

# Imagining Europe: Towards a More United and Effective EU

IAI RESEARCH PAPERS

Edited by  
Nathalie Tocci



Edizioni Nuova Cultura



**IAI**

*Istituto Affari Internazionali*

# IAI Research Papers

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*Edited by Nathalie Tocci*



*in cooperation with*

**Unicredit Spa**

**Edison Spa**

**The German Marshall Fund  
of the United States**

**Salini Spa**

**Elettronica Spa**

**Osife**



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# List of Abbreviations

ACER	Agency for Cooperation of Energy Regulators
AGCOM	Autorità Garante per la Comunicazione (Italian Communications Regulatory Authority)
AMIF	Asylum, Migration and Integration Fund
ASEAN	Association of Southeast Asian Nations
BIS	Bank for International Settlements
BoP	Balance of Payment Assistance
BRRD	Bank Recovery and Resolution Directive
CEDC	Central European Defence Cooperation
CEF	Connecting Europe Facility
CEER	Council of European Energy Regulators
CFSP	Common Foreign and Security Policy
CIEP	Clingendael International Energy Programme
CMM	Civilian Crisis Management
COM	Commission
COMESA	Common Market for Eastern and Southern Africa
COSAC	Constitutional Affairs Committee
CRD IV	Capital Requirements Directive
CRR	Capital Requirements Regulation
CSDP	Common Security and Defence Policy
DGS	Deposit Guarantee Schemes
DSL	Digital Subscriber Line
EASO	European Asylum Office
EBA	European Banking Authority
ECB	European Central Bank

ECF	European Climate Foundation
EDA	European Defence Agency
EFSF	European Financial Stability Facility
EFSM	European Financial Stabilisation Mechanism
EFTA	European Free Trade Association
EIB	European Investment Bank
EIOPA	European Insurance and Occupational Pensions
EMU	European Monetary Union
ENP	European Neighbourhood Policy
ESDI	European Security and Defence Identity
ESFS	European System of Financial Supervision
ESM	European Stability Mechanism
ESMA	European Securities and Markets Authority
ESRB	European Systemic Risk Board
ESS	European Security Strategy
ETS	Emissions Trading System
EU	European Union
EUFOR	European Union Force
EUMC	European Union Military Committee
EUMS	Military Staff of the European Union
EURIMF	EU Relations with the International Monetary Fund
EUROSUR	European Border Surveillance System
FRONTEX	Frontières extérieures (European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union)
FSB	Financial Stability Board
GCC	Gulf Cooperation Council
GEMU	Genuine European Monetary Union
ICT	Information and Communication Technology
IMF	International Monetary Fund
INF	Intermediate-range Nuclear Forces
LIBE	Committee of Civil Liberties

*LIST OF ABBREVIATIONS*

LTRO	Long Term Refinancing Operations
MAM	Migration, Asylum & Multiculturalism
Mbs	Megabit per second
MIP	Macroeconomic Imbalance Procedure
MTO	Medium Term Budgetary Objective
NAFTA	North American Free Trade Agreement
NATO	North Atlantic Treaty Organisation
NIMBY	“Not in my backyard” syndrome
NRA	National Regulatory Agency
NSCOGI	North Seas Countries Offshore Grid Initiative
OCA	Optimal Currency Area
OHQ	Operational Headquarter
OMT	Outright Monetary Transactions
PCI	Projects of Common Interest
PESCO	Permanent Structured Cooperation
PF	Pentalateral Energy Forum
PPP	Public Private Partnership
RABIT	Rapid Border Intervention Teams
R&D	Research and Development
RCC	Regional Coordination Committees
RES-E	European Renewable Energy Sources
RI	Regional Initiative
RPP	Regional Protection Programmes
RSC	Regional Steering Committees
SACEUR	Supreme Allied Commander Europe
SCIMF	Sub-Committee of the International Monetary Fund
SGEIs	Services of general economic interest
SGP	Stability and Growth Pact
SRB	Single Resolution Board
SRM	Single Resolution Mechanism
SSM	Single Supervisory Mechanism
TEN	Trans-European Networks

TEN-T	Trans-European Transport Networks
TFEU	Treaty of the European Union
TFM	Task Force for the Mediterranean
TSCG	Treaty on Stability, Coordination and Governance
TSO	Transmission system operator
UAVs	Unmanned aerial vehicles
WEU	Western European Union
WGI	Worldwide Governance Indicators

# Preface

*Imagining Europe* was launched in 2013 by a group of committed Europeans alarmed by the centrifugal forces gripping the European Union since the eruption of the Eurozone crisis. We took as a starting point Emma Bonino and Marco De Andreis' idea of a light federation as a promising route for the EU to exit the crisis as a united, effective and legitimate political entity. Yet we also felt that many of the public calls for "more Europe" were either too general or lost in translation into the technical lexicon of the Eurozone crisis and its responses. To move forward, we sought to imagine what a more federal EU could look like by delving into the details across various policy sectors.

*(N.T.)*



# 1.

## Towards a More United and Effective Europe: A Framework for Analysis

*Nathalie Tocci and Giovanni Faleg*

### 1. INTRODUCTION

The Eurozone crisis is dramatically shaping the construction of an EU polity as an integrated, legitimate and effective political space. The implications are twofold. The crisis has accelerated policy- and institutional integration in ways thought unthinkable only a few years ago. At the same time, the economic crisis and the ensuing societal and political malaise have generated centrifugal forces across the Union, threatening the very essence of the European project. These two, seemingly contrasting, dynamics are taking place on different planes – top-down and bottom-up, respectively. Working in parallel, these two trends are giving rise to a dangerously vicious circle.

Euro scepticism in European public opinion is not new. Neither is it entirely caused by the EU's top-down integration. But the style and content of the EU's top-down decision-making have certainly added fuel to the fire, and have led to divisions between member states that shake the very foundations of the integration endeavour. Europeans are increasingly disenchanted with Europe and with one another. Their resistance to Europe in turn narrows the feasibility and the legitimacy of EU-level decisions taken to exit the crisis through deeper integration. As centrifugal bottom-up dynamics deepen, the sustainability of top-level centripetal integration is being compromised.

The challenge for committed Europeans is that of reconnecting these two levels through a virtuous circle. Such a dynamic can only start if one imagines a new Europe, one that reconciles Europeans with the integration project by re-endowing the Union with its lost legitimacy, in terms of its ability to deliver peace and prosperity to its citizens and to do so

through an inclusive and accountable democratic process. It is our aim in this project to begin this exercise of imagination by exploring what kind of future the EU could create for itself were it to stand with its citizens and from there punch its full weight as a 21st century global power. It is our belief that Europe today needs a new narrative. At its outset, the European project was about cementing peace in the continent after the devastation brought about by two world wars and a genocide. With the end of the Cold War and the collapse of the Soviet Union, the challenge became reunifying Europe within a liberal world order. In a 21st century that is witnessing a profound shift in global power, a new EU narrative can converge on how to ensure European resilience in a multipolar world and encourage a peaceful transition towards a new consensual global order. To do so, the EU must be legitimate and effective within its borders, and from this position it must be able to project its full economic, strategic and normative weight in its neighbourhood and beyond.

Granted that a full recovery from the economic crisis is the necessary premise upon which any political and institutional way forward can be sought, this project attempts to delineate the types of governance models the EU could head towards, and evaluates these in terms of the *unity, effectiveness and governability of the EU*. In order to cater for these three goals, this project tackles three questions. First, what is the nature and degree of integration within the core of member states that opt to move up a gear (or two) in the transfer of their sovereign competences to the EU level? What does a more *united* Europe mean? Second, what is the desirable relationship between the core of member states that move towards deeper integration and those that remain outside? What relationship can be envisaged between core and non-core member states so as to ensure policy *effectiveness*? And finally, if the “cores” in different policy areas do not (perfectly) overlap, what institutional mechanisms can guarantee that a united and effective EU is also *governable*?

## 2. THE VICIOUS CYCLE: CENTRIPETAL AND CENTRIFUGAL FORCES IN EUROPE

The European Union is undergoing a double transformation. Top-down, centripetal forces are at play, with the EU transforming in ways thought unthinkable only a few years ago. The Fiscal Compact, the Six Pack, the Two Pack, and plans for a banking and fiscal union are moving the



Eurozone towards greater integration. Within this core, national parliamentary sovereignty over budget making is being eroded by supranational rules and the enhanced oversight role of European institutions designed to curtail deficit spending and restore economic stability. And there is a growing awareness that this cannot but be the first step towards deeper integration. Not all EU member states are on the same page. In Britain, plans to scale down commitments to the EU or exit the Union altogether have come to dominate public debate, with the looming prospect of a UK referendum on EU membership after the 2015 British elections. But Britain may well be in a class of its own: the exception and by no means the rule. More relevant, instead, are the deep divisions within the Union regarding what deeper integration actually means and how far it should go. Alongside the age-old intergovernmental-versus-federal, new fault-lines are developing regarding the sequencing and nature of integration. Some member states are pushing for an urgent cessation of member state competences first, followed by institutional arrangements to cater for more democratic accountability at EU level. Others insist that a “political union” should precede the loss of national sovereignty. Different interpretations notwithstanding, the Eurozone and most of the member states that have signed the Fiscal Compact have embraced a horizon of deeper integration, albeit to varying degrees and not without doubts and reservations.

Bottom-up, the Eurozone crisis is spurring centrifugal forces, which concomitantly see a progressive distancing of European citizens from the EU and a dangerous societal and political divide cementing between member states. Populism and Euroscepticism are not new in Europe. They acquired a higher profile, however, with the turn of the century through a potent mix of anti-immigration sentiment, post-9/11 Islamophobia and EU enlargement fatigue. Furthermore, the Eurozone crisis has magnified and provided a new twist to this phenomenon, making populist Euroscepticism (or more accurately Europhobia) a mass phenomenon in a number of EU member states. Across the European Union, and most notably in those member states most seriously afflicted by the crisis, a broad strand of Eurosceptic populism is taking root. These anti-systemic movements do not simply position themselves “against the elites” and “with the people”, but do so by challenging the very foundations of the political system, including the basic principles of representative democracy. While the prospect of redistributive fiscal federalism at the European level remains vague and uncertain, European citizens increas-

ingly feel the repercussions of crumbling welfare systems, soaring unemployment and anemic or negative growth, for which they blame the partial loss of economic sovereignty coupled with severe austerity measures. Mainstream centre-right and centre-left parties have already paid high political costs as they have been seriously challenged by populist alternatives on both ends of the political spectrum.

The pattern is similar across Europe, particularly in southern member states. In Greece, the 2012 elections led to the near sweeping away of traditional parties by anti-systemic alternatives such as Syriza and Golden Dawn. In Italy's 2013 elections, the formidable rise of the 5 Star Movement split the country into three political blocs and rang the death knell of the so-called "second republic". In Spain there has been a classic swing of the political pendulum, with the socialists paying the price of the crisis and handing over power to the Popular Party in 2011. Whilst Spain's recovery has yet to see the light of day, the centre-right has lost support, and the socialists are showing no signs of recovery. In fact, in the 2014 European elections, less than 50% of Spaniards cast their vote for one of the two traditional centre-ground parties. This could open a political vacuum that may readily be filled by smaller parties, radical protest movements and citizen platforms. Populism and Euroscepticism are not confined to southern Europe of course. The rise (and subsequent fall) of the populist *Piratenpartei* in Germany, and of today's Eurosceptic *Alternative für Deutschland*, are cases in point.

Such movements are not always and necessarily anti-European. However, in view of the EU's manifest failure, to date, to provide effective responses to the crisis and to do so in a manner deemed politically inclusive and accountable, they have questioned the legitimacy of the EU project and have acquired a distinct Eurosceptic spin. The rise of Europhobic anti-establishment movements reflects citizens' growing distrust of the EU. The discontent with the EU is most noticeable in weak Eurozone economies, in which the transfer of sovereignty out of the hands of national politicians has been starkest. Data from the 2012 Eurobarometer shows that 81% of Greeks, 72% of Spaniards and 53% of Italians do not trust the EU, while in 2007 those levels only reached 37%, 23% and 28% respectively.<sup>1</sup> A 2013 Pew Research poll shows that the favorability of the EU has fallen from an average of 60% in

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<sup>1</sup>European Commission, *Standard Eurobarometer* 78 (Autumn 2012) and 67 (Spring 2007), available at [http://ec.europa.eu/public\\_opinion/archives/eb\\_arch\\_en.htm](http://ec.europa.eu/public_opinion/archives/eb_arch_en.htm).

2012 to 45% in 2013.<sup>2</sup> In response, and as a means of acquiring standing amongst their publics, emerging political entrepreneurs as well as elements within traditional parties increasingly rely on the politics of symbolism and populism. The European Union is an easy target in their call for action.

Centrifugal forces do not stop here. The crisis has also led to a new and mobile cleavage in the EU, most notably in the Eurozone, between creditor and debtor countries. This cleavage has revolved around debates on “austerity versus growth”, terms that have become as technical as they are cultural and political. On both sides of the creditor-debtor cleavage, negative stereotypes of the “other” have proliferated, undermining the achievement of a shared project of mutual benefit. In identity terms, this stereotyped “North-South” cleavage has overshadowed the “East-West” one that had emerged after the Eastern enlargement. In this regard, the political challenge is no longer to unite “old” and “new” Europe, but to ensure a convergence between north and south so as to avoid enduring political backlash threatening the political survival of the European project as such. In debtor countries, a deficit of democracy due to the shift of decision-making power away from the national level and the effects of austerity policies have led to deepening disenchantment with the EU. In creditor countries, despite the greater leverage enjoyed at EU level, frustration with slack EU governance has been on the rise. Furthermore, this intra-European cleavage has also had dangerous repercussions on mutual intra-EU opinions. There is a growing perception in northern Europe of southern member states (and their citizens) as profligate and lazy, refusing to pay their own way out of the crisis. For their part, citizens from southern member states have come to view northern Europeans as selfish and inward looking, having abandoned European solidarity. Failure to tear down this wall of misperceptions may endanger the integration process. The paradigm of “austerity versus growth” has become symptomatic of an alarming “othering” process that is driving a wedge in the heart of the European project, while also hampering convergence on joint solutions to the economic crisis.

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<sup>2</sup> Pew Research Center Global Attitudes Project, *The New Sick Man of Europe: the European Union*, 13 May 2013, <http://www.pewglobal.org/2013/05/13/the-new-sick-man-of-europe-the-european-union>.

### 3. EUROPE AS A PUZZLE: UNITY, EFFECTIVENESS AND GOVERNABILITY IN POST-CRISIS EUROPE

The centrifugal and centripetal forces bedeviling crisis-Europe confront us with a puzzle. Restoring legitimacy in the European project calls for greater unity and thus deeper integration. Through such unity, the EU could reacquire legitimacy vis-à-vis its citizens by finding joint solutions to deliver peace and prosperity in a politically inclusive and accountable manner. However, a more united Europe could be presumed to be more effective in achieving its policy objectives only if all member states consensually moved towards deeper integration. Alas, this is not the case. Given the different inclinations of member states to accept deeper integration but also their different capacities to contribute to the effectiveness of EU policies, the simple equation “a more united EU equals a more effective EU” cannot be taken at face value.

#### *3.1. A more united Europe: integration of the core to restore the EU's output and input legitimacy*

Conventional wisdom has it that exiting the crisis and setting the EU back on the path of recovery, returning to the EU its lost “output legitimacy”, would call for a jump from a European Monetary Union (EMU) to a “Genuine European Monetary Union” (GEMU). GEMU would correct the structural deficiencies inherent in the EMU, which brought the Eurozone to the brink of implosion. It would prevent member state fiscal imbalances and non-compliance with rules, break the vicious link between public debts and banking systems, clarify the role of the European Central Bank (ECB), and endow the Union with a veritable fiscal capacity. To this effect, some steps are being made. Rules to avoid fiscal imbalances are now in place with the Two-Pack, Six-Pack and Fiscal Compact. The first steps towards a banking union are in the offing through the Single Supervisory Mechanism. The role of the ECB is being bolstered through its Long Term Refinancing Operations (LTRO) followed by the Outright Monetary Transactions (OMT). Much remains to be done, however, from the completion of a banking union through a common banking resolution and deposit insurance, to the move towards a fiscal union via fiscal transfers and an eventual Eurozone fiscal capacity, as well as coordinated economic and possibly social policies. On the latter, for instance, with growing crisis-driven intra-EU labour mobility, several social ques-

tions – such as the portability of pensions – urgently require EU-level solutions. Deep disagreements exist among Eurozone members on both the content and the sequencing of these steps. Underpinning these disagreements is the clash of ideas between austerity and growth, ordo-liberalism and neo-Keynesianism.<sup>3</sup> Most importantly, perhaps, deep-seated mistrust underpins disagreements on the steps and sequencing of economic integration, the very same mistrust that explains why it took the United States 140 years to complete its own fiscal federalization. But ideological differences and trust aside, most agree, in (very) broad terms, that deeper monetary and fiscal integration is the only recipe to restore the EU's output legitimacy through the delivery of stability and prosperity to its citizens.

Output legitimacy, however, does not suffice. Equally important is “input legitimacy”, which amounts to an effort to complement a fiscal and monetary union with a “political union”. Here the debate is still in its infancy, beyond a handful of proposals, such as those concerning the European Parliament's role in electing the President of the European Commission and those imagining more organic institutional ties between member state parliaments and the European Parliament. There are wide divergences on the actual meaning of a political union, with French and Italian approaches emphasizing the need to strengthen the legitimacy of EU leaders and institutions through direct elections, and Germany preferring an enhanced role for parliaments at both national and EU levels. Either way, what clearly needs to be rectified is the EU's chronic “political deficit”. What is lacking in Europe is the perceived accountability of the EU in the eyes of its citizens: a sense of confidence that decisions taken at EU level are not merely the technical and apolitical expressions of an inaccessible puppet master, but rather a reflection of the democratically-expressed political will across the Union. To grant such confidence, Europeans would expect the content of EU policies to change according to the changing political configuration across the EU – for instance edging towards the right or the left of the political spectrum according to the changing political majorities across the EU. They would also expect to have the power to vote EU leaders in or out of office

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<sup>3</sup> Vivien A. Schmidt, “The Eurozone Crisis: A Crisis of Economics or of Politics?”, presentation at the IAI seminar *Navigating Europe through Internal Crisis and Global Challenges*, Rome, 16 May 2013.

if their actions were or were not to meet their expectations.<sup>4</sup> Neither of these forms of accountability currently exists. The EU suffers from a deep political deficit in which citizens view the Union as a largely unaccountable entity whose actions are the product of an obscure internal logic rather than the emanation of the democratically expressed will of its citizens. Endowing the Union with such accountability is the ultimate goal and outcome of a political union.

### *3.2. A more effective Europe: heterogeneity within the core and the core-noncore relationship*

While restoring output and input legitimacy to the European project calls for a more united Europe, this does not automatically mean that deeper integration entails more effective EU policies at home and abroad. A more united EU could be presumed to be more effective both in averting crisis and in pursuing its declared policy objectives provided that such a Union truly moved ahead monolithically as one. This is unlikely to be the case.

First, the core might end up being far more internally heterogeneous and fragmented than what effective and sustainable policies would demand. Sectors that at first glance appear to be tightly integrated remain highly fragmented on closer inspection. In the telecommunications area, for instance, the number of operators in the EU (2000), contrasts starkly with that in the United States (10). In the field of migration, the Arab uprisings coupled with the EU crisis-led intra-EU labour mobility risk triggering a reinstatement of intra-Schengen barriers to the movement of persons. In the security and defence domain, crisis-induced defence budget cuts, far from leading to intra-EU coordination are pushing member states to proceed unilaterally, which risks depriving the EU of specific capabilities if all member states were to autonomously cut the same capabilities. In areas such as defence or energy, internal fragmentation may instead result from the absence of a shared strategic vision or from the pursuit of mutually incompatible goals. In the case of energy, the declared objectives of security of supply, decarbonization and competitiveness are unlikely to all be met

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<sup>4</sup>Joseph H.H. Weiler, "Institutions and Democratic Governance", speech at the EUI conference *The State of the Union*, Florence, 9 May 2013, <http://stateoftheunion.eui.eu/video>.

to the same degree. As member states attribute a different level of priority to each one of these objectives, the dynamics between them may drive the core towards greater internal divergence.

Second, not all member states may opt to take part in the core. Key questions on the horizon include: Poland's eventual entry into the Eurozone, following the examples of Slovenia, Slovakia and Estonia; or the critical question of British membership, namely whether the UK is heading towards a referendum and, if so, what could happen in the meantime to encourage the British public to remain anchored to Europe. The British question, while unlikely to set a precedent for other current members, may well impact upon the future dynamics of the EU's enlargement policy. Questions like whether the Western Balkans will proceed towards membership and, perhaps even more critically, whether Turkey's accession process will be revived or shelved altogether, will push the Union in different directions. The challenge lies in the divide between the centrifugal dynamics that push member states to keep clear of deeper integration, imperilling the potential effectiveness of EU policies, and the centripetal forces pressing for deeper integration in order to restore legitimacy to the European project.

When those member states that opt out of deeper integration – either as a sub-group of the core or outside the core altogether – are also the ones whose involvement would be a prerequisite for policy effectiveness in any given area, the aims of political unity and policy effectiveness may not neatly dovetail. Just to give a few – radical – examples, it is difficult to imagine: a united and effective Eurozone in which Germany were to opt out; a united and effective security and defence policy without the United Kingdom and France; or a united and effective migration policy without key transit and recipient countries like France, Italy or Spain.

Uncovering how a more united EU can also be more effective in delivering policy outputs at home and abroad thus calls for a comprehensive analysis both of the dynamics within the core and of the “core-noncore” relationship. We need to understand and resolve both the heterogeneity within the core and how the emerging core will relate to those member states that decide to stay outside it. For instance, how will the implementation of the Single Supervisory Mechanism (SSM) apply to Eurozone member state banks operating in non-Eurozone countries? What will be the implications for key financial hubs outside the Eurozone like the City of London? In the security and defence realm,



if a sub-set of member states were to move towards deeper integration, what would be the relationship between this core and the broader Common Security and Defence Policy (CSDP)? And what will be the implications for the CSDP-NATO relationship? These questions have potentially important implications for the role of the European Union in the neighbourhood and beyond. Take for instance the transport, infrastructure and communications domain. Here we could imagine that the possible core of deeper integration would involve not only all member states but also current – and possibly future – candidate countries. A more connected EU could be one that contributes not only to the EU's internal prosperity but also to its foreign policy projection in its neighbourhood.

Also linked to effectiveness is the question of critical mass or lowest common denominator of integration. What is the critical mass in terms of both functional integration and geographic membership that guarantees policy effectiveness within the core? How about in the noncore? And what about in the linkages between the two? In areas such as financial regulation, a critical mass in terms of membership would be critical for policy effectiveness. Highly relevant in this regard is the transport and infrastructure domain, where a distinction has been made between the essential network, to be completed by 2030 and partly financed at EU level, and the comprehensive network, whose time horizon stretches to 2050 and whose implementation and financing are largely left to the goodwill of member states.

### *3.3. Squaring the institutional circle: a more governable EU*

Complicating matters still is the fact that addressing these questions across a variety of policy areas may lead to different interpretations of how the “core” is internally organized, who belongs to it and who does not, and what precisely is the relationship between various sub-groups. This brings us to another puzzle in need of solving: seeking a more united and effective EU in any given policy area does not automatically mean achieving a more united and effective EU as a whole. The latter goal could only be reconciled with the former through carefully crafted institutional mechanisms that would render the future EU united, effective, but also governable.

The key question is thus to delineate what model of governance the EU could head towards, and which among possible models would



be most fit for the purpose of a more united, effective and governable Europe. Who constitutes the core in any given area and what does deeper integration mean within it? Does such a core include specific sub-groups and how are these institutionally represented? What kind of relationship between the core and the noncore member states would ensure policy effectiveness? And finally, will the “cores” across policy areas overlap perfectly, and, if not, how will the EU deal institutionally with the resulting geographic fuzziness in order to assure a governable Union?

#### 4. THE ANALYTICAL FRAMEWORK

Let us pause a moment to reflect on what we actually mean by a number of key terms in this project. Insofar as this project revolves around an analysis of the integration at the core of Europe and the relationship between core and noncore, a first question regards what precisely is meant by “core”. Broadly speaking, by core we mean a group of like-minded member states committed to deepening functional integration amongst themselves. By doing so, a core group has the political leverage and material (e.g. financial, natural) resources to pave the way for processes of Europeanization affecting other member states’ preferences or, in some cases, spilling over into other policy areas. The core does not assume any particular geographic configuration, nor will such a geographic configuration be precisely the same across different policy areas, nor is it necessarily constituted via Treaty-based enhanced cooperation. Finally, the core need not be a sub-set of member states and could comprise the entire EU in a given policy area. In the case of security and defence, if Denmark proceeds in opting into CSDP, the core would be the EU as such and the noncore would amount to the non-EU NATO members. In some policy areas, the core may even go beyond the current membership of EU-28. Indeed it is difficult to imagine how an essential transport network in the EU could exclude Switzerland or the Western Balkans. We do assume, however, that beyond the core there will be other countries (current members, candidates and neighbours) that will remain at a lower level of integration. In other words, a core exists to the extent that there is also a noncore group of member states.

The criteria for membership of the core regard both agency and structure. As far as agency is concerned, of prime importance is the political will of particular member states to move towards deeper inte-

gration, agreeing on the content and sequencing of the moves therein. In particular, members of the core must be able to muster the internal political will, enjoy external legitimacy (vis-à-vis other EU member states) and possess the material/non-material resources to act as the engines of deeper integration. In the case of fiscal and monetary policy, the core clearly consists of members of the Eurozone and, eventually, “pre-in” member states who will comply with the rules of the Eurozone and choose to follow the steps towards a banking and fiscal union. Yet in other policy areas structural conditions, beyond the mere political will of member states to move forward, may be as, if not more, important in determining the membership of the core. A key area in this respect is energy policy, where energy economics and existing structural convergence and complementarities in member state energy networks, energy prices and energy mixes will prove pivotal in determining who will participate in the core and who will be left outside it.

Given the existence of core and noncore member states, a second concept requiring elaboration is that of differentiated integration. Differentiated integration is defined as a mode of integration that addresses the problem of heterogeneity in the EU.<sup>5</sup> In particular it assumes and accepts that not all member states will integrate in the same way and to the same degree, but rather that sub-sets of members may go further than others. Depending on the precise form of differentiated integration, different models of governance may emerge: different institutions and rules would be developed to govern European heterogeneity.<sup>6</sup>

Stubb identifies three main models of governance – multi-speed, variable geometry and à-la-carte – according to the three corresponding variables of time, space and matter.<sup>7</sup>

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<sup>5</sup> Alexander C.-G. Stubb, “A Categorization of Differentiated Integration”, in *Journal of Common Market Studies*, Vol. 34, No. 2 (June 1996), p. 283-295.

<sup>6</sup> Sandra Lavenex, “Concentric circles of flexible ‘European’ integration: A typology of EU external governance relations”, in *Comparative European Politics*, Vol. 9, No. 4-5 (September/December 2011), p. 372-393.

<sup>7</sup> Alexander C.-G. Stubb, “A Categorization of Differentiated Integration”, cit., p. 284.

**Table 1.** Categorization of Differentiated Integration (adapted from Stubb)

	<b>Multi-speed (Time)</b>	<b>Variable Geometry (Space)</b>	<b>À la Carte (Matter)</b>
<b>Definition</b>	<i>A core of MS are able and willing to go further, the underlying assumption being that others will follow</i>	<i>As differences within the integrative structure are unbridgeable, a permanent separation exists between a hard core and less developed integrative units</i>	<i>MS pick and choose, as from a menu, which policy area they would participate in, while subscribing to a minimum set of common objectives</i>
<b>Related model of integration</b>	Multiple speeds	Multiple levels	Multiple clusters
<b>Examples</b>	EMU and pre-in member states	Schengen agreements	United Kingdom with respect to EMU, Denmark with respect to defence

Adapting from Stubb and projecting the debate to post-crisis Europe, this project conceptualizes four ideal type governance models for the EU. Overall, these models differ from one another in terms of the structure of the core, the structure of the non-core and the relationship between the two. These models will be assessed according to their implications for EU performance in selected policy areas. Performance is assessed against the three criteria set out above: political unity, policy effectiveness and institutional governability.

Drawing from previous works by Tocci and Bechev<sup>8</sup> and Junge,<sup>9</sup> this project introduces four ideal types that describe non-uniform methods of European integration: *patchwork core*, *concentric circles*, *multiple clusters* and *hub-and-spoke*. The conceptual basis of these models is Stubb's categorization of integration strategies according to the criteria of space and matter.<sup>10</sup> Unlike Stubb, however, we contend that time is a less relevant criterion for the future EU: the multi-speed framework no longer seems to reflect integration trends. While it is true that in the short-term multiple speeds will continue to characterize the Union, moving to a medium- and long-term perspective, with pre-in member states eventually joining the "Eurozone", the future EU will likely see a deeply integrated core(s) with noncore member states choosing to remain per-

<sup>8</sup> Nathalie Tocci and Dimitar Bechev, "Will Turkey Find its Place in Post-Crisis Europe?", in *Global Turkey in Europe Policy Briefs*, No. 5 (December 2012), [http://www.iai.it/pdf/GTE/GTE\\_PB\\_05.pdf](http://www.iai.it/pdf/GTE/GTE_PB_05.pdf).

<sup>9</sup> Kerstin Junge, "Differentiated European Integration", in Michelle Cini (ed.), *European Union Politics*, 2nd ed., Oxford and New York, Oxford University Press, 2007, p. 391-404.

<sup>10</sup> Cf. section 1.

manently outside. Accordingly, the present and future challenge for the EU is not the multi-speed one of allowing transition periods or derogations, but rather that of finding permanent institutional solutions to adapt to and govern heterogeneity. The forces driving integration are thus divided into centripetal (member states willing to move forward towards a more deeply integrated core) and centrifugal (member states more comfortable with lower levels of integration, opting out of deeper forms of integration). These two forces do not necessarily prefigure a federal core and an intergovernmental noncore. A centripetal behaviour may well coexist with a “Union of states” vision, whereby the Union would move forward through greater coordination and an intergovernmental logic, whereas within the noncore supranational elements, via the role of the Commission and the European Parliament, would persist.

The **concentric circles** model is conceived to address the challenges arising from variable geometry. This model implies the existence of differences among integrating units separating a hard core moving towards deeper integration and a less integrated outer circle. In such a model the core would essentially boil down to the Eurozone, which would integrate into a quasi-federal structure through a banking and fiscal union. A heightened degree of unity in economic governance within such a core would then spill over into other policy areas. According to neo-functionalism, in fact, sectoral integration is inherently expansive and leads to further integration in related functional areas through a bottom-up logic.<sup>11</sup> In this vein, some have discussed the prospects for the Eurozone to integrate in the defence realm too.<sup>12</sup> The core would thus, slowly but surely, transform into a so-called “federation-lite”, which would be accompanied by an enhanced meaning of EU citizenship.<sup>13</sup> Institutional solutions and political action would accompany the move towards deeper policy integration in order to ensure that citizens of the core reconnected with “Europe”. A political union would be part and

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<sup>11</sup> For a critical appraisal of neo-functionalism, cf. Jeppe Tranholm-Mikkelsen, “Neo-functionalism: Obstinate or Obsolete? A Reappraisal in the Light of the New Dynamism of the EC”, in *Millennium - Journal of International Studies*, Vol. 20, No. 1 (March 1991), p. 1-22.

<sup>12</sup> Giorgio Daviddi, “Verso un’eurozona della difesa. Sviluppo delle flessibilità istituzionali nelle politiche europee di sicurezza e difesa”, in *Quaderni IAI*, No. 6 (December 2012), <http://www.iai.it/content.asp?langid=1&contentid=817>.

<sup>13</sup> Cf. Emma Bonino and Marco De Andreis, “Making the case for a ‘federation lite’”, in *ECFR Commentaries*, 3 May 2012, [http://ecfr.eu/content/entry/commentary\\_making\\_the\\_case\\_for\\_a\\_federation\\_lite](http://ecfr.eu/content/entry/commentary_making_the_case_for_a_federation_lite).

parcel of this quasi-federal core, restoring public trust in, and the legitimacy of, the integration project.

Noncore member states would continue to be bound to the EU by the single market and the existing *acquis communautaire*. Noncore member states would not be allowed to pick and choose which aspects of the *acquis* to comply with, but neither would they be called upon to follow the tighter federal rules of the core. They would be free to move into the core, provided they met the conditions, but could not cherry pick from the core and would have to choose to be either in or out of it. Noncore citizens would not need to be persuaded about the benefits of more Europe, because their member state would have chosen to do without it. The need to address the EU's political deficit would simply not be felt as starkly in this looser circle of EU members.

These two levels of EU membership would be reflected institutionally, with different sets of institutions for Eurozone and non-Eurozone members.<sup>14</sup> Institutional trends are already moving in this direction, with the EU-wide Ecofin Council coexisting with the Eurozone's Eurogroup. Through a new convention these trends could be crystallized and extended beyond the Council of Ministers, applying, *mutatis mutandis*, also to the European Parliament (and Commission?).

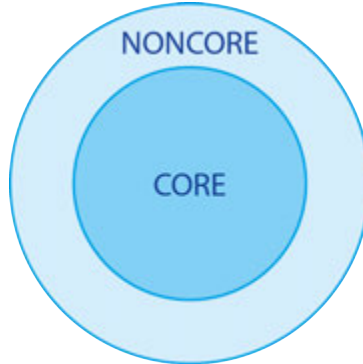
A concentric circle Europe would require careful institutional engineering. But such institutional solutions could conceivably result in a governable EU. The snag is twofold. First, there is the possibility that the classic spill over of integration from one policy area to another might not proceed smoothly. It is no foregone conclusion that a banking and fiscal union within the Eurozone would automatically mean that the Eurozone core would also integrate in other policy areas, from security and defence through to migration, energy, the environment and infrastructure. Second, and returning to our performance criteria, a single core with neatly delineated contours may not necessarily cater for an effective EU in policy terms. A Eurozone of defence, for instance, would essentially see the inclusion of only one member state with effective defence capabilities – France – and the exclusion of others – the United Kingdom but also Turkey or Norway – that could have much to offer in this respect. A Eurozone of defence would also stand at loggerheads with

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<sup>14</sup>Kemal Derviř, "David Cameron's European Spaghetti Bowl", in *Project Syndicate*, 4 February 2013, <http://www.project-syndicate.org/commentary/institutional-alternatives-to-full-european-integration-by-kemal-dervi>.

existing trends in intra-European defence cooperation, notably between the United Kingdom and France.

**Figure 1.** Concentric Circle Europe

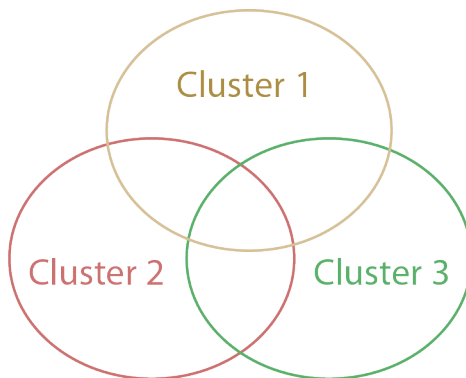


This brings us to a second ideal type model: a Europe of **multiple clusters**. A multiple cluster EU admits the emergence of different cores of integration, which result from member states' willingness to be more active and integrated in some policy areas than in others. This approach originates in the progressive institutional changes brought forth by the waves of Treaty reform; and, in particular, with the introduction of enhanced cooperation (Treaty of Nice), that allows a group of member states to cooperate more closely by developing partnerships that go beyond the minimum common denominator. The flexibility mechanisms introduced with enhanced cooperation are not bound conceptually to the existence of a single core. Accordingly, towards the end of the 1990s, the multiple clusters model started making headway in European debates, due to the growing awareness that the EU's variable geometry resembled more a set of Olympic rings than concentric circles. Therefore, this second model of governance depicts an EU marked by multiple, at times overlapping, clusters (e.g. the Eurozone, the Schengen area, and eventually a foreign policy core). Member states would be free to select which cores they would participate in and in which policy areas they would commit only to a lower level of integration.

This model sounds attractive as regards our two performance criteria of a united and effective Europe. However, unless the area of overlap of all cores is substantial – entailing only exceptional opt-outs or opt-ins – it is likely to perform poorly as far as our third performance criterion is con-

cerned: that of a governable EU. Accommodating institutionally a two-tier EU would be challenging but probably feasible. Accommodating multiple and partially overlapping cores (and noncores) would probably defy the most ingenious institutional architect. And even assuming such an institutional formula could be found, it would probably be so complex that European citizens crying out for greater institutional simplicity, transparency and accountability would watch in dismay and disbelief. The end result could well be so messy that the overall governability and legitimacy of the Union would be at stake. Hence, whereas the multiple clusters could cater for united cores and effective policies, they are unlikely to lead to a governable EU, nor a Union that can be readily understood and thus appreciated by its citizens. Whereas democratic institutional mechanisms could be imagined within each cluster, the EU as a whole would probably appear to be as complex (and despised) as ever in the eyes of its citizens.

**Figure 2.** Multiple Cluster Europe



The first two models are centripetal in nature: they assume that one or more cores would move towards deeper integration whereas noncore members would remain at the existing level of integration. A third governance model – **a hub-and-spoke EU** – is centrifugal in that it admits the possibility, not foreseen in other scenarios, of disintegration, with some member states opting out of specific policy areas. It also entails inbuilt incentives for hit-and-run approaches, entering a particular policy core up until when the member state in question is a net recipient and leaving it when it becomes a net contributor. The idea of a hub-and-spoke EU is not new. Its precedents lie in the UK, Danish and Swedish opt-outs from EMU or the Danish opt-out from defence. At the current juncture, the



notion of a hub-and-spoke *à la carte* EU has taken a new – centrifugal – meaning in light of British Prime Minister David Cameron’s talk about a renegotiation of British membership of the EU, with the possibility of “repatriating” some competences back to London. In others words, the question is not simply one of opting out of deeper integration, but actually taking a step back towards looser integration. In this model, integration would thus move forward thanks to the persistence of an integrated core. This core would be united, governable and would succeed in re-legitimizing itself vis-à-vis its citizens. Core EU would then interface on a bilateral basis with a flexible set of associate members (the periphery, or noncore), with the latter singling out the policy areas they would be willing to buy into. Even more so than in the concentric circle model, the EU’s democratic legitimacy would be a non-issue for non-core citizens given that associate members would have “repatriated” all the competences they desire back to the national level.

The British question poses starkly the problem of how the Union can manage the risks of “divorce” while maximizing the opportunities for unity, effectiveness and governability. Given that in 2015 the United Kingdom might hold a referendum on EU membership, is there an alternative formula which could be elaborated compatibly with the goals of a more united, effective and governable EU, which would avoid a wholesale British exit from the Union? As noted above, the British case is unlikely to be emulated by other current members of the EU. However, dwelling on this question may offer interesting opportunities for the EU to seek new channels to exert influence over enlargement countries and countries within the remit of the European Neighbourhood Policy. Indeed the real danger – not unknown to the EU – is that of a Union mired in its internal wrangling for the best part of the next decade, oblivious to its steadily waning influence beyond its borders. The risk is that by the time the EU will have lifted its gaze from its internal crisis, it will have missed the chance to become a true 21st century power in the world. Seen in this light, the British question and the hub-and-spoke model it evokes could be transformed from a spectre of disintegration into an opportunity to devise forms of membership and association that could allow the EU to anchor a wide set of members, candidates and neighbours in the broader European space. The (re)emerging proposals about “virtual membership”<sup>15</sup> with respect to

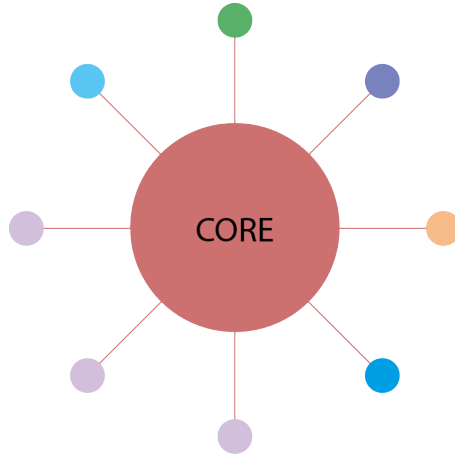
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<sup>15</sup> Sinan Ülgen, “Avoiding a Divorce. A Virtual EU Membership for Turkey”, in *The Carnegie Papers*, December 2012, <http://carnegieendowment.org/2012/12/05/avoi->



Turkey and “associate membership”<sup>16</sup> with respect to the UK, Turkey and the Ukraine are a refreshing contribution to this debate.

**Figure 3.** Hub and Spoke Europe



A final model, which could be either centripetal or centrifugal in nature, is that of a **patchwork core**. In this scenario, the core would remain the EU as such, which already amounts to the single market. With the exception of the United Kingdom, which would leave the EU and possibly negotiate forms of association with the single market, the Eurozone would gradually expand to include Lithuania today, Poland tomorrow and overtime the remaining non-Eurozone EU members. Likewise the Schengen area would gradually expand to include all member states (with the exception of the UK), and CSDP would do likewise with Denmark reconsidering its opt-out.

But within this all-encompassing core, both across different policy areas and within them, subgroups of member states would press for deeper cooperation and integration. In the case of energy, for example, one could imagine autonomous regional clusters of functional integration, whereby groups of member states would unite to find joint solutions to shared problems. In the area of defence, we could also foresee functional clusters uniting over specific questions related to strategy, operations, capabilities or industry.

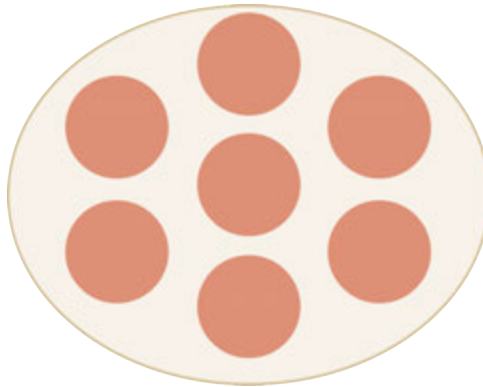
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ding-divorce-virtual-eu-membership-for-turkey/eqcm.

<sup>16</sup> Cf. Andrew Duff, *On Governing Europe*, London, Policy Network, September 2012, <http://www.policy-network.net/publications/4257/On-Governing-Europe>.

These sub-groups could end up being leaders in driving integration in the EU: their actions could be centripetal in triggering convergence within the Union, or they could remain autonomous and self-contained and perhaps even be centrifugal in nature. Such cooperation could be limited by taking the form of diplomatic alliances to push integration in particular directions, or it could give rise to internal institutional heterogeneity.

**Figure 4.** Patchwork Core Europe



Summarizing the argument so far, Table 2 below outlines the three ideal type governance models of the future EU.

**Table 2.** Models of Future EU Governance and Logics of Integration

Model	Logic of integration
<b>Concentric circles</b>	<i>Variable: geographic space</i> <i>Structure: single core</i> <i>Force: centripetal</i>
<b>Multiple clusters</b>	<i>Variable: matter</i> <i>Structure: multiple cores</i> <i>Force: centripetal</i>
<b>Hub and Spoke</b>	<i>Variable: space and matter</i> <i>Structure: single core</i> <i>Force: centrifugal</i>
<b>Patchwork Core</b>	<i>Variable: space and matter</i> <i>Structure: single heterogeneous core</i> <i>Force: centrifugal or centripetal</i>

The four models of EU governance presented here represent ideal types derived from an observation of existing trends coupled with reflections on the three performance criteria guiding this project: the

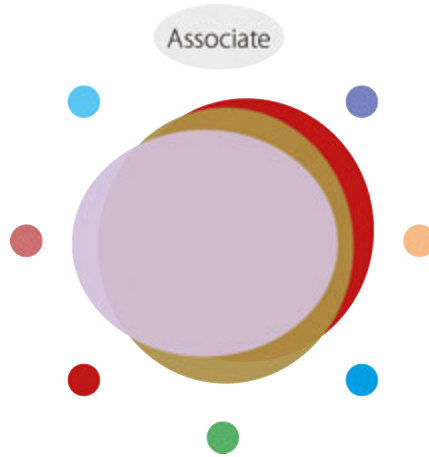
unity, effectiveness and governability of the EU. Throughout the empirical analysis, the models are also expected to unravel the puzzle of the EU's democratic accountability. Does a model's ability to deliver "outputs" suffice to make it closer to its citizens? Or is this no longer sufficient and new forms of input legitimacy are now indispensable?

As ideal types, we do not expect any one of these models either to perfectly apply to tomorrow's EU or to reflect what an ideal Union might look like. On the contrary, we expect to find elements in all four models being both applicable to emerging realities and desirable. The task at hand is thus that of imagining what mix between them might cater best for a more united, effective, governable, as well as legitimate EU.

Stemming from our baseline assumptions that a more united EU would improve the effectiveness of its policies provided the resulting institutional framework is governable, and that a more united, effective and governable EU would restore its input and output legitimacy, we proceed by positing three hypotheses to be validated in the ensuing empirical research:

- A concentric circle Europe or a multiple cluster EU with a substantial area of overlapping cores is the starting point to ensuring a united, governable as well as legitimate EU, but alone it cannot cater for an effective EU in policy terms.
- Neither a patchwork core nor a multiple cluster EU is likely to be governable or legitimate in the eyes of its citizens, but an element of fuzziness in both geographic space and policy matter must be accommodated institutionally in order to cater for effective EU policies.
- A concentric circle EU with fuzzy edges (or a multiple cluster EU with a substantial area of overlapping cores) will not be able to accommodate all current and future members. Forms of virtual or associate membership will need to be devised in order to for the EU to be effective and exert influence in the broader European space.

**Figure 5.** Working Hypothesis



These three hypotheses will be tested in five policy areas, selected on the basis of their contribution to a more united (and legitimate), effective and governable Union. The five policy areas are:

- fiscal and monetary policy;
- transport, communications and infrastructure;
- energy and environment;
- security and defence;
- migration and movement of people.

The project would then move from empirical policy studies to a synthesis elaborating what optimal internal organization of the core and institutionalized relationship with the noncore may lead to a more united, effective and governable EU as a whole. The five contributions may follow separate methodological approaches, provided that they meet four analytical targets: (1) assess the membership and degree of integration of the core; (2) assess the relationship between the core and noncore group of member states; (3) reflect upon which model of governance (or elements therein) the policy area could and should approximate; and (4) propose policy and institutional innovations to maximise the EU's performance in the given policy area, basing the assessment on the three criteria of political unity, policy effectiveness and institutional governability.

Once this analysis will be concluded at the sectoral level, we will proceed with a synthesis that will advance a proposal for the EU's

future governance as a whole. Our aim in pursuing this exercise, as the EU moves towards elections of the European Parliament, followed by a renewal of the EU's institutional leadership and ultimately – and hopefully – a new convention, is to feed a much needed public debate to imagine what kind of Union can ensure European resilience in a 21st century multipolar world and contribute to a peaceful transition towards such new world order.



## 2.

# European Fiscal and Monetary Policy: A Chicken and Egg Dilemma

*Michael Emerson and Alessandro Giovannini*

### 1. INTRODUCTION

At the outset of this project,<sup>1</sup> we were asked to test a number of hypotheses by way of mapping models for the EU, for example core and concentric circles, or multiple clusters, or forms of associated membership to complement the core. The purpose of reviewing these hypothetical options would be to try to identify systemic improvements that would enhance both the unity and policy effectiveness of the EU in a number of sectors – including the fiscal and monetary policy domain discussed in this paper.

The governance of the EU's economy is already divided between the plenary EU of 28 and the Eurozone of 17. However official doctrine at the EU level has a clear answer to the mapping question: after recovering from the sovereign debt crisis of the last few years, the Eurozone's membership should gradually expand towards the frontiers of the EU. While the new member states have accepted the obligation to join the Eurozone, there may still remain some dissident opt-outs for a long time, and maybe indefinitely. Moreover, this official view is an inadequate representation of what both economic theory and empirical evidence has to say.

At the heart of the question lies the theory of the Optimal Currency Area<sup>2</sup> (OCA). Beyond having a single sound central banking structure, the OCA has to have adjustment mechanisms to deal with asymmetric shocks

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<sup>1</sup> As outlined by Nathalie Tocci and Giovanni Faleg in chapter 1.

<sup>2</sup> See Robert A. Mundell, "A Theory of Optimum Currency Areas", in *The American Economic Review*, Vol. 51, No. 4 (September 1961), p. 657-665, <http://www.aeaweb.org/aer/top20/51.4.657-665.pdf>; Richard Baldwin and Charles Wyplosz, *The Economics of European Integration*, New York, McGraw Hill, 2004.

and to compensate for the loss of exchange rate flexibility. The American literature on this point highlights the possibility for labour market flexibility to allow significant migratory movements from competitive regions to uncompetitive ones, while of course the European reality on this account is much more constrained by factors of language and national culture. A further adjustment mechanism comes from the theory of fiscal federalism, according to which a substantial federal fiscal capacity allows for both union-level macroeconomic stabilisation and significant inter-regional financial redistribution that automatically evens out the impact of region-specific economic shocks. On this account also the European reality is weak in the absence of a central budget of macroeconomic significance.

For these reasons economists tend to agree that it is not surprising that European monetary integration has had a bumpy history. There was the first failed experiment of the 1970s, starting in 1972 when all the member states of the enlarging EC joined in the “snake” mechanism for fixed but adjustable exchange rates. The frontiers of this monetary area rapidly contracted under the impact of dollar and oil market shocks, with the UK withdrawing after only two months of failing central bank intervention, followed by a cascade of withdrawals, leaving in 1974 only a rump DM zone of Germany and the Benelux as the minimalist European monetary area. The reconstruction effort resumed in 1979 with the European Monetary System, and the subsequent move towards monetary union prompted by the completion of the single market. Here the complete liberalisation of capital movements necessitated strong monetary union structures, with a central bank and a single currency. While the central monetary mechanism was established, albeit with inadequacies on the banking supervisory front, the other elements of the optimal currency area remained conspicuously lacking, with limited labour market flexibility and no central budget of macroeconomic significance. The Eurozone crisis of the last few years has thus been another painful experience in terms of testing the frontiers of the optimal (or at least sustainable) European monetary area. While the euro was successfully defended against collapse, the depth of the resulting economic, social and political tensions in much of southern Europe has reignited debate on the optimal frontiers of the European Monetary Union (EMU), with various voices arguing for either a new northern hard monetary union, or for withdrawal from the euro by some southern states. This re-mapping of the Eurozone has not happened. While the European Central Bank has been ready to do “what it takes” to save the system, and the peripheral countries have undertaken their macro adjustment pro-



grammes, the challenges of making good the systemic inadequacies of the Eurozone system remain a work in progress, with nothing like a convincingly strengthened system yet in sight.

Against this sobering background this paper proceeds as follows. The next section summarises the current economic performance of the EU and various groupings of member states in the wake of the global financial crisis of 2008 and the subsequent crisis of the Eurozone. The story has been one of both recession at the overall macroeconomic level, and increased divergences on most measures between member states, between north and south in particular.

The third section reviews the cascade of complex macroeconomic policy arrangements adopted at EU or Eurozone levels to try to constrain national fiscal policies within bounds considered necessary for the sustainability of the monetary union. These various “pacts” and “packs” and treaty provisions amount to an evolutionary search for some new compromise between national and European-level powers over national budgets. The aim is to have a *sui generis* European regime for macroeconomic regulation in the absence of a large “federal” budget. The jury is still out on whether this will work effectively, in terms of either its economics or its politics. These arrangements reveal some fuzzy mapping frontiers between what applies to the EU as a whole versus only the Eurozone.

The fourth section summarises developments in the field of financial market regulatory policies, which responded quite impressively in the first stage of the crisis. However this broad field had become ever more complex as the need for a banking union has become apparent, leading now to major systemic developments in European-level regulation, supervision and resolution. Negotiations in this area are still ongoing, but there is at least consensus on the need for systemic change. Whether this is just a necessary, but insufficient step for securing the sustainability of the Eurozone is another question which the paper goes on to address.

In the fifth and sixth sections the remaining systemic weaknesses of the Eurozone are discussed, namely the absence of adequate fiscal powers for public borrowing (“Eurobonds”) and for absorbing region-specific economic shocks, and the problem of labour market adjustments. However, for both Eurobonds and region-specific shock absorbers there are a plethora of ideas in circulation. The increasingly important role of the European Central Bank is assessed in the seventh section, with critical comments on the obsolete arrangements for the representation of the Eurozone in various international institutions.

The final section draws conclusions. On the one hand, the pressure brought to bear by the financial markets to develop strong policy responses to the crisis has led to advances in European institutional integration in some economic and monetary areas up to levels hardly conceivable before the crisis. On the other hand, these developments still seem to fall far short of what would be necessary to ensure the long-term economic and political sustainability of the monetary union. The shortfall in sufficient fiscal federalism and the perceived weakness in the political legitimacy of the EU reveal a “chicken and egg” type of dilemma. A sound Eurozone for the future will require more quasi-federal powers, but these developments would have to be based on support from the European demos, which today is lacking, or at least on greatly improved trust between north and south over responsible policies on both sides. For this political legitimacy to be built up there would have to be good results delivered by the EU and the Eurozone, but for this the systemic advances seem necessary prerequisites.

## 2. MACROECONOMIC RECESSION AND DIVERGENCE

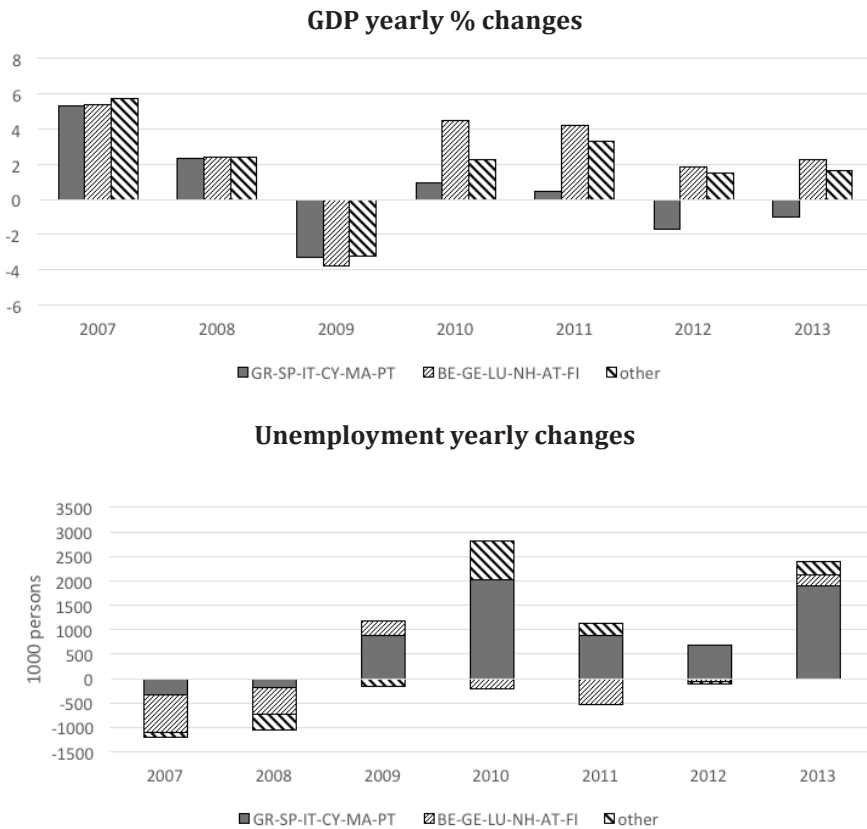
While the introduction of the euro led, as expected, to a more or less common rate of inflation, which suggested at first a well-functioning convergence process, the outbreak of the crisis has shown the deep divergences that still exist, at both Eurozone and EU levels, in economic performance and policies.

The global financial crisis triggered in 2008 by the collapse of Lehman Brothers was not the cause of the crisis that followed in the Eurozone, but only its detonator. While the severity of the crisis in the Eurozone has different roots and possible interpretations, it is undeniably linked to the progressive divergence in competitiveness among Eurozone countries. Much of northern Europe has recovered from the recession to the extent of moderate gains in GDP, albeit with the recovery still now fragile. By contrast, the south of Europe has remained in recession, such that these countries as a group have registered five years of non-stop recession or stagnation. The consequences for the labour market have been dramatic, with huge increases in unemployment in the south, alongside approximate stability in the north (see Figure 1).

Similarly, there has been a story of massive and sustained divergence in the current accounts of the balance of payments. The north has been in substantial surplus, with the German surplus now exceeding the 6% of GDP threshold for triggering the Macroeconomic Imbalance Procedure

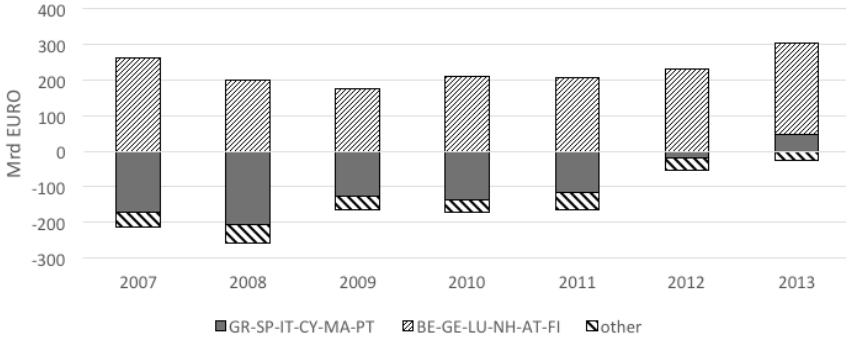
(MIP – see further below). This procedure puts the political spotlight on the German surplus, as at least requiring a balancing gesture in relation to the pressures that bear upon the sovereign debtors in difficulty, but it is not evident what policy implications could follow from the “in-depth” study now in progress.<sup>3</sup> The south has avoided large deficits, but this has mainly been due to the drop in domestic demand.

**Figure 1.** GDP, unemployment, current account balances, 2007-2013



<sup>3</sup> Daniel Gros and Matthias Busse, “The Macroeconomic Imbalance Procedure and Germany: When is a current account surplus an ‘imbalance’?”, in *CEPS Policy Briefs*, No. 301 (13 November 2013), <http://www.ceps.be/node/8593>. The authors point out that Germany cannot determine monetary policy, and that if it chooses fiscal expansion it will find itself breaching EU fiscal rules whose rigorous implementation it is the first to advocate. The introduction of a high minimum wage would be the surest way to boost demand in the short run, but is hardly a recommendable long-run solution.

### Current account balances



Source: European Commission, 2012.

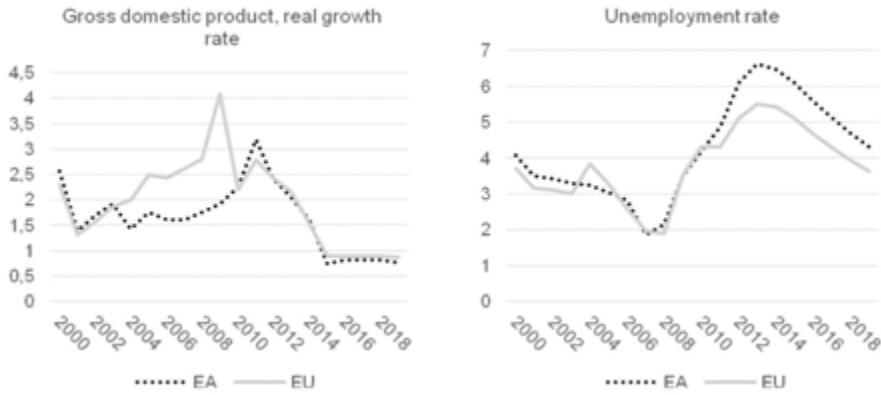
Divergences in performance are measured more systematically in Figures 2 and 3, with standard deviations of results for EU and Eurozone countries. It is to be noted that these figures extend from 1990 to 2018, with the long forecast or projected data between now and 2020 based on International Monetary Fund (IMF) estimates.<sup>4</sup> Given the extent of the unknowns for such a long forecast period, the estimates have to be viewed as having a considerable normative content.

Regarding the fiscal indicators the spectacular increase in divergences of the 2000s is now giving way to a sharp reversal in the divergence of deficit levels, due to the severe austerity policies introduced almost everywhere, whether autonomously or under the conditions of assistance programmes. The same can be said of economic growth levels: despite moderate real GDP growth, the IMF estimates that these are relatively similar between the different European countries.

However, these flow indicators (i.e. the fiscal deficit and real GDP growth) can adjust much faster than the “stock” indicators (i.e. the levels of public debt and unemployment). The latter will require a long time to be fully absorbed, and will therefore continue to make the situation considerably different across European countries, possibly creating conflicts in the definition of economic policy objectives at the European level.

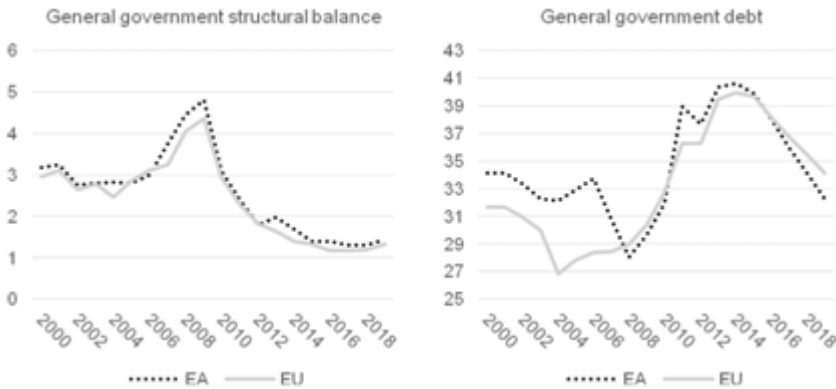
<sup>4</sup> IMF, *World Economic Outlook*, October 2013, <http://www.imf.org/external/pubs/cat/longres.aspx?sk=40432.0>.

**Figure 2.** European convergence in macroeconomic indicators (standard deviations)



Source: IMF, 2013.

**Figure 3.** European convergence in fiscal indicators (standard deviations)



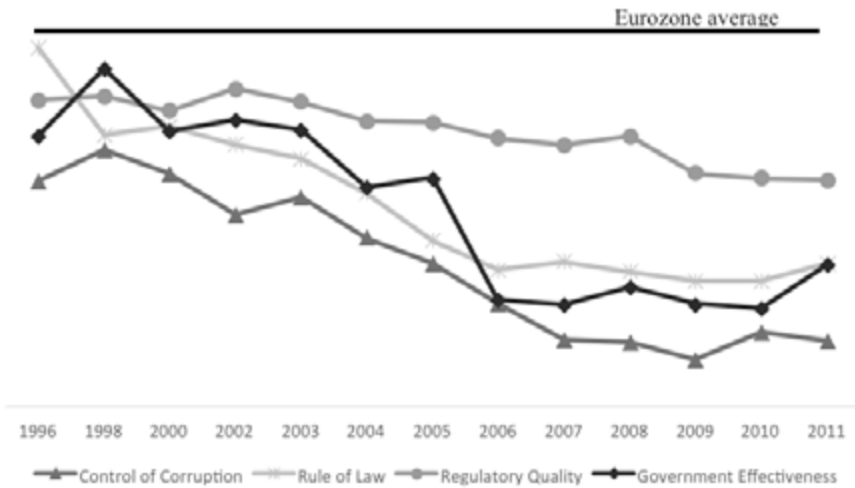
Source: IMF, 2013.

Going deeper into the causes of divergent economic performance, one can look also at various indicators of the quality of economic governance. The *Worldwide Governance Indicators* (WGI) published by the World Bank<sup>5</sup> measure the quality of governance on several scores (see Figure 4). The main story emerging from this data is that the four

<sup>5</sup> World Bank, *Worldwide Governance Indicators* (WGI), 2012, <http://www.govindicators.org>.

southern member states experiencing sovereign debt crises (Greece, Italy, Portugal, Spain) utterly failed, albeit to different degrees, in the run-up to the introduction of the euro and in its early years to improve their governance systems and to keep their financial regulatory systems under control. In fact, their performance worsened, and only stabilised from 2008 onwards after the onset of the financial crisis.

**Figure 4.** Governance indicators for the average of Greece, Italy, Portugal and Spain relative to the Eurozone average



Source: authors' elaboration from World Bank, 2012.

As we shall see below, systemic defects or inadequacies in the policy mechanisms of the Eurozone have been important, and play their part in explaining the disappointing and divergent economic performance of the Eurozone during the recent years of recession. How far the defects in the Eurozone system have influenced the quality of national economic governance is difficult to determine. However, it can be argued that the early years of the Eurozone created illusions of easy economic gains, starting from the reduction of interest rates for government borrowing, and continuing on with the supposition that current account imbalances “no longer matter” in a monetary union as compared to national currency regimes. This may be part of the reason why there has been no

real convergence in governance quality so far.<sup>6</sup> The illusions of the early euro years may now have been largely shattered, and there has certainly been a considerable amount of labour market adjustment of wages and employment conditions in response to recession. However the political processes of adopting reform measures remain very tough.

### 3. MACROECONOMIC POLICY REGIME DEVELOPMENT DURING THE CRISIS

Before the crisis the cornerstone of the EU's macroeconomic architecture was the **Stability and Growth Pact (SGP)**. This originated in the Maastricht Treaty and was carried into the Lisbon Treaty in Articles 121 and 126 TFEU, supplemented by Protocol 12, which defines the two key reference values of 3% of GDP budget deficit and 60% of public debt, beyond which the "excessive deficit procedure" is triggered. Article 126 TFEU sets out how the Commission and Council should work together in handling cases of excessive deficit or debt, with the ultimate possibility of penalising non-complying member states with a requirement to make non-interest bearing deposits with the EU, or through the imposition of fines. These provisions are basic EU law, applicable to all member states.

Nevertheless, already before the crisis it was generally recognised that the SGP was not proving effective, with recurrent unwillingness of member states to keep in line with its norms and recommendations, and of the Council to impose any of the financial sanctions provided for.

For this reason, several sets of measures have been incrementally added in the past three years in an attempt to reinforce the effectiveness of the SGP, with a presumption that at least Eurozone member states should accept more strictly binding commitments and procedures.<sup>7</sup>

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<sup>6</sup> See Alessandro Giovannini, *The Impact of the Euro on Foreign Investors' Decisions*, mimeo 2013, for an empirical assessment of the relationship between governance indicators, the euro and private financial flows in the Eurozone.

<sup>7</sup> For a more complete account of the different elements of the system summarised here, see European Commission, *Six-pack? Two-pack? Fiscal compact? A short guide to the new EU fiscal governance*, 14 March 2012, [http://ec.europa.eu/economy\\_finance/articles/governance/2012-03-14\\_six\\_pack\\_en.htm](http://ec.europa.eu/economy_finance/articles/governance/2012-03-14_six_pack_en.htm).

The **European Semester**<sup>8</sup> was developed in 2010 and has been operational since the first half of 2011. It is a mechanism for *ex ante* coordination of national economic policies. Each year, the economic policies of member states are analysed and assessed together by the Commission, which also sets specific recommendations for the following 12 to 18 months. The European Semester applies to all member states.

The **Euro+ Pact**<sup>9</sup> was signed by 23 member states (Eurozone states plus Bulgaria, Denmark, Latvia, Lithuania, Poland and Romania) in March 2011. This commits those member states to highly detailed structural measures to improve competitiveness, employment, the sustainability of public finances and financial stability, along with a debate over tax systems. It is integrated into the European Semester, and its implementation measures are supervised by the Commission, although non-compliance does not lead to sanctions.

The **Six-Pack** is made up of five regulations and one directive. It entered into force in December 2011, and applies to all member states, running in parallel with the TSGC (see below). It strengthens the SGP in the following ways: i) it introduces the reverse qualified majority voting procedure in the case of a decision to impose financial sanctions of up to 0.5% of GDP on a Eurozone state that does not comply with its obligations;<sup>10</sup> ii) it makes the debt criterion of the SGP more operational, requiring members states whose public debt level exceeds 60% to enter into a quantified path for returning to compliance; and iii) it sets new “expenditure benchmarks” to guide member states towards their medium-term budgetary objective (MTO), placing a cap on the annual growth of public expenditure according to a medium-term rate of economic growth. The Six-Pack is designed also to reduce macro-economic imbalances of the EU members states, creating a system of macroeconomic surveillance under a new **Macroeconomic Imbalance Procedure (MIP)** which is intended to give advance warning of imbalances, including impending excessive macroeconomic deficits.

The **Treaty on Stability, Coordination and Governance (TSCG)** was signed by 25 member states (all except the UK and the Czech Republic),

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<sup>8</sup> Council of the European Union, “The European Semester”, in *Special Reports*, 15 March 2013, <http://www.consilium.europa.eu/special-reports/european-semester>.

<sup>9</sup> See European Commission, *Six-pack? Two-pack? Fiscal compact?*, cit.

<sup>10</sup> The reverse majority procedure means that a qualified majority of member states is required to block a decision proposed by the Commission, rather than to authorise it.



and entered into force in January 2013. The TSCG is binding on all Eurozone member states, while other member states are bound only if they wish to be (possibly just on selected provisions), or will be once they adopt the euro. The cornerstone of this Treaty is the fiscal section, usually referred to as the **Fiscal Compact**, that fixes more precise rules and implementing procedures than those contained in the SGP, as follows: i) it requires signatory states to implement a balanced budget rule in their national legislation through permanent, binding provisions (preferably constitutional laws) by the end of 2013; ii) it limits annual structural government deficit to not more than 0.5% of GDP; iii) it extends to all signatory states the commitment made by Eurozone states to adopt Council recommendations and decisions under the excessive deficit procedure by means of the reverse qualified majority voting rule; and iv) it requires signatory states to design in advance restrictive fiscal measures to be automatically implemented in the event of a significant deviation from the agreed budget target. It foresees **Eurozone Summit meetings** of heads of state or government at least twice a year. It is an intergovernmental treaty which is not integrated into EU law, although member states have committed themselves to transfer its substance into the EU legal framework within five years.

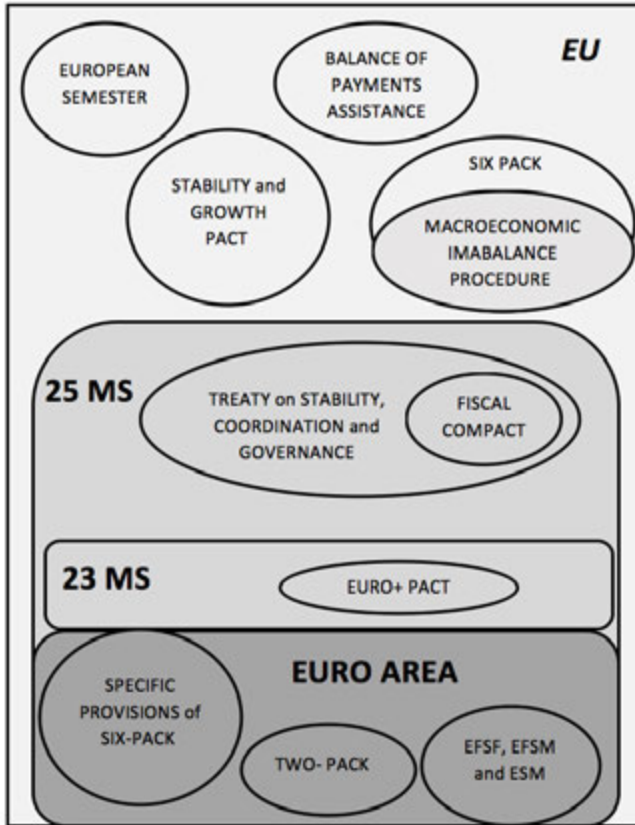
The **Two-Pack**, applicable only to Eurozone member states, strengthens the legal basis and specific provisions of the European Semester as from the 2014 cycle of budgetary procedures. It requires draft national budgets to be submitted by 15 October, and after assessment allows for the Commission to request changes to be made to bring them into compliance with established norms. It also provides for the recognition of the special needs of Eurozone member states under severe financial pressure.

The whole set of procedures is supported by several **Macro Financial Assistance Facilities**: the temporary **European Financial Stability Facility (EFSF)**, established in 2010, and the permanent **European Stability Mechanism (ESM)**, operational since 2012, represent the two stabilization mechanisms of the Eurozone. In addition, there are two other assistance instruments: the **European Financial Stabilization Mechanism (EFSM)** for Eurozone states, and **Balance of Payment Assistance (BoP)** for non-Eurozone states.<sup>11</sup>

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<sup>11</sup> For a clear description of the functioning of these instruments, see Alessandra Casale et al., "The Use of EU Instruments for Macro-Financial Stability: Implications for

**Figure 5.** The emerging system of European economic governance



Source: authors' elaboration.

As emerges from this short overview, and as simplified in Figure 5, the European system of economic governance has evolved with layer upon layer of initiatives in recent years. These initiatives have a highly complicated variable geometry, involving either all the EU, or just the Eurozone, or the Eurozone + “pre-ins”, with most legislation adopted within the EU’s legal framework, but with some intergovernmental elements at least temporarily outside it.

Returning now to the initial question about the mapping of the system, the mushrooming of rules and procedures provoked by the

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the EU and National Budgets”, in *CEPS Special Reports*, No. 64 (September 2012), <http://www.ceps.be/node/7257>.

Eurozone crisis has not led to a normative divide between the Eurozone and the rest of the EU. The substantive economic norms are basically a single standard, and the main difference is that the Eurozone states, and up to a point the “pre-in” states also, are committing themselves to stricter implementation, but even that has not yet been decisively tested in practice. The onerous level of detail in the commitments being made in some of these procedures, and the prospect of sanctions in the event of non-compliance, is causing unease in many governments, and feeding controversy in public opinion.

#### 4. FINANCIAL MARKET SUPERVISION AND BANKING UNION

Following the outbreak of the financial crisis in 2007-2008, the institutions of the EU have initiated a deep process of regulatory reform to strengthen the existing system of monitoring and supervision. The crisis brought to light serious shortcomings in the existing framework of European financial market supervision. The main problem lay in the fragmentation at the national level of competences related to supervisory tasks, despite the strong financial interdependence due to large cross-border financial operations, which in turn led in the crisis to contagion effects between member states.

In January 2011, following publication of the Larosière report, the system of supervision was completely redesigned, replacing the former supervisory committees and building a new financial supervisory architecture based on two pillars.

First, **macro prudential supervision**: the **European Systemic Risk Board (ESRB)** was created to monitor risks to the stability of the European financial system as a whole. It is designed to warn in advance of systemic risks that might appear, and to elaborate recommendations, which however do not bind member states. The ESRB is strongly connected to the European System of Central Banks and, most of all, to the ECB, which provides logistical and administrative support staff.

Second, **micro prudential supervision**: this is based on three new European supervisory authorities: i) the **European Banking Authority (EBA)** based in London; ii) the **European Insurance and Occupational Pensions (EIOPA)** based in Frankfurt; and iii) the **European Securities and Markets Authority (ESMA)** based in Paris, which supervises credit rating agencies, and can ban products that might undermine the stability of the overall financial system in emergency situations. All together, with

the network of national financial supervisors, these agencies constitute the **European System of Financial Supervision (ESFS)**. National supervisors are represented in all three agencies in order to ensure consistency in national supervision, to strengthen oversight of cross-border groups, and to establish a **European Single Rulebook** applicable to all financial institutions.

This new architecture, nevertheless, is set to change, following the decisions taken at the European Council and Eurozone summit at the end of June 2012 to establish a **banking union**. After the publication of the SSM legislation in the Official Journal on 29 October 2013,<sup>12</sup> the first block of this project has been formally established, with the creation of the **Single Supervisory Mechanism (SSM)**, led by the ECB.

The SSM is intended for all Eurozone states, but is also potentially open to other member states willing to be integrated in the system through close cooperation between their competent authorities and the ECB. The ECB will be the key institution within the SSM, of which the national authorities are also part. Within the SSM, the ECB will be responsible for ensuring the consistent application of the Single Rulebook, and will directly supervise banks with assets of more than EUR 30 billion, or which constitute at least 20% of their home country's GDP, or which have requested or received direct public financial assistance from the ESM. The other financial institutions will be monitored, as nowadays, by national supervisors, which however will in turn be supervised by the ECB. The ECB could also decide to supervise directly minor banks in cases in which the consistent application of high supervisory standards is necessary. Where the national competent authorities and the ECB Governing Council disagree on particular issues, the SSM governance structure foresees the establishment of a mediation panel.

The EBA will continue to develop the European Single Rulebook applicable to all member states and to carry out regular stress-tests, but its functioning will be adapted and reinforced. To safeguard non-Eurozone member states, EBA decisions on mediation and on technical standards will need a double majority, i.e. a majority of the member states participating in the SSM and of the non-participating member states. The Single

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<sup>12</sup> *Council Regulation (EU) No 1024/2013 of 15 October 2013*, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32013R1024>; *Regulation (EU) No 1022/2013 of the European Parliament and of the Council of 22 October 2013*, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32013R1022>.

Rulebook will represent the key tool for ensuring the sound functioning of the EU's internal market in financial services, and most of all will provide the common ground on which the banking union proposals can be built without fragmenting that market. However, tensions have emerged over the role of the committee of national regulators, which the chairman of the EBA considers unwieldy and to impair the capacity of the system to respond promptly in crisis conditions.<sup>13</sup>

The Single Rulebook will be built up alongside the implementation in the coming years of the **Capital Requirements Regulation (CRR)** and the **Capital Requirements Directive (CRD IV)**, adopted by the EU Council in June 2013,<sup>14</sup> which represent the EU's application of the Basel III reforms agreed at G20 level. The adoption of the two acts creates for the first time a single set of harmonised prudential rules with which all EU banks must comply, thereby ensuring the uniform application of Basel III. In the previous set-up there was a large number of national options and discretionary provisions, limiting the effective functioning of the internal market.

As regards the application of the CRR and the CRD IV, the EBA will play a crucial role in coordinating a Single Rulebook Q&A process and providing practical guidelines to promote common supervisory approaches and practices.<sup>15</sup> The EBA will also have, over the coming years, to develop a single supervisory handbook, in order to avoid divergences between the supervisory practices of the SSM and the rest of the EU. Discrepancies could translate into incentives for European banks to exploit regulatory arbitrage advantages, thus fragmenting the single market.

Other than the SSM, the only semi-institution already set up is the **European Stability Mechanism (ESM)**. At present the ESM can recapitalise banks only indirectly, i.e. by providing a loan to the government of the Eurozone country in question, which can then use that loan to recapitalise its banks (as in the case of ESM assistance to Spain). But this

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<sup>13</sup> Patrick Jenkins and Sam Fleming, "Euro bank watchdog attacks unwieldy governance", in *The Financial Times*, 17 November 2103, <http://www.ft.com/cms/s/0/a732237c-4f8e-11e3-b06e-00144feabdc0.html>.

<sup>14</sup> The CRD IV package which transposes - via a regulation and a directive - the new global standards on bank capital (commonly known as the Basel III agreement) into the EU legal framework, entered into force on 17 July 2013.

<sup>15</sup> Article 29 of *Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010*, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32010R1093>.

adds to the beneficiary country's budget deficit and public debt (i.e. reinforcing the link between that country's public finances and its banking sector). For this reason, Eurozone finance ministers agreed in June 2013 to let the ESM directly recapitalise ailing systemic banks once the SSM is fully operational. The ESM will be able to re-capitalise financial institutions, with appropriate conditionality, up to 60 billion euro (of the total 500 billion euro ESM capacity), which is roughly equivalent to 0.2% of the Eurozone banking sector. Moreover, the ESM will be able to act only when a bank has reached a core tier one capital buffer of 4.5%, while any recapitalisation required to achieve this minimum level will fall on the national government.

Despite the formal establishment of the SSM, and the subsequent possibility for direct recapitalisation of banks by the ESM, the path towards a fully-integrated banking union is long and full of delicate issues, notably the design of an integrated restructuring and resolution framework, and a common system for deposit guarantees.

Regarding the restructuring and resolution process, a **Bank Recovery and Resolution Directive (BRRD)** has been proposed by the Commission. The Commission's proposal sets out a bank resolution regime built on three pillars: i) prevention and preparation: it forces banks and resolution authorities to prepare recovery and resolution plans for possible situations of financial stress and/or crisis; ii) early intervention: in this phase the authorities will have more power to intervene when a financial institution fails to meet its regulatory capital requirements; and iii) resolution: when a bank is about to fail, the competent authority can directly apply several tools to ensure that essential functions of the distressed bank are preserved. Such tools include requiring the sale or merge of the business or setting up a temporary bridge bank to operate critical functions, in order to ensure that shareholders and creditors bear an appropriate part of the losses (the so called "bail-in" already applied in the Cyprus financial assistance plan). In this framework, the EBA will provide strong coordination during the first two phases, in order to ensure consistency in the parameters used by the authorities of the member states.

The key new institution in this process will be the **Single Resolution Mechanism (SRM)**, a single authority for banks resolutions with pooled resources at EU level, to be fully operational in 2015. The SRM provides a **Single Resolution Fund (SRF)**, financed by the banks, which will be gradually developed within eight years amounting in the end to 55 mil-

lion euro. In this transitional phase, national resolution authorities will progressively transfer the contributions raised at national level to the SRF national compartments. Moreover, in case of large banking resolutions, these national compartments will be increasingly involved in the mutualisation process: 60% over the first two years and 6.7% in each of the remaining six years.

The new SRM regulation approved by the European Parliament in April 2014 defines also the responsibilities shared by the Commission, the ECB, the single national resolution authorities and the Single Resolution Board (SRB). The latter is composed by a Chairman, a Vice Chair, four permanent members and the relevant national authorities (authorities of the countries where the 'resolved' bank has placed its headquarter, its branches and/or subsidiaries), as well as representatives of the ECB and the Commission, who act as permanent observers.<sup>16</sup>

The SRM mechanism will essentially work as follows: i) first, the ECB, as single supervisor, is required to signal when a bank needs to be 'resolved', that is when it is failing or likely to fail; ii) then, the SRB prepares the bank's resolution scheme and decides over the level of SRF financial involvement;<sup>17</sup> iii) at this point, the Commission (and, to a lesser extent, the Council), can eventually endorse or object the resolution scheme proposed by the Board, by forcing the SRB to amend it in case of contrasts with state aid rules.<sup>18</sup> Despite the apparent complexity, the operation is set on being concluded within very tight deadlines, around a weekend. This is in order to allow resolving an ailing bank before the opening of the financial markets on Monday and thus avoiding panic diffusion over markets.

This framework provides again for a strong interconnection between EU authorities and national resolution authorities: while the latter would be in charge of the practical execution of the resolution plan, the SRB would oversee the entire resolution process and be empowered to

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<sup>16</sup> See <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52013PC0520>.

<sup>17</sup> This fund would be financed by contributions from the banking sector, replacing the current national resolution funds, and would be under the direct control of the SRB.

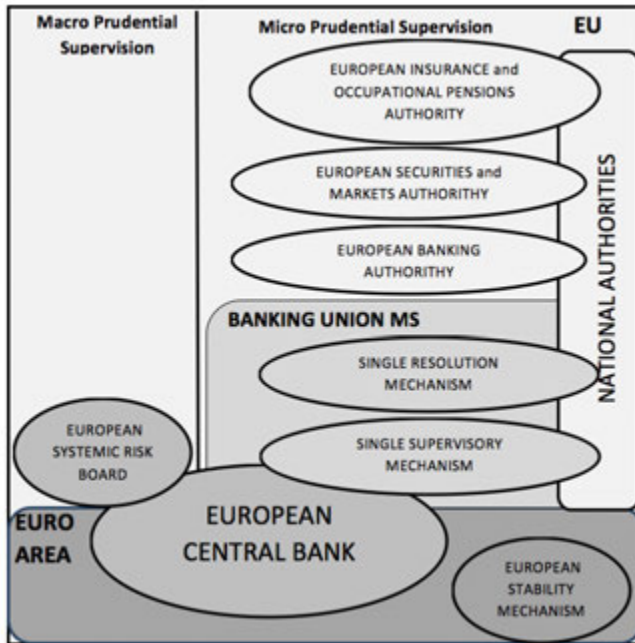
<sup>18</sup> For a clear description of the functioning of the proposed SRM Regulation and the BRRD, see Stefano Micossi, Ginevra Bruzzone and Jacopo Carmassi, "The New European Framework for Managing Bank Crises", in *CEPS Policy Briefs*, No. 304 (21 November 2013), <http://www.ceps.eu/node/8620>.



address executive orders directly to troubled banks in cases where the national resolution authorities do not carry out the agreed plan.

These complex interconnections are present also in the draft proposal for the third component of the banking union, the **Deposit Guarantee Schemes (DGS)**. While the current debate is around a draft directive currently under preparation by the Commission, it is commonly assumed that the governance structure that will emerge will be based on both EU and national authorities, through the establishment of a common “network” of national deposit guarantee schemes.

**Figure 6.** Financial market supervision and the emerging banking union



Source: authors' elaboration.

The establishment of banking union and the management of the transitional phase must be carefully designed. This is not an easy task, since divergences are still large, and the adoption of tighter rules could hurt national financial institutions. As and when tighter rules for capital requirements are applied, balance sheet assessments of several banks could reveal significant capital shortfalls, which could increase the fragility of the European banking system. In order to avoid this risk, the



SRM should be put in place as soon as possible, thereby reducing uncertainty in financial markets and leaving the ECB free to conduct its balance sheet assessments.

Returning to the initial question about the mapping of the system, what emerges in the microeconomic regulatory field is an intense reconstruction of the system, with substantial transfers of power from national authorities to the Eurozone and EU levels, albeit retaining an important dimension of networked collaboration with national authorities. The consistency between the rules of the emerging banking union and those of the single market as regards the regulation of financial institutions has received due attention, and the mechanisms of the banking union will therefore be open to non-Eurozone member states.

## 5. QUID FISCAL UNION?

The first failed attempt at monetary union in the 1970s (the Werner Plan<sup>19</sup> and the “snake in the tunnel”) was criticised retrospectively for having relied too exclusively on monetary mechanisms and for having lacked an adequate fiscal regime.<sup>20</sup> In response, the Commission launched a research project in the mid-1970s to investigate the fiscal properties of the advanced monetary unions, and notably those of the advanced federations such as the US, Canada, Australia, and, above all, Germany.<sup>21</sup> All the advanced federations buttress their monetary unions with large federal budgets of the order of 20-25% of GDP, which have important macroeconomic stabilisation and inter-regional redistribution functions. The inter-regional distributive effects of federal finances were found also to

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<sup>19</sup> Pierre Werner (ed.), *Report to the Council and the Commission on the realization by stages of economic and monetary union in the Community* (Werner Report), Luxembourg, 8 October 1970, [http://ec.europa.eu/economy\\_finance/emu\\_history/documentation/documentation\\_chapter5.htm](http://ec.europa.eu/economy_finance/emu_history/documentation/documentation_chapter5.htm).

<sup>20</sup> The Werner report of 1970 actually advocated a system with balanced monetary and economic/fiscal aspects, but its implementation was essentially monetary, consisting of a reduction in exchange rate fluctuation margins. See Daniel Gros and Niels Thygesen, *European Monetary Integration. From the European Monetary System to European Monetary Union*, London and New York, Longman and St. Martin's Press, 1992.

<sup>21</sup> Donald MacDougall (ed.), *Report of the Study Group on the Role of Public Finance in European Integration* (MacDougall Report), Vols. I and II, Brussels, April 1977, [http://ec.europa.eu/economy\\_finance/emu\\_history/documentation/documentation\\_chapter8.htm](http://ec.europa.eu/economy_finance/emu_history/documentation/documentation_chapter8.htm).

take place between regions of unitary states of the EU, although they have diverse systems of regional government (for example Spain, whose system borders on the federal). Overall, for both federal and unitary states the impact of adverse macroeconomic shocks at the regional or state levels is absorbed or compensated to a substantial degree by central fiscal mechanisms, by a margin of between one half and two thirds.

The findings of this report, while widely disseminated in academic circles, were completely ignored at the official level. These inconvenient truths were considered irrelevant. However when the single market programme was embarked upon in 1985, the then Commission president, Jacques Delors, argued that it had to be accompanied by a substantial increase in structural funds to help poorer regions adjust to new and harsher competitive conditions. This was done, to the point that structural funds rose to account for around one third of the EU budget.

After the single market programme had got well under way, and as thoughts were turning towards monetary union, Delors invited the late Tommaso Padoa Schioppa to lead a group of independent economists to develop a strategy for the overall European integration process. The resulting report argued in favour of a balanced combination of all three classic functions of public finance as established in both theory and practice, i.e. allocation, stabilisation and redistribution.<sup>22</sup>

However, in the run up to the creation of the euro no further consideration was given to any “fiscal federalism” in the sense of an increased EU budget (again the inconvenient truths). All attention was devoted to constraints designed to prevent national budget deficits from undermining monetary stability, as in the case of the Stability and Growth Pact and its subsequent derivatives discussed above.

In the current political debate, the idea of an enhanced EU redistribution function is referred to in Germany under the label of “transfer union”, and indeed the German federation features an elaborate system of fiscal equalisation through inter-Länder transfers (*Finanzausgleich*). At the same time, this is mentioned only to be excluded at the European level, until and unless there is also “political union”. However, the notion of political union is itself undefined, beyond some vague references to classic federal structures in some speeches of political leaders in Germany, as also

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<sup>22</sup> Tommaso Padoa Schioppa et al., *Efficiency, Stability and Equity. A Strategy for the Evolution of the Economic System of the European Community*, Oxford, Oxford University Press, 1987.

notably in Italy and Belgium, but such notions are in turn rejected by the political leaders of at least two of the founding member states, France and the Netherlands, let alone other more Eurosceptic member states.

Clearly there is an absolute blockage over replicating any kind of classic fiscal federalism at EU level which would entail an EU budget of major macroeconomic proportions for both expenditures and taxation. Nevertheless, in the course of the Eurozone crisis, debate over some elements of fiscal union for the Eurozone have emerged under two generic headings: Eurobonds and shock absorber mechanisms. There has been a plethora of technical variants advocated under both headings.

Eurobonds, different forms of which are proposed, could be a plausible means of strengthening macro-financial stability at the EU level. They would imply a move from the current system, in which each member state is responsible for its own debt, to a system of joint and several guarantee, in which all member states are jointly responsible for common debt issuance.<sup>23</sup> Mutualisation of national sovereign debts would restore confidence in the Eurozone and reassure markets of the solvency of member states. Most of the schemes proposed recently entail a joint and several guarantee limited to a certain amount of national debt. The proposal by Delpla and Weizsäcker<sup>24</sup> would see the EU pool up to 60% of GDP of national public debt in common “blue bonds”, whereas debt beyond the 60% limit would have to be financed nationally with “red bonds”. By contrast, the German Council of Economic Experts has proposed a redemption fund which would take over public debt beyond the 60% level.<sup>25</sup> Monti has proposed a European Debt Agency to issue Eurobonds, with the proceeds to be lent on to member states for amounts up to 40% of GDP levels.<sup>26</sup> Various formulations for Eurobonds have now tentatively entered into the range of ideas expressed in official EU docu-

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<sup>23</sup> For a thorough account of proposals see Alessandra Casale et al., “The Use of EU Instruments for Macro-Financial Stability: Implications for the EU and National Budgets”, cit.

<sup>24</sup> Jacques Delpla and Jakob von Weizsäcker, “The Blue Bond Proposal”, in Bruegel Policy Briefs, No. 2010/03 (May 2010), <http://www.bruegel.org/publications/publication-detail/publication/403-the-blue-bond-proposal>.

<sup>25</sup> See the German Council of Economic Experts’ website: *A European Redemption Pact*, <http://www.sachverstaendigenrat-wirtschaft.de/schuldentilgungspakt.html?&L=1>.

<sup>26</sup> Mario Monti, *A new strategy for the single market. At the service of Europe’s economy and society*, Report to the President of the European Commission, 9 May 2010, [http://ec.europa.eu/bepa/pdf/monti\\_report\\_final\\_10\\_05\\_2010\\_en.pdf](http://ec.europa.eu/bepa/pdf/monti_report_final_10_05_2010_en.pdf).

ments, such as the Commission's communication on "genuine economic and monetary union"<sup>27</sup> and the document issued by the so-called "four presidents".<sup>28</sup>

Regarding economic stabilisation or shock absorber mechanisms there has also recently been a proliferation of proposals around whether the Eurozone should have its own budget. The Commission's communication referred to above contains a section entitled "Central budget providing for a fiscal capacity with a stabilisation function".<sup>29</sup> This talks of a 50% European contribution towards funding unemployment benefits (as in the US), and other unspecified mechanisms for compensating economies hit by asymmetric economic shocks. The Commission acknowledges that this would imply a major transfer of sovereignty to the EU level, which would have to be accompanied by unspecified steps towards political integration, and so the topic is pushed into the future with no time horizon.

This was shortly followed by the related document by the "four presidents" referred to above, which outlined "guiding principles for the shock absorption function of an EMU fiscal capacity".<sup>30</sup> There would be an insurance-type system between Eurozone member states, with "[c]ontributions from, and disbursements to, national budgets" fluctuating according to the "each country's position over the economic cycle".<sup>31</sup> There would not be unidirectional and permanent transfers between member states, with this shock absorber mechanism categorically distinguished from income equalisation transfers.

Among the European think-tanks there has been a proliferation of ideas on how to develop such a system.<sup>32</sup> A common feature of these

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<sup>27</sup> European Commission, *A blueprint for a deep and genuine economic and monetary union. Launching a European Debate* (COM(2012)777 final), 28 November 2012, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52012DC0777>.

<sup>28</sup> Herman van Rompuy et al., *Towards a Genuine Economic and Monetary Union*, 5 December 2012, [http://www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/en/ec/134069.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/134069.pdf).

<sup>29</sup> European Commission, *A blueprint for a deep and genuine economic and monetary union*, cit., p. 31-33.

<sup>30</sup> Herman van Rompuy et al., *Towards a Genuine Economic and Monetary Union*, cit., p. 12.

<sup>31</sup> *Ibidem*, p. 10.

<sup>32</sup> Jean Pisani-Ferry, Erkki Vihriälä and Guntram Wolff, "Options for a Euro-area fiscal capacity", in *Bruegel Policy Contributions*, No. 2013/1 (January 2013), <http://>

proposals is their focus on insurance principles, i.e. with individual countries alternating between being contributors or beneficiaries, and payments in any year being a sum of contributions and disbursements, such that the net budgetary cost could over time be nil, while the wider macroeconomic benefits in terms of dampening recessionary episodes could be very substantial.

In November 2013 the IMF entered into the debate with a staff paper on fiscal union.<sup>33</sup> This makes a comprehensive review of the options for making good “critical gaps” in the Eurozone’s architecture. The paper draws a distinction between *ex post* crisis management measures such as those which have been developed (the EFSF, the ESM), and *ex ante* measures in the category of insurance schemes. The former have proved extremely expensive, with the total resources mobilized by the ESM and the EFSF amounting to 700 billion euro, or 7.5% of GNP, in addition to the massive macroeconomic and unemployment costs accumulated because of the late (*ex post*) intervention. The paper estimates that annual contributions of between 1.5% and 2.5% of GNP to a shock absorbing insurance fund could have contributed to a large degree to smoothing economic results (up to 80%), contrasting with the devastating five-year recessions experienced in the Eurozone south. The IMF paper draws on the historical experience of the advanced federations, including the findings of the MacDougall report of 1977. Its calculation of the cost of an insurance fund is of the same order as the 1% to 2.5% of GNP estimate of the MacDougall report. The IMF paper also notes that the introduction of such mechanisms has generally followed grave economic crises, starting from that which occurred in the US in the 1790s (the state bankruptcies of the civil war), and that it has usually been coupled to the strengthening of central fiscal powers. This in turn

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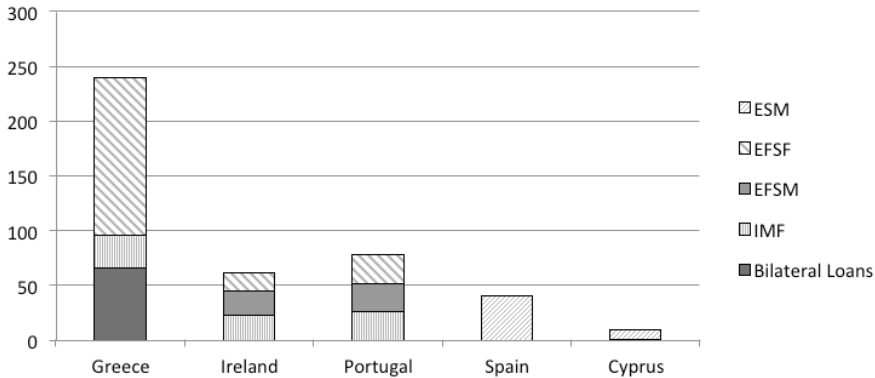
[www.bruegel.org/publications/publication-detail/publication/765-options-for-a-euro-area-fiscal-capacity](http://www.bruegel.org/publications/publication-detail/publication/765-options-for-a-euro-area-fiscal-capacity); Henrik Enderlein, Lucas Guttenberg and Jann Spiess, “Blueprint for a cyclical shock insurance in the euro area”, in *Notre Europe-Jacques Delors Institute Studies and reports*, September 2013, <http://www.eng.notre-europe.eu/011-16659>; Bernard Delbecq, “Proposal for a Stabilisation Fund for the EMU”, in *CEPS Working Documents*, No. 385 (October 2013), <http://www.ceps.be/node/8494>; Daniel Gros, “The European Banking Disunion”, in *CEPS Commentaries*, 14 November 2013, <http://www.ceps.eu/node/8596>.

<sup>33</sup> Céline Allard et al., “Toward a Fiscal Union for the Euro Area”, in *IMF Staff Discussion Notes*, No. 13/09 (September 2013), <http://www.imf.org/external/pubs/cat/longres.aspx?sk=40784>.

reduces the risks of moral hazard of unintended incentives for irresponsible policies. In the current Eurozone context centralising actions would mean giving binding effect to the procedures described above for the European Semester, Two Pack etc, alongside introducing fiscal insurance mechanisms for shock absorption.

At present the only common EU securities issued for reasons of macro-financial stability are those issued by the EFSM and those intended to finance balance of payments assistance, both of which are guaranteed by the EU budget. The former are currently used only to support Eurozone member states up to 60 billion euro (48.6 of which is outstanding), while the latter are used to assist member states that have not yet adopted the euro up to 50 billion euro (11,4 billion of which is outstanding). The EFSF and the ESM are currently the only two institutions that are able to issue debt securities. However, these are not instruments of “joint and several” responsibility, and each member state has only a quota of limited responsibility (by contrast, Eurobonds would be “joint and several”, and therefore have to be backed by a common fiscal capacity). The resources raised by these two institutions have been used to provide financial aid to Ireland, Portugal, Greece, Spain and Cyprus of a total of up to around 240 billion euro over three years, as set out in Figure 7.

Returning now to this project’s principal question about organisational models to optimise both the unity and effectiveness of the EU, the present section has an unequivocal answer. Structural inadequacy in the “fiscal union” content of the Eurozone has contributed, together with manifest mistakes in certain national policies, to extremely negative results in terms of both unity and effectiveness, to the point that the euro experienced an existential crisis. The damage to unity is represented by the *de facto* hierarchy of states within the Eurozone, which strains the democratic legitimacy of the EU and Euro governance to the absolute limit. The poor effectiveness is shown by the five year recession of the south of the Eurozone, with huge losses of economic welfare and increases in unemployment. At least these systemic shortcomings are now being recognised in the profusion of proposals to build a more adequate system, even if such proposals have not yet been agreed in principle at the top political level, let alone implemented.

**Figure 7.** Macro-financial assistance to Eurozone member states

Source: authors' elaboration.

## 6. QUID THE EUROPEAN LABOUR MARKET?

The labour market illustrates how the EU and the Eurozone are proving both divisive and ineffective. The EU's unemployment rate has increased by around 3.5 points compared to its level in 2007, while that of the Eurozone has increased by 4.5% over the same period. But these averages cover a dramatic divergence between on the one hand Germany, with a 4% reduction, and on the other hand increases of 18% in Greece and Spain. More than 25 million people living in the EU are out of work, ten million more than in 2007. The youth unemployment rate in the Eurozone is more than twice as high as the adult rate (24% versus 10%), and these levels are 10% higher than the average level in the 2000-2007 period.

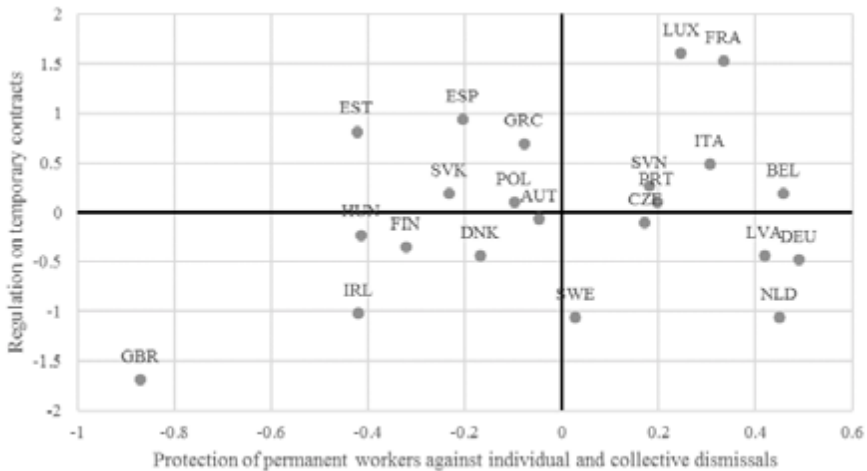
What conclusions can be drawn in terms of the responsibility of the EU to rectify this situation? What does it mean for the sustainability of the Eurozone?

The EU and especially the Eurozone have responsibility for the overall macroeconomic policy environment, which depends on the setting of monetary and fiscal policy. Much public discourse has shifted in favour of "growth" as opposed to "austerity". The attempts notably by Italy and France to translate this into action have achieved some slight easing of macroeconomic policy guidelines on the speed of the reduction of public deficits, and may also have facilitated the easing of monetary policy by the European Central Bank.



But the political pressure for the EU level to intervene more directly on the labour market has been building up ever more intensely. The 2012 Spring European Council<sup>34</sup> paved the way for an employment package adopted in April 2012 by the Commission,<sup>35</sup> with the intention of bringing the employment rate up to 75%, as agreed in the Europe 2020 targets. In addition, the 2013 Spring European Council was devoted to the unemployment problem, with a special focus on youth unemployment.<sup>36</sup> However these “packages” of measures largely consist of recommendations for national action, since the EU does not have competence for the main instruments of labour market policy, such as hiring and firing regulations, unemployment compensation conditions, and tax burdens or incentives for employment.

**Figure 8.** The differences in labour market regulation in the EU (centre: EU simple average)



Source: authors' elaboration from OECD, 2013.

<sup>34</sup> European Council, *Conclusions of the European Council 1-2 March 2012* (EUCO 4/3/12 REV 3), [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/136151.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/136151.pdf).

<sup>35</sup> European Commission, *Towards a job-rich recovery* (COM(2012) 173 final), Strasbourg, 18 April 2012, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52012DC0173..>

<sup>36</sup> European Council, *Conclusions of the European Council 14-15 March 2013* (EUCO 23/13), [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/136151.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/136151.pdf).



The actual policies of the member states for the labour market are highly divergent, as the huge differences in structural unemployment rates imply. EU legislation in the labour market defines certain standards for temporary or part-time work, but even here the range of policies set by member states varies widely, as Figure 8 shows.

Are these differences significant for the questions posed about the mapping of groups of member states, in either the EU as a whole or the Eurozone? The answer is hardly. The range from the most liberal to the most heavily regulated member states cuts across Eurozone and non-Eurozone states, and across north versus south. The UK is the most liberal in terms of both firing rules and temporary contracts, which explains why it objects to EU harmonisation in this field. Germany for its part is at the liberal end for temporary contracts, but at the restrictive end of the scale for dismissals. France is at the most heavily regulated end on both accounts.

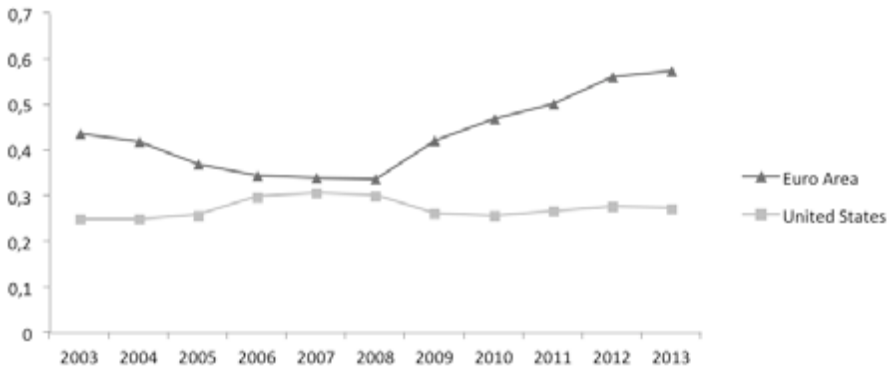
Should the EU intervene more strongly in the direction of harmonisation in the labour market and social policy domains? Opinions are sharply divided on this question. In some member states, notably France, political discourse stresses the need to combat “social dumping”. Others, and not only the UK, argue that basic social security provision and labour market regulations should remain the competence of member states, given also that while the divergences between member states are significant the minimum standards across the EU are high when compared to much of the rest of the world. At a time when the balance of competences between the EU and its member states is under explicit discussion, it is clear that very deep social structures and traditions are built into the striking differences in unemployment rates. To harmonise these more rapidly than through a long process of social learning looks like political fireworks. The social dumping argument is strong when comparisons are made with Bangladesh for example, but hardly within the EU.

While solving the unemployment problem is an objective *per se*, there is an additional reason for addressing it at European level, which flows from economic theory. In the literature on the OCA, labour market flexibility with respect to inter-regional migration is seen as one of the main stabilizing instruments, in the absence of exchange rate flexibility, to cope with asymmetric changes in demand. In the EU, the principle of free movement, employment and residence of people is firmly established in EU law and practice. People are free to migrate between member states in search of work. Moreover, in the last two decades, EU policy on the mutual recognition of professional qualifications and other actions by

the Commission have gradually relaxed some of the major regulatory barriers to work in other member states.

But regardless of the removal of all legal restrictions on the movement of workers, the EU is far from having an integrated labour market. The obvious reasons for limited intra-EU labour mobility are language barriers and national/cultural identities. This contrasts with the US “melting pot”, where inter-state migration is considered a much lighter matter than that between European countries. Interestingly, these contrasts are borne out by current empirical evidence. Figure 9 shows that whereas in the last decade the variation of unemployment rates between the states of the US has not changed despite the recession, in the EU there has been a clear increase in these variations. As a concrete example, at the end of the 1980s Massachusetts managed to reduce its unemployment rate differential relative to the US as a whole through emigration.<sup>37</sup> Equilibrium in the job market did not happen only through a fall in relative wages, but also through the movement of workers to other regions of the US.

**Figure 9.** Coefficient of variation of unemployment rates in the US and the Eurozone



Source: authors' elaboration from European Commission and US Bureau of Labor Statistics, 2013.

<sup>37</sup> As argued, for instance, by Paul Krugman: “Revenge of the Optimum Currency Area”, in *NBER Macroeconomics Annual 2012*, p. 439-448, available at <http://krugman.blogs.nytimes.com/2012/06/24/revenge-of-the-optimum-currency-area>.

**Table 1.** Unemployment levels and recent migratory flows to Germany from Greece, Italy, Portugal and Spain

	(1) Total unemployment, 000s, 2012	(2) Migration to Germany, 000s, average in 2007-9	(3) Migration to Germany, 000s, in 2012	(4) = (3) - (2)	(5) = (4)/(1) %
<b>Greece</b>	1,248	8	34	26	2.0
<b>Italy</b>	2,803	19	34	23	0.8
<b>Portugal</b>	1,780	16	42	6	0.3
<b>Spain</b>	5,935	9	12	21	0.4

Source: German Federal Statistical Office, 2013.

What can realistically be done at EU or Eurozone level? Should labour migration from Spain to Germany, for example, be advocated as a significant instrument of labour market adjustment policy? Of course there are movements of unemployed people from Barcelona to Munich, but this is hardly on a scale to make an impact on the aggregate unemployment numbers. The statistics on movements during the current crisis from Greece, Italy, Portugal and Spain to Germany illustrate this (Table 1). In 2012 these migrations had doubled or tripled by comparison with the pre-crisis levels, so some adjustment has been taking place. But nevertheless the amplitude of these movements has hardly been of macro-economic significance. (movements in the single year 2012 amount to between 0.3% from Portugal to 2.0% from Greece as a proportion of total unemployment). To be sure, there may also be an increasing integration of labour market services across the EU for recruitment.<sup>38</sup> However, the recent enlargements of the EU have seen refusals by many member states to immediate and complete openings of their labour markets to the new member states. The imminent lifting of the last remaining restrictions on Bulgarian and Romanian citizens is provoking visible tensions in many immigrant member states.

To conclude this section, we return to the first question about the possible mapping of different groups of member states according to labour market structures. The differences are substantial, but cut across all conceivable groupings of member states by geography, or Eurozone membership, or any other explanatory factor. As to the question of what

<sup>38</sup>The current European Job Mobility Portal (EURES), despite its worthy usefulness in providing information, advice and job-matching services, is still far from representing an effective European recruitment/placement integrated service.

the EU or Eurozone can do about the high and divergent unemployment rates, the answer is that direct labour market measures remain largely a matter of national responsibility, so that the EU can do little more than debate and advocate best practices. Greater harmonisation of labour market policies could be desirable if it were to see a convergence on “best practice”, but there is no agreement on what this should be, and so negotiations with this objective would be intensely political and contested at national level, beyond legislation on certain minimum standards in labour market law. As regards how the macroeconomic policy environment affects unemployment, here the responsibilities of Eurozone policy-makers are fundamental, and this brings us back to the need for adequate regional shock-absorbing mechanisms and a sound fiscal policy regime to complement the monetary authority.

## 7. THE EUROPEAN CENTRAL BANK THROUGH THE CRISIS AND BEYOND

Starting in May 2010, in the exceptional circumstances that Trichet described as the “most difficult situation since the Second World War – perhaps even since the First World War”,<sup>39</sup> the ECB had to adapt its activities, from having an inflation target as its sole goal to making the financial stability of the Eurozone and indeed its very survival its main immediate priority. In the last four years, under both Trichet and Draghi, the ECB has adopted several major policy initiatives to address the severe tensions in the European financial markets: i) the Security Market Program, based on the acquisition of country-specific sovereign bonds in the secondary market; ii) the decision to change the eligibility of debt instruments issued or guaranteed by the governments of the most troubled countries, in order to accept them as collateral in monetary policy operations; iii) two Long Term Refinancing Operations under which the ECB lent money at a very low interest rate to Eurozone banks to boost demand for the most troubled sovereign bonds in peripheral countries; iv) the Outright Monetary Transaction program, prepared to enable the

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<sup>39</sup> Jean-Claude Trichet, “A ‘Quantum Leap’ in Governance of the Euro Zone Is Needed”, in *Spiegel Online*, 15 May 2010, <http://www.spiegel.de/international/europe/european-central-bank-president-jean-claude-trichet-a-quantum-leap-in-governance-of-the-euro-zone-is-needed-a-694960.html>.

purchase of sovereign bonds of member states in the secondary markets, in the event of distressed circumstances and on condition that financial assistance programs would be put in place (this program has not had to be activated, but its announcement had an important and positive impact). In this perspective, the choice of the Maastricht Treaty to give exclusive competence for monetary policy to the ECB has proved justified, as it has been the only EU institution capable of a robust response to the crisis.

The ECB has also entered into the processes of fiscal policy through its participation with the IMF and the Commission in the Troika missions to negotiate conditional financial support for troubled Eurozone countries. The role of the ECB is due to expand further in the coming years through its new responsibilities for bank supervision. Adding the task of ensuring financial stability by means other than those of standard monetary policy could however potentially erode the ECB's political independence.<sup>40</sup> The still imperfect design of Eurozone economic governance puts the ECB in a delicate situation. It will require well-designed policy responses at EU level in the coming years in order to preserve its credibility in pursuing its core function, i.e. keeping the inflation under control.

A second potential institutional challenge for the ECB in the coming years will come from its role in the global arena. According to the IMF's economic scenario, thanks to the gradual re-absorption of internal imbalances, the Eurozone is going to run a substantial current account surplus of around 3% GDP in the years ahead, after ten years of approximate overall balance (see Figure 10). The monetary policy strategy of the ECB does not contain a target for the euro exchange rate,<sup>41</sup> thus facilitating its focus on the maintenance of price stability. However, the future surplus of the Eurozone could risk the excessive appreciation of the euro, and thus put the ECB under pressure to adopt an interventionist policy, which in turn could prejudice its priority objective of monetary stability.

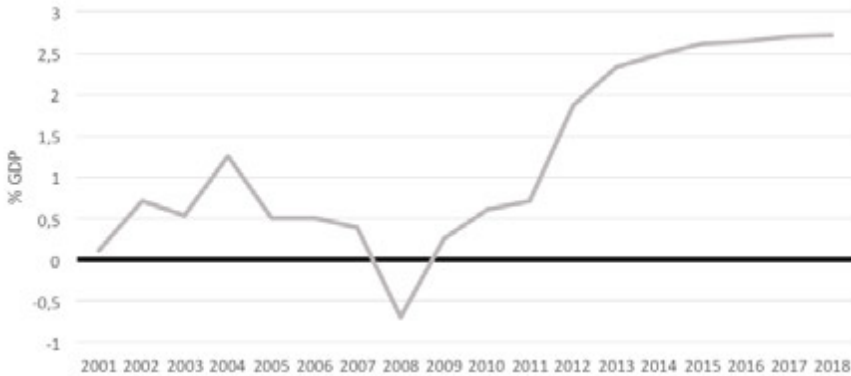
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<sup>40</sup> As argued by Cinzia Alcidi and Alessandro Giovannini, "The ECB Dilemma - Financial Stability or Independence?", in *Reconciling Governance and Model. A Five-fold Narrative for Europe*, Brussels, Madariaga College of Europe Foundation, August 2013, p. 50-64, <http://www.madariaga.be/publications/books/865-reconciling-governance-and-model-a-five-fold-narrative-for-europe->.

<sup>41</sup> The ECB's exchange rate policy is referred to in Articles 127 and 219 TFEU.

The recent shift in monetary policy by the Bank of Japan is an illustration of how such pressures can build up.

**Figure 10.** Current account balance of the Eurozone



Source: IMF, 2013.

Moreover, more and more, monetary policies require strong coordination between the central banks of the major global economies. Since the outbreak of the crisis, the ECB has been playing an increasing role in certain international financial institutions, notably the Financial Stability Board (FSB) and the Bank for International Settlements (BIS), where it has full representation.

The role of the ECB in the IMF and the G-20 is more complicated. At the IMF, the ECB is only an observer in selected Executive Board meetings where the agenda is of direct relevance to the ECB, and the ECB President is an observer in the International Monetary and Financial Committee. These limitations follow the formal rules of the IMF's Articles of Agreement, which restrict membership to member states, although there is the possibility for a monetary union to have full representation if its member states cede their places, which the Eurozone member states show no sign of doing at present. The ECB is invited to those Executive Board meetings that deal with activities linked to the IMF's two main publications (the *World Economic Outlook* and the *Global Financial Stability Report*), and to discussions linked to Article IV procedures regarding the Eurozone, EU member states and accession countries, and the United States and Japan. However, the ECB cannot participate in Article IV discussions regarding China and other systemically important countries, or in a large number

of Executive Boards discussing crucial IMF policy issues. Moreover, the activities of the two bodies intended to ensure European coordination in the Fund, the EURIMF (based in Washington) and the SCIMF (based in Brussels), tend to merely result in complex coordination procedures, with weak enforcement in the Executive Board of policy positions previously agreed by member states.

This lack of common positions inside the IMF Executive Board is not the fault of the ECB, but rather of the obsolete institutional design of the representation of the EU and Eurozone in the Fund. Rationalisation of the constituencies of member states in the Executive Board to reflect EU or Eurozone membership would seem to be an obvious and realistic move, but this has not been done. A natural step forward, but a more radical one, would be to have a common, single representation of the Eurozone at the IMF. This is foreseen in the Commission's communication on "genuine economic and monetary union", but considered to be only a long-term prospect.

At the G-20 the situation is much better. The EU has full rank as the 20th member, and the presidencies of both the Commission and the European Council participate. However the Eurozone is not represented as such in the summit meetings, but the ECB participates in meetings of Finance Ministers and Central Bank Governors and Deputies.

In answer to the principal question of this project, it can be said that the ECB now ranks as an important example of both unity and effectiveness at the Eurozone level. What is most striking compared to the workings of the Council is the ECB's capacity to make important decisions by majority voting, with some instances of objections of its biggest national central bank being overridden in the perceived interests of the Eurozone as a whole.

## 8. CONCLUSIONS

In relation to the various hypotheses presented in the concept paper<sup>42</sup> there is one formulation that fits the fiscal and monetary policy sphere as it is viewed normatively in official circles. The basic reference remains the EU, whose single market, legal order and institutions are already to historic achievement. According to this formulation, the Eurozone, having

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<sup>42</sup> See Chapter 1 by Nathalie Tocci and Giovanni Faleg.

survived the existential crisis of recent years, will gradually expand to include non-Eurozone member states, and thus largely re-establish the unity of the EU, with exception of some outliers, mainly the UK (whether seceding, or remaining an opt-out case within the EU).

While not dissenting from this normative view, the current Eurozone and EU have in practice seen emerge a highly complex, *de facto* multi-tiered, concentric circle regime, which is both defective in terms of effectiveness and damaging to the political legitimacy of both the Eurozone and the EU as a whole. Beyond the primary division between Eurozone and non-Eurozone states, secondary but still deep divisions have emerged between Eurozone creditors and debtors (actual or potential), or between north and south; within the north, Germany has emerged as the innermost core. Meanwhile, two EU institutions, the Commission and the ECB, have joined up with the IMF in the influential troika which oversee debtors, and this particular mix of the quasi-federal and the inter-governmental has further undermined the political credibility and legitimacy of the EU.

The terms “banking union”, “fiscal union” and “political union” are used to signal the desire to re-order this *de facto* set of concentric circles towards a more effective and unified system. While these three terms flow easily together in political discourse, the reality varies drastically between each of them.

Banking union, coupled to recent advances in financial market regulation, is at least the subject of formal proposals and intense negotiations, and thus relatively advanced compared to the other two unions referred to. However, divergent positions in negotiations over many important features are still proving difficult to resolve, and devil is still very much in the detail.

The idea of fiscal union is not yet in good shape. There has been a great deal of innovation in coordination procedures and normative standards, as for example with the European Semester, and various “pacts” and “packs” and treaty provisions. But the search for a workable compromise between national and EU level powers over national budgets is still a work in progress, to say the least. There are recurrent sequences of new initiatives intended to have a more binding effect, followed by weak implementation. Going beyond coordination procedures, there has been a profusion of proposals, more often by independent economists than EU institutions, for both Eurobonds and region-specific shock absorbing mechanisms. These would be moves in the direction of a more quasi-fed-



eral fiscal system. The difference between coordination methods versus quasi-federal mechanisms is of fundamental political significance. The coordination method, coupled to negotiated conditionality for aid to sovereigns in difficulty, has led to the politically problematic hierarchy of concentric circles described above, whose innermost core is a single member state, Germany. The quasi-federal elements would re-establish greater political unity and perceived legitimacy of the system. Although many ideas are in circulation for Eurobonds and shock absorbing mechanisms, there are not yet official proposals on the table.

Finally, the questions posed at the outset can be answered quite bluntly. The systemic weaknesses of the monetary union resulted in crisis. This could only be resolved with the *de facto* emergence of multi-tiered concentric circles within the Eurozone, which is politically unsatisfactory to the point of being unsustainable. Optimists in various official positions may claim that with the worst of the crisis now over, there will be a gradual return to normality and unity within the Eurozone (for example, Ireland is now exiting the bail-out regime). But overall this is a rather rosy scenario. Further systemic innovations towards fiscal union will be required to ensure the economic and political sustainability of the Eurozone. But this would require political will among member states and public opinion to innovate faster and deeper than has so far appeared possible. In order to restore the perceived political legitimacy of the EU to the point of enabling such decisions to be taken and ratified, the current wave of Euro-scepticism would have to be reversed: either by “good news” delivered by the EU, or by new grave threats that impose systemic innovations (although such threats can neither be wished for nor anticipated), or by exceptional political leadership.

The European policy-maker is thus trapped in a “chicken and egg” dilemma. The Eurozone economy needs systemic improvement to achieve better economic performance, but this would almost certainly require treaty changes, which would require greater political legitimacy than is evident at present, which in turn needs to be restored on the back of improved economic performance (“output legitimacy”). Given this negative circular logic, the other route of exceptional political leadership beckons.



# 3.

## Transport, Communications and Infrastructure in a United and Effective Europe

*Stefano Riela*

### 1. DRAWING THE POLICY AREA'S BOUNDARIES

This policy area comprises the Single Market's backbone. The use of the singular "backbone" rather than the plural "backbones" indicates a holistic approach in which transport, communications and infrastructure are distinct aspects of the same overall structure. While acknowledging their unique instrumental roles for the Single Market, it should be noted that these three parts have different legal bases:

- for transport services policy: the explicit reference in the 1957 Treaty of Rome is now Title VI of the TFEU, applying to services by rail, road and inland waterway and, for sea and air transport.
- for communication services (in their electronic<sup>1</sup> form): although there is no explicit reference in the Treaty of Rome, transport and communication services are included within the perimeter of the services of general economic interest which occupy a distinct place "in the shared values of the Union as well as their role in promoting social and territorial cohesion" (art. 14 TFEU). EU action was initially triggered by the liberalisation process, starting at the end of the 1980s, implementing the Single Market provisions - notably the free circulation of services - in the sector.

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<sup>1</sup> Electronic communications comprise networks and services and include: fixed-line voice telephony; mobile and broadband communications; and cable and satellite television. In this paper there is no reference to postal services for which there is not a specific EU strategy apart from the standard liberalisation process.

- for infrastructure: the Maastricht Treaty established an EU policy for Trans-European Networks (TEN), now Title XVI of the TFEU, in the areas of transport, telecommunications and energy infrastructure.<sup>2</sup>

Thus this policy area is made up of:

- two vertical sectors - transport and communication services - for which the EU defines the rules by Single Market principles (such as: liberalisation and the contestability of national markets; regulation where there is no room for competition; and interoperability where there is no standardisation); and
- a horizontal layer in which the EU focuses upon the infrastructure required to provide the transport and communication services by designing and co-financing - along with the Member States - projects of common interest.

These two orthogonal approaches - services and infrastructure - even though they have different legal bases, overlap since services and infrastructure should develop hand-in-hand. A user cannot enjoy a broadband service if there is no network reaching her/his device, and a European-wide rail network is essentially useless without a pan-European rail service. Moreover, the conditions intended to foster liberalisation of services might have an impact on the profitability of an investment in infrastructure; and the standards and interoperability rules might have an impact on the way infrastructure is built. Thus while networks are the physical backbone of the Single Market, they are only valuable with a fully functioning Single Market for transport and communication services.

Finally, even transport and communications share a common destiny since the former requires the use of the latter. The synergy between transport and communications (and energy too) might be visualised at micro-level through those particular projects intended to make our cities “smart”,<sup>3</sup> for example, traffic management and information sys-

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<sup>2</sup> In this paper, infrastructure refers to its part relevant for transport and communication services.

<sup>3</sup> This self-reinforcing relationship between transport and communications confirms that the latter are not celebrating the “end of geography”. That was trumpeted in the 1990s: see, for example, Stephen Graham and Simon Marvin, *Telecommunications and the City. Electronic Spaces, Urban Places*, London and New York, Routledge, 1996.

tems might increase effectiveness and efficiency of transport services by reducing congestion and emissions. Smart cities will be the tile-mosaic illustrated in the EU's Europe 2020 strategy:<sup>4</sup> innovation for sustainable and inclusive growth, where inclusiveness is achieved thanks to a network assuring efficiency as well as – once spread all over the EU - social and territorial cohesion.

## 2. A MORE UNITED AND EFFECTIVE EUROPE

Before indicating what the EU needs in order to be more united and effective in this policy area (section 2.2), unity and effectiveness must be defined in the context of this paper (section 2.1).

### 2.1. Defining effectiveness and unity

Effectiveness has got both an internal and an external dimension. The internal dimension is associated with the Single Market. Effective transport and communications, infrastructure and services together are a driver guaranteeing the EU's four fundamental freedoms: free movement of goods,<sup>5</sup> persons, services and capital.<sup>6</sup> Of course other policies contribute to the creation of the Single Market (*e.g.* taxation, labour law) and, as stated in this paper's introduction, this policy area's components are its backbone.

The Single Market draws the boundaries of the European model, the social market economy,<sup>7</sup> and services of general economic interest<sup>8</sup>

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Since then the UN expects the world's urban population to grow and even the servers of the most virtual service - *i.e.* cloud computing - must be located taking into account the local climate, available infrastructure and legal framework.

<sup>4</sup> European Commission, *Europe 2020. A strategy for smart, sustainable and inclusive growth* (COM(2010) 2020 final), 3 March 2010, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52010DC2020>.

<sup>5</sup> Part 3, Title II TFEU: "Free movement of goods."

<sup>6</sup> Part 3, Title IV TFEU: "Free movement of persons, services and capital".

<sup>7</sup> With the Lisbon Treaty, the EU's model is now clearly indicated by Art. 3 par. 3 TEU.

<sup>8</sup> SGEIs are economic activities that public authorities identify as being of particular importance to citizens and that would not be supplied (or would be supplied under different conditions in terms of quality, safety, affordability, equal treatment or universal access) if there were no public intervention. European Commission, *A Quality Framework*

(SGEIs) - such as transport and communications - are a clear example of how this model works.

Regarding the model's "market" component, the aim is on the:

- demand side: customers should be able to obtain services from any of the undertakings present in the EU, regardless of their location; and
- supply side: undertakings should be able to competitively offer services outside their Member States and target end-customers located throughout the EU.

Against this background, the EU is not a federal system but rather a confederation of different States. The EU does not have the political power to impose homogeneous competition rules without taking into account national sovereignties and a variety of significant local characteristics. Thus national markets still have different degrees of openness and, in sectors such as transport and communications, liberalisation processes have not achieved their full potential yet.

However the secondary legislation, including that recently proposed by the European Commission, is devoted to levelling the "playing-field" to provide an efficient allocation of resources in the economy, to foster innovation, and therefore to increase citizens' welfare. Such legislative levelling can only foster so-called contestability<sup>9</sup> while it is only business profit-seeking behaviour that encourages their entry into new geographic markets leading to fully-fledged competition in the Single Market.

The reference to "citizens" instead of "consumers" is the link to the adjective "social" that precedes "market", since for SGEIs such as some of transport and communication services, every citizen is a consumer. In

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for *Services of General Interest in Europe* (COM(2011) 900 final), 20 December 2011, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52011DC0900>.

<sup>9</sup>See William J. Baumol, "Contestable Markets: An Uprising in the Theory of Industry Structure", in *The American Economic Review*, Vol. 72, No. 1 (March 1982), p. 1-15. According to Baumol, a market is contestable when incumbents restrain their pricing behaviour by the threat of entry by competitors. Far from a theoretical perspective, entry and exit barriers exist so that contestability cannot produce the welfare effects that competition makes in a market; however contestability is undoubtedly precursory to the competition.

a market where competition is “effective”<sup>10</sup> the outcome is welfare-enhancing for consumers. But that outcome arises by taking a long-term perspective, practically a theoretical perspective. In the short-term, the process of resource re-allocation towards a more efficient *equilibrium* means there are, physically, winners and losers.

The EU is not a mere theoretical model (even though theory is needed in outlining a policy’s direction) and the “market is an instrument and not an end in itself”.<sup>11</sup> Since every citizen is often a user of transport and communications services, those unable to take the benefits of the market - the ones who cannot access services at a certain minimum quality level - need support and protection. The case for financial support requires building infrastructure and/or providing services where private investors and/or operators do not find a business case for doing so. Thus “sectoral legislation adopted at EU level has always carefully balanced the need to increase competition and the use of market mechanisms with the need to guarantee that every citizen continues to have access to essential services of high quality at prices that they can afford.”<sup>12</sup>

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<sup>10</sup> A basic microeconomics course teaches that perfect competition is the best equilibrium for consumers. But “perfect” is an attribute linked to a theoretical simplification only valid in textbooks. While “effective” is the usual attribute added to the word “competition” in EU secondary legislation (*e.g.* Art. 2 par. 1 of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings; Art. 8 par. 1 of the Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services) as well as in Euro-jargon (*e.g.* Commissioner Mario Monti’s speech at UNIFE annual reception on 21 May 2002 titled *Effective competition in the railway sector: a big challenge*, [http://europa.eu/rapid/press-release\\_SPEECH-02-216\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-02-216_en.htm)). Especially in regulated sectors such as transport and communications, effective competition is still a benchmark rather than an achieved target. See, amongst others: Christian M. Bender, Georg Götz and Benjamin Pakula, “‘Effective Competition’ in Telecommunications, Rail and Energy Markets”, in *Intereconomics*, Vol. 46, No. 1 (January/February 2011), p. 4-35, <http://www.ceps.be/node/4141>; J. Scott Marcus et al., *How to Build a Ubiquitous EU Digital Society* (PE 518.736), Brussels, European Parliament, November 2013, <http://www.europarl.europa.eu/RegistreWeb/search/simple.htm?language=EN&reference=518.736>.

<sup>11</sup> Mario Monti, *A new strategy for the Single Market at the service of Europe’s economy and society*, Report to the President of the European Commission, 9 May 2010, p. 12, [http://ec.europa.eu/internal\\_market/strategy/docs/monti\\_report\\_final\\_10\\_05\\_2010\\_en.pdf](http://ec.europa.eu/internal_market/strategy/docs/monti_report_final_10_05_2010_en.pdf).

<sup>12</sup> European Commission, *A Quality Framework for Services of General Interest in Europe*, cit., p. 9.

The EU is not a “fortress” and the internal dimension’s effectiveness risks being hollow if it is not coupled with an external one. Transport and communication services interact with the rest of the economy and, in a globalised economy, they link the Single Market with the rest of the world. So effective policies are required to strengthen the EU’s competitiveness and require international cooperation. Competitiveness has a relative understanding and puts the EU in a stronger position *vis-à-vis* the rest of the world. And competition is a driver for competitiveness. European firms facing the pressure of more competitors in a wider internal market become fitter and fitter to face international competitors world-wide. However, when economies of scale are at stake, a large number of firms in a market is not desirable anymore. Then concentrated markets - eventually dominated by European “champions” - might guarantee competitiveness. Concentrated markets (*e.g.* after merger and acquisition operations) allow exploitation of economies of scale, thus increasing the productive efficiency of firms and their competitiveness.<sup>13</sup> Yet a reduced number of firms have more leeway to increase their prices, thus hampering allocative efficiency - the cornerstone of competition assuring the market *equilibrium* maximises both social and consumers’ welfare.<sup>14</sup>

If a concentrated market does not allow the positive effects of productive efficiency to overcome the negative effects of a loss in allocative efficiency,<sup>15</sup> then a solution to this trade-off between competition and competitiveness might be found moving from a static approach to a dynamic one. The constant evolution of a market’s features (*e.g.* consumer demand and/or production technology) means that the extra-profits of firms in a concentrated market are not long-lasting. This is due to the cyclical pro-

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<sup>13</sup> Productive efficiency allows a firm to minimise production costs and it is not possible to produce that given quantity of output at a lower cost.

<sup>14</sup> Allocative efficiency is achieved in a market when firms produce their output until when the marginal cost of a unit they produce is equal to the value of such a unit for consumers. In that instance, those consumers willing to pay the price at least equal to the marginal cost of producing the good are supplied with it. Thus the quantity produced of the good is optimal and social welfare (*i.e.* the sum of consumers’ and producers’ welfare) and the share of consumers’ welfare are maximised.

<sup>15</sup> Williamson explained how a loss in allocative efficiency resulting from greater market power could be compensated by an increase in productive efficiency. Oliver E. Williamson, “Economies as an Antitrust Defense: The Welfare Tradeoffs”, in *The American Economic Review*, Vol. 58, No. 1 (March 1968), p. 18-36.



cess fed by innovation, which replaces obsolete products.<sup>16</sup> Therefore, to couple competition with competitiveness, the Single Market should be a level-playing field not only in geographic terms (companies able to sell in all the Member States) but also in product terms by creating conditions enabling companies to innovate.

Still, with reference to the external dimension of effectiveness, since rule-setting is undertaken in the context of multilateral bodies, the EU should have sufficient bargaining power to push or to defend its view such as, in general, its social and environmental model.

The definition of unity can be understood in two possible ways. The first is to assess unity based on policy outcome (output legitimacy, and so its effectiveness), such as the decrease in heterogeneity between EU components<sup>17</sup> (Member States, regions and citizens) as far as transport and communication services' availability and infrastructure endowment are concerned. The second way might be based on the inclusiveness of the decision-making process (input legitimacy).

Unity, from an output legitimacy perspective, overlaps with effectiveness since the social market economy should guarantee that, in any area of EU intervention, nobody lags behind. However, when unity, from an input legitimacy perspective, is understood as consensus, then some decisions, inspired by effectiveness, might suffer a shortcoming of democratic legitimacy because the traditional co-decision process might not be successful in taking into account the very particular interests of each of the EU's components. An example is that by designing a high-speed train network or by building a new airport, everyone would like to enjoy the new transport benefits of such infrastructure without suffering either from disadvantages, such as the altered natural landscape and/or from the increased noise of the new service (a typical case of NIMBY - "not in my backyard" - syndrome).

Such a trade-off could theoretically be resolved with "deep-pocket" expenditure. So, in the previous example, a train station could be built in every city enabling a super-fast train to run underground and so minimise the environmental impact and the delays caused by making frequent stops). However a more realistic approach leads either to

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<sup>16</sup>Joseph A. Schumpeter, *Capitalism, Socialism and Democracy*, New York and London, Harper & Row, 1942.

<sup>17</sup>According to art. 3 par. 3 of the TEU, the EU "shall promote economic, social and territorial cohesion, and solidarity among Member States."

adopting a long-term perspective, in which everyone - even those affected negatively by the new infrastructure - could benefit from the re-allocation of resources within a single market, or to recognising that the EU decision-making process has appropriate democratic legitimacy when Single Market issues are at stake. As decision-making in the EU takes place at different levels (local, national, European), EU-level decisions to build infrastructure, such as a TEN-T railway, are likely to encounter opposition from more local parts of the democratic scale. If the long-term perspective is to succeed, then the appropriate European body must decide what is in the wider interest, after open consultations aimed at taking duly into account the positions of all stakeholders.

## *2.2. The steps towards more unity and effectiveness*

Before detailing what is required to increase unity and effectiveness in this particular policy area, this section 2.2 outlines the common features needed to produce a consistent view. As stated, the EU - according to the aims set out in the EU Treaties - has not achieved a fully functioning Single Market and this failure is partly due to shortages in transport, communication services and related infrastructure.<sup>18</sup> As the market, by itself, cannot achieve an equilibrium consistent with a social market economy model, then some public intervention should be permitted either to correct the market failures and/or to decrease inequalities within the EU.

Since the key rule of the Single Market is competition,<sup>19</sup> public intervention is needed for a couple of reasons. Firstly, to liberalise a sector by eliminating entry and exit barriers. Secondly, when necessary, to create

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<sup>18</sup> For some authors competition is not fully effective "given, for instance, their high level of State intervention, the number of competition cases, and the still important role of the historical incumbent, sometimes representing bottlenecks for further market opening. An exception is offered by air transport passenger and some eComms [electronic communications] segments like mobile communication services, whose prices have fallen substantially in the EU after 2002." Emmanuelle Maincent, Dimitri Lorenzani and Attila Eordogh, "Market Functioning in Network Industries - Electronic Communications, Energy and Transport", in *European Economy Occasional Papers*, No. 129 (February 2013), p. 25, <http://dx.doi.org/10.2765/40736>.

<sup>19</sup> Even though "competition" has been formally downgraded in the Treaty ranking with the entry into force of the Lisbon Treaty, this paper still considers the role of competition remains unchanged since the Treaty of Rome. See, among others, Giorgio Monti, "EU Competition Law from Rome to Lisbon - Social Market Economy", in Heide-Jorgensen et al. (eds.), *Aims and Values in Competition Law*, Copenhagen, DJØF Publishing,

the framework for effective competition by *ex-ante* regulating access conditions, namely price and quality, concerning monopolist-owned essential facilities<sup>20</sup> (such as access to a telecommunication network, where cable TV operators are not available, or to a railway network), especially when the same monopolist is vertically integrated. In such a case, that firm could enjoy an unfair advantage *vis-à-vis* other competitors in the retail market by selling inflated essential wholesale services.<sup>21</sup>

Since the vertically-integrated undertaking that controls the essential facility has the expected incentive to discriminate against competitors, wholesale prices paid by the latter to access the essential facility should be set by a public authority; prices should be set by taking into account the cost of an efficient undertaking that owns and manages the essential facility while allowing for a reasonable profit. There are ever-developing regulatory techniques (accounting analysis, benchmarking, price-caps) to decrease the information asymmetry between the regulator and the regulated undertaking to shape non-discriminatory models of wholesale service. In that context, an effective model should foresee a separation between the undertaking owning and operating the essential facility and the undertaking competing with all the other competitors in the downstream retail market.

Between an upstream and downstream market there can be different types of separation. These range from a simple accounting separation (within the same vertically-integrated firm) to ownership separation passing through functional separation<sup>22</sup> and legal separation under the

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2013, <http://www.eui.eu/Documents/DepartmentsCentres/Law/Professors/Monti/GiorgioMonti-Cph-AimsandValuesinCompetitionLaw.pdf>.

<sup>20</sup> Certain services, which are at the heart of transport and communications, are provided more efficiently by just one undertaking due to the huge fixed and sunk costs of the network infrastructure and the relative low-demand which does not over-burden the capacity. These services are known as “natural monopolies”.

<sup>21</sup> This practice, named “margin squeeze” is such that “a dominant undertaking may charge a price for the product on the upstream market which, compared to the price it charges on the downstream market, does not allow even an equally efficient competitor to trade profitably in the downstream market on a lasting basis”. European Commission, *Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings* (2009/C 45/02), 24 February 2009, par. 80, [http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52009XC0224\(01\)](http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52009XC0224(01)).

<sup>22</sup> Functional separation requires that a vertically integrated undertaking has “to place activities related to the wholesale provision of relevant access products in an

same ownership.<sup>23</sup> The clearer such separation is, the better it is for regulation and for effective competition at the retail level (and thus in citizens' interest). Moreover, a clear-cut separation does not hamper effectiveness by reducing the incentive of the undertaking controlling the essential facility to invest. Even though there might be a hold-up problem when the investment by an upstream firm is tailored to meet the needs of another party and cannot be used by a third party,<sup>24</sup> a competitive downstream market eliminates that risk since that investment undertaken by the owner of the essential facility is unlikely to be specific,<sup>25</sup> or in Williamson's words, idiosyncratic.<sup>26</sup>

As included within the perimeter of the SGEIs, for essential transport and communication services,<sup>27</sup> every user should access these services at

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independently operating business entity. That business entity shall supply access products and services to all undertakings, including to other business entities within the parent company, on the same timescales, terms and conditions, including those relating to price and service levels, and by means of the same systems and processes" (art. 13a of the Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities).

<sup>23</sup> Martin Cave, "Six Degrees of Separation: Operational Separation as a Remedy in European Telecommunications Regulation", in *Communications & Strategies*, No. 64 (2006), p. 89-103, <http://mpira.ub.uni-muenchen.de/3572>.

<sup>24</sup> This places the investor at a disadvantage, as the party for whom the investment is made can behave opportunistically based on the fact that the investor has limited possible alternatives to utilise the investment for alternative purposes. Vertical integration between the parties would internalise the gains to be made from the investment and so remove the incentive for opportunism.

<sup>25</sup> SPC Network, *Equivalence of Input and Functional Separation: A Framework for Analysis*, 26 February 2009, [http://spcnetwork.eu/uploads/20090226\\_EFS\\_Report.pdf](http://spcnetwork.eu/uploads/20090226_EFS_Report.pdf).

<sup>26</sup> Williamson wrote that "the crucial investment distinction is this: to what degree are transaction-specific (nonmarketable) expenses incurred. Items that are unspecialized among users pose few hazards, since buyers in these circumstances can easily turn to alternative sources, and suppliers can sell output intended for one order to other buyers without difficulty. Nonmarketability problems arise when the *specific identity* of the parties has important cost-bearing consequences. Transactions of this kind will be referred to as idiosyncratic." Oliver E. Williamson, "Transaction-Cost Economics: The Governance of Contractual Relations", in *The Journal of Law and Economics*, Vol. 22, No. 2 (October 1979), p. 239-240.

<sup>27</sup> With "essential" services we refer to those services for which sector-specific EU legislation establishes the principles that Member States should follow when defining public service obligations. Thus these are services mainly for citizens (*e.g.* passenger

a reasonable quality and an affordable price.<sup>28</sup> When the market does not provide such services, or does not provide them upon fair conditions, then a public authority could compensate the service provider for the net cost incurred in building the infrastructure and/or in supplying the service in unprofitable areas. But each time there are public resources at stake, then strict conditions should be met to reduce the negative impact of a State aid.<sup>29</sup> Thus, where there is no room for competition *in* the market and the public service provider is not chosen pursuant to a public procurement procedure (competition *for* the market), the compensation should be calculated by taking into account the cost of an efficient undertaking providing that specific service.

The European added value,<sup>30</sup> though fundamental in pushing the liberalisation process, is increasing homogeneity of national legal frameworks to smooth cross-border business and for financing those relevant “missing links” which are necessary to reach an adequate level of effectiveness of European infrastructure. Since the EU is a confederation of different States, different national level standards and procedures (*e.g.* authorisation) increase the cost of cross-border operations.

National liberalisation processes, along with homogenous rules, are the recipe for the level-playing field in the Single Market. In this seamless market, transport, communications and the relevant infrastructure should be managed according to a unique EU framework.

However homogeneity in transport and communications is not achievable in the short-to-medium term due to physical and legal limitations and

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collective transport services, and connection to the public telephone network at a fixed location) rather than for business (*e.g.* cargo transportation, and videoconferencing).

<sup>28</sup> Art. 1 of the Protocol No. 26 of the TEU on Services of General Interest reads “The shared values of the Union in respect of services of general economic interest within the meaning of Article 14 of the TFEU include in particular: [...] a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights.”

<sup>29</sup> European Commission, *Communication on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest* (2012/C 8/02), 11 January 2012, [http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52012XC0111\(02\)](http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52012XC0111(02)).

<sup>30</sup> As stated by Tarschys, the European added value can be considered the “corollary of the established principle of subsidiarity”. Daniel Tarschys, “The Enigma of European Added Value. Setting Priorities for the European Union”, in *SIEPS Reports*, No. 2005:4 (June 2005), p. 8, <http://www.sieps.se/sites/default/files/45-20054.pdf>.

as changes in these industries require a long adaptation time. There are still transaction costs in moving from one Member State to another, both for the undertakings wishing to supply the same service, and for those consumers wishing to use the same service supplied by firms resident in other Member States. Network services rely on the legacy of national network design and operating systems, while transport and communication services are affected by Member States' different institutional and legal frameworks. Thus a one-size-fits-all framework might be a source of distortion within the EU. Even a pure country-of-origin principle can lead to a harmful heterogeneity, which would hamper European business.

Therefore in the short-term, effective governance must combine an EU-level approach with a national-level approach. At the EU-level there should be models of regulation (*e.g.* how to calculate efficient wholesale tariffs, how to define obligations to ensure non-discrimination) and models of procedures (*e.g.* how to outline an authorisation procedure) to create more consistency among the 28 national markets. But, it must be stressed that this EU-guided harmonisation process would not lead certainly to homogenous - wholesale and retail - prices due to the different national conditions, such as energy and labour costs and taxation.

National-level policies should integrate the EU-level approach to increase effectiveness as well as unity. According to the subsidiarity principle, national authorities (Government and regulatory authorities) are better placed to know local conditions for the supply side (services and infrastructure) and for the demand side (consumers' behaviour). Thus, a unique model for transport and communication markets, shaped at the EU-level, could provide consistent implementation and still physically differentiated results at the national level.

In the long-term, as economic and legislative developments minimise national differences, and if *ex-post* antitrust intervention is not considered more efficient than *ex-ante* regulation, unique models of regulation with national implementation could be substituted by a unique sector-specific regulation at the EU level. This choice would be consistent with the scale of operations of the relevant markets. That is a scale that is always moving upward because of the globalisation processes and technological evolution. The speed of these processes could require more "European" regulation because of the inadequacy of every national regulation. This step would pave the way for a unique EU regulator, which would still need national institutions to guarantee both effectiveness

(*e.g.* by monitoring local implementation of EU regulations,<sup>31</sup> such as the fulfilment of universal service obligations), and unity (*e.g.* by keeping a closer-to-the-citizens presence for the protection of consumers).

### 2.3. Transport

After decades of EU activity, and despite noteworthy investments, the EU does not currently have a sufficiently interoperable and resource efficient network of interconnected, cross-border transport infrastructure. The market is still affected by missing links, bottlenecks and other market barriers. Since there are large divergences between the eastern and western parts of the EU, this issue relates both to the effectiveness and to the unity of Europe.

The European Commission has proposed measures for a Single European Transport Area<sup>32</sup> where effectiveness is associated with competitiveness and sustainability. To have effective transport systems, the EU should capitalise existing infrastructure in different Member States and should combine a top-down approach with a bottom-up design of a functional network aiming to carry large and consolidated volumes of freight and passengers traffic with high-efficiency and low-emissions. This aim would be achieved due to the extensive use of more efficient modes in multimodal combinations and the wide application of advanced technologies and the supply of infrastructure for clean fuels.

The bottom-up approach shapes the “comprehensive network” which constitutes the basic layer of the trans-European transport network (TEN-T) and includes all existing and planned infrastructure and the *desiderata* of every Member State.

The top-down approach shapes the “core network”. This network overlays the comprehensive network and consists of its strategically most important parts. The design of the core network should be even more effective by connecting those components of TEN-T with the highest European added value and by realising cross border missing links, eliminating bottlenecks and increasing multi-modality at the relevant nodes.

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<sup>31</sup>Once the regulation is no longer differentiated due to the fragmentation in national markets, then regulations will be replaced by directives as the leading legal instrument.

<sup>32</sup>European Commission, *Roadmap to a Single European Transport Area - Towards a competitive and resource efficient transport system* (COM(2011) 144 final), 28 March 2011, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52011DC0144>.



The distinction between a core network and a comprehensive network reflects the hierarchical structure of a transport network; since nodes have unequal ranking, there is room, and necessity, for a correct subsidiarity approach. What is relevant *vis-à-vis* the integration strategy is the top-down core network that will serve the whole of Europe only when fully completed.

The design of the network should be effective in ensuring efficient multi-modal links. Such links would be between the EU capitals and other main cities, ports, airports and key land border crossings, as well as other main economic centres. These links would have a view beyond the EU's borders,<sup>33</sup> by extending the EU's transport network to its immediate neighbours, and by connecting Europe to the rest of the world through its ports and airports. According to the Expert Group for the TEN-T Policy Review,<sup>34</sup> for a long time now the EU's ports and airports have been considered just as the Single Market's closure points. The Eastern enlargement, the globalisation of markets and the emergence of new business powers is rebalancing the role of sky and sea modes with respect to road, rail and inland navigation modes. From the current global market perspective, new, very sensitive "missing links" coincide with ports (goods) and airports (people) making it easy, or not, to connect Europe to the global market and so reduce external transaction costs.

The transport network should be efficient in reducing the investment in infrastructure by favouring more direct connection between the core nodes, and since infrastructure shapes mobility, the design should break the transport system's dependence on oil (currently at 90%). Reducing oil dependency is necessary to diversify input portfolio to face both its expected increasing scarcity and the fact that this input is mainly controlled by an international cartel.

Airports, ports, railway, metro and bus stations, should increasingly be linked and transformed into multimodal connection platforms for

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<sup>33</sup> Art. 21 par. 2 of the TEU reads: "The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to: [...] (e) encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade."

<sup>34</sup> See "TEN-T and Connections outside the EU", Annex 3 to the final report of the 2010 TEN-T Policy Review Expert Group 4, available at [http://ec.europa.eu/transport/themes/infrastructure/ten-t-policy/review/expert-groups\\_en.htm](http://ec.europa.eu/transport/themes/infrastructure/ten-t-policy/review/expert-groups_en.htm).



both passengers and goods. Online information and electronic booking and payment systems integrating all means of transport should facilitate multimodal travel. But today, legal, administrative and technical barriers are multiplied. There is no single transport document, but different modes of transport require different documentation.

Despite rail freight services opening up to competition in 2007 and international passenger services in 2010, market access in rail services continues to be a major problem. That is mainly due to the insufficient independence of and the lack of financial transparency between infrastructure managers and service operators, which can result in discriminatory behaviour and market distortions.<sup>35</sup> Thus the European Commission proposed to increase the separation between infrastructure managers and service operators.<sup>36</sup> That proposal should ensure non-discrimination in terms of tariff setting, path allocation and traffic management. Track measures, energy supply and signalling systems differ from one Member State to another, as an inheritance from the times in which railways were still national monopolies. This legacy hinders cross-border circulation of trains and increases the cost of rolling-stock used in international operations, which must be equipped to deal with multiple systems. Moreover, rail operators from one Member State are still not allowed to transport passengers on domestic lines within another Member State. At the same time, public service contracts can be awarded directly without open tender and procurement procedures.

Freight shipments over short and medium distances (below some 300 km) will, to a considerable extent, remain on trucks. It is therefore important, besides encouraging alternative transport solutions (rail, waterborne transport), to improve truck efficiency, via the development and the uptake of new engines and cleaner fuels, the use of intelligent transport systems and further measures to enhance market mechanisms. In road transport, national markets have only recently opened

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<sup>35</sup> European Commission, *Contribution to the Annual Growth Survey 2014* (COM(2013) 785 final) 13 November 2013, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52013DC0785>.

<sup>36</sup> European Commission, *Communication on the Fourth Railway Package - completing the Single European railway area to foster European competitiveness and growth* (COM(2013) 25 final), 30 January 2013, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52013DC0025>.

to cabotage (*i.e.* service operated by an undertaking resident in another Member State) to reduce the number of empty trucks.

Over longer distances, options for road de-carbonisation are more limited and freight multimodality has to become economically attractive for shippers (the cargo owners). The EU needs specially developed rail freight corridors optimized in terms of energy use and emissions. Airport capacity needs to be optimised and, where necessary, increased to face growing demand for travel to and from third countries and areas of Europe otherwise poorly connected, which could result in a more than doubling of EU air transport activities by 2050. In other cases, (high-speed) rail should absorb much medium distance traffic.

Europe needs a single integrated airspace. Its aircraft are still obliged to make unnecessary detours rather than take more direct routes and they suffer from air traffic delays, which produce significant economic and environmental damage. Due to the continuing growth of air traffic, the existing air traffic management system is no longer sustainable for reasons of safety and capacity.

Customs formalities for ships travelling between two European ports remain subject to identical customs formalities foreseen for international maritime transport. Therefore, even though simplified administrative procedures for maritime transport have already been introduced by EU legislation, vessels travelling between EU ports still encounter a significant number of complex procedures that put intra-EU shipping at a disadvantage in comparison to other transport modes. The attractiveness of maritime transport is dependent, moreover, on the availability, efficiency and reliability of port services. In a globalised world an integrated approach to the value chain is required. Hence access to ports must be organised in an integrated way.

According to the European Commission's estimates,<sup>37</sup> the cost of completion of the TEN-T network requires about 550 billion euros<sup>38</sup> until 2020. Out of that sum, some 215 billion refers to the removal of the main bottlenecks. This amount requires public and private resources. The selection of projects eligible for EU funding must reflect this vision and put greater

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<sup>37</sup> European Commission, *Roadmap to a Single European Transport Area ...*, cit., par. 55.

<sup>38</sup> This does not include investment in vehicles, equipment and charging infrastructure that may require an additional trillion euro to achieve the emission reduction goals for the transport system.

emphasis on European added value, especially the “missing links” of the core network. Even the regulatory framework could unlock the potential of private finances by restructuring transport charges and taxes to apply the principle of “polluter-pays”. The internalisation of externalities<sup>39</sup> is a source of financing<sup>40</sup> and it gives to users the correct economic signal to influence their behaviour when they decide upon a mode, a route or a time to travel. The Commission, in its 2014 Annual Growth Survey proposed that “tax systems should be redesigned by broadening tax bases, and shifting the tax burden away from labour on to tax bases linked to consumption, property and *pollution*.”<sup>41</sup> [emphasis added]

Along with market opening, the effectiveness of transport services relies on the quality of human resources (requiring training, certification, proper working conditions), and security (safety systems, passengers’ rights). Due to the global nature of transport, market and non-market rules should be strengthened through bilateral and multilateral cooperation via international institutions such as the World Trade Organisation, the International Civil Aviation Organization, and the Organisation for Co-Operation between Railways.

#### 2.4. Communications

All citizens and businesses should have the opportunity to be part of the digital economy since it improves both productivity<sup>42</sup> and cohesion.

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<sup>39</sup> Congestion, accidents, air pollution and noise are generally described as “externalities” as some costs are not included in the prices paid by transport users. The process of bridging this gap is called the internalisation of external costs, which means that someone making a journey should pay the real cost of that journey.

<sup>40</sup> The 2010 *TEN-T Policy Review* Expert Group 5 acknowledged the difficulties (economic, technical and political) that such a scheme will inevitably encounter. In particular the disparities across Europe as regards pricing, the use of the infrastructure and monetising the externalities, are likely to impair the instalment of a generic and standardised user fee collection framework, unless there is strong political commitment from the Commission. See “Funding Strategy and financing perspectives for the TEN-T”, final report of the 2010 *TEN-T Policy Review* Expert Group 5, available at [http://ec.europa.eu/transport/themes/infrastructure/ten-t-policy/review/expert-groups\\_en.htm](http://ec.europa.eu/transport/themes/infrastructure/ten-t-policy/review/expert-groups_en.htm).

<sup>41</sup> European Commission, *Annual Growth Survey 2014* (COM(2013)800final), 13 November 2013, p. 7, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52013DC0800>.

<sup>42</sup> According to the Commission “it is estimated that half of all productivity growth derives from investment in ICT”, while for McKinsey Global Institute, in a sample of

Europe 2020 Strategy puts digital infrastructure at the forefront of the flagship initiative “Digital Agenda for Europe”.<sup>43</sup> It underlines the need to ensure the roll-out and take-up of broadband for all, at increasing speeds, through both fixed and wireless technologies and to facilitate the necessary investment. The EU approved a quantitative target to achieve by 2020: all Europeans should have access to much higher internet speeds of above 30 Megabit per second (Mbs) and 50% or more of European households should have access to internet connections above 100 Mbps. In this case, the “missing links” are not at the backbone level (such as with the cross-border connection between two national railways). The missing links are at local level, the so-called access network, since the challenge is to connect everyone to an already powerful international backbone. Moreover, this network design - which places everyone upon the same conditions - combines unity with effectiveness since the latter is achieved by connecting everyone.

According to the Commission’s estimates,<sup>44</sup> a balanced portfolio of 30 and 100 Mbps projects will cost Member States up to 270 billion euros. That amount is due to the upgrade of the traditional copper lines (eventually replaced by optical fibre lines) and for investment in wireless 3G, 4G, Wimax. To increase the efficiency of this investment, the Commission has proposed a regulation<sup>45</sup> to reduce the cost of civil engineering works (which constitute the dominant part of deploying high-speed electronic communications infrastructure). That proposed regulation is addressed not only to electronic communications network providers but to any

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13 countries (Brazil, Canada, China, France, Germany, India, Italy, Japan, Russia, South Korea, Sweden, UK, US) the Internet contributed 7% of growth over the past 15 years and 11% over the past 5 years. See European Commission, *The Digital Agenda for Europe - Driving European growth digitally* (COM(2012) 784 final), 18 December 2012, p. 3, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52012DC0784>; Jacques Bughin and James Manyika, *Internet Matters. Essays in Digital Transformation*, McKinsey Global Institute, March 2012, [http://www.mckinsey.com/insights/business\\_technology/essays\\_in\\_digital\\_transformation](http://www.mckinsey.com/insights/business_technology/essays_in_digital_transformation).

<sup>43</sup> European Commission, *A Digital Agenda for Europe* (COM(2010)245 final/2), 26 August 2010, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52010DC0245>.

<sup>44</sup> European Commission, *A growth package for integrated European infrastructures* (COM(2011) 676 final), 19 October 2011, p. 5, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52011DC0676>.

<sup>45</sup> European Commission, *Proposal for a Regulation on measures to reduce the cost of deploying high-speed electronic communications networks* (COM(2013) 147 final), 26 March 2013, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52013PC0147>.

owner of physical infrastructure, such as electricity, gas, water and sewage, heating and transport services, which are suitable to host any parts of electronic communications networks. The Commission's proposal provides minimum rights and obligations without prejudice to existing measures adopted at the national and local levels entailing more detailed provisions and conditions, as well as additional measures complementing those rights and obligations.

This inter-sectoral cooperation - communications which make use of other networks - should be coupled with intra-sectoral cooperation where network operators share infrastructure or pool basic parts of their infrastructure, to avoid expensive duplication. One example is in the United Kingdom where Vodafone and Telefónica (in an agreement signed in June 2012) agreed to share towers and masts and to build new sites needed to extend mobile coverage into rural and remote areas. Another example is in Italy where Telecom Italia and Fastweb (in an agreement signed in September 2012) agreed to cooperate and share investment costs in rolling out two independent parallel fibre networks to street cabinets and offer FTTC<sup>46</sup> services to end customers.

In September 2013, after 26 years of regulation, the Commission proposed new measures for creating a telecommunication single market<sup>47</sup> with the aim of increasing regulatory consistency and predictability across the EU.

By reducing heterogeneity between national rules, procedures and sector-specific regulations, citizens can benefit from an increase in cross-border competition or, at least, from a more contestable market. Once the playing field is levelled it will be easier to undertake cross-border activity. In network industries characterised by economies of scale, size matters to be more competitive, to deliver more welfare for consumers, as well as to find resources to invest in the new access network.

It is worth distinguishing between two worlds: the wired network from the wireless network. The former heavily bears the legacy of

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<sup>46</sup> Fibre-to-the-Cabinet (FTTC) involves running fibre optic cables from the telephone exchange to the street cabinets which then connect, with a copper cable, to a standard phone line to provide broadband.

<sup>47</sup> European Commission, *Proposal for a Regulation laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent ...* (COM(2013) 627 final), Brussels, 11 September 2013, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52013PC0627>.

decades of investment undertaken by every national government before the liberalisation process. National networks are still different and, even though they are regulated according to the same models, those differences (national orography, network topology, cost of electricity and cost of workforce) naturally lead to different prices at the wholesale and retail levels. Moreover, differences affect each Member State since urban areas usually have a sufficient level of demand to allow competition between different operators with their own infrastructure. So the regulation enabling use of an incumbent operator's essential facility (access to the network) might not be as necessary there as in rural areas where the incumbent's network is the only available infrastructure.

The wireless story, by contrast, is much shorter and, by definition, less influenced by exogenous conditions other than radio spectrum allocation. That allocation, in the Single Market, should follow common regulatory principles applicable to Member States when defining conditions on its use and is harmonised for wireless broadband communications.

In a single market there cannot be any discrimination based upon the nationality of users. Thus service providers should not differentiate their prices - such as international roaming charges - unless objectively justified. The new regulation proposed by the Commission<sup>48</sup> does not permit mobile operators to charge a fee for international roaming. For example, an Italian user travelling in Germany would be using a network (Deutsche Telekom) which does not belong to his/her operator in the Italian's country of origin (Telecom Italia). Thus Telecom Italia should reward Deutsche Telekom for the Italian user making and receiving phone calls in Germany. If the Commission's proposed "roaming like at home" rule, which cancels roaming charges, is approved then operators cannot discriminate between users who travel and users who do not and will be obliged to raise the tariffs of every user to compensate for their inability to charge more for making and receiving calls outside the country of origin.<sup>49</sup> Reducing roaming charges is welcome since it is consistent with the concept of a single market. But it has a social impact: users who do not travel will subsidise those who do travel within the EU.

European users should rely on the same set of rules: for example, rules on contractual terms, transparency, facilitating "switching" oper-

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<sup>48</sup> Ibid.

<sup>49</sup> This outcome is likely due to unbalanced flows of travellers within the EU.

ators and rules to prevent the blocking or “throttling” of online services, as part of measures to ensure access to the open internet. However, a Single Market for communications cannot change Member States’ legal frameworks which are not completely overlapping and these differences might lead to a fragmentation of consumer rights’ safeguards.

The European Commission has proposed an evolution of the orthodox network-neutrality, *i.e.* the obligation for providers to supply an unhindered connection to all content, applications or services being accessed by end-users,<sup>50</sup> while regulating the use of traffic management measures by operators in respect of general internet access. Thanks to the Commission’s proposal end-users are free to conclude agreements on the provision of specialised services with an enhanced quality of service - relevant for services such as e-Health, cloud-computing, teleconferencing - with their providers of electronic communications.

There is the possibility of transmitting the related data volumes or traffic as specialised services with a defined quality of service or dedicated capacity. But the provision of specialised services shall not impair, in a recurring or continuous manner, the general quality of internet access services. Voice-over-IP and instant messaging are replacing traditional phone calls and SMS and, within this framework, telecom operators sell a commodity (transport of “packets” of information). In these markets, by definition, there is no way to differentiate by charging different rates to internet content providers. With this Commission proposal, network operators are being given more room for manoeuvre to upgrade their role in electronic communications: not just as mere infrastructure operators pushing indistinguishable data, but also as managers of a value-added service. Thus network operators balance their position *vis-à-vis* over-the-top services (*e.g.* Google, WhatsApp and Skype) running through the networks “on top” of the basic provision of Internet access. This role enhances effectiveness by letting network operators extract more value from the ICT ecosystem to finance new investments in access networks. Investments are necessary since network capacity risks

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<sup>50</sup> European Commission, *Proposal for a Regulation on measures to reduce the cost of deploying high-speed electronic communications networks*, cit., p. 12. This principle of equal treatment applies to all data packages which may not be discriminated against on the grounds of content, service, application, origin or destination.



lagging behind traffic evolution<sup>51</sup> and so leading to congestion, which would reduce service quality.

Along with its geographical dimension, a level playing field in electronic communication should also consider the product and service dimensions. No more than two decades ago, single-purpose devices were the norm, being distinct and therefore separate product markets: a telephone was different to a camera and a TV was different to an ADSL service. Sector-specific regulations took different approaches to different services that are now converging towards the single one encompassed by electronic communications. But while we have a fairly comprehensive set of rules for linear television, the field of non-linear audio-visual media services has so far been marginally regulated; internet services delivered via television will fall into the latter category. Cultural diversity, media pluralism and the protection of minors retain their importance to society but are not always enforceable on all new digital platforms. Trumpeted for many years, convergence is becoming a reality as Digital Agenda targets are approached. Even though content broadcasted and demanded online is beyond the scope of this paper,<sup>52</sup> a more effective Europe means that the legal framework must not be regulated differently because the same content is obtained by different means (such as traditional broadcasting vs. the internet).

The Digital Agenda's target of universal coverage of at least 30 Mbs broadband should be coupled with a revision of the universal service obligation. It might be an ineffective investment to give citizens access to powerful infrastructure if some of them cannot afford to use it. As has been the case for traditional telephony up to today, the EU should allow every user to access the broadband service at a reasonable quality and an affordable price.

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<sup>51</sup> See European Commission, *The Digital Agenda for Europe - Driving European growth digitally*, cit., p. 3: "Internet traffic is doubling every 2-3 years and mobile internet traffic every year. By 2015 there will be 25 billion wirelessly connected devices globally; doubling to 50 billion in 2020. Mobile data traffic will increase 12-fold between 2012 and 2018, and data traffic on smartphones will increase 14 times by 2018."

<sup>52</sup> According to art. 2 of Directive 2002/21/EC: "'electronic communications service' means a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services and transmission services in networks used for broadcasting, but exclude services providing, or exercising editorial control over, content transmitted using electronic communications networks and services [...]."



Finally, the EU should create the right conditions - such as a standard or appropriate interoperability rules - to develop EU-wide services at the root of the Single Market *e.g.* e-Health, e-Justice, e-Payments, e-Commerce, copyright online. EU-based electronic services have, as a prerequisite, the unique identification and authentication of European citizens. These EU-wide services will require common rules on privacy and subsequently on procedure to create and/or to share databases containing the relevant information.

### 2.5. Infrastructure

In the previous sections, this paper has identified which are the transport and communication services and the relevant infrastructure needed for an effective and united Europe. In a nutshell, the cross-border transport infrastructure gap is becoming more acute in Europe and bottlenecks still exist within the Single Market, notably in the eastern Member States.<sup>53</sup> While for electronic communications, new infrastructure must be put in place in the eastern and southern Member States<sup>54</sup> and even in the western Member States there is a gap to fill between urban and rural areas.

In what follows, the paper will focus on the financial issue or aspect of infrastructure (since transport and communication infrastructure's effectiveness and unity have been the focus of the previous sections). According to the Commission, the current flow of private finance is not sufficient to address the significant investment needs of infrastructure sectors.<sup>55</sup>

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<sup>53</sup> For the Commission "large divergences in terms of transport infrastructure remain between eastern and western parts of the EU". See European Commission, *Roadmap to a Single European Transport Area ...*, cit., par. 51. However even in the eastern part of the EU, it should not be underestimated that technological progress is putting outside the marketplace large parts of existing infrastructure. For example, ship gigantism - justified in term of economies of scale at sea - is making it impossible to call at many existing ports and so demands huge port investments to replace the existing infrastructure which is becoming obsolete.

<sup>54</sup> Citing a 2013 Eurobarometer survey, some experts point out that "[a]ccess to Internet at home, and specifically access to broadband Internet at home, varies greatly among EU Member States [...]. Both east-west and north-south divides are clearly in evidence". J. Scott Marcus et al., *How to Build a Ubiquitous EU Digital Society*, cit., p. 45.

<sup>55</sup> European Commission, *A growth package for integrated European infrastructures*, cit., p. 7.

Private finance is not readily available upon conditions and at maturity rates which appropriately reflect the economic life-cycle of commercially viable long-term infrastructure projects. Thus public institutions are in the right position to fund such infrastructure projects: they have a long-term perspective and, in some cases, they can raise financial resources at a lower cost. But due to the “long-tail” of the financial and economic crisis (which reduces both users’ willingness and ability to pay and tax sustainability), Member States, and the EU itself, have a reduced fiscal space within which to operate.

According to the Vice-President of the European Commission Olli Rehn “meeting the EU’s infrastructure challenge - with investment needs estimated at 1.5 trillion euro up to 2020 in transport, energy and ICT - will require huge upfront financing at times of tight public budgets and on-going balance-sheet consolidation in the banking sector”.<sup>56</sup>

Where public support is needed to finance new infrastructure, then the granting authorities should select a company to deploy and/or to operate the subsidised infrastructure and ensure the process is transparent for all investors wishing to bid for the implementation and/or management of the subsidised project. Equal and non-discriminatory treatment of all bidders and objective evaluation criteria are indispensable conditions. The competitive tender is a method to reduce budgetary costs and to minimise the potential amount of State aid involved.

Against this background, the European Commission, along with its proposal to increase efficiency in investments,<sup>57</sup> has proposed the Connecting Europe Facility<sup>58</sup> to finance projects that fill the missing links in Europe’s energy, transport and digital backbones. The Connecting Europe Facility (CEF) has two main types of instruments: participations in equity funds which provide risk capital to activities contributing to projects of common interest; loans and/or guarantees to projects of common interest facilitated by risk sharing instruments, including enhancement mechanisms for long-term bank lending and

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<sup>56</sup> Speech at the European Policy Centre: *Europe’s growth challenge and innovative infrastructure financing*, Brussels, 7 November 2012, [http://europa.eu/rapid/press-release\\_SPEECH-12-789\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-12-789_en.htm).

<sup>57</sup> E.g. the *Proposal for a Regulation on measures to reduce the cost of deploying high-speed electronic communications networks*, cit.

<sup>58</sup> European Commission, *A growth package for integrated European infrastructures*, cit.

for project bonds issued by project companies. EU level intervention, through grants and financial instruments, will focus on initiatives that eliminate or reduce market fragmentation, increase European security, and on infrastructure with a considerable growth enhancement potential and/or socio-economic benefits which cannot be captured or monetised at the project level.

The CEF, combined with the structural funds, cannot cover the overall cost of investment required; but it should work as a guarantee for private investments and a driver to stimulate the combination of public-private partnerships. However if a comparison is made between the original Commission proposal and the Council-Parliament agreement<sup>59</sup> for the CEF, it is clear there is a difference between transport and communication infrastructure and the EU's added value. Given the estimated investment required for transport and communications are respectively 215 and 270 billion euro, the CEF's coverage is 12%, a mere 0.4% of what is required.

The rationale behind these different gaps between infrastructure needs and respective financial interventions is faultless. If there is a missing-link in the middle of the TEN-T priority project number 6 (the Railway axis Lyon - Trieste - Divača/Koper - Divača - Ljubljana - Budapest - Ukrainian border), then the effectiveness of the corridor would be seriously jeopardised. Whereas, if a Member State's population cannot access the broadband service, the European digital society is not going to experience significant damage. This is why the CEF in communications will mostly go to developing re-usable platforms for the delivery of public services online, rather than investing in physical networks in underserved areas.

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<sup>59</sup> The political agreement on the Multiannual Financial Framework 2014-2020 dates 10 July 2013. Figures in table 1 refer to the European Parliament *Resolution on the proposal for a regulation of the European Parliament and of the Council establishing the Connecting Europe Facility* (P7\_TA-PROV(2013)0463), 19 November 2013, <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0463&language=EN>.

**Table 1.** Infrastructure for transport and communication networks  
(billion euro)

	Investment required	Connecting Europe Facility	
		Commission's proposal	Council and Parliament agreement
<b>Energy</b>	200*	9.1	5.85
<b>Transport</b>	215**	31.7	26.25
<b>Communications</b>	270	9.2	1.14

Source: European Parliament, *Resolution on the proposal for a regulation establishing the Connecting Europe Facility*, cit.

\* The amount needed for electricity and gas networks of European importance alone.

\*\* This figure refers only to the removal of the main bottlenecks of the TEN-T.

Even if the CEF should work as a lever to attract private investment, the gaps in Table 1 shows that if the EU wants to meet the challenges set by Europe 2020, then some other instruments are needed. These supplemental instruments could include:

- Investments by the incumbent financed by “regulated” profits? The Commission has proposed a model for electronic communications<sup>60</sup> in which the national incumbent should be allowed extra-profits in regulated wholesale services (such as the traditional local loop unbundling) to finance investments in brand new fibre networks. This potential cross-subsidisation leads to discrimination against competitors buying, more expensive, wholesale services still used by consumers such as the traditional DSL.<sup>61</sup> The same cross-subsidisation is however only theoretical since, in a market economy, a public authority cannot enter into the decision-making of an incumbent, unless it is State-controlled, to impose investment decisions to pre-

<sup>60</sup> European Commission, *Recommendation on consistent non-discrimination obligations and costing methodologies to promote competition and enhance the broadband investment environment* (2013/466/EU), 11 September 2013, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32013H0466>.

<sup>61</sup> Digital Subscriber Line (DSL) technology enables fast data transmission over copper telephone lines.

vent the dispersal of such extra-profits as dividends. For the European Parliament it is not just the incumbent which is called to invest since it is the competition that spurs investments.<sup>62</sup> The network is a strategic asset for the EU and the EU itself should finance it where private investors find no business case to build new networks and/or to upgrade the existing ones.

- A deeper EU financial involvement? An increase in the EU budget - currently about 1% of the EU GNI - would place a heavier burden on the shoulders of the already-over-indebted Member States since the EU budget is 75% financed by the Member States themselves.<sup>63</sup>
- A golden rule for the Stability and Growth Pact<sup>64</sup> (SGP)? The achievement of a budget position “close to balance or in surplus”, at the basis of the coordination of national fiscal policies, implies that most capital expenditure will have to be funded from current revenues. Hence it is not possible to spread the cost of an investment project over all the generations of taxpayers who benefit from it. Thus a golden rule for the SGP might exclude investment spending in EU infrastructure from the computation of the fiscal parameters relevant to the Excessive Deficits Procedure. A similar proposal was criticised in the early 2000s<sup>65</sup> but the same proposal might gain *momentum* in a feebler economic background and with a strictly-defined framework that constrains the less virtuous Member States’ opportunistic behaviour.

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<sup>62</sup> European Parliament, *Resolution on the Digital Agenda for Growth, Mobility and Employment: time to move up a gear* (P7\_TA(2013)0377), 12 September 2013, <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0377&language=EN>.

<sup>63</sup> In the EU budget 2012’s share of own resources based on Gross National Income.

<sup>64</sup> Art. 121 and art. 126 of the TFEU provide the legal basis of the SGP: respectively the preventive arm, which seeks to ensure that fiscal policy is conducted in a sustainable manner over the cycle, and the corrective arm, which sets out the framework for countries to take corrective action in the case of an excessive deficit. Protocol 12 defines the reference values of 3% of GDP for public deficit and 60% of GDP for public debt.

<sup>65</sup> See, for example, Fabrizio Balassone and Daniele Franco, “Public Investment, the Stability Pact and the ‘Golden Rule’”, in *Fiscal Studies*, Vol. 21, No. 2 (June 2000), p. 207-229, <http://www.ifs.org.uk/fs/articles/0023a.pdf>.

- EU debt on top of existing national debts? The Commission launched a consultation<sup>66</sup> to assess the feasibility of common issuance of sovereign bonds among the Member States of the euro area. This would mean a pooling of sovereign issuance among the Member States and the sharing of associated revenue flows and debt-servicing costs. The absence of concrete steps after that consultation demonstrates that Eurobonds are not feasible in the short-run and, above all, without a “leap-frog” step in EU integration. This scepticism is justified by the fact that the most virtuous Member States would have to accept partly diluting their superior sovereign risk premium into common forms of debt, in exchange for the acceptance, by the beneficiary (and less virtuous) Member States, of stricter forms of public finance controls, with centralised powers of control able to overrule the sovereignty of those Member States.
- *Emission of bonds devoted to finance a specific EU infrastructure? The Commission has already launched a pilot phase in 2012 of the Project Bond Initiative<sup>67</sup> with the aim of attracting institutional investors by enhancing the credit standing - through an EU/EIB financed loan or guarantee - of private entities needing to raise private funds for the infrastructure projects which they are promoting. In 2012 and 2013 the Project Bond Initiative mobilised 230 million euro, enabling the financing of a total infrastructure investment volume of some 4.5 billion euros. But that amount of money demonstrates, if there is the need, that just one instrument cannot solve by itself the financial issue for infrastructure.*

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<sup>66</sup> European Commission, *Green paper on the feasibility of introducing Stability Bonds* (COM(2011) 818 final), 23 November 2011, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52011DC0818>.

<sup>67</sup> Regulation (EU) No 670/2012 of the European Parliament and of the Council of 11 July 2012 amending Decision No 1639/2006/EC establishing a Competitiveness and Innovation Framework Programme (2007-2013) and Regulation (EC) No 680/2007 laying down general rules for the granting of Community financial aid in the field of the trans-European transport and energy networks.

### 3. THE CORE GROUP

The steps towards the establishment of a more united and effective transport and communications sectors are at the heart of the Single Market. Being a part of the core group<sup>68</sup> of Member States wanting to push ahead in the integration process in this policy area means supporting the Single Market as the basis of the EU project. After more than fifty years, the Single Market has confirmed its role as the “common denominator” of all the members which are part of the EU project. The Single Market has imitations in every corner of the globe<sup>69</sup> and attracts European and non-European countries which are part of the EU network of bilateral and multilateral agreements signed to liberalise trade.

But the Single Market project is not fully complete<sup>70</sup> and even the European Parliament, the EU institution representing citizens, displayed concern that the re-emergence of economic protectionism at the national level would most probably result in fragmentation of the Single Market and therefore should be avoided.<sup>71</sup>

There are many quantitative estimates of the cost of an incomplete Single Market.<sup>72</sup> But the qualitative opinion of Monti might be more useful: “given the very limited margins available for budgetary stimuli, making the single market more efficient is Europe’s best endogenous source of growth and job creation.”<sup>73</sup> This endogenous source has got an external connection due to the “increased integration of EU industries into global value chains which will help strengthen Europe’s industrial base and requires open and inter-connected product and services markets.”<sup>74</sup>

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<sup>68</sup> As understood by Nathalie Tocci and Giovanni Faleg in Chapter 1.

<sup>69</sup> See, for example, the Common Market for Eastern and Southern Africa (COMESA), the Gulf Cooperation Council (GCC), the Association of Southeast Asian Nations (ASEAN), the Mercosur, and the North American Free Trade Agreement (NAFTA).

<sup>70</sup> European Commission, *Contribution to the Annual Growth Survey 2014*, cit.

<sup>71</sup> European Parliament, *Report on delivering a Single Market to consumers and citizens* (A7-0132/2010), 3 May 2010, <http://www.europarl.europa.eu/sides/getDoc.do?reference=P7-TA-2013-0377&language=EN>.

<sup>72</sup> See, for example, London Economics and PwC, *Study on ‘The cost of non-Europe: the untapped potential of the European Single Market’*, April 2013, <http://londoneconomics.co.uk/?p=1664>.

<sup>73</sup> Mario Monti, *A new strategy for the Single Market ...*, cit., p. 9-10.

<sup>74</sup> European Commission, *Annual Growth Survey 2014*, cit., p. 10.

Competitiveness is not an option anymore as it was in 2000 when the EU started the ten-year Lisbon Strategy. Now it is about defending the European social market economy model since the crisis could have a lasting effect on potential growth and unemployment.<sup>75</sup>

To be competitive, the EU should be a leader in a globalised economy. Indeed the EU is one of the pillars of a multipolar world and worldwide agreements are often based on an understanding between the US and the EU<sup>76</sup> thanks to their combined economic weight. However Cassese's view comes in the middle of a clear downturn in the EU's economic position (see Table 2 below).

**Table 2.** Gross domestic product based on purchasing-power-parity (% of world total)

	<b>2000</b>	<b>2019</b>
<b>EU-28</b>	<b>24.8</b>	<b>16.7</b>
<i>Germany</i>	<b>5.0</b>	<b>3.2</b>
<i>United Kingdom</i>	<b>3.5</b>	<b>2.6</b>
<i>France</i>	<b>3.6</b>	<b>2.3</b>
<i>Italy</i>	<b>3.3</b>	<b>1.8</b>
<b>United States</b>	<b>24.0</b>	<b>18.2</b>
<b>China</b>	<b>7.0</b>	<b>18.5</b>
<b>India</b>	<b>3.7</b>	<b>6.8</b>
<b>Japan</b>	<b>7.6</b>	<b>4.6</b>
<b>Russia</b>	<b>2.6</b>	<b>2.7</b>
<b>Brazil</b>	<b>2.9</b>	<b>2.7</b>
<b>South Korea</b>	<b>1.8</b>	<b>1.9</b>

Source: IMF, *World Economic Outlook Database*, April 2014.

<sup>75</sup> In his foreword to the Commission's Communication to the 2005 Spring European Council, President Barroso affirms that the challenges the EU faces are even more urgent than in 2000 "in the face of an ageing population and global competition. Unless we reinforce our commitment to meeting them, with a renewed drive and focus, our model for European society, our pensions, our quality of life will rapidly be called into question." European Commission, *Working together for growth and jobs. A new start for the Lisbon Strategy* (COM(2005) 24 final), 2 February 2005, p. 4, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52005DC0024>.

<sup>76</sup> Sabino Cassese, "Introduction: Im Zweifel für Europa", in Stefano Micossi and Gian Luigi Tosato (eds.), *The European Union in the 21st Century. Perspectives from the Lisbon Treaty*, Brussels, Centre for European Policy Studies (CEPS), 2009, p. 1-5, <http://www.ceps.be/node/2770>.



The linkage between the Single Market and competitiveness should not be understood only in GDP terms. According to Gill and Raiser, Europe is a “convergence machine” taking in poor countries and helping them become high-income economies thanks to trade in goods and services, and thus to the Single Market.<sup>77</sup>

Still the Single Market facilitates intra-EU labour mobility to avoid unfilled job vacancies as well as to give business opportunities on a wider scale. Labour mobility is also one of the conditions needed for an optimal currency area.<sup>78</sup> Moreover, the Single Market is in line with the principle of sustainable growth by making use of efficient transport and communication networks which move goods and people using lower polluting resources and/or which moves digital files avoiding *in toto* any polluting transportation.<sup>79</sup>

The incentives for a Member State to be part of the core group that wish to push ahead in the integration process in transport and communications, as part of a wider Single Market project, are:

- To take part in the decision-making designing the European networks and service conditions. Especially for transport, size and geography matters in network design. The network design will be most efficient when the map identifying the relevant nodes is at its widest and most complete. For this reason the current design of TEN-T comprises Switzerland and the Western Balkans and rail and road networks take into account the core nodes beyond the EU's eastern border (such as to Ankara and Kiev).

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<sup>77</sup> Indermit S. Gill and Martin Raiser, *Golden Growth. Restoring the Lustre of the European Economic Model*, Washington, World Bank, April 2012, <http://documents.worldbank.org/curated/en/2012/04/16234385>.

<sup>78</sup> Robert Mundell, “A Theory of Optimum Currency Areas”, in *The American Economic Review*, Vol. 51, No. 4 (September 1961), p. 657-665. An optimal currency area is a geographical region in which sharing a single currency would maximise economic efficiency. But these areas - without national monetary policy and with fixed exchange rates - are likely suffer large asymmetrical shocks (*e.g.* a recession which only affects some members of a group) without sufficient labour mobility. For example, if Country A is affected by a recession and its unemployed workforce can move to Country B, where excess demand for labour pushes wages up, then this mobility eliminates the need to push wages up in Country B and wages down in country A. In country A unemployment disappears and Country B no longer suffers from inflationary pressures.

<sup>79</sup> Examples range from the elimination of the physical formats of music and video products, to the reduction in the level of business travel thanks to videoconferencing.

- Funding the relevant infrastructure at a cost that might be below the market rate thanks to EU-supported financial instruments.
- Being part of a more integrated market which might be welfare-improving for consumers thanks both to new services (such as high-speed rail links and an e-Health service available abroad) and to economies of scale enjoyed by operators in network economies.
- Enjoying a stronger bargaining power in bilateral and multilateral bodies when international rules need to be set (*e.g.* safety systems for transport, international roaming charges paid by users, traffic management) thanks to the size, and the components, of the core group.

The governance model, as already indicated in section 2.2, should be inspired by a more centralised regulation once national heterogeneity decreases. This model is not a discontinuity with the current EU framework but it is a natural evolution, where “natural” refers to the path drawn by the Treaty of Rome.

#### 4. THE NON-CORE GROUP

A Member State may decide to remain in the Single Market but not to progress in the integration of transport and communications. That rationale might be due to either a lack of financial resources caused by national budget constraints or an evaluation according to which the national investment required is higher than the estimated national pay-offs, even in political terms (such as when NIMBY advocates have the power to determine national decisions).

Fiscal problems might be an obstacle for Member States in progressing towards more effective transport, communications and infrastructure; this is why at the EU level there is an on-going debate about the financial solutions listed above.

The option of not taking part in the core group or leaving the Single Market altogether, is not significant for communications effectiveness since the network which requires an expensive upgrade is mainly local and the EU is not going to be negatively affected by a missing Member State. While, if the core group starts to build its core transport network without a particular Member State, this missing partner might lead to a sub-optimal network design. Connecting core group relevant nodes

and extending the transport network beyond EU borders might be less efficient due both to “holes” in the map (*e.g.* connecting by high-speed train Rotterdam to Warsaw or Berlin to Istanbul might be tricky - and thus inefficient - if respectively Germany and Bulgaria decide not to be part of the core group), and to missing strategic nodes (*e.g.* there are not equivalent alternatives - in the short-medium term - to the Rotterdam and Hamburg ports if they are not components of the core group).

Even in this case, no special governance model is needed. The requirement is that developed services and infrastructure of the core group should interconnect with the traditional services and infrastructure of the non-core group (*e.g.* a train can move from a core country to a non-core one, but in the latter should reduce its speed, cross-modal operations might be slower in non-core countries rather than in core countries).

However, new instruments are needed since there might be two types of opportunistic behaviours by Member States.

Firstly, a Member State may decide to leave the core group once the network infrastructure has been completed and once the national infrastructure has been financed at a cost below the market rate (*e.g.* a loan guaranteed by EU institutions/instruments with a higher credit worthiness). That country might use that infrastructure once it decided to leave the core group, or even the EU. Such a scenario would leave a suboptimal service for the operators belonging to the core-group countries since, for example, a country with a new port or rail infrastructure leaves the core group and do not allow cross-modality or high-speed services as originally planned by core members.

Secondly, a Member State may decide to exit the core group when its national section of the network infrastructure is not completed, even though it showed a firm commitment in realising it, while neighbouring countries have already undertaken relevant investments. The cost, in this case, might be huge: what is the value of a tunnel dug for half of its length? Since the network with that missing link might reduce dramatically its effectiveness, other Member States which are part of the core group might find it valuable to finance themselves that relevant part which is located in a now non-core Member State. Thus the latter could opportunistically wait for this situation to happen so that it would enjoy a new transport service without bearing the full cost of the relevant infrastructure.

In both cases, Member States still part of the core group, or of the EU, could not grab the benefits of this new infrastructure either because it

would be completed but not operating to its full potential, or because it would not be completed.

Opportunistic behaviours undertaken by one or a few Members States would be one-off in nature. All types of transaction in the international economy are part of a repeated, continuing game. Theoretically a player can cheat only once, then it would face the negative consequences of a lack of cooperation and even of retaliatory measures (as already foreseen by international institutions such as the WTO<sup>80</sup>).

A big risk is that the policy cycle is aligned with the electoral cycle, which is too short compared to the long-term perspective needed for cooperative behaviour. Thus a solution might be that the core group, before starting investments in infrastructure, should define penalties for Member States not fulfilling their commitments.

## 5. OUT OF THE SINGLE MARKET, OUT OF THE EU

The exit from the Single Market might be a legitimate decision since, as stated in the already mentioned EP report, integration “is not an irreversible process and that the continued existence of the single market should not be taken for granted”.<sup>81</sup>

A Member State may decide to leave the Single Market, thus abandoning the integration process in transport and communications for different reasons such as:

- playing by rules that are less restrictive (*e.g.* on pollution) than the ones adopted by other European countries in the Single Market;
- protecting national transport and communication undertakings by adopting the “infant industry” argument revamped by Chang;<sup>82</sup>
- heeding the voices<sup>83</sup> of those who oppose international trade and information and communication technologies as drivers to improve human welfare.

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<sup>80</sup> The Dispute Settlement Body has the power to authorise retaliation when a country does not comply with a ruling.

<sup>81</sup> European Parliament, *Report on delivering a single market to consumers and citizens*, cit.

<sup>82</sup> Ha-Joon Chang, *Bad Samaritans. Rich Nations, Poor Policies, and the Threat to the Developing World*, London, Random House Business, 2007.

<sup>83</sup> “Voice” should be understood as one of way to express concern or to communicate a change proposal. See Albert O. Hirschman, *Exit, Voice, and Loyalty. Responses to Decline*

Liberalisation and competition, though drivers of an effective Europe, create discontinuities and these have a negative impact on the social side of the EU economic model and on the unity dimension. The immediate social costs of the Single Market, and of the globalisation, are more vibrant compared to the opportunities and the long-term benefit. In addition, the EP report goes on to state that: “the already existing antipathy felt by consumers, citizens and SMEs towards the single market prior to the crisis, has post crisis been transformed into antagonism”.<sup>84</sup>

According to Gill and Raiser,<sup>85</sup> among the reasons which have exacerbated this reaction in some countries and in some parts of society might be found in: a premature adoption of the euro by southern economies; the too quick enlargement towards formerly communist countries; the fragmented economic structure in some countries since small competitors are not suited for a big market.

As table 2 clearly shows, there is no significant role in the global economy, even for the biggest EU countries, out of the Single Market. The UK Prime Minister, in a speech about a referendum on British membership of the EU, affirmed that “at the core of the European Union must be, as it is now, the single market. Britain is at the heart of that single market, and must remain so. But when the single market remains incomplete in services, energy and digital - the very sectors that are the engines of a modern economy - it is only half the success it could be. It is nonsense that people shopping online in some parts of Europe are unable to access the best deals because of where they live. I want completing the single market to be our driving mission.”<sup>86</sup>

However, it is difficult to figure out how a Member State that decides to leave the Single Market can still be part of the EU since the Single Market is the cornerstone of the EU.

If a country decides to leave the Single Market without damaging other Member States, the governance model is not new since it might be the same as that which the EU already has with third countries as far as transports and communications are concerned.

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*in Firms, Organizations, and States*, Cambridge, Harvard University Press, 1970.

<sup>84</sup> European Parliament, *Report on delivering a single market to consumers and citizens*, cit.

<sup>85</sup> Indermit S. Gill and Martin Raiser, *Golden Growth*, cit.

<sup>86</sup> David Cameron, *EU speech at Bloomberg*, 23 January 2013, <https://www.gov.uk/government/speeches/eu-speech-at-bloomberg>.

## 6. CONCLUSIONS

Transport, communications and infrastructure are tightly connected to the Single Market or, better, are the backbone of it. The Single Market is the endogenous strength the EU can use to boost its competitiveness, since competition - the key rule of the Single Market - is a driver of competitiveness.

The Single Market has the potential to combine effectiveness and unity: it increases the “size of the cake” (competitiveness) and it allows every component of the EU to eat a “slice” of it (thanks to diffused and efficient network connections). However, a trade-off might be faced in the short-term when sector-specific progress is mainly focused on liberalisation and competition. This asymmetric progress is perceived as an opportunity for some but as a risky adjustment for others depending on whether the focus is placed, respectively, on efficiency or the protection guaranteed by national rules.

According to the EP “the EU and its Member States must intensively promote the possibilities that result from European economic integration, and change popular perceptions of the single market by making people aware of and able to understand the benefits it offers them and the ways of effectively claiming their rights”.<sup>87</sup>

The Single Market displays its potential in the long term, when resources re-allocation, after stronger competition, increases the effectiveness of the EU economic model. In the short term, those negatively affected by new EU developments are echoed by media and breed local discontent which might be perceived as a widespread loss in confidence in the Single Market, thus jeopardising the unity of Europe.

Given the effectiveness of the Single Market for the entire EU project, there are two solutions to achieve a more united Europe:

- EU leaders should indicate the future benefits for all coming from a fully functioning Single Market; benefits which will overcome the short-term restructuring costs.
- The Single Market process should be comprehensive in order to be perceived as fair; a sector-specific approach might empower the voices of the few negatively affected by the process.

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<sup>87</sup> European Parliament, *Report on delivering a single market to consumers and citizens*, cit.

Up to now, it seems unlikely that a Member State, after comparing the costs and benefits, would find a net incentive to be part of the non-core group in this policy area or even to exit the Single Market project. The Single Market for services has been and still is difficult to build (the Bolkestein directive saga in 2004 is a clear example): many vested interests still operate against full market integration. On the contrary there is a strong common interest in building efficient EU infrastructure networks and this common interest acts as a powerful tool to European integration.

However, Member States might, in theory, find an incentive towards opportunistic behaviours by financing new infrastructure at a lower cost (without sharing its value with its core partners), or by leading other Member States in the core group to finance that missing part of the network within its own territory to achieve the effectiveness of the entire project. To reduce this incentive, a clear system of penalties should be put in place. When the penalties cannot repay the damage to the other Member States, then a suitable sanction, such as the expulsion out of the EU, should be used.

Regulation, though second-best to competition policy, would be needed due to the persistence of bottlenecks (*e.g.* railways and access communication networks). The Single Market project would require a more homogeneous regulation in which the balance of power shifts from national authorities to the EU-level, with the institution of a unique EU regulator. However, a price convergence cannot be expected or imposed until there is a convergence process involving every single cost component (*e.g.* taxation).

Regulation cannot be shaped to foster investments where the market fails. The EU should avoid the model in which an incumbent is allowed extra-profits in regulated wholesale services and so can finance new infrastructure. Public resources should be allocated only where market fails in order to avoid “crowding-out” effects. Where public support is needed to finance new infrastructure, then a competitive tender is necessary to reduce budgetary costs and to minimise State aid. The granting authorities should select a company to deploy and/or to operate the subsidised infrastructure ensuring that the process is transparent for all investors wishing to bid for the implementation and/or management of the subsidised project. In this way the EU might grab the benefits of a strong competition *for* the market when competition *in* the market is not foreseeable.

Perhaps it is time for a golden rule for the Stability and Growth Pact to exclude investment spending in EU infrastructure from the computation of the fiscal parameters relevant to the Excessive Deficits Procedure.



It would be irrational to set challenging aims for Europe 2020 and beyond, while keeping indebted Member States unable to raise adequate resources under the stress of the financial markets.

The EU should create the framework to foster cooperation and infrastructure sharing only if competition at the retail level is guaranteed. Notwithstanding a shared destiny due to technological evolution, the respective aims of the two policies - transport and communications - require a distinct analysis especially with reference to their relevant infrastructure.

An effective transport policy requires a network that joins the disparate regions of the EU and connects them with the rest of the world. The size of the core group is important as well as the geography of the group since “holes” in the map and “missing links” along the corridors might lead to a suboptimal design of the network. Since the network shapes mobility, the design should be coupled with a multimodality approach, which conveys the flow of goods and people in an efficient way by reducing congestion and pollution.

An effective communication policy means giving the opportunity to every citizen to access the internet at a speed which allows them to make use of new services (*e.g.* cloud computing, e-Health) with sufficient safeguards for users to guarantee their privacy. By contrast to the transport case, in which massive infrastructure can trigger NIMBY reactions, no neo-luddism has emerged in the EU as far as electronic communications are concerned. At the same time, missing States from the core group do not affect dramatically the effectiveness and the efficiency of electronic communications.

Even though infrastructure is located in the European continent, the policy area has a relevant international dimension. The EU is not a fortress and thus transport and communications are the instruments to grab the benefits from the globalisation process.

The EU needs sufficient bargaining power to shape the international “rules of the game”. Europe as a “single market” is not enough anymore. The aim should be “a single Europe in the global market” where unity is intertwined with effectiveness since a critical mass is needed, and not even big Member States have that mass on their own. A small core group might be the “Rond-point Schuman” solution to an *impasse*, but global markets might not take in account, the *avant-gardistes* proposals.



# 4.

## Thinking the Unthinkable: Promoting Regional Approaches to EU Energy Policies for a More United and Effective Europe

*Christian Egenhofer and Jacques de Jong*

### 1. INTRODUCTION

Following the 2007 European Council meeting that led to the 2007-08 Climate and Energy Package, reinforced by the entry into effect of the Lisbon Treaty, which established a European Union competence for energy, as well as by the “third package” of legislative proposals for an internal gas and electricity market, an energy policy for the EU was thought to be within reach. The belief was that three pieces of legislation, the internal market electricity, gas and renewable directives, and the Climate and Energy Package with the Emissions Trading System (ETS), would lead to a convergence of member states’ energy policies or at least better cooperation. While conceptually this might still hold true, in reality member states’ energy policies diverged, and cooperation did not materialise, at least not on an EU-wide basis. In the absence of an effective ETS, the internal energy market on its own was not enough to elaborate a European energy policy. European energy policy involves more than the single market.

But the story does not end here: too often the rhetoric on energy policy coordination is not matched by implementation. Germany’s implementation of its unilateral decision to switch off nuclear power plants without consultation is but one, if extreme, example. However, as long as national policy-making remains dominant, there is a high likelihood that cross-border benefits are being missed. The economic opportunity is significant. An assessment for the European Commission estimates

that 40 billion euro per year could be saved as a result of more integrated European power markets, enabled through cross-border infrastructure.<sup>1</sup> Other studies come to similar results.<sup>2</sup> European Climate Foundation modelling shows that the system efficiencies achieved through interconnected markets could save up to 426 billion euro by 2030. Part of the savings results from renewable generation where the resource availability is highest; however, the bulk of the value comes from more efficient system operation and balancing in the context of higher levels of variability in renewable resources.<sup>3</sup>

Moreover, ambitions to move toward a low-carbon energy economy have introduced new instruments that are having an impact on existing energy markets. Renewable energy source (RES) targets, energy efficiency policies and choices regarding fuel mixes all affect the EU's regional and national energy markets. This became especially apparent when national governments started to implement their own policies<sup>4</sup> to comply with the Climate and Energy Package. Examples are national roadmaps, capacity remuneration mechanisms to ensure generation adequacy and market designs, regional approaches to new network investments, RES support policies, col-phase out policies and even market monitoring and industrial strategies.

This is in contrast to the measures relating to the political commitment to complete the single EU energy market by 2014-15. This process has triggered numerous activities such as the development of target models – i.e. gas and electricity market designs – network codes and regional markets. Among other things, it has become increasingly clear

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<sup>1</sup> Booz & Co., *Benefits of an Integrated European Energy Market*, Final report for European Commission Directorate-General Energy, 20 July 2013, [http://ec.europa.eu/energy/infrastructure/studies/doc/20130902\\_energy\\_integration\\_benefits.pdf](http://ec.europa.eu/energy/infrastructure/studies/doc/20130902_energy_integration_benefits.pdf).

<sup>2</sup> Georg Zachmann, "Electricity without borders: a plan to make the internal market work", in *Bruegel Blueprints*, No. 20 (September 2013), <http://www.bruegel.org/publications/publication-detail/publication/791-electricity-without-borders-a-plan-to-make-the-internal-market-work>.

<sup>3</sup> European Climate Foundation, *Power Perspectives 2030: On the Road to a Decarbonised Power Sector*, 2013, <http://www.roadmap2050.eu/project/power-perspective-2030>.

<sup>4</sup> Robert Grant (ed.), *A Smart EU Energy Policy*, Final report CIEP, EUI, FEEM and Wilton Park, April 2010, <http://www.clingendaelenergy.com/publications/publication/a-smart-eu-energy-policy>.

that adjacent national markets require specific arrangements that facilitate cross-border trade.

This paper argues that instead of pursuing the “illusiv<sup>e</sup>” internal energy market, a better way to create a more unified and effective Europe would be to seriously embark on regional energy approaches. The condition would be that they are embedded in a EU framework. If so, could regional approaches be an efficient, effective and politically acceptable approach towards reaching the three EU energy policy objectives of competitiveness, supply security and sustainability?

## 2. REGIONAL APPROACHES

Regional approaches, which are a means of taking into account country-specific circumstances and characteristics, can explore and assess potential opportunities for coordinated energy policy cooperation. There may be another rationale for regional initiatives; it is far from certain that the specificities of national situations are always considered when policy objectives are translated into regulation and implementation at the EU level.

Yet, policy coordination at the regional level requires some form of governance structure within the wider context of EU energy policy-making, hence the expression “Schengenising” European energy policy, referring to the Schengen Convention eliminating intra-European border controls among participating nations. In light of the challenge of finding EU-wide energy solutions that fit the needs of all 28 member states, regional solutions tailored to the specific preferences of certain parts of Europe are a promising, complementary alternative. Notably, security of natural gas supplies is a more salient issue in Central and Eastern Europe, while environmental considerations feature more prominently in northwestern Europe. Important regional forms of cooperation include the Visegrad countries’ V4 initiative (Poland, the Czech Republic, Slovakia and Hungary), the Pentalateral Energy Forum (PF, which involves France, Germany, the Benelux countries, Switzerland and Austria) and the related North Seas Countries Offshore Grid Initiative (NSCOGI, for ten nations bordering or close to the North Sea), as well as the Mediterranean Energy Forum.

### 3. REGIONAL INITIATIVES: EXAMPLES AND CONCEPTS

This section briefly describes a few concepts and initiatives, some of which have been discussed and presented in previous workshops. They are examples highlighting the generic issues that will have to be addressed, including the energy policy/market, as well as institutional and political perspectives, in light of the many regional initiatives that exist.

- A “corridor” approach has been adopted for the development of energy from renewable sources (RES) in the Mediterranean region, whereby countries are linked by infrastructure pathways. This approach has been further refined<sup>5</sup> to focus on specific corridors inside the EU as a whole. For Mediterranean RES exchanges to overcome the patchwork of member states’, third countries’ and EU energy regulations, they have to be complemented by case-sensitive renewables-specific trade arrangements that frame EU imports of RES. The approach is expected to unlock investment and stimulate regulatory and legal reform.
- An “infrastructure” approach, with a focus on reducing carbon emissions, has been taken by E3G,<sup>6</sup> a non-governmental organisation working toward sustainable development. This concentrates on renovating and creating network infrastructure to underpin deployment of low-carbon-generation resources within an integrated European power market. The regional element is that it also calls for strengthened institutional capacity for cross-border collaboration on infrastructure development and trading. Regional initiatives are thought to be better at capturing the value derived from resource sharing while reflecting differing national circumstances.
- In contrast, the think tank Notre Europe has proposed an institution-based approach whereby a new European Energy Community<sup>7</sup>

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<sup>5</sup> Jean-Michel Glachant and Nicole Ahner, “In Search of an EU Energy Policy for Mediterranean Renewables Exchange: EU-Wide System vs. ‘Corridor by Corridor’ Approach”, in *Florence School of Regulation Policy Briefs*, No. 2013/06 (October 2013), <http://hdl.handle.net/1814/28359>.

<sup>6</sup> Jonathan Gaventa, “Infrastructure networks and the 2030 climate and energy framework”, in *E3G Working Papers*, September 2013, <http://www.e3g.org/news/media-room/infrastructure-networks-and-the-2030-climate-and-energy-framework-03>.

<sup>7</sup> Sami Andoura, Leigh Hancher and Marc Van der Woude, “Towards a European Energy Community: A Policy Proposal”, in *Notre Europe Studies & Research*, No. 78

would operate under the present EU institutional structure but according to rules that would only be compulsory for those member states that join, in other words, enhanced cooperation as defined in EU treaties. Other member states would later be able to join later. This would be coupled with ad hoc measures designed to meet and anticipate the objectives of the European Energy Community on specific issues. The proposal describes a number of clearly identifiable competences, but others could be conceivable.

- The Visegrad 4 approach aims for regional energy policy cooperation and market integration. It emerged from the Russia-Ukraine-EU gas crises of 2006 and 2009, the former affecting Poland and the latter hitting the Czech Republic, Slovakia and Hungary hard. This resulted in discussions about essential gas infrastructure investment in the region and, more broadly, about the need for a Visegrad 4 gas target model<sup>8</sup> (compatible with EU framework legislation). The V4 initiative is unique because it combines political cooperation within the V4 with energy market cooperation.
- The objective of the North Seas Countries' Offshore Grid Initiative<sup>9</sup> (NSCOGI) is to maximise the potential of the renewable energy sources of the North Sea region. It aims at coordinated and cost-effective development of offshore and onshore grids by, for example, linking wind farms and other renewable energy sources across the northern reaches of Europe. Innovative grid solutions with offshore wind projects connected to more than one member state face major regulatory and market challenges, owing to the complications introduced by different national renewable energy support schemes.

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(March 2010), <http://www.eng.notre-europe.eu/011-2155>.

<sup>8</sup> Péter Kaderják, Adrienn Selei and Antal Hum, *Energy Market Integration in Central Eastern Europe (CEE): Drivers, Early Lessons and the Way Forward*, paper based on proceedings of a workshop at the Regional Centre for Energy Policy Research, Corvinus University, Budapest, 4 April 2013, [http://www.rekk.eu/index.php?option=com\\_content&view=article&id=281](http://www.rekk.eu/index.php?option=com_content&view=article&id=281).

<sup>9</sup> The ten countries involved are Belgium, Denmark, France, Germany, Ireland, Luxembourg, the Netherlands, Norway, Sweden and the UK. See the ENTSO-E website: <https://www.entsoe.eu/about-entso-e/system-development/the-north-seas-countries-offshore-grid-initiative-nscogi>.

- A climate-centred approach has been chosen by the Nordic countries.<sup>10</sup> Fuelled by the ambition of developing a carbon-free energy system that could serve as a model for cross-border cooperation, the Nordic approach falls under the umbrella of the Nordic Action Group on Climate and Energy.<sup>11</sup> In this context, the collaboration of the Nordic countries relies on four main “pillars”: i) the adoption of common (low-carbon) energy policies, ii) the promotion of Nordic market design solutions across the EU, iii) the devising of common incentives for the deployment of low-carbon technologies and iv) intensified cooperation of the Nordic renewable energy industry.
- A 2012 Clingendael International Energy Programme (CIEP) paper<sup>12</sup> discussed in some detail a number of possible approaches to fostering further policy cooperation in northwestern Europe. These range from informal information-sharing devices to a much more focused harmonisation of various policy instruments. The details will be covered in the next section. In a more recent paper, CIEP described the ongoing developments of energy policy discussions in the Pentilateral Energy Forum platform for the northwestern Europe region.<sup>13</sup>

## 4. A CONCEPTUAL FRAMEWORK FOR NORTHWESTERN EUROPE

Leonie Meulman et al.<sup>14</sup> have explored and assessed the potential for coordinated energy policy in northwestern Europe on behalf of CIEP. This can serve as a ‘checklist’ of opportunities. Note that the following text is a shortened version of Meulman et al.

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<sup>10</sup> Namely Iceland, Norway, Sweden, Finland and Denmark.

<sup>11</sup> Nordic Action Group on Climate and Energy, *Nordic Energy Ways in Europe. Clean, Competitive and Connected*, November 2013, <http://en.globalutmaning.se/?p=3589>.

<sup>12</sup> Leonie Meulman et al., “Harvesting Transition? Energy Policy Cooperation or Competition around the North Sea”, in *CIEP Energy Papers*, January 2012, <http://www.clingendaelenergy.com/publications/publication/harvesting-transition>.

<sup>13</sup> Jacques De Jong and Koen Groot, “A Regional EU Energy Policy?”, in *CIEP Energy Papers*, No. 2013|06 (August 2013), <http://www.clingendaelenergy.com/publications/publication/a-regional-eu-energy-policy>.

<sup>14</sup> Leonie Meulman et al., “Harvesting Transition?”, cit.

- Information sharing could be relevant for all fuels used in the power generation/distribution sector and for infrastructure improvements. This could be extended to sharing data on all issues having an impact on other national markets.<sup>15</sup>
- The next level is “some kind of coordination, building further upon the existing PF and NSCOGI structures”. This means that knowledge and information could be developed jointly on issues such as energy storage facilities, and tendering processes for off-shore wind could be coordinated, as could the implementation of RES support schemes. At the industry level, transmission system operator (TSO) cross-border cooperation could be strengthened to take into account regulatory impacts and mandates as well. Yet, countries would still make all decisions individually, and no joint institutions would be developed.
- Next, a “coordination plus” process could be instituted, encouraging neighbouring countries to search for common policy considerations. RES support is a good example, with the partners striving to formulate a scheme that incentivises RES production that is not too costly and does not create windfall profits. Sharing and comparing information about the pros and cons and the costs of RES energy could be more than useful. Such a level of coordination offers a basis for covering broader issues, such as the interactions between the power and gas grids and systems. Discussions on short- and longer-term system reliability and fuel supply security, back-up capacities, storage and demand-side management could be added as well, seeking cross-border solutions while exploring the most cost-efficient possibilities. This would require joint policy frameworks at the regional level. Wide-ranging discussions would take place, but specific policy instruments could still differ from country to country according to legal and parliamentary traditions.
- Developing “joint instruments” – not yet defined – could come next, if a differentiated approach were no longer effective. The joint instruments could, for instance, require a joint incentive mechanism for RES and could be expanded to the formulation of

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<sup>15</sup> Note that some information sharing has taken place in the context of the Pentalateral Energy Forum; the UK, Norway and Denmark might join in this activity, and it could perhaps be organised in a memorandum of understanding.

a single RES objective for the whole region. Various models for market design could be jointly introduced, paired with a harmonising of the legal instruments of system operation and balancing. A final ‘maximum approach’ would be that of a joint electricity policy across the whole region. This would not necessarily be relevant for local options such as types of heating systems or building codes but could include all aspects of the power market and the gas market.

While there are opportunities in such an approach, the CIEP report then discusses what it calls a “fundamental road block”: the institutional legacy. The report defines this as “the way in which decision-making structures play a role in influencing each other before various degrees of consensus are developed – in policy terms, in political terms, but also very much in the way in which stakeholders in industry and as consumers are organised”. This refers, for example, to the safeguarding of national interests in the energy policy process, to basic energy security and public policy concerns, even to just the different ways in which things are done in various member states. Nevertheless, the report closes with a positive assessment, expecting that as the “awareness increases that neighbouring member states have to cooperate more together in managing their cross-border issues, they will realise that this has to be done within the common EU legal framework”. The report concludes as follows: “The development of such a framework is the responsibility of the EU, whereas implementation is usually done at the national level.”

## 5. OPPORTUNITIES AND RISKS

From the short discussions above on the merits of regional initiatives and the challenges inherent in applying them, one can identify a number of issues that need further attention. Regional approaches offer opportunities for more effective EU energy policy coordination through structured or semi-institutionalised discussions, including, for example, continuous peer review of national energy policies. At the same time, there are risks of further fragmentation of the internal energy market; regional sub-sets of markets may be more difficult to integrate into a common EU market, provided that this remains a credible and achievable objective.



There is a risk of tensions between different regional approaches. The possibility is especially pronounced in cases where regional approaches pursue divergent political or strategic objectives, notably if they venture beyond market functioning and general energy policy coordination. For example, there have been attempts by the V4 to adopt a strong energy policy position in the context of the 2030 climate and energy policy framework discussion, which risks blocking progress in this important area.

Finally, doubts arise on governance; if regional platforms become more “institutionalised”, issues concerning the limits of competence or overlapping responsibilities are likely to appear. Most likely, this would extend to questions about the “institutional fit”, especially but not only vis-à-vis the remit of the European Commission, and even to debates on how to finance the organisational arrangements.

## 6. TESTING REGIONAL APPROACHES: THE NEXT STEPS FORWARD

There are a number of useful steps forward that could help in exploring further the potential of regional approaches. The first is clarity and consistency of the terminology used. Section 4 made evident that regional initiatives can mean very different things. A more precise definition of the different approaches or models is required.

Second, these “regional models” could be further analysed in relation to their mandates and policy content, which will vary for each. A “menu for mandates” could be developed, including the distinction between (more) bottom-up or top-down models.

Finally, taking regional approaches or models further will require reflection on the meaning of subsidiarity and the position and role of the European Commission.

### 6.1. Terminology

The various regional approaches all have their own nomenclatures, such as “forum”, “council” and “platform”. All are using different conceptions of policy discussions and various degrees of policy consultation and information, coordination and even more concrete harmonisation or joint instruments. Energy regulators have arranged “regional initiatives”, and the European Commission has set up a number of

regional Projects of Common Interests,<sup>16</sup> in which the respective governments, national regulatory authorities, project promoters, the European network of transmission system operators and the EU Agency for the Cooperation of Energy Regulators (ACER) are working with the Commission on projects considered to be of common interest under the EU's energy infrastructure regulation.

Terminology also matters in terms of geographical coverage. For example, the Pentalateral Energy Forum, in addition to the Benelux countries, Germany and France, comprises Austria and Switzerland and could easily take in Italy and maybe Denmark as well. The Nordic Co-operation partnership also includes non-EU Norway. The Visegrad 4 group has become engaged in affairs beyond the four founding member states and stretches toward the southeastern part of the EU. The Mediterranean Energy Forum extends past the EU to welcome the EU's southern (North African and Levantine) neighbours.

The desire to give regional approaches a "simple brand," which also hints at their scope and content, is understandable. However, this is likely to create misunderstandings. One is the use of the term "Schengenisation", which has been used for regional approaches. The reference is to Schengen, the Luxembourg village where the "Penta-ministers"<sup>17</sup> concluded an agreement on free movement of persons without border controls. That agreement has expanded over the years, currently embracing 22 EU and 4 non-EU countries, and it is now fully integrated into the institutional and legal set-up of the EU. The "Energy-Schengen" project does not quite take the same approach. The term "regional energy cooperation approaches," making clear that the cooperation process is unique to energy issues, may be more suitable.

## 6.2. Bottom-up Processes

The Regional Initiatives by the Council of European Energy Regulators (CEER), the association of European energy regulators, emerged more or less in a top-down fashion from deliberations about the various implementing devices relating to cross-border issues as a follow-up to the EU

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<sup>16</sup> European Commission, *The future role of regional initiatives* (COM(2010)721), 7 December 2010, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52010DC0721>.

<sup>17</sup> Again, the Benelux countries, France and Germany.

energy market directives and regulations. Practical reasons were behind this, including divergent interests, infrastructure constraints, etc.

The Pentalateral Forum was a more bottom-up process, springing from a decision by TSOs, national regulatory authorities and governments to establish specific market rules and institutions that would facilitate and stimulate market integration in the region in question. Their successful set-up later became the “target model” for the wider EU.

Visegrad 4 could also be considered as bottom-up in origin, when the four governments involved decided to raise their political profile and interests in the wider EU context. This was to some extent further expanded to the whole Danube region and developed as a platform for discussing common energy security concerns, leading to joint policy approaches and actions.

The Mediterranean region’s “energy corridor” approach was also driven by bottom-up considerations of developing and bringing energy flows to the wider region, with the potential for further energy market integration through regulatory action and the participation of industrial institutions.

Following bottom-up types of approaches, the respective mandates could be further expanded whenever appropriate.

- Common methodologies could be developed for assessing generation and system adequacy, as has already started to happen in the Pentalateral Forum. On that basis, common assessments could be made about regional generating capacity as a basis for discussing future supply and delivery security.
- Similar approaches could be used to assess ways of managing cross-border balancing issues, notably in terms of regulatory design. Different instruments could be developed and tested.
- These common approaches would be particularly relevant for the integration of rapidly increasing renewable energy sources. They could be a meaningful starting point for the governance of (renewable) energy that the European Commission has proposed in its 2030 Climate and Energy Framework.<sup>18</sup> Tools to integrate them at regional level could be developed.
- When there are concerns about gas supply security, as in the case of the Visegrad 4, gas market integration issues could be discussed

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<sup>18</sup>European Commission, *A policy framework for climate and energy in the period from 2020 to 2030* (COM(2014)15), 22 January 2014, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52014DC0015>.

and eventually agreed upon. The development of what could be considered a regional gas target model for the V4 group may be seen as a step in this direction.

- Further, infrastructure project development could be handled also by discussing and then testing appropriate regulatory designs, even on a pilot basis. The NSCOGI process is an example, as is the “corridor” approach in the Mediterranean Energy Forum.

In addition to these issue-specific instances of cooperation, one could also envision a broader scope for collaboration. The following list offers a few examples.

- Whenever member states make strategic energy choices that significantly affect their neighbours, their governments should carry out a compatibility check with the energy policy of nearby countries and EU internal market rules.
- Member states ought to consider whether or not to develop and coordinate regional energy strategies, as a matter of principle, building upon existing region-wide initiatives (e.g. the Pentalateral Energy Forum), thereby gradually moving beyond strictly national energy policies as part of a broader EU vision. This could include:
  - an assessment of the regional effects of current national energy policies (such as on cross-border flows and system security), as a means to develop a joint list of energy and climate change policy measures that could have major cross-border impacts;
  - commonly designed action plans aiming to mitigate the negative effects of national energy choices.
- Coordinating of national policies could also be considered for
  - regional market integration and the infrastructure interconnections required to achieve such market integration,
  - meeting the various policy targets and instruments for the deployment of renewable energy technologies and the supporting infrastructures,
  - fuel mix policies,
  - (cross-border) regulatory approaches and incentives,
  - the establishment of specific legal procedures, for instance, when substantial off-shore developments are at stake.

Finally, another road toward policy coordination might involve exploring measures related to market design, such as new networks for RES production (for example, using offshore North Sea resources or new storage options and technologies) or pilot projects benefiting from exemptions of legal obligations, which would make it possible to test new regulatory approaches for managing and accommodating large RES flows.

### 6.3. Top-down Approaches

A regional approach could also be considered as a more top-down process, for instance, following the CEER Regional Initiatives (CEER/RI) experience. Essentially, the CEER/RI has been purely regulatory-driven. Top-down approaches, however, do not necessarily have to stop at regulation. One could imagine applying them to policy formulation, in particular, to the 2030 Climate and Energy Framework, the post-2020 EU low-carbon agenda. Suggestions have been made in recent years to strengthen the governance of the Regional Initiatives by creating Regional Steering Committees including ACER and the European Commission, as well as the member states and the national regulatory authorities from the region. Although the Commission presented a number of ideas in this vein,<sup>19</sup> there was not much support for them, either from governments or their regulators. Nevertheless, ACER has a review function. The EU Regulation governing ACER in its Article 7.3 makes review an explicit task, together with a monitoring function in Article 6.9. It thus seems appropriate for ACER to play an active role in what is happening in the Regional Initiatives.

Another example of the top-down approach can be found in the new energy infrastructure regulation,<sup>20</sup> whereby a number of regional groups with clear and specific mandates have been created. They are charged with proposing and reviewing the so-called Projects of Common Interest (PCIs). In order to muster broad consensus, the regional groups should ensure close cooperation between member states, national regulatory authorities, TSOs and other project promoters and relevant stakeholders.

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<sup>19</sup> European Commission, *The future role of regional initiatives*, cit.

<sup>20</sup> Regulation (EU) No 347/2013 of 17 April 2013 on guidelines for trans-European energy infrastructure..., <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32013R0347>.

The regulation establishes numerous regional groups,<sup>21</sup> with membership to be aligned with the PCI priority corridors and their respective geographical coverage. Decision-making powers in the groups are restricted to the member states and the Commission. The Commission is chairing the groups (with one exception<sup>22</sup>). ACER and the groups concerned are responsible for monitoring the progress achieved in implementing the PCIs and making recommendations when necessary.

#### *6.4. Institutional Issues and Governance*

Regional cooperation approaches immediately raise issues of governance and more specifically the role and involvement of the European Commission. This has now been acknowledged in a recent EU communication on the post-2030 framework, in which the Commission has explicitly broached the topic of governance and the indicators closely associated with it.<sup>23</sup>

This does not touch on the competences of the European Commission under the Treaty of Lisbon, which will remain unchanged. What is meant here is the function of the European Commission in member state or regional energy cooperation approaches. There is no need to resort to such subsidiary arrangements as long as the EU is able to address the challenges at hand through the passage and implementation of law. However, implementation especially often requires new tools and instruments at the EU level, whose adoption can be uncertain or turns out to be ineffectual.<sup>24</sup> Developing EU-wide solutions covering all national and regional circumstances is often a drawn-out process and is sometimes not feasible at all. As a result, the EU can find itself with watered-down compromises not always suitable for its purposes.

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<sup>21</sup> Groups on the Northern Seas Offshore Grid (NSOG), North Sea Infrastructure (NSI)-West Electricity, NSI-East Electricity, Baltic Energy Market Interconnection Plan (BEMIP) Electricity, NSI-West Gas, NSI-East Gas, Southern Gas Corridor (SGC), BEMIP Gas.

<sup>22</sup> The group on the Northern Seas Offshore Grid is similar to the existing NSCOGI framework, rotationally chaired by its member states.

<sup>23</sup> European Commission, *A policy framework for climate and energy in the period from 2020 to 2030*, cit.

<sup>24</sup> The German example is apposite: German Energiewende policies have direct impacts on Germany's neighbours, requiring some kind of coordination to manage them.

Making use of regional approaches could be relevant in two ways:

- Learning lessons about bridging the gap between EU and national levels that can be applied in other, non-energy-policy domains; the effectiveness of policymaking can be improved when information is shared in smaller groups and new policies explored, anticipating each other's reactions, experimenting, testing, verifying, etc.
- In a more formal approach, applying and implementing at regional level the global objectives and guidelines set by the EU. This could require that the European Commission assess and approve specific policy instruments at regional levels to guarantee compliance with broader goals. This approach would probably need some kind of governance structure at regional level, including a role for regional industrial institutions, for instance, regarding system operation and market mechanisms.

### 6.5. *Subsidiarity*

The proposals above will need to be compatible with EU law, including the subsidiarity principle. By “subsidiarity”, the EU Treaty means with that competence should be assigned to the level at which a task can be done best, that is, at the local, regional, member state, EU or even international level. Reasons for assigning competences are economies of scale and positive and negative spillovers (cross-border effects).

On energy, the Treaty<sup>25</sup> – as is the case with most other policies – foresees a shared competence between the EU and member states. There are, however, two exceptions to this rule. National sovereignty is explicitly acknowledged for the deployment of a state's natural resources and for determining the national energy mix. This is despite the number of specific and concrete rules that have been set out at the EU level on coal, gas, renewable energies, uranium and electricity.<sup>26</sup> The question may arise as to whether this approach is sustainable in a common energy market model. Nonetheless, it is hard to foresee a major treaty revision within the foreseeable future. The logic of “regional energy cooperation

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<sup>25</sup> Art. 194 TFEU.

<sup>26</sup> Although there is hardly an explicit EU policy on oil and oil products, the general rules of the internal market are all applicable to this energy source as well.

approaches” would be to attempt to close the gap between the reality of the market and the EU energy policy “constitution”.<sup>27</sup>

The Schengen blueprint could be helpful as a model for allowing pioneering member states to commit to and promote ad hoc common policies “escaping” formal and procedural EU requirements. Ahner et al.<sup>28</sup> mention three criteria for assessing the legal feasibility in the energy context: pre-emption, primacy and subsidiarity. They conclude that the last of these is the most significant in areas of shared competence and that the value-added test of such an arrangement in energy would probably be the most relevant one.

The test would inextricably be linked to the political feasibility of action at the EU level. As mentioned before, on specific and technically detailed policy implementation for meeting the low-carbon objectives, that feasibility might be highly questionable. Regional approaches could hence be particularly suitable when a number of neighbouring member states are involved and when there are no negative spillovers to non-contracting states (unless they could join later).

Benefits for the participating states could come in two areas: 1) system adequacy and the related security of supply issues that arise from the challenges of integrating a large amount of intermittent renewables and 2) enhancing economies of scale and efficiency in encouraging new investments in RES generation. Negative spillovers are distortions to competition.

If regional energy cooperation approaches are seen as a way forward, the European Commission might want to consider developing some kind of a framework for regional cooperation, detailing what is permissible according to EU treaties. For example, it could give ACER some responsibilities in this area, especially regarding the issues about system impacts and market designs. A mechanism to maintain the paradigm of the internal energy market should be a *conditio sine qua non* for any model navigating the road toward a low-carbon energy economy.

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<sup>27</sup> See, e.g., Jean-Michel Glachant and Nicole Ahner, “In Search of an EU Energy Policy for Mediterranean Renewables Exchange...”, cit.

<sup>28</sup> Nicole Ahner, Jean-Michel Glachant and Adrien De Hauteclocque, “Legal Feasibility of Schengen-like Agreements in European Energy Policy: The Cases of Nuclear Cooperation and Gas Security of Supply”, in *Florence School of Regulation Policy Briefs*, No. 2010/02 (June 2010), <http://hdl.handle.net/1814/20785>.



## 7. A WAY FORWARD

On the basis of the discussion in the preceding paragraphs, a possible way forward could take place along the following lines. The revitalisation of the regional approaches to energy policies presents a way to renew the energy governance at the EU level. Regional approaches seem to be the best solution to cope with energy issues at the European level for different reasons. First, there is the strategic nature of energy as perceived by each European country, and the consequent need to maintain a certain degree of national sovereignty over such a critical sector. The content of Article 194 of the Lisbon Treaty reflects this. Second, the extended nature of energy policy itself, with its broad spectrum of different areas in terms of policy objectives (liberalisation/competitiveness, sustainability, security of supply), industrial sectors (i.e. electricity, gas, renewables, energy efficiency), and activities (regulation, investments, policy development, R&D). These two main reasons contribute to generating strong heterogeneity and significant divergences in terms of energy priorities between European countries and regions, as highlighted not only by the various fora and initiatives currently in place in Europe, but also by the delay in the implementation of some key EU energy policies.

There are, however, a number of risks and challenges that will have to be faced when applying the regional approaches. There is a possibility of fragmentation when different regional energy approaches follow their own course, leading to diverging paths and levels of integration and further calling into question the paradigm of a single European energy market. Another risk could come from the various regional energy approaches generating significant strategic policy deviations from the wider EU key policy objectives. This risk would emerge especially when independent and disconnected regional clusters come to diversify regional energy policies in response to the specific needs of each country/region. Finally, regional energy approaches risk creating different poles of competence and responsibility with overlapping and duplications at institutional levels, thus complicating energy governance rather than facilitating it.

Therefore a condition for using regional approaches would be to allow their development in a clear, coherent and consistent set of principles. The key issue would then be how to establish a governance structure that ensures a sufficient degree of flexibility while maintaining a certain level of guidance to lead the different regional approaches towards

the common and converging European objectives. Although the term “Schengenisation” is used in the paper, we are not suggesting following this concept, as the energy domain presents significantly different features compared to Schengen.

An alternative might be found in looking at the cooperative model established in the framework of the European Defence Agency. The EDA acts as a catalyst to promote cooperation and new initiatives in order to improve defence capabilities, as member states are free to participate in and are in line with, for instance, the Pentalateral forum; hence, top-down political guidance is accompanied by bottom-up practical solutions. In energy terms, one could mention the role of ACER, in which such an approach could be considered as well.

It goes without saying that some kind of top-down framework is necessary. Based on the examples of the existing regional energy fora mentioned, such a framework could be based on various elements:

- The degrees of existing cross-border energy market integration, in both physical and commercial terms. It makes no sense to have the Baltic region in the same group as the Iberian Peninsula, or to exclude the Dutch market from the Belgian one.
- Member states could, if they wish, be part of more than one regional approach. This would especially be relevant for the larger member states, realizing that sometimes a “natural” division already exists within a large market.<sup>29</sup>
- The Commission should set out the global principles and guidelines, with regard not only to policy (such as the basics of the 2030 Framework), but also to market rules (such as the Guidelines on State Aid in Energy and Environment).
- If necessary, the Commission could also be somewhat more specific in policy instrumentation terms by inviting/requiring the regions to develop cross-border balancing zones or markets or joint generation and/or system adequacy approaches and assessments.
- Market monitoring in order to assess market developments in line with the wider EU energy market objectives would become a necessary condition. The Commission could set a number of criteria for assessing these developments, and ACER could and should be mandated with the task of monitoring.

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<sup>29</sup> The southern part of the German power market is more integrated with Austria and Switzerland than with the northern part of the German market.

## 8. RECOMMENDATIONS

The following recommendations issue from the ideas presented and analysed above.

- Practical, bottom-up approaches to regional energy cooperation should be allowed, facilitated and promoted to help the EU move towards a “more united and effective Europe.”
- This will require that the existing regional fora will need to come forward with a short-term agenda for addressing the challenges of system and generation adequacy and their related supply-security concerns.
- The European Commission should give further guidance in the form of a communication or regulation.
- In parallel, the European Commission, in cooperation with member states, should assist member states’ efforts to advance practical solutions to implementing the low-carbon agenda in the 2020 and 2030 frameworks, and in accordance with the rules of the internal energy market. ACER’s role should be explicitly addressed in this context.
- Regional energy cooperation approaches should be further studied, both in their legal context and in their practical and pragmatic applications, as a basis for further consideration and discussion.

While regional approaches may appear “counter-intuitive” with respect to the objective of a more united and effective Europe, they may constitute the most promising way forward towards a more integrated Europe and thereby be a safeguard against further fragmentation.



# 5.

## European Security Post-Libya and Post-Ukraine: In Search of Core Leadership

*Jolyon Howorth*

### 1. INTRODUCTION

The EU's Common Security and Defence Policy (CSDP), according to the conclusions of the special December 19-20, 2013 European Council devoted to defence, "contributes to peace and stability in our neighbourhood and in the broader world."<sup>1</sup> And yet, in the two most serious regional security crises in the EU's neighbourhood since the end of the Cold War – the Arab Spring in general and the Libyan crisis of 2011 in particular, and the crisis in Ukraine and Crimea in 2014, CSDP was not only completely absent from both theatres, but was barely invoked as a hypothetical or appropriate policy instrument. Moreover, there has been virtually no discernible effort to engineer coordination between CSDP and the EU's much-vaunted Neighbourhood Policy (ENP). Indeed, its main constituent parts, the Union for the Mediterranean created in 2008 and the Eastern Partnership created in 2009, have both proven to be deeply flawed projects. US commentators on the Ukraine crisis were scathing in their denunciation of the EU's alleged ineptitude in handling its relations both with Kiev and with Moscow.<sup>2</sup> And a senior European

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<sup>1</sup> European Council, *Presidency Conclusions*, Brussels, 19-20 December 2013 (EUCO 217/13), para. 1, [http://www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/en/ec/140245.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/140245.pdf).

<sup>2</sup> Several dozen posts by prominent US academics and commentators on a private list-serve; Stratfor Global Intelligence, "The European Union Reacts to the Crisis in Ukraine", 4 March 2014, <http://www.stratfor.com/node/205194>.

analyst concluded, more diplomatically, that the entire ENP has been a failure and needs a drastic rethinking.<sup>3</sup>

These perspectives need to be borne in mind when reflecting on the security dimensions of a “more united and effective Europe.” There is precious little unity, minimal effectiveness, and an extremely diffuse and unwieldy, though not dysfunctional, system of governance. Above all, there is no “obvious” CSDP leadership.<sup>4</sup> Indeed, “leaderlessness” appears to be the name of the CSDP game. Anand Menon has insisted that this is “not necessarily as dysfunctional as most analyses are wont to claim.” Arguing that the EU cannot and should not attempt to act in a “heroic” manner like militaristic nation states where leadership is crucial, he notes that, in the case of CSDP, “overlapping institutional competences are part of the very nature of what remains a unique and sophisticated international organization.”<sup>5</sup> Perhaps, but this does not help achieve either coordination or effectiveness.

Lacking any leadership, the EU’s member states also remain *divided* over key issues such as the meaning of CSDP “autonomy” vis-à-vis NATO and the US; the desirable balance between military and civilian priorities in CSDP missions; the very range and ambition of those missions; financing, procurement, collective defence; and above all strategic vision. One 2013 study, essentially focused on the *military* dimension of CSDP, breaks EU member states down into those that actually *have* a strategy (France and the UK); those that have some sense of strategic purpose (Sweden, Finland and the Czech Republic); those with global horizons, although little in the way of operational plans (the Netherlands, Spain, Germany, Hungary and Slovenia); “abstentionists,” who, according to the authors of this study, have no coherent plan and in some cases no defence ministry as such (Luxembourg, Austria, Ireland, Malta); “drifters,” whose national plans, for one reason or another, have not been updated since the turn of the century (Greece, Italy, Portugal and Belgium); and

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<sup>3</sup> Stefan Lehne, “Time to Reset the European Neighborhood Policy,” in *Carnegie Europe Papers*, February 2014, <http://ceip.org/1doS8LR>.

<sup>4</sup> The NATO coalition against Libya was led by France and the UK; the EU “trio” which attempted to resolve the Ukrainian crisis in March 2014 involved foreign ministers from Poland, Germany and France.

<sup>5</sup> Anand Menon, “Security Policy and the Logic of Leaderlessness”, in Jack Hayward (ed.), *Leaderless Europe*, Oxford and New York, Oxford University Press, 2008, p. 131 and 145.

the rest, dubbed “localists,” whose main concern is their own territorial integrity.<sup>6</sup> A 2009 study of the EU’s coherence in terms of *civilian crisis management*, broke the EU member states into four groups: professionals, strivers, agnostics, and indifferents. The professionals (Denmark, Finland, Germany, the Netherlands, Sweden and the UK) were judged to be ahead of the game in recruiting and training civilian capacity for crisis management missions. The strivers (Austria, Belgium, France, Ireland, Italy and Romania) were deemed serious in their intentions but disorganised. The agnostics were “unconvinced about the value of civilian deployments,” while the indifferents simply failed “to take the task of developing civilian capacity seriously.”<sup>7</sup> So much for unity...

In terms of *effectiveness*, this same study concluded that “ten years after the creation of [C]SDP, most EU missions remain small, lacking in ambition and strategically irrelevant.”<sup>8</sup> The judgment sounds harsh, but the acid test of this policy area has to be its concrete achievements in the field of international crisis management. The EU regularly prides itself on being a “global actor.” The 2003 European Security Strategy (ESS) stated, “Europe should be ready to share in the responsibility for global security and in building a better world.”<sup>9</sup> It went on to boast that “European forces have been deployed abroad to places as distant as Afghanistan, East Timor and the DRC.” It did not add the key detail that only in the latter had those forces been deployed under the EU flag. The ESS notes that “we need both to think globally and act locally,” adding that “with the new threats the first line of defence will often be abroad.” The image purveyed by the ESS is misleading. Of the thirty-four missions recorded by ISIS-Europe as having been launched under CSDP,<sup>10</sup> no fewer than seven have been in the former Yugoslavia (i.e. inside the EU’s

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<sup>6</sup> Olivier de France and Nick Witney, “Europe’s Strategic Cacophony”, in *ECFR Publications*, No. 77 (April 2013), p. 4-8, [http://www.ecfr.eu/publications/summary/europes\\_strategic\\_cacophony205](http://www.ecfr.eu/publications/summary/europes_strategic_cacophony205).

<sup>7</sup> Daniel Korski and Richard Gowan, “Can the EU Rebuild Failing States? A Review of Europe’s Civilian Capacities”, in *ECFR Publications*, No. 14 (October 2009), p. 13-15, [http://www.ecfr.eu/content/entry/civilian\\_capacities\\_report\\_page](http://www.ecfr.eu/content/entry/civilian_capacities_report_page).

<sup>8</sup> *Ibidem*, p. 11.

<sup>9</sup> European Council, *A Secure Europe in a Better World. European Security Strategy*, Brussels, 12 December 2003, <http://www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf>.

<sup>10</sup> ISIS Europe, “Mission Chart”, in *CSDP MAP*, <http://www.csdpmap.eu/mission-chart>.

own external borders), and eighteen in Africa. Of the remaining nine, four have been on the EU's Eastern border (three in Georgia and one in Ukraine and Moldova). Any objective or realistic geographical analysis of these missions would have to conclude that the overwhelming majority of them have been in the EU's immediate neighbourhood. To this extent, it is clear that the EU is a regional actor, but one which frames regional conflicts and destabilisation in a broader globalising context.

The EU has shown that it is taken seriously as an international partner by the United Nations and by the African Union, even if the US remains unconvinced about its seriousness of purpose as a security provider.<sup>11</sup> To date, the military side of CSDP has been very limited in scope and scale and extremely selective in its choice of missions. There have been dozens of academic and think-tank analyses of CSDP missions.<sup>12</sup> A clear majority of the analysts conclude that the effectiveness of the missions is limited at best, negligible at worst. The EU currently has eight missions running in Africa, only one of which (Atalanta) has any critical mass. Between them, the other seven involve fewer than 650 European officials, and cover challenges and distances of epic proportions. In the context of the general pattern of "Western" interventions in the internal affairs of sovereign states since the end of the Cold War (most of which have turned out badly),<sup>13</sup> the EU needs to re-assess its entire approach to crisis management. Effectiveness, to date, has been sub-optimal.

*Governability*, on the other hand, has not been a major problem in CSDP. Although the EU has a bewilderingly complex multi-level and multi-agency institutional matrix for the delivery and management of CSDP crisis management missions, the key EU decision-making and decision-shaping bodies (Council Secretariat, Political and Security Committee, European Union Military Staff, European Union Military

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<sup>11</sup> US Dept. of Defense, *The Security and Defense Agenda: the Future of NATO*, Speech by Secretary of Defense Robert M. Gates, Brussels, Brussels, 10 June 2011, <http://www.defense.gov/Speeches/Speech.aspx?SpeechID=1581>.

<sup>12</sup> I offer a comparative appraisal of all of these analyses in chapter five of my book, *Security and Defence Policy in the European Union*, 2nd edition, Basingstoke and New York, Palgrave Macmillan, 2014.

<sup>13</sup> Jolyon Howorth, "Humanitarian Intervention and Post-Conflict Reconstruction in the Post-Cold War Era: A Provisional Balance Sheet", in *Cambridge Review of International Affairs*, Vol. 26, No. 2 (2013), p. 288-309.



Committee, European Defence Agency) work relatively smoothly.<sup>14</sup> This is more remarkable given the political constraints under which they operate – member state dominance of this entire policy area. A mass of academic literature argues that the socialisation mechanisms that kick in when these intergovernmental bodies go about their business are such that, although CSDP is virtually untouched by direct supra-national inputs, an aura of supra-nationalism nevertheless informs the way in which decisions are actually made<sup>15</sup> – it being clearly understood that everything CSDP does enjoys the blessing of the member states. Anything to which any member state has a serious objection simply does not make it onto the CSDP agenda.

Some argue that, to improve unity and effectiveness (and possibly even governance), the EU needs to develop a core group of member states, a leadership group that will be committed to taking CSDP to a higher level.<sup>16</sup> It is to this issue, which lies at the heart of the IAI project, that I now turn.

## 2. GENERAL THOUGHTS ON THE FRAMEWORK PAPER

The present paper starts from a position of basic agreement with the two initial observations presented in the IAI framework paper.<sup>17</sup> The puzzle outlined in the framework paper accurately reflects the overall

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<sup>14</sup>Mai'a K. Davis Cross, *Security Integration in Europe. How Knowledge-based Networks Are Transforming the European Union*, Ann Arbor, University of Michigan Press, 2011; Hylke Dijkstra, *Policy-Making in EU Security and Defense. An Institutional Perspective*, Basingstoke and New York, Palgrave Macmillan, 2013; Ana E. Juncos and Christopher Reynolds, "The Political and Security Committee: Governing in the Shadow", in *European Foreign Affairs Review*, Vol. 12, No. 2 (May 2007), p. 127-147. It should be noted that the European External Action Service is too young to assess and still has to prove its value.

<sup>15</sup>Jolyon Howorth, "Decision-making in Security and Defense Policy: Towards Supranational Intergovernmentalism?", in *Cooperation and Conflict*, Vol. 47, No. 4 (December 2012), p. 433-453.

<sup>16</sup>Jo Coelmont and Maurice de Langlois, "Recalibrating CSDP-NATO Relations: The Real Pivot", in *Egmont Security Policy Briefs*, No. 47 (June 2013), <http://www.egmontinstitute.be/?p=2431>; French Senate Committee for Foreign Affairs, Defence and Armed Forces, "Let's Get Rid of 'Europe of Defence'. Towards a European Defence", in *Rapport d'information*, No. 713, 3 July 2013, p. 48, <http://www.senat.fr/rap/r12-713/r12-713.html>.

<sup>17</sup>See Chapter 1 by Nathalie Tocci and Giovanni Faleg.

situation of the EU in 2014. A constructive or positive outcome to the eurozone crisis will almost inevitably involve some top-down, centripetal, quasi-federal structure and associated policy-process. This risks exacerbating the opposite dynamic in today's EU, which is a bottom-up, centrifugal, eurosceptic tendency, the extreme expression of which (the UK) is bent on repatriating power from Brussels. However, this pattern does not readily apply in the field of CSDP. Institutional creativity in the form of some quasi-federal security and defence architecture, in addition to being hard to conceptualise, would not necessarily fix the problem, which derives essentially from the absence of strategic vision<sup>18</sup> (itself a casualty of conflicting security cultures within the EU<sup>19</sup>) and the concomitant lack of political will. Moreover, the European public, in a very general sense, has no significant underlying problem with CSDP. Poll after poll suggests that citizens across the Union accept almost intuitively that it is logical for foreign and security policy to be conducted at the European level. With one or two minor exceptions,<sup>20</sup> negative reactions to the Lisbon Treaty were in no way spurred by this particular policy area. It is not European publics that are concerned about loss of sovereignty in CSDP, but EU governments. At the same time, all governments recognize the imperative need for CSDP, as has been stated repeatedly in every official document about this policy area. So there is a widespread trans-European desire for CSDP to be somehow made to work better.

The other major assertion of the framework paper that I endorse is the crucial need for a new European narrative. Here, the *problématique* of CSDP is entirely salient. The motivation and mobilisation of EU citizens no longer resonate around the message of internal European peace. One great challenge of the future has to do with the EU's interaction with the outside world – a point that has been poignantly driven home by the Libyan and Ukrainian crises.<sup>21</sup> I believe that this challenge can infuse new dynamism into the EU story. But what precisely is the new mobi-

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<sup>18</sup> Sven Biscop and Jo Coelmont, *Europe, Strategy and Armed Forces. The Making of a Distinctive Power*, London and New York, Routledge, 2012; Jolyon Howorth, "The EU as a Global Actor, Grand Strategy for a Global Grand Bargain", in *Journal of Common Market Studies*, Vol. 48, No. 3 (March 2010), p. 455-474.

<sup>19</sup> Heiko Biehl, Bastian Giegerich and Alexandra Jonas (eds.), *Strategic Cultures in Europe. Security and Defence Policies Across the Continent*, Wiesbaden, Springer VS, 2013.

<sup>20</sup> Irish and French misunderstandings about neutrality and NATO.

<sup>21</sup> Anand Menon, *Divided We Fall? Europe in a Changing World*, JCMS Annual Lecture, New Delhi, 24 March 2014.

lizing narrative to consist of? The IAI framework paper talks about the EU “punch[ing] its full weight as a 21st century global power,” and of projecting the EU’s “full economic, strategic and normative weight in its neighbourhood and beyond.”<sup>22</sup> What exactly does that imply? Is a “21st century global power” different from global powers in the 19th or 20th centuries? On 1 March 2014, at the height of the crisis over Ukraine, John Kerry said, “You just don’t in the 21st century behave in 19th century fashion by invading another country on completely trumped up pretext.”<sup>23</sup> Really? Are we forgetting Grenada in 1983? Have we forgotten Iraq in 2003? And Barack Obama opined, “In 2014, we are well beyond the days when borders can be redrawn over the heads of democratic leaders.”<sup>24</sup> Yet Vladimir Putin, in his speech in the Kremlin on 18 March 2014, clearly relished reminding the US of its own 2009 written statement to the International Court of Justice over Kosovo: “Declarations of independence may, and often do, violate domestic legislation. However, this does not make them violations of international law.”<sup>25</sup> Since 1945, there is no question that the “international community” has made substantial progress in embedding state practices in international law, and in operationalising international institutions as the default framework for inter-state relations. But traditional power politics has not been transcended and great powers continue, when it suits them, to deploy that power in traditional ways.<sup>26</sup>

The EU is not good at thinking about power. The word itself – significantly – is absent from the 2003 Security Strategy document. It was remarkable that the High Representative, in her report to the December 2013 European Council, made a real effort to face up to the world as it is rather than to one reflecting EU wishful thinking:

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<sup>22</sup> See Chapter 1 by Nathalie Tocci and Giovanni Faleg.

<sup>23</sup> Rebecca Kaplan, “John Kerry warns of consequences for Russia after Ukraine invasion”, in *CBS News*, 2 March 2014, <http://www.cbsnews.com/news/john-kerry-warns-of-consequences-for-russia-after-ukraine-invasion>.

<sup>24</sup> The White House, *Statement by the President on Ukraine*, 6 March 2014, <http://wh.gov/lykXU>.

<sup>25</sup> Russian Presidency, *Address by President of the Russian Federation*, Moscow, 18 March 2014, <http://eng.news.kremlin.ru/news/6889>.

<sup>26</sup> Robert D. Kaplan, “The Old Order Collapses, Finally”, in *Stratfor Global Intelligence*, 21 May 2014, <http://www.stratfor.com/sample/weekly/old-order-collapses-finally>.

The world as a whole faces increased volatility, complexity and uncertainty. A multipolar and interconnected international system is changing the nature of power. The distinction between internal and external security is breaking down. Complex layers of governance and new patterns of interdependence empower new players and give rise to new challenges. As a result, state power is becoming more fragile. Among the drivers for this are: changing demographics and population growth, embedded inequalities, and new technologies.<sup>27</sup>

Ashton, arguing that these developments “warrant a strategic debate among Heads of State and Government,” went on to argue that one of the EU’s top priorities through CSDP must be “to protect its interests and project its values by *contributing to international security, helping to prevent and resolve crises and including through projecting power* (emphasis in original).”<sup>28</sup>

Unfortunately, but not entirely surprisingly, the Heads of State and Government, in their Council Conclusions, chose to avoid altogether any mention of strategy or power projection, instead focusing on the challenge of developing military and civilian capacity.<sup>29</sup>

Ashton, however, was right. In order to generate a new grand narrative, Europeans need two things. First, they need to be absolutely clear – and in agreement – about the overall direction of systemic trends in international affairs. Is there a difference between the nature of and the deployment of power in the 19th century and in the 21st, and if so what is it? Second, they need to decide what outcome they might wish to favour from among the various options on offer and then to know how best to go about securing that outcome. Political scientists and international relations scholars have long theorized that major power transitions tend to be accompanied by military conflict.<sup>30</sup> As the stakes currently seem to

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<sup>27</sup> Final Report by the High Representative/Head of the EDA on the Common Security and Defence Policy, Brussels, 15 October 2013, [http://eeas.europa.eu/statements/docs/2013/131015\\_02\\_en.pdf](http://eeas.europa.eu/statements/docs/2013/131015_02_en.pdf).

<sup>28</sup> Ibidem.

<sup>29</sup> Sven Biscop and Jo Coelmont, “Defence: The European Council Matters”, in *Egmont Security Policy Briefs*, No. 51 (December 2013), <http://www.egmontinstitute.be/?p=8816>.

<sup>30</sup> A.F.K. Organski, *World Politics*, 2nd edition, New York, Knopf, 1968.

be on the rise in Eurasia, the East China Sea, the Near East, and elsewhere, this issue acquires huge salience, especially in the context of the US “tilt” to Asia. Scholars such as John Ikenberry have argued that the liberal international order put in place after World War II is sufficiently strong and resilient to be able to co-opt the rising powers into its logic and institutions while making no significant concessions to those new emerging powers.<sup>31</sup> Others have insisted that there is no way the rising powers will allow themselves to be co-opted, and have stressed the need for the West to strike a “global grand bargain” with the Rest in order to avoid military conflict.<sup>32</sup> Giovanni Grevi has a slightly different European variant on this approach, which he calls “inter-polarity.”<sup>33</sup> Still others, such as Charles Kupchan, envisage a global order in which, for the first time in history, no one power will exercise hegemony or dominance and in which there will be multiple and quite different pathways to modernity and no single international system.<sup>34</sup> Robert Kagan and Robert Kaplan, for their part, continue to see a Hobbesian world reflecting naked power.<sup>35</sup> Any new EU narrative will need to engage with these perspectives in order to devise a strategy for the EU. The key pitfall to be avoided is that of inadvertently contributing to a new order that will be competitive, conflict-prone, and zero-sum. The Ukrainian crisis is a case in point. The new narrative informing the EU’s global action might therefore be: “to facilitate and help engineer a peaceful transition towards a new consensual global order.” That might be a narrative with which no EU member state could reasonably disagree, and therefore a good starting point for reconsidering the ways in which leadership of CSDP might be rethought. But first, what is the problem?

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<sup>31</sup> G. John Ikenberry, *Liberal Leviathan. The Origins, Crisis, and Transformation of the American World Order*, Princeton and Oxford, Princeton University Press, 2011.

<sup>32</sup> Robert Hutchings and Frederick Kempe, “The Global Grand Bargain”, in *Foreign Policy*, 5 November 2008, [http://www.foreignpolicy.com/articles/2008/11/04/the\\_global\\_grand\\_bargain](http://www.foreignpolicy.com/articles/2008/11/04/the_global_grand_bargain).

<sup>33</sup> Giovanni Grevi, “The Interpolar World: A New Scenario”, in *EU-ISS Occasional Papers*, No. 79 (June 2009), <http://www.iss.europa.eu/publications/detail/article/the-interpolar-world-a-new-scenario>.

<sup>34</sup> Charles A. Kupchan, *No One’s World. The West, the Rising Rest, and the Coming Global Turn*, Oxford and New York, Oxford University Press, 2012.

<sup>35</sup> Robert Kagan, *The Return of History and the End of Dreams*, New York, Knopf, 2008; Robert D. Kaplan, *The Revenge of Geography*, New York, Random House, 2012.

### 3. THE CRISIS OF CSDP

What is the “crisis of CSDP”? It is rather different from the crises of the EU itself or of the eurozone, the key features of which are accurately and well defined in the framework paper. There is one key similarity between CSDP and the eurozone in that both policy areas were launched on a whisper and a prayer, with the elites present at the launch knowing perfectly well that the political conditions for ultimate success (unity, effectiveness and governability) were simply not present at the outset.<sup>36</sup> These policy areas/projects were launched above all as a political signal to whoever was paying attention. The signal indicated that the EU was confident of the direction in which it was heading and also hopeful that if these policy areas at some stage ran into problems, these would be resolved by some great leap forward. That is the situation in which the EU found itself in 2011/2012 with regard to both of these key policy areas.

However, unlike in the case of the eurozone – where the problem was that a common currency simply *cannot work* in the long term without a strong measure of fiscal harmonisation, banking oversight, budgetary transparency and many other techno-politico-institutional mechanisms – the problem with CSDP was not technical design fault. Rather, it was that the policy area itself, by 2011/2012, seemed to have run out of steam. The available energy of EU officials was being taken up by the eurozone crisis and there wasn’t any left for much else. The member states were in any case “missioned out,” having been engaged in no fewer than 26 missions between 2003 and 2008, and many of them had also been or still were heavily involved in Iraq and Afghanistan. No new mission was launched between 2008 and 2012, with the (partial) exception of a small training mission for Somali troops (in Uganda). The High Representative, appointed in 2009 to head up the CSDP project, considered it a low priority, and was largely absorbed by the creation of the EEAS. It was no surprise, therefore, that when the Arab Spring erupted CSDP appeared to many to be irrelevant, rather like a cow grazing in a field, watching a passing train go by. Some analysts even pronounced it “dead.”<sup>37</sup> With these challenges in mind – and they are considerable – let us proceed to

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<sup>36</sup> Each of these policy areas goes to the very heart of sovereignty – as does that of borders and frontiers (Schengen), which is also currently undergoing turbulence.

<sup>37</sup> Anand Menon, “European Defence Policy from Lisbon to Libya”, in *Survival*, Vol. 53, No. 3 (June-July 2011), p. 75-90; James Rogers and Luis Simón, “The New ‘Long Telegram’:

an assessment of how (or whether) the creation of a “core CSDP leadership” might change the situation.

#### 4. THE MEMBERSHIP AND DEGREE OF INTEGRATION OF THE CORE

The absence of any clear (or agreed-upon) view of policy objectives – the absence of *strategic vision* – has important consequences for the definition of the core. Since there is no clear agreement on what CSDP is attempting to *achieve* in the international arena (and how), then it is highly problematic to identify the core. To date, CSDP has largely *reacted* in ad hoc fashion to distress signals, mainly from the Balkans and Africa. If the problem is relatively minor and the member states can turn it into an opportunity (the DRC in 2003, Bosnia in 2004), then CSDP kicks in. If the problem is a major one and/or the stakes are considered high (Lebanon in 2006, Congo in 2008, Libya in 2011, Ukraine in 2014), then CSDP remains dormant.<sup>38</sup> This could be perceived as “strategy by default” in that CSDP missions become self-defining. But we should not delude ourselves that any of these missions were pro-actively or strategically selected.

The problem of identifying the core therefore boils down, at one level, to that of knowing *what the objective of CSDP is*. Let us start at the high end. If the objective, as articulated by the July 2013 French Senate report on the future of CSDP, is to create a core “Eurogroup” whose task is to generate an “genuine, integrated, collective European defence system capable of protecting its own territory and citizens independently,”<sup>39</sup> then clearly, as proposed in this report, the core would have to be France and the UK,

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Why We Must Re-found European Integration”, in *Long Telegrams*, No. 1 (Summer 2011), <http://www.ies.be/files/Long%20Telegram%201.pdf>.

<sup>38</sup>Katarina Engberg, *The EU and Military Operations. A Comparative Analysis*, London and New York, Routledge, 2014; Annemarie Peen Rodt, *The European Union and Military Conflict Management. Defining, Evaluating and Achieving Success*, London and New York, Routledge, 2014; Benjamin Pohl, *EU Foreign Policy and Crisis Management Operations. Power, Purpose and Domestic Politics*, London and New York, Routledge, 2014.

<sup>39</sup>French Senate Committee for Foreign Affairs, Defence and Armed Forces, “Let’s Get Rid of ‘Europe of Defence’. Towards a European Defence”, cit., p. 48. See also the similarly ambitious report by Philippe Esper et al., *Eurodéfense: pour une relance de l’Europe de la défense*, Paris, Editions Unicomm, 2009.



acting according to a “breakaway strategy” (i.e. outside of the Treaties) and inviting into their orbit a number of associated member states. In the Senate’s view these would be first and foremost Germany (because of its size and because of the centrality of the Franco-German motor),<sup>40</sup> and, in a “second wave,” Italy, Poland and Spain. We thus wind up with the *Weimar Five*, plus the UK.<sup>41</sup> This line-up is identical to that proposed by President Sarkozy in 2008, with the same six “big” European states.<sup>42</sup> That proposal was, at the time, considered to be arrogantly dismissive of a number of somewhat less sizeable, but nevertheless equally “CSDP-active,” states such as Sweden, the Netherlands, Belgium, Finland and even Ireland. Even when we set a clearly articulated objective, therefore, there is little agreement on who exactly should be involved in leadership.

Nevertheless, within this “high end core,” there is a clear “inner core,” widely identified as consisting of France and the UK. The November 2010, Anglo-French “Lancaster House” Treaty on Defence and Security Cooperation underscored recognition in both London and Paris that these two would-be global players and permanent members of the UN Security Council could only continue to aspire to global player status if they combined their military efforts in a number of highly strategic sectors: aircraft carriers, transport aircraft, nuclear submarines, military satellite technology, drones, expeditionary forces, and eventually combat systems. The fundamental question sparked by this development among experts was: would this Franco-British cooperation act as a *complement* to CSDP or as an *alternative*?<sup>43</sup> Would those member states less keen to play a military role (either through CSDP or through NATO) see this as an incentive to continue to free-ride? France and the UK together account for around 45% of the collective EU defence spending of the 28 member states.

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<sup>40</sup> The report recognizes that France may require “strategic patience” in order to bring Germany along... (p. 49).

<sup>41</sup> *Ibidem*, p. 48-49.

<sup>42</sup> Nicolas Sarkozy, *Ensemble*, Paris, XO Editions, 2007.

<sup>43</sup> Ben Jones, “Franco-British military cooperation: a new engine for European defence?”, in *EU-ISS Occasional Papers*, No. 88 (February 2011), <http://www.iss.europa.eu/publications/detail/article/franco-british-military-cooperation-a-new-engine-for-european-defence>; Anand Menon, “Double Act: Anglo-French Defence Co-operation Pact”, in *Jane’s Intelligence Review*, February 2011, p. 24-27, <http://www.esrc.ac.uk/my-esrc/grants/RES-062-23-2717/outputs/Read/adcdc180-c893-4cc2-82ae-2f5c8ceb9146>.



However, would this “high end core” leadership attract followers? Appropriation, by CSDP, of NATO’s historic core purpose of collective European defence may well be an objective nurtured in Paris.<sup>44</sup> It is emphatically not an agenda item in London, and would encounter serious resistance in many other EU capital cities. Franco-British partnership in security and defence – whatever its ultimate objective – is primarily a *bilateral* rather than a *community* project. And although there is a great deal of Franco-British cooperation taking place on the ground,<sup>45</sup> it is far from clear where it is going strategically or politically – or even in terms of procurement.<sup>46</sup> It cannot, under existing political and strategic circumstances in Europe, be substituted for a *common* EU security and defence policy.

If, on the other hand, setting the sights slightly lower, the objective of CSDP, as initially stated in the Saint-Malo Declaration of 1998, is to allow the EU to “play its full role on the international stage [with] the capacity for autonomous action, backed up by credible military forces, the means to decide to use them and a readiness to do so,”<sup>47</sup> then the core must include all those member states which can contribute seriously to that objective. To date, that has, in theory at least, embraced all member states except Denmark, which secured an opt-out from CSDP at

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<sup>44</sup> The “Europeanisation of NATO” was an intriguingly ill-defined objective of Hubert Védrine’s 2012 report on France’s reintegration of the military structures of the Alliance. See Hubert Védrine, *Report for the President of the French Republic on the Consequences of France’s Return to NATO’s Integrated Military Command, on the Future of Transatlantic Relations, and the Outlook for the Europe of Defence*, 14 November 2012, <http://www.diplomatie.gouv.fr/en/global-issues/defence-security/french-defence/international-organization-in/nato/france-and-nato/article/hubert-vedrine-report-submitted-to>.

<sup>45</sup> Alice Pannier, “Understanding the workings of interstate cooperation in defence: an exploration into Franco-British cooperation after the signing of the Lancaster House treaty”, in *European Security*, Vol. 22, No. 4 (2014), p. 540-558.

<sup>46</sup> Claire Chick, “Make-or-Break Year for a Partnership: 2014 may show if France, UK are serious”, in *Defence News*, 27 January 2014, p. 21, <http://www.defensenews.com/article/20140127/DEFREG02/301270045>.

<sup>47</sup> Text available in Maartje Rutten (ed.), “From St-Malo to Nice. European defence: core documents”, in *Chaillot Papers*, No. 47 (May 2001), p. 8-9, <http://www.iss.europa.eu/publications/detail/article/from-st-malo-to-nice-european-defence-core-documents>. The ESS of 2003 implies similarly high ambitions, although it fails to deliver a succinct quotable statement of those ambitions.

the Maastricht Treaty, but which is currently reconsidering this option.<sup>48</sup> An examination of member state participation in CSDP operations over the first ten years confirms that by and large, and controlling for size, all EU member states, with very few exceptions, have contributed to both military and civilian operations.<sup>49</sup> Denmark, incidentally, has carried more than its fair share of the burden in civilian missions.

However, the fact that (practically) all member states contribute actively does not help to resolve the problem of core leadership. The “core” cannot be all member states. Here, there are two issues. In a series of interviews conducted in 2007 of all of the (then) twenty-seven ambassadors to the Political and Security Committee,<sup>50</sup> I was told repeatedly that, whenever there was any issue of significance on the agenda, the majority of the permanent representatives waited to hear what their UK, French and possibly German colleagues had to say. If the division within the leading member states was beyond salvation, then the matter ended there.<sup>51</sup> If it was not, then the task of the other ambassadors was to facilitate agreement. The point here is simply that, if the “big three” are significantly divided on a political basis, then there is no measure of institutional tinkering that can fix that problem. If, however, they are agreed, the chances are that all member states will step in line.

The second issue has to do with the type of operations favoured by CSDP. In the early days after Saint-Malo, in part because that was a Franco-British initiative, the emphasis was on *military capability* and missions. Yet, within a couple of years, this emphasis had been relativ-

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<sup>48</sup> Lisbeth Kirk, “Danish Opposition Agrees to Quick EU Referendum”, in *EUobserver*, 12 August 2013, <http://euobserver.com/political/121082>. According to this article, 55% of Danes are in favour of scrapping the opt-out on CSDP.

<sup>49</sup> Giovanni Grevi, Damien Helly, Daniel Keohane (eds.), *European Security and Defence Policy. The First Ten Years (1999-2009)*, Paris, EU-ISS, 2009, p. 414-415, <http://www.iss.europa.eu/publications/detail/article/esdp-the-first-10-years-1999-2009>. The most significant exceptions have been Cyprus and Malta, whose contributions to both military and civilian missions has been close to zero, as well as the Baltic states and Luxembourg, whose contribution has been disproportionately small, even allowing for limited size and resources.

<sup>50</sup> In fact, twenty-eight since the Commission representative was also interviewed.

<sup>51</sup> It is relatively rare that such an impasse develops because such an issue would most likely not have been placed on the agenda in the first place. This is another institutional pitfall that argues against trying to get around the problem via institutional creativity.

ized by the introduction of the concept of Civilian Crisis Management (CCM). The concept of CCM did not make its mark until the Helsinki European Council meeting in December 1999, when the term was first used in the Presidency Report. In particular, in the Annexes to that report, there were specific recommendations on what was referred to as the “non-military crisis-management” of the EU. This somewhat negative framing of the concept set the tone for discussions on civilian capabilities over the next two years. These were clearly seen as a *complement* to or as *subordinate* to the military capacities to which Helsinki gave its name. To this extent, the unintended consequences of the introduction of specific CCM policy instruments, under the impetus of the EU’s less militarily-inclined member states, have resulted in an overall mix of civilian and military aspects to CSDP which is undoubtedly very far removed from what Blair and Chirac had in mind at Saint-Malo.<sup>52</sup> Three of the first five CSDP missions were indeed military missions. Yet, that early statistic gave a very misleading impression of the real footprint of CSDP. Only three further military missions were mounted between 2004 and 2014, compared with a total of twenty-eight missions which, while not being 100 percent “civilian,” were all basically “non-military.” CSDP’s tortuous relationship with NATO, which has involved endless and inconclusive arguments about a hypothetical “division of labour” (the Alliance doing heavy military lifting and the EU concentrating on small-scale civ-mil operations), and the ongoing debate over how the EU might enter into new forms of cooperation with the Alliance will be discussed below. But the fact that CSDP has *de facto* evolved into a practice massively dominated by overseas missions in which high-intensity military capacity is rarely required suggests that the Saint-Malo ambitions for CSDP, as defined above, are no longer seen as the core function of this policy area.

If that is the case, and if the purpose of CSDP is to act as a small-scale European crisis management mechanism conducting mainly civilian missions as a complement to NATO, then the core might be very different. Countries such as Germany, Finland, Romania and Sweden have contrib-

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<sup>52</sup> Anand Menon and Ulrich Sedelmeier, “Instruments and Intentionality: Civilian Crisis Management and Enlargement Conditionality in EU Security Policy”, in *West European Politics*, Vol. 33, No. 1 (January 2010), p. 75-92; Peter Viggo Jakobsen, “Small States, Big Influence: The Overlooked Nordic Influence on the Civilian ESDP”, in *Journal of Common Market Studies*, Vol. 47, No. 1 (January 2009), p. 81-102, <http://dx.doi.org/10.1111/j.1468-5965.2008.01833.x>.

uted disproportionately to civilian missions to date. Could they conceivably replace France and the UK as the dominant force in such a core?

One other candidate for a leadership role that is occasionally raised is the traditional driver of European integration: the Franco-German couple, which has always driven the most important policy areas of the European Union. However, in the area of defence, this has not been the case. Too many major areas of divisiveness prevent convergence: history, nuclear weapons, overseas expeditionary warfare, approach to civilian-military synergies, strategic culture in general. The experience of the Franco-German Defence Commission and the Franco-German Defence Committee in the 1980s and early 1990s was extremely disappointing to both sides. The much-trumpeted Eurocorps has remained a dormant shell. Throughout the 1990s, France moved ever closer to the UK and ever more distant from Germany. During the 2000s, France nevertheless tried hard to involve Germany more actively in CSDP expeditionary missions, such as the 2008 EUFOR Chad mission, the leadership of which Paris more or less forced onto a reluctant Berlin. By the end of that decade, France had begun to despair of Germany ever closing the gap between her own hesitancy and France's exuberance. Paris prioritised London as the key partner. However, since 2012, the picture has changed again. Britain has reneged on one key aspect of the Lancaster House Treaty (aircraft carriers), made increasingly anti-European noises (referendum), had second thoughts about intervention in Syria, and generally gone into limbo. Germany, on the other hand, has been active with France and the broader Weimar group in pressing for a EU OHQ and, more generally, in continuing to promote CSDP. At the Munich Security Conference in February 2014, several German speakers flew the kite of more pro-active German leadership in foreign and security matters. Yet although one hears more and more senior French officials saying quietly that France has to prioritise the German defence partnership over the British,<sup>53</sup> it is not at all clear whether there is much substantial mileage in this.

The "wild card" in many of these scenarios is the position of the United Kingdom. The decision taken by Prime Minister David Cameron to attempt to renegotiate Britain's role in the EU cannot but have potentially serious implications for the UK's future role in CSDP. Whether or not

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<sup>53</sup> The speech by General Gilles Rouby to the Parliamentary conference on CSDP in July 2013 explicitly called for a Franco-German leadership in CSDP.

the UK, by accident or design, finds itself leaving the formal structures of the EU, the defence and security conundrum facing the Union will remain exactly the same. Experts are often asked: could the EU develop a robust security and defence capacity without the UK? The answer comes in two parts. The first is that CSDP without the UK would inevitably be a much lesser reality than it would be if the UK were fully involved. The second is that, because the European defence and security project arises out of the movement of history's tectonic plates, CSDP would have no alternative but to continue to develop, even without the UK. Indeed, it might even develop more rapidly because the "British brakes" would be removed. By the same token, the UK, because it is a significant defence player geographically situated in Europe, would have no alternative but to continue to have some sort of relationship with CSDP. This might involve the negotiation of a special status for the UK (similar to that of Turkey?) within the European security project. But whatever the precise nature of such an arrangement, the UK would clearly henceforth wield significantly less clout in CSDP than it has to date. There would be a serious cost to pay in terms of the UK's influence over this crucial policy area.<sup>54</sup>

Therefore, the answer to the first question posed by the IAI's framework paper is that it remains extremely difficult to determine the membership of the core, whichever scenario one assumes. Furthermore, the degree of integration of this elusive core is itself a victim of the political and strategic conundrum of identifying CSDP's ultimate objective and purpose. With that difficulty in mind, we move to the second question about the relationship between the core and the non-core.

## 5. THE RELATIONSHIP BETWEEN THE CORE AND THE NON-CORE?

Assuming CSDP stays in business, it is hard to imagine a "non-core" which stands idly on the margins or elects to write cheques rather than to deploy forces. A "security community" is indivisible, especially when the smaller,

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<sup>54</sup> Julian Lindley-French, *Little Britain? Twenty-First Century Strategy for a Middling European Power*, Melbourne, Wilkinson Publishing, 2014; Jolyon Howorth, "The UK & Europe: In or Out of Security and Defence Policy?", in John Drew and Martyn Bond (eds.), *The UK and Europe: Costs, Benefits, Options. The Regent's Report 2013*, London, Regent's University, 2013, p. 189-197, <http://www.regents.ac.uk/europereport>.

weaker member states are also the most vulnerable (for example the collective policing of Baltic air space). In the mid-2000s, after the debates in the Constitutional Convention that generated the concept of “permanent structured cooperation” (PESCO), there was much discussion of the creation of a “vanguard” group of countries that would be committed to taking CSDP to a “higher level.” Initially driven by France, this concept was explicitly intended to opt for quality rather than quantity and to divide the EU member states, for CSDP purposes, into more active and more passive members, on the assumption that, in time, all would eventually “catch up.” The UK was opposed to such an approach, having only agreed to the launch of CSDP on the understanding that it would aim to generate the maximum possible military capacity – and that meant squeezing every last drop out of every member state. Article 42(6) of the Lisbon Treaty nevertheless states that

Those Member States whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area with a view to the most demanding missions shall establish permanent structured cooperation within the Union framework.

The procedures whereby member states may enter into permanent structured cooperation are laid out in detail both in the main body of the Treaty and in a Protocol. Although the procedure has never been formally activated, the debate around its intentions led to widespread acceptance that it must be as *inclusive* as possible.<sup>55</sup> The procedure itself remains in limbo.

One way in which, despite their differences in terms of size, strategic culture and resources, the member states are beginning to cooperate to drive forward the acquisition of civil and military capacity is through the so-called “clusters” approach. This is a quite different phenomenon from PESCO, but it is one in which the member states are self-consciously organising themselves into a small number of relatively like-minded groups for purposes of cooperation. Tomas Valasek has theorised a number of “bottom line requirements” for cross-border defence cooperation to thrive. The first is a measure of commonality in strategic cul-

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<sup>55</sup> Sven Biscop, “Permanent Structured Cooperation and the Future of the ESDP: Transformation and Integration”, in *European Foreign Affairs Review*, Vol. 13, No. 4 (November 2008), p. 431-448.

ture. The second is an important degree of trust. Every participant to a cooperative venture fears either entrapment (being sucked into a conflict it would not have chosen) or abandonment (being jilted at a critical moment). This has been the reality in NATO since 1949. Trust can only be built with time and experience. The third factor is that the cooperating nations should be of roughly the same size and quality. Fourth, there needs to be a level playing-field for defence industries, since cooperation will suffer if one partner is perceived to be protecting its national champions at the expense of the other(s). Seriousness of intent is a fifth requirement, and the absence of corruption in the procurement process is a sixth.<sup>56</sup> These elements have tended to come into play in the growing number of cooperative clusters that have appeared in recent years.

The Franco-British couple is the most obvious example, and we have already assessed its internal tensions. Recently, there has also been intensive cooperation between Denmark, Finland, Iceland, Norway and Sweden, five countries with very different relations to NATO and to the EU. Norway and Iceland are members of NATO but not of the EU; Sweden and Finland are members of the EU, but not of NATO; Denmark is a member of both organisations, but has an opt-out from CSDP.<sup>57</sup> And yet they actively seek cooperation. A third example is offered by the Benelux countries, which have a long tradition of cross-border cooperation. The Belgian and Dutch navies share an integrated command and feature common training and maintenance operations. This model is perceived by partners as offering scope for similar endeavours such as governance, education, training, control of the Benelux airspace and other matters, where cooperation has been successful. This particular cluster of countries is also deeply interested in extending cooperation to both France and Germany.<sup>58</sup>

A fourth example of a cooperative cluster is that of the Visegrad countries (Poland, Hungary, Slovakia and the Czech Republic). While

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<sup>56</sup>Tomáš Valášek, "Surviving Austerity: The Case for a New Approach to EU Military Collaboration", in *CER Reports*, April 2011, <http://www.cer.org.uk/node/75>.

<sup>57</sup>Alyson J. K. Bailes, Gunilla Herolf and Bengt Sundelius (eds.), *The Nordic Countries and the European Security and Defence Policy*, Oxford, Oxford University Press, 2006, [http://books.sipri.org/product\\_info?c\\_product\\_id=239](http://books.sipri.org/product_info?c_product_id=239). See also the official website of Nordic Defence Cooperation (NORDEFECO): <http://www.nordefco.org>.

<sup>58</sup>Sven Biscop et al., "The Future of the Benelux Defence Cooperation", in *Clingendael/Egmont Reports*, April 2013, <http://www.clingendael.nl/node/4307>.



the driver of this experiment is probably as much NATO as it is the EU (countries that wish to demonstrate their loyalty as US allies), the range and variety of cooperation projects is encouraging, and the potential for pooling and sharing is felt to be considerable.<sup>59</sup> In June 2012, a broader grouping of Austria, Croatia, the Czech Republic, Hungary, Slovakia and Slovenia formed the Central European Defence Cooperation (CEDC) initiative.<sup>60</sup> It is unclear how coherent this grouping might prove to be given the rather different agendas of the Czech Republic, which focuses massively on NATO, and Austria, which clings to its neutrality. Finally, there is much ongoing cooperation between France, Germany and Poland in the context of the “Weimar Triangle”<sup>61</sup> and also, increasingly, between Portugal and Spain.<sup>62</sup> The point about all of these examples is that, in most cases, the countries involved are all trying, in different ways, to ensure *that they will not be consigned or relegated to the “non-core,”* while recognising that the precise definition of “the core” remains a work in progress. One concern with the clusters approach (precisely because it lacks an overall strategic framework) is that it will eventually deliver capacities that might prove sub-optimally useful in terms of their collective coherence and contribution to the overall CSDP endeavour. This simply reminds us of the importance of overall leadership. This model does bear some resemblance to the “patchwork core Europe,” except that the different patches are far from similar either in size or in the quality of

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<sup>59</sup> Tomáš Valášek and Milan Šuplata (eds.), “Towards a Deeper Visegrad Defence Partnership. DAV4 Full Report”, in *CEPI Policy Briefs*, 15 November 2012, <http://www.cepolicy.org/node/169>.

<sup>60</sup> Xymena Kurowska and Bence Németh, “The Central European Playground: Who Plays What?”, in *Long Posts*, No. 6, 22 May 2013, <http://www.europeangeostrategy.org/2013/05/playground-central-europe>; Michal Onderco, “Misreading the European Playground”, in *European Geostrategy*, 5 June 2013, <http://www.europeangeostrategy.org/2013/06/misreading-european-playground>. See also Kurowska and Németh’s response to Onderco: “The Central European Playground: A Rebuttal”, in *European Geostrategy*, 5 July 2013, <http://www.europeangeostrategy.org/2013/07/central-european-playground-rebuttal>.

<sup>61</sup> Cornelius Adebahr, “The Comprehensive Approach to Crisis management in a Concerted Weimar Effort”, in *Genshagener Papiere*, No. 6 (March 2011), [http://www.stiftung-genshagen.de/fileadmin/Dateien/Publikationen/Genshagener\\_Papiere/Genshagener\\_Papiere\\_2011\\_06.pdf](http://www.stiftung-genshagen.de/fileadmin/Dateien/Publikationen/Genshagener_Papiere/Genshagener_Papiere_2011_06.pdf).

<sup>62</sup> *Joint Statement: 26th Spain-Portugal Summit*, Madrid, 13 May 2013, [http://www.lamoncloa.gob.es/IDIOMAS/9/Presidente/News/2013/20130513\\_SPAIN\\_Portugal.htm](http://www.lamoncloa.gob.es/IDIOMAS/9/Presidente/News/2013/20130513_SPAIN_Portugal.htm).



their respective capacity offerings. Moreover, in theory at least, they are temporary, expedient arrangements designed in the near future to come back together in a more coherent whole.

If we accept that, within the 28 member states of the EU, there is really no way either of designating a clear CSDP “core” or, *ipso facto*, of defining a clear “non-core,” we are left with the recognition that the relationship between the different players, either as individual nation states, as proximate “dyads” or “triads,” or as clusters, remains relatively indecipherable. All are members of CSDP *because* they are members of the EU – and because the EU has designated CSDP as a priority policy area from which (with the partial<sup>63</sup> and perhaps temporary exception of Denmark) none wish to be excluded. The problem for CSDP, as I have indicated, is not so much one of institutional recalibration as of lack of clarity about the *core purpose*. This poses, very directly, the question of the relationship between CSDP and NATO. It is in part because of the *coexistence* of CSDP and NATO that the core purpose of the former remains elusive – thus making it difficult to grapple with the question of leadership.

From the very outset, CSDP was predicated on *autonomy* – from NATO (and, therefore indirectly, from the United States).<sup>64</sup> As the Cold War wound down after the traumas of the INF crisis and as the hot war in Yugoslavia raged out of control, the desire among many Europeans for *security autonomy* became overwhelming. US unilateralism had profoundly rocked European elites in the mid-1980s. NATO’s very existence was a daily reminder of the second-class status suffered by Europeans in this policy area. Kosovo merely intensified that sentiment. US injunctions about burden-sharing cut no ice with allies whose free-riding tendencies had become part of their DNA. The forlorn attempt to discover some mechanism *from within* NATO that would allow the EU to borrow US assets for missions Washington did not wish to be associated with (the European Security and Defence Identity – ESDI) reinforced the growing sense that NATO was part of the problem rather than part of the solution. The only way Europeans were ever going to step up and take some measure of control over the security and stability of their neighbourhood was through an autonomous initiative. This was the thinking that

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<sup>63</sup> Note that Denmark is fully represented by its ambassador on the Political and Security Committee.

<sup>64</sup> Jolyon Howorth and John T.S. Keeler (eds.), *Defending Europe: The EU, NATO and the Quest for European Autonomy*, New York, Palgrave Macmillan, 2003.

animated both Tony Blair and Jacques Chirac at Saint-Malo (albeit driven by different logics). It was overwhelmingly predicated on the perceived need to *empower* the EU.

The quest for autonomy in the 21st century was driven by two main considerations. The first was that the EU should be free to decide on its strategic objectives according to policies set in Europe rather than in Washington DC. There was a widespread expectation (indeed, it was widely asserted – especially by Tony Blair) that these objectives would be entirely compatible with NATO. But the *political principle* of strategic autonomy was fundamental. The second driver was the belief that, as long as European military capacity was generated within and through NATO, most Europeans would simply free-ride on the US. Only through a EU agency and project, it was argued, would Europeans be prepared to stump up for the military capacity they so sorely lacked. At one level, this was primarily a question of *leadership*. As long as the US agreed to lead, the Europeans were happy to follow – at minimal cost to themselves. In NATO, there was always an undisputed leader. Beyond that leader, the “core group” (informally referred to as the “quad” – the US, the UK, France and Germany) was clearly identified and accepted by the other member states. One problem with CSDP, as we have seen, is that there has never been any real agreement on leadership. Through NATO, Europeans lost the habit of leadership – and therefore of thinking strategically.

Equally significantly, the promise of autonomy has remained unfulfilled. There has been no meaningful crafting of a European strategic doctrine or grand strategy. And there has been very limited development of new, usable, European military – and even civilian – capacity. As we saw with Libya in 2011 and with Ukraine in 2014, CSDP was simply nowhere to be seen. The Libyan operation was formally “badged” by NATO – albeit with the US fictitiously “leading from behind” and half the member states opposed to the mission. With respect to the West’s response to Russian moves in Ukraine, on March 26, 2014 President Obama explicitly reasserted NATO’s primacy. It is not clear at the time of writing (late May 2014) what possible purpose (other than symbolic) NATO might serve in Eastern Europe, but that is another question.

Despite its assertion of autonomy, CSDP has welcomed and embraced inputs from the non-EU member states of NATO (US, Canada, Turkey and Norway), all of which have participated in one or several CSDP missions. In one sense, these countries might be thought to constitute the

“non-core.” But that perspective merely opens up a legal and operational Pandora’s box, which is highly prejudicial to overall security arrangements in Europe. It is a truism that the “Berlin Plus” arrangements have proven to be at best dysfunctional, at worst a farce. Institutionally, there is a fundamental legal obstacle to harmonious relations between CSDP’s EU member states and the non-EU members of NATO. This arose at the very outset of the CSDP story when Norway and Turkey, strongly supported by the US, pushed very hard for the continuation of the previous arrangements within the WEU that gave Ankara and Oslo a serious part in decision-making via that body.<sup>65</sup> It was probably a strategic mistake on the EU’s part not to have made some early juridical/institutional concession to Turkey and Norway whereby they could assume some meaningful status within the institutions of CSDP. But this did not happen, and relations have been seriously soured by fifteen years of standoff. Norway has successfully negotiated an “opt-in” to the activities of the EDA, but any such role for Turkey is blocked by Greece and Cyprus. It is not beyond the bounds of the imagination to revisit the 1999 decision to enshrine what Madeleine Albright called “discrimination” against Turkey and Norway, but it would be awkward and messy and is probably unnecessary.

A better approach would be to completely rethink the much broader framework of institutional arrangements between the EU/CSDP and NATO. It is becoming widely acknowledged that, post-Libya (and all the more so in light of events in Ukraine), CSDP and NATO need to cooperate with one another intensively.<sup>66</sup> This approach must be understood in the broader context of the US “pivot to Asia,” the Obama doctrine of the US encouraging other regional actors to take greater responsibility for their neighbourhood,<sup>67</sup> the US financial crisis and swingeing defence budget cuts, and a constant barrage of signals from Washington DC

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<sup>65</sup> Willem van Eekelen, *Debating European Security, 1948-1998*, The Hague, Sdu Publishers; Brussels, CEPS, 1998.

<sup>66</sup> Maya Kandel and Jean-Paul Perruche, “Now or Never: The Way to a Credible European Defense”, in *Paris Papers*, No. 2 (2011), <http://www.defense.gouv.fr/content/download/153083/1551257/file/Paris%20Papers2.pdf>; Jo Coelmont and Maurice de Langlois, “Recalibrating CSDP-NATO Relations: The Real Pivot”, cit.; Sven Biscop, “The Summit of Our Ambition: European Defence Between Brussels and Wales”, in *Egmont Security Policy Briefs*, No. 55 (March 2014), <http://www.egmontinstitute.be/?p=12911>.

<sup>67</sup> David Rohde, “The Obama Doctrine”, in *Foreign Policy*, 27 February 2012, [http://www.foreignpolicy.com/articles/2012/02/27/the\\_obama\\_doctrine](http://www.foreignpolicy.com/articles/2012/02/27/the_obama_doctrine).

that the EU must transform itself into a consequential security actor. Both NATO and CSDP are currently in a state of existential self-interrogation. What does it mean under those circumstances to insist that CSDP should remain autonomous? As one who initially argued strongly in favour of autonomy, in order for CSDP to breathe life into itself, I now believe the EU should cooperate intensively with NATO in order to turn their joint efforts into an effective and appropriate *single regional capacity* for the stabilisation of what I call the “greater European area.”<sup>68</sup>

There are three distinct options for the recalibration of the CSDP-NATO relationship. The first is for CSDP simply to cease to exist, to admit failure, to abandon its fifteen-year project, and for the appropriate EU member states to free-ride, for their security and even their existence, on the United States, via NATO. This is an unseemly prospect for a Union that constantly repeats its intention to be a subject rather than an object of history. Nor would it be an option that would be welcomed by the US given the pressure on the EU to assume its strategic responsibilities. The second option for CSDP is to continue to attempt to carve out a workable relationship with NATO *as a separate and autonomous entity*. That option presents many challenges. Why would another twenty years produce markedly better results for CSDP than the last twenty? As long as the two organisations remain, or are kept, rigorously distinct, the confusion over “core purpose” and therefore over “core” and “non-core” membership will persist. There will be a strong tendency to adopt an uneven and inequitable division of labour – with NATO doing the heavy military lifting and CSDP serving as a mere back-up organisation for minor civilian and civ-mil missions. That again will prove unsatisfactory both to the US and to the EU and will not resolve the issue of the “core” and the “non-core,” and still less the issue of leadership inside CSDP.

A third CSDP-NATO option is for CSDP progressively to merge with NATO and to take over primary responsibility for key NATO functions. This also presents a number of major challenges and is predicated on two crucial assumptions. The first is that the United States

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<sup>68</sup> I would define the “greater European area” as covering, in addition to the EU itself, the immediate EU borderland, plus the hinterland to that borderland. In other words, the entire territories between the EU and Russia, which takes us from the Arctic to the Black Sea and to the Caspian basin, from the Red Sea to the Straits of Gibraltar and down to the vast expanses of the Sahel.

is serious about encouraging the Europeans progressively to become consequential players, essentially responsible for taking on the leadership of stability and security in the greater European area. There are reasons to believe that this is not wildly unrealistic. Why would Americans continue to assume the burden and expense of carrying the security of the Europeans (who are more numerous and wealthier than they) in an era of austerity and retrenchment and when the world of 1947-49 has moved on several times? The US “decline” has been seriously exaggerated, but even Washington now has to make real choices and to focus its attention on strategic priorities.<sup>69</sup> In spring 2014, twice as many Americans (61%) believed the US should not get involved in resolving the Ukraine crisis as believed it should (32%).<sup>70</sup> In the short and medium terms, it is reasonable to expect that the United States will be prepared to continue to underpin NATO for a transitional period. But there are two caveats. First, it will do so increasingly reluctantly, especially if the Europeans persist in shirking their historical and strategic responsibilities. Second, the US will not do so indefinitely. However, if the Europeans are seen to be taking control of their own destiny and neighbourhood, then there are reasons to believe that the US will be willing to share and eventually even to transfer responsibilities to the Europeans, who will progressively become the major stakeholder(s) in the “Alliance.” This is a major assumption that can be neither proved nor disproved other than by testing it. That would be a gamble. The second assumption is perhaps even more difficult to make. It is that the EU member states (collectively) *would agree* progressively to shoulder the responsibilities of regional security and stabilisation, provide the resources that shift would require and take over from the US the burdens of leadership. If the EU intends to become a consequential regional security player, it has no alternative than to become a military (and civilian-military) power. That can only happen if the political, operational and institutional confusion between NATO and CSDP is resolved. Policy proposals along these lines will be offered in the final section of this paper.

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<sup>69</sup> Michael Mandelbaum, *The Frugal Superpower: America's Global Leadership in a Cash-Strapped Era*, New York, PublicAffairs, 2010.

<sup>70</sup> Sarah Dutton et al., “Poll: Most say U.S. doesn't have a responsibility in Ukraine”, in *CBS News*, 25 March 2014, <http://www.cbsnews.com/news/poll-most-say-us-doesnt-have-a-responsibility-in-ukraine>.

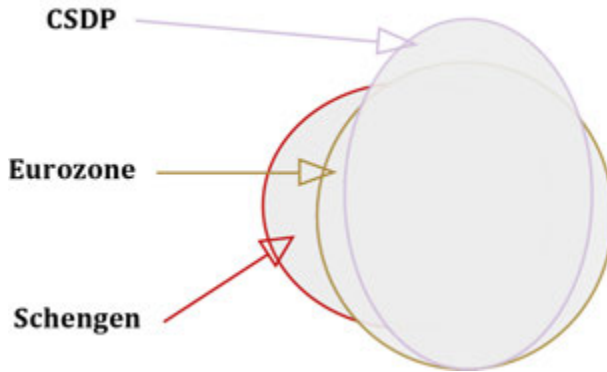
## 6. WHICH MODEL OF GOVERNANCE BEST APPLIES IN THE CASE OF CSDP?

**Concentric circles:** This model does not quite fit as far as CSDP is concerned. It is based on the notion of a *permanent separation* between the core (whose members are clearly defined) and a non-core (among whose members, presumably, there is close convergence if not an identity of views on their relationship to the core and on their desire to remain outside it). It is this latter notion that is especially problematic. There is, in my view, no way that a sizeable majority (or even a sizeable minority) of EU member states would wish to remain permanently outside the core of CSDP – or even that the core would wish (or allow) them to remain outside. On the contrary, the reality seems to be that all EU member states hanker to be part of the core, even though their inputs and commitment vary considerably. The variability in geographic space does not affect the desire to be part of the core. What it does affect is the core purpose of the policy area (what the framework paper calls “matter”). The centripetal/centrifugal dimension does not really apply. No member state is trying to break away (with the possible exception of the UK), but then neither is there a discernible dynamic to transfer political decision-making authority from the member states to Brussels. The process of “Brussels-isation” in foreign and security policy (Council Secretariat, High Representative, Political and Security Committee, EUMS, EUMC, EDA) has remained resolutely inter-governmental and the member states, to date, have firmly resisted transferring any serious *power* to the EU.

However, the move towards greater “federal” decision-making procedures and structures in the eurozone core would almost certainly have a knock-on effect in the area of security and defence, if only because it would relativize the value of “sovereignty,” tie the external policies of the core member states in competition, trade, economics and banking more closely together, and progressively redefine the stakes in foreign and security policy. The extent to which this would persuade member states to move robustly in the direction of pooling, sharing, rationalising and eventually integrating their security and defence capacity would almost certainly depend to a large extent on other external “events” (Ukraine/Crimea serve as a useful reminder of the inescapability of external shocks).

**Multiple clusters:** This seems to be an appropriate model when applied to the entire range of major policy areas covered by this project. If CSDP were to be considered as one of the overlapping circles, the inner-

most core corresponding to the members of the eurozone, then the second zone would cover a further ten countries, and the area left entirely outside would contain Denmark. The area covered by the core therefore needs to be much larger and the outer sections much smaller, as in the chart below.



This would make the overall issue of governability for the EU less fraught than is implied in the framework paper. Moreover, the potential spill-over into defence from an intensified, quasi-federal impetus in economics and finance would be likely to work in similar ways to that posited in the concentric circle model. In many ways, this seems a relatively accurate rendering of the reality of overlapping policy communities that already exists across the EU, and which has been theorised by Vivien Schmidt as the EU becoming a *region state* in which there are certain state-like features and powers but also many policy areas continuing to depend to a large extent on intergovernmental agreements between nation states.<sup>71</sup> But the issue of *CSDP governability* would not really be affected by the reinforcement of this model. As was made clear above, that issue depends overwhelmingly on the resolution of two problems: the definition of a strategic core purpose for CSDP, and its relations with NATO.

**Hub and Spokes:** This model does not really apply to CSDP, for two reasons. First, it is predicated far too heavily on the “UK heresy” becoming more widespread. There are no signs that this will happen.

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<sup>71</sup> Vivien A. Schmidt, *Democracy in Europe. The EU and National Politics*, Oxford and New York, Oxford University Press, 2006.



Denmark (which some might think would be a candidate for *suivisme*) has already explicitly ruled this out. The UK is unique, for reasons of history, geography, culture, politics and identity. No other country is likely to follow this approach. Turkey might wind up finding itself in a comparable situation to that of the UK (for different reasons) but that would still only give two spokes. The second reason is that the spokes would be relatively insignificant in relation to the hub, whereas in a bicycle wheel (the presumed analogy) they are actually vital. It is inconceivable that the UK would agree to be “a spoke” in a CSDP wheel. It will either be central or not at all. There are, therefore, no discernible centrifugal forces at play in the CSDP policy area.

**The patchwork core:** This model cannot be applied to security and defence. The example given of energy policy may have some salience. But the defence example of “functional clusters uniting over specific questions related to strategy, operations, capabilities or industry”<sup>72</sup> breaks CSDP down into too many sub-divisions to make sense. It is true that the geographical clusters referred to above look on the surface as though they fit the model. But as noted above, these clusters are temporary and expedient and designed to promote greater overall coherence. The model looks and sounds inherently centripetal rather than centrifugal.

## 7. POLICY AND INSTITUTIONAL INNOVATIONS

The key problems for CSDP remain its mythical “autonomy” from NATO, its sub-optimal relationship with non-EU NATO member states (especially Turkey), its inability to generate a clear strategic vision or doctrine, its inadequate generation of usable capacity and its ad hoc, reactive approach to overseas missions. All these problems could be solved by a move towards intensive cooperation and an eventual merger with a transformed NATO (probably with a new name) in which Europeans would progressively assume greater and greater responsibilities and leadership. This recast alliance would be focused almost exclusively on the “greater European area,” and the US, during a medium-term transitional period only, would play an important enabling role. Gradual institutional innovations might include the following:

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<sup>72</sup> See Chapter 1 by Nathalie Tocci and Giovanni Faleg.



- The North Atlantic Council should be re-designated as the supreme political forum for overall strategic dialogue between the main geographical areas of the Alliance and comprise one member each from the US, the EU, Canada, Turkey and Norway.
- The Political and Security Committee would assume responsibility for the political control of greater European area operations.
- A “policy framework” would be elaborated jointly via CSDP and the NATO Defence Policy Planning Process.<sup>73</sup>
- The post of SACEUR would be assigned to a different handpicked officer with each separate mission that is undertaken. Sometimes it would be an American flag officer but most often – and increasingly – it would be a European.
- Allied Command Transformation would be merged with the European Defence Agency, the merged entity being based in Brussels, and with a significant US liaison mission. This would effectively merge the two initiatives of “pooling and sharing” and “smart defence.”
- A European Security Council would be established to draft a quadrennial *European Security Strategy* focusing on strategic foresight, conflict prevention and crisis management procedures, including the elaboration of a “comprehensive framework” doctrine.
- At the highest level, a direct EU-US Partnership Council, made up of former heads of government or heads of state and key ministers would discuss the entire range of EU-US cooperation on all policy issues (trade, economics, culture, agriculture, intellectual property, environment, transport, etc.) and also those which are currently – and inappropriately – taking up time in NATO (climate, energy security, cyber etc.).

## 8. CONCLUSION

The challenges facing CSDP stem largely from the ill-defined core purpose of this policy area and from the increasingly illogical and unworkable structural/political relationship that has developed between CSDP and NATO. The institutional questions and prescriptions formulated in

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<sup>73</sup>Thanks to Sven Biscop for elaborating this idea in “The Summit of our Ambition...”, cit.

the IAI framework paper offer interesting insights into the specificity of CSDP as opposed to the other policy areas being assessed by this project. But it is not through a process of new institutional architecture that CSDP's current weaknesses can be fixed. The problem remains fundamentally *political*. It is also strategic in the sense that the world around the EU is changing rapidly – and not for the better. Unless and until the EU's member states acquire a firm grasp of the processes of power transition that are taking place not only in their immediate neighbourhood but around the globe, and unless they make a resolute collective decision to become actors in those processes rather than bystanders or spectators, CSDP will continue to remain a work in progress which still has a very long way to go.

## 6.

# The Governance of Migration, Mobility and Asylum in the EU: A Contentious Laboratory

*Giulia Henry and Ferruccio Pastore*

### 1. A TERMINOLOGICAL PREAMBLE

The terms “immigrant” and “migrant” are generally taken to refer to any kind of movement of people which is not occasional, whatever the length, nature and cause of that movement. Second- and third-generation migrants are often still perceived as migrants themselves, even if they are born in the host country and have no link whatsoever with the parents’ country of origin.

Conversely, in legal and institutional terms, conceptualizations of international migration and mobility are strictly categorized. This is even more clearly the case for asylum, the only form of international human movement which is covered by a detailed set of international norms.

In the EU context, migration and mobility in particular are framed as distinct issues which are dealt with in different institutional and administrative contexts and in different policy-making environments. More precisely, all forms of inter-state movement of European citizens within the geographical space of the EU as a whole are officially labelled as “mobility”, in order to stress that they are an expression of a fundamental freedom (which is in general not the case for “migration”). Intra-EU movements of third-country nationals legally residing in one Member State are also defined as “mobility”, even though they are subject to much stricter rules than those applying to EU citizens. As for movements of third-country nationals from outside the EU, the term “mobility” is used for short-term movements (i.e. those leading to stays in the EU which are no longer than three months), while longer-term movements are usually classified as “migration”.

Besides these two fundamental types of movement, forced movements driven by the search for international protection represent a third and distinct category, generally included in the “asylum” policy domain.

From a political, institutional and administrative point of view therefore, “migration”, “mobility” and “asylum” do not represent a single and unified policy field in the EU architecture.

“Migration” has traditionally been included in the Home Affairs domain, although with growing dissatisfaction and difficulty. As a consequence, there has been increased overlap with other EU policy domains (such as labour, social issues, and external relations), especially within the Commission.

The regulation of fully-fledged Geneva-based asylum and other forms of international protection also falls in the broadly-defined sphere of Home Affairs (with the JHA Council, the Commission’s DG Home Affairs and the European Parliament’s LIBE Committee being the competent bodies of the three main institutions).

On the other hand, as “mobility” is framed as a fundamentally legitimate expression of a freedom to move, it is consequently dealt with in the mainstream of Community and Single Market policies. The intra-EU mobility of third-country nationals (long-term residents and high-skilled workers, for instance) represents an exception, however, as it falls within the domain of administrative competence of the Immigration Directorate of the Commission’s DG Home Affairs.

The fundamental distinctions between the regulatory regimes and the institutional spheres of competence of migration, mobility and asylum are the outcome of a complex historical and political process and, from many points of view, aptly reflect substantial differences between these forms of mobility.

To some extent, however, such a tripartite regulatory architecture is problematic insofar as it hampers proper consideration and treatment of overlapping situations such as the *integration of destitute intra-EU mobile persons* or the *management of “mixed flows”* (i.e. irregular inflows from outside the EU in which asylum-seekers and other vulnerable categories of migrants are mixed with economic migrants). It is likely that such complex situations, which are not easily categorised within one of the three main official policy baskets, will become more frequent in the future. The capacity of the EU to tackle such issues through appropriate forms of interinstitutional and cross-sectorial cooperation will be crucial for the overall effectiveness and (thus) the legitimacy of the EU in the

field of human mobility in all its forms. For this specific reason, in this paper, we deal with migration, mobility and asylum together, giving an account of the historical and institutional peculiarities, but also taking account, whenever relevant, of interplay and potential for cross-sectorial learning and coordination.

Given this background, with reference to the analytical framework proposed by Tocci and Faleg,<sup>1</sup> we will analyse the evolution of “core-non-core” relationships in the three policy fields of mobility, migration and asylum (MAM). For each of these policy fields, we will first describe the evolution of its specific model of governance (section 1). We will then focus on some clearly-emerging and largely interconnected dynamics of crisis within the cores of each of these policy fields, trying to identify the centrifugal forces which risk jeopardising integration processes beyond sectorial boundaries (section 2). We will finally envisage future scenarios which respond to different responses by various actors to the tension between centripetal and centrifugal dynamics (section 3).

## 2. THE EVOLUTION OF THE “CORE-NONCORE RELATIONSHIPS” IN THE MAM POLICY FIELDS

With reference to the theoretical framework outlined in the background paper,<sup>2</sup> we will try to describe the complex process of “core building” and “core expansion” of groups of EU Member States in relation to the three policy fields of mobility, migration and asylum. Illustrating the integration processes in these policy areas, we will identify the initial members, institutional nature (community or intergovernmental) and main phases of expansion of the core of each sector. Mobility, migration and asylum policies have followed intrinsically different criteria of expansion of the “core” and different logics of relationship with the “noncore”.

According to the relevant time-frame and geographical scope, we consider how the core’s legal *acquis* in each sector is divisible or indivisible (each Member State being able only to be in or out of the *acquis*, or being able to pick and choose which aspects of the policy area it participates in). Another relevant variable we will consider when observing the model of governance in each sector is the ability of gate-keepers (i.e. members

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<sup>1</sup> See Chapter 1 by Nathalie Tocci and Giovanni Faleg.

<sup>2</sup> *Ibidem*.

of the core of the *acquis*) to assess potential candidates to join the core. Such discretion can be limited or unlimited.

Although the different dynamics between the core and noncore groups of Member States should be assessed separately for each policy area, analogies can be observed in the models of governance followed by European integration in these three fields.

Whereas the right to mobility for EU workers has been an *acquis* of the EU since its origin (section 1.1), the construction of a common migration and asylum policy can repeatedly be seen as the answer to “problem pressure” and a reaction to “crisis events”, gradually developing in reaction to previous decision-making cycles. Functional interdependencies and spill-over effects have given in some circumstances negative and in others positive impulses to the European integration process in the migration field (section 1.2). The political demand for burden-sharing and “harmonization of attraction factors” has instead been the key driver for the communitarisation process in the asylum area (section 1.3).

### *2.1. The core of mobility rights for EU citizens and the enlargement dynamic*

The right of EU citizens to freely move to and live in any EU country, along with their family members, is one of the four fundamental freedoms enshrined in EU law and a cornerstone of EU integration. Mobility rights for workers was a key provision of the Treaty of Rome (1957), and was gradually expanded by subsequent Treaty amendments up to the Treaty of Maastricht (1992), which extended the right to free movement to all EU citizens, irrespective of whether they are economically active or not.

The original “mobility core” corresponds to the six Member States which founded the European Economic Community (Belgium, France, Germany, Italy, Luxembourg and the Netherlands), and also applies, in general terms, to the countries in the European Economic Area, namely Iceland, Liechtenstein and Norway.

Every EU citizen has the right to live in another EU country for up to three months without any conditions. The right to reside for more than three months is subject to certain conditions, depending on the individual’s status in the host Member State.<sup>3</sup> Member States are entitled

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<sup>3</sup>The rules and conditions applying to free movement and residence are set out in Council Directive 2004/38/EC of 29 April 2004.

to impose public policy limitations on the free movement of workers, for example on specified grounds of public security and public health, observing strict procedural requirements.<sup>4</sup>

This *acquis* of mobility rights is indivisible: the conferral of the right of free movement on the citizens of a Member State is a direct consequence of its accession to the EU.

When a new Member State accedes to the Union, the governments of the existing Member States can decide whether they want to apply restrictions to workers from the new Member State, and, if so, what kind of restrictions. However, they are not allowed to restrict the general freedom to travel, only the right to work in another Member State as an employed person. For the first two years after a country joins the EU, the national law and policy of the existing Member States determines access to their labour market of workers from the new Member State, meaning that those workers may need a work permit. If a country wants to continue to apply these restrictions for three more years, it must inform the Commission before the end of the first two years. After that, countries can continue to apply restrictions for another two years if they inform the Commission of serious disturbances in their labour market. In the case of Croatian accession, the negotiation Treaties defined that all restrictions must end after 7 years.

Once they are legally employed in another EU country, workers are entitled to equal treatment with workers of the country where they are working. The right of gate-keepers to determine accession to the core is therefore limited in scope and time.

Free movement in the countries originally constituting the European Economic Community was encouraged, and was functional in a period of economic growth. No restriction on mobility was introduced with the first enlargement, in 1973, when Denmark, Ireland and the United Kingdom joined.

Transitional periods were introduced on the occasion of the accession of Greece in 1981 and Spain and Portugal in 1986, but, in a favourable economic conjuncture, accession allowed citizens of countries with lower pro capita incomes to accelerate a phase of economic growth, and consequently even discouraged the movement of people looking for

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<sup>4</sup>Directive 64/221/EEC of 25 February 1964.

jobs abroad. The presence of Greek, Spanish and Portuguese communities in France and Germany progressively decreased after accession.

When Austria, Finland and Sweden joined the EU in 1995, citizens of the 15 Member States could freely circulate in almost the whole of Western Europe.

For the 2004 enlargement, the largest single enlargement in terms of people and number of countries, restrictions applied to citizens of the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia, but not to citizens of Cyprus and Malta.

With the accession of Bulgaria and Romania in 2007, a moratorium on free access to labour markets was adopted by most Member States, mainly invoking the effects of the economic crisis to justify their fears of the arrival of new waves of competitors on their national labour markets and on their national welfare systems.

The deadline of January 2014 as the very end of the transitional period for restrictions imposed on citizens of Bulgaria and Romania was the occasion, even for some of the six founding Member States composing the core of the *acquis* on movement of people within the European Union, to call into question the *acquis* of mobility rights for EU citizens.

## *2.2. The functionalist construction of the common migration policy: communitarisation through gradualism and flexibility*

At the end of World War II, Western European countries actively tried to tap into new pools of labour. They strategically signed bilateral agreements for the recruitment of foreign labour in competition between themselves, aiming at securing the “best” immigrants from both Southern European and non-European countries (often former colonies). The past of intra-European relations in the field of migration management is one of competition, rather than cooperation. The only convergences were between Mediterranean labour-exporting countries and Continental labour importers. Even when traditional labour importers decided to close their borders following the economic recession after the oil crisis in the 1970s, that decision was taken by each country in an uncoordinated, competitive way. National borders were closed without considering the possible impact on neighbouring countries, not to speak of the impact on the countries of origin. Newcomers came to be considered mainly as potential competitors and threats to national economies. Ever stricter



categorization was introduced to distinguish between desired and undesired immigrants.

It was only as from the mid-1980s that European governments began to recognize the need to find ways to cooperate in a functional way. European leaders believed in the need to accomplish economic integration. This implied - as the European Single Act of 1986 put it - the construction of an area of free circulation, not only for goods and capital, but also for people, whatever their origin. But while that decision was being taken, security concerns started to spread among security professionals first, and politicians next. The abolition of internal borders meant that “compensatory measures” at external borders needed to be adopted in order to avoid that the completion of the internal market affected negatively the overall internal security of a borderless space. This was the techno-political logic underlying such cooperation: enabling individuals to cross internal borders without being subjected to border checks was the dominant paradigm for most of the 1990s.

The original “core” of European cooperation on migration was therefore constituted by the signature, in 1985, by five Member States (a geographical core formed by France and Germany plus the three Benelux countries) of the Schengen Convention, which came into force in 1995. Originally based on a purely intergovernmental scheme, Schengen is a paradigmatic example of cooperation outside the Treaties, which was progressively incorporated into the main body of the EU *acquis* (the Amsterdam Treaty in 1999).

Differently from the mobility core, the migration core is not indivisible, and the accession of new Member States to the Schengen Area is subject to discretionary assessment by the core Member States, which can potentially be extended for an unlimited period of time.<sup>5</sup>

The establishment of a common external border for the Schengen Area also called for the setting-up of a common visa policy, defining non-EU

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<sup>5</sup> 22 of the 28 EU Member States and all four European Free Trade Association (EFTA) Member States participate in the Schengen Area. Of the six EU Member States that do not form part of the Schengen Area, Ireland and the United Kingdom maintain opt-outs with respect to some aspects of the Schengen *acquis*. The remaining four Member States, i.e. Bulgaria, Croatia, Cyprus and Romania, are obliged eventually to join the Schengen Area. However, before fully implementing the Schengen rules, each Member State must have its preparedness assessed in four policy areas: air borders, visas, police cooperation, and personal data protection.

countries whose citizens must have a visa (a so-called “Schengen visa”) when crossing EU borders. A Schengen visa grants a right to short stays of up to three months.

In a logic of spill-over effects, the introduction of common visa requirements for the entry of citizens from some non-EU countries is an outcome of the Schengen “philosophy”. This process was driven further by the perception of the “asylum crisis” of the early 1990s and the upsurge in asylum applications in Northern European countries in the aftermath of the collapse of the Communist bloc. The aim of the process was the prevention of the arrival on EU territory of potential asylum-seekers.

Visa policy has been among the earliest and most successful areas of coordination among EU Member States. All Schengen Area Member States grant short-term visas according to the same highly-structured procedure, regulated by the same Community Visa Code. Schengen visa holders are allowed to circulate freely across the entire common space.

The technocratic and functionalist paradigm that allowed European cooperation in the migration field to take some pragmatic steps forward soon showed its limits. Those limits were firstly institutional, resulting from the tight “unanimity jacket” typical of the intergovernmental nature of cooperation in the field. They were, however, also political, resulting from the lack of democratic legitimacy and the narrow strategic horizon.

The Maastricht Treaty (1992) formalized the will to cooperate on migration and asylum policies as “components of a new agenda on security” by creating an “intergovernmental pillar” dealing with Justice and Home Affairs, based on unanimous decision-making largely precluding a role for supranational EU institutions.

Progressively, and notably under the Finnish presidency during the Tampere summit of October 1999, European Heads of State and Government pushed their political will and their rhetoric beyond narrowly sectorial functionalism. In the framework of a broad strategy aimed at building a European “Area of Freedom, Security and Justice”, a comprehensive approach to immigration and asylum was adopted. The aim of the common migration policy was no longer limited to compensating the potential negative impact of the suppression of internal borders, but also covered managing legal immigration efficiently, promoting the social integration of migrants, combating discrimination, and ensuring international protection for those in need, as well as fighting the causes of forced migration worldwide, and preventing illegal economic immigration through development cooperation.

The Tampere Programme (which inaugurated a pattern of long-term interinstitutional planning and coordination, followed by The Hague and the Stockholm Programmes) marked a shift from functionalism to a more comprehensive approach to agenda-setting. Institutionally, progress from an intergovernmental approach to a full communitarisation of immigration and asylum policies was slower but, to a certain extent, irreversible and resolute.

With the Amsterdam Treaty (1999), migration and asylum were extracted from the JHA pillar and inserted alongside free movement in a new Title IV of the EC Treaty covering free movement, migration and asylum. Gradualism characterized, once again, this process, with the so-called “*passerelle clause*” foreseeing that, as from 2004, the Council could unanimously decide to introduce qualified majority voting into decision-making on proposals relating to immigration and asylum. A legal basis for EU action in this field was established (Articles 62-64 EC). The Amsterdam Treaty also integrated the Schengen Convention into the Treaty framework.

With the Nice Treaty (2001), provisions for the use of qualified majority voting and co-decision in the area of migration were approved, and with the entry into force of the Lisbon Treaty on 1 December 2009, migration and asylum were fully and unconditionally incorporated within the Treaty framework, with qualified majority voting in the Council, co-decision with the European Parliament and a full role for the Court of Justice (Articles 77-80 TFEU). A common EU migration policy was institutionalised, although with the notable omission of admission policy, as the Lisbon Treaty clearly states that measures on migration “do not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed” (Article 79 TFEU).

Flexibility within the Treaty system was the political device employed to accommodate diversity and to facilitate convergence. Opt outs and opt ins, protocols and derogations inserted by Member States into legislative texts could be seen as a threat to the “traditional Community model”, but also offered scope for the attainment of objectives in areas of “high politics”: those that are “out” can still use negotiations and derogations to define their position in relation to agreed measures. From a certain perspective, such determined progress towards the full communitarisation of migration and asylum policies was made possible by following a gradualist approach and leaving a margin of “flexibility” to each Member

State. At the same time, this potentially least-worst solution to the practical problems of co-operation and integration in contentious areas, the “price to pay” for reaching agreement, can also be seen as the main limit on such cooperation, still leaving crucial aspects of migration policy to the intergovernmental method.

### *2.3. The Common European Asylum System: burden-sharing as a key driver*

Until the end of the 1970s, the number of asylum applications in Europe was low, and most applicants were exiles from the Socialist bloc to whom Western countries were keen to grant refugee status. As from 1980s, following the increasing political instability in areas close to the EU’s borders, such as the exacerbation of Kurdish persecution in Iraq, the break-up of Yugoslavia, and the conflict in Kosovo, some EU Member States in particular experienced a rise in asylum applications.

Breakdowns of asylum flows show that the peaks in asylum claims were mainly absorbed by a few Member States, above all Germany, which in 1992 received 438,000 out of a total of 675,000 asylum applications in Europe.

Such imbalance in the flux of asylum-seekers towards certain destination countries can be explained by several factors: geographical reasons and proximity to areas of conflict; political factors, such as foreign policy choices and privileged international relations; social factors, such as the historical presence of a foreign community abroad and of social networks of the same community, as well as the role of an active civil society; and policy factors, such as the treatment of asylum-seekers, reception conditions and national welfare regimes.

With Germany at the forefront of initiatives as from the first half of the 1990s, on the grounds of the need to restrict bogus asylum claims, restrictive reforms of national legislation were undertaken and a strong movement towards more effective burden-sharing and the harmonisation of asylum systems was promoted.<sup>6</sup> Such harmonisation of pull

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<sup>6</sup> In 1993, the German “Basic Law” was revised to limit, in practice, the recognition of refugee status and the right to asylum. Both the “safe third country” and the “safe country of origin” concepts were incorporated into the German constitution and further defined in German asylum procedures. EU Member States were by definition considered to be safe countries of origin. Furthermore, the German constitution defines countries as safe “... in which, on the basis of their laws, enforcement practices and general political conditions, it can be safely concluded that neither political persecu-

factors was driven and shaped by the priorities of a core of Continental European countries. In the official political discourse of the German authorities in EU fora, there was a clear and largely successful attempt at emphasizing the importance of some driving factors behind asylum migration and of the international distribution of asylum claims. In particular, the unfitness of the asylum systems of peripheral countries (Southern European countries first, Eastern countries at a later stage) and the lower welfare opportunities in these Member States were effectively presented as the main factors explaining the excessive concentration of asylum claims in Northern European Member States. Other factors, which have been shown to be equally if not more important by several sociological studies, including in particular the pull factor represented by already-established immigrant communities from the same areas of origin, were systematically downplayed.

Such a strategy pursued the long-term goal of pushing peripheral countries to reinforce their national asylum systems in order to rebalance perceived asymmetries among Member States which was seen to explain the uneven distribution of the “asylum burden”. A belt of safe countries would thus be created capable of intercepting and stabilizing locally asylum-seekers who would otherwise potentially move towards more Northern parts of Europe.

Also with the aim of redistributing asylum-seekers more equally throughout Europe, the concept of “first safe country” was promoted as the very core of the Common European Asylum System. This principle, already referred to in the Schengen Convention (Article 30),<sup>7</sup> was codified by the Convention on determining the state responsible for examining asylum applications lodged in one of the Member States, which was signed

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tion nor inhuman or degrading punishment or treatment exists”. See Article 16a(3) of the *Basic Law for the Federal Republic of Germany*, [http://www.gesetze-im-internet.de/englisch\\_gg/englisch\\_gg.html#p0088](http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#p0088).

<sup>7</sup>“The Contracting Party responsible for the processing of an application for asylum shall be determined as follows: [...] (e) if the applicant for asylum has entered the territory of the Contracting Parties without being in possession of one or more documents permitting the crossing of the border, determined by the Executive Committee, the Contracting Party across the external borders of which the applicant for asylum has entered the territory of the Contracting Parties shall be responsible.” *The Schengen acquis. Convention implementing the Schengen Agreement of 14 June 1985...*, 19 June 1990, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:42000A0922%2802%29>.

in Dublin in 1990 and ratified by 12 EU Member States.<sup>8</sup> According to the Dublin Convention, which entered into force in 1997, in the “Dublin space” represented by the sum of the national territories of the signatory parties, an asylum-seeker can present only one asylum claim. The system aimed at ensuring that each claim would be examined by one responsible authority and that asylum-seekers should not be returned from one Member State to another. At the same time, it inevitably placed the major burden of the management and first reception of asylum-seekers’ claims on the more peripheral countries.

The core of the C European Asylum System is again intergovernmental in origin, and has since been progressively “communitarised”. In 1992, with the Maastricht Treaty, asylum became an “area of common interest” regulated in accordance with typically intergovernmental decision-making principles. Under the Amsterdam Treaty, Article 63 EC established a 5-year deadline for adopting policies to complete a common asylum policy to be dealt with under the first pillar and in accordance with the Community method. With the Treaty of Nice in 2001, asylum shifted to the “first pillar”, and was therefore subject to qualified majority voting, with a greater role for the Commission, the Parliament and the European Court of Justice.

With the communitarisation of the right to asylum that followed the Treaty of Amsterdam, the Dublin Convention was replaced by the Dublin Regulation. Even in this revised legal framework, however, the key principle of the responsibility of the first state of entry for the examination of asylum applications presented by persons in irregular conditions - even though strongly criticised by peripheral Member States which considered this principle to have an unequal impact - was left untouched, with only minor exceptions.

The core of the Common European Asylum System is also indivisible. No assessment is to be made by the other core Member States. Under the Amsterdam Treaty, a general right to opt out or to opt in to measures concerning asylum, immigration and border control was established. The use of qualified majority voting for asylum measures, agreed at Amsterdam in 1997, does not affect the general right to opt out.

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<sup>8</sup> Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxemburg, the Netherlands, Portugal, Spain and the United Kingdom.

The United Kingdom, Ireland and Denmark negotiated an opt-out clause and are not bound by the Common European Asylum System<sup>9</sup> Complementary to the asylum core *acquis*, a number of directives have been adopted by the EU with the aim of harmonising asylum legislation and systems.<sup>10</sup> As directives, they bind Member States as to the results to be achieved, without dictating the means of achieving those objectives, thus leaving Member States a certain amount of leeway as to the implementation of the goal to be met.

The harmonisation of national asylum legislation has therefore been encouraged by the legislation adopted by the EU, whereas burden-sharing has been formally promoted through the redistribution of

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<sup>9</sup> According to Title V of the TFEU, the UK and Ireland, on the one hand, can decide to opt in to any single measure, whereas Denmark, on the other hand, has a constitutional limit on opting-in, and is therefore completely excluded from the Common European Asylum System.

<sup>10</sup> The Reception Conditions Directive (recast version 2013/33/EU, due to be transposed by July 2015) defines standards to be granted to asylum-seekers in accordance with the Geneva Convention. Member States can apply such rules also to complementary forms of protection. The recent revision of the Directive improved some aspects of reception conditions (such as housing) for asylum-seekers, and underlined that detention is only to be applied as a measure of last resort. The Qualification Directive (recast version 2011/95/EU, due to be transposed by December 2013) clarifies the grounds for granting international protection, including “subsidiary protection”, recognising that situations deserving protection may go beyond the scope of the Geneva Convention and its definition of “refugee”. It aims at preventing so-called “asylum shopping” by asylum-seekers searching for the most generous national regime by ensuring a minimum level of rights and procedures across the EU. This aspect is addressed in particular by the Asylum Procedures Directive (recast version 2013/32/EU, due to be transposed by July 2015), which aims at limiting the secondary movement of asylum applicants between Member States where such movement is caused by differences in legal frameworks, and at approximating rules on the procedures for granting and withdrawing refugee status. The Temporary Protection Directive (2001/55/EC) was intended to deal with displaced persons who are unable to return to their country of origin when there is a risk that the standard asylum system might struggle to cope with demand stemming from a mass influx which risks having a negative impact on the processing of claims. This was intended to promote solidarity and burden-sharing among EU Member States in circumstances where large numbers of potential refugees are received at any one time. The system should also have allowed for the transfer of beneficiaries between EU Member States, based on a voluntary offer from a Member State and on the consent of the transferee. But this Directive has never been used, and remains a dead letter for Member States so far.



asylum-seekers by the Dublin Convention and Regulation and economic compensation measures.<sup>11</sup>

### 3. THE UPSURGE OF CENTRIFUGAL FORCES IN THE MAM POLICY FIELDS

The cooperation on mobility, migration and asylum described above was made possible by a relatively homogeneous club of European destination countries and a relatively stable neighbourhood surrounding European borders.

With the Southern enlargement in the mid-1980s, a fast economic catch-up on the part of the new acceding countries even marked a decrease in the migratory pressure on other EU Member States. As from the 1990s, however, all Southern European countries turned into net immigration receivers, and this transition was critical in enhancing the perception of a strategic convergence of interests among Member States to strengthen external migration controls.

The global economic crisis, which affected in particular those EU Member States which were counting on large-scale inflows of low-skilled and low-paid labour migration, such as the Mediterranean countries, together with the growing political instability at the Southern external borders which resulted from the tormented transitions to democracy taking place in North Africa, changed the structural and economic conditions of migration and mobility.

In this context, structural limits on cooperation on migration and asylum became more and more evident, and even the mobility of EU citizens became a controversial issue.

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<sup>11</sup> The “European Refugee Fund”, together with the “External Border Fund”, the “European Return Fund” and the “European Integration Fund”, is part of the general programme entitled “Solidarity and Management of Migration Flows”, which between 2007 and 2013 allocated almost 4 billion euros to ensuring the fair sharing of responsibilities between EU countries for the financial burden that arises from the integrated management of the Union’s external borders and from the implementation of common asylum and immigration policies. See the European Commission website: *Migration, Asylum and Borders*, updated 19 March 2014, <http://ec.europa.eu/dgs/home-affairs/financing/fundings/migration-asylum-borders>.



### 3.1. Questioning mobility rights

The 2013 European Year of Citizens was profoundly marked by escalating attacks against one of the EU's major achievements for EU citizens: freedom of movement. Despite strong evidence against the idea that mobile EU citizens represent a burden on the welfare systems of host Member States, the debate on free movement was twisted by some national leaders and exacerbated by the expiry on 1 January 2014 of restrictions still imposed by some Member States on the mobility of citizens from Bulgaria and Romania.

In April 2013, with a joint letter to the Irish presidency of the Union, four Ministers - representing Austria, Germany, the Netherlands and the United Kingdom - underlined the need to protect freedom of movement against abuse, in particular where it strains social systems, and, consequently, requested the adoption of new restrictive and punitive measures.

In December 2013, the UK (Prime Minister David Cameron and the ruling Conservative party) went so far as to announce its intention to prevent non-British citizens from having access to social benefits and to block tax credits for the first five years of residence, or to link free movement to minimum income thresholds. Plans were also announced to cap the number of "EU migrants" entering the country to 75,000 per year "to protect low-skilled UK workers from foreign competition and to stop social welfare abuse by EU migrants".<sup>12</sup> In addition, it should be stressed that the restrictions could entail revising the EU Treaties and associated fundamental rules on the free movement of people so as to introduce transitional controls based on economic criteria for new countries that join the EU in the future.

The quarrel between these Member States, the UK in the first place, and the European Commission and Parliament has been growing. The European institutions recalled that safeguards against so-called benefit tourism are already foreseen by current EU legislation, and that any changes on access to benefits would first have to be proposed by the Commission and would now need to be supported by a qualified majority of Member States as well as by the Parliament. Moreover, a study for the Commission produced evidence that EU citizens move from one Member

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<sup>12</sup> Nikolaj Nielsen, "Mooted UK migrant cap would be 'illegal'", in *EUobserver*, 16 December 2013, <http://euobserver.com/justice/122491>.

State to another overwhelmingly for work reasons and not to claim welfare, and that “EU migrants” tend to pay more in tax and social security to the welfare system of the host country than they receive in benefits, meaning that so-called “benefit tourism” is neither widespread nor systematic.<sup>13</sup> The study also shows that migrant flows change according to the economic well-being of a country: Spain and Ireland have seen a decline in intra-EU inward migration, whereas flows to Austria, Denmark and Germany have increased.

Questioning the mobility rights of EU citizens - thus challenging the core of European integration - has moved up the political agenda, together with general anti-immigrant sentiment in the EU.<sup>14</sup>

Romania and Bulgaria’s full accession to the Schengen Area has also been strongly opposed by the Franco-German duo, as well as the Netherlands, although Schengen accession will not “open” Western Europe’s borders to Bulgarians and Romanians, who have been free to travel to the Schengen space since 2002 when visa obligations were lifted, nor will it affect movement to the West by the Roma population of these two countries.

The upsurge of such centrifugal forces undermining the core of EU mobility rights culminated with the decision taken by Switzerland in a referendum held on 9 February 2014 to reintroduce immigration quotas with the EU.<sup>15</sup> The results of this popular consultation, which reflected

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<sup>13</sup> ICF GHK and Milieu Ltd., *A fact finding analysis on the impact on the Member States’ social security systems of the entitlements of non-active intra-EU migrants to special non-contributory cash benefits and healthcare granted on the basis of residence*, October 2013, <http://bookshop.europa.eu/en/-pbKE0413060>.

<sup>14</sup> Recent polls have revealed widespread fears: 64% of British citizens, 63% of French citizens and 58% of German citizens disapprove of Romanian and Bulgarian citizens having the full right to work in any other EU Member State. Such percentages further increased when respondents were asked if they would approve of restricting rights to benefits for citizens from other EU Member States: 83% in Britain, 73% in Germany and 72% in France are in favour of such restrictions. See Financial Times/Harris Polls, *A729 - FT Immigration*, October 2013, <http://media.ft.com/cms/8caa41b8-383e-11e3-8668-00144feab7de.pdf>.

<sup>15</sup> Although Switzerland is not an EU Member State, its immigration policy is based on free movement of citizens to and from the EU, with some exceptions, as well as on allowing in a restricted number of non-EU citizens. This agreement on the free movement of people, which came into force 12 years ago, was signed as part of a package of agreements with the EU.

in particular concerns about competition between the local and Italian workforces, risk triggering a ripple effect across Europe.

### 3.2. *The emergence of structural limits to European cooperation on migration*

Although the regulation of legal migration for economic purposes was explicitly inserted among EU competencies with the Treaty of Amsterdam (1999), the repeated attempts by the European Commission to initiate a harmonization or at least a coordination process in this field have met overall with disappointing results due to persistent opposition and scepticism from the capitals of the Member States. The proposal of Commissioner Antonio Vitorino in 2001 for the establishment of common rules regarding the admission of third-country nationals for work and self-employment purposes<sup>16</sup> was abruptly rejected by Member States, and a sectorial approach was followed thereafter on the basis of the Commission's Green Paper on economic migration<sup>17</sup> and Policy Plan on legal migration,<sup>18</sup> this latter providing for the adoption of five legislative proposals, addressing specific categories of migrant workers. Since then, several regulations and directives have tackled important sectors of legal migration, such as family reunification<sup>19</sup> or the status of long-term residents.<sup>20</sup> If Member States agreed on common rules targeting specific categories of third-country national workers,<sup>21</sup> they have never been keen to adopt common comprehensive rules regarding the admis-

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<sup>16</sup> European Commission, *Proposal for a Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities* (COM(2001)386), 11 July 2001, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52001PC0386>.

<sup>17</sup> European Commission, *Green Paper on an EU approach to managing economic migration* (COM(2004)811), 11 January 2005, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52004DC0811>.

<sup>18</sup> European Commission, *Policy Plan on Legal Migration* (COM(2005)669), 21 December 2005, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52005DC0669>.

<sup>19</sup> Council Directive 2003/86/EC of 22 September 2003.

<sup>20</sup> Council Directive 2003/109/EC of 25 November 2003.

<sup>21</sup> Cf. Council Directives 2004/114/EC of 13 December 2004, 2005/71/EC of 12 October 2005, and 2009/50/EC of 25 May 2009; cf. also the Directive 2014/36/EU of 26 February 2014, and the Commission *Proposal for a directive on conditions of entry and residence of third-country nationals* (COM(2010)378), on which final negotiations are still, however, on-going.

sion of migrants for labour purposes, which remains essentially determined at national level.

Progress in the harmonisation of legislative and operational action at EU level has primarily been focused on security-related issues. Border management, visa policy, irregular migration and readmission agreements have taken precedence in the joint actions of Member States.

At the end of 2010, the “fight against illegal immigration” across the Mediterranean seemed to be close to a successful conclusion, and landings on the Southern coasts of Europe were reduced to a few hundred. This migration control regime was based on bilateral activism on the part of coastal states, but it rested on brittle foundations, as it was based on agreements with the autocrats in power on the other shore, and was ultimately conditional upon their readiness and capacity to impose exit controls and to enforce the systematic readmission of both their own people and transit migrants, who mostly originated from poor and diplomatically weak countries of origin.

The EU integrated border control system was therefore strongly and directly affected by the fall of the North African regimes. The collapse of exit restrictions in Southern Tunisia in the early phase of the “Jasmine revolution” is the clearest example.

Both regular and irregular emigration from Tunisia and Libya has substantially increased since 2011, not to consider the war exodus from Libya to neighbouring North African countries.

Strong media messages and a public perception of mass inflows were followed by the precarious reintroduction of cooperation with the new post-revolutionary authorities, which was principally based on the reactivation of bilateral negotiations by Italy with the marginal support of the EU institutions. The failure of the transitions in Egypt and Libya led to a reduction of the control capacities of the weak new governments and the reactivation of smuggling and irregular migration networks and flows.

Moreover, the crisis and declining labour demand reduced the attractiveness of Italy and other Southern European countries as destination countries for such flows. As a consequence, transit flows from Southern to Continental and Northern Europe were reactivated, with growing tension around the issue of so-called “secondary movements” between Southern and other Member States.

The interpretation of the Schengen provisions and the balance between free circulation and border controls within the common space

became an issue between the Commission and some Member States. Until recently, Schengen was unanimously praised as a European success story. However, the arrival in Lampedusa in spring 2011 of some 20,000 Tunisians fleeing their country shook the system to its foundation.<sup>22</sup>

These developments called into question the core of European cooperation on migration, namely the Schengen *acquis*. In this context, it is also worth mentioning the potential derogations to another branch of the EU *acquis* on migration, namely the common visa policy. As described in section 1, visa policy was among the earliest and most successful areas of coordination among Member States. Despite such coordination, differences in the granting of visas by Member States remain relevant,<sup>23</sup>

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<sup>22</sup> As the migrants wanted to go to France, and Rome was not willing to let them stay in Italy, the Italian authorities granted six-month residence permits allowing them to move across the entire Schengen area. On 17 April, the French authorities blocked every train from the Italian town of Vintimille to France, causing tensions between Rome and Paris. Berlusconi and Sarkozy eventually reached an agreement, and on 26 April sent a letter to the European Commission calling for a reform of the procedure to reintroduce border controls in extraordinary circumstances. The European Commission presented its proposals on 16 September, saying that the decision to reintroduce border controls should be taken at the European level following a proposal from the Commission, and stressing that a unilateral reintroduction should only be admissible in case of emergency and for no more than five days, with the EU being competent to authorize any extension. In the Commission's view, reintroducing internal border checks should remain a last resort solution when no other measure had proved able to mitigate the threats identified, and a threat to national security or public order should remain the sole grounds for such a measure. Nevertheless, keen to reap the benefits in terms of domestic popularity, in May that same year the Danish Government unilaterally reintroduced border controls with Germany and Sweden, with a move deemed, again, unjustified by the Commission. Emily Delcher, *Freedom of movement and the Schengen*, Reykjavík, Icelandic Human Rights Centre, July 2013, <http://www.humanrights.is/human-rights-and-iceland/the-notion-of-human-rights/freedom-of-movement-and-schengen>.

<sup>23</sup> Recent studies show that each major Member State maintains a distinctive pattern of short-term visa supply, significantly moulded by geopolitical, economic and historical legacies. Moreover, the decision to grant, or deny, a short-term visa is largely left by international law to the discretion of states and bureaucrats. See Claudia Finotelli and Giuseppe Sciortino, "Through the Gates of the Fortress: European Visa Policies and the Limits of Immigration Control", in *Perspectives on European Politics and Society*, Vol. 14, No. 1 (2013), p. 80-101. Infantino and Zampagni have also illustrated, through in-depth fieldwork, that the expanding trend to outsource specific steps of visa procedures to private service providers implies a high degree of differentiation in practice between different embassies, even of the same state. See Federica Infantino, "La frontiera au guichet. Politiques et pratiques des visas Schengen à l'Ambassade et

and have an impact on migration movements, as third-country nationals can freely circulate and, under certain conditions, work in a different Member State from that which issued the visa. The German visa scandal of 2000-2005 was emblematic in this respect,<sup>24</sup> as was, more recently, the introduction by the Commission of a safeguard clause to permit the temporary reintroduction of a visa requirement for citizens of certain third countries.<sup>25</sup>

### *3.3. Formal and substantial burden-sharing in the management of mixed flows*

Advances in EU policies on immigration and asylum were often in the past propelled by tragic events or emergency situations. After five people were killed in September 2005 during a mass attempt by migrants to get into the Spanish enclave of Ceuta in North Africa, a wave of policy activism was

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au Consulat d'Italie au Maroc", in *Champ pénal/Penal field*, Vol. 7 (2010), <http://champ-penal.revues.org/7864>; Francesca Zampagni, "A Visa for Schengen's Europe: Consular practices and regular migration from Senegal to Italy", in *CARIM Analytic and Synthetic Notes*, No. 2011/59 (July 2011), <http://hdl.handle.net/1814/18485>.

<sup>24</sup> In 2000, the German Ministry of Foreign Affairs issued the so-called "Volmer Directive", which shifted the burden of proof from the applicant to the embassy, with the result that embassy workers were obliged, when in doubt, to decide in favour of issuing a visa to the applicant. The change had powerful consequences, with the German Embassy in Kiev processing nearly 300,000 applications for short-term visas in 2001 alone. The German decision had Europe-wide consequences: following the Volmer Directive, large numbers of Eastern Europeans, most notably Ukrainians and Moldovans, reached the irregular labour market of Southern European Member States, from which they had previously been almost absent. The German opposition called for the Foreign Minister of the time, Joschka Fischer, to resign, and the European Commission carried out an official review of German visa policy. See Claudia Finotelli and Giuseppe Sciortino, "Through the Gates of the Fortress...", cit., p. 90.

<sup>25</sup> Following visa liberalisation for citizens of Serbia, Macedonia and Montenegro as from December 2009, and of Albania and Bosnia-Herzegovina as from December 2010, asylum-seekers from these countries represented between 10% and 21% of the total of asylum claims in the EU in last 5 years. The number of asylum-seekers rapidly increased, in particular those seeking asylum in Germany, Sweden and Luxembourg. Noting that most applications for international protection by Western Balkan citizens enjoying visa-free travel were declared manifestly unfounded, in May 2011 the European Commission proposed the introduction of a safeguard clause to permit the temporary reintroduction of the visa requirement for citizens of certain third countries. See European Commission, *Cecilia Malmström on the adoption of a visa waiver suspension mechanism* (Memo/13/784), 12 September 2013, [http://europa.eu/rapid/press-release\\_MEMO-13-784\\_en.htm](http://europa.eu/rapid/press-release_MEMO-13-784_en.htm).

triggered which led to the first Euro-African Conference on Migration and Development, held in Rabat in July 2006,<sup>26</sup> and to the adoption and subsequent reinforcement of the Global Approach to Migration and Mobility.<sup>27</sup>

On 3 October 2013, a boat carrying around 500 migrants sank off the coast of Lampedusa. The loss of human lives triggered a strong call for action from both European institutions and Member States. A Commission-led Task Force for the Mediterranean (TFM) was set up with the aim of preventing migrants from undertaking dangerous journeys to the shores of the European Union, and of implementing actions, also in cooperation with third countries, such as regional protection, resettlement and reinforced legal avenues to Europe, the fight against trafficking, smuggling and organised crime, reinforced border surveillance, contributing to the protection and saving of lives of migrants in the Mediterranean, and assistance and solidarity with Member States dealing with high migration pressure.<sup>28</sup> This was to be supported by information-sharing on the situation in the Mediterranean through the European Border Surveillance System (EUROSUR), which became operational on 2 December 2013.

In addition, the European Parliament adopted a forward-looking resolution on migratory flows in the Mediterranean which called for a coordinated approach based on solidarity and responsibility, with the support of common instruments, and which stressed the importance of creating legal entry channels into the EU as a necessary alternative to

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<sup>26</sup> Ministers from more than 50 countries of origin, transit and destination met for the first time in order to respond to the questions raised by the complex challenges of migration, and agreed on the need to adopt a “balanced approach to migration issues in a spirit of shared responsibilities” and to create a framework for dialogue and consultation within which concrete initiatives would be implemented, such as preventing and reducing illegal migration, tackling root causes, improving the organisation of legal migration, and promoting the connections between migration and development. See *Introduction to the Rabat Process*, <http://www.processusderabat.net/web/index.php/process>.

<sup>27</sup> European Commission, *On migration* (COM(2011)248), 4 May 2011, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52011DC0248>; *The Global Approach to Migration and Mobility* (COM(2011)743), 18 November 2011, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52011DC0743>.

<sup>28</sup> European Commission, *On the work of the Task Force Mediterranean* (COM(2013)869), 4 December 2013, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52013DC0869>.



dangerous irregular entry, which could entail the risk of human trafficking and the loss of human lives.<sup>29</sup>

The Italian Interior Minister and Deputy Prime Minister Angelino Alfano said he hoped that “divine providence has led to this tragedy so that Europe will open its eyes”. He also called for urgent changes to the Dublin Regulation, since it demanded “much too much” from those Mediterranean countries where refugees first set foot on European soil.<sup>30</sup> Martin Schulz, President of the European Parliament, also called for a more balanced distribution of responsibilities, and characterized the refugee issue as a “problem for all EU Member States”. President Schulz argued that Italy should not be left alone with the task of coping with the massive influx of people from Africa and Asia, as “[i]t is a question of solidarity within the Member States of the EU as well as a question of responsibility towards refugees. [...] Italy’s frontier towards the South is also every other Member State’s problem. We have a common challenge and responsibility”.<sup>31</sup>

The revised Dublin Regulation, which entered into force in January 2014, introduced some exceptions to the transfer of asylum-seekers to the Member State of first destination, such as when the person has family already residing in another Member State, or is in a particularly vulnerable situation, or even where there is a risk that the person will be subjected to inhuman and degrading treatment. Incidentally, one could say that this last exception might entail a downward pressure on the reception systems of peripheral countries, which do not in any case have an incentive to improve their currently often deficient standards in the treatment of asylum-seekers.

The new Regulation also provides enhanced safeguards for asylum-seekers and a new surveillance system, the so-called “early warning mechanism”, to detect problems and get help from the Commission and the EASO (European Asylum Office) in Malta. The aim is to prevent sit-

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<sup>29</sup> European Parliament, *Resolution on migratory flows in the Mediterranean, with particular attention to the tragic events off Lampedusa* (P7\_TA(2013)0448), 23 October 2013, <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2013-448>.

<sup>30</sup> Walter Mayr and Maximilian Popp, “Lampedusa Tragedy: Deaths Prompt Calls to Amend Asylum Rules”, in *Spiegel Online International*, 7 October 2013, <http://spon.de/ad3aX>.

<sup>31</sup> European Parliament, *Schulz on the tragedy in Lampedusa*, 3 October 2013, [http://www.europarl.europa.eu/the-president/en/press/press\\_release\\_speeches/press\\_release/2013/2013-october/html/schulz-on-the-tragedy-in-lampedusa](http://www.europarl.europa.eu/the-president/en/press/press_release_speeches/press_release/2013/2013-october/html/schulz-on-the-tragedy-in-lampedusa).



uations such as in Greece, where the asylum system completely collapsed.<sup>32</sup> Moreover, the EASO has been reinforced and given greater financial resources to ensure “practical cooperation” in supporting the asylum system of the Union, setting common high standards and encouraging greater co-operation to ensure that asylum-seekers are treated equally in an open and fair system, to whichever Member State they might apply.

Despite this revision of the current legislation and some efforts to reinforce practical cooperation in response to peripheral states’ insistence on enhancing burden-sharing as regards asylum, the funding principles of the asylum system have remained the same, and the management of mixed flows remains the main challenge for the European Union in the fields of MAM, as we will observe below.

At the meeting of the European Council of 24-25 October 2013, EU leaders did not commit to any action, and decided to “return to asylum and migration issues in a broader and longer term policy perspective in June 2014, when strategic guidelines for further legislative and operational planning in the area of freedom, security and justice will be defined”.<sup>33</sup> They therefore decided to postpone any further action or decision until after the May 2014 European Parliament elections. They affirmed that “determined action should be taken in order to prevent the loss of lives at sea”, according to the “imperative of prevention and protection and guided by the principle of solidarity and fair sharing of responsibility”, but no further concrete proposal followed this statement, and no indication was given as to how the solidarity principle, which is clearly set out in the Lisbon Treaty (Article 80 TFEU), should be implemented.<sup>34</sup>

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<sup>32</sup> All transfers to Greece have in fact been halted for two years, after the ruling of the Court of Justice in case C-4/11, *Bundesrepublik Deutschland v Kaveh Puid*, 14 November 2013, <http://curia.europa.eu/juris/liste.jsf?num=C-4/11>.

<sup>33</sup> European Council, *Conclusions of the European Council 24-25 October 2013* (EUCO 169/13), 25 October 2013, [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/139197.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/139197.pdf).

<sup>34</sup> Article 80 TFEU reads as follows: “The policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the Union acts adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle”.

## 4. CHALLENGES AHEAD AND POTENTIAL GOVERNANCE IMPLICATIONS

With very contentious European elections in sight, together with a complete overhaul of leading roles, and the on-going economic instability still not resolved, the EU is certainly navigating in very uncertain waters. The political and institutional future of the MAM policy cluster is of course intrinsically linked to, and strongly affected by, developments on broader political, institutional and economic levels. Any prediction would thus necessarily be highly biased and subjective, but it is nevertheless possible to sketch, for each of the three policy fields, some scenarios oscillating between a prevalence of the centrifugal forces which have gained momentum, albeit in different forms, over recent years, a renewed increase in the strength of centripetal dynamics, and more nuanced scenarios of continuity, where the incapacity of either integrationist or renationalising forces to prevail leads to *de facto* policy stagnation.

### 4.1. Free movement: a “hub and spoke” scenario?<sup>35</sup>

Mobility of EU citizens is a fully integrated field of policy at the EU level. A successful defence of this *acquis* seems to represent the most optimistic scenario that is currently possible. Unconditional advocates of unrestricted intra-EU mobility promote this as a device for macro-economic rebalancing in an EU which looks increasingly polarized from a socio-economic point of view. According to such arguments, labour mobility is an opportunity for individuals, despite issues such as the over-qualification of young mobile workers, which are likely to be temporary. Such commentators propose the use of incentives to encourage people to move and to reinforce the role of public policies, both at EU and national levels, in order to address potential costs and optimise a better allocation of human resources.<sup>36</sup>

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<sup>35</sup> Drawing from the analytical framework proposed by Tocci and Faleg, three ideal types of non-uniform method of European integration are described: concentric circles, multiple clusters and hub-and-spoke. The hub-and-spoke version of the EU allows for the possibility, not foreseen in other scenarios, of disintegration, with some Member States opting out of specific policy areas. See Chapter 1 by Nathalie Tocci and Giovanni Faleg.

<sup>36</sup> Yves Pascouau, “Intra-EU mobility: the ‘second building block’ of EU labour migration policy”, in *EPC Issue papers*, No. 74 (May 2013), [http://www.epc.eu/pub\\_details](http://www.epc.eu/pub_details).

More moderate supporters of freedom of movement point out the potential negative backlashes of too much crisis-driven mobility in terms of brain drain and human resources impoverishment. Such positions also consider the risks of an enhanced mobility which could hamper the long-term chances of recovery of the countries which are now worst hit and which generate the largest intra-EU flows, particularly of youth mobility.

The initiatives taken during the last few years by the European Commission to boost transnational labour mobility aim at compensating the risk of economically-forced mobility, focusing in particular on incentives to youth employment.<sup>37</sup>

On the occasion of the 2013 Demography Forum entitled “Investing in Europe’s demographic future”, László Andor, European Commissioner responsible for Employment, Social Affairs and Inclusion, stated as follows: “Intra EU mobility can in economic terms be a response to imbalances. But in demographic terms it could lead to imbalances and serious tensions. Many regions risk being caught in a downward spiral where population loss and ageing can aggravate the infrastructure gap with more developed regions; this in turn motivates young adults to leave. [...] EU cohesion policy should be used to help addressing this situation through investment”.<sup>38</sup>

The Commission proposes an intermediate way, and sets out a strategy of concrete support to local communities and institutions, which can bear in practice the cost of the possible negative consequences of mobility. On 25 November 2013, it adopted a Communication entitled *Free movement of EU citizens and their families*,<sup>39</sup> in which it set out the following five concrete actions to help national and local authorities effectively to

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php?pub\_id=3500.

<sup>37</sup> 2012 Employment Package and Youth Mobility Package 2013 Programme for Social Change and Innovation. cfr. in particular: European Commission, *Towards a job-rich recovery* (COM(2012)173), 18 April 2012, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52012DC0173>; *Working together for Europe’s young people. A call to action on youth unemployment* (COM(2013)447), 19 June 2013, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52013DC0447>.

<sup>38</sup> European Commission, *Investing in Europe’s people is key to restoring prosperity* (Speech/13/385), 6 May 2013, [http://europa.eu/rapid/press-release\\_SPEECH-13-385\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-13-385_en.htm).

<sup>39</sup> European Commission, *Free movement of EU citizens and their families: Five actions to make a difference* (COM(2013)837), 25 November 2013, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52013DC0837>.

apply EU free movement rules and to use available funds on the ground: fighting marriages of convenience; helping authorities to apply EU social security coordination rules; helping authorities to meet social inclusion challenges; promoting the exchange of best practices; and helping local authorities to apply EU free movement rules on the ground.

Nevertheless, as recently demonstrated by the Swiss vote and by the British Prime Minister David Cameron's talk about a renegotiation of British membership of the EU, with the possibility of "repatriating" some competences back to London, bleak and regressive scenarios are still likely, with the risk of a domino effect, disaggregating the very core of mobility rights.

A sort of "hub-and-spoke" future scenario could therefore be envisaged, with some Member States opting out of EU core mobility rights and the persistence of a narrow, still integrated, although restricted, core of Member States defending free movement as an indivisible *acquis*.

A more extreme disaggregating scenario could entail a process of hollowing free movement rights via clauses, derogations and caps, such as a re-entry ban on EU citizens returning from another EU Member State. Major prolongations of transition periods for access to full mobility, or even a structural change of approach, with non-full membership the only possibility in the future, could represent other components of broader re-nationalisation scenarios based on reinforcement of the discretionary power of the gate-keepers.<sup>40</sup>

Indeed, the introduction of a cap on the number of EU citizens entitled to move to other Member States could only happen through the re-negotiation of the EU Treaties, while the reduction of social benefit rights would imply a modification of EU rules in accordance with the co-decision procedure. In this case, the European Parliament would be a major obstacle, and there is no agreement for revision in the Council.

If such regressive scenarios should occur, the restructuring of the internal market as being in goods and services only would bring the risk of a further collapse of legitimacy among citizens of the more peripheral Member States. In addition, there is the opposite risk of the EU surrendering to the trend to polarization and imposing the whole burden of

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<sup>40</sup> Montenegro is conducting accession negotiations, while Serbia opened negotiations on 21 January 2014 and other Western Balkans countries will follow, not to speak of Turkey.

absorbing the asymmetric shock of the crisis onto the citizens of the economically weaker Member States by requiring them to migrate elsewhere.

On the other hand, it might be possible to promote the continued and unwavering defence of the right of persons freely to circulate within the EU, refining and reinforcing long-term strategies for maximising the positive effects of mobility - especially that of young people - in terms of cultural and economic dynamism, while remaining vigilant against, and reducing, the possible negative repercussions.

#### *4.2. Governance implications of a more effective policy on mixed flows*

The apparent convergence of EU Member States which led to the common asylum policy based on the imposed paradigm of burden-sharing, as described above in section 1.3, showed its limits in October 2013, in the wake of the tragic incidents in the waters off the Italian island of Lampedusa, in which hundreds of human beings died trying to reach EU soil.

The issue of a more effective protection system has returned dramatically to the forefront in recent months, and a growing polarisation within Europe with respect to the governance of mixed flows divides Northern and Continental EU Member States from Southern and South-Eastern EU Member States, “core countries” (in geographical terms) from countries situated along common external borders, especially maritime ones.

Faced with the lack of legal channels of entry and the absence of off-shore procedures to ask for protection, the pressure on the irregular channels of entry, themselves limited in number due to the effective closure of other routes, has increased.<sup>41</sup> Although in merely quantitative terms the volume of arrivals on the Southern Mediterranean coast is relatively small, the arrivals coming, more silently, from land are especially sensitive and of a more and more complex and mixed nature: economic migrants together with refugees, adults and minors, women and children seeking better conditions of life, and victims of trafficking. Such diverse groups of people call for differentiated treatment, which seems to be as necessary as it is difficult and expensive to carry out.

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<sup>41</sup> For the origins of this trend, see Ferruccio Pastore, Paola Monzini and Giuseppe Sciortino, “Schengen’s Soft Underbelly? Irregular Migration and Human Smuggling across Land and Sea Borders to Italy”, in *International Migration*, Vol. 44, No. 4 (October 2006), p. 95-119.

The crucial challenge ahead, which requires the combination of search and rescue activities with the fight against trafficking of human beings and the protection of vulnerable categories of migrants, is clearly one which does not have an easy and wide-ranging convergence of interests and political will between Member States. As such, on paper at least, it calls for new strategic alliances among the “border states” by which the burden of the management of such mixed flows is mainly borne. In practice, however, coalitions of peripheral states aimed at obtaining more from the EU and other Member States in terms of resources are hampered by the deep differentiation of migratory situations and, therefore, short-term interests, which makes any formal reinforced cooperation very unlikely.

The geography and geopolitics of irregular migration, and of mixed flows in particular, is highly fragmented. Contrary to the situation a decade ago, when accessible sea routes to the EU were still manifold, successful EU-wide and bilateral actions have effectively curtailed a number of access routes, the most evident case being the crossing from West Africa to the Canary Islands.<sup>42</sup> In this changing context, the so-called Central Mediterranean route(s), with departure from between Western Egypt and Tunisia and arrival in Malta, Calabria, Sicily or the Sicilian archipelago of the Pelagie Islands (Lampedusa and Linosa being the main ones), stands out as the main if not only access channel. This *de facto* sets apart Italy and Malta as actual destinations and as border states with practical (as opposed to only theoretical) responsibilities for everyday management of mixed arrivals and for search and rescue activities.

In such a context, the political viability and the prospects of success of a strategy aimed at building reinforced cooperation between Member States sharing the same short-term concerns are low. Therefore, any successful EU policy should be framed in a longer-term perspective, based on a deeper understanding of interdependencies among Member States. At present, the risk of a vicious circle in which limited solidarity calls for limited engagement in border control and protection activities (and vice versa) is concrete.

The logic behind the extraordinary effort made by Italy with the deployment of the Mare Nostrum operation goes exactly in the opposite

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<sup>42</sup> Ibidem.

direction, namely that of investing more in controls and protection in order to gain credibility and put pressure on Brussels and other capitals, from which more solidarity is requested. It is evident, however, that such an extraordinary effort can only be sustained for a limited period both politically and economically speaking.

A specifically worrying sign is the lack of political solidarity shown by Spain towards Italy: the Spanish authorities have sent signals showing a lack of support for highly-demanding initiatives such as *Mare Nostrum*, on the basis of the argument that this would represent a pull factor: in other words, reducing the risk of shipwrecks and deaths at sea would *de facto* create an incentive for migrants.

In the short- to medium-term, a more realistic - even though by no means smooth or probable - scenario entails the launch of small bilateral or multilateral *ad hoc* cooperation projects among coastal or island states, inside or outside the framework of a Frontex operation, aimed at pursuing specific and limited technical goals (e.g. developing new surveillance technologies, or starting pilot projects in transit countries), including through the use of the resources of the new Asylum, Migration and Integration Fund (AMIF). It is clear, however, that such *ad hoc* micro-coalitions will not be decisive. More fundamental responses to the challenges ahead can only come from wider cooperation schemes, which can only be based on a longer-term perspective and a deeper understanding of interdependencies, including the negative backlashes of a denial of solidarity.

For all these reasons, the Italian presidency of the Council of the European Union in the second half of 2014 could have a decisive role in better applying the principle of solidarity, in rendering more effective both the Union's reception policies and its external border control measures, and in trying to build new coalitions with these aims.

The Italian presidency occurs at a moment of new agenda-setting in the Justice and Home Affairs field destined to replace the Stockholm Plan that expires at the end of 2014,<sup>43</sup> and will have a decisive role in ensuring

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<sup>43</sup> Published on 11 March 2014, the Commission communication entitled *An open and secure Europe: making it happen* (COM(2014)154) refers to the integrated management of the external borders and calls for the adoption of new rules on the mutual recognition of asylum decisions across Member States and the development of a framework for the transfer of protection to reduce obstacles to movement within the EU and to facilitate the transfer of protection-related benefits across internal borders.



a follow-up to the conclusions of the June 2014 European Council, which will discuss the new work programme in matters of justice, security, asylum and immigration. This responsibility can and must also be interpreted as an opportunity, especially for a country that, from various points of view (as a custodian of a delicate segment of the common external border, a recent destination for massive migration flows, and a significant source of youth mobility), is directly affected by the EU's decisions (or a lack thereof) in this area.

At a stage at which several of Italy's long-term interests coincide significantly with major strategic lines of action espoused by the European institutions, and especially the Commission, some of the most prominent priorities to be proposed could include the pursuit of efforts already under way towards ensuring more effective and sustainable European Union and Member State external border controls. This could particularly concern southern maritime actions, and should be carried out with full respect for fundamental rights. To that end, an exceptional and prolonged commitment to implementing the "Mediterraneo" Task Force recommendations (beyond the present emergency) needs to be made.<sup>44</sup>

The development of relocation procedures and joint processing schemes, together with procedures to enable asylum-seekers to lodge

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More concretely, promoting high standards of protection in countries of transit and origin and reducing the numbers of people who make hazardous journeys across the Sahara, the Mediterranean and other routes in the hope of reaching Europe should, in the Commission's view, be stepped up as an integral part of the EU's external policies, *inter alia* through the reinforcement of Regional Protection Programmes (RPP) and resettlement programmes.

<sup>44</sup> For an update of the Italian position on migration and Europe, see also: Italian Chamber of Deputies-Schengen Committee, *Audizione del Ministro dell'interno, on Angelino Alfano, nelle materie di competenza del Comitato, con particolare riferimento alle politiche in materia di immigrazione*, 15 April 2014, [http://documenti.camera.it/leg17/resoconti/commissioni/stenografici/html/30/audiz2/audizione/2014/04/15/indice\\_stenografico.0005.html](http://documenti.camera.it/leg17/resoconti/commissioni/stenografici/html/30/audiz2/audizione/2014/04/15/indice_stenografico.0005.html); Chamber of Deputies, *Informativa urgente del Governo sulle dichiarazioni del Ministro dell'interno relative ad un ingente incremento del flusso di migranti e sulle misure che si intenda adottare per farvi fronte*, 16 April 2014, <http://documenti.camera.it/leg17/resoconti/assemblea/html/sed0213/stenografico.pdf>; Guido Ruotolo, "Il ministro Alfano 'L'Europa immobile aiuta la Le Pen'", in *La Stampa*, [http://www.interno.gov.it/mininterno/export/sites/default/it/sezioni/sala\\_stampa/interview/Interviste/2098\\_500\\_ministro/2014\\_04\\_17\\_La\\_Stampa.html\\_8783070.html](http://www.interno.gov.it/mininterno/export/sites/default/it/sezioni/sala_stampa/interview/Interviste/2098_500_ministro/2014_04_17_La_Stampa.html_8783070.html).



an application outside the Union through national embassies or consulates or EU delegations, as well as the creation of safe channels for legal entry into Europe, so called “humanitarian corridors”, are also concrete options which could be promoted.

The success of negotiations on these issues will largely depend on the capacity to frame the need for a more effective policy on mixed flows not as a selfish request for financial relief and material support from a minority of Member States, but as a condition for the effective management of such flows which cannot be achieved by a few Member States acting alone.

#### *4.3. EU policy on labour migration: stagnation or breakthrough?*

A polarisation between Southern and Continental EU Member states has occurred also with respect to priorities and interests on legal migration policies. As mentioned above, the highly uneven impact of the economic crisis has contributed to bringing immigration policies into different perspectives: the low-skilled labour migration needs of Southern States (but not only them) have been strongly downsized due to national labour shortages, whereas some Northern EU countries are experiencing a growing need for high- and medium-skilled labour migration.<sup>45</sup>

Given that, even at a time of greater convergence of interests around this issue, cooperation among EU member states led only to agreement on a limited and “piecemeal” approach to legal migration, as described at section 2.2, a fully-fledged labour migration policy is all the more unthinkable in the current economic situation.

In a policy cluster where progress is so gradual, slow and down-to-earth, and where achievements can be considered as minimum standards or minimum common denominators for national legislation, no possible pioneers’ game changes or restarts, as for the asylum policy field, are even thinkable in a short- to medium-term time frame.

As Article 79 TFEU already shows, and moreover given the current economic circumstances, it is clear that no agreement on a genuinely transformative and coordinated admission policy, setting common and

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<sup>45</sup> For an overview of the evolution of the governance of labour migration in the EU and its Member States since the beginning of the crisis, see the country reports and working papers available in the website of the FIERI-led project LAB-MIG-GOV: <http://www.labmiggo.eu>.

binding conditions for entry and residence in EU Member States for work purposes, will be found soon.

The new multiannual programme setting out EU priorities for the area of justice, freedom and security,<sup>46</sup> which will take place in a stable legislative framework as no further Treaty modifications are envisaged, does not contain any radically new proposals in this field.

On the other hand, in contrast to the field of mobility, no major sign of real disaggregation is looming on the horizon, although some regressive interventions can be envisaged: these could imply for instance the re-nationalisation of specific aspects of migration policy as a way to protect Continental core Member States from possible future unsolicited and large-scale South-North transit flows. Preventive and “defensive” harmonization trends could imply restrictions in Southern European admission policies, starting with a stop on “easy-going” large-scale admissions or a block on any regularization of low-skilled third-country nationals.

The more realistic scenario in the short- to medium-term is the accomplishment of the Policy Plan on Legal Migration, including of course its implementation at national level, in accordance with a down-to-earth and strictly functionalist approach. The latest step taken in this direction is the adoption by the Council on 26 February 2014 of the Directive 2014/36/EU on seasonal workers. Although limited harmonization has been achieved, minimum standards have been put in place as regards the rights of seasonal workers. This can be seen as an important sign at a time of economic crisis when national debates are rife with references to restricting migration and attacking the free movement of EU workers, and where populism has made legal migration an even more toxic issue in the public discourse.<sup>47</sup> With this piece of legal migration legislation adopted at EU level, and the Intra-Corporate Transferees Directive soon to follow, the policy plan on legal migration, as reshaped from the original ambitions of the early 2000s, could be considered to have been achieved.

To conclude, however, a more dynamic scenario should also at least be mentioned, even if it is conceivable only in a longer-term perspective. If the on-going trend towards greater coordination of Member States’

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<sup>46</sup>European Commission, *An open and secure Europe: making it happen* (COM(2014)154), cit.

<sup>47</sup>Alex Lazarowicz, “A success story for the EU and seasonal workers’ rights without reinventing the wheel”, in *EPC Policy Briefs*, 28 March 2014, [http://www.epc.eu/pub\\_details.php?cat\\_id=3&pub\\_id=4309](http://www.epc.eu/pub_details.php?cat_id=3&pub_id=4309).

economic policies continues, it will be difficult to exclude areas such as taxation and labour market policies from such coordination. In such a context, the volume and composition of legal migration - which is unanimously deemed a key factor in the future sustainability and competitiveness of European social and economic systems - might find itself at the core of a renewed and more strategic understanding of the common European interest.

## CONCLUDING REMARKS

In this paper we have explored “core-noncore” relationships in the three inter-connected policy fields of mobility, migration and asylum (MAM), which have evolved in autonomous ways, according to distinct logics but on the basis of some overarching structural tendencies.

While the mobility field has had a communitarian core from its origin, a convergence in migratory situations among Member States and a relative stability in the neighbourhood have allowed for the gradual construction of a limited migration core, as well as of a rather unstable asylum core.

We have then focused on some clearly emerging and largely inter-connected dynamics of crisis within the cores of each of these policy fields, and identified the centrifugal forces which risk jeopardising integration processes even beyond the boundaries of each specific policy field. The polarisation between Northern and Continental EU Member States on the one hand and Southern and South-Eastern EU Member States on the other, between “core countries” (in geographical terms) and countries situated along common external (especially maritime) borders, associated with the de-structuring of the European neighbourhood, have undermined the very foundations of cooperation and solidarity in the MAM fields. In particular, problems emerge especially in “grey areas” situated at the overlap of traditional policy fields: the management of mixed flows (an issue which stretches across the migration and asylum policy clusters) and of mobility of “poor Europeans” (another thorny issue, situated at the boundary between the migration and mobility clusters).

The crisis of trust occurs at two levels: firstly, between electorates and institutions, as the ineffective management of migration flows and poor mobile Europeans creates a sense of lack of control over these rights-based (i.e. non-discretionary) forms of migration. Secondly, at a higher and at least equally worrying level, a crisis of trust is unfolding

among Member States, where the South-North gap overlaps with the core-periphery division.

The deficient and anachronistic design of the wider MAM policy fields contributes to explain the structural difficulties that the EU is finding in providing effective responses to such issues.

We have finally tried to outline possible future scenarios, according to the different responses of the various actors to the tension between centripetal and centrifugal dynamics.

The mobility of EU citizens is already a fully-integrated field of policy at the EU level, meaning that the maintenance of such an *acquis* is the most optimistic scenario which can currently be envisaged. However distant and legally problematic, options of opt-out from the freedom of movement, whether or not associated with threats of secession from the EU, undermine such a conservative perspective.

The governance of mixed flows is the probably the most demanding short-term challenge facing the European Union in the MAM policy fields. The risk of paralysis and lack of action, which would mean a *de facto* betrayal of promises of solidarity and burden-sharing as regards the asylum and protection system, stands out as a likely scenario as, at least in the short term, formal (or even informal but stable) reinforced cooperation among peripheral Member States aimed at upgrading the common asylum policy seems unlikely to occur. Micro-coalitions with possible European financial support could improve concrete situations and allow a marginally more efficient control and protection system, but the risks of mutual free-riding and retaliatory behaviour could also lead to an extreme scenario of exit from Schengen on the part of some Member States.

As far as the governance of labour migration is concerned, at one extreme of the spectrum of possible scenarios lies the stagnation of the current piecemeal approach, whereby the maintenance of a *de facto* intergovernmental method to decide on legal migration flows and labour migration policies constitutes the most likely scenario.

Although no regressive signs nor any major step forward are envisageable in the short term, in a longer perspective, a complete overhaul of European economic governance would necessarily include labour migration. In fact, although in extraordinary circumstances, this has been happening already: governments operating under the control of the “troika” have certainly not maintained full control of their domestic

labour migration policies, which is also true of any other policy field structurally affecting the domestic economic outlook.

A jump ahead from the muddling through of the current migration governance could be brought about in the future by a substantial breakthrough in the economic governance of the EU or at least of the Eurozone. How this could happen, through which paths and with which outcomes: addressing these questions would require a visionary effort which clearly goes beyond the scope of this paper.



# 7.

## Imagining Post-Crisis Europe

*Nathalie Tocci*

### 1. INTRODUCTION

*Imagining Europe* was launched in 2013 by a group of committed Europeans alarmed by the centrifugal forces gripping the European Union since the eruption of the Eurozone crisis. Polarization, fragmentation and asymmetry have marked European dynamics in different policy domains, between member states, and between leaders and citizens. Asymmetries in economic performance cast within an incomplete monetary union both caused and deepened in view of the crisis. As a result, a deep socio-cultural and political polarization has taken root within the Eurozone, notably between northern and southern countries whose elites and publics have indulged in dangerous reciprocal stereotyping. And even within the innermost core of the Union, Germany has emerged as the unrivaled *primus inter pares* generating a hitherto unknown asymmetry at the heart of the European construction. Integrative dynamics have been coupled with the risks of fragmentation, as reflected in the Dutch debate on subsidiarity, the Danish propensity for opt-outs, the French calls for re-nationalizing EU policies and, standing in a league of its own, the prospect of a British exit from the EU altogether. Perhaps most alarming, populist Euroscepticism, a longstanding presence on the European political scene, has become a pan-European mass phenomenon, altering beyond recognition the sociopolitical fabric of the European Parliament. Populist opposition to the EU comes in various forms, reflecting the national shades of the EU debate. Suffice it to say here that both its classic variant – the nationalist, sovereignist, right-wing, anti-immigrant Europhobia – and the newer, crisis-inspired and left-leaning Eurocriticism are edging towards majoritarian status even in traditionally Europhile member states such as France and Italy.

We are not alone in observing these trends with growing concern. Recent months have seen a flurry of political and, more often, civil society activities by committed Europeans who have imagined and advocated a new Europe capable of exiting the crisis as a more united, effective and legitimate political space. The manifestos of the German Glienicker group, the French Eiffel group and the foreign ministers engaged in the Future of Europe initiative stand out as three such efforts.<sup>1</sup> These as well as other initiatives propose a two-level concentric circle Europe. The future EU would thus be marked by a federal core consisting of a subset of member states, and a wider and looser outer circle of EU members united by the single market. The composition of the core differs from one proposal to another, with some opting for a relatively compact group of member states – essentially limited to the original six, plus Spain and possibly Poland<sup>2</sup> – while others extend the federal core to Eurozone and “pre-in” member states.<sup>3</sup> All initiatives place prime emphasis on the completion of a banking, economic and fiscal union. The Eiffel and Glienicker groups call for a Euro community fiscal capacity which, according to the latter, would amount to approximately 0.5 percent of the budgets of each participating member.<sup>4</sup> Armed with a budget worthy of the name, the federal core would provide common unemployment insurance and automatic stabilizers to offset national economic cycles, and would pursue an integrated economic policy with measures explicitly aimed at encouraging labour mobility and a partial harmonization of labour markets and pension systems. As suggested by French President Hollande, the core would feature an economic government.<sup>5</sup> The executive could include a Eurozone presi-

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<sup>1</sup> Glienicker Group, *Towards a Euro Union*, 18 October 2013, <http://www.bruegel.org/about/person/view/373-the-glienicker-group>; Eiffel Group, *For a Euro Community*, 14 February 2014, <http://www.bruegel.org/about/person/view/389-the-eiffel-group>; Future of Europe Group, *Final Report of the Future of Europe Group*, 17 September 2012, [http://www.auswaertiges-amt.de/EN/Europa/Aktuell/120918-Zukunftsgruppe\\_Warschau\\_node.html](http://www.auswaertiges-amt.de/EN/Europa/Aktuell/120918-Zukunftsgruppe_Warschau_node.html).

<sup>2</sup> Roger Godino and Fabien Verdier “Heading towards a European Federation. Europe’s Last Chance”, in *Notre Europe-Jacques Delors Institute Policy Papers*, No. 105 (11 February 2014), <http://www.eng.notre-europe.eu/011-17715-Heading-towards-a-European-Federation.html>.

<sup>3</sup> Future of Europe Group, *Final Report of the Future of Europe Group*, cit.

<sup>4</sup> Glienicker Group, *Towards a Euro Union*, cit.; Eiffel Group, *For a Euro Community*, cit.

<sup>5</sup> “Hollande calls for ‘EU economic government’”, in *France24*, 17 May 2013, <http://www.france24.com/en/20130516-hollande-europe-union-eurozone-government-economy-france>. Full text (in French) available in the French Presidency website:



dent who would either be directly elected or would be chosen by the heads of states of participating countries. The president would in turn appoint a government that would reflect the political majority across the core.<sup>6</sup> The federal core would also feature a legislative branch, with some calling for a single<sup>7</sup> and some for a two-chamber European parliament.<sup>8</sup>

The underlying logic of these proposals is quintessentially functionalist. The core would stem from the economic realm, but it would pave the way for deeper integration in other key policy sectors. The Future of Europe group places considerable emphasis on the migration and defence domains, advocating a European border police and the extension of qualified majority voting to the Common Foreign and Security Policy (CFSP) aimed at a common defence policy and defence industry. The Eiffel group argues that the core would also be responsible for research, communications, transport and infrastructure. French President Hollande has advocated an energy community designed to coordinate member states' energy transition. In other words, while the core would emerge from the ashes of the Eurozone crisis and feature first and foremost a banking, fiscal, and political union, it would extend its integrationist reach to other policy sectors that traditionally fall within the remit of federal states.

For the sake of intellectual honesty, we acknowledge that our project was driven by similar assumptions and goals. We too believed that a federal core would provide the best answer to the economic crisis and help restore the political legitimacy of the integration project, while at the same time providing a working formula to embed, via the single market, current and future member states that would make up the EU's outer circle. A two-level Union could help provide an answer to the perennial deepening versus widening dilemma that has plagued European integration since its inception.

And yet at the outset of the project we were troubled by two sets of questions. The first regarded the geographic scope of the core.

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<http://www.elysee.fr/declarations/article/intervention-liminaire-du-president-de-la-republique-lors-de-la-conference-de-presse>.

<sup>6</sup> Roger Godino and Fabien Verdier "Heading towards a European Federation...", cit.

<sup>7</sup> Glienicker Group, *Towards a Euro Union*, cit.; Hans-Wolfgang Platzer, "Rolling Back or Expanding European Integration? Barriers and Paths to Deepening Democratic and Social Integration", in *Friedrich Ebert Stiftung International Policy Analyses*, February 2014, <http://library.fes.de/pdf-files/id/ipa/10527.pdf>.

<sup>8</sup> Roger Godino and Fabien Verdier "Heading towards a European Federation...", cit.

Presumably the core would consist of a select sub-set of member states. It is difficult to imagine that a group that approximates the current membership of the EU would succeed in making the *saut qualitatif* that the EU as a whole has failed to make for decades. And yet, as stated by all the initiatives reviewed above, such a core would be open to all members willing and able to join it. But how could openness be reconciled with selectivity? And how could the core comprise all those member states whose input would be necessary – or at least highly desirable – in the policy competences assigned to the federal centre while at the same time remaining fairly small? What, in other words, if the core were to enlarge to a large sub-set involving virtually all member states aside from a few “usual suspects”? And what, instead, if it were to exclude members that were crucial to delivering policy effectiveness in any of the specific areas designated for the core? What would be the logic of creating two layers of institutions if the core were to largely coincide with the rest of the EU over the course of the next decade or so? Would EU citizens not end up feeling even more alienated from what may look like an even more baroque European project?

The second and related question regarded the thematic scope of the core. As mentioned, all initiatives reviewed above ascribed to the core most policy competences that fall within the classic remit of federal states. Their assumption is that deeper integration would move from one policy domain – the fiscal and monetary – to others. Policy and institutional dynamics within the Eurozone have indeed dominated EU politics since the eruption of the crisis. Yet, a Eurozone over-determinism for other policy sectors does not reflect reality, with actors and issues within different policy sectors being governed by logics of their own. Functionalist spillover in European integration has always been present but woefully incomplete. Why should it flow naturally now within the core, and what makes us think that deeper integration in all policy sectors would comprise the same neat set of member states? In light of these questions we set forth other possible models of governance for the future European Union, including a multiple clusters, a hub-and-spoke and a patchwork core European Union.<sup>9</sup>

It is with these assumptions and goals, but also with these underlying questions and doubts that we set off on this project. We thus gathered a

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<sup>9</sup> See Chapter 1 by Nathalie Tocci and Giovanni Faleg.

group of experts across five policy areas – fiscal and monetary, security and defence, infrastructure, communications and transport, migration, mobility and asylum, energy and environment – asking them to address the same set of questions:

- the membership and degree of integration of the core;
- the relationship between the core and non-core group of member states;
- the model of governance the policy area approximates;
- policy and institutional innovations to maximize the EU's political unity, policy effectiveness and institutional governability.

In what follows, we review the results from this thematic enquiry, drawing out a synthesis for the future governance of a more united and effective EU as a whole.

## 2. THE STATE OF THE UNION

A glance over the five policy areas selected in this project reveals considerable divergence in the integration-fragmentation dynamics across the European Union. Unsurprisingly, the fiscal and monetary area stands out as the policy domain in which integration has been most visible. Integration within the Eurozone in particular has been driven by a strong economic rationale. The deep trade and financial integration between EU economies has amplified the spillover effects of national economic policies, calling for coordination in order to manage externalities with a view to increasing common welfare. These spillover effects have been particularly acute within the Eurozone. The Greek crisis demonstrated how one country's bad fiscal policies can have immediate and significant repercussions on other Eurozone countries and on the entire structure of the Euro. Steps towards fiscal consolidation have been significant, with a succession of packs and pacts reviewed in detail by Emerson and Giovannini.<sup>10</sup> The banking union is following suit, with a single supervisory mechanism and a single resolution mechanism now on their way. A fiscal union, and notably an EU fiscal capacity capable of providing automatic stabilizers have, alas, not made it onto the official policy agenda yet, but are very much part of public debate. As is well known, fiscal and

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<sup>10</sup> See Chapter 2 by Michael Emerson and Alessandro Giovannini.

monetary integration have tilted heavily towards intergovernmentalism, with the European Council playing an unprecedented role in EU policy-making. But EU institutions, most prominently the European Central Bank (ECB), have also seen a considerable aggrandizement of their role. To think that, beyond price stability, the ECB would have become responsible for a Security Markets Programme, Long-term Refinancing Operations, Outright Monetary Transactions, banking supervision and fiscal consolidation through the Troika would have been impossible a few years ago.

This is not to say that polarization and fragmentation are not present in this policy field. Talk about core and periphery is often applied to the Eurozone itself, with divergent economic performances lying at the heart of the economic crisis. Beyond the creditor-debtor divide, there is the divide between actual and potential bailout cases in the “periphery”, and a divide between Germany and the rest within the “core”. Perhaps most significantly, there is a growing rift between publics and EU leaders, with what is viewed as an opaque and unaccountable management of the crisis feeding public disaffection towards the integration project as a whole. In brief, a regime of *de facto* concentric circles that is strikingly lacking in democratic legitimacy is emerging, questioning the Eurozone’s long-term sustainability. A more federal fiscal union would be the answer, if only political will and leadership were in place.

While the fiscal and monetary domain has seen considerable, though not undisputed, steps towards greater unity, the same cannot be said for other policy areas. Stagnation has characterized the security and defence, and transport, communications and infrastructure domains, while fragmentation and the risk of disintegration looms over the energy/environment and migration/mobility/asylum fields.

In security and defence, aside from the timid and largely declaratory steps made at the December 2013 European Council, Howorth notes the dramatic decline of the Common Security and Defence Policy (CSDP).<sup>11</sup> CSDP missions have always been small, marginally effective and strategically irrelevant, concentrated geographically in the neighbourhood and Africa. But in the first decade of the 2000s at least they took place. The same cannot be said in recent years. Whereas the 2003-2008 period saw no less than 26 missions, between 2008 and 2014, there have been

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<sup>11</sup> See Chapter 5 by Jolyon Howorth.

only five. Furthermore, whereas in the first years civilian and military missions alternated, as years went by the latter became few and far between. The core function of CSDP has boiled down to relatively small civilian crisis management operations in the extended neighbourhood. After fifteen years of EU security and defence, the balance sheet is disappointing to say the least. But as aptly put by Howorth, the mother of all ills is not a technical design fault. In CSDP, the Council, the Political and Security Committee, the EU Military Committee, and the European Defence Agency, on the grounds of the competences with which they have been endowed, perform relatively well. Nor is public opinion an obstacle. Despite the waning popularity of the EU, foreign policy stands out as the area in which Europeans have consistently advocated more, not less, Europe. Rather, the problem is political. This policy area is still marked by a gaping lack of leadership and common strategic vision. Member states, with their different policy positions, priorities and strategic cultures, dominate, with no issue even making it on the agenda if met by strong resistance by a single state. Furthermore, for any action to be taken, strong support by the big three – France, Germany and the UK – is of the essence. Although the security challenges we collectively face would warrant intensive integration through CSDP within a broader NATO context, deep intra-EU divergences on foreign policy and the EU's role in the world epitomize the entrenched disunity of this policy field.

Stagnation has also marked the transport, communications and infrastructure domain. Transport and communications policy along – and intertwined – with infrastructure, notably the Trans-European Networks (TEN), literally represent the backbone of the single market. The pending incompleteness of the single market is largely due to multiple failures in this policy domain: to fully liberalize, to create an effective framework for competition and ideally a common framework for regulation, and to provide missing links. In particular, the EU still lacks a fully interoperable and resource efficient network of interconnected cross-border transport infrastructure. Missing links, bottlenecks and market barriers, particularly in Central and Eastern Europe persist. While the Commission advanced proposals for a single European transport area in 2011, including a “comprehensive network” featuring the Trans-European Transport Network (TEN-T) and all existing and planned networks, along with a “core network” including its most strategic elements, advances remain limited. Missing links are also present in the area of communications, with major deficiencies present at the

local rather than the backbone level. Here too, the Commission proposed a telecommunications single market in 2013 but a more radical change of gear is necessary to curb the current market fragmentation, with incentives and Public Private Partnerships (PPP) for broadband rollout, spectrum policy, net neutrality and competition policy for the high-tech market.<sup>12</sup> A major problem regarding both transport and communications infrastructure is financing. With EU level funding being almost symbolic – for instance, the Connecting Europe Facility set aside approximately €32 billion for transport while the completion of TEN-T alone requires €500bn by 2020 – and ordo-liberalism remaining the prevailing economic dogma across the EU, translating plans from paper will likely require far more than the pilot project bond initiative set forth by the EU and the European Investment Bank in 2012.

Fragmentation is the name of the game in energy and climate policies. In 2009, the Climate and Energy Package,<sup>13</sup> the entry into force of the Lisbon Treaty and the Third Energy Package for an internal electricity and gas market held the promise to create a common energy market. The widespread belief was that the electricity and gas directives and the EU Emissions Trading System would lead to convergence in member states' energy policies. In fact there has been wide divergence between member states and lack of EU-wide energy coordination and cooperation in recent years, with Germany's decision to call off its nuclear energy plans being perhaps the most extreme case of non-coordination. Environmental policy fares no better. Intent on fulfilling the 20-20-20 targets, member states have proceeded haphazardly with autonomous and non-coordinated policies. The goal is a worthy one: the Commission estimates that €40 billion could be saved per year through integrated EU power markets enabled by cross-border infrastructure. But its accomplishment remains altogether elusive. In view of the strategic nature of energy, soliciting sovereignist national instincts, and the broad and complex nature of the policy field, featuring diverse sub-sectors (electricity,

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<sup>12</sup> Andrea Renda, "The Digital Infrastructure as the Next 'EU Grand Project'", in *Imagining Europe*, No. 3 (January 2014), <http://www.iai.it/content.asp?langid=2&contentid=1042>.

<sup>13</sup> The EU set for itself the following climate and energy targets for 2020, known as 20-20-20: a) a 20 percent reduction in EU greenhouse gas emissions from 1990 levels; b) raising the share of EU energy consumption produced from renewable resources to 20 percent; c) a 20 percent improvement in the EU's energy efficiency.

gas, oil, renewables) and activities (energy efficiency, regulation, investments, R&D), the potential for heterogeneity is immense.

Migration is the policy domain in which there has been the most vivid threat of disintegration. Until recently, remarkable steps forward had been made in the broad area of mobility, citizenship, migration and asylum. Intra-EU mobility has traditionally lain at the heart of the European project, with free movement for workers enshrined in the 1957 Treaty of Rome and extended in the Treaty of Maastricht (1993) to all EU citizens irrespective of whether they are economically active or not. Intra-EU mobility and migration are organically tied to the notion of EU citizenship, featuring, *inter alia*, political participation rights in local and EP elections, and social assistance for EU permanent residents.<sup>14</sup> With the abolition of internal borders, compensatory measures for external borders were gradually introduced, beginning with the Schengen regime from 1995 onwards. Hence, although migration and asylum policies remained national prerogatives – despite their incorporation in the Treaty framework since 2009 – the security dimension of external migration became increasingly Europeanized.<sup>15</sup> Hence, the common Schengen visa policy, the growing web of EU readmission agreements with third countries, and the establishment of a number of EU border control institutions and initiatives, amongst which the European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX) in 2004, the Rapid Border Intervention Teams (RABIT) in 2007 and the European Border Surveillance System (EUROSUR) established in 2013. The securitization of the EU's external borders became the flip side of extension of intra-EU freedoms.

In this context of gradual albeit limited integration, the double crises in the EU and in the Arab world have unsettled the two major assumptions underpinning this policy field: first that southern European states, having completed their migration transition into countries of immigration would successfully modernize (i.e. toughen) their border policies; and second that the relative stability of southern Mediterranean states would act as an effective buffer to stem migratory flows into the EU. The

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<sup>14</sup> Theodora Kostakopoulou, "Mobility, Citizenship and Migration in a Post-Crisis Europe", in *Imagining Europe*, June 2014 (forthcoming).

<sup>15</sup> Anna Triandafyllidou and Angeliki Dimitriadi, "Governing Irregular Migration and Asylum at the Borders of Europe: Between Efficiency and Protection", in *Imagining Europe*, No. 6 (May 2014), <http://www.iai.it/content.asp?langid=2&contentid=1118>.



double crises in Europe and the Arab world dislodged both assumptions raising the spectre of disintegration of this policy area since 2011.<sup>16</sup>

The Eurozone crisis has led to an unprecedented questioning of EU mobility and citizenship rights. Despite strong evidence to the contrary, populist noises are recurrently being made about the welfare burden posed by mobile EU citizens migrating from the crisis stricken “south” to the more prosperous “north”. In April 2013, a joint ministerial letter by Austria, UK, Germany and the Netherlands underlined the need to adopt restrictive and punitive measures to combat “welfare tourism”. Driven by a similar logic, in 2014 Switzerland passed a referendum reintroducing immigration quotas for EU citizens.<sup>17</sup> Far from fulfilling the promise set forth in Article 25 of the Treaty on the Functioning of the European Union to extend EU mobility and citizenship rights (for instance to third country permanent residents of EU member states) the economic crisis risks downgrading EU “citizens” into “migrants”. What were originally conceived as separate policy fields – intra-EU mobility and migration – all of a sudden risk interlocking into a vicious circle that can undermine one of the basic pillars of the integration project.

The Arab uprisings and their uneven impact on EU member states have added to this, putting the spanner in the wheels of a common migration and asylum policy that features both security and protection. The migration and asylum challenges of the member states have often been different: northern Europe receiving a disproportionate share of asylum requests and southern Europe bearing the brunt of processing mixed flows – irregular migrants and asylum seekers – from the south. With the eruption of the Arab uprisings, the real (and perceived) challenges for southern Europe have been exacerbated. In light of EU inaction in response to Italian calls for “burden sharing”, in 2011 Italy granted temporary protection permits to Tunisians, which allowed them to travel to the Schengen area. Italy was aware that most wanted to reach France, where many Tunisians had friends and relatives. France retaliated by reintroducing border checks at the Italian border. The Italian-French spat prompted the EU Schengen governance package in 2011, which acknowledged that a large influx of third country nationals could jus-

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<sup>16</sup> See Chapter 6 by Giulia Henry and Ferruccio Pastore.

<sup>17</sup> Switzerland, while not an EU or EEA member state, enjoys similar rights and obligations than EU/EEA member states, being tied to the EU via over 120 sectoral bilateral treaties in the fields of the free movement of people, goods, services and capital.



tify the temporary reintroduction of intra-EU controls. Alongside this, the Commission introduced a safeguard clause permitting the temporary reintroduction of the visa requirement for citizens from third countries enjoying a Schengen visa exemption.<sup>18</sup> Intra-EU solidarity amongst southern European countries has also fallen short. Having effectively curbed migration flows through the Canary islands, Spain has become reluctant to seek common cause with its southern European peers. In this respect, Italy's search & rescue *Mare Nostrum* initiative aimed at proving Italy's credibility to curb migration flows in order to solicit Brussels' solidarity after the 2013 Lampedusa tragedy risks remaining a single member initiative, whose costs make it unsustainable in the long-term.<sup>19</sup> In light of these divergent interests, when in 2013 the Dublin regulation was revised – known as Dublin III – burden sharing remained off the table. Exceptions were introduced to the “first safe country of arrival” clause when there is the risk that an asylum seeker is treated inhumanely in the first safe country. But far from resolving the underlying problem of deficient intra-EU solidarity, Dublin III risks merely reducing incentives for southern European countries – notably Italy and Greece – to upgrade their poor reception services. More broadly, even if most asylum seekers are stranded in Greece and Italy, they continue to be reluctant to file asylum requests there. Intra-EU divergent interests magnified by the growing instability on the EU's southern shores thus lie at the heart of a deficient common asylum and migration policy, whose security dimension is only partially effective and its protection dimension woefully wanting.

### 3. THE MYTH OF A CORE EUROPE

Taking as a starting point this mixed picture across major policy areas, what could a more united and effective EU look like in the future? As mentioned at the outset, an exclusive focus on the fiscal and monetary field would suggest a possible concentric circle evolution of the European Union. The EU is already divided between a plenary of 28 member states

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<sup>18</sup> The latter was a response to the perceived risk of a surge in asylum requests from Western Balkan countries that had recently been exempted from the Schengen visa requirement.

<sup>19</sup> In October 2013 a boat went down off the Italian island of Lampedusa, killing 366 migrants on board.

and a Eurozone of 17, with the Treaty on Stability, Coordination and Governance foreseeing twice yearly Eurozone summits at heads of state level and the Eurogroup, the informal body of Eurozone finance ministers, having become a consolidated practice since 2005 and Treaty based reality in 2009.

Yet a closer look at the emerging economic governance of the Union suggests that even in this sector, which most lends itself to the notion of a two-tier EU, reality is far messier. Insofar as the in-built intention is that the Eurozone will eventually expand to all members of the Union, the governance mechanisms that have sprouted from the crisis do not reflect a neat subdivision between core and non-core states. A quick run through the various agreements that make up the budding panorama of the EU's fiscal consolidation efforts starkly reveals this messiness. The Stability and Growth Pact enshrined in EU Treaties, the European Semester on the *ex ante* coordination of national economic policies, and the Six Pack requiring members exceeding the 60 percent debt level to embark on a quantified path towards compliance and be subject to the Macroeconomic Imbalance Procedure applies to all member states. One step down in terms of inclusiveness is the Treaty on Stability, Coordination and Governance, which applies to all member states except the United Kingdom and the Czech Republic. Then comes the Euro Plus Pact aimed at improving competitiveness, employment and fiscal consolidation that applies to 23 member states: the 17 Eurozone members, Bulgaria, Denmark, Latvia, Lithuania, Poland and Romania. And finally, the Two Pack that strengthens the provisions of the European Semester, as well as financing mechanisms such as the European Stability Mechanism and the European Financial Stabilization Mechanism, which are applicable only to the 17 Eurozone members.<sup>20</sup>

The banking sector is no neater. The Single Supervisory Mechanism has been designed for the Eurozone but is potentially open to other member states as well. By contrast, the European Stability Mechanism that could be used to directly recapitalize banks once the SSM is operational is only applicable to the Eurozone. And the Single Resolution Mechanism, which determines the mix of measures needed to resolve banks in need is applicable to the Eurozone but potentially to other member states too. In short, the fiscal and monetary area, on which most

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<sup>20</sup> By contrast balance of payments assistance is applicable only to non-Eurozone states.

proposals for a two-tier EU are based, is premised on an expectation of gradual expansion: a multi-speed rather than multi-tier EU remains an ingrained EU instinct. The result is the absence of a clear divide between two zones, but rather a mushrooming of initiatives and institutions with variable and fluid memberships. The basic reference point remains the EU as a whole.

Moving beyond the fiscal and monetary domain, the idea of a concentric circle EU becomes even more elusive. In none of the other policy areas is there an existing workable embryo of a core/non-core EU. In the security and defence field, all member states, with the exception of Denmark, are part of CSDP. And even Denmark has in practice contributed more than its fair share to CSDP missions, with its “opt-out” more a relic of national political circumstances at the time of CSDP’s inception than based on current practice. At a deeper level, the indivisibility of a security community such as the EU is such as to make talk of tiers odd at best.

Nevertheless, ideas for a core group have been floated in this policy area. But on close inspection they appear ill thought out. In July 2013, the French Senate proposed that the Eurogroup scale up integration in the security and defence realm. But would such a core be effective when the only member state in it with a defence capability worthy of the name is France? The “core” of an effective European defence has traditionally consisted of France and the UK, which together account for approximately 45 percent of European defence spending. Precisely this acknowledgement underpinned the 2010 Lancaster House Treaty on Defence and Security Cooperation between the two, aimed at pooling efforts on aircraft carriers, transport aircraft, nuclear submarines, military satellite technology, UAVs and expeditionary forces. While this inner core foresaw a wider orbit including Germany, Italy, Poland and Spain – that is the Weimar 5 plus the UK – its purpose is unclear. One could be collective defence. However, all these “core states” are members of NATO, whose “core mission” – collective defence – has been revamped in light of the Ukrainian crisis. Another, more convincing, answer is common defence. However, the group of EU members that are most advanced in this regard – the Benelux countries – are not included in any of the above. A third answer is civilian crisis management, that is the unspoken “core mission” of CSDP. However, the most active members in this regard create a different grouping: Sweden, Finland, Belgium, Netherlands and Ireland. In short, thinking through a core/non-core way forward for European

security and defence opens up more questions than it answers. A core group would not provide more effective European security and defence policy if its composition were to mirror that of the Eurozone, yet its purpose would not be clearer if a different core were envisaged either. Above all, a core/non-core divide would do little to overcome the mother of all ills in this policy area: the reluctance of all member states to pool sovereignty in light of their distinct interests, priorities and positions.

In the migration and mobility field, a core/non-core distinction of sorts exists. The EU, the European Economic Area and Switzerland constitute the outer circle bound by internal mobility rights. The Schengen regime instead constitutes the core migration group. Yet here too, the core/non-core division suffers from a number of fundamental flaws. First, if Schengen is the core, then it is not a small and select group of member states. The Schengen regime includes 22 of the 28 member states, plus several non-EU countries.<sup>21</sup> Furthermore, of the six “non-core” EU members, only the UK and Ireland are permanent opt-outs, while Bulgaria, Croatia, Cyprus and Romania are eventually set to enter. Likewise, all member states have signed up to the Dublin Convention, with only Denmark, Ireland and the UK not being part of the Common European Asylum System.<sup>22</sup> Second, the governance of the outer circle is far messier than first meets the eye. When the EU acknowledged the ineffectiveness of securing the Union *at* its borders, the governance of migration was actually externalized *beyond* EU borders, hence the host of neighbourhood initiatives in this regard, from readmission agreements and mobility partnerships, to border control support, joint surveillance and naval patrols beyond EU territorial waters. The responsibility for preventing migration into the EU was increasingly shifted to third countries of departure or transit. Third and as discussed above, the twin crises in the EU and the Arab world have highlighted the relevance of the grey areas spanning across mobility, citizenship, migration and asylum. With the Eurozone crisis highlighting the tight link between mobility and migration, and the Arab uprisings exacerbating the challenges posed by the mixed flow of economic migrants and asylum seekers, a geographic distinction in which one policy area – internal mobility – regards the

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<sup>21</sup> The Schengen regime as well as the Dublin Convention apply also to Iceland, Liechtenstein, Norway and Switzerland.

<sup>22</sup> While the UK and Ireland can opt into any single measure, Denmark has a complete constitutional opt out.

outer circle, and the other policy areas – external migration and asylum – are allocated to the inner core plus several non-EU members contributes little to the goals of political unity and policy effectiveness.

Moving on to energy and infrastructure, the core/non-core categorization has no resonance at all. In the case of infrastructure, the Commission has made a distinction between the core and the comprehensive network.<sup>23</sup> But the two are not divided between member states, with some members being part of the core and others of the comprehensive group. Moreover, when physical transport, communications or energy networks are at stake, then geographic holes on the map are not an option. No wonder that Switzerland and the Western Balkans are included in the core network identified by the TEN-T corridors.<sup>24</sup>

A final set of reasons militating against a core/non-core design of the future EU are the links between different policy areas, and in particular between the fiscal and monetary domain and other policy sectors. While these links have been raised to justify a spillover of the Eurozone's fiscal and monetary integration into other policy areas, precisely the same functionalist reasoning and the absence of a workable core/non-core divide in other policy areas would suggest that such a distinction may end up being inapplicable to the economic domain as well.

Suffice it to provide two examples that link the fiscal domain to the migration and infrastructure sectors. As described above, plans for a fiscal union are embryonic at best. Of the various ideas being floated, the most promising first step is the build-up of a respectable EU fiscal capacity whose prime functions would be stabilization<sup>25</sup> and investment. Stabilization is generally interpreted exclusively in economic terms: insurance schemes to offset member states' economic cycles. But there is no reason why such stabilization could not be interpreted more broadly. Above we described the deficient burden-sharing in the EU in the area of migration. If burden-sharing is interpreted in numeric terms – the “sharing” of unwanted migrant arrivals on the EU's southern shores, EU consensus is likely to remain elusive, as northern members remind their southern peers of the disproportionate number of migrants and asylum seekers they already host. If, however, burden sharing is interpreted in

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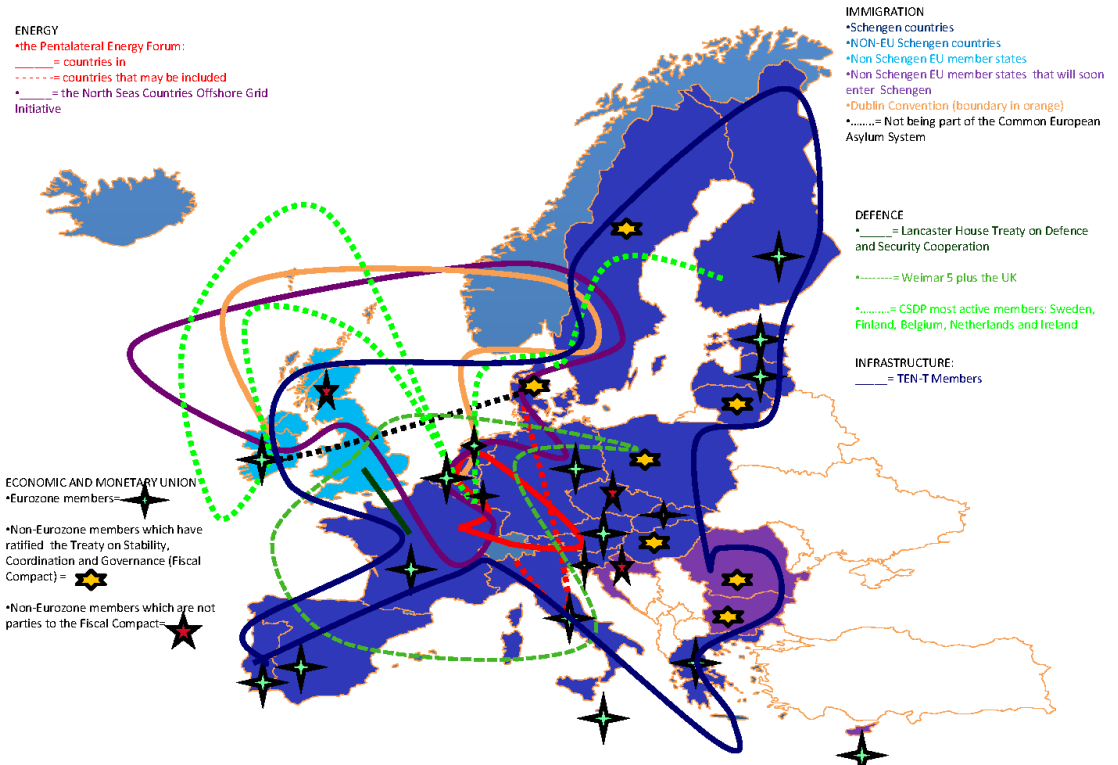
<sup>23</sup> See Chapter 3 by Stefano Riela.

<sup>24</sup> *Ibidem*.

<sup>25</sup> Herman van Rompuy et al., *Towards a Genuine Economic and Monetary Union*, 5 December 2012, [http://ec.europa.eu/economy\\_finance/crisis/documents/131201\\_en.pdf](http://ec.europa.eu/economy_finance/crisis/documents/131201_en.pdf)

financial terms – bolstering southern members’ capacity to adequately perform both the protection and security functions of external migration policy – an enhanced EU fiscal capacity could conceivably play a crucial role. Were this to happen, then all current and future members that lie at the EU’s borders would be likely candidates to receive such “stabilization” funds. When it comes to investments instead, debate has concentrated on the use of an EU fiscal capacity to stimulate growth by investing in flagship EU infrastructure projects. Indeed the Connecting Europe Facility and the pilot EU-EIB project bond initiative move precisely in this direction. However, the financing conundrum remains real, with the risk of large chunks of TEN remaining on paper. Were an EU fiscal capacity to develop through a fiscal union and be directed to stimulate infrastructure investments, then its recipients ought not to be confined to the Eurozone, given the inapplicability of a geographic core/non-core distinction in this policy sector, but non-Eurozone members would only be allowed to participate through national financial contributions.

Figure 1. The Myth of Core Europe



#### 4. A MORE UNITED AND EFFECTIVE POST-CRISIS EUROPE: A WAY AHEAD

If a concentric circle Europe is neither feasible nor necessarily desirable, how could a more united and effective EU be achieved? And how could such a Union also rebuild its lost legitimacy? The picture that emerges from the *Imagining Europe* project is one in which the EU as a whole will remain the principle reference point. This does not exclude occasional liminal opt-outs across and within different policy areas. But on a whole, the EU will remain as one. In this respect, the United Kingdom is likely to be left in a league of its own, not only because of its non-Eurozone, non-Fiscal Compact, non-Schengen status, but above all because of the fundamental uncertainty over its European future. While Euroscepticism is on the rise across the EU and while other member states are also questioning the allocation of competences between levels of EU governance, no other member questions its future within the Union. The UK is unlikely to offer a model to other current members. However, if, as highly desirable, it were to remain either in or associated with the EU, it could offer an interesting model to future enlargement countries like Turkey and perhaps even Ukraine. In other words, the future EU may have some permanent fuzzy edges. But it would remain a single political space.

Within this EU, the fiscal and monetary domain will continue setting the pace and shape of integration in the years ahead. The push for completion of a banking union and the establishment of a fiscal union can only come from leadership within the Eurozone itself, and, above all, from the reconstitution of a social contract between Eurozone members across the north/south-creditor/debtor divide. But, as outlined throughout, there is no reason to assume that integration in this area would indefinitely be limited to a sub-set of member states, but may gradually expand to include (almost) all. Furthermore, in moving towards a fiscal union featuring both fiscal consolidation and a genuine fiscal capacity, two measures would be worth considering. The first would be to channel more significant EU funds into infrastructure and external border management.<sup>26</sup> The second and related measure would be the exclusion of investment spending in EU infrastructure and external border control

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<sup>26</sup>In their exposition of a fiscal union, Emma Bonino and Marco de Andreis advocated an EU fiscal capacity responsible for automatic stabilizers, research, infrastructure and also defence, diplomacy and border control. See Emma Bonino and Marco De Andreis,



and protection capacities from the Macroeconomic Imbalance Procedure. Both investments in infrastructure and migration and asylum capacities should be applicable to all member states, and not exclusively to Eurozone members.

The temptation of a Eurozone over-determinism when thinking through the future of the EU as a whole is natural to some extent. Integration in the fiscal and monetary realm may indeed spillover and induce greater integration in other policy areas, thus approaching a federal steady state. But if the mechanisms of European economic governance remain open to all EU members and foresee a gradual expansion, the current two-level EU is unlikely to become entrenched. Consequently, it would not justify its crystallization through new institutions. If the EU does not develop in a concentric circle fashion, establishing new institutions (such as a Euro-area Council of Ministers, matched by a similar parliamentary body, as proposed by the Eiffel Group) would simply risk adding to the perceived complexity of the EU machinery while doing little to bolster democratic accountability.

This leaves two principal questions unanswered. The first question is how to push for a Union which is more united and effective – federal – but remains a single political entity across all policy areas? Here, ideas stemming from the defence and energy sectors could indicate a way forward. In the CSDP debate, ideas about “leadership groups” are not new. The idea is that of sub-sets of like-minded states that push for deeper integration in defence industry and policy in specific areas in order to generate trust, save money and collectively accomplish the mission spelled out in the 1998 St. Malo declaration. There has already been intense cooperation amongst specific groups: Denmark, Sweden and Finland, alongside non-EU Norway and Iceland; the Belgium and the Netherlands; the Visegrad countries;<sup>27</sup> the Central European Defence Cooperation,<sup>28</sup> the Weimar triangle;<sup>29</sup> and the Iberian peninsula, to name a few. Moving forward, while the European Council in December 2013 delivered well below expectations, it did set out an agenda on a number of key issues. Were European Council meetings dedicated to defence to

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“Federation Lite, or what the United States of Europe might look like”, December 2011, <http://www.emmabonino.it/press/world/9991>.

<sup>27</sup> The Czech Republic, Poland, Slovakia and Hungary.

<sup>28</sup> Austria, Croatia, the Czech Republic, Hungary, Slovakia and Slovenia.

<sup>29</sup> France, Germany and Poland.



be regularized to provide strategic guidance and, above all, followed up by implementation via multinational EU programmes<sup>30</sup> coordinated by the European Defence Agency, a significant step towards a more united and effective CSDP would be made. If this happened and CSDP became a more credible defence framework, CSDP and the European pillar of NATO could gradually merge, with CSDP providing the core security and defence functions in the European space and neighbourhood, and NATO, as the hard “outer” core, continuing to provide inter-operability, command and control, common defence planning, strategic dialogue, and foremost Article 5 guarantees. Such an evolution is of course premised upon organic NATO-EU cooperation requiring, in turn, a resolution of the Turkey-Cyprus conflict.

Energy is another area in which *avant-garde* regional clusters may offer a way forward in the elusive search for a more united and effective Europe. In view of the different regional interests and priorities across the EU, various clusters have already emerged, pressing for deeper integration, harmonization and coordination on specific issues: the Visegrad initiative stretching into the Balkans; the Pentalateral Energy Forum<sup>31</sup> that has already expanded to Austria and Switzerland and could conceivably include Italy and Denmark; the North Seas Countries Offshore Grid Initiative;<sup>32</sup> and the Mediterranean Energy Forum, which also comprises southern Mediterranean countries. Rather than pursuing an integrated internal market top-down, a bottom-up approach, upgraded and amplified by the EU’s blessing, may offer a way out of the impasse.<sup>33</sup>

The risk in pursuing a clustered approach in the energy, defence, migration or infrastructure areas is fragmentation: whereas regional clusters would press for greater intra-group integration, they may do so independently or at cross purposes. The overall result across the EU would be a risk of disintegration. Political, policy and to some extent operational guidance at the EU level, while allowing for due flexibility within the given parameters, would thus be of the essence. In communitarianized policy areas, such as infrastructure, energy and to some extent migration, the

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<sup>30</sup> Beginning with cyber security, drones, satellite communication and, above all (as the Libya operation has taught us) air-to-air refueling.

<sup>31</sup> Belgium, Netherlands, Luxembourg, France and Germany.

<sup>32</sup> Belgium, Denmark, France, Germany, Ireland, Luxembourg, Netherlands, Norway, Sweden and the UK.

<sup>33</sup> See Chapter 4 by Christian Egenhofer and Jacques de Jong.

Commission would thus propose policy guidelines for clustered cooperation. In some sectors – infrastructure or energy – a regional approach embedded in an EU framework would likely be a precondition. In areas such as defence or migration, geography would be a less relevant criterion. In all cases, every member state could and in fact would be encouraged to participate in more than one initiative. Operationally, member state clusters could come together within the framework of specific agencies. The European Defence Agency could act as an interesting model for areas such as energy, where an energy agency – incorporating ACER (Agency for Cooperation of Energy Regulators) – could represent the venue in which actors meet, share information and pursue jointly funded and managed programmes, which would be open to opt-in mechanisms.

The second question regards legitimacy. At one level, output legitimacy could be reconstituted were the EU to exit the crisis as more united and effective entity. At another, deeper, level, the crisis has perhaps irreversibly let the genie out of the bottle, with European citizens now well aware that what is decided in Brussels is not far removed from their daily lives. The need to shore up input legitimacy will not fade with the end of the crisis. On those EU policy issues which have been politicized – foremost fiscal consolidation – reconnecting EU citizens with the EU project will be crucial. How to bolster EU legitimacy and accountability without creating an extra layer of EU institutions?

Taking the EU as the reference point for a more united, even federal, Union, points to two paths for action. Both these paths are, to different degrees, in the embryonic phase of debate and experimentation. The first, aimed at filling the political – rather than strictly democratic – deficit of the Union, regards the “politicization” of the European Commission. The first step is underway, with the future Commission President nominated by the political majority emerging from the European Parliament.<sup>34</sup> If interpreted as a stand-alone measure, this step risks creating more problems than it solves: partially undermining the technical character of the Commission without rendering the Commission as such the expression of the European public’s will.<sup>35</sup> If interpreted as an evolutionary

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<sup>34</sup> Gianni Bonvicini (ed.), “Democracy in the EU and the Role of the European Parliament”, in *IAI Quaderni. English series*, No. 14 (March 2009), <http://www.iai.it/content.asp?langid=2&contentid=141>.

<sup>35</sup> Heather Grabbe and Stefan Lehne, “The 2014 European elections. Why a partisan Commission president would be bad for the EU”, in *CER Essays*, October 2013, <http://>

move, then the organic bond between the European Parliament and the Commission President could act as a precursor to the full politicization of the Commission: an executive body whose political and policy orientation would emanate from the political preferences of the European electorate: pursuing more rightwing policies when the majority in the EP tilts to the right, and more leftwing policies when elections tilt the EP to the left.

Second, there is the need to compensate the lopsided evolution of the EU's economic governance during the crisis by reinforcing the role of the European Parliament and national parliaments. Here, ideas are currently being floated to establish economic dialogues between the European Parliament as a whole – or perhaps a future EP Eurozone committee – and member states on issues such as the Stability and Growth Pact and the Macroeconomic Imbalance Procedure, and between the EP and EU institutions on issues pertaining to the Two Pack or Six Pack. There is also the need to bolster the link between national parliaments and EU policy-making, particularly given the uneven manner in which the former have resisted the feeling of parliamentary powerlessness as regards national budgets and economic policy-making.<sup>36</sup> In this regard, proposals are being made, amongst which the strengthening of inter-parliamentary dialogue and cooperation both by enhancing existing instruments – for instance the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC) – and by establishing new interparliamentary arrangements with specific policy foci.

The answers emerging from our project distance themselves from authoritative voices calling for a concentric circle EU. Our dissent is not principled; it is practical. With these initiatives, we share the deep conviction that for Europe to resume growth, reconnect with its citizens, and punch its weight in a polycentric world, it must accomplish a *saut qualitatif* in integration. It must pursue a more federal Union, not as a dogma but as the model of governance that best reconciles diversity, integration and democracy. Complacency about a timid exit from the Eurozone crisis risks becoming Europe's worst enemy in the years ahead. Yet the historical trajectory and current evolution of the EU across different

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[www.cer.org.uk/node/3590](http://www.cer.org.uk/node/3590).

<sup>36</sup> Claudia Heffler and Wolfgang Wessels, "The Democratic Legitimacy of the EU's Economic Governance and National Parliaments", in *IAI Working Papers*, No. 13|13 (April 2013), <http://www.iai.it/content.asp?langid=2&contentid=900>.

policy fields suggests that deeper integration can only be achieved by the EU as a whole. Internal variable geometries will likely remain the name of the European game. But the ensuing complexity of the Union need not hamper the push for greater unity. On the contrary, ad hoc coalitions, regional clusters and leadership groups, provided they remain embedded in the EU framework, become supported by an indispensable EU fiscal capacity, and are matched with the closure of the EU's daunting political deficit could offer the way ahead for a more united, effective and legitimate Union.



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