

Collaborative federalism in the European Union – intergovernmental relations and the allocation of powers in the Economic and Monetary Union

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DRAFT!

Introduction (*word count approx. 600*)

The financial and economic crisis accentuated anew the complexity and sensitivity of the Economic and Monetary Union (EMU). Member states of the European Union (EU) once again faced the dilemma between the need for further coordination in areas under their own jurisdiction and the reluctance towards further competence transfers (see Chryssochoou, 1997; Koslowski, 1999; Neyer, 2006; Puetter, 2012). Instead of relying on the traditional Community method to settle cross-jurisdictional challenges, member states turned to an ‘intergovernmental method’ where “all the major stakeholders – the Union institutions, the member states and their parliaments – complement each other by acting in a coordinated manner in the areas for which they are responsible (...) but all working towards the same goal”¹. As a result, the character of intergovernmental relations in fiscal policy matters changed considerably: discussions became more open, new institutions and procedures were established, there was greater activism and more involvement of the highest political levels. At the end, intergovernmental relations came to substitute a formal transfer of constitutional powers and collective, centralized legislative decisions with it (e.g. Treaty on Stability, Coordination and Governance), yet, they impacted on the actual allocation of powers among the different orders of government without changing the constitutional framework. Under which conditions and how does such a development occur? What does it mean for the character of intergovernmental relations and what impact does it have on the allocation of powers?

Since the nature of the original dilemma coincides with the internal tension known in federalism, namely ‘unity and diversity’ (see Jachtenfuchs and Kraft-Kasack, 2013), it is argued that the study of federalism can provide important insights to understand the changing character of intergovernmental relations. However, instead of looking for the adoption of federal principles within the formal, constitutional division of powers, it is suggested that those principles emerge and develop within intergovernmental relations so that the coordination of constituent unit jurisdictions can be ensured. For long, federal studies in relation to the EU have been pre-occupied with the analysis of the constitutional distribution of powers, and neglected any consideration of the role of intergovernmental relations within such a framework². However, as the relevance of intergovernmental exchanges increased with

¹ Speech by Federal Chancellor Angela Merkel at the opening ceremony of the 61st academic year of the College of Europe in Bruges on 2 November, 2010, p. 7. <http://www.bruessel.diplo.de/contentblob/2959854/Daten/>

² As Burgess (2009: 33) argued: “the role of EU member states as propulsive forces in helping to build a federal Europe has actually been underestimated by federalists themselves and should be much more effectively integrated into federalist theory”.

the tension described above, there is a call for a renewed theory of federalism that could incorporate these latest developments to understand their role in power allocation mechanisms. It is to be noted that the framework advanced here is not so much concerned with governance techniques based on intergovernmental relations, but rather its aim is to understand the processes of change within the allocation of competences (see Nicolaidis, 2001) and what role intergovernmental relations plays in that procedure.

This short study unfolds as follows. First, it will advance an alternative federalist framework within which the diverging character of intergovernmental relations can be better understood based on the adoption of federal principles. This part will also relate the proposed theory to other approaches in the field to highlight its added-value. The subsequent section will review the emergence and development of federal principles within intergovernmental relations with regard to ‘economic governance’ in the EU, while the third part demonstrates how it has changed the institutional and procedural structure. This section will also highlight how the changed character of intergovernmental relations influenced the allocation of powers among the different orders of government.

Collaborative federalism in the EU (*word count approx. 3000*)

Approaches of EU integration, based on grand theories of international relations (IR), such as *liberal intergovernmentalism* (LI) (Moravcsik, 1993, 1998, with Schimmelfennig, 2009) studied intergovernmental relations to understand the evolution of regional integration. LI is “a theory of intergovernmental decision-making under anarchy” (Moravcsik and Schimmelfennig, 2009: 73), which implies that the character of intergovernmental relations does not change over time (i.e. the logic of anarchy prevails). The LI approach is based on the assumption that member states are always capable of establishing preferences before the bargaining process starts. However, as more and more sensitive areas (e.g. fiscal, energy, social, and employment policies) require coordination among member states, the complexity of policy challenges is more likely to limit member states’ preference-building capacity. Furthermore, LI comes short of understanding delegated or pooled sovereignty and decision-making among the individual actors as it “neither describes nor explains the context within which intergovernmental bargaining takes place” (Sbragia, 1993: 26). Consequently, LI pays little attention to the emergence and development of norms, values and principles that may structure intergovernmental relations within a given context.

As a response to this gap in the literature Puetter (2012) advanced the analytical concept of *deliberative intergovernmentalism* (DI). He argued that there was an ‘integration paradox’ where member states needed to coordinate their respective policies without formally transferring competences to the European level. As preferences were hard to construct, intergovernmental relations became increasingly dependent upon deliberative processes of policy formation, which in turn had a great impact on intergovernmental procedures and institutions themselves. However, DI lacked an in-depth consideration of the actual process which resulted in a changed character of intergovernmental relations and an analysis of its impact on the allocation of powers. This is also due to the fact that DI focuses on intergovernmental relations from the perspective of policy solutions and decision-making techniques³. Even though it emphasized the role of deliberation⁴, it did not reflect on the values and principles that emerged and developed through deliberation, which could have

³ In this, it reflects the ‘governance turn’ within EU integration studies (see Bulmer, 1993; Hix, 1994; Hurrell and Menon, 1996; Pollack, 2001; Jachtenfuchs, 2001). Governance approaches analyzed the European integration process from the point of view of effective and legitimate governance capacities (Peters and Pierre, 2009), and studied how complex policy decisions required creative institutional designing.

⁴ As a response to the ‘deliberative turn’ (see Neyer, 2006) in EU integration studies.

affected intergovernmental relations as well⁵. Since Puetter's 'integration paradox' resonates with the *federal* idea of 'self-rule and shared rule' (see Elazar, 1979) or 'unity in diversity' (see Jachtenfuchs and Kraft-Kasack, 2013), it is argued that the incorporation of the emergence and development of federal principles within a federalist theoretical framework could enrich our understanding of how intergovernmental relations come to substitute collective, centralized, legislative decision-making to deal with cross-jurisdictional policy challenges.

The 'new governance'⁶ literature emphasized the increased role of "alternative approaches to governance that are more accepting of diversity and encourage voluntary forms of co-ordination" (Mosher and Trubek, 2003: 63). They featured "a shift in emphasis away from command-and-control in favor of 'regulatory' approaches which are less rigid, less prescriptive, less committed to uniform outcomes, and less hierarchical in nature" (de Búrca and Scott, 2006: 2). 'New governance' argued that the Open Method of Coordination (OMC) was "an appropriate tool to use in situations when common problems exist[ed] (...) but conditions ma[de] uniform policies impossible" (Mosher and Trubek, 2003: 84). Consequently, the concept of 'soft law' was advanced to describe arrangements "that operate in place of or along with (...) 'hard law'" (Trubek et al., 2006: 65). However, 'new governance' approaches analyzed these developments under the traditional Community method (see Mosher and Trubek, 2003) and did not consider the impacts of soft mechanisms on intergovernmental institutions and processes. As DI, the 'new governance' literature also assumes that member states adopt certain norms during processes of coordination, yet they fail to specify which norms come to matter and how they actually emerge over time.

As argued before, the European Union started its journey as an experiment in regional integration, and thus, intergovernmental relations were first studied from an IR perspective. Taken that federalist approaches by that time had lost their international components (see Riley, 1973; Burgess, 2006) and turned towards analyzing federal *states*, intergovernmental relations in the EU were not studied under federalist lenses⁷. Furthermore, most federal analyses focused on the legal, constitutional aspects of the European polity (Burgess and Gagnon, 1993; Burgess, 1996, 2006, 2009), and have dedicated little attention to the political dynamics of intergovernmental relations⁸ and their role in the process of competence transfers. In sum, even though, it was argued that "a shift of focus towards the study of intergovernmental relations in federations could conceivably facilitate valid comparisons" (Burgess, 2006: 138), it has been unexpectedly understudied in the European federalist literature.

From a comparative federalist perspective, intergovernmental relations have been analyzed from different angles. Most studies argued that intergovernmental relations were either the result of the constitutional arrangement (e.g. Hueglin and Fenna, 2006; Watts, 2008), or the response to the existence and type of power-sharing mechanisms at the constituent unit level (Bolleyer, 2009; Bolleyer and Börzel, 2010). Both approaches stressed the influence of either the macro- or the microstructure on the actual character of intergovernmental relations⁹. However, this would allow for little changes in the overall conduct of intergovernmental relations if neither the constitutional framework at the macro-level, nor the legislative-executive relationship at the micro-level changed.

⁵ Consequently, it lacks a contextual element such as LI did.

⁶ See also the White Paper on European Governance, COM(2001) 428, (2001/C 287/01). <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52001DC0428&rid=2>

⁷ This is also due to the intergovernmentalist – supranationalist dichotomy within European integration theory (see e.g. Diez and Wiener, 2009: 8-9).

⁸ However, it is argued by some scholars that intergovernmentalism "is an inherent part of a genuine federal vision" (Nicolaidis, 2001: 454).

⁹ Therefore these studies all considered intergovernmental relations as the dependent variable.

As “Canada is the state that comes closest to the EU in several critical aspects” (Fossum, 2009: 498)¹⁰, and the literature on Canadian federalism dealt extensively with the topic of intergovernmental relations, it might enhance a federal theory aiming to understand European intergovernmental dynamics. Intergovernmental relations in Canada, also understood as ‘federal-provincial diplomacy’ (Simeon, 1973) or ‘executive federalism’¹¹ (Smiley, 1974, 1987; Verney, 1989; Watts, 1991) were also analyzed from a constitutional perspective¹². Even though most studies argued that particular norms, attitudes, goals and principles also had an impact on intergovernmental relations, their role remained rather marginal and understudied. Furthermore, there was no distinction made between intergovernmental relations used as a tool to facilitate law-making and as substitutes for legislative decisions. Most analyses were rather descriptive and lacked a dynamic element that would differentiate between various forms of executive leadership in policy-making depending whether it led to federal legislative decision-making or not. In fact, paradoxically enough, executive federalism is a concept very much connected to centralized, legislative decision-making inasmuch as it aims to understand intergovernmental negotiations outside the parliamentary processes that would nevertheless facilitate federal legislation. This is indicated by Verney (1989) who considered executive federalism as half-federalism, or a transitional stage on the road to full-blown legislative federalism which he described as a federal system where regional interests were represented and accommodated in a federal legislative body (i.e. an elected Senate).

In 2002, Cameron and Simeon advanced the idea of *collaborative federalism* to describe the changing nature of intergovernmental relations in Canada. Faced with a similar dilemma the EU encounters today, they argued that the practice of “co-determination of broad national policies” (Cameron and Simeon, 2002: 49) by the different orders of government was becoming more and more salient. Even though they described the institutional changes collaborative federalism initiated, they failed to provide a more abstract theoretical framework within which such intergovernmental dynamics could emerge. Since they were “not positing a dramatic break with the past” (Cameron and Simeon, 2002: 50), they repeated Simeon’s legalistic perspective from the 1970s concerning the factors having an impact on intergovernmental relations (see also Bakvis and Skogstad, 2012: 8). Despite the growing sensitivity of policy matters, there was no consideration of policy deliberations and their impact on intergovernmental relations. Furthermore, there were no propositions made concerning the process through which collaborative federalism would emerge or the underlying norms, values and principles that could influence such a process.

To understand how intergovernmental relations substituted collective, legislative decisions in settling cross-jurisdictional policy matters within the EMU file, this study advances a revised understanding of collaborative federalism that would combine essential elements of the

¹⁰ It is noteworthy that Jean Monnet, one of the most prominent figures around the establishment of the European Union (Community back then) has spent some of his most formative years in Canada, and his ideas about European integration has been greatly influenced by his experience overseas (see Ugland, 2011).

¹¹ ‘Executive federalism’ refers to a “pattern of interaction in which much of the negotiating required to manage the federation takes place between the executives, elected and unelected, of the main orders of governments” (Bakvis et al., 2009: xii). However, there was an alternative understanding of the concept ‘executive federalism’ advanced by Dawson (1987) which argued that the federal cabinet represented regional interests as opposed to the Senate in ‘legislative federalism’ or separate external mechanisms such as First Ministers’ Meetings (Smiley’s understanding of executive federalism).

¹² Since the Senate does not accommodate provincial interests in national legislative matters and the parliamentary form of government emphasizes the role of the executive over the legislative branch (see e.g. Bakvis et al., 2009: 71) ongoing negotiations between provincial executives is to work out *legislative* decisions outside the parliamentary system.

literature on federalism and European integration theory. *It will be argued that the sensitivity (i.e. it comes under member state jurisdiction) of a policy challenge increases skepticism among member states towards centralized decision-making, while complexity (i.e. great level of policy interdependence) of a policy area pushes governments towards open deliberations, which in return, allows for the adoption of federal principles in areas of separate member state jurisdictions. Consequently, the character of intergovernmental relations changes which will have an impact on the allocation of powers among the different orders of government.* Instead of arguing that the constitutional arrangement determines the nature of intergovernmental relations, it will be demonstrated, that the emergence and development of federal principles in response to specific policy challenges often have a greater impact.

Contemporary trends show a revival of intellectual interest in the cultural aspects of federalism understood as a shared knowledge of basic norms, principles, and patterns of behavior. However, “its conceptual and empirical implications have never been fully explored” (Burgess, 2013: 3). The special emphasis on the cultural dimension is supported by the fact that federalism is essentially a normative concept. The term ‘federal idea’ (Courchene et al., 2011) or ‘federal spirit’ (Burgess, 2013) is used frequently within the scholarly and political discourse, highlighting the importance of values, visions, beliefs, principles, norms and the corresponding language and behavioral patterns that define federalism. Analyzing institutional and procedural developments could therefore start with a closer look at these components and explore their potential in helping us understand the character of intergovernmental relations. After all¹³, federalism is a *sentiment* (Riker, 1964: 111), a *behavior* (Friedrich, 1968: 39; Elazar, 1987: 154) which entails “the *spirit* of cooperative enterprise and mutual respect” (Livingston, 1956: 316). It is based on a compromise and it requires “a *firm determination* to maintain both diversity and unity by way of a *continuous process* of mutual adaptation” (Friedrich, 1968: 175). In sum, federalism is “a *form of political will* designed to forge a particular kind of constitutional bargain based upon elite negotiations and compromises, and secondly (...) a *culture* of political attitudes, habits, beliefs, and orientations that sustained a mode of behavior appropriate to the maintenance of that bargain” (Burgess, 2013: 12). As there is a “need to reassert the importance of process over substance, the need to move beyond comparative statics, in the study of competence and federalism” (Nicolaidis, 2001: 448), federal principles are to be analyzed with regard to intergovernmental relations as well as constitutional arrangements. Consequently, federalism needs to be understood as “a combination of self-rule and shared rule” (Elazar, 1979: 2), which combines both structure (i.e. self-rule manifested in legislative decision-making) and process¹⁴ (i.e. shared rule manifested in supranational institutions or intergovernmental arrangements). Even though Nicolaidis (2001) highlighted the importance of a more sophisticated way of shared competences (from reserved through national but coordinated to partially or mostly transferred powers), she left the question open “when various components of ‘shared competence’ are activated and under what conditions” (Nicolaidis, 2001: 451). Sbragia (2004) went further to stress the possibility of shared rule achieved through intergovernmental coordination. However, she also left the conditions open under which such a sharing should take place. This study argues that complex and sensitive policy challenges often push member states towards open discussions while stressing the relevance of intergovernmental exchanges which allows for the adoption of federal principles in areas under member states’ jurisdiction. Once a particular combination of these principles is established, competitive intergovernmental interactions give way to collaborative ones, which will have a major impact on the allocation of competences as well. However, the sharing of a competence (i.e. re-distribution of powers) is not guaranteed through a legal, constitutional

¹³ Emphases within this paragraph have been added by the author.

¹⁴ See Elazar (1987).

framework but rather through an informal, political process of intergovernmental collaboration. This feature distinguishes collaborative from cooperative federalism (see Schütze, 2009), and allows for an alternative or complementing development path for federal political systems. Depending on the federal principles adopted in intergovernmental relations federal political systems may evolve from competitive to collaborative as opposed to cooperative federalism, making collaborative federalism a *mezzanine* towards a full-blown cooperative federalism based on the constitutional sharing of legislative competences. What are these federal principles?

Based on Burgess (2013), this study argues that the combination of the following federal principles indicates the existence of collaborative federalism.

- 1.) *Self-determination and autonomy* refers to the assumption that ‘national interests’ in relation to specific policy questions can be achieved by self-defined communities which accommodate distinct identities with regard to common pursuits.
- 2.) *Partnership* is based on the value of equality among the different actors, and it means a voluntary relationship that is of non-hegemonic nature which implies both openness and consensus-orientation.
- 3.) *Loyalty* refers to an expectation that constituent units commit themselves to the overall needs of the federal system.
- 4.) *Comity* implies fair play among the different actors to be ready for compromise and to be pragmatic on cross-jurisdictional matters.
- 5.) *Unity in diversity* refers to the idea of unity without uniformity and diversity without fragmentation, or the indestructible union of indestructible parts¹⁵ which also speaks to the idea of non-centralization.
- 6.) *Proportionality and mutuality* are based on the values of toleration, recognition and respect for the others. While proportionality is “the operational core of subsidiarity” (Nicolaidis, 2001: 453), mutuality refers to an “obligation (...) in joint decision-making to foster the legitimacy and capacity of the other” (Nicolaidis, 2001: 462).
- 7.) *Flexibility and open-endedness* are essential in maintaining a federal polity that requires the ability to respond quickly to changing policy challenges. It also implies being susceptible to influence or persuasion, therefore it emphasizes the role of iterations that foster deliberations.

In competitive or dual federalism self-determination is the dominant principle driving intergovernmental relations concerning constituent unit competences. However, here autonomy rather refers to independence of policy-making authority. There is no partnership since hegemony is guaranteed in areas under constituent unit responsibilities. There is no sense of loyalty as the policy field in question is considered to be separate and independently regulated from others. Since loyalty and partnership are missing, there is little room for comity. Diversity is emphasized over unity, and consequently, there is little consideration of either proportionality or mutuality. Constituent units aim for flexibility. However, it lacks a cooperative component inasmuch as it is guaranteed by single actors.

As far as cooperative federalism is concerned, intergovernmental relations are driven more by these principles. In the cooperative scheme, self-determination and autonomy as a principle correspond with the accommodation of national interests in the pursuit of common goals. However, as collective, legislative decisions are to guarantee the coordination of cross-jurisdictional areas, the partnership principle is partially violated. Instead of non-hegemonic and heterarchical relations, cooperative federalism implies some hierarchy among the

¹⁵ Texas v. White, 74 U.S. 700 (1868) Supreme Court decision, <http://supreme.justia.com/cases/federal/us/74/700/case.html>

different orders of government. Loyalty and comity are both relevant principles of cooperative federalism, the former referring to a common understanding that a given policy challenge is considered as a federal issue, while the latter is assured through the participation of the constituent units in procedures leading to legislative decisions. Unity in diversity is generally reflected in the legislative framework. While federal law assures unity, constituent unit implementation guarantees diversity. Since cooperative federalism is based on the constitutional distribution of legislative powers, there is very little room for flexibility and open-endedness, which also has a great impact on the proportionality and mutuality principles (if one is to police ‘where’ a power is exercised instead of ‘how’ it is exercised, there is little need for these principles).

Instead of looking at federalism from a systemic point of view, the concept of collaborative federalism reflects the need to consider individual policy areas and look for structural and procedural elements of federalism. In other words, collaborative federalism supports the understanding of the federalization of sensitive and complex constituent unit competences. Once again, this study argues that the sensitivity of the EMU file created skepticism among member states towards centralized legislative decisions, while the complexity of the policy area created incentives for the adoption of federal principles underlying collaboration. In order to be able to analyze how these principles emerged and developed in intergovernmental relations, this study used personal interview materials with EU and member state officials, European Council and Commission documents, and relevant newspaper clippings. The aim was to reconstruct a narrative which explains intergovernmental development from the Rome Treaty to the adoption of the Treaty on Stability, Coordination and Governance (TSCG) and how the allocation of powers changed correspondingly.

Intergovernmental relations and the development of federal principles in economic governance (word count approx. 2700)

Economic governance is a complex concept that was once described as an “equivalent of fiscal federalism based on much stronger surveillance of budgetary and competitiveness policies since a truly federal system would require a treaty change”¹⁶. Interestingly enough, references to the integration of economic policies remained rather vague in the earliest treaties of the European Union. The Treaty of Rome talked about the promotion of “a harmonious development of economic activities” (Article 2) and coordination of economic policies was mentioned several times (see Article 6, 105[1]). However, more attention was given to exchange-rate mechanisms and monetary issues while substantive elements of fiscal matters remained rather undefined. As one member state official argued “there was something specific about fiscal policy...it wasn’t necessarily more complicated than other areas but still, the situation was rather difficult as it [i.e. fiscal matters] was considered to be the primary responsibility of the state”¹⁷. Consequently, intergovernmental relations were simply dominated by the principle of self-determination and autonomy. As another official explained, “during the first years we [i.e. member states] did not understand the interconnectedness of economic issues...macroeconomic considerations have not been taken seriously”¹⁸.

Not until the *Delors Report*¹⁹ in 1989 was there a firm and official call to coordinate fiscal policies across member states of the EU in order to deal with economic

¹⁶ <http://www.europarl.europa.eu/sides/getDoc.do?language=en&type=IM-PRESS&reference=20100621IPR76407> under the section: The new economic governance architecture.

¹⁷ Anonymous interview conducted in Brussels, 24 March, 2013.

¹⁸ Anonymous interview conducted in Brussels, 14 June, 2013.

¹⁹ Officially known as *Report on economic and monetary union in the European Community*. Source:

interdependencies. To be able to create a real economic and monetary union, the text proposed a transfer of decision-making powers in the area of monetary policy to the Community level while stressing that “in the economic field a wide range of decisions would remain the preserve of national and regional authorities” (p. 14). In order to fulfill the aim of economic union, the text proposed binding rules in the budgetary field (i. e. limits on deficits) while allowing for discretionary coordination to ensure effective implementation (p. 24). The Delors Report admitted that “under present national legislations no member country is able to transfer decision-making power to a Community body, nor is it possible for many countries to participate in arrangements for a binding *ex ante* coordination of policies (...) [consequently] there is at present no transfer of responsibility for economic and monetary policy from Member States to the Community” (pp. 36-37). As the Delors committee members were mainly central bank governors, “the Delors report advance[d] the European Commission further than ever into (...) monetary affairs”²⁰. However, it also contributed to the debate leading to the Maastricht treaty. Though the new treaty repeated the provisions of the earlier treaties concerning fiscal policies, it also clarified and further specified certain elements of it. Article 103 repeatedly argued that “Member States shall regard their economic policies as a matter of common concern” (Article 3 (1)), yet the role of the Council was explicitly mentioned in the text as the body where such coordination should take place. The biggest development the Maastricht Treaty initiated was the establishment of ‘broad economic guidelines’ and the related monitoring and assessment procedures to ensure closer coordination of economic policies among member states. However, these all came in the form recommendations based on qualified majority decisions of the Council, and therefore they meant non-binding acts, and in that they cannot be equated with legislative decisions at the federal level such as regulations, directives or decisions. Furthermore, Article 104(c) established a procedure to resolve excessive deficit problems occurring in any given member state. This was based on the monitoring of the ratios of government deficit and government debt to gross domestic products carried out by the Commission. Once again, Council recommendations were to be used (Article 104[c]6-7) in case a member state did not comply with the rules set out in the Protocol concerning the macroeconomic figures. Even though they introduced a deficit rule in the EMU it proved to be a half-hearted measure and remained very inconsistent and hardly internalized by member states. In fact, when some of the bigger states faced excessive deficit problems themselves the established system and the enforcement mechanisms of the rules did not pass the ultimate test. As one financial counselor argued: “the aim of the Maastricht Treaty was to set the rules for the scene...however, it was imperfect because it was very theoretical and very political, and everything had to be done not to be politically rude on member state sovereignty in these areas (...) right at the beginning the idea was to do some kind of soft coordination”²¹.

As far as the legislative competences were concerned, the integration process seemed to have reached its peak concerning monetary and especially economic policy matters. In fact, “neither the Amsterdam Treaty, nor the Nice Treaty touched the issue. Finally, the negotiations about the Constitutional Treaty and the Lisbon Treaty clearly revealed that there would be no scope for further transfers of formal decision-making competences in the foreseeable future” (Puetter, 2012: 167). Beyond the simple consolidation of the already existing framework, the only added value in the field before the financial and economic crisis came from the Stability and Growth Pact (SGP) in 1997. The legal basis for the SGP was to be found in Article 99(3) of the Amsterdam Treaty which called for multilateral surveillance, in Article 104 which dealt with the excessive deficit procedure (see also Protocol 20), and in

http://aei.pitt.edu/1007/1/monetary_delors.pdf

²⁰ The Delors Report; Summit hurdles loom for report, in *Financial Times*, 18 April, 1989.

²¹ Anonymous interview conducted in Brussels, 11 April, 2013.

Article 211 which gave the Commission power to policy advice. Even though the regulations connected to the SGP had a legally binding nature, they had not been internalized by the member states. As one EU official argued, “the SGP was too weak in the potential application because the means were not there (...) because member states were not ready to transfer the prerogatives to the central institutions”²². As another EU official from a small member state put it “there was clearly no sufficient power given to the center to apply the rules in a consistent way (...) the political will has not moved with the rules”²³. This ambiguity was also manifest in the 2003-2004 ‘deficit crisis’ where France and Germany did not comply with the deficit rules set out in the Maastricht Treaty, yet the sanctions based on the SGP were voted down, effectively “destroying the pact in the process”²⁴. Even though it was stated that “responsibility for making the member states observe budgetary discipline lie[d] essentially with the council”²⁵, the SGP framework was reformed in 2005.

The period between 1989 and 2005 could be characterized as a rather ambiguous time from the point of view of intergovernmental relations. The complexity of the economic policy field was partially acknowledged by the member states, as they began to examine fiscal policy matters in relation to monetary ones. However, as budgetary affairs were still regarded as the most important responsibilities of the state, the topic was not considered in details from a community perspective. As one financial counselor argued, “national politics weren’t ready for a full transfer of sovereignty...European politics wasn’t ready for more EU”²⁶. As both complexity and sensitivity of the fiscal issue was only partially recognized by the member states, self-determination and autonomy still dominated intergovernmental interactions, while other federal principles could only partly develop. Even though member states voluntarily began to coordinate their economic policies, as autonomy was equated with independence, the partnership principle remained rather limited in intergovernmental relations. As an official from Luxembourg argued, “national interests prevailed over community interests (...) [and] procedures did not help to change that either”²⁷. Loyalty was emerging as the treaties referred to economic policy as a common concern of member states. However, the ‘deficit crisis’ demonstrated how fragile the commitment to the implementation of the agreed upon fiscal rules was. As loyalty was only partly developed, the comity principle emerged in a restrained manner as well. Although unity was guaranteed by the fixed deficit and debt rules, diversity prevailed due to the dominance of the autonomy principle. Flexibility and open-endedness were adopted as principles in intergovernmental relations, although the role of deliberations was constrained since ‘national interests’ prevailed. Despite the resolution on the SGP and its corresponding regulations, member states remained reluctant to transfer decision-making powers to a central, collective body. As one official rightly claimed, “the rules were not the problem, but authority was really weak...it needed to be reinforced by someone else...a referee with authority to apply the rules”²⁸.

The financial crisis showed how fragile the framework established in Maastricht was. The complexity of the economic policy file was finally fully acknowledged by member states as “the economic framework has been hit by an instable situation where clearly the institutions were not ready, the member states were not ready, and the union was not ready to deal with it, because they realized it was too soft of a system”²⁹. Once the interconnectedness of the European economies was recognized by member states, fiscal policy coordination

²² Anonymous interview conducted in Brussels, 11 April, 2013.

²³ Anonymous interview conducted in Brussels, 28 March, 2013.

²⁴ Flexible rules for Europe, strictly enforced, in *Financial Times*, 19 January, 2004.

²⁵ Point 76 of the European Court of Justice Case C-27/04.

²⁶ Anonymous interview conducted in Brussels, 24 March, 2013.

²⁷ Anonymous interview conducted in Brussels, 24 March, 2013.

²⁸ Anonymous interview conducted in Brussels, 11 April, 2013.

²⁹ Anonymous interview conducted in Brussels, 10 April, 2013.

became a sensitive issue that made pre-negotiation preference setting difficult. Consequently, intergovernmental processes changed. As a financial counselor from a member state argued, “it was something new compared to the situation before, I remember clearly a session of the Economic and Financial Committee [EFC] in March [2010] (...) there was a kind of open discussion which rarely happens in this kind of format because everything is driven by an agenda”³⁰. These deliberative settings allowed for the development of federal principles. As the complexity and sensitivity of fiscal policies was recognized, ‘national interests’ were to be pursued with regard to common goals. Consequently, the partnership principle was enhanced as member states aimed to resolve the crisis through strengthened horizontal means instead of relying on proposals made by the Commission. As one official argued, “the more you went into the negotiations, the more you moved towards partnership”³¹. As it was demonstrated, the Commission usually followed up on the intergovernmental agenda. As one senior official from the COREPER argued, “the European Council is among the institutions now but is freer to see itself coming up with dossiers without a legislative angle (...) it represents another work-stream along the Commission with its own working and guiding principles”³². Another financial counselor from a member state argued with regard to economic governance that “going the intergovernmental way was clearly a political decision that reflected certain member states’ skepticism on legal issues right from the beginning”³³. Consensus-orientation was echoed in the move to unanimity rules and the almost complete closing out of the European Parliament from the procedures. The reforms initiated on the SGP by the Six Pack also reinforced the commitment of member states towards reaching resolutions at the community level (loyalty). As one official argued, “there was a clear sense of respect for the rules as the governance structure was reinforced (...) the commitment was there, but the application of the rules was still questionable”³⁴. With the reform attempts to the SGP, clearly there was more pragmatism injected into the system, and member states were generally ready to compromise as most officials argued. As it was noted, “the principle of ‘unity in diversity’ was becoming a relevant approach under the idea and practice of ‘constrained discretion’”³⁵ which related to autonomous decisions within the established common standards. As far as flexibility was concerned, it was argued that “legislative deliberations now often lead to non-legislative decisions”³⁶ in the form of intergovernmental agreements (e.g. TSCG).

In general, intergovernmental institutions and processes began to dominate. Informal procedures gained relevance over time, which led to a reversed community method where the European Council invited the Commission to make proposals in relation to the problems that needed to be addressed. The Commission actually tried to reserve the right of initiative by coming out with a package of proposals³⁷ (Six Pack) before the Van Rompuy Task Force finished its report³⁸. However, as one member state official argued “idea of the European Semester was first put forward by Luxembourg [in the EFC], two months before the Communication of the Commission”³⁹.

By 2011, the situation was ripe for a new set of measures. First, the President of the European Council showed leadership again by putting forward the proposal of the Euro Plus Pact. It was created under his personal guidance, and was endorsed by the Euro area countries

³⁰ Anonymous interview conducted in Brussels, 24 March, 2013.

³¹ Anonymous interview conducted in Brussels, 28 March, 2012.

³² Anonymous interview conducted in Brussels, 30 May, 2013.

³³ Anonymous interview conducted in Brussels, 24 March, 2013.

³⁴ Anonymous interview conducted in Brussels, 28 March, 2012.

³⁵ Anonymous interview conducted in Brussels, 24 March, 2013.

³⁶ Anonymous interview conducted in Brussels, 6 June, 2013.

³⁷ COM(2010) 522-527.

³⁸ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/117236.pdf

³⁹ Anonymous interview conducted in Brussels, 24 March, 2013.

and later by some of the non-euro zone countries as well. The Pact was based on an OMC and marked a move towards intergovernmental resolutions that would substitute centralized, collective legislative decisions. Although in November, 2011, the Commission proposed two further regulations (known as the Two Pack) to further surveillance and monitoring procedures for euro area member states. The Two Pack, in many ways, reflected coordination demands initiated by the Euro Plus Pact. The dominance of the intergovernmental bodies was summed up as follows by Herman Van Rompuy:

“Until recently, it seemed natural to imagine that Europe would become more centralized. Instead we are seeing member states and national leaders take centre stage in particular in dealing with the public debt crisis. In my view this is not contradictory. Unlike some, I do not see the return of the ghosts of the past and the ‘renationalization of European politics’. No, in my view, what is in fact happening is the ‘Europeanization of national politics’”⁴⁰.

On 2 March, 2013, the Treaty on Stability, Coordination and Governance (TSCG) was signed by 25 of the 27 (now 28) member-states of the EU. As an intergovernmental agreement (therefore not part of EU law) it did not change the formal distribution of competences between the EU and its member-states. As Article 2.2 of the treaty stated, it merely aimed to help member-states coordinate their fiscal policies to be able to ensure the stability of the euro. Yet, the Fiscal Compact has important implications as far as measures relating to fiscal policies are concerned. It requires member states to enshrine into national law⁴¹ a balanced budget rule with a lower limit of a structural deficit of 0,5% of the GDP, and is centered on the concept of the country-specific medium-term objective as defined in the SGP. It was a clear result of “institutional fatigue”⁴² as one official expressed it. The TSCG was a clear indication of the situation where “member states had to start coordination in areas where the Union had no explicit competence, but there wasn’t much possibility for going beyond the existing allocation of competences”⁴³. As many officials argued, even though it was a minor extension to the existing framework, it reinforced many of the federal principles that came to drive intergovernmental relations.

Institutional changes and the allocation of powers (*word count approx. 1200*)

The previous part demonstrated how the growing complexity and sensitivity of the economic policy file pushed member states to adopt federal principles in an area under their own jurisdiction (i.e. fiscal policy) and what impacts this had on the conduct of intergovernmental relations aiming at resolutions. Although certain elements have been highlighted before, this last part will sum up the major institutional and procedural changes and will also analyze to what extent the newly established framework formalized these new principles? This shall also help assess how the allocation of competences was changed without formally having altered the constitutional framework established in Maastricht.

As for the institutional changes, the working methods of European Council were modified somewhat. Whereas, between 1993 and 2008, there were an average of four European Council meetings per year (with the exception of 2003) and only five extraordinary and eleven informal meetings have been called together, between 2008 and 2013 these

⁴⁰ Beyond the institutions: Why Europe today?, a speech delivered by Herman Van Rompuy, President of the European Council at the Europe Conference in Copenhagen, 11 May, 2012.

⁴¹ Of binding force and permanent character, preferably constitution.

⁴² Anonymous interview conducted in Brussels, 5 July, 2013.

⁴³ Anonymous interview conducted in Brussels, 31 May, 2013 (A).

numbers increased considerable. There were around 6-7 European Council meetings annually with additional Euro summits. As a new development, bilateral discussions over the phone and in person have become rather regular between Van Rompuy and individual heads of member state governments, having the purpose of “pre-baking the pie”⁴⁴ as one British official put it. In general, strong interaction and real discussions prevailed which have been actively supported by the ECOFIN and the Euro Group meetings as well which contributed greatly to the deliberations.

The changes in the Euro Group have also been important in furthering the deliberative mechanisms of the existing institutions in order to be able to deal with policy coordination responsibilities. The Lisbon Treaty merely formalized what was already a practice before among the finance ministers of the Euro zone countries. Yet, the crisis had a huge impact on the Euro Group itself. As one European official from the Commission noted, “during the crisis, the Euro Group has been acting like a firefighters’ meeting, [...] it has become a better functioning institution with a Secretariat and a permanent chair”⁴⁵. In general, as one official from Luxembourg claimed, “Euro Group meetings have become more important than ECOFIN meetings”⁴⁶.

In terms of the Council (ECOFIN), its importance shall not be downplayed nevertheless. In fact, its relevance increased as far as policy coordination and deliberation is concerned. However, as one official argued, “informal meetings of ECOFIN are more essential now...formal settings are rather useless as there are too many people and very seldom debates on substantive issues”⁴⁷. As a UK official argued, “ECOFIN changed ways how things work, and fundamentally it became responsible for a supervisory policy”⁴⁸. In a similar manner, DG ECFIN within the Commission took up the role of “surveillance police”⁴⁹. As another indication of increased reliance on informal institutions and procedures, one has to mention the *sherpa meetings*. Their importance cannot be emphasized enough. As an official from Luxembourg explained, *sherpas* are one of the members of the delegations during COREPER meetings, however “*sherpas* meet on a regular basis as well, and there are important discrete side meetings before each Council meeting”⁵⁰. As an Eastern European official claimed “*sherpa* meetings could be rather powerful...sometimes it feels almost like important decisions are taken there”⁵¹.

The working methods, in general, have shifted towards more discussion whether in a formal or an informal setting, whether in the European Council, the Council, the Euro Group or COREPER meetings. As Herman Van Rompuy concluded:

“All the members of the European Council were willing to take more responsibility for these economic issues. Such personal involvement is indispensable. I was glad to find a high level of ambition around the table. The first result is that the European Council becomes something like ‘the gouvernement économique’ of the Union, as some would call it. (...) The financial and economic crisis obliges us to take steps on this road (...) To help find consensus among Member States, new institutions and new offices were created (...) However, it does not suffice to create a new institution to solve a problem,

⁴⁴ Anonymous interview conducted in Brussels, 23 July, 2013.

⁴⁵ Anonymous interview conducted in Brussels, 5 July, 2013.

⁴⁶ Anonymous interview conducted in Brussels, 2 July, 2013.

⁴⁷ Anonymous interview conducted in Brussels, 31 May, 2013 (B).

⁴⁸ Anonymous interview conducted in Brussels, 23 July, 2013.

⁴⁹ Anonymous interview conducted in Brussels, 23 July, 2013.

⁵⁰ Anonymous interview conducted in Brussels, 6 June, 2013.

⁵¹ Anonymous interview conducted in Brussels, 5 July, 2013.

certainly, not immediately. This requires consultation between Member States and time⁵².

The institutional and procedural changes are reflective of the development of the federal principles featured in the previous part. As a last task, it is important to assess how these principles got formalized and how the actual allocation of competences changed despite the fact that intergovernmental relations came to substitute centralized legislative decisions.

It was already signaled that the Six Pack and the Two Pack which consisted of different regulations (and one directive) did not change the framework established by the SGP. Rather they simply stipulated the strengthening of budgetary surveillance and coordination of economic policies (i.e. multilateral surveillance, European Semester, macroeconomic imbalances procedures, excessive deficit procedures, etc.). Even though they came in the form of regulations, they did not create legislative powers concerning fiscal policy coordination. Recommendations were used to ensure the correction of excessive deficits, and delegated acts were only referenced in connection with administrative matters of reporting. All substantive decisions were to go through the intergovernmental institutions and procedures of the EU, which nevertheless reflected the federal principles highlighted previously.

As for the Euro Plus Pact, it enshrined the autonomy and loyalty principles as it aimed to “strengthen the economic pillar (...) [while focusing] primarily on areas that fall under national competence⁵³. Loyalty and comity were also carved into the text as the whole pact was to be monitored politically by the heads of state or government, and “Member States commit to consult their partners on each major economic reform having potential spill-over effects⁵⁴. ‘Unity in diversity’ was preserved through the freedom of policy actions while maintaining common objectives, which also reflected on proportionality. The agreement on the European Stability Mechanism (ESM) was a good indication of the partnership principle as well which manifested itself in the ‘mutual agreement’ requirement in most decisions.

The TSCG further reinforced the partnership principle inasmuch as it called member states to police each others’ compliance with the correction mechanism (Article 8.), but provisions for ‘economic partnership programs’ are also indicative. It enshrined the flexibility principle inasmuch as it left the formalization of the intergovernmental agreement open.

All things considered, even though the different intergovernmental elements from mechanisms in the reformed SGP through the Euro Plus Pact and to the TSCG did not change the formal distribution of powers among the member states and the European level, it did lessen the capacities of individual governments to act unilaterally in fiscal affairs.

Conclusion (*word count approx. 400*)

The financial and economic crisis challenged the existing economic and monetary framework of the European Union once again. Member states clearly were in need of system-wide policy solutions yet they demanded autonomy in decision-making. This internal tension led to a changed character of intergovernmental relations which came to substitute a formal transfer of legislative competences to the European level. Despite the great reliance on intergovernmental relations, this study argued, questioning the age-old dichotomy of intergovernmentalism v. supranationalism in the EU integration literature, that a federalist approach can help us best understand how such a development can arise. It was argued that as

⁵² The challenges for Europe in a changing world, a speech delivered by Herman Van Rompuy, President of the European Council at College d’Europe, Bruges, 25 February, 2010.

⁵³ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/120296.pdf p. 13.

⁵⁴ Ibid. p. 14.

the internal tension corresponds with the basic federal idea of 'unity and diversity', the process can be best understood from the perspective of federal principles. It was hypothesized that the growing complexity and sensitivity of the fiscal policy file pushed member states towards open deliberations which allowed for the adoption of basic federal principles that in turn impacted on the character of intergovernmental relations.

The relevance of the topic cannot be stressed enough. As the European Union is destined to face a similar dilemma in other areas as well (e.g. employment policy, energy policy, social policy), it is important to study the dynamics of intergovernmental relations. It could help better determine the circumstances under which policy coordination without formal transfers of constitutional powers and legislative decisions are more likely to flourish. This latest development also suggests that the European Union reached yet another step towards some kind of federal political system. Consequently, comparative federalist studies using the EU as a case may prove to be theoretically more well-grounded if they turn their focus away from the constitutional distribution of powers and pay more attention to intergovernmental processes instead.

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