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# ***INTERGOVERNMENTALISM AND ITS OUTCOMES: THE IMPLICATIONS OF THE EURO AND LIBYAN CRISES ON THE EUROPEAN UNION***

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## **ABSTRACT**

The ink of the Lisbon Treaty's signatories had barely dried when the financial and the North African crises called it into question. Regarding the financial crisis, measures have been adopted for dealing with it, first within the EU treaty framework and then outside of it. Two new intergovernmental treaties (the Treaty on the European Stability Mechanism and the Treaty on the Fiscal Compact) have been set up with the aim of making them operative by July 2012. Both are the expression of the German-French *directoire* emerged in financial policy. At the same time, the North African crisis, the Libyan conflict in particular, led to the emergence of a French-British *directoire* in foreign and military policy. In both crises the decision-making power has been controlled by the European Council, with no significant role played by the European Parliament and only a technical role played by the Commission. Is the intergovernmental Europe Union shadowing the supranational Europe Union?

Key words: Lisbon Treaty, financial and political crises, intergovernmentalism, supra-nationalism, Post-Lisbon Treaty

## Introduction

The Treaty of Lisbon came into force on 1 December 2009 (Foster 2010)<sup>1</sup>, raising high hopes that the long constitutional odyssey of the European Union (EU) was finally over. It soon became clear that those hopes had been unrealistic. In fact, as a result of the financial crisis that broke out in 2008, taking a serious turn for the worse in 2010 and thus deepened in 2011, the new institutional structure set up by the Lisbon Treaty soon started to totter. The financial bankruptcy of Greece and Ireland and the serious financial difficulties of Portugal, Spain and Italy have determined the need to reconsider the EU institutional arrangement so painstakingly constructed in the course of the previous decade (the 2010s). Under the financial threat of the Euro's collapse, the heads of state and government of the EU member states have eventually ended up in radically transforming the system of economic governance in Europe (and the Euro-area in particular). New radical legislative measures were approved following the procedures of the Lisbon Treaty and two new intergovernmental treaties (the Treaty on the European Stability Mechanism and the Treaty on the Fiscal Compact<sup>2</sup>) have been set up outside of the Lisbon Treaty. At the same time, the political crisis in the North African countries, and Libya in particular, in the Spring 2011 witnessed the dramatic impotence of the EU of affecting the events, if not of being able to have a role at all in them.

The financial and Libyan crises have thus highlighted how the EU institutional arrangement which emerged from the Lisbon Treaty, although representing a step forward compared to the prior situation, nevertheless has proved to be unable for making the EU an actor with the tools and the will for facing its economic and foreign policies challenges. The EU has thus had to rethink its own institutional system, introducing significant changes in the area dealing with economic governance, but it has also had to open a discussion on the adequacy of its foreign and security policy framework as well. How should these formal changes introduced in the economic governance framework and the informal solution found for the governance of foreign policy be interpreted? Here I will proceed as follows. First, I will analyse the features of the Lisbon Treaty, showing its dualistic logic (supranational regarding the policies of the single market and intergovernmental regarding foreign and financial policies). Second, I will describe the two crises, showing how the intergovernmental logic adopted for dealing with them brought to the formation of *directoires*

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<sup>1</sup> The Lisbon Treaty is constituted by the amendments to the two consolidated treaties, the Treaty on the European Union or TUE of 1992 and the Treaty on the European Community, renamed as Treaty on the Functioning of the European Union or TFUE, of 1957, plus the Declaration concerning the Charter of Fundamental Rights considered *de facto* as a third treaty.

<sup>2</sup> I use the term of Treaty on Fiscal Compact for need of clarity. Indeed, its name is Treaty on Stability, Coordination and Governance in the Economic and Monetary Union. I am considering here the 19 January 2012's Draft.

(French-British in foreign policy and German-French in financial policy). The outcome has been a more integrated Europe but dominated by the bigger countries (Germany and France in particular). Third, I will discuss the institutional outcomes of intergovernmentalism and the dilemmas it has to face for becoming the predominant logic of the integration process, thus concluding that those dilemmas are not easily solvable.

### **The dualistic ‘constitution’ of the Lisbon Treaty: the supranational side**

Although the Treaty of Lisbon has scrapped any constitutional symbolism, it has however defined (in terms of roles and functions) the institutional structure of the EU. For the large majority of policies where integration proceeds through formal acts (*integration through law*), it is plausible to argue that the Lisbon Treaty has set up a system of government (that is, a formal structure of institutions endowed with the power of taking decisions) and not only stabilized a system of governance (that is, an informal network of decision-making relations between public and private institutions and groups). As in all established democracies, government and governance are intertwined in the EU as well, i.e. vertical decision-making (typical of government) interacts with horizontal decision-making (typical of governance). Certainly, the EU has not adopted a fusion of powers model as in the generality of its member states. It cannot be considered a parliamentary federation as Canada, Australia, Germany, Austria, Belgium or quasi-parliamentary federations as Spain (to mention the most relevant cases within OECD<sup>3</sup>) and of course India (outside the OECD). However, the Lisbon Treaty has formalized a governmental structure of separation of powers as in the United States (US) and Switzerland (in the OECD countries), with the difference that such separation is not only organized around two separated legislative chambers but also through a dual separated executive (which is not the case of both the US and Switzerland).

The Lisbon Treaty has brought a long process of distinction between the executive and the legislative branches to maturity. Celebrating the codecision procedure as “the ordinary legislative procedure” (TFEU, Art. 289), the Treaty has institutionalised a two-chamber legislative branch, consisting of a lower chamber representative of the European electorate (the European Parliament or EP) and an upper chamber representative of the governments of the member states (the Council). According to TFEU, Art. 289, “the ordinary legislative procedure shall consist in the joint adoption by the European Parliament and the Council of a regulation, directive or decision on a proposal from the Commission”. The Treaty has thus celebrated the growing role acquired by the EP since its

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<sup>3</sup> Organization for Economic Cooperation and Development instituted on 14 December 1960 and constituted (at the end 2011) by 35 countries.

direct election in 1979. The EP has become finally an institution of equal standing with the Council representing (in its various ministerial formations) the ministers of the EU member states' governments. At the same time, by recognising the European Council (which consists of the heads of state or government of the EU member states, chaired by a president elected "by a qualified majority" of them "for a term of two and half years, renewable once", TEU Art. 15.5) as the body responsible for setting the general political guidelines and the priorities of the EU, the Treaty has finally transformed it into a political executive of the Union, while confirming the Commission in its role of technical executive of the latter. The European Council, therefore, can no longer be considered a body linked to the Council as it was in the past (Naurin and Wallace, 2008), because the latter exercises legislative functions, while the former executive ones. The Lisbon Treaty has therefore built a four-sided institutional framework for governing the EU policies (on the single market), with a two-chamber legislative branch and a dual executive branch.

Thus, "where reference is made in the Treaties to the ordinary legislative procedure for the adoption of an act, the following procedure shall apply" (TFEU, art. 294): on the basis of the political inputs coming from the European Council or from the functional needs expressed by the Commission concerning specific policy's problems, the Commission transforms the input in a formal or legal proposal (directive, regulation or decision), after having consulted the various committees of the representatives of the member states working with the Council, the parliamentary committees and interested or influential social and functional private organizations. Thus framed, the proposal is thus submitted to one or the other legislative chamber and it will become a legal act only if approved by both. The experience of the first post-Lisbon Treaty years show an outstanding trend of the two legislative chamber to agree on the proposal at the first reading, thus avoiding to pass through the time-consuming procedure of reconciliation between their different proposals (Dehousse 2011). Because they are legal acts, the law making process and the implementation of its outcome are necessary supervised by the European Court of Justice (ECJ) in cooperation with member states' constitutional courts.

In the large majority of policies where integration is moving through legal acts, the EU decides through a complex interplay of institutions each independent from the other for operating. The European Council and the Council are expressions of member states governments and their composition depends on the outcome of the staggered national elections in the member states. The EP depends on the outcome of the elections organized in districts within member states every 5 years. The Commission's president is nominated by the European Council but should then receive the approval of the EP and the commissioners are nominated by the European Council, in

cooperation with Commission's president, but even they have to pass through the approval of the EP. Why has the EU evolved towards separation and not fusion of powers? The answer is still open and contrasted. It seems reasonable to argue, however, that a Union constituted by member states of such asymmetry (in demographic, economic and cultural terms) has a systemic resistance to move in direction of a parliamentary-based decision-making system. Separation of powers guarantees that each member state has an opportunity to make its voice heard (either in the EP or the Council, the European Council or the Commission), regardless of its demographic size or political clout. This has not meant that that voice (or request, or interest) was necessarily accepted, but that it was definitely heard. If the perimeter of the decision-making power is kept within the EP, then it would be much more difficult for its members (MEPs) representing small-medium size member states to exercise a serious influence in the formation and decisions of the 'European government'. Unless parliamentary elections in all EU member states are run according to the same left v. right logic, thus bypassing demographic, economic, cultural, linguistic differences. But this has not been the case, although a growing coordination within the EP between the MEPS aggregated in the main party organizations (Popular Party, Socialists and Democrats, Liberal and Democrats, Greens) has been detected (Hix, Noury and Roland 2006). Horizontal separation of powers has shown to be quite successful in keeping all EU member states on board.

This institutional evolution in direction of separation of powers has not been however accompanied by a coherent constitutional vision or supported by a post-national democratic thought. Probably for containing the persistent neo-parliamentary critic of the EU being a governmental system with a democratic deficit (a deficit supposedly to be reduced if the EP, on behalf of the European citizens, becomes the only or main source of political legitimacy, Majone 2009 and Hix 2008), the Lisbon Treaty has preserved a significant quota of the (traditional) neo-parliamentary rhetoric. For instance, the call made (TEU, Art. 17.7) to the European Council "of taking into account the elections to the European Parliament" in the appointment of the president of the Commission is an expression of that rhetoric, rather than an operational recommendation. In fact, what does that call mean when the elections for the EP are held according to a highly proportional system, which, by its very nature, will never be able to produce an electoral majority (and it will possibly justify different configurations of legislative majorities with regard to the different issue at stake)? The same can be said with respect to the claim (celebrated in the same article of the Lisbon Treaty) that the EP shall elect the president of the Commission. How can one speak of election, when the power to appoint the president of the Commission continues to be in the hands of the European Council? Rather, the EP has the power of advice and consent with respect to decisions made by others and not the power to elect which, by its very nature, cannot be

predetermined. Unions of highly asymmetrical states cannot easily accommodate the formation of permanent (although changing every 5 years) majorities (as in parliamentary systems).

### **Integration through coordination: the intergovernmental side of the Lisbon Treaty**

Integration through law doesn't represent yet the only logic celebrated by the Lisbon Treaty. With the extension of the integration process to policy realms considered traditionally sensitive for the national sovereignty of the member states, such as foreign and security policy (Common Foreign and Security Policies or CFSP), military and security policy (Common Defence and Security Policy or CDSP) and economic and monetary policies (and the Economic and Monetary Union or EMU in particular<sup>4</sup>), the decision was taken to give these policy realms a specific status within the Treaty. Indeed, regarding the first one, already the 1992 Maastricht Treaty recognized the need to promote integration in foreign policy, but it interpreted *integration as growing coordination* of member states' policies. For distinguishing between the two types of integration, that Treaty set up different institutional pillars or decision-making regimes, one supranational on the policies connected to the single market and the other intergovernmental on the policies of foreign affairs and external security and home affairs and justice. The Lisbon Treaty abolished this separation of institutional pillars, giving to the Union a unified legal personality. However, it has preserved different decision-making regimes and different modalities of integration. In particular, regarding CFSP and EMU it has eschewed the principle that integration should proceed only through legislative acts that are directly binding on all the subjects involved.

Because (TEU, Art. 24.1) in CFSP “the adoption of legislative acts shall be excluded” and the decisions are implemented through actions and positions (TEU, Art. 25), then the EP is kept outside the decision-making process in foreign policy. Moreover (TEU, Art. 24), “the Court of Justice of the European Union shall not have jurisdiction with respect to these provisions”, unless the foreign policy decisions infringe fundamental principles and rights the EU should to respect, as stated in TEU, Art. 2 (“The Union is founded on the values of respect for human dignity...” ) and TEU, Art. 3 (“The Union's aims is to promote peace...”) . Certainly, it is plausible to argue that the EP might be indirectly involved in foreign policy also through its connection with the High Representative of the Union for Foreign Affairs and Security Policy (HR). Indeed, the reform of the HR's role is considered by many scholars as one of the main innovations introduced by the Lisbon Treaty for bringing foreign and security policy as close as possible to the supranational logic. The HR role was initially introduced in the 1997 Amsterdam Treaty with the aim of giving a technical

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<sup>4</sup> The EMU is constituted by the member states whose currency is the Euro.

support to the Council on Foreign Relations. Through the HR, the latter did not need to rely only on the work of the General Affairs Council' secretariat, thus giving an autonomous functional bases to the Council of Foreign Relations. The Lisbon Treaty has apparently transformed this technical role in a more political one. According to the Treaty (TEU, Art. 18.2), the HR has now to wear a 'double hat', being assigned the role of vice-president of the Commission and permanent chair of the Foreign Affairs Council. S/he has to be appointed by the European Council in agreement with the president of the Commission, appointment that must then be approved by the EP. The HR is a member of both the executive (in his/her capacity as vice president of the Commission) and legislative branches (because s/he permanently presides over the Foreign Affairs Council, the only configuration of the Council not chaired by the half-yearly rotating presidency of the Council). The Treaty has tried to institutionalize a sort of ambiguous role for the HR, expecting s/he might bridge the supranational culture represented by the Commission and the intergovernmental interests protected by the Foreign Affairs Council. Indeed, the Lisbon Treaty has left unanswered the question whether the HR should be a facilitator or rather a promoter of a common foreign policy position, or better whether s/he should help the coordination's process among the minister of foreign affairs constituting the Council or should reframe the interests of the member states in a more integrated perspective.

A similar logic governs the functioning of the economic and monetary policy of the EU (and in specific of the economic and monetary union, or EMU). As stated by TFEU, Art. 119, "the adoption of an economic policy (...) is based on the close coordination of Member States' economic policies". The economic and monetary policy is controlled by the Council with the Commission playing a very important but technical role in monitoring the economic performance of the member states. In particular regarding excessive deficit procedures of the Euro-area member states (annexed as a Protocol n. 12 to the Lisbon Treaty, generally known as the Stability and Growth Pact, or SGP, as regulated by TFEU, Art. 126), the Council monopolizes the policy's decision, although its decisions are generally based on reports or recommendations of the Commission. Those decisions may have the form of recommendation or (as stated in TFEU, Art. 126.14) "the Council shall, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the European Central Bank, adopt the appropriate provisions" for implementing agreed economic guidelines. According to the special legislative procedure, the Council, acting either unanimously or by a qualified majority depending on the policy area concerned, can adopt legislation based on a proposal by the Commission after consulting the EP. However, while being required to consult the EP on legislative proposals concerning economic and monetary policy, the Council is not bound by latter's position. Indeed, the

Council has frequently achieved decisions without even waiting for the EP's opinion. The Council (in its configuration as Council on Economic and Financial Affairs generally known as ECOFIN) is supported in its activities by an Economic and Financial Committee whose task (TFEU, Art. 134) is to supervise the economic and financial situation of the member states. It is an advisory body to ECOFIN to which "the Member states, the Commission and the European Central Bank shall each appoint no more than two members" (TFEU, Art. 134.2).

Thus, either through recommendations or through special legislative procedure, the ECOFIN is the institution with the power of taking decisions concerning the economic and financial policies of the Union. Certainly, it is recognized (TUE, Art. 126.6 and 126.7) that the Commission might initiate a procedure against a member state running an excessive budget deficit, but the Commission's recommendation has the status of a proposal, because only the Council can take the appropriate measures (that may go from requests of information addressed to the member state that fails to comply to fines imposed on it). It is thus up to the Council to decide whether or not to proceed along the lines of the Commission's proposal (as it didn't do in 2003, when the Commission proposed to open an infringement procedure against France and Germany that were not respecting the parameters of the SGP). This is why the economic and monetary policy is based on voluntary coordination. The sanctions for excessive deficits and debts are always subject to the will of member states governments (in the ECOFIN and the European Council). This is even more true for Euro-zone member states, whose main decisions are taken by the Euro Group (the ministers of economics and finance of the EU member states adopting the common currency, the Euro, as regulated by Protocol n. 14 annexed to the Lisbon Treaty), with the technical support of the Commission. Protocol n. 14 doesn't even mention the EP, at least as the institution required to be informed of the decisions taken. And, as in the CFSP, no supervisory role is recognized or assigned to the ECJ. With the setting up of a common currency (the Euro) and its adoption by (as 2011) 17 member states, the EU has thus centralized monetary policy (assigning its management to a proper federal institution, the European Central Bank) and at the same time, institutionalizing the coordination framework, has allowed for the decentralization of those fiscal and budgetary policies which are structurally connected to monetary policy.

The terms of the coexistence between the supranationalism of the policies for single market and the intergovernmentalism of the CFSP and EMU in particular were left uncertain by the Treaty. On both realms, the Treaty has recognized a strategic role to the European Council, now become the real political head of the Union (Scoutheete 2011). Certainly, the permanent president of the European Council (although the half-yearly rotating presidency has remained in all the



configurations of the Council but Foreign Affairs) was supposed to decrease the strictly intergovernmental nature of the institution. Indeed, the first new president (Herman Van Rompuy) has been fast in setting up in Brussels his permanent office (at the Justus Lipsius building), marking also symbolically that the European Council's presidency is based in the Union's capital and no longer in the member states' ones. At the same time, the decision to keep a commissioner for each member state in the Commission, although due to contingent reasons<sup>5</sup>, has had the effect of introducing intergovernmental guarantees into the traditionally most supranational institution of the Union<sup>6</sup>. The ambiguity intrinsic to the Lisbon Treaty reflected the unresolved struggle which has accompanied the constitutional debate in the 2000s between those supporting a supranational Europe and those willing to strengthen the intergovernmental Europe. It was and has continued to be a divide between two different visions of integration, not a cleavage between pro- and anti-integration forces. For both visions, integration is necessary. However, for the former vision its path should be governed by the quadrilateral structure of the Brussels' institutions, for the latter by the national governments organized in the European Council and the Council. The dramatic events of the financial crisis and the challenge of a political crisis in the 'European backyard' (Libya) have radically shaken the confrontation between the two visions of integration.

### **Two crises and their dynamics**

For dealing with the financial crisis, frequent meetings of the European Council were organized since 2010<sup>7</sup>. In particular in 2011, two round of crucial decisions were taken concerning the economic governance of the EU: the first between the European Council of 24-25 March and the European Council of 23-24 June; the second, between the European Council of 17-18 October and the European Council of 9-10 October.

Regarding the decisions taken in the first semester of 2011, six of them consisted in legislative measures finalized to tighten the economic policy coordination among the EU member states through a stronger Stability and Growth Pact (SGP) (Micossi 2011), all of them become

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<sup>5</sup> The decision was taken in order to appease Irish voters required to vote a second time on the Lisbon Treaty (on October 2009) after having rejected it in a previous referendum (on June 2008).

<sup>6</sup> Certainly, the Lisbon Treaty, TEU Art, 17.5, states that each member state has a right to propose a national as commissioner till 1 November 2014, thus adding that after that date the Commission will be composed of "two thirds of the number of the Member States, unless the European Council, acting unanimously, decides to alter this number". However, it is likely that the small member states will pressure for keeping the *status quo*, exactly because they want to guarantee the equally weighted geographical composition even within the Commission regardless of what the treaty states.

<sup>7</sup> It is interesting to notice that, while the Lisbon Treaty (TUE, Art. 15.3) states that "the European Council shall meet twice every six months", in the 2010 it met 6 times (7 times if one considers a meeting of the Euro-area member states' heads of government) and in 2011 7 times (9 times if one considers also the meetings of the Euro-area member states' heads of government).

operative by 13 December 2011. It was: (1) the strengthening of the surveillance of budgetary positions and coordination of economic policies through a regulation amending Council Regulation 1466/97 approved with the codecision procedure on Commission's proposal; (2) the speeding up and clarification of the excessive deficit procedure through a Council regulation amending Council Regulation 1467/97 approved with a special legislative procedure (with the EP only consulted); (3) the enforcement of the budgetary surveillance in the Euro area through a new regulation approved with the codecision procedure on Commission's proposal; (4) the definition of a budgetary framework of the member states through a new Council directive implemented with a non-legislative procedure (with the EP only consulted); (5) the prevention and correction of macroeconomic imbalances through a new regulation approved with the codecision procedure on Commission's proposal; (6) the enforcement of measures for correcting excessive macroeconomic imbalances in the Euro area through a new regulation approved with the codecision procedure on Commission's proposal.

To these measures, it should be added: (7) a previous decision on the European Semester, approved by the Council on 7 September 2010, and entered into force by January 2011, finalized to coordinate ex ante the budgetary and economic policies of the EU member states, in line with both the SGP and Europe 2010 strategy; (8) the Euro Plus Pact, consisting in a political commitment (a sort of intergovernmental agreement) between the Euro area member states, but also open non-Euro area ones (Denmark, Poland, Latvia, Lithuania, Bulgaria and Romania) aimed to foster a stronger economic policy coordination; (9) the European Stability Mechanism (ESM), consisting in the establishment of a new treaty among the euro-area member states "as an intergovernmental organisation under public international law" to enter into force after June 2013 (and then anticipated to July 2012), located outside the EU institutional framework although justified by an amendment proposal to TFEU, Art. 136 which states that "the member States whose currency is the euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the euro area as a whole". Considered in its entirety, the decisions taken in the first semester of 2011 seem to be ambivalent regarding their institutional implications. Whereas the first six legislative measures went largely in the direction of strengthening, with the codecision procedure, the institutional equilibrium emerged from the Lisbon Treaty, the same cannot be said for the last three decisions which went in an intergovernmental direction, especially with the establishment of the ESM Treaty and the Euro Plus Pact. At that time, these measures and decisions seemed to many observers to have put "the EU system...in the throes of a revolution (although) like all revolutions, this one (too) displays numerous evolutionary features" (Ludlow 2011:5).

However, that revolution was not sufficient to appease the financial markets that indeed started to ask for higher interest rates for buying the public bonds of Italy and other southern and peripheral Euro-area member states. The pressure of the markets became so powerful that many of these countries with high percentage of public debt to GNP had to register the collapse of their incumbent government. In some cases, the crisis was resolved through new elections (Ireland, Portugal, Spain), in other through the substitution of the 'party/ies in government' with a 'national solidarity' executive composed by technocrats and supported by a large trans-parties alliance in the parliament (Greece and Italy). The formation of executives independent from electoral consensus was considered necessary not only for promoting the required reforms (that were vetoed by powerful electoral constituencies), but also for guaranteeing the Euro-area member states with a balanced public budget (Germany, Netherland, Finland, Austria) that Greece and Italy would be serious in cutting their public debt and rationalizing the general system of public expenditure. The hope was to show to the financial markets (and to the domestic electorates of the virtuous countries) that the entire Euro-area was committed to achieve financial stability. But even these highly costly domestic changes were not considered sufficient. The reluctance of Germany to let the European Central Bank to operate as lender of last resort or to allow the Euro-group to issue bonds guaranteed by all the Euro-area member states for keeping interest rates low, all this increased the uncertainty about the future of the Euro.

Thus, in the second half of 2011, other crucial decisions were taken, in particular during the meeting of the European Council of 8-9 December 2011. Under the irresistible leadership of the German chancellor Angela Merkel and French president Nicolas Sarkozy a proposal was advanced for amending the Lisbon Treaty in order to integrate the fiscal policies of the member states. This time, automatic mechanisms of sanctions for the member states not respecting further stringent criteria of deficit-GNP percentage (0,5 per cent a year) and debt-GNP percentage (60 per cent, with the downsizing of 1/20 of the over stock every year) were advanced, with the request that each member state would introduce domestically, at the constitutional or equivalent level, the golden rule on mandatory balanced budget. The opposition of United Kingdom (UK) to pursue fiscal integration within the Lisbon Treaty, motivated by the need to protect the London financial district from possible restrictive fiscal regulations, ended up in creating the necessity of moving beyond the Lisbon Treaty, an outcome that certainly the French leadership aimed at given its mistrust if not distrust of the supranational features of the latter. Indeed, it might have been possible to recur to the procedure of reinforced cooperation (TEU, Art. 20), on the basis of which a group of EU member states is allowed to advance towards deeper integration in policy fields that are not of exclusive competence of the Union or do not concern the common foreign and security policy (CFSP).

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

Thus, after two years of financial crisis, Europe has ended up with a multiplication of treaties: the Lisbon Treaty which has remained in force, the ESM Treaty for the management of financial stability and the Fiscal Compact Treaty for the control of the budgetary policies. Finally, all along the financial crisis, it was paramount the German-French *directoire* of the policies pursued and the various treaties' proposals advanced. Under the European Council umbrella, the European Monetary Union (EMU) was controlled and governed by Berlin and Paris, with the coordination of the Brussels' office of president Herman van Rompuy. It was inevitable that many small-medium size member states resented this open German-French leadership. Indeed, commenting the decisions that were going to be taken by the European Council of 8-9 December 2011, an influential European group denounced "the temptation of a Franco-German *coup de chefs d'Etat*"<sup>8</sup>.

In a similar vein, the political crisis which exploded in North Africa in the first months of 2011 showed the inadequacy of the institutional mechanism defined in the Lisbon Treaty for pursuing both a Common Foreign and Security Policy (CFSP) and a Common Security and Defence Policy (CSDP). The EU played no significant role in the crisis, also because stalemated by the contrasting perspectives of its larger member states. Following Germany's decision to abstain in the United Nations Security Council vote on Resolution n. 1973, approved on 17 March 2011, which allowed for military intervention in Libya, France and UK decided to intervene in the North African country, backed by the United States (US) and with the support of other European and Arab countries, although the intervention was later re-framed as a NATO military operation. In that crisis, the HR was unable to muster a collective position of the EU member states, with the effect of legitimizing a French and British *directoire* of the military intervention in that country. Very soon, discontent over the *directoire* (and the weakness shown by the HR in preventing it) went public (Castle 2011: 4) through a statement subscribed by three small-medium sized member states (but

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<sup>8</sup> Statement by the Spinelli Group (a coalition of influential politicians and scholars) based in Brussels made public on 8 December 2011.

also among the founders of the EU) as Belgium, the Netherlands and Luxembourg. At its turn, the very influential think-tank Friends of Europe made public a document on 22 June 2011 which denounces “the trend in which Europe’s national governments rather than the EU are increasingly in the driving seat...This is especially true in the economic domain where there is a global perception that Germany matters more than the EU and on security issues where France and the UK eclipse the rest of Europe” (Friends of Europe 2011).

### **The dilemmas of intergovernmentalism**

The idea that integration has reached such depth that only member states’ governments can drive it properly has become the predominant public philosophy of the leaders of the main countries at the turn of 2010s. In a speech given on 2 November 2010<sup>9</sup>, the German chancellor Angela Merkel assesses clearly that “the Lisbon Treaty has placed the institutional structure (of the EU) on a new foundation”, to the point of making out-dated the traditional distinction between the “Community and the ‘Intergovernmental methods’”<sup>10</sup>. Indeed, she added, the EU is already working according to a “new Union method”, which consists of “coordinated action in a spirit of solidarity”. If such coordination doesn’t spring naturally, then other structural factors might help to foster it. In fact, it was market’ speculation and the fear of national defaults which pressured the weakest Euro-area member states to abide by the conditions imposed by Germany, although it seems difficult to call this convergence as ‘policy coordination in a spirit of solidarity’. Legitimately so, the primary solidarity of the German government was towards its own citizens not those of the other member states. It might be misleading, however, to assume that Germany or France have become sceptical towards the process of European integration. Indeed, all the decisions taken during the 2011 by the European Council under German and French pressure and thus the new intergovernmental treaties have had and will have the effect of further reducing, if not abolishing, national sovereignty in the field of budgetary and fiscal policies in favour of the new European institutions enshrined in the ESM and Fiscal Compact Treaties. Those European institutions, however, are mainly intergovernmental, that is constituted or controlled by the national executives (and in particular those of the larger and more powerful member states)<sup>11</sup>.

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<sup>9</sup> Opening ceremony of the 61th academic year of the College of Europe in Bruges.

<sup>10</sup> On this, see Dehousse (2011).

<sup>11</sup> The Conclusions of the European Council of 24-25 March 2011 states: “The ESM will have a Board of Governors consisting of the Ministers of Finance of the euro-area Member States (as voting members), with the European Commissioner for Economic and Monetary Affairs and the President of the ECB as observers. The Board of Directors will elect a Chairperson from among its voting members. (...) The ESM will have a Board of Directors which will carry out specific tasks as delegated by the Board of Governors. (...) All decisions by the Board of Directors will be taken by

However, intergovernmentalism as a mechanism for voluntary policy coordination has to solve several dilemmas for institutionalizing itself as the predominant logic of European integration. Let's consider the most significant ones. First dilemma, how to guarantee the respect of rules decided voluntarily by contracting governments when that respect no longer fits their interests? This dilemma exploded when it became apparent that Greece cheated the other member states' governments (manipulating its statistical data) for entering and then remaining in the Euro-area. However, the same dilemma emerged in 2003, when France and Germany were saved from sanctions by a decision of the Council (and in contrast to a Commission's recommendation) notwithstanding their disrespect for the SGP's parameters. Second dilemma, how to guarantee legitimacy to decisions reached by national executives in the Council that were never discussed by the institution representing also the European citizens (the EP)? Indeed, this dilemma became evident all along the Euro crisis. Not only member states' citizens had to abide by decisions imposed by impersonal financial markets, but also imposed by the stronger of the national executives within the Council and the European Council. Indeed, during the crisis emerged a German-French government, although only German and French voters contributed to the latter's election. Third dilemma, how is it possible to subordinate the established structure of the multilateral decision-making system set up by the Lisbon Treaty to the will of the national executives? Indeed, the dualistic constitution of the Lisbon Treaty might operate as a constraint on intergovernmentalism, not only *viceversa*.

These dilemmas are not easily solvable. For example, the Fiscal Compact Treaty's draft tries to deal with the first dilemma providing for a binding intervention of the ECJ on those contracting parties that do not respect the agreed rules. It is stated (Art. 8.1) that "where a Contracting Party considers, independently of the Commission's report, that another Contracting Party has failed to comply with Article 3(2), it may also bring the matter before the Court of Justice. (...) the judgment of the Court of Justice shall be binding on the parties in the procedure". This applies also when the Commission issues a report on a contracting party failing to comply the rules set up in the Treaty. In the latter case, if the Commission, after having given the contracting party concerned the opportunity to submit its observations, still confirms the non-compliance by the contracting party in question, then the matter will be brought to the ECJ. Thus, the discretion of the

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qualified majority (...) A qualified majority is defined as 80 percent of the votes", *EUCO 10/11, Concl 3*, pp. 22-23. Regarding (the last draft of 19 January 2012 of) the Fiscal Compact Treaty, Art. 12 specifies that "The Heads of State or Government of the Contracting Parties whose currency is the euro shall meet informally in Euro Summit meetings, together with the President of the European Commission. The President of the European Central Bank shall be invited to take part in the meetings. The President of the Euro Summit shall be appointed by the Heads of State or Government of the Contracting Parties whose currency is the euro by simple majority at the same time the European Council elects its President and for the same term of office". Thus, the decision-making body is the Summit of the Heads of State and Government, although the Commission is recognized a full actor of the system.

Council seems to have been curtailed recognizing the need to rely on a third actors (the ECJ) for keeping the contracting parties aligned with the agreed aims of the Treaty. However, the binding role of the ECJ is highly problematic. It is indeed questionable that a new organization (set up by the Treaty on Fiscal Compact) might use institutions (such as the ECJ and the Commission) of another organization (the EU set up by the Lisbon Treaty), use that should be authorized by all the 27 member states of the EU (which might result not to be the case, given UK's opposition). Moreover, the ECJ's role doesn't seem to be sufficient for dealing with the second dilemma. International organizations may function on the basis of decisions taken in a governments' club and supervised by their respective judicial organs, but this is not the case of the EU which is not an international organization but a supra-national one. EU's legitimacy cannot be a derivative of the legitimacy enjoyed by its member states. Decisions taken at the EU level require legitimizing mechanism at that level, not at the level of its member states. Without a proper involvement of the EP in those decisions, the latter will lack the sufficient justification for being accepted by the European citizens.

Even the third dilemma has shown to be problematic. In fact, the supranational institutions like the EP and the Commission have started to react to the intergovernmental turn of EU politics, raising questions and advancing conditions that collide with the intentions of the German-French leadership. For instance, both intergovernmental treaties had to recognize the need to apply them in coherence with the EU law. For instance, the Treaty on Fiscal Compact refers to the necessity of applying it (Art. 2.1) "in conformity with the Treaties on which the European Union is founded, in particular Article 4(3) of the Treaty on European Union, and with European Union law". Moreover, because of the EP's mobilization, the Treaty declares that (Art. 16) "within five years at most following the entry into force of this Treaty, on the basis of an assessment of the experience with its implementation, the necessary steps shall be taken, in compliance with the provisions of the Treaty on the European Union and the Treaty on the Functioning of the European Union, with the aim of incorporating the substance of this Treaty into the legal framework of the European Union". After all, the EP was fast to notice, after the decision concerning the Treaty on the ESM, that the latter "poses a risk to the integrity of the Treaty-based system"<sup>12</sup>. At the same time, the reaction of the supranational institutions to the Fiscal Compact Treaty has pressured the framers to recognize that the operation of the intergovernmental Summit of the Heads of State and Government should rely on the president of the Commission. As stated in Art. 1.3, the meetings of the Euro Summits "shall be prepared by the President of the Euro Summit, in close cooperation with the President of the

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<sup>12</sup> Text adopted by the European Parliament at the sitting of Wednesday 23 March 2011, O.7.

European Commission, and by the Euro Group. The follow-up to the meetings shall be ensured in the same manner”. The Fiscal Compact Treaty has arrived to formalize (Art. 10) the possibility for the member states whose currency is the Euro to recur “to the enhanced cooperation as provided for in Article 20 of the Treaty on the European Union (TEU) and in Articles 326 to 334 of the Treaty on the function of the European Union (TFEU)<sup>2</sup>, thus making redundant *de facto* the same new treaty. Certainly, in the Fiscal Compact Treaty the EP is considered an outsider at pair with the EU member states whose currency is not the Euro. According to Art. 12.4, “The President of the European Parliament may be invited to be heard. The President of the Euro Summit shall present a report to the European Parliament after each of the meetings of the Euro Summits”. Thus, although the intentions of the German-French promoters of the Treaty were highly intergovernmental, the reaction coming from the EP and the Commission has tamed them to a certain extent. It has shown to be difficult for the intergovernmentalists to overshadow completely the established multilateral structure of the Lisbon Treaty.

To be sure, also at the national level, foreign and financial policies are largely defined, managed and executed by the national executives (Lijphart 1999). In fusion of powers’ systems, as in parliamentary Britain, foreign and military policies are traditionally at the core of the Cabinet’ structure, protected by secrecy, informality and bi-partisanship. The parliament as such has a limited role in those policies (unless it has to discuss crucial issues concerning war and peace, as it happened in the 2003 debate on the invasion of Iraq), although the leader of the shadow cabinet is kept regularly informed by the Cabinet on the main foreign and military challenges the country is facing. In the French semi-presidential Fifth Republic, foreign and military policies are centralized at the Elysée, the site of the presidency of the republic, not in the Cabinet. Indeed, both policies are considered a ‘domain réservée’ for the president of the republic, subtracted to the vagary of partisan politics, with the parliament playing consequently a limited role. Executive’s predominance is unquestionable also in the budgetary policies. Already before the introduction of the European Semester, in the main EU member states, the executive was recognised the power to submit the yearly financial law to the parliament, with the latter unable to introduce new programs unless agreeing in cutting a program of equivalent size. In both policies, however, although nobody questions the executive’s dominance, there is also a general expectation that the parties in opposition have a duty to mobilize, within and outside the legislature, for criticizing the executive’s priorities and for opening a public debate on them. This is even truer in a separation of powers’ system as the US. The president is recognized to play a role of pre-eminence in foreign and military policy and to have a power of initiative in the budgetary policy. However, in both policies, the executive’s prerogatives are regularly challenged by the legislature, not only when the president and



the Congress express different partisan majorities (the so called situation of *divided government*). The Senate is a crucial institution for checking the foreign policy's choices of the president and the House of Representatives has never given up to its constitutional role of controller of the public purse (Polsby 2003). Certainly, the executive branch has tried to escape from this constitutional constraints, in particular in foreign policy (Silverstein 1997), but the two legislative branches have not let it to play any exclusive decision-making role. Thus, in a comparative perspective, EU intergovernmentalism cannot be equated to executive predominance in democratic systems.

### **The political and cultural roots of intergovernmentalism**

Which are the political and cultural factors of this powerful intergovernmental twist in EU politics? Politically, probably for the very first time, French and German governments converged towards an intergovernmental interpretation of the process of integration. President Sarkozy has been the coherent heir of Charles De Gaulle's vision of a "Europe of nation states", that is of a process of integration primarily controlled by the member states' executives. In the Sarkozy's vision (as in the De Gaulle's one) there is no room for the EP and the Commission in the decision-making process<sup>13</sup>, not to mention the ECJ. One might argue that this vision is shared also by a large part of the ruling elite of the country, not only by the Gaullists, highly supportive of a domestic governmental system based on the decision-making primacy of the president of republic. After all, this vision caused one of the most dramatic institutional conflicts with the Commission in the 1960s (known as the crisis of the 'empty seat'), because of the latter's attempt to establish its supranational independence from the national governments. In sum, it seems that president Sarkozy has resurrected the nationalist vision of integration, after the predominance of the more balanced vision promoted by Jacques Delors and Francois Mitterand.

At the same time, it might be surprising that such intergovernmental vision of Europe has come to be shared also by the German political élites in the government. Probably because of generational changes, and as an effect of different sensibilities towards Europe of the new political élites (as Angela Merkel) coming from the Eastern *laender*, the incumbent German government has started to give no longer for granted its paymaster's role for the integration. Moreover, the outcome of the 2009 German elections brought to a coalition government between the Christian Democrats

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<sup>13</sup> It might be interesting to notice that, on 11 January 2012, the French minister for European Affairs, Jean Leonetti, has even proposed to create a parliament for the Euro-area, largely constituted by parliamentarians of the national parliaments of the Euro-area. Thus going back to the assembly of the 1950s and 1960s which was indirectly formed (and consequently had no power). Again, the legitimizing role of the EP is totally ignored by the French government presided by Nicolas Sarkozy.

and the Liberal Democrats, with the latter party (*Liberal-Demokratische Partei*) that has assumed an unusual euro-sceptical position. Finally, the decisions of the German constitutional court or *Bundesverfassungsgericht* (BVerfG)<sup>14</sup> have raised powerful hurdles to the further transfer of national sovereignty to the EU, although they confirmed the level of integration reached ‘up to now’. Those decisions have thus pressured chancellor Merkel to look for solutions to the Euro crisis that would not be questioned by the Court (as it was presumed to be the case with new treaties having clear intergovernmental features). This German intergovernmentalism does not fit well with the structure of the German governmental system, where a crucial role is recognized to the bicameral legislature, with the judiciary being the indispensable solver of last resort. Certainly, differences emerged between the French president and the German chancellor regarding the institutional solution for the new economic governance’ system. For the former, the governments had to enjoy a discretionary role in order to reach the stated aims of financial policy. For the latter, the governments had to operate within the rules they have set up for themselves. What’s matter for Sarkozy is politics, for Merkel rules. The binding role assigned to the ECJ in the Fiscal Compact Treaty is thus clearly an outcome of the German interpretation of intergovernmentalism.

However, intergovernmentalism has also deep cultural roots in the EU’s experience. It has largely inspired the paradigm conceptualizing the EU as a *sui generis* organization (Weiler, 2000; 1999). The view that the EU is an exceptional political system, unprecedented due to “its unique institutional nature” (Orbie, 2009: 2), “different to pre-existing political forms (because of) its historical context, hybrid polity and political-legal constitution” (Manners, 2002: 240-242) is largely shared by scholars and practitioners alike<sup>15</sup>. According to this view, the legitimacy of EU is derived from the legitimacy of its member states, its functioning is an outcome of the political will of its member states (Moravcsick and Schimmelfenning, 2009). The EU is an ‘intergovernmental organization plus’, it is an organization which coordinates member states’ policies plus supranational institutions allowed to manage common interest in limited fields of policy (Moravcsick, 2005). This intergovernmental basis of the EU has allowed the national executives to keep under control the integration process. A system of governance has been constructed according to specific ad hoc procedures that do not need necessarily to take into account the criteria (of effectiveness and accountability) that inspire the functioning and legitimacy of all democratic political systems, starting with those of its member states. The fundamental distinction (either

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<sup>14</sup> From the sentence of 30 June 2009 stating that the Treaty of Lisbon (*Zustimmungsgesetz zum Vertrag von Lissabon*) is compatible with the German Basic Law to the sentence of 6 September 2011 **upholding the country's participation in bailing out the financially ailing Eurozone member states such as Greece.**

<sup>15</sup> For instance, in a speech given at Humboldt University of Berlin on 9 May 2011, Michel Barnier, European commissioner for internal market and services, echoed this view asserting that the EU “is unique in history and in the world”.

institutional or functional) in each system of government between the executive and the legislative branches (and between these and the judiciary) tends to blur in the intergovernmental view of the EU. For the latter, institutions are instrumental to the solution of contingent problems, their features constitute ad hoc arrangements regardless of their long term effects. Intergovernmentalists do not consider whether the EU risks being organized according to the (undemocratic) principle of confusion of power rather than according to the (democratic) principle of the distinction of powers. As long as the confusion of power concerns the EU but not its member states, then it will remain a non-issue for them.

When the decision-making power is located in the hands of the domestic governments, then it is inevitable that some governments weight more power than others. It is highly likely that an intergovernmental Europe is going to institutionalize hierarchical relations between governments within the intergovernmental institutions (the Council and the European Council). As shown by the 2010-2011 Euro-crisis, an intergovernmental financial Europe is a German-French Europe and as shown by the Libyan crisis, a common foreign policy means a French-British political and military leadership. From the intergovernmental point of view, the emergence of a French-British *directoire* in foreign policy and German-French *directoire* in financial policy seems to be a perfectly reasonable outcome of a Union that exists thanks to the will of domestic governments. Thus, why bother? One might argue that the political crisis in Libya developed in the space of days and hours, leaving little room for the patient and necessarily slow-moving diplomacy of the HR whose action requires the support of 27 member states' governments. The French-British *directoire* was thus the only viable solution for stopping Muammar Gaddafi's attempt to get rid of the opposition; a viable solution given that France and UK have agreed (since the Saint-Malo declaration of December 1998) to coordinate their military structures and operations, a choice they have always presented as a step forward to a future common European foreign policy. After all, in foreign policy, France and UK have a permanent seat on the United Nations (UN) Security Council, have nuclear power, rely on efficient diplomatic corps, have the political outlook proper of great powers. At the same time, with regard to the establishment of the ESM and the Fiscal Compact Treaties, one might also argue that it was inevitable that Germany has come to play a domineering role in setting them up and in defining the policy's priorities of the Euro-area, given it is the most powerful economy of the continent. Moreover, German economic predominance has been also legitimized by the financial stability achieved by the country in the second half of the 2000s, a stability which has prevented the country from being crushed by the crisis of the unregulated banking and financial system exploded in the US in 2008. In sum, both *directoires* emerged in foreign and financial policies confirm that

the EU can grow only if its decision-making barycentre remain in the hands of its (bigger) member states' governments.

The ad hoc institutional solutions introduced by the member states' governments have proven to be effective and often creative responses to emerging problems. However, they have not taken into account the context which made them successful and their possible negative unintended consequences. For example, in foreign policy, the French-British intervention was effective in opposing Gaddafi's troops from seizing the rebellious regions of Libya, but that effectiveness was largely due a contextual factor, namely the support received by the US military forces leading NATO (although *from behind*). France and the UK are no longer self-sufficient military powers, and they can no longer seriously assume that their *directoire* in foreign policy will be accepted by the other EU member states. Moreover, their *directoire* might mean not only the end of a common foreign policy, but also of their great powers' ambition, if it is true that the US is going to reduce its military presence in the European theatre<sup>16</sup>. No single country may offset, on both the economic and military level, the withdrawal of the US, nor any single European country might play a significant international role in a system of continental giants (as China, Russia, India, Brazil, a part from the US). At the same time, no major European economic power (Germany included) has the capacity to appease the financial markets, restoring confidence on the common currency. Even Germany, as a single country, is a medium sized economic power, unable to affect the political economy's logic of a world structured around few powerful continental economies. The German *directoire* in financial policy, based on the German predisposition to extend its own economic model and interests to the entire continent, might backfired, leaving Germany to preside over a declining continent. Moreover, because the *directoire* cannot guarantee legitimacy to its operation, then it is inevitable that citizens would react to the German predominance in economic policy, asking for a re-nationalization of the policy process (if not of the same currency). Indeed, there is no shortage of populist parties in Europe today able to profit from citizens' discontent toward the EU of *directoires*. If not tamed by the supranational institutions and logic, intergovernmentalism might be a recipe for the implosion of the EU.

## Conclusion

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<sup>16</sup> The previous US secretary of Defence Robert Gates said on 10 June 2011 at the Security and Defence Agenda Conference held in Brussels: "The blunt reality is that there will be dwindling appetite and patience in the U.S. Congress, and in the American body politic writ large, to expend increasingly precious funds on behalf of nations that are apparently unwilling to devote the necessary resources or make the necessary changes to be serious and capable partners in their own defense" .

For preventing the smooth disintegration of the EU, to bring the new intergovernmental treaties back to the Lisbon Treaty represents a necessary, although not a sufficient, step. To be sure, the decision-making role of member states' governments should be recognized as a fundamental condition for the existence and the functioning of the EU. It is not accidental that the European Council has emerged as the main decision-making body of the EU and its president as a more influential actor than the Commission's president. One can assume that, there being no prohibitions in this respect in the Lisbon Treaty, the future evolution of the EU will eventually lead to a re-composition of the two presidencies in a single person<sup>17</sup>. However, in the two crises, the European Council and its president have clearly established their role as political executive of the EU<sup>18</sup>, with the Commission and its president giving rather a technical support. This recognition of the role of the governments *through* the European Council is crucial for making possible further advance in the integration process. As Ludlow (2011: 6) asserted, "this does not mean a radical downgrading of the Commission. It does however mean that the *simpliste* vision of the Union...which still prevailed in the Convention, and which, remarkably enough, still survives in certain features of the Lisbon Treaty ... ought to be buried once and for all. The EU is now concerned with matters of such seriousness that only a Union of States represented at the highest level can deal with them". At its turn, the increased decision-making role of the European Council's president should raise strategic demands regarding his/her legitimacy and democratic representativeness.

However, if that is true, it also true that in a democratic polity all powers (in particular those at the highest level) should be checked and balanced. Thus, the strategic role recognized to the European Council should be balanced by a strengthening of the EP, not necessarily in legislative terms but also in institutional ones. This balance should be promoted also in the fields of financial and foreign policy. Even in those policies where decisions have not a legislative form, the EP should play a supervisory role, calling the European Council's president and the members of the Commission to accounting to the European public it represents. It is not sufficient that the European Council or the Euro Summit will have to inform the EP about the establishment and operation of monetary and fiscal policies. The EP should become part of the policy-making, if not decision-making, framework. And it is not sufficient that the HR be a vice-president of the Commission if s/he continues to chair the Foreign Affairs Council. The HR should become a coherent executive

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<sup>17</sup> As stated by Michel Barnier in his speech at the Humboldt University in Berlin on 9 May 2011, "one day a future president of the European Union...should both preside over the European Council and chair the European Commission" thus adding that "the individuals who would become president of the European Union on a proposal from the heads of state and government could have their power vested in them by a Congress comprising both the European Parliament and representatives of the national parliaments...in the future they could obtain a direct mandate from the peoples of Europe".

<sup>18</sup> For this reason, it might be appropriate to call the European Council as the *European Presidency*, not only to avoid the current terminological confusion with the other (legislative) Council but also to signify its clear executive role.

officer, with the role of coordinating the European Council's president and the Commission's president, and not member states' foreign affairs ministers. At the same time, the EP and the Foreign Affairs Council should play the checking and balancing role of the legislature of a separated system.

These changes seem necessary especially if the EU will move towards some form of institutional differentiation, for instance between an inner Europe constituted by those member states adopting the Euro currency and willing to use the procedure of reinforced cooperation (Dyson and Sepos, 2010) for deepening their integration in a growing number of policy fields among which financial<sup>19</sup> and foreign policy and an outer Europe constituted by those member states (UK and probably the Czech Republic and few others) interested to stay in the single market but willing to maintain their own domestic sovereignty in monetary affairs and also to regain that sovereignty in other previously Europeanized policy fields<sup>20</sup>. In fact, it might be paradoxical to see the more integrated Europe (the inner Europe) operating according to the intergovernmental constitution and the less integrated Europe (the outer Europe) functioning according to the supra-national constitution of the Lisbon Treaty.

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<sup>19</sup> According to Munchau (2011), the measures introduced in the economic governance will bring to “the creation of the office of a eurozone treasury secretary...to a fiscal union...to a eurozone bond”.

<sup>20</sup> The most significant example of that is the UK's *European Union Act* that received Royal Assent on 19 July 2011. The Act dramatically calls into question the constitutionalization of the EU brought about by the ECJ decisions of the 1960s on direct effect and supremacy of Community law. Indeed, it states that “there are no circumstances in which the jurisprudence of the Court of Justice can elevate Community Law to a status within the corpus of English domestic law to which it could not aspire by any route of English law itself (...). The conditions of Parliament's legislative supremacy in the UK necessarily remain in the UK's hands”.

## **BIBLIOGRAPHY (provisional)**

Castle, S. (2011) 'Discontent over foreign policy chief goes public', *International Herald Tribune*, May 24, p. 4.

Dehousse, R. (ed.) (2011) *The 'Community Method': Obstinate or Obsolete?* (New York: Palgrave Macmillan).

Dyson, K. and Sepos, A. (eds.) (2010) *Which Europe? The Politics of Differentiated Integration* (New York: Palgrave Macmillan).

Foster, N. (2000) *EU Treaties and Legislation 2010-2011* (Oxford: Oxford University Press).

Friends of Europe (2011) *An 8-Point Strategy to Revitalize the EU*, <http://www.friendsofeurope.org>

Hix, S. (2008) *What's Wrong with the European Union and How to Fix It* (Cambridge: Polity).

Hix, S., Noury, A. and Roland, G. (2006) *Democratic Politics in the European Parliament* (Cambridge: Cambridge University Press).

Lijphart, A. (1999) *Patterns of Democracy* (New Haven, CT: Yale University Press).

Ludlow, P. (2011) 'The European Council and the Media: Some Preliminary Reflections Prompted by the March European Council', *EuroComment*, 5 April.

Majone, G. (2009) *Europe as the Would-Be World Power* (Cambridge: Cambridge University Press).

Manners, J. (2002) 'Normative Power Europe: A Contradictions in Terms?', *Journal of Common Market Studies*, 40 (2), pp. 235-258.

Moravcsick, A. (ed.) (2005) *Europe without Illusion* (Lanham, MD: University Press of America).

Moravcsick, A. and F. Schimmelfenning (2009) *Liberal Intergovernmentalism*. In A. Weiner and T. Diez (eds.) *European Integration Theory* (Oxford: Oxford University Press, 2<sup>nd</sup> edition).

Micossi, S. (2011) 'The New Economic Governance of Europe after the Crisis', paper delivered at the conference on "Economic Crisis and Institutional Reforms", LUISS School of Government, Rome, 23 May.

Munchau, W. (2011) 'Ingredients of a European Political Union', *Financial Times*, June 5.

Naurin, D. and H. Wallace (eds.) (2008) *Unveiling the Council of the European Union: Games Government Play in Brussels* (New York: Palgrave Macmillan).

Orbie, J. (2009) *A Civilian Power in the World? Instruments and Objectives in European Union External Policies*. In J. Orbie (ed.) *Europe's Global Role: External Policies of the European Union* (London: Ashgate).

Polsby, N.W. (2003) *How Congress Evolves. Social Bases of Institutional Change* (Oxford: Oxford University Press).

Scoutete, de, P. (2011) 'Decision-making in the Union', *Notre Europe*, Policy Brief No. 24, April.

Silverstein, G. (1997) *Imbalance of Powers. Constitutional Interpretation and the Making of American Foreign Policy* (Oxford: Oxford University Press).

Weiler, H.H. (2000) *Federalism and Constitutionalism: Europe's Sonderweg*, Harvard Law School, Jean Monnet Chair Working Papers.

Weiler, H.H. (1999) *The Constitution of Europe* (Cambridge: Cambridge University Press).