CENTRO STUDI SUL FEDERALISMO
PERSPECTIVES ON FEDERALISM

ISSN: 2036-5438

The failure of intergovernmentalism in tackling the EU crisis and the European Parliament's initiative

by

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Perspectives on Federalism, Vol. 8, issue 3, 2016

Abstract

The EU is facing a multi-faceted, existential, crisis; it is an economic and social crisis in some countries, a political and cultural crisis all over the EU and a geopolitical crisis at the international level. National governments have taken the lead in the crisis management of the EU: the European Council has become the dominant institution and the intergovernmental method has come back into fashion. But intergovernmentalism has failed: since 2008 the crisis keeps getting worse. Intergovernmentalism is leading towards the EU's disintegration. Among many voices to save the EU, it is interesting that the supranational institutions, and particularly the Parliament, are taking on themselves the responsibility to take the initiative and indicate a possible way forward for the Union.

Key-words

EU crisis, intergovernmentalism, European Parliament

1. The multi-faceted crisis of the EU

For almost sixty years European integration had been considered a great success and had enjoyed huge popular consensus. This "permissive consensus" could have allowed political leaders to push integration forward, but it actually made it possible for them to postpone difficult decisions to a more favourable time, in the expectation that the popular consensus will always be there. Since 2008 all this has changed. An accumulation of challenges over the last 8 years has created a multi-faceted crisis that may turn out to be an existential threat for the EU as such.

The financial crisis started in the US, but had its most severe effects on the EU, and especially the Eurozone. The European Monetary Union cannot survive in the long term as it stands. This was known from the very beginning: the MacDougall Report suggested that a monetary union required a budget of at least 5-6% of GDP to address asymmetric shocks and foster convergence.[I] When the monetary union was created without such a budget, most experts thought this could not work, and that the monetary union was just a step along the road towards political union.[II] However, the start of the Euro proved an amazing success, silencing all critical voices, except for a few federalists who kept denouncing the limits of the Maastricht Treaty and the lack of sustainability of a monetary union decoupled from an economic and political union, even before the start of the 2008 crisis.[III] Nowadays this opinion is shared by several Nobel Prize winners[IV] and by the European institutions themselves! The Four Presidents Report of 2012 and the Five Presidents Report of 2015 stress the need to create a "genuine" economic and monetary union. But they have essentially remained on paper due to the lack of political will by national governments

During the crisis the European Council became the dominant institution in crisis-management. This also produced a wide debate over the new intergovernmental turn of European integration.[V] But intergovernmentalism failed:[VI] since 2008 the crisis kept getting worse. The failure of EMU and its possible collapse are widely debated. Political parties opposing the single currency have appeared. The EU's mishandling of the Greek crisis was lacking in both solidarity and effectiveness, and dramatically reduced its legitimacy.[VII] The intergovernmental crisis-management failed and turned the EU from a success story to a

perceived failure. Eventually this made Brexit possible. Intergovernmentalism is leading towards the EU's disintegration.

The rise of China has shifted the competition for global hegemony to the Pacific; US strategic focus has structurally shifted accordingly. Shale gas and America's new energy autonomy has also contributed to the decrease in the strategic value of the Middle East. Eventually this produced a significant power vacuum which made possible the Arab Spring and the collapse of several authoritarian pro-West regimes in Africa and the Middle East, the civil wars, with different levels of intensity, in Syria and Libya, the rise of Daesh or Islamic state, the Russian annexation of Crimea and destabilization of Ukraine, the authoritarian turn in Turkey. All these events have produced significant fluxes of migrants and refugees, a part of which have tried to reach the EU. Since World War II the Europeans have entrusted their defence on the US. With the shift in American strategic focus and the new Trump presidency, requiring allies to carry a greater share of defence costs, Europeans now needs to ensure their own defence, and so far are incapable of doing it. The EU as such spends 0€ on defence. The EU Member States together make up the second highest military expenditure in the world, almost half that of the US, and more than China or Russia. But this money is dispersed among 28 different armies, thus producing very little effective capability. Overall Europeans spend 1.2% of GDP for defence – against a NATO request of 2% - as compared to the whole EU budget which is just 0.9% of GDP.

At the same time, several terrorist attacks within the EU have occurred. The inability of the EU to ensure that Member States exchange information effectively and in real time, and cooperate effectively is evident, yet still very little progress has been made on this. The violent death of so many European citizens was not enough to push national governments to pool their resources at European level. Security concerns, and also islamophobia, are thus on the raise.

All this has weakened the consensus on the EU, but surveys also show that the consensus for national and local government is often even weaker. The whole democratic multi-level system of government in which Europeans live is experiencing a deep legitimacy crisis; Nationalism cloaked in a populist disguise has made its comeback. More political leadership and capital is thus required from heads of state and government to make the decisions needed to address the crisis. But political leadership is conspicuously

lacking. The national governments response to the crisis has been more intergovernmentalism, and the pursuit of the Maastricht logic: more constraints to economic and fiscal national policies, without an effective European economic policy. European decision-making continues to be hostage of national politics, where crucial decisions are postponed in view of a national or local election. Alternatively, fundamental decisions on Europe are forced by party interests, like Cameron's promise to hold a referendum on the British membership of the EU if he won the election, made to keep the Tories united in view of an election he didn't think he could win. But he did, and Brexit may turn out to be the start of the EU's – and possibly the UK's - disintegration, and not just the end of Cameron's political career.

In this context the main attempts to change course came from European supranational institutions. The Juncker Commission introduced more flexibility in the interpretation of the European constraints on national fiscal policies. It boosted investments through the 'Juncker Plan' - essentially EU debt under the form of Euro-project bonds disguised by the management of the European Bank of Investments. Its success brought its further strengthening and increase in funds, doubling its original amount. And a new European External Investment Plan (Juncker Plan II) has just been launched as a tool to help stabilize the Neighbourhood within the European foreign and security policy. Recently President Juncker observed that the success of the Plan has produced a change in its name. Initially nobody believed it would work, and everybody called it 'the Juncker Plan', ready to blame the Commission for the failure. Now that in one year it has disbursed over 17bn. euro into the economy - of the 30bn. already approved from the 163bn. available – the media and national governments have reverted to calling it with its official name, the European Fund for Strategic Investment, so that its success does not strengthen Juncker and the Commission.[VIII]

The Juncker Commission also tried to push forward completion of EMU, by re-launching the debate on the Four Presidents Report of 2012 through a new Five Presidents Report in 2015, but stumbled when opposed by strong resistance by most Member States.[IX] The Commission also prepared a new "EU global strategy", made pushes towards more defence cooperation, and possibly the use of Permanent Structured Cooperation. With regards to migrant and refugee fluxes the Commission set up a redistribution system for refugees, which Member States approved, but are not implementing. The Commission

proposed and managed to create a European Coastal and Border Guard, but Members States limited their powers significantly. Even before the results of the Brexit referendum national governments showed they had no plan – just like the British government! Only the European institutions seemed to have planned for the worst outcome – which is the duty of any government. The European Central Bank had consulted with the Bank of England to prepare emergency plan to cope with potentially negative market reactions. The Commission immediately suggested that citizens' votes needed to be respected, that Brexit should take place as quick as possible to reduce uncertainty, and that the EU should focus on its own reform to address citizens' needs and expectation. Also, the Parliament held an ad hoc plenary and approved by a vast majority a resolution on the same line asking the EU to move forward.

In spite of the limitations in the results obtained, it is clear that the Commission tried to move the EU forward with regards to all the main challenges it is facing. It is now time to turn to the European Parliament, which now seems ready to take the initiative to bring that agenda forward.

2. The European Parliament's role

The European Parliament (EP) is often considered a relatively weak institution, at least by the media; and thus by public opinion. This is mainly due to the fact that even at the time of the first direct elections in 1979 it had very few powers. Nonetheless, its strong democratic legitimacy, as the only directly elected institution of the EU, allowed the Parliament to acquire more and more powers at each Treaty reform, from the Single European Act, to the Maastricht, Amsterdam, Nice and Lisbon Treaties.[X]

Today, compared for example with the French or Italian parliaments, the EP stands out as a strong institution from several perspectives. It has a much stronger legislative role that cannot be curtailed by any means by the executive – as it happens in France where the government can legislate in place of the Parliament, and recently did on labour law for example. The EP cannot be coerced through a request of a vote of confidence by the Commission, as the Italian government does on all most significant pieces of legislation. Nor can the Commission or the Council legislate through decrees.

The EP has gained significant powers with regards to the appointment of the European commissioners, and has established a regular procedure through its hearings and "grilling" of the candidates. Many national parliaments can only vote for the whole government, without the possibility of just setting aside one or a few proposed ministers not suited for their proposed posts. If, for example, the same powers and procedures were available to the Italian Parliament it is doubtful that all of the Ministers of several recent governments would have been appointed to those ministries or at all.

With the Lisbon Treaty the EP also gained the power to elect the Commission President from nominations by the European Council, decided by qualified majority voting, which must take into account the results of the European election. This procedure is very similar to traditional parliamentary democracies, with the European Council in the role of the head of state. The 'Spitzenkandidaten' process, the presentation of a Commission President candidate by each of the main European parties at the 2014 European election, was the first test of this procedure. Most people did not believe the process would work, and the European Council would not nominate any of the parties' candidates; consequently, the media did not pay much attention to the candidates and their debates. But democracy is strong, and the European Council eventually had to nominate Juncker, as the candidate of the party with the most seats in the Parliament. This process could be strengthened in different ways, for example through primaries of the European parties to select their candidates, and by establishing a clear procedure for the European Council to consult the Parliament party groups in order to select the nominees for Commission President. But the democratic linkage between the European citizens and the Commission – as the European executive – through the election of the Parliament has been established.

EU transparency rules allow us to monitor lobbyists' activity, and these have taken notice of the increase in the EP's power. While they used to focus mainly on the Commission, they now devote a great deal of resources to the Parliament.[XI]

This new situation and powers are triggering new political dynamics. On the one hand working practices in the EP have shown a tendency for the groups that voted in favour of Juncker as Commission President – EPP, S&D, and ALDE - to cooperate more closely, as if they were a political majority. With regards to all the main legislative acts and reports there are informal consultations among the rapporteur and the shadow rapporteurs of

those groups, and the compromise amendments are drafted taking mainly into account those groups views. On the other hand, we have seen an end of the traditional arrangement between the two main party groups to elect together the president of the Parliament for half a legislature so that each party holds the presidency over the term of a legislature. The S&D is rejecting this arrangement on the basis that the EPP, as the first party group, holds the Commission Presidency with Juncker - and currently also the European Council Presidency, with Tusk.

At the same time the Parliament is also sensing its new responsibilities. The intergovernmental method of governing the EU has failed dramatically in dealing firstly with the financial and economic crisis, and then with the increasingly dangerous geopolitical challenges around the EU, which contribute to the migrant and refugee crisis. The collapse of the EMU was only averted by the resolute action of the European Central Bank, yet ECB calls for the completion of EMU itself fell on deaf ears in national governments. The 2012 Four Presidents Report, and the 2015 Five President Reports have remained so far an example of what Giddens calls "paper Europe" (Giddens 2014: 7). The crisis eroded trust among national governments, which have shown their lack of political will to tackle the EU's and EMU's structural problems. The Lisbon Treaty for the first time conferred on the Parliament the power to start Treaty reform processes. This was precisely the power the Parliament lacked during its first attempt to reform the then European Economic Community by approving the Draft Treaty on European Union in 1984, known as the 'Spinelli project'. The Parliament proposal was not taken as the basis of the negotiations which led to the Single European Act, even if most of its contents has ultimately found its way into the EU treaties through various revisions.[XII]

3. The Parliament's initiative to tackle the crisis

Against this background the Parliament is trying to take the initiative. The Constitutional Affairs Committee concomitant approval of the Reports on "Improving the functioning of the European Union building on the potential of the Lisbon Treaty" – rapporteurs Mercedes Bresso (S&D) and Elmar Brok (EPP) – and on "Possible evolutions of and adjustments to the current institutional set-up of the European Union" – rapporteur Guy Verhofstadt (ALDE) – provides the EP's view of what can be achieved within the

current treaties, and on what else need to be done through Treaty reforms. The Economic and Monetary Affairs Committee is working on Reports on "The Banking Union" – rapporteur Danuta Hübner (EPP) – and together with the Budget Committee on a Report on "A budgetary capacity for the Eurozone" – rapporteurs Pervenche Berès (S&D) and Reimer Böge (EPP). The final vote of the plenary is likely to take place before the Rome Treaties celebrations next March, when the European Council is supposed to deliver a road map for the relaunch of the Union. Together these four reports constitute the Parliament's attempt at keeping the integration process going, with particular respect to the completion of the EMU, but also taking into account the changing geopolitical environment, and needs. In this last respect it is also interesting to note the start of joint work by the Foreign Affairs and Constitutional Affairs Committees on a Report on "Constitutional, legal and institutional implications of a common security and defence policy: possibilities offered by the Lisbon Treaty" – rapporteurs Michael Gahler (EPP) and Esteban González Pons (EPP).

While national governments do not seem ready to take major decisions, the Parliament is working on a comprehensive set of proposals, that essentially set out ways to implement the Four and Five Presidents Reports. In this endeavour the Parliament can act as a vanguard, counting on the support of those governments keenest in pushing integration forwards. Significantly, the then Prime Minister Renzi praised the EP's work on the reports in his speech to the Italian Parliament on the European Council meeting of last October.[XIII] It is rather uncommon to hear a PM praise and support the EP, and to offer it as an example of the capacity to work in a bipartisan manner, to put forward constructive proposals.

These documents can be considered as attempts by the Parliament to influence the debate in view of the road map to be launched by the European Council in Rome next March 2017. It would also be possible to dismiss the Parliament reports as just more "paper Europe". The Four and Five Presidents reports remained mostly on paper, so why should the Parliament's reports have a different fate? The reason is in the history of the Parliament. These documents may well turn out to be the preparatory works needed to set the common ground among the main party groups to prepare and formally put forward a comprehensive Treaty reform proposal by the end of the legislature, thus using the newly acquired power to initiate the Treaty reform process. This would be coherent with the

Parliament's historical record of struggling to get new powers, and always using them once they have been acquired. The 'Spitzenkandidaten' process is just the last example of this. Therefore, it is interesting to analyse the main proposals of these Reports.

The Bresso-Brok report explores what can be done to strengthen the EU within the current Treaties. It offers several suggestions for improvements and simplifications and shows that integration can be significantly deepened through the tools provided by the Lisbon Treaty. It articulates a few clear messages in a legally detailed and sophisticated manner, pointing out for each proposal the existing legal basis and means. Therefore, it is at the same time a critique of the lack of political will and courage by Member States, who are not exploiting the Lisbon Treaty to the full.

The report criticizes the intergovernmental method and the European Council's dominance and defends the Community method and the role of the Union's supranational institutions. To this end it proposes a reduction in the Council's configuration and the creation of a legislative Council acting as a second chamber and working in public. It also seeks to strengthen and formalise the consultation procedure of the Parliament by the European Council in the process to nominate the Commission President. It suggests that the Member states designate 3 candidates as commissioners (to include both genders) from whom the Commission President can choose, thus increasing its powers and independence. It proposes the adoption of qualified majority voting for the approval of the Multi-Annual Financial Framework and its reduction from 7 to 5 years, to bring it into alignment with the Parliament mandate.

The report emphasises the potential of differentiated integration and stresses that this does not necessarily imply intergovernmental governance. Therefore, it commits the Parliament to refusing its consent to any new enhanced cooperation unless the related passerelle clause (art. 333 TFEU) is also activated – which provides for the application of the ordinary legislative procedure with full co-decision by the Parliament and qualified majority voting in the Council .

The report stresses the need for the completion of EMU. It suggests the merger of the Euro Group President and the Commissioner for economic and financial affairs into an EU Finance Minister as Commission Vice-President in charge of a fiscal capacity. It also proposes a European Monetary Fund to be established in view of the creation of a European Treasury. To this end it proposes to communitarise the European Stability

Mechanism, to set up a real system of own resources for the EU budget, and possibly for a Eurozone additional one, within the EU framework and under the democratic scrutiny of the Parliament. The report rejects the need to create other specific institutions, stressing that the Euro is the currency of the EU, just as the EP is its parliament. It also asks for a single external representation of the Eurozone in the International Monetary Fund, the World Bank and other international financial organizations. It suggests the creation of a framework for an orderly sovereign default procedure, but at the same time demands the strengthening of the Union investment capacity and the creation of a convergence code including social criteria, within a new European social pact.

Finally, the report emphasises that the geopolitical situation requires an EU foreign and defence policy, and that the current treaties allow this to be pursued. It asks for a common defence policy and a Council of Defence Ministers to be chaired by the High Representative/Vice President. It demands the use of Permanent Structured Cooperation, as well as greater involvement of the Parliament on foreign and security policy. It proposed the creation of a permanent civilian and military headquarters with planning and management capability. On internal security it demands mandatory exchanges of information to be established, eventually through enhanced cooperation. It asks for the revision of the Dublin regulation on asylum-seekers and the establishment of a Common EU asylum policy and system. It calls for the use of the passerelle clause to move the justice and home affairs policies to the ordinary legislative procedure. It demands the establishment of a European Public Prosecutor Office.

The Verhofstadt Report builds on the previous one, also addressing the various aspects of the EU crisis, and pointing out what other measures are necessary to strengthen integration but require a Treaty reform as they cannot be reached with existing legal instruments.

The report stresses the goal of ever-closer union and the legitimacy of the Convention as the tool for the reform of the Treaties. It denounces the use of differentiated integration for single pieces of legislation and the creation of a complex Europe "à la carte", rather than being a tool to deepen integration. It asks for a Treaty reform curtailing opt-outs at primary law level, and overcoming all exceptions to the ordinary legislative procedure. It criticised the intergovernmental method reinforced through crisis-management mechanisms. It opposes the creation of different sub-sets of Member states trying to lead

the debate. It also proposes to set up a partnership to accommodate countries outside the EU but with a strong relationship with the EU, that could include the UK, Switzerland, Norway, Turkey, Ukraine, and possibly others.

It also suggests that the next Treaty revision should bring into the Treaties the European Stability Mechanism, the Single Resolution Fund and the Fiscal Compact, ensuring democratic decision-making and Parliamentary control. It should create a European Treasury with a fiscal capacity based on own resources and the ability to borrow. A European Finance Minister within the Commission - under the control of the Parliament and Council - would be in charge of the Treasury and represent the Eurozone in international financial organizations, with the ESM – under the oversight of the ECB – to act as first lender of last resort. It asks for the completion of the banking, capital market, and energy union, and for some form of tax harmonization or coordination, overcoming the unanimity requirement.

The report calls for a European migration system, the strengthening of the Border and Coastal Guard, and of Europol and Eurojust, to also include a European intelligence capacity to cope with the terrorist threat. It also proposes a defence union; the transformation of the high representative into a Foreign minister, also in charge of a unified EU representation in international organizations including the UN; and the creation of a European Intelligence Office within the common foreign and security policy.

It proposes the strengthening of the Commission's power to protect the rule of law and fundamental rights, and the access by citizens to ECJ with regards to those issues. It demands the transformation of the Charter of Fundamental Rights into a Bill of rights, abolishing the limits provided in its art. 51.

Finally, it asks for the Commission to evolve into a fully-fledged European executive, for the reduction of the number of members and Vice-presidents, who should be the Finance Minister and the Foreign Minister. To this end it also calls for the strengthening of the 'Spitzenkandidaten' process, proposes the creation of a legislative Council, and reiterates the call for a single seat of the European Parliament. It proposes to change the ratification procedure of Treaty changes, to take place preferably through a European referendum, or otherwise through a 4/5 majority of national ratifications. It proposes to start a period of reflection aimed at bringing about a Treaty reform on the occasion of the sixtieth anniversary of the Treaties of Rome.

The work on the Hübner Report on "The Banking Union" and on the Berès – Böge Report on "A budgetary capacity for the Eurozone" is still going on, and there has not been a formal vote yet, even within the relevant Committees. Therefore, I will not analyse them in detail; it is enough to note that they delve into two crucial issues regarding the completion of the EMU, providing articulated and specific proposals on the way forward.

4. Clear implications of legitimate discriminatory disenfranchisement

The idea that the EU is at a crossroads is a recurrent one, and the fact that the EU is facing a multi-faceted existential challenge suggests that it may well be again. However, it is unlikely that the EU as such will take crucial decisions in 2017, due to the many important national elections scheduled, most prominently the French Presidential and the German parliamentary elections. Possibly Italy may hold early elections too, while Spain finally got a government. This means that in the four largest Eurozone countries there may be a few years without elections. This opens a window of opportunity for crucial decisions to be taken before the end of the current European legislature, in 2019. An obstacle may be the Brexit negotiations and the fact that the UK would still formally be part of the EU and may try to exploit this to get concessions on the Brexit terms.

A first important moment that may set the path for the next couple of years will be the extraordinary European Council meeting in Rome on March 25, which will start work on a road map for the EU relaunch on the occasion of the 60th anniversary of the Rome Treaties. On that occasion pro-European citizens will rally in Rome to show that citizens still understand that the EU can be part of the solution rather than the problem. It will be an important event that can spell a new alliance between pro-European NGOs, businesses, trade unions, local governments, the European Parliament and pro-EU political leaderships. It can contribute to halting the momentum of nationalist forces, and to provide some political courage to pro-EU ones. The Parliament's initiative can provide the focal point for the Rome mobilization, which can further strengthen the Parliament's will to exploit its powers to the full, preparing and presenting a comprehensive treaty reform proposal.

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[I] The MacDougall Report is available at http://ec.europa.eu/archives/emu_history/documentation/chapter8/19770401en73macdougallrepvol1.pdf.
[II] It should be noted that this view was shared by those in favour and those against the monetary union. In a series of debates organised in London by the Institute of Economic Affairs in the years after the Maastricht Treaty Issing (1996) recognised the limits of the EMU, but still supported it, as a step towards political union, while Portillo (1998) recognised that the single currency was ultimately necessary for the single market to work, but he was still against, because it would eventually lead to political union.
[III] An overview of the articles published by *The Federalist* – the main federalist journal – since the Maastricht Treaty to the 2008 crisis is telling on this issue: see Padoa Schioppa A. 1993, 1995, 1998; Rossolillo 1995; Lamers 1995; Pistone 1996; Montani 1997, 1998, 2005; Padoa Schioppa T. 2002; Trumellini 2003; Draetta 2005.
[IV] Some anti-euro scholars have tried to suggest that the Nobel Prizes critique of the EMU indicates that it should be dismantled. However, several Nobel Prizes explicitly answered that they rather want the EMU to be completed: see http://www.huffingtonpost.com/2014/04/11/amartya-sen-joe-stiglitz-populism_n_5134487.html. Only recently Stiglitz occasionally seem to have lost hope on this.
[V] See Bickerton, Hodson, Puetter 2015. For a rather different view see Schimmelfennig 2015, Bauer and Becker 2014.
[VI] On this issue see Fabbrini 2013.
[VII] On this issue see Balibar 2016.
[VIII] See Juncker speech in Berlin on November 10th at the Konrad Adenauer Foundation, available at http://europa.eu/rapid/press-release_SPEECH-16-3654_en.htm.
[IX] Eventually the Commission published the documents presented by Member states in the consultation process that led to the Report. They are available at http://ec.europa.eu/priorities/five-presidents-report_en.
[10]All the Treaties can be consulted at http://europa.eu/european-union/law/treaties_en.
[XI] An overview can be found athttp://ec.europa.eu/transparencyregister/public/homePage.do?redir=false&locale=en and https://lobbyfacts.eu/charts-graphs.
[XII] On this issue see Ponzano 2010: 3-10.
[XIII] The speech and debate is available at http://documenti.camera.it/leg17/resoconti/assemblea/html/sed0691/stenografico.pdf. The reference to the European Parliament is at page 5..

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