Round-Table 3 / Work Package 1

European Governance & the Twin Necessities of The Legitimacy of the European Union's Modes of Governance after the Crisis: Imperatives, Processes & Results

Academic Policy Note

Vivien Schmidt
Boston University

Ramona Coman & Frederik Ponjaert
Boston University

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Introduction

The EU's economic crisis has generated a crisis of democratic legitimacy, as deteriorating economics and increasingly volatile politics have combined with restrictive governance processes focused on 'governing by the rules and ruling by the numbers.' Using the systems-related terms of democratic theory, this paper analyzes this legitimacy crisis in terms of problems with the 'output' performance of EU policies, the EU's responsiveness to European citizens' political 'input,' and the quality of the EU's 'throughput' processes. It then considers how these play out for EU institutional actors—including the ECB, the Council, the Commission, and the EP.

Our overall argument is that EU actors have sought to fix the economics and calm the politics by progressively reinterpreting the rules without admitting it in the discourse, and that such reinterpretation 'by stealth,' although perhaps beneficial for output legitimacy, risks generating further problems for input and throughput legitimacy. This disconnection between what EU actors do and what they say has generated mixed responses from the public and analysts alike. The ECB may be seen as 'hero' or 'ogre,' the Council as 'dictator' or 'deliberative public body,' the Commission as 'ayatollahs of austerity' or 'ministers of 'moderation,' and the EP as a 'talking shop' or a potential 'equal partner.'

We find that EU institutional actors differ with regard to their avenues for legitimation and their responses to fast burning versus slow burning phases of the crisis. The main differentiation is between technical actors who look to expert networks for legitimation and are most likely to innovate in the slow burning phase of crisis and political actors who turn to national constituencies for legitimation and are more likely to innovate in the fast burning phase.

We additionally offer some legitimacy-enhancing suggestions. For the Commission, this brief highlights the need for leadership through greater flexibility and transparency in the reinterpretation of the rules, made possible by its new EP linked input legitimacy, and its now simultaneous accountability to the EP and Council. It also recommends a transformation in the Commission's own approach to administering the rules—from community enforcer to community enhancer/facilitator/advisor within a more decentralized system of supervision/support. For Eurozone governance more generally, the paper proposes a return to the long-standing institutional balance embodied by the 'Community Method,' meaning governance via co-decision. Among recommendations for the other EU institutional actors: the ECB should limit its focus to Euro-related issues of monetary governance, leaving economic policy orientation to the other institutional actors, while doing all the necessary as quasi lender of last resort and bank supervisor. The Council should become a more open and transparent arena for political debate about the rules. The EP needs to be brought into all Eurozone decision-making, and better tied in with national parliaments, which will also see their role expanded.

Finally, for the medium and long-term future, in addition to greater fiscal solidarity, the EU should end the unanimity rule, replaced by supermajorities with opt-outs, while treaty-based rules regarding the Eurozone are to become ordinary legislation, and therefore more readily amended. Moreover, instead of a Eurozone hard core with its own Euro-parliament the EU should be conceptualized as consisting of overlapping policy communities made up of clusters of member-states, in which all have voice but can vote only in the communities in which they are members.

Background:
Changes in Modes of Governance & their Policy Implications

Although the Commission is accountable to multiple masters, in the context of the Eurozone crisis the institution found itself in a "more hostile political environment and under persistent political accusations of runaway or unaccountable behaviour" (Ellinas and Suleiman 2012: 3). While in the past the Commission acted as a “purposeful opportunist” (Cram 1993) in order to expand its capacity of action (Coman 2014), seeking forms of integration “by stealth” (Dehousse and Thompson 2012:113), in the context of the crisis it acted cautiously in order to protect its legitimacy. Agenda setting has been dominated by Member States (Hodson 2013) acting mainly in the European Council and the Eurozone Council of Finance Ministers, while the Commission was “not very visible in the early crisis management” (Puetter 2012: 172). As such, the Council can be seen to have been engaged in an excessive or ‘super’ intergovernmental process of decision-making, in particular in the fast-burning phase of the crisis.

In the fast-burning phase of the crisis, the European Commission acted largely as the secretariat of Member States (Interviews). It lost its powers of initiative and the College of Commissioners kept a low profile. However, when it comes to role of the Commission in the implementation of the decisions adopted in the fast burning years, the institution acquired a great deal of authority and responsibility (Bauer & Becker 2014). New governance structures strengthened its role vis-à-vis the Member States and other EU institutional actors. The Commission expanded its action capacity in policy areas in which it had not been involved heretofore. It acquired expertise and savoir-faire in policy areas (i.e. financial stability support), which fell outside its competences before the crisis. Its competences in the European stability architecture also grew more complex (Bauer and Becker 2014: 216). For example, in what concerns Economic Policy Surveillance, the recommendations and assessments of the Commission have also acquired a significant political weight.

Most of the decisions of the Commission have been based on its accrued powers of “executive supranationalism” or “delegated supranationalism,” which were expanded by the Council in the heat of the fast-burning crisis. These include in particular the ‘**European Semester**,’ which provides for fiscal surveillance of member-states’ budgets, and fixes numerical targets under various procedures (e.g., the Macroeconomic Imbalance Procedure and the Excessive Deficit Procedure). Notably, whereas in the heat of the fast-burning crisis, the Commission applied the rules rigidly, once the crisis cooled to a slow burn, it began reinterpreting the rules more flexibly while not admitting it (Schmidt, think piece, 2015).

The Commission has also been one of the members of the ‘Troika’ (the other two were the IMF, ECB), which operated on the basis of an even greater ‘executive supranationalism’—given that its authority was founded on the basis of international treaties and agreed with an international treaty organization (the IMF). In the bailouts of Greece, Ireland, and Portugal, the Commission along with the ECB played an active and often doctrinaire role, in particular as compared to a now ‘kinder and gentler’ IMF. Here, the circuits of influence via expert networks point to a greater economic orthodoxy for EU actors with regard to austerity than the more revisionist IMF (see Ban 2015). And here, little flexibility was in evidence (see IMF report 2013).

The ECB has been seen as the ‘hero’ of the Eurozone crisis because of its pledge to do ‘whatever it takes’ to save the Euro in July 2012, thereby stopping the fast burning phase of the crisis. But in exchange, the ECB could be criticized for exceeding its technocratic authority (based on supranational executive governance) and legitimacy (based in output economic policy performance) by pushing member-state leaders to institute policies of austerity and structural reform.

- ‘Super’-Intergovernmentalism in Eurocrisis Rules Creation

Member-state leaders in the Council largely turned away from EU governance by the Community Method—which had in any case not been anticipated in the treaties—in favor of what can only be seen as an excess of intergovernmentalism. The intergovernmental method was excessive not only because it was the main method by which new measures were adopted—side-lining the European Parliament. It was also excessive because Germany dominated the decision-making process by virtue of its economic weight. Its bargaining power was based not just on economics, however, but also on its ability to attract strong coalitional allies (mainly from Northern Europe, such as Finland and the Netherlands) and to exert ideational influence through its belief in the ‘stability culture’ and the rules of the Stability and Growth Pact (Howarth and Rommersch 2014). In the fast-burning phase of the crisis, the Franco-German couple became a *directoire* (Fabbrini 2013) in which Germany predominated; in the slow burning phase, Germany was the main player in terms of decision-making.

In its efforts to pass its decisions rapidly (and to get around the unanimity rule), moreover, the Council adopted some instruments not just outside the scope of the community method but also outside the framework of the treaties (e.g., the EFSF and the Fiscal Compact—see below). Although their democratic legitimacy was guaranteed by the ratification procedure of national parliaments and by the ruling of the German constitutional court, it has been argued that the crisis has strengthened the power of executives and has led to an “unbalanced intergovernmentalism” in the sense that Germany plays a leading role, France is absent (see Picketty;) and Italy is not credible enough (see Fabbrini 2015).

The decisions taken outside the framework of the treaties were contested. This is not the first time EU institutional actors have opted for a strategy favoring alternative legal solutions to overcome the limits of the existing treaties, however. As the president of the ECJ has argued, there are many other examples of this kind. In this regard V. Skouris has mentioned the Charter of Fundamental Rights, the Schengen Agreements and the European Patent, which were in the past praised for overcoming blockages and contributing to the integration process. But these were actually very different kinds or agreements. The Charter in particular was most notable for being drawn up using principles of input legitimacy, given a convention in which representatives included parliamentarians and members of civil society who deliberated on the measures to be included.

More generally, the EU’s executive leadership, and in particular the super-intergovernmentalism that has also produced greater supranationalism, has been called into question on grounds of problems related to democratic (input) legitimacy. For example in Germany, the panel of judges in Karlsruhe ruled in favor of a greater say of national parliaments in the attempts to save the Euro. They also ruled that a secret committee meant to fast-track approval for bailouts was largely unconstitutional (29 February 2012).

- Executive Supranationalism & Financial Facility Support

When the financial crisis escalated in 2010, the Council via intergovernmental decision-making established two instruments that would be run via executive supranationalism: the European Financial Stabilization Mechanism and the European Financial Stability Facility. The former was conceived as an instrument of crisis management, while the later was an instrument of crisis prevention (Fabbrini 2015: 51). The Council Regulation No 407/2010 establishing a European Financial Stabilization Mechanism (EFSM) was the EU's first response to the crisis. The members of the ECOFIN Council in May 9-10 "transformed themselves into representatives of their states at an intergovernmental conference" and in this capacity they adopted the European Financial Stability Facility (EFSF) outside the EU legal framework (Fabbrini 2015: 50; De Witte 2012: 2). Thus, the EFSM – which was a temporary solution – consisted of an executive agreement between Member States. Both the EFSF and the EFSM have an intergovernmental treaty basis (Bauer and Becker 2014: 218), and both operate through an executive supranational mode of governance.

In September 2010, the ECOFIN Council (intergovernmentally) also approved the European Semester, which came into force in January 2011. This instrument was conceived to coordinate "ex ante" the budgetary and economic policies of the member states (Fabbrini 2015: 51).

In 2011 many other measures had been decided. The so-called Six-Pack, which includes five regulations and one directive, were adopted through the community method. In addition, the Euro Plus Pact aiming at fostering stronger economic policy was a political commitment between members of the Eurozone (and open to non-euro-area member) (see Fabbrini 2015:51).

The tempo accelerated as time passed. In the second half of 2011, the European Council focused on the approval of an intergovernmental treaty called the European Stability Mechanism (March 2011). It was established as an international agreement between Member States of the Euro area, and it too was to operate via an executive supranational mode of governance. This was made possible after the adoption of the European Council Decision of 25 March 2011 amending Article 136 of the Treaty on the Functioning of the EU. On December 2010, the European Council agreed an amendment of this article, according to which "Member States whose currency is the euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the euro area as a whole". On this basis the ESM was established as a new treaty, endowed with its own institutions (Fabbrini 2015: 53). Signed by all the 27 Member States, it could come into force after the decision of the German Constitutional Court in September 2012.

- Community Method & Economic Policy Surveillance

The community method was used for the adoption of the Six-Pack,, including five regulations and one directive, and the Two Pack, with two regulations. Both were adopted through the ordinary legislative procedure of co-decision, and were aimed at strengthening the Stability and Growth Pact. Although the use of the Community Method suggests that not all decisions in the fast-burning phase of the Eurozone Crisis were intergovernmental or supranational, it is important to note that the members of the European Parliament were voting in the heat of the crisis, with little time for deliberation, in fear of the markets, and under pressure from their member-state governments. The legislative package for which they voted, moreover, did not give the EP any powers of oversight as it empowered to Commission to oversee member-state budgets, enabled it to provide recommendations on budgetary issues, and strengthened its monitoring capacity.

- The Open Method of Coordination and greater coordination of national policies

Based on the Open Method of Coordination, two important strategies were also adopted: Europe 2020 and the Euro Plus Pact. This mode of governance is similar to those established by the Commission in the enlargement process: it provides guidelines and recommendations to guide Member States' reforms. It rests on policy learning through best practices, persuasion through naming and shaming and benchmarking (Bauer and Becker 2014: 223). This mode of governance combined with the fast and slow tempo of the crisis invites us to question the effects of soft low on domestic policies. As already noted above (p. 5), the Europe 2020 strategies were largely ignored in countries' efforts at fiscal consolidation, despite being put into the Commission's Annual Growth Strategy documents as the crisis slowed (Schmidt think piece, 2015).

Policy recommendations

The ECB

The ECB should go back to its core mission and mandate, which is monetary policy and banking supervision, and leave the policy orientation and politics to the Council and the EP. As it is, the ECB has enough on its hands, what with quantitative easing and monitoring the banks. What it needs to do is generate more output legitimacy for what it has been doing, arguably by building a legitimating discourse and supporting (epistemic and political) coalition in favor of enabling it to become a true *LOLR* (lender of last resort).

As part of this, the ECB could and should come up with policy solutions to the crisis. It backed slowly into the monetary policy remedies that have kept the euro alive, but only just. And now it is engaging in *quantitative easing*, which saves the euro (again) with a different form of reinterpreting the rules by stealth—since it essentially devalues creditors' savings, making it easier for debtor countries to refinance their debt (through low interest rates on bonds), although not necessarily to pay off that debt.

But there are surely other ways to solve the problems of the Euro in a more definitive way. But all of these require greater fiscal federalism. Of those involving the ECB specifically, there are mechanisms already discussed at length by think-tanks and policymakers, that would involve the ECB actively—including some form of *mutualization of the debt* (e.g., Eurobonds), *repackaging old debt* overhangs (e.g., that of Italy), *restructuring current debt* (e.g., of Ireland and Greece), or an even better alternative, *free the ECB from the prohibition of monetary state financing* to provide emergency finance to member states with above-average rates of unemployment (provided they accept and enforce no-exceptions wage stop for three years—the kind of Keynesian enforced short-term wage controls employed in the 1950s and 1960s to great effect).[1]

If the above mechanisms cannot be developed, then other economic policy instruments remain a possibility. These could include a cyclical adjustment fund to stop countries from over-heating or over-cooling; and an unemployment insurance fund.

But all of these measures would also require initiatives from the Council, which has not been innovating

[1] Thanks to Fritz W. Scharpf for this suggestion. See also Scharpf 1991, Ch. 5.

much since the crisis moved into its slow-burning phase.

The Council

A positive sign with regard to the Council has been its increasing *politicization*, both internally in its coordinative discourse and externally, in its communicative discourse to the public. Lately, this has been part of a game by member-state leaders under pressure for reform to legitimize themselves to national constituencies by demanding ever more flexible rules-reinterpretation while using the EU's outside pressure to keep up the internal push for reform. But this risks turning the EU into the scapegoat, and grist for the populists' mill.

By the same token, however, the public debate and contestation on how to apply the rules by member-states in the Council could make for greater throughput transparency and accountability in the negotiations, while government responsiveness to the citizens' concerns—on both sides—is demonstrated. It also means that the process becomes politicized in a positive way, with public debate about how to apply the rules appropriately. The EU looks less rigid or draconian as a result. And member-state leaders look like they are saying what they are doing. Moreover, this could be seen as constituting the beginning of what the French have long called for: a *gouvernance économique* that puts the emphasis on governance.

This bodes well, thinking in terms of the future. *Council debates* about how to apply the rules—*used more as guidance than as rigid diktats*—together with a more accommodating ECB—could come to constitute a more throughput legitimate way of governing. It would be more accountable and transparent because of the open debates on how to apply the rules, and more input legitimate, because more responsive to all member-states' concerns, not just to those of the member-state with the greatest bargaining power. The output results may also, thereby, also likely to be better. But this is still no substitute for the bold actions necessary to solve the crisis once and for all. This would mean finally agreeing to some sort of *'fiscal federalism,'* in which debts up to a certain level are mutualized, and some form of 'Eurobonds' or EU debt instruments are created to ensure all member-states the kinds of low interest rates from which the Germans (and other Northern European countries) have long benefited. Alternatively, develop mechanisms like cyclical adjustments funds or unemployment insurance (mentioned above). Equally important would be to give the Commission its own resources and greater discretionary powers, overseen by an empowered EP.

The Commission

The Commission needs to be able to do more and better than it has at the moment, even as some of its powers should be devolved back to the member-states. The answer is certainly not ever bigger sticks, but at the very least carrots along with the sticks. In fact, why not make any efforts toward improving skills and human capital deductible as part of the 'social investment' initiative of the EU that seeks to promote growth in knowledge-based economies. Beyond this, why not *leave off the balance sheets growth-enhancing investments* in infrastructure projects, education, training, research and development?

Structural reform, in short, needs a redefinition and refinancing. In addition to the specific areas mentioned above, the Commission could start by taking its own Europe 2020 goals seriously, by not just incorporating social issues on paper but also in practice. This means arguably incorporating other numbers in the targets, such as rising inequalities along with unemployment, and proposing moves toward more progressive taxation and redistribution. But how can the Commission do any of this, since such changes on the output policy side of legitimacy also require changes on the throughput side? The challenges are not just attitudinal but also organizational and legal as well as financial.

In terms of finances, first, the EU also needs to have its own sources of revenue. As Maduro (2012) has argued "financial solidarity in the EU must be detached from transfers between states and related, instead, to the wealth generated by the process of European economic integration."[2] Examples abound. These include a *financial transactions tax*, modeled on the Tobin tax initiative, and expanding the FTT already in process; a *European corporate tax* that could also involve harmonization of national corporate tax so as to ensure that European corporations pay reasonable tax in their home countries, and that multinationals are no longer able to game the system, and pay appropriate taxes, full stop; a *VAT on EU generated wealth* related to cross-border transactions and/or online sales; and a *solidarity tax* (or fund) levied on all citizens and residents of the EU, targeted for poverty alleviation. Initially, it could be voluntary, possibly collected via national taxes through a box checked on national tax forms that would then be transferred to the EU to administer (Schmidt 2012).

But more money, to be administered by the Commission, is just a beginning. To make structural reform of the kind discussed work, the Commission itself would need changes in its own approaches not only to what it does but how it does it.

The *European Semester* as it currently stands is highly centralized. In this process, the Commission has been the 'enforcer' in a centralized exercise that threatens to impose hard and fast sanction-triggering numbers (however flexibly interpreted). Moreover, as the Commission's own Annual Growth Strategy report (2015) admits, its democratic legitimacy "has sometimes been called into question." Its effectiveness is also in question, in particular since a low percentage of recommendations in country reports have been taken up, while the imperative of rapid deficit reduction has meant that countries in programs or at risk of programs have tended to implement across-the-board cuts that did nothing with regard to growth producing structural reform and were often socially unjust.

By empowering local actors through the decentralization of the process, the European Semester could help generate more workable kinds of 'structural' reforms, fine-tuned for each member-state's political economy. Within this context, moreover, instead of Community enforcer *the Commission should become the 'enabler' or 'advisor' within a more decentralized system of supervision and support*. This could involve more opening up of the process to national actors—not only experts but also members of parliament, NGOs, labor representatives, and other stakeholders—possibly along the lines of the Open Method of Coordination. More generally, while the Commission would continue to coordinate policy, the European Semester needs to be as decentralized as possible, so that the member-states take ownership of it. Additionally, it could mean that the Commission would act in some sense as a consultant to national parliaments, serving to empower national actors to push for the right kinds of reform.

Most importantly, the Commission has to stop engaging in reinterpretation 'by stealth,' and make clear that it is easing the rules for good reason. In other words, *Commission discourse to the public needs to say out loud what it is doing, and that this is both necessary and appropriate to exit the crisis once and for all*. This is actually now possible in a way it was not before not only because the Council has agreed that the rules do have built-in flexibility. It is also because of the new institutional realities that follow from the appointment of the leader of the winning party in EP elections in May 2014 to be President of the Commission. The new institutional mix now gives the Commission a much clearer double accountability to the EP and Council, which potentially re-empowers the Commission. Such re-empowerment could be crucial to finding ways out of the Eurozone crisis, given the importance of technical actors in slow-burning crises to come up with innovative ideas that political actors could take up in the fast-

[2] Maduro 2012

burning moments.

But to do this right, the Commission would need to be able to propose ideas that could fit with any emerging political orientation of the Council—especially in view of a potentially shifting majority toward the center left—and of the European Parliament, with its general 'grand coalition' orientation toward the public interest. In short, the Commission needs to go back to what it used to be, which was an active *vivier d'idées,* a veritable beehive of innovative ideas, in which possible solutions on the right, left, and center get debated and new syntheses proposed.

The European Parliament

Any increase in the EP's legitimacy would need to be linked to institutional reforms providing, for example, for greater EP input at the beginning stages of policy formulation. This actually goes beyond the question of Eurozone governance, since the EP has had little say in policy formulation generally. Reforms here could involve linking relevant EP members and committees to the Commission's expert committees. Even without this, however, the Commission could lay out the political dimensions of its policy initiatives, rather than presenting them as purely technical, while the European Parliament could do more to debate the issues (Magnette, 2003; Schmidt, 2006, pp. 268-9). In addition, the EP could be more fully connected to national parliaments – and needs to be, way beyond the provisions in the Lisbon Treaty. This may be the only way to ensure greater national parliamentary engagement with EU issues. Greater citizen access to the EP either directly or through the national parliaments is another area crying out for reform, as the Lamassoure report (2008) made clear, since citizens don't know their rights or how to ensure them through EU institutions

Another remedy to EU legitimacy problems would be through more *pluralist politics.* This is a national task as much as an EU level one. At the national level, political leaders' discourse should make it clear to national publics that national governments are not the only voices which can speak for national interests and values, but that citizens – as opposed to just experts – can and should have more direct input into supranational decision-making. In addition to informing citizens of the pluralist nature of supranational governance, they need to help citizens to organize themselves so as to gain access and influence in European decision-making – providing funding, information, and strategic advice – as opposed to trying to avoid citizen involvement. Moreover, they need to put procedures into place to enable citizens to participate in the national formulation processes focused on EU decision-making. All of this would also afford the already activist citizens and social movements better access and input at both EU and national levels.

With regard to Eurozone governance specifically, for the EP to have any real sway over decision-making, the mode of governance itself would need to be changed from highly intergovernmental to more co-decision via the Community Method. For this to happen, however, Treaty based rules would have to become ordinary legislation, which means open to amendment through political debates and compromise. Opt-outs for individual member-states would also be necessary, but subject to denial by qualified majorities.[3] The benefits would be many, but in particular we would see an end to the unanimity rule that imposes a lock-in via treaties, which once agreed cannot be undone because of the decision-trap of the unanimity rules. Abandoning the unanimity rule would help avoid the hazards of the current process, in which individual member states have been able to hold the others hostage, delaying the entry into vigor of treaties approved by the others and often watering down measures desired by large majorities in futile attempts to engineer compromise. Without the unanimity rule, member states could reach agreement on the big policy issues to

[3] For further elaboration, see Scharpf 2014.

pursue by allowing the occasional negotiated opt-outs for those members with legitimate reservations about participation in a given area.[4] The UK sagely has the rule that one Parliament cannot bind the hands of the next. All democracies allow amendments to Constitutions by a supermajority (generally two thirds). Only the EU enables treaties, which are essentially 'constitutionalized' laws, to be unchangeable because of the unanimity rule. The Council has informally been attempting to get around this anyway, e.g., with the EFSF as multiple bilaterals, or the Fiscal Compact as outside the treaties.

In the past couple of years, an alternative suggestion has been to set up a special Eurozone Parliament. This is a bad idea, in particular because all member-states except two (UK and DK with opt-outs) are slated to become members at some point in the not too distant future. And how would such a Eurozone Parliament be chosen? From the existing EP? Or newly elected, to concentrate only on this? And at what level of abstention in voting could this body still be input legitimate? Instead, special sessions of the EP could be focused on the Eurozone, in which everyone has voice and can be heard, but that votes remain for Eurozone members, assuming that the policies will affect them alone. That said, where policies affect others, and/or other member-states want to be a part of them, they too should be able to vote. It would be better to spend one's time figuring out how to revitalize the existing EP, and make it better linked to the national parliaments, rather than to create another special body.

The European Semester is itself also another area of possible expanded EP and national parliamentary involvement.[5] A major decentralization of the semester, as recommended in the section on the Commission, could be a way in for national parliaments. But failing that, at the very least once the Commission has made its country recommendations in the CSRs, it should have to defend its recommendations in the national parliament and/or the relevant parliamentary committees—with revision expected in response to parliamentary concerns. Moreover, different moments of the European Semester could also provide opportunities for EP involvement. In particular, were the Council to seriously deliberate priorities for the Eurozone at the beginning of the exercise, in response to the Annual Growth Survey, then the EP could respond, say, in the form of a send-back right or a conciliation procedure. Finally, where the Troika prescribes specific policies (if the Troika continues), the demands on national governments should not be kept in secrecy but, rather, considered in national parliament.[6]

In short, the Eurozone should try to resemble more something of a normal governance system, where the forum for discussion, debate, deliberation, and contestation naturally takes place within and between governments and parliament. The increased supranational powers of the Commission and the greater intergovernmentalism of the Council, however understandable as a result of the crisis, now needs at the very least to be counter-balanced by enhanced involvement of the European and national parliaments. Input legitimacy is at stake, not only by giving citizens the sense that their votes matter, but also that the processes of national governments and EU governance are subject to parliamentary scrutiny and to democratic deliberation sufficient to legitimate any compromises.

Towards a core Europe or a 'Clustered' Europe?

With proposals for greater deepening of economic integration, some have argued for a 'core Europe' in which a compact group of member-states agreeing to fiscal union would be surrounded by a larger circle

[4] See discussion in Schmidt 2009.
[5] See Alcidi et al., 2014.
[6] See the discussion in Crum 2015.

constituted by a looser group united by the Single Market.[7] But this ignores the realities of what the EU is.[8] With the exception of the all-encompassing single market, the EU is essentially made up of clusters of member-states in overlapping policy communities with variable boundaries in terms of membership—not just the 18 members of the Eurozone but Schengen (with the UK and Ireland out but Switzerland, Norway and Iceland in), Common Security and Defense Policy (Danish opt-out and all others opting in), and the Charter of Fundamental Rights (UK and Polish opt-out). Moreover, the number and variability of the EU's policy communities are likely only to increase over time as a result of enhanced cooperation in a range of areas (e.g., security and defense, or possibly immigration policy). The EU cannot be made up of one 'hard core'. It does better to be understood as having many overlapping policy clusters, which through their overlap creates a *soft core* encompassing a large majority of member-states.

Creating a hard core around the Eurozone may make other potential community clusters more difficult to pull together, with the other clusters likely to be characterized by an increasingly high degree of differentiation without integration—already the case for transport, communications, and infrastructure—or even fragmentation and the risk of disintegration—in areas such as energy and the environment as well as migration, mobility, and asylum.[9] Moreover, given the differences among member-states on these issues, there is no guarantee that even a hard core around the Eurozone will expand to incorporate these other policy areas.

Imagining the Eurozone as the core disregards the effects of the Eurozone crisis, which has created an increasing division in economic identity constructions—in which the 'other' now appears to be inside Europe, between groups of member-states, rather than mainly outside—in particular between Northern and Southern Europe but also more generally between inside and outside the Eurozone. It is unclear that a smaller hard core would be able to come to agreement any better than the larger EU membership can. Moreover, creating such a hard core would be most likely to permanently alienate member-states that resist euro-membership, such as the UK, Denmark, and Sweden. And would be likely to further the cause of 'Brexit' (British exit from the EU), if the UK were to feel itself fully marginalized from a significant role in EU governance.

In addition to these problems are further practical questions such as which member-states are to be included and which excluded, in particular if member-states to be left out might have capacities necessary for the core to succeed in another given area (e.g., Britain in defense and security policy; Sweden on the environment). Moreover, if all member-states are notionally to become members of the core at some later date (in particular if the Euro forms the 'core'), does it make sense to exclude them now? As it is, most member-states belong to some aspect of Eurozone governance. All member-states signed up to the SGP, the European Semester, and the 'Six-Pack' legislation (requiring all members above 60% debt to move toward compliance and be subject to the Macroeconomic Imbalance Procedure); all but the UK and the Czech Republic, to the Treaty on Stability, Coordination, and Governance (the so-called 'Fiscal Compact,' which reinforces the legislation above by making it a treaty as well); 23 member-states, to the 'Euro Plus Pact'(17 eurozone members plus Bulgaria, Denmark, Latvia, Lithuania, Poland, and Romania, focused on

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[7] E.g., the Glenicker group (2013), Eiffel group (2014), Future of Europe initiative (2012), President Hollande (2013)

[8] I like to call the EU a 'region-state,' as a regional union of member-state nations in which the creative tension between the supranational Union and its member-states ensures both ever-increasing regional integration and ever-continuing national differentiation--Schmidt (2006).

[9] See Tocci 2014.

improving competitiveness, employment and fiscal consolidation); and 17 (eurozone) member-states to the 'Two Pack' (strengthening provisions of the European Semester and financing mechanisms such as the ESM and the EFSM).[10]

The EU, in short, cannot be made up of one 'hard core'. It does better to be understood as having many overlapping policy clusters, which through their overlap creates a *soft core* encompassing a large majority of member-states.[11] One such soft core is the Eurozone. And all member-states, in any case, are part of the largest policy community—the Single Market.

Conclusions

But how then can we conceive of a reset of European economic governance within and beyond the Eurozone? How does the EU get beyond 'governing by the rules' and 'ruling by the numbers?' The reinterpretations of the rules that have already led to a more politicized Council, a potentially more autonomous because doubly accountable Commission, a more empowered EP, and an ECB acting akin to an LOLR suggest the beginning of the way beyond rules-based governance. The recommendations for more policies promoting economic and social solidarity would add to this. But more coordinated EU economic governance is also necessary. With a more decentralized European Semester, the existing EU-wide system of member-state budget development and oversight adds bottom-up processes to top-down ones. But the top-down processes could and should also be reformed. They need not remain stuck with the numbers-targeting rules.

Instead of speaking and/or acting as if the rules and numbers are set in stone, they should be understood as general guidelines—which is what they actually have become in practice. The specific targets could therefore be revised upward or downward in yearly budgetary discussions of what the EU economy as a whole requires for growth and prosperity. Such revisions have actually already started informally, with the shift away from the insistence on austerity to growth and investment. But it could be formalized as a yearly exercise, in which the Commission could make recommendations based on ECB forecasts of the needed inflation rate in consultation with the decentralized National Semester Councils of the member-states, to be then deliberated in the Council—among Eurozone and non-Eurozone member-states alike—with the recommendations then considered in the EP in consultation with national parliaments. Such an EU-wide system of budgetary coordination would thus come closer to an EU-level economic governance in tune with the real needs of national and EU economies, responsive to changing realities and more open to the needs of European member-states' heterogeneous economies

The danger for the EU, in particular given the Eurozone crisis, is *differentiated disintegration*. The best way to avoid this is on-going *differentiated integration*, which means that the heterogeneity of EU member-states' economies and polities is recognized as at the basis of European integration. But this still leaves the question of how to construct a fully democratic European Union, that is, one that can be legitimized in terms of its output performance, input responsiveness, and throughput quality. My preliminary suggestion is that the EU needs to have one set of institutions, that all these institutions require greater legitimacy not only on their own but also in their interactions, and that deeper integration must at the same time allow for greater differentiation and decentralization.

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[10] Tocci 2014.
[11] Schmidt 2006.