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*Union, Disunion or Time
for a Paradigm Shift?*

POLICY PAPER

Democracy, Hostage to the European Governance Crisis

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New urgencies in policy, old ways of governing

In the face of various crises – financial governance crisis, labour devaluation and capital accumulation crises, refugee and migratory mobility crises, security crisis, crisis of state power - the European Union and its member states showed low responsiveness. The shift of responsibility for managing market risks and financial losses to states normalized the idea that it is mainly a problem of sovereign debt crisis. By pointing out EU and member states' incapacity to handle public affairs and all kinds of security challenges (economic, social, political, geopolitical), a process of governance de-legitimation has been put in place affecting people's stated willingness to engage with the state, the EU and representative democracy. No doubt, seeking to explain and address the role of member states and EU's institutions during these turbulent times is not an easy task. In order to give clarity of meaning to what would otherwise be an anarchic stream of events this paper provides some insights into the European governance crisis.

The rise of national-level democratic deficit (shorter electoral cycles, rise of political uncertainty, rise in electoral volatility, increase in undecided voters, persistent blurring of ideological lines and the political instrumentalization of referendums) is also the symptom of a huge and violent systemic and cognitive crisis concerning the political usefulness of the European project. Contrary to the common perception, the major ontological shift in thinking about the European project is deemed to have occurred not at the time of the financial and economic crisis in the late 2000s, but in the early 1990s. At that time, the institutionalisation of intergovernmental cooperation through the Treaty of Maastricht in policy areas until then exclusively reserved for the member states (coordination of economic policies, justice and internal affairs, foreign policy and security) was at odds with financial globalization's acceleration, European markets integration perspectives and EU enlargement prospects.

Formalising the intergovernmental method of decision-making was not considered to be a deviation from traditional community method but a window of opportunity to widen the field of European cooperation in new policy areas. This fundamental and thorough shared belief in the ability of the European project was based on the neo-functional linear and teleological logic of the integration process. The substance of the matter is that still today we continue to think in terms of a bygone age where the neo-functional rationality

was convincing. Actually, this type of neo-functional rationality was compelling as long as negative (market) integration was the prevailing mode of European integration according to which structural economic heterogeneities between EU member states were not an obstacle in the path of the European construction market. On the contrary, we were (wrongly) told that they would be largely attenuated thanks to the free movement of capital; actually the same kind of logic has been deployed afterwards in the case of the monetary integration, considering that member states heterogeneities would be even further mitigated through the free movement of (low-cost) labour.

The market integration was mainly pursued through a regulatory approach to governance, i.e. the method of mutual recognition, considering that there was no need for normative harmonization. This explains why the emphasis in terms of EU policy-making has above all been put on procedures instead of results/outcomes; a trend that inevitably affected new post-Maastricht policies too (especially EMU and JHA pillar). This policy trend influenced also academia; there was a shift on the research agenda in adopting a more operational approach since the late 1980s according to which the study of European integration was moving into a post-ontological stage, meaning that scholars were, and still are, less concerned with how to qualify/evaluate the EU than how to explain process and rules.

All of which is why permissive consensus worked until the early 1990s. From that time on, there is a progressive rise of radical right-wing Euroscepticism, which became an increasingly embedded phenomenon within the EU especially after the 2009 EP elections. The expansion of various crises has further nourished the growth of a systemic Euroscepticism allowing the proliferation of low-cost and opportunistic debates on the future of Europe while defying national democratic standards.

Defining asymmetric intergovernmentalism, defying democracy

The rise of ‘new policies’, a whole new generation of European policies (surveillance of budgetary and macro-economic policies, structural adjustment policies, financial markets integration policies, migration and refugees policies, internal security policies) becoming progressively matters of high politics, at first glance unexpectedly, caused abrupt changes to the political and institutional status quo of the EU. These crisis’ policies seriously involve issues of national public interest, and, in this sense, they affect national social, political and cultural contexts. They have been pursued via supranational regulatory and procedural governance as well as through a disrupted and opaque intergovernmentalism (the so-called ‘coordination method’). Risk-containment policy mechanisms have been incrementally developed by elite consensus without building a solid compromise between national conflicting interests and societies², thus jeopardising the already weak democratic foundations of national representative systems. This explains the reason why constraining dissensus on integration is irrepressibly gaining

² German opposition against low interest rates putting in risk its high savings contrasts with European south countries’ need for a more expansive monetary policy of low rate interests.

ground, vulnerable to ideological manipulation and easy prey for exploitation by radical right-wing anti-European forces.

This 'new kind of intergovernmentalism' exacerbates EU member states' equality in taking decisions in policy areas in principle of shared or special (non-legislative) competence; the result is that unanimity within the Council no longer applies and/or the Council interferes with the rights of national parliaments and the European parliament (asymmetric intergovernmentalism). The European Commission reinforces its role as policy initiator and executor while the European Council becomes the political body of asymmetrical interdependence *par excellence*, leaving only marginal roles to the majoritarian institutions³. In fact, we are witnessing a disturbing development that might look like a 'democratic dumping' by imposing lower democratic standards on European countries.

It is important to note that while this system encompasses the formal legality of the Treaties, it is lying outside the substantial legality operating a *de facto* transfer of national competences to the European level⁴. It's highly problematic the fact that while the scope of the EU scrutiny in the area of 'new' policies is gradually increasing, the new governance of crisis' policies continues to rely mostly on indirect representation operating under asymmetric power conditions (through the Council, the European Council and as a last resort national parliaments).

At the same time, the non-majoritarian institutions/technocracies (European Commission, ECB, EBA, EIOPA, European Board and Coast Guard⁵ etc.), are getting much power which is extremely alarming given the lack of accountability mechanisms of their action⁶. As long as the powers transferred to the supranational level were clearly demarcated and specific, indirect legitimacy through national representative democracies seemed to be enough. It should be noted that the independence of non-majoritarian institutions from political control does not mean independence from public accountability. If the conditions of the procedural but also substantive legitimacy of non-majoritarian institutions are present, accountability and independence are complementary to each

³ To illustrate this point, under the economic governance framework, the strong position of intergovernmental institutions makes sure that the creditor member states can influence specific policy decisions on reinforced budgetary surveillance, the excessive deficit procedures and macroeconomic imbalances.

While the national 'ownership' of adjustment programmes is frequently highlighted, the EU institutions have wide executive discretion in the implementation process. Concerning the Greek case, following the spring negotiation round over the first review of the third bailout programme, an agreement has been reached on a new privatization fund and a new contingency fiscal mechanism as far as concerns the possible adoption of additional structural, including revenue, measures ('fourth' Greek Memorandum).

Council's decision on asylum seekers' relocation raised some critics about its validity, saying that there was a breach of the principles of institutional balance and representative democracy (use of a non-legislative procedure, not proper consultation of the EP).

⁴ The establishment of the conditionality as global principle governing EU policies allows the EU to put pressure towards further adaptation of the social policies of member states on the market conditions.

⁵ According to the European Commission member states will continue to keep their competence and sovereignty over their borders. Nevertheless, according to the recent agreement, the Council will decide on the action plan proposal of the European Commission by qualified majority with the assent of both EBCG and the interested member state.

⁶ Formally, in the framework of the Economic governance, the non-majoritarian institutions report to the EP (monetary dialogue, economic dialogue), which is a very weak form of accountability. This adds up to the fact that the mode of decision-making of the ECB is more close to an asymmetric intergovernmental logic than to a federal one (rotation of voting rights, voting weight depending on the size of the economy of member states).

other. The strengthening of enforcement and adjudicating powers of EU non-majoritarian institutions is a quite disquieting development as long as the normative and political foundations of supranational institutions remain weak.

Can we avoid a democratic default?

In the current context (Franco-German axis kaput, Brexit but at the same time growing British influence on the European project, normalization of the Eurosceptic radical right), it may be naïve to assume that the development of a European regulatory governance could be a robust sufficient condition for ensuring the resilience of the system against national democratic pressures and tensions. The liberalization of Europe's economies accompanied by institutional and regulatory reforms at national and European level cannot be a substitute for the political / democratic development of the EU. Moreover, without having any common vision and common needs, saying that Europeanising the solutions to our various crises (through asymmetric intergovernmentalism) will not come at the cost of further loss of democratic sovereignty at the national level seems as a rhetorical exercise disconnected from policy reality.

When it comes to the political reform of the Economic governance, proposals are oriented towards the institutional reinforcement of the existing framework (Eurozone Parliament, European Minister of Finance); and in the best case scenario of a fiscal Union, further communitarization of competences and harmonisation of a whole range of policies appear to be the most appropriate solution.

In fact, main perspectives on European integration stay trapped in the old-fashioned integration logic referring to the transfer of competences; in this sense the issue before us should be whether it is preferable to opt for the extension of (Community) competences or even their renationalisation. This dilemma is completely overcome by reality. The renationalisation of competences cannot be a practicable solution for European countries caught up in relations of systemic interdependency in a globalised world where an important range of economic and non-economic issues have cross-border implications. Serious doubts might also be raised with regard to further communitarization (federalization) and normative harmonisation in a highly heterogeneous union with conflicting national interests and traditions (different labour market regimes, different welfare state regimes, different extent of social policies, divergent tax systems etc.).

Bearing in mind EU's structural heterogeneity, some of the supporters of further integration in the Eurozone consider differentiated integration as the only viable solution. The weakness of their argument lies on the fact that in a fragmented, destabilised and more and more divergent EU, an open call for enhanced cooperation will not flourish since member states' participation depends on their goodwill and is not a matter of common/convergent interests and systemic similarities between them.

The EU is structurally in deficit for providing economically, socially and politically unifying mechanisms. There is an urgent need to rethink the governance architecture of the EU in

terms of (regional) zones of common interest and cooperation. In this framework, it will be important to address the transversal nature of policy cooperation projects between groups of member states aiming to manage heterogeneities and attenuate social and spatial divisions further exacerbated by the crises. The idea is that it will facilitate transfers and mobility, restore a sense of trust in democracy at national level and allow at a later stage to reshape the institutional and political environment at European level to suit real needs and expectations.

Selected Readings

Fabbrini, Sergio (2015), *Which European Union? Europe after the Euro Crisis*, Cambridge University Press, p. 338 (especially chapters 5 and 9).

Majone, Giandomenico (2014), “The decoupling of politics and economics (the fundamental fallacy of neofunctionalism)”, in G. Majone, *Rethinking the Union of Europe Post-Crisis: Has Integration Gone Too Far?*, Cambridge University Press.

Schmitter, Philippe C., Lefkofridi, Zoe, (2016), “[Neo-Functionalism as a Theory of Disintegration](#)”, *Chinese Political Science Review*, March 2016, 1:1–29. .

