them (such as the European Council and the Council of economic and financial ministers or ECOFIN Council and, with regard to the euro-area member states, the Euro Summit and the Euro Group). What was lost at the national level was certainly regained at the Union level, but by the latter's intergovernmental institutions and not the supranational ones. This intergovernmentalization of economic policy has guaranteed the executive dominance of EMU, or better the latter's control by the national executives coordinating within the European Council and the ECOFIN Council (Curtin 2014). However, this executive dominance, with the deepening of the financial crisis, has acquired the features of uneven relations between national governments within the intergovernmental institutions, thus disrespecting the search for consensus hailed as the inspiring logic of the intergovernmental union. Not only the intergovernmental institutions have not been checked by supranational institutions as the EP (Crum 2013), but also within those institutions the formation of hierarchical relations between national governments has not been prevented or limited by political or procedural factors. If the search of consensus should characterize the functioning of intergovernmental institutions, then the euro crisis

has sacrificed it. For dealing with the existential threat of the euro collapse (Menéndez 2013), fast leadership, not slow-forming consensus, was required. A leadership that only the stronger and creditor member states (and Germany in particular) could provide.

The paper will reconstruct the formation and affirmation of the intergovernmental union as it has come to be institutionalized in the EMU. The paper is organized as follows. First, it will clarify the difference between a IR and a CP approach to intergovernmentalism, thus identifying the institutional logic of the intergovernmental union as a political system. Second, it will discuss the significance of a process of integration managed by an intergovernmental decision-making regime, namely to make possible integration without supranationalization. Through the functioning of EMU the EU has witnessed the formation of an intergovernmental union as an institutional organization endowed with the powers and the resources for governing economic policy without relying on the Community method. Third, it will analyse the implications of the intergovernmental union in dealing with the euro crisis. Owing to the difficulties in resolving basic problems of collective action, the intergovernmental union has proven to be a recipe neither for efficacy nor for legitimacy in the decision-making process. What has emerged from the euro crisis is a sort of federation of domestic governments which is highly centralized and intrusive in member states' economic policies, something unprecedented in federal political systems. The strengthening of the decision-making role of the European Council and the ECOFIN Council (and the Euro Summit and the Euro Group) has meant transferring policy decisions to an organism within which the larger and richer member states have come to play a domineering role. The conclusion will bring home the main argument of the paper. Celebrated as the perspective able to combine, through the pooling of national sovereignties in intergovernmental institutions, domestic policy prerogatives and political legitimacy, with the deepening of the integration process, intergovernmentalism has favoured the formation of an EMU based on the power of a few larger member states to the detriment of the others.

From a process to an organization

The perspective of the intergovernmental union is analytically distinct from the political theory of the process of integration that has assumed national governments as the strategic actors in the latter (a political theory defined as the intergovernmental school of European integration). The intergovernmental interpretation of the European process of integration, which is simultaneously a descriptive and a normative theory, has deep roots in International Relations' (IR) scholarship, whereas the conceptualization of the intergovernmental union as a political system derives from a Comparative Politics (CP) approach to the institutional structure of EMU. IR intergovernmentalism is based on the work of one of its modern founders (Hoffmann 1966), then developed by the sophisticated work of Moravcsik (1998) based on the exogenous preferences' formation of national governments negotiating in intergovernmental conferences (IGCs). In Moravcsik's interpretation of the grand bargains between national governments, societal interests play a crucial role in identifying the latter's negotiating positions.

IR intergovernmentalism has become one of the main theories explaining (empirically) why the EU emerged in the first place and how it has continued to integrate, thus assessing (normatively) that it should continue to go along the same road if integration has to proceed. According to the intergovernmental school, the EU dynamic has been controlled by its member states and the integration process will advance as long as the member states wish or decide to do so. National governments define and control the terms and the conditions of the EU's functioning, through their periodical IGCs and through the regular action of formal (the Council) and for a long time informal (the European Council) intergovernmental institutions that, since the beginning of the integration process, have supervised and steered the latter. The Lisbon Treaty celebrated national governments' power in treaty-making by formally recognizing (for the first time) their possibility to leave the Union (TEU, Art. 50.1). For the intergovernmental school (Moravcsik and Schimmelfenning,

2009; Moravcsick, 2005), supranational actors can be considered the functional agents of principals constituted by national governments. National governments delegate to functional agents the power to frame specific solutions for their common problems. Although these functional agents are necessary to reduce the transaction costs of intergovernmental negotiation, their action is strictly supervised by their principals. They have to behave according to guidelines established by the national governments that created the agencies in the first place and maintain their operations. Indeed, national governments delegate to those supranational institutions the task of transforming the negotiating outcome in a regularized and supervised policy pattern. On this basis, a huge number of empirical studies, based on principal-agent theory, have investigated the forms and the possibilities of delegation.

For a CP approach, the research questions raised by intergovernmentalism as a political system are different. Here what matters is to analyse the institutional logic of the intergovernmental union, thus conceptualizing its limits in dealing with the policy challenges it has to face, in order to then finally identify its critical outcomes, namely, the formation of relations within its decision-making structure that have the features of domination. The intergovernmental union is a sub-section of the political system of the EU, in our case it is the institutional form of the EMU. It emerged through the critical juncture of the Maastricht Treaty, it was consolidated by a sequence of decisions such as those institutionalizing the Stability and Growth Pact (SGP) in the following years (1997-98), it was legitimized by the CT's failure and then constitutionalized by the Lisbon Treaty as a distinct decision-making regime based on the predominance of the intergovernmental institutions. The formalization of the decision-making power of the European Council, chaired for the first time by a permanent president, epitomizes the executive role finally acquired by the intergovernmental institutions in the EU. The decision to give a permanent president to the European Council is the epitome of the strategy to bring a previously informal institution into the formal decision-making core of the EU. In this approach, the role played by member state governments in treaty-making is not relevant. What is relevant is the formation of permanent decision-making institutions

representing the coordinated interests of national governments within the institutional system of the EU. Adopting the CP approach, delegation is not the central theoretical issue, because national governments do not go home after treaty-making, but remain in Brussels through the operation of their intergovernmental institutions. Rather, what is a central issue is the investigation of the competitive forms taken by the relations between permanent intergovernmental and permanent supranational institutions operating in Brussels.

The intergovernmental union can be conceptualized as an organization which coordinates on a permanent basis member state policies in Brussels in sensitive areas (such as economic and foreign policies). This coordination implies the technical support of supranational institutions (such as the Commission and the ECJ) to monitor and implement those policies. The Commission is necessary to neutralize free-riding, whereas the ECJ is indispensable to resolve intergovernmental disputes. In an intergovernmental union, the EP is a redundant institution, given that the function of legitimacy is performed by the parliaments of its member states. Logically, in an intergovernmental union, the national governments should be controlled by their corresponding national parliaments. This means, in the case of the EU, the formation of an inter-parliamentary legislature (a chamber constituted by representatives of the national parliaments), substituting or integrating the EP, as a check on the European Council and Council¹. The knowledge of the logic of how the intergovernmental union functions has been enriched by a sophisticated literature on the new modes of governance tried out in several policies, in particular after the crisis of the EU's constitutionalization process in the mid-2000s. The new mode of governance has become both an empirical concept but also a normative theory of *how* the EU might integrate in areas where

¹ Proposals on the necessity to strengthen the role of national parliaments vary. One of the most radical has been advanced by Chalmers (2013: 9), according to which “unless two thirds of parliaments indicate their support for a measure, a Commission proposal should not go forward to the Council”, or “if one third of national parliaments propose either that legislation be reviewed or that new legislation should be proposed, the Commission is obliged to make a proposal to that effect”.

supranationalism is not accepted by crucial national governments². In this view the new modes of governance have come to be represented as an alternative to the ‘Community method’ in advancing the integration process in those policy realms that are sensitive for member states. Indeed, since the late 1990s, several authors (Bulmer 1996; Wallace 2002) claimed the necessity to investigate forms of integration that were skipping the supranational institutions. New modes of governance include a panoply of policy patterns, such as the open method of coordination, benchmarking, mainstreaming, peer review and other forms of *voluntary coordination* between governments and supranational actors (Heritier and Rhodes 2010). However, as argued by Idema and Kelemen (2006), the functional efficacy of the new approach has been probably exaggerated (in particular by practitioners), as it was underestimated its lack of legitimacy.

Integration without supranationalization

Thus, from Maastricht to Lisbon, in policy areas traditionally at the core of member state national sovereignty, an intergovernmental union has come to be institutionalized where the institutions aggregating national governments (heads of state and government and ministers) have acquired powers and resources to control a regularized and institutionalized decision-making process. Those institutions have justified themselves, in particular after the CT’s failure, through their capacity to resolve the collective problems arising from the extension of the process of integration to new crucial policies. Contrary to the teleological narrative that traditionally assumed the integration process as a linear development towards the formation of a unitary supranational organization acquiring a growing number of competences and powers, with Maastricht the EU has come to institutionalize a dual constitutional regime, supranational in the single market but intergovernmental in the new crucial policies (Fabbrini S. 2013). The neo-functionalist assumption

² I am aware of the fact that not the entire literature on the new modes of governance can be considered coherent with intergovernmentalism. However, it shares with the latter an emphasis on the importance of voluntary coordination and an underestimation of the process of legalization.

that the solution of a crisis would have implied the transfer of competences to the supranational institutions has been falsified by the formation and development of an intergovernmental organization, in Brussels, able to take decisions without delegating them to the Commission and the EP. Institutionalizing the principle of coordination (and not merely cooperation), national governments have set up a permanent decision-making system supporting their claim to control on a regular and daily bases the policy-making process. The unitary character of the organization developed between the founding treaties of Paris 1951 and Rome 1957 and the Single European Act of 1986 was interrupted in the critical juncture of the 1989-1991 period. The pillarization introduced with the Maastricht Treaty celebrated the distinction between the decision-making regimes of single market policies (on one side) and of the policies traditionally close to national sovereignty (on the other side). Through the Maastricht Treaty, two constitutional regimes came to be institutionalized, representing two different political perspectives on European integration. After Maastricht it has no longer been possible to assume, contrary to what Monnet (1978: 46) wrote in his *Memoirs*, that a supranational “Europe would be built through crises and that it would be the sum of their solutions”. The institutionalization of an intergovernmental setting for dealing with economic policy (*inter alia*) would have prevented the solution of an economic crisis in (necessarily) supranational terms.

The 2009 Lisbon Treaty abolished the distinction between pillars, but left untouched the distinction between decision-making regimes. In doing that, the Treaty has institutionalized the executive role of the national governments coordinating in the European Council as the condition for extending the processo of integration beyond the single market. As Van Middelaar (2013: 195) observed: “In the Lisbon Treaty, the legal distinction between the Community and the Union was abolished: the Community disappeared, leaving the Union. The institutions remained the same, on the understanding that the European Council of heads of state or government would now make all the strategic decisions, irrespective of the policy field. The gathering of national leaders also chose to give itself a permanent president, who could represent it externally. The existence of such a

figure turns the Union into a single political body”. The Lisbon Treaty has thus empowered the European Council as the true decision-making centre for economic and related policies. Once the EU had to face the failure of the Constitutional Treaty or CT (as the utmost expression of supranational approach to integration) in the French and Dutch popular referenda of 2005, the intergovernmental perspective emerged as the predominant view of integration. As *The Economist’s Charlemagne* (2012) wrote, after “the French and Dutch voters killed the proposed EU constitution ... intergovernmentalism (became) the new fashion”. The view expressed by the then French President Sarkozy in his Toulon speech on 1 December 2011, that “the integration of Europe” will have to go the intergovernmental way if Europe wants “to make strategic political choices”, epitomized the intergovernmental perspective. After the 2005 defeat of the CT, the intergovernmental perspective emerged as the main one for re-launching the process of integration, thanks also to the support of a powerful constellation of political actors in France and Germany in particular.

The supporters of this perspective (the intergovernmentalists) assume that institutions are instrumental to the solution of contingent problems and their rationale has to be justified mainly on effectiveness criteria. Indeed, for intergovernmentalists, whether the EU is organized according to the (undemocratic) principle of a confusion of powers rather than in accordance with the (democratic) principle of formal division of powers is not an issue. As long as the confusion of power concerns the Union level but not its member states, it will not be a problem for intergovernmentalists. The legitimacy of the intergovernmental institutions derives from the national legitimacies of the national governments constituting them. It is assumed that the intergovernmental institutions pool also the national legitimacy of the governments constituting them. At the same, the legal separation of competences between the centre and the territorial units as in all federal unions or states is uncertain in the intergovernmental union because of the lack of a formal boundary between national governments and their intergovernmental institutions. Contrary to the perspective of the EU as a network (Slaughter 2004) or a club (Majone 2014) of

governments, here the intergovernmental institutions should be adequately consolidated and endowed with enough institutional and policy resources in order to exercise their decision-making role. Those institutions should exist independently from the actors constituting them. Theoretically, they are a whole distinct from their parts. This intergovernmental union has embodied an institutional perspective on the EU alternative to the supranational one as celebrated by the Community method.

The euro crisis and its implication

The euro crisis has tested the intergovernmental union built within the Lisbon Treaty. In order to manage the euro crisis, the EU has acquired unprecedented institutional features. First, the equilibrium between supranational and intergovernmental constitutions has been radically changed in favour of the latter. Since the financial agenda has engulfed EU policy-making, the European Council, led now by a permanent president, has become the true decision-maker (De Scoutete 2011) or better the new centre of EU politics (Puetter 2013), not just an institution limiting itself to defining the general aims of the integration process. Given the constraints set up in the Lisbon Treaty, in economic policy the Commission has come to play an administrative role, transforming and implementing the policy indications of the European Council. As Curtin (2014: 7) observed: “empirical evidence points to a ‘progressive erosion’ of the Commission’s power of initiative, and the European Council’s detailed setting of the legislative agenda is pronounced”. The more the crisis has deepened, the more it has required “leadership and decision-making at the highest political level, which has contributed to the strengthening of the position of the European Council” (Leino and Salminen 2012: 864). Unsurprisingly, the European Council has tried to extend its influence also to other crucial policies of the EU (Dawson and De Witte 2013). Assuming that the Commission was the exclusive Union executive when the EU policies centred exclusively around the single market, this assumption no longer holds true with the shift of the policy focus in the direction of euro stability and economic governance. This does not mean that the Commission has

become irrelevant (and in any case the Commission president is a formal member of the European Council). Indeed, because intergovernmental coordination has not been able to overcome the fundamental dilemmas of collective action, the governmental leaders of the European Council have had to resort to the Commission (and in few cases also on the ECJ). However, in the executive branch which emerged from the crisis, the Commission has proven to be a technocratic structure in support of the European Council's deliberations, rather than the institution with the capacity to set the political agenda of the EU.

Second, the European Council-based executive has developed without a significant check from the EP. With the euro crisis, the decision-making barycentre has moved towards the relation between the European Council (and the Euro Summit) and the ECOFIN Council (and the Euro Group), with the EP and its co-decisional power shadowed by the intergovernmental logic. It is true that important legislative measures (as the European Semester, the Six Pack and the Two Pack) were adopted through either the ordinary or the special legislative procedure that recognize a legislative or consultative role to the EP, but it is also true that the deepening of the euro crisis has led to new treaties (as the European Stability Mechanism or ESM Treaty, the Fiscal Compact Treaty or the Single Resolution Fund or SRF) that do not recognize the EP as a policy-making actor. The SRF is the last, but probably not the least, crucial institution deriving from an intergovernmental treaty which is protected against the EP's oversight. Of course, it was difficult to identify a role for the EP in new organizations set up by not all the EU member states (Heffler and Wessels 2013). In fact, whereas the Maastricht Treaty (TEC, Art. 137) stated that "The European Parliament (...) shall consist of representatives of the peoples of the States brought together in the Community", the Lisbon Treaty (TEU, Art.14.2) instead makes clear that the EP "shall be composed of representatives of the Union's citizens", not of representatives of member state citizens. However, also national parliaments had very limited impact on intergovernmental decision-making. The intergovernmental union is constrained by a basic paradox. If the domestic parliaments are successful in constraining their governments in Brussels, then the latter will not be able to find the

necessary adjustments to deal with the issues at stake. If the domestic governments are unconstrained enough to start successful negotiations, then they will operate without the control of domestic parliaments. The EU epitomizes the difficulty of interparliamentary coordination at the international level (Crum and Fossum 2013). At the end of the day, the intergovernmental union is based on decision-making institutions that are controlled neither in Brussels nor in the capitals of the member states (Lord 2011a). The confusion between executive and legislative institutions and functions in Brussels has led to unprecedented decision-making independence for the European Council and the Council in economic policy. With the consequence that a crucial policy (such as economic policy) has escaped the basic mechanisms of democratic accountability. As Habermas (2012: 44) stressed, “there is a strange contrast between the political power concentrated in the European Council and the fact that its decisions lack legal force (...) The Lisbon Treaty was supposed to confer enhanced decision-making power on the EU by incorporating the European Council into its institutional structure; but it pays a high price for this in the form of the lack of legitimacy of decisions with far-reaching implications”.

Third, the euro crisis, by upsetting the compromise between a centralized monetary policy (in the European Central Bank or ECB) and decentralized but coordinated economic policies (in the ECOFIN Council), has led to the hardening of the ordo-liberal principle that rules, not politics, should govern the EMU. If one remains within the intergovernmental framework, then it is inevitable to assume that coordination of national policies should be disciplined by stricter macroeconomic and legal rules to be activated through automatic, i.e. non-discretionary, mechanisms. With the deepening of the financial crisis, the European Council has allocated increasing disciplinary powers to technocratic institutions, like the Commission and the ECJ. In the Fiscal Compact Treaty, the Commission’s intervention on the contracting party which defaults on the agreement is now quasi-automatic, something which can be neutralized only by a reversed qualified majority of the financial ministers of the signatory member states. The discretionary power of the ECOFIN Council, that led to the controversial decision in 2003 to disregard the

Commission's recommendation to subject Germany and France to the Excessive Deficit Procedure (EDP), has been drastically curtailed. Furthermore the Fiscal Compact Treaty has required the contracting parties to introduce at the constitutional level (or equivalent) the balanced-budget rule, thus limiting also within the domestic system the possibilities of political discretion. The new legislative measures (European Semester, Six Pack, Two Pack) have increased both the supervisory role of the Commission in monitoring *ex-ante* member states' behaviour regarding their respect of the legal parameters and the sanctioning role of the Commission in activating *ex-post* the EDP. The banking union taking shape through the Single Supervisory Mechanism (SSM) and the Single Resolution Mechanism (SRM) is based on strict legal rules as well. Owing to a lack of reciprocal trust between the member states which should voluntarily coordinate their economic, budgetary and fiscal policies, the policy-making process has been judicialized and entrusted to the control of non-political institutions. This is why the Commission, weakened as both an agenda-setting and decision-making institution, has seen an increase in its technical role as an independent bureaucracy in charge of guaranteeing respect of the EMU rules.

The financial aid to member states unable to respect those rules has been accompanied by conditionality rules that have led to the downsizing of their decision-making autonomy. Notwithstanding the persistence of deep differences between models of national political economy, in particular between Northern and Southern socio-economic patterns (Hall and Soskice 2001), the intergovernmental EMU has tried to force convergence between those political economies through a policy regime constrained by formal judicial rules and technocratic automatism. This approach, in a context of structural differences within euro-area member states, has deepened the cleavage between the latter, with some member states benefitting from the imposed rules and others paying significant costs. The euro crisis has thus sharpened the divisions within the EU between the different political economies of its member states or regional sections (and between groups within each of them, Fligstein 2010). National political discretion has been unevenly restructured, with the debtor member states becoming less autonomous than the creditor member states due to their

inability to control the externalities of their policies. Under the impact of the euro crisis, the intergovernmental EMU has not prevented its transformation into a centralized regime, highly convoluted in technical and legal terms and extremely intrusive in terms of national prerogatives that it was supposed to respect in the first place. The assumption that, through the logic of voluntary policy coordination, it would have been possible to govern the common currency has been dramatically unmasked by the euro crisis. The combination of an intergovernmental decision-making regime with the German *ordo-liberal* approach has led to a convoluted imposition of rules that have undermined the solidarity between member states.

Consensus or domination?

It has been generally assumed that voluntary policy coordination requires, for functioning, the search for consensus among the representatives of national governments (Allerkamp 2009). If the Community method has gradually evolved towards the adoption of majoritarian criteria (the legislative proposals submitted by the Commission may be adopted if approved by the absolute majority of the EP and the qualified majority of the Council – that is, starting November 2014, a majority of 55 percent of the ministers representing at least 15 member states and 65 percent of the population of the Union), the intergovernmental method has been hailed for its predisposition to guarantee consensus, if not unanimity, in its decision-making process (Puetter 2014). However, with the deepening of the euro crisis, within the European Council (and the Euro Summit), a decision-making hierarchy has emerged under the form of a German-French (and then only German) directorate for the EMU. As Craig (2014: 36 and 37) observed: “the Euro crisis has...impacted on the EU inter-institutional division of political power. It would be tempting to conclude that it has had a predictably Schmittian effect, with power being concentrated to an ever greater extent in the EU executive, the rationale being that only it can respond with sufficient speed to the profound problems generated by the Euro crisis. (...) In terms of process, the lead on

measures to address the Euro crisis has been taken by the European Council, and by Germany and France acting partly within the European Council and partly through bilateral discussion”.

The Schmittian state of exception has thus pressured the supporters of the intergovernmental institutions to operate also on the borders of them if necessary to reach a decision (Joerges 2012). Indeed, given the difficulty to tame the crisis through voluntary policy coordination, the financial strategy for dealing with the latter has come to be more and more dictated by Berlin (supported by its Northern allies), although together with the Brussels office of the European Council president. The growing unilateral German leadership of the euro-area has led to an unprecedented split between Northern and Southern member states. If the euro was adopted in the first place to preserve a European Germany, the crisis of the euro has led to its opposite, that is to the emergence of a German Europe. This is a serious problem for the intergovernmental union because it contradicts the rationale of the integration project. In fact, if it is true (Van Middelaar 2013: 193) that “...Germany bears more responsibility than...Luxembourg (...) the member states of the Union are unequal – large and small, rich and poor, with long or short external borders, with friendly and hostile neighbours inside or outside the Union”, it is also true that the legal principle of equality between member states cannot be made redundant if the EU aims to persist as a union of states (Eriksen 2014). The hierarchical relations between creditor and debtor member states is incompatible with the ‘republican principles’ of political constitutionalism (Bellamy 2013).

From a comparative perspective, this outcome would have been unconceivable, for instance in the US federal union (Fabbrini F. 2013). Certainly, in the US, since the 1840s, each federated state is responsible for its public debt. Since then, the states cannot be bailed out by the federal government if they are in financial default (Sbragia 1996), while balanced budget rules have been gradually introduced in most states (Von Hagen and Eichengreen 1996). The financial accountability of each state represents one of the properties of US federal system, that has remained dual in this regard although it has evolved towards forms of cooperation in other policies (Schutze

2010). However, since the 1930s, the federal government has started to intervene in the various states, through the use of the federal budget for reasons of public investment or other forms of grants-in-aid (Rodden 2006), in several cases triggered by military considerations, to stimulate growth. Debt has continued to remain a state's business, but growth has become a federal preoccupation. To be sure, the use of the federal budget has been decided through various forms of log-rolling and pork-barrelling, at time inter-institutional conflict, between members of Congress and the president. Nevertheless, states have had a supra-state arena (federal institutions) to use, and a supra-state budget to appeal to, to make their needs heard. In a federal system, it is highly unlikely that hierarchical relations would develop between its federated states, not only for the clear constitutional boundaries that protect each state from the others, but also because it is constitutionally precluded the direct transfer of money from one state or group of states to another state or group of states (on a regular bases).

The EU bicameral legislature, and the EP in particular, has a very limited budget (less than 1 percent of the total GDP of the Union³). The budget is financially dependent on transfers from member states, a condition that has inevitably raised tension between member states and between the latter and the supranational institutions. Deprived even of the limited internal custom duties abolished with the SEA of 1986 and of the authority for promoting autonomous policies, the EP has been pushed to the margins in those policies that constitute the core business of federal union legislatures, such as the US Congress (Henning and Kessler 2012) or the Swiss Federal Assembly. Although the Lisbon Treaty celebrates the 'no bail-out clause' (TFEU, Art. 125.1, states: "the Union shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of any Member State"), *de facto* during the euro crisis the indebted member states were obliged to be

³ After the negotiation for setting the multiannual financial budget (2014-2020), the latter has become less than 1 percent of the total GDP of the EU. The size of the budget is defined according to the following procedure, as stated by the TFEU, Art. 312.2: "The Council, acting in accordance with a special legislative procedure, shall adopt a regulation laying down the multiannual financial framework. The Council shall act unanimously after obtaining the consent of the European Parliament, which shall be given by a majority of its component members".

helped by the creditor member states because of the fear of a general collapse of the euro-area. In the absence of a Union budget that can be drawn on by democratically accountable institutions to indirectly support the economy (not the debt) of the indebted states, help has come directly from the richer member states (that gave it out of interest) aimed at relieving their debt (not to support their growth). Any direct financial relations between states harbours the danger of both domination and resentment.

Lacking a federal method and federal resources for preserving the boundary between the member states' prerogatives and responsibilities, the euro-area has set up a system of economic governance that has allowed the stronger member states to intrude, through the decisions imposed on the intergovernmental institutions (such as the so-called austerity measures of fiscal consolidation enshrined in intergovernmental treaties and legislative packages), in the national prerogatives of the weaker member states. However, this outcome was neither effective during the euro crisis, nor was it perceived as legitimate by the citizens of the member states most affected by the latter. The electoral affirmation of anti-EU parties in debtor member states, in the EP elections of 22-25 May 2014, made evident the difficulties of the intergovernmental union. In Greece, the radical left Syriza party, running a campaign against German austerity, became the first party of the country with 26.58% of the popular vote. In Spain, the two main parties (the Popular Party or PP and the Socialists or PSOE), that have alternatively supported austerity measures, lost around 1/3 of their electorate (the former dropping from 42.2% in the 2009 EP election to 26.1% and the latter from 38.8% to 23%). In Italy, the newly-created populist anti-European Five Stars Movement became the second party with 21.2% of the popular vote. In Portugal, the party that governed the re-adjustment of the economy under the impact of financial bankruptcy, the Social Democratic Party/People's Party, lost more than 1/4 of the votes it received in the previous EP elections. The same in Ireland for the governing party, Fine Gael, that lost 1/4 as well of its 2009 electorate.

Conclusion

The papers started from the distinction between IR and CP approaches to intergovernmentalism, thus identifying the institutional bases of the intergovernmental union institutionalized within the EU. At the origin of the intergovernmental union, which emerged with the 1992 Maastricht Treaty, there was the assumption that crucial policies (such as economic policy,) may be Europeanised only if elaborated and decided by the member state governments coordinating in the European Council and ECOFIN Council. Supranational institutions like the Commission and the ECJ were considered necessary for supervising respect of the intergovernmental decision by the contracting governments, for implementing that decision together with national administrations, and for resolving disputes between them - but not for elaborating and deciding the policies to adopt. Nor, in the case of the EP, for checking the intergovernmental decision-making process. The Lisbon Treaty has thus formalized this intergovernmental union.

The paper has thus analysed how the intergovernmental union has performed during the euro crisis. Indeed, notwithstanding the supranational independence of monetary policy, economic policy was largely determined by the intergovernmental institutions of the European Council and the ECOFIN Council, that controlled the elaboration and decision-making phases of the policy-making process. Those intergovernmental institutions were not able, however, to solve the dilemma of collective action in an effective and legitimate way. The euro crisis has shown that the intergovernmental EU has not only had difficulty in taking timely decisions for crisis management, but it has also had to rely increasingly on the technocratic and judicial intervention of the supranational institutions in order to make credible commitments for crisis prevention. In fact, although the role of the Commission in the decision-making phase has been curtailed and its contribution to the policy elaboration phase limited, its power in supervision and implementation has been on the contrary increased. At the same time, the EP has become a secondary institution

within the EMU, nor its weakness has been offset by the interparliamentary coordination of national legislatures.

In facing the danger of the negative externalities from voluntary coordination, the EMU has ended up becoming a centralized, technocratic and judicialized policy regime. The construction of a centralized policy-making regime, regulated by automatic rules, does not fit easily with the intergovernmental assumption that the EU is based on member state governments' will and legitimacy. At the same time, the euro crisis has also called into question this assumption, showing that indirect legitimacy is insufficient to justify decisions taken at the level of, and on behalf of, the Union. Also from a normative point of view, as Lord (2011b) stated, "indirect legitimacy cannot justify coercive powers that have not themselves been delegated to EU institutions by its member states, and nor can it answer the question 'what is the basis of political obligation to the EU?' in any way that presupposes EU institutions can enjoy inherent, rather than delegated, democratic authority". President Sarkozy's argument that the EU either goes down the intergovernmental road or it does not proceed has been thus negatively falsified. Under the dramatic impact of a financial crisis perceived as an existential crisis (Menéndez 2013), the intergovernmental union has ended up not only in centralizing decision-making in the intergovernmental institutions of the ECOFIN Council and the European Council, but also in institutionalizing hierarchical relations between national governments within them. Through the creation of a "euro-zone fiscal colonialism" (Legrain 2014), domination, rather than voluntary and consensual coordination, has become the code of the intergovernmental union.

REFERENCES

- Allerkamp, D.K. (2009). 'Intergovernmentalism reloaded: The Transformative Power of 'Intergovernmental' Council Policy-Making', *mimeo*.
- Bellamy, R. (2013). 'An Ever Closer Union Among the Peoples of Europe': Republican Intergovernmentalism and Democratic Representation within the EU', *Journal of European Integration*, 35/5: 499-516.
- Bulmer, S. (1996). 'The European Council and the Council of the European Union: shapers of a European confederation', *Journal of Federalism*, 26/4: 17-42.
- Chalmers, D. (2013). 'Democratic Self-Government in Europe: Domestic Solutions to the EU Legitimacy Crisis', *Policy Network Paper*, May.
- Craig, P. (2014). 'Economic governance and the euro crisis: constitutional architecture and constitutional implications', in M. Adams, F. Fabbrini F. and P. Larouche (eds.) (2014). *The Constitutionalization of European Budgetary Constraints*, Oxford: Hart Publishin, 19-40.
- Crum, B. (2013). 'Saving the euro at the cost of democracy?', *Journal of Common Market Studies*, 51/4: 614-30.
- Crum, B. and J.E. Fossum (eds.) (2013). *Practices of Interparliamentary Coordination in International Politics: The European Union and Beyond*, Colchester: ECPR Press.
- Dawson, M. and F. De Witte (2013). 'Constitutional Balance in the EU after the Euro-Crisis', *The Modern Law Review*, 76/5: 817-44.
- Dehousse, R. (ed.) (2011). *The 'Community Method': Obstinate or Obsolete?*, New York: Palgrave Macmillan.
- De Scoutete, P. (2011). 'Decision-making in the Union', *Notre Europe: Policy Brief*, n. 24, April.
- Dinan, D. (2011). 'Governance and Institutions: Implementing the Lisbon Treaty in the Shadow of the Euro Crisis', *Journal of Common Market Studies*, 49 (Annual Review): 103-21.
- Curtin, D. (2014). 'Challenging Executive Dominance in European Democracy', *Modern Law Review*, 77/1: 1-32.
- Eriksen, E.O. (2014). *The Normativity of the European Union*, New York: Palgrave Macmillan.
- Fabbrini, F. (2013). 'The Fiscal Compact, the "Golden Rule" and the Paradox of European Federalism', *Boston College International and Comparative Law Review*, 36/1: 1-38.
- Fabbrini, S. (2013). 'Intergovernmentalism and Its Limits: The Implications of the Euro Crisis on the European Union', *Comparative Political Studies*, 46/9, 2013: 1003-1029.
- Fligstein, N. (2010). *Euro-Clash: The EU, European Identity, and the Future of Europe*, Oxford: Oxford University Press, 2nd edition.
- Habermas, J. (2012). *The Crisis of the European Union: A Response*, Oxford, Polity Press.
- Hall, P. and Soskice (2001). *Varieties of Capitalism. The Institutional Foundations of Comparative Advantage*, Oxford: Oxford University Press.
- Hefftlar and Wessels (2013). *The Democratic Legitimacy of the EU's Economic Governance and National Parliaments*. Rome, IAI Working Paper, No. 13, 13 April.
- Henning, C. R. and M. Kessler (012). *Fiscal Federalism: US History for Architects of Europe's Fiscal Union*, Brussels, Bruegel Essay and Lectures Series.
- Heritier, A. and M. Rhodes (eds.) (2010). *New Modes of Governance in Europe: Governing in the Shadow of Hierarchy*, London: Palgrave Macmillan.
- Hoffmann, S. (1966). 'Obstinate or Obsolete? The Fate of the Nation-State and the Case of Western Europe', *Daedalus*, 95/3: 862-915.

- Joerges, C. (2012). 'The European economic Constitution in Crisis: Between "state of exception" and "constitutional moment"', in M. Poiares Maduro, B. de Witte, M. Kumm (eds.), *The Democratic Governance of the Euro*, RSCAS Global Governance Programme, RSCAS Policy Paper 2012/8, European University Institute, Florence, San Domenico di Fiesole, pp.39-44,
- Idema, T. and D. Kelemen (2006). 'New Modes of Governance, the Open Method of Coordination and Other Fashionable Red Herring', *Perspectives on European Politics and Society*, 7/1: 108-123.
- Legrain, P. (2014). 'Euro-Zone Fiscal Colonialism', *The New York Times*, op-ed page, 21 April.
- Leino, P. and J. Salminen (2012). 'Should the Economic and Monetary Union Be Democratic After All? Some Reflections on the Current Crisis', *German Law Journal*, 14/7: 844-68.
- Lord, C. (2011a). 'The political theory and practice of parliamentary participation in the Common Security and Defence Policy', *Journal of European Public Policy*, 18/8: 1133-1150.
- Lord, C. (2011b). 'Polecats, lions, and foxes: Coasian bargaining theory and attempts to legitimize the Union as a constrained form of political power', *European Political Science Review*, 3/1: 83-102.
- Lord, C. (2003). 'The European Parliament, Not a Very European Parliament?', *Politique Européenne*, 9: 30-48.
- Majone, G. (2014). *Rethinking the Union of Europe Post-Crisis: Has Integration Gone Too Far?*, Cambridge: Cambridge University Press.
- Menéndez A. J. (2013). 'The Existential Crisis of the European Union', *German Law Journal*, 14/5: 453-526.
- Monnet, J. (1978). *Memoirs: The Architect and Master Bulder of the European Econmic Community*, New York: Dpubleday and Company.
- Moravcsick, A. (1998). *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht*, Ithaca: Cornell University Press.
- Moravcsick, A. (ed.) (2005). *Europe without Illusion*, Lanham, MD: University Press of America.
- Moravcsick, A. and Schimmelfenning, F. (2009). 'Liberal Intergovernmentalism' in Weiner, A. and Diez, T. (eds.) *European Integration Theory*, Oxford: Oxford University Press, 2nd.
- Puetter, U. (2013) 'The European Council: The New Centre of EU Politics', *European Policy Analysis Paper*, Sieps, issue 2013:16 epa, October.
- Puetter, U. (2012). 'Europe's deliberative intergovernmentalism: the role of the Council and European Council in EU economic governance', *Journal of European Public Policy*, 19/2: 161-178.
- Puetter, U. (2014). *The European Council and the Council: New Intergovernmentalism and Institutional Change*, Oxford: Oxford University Press.
- Rodden, J.A. (2006). *Hamilton's Paradox: The Promise and Peril of Fiscal Federalism*, Cambridge: Cambridge University Press.
- Sbragia, A.M. (1996). *Debt Wish. Entrepreneurial Cities, U.S. Federalism, and Economic Development*, Pittsburgh: University of Pittsburgh Press.
- Schutze, R. (2010). *From Dual to Cooperative Federalism*, Oxford: Oxford University Press.
- Slaughter, A.-M. (2004). *A New World Order*, Princeton: Princeton University Press.
- Van Middelaar, L. (2013). *The Passage to Europe: How a Continent Became a Union*, New Haven: Yale University Press.
- Von Hagen, J. and B. Eichengreen (1996). 'Federalism, Fiscal Restraints, and European Monetary Union', *The American Economic Review*, 86/2: 134-138.
- Wallace, H. (2002). 'The Council: an institutional chameleon?', *Governance*, 15/3: 325-44.