The New Supranationalism

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Abstract: While much of the literature on the Euro-crisis has highlighted the intergovernmental features of the European Union response, it appears that in strategic areas such as macroeconomic policy or banking regulation supranational institutions have seen their discretionary powers significantly enhanced and that they have played an instrumental role in bringing about such a change. This is all the more remarkable considering the decline in support for integration amongst governments and the public. This article explains this paradox by the dramatic character of the crisis and by the deep contrasts that existed between European states at the time. It also suggests that the process could be hard to reconcile with attempts at 'politicizing' EU public policy.

Keywords: Institutions, supranationalism, intergovernmentalism, macro-economic policy, banking union

Paper prepared for presentation at the ECPR General Conference
Panel P298. Reflections on the Euro-crisis and the Future of Representative Democracy
Montreal, August 26-29, 2015

1. Introduction

January 2015 saw two major developments in the European Union's (EU) endeavour to reverse the protracted low growth that has plagued the European economy, with adverse consequences on the social plane as well as in terms of support for European integration. On 13 January, the European Commission issued a communication detailing how it would apply the flexibility provisions of the Stability and Growth Pact to encourage growth-friendly fiscal consolidation.[1] The communication laid down the principles the Commission intended to follow in order to facilitate the adoption of investment measures by countries engaged in fiscal consolidation programmes. This move, announced by President-elect Jean-Claude Juncker in the programme speech he delivered before the European Parliament in July 2014, intended to steer a new course by providing guidance on how the Commission would apply its margin of interpretation in implementing existing rules; the Commission made clear that it saw no need to change or replace those rules (European Commission, 2015, at 3). A week later, on 22 January, the European Central Bank (ECB) announced a massive programme of purchases of bonds issued by euro area central governments, agencies and European institutions. This programme, supported by what the ECB President described as a 'large majority' in the Bank's governing council, foresaw monthly purchases amounting to €60 billion, to be carried out 'until at least September 2016'. 'Asset purchases, the press release said, provide monetary stimulus to the economy (...). They further ease monetary and financial conditions, making access to finance cheaper for firms and households. This tends to support investment and consumption, and ultimately contributes to a return of inflation rates towards 2%.' The reference to this target was anything but casual, as it enabled the bank to claim that this 'Quantitative easing' programme, inspired by the US Federal Reserve's response to the 2007-8 crisis, '[signalled] the Governing Council's resolve to meet its objective of price stability in an unprecedented economic and financial environment' and was 'in full compliance with the EU Treaties'.[2]

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[1] MAKING THE BEST USE OF THE FLEXIBILITY WITHIN THE EXISTING RULES OF THE STABILITY AND

[2] - ECB announces expanded asset purchase programme, Press release of 22 January 2015, available at https://www.ecb.europa.eu/press/pr/date/2015/html/pr150122_1.en.html

An observer unaware of the history of European integration and of the many debates it has engendered might therefore conclude that European macro-economic policy rests largely in the hands of supranational actors. Indeed, each of these two developments in its own way highlighted one of the remarkable aspects of the changes introduced in the economic governance of the EU in the wake of the economic and financial crisis. In both cases supranational actors availed themselves of the discretionary powers with which they were formally or informally vested to adopt decisions that did not reflect the policy preferences of all national governments, notably those of Germany, often described as the unrivalled hegemon of Europe. This development is all the more perplexing if one takes into account the context in which it unfolded. As is widely known, the crisis years saw a massive decline in support for the European Union and the idea of European integration: the gap between positive and negative opinions of the EU, which was of 28 points at the outbreak of the crisis, went down to a mere 1 % in the fall of 2012 (Standard Eurobarometer 82, Fall 2014). Moreover, since the beginning of the crisis, heads of state and governments had made it very clear that they intended to keep the reins firmly in their hands. In a speech delivered at the end of 2011, former French President Nicolas Sarkozy was quite explicit:

> 'The crisis has prompted heads of state and government to assume greater responsibilities because at the end of the day, they alone have the democratic legitimacy to make decisions. European integration will be intergovernmental because Europe will have to make strategic, political choices.'[3]

Chancellor Merkel was equally clear in an interview given in 2013 to the German magazine *Der Spiegel*:

> 'I see no need in the coming years to transfer even more (decision-making) rights to the Commission in Brussels (…) Economic policy coordination in Europe is said to be far too weak; it needs to be strengthened, which is not the same as transferring more competences to Brussels.'[4]

[3] Speech delivered in Toulon on November 1st, 2011. Author's translation.

[4] Cited in Puetter (2014) at 227-28.

Academic coverage of the EU's response to the crisis emphasizes in various ways the central role played by Member State governments and by intergovernmental institutions in defining policy choices and in designing the new instruments that were deemed to be necessary. The European Council and its president are said to have become the true decision-makers (Fabbrini, 2015; De Schoutheete, 2012). Indeed, both formal and informal European Council meetings became more frequent after the onset of the crisis, reaching a peak of 11 meetings in 2011. The creation of the 'Euro-area Summit' was viewed as a way to enable national leaders to play a more active role in economic governance. Key decisions made during this period – from the financial assistance packages granted to countries threatened by default to the establishment of new devices such as the European Stability Mechanism or the European semester – were decided at that level. Intergovernmental agreements concluded outside the framework of the EU treaties were often preferred over standard Treaty reforms, be it to neutralize the opposition of some government (in the case of the 'Fiscal Compact' negotiated in the Winter of 2011-12), or to grant national parliaments a say (in the case of the Single Resolution Mechanism). In addition, the Commission often appeared sidelined. As regards the reform of European economic governance, The European Council President was vested with an agenda-setting role akin to that traditionally assigned to the Commission. In other areas as well, European Council conclusions 'have become more specific and started to identify concrete tasks and deadlines for the Council, the Commission, and Member State governments' (Puetter, 2014, at 136-7). The crisis is therefore viewed as confirming the pre-eminence acquired by the European Council in the post-Maastricht era: 'Many expected the global financial crisis to edge Europe towards further supranationalism, but this has not yet happened. (…) Integration since Maastricht has been pursued via an intensification of policy co-ordination between Member States. (…) (I)t consistently avoids transferring more powers to traditional supranational bodies' (Bickerton, Hodson and Puetter, 2014 at 2). In instances where this intergovernmental bias was overcome and power was delegated, it was done so through 'the creation of *de novo* bodies rather than the empowerment of traditional supranational institutions' (Ibid. at 11; see also Fabbrini, 2015 at 125).

The prominent role of national governments in designing the EU's response to the crisis is in many respects easy to explain. In crisis times, it is more natural to turn to political leaders elected by universal suffrage rather than to unelected bodies. Moreover,

given the small size of the EU budget, the bulk of the large sums that were mobilized to face the emergencies were drawn from the coffers of national governments, accountable to their respective voters for the way the funds could be used. Finally, since no contingency plan existed for providing assistance to Eurozone countries in the event of a systemic crisis, new solutions had to be designed, and in the EU political system this constitutional role is largely vested in the Member States, masters of the treaties.

However, the situation appears to be more complex than intergovernmentalist analyses of the situation would have us believe. Contrary to widespread expectations supranational institutions seem to be in a position to exert a key role in a number of areas, as the above-mentioned examples illustrate,. Since the beginning of the crisis in 2007 the European Central Bank has been very entrepreneurial, expanding its range of instruments, notably with the adoption of outright monetary transactions (OMT) in 2012, which succeeded in reassuring the financial markets about its determination to do 'whatever it takes' to protect the Euro, and with the quantitative easing programme described above. With these moves, the ECB effectively acquired the role of lender of last resort, which everyone thought it had been denied by the Maastricht Treaty (Buiter and Rahbari, 2012), as well as a primary role in European macroeconomic policy. While these innovations were decided without the formal agreement of the Member states, it is important to note that no government opposed them. Whereas Germany had systematically objected to anything resembling a bail-out of member states, its government chose not to react to the ECB initiatives, even though in both cases it was public knowledge that the German member of the Bank's governing Council had voted against them. As regards the new powers acquired by the Commission in the framework of macro-economic policy the situation is even clearer, since they were conferred to it by decisions involving national governments, either in the legislative procedure (for the so-called 'six-pack' and 'two-pack') or through new treaty provisions (as regards the fiscal compact). The repeated clashes that have pitted the Commission against governments from Southern European countries in the framework of the European semester appear to confirm that, contrary to widespread expectations the Commission has emerged as the main net beneficiary of the crisis in the field of macro-economic governance (Bauer and Becker, 2014). On the whole, therefore, the crisis seems to have resulted in a consolidation of the power of supranational institutions. This leaves us with a paradox: why did national governments, which claimed to be adamantly opposed to new

transfers of powers to the European level and played a crucial role at the height of the crisis, end up willy-nilly conceding substantial transfers of authority to bodies over which they cannot exert direct control?

To address this question, this article is organized as follows. The next two sections look at two instances of delegation of new powers to supranational authorities. Space being limited, I will focus on cases where national governments explicitly proposed or approved new delegations of authority, rather than merely consent to choices made unilaterally by independent bodies, as this is at the heart of the above paradox. I will therefore review the reform of fiscal surveillance decided in 2011-12, which greatly expanded the Commission's powers, and the decision to make the ECB the 'anchor of banking regulation', in the words of the June 2012 European Council. In both cases the enhanced authority of supranational bodies was not an unintended consequence of earlier decisions but a deliberate choice. Section IV tries to explain these paradoxical decisions: what were the reasons that prompted the member states to turn to independent bodies, endowed with significant discretionary powers, rather than to more shallow alternatives? As we shall see, the answer largely lies in the question itself: the very independence of those bodies largely motivated the eventual choice. Finally, the conclusion analyses the consequence of these innovations for the balance of power in the European Union.

2. The Reform of Macro-Economic Governance

The economic and monetary union (EMU) part of the Maastricht treaty rested on a clear differentiation between the principles underpinning monetary policy (centralized and entrusted to a powerful agent – the ECB) and economic policies (decentralized but subject to rule-based coordination procedures). In the former case, in exchange for the establishment of a single currency, Germany imposed on its partners the centralization of monetary policy in the hands of the European Central bank whose autonomy was strongly protected, inter alia by granting its Statute a 'quasi-constitutional' status through its enshrinement in a protocol attached to the EU Treaty. In contrast, as regards economic policy, all the member states agreed to was a rules-based system with peer control; the Commission was not even granted the surveillance powers it normally wields under the 'Community method' (Dyson and Featherstone, 200?). One of the

problems identified very early on in the literature was the 'partisan' character of the enforcement mechanism: 'national authorities are supposed to apply the rules to themselves, thereby having incentives for collusion and horse-trading' (Buti, Eijfinger and Franco, 2003 at 27). Indeed, it has been shown that in the first years of implementation of the stability and growth pact (SGP), the Council regularly weakened Commission recommendations (Hallerberg, 2011). The weakness of the system was exposed in 2003, when the ECOFIN Council failed to reach the qualified majority required to endorse Commission recommendations sanctioning France and Germany in the framework of the excessive deficit procedure, even though a majority of countries were in favour. National governments confirmed their unwillingness to confer too much power on the Commission by turning down a 2005 draft regulation strengthening EUROSTAT's (a Commission Directorate-General) power to monitor states' accounts, following (already) the discovery of repeated irregularities in Greek public accounts.

The European response to the Euro-crisis may have been slow and piecemeal (Hall, 2012), but it nonetheless led to a substantial consolidation of European economic governance. A first part of the reform was to set up backstop devices aiming to assist countries threatened by default, culminating in the creation of the European Stability mechanism in 2012. From the very beginning, however, in exchange for their solidarity 'creditor countries' demanded a significant tightening of the surveillance system to prevent the resurgence of similar problems in the future. In slightly over a year, this led to the adoption of two important legislative packages (the 'Six Pack' and the `Two Pack' in Eurospeak), and of a new treaty – the 'Fiscal Compact' imposed by Chancellor Merkel. While this is not the place for a systematic analysis of these reforms (see e.g. Bauer and Becker, 2014; Dehousse, 2012; Keppenne, 2014), it is important to note that they significantly 'hardened' economic policy coordination by strengthening the Commission's hand in the surveillance of member states' fiscal policy in various ways.

First, the scope of the Commission's control powers was expanded far beyond public finances in response to the economic crisis. The Irish and Spanish housing bubbles, for instance, showed that private debt could destabilize the whole financial system of a country, with potentially devastating consequences for its public finances. The Six pack therefore established a macroeconomic surveillance procedure based on a scoreboard of indicators that enable the identification of countries and issues for which an in-depth review is deemed necessary. Much like the SGP, the macroeconomic

imbalance procedure (MIP) has a preventive and a corrective arm. The latter can eventually lead to sanctions for euro area Member States if they repeatedly fail to meet their obligations.

A second major innovation was the establishment of the 'European semester', which increases the interactions between the national authorities and the Commission *before* draft budgets are submitted. In this framework, the Commission receives each year national reports on economic and budgetary policies and can issue country-specific recommendations that, if adopted by the Council, must be taken into consideration in the drafting of national budgets. This twofold integration – of economic coordination and budgetary discipline, and of action at the national and European levels – was introduced to facilitate a focus on long-term objectives rather than quick fixes, and to detect possible fiscal policy drifts at an earlier stage.

Thirdly, to ensure the effectiveness of the new regulatory system, there was a general shift 'from soft law measures without binding consequences toward a binding framework' (Keppenne, 2014 at 211). To this end, the authority of the Commission was considerably enhanced. As is known, the various financial assistance packages offered to countries in trouble are subject to strict conditionality. Since the new instrument conceived for this purpose – the European Stability Mechanism – was created by a separate Treaty and is governed by national representatives, it is generally characterized as intergovernmental; however, it relies heavily on the supranational Commission and ECB (Salines, Glöckler and Truchliewski, 2012). Both were granted an active role in the negotiation of adjustment programmes; together with the International Monetary Fund, they have staffed the various 'Troikas' mandated to monitor programme implementation by countries receiving assistance. Judging from the strong protests the latter elicited in those countries, they do not appear to have proceeded in a particularly 'soft' manner. The Commission's enforcement powers were also considerably beefed up to avoid a repetition of the 2003 episode. If the Commission deems the rules of the Stability and Growth pact to be violated, its 'recommendations' become binding unless the Council rejects them through a qualified majority decision within 10 days. This 'reverse qualified majority' system, introduced by the Six Pack and consolidated by the Fiscal Compact,[5] aims to render the enforcement process less

[5] See Articles 4(2), 5(2) and 6(2) of Regulation 1173/2011 and Article 3(3) of Regulation 1174/2011 (Six Pack); see also Article 23(10) of Regulation 1303/2013 ('Macroconditionality').

'partisan'. It heavily tilts the balance of power in favour of the Commission, whose choices are now very difficult to reverse (Van Aken and Artige, 2013). In the words of former European Council president Herman Van Rompuy: 'we knew it would never happen.'[6] Finally, if it were not for the British Prime Minister's refusal to endorse any modification of the EU Treaty, the German government and its allies would in all likelihood have secured an extension of the European Court's oversight powers in the realm of economic policy. In any event, the 'contracting parties' proved to be creative by establishing a parallel infringement mechanism to monitor implementation of the Fiscal Compact (Keppenne, 2014).

In discussions on the reform of the Stability Pact, the introduction of the 'reverse qualified majority' was presented as a shift towards 'quasi-automatic' sanctions.[7] However, this description obscures the fact that the enforcement mechanism involve a degree discretion. This is because budget deficit targets are no longer defined in nominal but in structural terms, i.e. they are to take into consideration business cycle swings and filter out the effects of one-off and temporary measures.[8] Similarly, in the MIP, a "flash" for an indicator does not lead to the automatic conclusion that there is an imbalance, since from an economic standpoint it is difficult to determine the exact threshold at which a macroeconomic imbalance might become harmful. In other words, the attempt to refine the rules and render them less mechanical has by the same token enhanced the discretion enjoyed by the Commission in its missions of economic and fiscal surveillance. The breadth of its margin for manoeuvre is by its very nature indeterminate. The Commission and the Finance ministries, represented in the Economic and Financial Committee, have tried to limit uncertainty by adopting a number of codes of conduct endorsed by the ECOFIN Council and amended on various occasions. There are, however, limits to the ability to anticipate the problems that may arise in 'imperfect contracts' such as the SGP.[9]

Since these new provisions came into force, a number of countries have been subjected to the Commission's criticism. Their reactions suggest that they were somehow caught off-guard by the intrusive character of the Commission's supervision. In May 2013, French President François Hollande vehemently reacted to a Commission

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[6] Interview, Brussels, 9 April 2015.

[7] Not least by the German government, the Commission and the ECB. See e.g. the Ludwig Ehrard lecture delivered by the Commission for economic and monetary affairs Olli Rehn on …

[8] See e.g. Article 3(3) of the Fiscal Compact.

[9] Interview with Mario Buti, Director general, DG ECFIN, May 2015.

suggestion that a more radical pensions reform would be needed: France, he said, is a sovereign country, and it is up to the country to decide how it reaches its public finance targets. Later that year, Italian Prime Minister Enrico Letta reacted to the scepticism expressed by Commissioner Olli Rehn regarding Italy's ability to reduce public spending.[10] In turn, at the beginning of 2015 'creditor countries' were surprised to see the Commission display an unprecedented degree of understanding towards Belgium, France and Italy, which appeared to have failed to meet their medium-term budgetary objectives. This illustrates a structural feature of the politics of delegation in the EU: in a situation with many principals holding different views over the policy to be pursued, the agent may enjoy a greater degree of discretion (Dehousse, 2013). The Commission's decision in January 2015 to publish a communication detailing how it intends to use the flexibility provided by the stability pact can also be seen as an assertion of authority, since unlike the earlier 'codes of conduct', this 'interpretative communication' was adopted unilaterally and claims a 'margin of interpretation in implementing the existing rules' (European Commission, 2015, at 17). Criticism levelled at its decisions often prominently feature attacks on the unelected nature of the Commission. 'Who knows Mr. Rehn?', asked Belgian minister Paul Magnette in January 2012,[11] after the Commission Vice-president expressed doubts about the Belgian government's debt reduction programme. There is of course a mild irony in this kind of rhetoric. While it clearly intends to underscore the weak legitimacy of the European executive, it actually points to the main reason underpinning the delegation of control powers to supranational bodies: If the Commission was electorally accountable, supporters of fiscal discipline would not have pleaded in favour of granting it stronger enforcement powers.

At the time these measures were adopted, all eyes were on the European Council, in which the 'Merkozy' tandem appeared to be decisive; as said, the Commission often appeared to be side-lined by the coordination tasks entrusted to the President of the European Council. But this view is somewhat simplistic. There is no shortage of evidence showing that some of the key innovations introduced in the numerous reforms of the period originated in the cognitive work undertaken before the crisis within the Commission or in circles close to it.

[10] 'Letta: Rehn non può permettersi scetticismo sull'Italia', *La Repubblica*, 3 December 2013.
[11] 'Mais qui est Olli Rehn?', *Le Monde*, 27 February 2012.

As early as 2002, in a provocative interview with the French newspaper *Le Monde*, then-Commission President Romano Prodi described the Stability as 'stupid', like all rigid rules, and pleaded in favour of a better integration of economic and fiscal policies.[12] The idea of a 'European semester' was drawn from the blueprint of an 'Economic Policy Coordination Pact' put forward by Jacques Delors and his think-tank *Notre Europe* at the time the SGP was being drafted (Delors, 1997). It was developed in the Sapir report, which was commissioned by Prodi and authored by a high-level group of experts tasked with reviewing the system of EU economic policies and proposing a strategy to deliver faster growth in an enlarged EU. The report called inter alia for better coordination of economic and fiscal policies. Given the division of responsibilities between the Union and the member states, this required an alignment of the European coordination process and the national budgetary process. Hence the idea of 'dividing the twelve month calendar into a 'European semester' in which the priorities for the area as a whole are agreed, and a 'national semester', in which such orientations are factored into domestic policy-making' (Sapir et al., 2003 at 173). DG ECFIN further promoted the idea in a 2004 report that attempted to draw lessons from the difficulties that had arisen in the implementation of the Stability Pact (European Commission, 2004). Although the proposal did not garner much support at the time the Commission kept pushing for it, featuring the proposal in its communication for the tenth anniversary of the Euro, a few months before the collapse of Lehman Brothers (European Commission, 2008). The crisis made the idea of preventive fiscal monitoring appear much more attractive to countries anxious to see their partners' fiscal discipline under better oversight (Copeland and James, 2014).

Similarly, the idea of limiting the Council's role in sanctioning possible violations of the SGP had been under Commission consideration for a while. Even before the 2003 events, at the time of the convention on the future of Europe, it had called for a shift to Commission proposals, instead of mere recommendations, since the former can only be modified through a unanimous decision of the Council.[13] The idea was retained in the convention's draft treaty, only to be killed by the subsequent IGC. Together with a number of colleagues, Marco Buti, who was to become director-general of DG ECFIN in 2008, had also proposed the adoption of 'a European Council resolution which would

[12] *Le Monde,* 17 October 2002 ?

[13] See Article 293(1) of the Treaty on the Functioning of the European Union.

state that, in the case of technical decisions, the Council commits to reject the Commission recommendations only with unanimity' (Buti, Eijfinger and Franco, 2003 at 27). Both ideas resurfaced in the Commission's proposals on the reform of economic governance, in which a system of 'reverse qualified majority' inspired by the one in use in anti-dumping procedures was proposed (European Commission, 2010). The idea of greater automaticity met with strong resistance in some corners, however. French Finance Minister Christine Lagarde inter alia made clear her country's objection to 'a power that would be exclusively in the hands of experts'[14] At a Franco-German Summit in Deauville in October 2010, Nicolas Sarkozy, faithful to his intergovernmental creed, secured Germany's agreement on a proposal granting the first say on sanctions to the ECOFIN Council, in exchange for his support for Germany's proposal to have private investors bear part of the costs involved in rescue packages for EU states on the brink of insolvency. For its part, the ECB criticized the 'insufficient automaticity' of the sanctions system as 'a fundamental flaw' of the Commission proposal (European Central Bank, 2011 at 3). The compromise enshrined in the 'Six Pack' was therefore fairly ambiguous: recommendations were retained, and could therefore be modified by a qualified majority, but reverse qualified majority was required to reject them.[15] After months of great uncertainty on the financial markets, the matter was eventually settled by the 'Fiscal Compact', which recorded the contracting parties' commitment to systematically support Commission proposals and recommendations, unless a qualified majority is opposed to the proposed decision.[16]

In sum, a similar scenario unfolded in all of these cases. The Commission's blueprints were first discussed within the policy community composed of academics and experts from think tanks and national governments, without being formally submitted. But when the crisis erupted they were readily available and could swiftly be inserted into the proposals demanded by 'creditor' countries. In the end, the final solution was pretty close to the Commission's initial proposal.

3. **Banking Union: An Unexpected Breakthrough**

[14] Agence France Presse, 29 September 2010.

[15] See e.g. Article 4(2) and (3) of Regulation No 1173/2011 of 16 November 2011 on the Effective enforcement of Budgetary Surveillance in the Euro Area

[16] Article 7.

Developments in the field of banking regulation also illustrate how uncertainty triggered by the crisis resulted in a tightening of EU regulation. At the time of the Maastricht Treaty, Germany had systematically opposed any role for the new central bank in supervising banks, which remained in the hands of national authorities, because the right to control its own market was deemed to be of central importance to its economy (Mourlon-Druol, 2014). The following two decades, however, saw the cross-border integration of the banking sector and the emergence of a number of large groups operating in several countries. Former ECB Executive Board Member Tommaso Padoa-Schioppa, then Italy's Finance minister, was among the first to highlight that the misfit between an increasingly integrated industry and a loosely coordinated regulatory structure could be a source of instability, leading Italy to propose a blueprint for enhanced banking supervision at the European level as early as December 2007 (Padoa-Schioppa, 2011, at 529-538). As is known, the European banking sector was subsequently hit by a series of crises beginning in 2008: the credit crunch following the bankruptcy of Lehman Brothers, the turmoil deriving from banks' exposure to the sovereign debt of countries like Greece, the real estate bubbles in Ireland and Spain – all contributed to undermining public confidence in European banks. A strong response appeared necessary to restore confidence in the financial market.

A first step in the direction of greater coordination came in the form of a sharp increase in the volume of 'soft' recommendations issued by the Commission and the ECB to provide guidance to national governments (Salines, Glöckler and Truchliewski, 2012). But the idea gained traction that a nationally based supervisory model was inadequate to oversee an integrated financial market in which capital can move freely. Following recommendations from a high-level group of financial experts chaired by a former Banque de France governor (de Larosière Group 2009), the Commission proposed to establish the European Systemic Risk Board, in which ECB members play a central role, and to replace the committees of national regulators that were in place with independent regulatory authorities for banks, insurance, occupational pensions and securities, respectively. However, due to opposition from countries with large financial centres, the new structures were granted only limited competences, while voting and appeals procedures enabled national authorities to keep agencies under their control (Hennessy, 2014; Quaglia, 2013). The regulatory powers of the European Banking Authority (EBA), for instance, were tailored according to a strict reading of the European

Court of Justice's *Meroni* doctrine, which severely limits the possibility of conferring decision-making powers to an autonomous agency (Busuioc, 2013). One of the EBA's main tasks is to regulate national supervisory authorities, which remain the primary regulators. It was also given the power to choose a supervisor in the event host and home countries could not agree on who was responsible for supervising an ailing cross-border institution. The first 'stress tests' it conducted in July 2011 were heavily criticized as the agency's neutrality was questioned (Dehousse, 2013). All this had a negative impact on the credibility of the new 'centralized, yet softly coordinated' system of macroprudential supervision (Hennessy, 2014 at 156).

In the spring of 2012, Europe experienced a further deterioration of credit conditions, threatening the viability of the Spanish banking system, which was loaded with bad real estate investments. Spain and Italy pushed heavily for a rescue package, but channelling the funds through the Spanish government, as the economically strong countries required, would have aggravated Spanish debt. Following a dramatic meeting of the Euro Area Summit, the option of directly injecting EU funds into Spanish banks was accepted 'to break the vicious circle between banks and sovereigns'[17]. This Europeanization of the responsibility for rescuing ailing banks came with conditions, however. In exchange, 'creditor' countries insisted that the supervision of European banks be removed from the hands of national authorities and entrusted to a strong European regulator, and that EU regulation be tightened. Large banks with major international operations largely supported this development, seeing the move to a standardized set of rules and the supranationalization of oversight as a way to reduce costs (Epstein, 2014).

With its weak structure and complex procedures, the European Banking Authority did not appear to offer sufficiently guarantees. It was therefore decided that the European Central Bank should become the anchor of the new 'single supervisory mechanism'. Making this decision on the basis of article 127(6) of the Lisbon Treaty had the additional advantage of not requiring a Treaty revision, which would have entailed significant procedural risks since ratification of such revisions require a referendum in some countries. This choice was obviously also influenced by the fact that throughout the crisis the ECB had demonstrated an ability to act swiftly and effectively. The institution's reputation and prestige could therefore be harnessed to serve a new

[17] Euro Area Summit Statement of 29 June 2012.

purpose. ECB President Mario Draghi managed to convince the finance ministries that national regulators were not equipped to address the problems and that in order to restore market confidence it was crucial that the Bank be tasked with supervising all 6,000 European banks, in line with the Commission proposal.

Once the decision was made to move towards what was defined as a 'banking union', it took only a few months to agree on the blueprint for a 'single supervisory mechanism' (SSM). The matter was given fast-track treatment by the Commission,[18] whose roadmap was tabled in September 2012 and endorsed by European leaders the following month. In their detailed account of the negotiations, Rachel Epstein and Martin Rhodes (2014) show how the Commission resisted attempts to push back discussions into intergovernmental channels. Despite Germany's resistance to the idea that its regional banks could be subjected to European oversight, a compromise was reached by the end of the year on the fact that 'ultimate responsibility' should lie – directly or indirectly -- with the ECB, even if banks with less than 30 billion euros in assets would remain under national supervision.[19] As the ECB had been called upon to perform functions traditionally devolved to fiscal authorities, such as recapitalizing private banks (Schelkle, 2014), it was decided that a firewall would be erected between the regulatory and the monetary policy branches of the Central Bank in order to preserve the institution's commitment to price stability (Hennessy at 162-64). Although it took a few more months to sort out the details, the entire legislative process for regulation 1024/2013 lasted some 13 months, which is significantly shorter than the average two years now required for passing an EU legislation. The fact that key elements of the package were regarded as *Chefsache*, i.e. matters to be handled by EU leaders in a meeting without their technical experts, actually served the Commission's interest: 'Once the general support for a measure has been achieved in the European Council, it is difficult for the finance ministers to renege on a commitment from their heads of state.' (Epstein and Rhodes, 2014 at 23)

The single supervisory mechanism was only the first pillar of a full-fledged integration of banking regulation, which is commonly understood to also require agreements on a single resolution mechanism in the event of a bank failure, and an EU-wide deposit guarantee. Agreement on the first was reached in June 2013; the second is

[18] Interview with European Commission Secretariat General official, May 2015.
[19] According to the Bank's own count there are at present 123 significant banks in the Euro-area.

still being negotiated at the time of writing. This is not the place for a detailed analysis of the new system and of how the ECB will fulfil its new tasks, which are replete with difficulties (See e.g. Veron 2015). However, the momentous character of what has been decided cannot be overemphasized. Given the crucial role played by banks in the economies of European countries (Woll, 2014), banking regulation was regarded as part and parcel of national sovereignty by national governments, as demonstrated by the reactions in the first years of the crisis. The ECB has now become the sole decision-maker for granting or revoking banking licenses in the Euro-area; it has had to recruit around 1,000 officials for its supervisory arm and now employs a fifth of all banking supervisory staff in the Euro-area (Veron, 2015, 24). Moreover, the move towards banking union had broader political ramifications: not only did it entail a degree of fiscal union (through the prospect of cross-border liabilities and transfers), but it was also perceived by many actors as 'a vote of confidence … from the euro area's political leaders' (Veron, 2015 at 18), which enabled Mario Draghi to announce a few weeks later that the ECB would do 'whatever it takes' to save the Euro.[20]

This episode, together with the bolstering of the Commission's surveillance powers in economic policy, illustrates the remarkable character of the developments that have unfolded over the course of the Euro crisis. In both cases, despite member states' traditional sovereignty concerns and a political climate where hostility towards the EU was flourishing, supranational institutions saw their powers significantly increased in areas of strategic importance. Equally remarkably, the final result appears to owe much to the agency of the two institutions that benefitted most from the crisis, namely the Commission and the European Central Bank.

4. Explaining the Paradox

How can one explain this sudden and radical shift? To make sense of the general 'integration paradox' raised in the introduction, some observations on the process of change are in order. The accretion of power by supranational institutions did not happen overnight as a result of some sort of 'big bang'. On the contrary, it was the outcome of a series of decisions taken in countless dramatic meetings where the big divide among Eurozone member states, shaped by their respective financial situations,

[20] Interview with former European Council President Herman van Rompuy, Brussels, 9 April 2015.

was laid bare: on one the hand, Northern countries with sound public finances; on the other, Southern countries with major solvency problems. Change was so gradual that early accounts of the crisis tended to highlight the absence of any major shift of competence to the EU or the Eurozone level (Vilpisauskas, 2013 at 368), stressing instead the incremental character of successive reforms, which essentially preserved the basic philosophy of the Maastricht blueprint and of the SGP. Using Thelen and Maloney's (2005) model of institutional change, for instance, Salines and colleagues described the entrusting of new supervisory missions to the ECB as a case of *layering*, wherein new institutional elements are added to the existing ones. Likewise, reform of the economic governance framework was presented as a *redirection* of existing instruments through the definition of new criteria and the adoption of new instruments (Salines, Glöckler and Truchliewski, 2012). This incrementalism was largely due to the absence of broad consensus on the nature of the reforms to be carried out, or indeed on the very need for reform in the first place. The negotiations often unfolded according to the same pattern, with Germany and its closest allies reluctant to display greater solidarity, then ultimately constrained to accept it because of the risks to the Eurozone arising form financial market instability, but imposing stronger EU control mechanisms in exchange (see e.g. Epstein and Rhodes 2014; Bulmer, 2014). The piecemeal character of the reform process may also explain why, despite the growing attention devoted to European matters in domestic politics identified by postfunctionalist scholars (Hooghe and Marks 2009), opposition to further integration did not prevent the significant transfers of authority to the European level reviewed in this article: not only were various tactics used to avoid risky debates, but the absence of a big 'quantum leap', the sense of urgency and the technical complexity of the proposed reforms ultimately combined to justify ad hoc solutions.

Such accounts leave in the dark the motivations of the key actors in the process of change. In a neofunctionalist explanation of the EU response to the crisis, Franck Schimmelfennig argues that the eventual outcome was due to the emergence of a new, endogenous preference amongst national governments: 'the common interest of preserving the Euro and the Eurozone was paramount to the different preferences of highly solvent and highly indebted member states' (Ibid. at 329). In the words of Herman Van Rompuy: 'governments gradually came to recognise that the problem was

systemic and could blow up the entire monetary union'.[21] This however leaves us with a final puzzle, linked to their choice of policy instruments. Having reluctantly come to accept to enhance the power of the EU in areas where their initial preference was clearly to retain as much discretionary power as they could, why did they also decide to empower supranational institutions, over which their control is in principle limited, despite the intergovernmental mood that characterized the period?

The explanation for this choice revolves around one concept: mistrust. A degree of mistrust permeated the creation of economic and monetary union; it largely explains the asymmetric structure of EMU. The ECB's independence and exclusive competence over monetary policy were conditions requested by Germany to protect the newly established Euro against any move that might undermine price stability. Similarly, the decentralized character of macroeconomic policy resulted from Germany's opposition to the idea of 'economic government' promoted by the French government in the clear hope of achieving greater flexibility than the Bundesbank allowed. Diverging preferences thus resulted in limited Europeanization. However, the crisis underscored that that the risks taken by some countries could have consequences for the rest of the Eurozone. It also exposed a number of deviant behaviours, worst of which was Greece's forgery of its public accounts, which undermined mutual trust among Eurozone countries. A survey released by the Pew research center at the height of the crisis showed the depth of the mistrust between citizens,[22] and it appears the situation was no better among governments. No wonder then that the countries which were asked to contribute to the various solidarity mechanisms displayed so little enthusiasm. Finland even demanded a collateral payment from Greece as a condition for contributing to the 2011 bailout. Research has shown that mistrust generally results in demand for more regulation, even where there is limited support for the state (Aghion, Algan, Cahuc and Shleifer, 2010). Applied to the EU, this model helps explain why, in the absence of any possibility for an orderly exit, North-South mistrust in the two cases reviewed here led to a compromise whereby stricter European discipline was imposed in exchange for a commitment to financial solidarity among Eurozone countries.

[21] Interview with Herman Van Rompuy, April 2015.

[22] For a large majority of Germans (60%) the Italians were the most corrupt and the Greeks the least hardworking among Europeans (PEW, 2012)

Given the weakness of earlier enforcement mechanisms, however, it was crucial to buttress the credibility of the new arrangement. In a 2001 study, Giandomenico Majone suggested a distinction between 'ordinary delegation', explained in the principal-agent literature by the willingness to reduce costs and improve the quality of decision-making, and the 'fiduciary principle', used when the credibility of commitments needs to be enhanced. In this latter scheme, responsibility is completely transferred to the delegate – a situation he compares to the common law institution of the trust, under which property is transferred to a person who is supposed to manage it for the benefit of another person. The trustee does not have a personal obligation to a principal, but must preserve a higher interest, which is why his or her independence is guaranteed. As Majone perceptively noted, this model of full delegation, which goes far beyond the relationship between supranational agents and their national principals described in the intergovernmentalist literature, 'has always been more important than agency as a mechanism for structuring the relations between the actors of European integration' (Majone, 2001 at 119). Likewise in the two reviewed cases: North-South mistrust had reached such high levels that creditor countries insisted on a depoliticization of enforcement mechanisms. And as stressed by former President Herman van Rompuy, 'in the (European) institutions there is only one way to depoliticize a process: it is to 'communitarize' it.'[23]

As regards macroeconomic policy, the Commission emerged as a natural fit for a supervisory function, which is in many respects similar to its role as guardian of the treaties under the 'Community method'. Similarly, in the banking field, the establishment of a strong European regulator was a precondition for mutualising the guarantees offered to banks. In both cases, delegation of authority to supranational institutions was perhaps no one's first choice but in a situation characterized by highly conflicting preferences among the various principals, it offered a second-best solution acceptable to all (Dehousse, 2013). To the hawks, it offered guarantees against poor implementation by lax and untrustworthy governments, while the doves (whose bargaining power was weaker) could embrace the fact that they were still represented in a body that appeared less threatening than direct submission to the yoke of foreign administrations.

[23] Interview with Herman Van Rompuy, April 2015.

In both cases, supranational institutions strongly shaped the compromise that member states eventually accepted. As regards macroeconomic governance, DG ECFIN of the European Commission did not necessarily conceive all the innovations introduced by the 2011-2012 reforms but it was a key actor in the policy debate. Throughout the euro's first decade of existence, it conceived a number of blueprints that were rediscovered at the height of the crisis. Although its formal agenda-setting role was at times weakened by the leadership granted to the European Council president, it was able to re-insert these blueprints in the political debate, first in the run-up to the Four Presidents report, and then in its legislative proposals. In other words, it acted as the stubborn policy entrepreneur described by John Kingdon (1984), able to take advantage of a window of opportunity to push for its favourite solutions. Similarly, ECB president Mario Draghi repeatedly used financial market instability to make the case for a greater role for his institution in banking supervision. Needless to say, both reforms could not have passed if they had not addressed the concerns of Germany and its allies, eager to export their stability culture, enshrined in binding legal rules, to reluctant southern European countries. Yet supranational institutions profoundly shaped the outcome. At times, they even acted in concert: the Commission supported the central bank's ambitions in banking regulation, while the latter strenuously pleaded in favour of greater Commission authority in the area of fiscal surveillance. Their campaign for further integration received further support from key private actors, such as multinational banks and the amorphous 'financial markets', which calmed down only when they were reassured that order would be restored by powerful European regulators. Combined with the strong interdependence between Eurozone economies and the linkages between economic and financial union, all the ingredients of the spillover process described in Haas' neo-functionalist model (1958) were present, even when the final decision was made in an intergovernmental setting and cast in the mould of an intergovernmental agreement, as was the case for the single resolution mechanism (Epstein and Rhodes, 2014)

Conclusion : Delegation and Rules-Based Governance

To explain the complex response to the Euro crisis, all facets of the policy change process must be considered. There is no question that the European Council was the forum where all major decisions were taken, and that it even played the role of 'legislative initiator to the detriment of the Commission' (Keppenne, 2014 at 208). But as was seen, on several occasions supranational actors played a decisive role in the process and often emerged empowered by the reforms. Not only were they granted new powers, but to some extent their autonomy was strengthened: the ECB gained the power to play a clearer counter-cyclical role, while the multiplication of derogations and conditions inserted in the revised stability pact to make it less 'stupid' has resulted in more complexity and ultimately greater ambiguity, thereby enhancing the discretion of the agent in charge of its implementation, i.e. the Commission. The conferral of new responsibilities on supranational actors is all the more remarkable that it took place despite the absence of demand for such a change among governments or in the public. Supporters of 'new intergovernmentalism' downplay the importance of this shift by arguing that it has little to do with granting legislative powers to EU institutions, which is regarded as the hallmark of the Community method. It could be argued that this characterization of the Community method underestimates the importance given to implementation matters in the design of supranational actors' role (see e.g. Moravcsik, 1998). However, this scholarly debate is only of secondary importance: what matters is that emphasizing a purely intergovernmental account of the crisis obfuscates a process of change with potentially huge implications for the balance of power in the European Union.

Arguably, this brand of supranationalism replicates a pattern of delegation that is not without precedent in the history of European integration. What seems to be emerging is not a mere consolidation of the rules-based governance model of the Mastricht Treaty, but a variant in which supranational trustees may have the opportunity to play a more prominent role than in the past. In a much-noticed speech at Jackson Hole in the Summer of 2014, ECB President Mario Draghi, after having duly emphasized that the SGP 'acts as an anchor for confidence … that would be self-defeating to break', hinted at the launch of quantitative easing that followed a few months later… to fight unemployment, which very few people would have thought to figure on the bank's radar screen at the time the Maastricht Treaty was signed, and argued that there was, 'leeway to achieve a more growth-friendly composition of fiscal policies' (Draghi,

2014). Those words find an echo in the Commission, where ECFIN Director-General Marco Buti has outlined that if strong rules were rendered necessary by the lack of trust, recent experience showed the need for stronger institutions at the centre, empowered to enforce the common rules, but also 'to exert the necessary discretion to depart from the quantitative parameter enshrined in the rules under specific circumstances' (Buti, 2015 at 10). As long as contrasts will persist among their national principals., both the ECB and the European Commission are likely to continue to play a significant role in shaping the EU area's response to the economic problems it faces, and possibly in shaping its future institutional design.

Needless to say, in so doing they are likely to encounter strong resistence. While it initially paved the way for the consolidation of supranational actors' role, the polarisation between the EU centre of gravity – the 'creditor' countries – and countries from the periphery will eventually expose these institutions to criticism regardless of the course they choose. Many in Germany (though ostensibly not the Chancellor) have strongly opposed the European Central Bank's OMT programme and launch of quantitative easing, and the former has been subject to a legal challenge before its Constitutional Court. The Commission has experienced how difficult it may be to steer a middle course between radically opposed camps in the protracted negotiations between Greece and the rest of the Eurogroup. It may also be exposed to greater pressure from the European Parliament, which scored an unexpected victory last year by forcing heads of state and government to accept the logic of the *Spitzenkandidaten* system (Penalver Garcìa and Priestley 2015) . Having obtained that the candidate nominated by the party having won the largest number of seats in the European elections become the President of the Commission, the assembly is now calling for a measure of political control over the policies pursued by the executive. This parliamentary logic, a constant reference point in debates over the EU political system (Dehousse, 1994; Goetze and Rittberger, 2010), appears to directly clash with the fiduciary principle underpinning many of the new powers vested in the Commission in the name of 'depoliticization'. In other words, the big leap towards more integration that occurred has given rise to a situation which is anything but stable.

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