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INTERGOVERNMENTALISM AND ITS OUTCOMES: *THE IMPLICATIONS OF THE EURO CRISIS ON THE EUROPEAN UNION*

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ABSTRACT

The euro crisis has brought to the crisis of the intergovernmental EU not of the EU as such. The Lisbon Treaty in fact has institutionalized a dual constitution, supranational in the single market's policies and intergovernmental in (among others) economic and financial policies. The extremely complex system of economic governance set up for answering the euro crisis has been defined and implemented on the basis of the intergovernmental constitution of the EU. The euro crisis has thus represented a test for testing the validity of the intergovernmental constitution of the Lisbon Treaty. Although the measures adopted in the period 2010-2012, consisting both of legislative decisions and new intergovernmental treaties, are of an unprecedented magnitude, they were nevertheless unable to promote effective and legitimate solutions for dealing with the financial crisis. In the context of an existential challenge, the intergovernmental approach faced a structural difficulty in solving basic dilemmas of collective action.

Keywords: Lisbon Treaty, supranationalism, intergovernmentalism, euro crisis, treaty reform

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INTRODUCTION

The aim of the article is the following: to show the difficulty of the intergovernmental EU in dealing with the euro crisis. According to the Lisbon Treaty, financial policy is a prerogative of the national governments of the EU member states. It is thus a policy that should be managed within an intergovernmental framework. The extremely complex system of economic governance set up during the euro crisis (in the period 2010-2012) has been largely defined and implemented on the basis of the intergovernmental approach. An analysis of how the EU has dealt with the euro crisis is thus an opportunity to assess the effectiveness and legitimacy of that approach. Indeed, after the failure of the Constitutional Treaty in the 2005 French and Dutch popular referendum, the intergovernmental 'moment' has become predominant within the EU, to the point that the defenders of the alternative Community method had to wonder whether the latter has in the meantime become 'obsolete' (Dehousse 2011). However, as a result of the financial crisis that broke out in 2008, taking a serious turn for the worse in 2010 and deepening since then, the intergovernmental structure set up in the Lisbon Treaty soon started to totter. The financial bankruptcy of Greece and Ireland and the serious financial difficulties of Portugal, Spain and Italy determined the need to reconsider the EU intergovernmental arrangement constructed in the course of the last two decades. An arrangement that was based on a centralized monetary policy (in the Frankfurt-based European Central Bank or ECB) and a decentralized financial, fiscal and budgetary policies (in the member states).

Under the financial threat of the euro's collapse, the heads of state and government of the EU member states eventually ended up in dramatically redefining the intergovernmental system of economic governance in Europe (and the euro-area in particular). New radical legislative measures were approved (from the 2010 European Semester to the so-called 2011 Six Packs and 2012 Two Packs) within the institutional frame of the Lisbon Treaty and new intergovernmental decisions (the 2010 European Financial Stability Facility or EFSF and the European Financial Stability Mechanism or EFSM[1]) and new intergovernmental treaties (the 2011 Treaty on European Stability Mechanism or ESM[2] and the 2012 Treaty on the Fiscal Compact[3]) were set up outside of the Lisbon Treaty. The new measures and treaties attempted

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[1] The European Financial Stability Facility (EFSF) was instituted in May 2010 "at the very same time as a new EU law instrument serving the same purpose of giving financial support to countries facing a severe sovereign debt crisis, namely the European Financial Stability Mechanism (EFSM) was established by a Council Regulation based on Article 122(2) TFEU (…) Both instruments have been used simultaneously and cumulatively with respect to Ireland and Portugal" (De Witte 2012:4). The EFSM will be superseded by the ESM when the latter will enter into force.

[2] The Treaty on the European Stability Mechanism (ESM) was signed by all the EU member states on 25 March 2011 on the basis of a European Council's decision, taken on 16 December 2010, to amend TFEU Art.136 for authorizing the euro-area member states to establish a specific stability mechanism for their currency. It was finally established on 27 September 2012 and it will become operative by January 2013 replacing the EFSM.

[3] It is generally used the term of Treaty on Fiscal Compact for the sake of simplicity. Indeed, its name is Treaty on Stability, Coordination and Governance in the Economic and Monetary Union of which the fiscal compact is only one component. Signed by all the heads of state and government (except the Czech Republic and the United Kingdom or UK's ones) in the meeting of the European Council of 2 March 2012, it will enter into force on 1 January 2013, provided that 12 contracting parties whose currency is the euro have deposited their instrument of ratification.

to ameliorate market pressures on the weaker and indebted member states of the euro-area, but they didn't work as expected. They were considered ineffective by the financial markets and illegitimate by the affected citizens (as shown by the strikes and riots in the capitals of the indebted EU member states). Thus, if one defines the euro crisis as an *existential crisis* (that is, a crisis which antagonizes EU member states to the point of not allowing for a politics of normal bargaining between them based on side payments, trade-offs, postponed benefits, mutual recognition), then the intergovernmental Union has shown to be unable to generate effective and legitimate decisions in crisis condition. The euro crisis has thus called into question the intergovernmental EU rather than the EU as such.

The paper is divided into three sections. The first section aims to show that the Lisbon Treaty has institutionalized a dual constitution or decision-making regime (supranational regarding the policies of the single market and intergovernmental regarding *inter alia* economic and financial policies), with the aim of qualifying the features and the logic of the latter. The second section will describe the measures taken in the period 2010-2012 on the basis of the intergovernmental decision-making regime for dealing with the euro crisis, with the aim of showing their inability to offer effective and legitimate answers to the crisis. The third section will discuss the reasons why the euro crisis did not find a satisfactory solution in the period in question, with the aim of identifying the basic dilemmas of collective action the intergovernmental framework couldn't resolve. This helps to explain the political reaction to the intergovernmental decisions and to reconsider the constitutional basis of the EU.

THE LISBON TREATY: THE DUAL CONSTITUTION

The supranational side

The Treaty of Lisbon came into force on 1 December 2009 (Foster 2010)[4]. Although the Treaty of Lisbon has scrapped any constitutional symbolism, it has defined (in terms of roles and functions) the EU's institutional structure (as constitutions do). For a large majority of policies where integration proceeds through formal acts (*integration through law*), it is plausible to argue that the Lisbon Treaty has set up a system of democratic government (that is, using David Easton's (1971) classic formulation, a formal structure of institutions endowed with the power and legitimacy of allocating values authoritatively). The Lisbon Treaty has formalized a governmental structure organized around two distinct legislative chambers and two distinct executive institutions.

It is possible to argue that the Treaty has brought to maturity a long process of distinction between the executive and the legislative branches. Celebrating the codecision procedure as "the ordinary legislative procedure" (TFEU, Art. 289), the Treaty has institutionalised a two-chamber legislative branch, consisting of

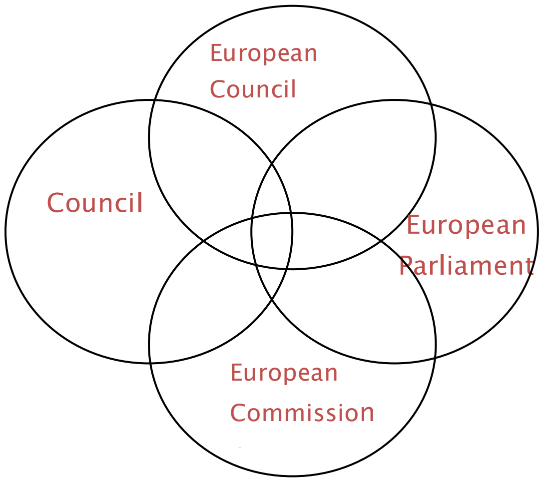
[4] The Lisbon Treaty is constituted of the amendments to the two consolidated treaties, the Treaty on the European Union or TUE of 1992 and the Treaty on the European Community, renamed as Treaty on the Functioning of the European Union or TFUE, of 1957, plus the Declaration concerning the Charter of Fundamental Rights considered *de facto* as a third treaty.

a lower chamber representing the European electorate (the European Parliament or EP) and an upper chamber representing the governments of the member states (the Council). According to TFEU, Art. 289, “the ordinary legislative procedure shall consist in the joint adoption by the European Parliament and the Council of a regulation, directive or decision on a proposal from the Commission”. The Treaty has thus celebrated the growing role acquired by the EP since its direct election in 1979 (Shackleton 2005). The EP has finally become an institution of equal standing with the Council representing (in its various ministerial formations, 10, included the General Affairs Council, as of 2012) the ministers of the EU member states’ governments. The inter-institutional balance between the EP and the Council has contributed legitimacy to the law making process of the EU. At the same time, by recognising the European Council (which consists of the heads of state or government of the EU member states, chaired by a president elected “by a qualified majority” of them “for a term of two and half years, renewable once”, TEU Art. 15(5)) as the body responsible for setting the general political guidelines and priorities of the EU, the Treaty has finally transformed it into a political executive of the Union, while confirming the Commission in its role of technical executive of the latter. The European Council, therefore, can no longer be considered a body linked to the Council as it was in the past (Naurin and Wallace, 2008), because the latter exercises legislative functions, while the former executive ones (Kreppel 2011). The Lisbon Treaty has therefore built a four-sided institutional framework for governing the EU policies (on the single market), with a bicameral legislature and a dual executive branch.

The four institutions are separate because formed through different electoral procedures, representing different communities of interest, operating according to different prerogatives and nevertheless connected through several mechanisms of checks and balances. The European Council and the Council are expressions of member state governments, and their composition depends on the outcomes of the staggered national elections in the member states. The EP depends on the outcome of the elections organized in districts within member states every 5 years[5]. The Commission’s president is nominated by the European Council, but should then receive the EP’s approval. Moreover, the Treaty requires (TFEU, Art. 17.7) the European Council “of taking into account the elections to the European Parliament” in the appointment of the president of the Commission. The commissioners are nominated by the European Council, in cooperation with Commission’s president, but even they have to pass through a process of approval by the EP. Thus, in the large majority of single market’s policies, where integration is taking place through legal acts, the EU decides through a complex interplay of those institutions each independent from the other (see Fig. 1).

[5] It should be stressed that the Lisbon Treaty does not apportion the 751 seats of the EP strictly according to the population of the member states. Indeed: (1) a minimum of 6 EP seats are assigned to each member states (162 seats); (2) the remaining 589 seats are assigned to member states in proportion to their population; (3) the larger member state (Germany) can obtain a maximum of 96 seats.

Fig. 1 The supranational institutional system of the EU



It is a decision-making system complex and nevertheless balanced. In fact, "where reference is made in the Treaties to the ordinary legislative procedure for the adoption of an act", the above procedure shall apply (TFEU, art. 294): the Commission has monopoly over legislative proposals (although its proposals might increasingly reflect European Council's political inputs) that have the form of a directive, regulation or decision; before submitting its proposal, the Commission will have to consult the various committees of the representatives of the member states (COREPER) supporting the activities of the Council, the parliamentary committees and interested or influential social and functional private organizations; once submitted, the Commission's proposal will have to be discussed, amended and approved by both legislative branches (the EP and the Council). It is interesting to notice that, in the first years after the Lisbon Treaty came into force, when the Commission's proposal was finally submitted to one or another legislative chamber it was generally approved at the first reading, avoiding passage through the time-consuming procedure of reconciliation between their different views on the proposal (Costa, Dehousse and Trakalova 2011). This decision-making system tries to satisfy the effectiveness' criteria, with the competitive cooperation between the European Council and the Commission, and the legitimacy's criteria, thanks to the legislative role of the EP and the Council and the supervisory role of European Court of Justice (ECJ), together with member states' constitutional courts.

The institutionalization of the quadrilateral decision-making system has had contradictory effects on the so-called *Community method,* which is at the origin of the EU's transformation into a supranational organization. In fact, according to this method, "the European Commission alone makes legislative and policy proposals. Its independence strengthens its ability to execute policy, act as the guardian of the Treaty and represent the Community in international negotiations. Legislative and budgetary acts are adopted by the Council of Ministers…and the European Parliament…The use of qualified majority voting in the Council is an essential element in ensuring the effectiveness of this method. Execution of policy is entrusted to the

Commission and national authority. The European Court of Justice guarantees respect for the rule of law" (Dehousse 2011: 4). According to this method of integration, therefore, there is no role for the European Council in the EU decision-making system, although it has become an institution of strategic importance for the EU. At the same time, the strengthening of the EP has certainly cohered with the Community logic envisioned by Jean Monnet at the foundation of the integration process (although then the EP was an assembly constituted by representatives nominated by national parliaments). How do we reconcile the European Council's decision-making role with the decision-making independence of the Commission (which is the hinge of the Community method), given that both institutions exercise executive functions? Remaining within a strict Community method perspective, it would be difficult to find an answer[6]. In any case, with the Lisbon Treaty, the European Council has formally entered into the supranational EU decision-making system with its role of defining the ends of the integration process (Kreppel 2008). Because the European Council has come to stay, probably it is less confusing to speak of a supranational, rather than Community, method for the management of single market policies. In sum, in the supranational side, the EU has institutionalized a quadrilateral decision-making system trying to combine the effectiveness of the executive power with the legitimacy of the legislative power.

The intergovernmental side

Integration through law does not represent the only logic celebrated by the Lisbon Treaty. With the extension of the integration process to policy realms traditionally considered sensitive to the national sovereignty of the member states, such as welfare and employment policies, foreign and security policy (Common Foreign and Security Policies or CFSP), military and security policy (European Security and Defence Policy or ESDP) and economic and financial policies (and the Economic and Monetary Union or EMU[7]), the EU has looked to organize the decision-making process by new modes of governance. Since the 1990s, scholars have analysed and discussed this new approach to policy-making based on open method of coordination, benchmarking, mainstreaming, peer review and, more generally, *intergovernmental coordination* (Heritier and Rhodes 2010; Trubek and Trubek 2007; Kohler-Koch and Rittberger 2006; Caporaso and Wittenbrinck 2006; Idema and Keleman 2006). Indeed, it was the 1992 Maastricht Treaty that institutionalized a *compromise* between those asserting the need to promote integration also in policy's areas historically at the centre of national sovereignty, as monetary and economic policy or foreign and security policy, and those unwilling to downsizing the powers of national governments in those policy's realms. The compromise consisted, on one side, in integrating at the Union's level also those policies and, on the other side, in interpreting this integration as *voluntary coordination* between member states' governments, with minor if not insignificant role of the supranational institutions. Indeed, for distinguishing between different

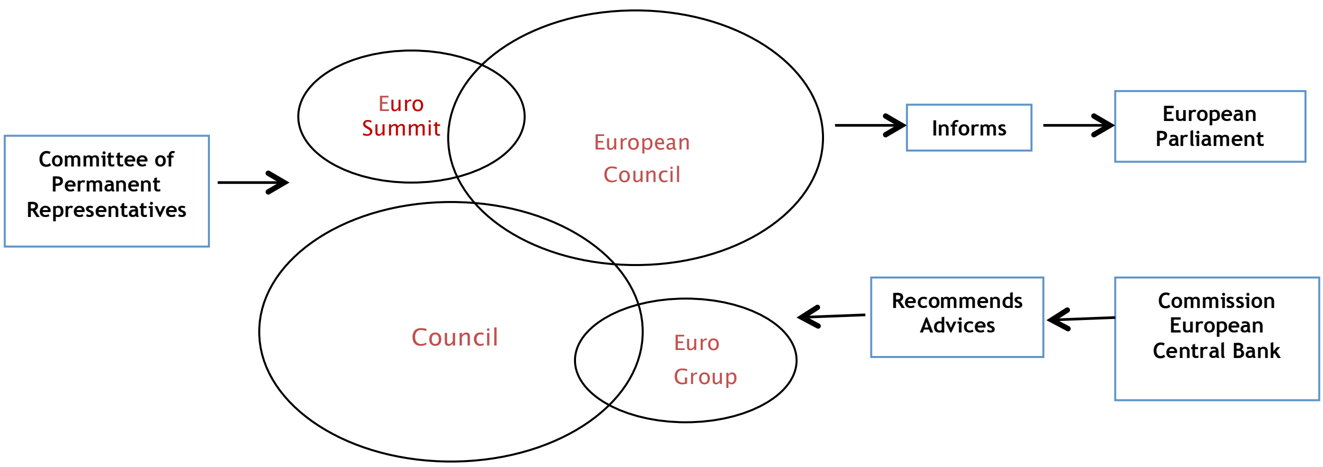
[6] Indeed, in the most articulated study on the Community method (Dehousse 2011), there are no references to the role acquired by the European Council in the supranational EU. For a discussion on the erosion of the Commission's power of initiative, see Ponzano, Hermanin and Corona (2012).

[7] The EMU is constituted only by the member states whose currency is the euro.

models of integration, the Maastricht Treaty set up three distinct institutional pillars or decision-making regimes, although some authors (Wallace and Wallace 2007) identified at least five different regularized patterns of decision-making within and across those pillars.

The Lisbon Treaty has abolished the institutional distinction between pillars, giving a unified legal personality to the EU, but it has maintained the distinction between different decision-making regimes, the supranational and the intergovernmental. Although each regime accommodates several patterns of decision-making, the two decision-making regimes embody two distinct constitutional logics, one multilateral (because based on both supranational and intergovernmental institutions, i.e. the quadrilateral) and the other unilateral (because based exclusively on the intergovernmental institutions). Certainly, the boundary between the supranational and intergovernmental methods is not fixed and insurmountable, as shown by the home affairs and justice policy that since Maastricht was gradually transformed from an intergovernmental to a supranational policy. The so-called 'cross-pillarization' affected also other realms of policy, as foreign and security policy (Stetter 2007). Nonetheless, the Lisbon Treaty has formally entrenched the intergovernmental decision-making regime, thus celebrating an alternative model of integration based on (Allerkamp 2009: 14): (a) "policy entrepreneurship (coming, *n.d.r.*) from some national capitals and the active involvement of the European Council in setting the overall direction of policy"; (b) "the predominance of the Council of Ministers in consolidating cooperation"; (c) "the limited or marginal role of the Commission"; (d) "the exclusion of the EP and the ECJ from the circle of involvement"; (e) "the involvement of a distinct circle of key national policy-makers"; (f) "the adoption of special arrangements for managing cooperation, in particular the Council Secretariat"; (g) "the opaqueness of the process to national parliaments and citizens"; (h) "the capacity on occasion to deliver substantial joint policy". What we have here is a simplified decision-making regime, based on the European Council and the Council, within which national governments play an exclusive role (see Fig. 2).

Fig. 2 The intergovernmental institutional system of the EU



Regarding CFSP and EMU in particular, the intergovernmental Lisbon Treaty has formally eschewed the principle that integration should proceed through legislative acts that are directly binding for all subjects involved. These policies are based on *soft law*, not *hard law.* As TEU, Art. 24(1), states expressly, in CFSP "the adoption of legislative acts shall be excluded" and the decisions are implemented through actions and positions (TEU, Art. 25). Thus, not only is the EP excluded from the decision-making process, but, as TEU, Art. 24 clarifies, "the Court of Justice of the European Union shall not have jurisdiction with respect to these provisions", unless the foreign policy decisions infringe upon fundamental principles and rights the EU should respect, as stated in TEU, Art. 2 ("The Union is found on the values of respect for human dignity…") and TEU, Art. 3 ("The Union's aims is to promote peace…"). It is certainly plausible to argue that the EP may be indirectly involved in foreign policy through its connection with the High Representative of the Union for Foreign Affairs and Security Policy (HR). Indeed, reformation of the HR's role was considered by many scholars (Howorth 2011) one of the main innovations introduced by the Lisbon Treaty for bringing foreign and security policy as close as possible to the supranational institutions. The HR role was initially introduced in the 1997 Amsterdam Treaty with the aim of giving technical support to the Foreign Affairs Council. Through the HR, the latter did not need to rely solely on the work of the General Affairs Council' secretariat, thus giving the Foreign Affairs Council an autonomous functional structure.

The Lisbon Treaty has apparently transformed this technical role into a more political one. According to the Treaty (TEU, Art. 18.2), in fact, the HR must now wear a 'double hat', being assigned the role of vice-president of the Commission and permanent chair of the Foreign Affairs Council. He or she must be appointed by the European Council in agreement with the president of the Commission – an appointment that must then be approved by the EP. The HR is a member of both the executive (in his/her capacity as vice president of the Commission) and legislative branches (because s/he permanently presides over the Foreign Affairs Council, the only configuration of the Council not chaired by the half-yearly rotating presidency of the Council). The Treaty has thus tried to institutionalize a sort of ambiguous role for the HR, expecting s/he might bridge the supranational culture represented by the Commission and the intergovernamental interests protected by the Foreign Affairs Council. Notwithstanding this innovation, however, the CFSP has continued to function according to that regularized pattern of decision-making called as 'intensive transgovernmentalism' (Wallace and Wallace 2007). A pattern that, although it fosters a process of socialization between national civil servants and ministers and Union's officials engaged in this policy realm, recognizes mainly the Foreign Affairs Council as the institution authorized to decide 'actions' and 'positions' for the EU (Thym 2011).

A similar logic governs the functioning of the economic and financial policy of the EU (and in particular of EMU) (Heipertz and Verdun 2010). Although monetary policy was centralized in the ECB, economic and financial policies were left in the hands of national governments. This is why TFEU, Art. 119, states that "the adoption of an economic policy (…) is based on the close coordination of Member States' economic policies". For the Treaty, economic and financial policies are reserved territories of the Council with the Commission allowed to play a technical role, although important, in monitoring the economic performance of member states. Regarding excessive deficit procedures of the euro-area member states (annexed as Protocol n. 12 to the Lisbon Treaty, called the Stability and Growth Pact, or SGP, as regulated by TFEU, Art. 126), the Council monopolizes the policy's decision, although the latter is generally based on reports or recommendations of the Commission. As stated in TFEU, Art. 126(14), "the Council shall, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the European Central Bank, adopt the appropriate provisions" for implementing agreed-upon economic guidelines. According to the special legislative procedure, the Council, acting either unanimously or by a qualified majority depending on the issue concerned, can adopt legislation based on a proposal by the Commission after consulting the EP. However, while being required to consult the EP on some legislative proposals concerning economic and financial policy, the Council is not bound by latter's position. Indeed, the Council took frequently decisions without even waiting for the EP's opinion. The Council (in its configuration as Council on Economic and Financial Affairs known as ECOFIN) is supported in its activities by an Economic and Financial Committee whose task (TFEU, Art. 134) is to supervise the economic and financial situations of the member states. It is an advisory body to ECOFIN to which "the Member states, the Commission and the European Central Bank shall each appoint no more than two members" (TFEU, Art. 134.2). Also the EMU functions according to a variant of intergovernmentalism, a decision-making pattern that Puetter (2012) has defined as 'deliberative intergovernmentalism'. In any case, either through recommendations or special legislative procedure, the ECOFIN is the institution with the power of making decisions concerning the economic and financial policies of the Union.

In fact, although it is recognized (TUE, Art. 126(6) and 126(7)) that the Commission may initiate a procedure against a member state running an excessive budget deficit, the Commission's recommendation has however the status of a proposal, because only the Council can take the appropriate measures (that may go from requests of information addressed to the member state that fails to comply to fines imposed on it). It is thus up to the Council to decide whether or not to proceed along the lines of the Commission's proposal (as it didn't do in 2003, when the Commission proposed opening an infringement procedure against France and Germany, who were not respecting the parameters of the SGP). The Lisbon Treaty has thus institutionalized the principle that financial policy is based on voluntary coordination. The sanctions for excessive deficits and debts should be subject to the wills of member states' governments (or their financial ministers in the ECOFIN). This is even truer for euro-area member states, whose main deliberations take place either in the Euro Summit or in the Euro Group (consisting respectively of the heads of state and government and the ministers of economics and finance of the EU member states adopting the common currency, as regulated by Protocol n. 14 annexed to the Lisbon Treaty), with the technical support of the Commission. The Euro Group has the status of an 'informal institution,' embodying a specific approach to policy-making defined as 'informal governance' (Puetter 2006). Protocol n. 14 doesn't even mention the EP, at least as the institution required to be informed about the decisions made. And, as in the CFSP, no supervisory role is recognized or assigned to the ECJ. By establishing a common currency (the euro adopted by 17 member states as of 2012), the EU has thus centralized monetary policy (assigning its management to a proper federal institution, the ECB). At the same time, by introducing the coordination framework, it has allowed for the decentralization of those financial, fiscal and budgetary policies structurally connected to monetary policy.

The terms of coexistence between the supranationalism of the policies for the single market and the intergovernmentalism of the CFSP and EMU in particular were left uncertain by the Lisbon Treaty. In both realms, the Treaty has given a strategic role to the European Council, which is now the real political head of the Union (Scoutheete 2011). Certainly, the permanent president of the European Council (although the half-yearly rotating presidency has remained in all configurations of the Council but Foreign Affairs Council) was supposed to dilute the strictly intergovernmental nature of the institution. Indeed, the first new president (Herman Van Rompuy) was quick to set up his permanent office in Brussels (at the Justus Lipsius building), which also symbolized that the European Council's presidency is now based in the Union's capital and no longer in those of member states. At the same time, the decision to maintain a commissioner for each member state in the Commission (although due to contingent reasons[8]) had the effect of introducing intergovernmental biases into the traditionally most supranational institution of the Union[9]. That notwithstanding, the Lisbon Treaty has formalized two different decision-making regimes or constitutional frameworks for dealing with the policies of the single market and the policies of financial stability (as well as foreign affairs, security policy, welfare and unemployment policies). This is why it has been the intergovernmental Union that was tested by the dramatic events of the euro crisis. For the first time since its post-2005 ascent to dominance, the pretension of the intergovernmental decision-making regime of being more adept, than the supranational one, in dealing with the challenges of integration has been empirically falsified.

INTERGOVERNMENTALISM: ASCENT AND CRISIS

The politics of intergovernmentalism

Once the financial crisis arrived to Europe in 2009-2010, the EU had already in place the Lisbon Treaty with its intergovernmental constitution. This intergovernmental Union enjoyed also the support of a powerful constellation of political leaders and public opinions. Once the EU entered the throes of a crisis after the failure of the Constitutional Treaty in the French and Dutch popular referendum of 2005, the intergovernmental approach emerged as the only feasible strategy for promoting integration. As *The*

[8] The decision was made in order to appease Irish voters required to vote on the Lisbon Treaty for a second time (on October 2009) after having rejected it in a previous referendum (on June 2008).

[9] Certainly, the Lisbon Treaty, TEU Art, 17.5, states that each member state has a right to propose a national as commissioner till 1 November 2014, thus adding that after that date the Commission will be composed of "two thirds of the number of the Member States, unless the European Council, acting unanimously, decides to alter this number". However, it is likely that the small member states will exert pressure to preserve the *status quo,* exactly because they want to guarantee the equally-weighted geographical composition even within the Commission regardless of what the treaty states.

Economists' s Charlemagne (2012) wrote, after "the French and Dutch voters killed the proposed EU constitution … intergovernmentalism (became) the new fashion".

The apex of the intergovernmental moment was reached between 2009-2011. In that period, in fact, French and German governments converged towards an intergovernmental interpretation of the integration process. President Sarkozy, in his 2007-2012 mandate, behaved as the coherent heir of Charles De Gaulle's vision of a 'Europe of nation states', that is, of a process of integration primarily controlled by the member states' executives (Calleo n.d.). In Sarkozy's vision (as in De Gaulle's) there was no room for the EP and the Commission in the decision-making process, not to mention the ECJ. One might argue that, in France in particular, after the popular refusal of the Constitutional Treaty in the 2005 referendum, this vision came to be shared by much of the ruling elite of the country, not only by Gaullists (Grossman 2008). This vision appears to cohere quite well with a domestic semi-presidential system based on the decision-making primacy of the president of republic. At the same time, it may be surprising that such an intergovernmental vision of Europe came to be shared by the post-2009 German government of Angela Merkel. After Helmut Kohl's chancellorship, a new generation of German politicians with no experience of WWII has come into power. This change emerged clearly with the Schroeder government which followed the last Kohl government in 1998 and which lasted till 2005. Since then, "generational change…allowed (German) political leaders to *normalise* EU policy in the sense of becoming more like other large member states" (Sloam 2005: 98). The new generation was "ready to articulate material German interests" (Ibidem: 88) and not only to profess guilty for the country's past. During the first half of the 2000s, the social-democratic and green governmental elites began questioning the paymaster role that Germany traditionally played within the process of European integration (for instance, asking for a renegotiation of the EU budget), did not refrain from mobilizing German military force abroad (for instance, participating in the 1999 Kosovo war), and articulated a vision of a German interest distinct from the European interest[10]. However, this new German assertiveness remained within the federal perspective of an increasingly economically and politically integrated Europe. This continuity was clearly expressed by the famous speech by the German Foreign Affairs Minister Joschka Fischer at Humboldt University in Berlin on 12 May 2000, a speech not by chance titled "From Confederacy to Federation: Thoughts on the Finality of European Integration".

When Angela Merkel took power for the first time in 2005[11], the generational change acquired also a new 'territorial' connotations. Angela Merkel was and is the first chancellor coming from the Eastern part of Germany (the *Deutsche Demokratische Republik* or DDR), remained under Soviet control during the Cold War era. The DDR was not involved in the public self-analysis of German responsibilities for the Holocaust and WWII that instead developed in the Western part if Germany (the *Bundesrepublik Deutschland*). A

[10] In a famous 1997 statement, the new leader of the SPD (Social-democratic Party) Gerhard Schroeder said: "Kohl says the Germans have to be tied into Europe or they will stir up old fears of the 'furum teutonicus'. I say that's not the case. I believe that Germans have become European not because they have to be, but because they want to be. That is the difference" (now in Sloam 2005: 89).

[11] She was elected chancellor of a grand coalition government constituted by her party (the Christian Democratic Union, CDU), the sister party of the latter (the Christian Social Union, CSU) and the Social Democratic Party (SPD).

'territorial' origin that might explain why Angela Merkel is considered to be a European more in the head than the heart[12]. Moreover, with the outcome of the 2009 German elections, which led to the formation of a coalition government between the CDU and the *Freie Demokratische Partei* (FDP), the chancellorship of Angela Merkel became more exposed to the intergovernmental tone. The FDP took increasingly a clear euro-realistic position, quite unusual for German politics. At the same time, the German constitutional court or *Bundesverfassungsgericht* (BVerfG)[13] has introduced powerful hurdles to the further transfer of national sovereignty to the EU. And finally the German public seemed increasingly wary of paying taxes to aid countries with high public debts and deficits. It was probably this combination of factors that led the Merkel's government formed in 2009 to search for institutional and policy solutions to the euro crisis that would not be questioned by the Court, her coalitional partner, or her voters. Merkel's government gradually moved from a re-affirmation of national interests (as the previous governments did) to a preference for an intergovernmental solution to the crisis, a preference at odds with the political structure and public culture of her country. The German parliamentary-federal system, in fact, is quite different from the French semipresidential-unitary system. In Germany the bicameral legislature (the *Bundestag,* representing the citizens, and the *Bundesrat,* representing the *laender's* executives*)* plays a crucial role in the policy-making process, and the judiciary is the indispensable mediator of any constitutional dispute. Thus, if France, in the 2007-2012 period, came to adopt the German economic paradigm, enshrined in the two new intergovernmental treaties, in the same period Germany came to adopt the French political paradigm, accepting that decision-making power in the EU should remain in the exclusive hands of the governments meeting within the European Council and the ECOFIN Council. This marked a significant change for a country like Germany, which was traditionally the defender of the Commission and the EP (Pederson 1998). Finally, among the larger countries, the intergovernmental vision was supported not only by the British coalition government of David Cameron (elected in 2010), but also by the Italian government of Silvio Berlusconi (2008-2011), the latter in clear discontinuity with the previous government of Romano Prodi (2006-2008) and the country's traditional preference for a supranational approach.

In sum, at the turn of the first decade of the 2000s, the consensus was that integration has reached such depth that only member states' governments can drive it properly. As President Sarkozy made clear in his speech in Toulon on 2 December 2011, "the reform of Europe is not a march towards supra-nationality. (…) The crisis has pushed the heads of state and government to assume greater responsibility because ultimately they have the democratic legitimacy to take decisions. (…) The integration of Europe will go the intergovernmental way because Europe needs to make strategic political choices". A month before President Sarkozy' speech, on 2 November 2011[14], German chancellor Angela Merkel assessed that "the Lisbon Treaty has placed the institutional structure (of the EU) on a new foundation", out-dating the traditional distinction

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[12] See Charlemagne, 'Angela the lawgiver', *The Economist,* hhhp://www.economist.com/blogs/Charlemagne.
[13] From the sentence of 30 June 2009 stating that the Treaty of Lisbon (*Zustimmungsgesetz zum Vertrag von Lissabon*) is compatible with the German Basic Law to the sentence of 6 September 2011 upholding the country's participation in bailing out financially-ailing Eurozone member states such as Greece.
[14] Opening ceremony of the 61th academic year of the College of Europe in Bruges.

between the "Community and the Intergovernmental methods"[15]. Indeed, she added, the EU is functioning according to a "new Union method", which consists of "coordinated action in a spirit of solidarity". For her, coordination referred inevitably to the decision-making role of national governments, not supranational institutions.

If the decision-making pre-eminence of national governments was justified by the legitimacy coming to them from their own domestic electorates, as both Sarkozy and Merkel asserted in several occasion, then the control of their action should be assigned to national legislatures, not the EP. Which is, indeed, the position expressed by the German constitutional court in its judgements. Thus, the intergovernmental logic brings with it an inter-parliamentary balancing: national parliaments should coordinate for controlling the coordinated national governments. The Lisbon Treaty prefigured this possibility, when (Protocol N. 1) it encourages "greater involvement of national Parliaments in the activities of the European Union and…enhance(s) their ability to express their views on draft legislative acts of the European Union as well as on other matters which may be of particular interest to them". In a speech given on 11 January 2012, the then French minister for European Affairs, Jean Leonetti, proposed the creation of an indirectly formed "Euro-area parliament", consisting of parliamentarians of the national parliaments of the euro-area, as an institution balancing the Euro Summit.

The crisis and its dynamic

Thus, when the crisis started to hit Greece, there was in place a decision-making regime for structuring the institutional and policy's answer to financial turmoil. As established by the intergovernmental constitution, the European Council and the ECOFIN Council took immediately the centre-stage of the policy-making process, while the Commission was marginalized and the EP left dormant. Continuous meetings of the European Council and ECOFIN Council were organized between 2010 and 2012[16], although none of them did come out as decisive. At least there were four rounds of crucial decisions concerning the new economic governance of the EU.

The first round took place in 2010. At the ECOFIN Council of May 2010, first it was adopted a regulation to create the EFSM as a new EU law instrument and then, at the margin of that meeting, "the members of the Council from the 17 euro area countries 'switched hats' and transformed themselves into representatives of their states at an intergovernmental conference; in that capacity, they adopted a decision by which they committed themselves to establish the EFSF outside the EU legal framework" (De Witte 2012:2). The EFSF consisted of an executive agreement (not a new formal treaty), in the form of a private

[15] On this, see Dehousse (2011).

[16] It is interesting to note that, while the Lisbon Treaty (TUE, Art. 15.3) states that "the European Council shall meet twice every six months", in the 2010 it met 6 times (8 times if one considers two meeting of the Euro-area member states' heads of government), in 2011 it met 7 times (9 times if one considers also the meetings of the Euro-area member states' heads of government) and in 2012 it met six times, any time followed by a meeting of the euro-area member states' heads of state and government.

company established under Luxembourg law, thus authorized to negotiate with its 17 shareholders. Moreover, in the Council of 7 September 2010, it was approved the European Semester, an instrument for enhancing time consistency in EU economic policy coordination, entered into force by January 2011. If the former was an instrument of crisis management (to help Ireland and Portugal to face the crisis of sovereign debt), the latter was rather a framework for promoting crisis prevention because finalized to coordinate *ex ante* the budgetary and economic policies of the EU member states, in line with both the SGP and Europe 2010 strategy (see Hallerberg, Marzinotto and Wolff 2012).

The second round took place in the first half of 2011. Between the European Council of 24-25 March and the European Council of 23-24 June, several measures were taken. First of all, the so-called Six Pack consisting of legislative proposals finalized to tighten further the policy coordination required by both the European Semester and the Stability and Growth Pact (SGP). All of these became operative by 13 December 2011. They were: (1) the strengthening of the surveillance of budgetary positions and coordination of economic policies through a regulation amending Council Regulation 1466/97 approved with the codecision procedure on Commission's proposal; (2) the speeding up and clarification of the excessive deficit procedure through a Council regulation amending Council Regulation 1467/97 approved with a special legislative procedure (with the EP only consulted); (3) the enforcement of budgetary surveillance in the euro area through a new regulation approved with the codecision procedure on Commission's proposal; (4) the definition of a budgetary framework of the member states through a new Council directive implemented with a non-legislative procedure (with the EP only consulted); (5) the prevention and correction of macroeconomic imbalances through a new regulation approved with the codecision procedure on Commission's proposal; (6) the enforcement of measures for correcting excessive macroeconomic imbalances in the euro area through a new regulation approved with the codecision procedure on Commission's proposal. To these measures it should be added the Euro Plus Pact, consisting of a political commitment (a sort if intergovernmental agreement) between the euro area member states, but also open to non-euro area ones (Denmark, Poland, Latvia, Lithuania, Bulgaria and Romania) aimed to foster stronger economic policy coordination. The signatories of the Pact made concrete commitments to a list of political reforms intended to improve the fiscal strength and competitiveness of each country. The Pact was intended as a more stringent successor to the SGP although it was based on the open method of coordination. It was finally adopted in March 2011.

The third round developed in the second half of 2011 and the first month of 2012. In July 2011 it was signed a first version of the ESM Treaty, thus renegotiated in February 2012, as a permanent successor of the temporary EFSF. The ESM was located outside the EU legal framework on the basis of a European Council decision of 25 March 2011 to amend TFEU Art.136 that states that "the member States whose currency is the euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the euro area as a whole". The ESM was thus established as a new treaty among the euro-area member states, endowed of its own institutions[17], "as an intergovernmental organisation under public international law", to enter into force by January 2013 (having to wait the decision of the German constitutional court regarding its constitutional congruence with the German Basic Law, decision finally and positively expressed in September 2012). In the second half of 2011, other crucial decisions were made, particularly during the European Council's meeting of 8-9 December 2011. Under the irresistible leadership of German chancellor Angela Merkel, followed by French president Nicolas Sarkozy, a proposal to amend the Lisbon Treaty for integrating the fiscal policies of the member states was advanced. This time, automatic mechanisms of sanctions on member states who would not respect more stringent criteria of deficit-GDP percentage (0,5 per cent a year) and debt-GDP percentage (60 per cent, with the downsizing of 1/20 of the over stock every year) were advanced, with the request that each member state would introduce the golden rule of a mandatory balanced budget domestically at the constitutional or equivalent level. The UK's opposition to pursuing fiscal integration within the Lisbon Treaty's legal framework, motivated by the need to protect the London financial district from possibly-restrictive fiscal regulations, made it necessary to move beyond the Lisbon Treaty, an outcome that the French president, given his mistrust if not distrust of the supranational features present in the Lisbon Treaty, aimed for. Indeed, it may have been possible to recur to the procedure of reinforced cooperation (TEU, Art. 20), on the basis of which a group of EU member states is allowed to advance towards deeper integration in policy fields that are not of exclusive competence of the Union or do not concern the common foreign and security policy (CFSP) (Dyson K. and Sepos, 2010).

However, this institutional strategy was not considered viable because of German domestic reasons (chancellor Merkel had to appease her electoral constituencies by displaying her capacity to impose stricter rules on the euro-area member states) and also because the activation of the reinforced cooperation's procedure would have required (TFEU, Art. 326-334) the consent of the entire Council (UK included). For these reasons, it was decided that a new intergovernmental treaty, the Fiscal Compact Treaty with its own governance structure, would be set up outside the Lisbon Treaty and signed by all the 17 euro-area member states plus those non-euro area member states (all of them, apart from the UK and the Czech Republic) interested in participating in the Treaty.

Finally, a fourth round developed from the European Council of 28-29 June and 13-14 December 2012. If the June's European Council moved the agenda of the EU from fiscal rigor to the need of promoting economic growth, the December's European Council has formalized a road map for moving "towards a genuine economic and monetary union". This direction implies, in particular for the euro-area member states, to share an integrated financial framework, an integrated budgetary framework, an integrated economic policy framework and to strengthen democratic legitimacy and accountability of the euro-area institutions. In

[17] The Conclusions of the European Council of 24-25 March 2011 states: "The ESM will have a Board of Governors consisting of the Ministers of Finance of the euro-area Member States (as voting members), with the European Commissioner for Economic and Monetary Affairs and the President of the ECB as observers. The Board of Directors will elect a Chairperson from among its voting members. (…) The ESM will have a Board of Directors which will carry out specific tasks as delegated by the Board of Governors. (…) All decisions by the Board of Directors will be taken by qualified majority (…) A qualified majority is defined as 80 percent of the votes", *EUCO 10/11, Concl 3,* pp. 22-23.

this period, two regulations were approved through the codecision procedure (the so-called Two Pack), applicable to the euro-area member states only on the basis of TFEU, Art. 136, aimed to further strengthening the surveillance mechanisms in the euro-area. The two regulations build on the SGP and the European Semester and impose the euro-area member states to submit their budgetary plan for the following year to the Commission and the Euro Group before 15 October along with the independent macro-economic forecast on which they are based. The exercise in Autumn introduced by the Two Packs would allow the monitoring and sharing of information on the member states' budgetary policies before their adoption. The Two Pack is a further and more stringent contribution to the crisis prevention regime of the euro-area member states.

Considering the complex of the measures adopted in the period 2010-2012, one has to acknowledge their policy magnitude and institutional complexity. Some of them, as the Six Pack and the Two Pack, have strengthened the supranational side of the EU, given they consisted of regulations and directives approved predominantly through the codecision procedure. However, with the deepening of the euro crisis, the EU has more and more shifted in an intergovernmental direction. In fact, a multiplicity of treaties were set up, as the EFSF thus substituted by the ESM for crisis management and the Fiscal Compact for crisis prevention. It was observed that those decisions have put "the EU system…in the throes of a revolution (although) like all revolutions, this one (too) displays numerous evolutionary features" (Ludlow 2011a:5). However, that revolution was not sufficient to appease the financial markets that indeed began demanding higher interest rates for buying public bonds from Italy and other southern and peripheral euro-area member states. Market pressures became so powerful that many of these countries with high ratios of public debt to GDP had to register the collapse of their incumbent governments. In some cases (Ireland, Portugal, Spain), the crisis was resolved through new elections, while in others (Greece, Italy) it was resolved through the substitution of the parties in government with a 'national solidarity' executive composed by technocrats and supported by a large trans-parties alliance in the parliament (Greece and Italy). The formation of executives independent from electoral consensus was considered necessary not only to promote the required reforms (previously vetoed by powerful electoral constituencies), but also to guarantee the virtuous euro-area member states (Germany, Netherland, Finland, Austria) that Greece and Italy would be serious in cutting their public debt and rationalizing their general systems of public expenditure. The hope was to show the financial markets (and the domestic electorates of the virtuous countries) that the entire euro-area was committed to achieving financial stability. But nevertheless markets' speculation continued. In sum, even the most audacious decisions arrived late for answering to the market's pressures, were too limited in their reach and were perceived as illegitimate by the affected interests. It is possible to argue that the contradictory evolution of the euro crisis does not vindicate the claim that intergovernmentalism constitutes a more effective approach (than the supranational one) for dealing with the challenges of integration. The euro crisis is to the 'intergovernmental method' what the French and Dutch referendum were to the 'Community method'.

INTERGOVERNMENTALISM: DILEMMAS AND REACTION

The dilemmas of intergovernmentalism

Why has the intergovernmental EU set up an extremely complex system of economic governance that nevertheless was unable to appease the markets and to convince the citizens of the indebted countries? One might answer that the euro crisis has hit so deeply the EU to require the setting up of amazingly complex instruments of both crisis management and crisis prevention. But why have crucial policy's instruments been located outside the legal structure of the EU? Such institutional intricacy has to be considered the logical outcome of a decision-making regime that is based primarily on national governments' coordination. Coordination is insufficient for solving basic dilemmas of collective action. If any decision-making regime should be able to generate effective and legitimate solutions for the problems it has to deal with, the intergovernmental regime has shown to be based on shaky foundations for doing that.

Let's start from considering the effectiveness' side of the intergovernmental decision-making regime. Three basic dilemmas emerged during the euro crisis. The *first* was the *veto dilemma*: how to neutralize oppositions in a decision-making process requiring unanimous consent? This dilemma accompanied the entire evolution of the euro crisis, bringing the European Council and the ECOFIN Council to answer the crisis regularly 'too late and too little'. Although the financial crisis was initially circumscribed only to Greece, it gradually began expanding to other euro-area member states because of the decision-making stalemate produced by divergent strategies for dealing with it. Divergences in the domestic electoral interests of the various incumbent governments (governments with a sound budget did not want to pay for the difficulties of indebted countries whose governments expected instead to be helped for surviving politically) made the decision-making process dramatically muddled. The opposed financial needs of creditors and debtors caused endless negotiations between governmental leaders despite the crisis required immediate answers. Indeed, for neutralizing the British veto on fiscal coordination, it was necessary to move outside of the Lisbon Treaty, setting up a new treaty. At the same time, the difficulty in speeding up the decision-making process during the crisis increased the stake of the leadership's role in driving the EU toward the necessary answers. As the financial crisis deepened, the bi-lateral leadership of Germany and France, in the period 2009-2011, was transformed into a compelling *directoire* of the EU financial policy. Analytically it is not clear where to locate the boundary between bi-lateral leadership on one side and bi-lateral *directoire* on the other. To be sure, as Heipertz and Verdun (2010: 20) argued, "when Member States governments bargain with one another, the largest countries have the greater influence". And, of course, the bi-lateral leadership of France and Germany has historically represented the engine of the integration process, although the various waves of enlargement, increasing the number of the EU member states, have inevitably reduced its efficacy (Cole 2010). Their bi-lateral leadership was not resented by the other member states as long as the two countries, although sharing a strategic goal, "started from quite diverging points when it came to sketching the road toward this common goal" (Schild 2010: 1380). As Webber (1999: 16) put it, the greater the divergence between French and German preferences on the policy before reaching a common goal, the easier it was for the other member states to 'multilateralize' that common goal.

The deepening of euro crisis prevented however this multilateralization, for two reasons. First, Merkel's Germany and Sarkozy's France came to share the same ends and means for dealing with the crisis. Although France initially used a strategy different than Germany's, fear of playing victim to market speculations if unprotected by an alliance with Germany brought France closer and closer to the Germany's restrictive monetary position (no role for the ECB to act as lender of last resort, no Euro-bonds, no expansive policies either at the EU or domestic level). With the coordination of the Brussels office of President Herman van Rompuy, the financial strategy for dealing with crisis came to be dictated by Berlin and Paris sharing not only the same strategic goals (financial stability and fiscal integration), but also policies with which to reach them (the introduction of a balanced budget clause in the constitution of the member states even through a new treaty, domestic structural reforms, fiscal discipline). Second, Sarkozy and Merkel, in their attempt to solve the veto dilemma proper of the intergovernmental method, came to 'verticalize' the decision-making process. They regularly met (in Berlin or Paris other than in Brussels) before the European Council meetings to identify common or shared positions that were later imposed in the following formal meeting of the heads of state and governments[18]. Probably, the epitome of this attitude was the meeting between the two leaders in Deauville on 5 December 2011 where they took decisions then 'reported' to the European Council meeting of the following 8-9 December. Indeed, it became common to talk in the press of a 'Merkozy' government within the European Council. Is a *directoire* compatible with the logic of integration of and between asymmetrical states (i.e., states of different demographic size, economic capacity, cultural and linguistic patterns, historical identities)?

The second is the *enforcement dilemma*: how to guarantee the application of a decision taken on a voluntary bases? The enforcement dilemma emerged dramatically with regard to the approval of the new treaties (the ESM and the Fiscal Compact) by their contracting parties. In fact, to avoid jeopardizing the entire project by the possible rejection of one or another intergovernmental treaty by few of their contracting parties, the Fiscal Compact Treaty (Title VI, Art. 14.2) had to state that it "shall enter to force on 1 January 2013, provided that twelve Contracting Parties whose currency is the euro have deposited their instrument of ratification". Twelve and not all the 17 member states of the euro-area. It is the first time (in the European integration experience) that unanimity has been eliminated as a barrier for activating an intergovernmental treaty (that would require, by its own logic, the unanimous consent of all the contracting parties). Or, anticipating plausible rejection of the Fiscal Compact Treaty, the ESM Treaty had to state (Point 5) that "the granting of financial assistance…will be conditional, as of 1 March 2013, on the ratification of Fiscal Compact Treaty by the ESM Member concerned". This threat was efficacious in cooling down the euro-sceptical mood of Irish voters (in the referendum on the Fiscal Compact held on 31 May 2012) or the anti-

[18] It is worthwhile to read the chronicles of the preparation of the various European Council held into 2011 by Peter Ludlow with their detailed description of the triangulation between chancellor Angela Merkel and her staff, president Nicolas Sarkozy and his staff and the office of president. Herman Van Rompuy. A good example is Ludlow (2011b).

European mood of Greek voters. However, in moving in this direction, the intergovernmental logic had not only to cintradict itself, but it had to introduce explicit threats not properly congenial with "the spirit of solidarity" celebrated by Angela Merkel in her 2 November 2011 speech.

The third is the *compliance dilemma*: once enforced an agreement, how to guarantee the respect of its rules even when they no longer fit the interest of one or the other of the voluntary contracting parties? This dilemma emerged dramatically in the case of the disrespect of the rules of the SGP. It became apparent in 2009 that Greece cheated the other member states' governments (manipulating its statistical data regarding public deficit and debt) for remaining in the euro-area. However, the same dilemma emerged in 2003, when France and Germany were saved from sanctions by a decision of the ECOFIN (and in contrast to a Commission's recommendation) notwithstanding their disrespect for the SGP's parameters. The Fiscal Compact Treaty tries to deal with the non-compliance possibility providing for a binding intervention of the ECJ upon those contracting parties that do not respect the agreed rules. It is stated (Art. 8.1) that "where a Contracting Party considers, independently of the Commission's report, that another Contracting Party has failed to comply with Article 3(2), it may also bring the matter before the Court of Justice. (…) the judgment of the Court of Justice shall be binding on the parties in the procedure". This also applies when the Commission issues a report on a contracting party failing to comply with the rules established by the Treaty. In the latter case, if the Commission, after having given the contracting party concerned the opportunity to submit its observations, still confirms the non-compliance by the contracting party in question, the matter will be brought to the ECJ. Art. 17 of the Fiscal Compact Treaty has come to stress that, in order to neutralize a recommendation of the Commission to intervene against a member state breaching a deficit criteria, "a qualified majority of the member states (should be) opposed to the decision proposed or recommended".

The clause of the reversed qualified majority is an attempt to make less likely non-compliance. Indeed, the discretion of the Council has been reduced (if compared with the rules concerning the SGP institutionalized in the intergovernmental side of the Lisbon Treaty), not only by the Treaty but also by the combination of the Six Pack and Two Pack, recognizing the need to rely on third actors (the ECJ or the Commission) for keeping the contracting parties aligned with the agreed aims of the Treaty. Even the ESM Treaty states that, in case of a dispute between an ESM Member and the ESM (Art. 37.2), "the dispute shall be submitted to the Court of Justice of the European Union. The judgement of the Court of Justice of the European Union shall be binding on the parties in the procedure, which shall take the necessary measures to comply with the judgement within a period to be decided by said Court" (Art. 37.3). At the same time, qualified majority vote (QMV) is extended even in the ESM. In fact, its Board of Directors "shall take decisions by qualified majority, unless otherwise stated in this Treaty" (Art. 6.5), where QMV corresponds to 80 per cent of the votes. However, because Germany detains 27,1461 of ESM keys, it will be impossible to have a QMV against Germany. In monetary affairs there is a German line that no member state can bypass.

However, the various solutions of the non-compliance dilemma seem problematic. It is problematic, in fact, that a new organization (set up by the Fiscal Compact Treaty or ESM Treaty) might use an institution (such as the ECJ) of another organization (the EU of the Lisbon Treaty) to bind its own member states. This may also apply to the technical expertise of the Commission or ECB, upon which both treaties rely. In the ESM Treaty, for instance, it is stated (Art. 17(5)) that "the Board of Directors shall decide by mutual agreement, on a proposal from the Managing Director and after having received a report from the Commission, … the disbursement of financial assistance to a beneficiary Member State"; or (Art 18(2)) that "decisions on interventions…shall be taken on the basis of an analysis of the ECB recognising the existence of exceptional financial market circumstances…", although the Commission and the ECB are not allowed to play an independent role in the decision-making process. Certainly, the intervention of the ECJ is justified by TFEU, Art. 273, that states: "the Court of Justice shall have jurisdiction in any dispute between Member States which relates to the subject matter of the Treaties if the dispute is submitted to it under a special agreement between the parties". Nevertheless, the ECJ or the Commission or the ECB are institutions operating within a legal structure defined also by the UK and the Czech Republic that did not agree upon the Fiscal Compact Treaty that utilizes them. Which are the political implications of this discrepancy? More in general, it is problematic, from an institutional perspective, to have established new treaties to solve the contradictions of an old treaty and keep them alive simultaneously. It seems reasonable to argue that such coexistence between different treaties might be the source of new legal, technical and political problems.

If the above dilemmas constrained the effectiveness of the intergovernmental Union (regarding crisis management in the first case and crisis prevention in the other two cases), that Union met also difficult hurdles in dealing with the *legitimacy dilemma*: how to guarantee legitimacy to decisions reached by national executives in the European Council or the ECOFIN Council that were never discussed, let alone approved, by the institution representing the European citizens (the EP)? Indeed, this dilemma became evident as the crisis deepened and the citizens of the indebted member states had to pay high costs for making the necessary structural adjustment of their country possible. Not only did they have to abide by decisions imposed by impersonal financial markets, but above all by the Council and the European Council where the national executives of the larger member states (they never voted) played a predominant role. The problem does not concern the content of the decision but the procedure for reaching it. Moreover, the highly centralized crisis prevention regime, set up during the euro crisis, will operate under the control of the larger and creditor member states, not the supranational institutions, that would impose their criteria to the small and debtor member states. The effects of the intergovernmental centralization were and will be uneven. Contrary to what happens in federal union, the transfer of sovereignty in financial policy has not gone from the states to the Union but from a group of states to another. Making content analysis of quality newspaper's articles on the euro crisis in six European countries (Austria, UK, France, Germany, Sweden and Switzerland) from December 2009 to March 2012, Kriesi and Grande (2012: 19) arrived to the conclusion that "by far the most important individual actor in in this (euro crisis, *n.d.r.*) debate was the German Chancellor Angela Merkel (…) followed by the (then) French President Nicolas Sarkozy". Indeed, the affected citizens have continued to protest against Angela Merkel and not Herman van Rompuy or Manuel Barroso. This effect has inevitably increased the public perception of the illegitimacy of the intergovernmental decision-making regime. The intergovernmental framework cannot identify a satisfactory solution to this dilemma because it assumes that the legitimacy of the EU derives from the legitimacy of its member states' governments, as asserted by President Sarkozy in his Toulon speech on 2 December 2011. However, the legitimacy of decisions taken on behalf of the EU cannot be a derivative of the legitimacy enjoyed by the governments of its member states. Decisions made at the EU level would require a legitimizing mechanism at that level, not at the level of its member states. Without a proper involvement of the EP in those decisions, the latter inevitably lacks the justification for being considered legitimate by the European citizens affected by those decisions.

Reacting to intergovernmentalism

From an intergovernmental point of view[19], the emergence of a German-French *directoire* in financial policy was considered a logical political outcome in a Union that exists thanks to the will of domestic governments. Indeed, with regard to the establishment of the ESM and the Fiscal Compact Treaties, it was argued that Germany inevitably had to play a domineering role in setting them up and defining the policy's priorities of the euro-area, given its condition as the continent's most powerful economy and the major financier of the various instruments of financial stability. However, with the deepening of the crisis, this intergovernmental statement came to be questioned.

Facing the German-French slither into the intergovernmental logic, the EP and the Commission started to react, more and more vociferously, to the *directoire* and its lack of legitimacy. Particularly under EP's pressure, both intergovernmental treaties were subjected to several revisions. The Fiscal Compact Treaty, which passed through five different drafts in less than two months (8-9 December 2011-31 January 2012) before a final version was published, was particularly affected (Krellinger 2012). In the final version, for instance, it refers to the necessity of applying it (Art. 2.1) "in conformity with the Treaties on which the European Union is founded (…) and with European Union law". Moreover, because of the EP's mobilization, the Treaty declares that (Art. 16) "within five years at most following the entry into force of this Treaty, on the basis of an assessment of the experience with its implementation, the necessary steps shall be taken, in compliance with the provisions of the Treaty on the European Union and the Treaty on the Functioning of the European Union, with the aim of incorporating the substance of this Treaty into the legal framework of the European Union". Indeed, the EP was fast to notice, already during the decision to create the ESM Treaty, that the latter "poses a risk to the integrity of the Treaty-based system" of the EU[20]. At the same time, the supranational institutions' criticism of the Fiscal Compact Treaty pressured the Treaty's framers to recognize that the operation of the intergovernmental Summit of the Heads of State and Government should rely on the president of the Commission. As stated in Art. 12(4), "the President of the

[19] This view was largely diffused in the press by 'realist' observers (journalists, analysts, politicians).
[20] Text adopted by the European Parliament at the sitting of Wednesday 23 March 2011, O.7.

Euro Summit shall ensure the preparation and continuity of Euro Summits meetings, in close cooperation with the President of the European Commission."

The Fiscal Compact Treaty has finally arrived to formalize (Art. 10) the possibility for member states whose currency is the euro to recur "to enhanced cooperation as provided for in Article 20 of the Treaty on the European Union (TEU) and in Articles 326 to 334 of the Treaty on the function of the European Union (TFEU)", thus making the new Treaty *de facto* redundant. After a long negotiation, the Fiscal Compact Treaty has come to recognize, first, that the Commission's role in monitoring the excessive deficit's member states is necessary and, second, that the EP cannot be considered an outsider on par with the EU member states whose currency is not the euro (both conditions absent in the initial announcement of the Fiscal Compact Treaty). However, if the Commission has been finally included in the policy-making process, the EP continues to be kept on the margins. According to Art. 12(5), "the President of the European Parliament may be invited to be heard (by the Euro Summit, *ndr*). The President of the Euro Summit shall present a report to the European Parliament after each of the meetings of the Euro Summits". Thus, the EP has entered the Treaty, but its powers on Euro Summit's Reports remain undefined. At the same time, the EP is never mentioned in the ESM Treaty. Although the intentions of the German and French promoters of the new treaties were originally much more intergovernmental, the reaction coming from the EP and the Commission has tamed them, but only to a certain extent.

A part from the EP and the Commission, also private think-tanks and national governments came to criticize and to resent a Union dominated by a *directoire.* The influential think-tank Friends of Europe made public on 22 June 2011 a document which denounced "the trend in which Europe's national governments rather than the EU are increasingly in the driving seat…This is especially true in the economic domain where there is a global perception that Germany matters more than the EU…" (Friends of Europe 2011). Or, commenting on the decisions to be taken by the European Council of 8-9 December 2011, an influential European group denounced "the temptation of a Franco-German *coup de chefs d'Etat*"[21]. The election in May 2012 of the new French president, Francoise Hollande, brought to a resetting of the relations between France and Germany and more in general to a multilateralization of the decision-making process in financial policy. The new Italian government of Mario Monti (that substituted that of Silvio Berlusconi in November 2011) unmoored Italy from the intergovernmental coalition, returning the country to its supranational position. Medium-sized member states such as Spain or Belgium started to distance themselves from intergovernmental consensus, stressing the importance of involving supranational institutions in financial policy. Finally, also in Germany, Chancellor Merkel gradually silenced the previous intergovernmental attitude. In a talk given at the Berlin's *Neues Museum* on 7 February 2012, she indicated the need for "a political union, something that wasn't done when the euro was launched", thus stressing the importance of having an effective Commission and a strengthened EP within an established bicameral legislature (Peel 2012). The distance from the intergovernmental approach was thus made explicit in the speech she gave to

[21] Statement by the Spinelli Group (a coalition of influential politicians and scholars) based in Brussels made public on 8 December 2011.

the EP on 8 November 2012, when she stated that "legitimacy and oversight are to be found on the level where decision are made and implemented. That means that if one of the European level's competences is strengthened, the role of the European Parliament must also be strengthened", thus adding "we should not contemplate – as is sometimes suggested- establishing an additional parliamentary institution. The European Parliament is the bedrock". Finally, the growing isolationism of UK contributed to the further weakening of the coalition in favour of the intergovernmental approach[22]. Of course, it remains to be seen how the reaction to intergovernmentalism will be elaborated by the critics of the latter.

Conclusion

The intergovernmental 'moment' has been called into question by the euro crisis. The intergovernmental EU, because constrained by its intrinsic logic, has not solved the dilemma of collective action in an effective and legitimate way. At the origins of the intergovernmental EU there was the assumption that crucial policies (as the financial one) may be europeanized only if controlled by the member states' governments in the European Council and ECOFIN Council. Supranational institutions like the Commission and the ECJ were considered necessary for reducing the transaction costs of the intergovernmental negotiation, but not for making more effective the decision-making process. The euro crisis has shown that this assumption is unwarranted. The intergovernmental EU had not only difficulty in taking timing decision of crisis management, but it had also to rely more and more on the discretion of those supranational institutions for making credible commitments of crisis prevention. Furthermore, it has contradicted itself introducing rules contrasting the logic of voluntary coordination. At the same time, the intergovernmental EU was based on the assumption that the EP is a redundant institution, given that the legitimization function is or should be performed by the parliaments of its member states. The euro crisis has called into question also this assumption, showing that indirect legitimacy is insufficient for justifying decisions taken at the level and on behalf of the Union. The euro crisis has thus triggered the crisis of the intergovernmental EU, not of the EU as such, calling into question the viability of the Maastricht compromise as constitutionalized in and by the Lisbon Treaty. The future of the EU seems to depend again on its capacity to find a new balance between intergovernmental and supranational institutions. While the debate has started (Piris 2012), a paradox has emerged, namely that the EU of the single currency (constituted by the more integrated member states) has unsuccessfully tried to operate according to the intergovernmental constitution while the EU of the single market (constituted also by the less integrated member states) continues to function successfully according to the supranational constitution of the Lisbon Treaty.

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[22] The *European Union Act,* enacted in UK on 19 July 2011, calls even into question the constitutionalization of the EU brought about the by the European Court of Justices decisions of the 1960s on direct effect and supremacy of Community law. Indeed, it states that "there are no circumstances in which the jurisprudence of the Court of Justice can elevate Community Law to a status within the corpus of English domestic law to which it could not aspire by any route of English law itself (…). The conditions of Parliament's legislative supremacy in the UK necessarily remain in the UK's hands".

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