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EMU'S GOVERNANCE POST-CRISIS: WHAT ROLE FOR INTERGOVERNMENTALISM?

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Abstract
Over the years EU member states favored an intergovernmental approach to policy-making within the Economic and Monetary Union (EMU). This approach emphasized the role played by national authorities, as member states' representatives, within a “soft governance” framework. In this framework, national representatives voluntarily participated in various coordinative networks and committees, which relied on interstate negotiations to create policies. However, the Euro area crisis highlighted the shortcomings of the intergovernmental approach to policy-making, such as divergent implementation of policies and regulatory arbitrage, which undermined the EMU’s stability. After the crisis, we are witnessing a centralization of policy creation processes and decision-making within the EMU, with apparently limited room for “old intergovernmentalism”. New actors such as the European Supervisory Authorities, perfectly embody this development since they require from member states to commonly agree “under the shadow” of non-majoritarian institutions, at times even against their own policy preferences. This raises important questions on the role of “old” conceptual frameworks in explaining current EU integration. Therefore, this paper explores the concept of intergovernmentalism (and also, “liberal intergovernmentalism”) as one the key driving forces within EMU’s governance, offering further insight into raised questions as well as arguing in favor of its political and integrationist potential in the years to come.

Keywords: *EU integration, EMU, intergovernmentalism, agencies*

1. Introduction

From the inception of the European Economic and Monetary Union (EMU) its governance has been characterized as intergovernmental. As one of the theories of EU integration, intergovernmentalism underscores the role of member states' cooperation in decision-making made within a multilateral environment.[1] Over the years the concept of intergovernmentalism has been extended in order to accommodate new socio-economic realities with one of the most important reformulations delivered by Andrew Moravcsik in 1993, in the form of the liberal intergovernmentalism theory.[2] Although an undisputed driving force behind the EMU project, (liberal) intergovernmentalism proved as an inefficient mode to govern economic turbulences, as dramatically demonstrated by the Euro area crisis. A rapidly exacerbating crisis demanded swift policy responses and regulatory measures, which was not within EMU's capacity since intergovernmental governance orthodoxy centered on interstate negotiations and bargaining, both time consuming processes. At the same time, the crisis exposed (liberal) intergovernmentalism's troublesome by-products, such as inconsistent policy implementation across the EU, which in practice translated to regulatory arbitrage within the internal market for financial services. This has impaired the level playing field for relevant stakeholders within the EMU and, most importantly, it has undermined long-term financial stability. In an attempt to stabilize the internal market and the EMU overall, European policymakers decided to opt for "more Europe", therefore deciding to overhaul the EU's framework of economic governance with a series of far-reaching reforms.

One of the more interesting and crucial transformations in this respect has been the so-called "agencification" of the EMU.[3] The establishment of three sectoral European Supervisory Authorities (ESAs)[4] – the first set of EU agencies in this policy area – as a response to the crisis has noticeably narrowed the "autonomy and sovereignty of national governments within the realm of economic policy".[5] Namely, the ESAs made a major leap in terms of governance centralization since they dispose with substantive policy powers and a high degree of institutional independence.[6] Building up on the existing framework where "soft modes" of governance existed within various committees and networks, the ESAs formalized intra-agency dynamics, with a "creeping supranationalization" of policy-making. This is because

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[1] Cini, M., *European Union Politics*, Oxford University Press, Oxford, 2006., at p. 100.

[2] Moravcsik, A., Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach, *Journal of Common Market Studies*, Vol .31, No. 4, 1993., pp. 473-524. See further in Moravcsik, A., The Choice for Europe. Social Purpose and State Power from Messina to Maastricht, Cornell University Press, Ithaca, 1998.

[3] The term "agencification" refers to the establishment of EU agencies as central entities in decision-making procedures and policy creation processes within the economic and monetary sphere. See further in Egeberg, M.; Trondal, J., Agencification of the European Union administration-connecting the dots, *TARN Working Paper* No. 1, 2016. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2754716 (Accessed on 3.6.2019.)

[4] They are: the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA).

[5] Maris, G.; Sklias, P., *Intergovernmentalism and the New Framework of EMU Governance*, In: Fabbrini, F.; Hirsch Ballin, E.; Somsen, H. (Eds.), *What Form of Government for the European Union and the Eurozone?*, Hart publishing, Oxford and Portland-Oregon, Hart Publishing, 2015., pp. 57-75., at p. 57.

[6] Busuioc, M., *European Agencies-Law and Practices of Accountability*, Oxford University Press, Oxford, 2013., at p. 16.

policies are now being created even against distinct national preferences, with member states obliged to comply with decisions commonly agreed among member states within ESAs' executive organs (the Board of Supervisors in the first place). At the same time, decision-making within these structures is seemingly moving away from the old form of intergovernmentalism, primarily because of EU's current challenging reality of differentiated integration. Namely, in the EU and the EMU two subsets of countries with starkly different economic positions co-exist: the Central and South-Eastern European countries and those of Western Europe, whose economic and institutional differences are then further confronted within the Euro area. Furthermore the establishment of the Banking Union (BU) that coalesces with the Euro area exclusively, brings further fragmentation. Within EMU's complex system of integration, there is potential for Euro area member states to closely align in various policy issues and exert decisive leverage in decision-making procedures within the ESAs. In other words, functional inequality[7] may jeopardize EMU's long-standing tradition of intergovernmentalism. This raises important questions on the role of member states in policy creation processes and on the relevance of intergovernmentalism overall.[8] Against this background, the following sections explore intergovernmentalism, "liberal" and "new" intergovernmentalism, as key driving forces of EMU's progress, arguing in favor of their political and integrationist relevance in the post-crisis environment.

2. (Liberal) intergovernmentalism: revisiting the literature

The progressive process of political and financial integration in Europe has been widely covered in literature, especially by political theory and political/social philosophy scholarship, which are interested in grasping and explaining the main conceptual motivations and ideological drivers behind the project. According to Moravcsik, those that figure prominently are: 1) federalist beliefs, which view the EU as a community of shared identity and purpose as envisaged by the cosmopolitan idea; 2) economic prosperity motivations, considering that macroeconomic and trade interdependencies between EU countries support multilateral economic policies; and finally, 3) the concept of peace and democracy, which assure "peaceful accommodation among democratic states with an historical legacy of conflict".[9] Among them, the concept of democracy is one of the genuine drivers of the EU integration project from the historic, post-World War II founding treaties to the present day. Piattoni rightly underscores that this is a fluid and multifaceted concept, which must take account of several normative and political assumptions.[10] In the context of EU integration and the EMU project, member states

[7] Functional equality relates to "the creation and maintenance of a 'level playing field' between different subsets of countries in the EU within various modes of governance in the financial market, through carefully designed decision-making mechanisms that provide each subset of countries with similar opportunities to shape policy outputs." See further in Božina Beroš, M., Agencies in European Banking – A Critical Perspective, Palgrave Macmillan, Basingstoke, 2018., at p. 9.

[8] Maris, G.; Skilas, P., *op. cit*. note 5., at p. 57.

[9] Moravcsik, A., Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach, *Journal of Common Market Studies*, Vol .31, No. 4, 1993., pp. 473-524., at p. 484.

[10] Piattoni, S., *The European Union between Intergovernmentalism and 'Shared and Responsible Sovereignty': The Haptic Potential of EMU's Institutional Architecture*, Government and Opposition, doi:10.1017/gov.2016.48, pp. 1-27., at p. 6.

should have an ideational convergence in respect of "what democracy is", revolving around several essential elements determined by Fung:

"First, it must offer an articulation of the values that relate collective decisions and actions to the interests and views of the individuals who compose a collectivity. (...) Second, every democratic conception must recommend institutions – for example, political liberties, competitive elections, (...) civic associations, referenda, (...) and peak bargaining arrangements – that advance its underlying values. Third, values and institutional prescriptions are typically connected deductively by presuming empirical facts – often quite stylized – about the political psychology and capabilities of individuals and about sociopolitical dynamics."[11]

The core of these elements – member states' values and interests, bargaining arrangements, and institutional commitment, optimally coalesce in the intergovernmental theory of EU integration. As one of the "axis of integration", intergovernmentalism suggests that a process of interstate negotiations and bargaining decisively shapes the EU and its various policy sectors (therefore, the EMU as well).[12] Without interfering with member states' sovereignty, the process allows national, particularistic interests and inclinations to be confronted, coordinated and reconciled toward commonly agreed interests and goals, consequently producing a "cooperative solution" that advances the project of EU integration in various policy areas.[13] Intergovernmentalism clearly underscores the role of national states in integration dynamics as primary actors in this political process, which "transfer various competences and powers to the European supranational institutions only if they can take control in various policy sectors."[14] Moreover, from the perspective of intergovernmentalism the role of national states is invaluable since "citizens' preferences are aggregated at the national level", which through a democratic chain of representation steer "national governmental representatives" in interstate negotiations at the EU level.[15]

As a practical confirmation of EU's (and EMU's) intergovernmentalist nature, over the years national representatives gathered under the auspices of different coordinative bodies such as networks or committees[16] relying on soft law tools (for instance, information sharing

[11] Fung, A., *Democratic Theory and Political Science: A Pragmatic Method of Constructive Engagement,* American Political Science Review, Vol. 11, No. 3, 2007., pp. 443-458., as cited in Piattoni, S., *The European Union between Intergovernmentalism and 'Shared and Responsible Sovereignty': The Haptic Potential of EMU's Institutional Architecture,* Government and Opposition, doi:10.1017/gov.2016.48, pp. 1-27, at p. 6.

[12] Hoon, L., *Supranational Democracy Adrift? The 2019 Elections and the Future of Europe*, Egmont Paper February, 2019., p. 5. Available at: http://www.egmontinstitute.be/supranational-democracy-adrift-the-2019-elections-and-the-future-of-europe (Accessed on 7.6.2019.)

[13] Schimmelfenning, F., *Liberal intergovernmentalism and the euro area crisis,* Journal of European Public Policy, Vol. 22, No. 2, 2015., pp. 177-195., at p. 177.

[14] Jensen, C. S., "Neo-functionalism" in Cini, M. (Eds.), *European Union Politics,* Oxford University Press, Oxford, 2007., as cited by Maris, G.; Sklias, P., *op.cit.* note 5., at p. 62.

[15] Piattoni, S., *op.cit.* note 9., at p. 7.

[16] For instance, the Lamfalussy Level 3 Committees (LL3C). The three sectoral committees in the area of finance (the Committee of European Banking supervisors – CEBS, the Committee of European Securities regulators – CESR, and the Committee of European Insurance and Occupational Pensions Supervisors – CEIOPS) were developed under the Lamfalussy framework for the regulation of financial services introduced by the 2001 Lamfalussy Report. The LL3Cs were consultative bodies that consisted of national competent authorities working together (on a voluntarily basis) to develop common recommendations and guidelines, which were then used by the European Commission in order to improve regulation in each of the three financial sectors. For more information see: European Commission, Regulatory process in

and peer-review) in order to foster harmonization and convergence of regulatory and supervisory practices in economic and monetary matters. But the goal proved far more challenging than anticipated, since member states were rather protective of distinct domestic policy concerns, which ultimately meant that intergovernmentalism advanced integration only if national interests were interrelated.[17] What can be concluded from this is that intergovernmentalism – in its genuine form – cannot fully harness and explain the process of EU and monetary integration.[18]

As mentioned earlier, thanks to a prolific scholarship in the field of EU integration, the framework has been reformulated and extended, with the greatest impact made by Andrew Moravcsik back in 1993, with his seminal contribution on integration dynamics in the form of the liberal intergovernmentalism theory.[19] The importance of liberal intergovernmentalism as a conceptual framework to explain integration dynamics in the field of economic and monetary policy rests on the theory's core elements: firstly, rational state behavior, secondly, liberal theory of national preferences' formation, and thirdly, institutional commitments to interstate negotiations.[20] Put simply, liberal intergovernmentalism argues that domestic economic interests inform national policy preferences, which are then bargained with other member states the EU level typically "under the shadow of hierarchy" of an EU institution[21] in order to support credible member states' commitments to commonly agreed objectives as well as to incentivize progress in specific policy fields.

A case in point is the agencification of the EMU, where decentralized, EU agencies are becoming focal points of economic governance thanks to their functioning as institutional structures where national representatives in the financial and monetary area can confront, coordinate and reconcile their multiple, and at times conflicting, national preferences. As the backbone of EMU's governance, agencies strive to create a level playing field among different stakeholders involved in policy-making and to advance a "positive sum game". Considering the policy capacity and the level of institutional independence enjoyed by the agencies governing the EMU, the notion of (liberal) intergovernmentalism as established by relevant scholarship becomes challenged. Namely, the process does not rely on the "supranational axis of EU integration"[22] but rather on a process of interstate co-operation that streamlines national policies toward "Europeanized" outputs – and in this it is much similar to the essence of (liberal) intergovernmentalism. But the added value of agencification is efficiency in policy-making, and this undermines true intergovernmentalism, which is not quick in delivering policies.[23] Moreover, because of important differences emerging in EMU's integration structure, agencies are becoming more aware of their power to impinge on national policy

financial services, available at: https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-reforms-and-their-progress/regulatory-process-financial-services/regulatory-process-financial-services_en (Accessed on 27.5.2019.)

[17] Maris, G.; Sklias, P., *op.cit*. note 5., at p. 62.

[18] *ibid*., at p. 62.

[19] Moravcsik, A., *op.cit.* note 8. See further in Moravcsik, A., *The Choice for Europe. Social Purpose and State Power from Messina to Maastricht*, Cornell University Press, Ithaca, 1998.

[20] Moravcsik, A., *op.cit.* note 8., at p. 480.

[21] Cram, L., In the Shadow of Hierarchy: Governance as a Tool of Government, in Dehousse, R. (Ed.), *The "Community Method" – Obstinate or Obsolete?*, Palgrave Macmillan, Basignstoke, 2011., pp. 151-165.

[22] Hoon, L., *op.cit.* note 11., at p. 5.

[23] *ibid*., p. 7 and p. 19.

preferences thus compelling member states to "Europeanization", even against their genuine inclinations. The following section examines the transition from "liberal" to "new" intergovernmentalism in light of EMU's agencification post-crisis.

3. The agencification of the EMU: evidence of "new intergovernmentalism"?

As noted previously, the Eurozone crisis prompted EU policymakers to reconsider the core paradigms and operational structures of economic governance. Among the manifold interventions and reforms, the establishment of decentralized EU agencies[24] as new focal points of decision-making indisputably presents one of the more interesting and bold policy steps. On the one hand, this is because agencies in finance had a mission to finally disassociate policy-making from any kind of particularistic interests (be it member states' or that of the private sector) in favor of genuinely European policies. However, on the other hand, in order to effectively achieve that the set of EU agencies operating within the EMU – the ESAs as well as the Single Resolution Board[25] as the most recent addition – had to progress further along in terms of agencies' powers and independence in comparison to the model of EU agencies that existed in other policy sectors (for instance, in education, transport, etc.). Indeed, before the agencification of the financial sector EU agencies were careful to tailor their existence, tasks and powers to predetermined legal and institutional limitations – primarily to the jurisprudence of the Court of Justice of the EU as well as the EU integration principle of institutional balance. This is not to say that the ESAs and the SRB do not respect set limitations, rather what we are witnessing is that these agencies started stretching them to accommodate new policy powers and competencies.[26] Furthermore, one of the more valuable features of agencies is that they strive to create a "level playing field" between stakeholders involved in decision-making processes, and to this end they adopt an intergovernmental approach, meaning that they center decision-making primarily on deliberations and negotiations between stakeholders' preferences but within legally set procedures. While interstate bargaining implied ample timing in making decisions, agencies allow decisions to be made swiftly, in line with financial market movement. To this end the ESAs' and the SRB's decision-making centers on distinct voting modalities, which allow a more effective coordination of actor-specific preferences and the delivering of consistent common policies.

Yet, the EMU's complex system of governance challenges the success of agencies, since differentiated integration allows subsets of countries (such as the Euro area member states) that are pushing together ahead in political and monetary integration to gain leverage in decision-making processes. A case in point is the 2014 study of HM Government, which cautions that "greater convergence of political and economic interests among euro area

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[24] The term refers to specialized, non-majoritarian EU bodies with legal personality, which are established to exercise public authority however separate from (or *decentralized*) other EU institutions such as the European Commission or the Council of the EU. See further in: Busuioc, M., *op.cit.* note 6., at p. 21.

[25] The Single Resolution Board, or the SRB, is one of the key executive entities of the Banking union. This agency is the focal point of the Single Resolution Mechanism (the Banking union's second operative pillar alongside the Single Supervisory Mechanism) gathers national resolution authorities of Banking union-participating countries together with the European Commission and the Council of the EU (as well as some other relevant stakeholders) in formalized decision-making process on resolution matters.

[26] This is the so-called "qualitative increase" in agency powers and it is comprehensively examined by Busuioc, M., *op.cit.* 6., for instance at. p. 15.

Member States" can marginalize non-Euro area interests in agency governance.[27] Arguably, this questions the relevance of intergovernmentalism as one of EU integration's core principles. Functional inequality and the prevalence of the compulsory mode of coordination (i.e. one that impinges or goes against own preferences) do not correlate with genuine intergovernmentalism. Scholarship has been quick to respond to intergovernmentalism's recalibration in this sense, by delivering the concept of "new intergovernmentalism".[28]

Arguing how new intergovernmentalism is a "distinct phase of EU integration" that we follow since the signing of the Maastricht treaty, Bickerton *et al*., brilliantly elucidate several building blocks of the concept, offering a new dimension into the long-standing research of the methods of EU integration as well as the nature of economic governance.[29] Indeed, when considering these building blocks, the EMU as a policy sector appears to perfectly embody new intergovernmentalism. Firstly, following the elaboration of Bickerton *et al*., we can observe that in the post-crisis socio-economic dynamics of the EMU, the tenants of "old intergovernmentalism" – deliberation and consensus are "at the heart of EU policy-making in general, and especially in settings that are explicitly intergovernmental in their institutional determinations."[30] The ESAs and the SRB clearly support this hypothesis, which moreover fits well with a second elaboration by the same group of authors – namely, new intergovernmentalism implies that new entities are established as focal points for collective action in policy sectors that demand carefully tailored, yet swift, responses such as economic and monetary matters. This is indeed true for the EMU, where Hoon notes the process of:

"(…) delegation of tasks that could (in a truly supranational scenario) be fulfilled by the Commission to so-called de novo bodies. These are largely bureaucratic institutions with considerable political power, founded and legitimized by the member states."[31]

Thirdly, and finally, new intergovernmentalism appears as a neat conceptual framework for EMU's post-crisis governance, since – according to Bickerton *et al.*, it acknowledges that the EU is indeed "in a state of disequilibrium"[32], which is plainly illustrated by the fragmentation of the EMU along the lines of Euro area membership and Banking union participation.

4. Conclusions

In a few years we will mark a decade since the offset of the Euro area crisis, and in this sense it is already possible to draw lessons on the its policy and institutional implications. One of the more important lessons regards the appropriateness of the EMU's ideational framework and its governance. Namely, from their very beginning economic and monetary integration have been strongholds of intergovernmentalism, as opposed to any supranational aspirations

[27] HM Government, Review of the Balance of Competences Between the United Kingdom and the European Union. The Single Market: Financial Services and the Movement of Capital. Summer 2014, at p. 106.
[28] See for instance in: Bickerton, C. J., *et al*., The New Intergovernmentalism: European Integration in the Post-Maastricht Era, *Journal of Common Market Studies*, https://doi.org/10.1111/jcms.12212., pp. 1-20.; Piattoni, S., *op. cit*. note 9., at p. 8., and Hoon, L., *op.cit.* note 11., at p. 7.
[29] Bickerton, *et al*., *op. cit*. note 27., at p. 15.
[30] Bickerton, *et al*., *op. cit*. note 27., at p. 9.
[31] Hoon, L., *op.cit.* note 11., at p. 7.
[32] Bickerton, *et al*., *op. cit*. note 27., at p. 14.

of the EU. This meant that member states retained a central role in policy creation processes within policies covered by the EMU (e.g. banking regulation, financial stability) because national policy preferences were confronted and then coordinated on a voluntarily basis, in a "soft governance" setting. Intergovernmentalism was the norm for many years, until the crisis exposed many undesirable byproducts of such mode of economic governance, such as the reality of an un-level playing field in the internal market for financial services.

Led by a rationalist logic of "not letting a good crisis to waste", EU policymakers have shifted gears in economic governance, by establishing new legal and institutional framework of member states' dynamics. Some of these developments – most notably the establishment of EU agencies within the financial and monetary sector – challenge "old intergovernmentalism". This is because the EU agencies that now form the governance backbone of the EMU dispose with noticeable power to impinge and shape national policy preferences, as well as to oblige member states comply with commonly agreed goals. Considering that EU agencies are widely praised for their ability to insulate European policymaking from particularistic biases because of their constituency (i.e. experts from various policy fields), the departure from "old intergovernmentalism" ushered by agencification should be welcomed one. As policy-making in the EMU becomes even more "output driven" and "as true intergovernmentalism (…) hinders quick and efficient decision-making"[33] it signals that the EMU has to search for new concepts and ideas that can appropriately frame member states' relations.

Indeed, "the use of de novo bodies signals a shift in the pattern of EU integration"[34], however not toward supranationalism as feared by some, but "new intergovernmentalism". This is a versatile concept that can adequately frame economic and political realities the EMU faces post-crisis, in which deliberation and consensus among member states are steered by new entities (i.e., the ESAs) whose founding legislation precisely defines stakeholders' capacities, tasks, and delineates decision-making process, voting modalities and timing. Although agencification resembles "creeping supranationalization", scholarship has rather defined it as a re-calibration of genuine intergovernmentalism, as the concept's new and improved form. What results from this is that intergovernmentalism is still a relevant analytical lens through which relationship dynamic between stakeholders' in the economic and monetary policy sector can be explained. At the same time, however, we must be aware that the work of agencies is susceptible to particularistic influences and leverage, which reignites "old questions about European integration concerning the centrality of the state, and transnational interactions."[35] Far from being decided, the discussion regarding the EMU's conceptual framework is bound to intensify in the years to come, searching for a variety of intergovernmentalism that will be able to frame institutional and political developments.

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[33] Piattoni, S., *op. cit.* note 9., at p. 19.
[34] Bickerton, *et al.*, *op. cit.* note 27., at p. 12.
[35] Maris, G.; Sklias, P., *op.cit.* note 5., at p. 74.

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