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Integration without supranationalisation: studying the lead roles of the European Council and the Council in post-Lisbon EU politics

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ABSTRACT

This special issue follows up on a stream of recent contributions on what has been identified as a particular phase of post-Maastricht European integration: the ‘new intergovernmentalism’ and ‘the intergovernmental union’. This literature considers the European Union’s (EU) core intergovernmental forums for policy coordination, the European Council, the Eurogroup and the Foreign Affairs Council as central to EU decision-making. These bodies perform functions related to policy initiation and implementation which were traditionally associated with the European Commission. Intergovernmentalisation is primarily detectable in new areas of EU activity such as economic governance and foreign affairs which operate mainly outside the community method and in policy sectors which depict a mix of legislative and non-legislative decision-making mechanisms, such as justice and home affairs and energy. More integration is achieved without significant further supranationalisation. These developments affect how the Union’s main decision bodies operate and how interinstitutional relations are structured.

KEYWORDS

Integration;
intergovernmentalism;
supranationalism; European
Council; Council

Introduction

This special issue follows up on a stream of recent contributions on the emergence of what has been identified as a particular phase of post-Maastricht European integration and referred to as the ‘new intergovernmentalism’ (Bickerton, Hodson, and Puetter 2015a, 2015b; Puetter 2012, 2014) and ‘the intergovernmental union’ (Fabbrini 2013, 2015a). The main argument advocated by these contributions is that, in contemporary European Union (EU) politics, core intergovernmental forums of EU governance have become the main catalysts of further policy integration but not in the sense of the traditional community method which involves acts of competence transfers to supranational bodies. We understand the community method here as the mechanism through which collective decision-making at the EU-level takes the form of legislative decision-making. It notably involves a limited though important autonomy of supranational actors to propose legislation and, on the basis of the legislative mandate, to execute policies and to monitor their implementation at the member

state level including the capacity to sanction non-compliance without the need to rely on the collective or individual expression of consent on part of member state governments (cf. European Commission 2001 and Puetter 2014: 37). Instead intergovernmental forums and notably the European Council take lead roles at all stages of the policy process, including agenda-setting, decision-making and, finally, the adoption and implementation of EU policies at all relevant levels of governance. This pattern of policy-making is mainly identifiable in prominent new areas of EU activity, such as economic governance, foreign and security policy, crucial sub-fields of justice and home affairs and social and employment matters, which operate outside the framework of the traditional community method. In these new policy areas, many of them close to 'core state powers' (Genschel and Jachtenfuchs 2014), integration is achieved without greater supranationalisation, if understood as the empowerment of independent supranational actors.

The group of intergovernmental decision-making forums of the EU which steer the new intergovernmentalism is headed by the European Council, which is composed of the Heads of state and government of the member states (Heads, from here on). Moreover, a euro area sub-division of the European Council, the Euro Summit, from time to time takes decisions just for the euro area countries. For example, special meetings of the Heads of euro area members were convened throughout the most intensive period of euro crisis management between March 2010 and June 2012 to agree on the provision of financial assistance to euro area member states at the brink of bankruptcy. In the summer 2015, two Euro Summits were convened in quick succession to find a response to the deteriorating financial situation in Greece. Indeed, with the Lisbon Treaty the institutional differentiation between the European Council and the Council, as far as the latter is considered in its role as a legislative institution, has been formalised. Contrary to what was assumed in the past (cf. for example Naurin and Wallace 2008), the post-Lisbon European Council cannot primarily be considered as the highest formation of the Council. The European Council rather has developed into an executive institution in its own right (Fabbrini 2013; Kreppel 2011). Instead of focusing primarily on longer term overall policy guidance and EU development as such, the European Council has become a key actor in day-to-day decision-making. In the post-Lisbon EU, decisions in the new areas of EU activity depend on European Council input. This applies both to frequent ad hoc and crisis-related decision-making as well as to the operation of regular coordination routines such as the European Semester. This central policy-making role of the European Council (Puetter 2014, 2015) can be understood as a manifestation of an intergovernmental union which has developed alongside previously established domains of community method integration and which depicts particular institutional features and dynamics.

Accordingly, the operation of the Council as the EU's central legislative forum, in which member states are represented at the level of cabinet ministers, also has undergone substantial changes (Puetter 2014: 148–225). Next to their traditional roles as the EU's co-legislators, ministers gather in specialised Council formations and/or retreat for informal discussions, which are scheduled alongside formal Council meetings, to coordinate member state policies through direct agreement between themselves and to collectively perform key executive functions which otherwise could have been delegated to the European Commission. The Eurogroup of euro area finance ministers is one of the most prominent of these specialised forums and meets as an informal group of ministers outside the formal framework of the Council. Another prominent body is the Foreign Affairs Council which primarily deals with executive decision-making, a role which was further codified by the

Lisbon Treaty's explicit prohibition of legislative decision-making in the field of the Union's common foreign and security policy (Article 24.1, TEU). Both the Eurogroup and the Foreign Affairs Council have elected or appointed chairs like the European Council and do not rotate the presidency function as it is the case with traditional Council formations. The Economic and Financial Affairs (ECOFIN) Council uses the working format of so-called informal breakfasts, which can account for a substantial part of the time senior finance ministers devote to joint discussions in Brussels, to deal with economic policy coordination matters and institutional issues which are relevant to all EU member states. The EU thus has developed distinct institutional procedures which reflect the coexistence of two main governance mechanisms: the community method and the intergovernmental union. This dualism (that does not prevent a reciprocal influence) implies first and foremost a modification or redefinition of the functioning of the EU's overall institutional infrastructure and requires fresh analysis. Institutional roles and interinstitutional relations, in short EU politics, cannot be understood by primarily focusing on legislative decision-making under the community method, even though the Lisbon Treaty as no other treaty before seeks to unify and standardise legislative decision-making across all policy fields. However, the caveat here is that such harmonisation only applies to policy fields within which the EU enjoys legislative competences.

How is it possible to conceptualise the new institutional dynamics and what do new research perspectives on EU intergovernmental relations and institutional change offer? How does the ever more central role of the European Council impact on interinstitutional relations? How do other key actors, notably the European Commission and the European Parliament (EP), adapt to these changes? Does the direct intervention of the most senior political representatives of member state governments imply a politicisation of otherwise depoliticised and opaque EU policy-making? In how far does the new intergovernmentalism contribute to a further lack of transparency and accountability through the empowerment of core executive actors and secrecy practices which are in conflict with the formal rules for decision-making in the domain of classic EU legislative politics? How much evidence is there for the emergence of an intergovernmental union and a lead role of the European Council in areas which also feature important supranational characteristics and a central role of the European Commission and the EP, such as justice and home affairs and energy policy? This introductory article paves the way for answering these questions by elaborating on the conceptual considerations which provide the reference frame for the individual contributions to this special issue. These contributions address the above set of questions in greater detail, each of them emphasising one particular dimension.

Three analytical concepts

At an analytical level scholars of European integration need to reconsider their understandings of the respective roles of EU institutional actors and interinstitutional relations, at least with regard to specific domains of EU policy-making. An obvious development which constitutes a key challenge for scholars of European integration is the sharp increase in European Council decision-making activity. Compared to the time when the Maastricht Treaty was adopted the number of European Council meetings has doubled and in some years tripled. This article connects this growing activism of the European Council to the transformation of the EU agenda. The end of the Cold War and the massive enlargement of the EU created the context for the integration of further national policy-making competences beyond the

original domain of market integration. This notably included policy areas which are key to national sovereignty such as economic and monetary policy, as well as foreign, security and defence policy. Similarly, justice and home affairs matters and national social and employment policies were no longer considered to be off limit to European integration. Calls for closer integration were informed by the undeniable policy interdependencies the single market had created by the late 1980s in Western Europe beyond the immediate field of regulatory policies and the apparent inability of even larger EU member states to address the challenges of global economic competition and novel security threats against the background of increasingly limited financial resources.

Facing the need to further integrate these policy domains the leaders of rooted national governments could not accept the transfer of their traditional powers through the same mechanism which had helped organising the policy-making process in the single market. To assume the contrary was probably the main weakness of the federalist theory that inspired EU politicians and civil servants from the 1957 Rome Treaty to the 1986 Single European Act and epitomised by the Spinelli Report of 1984. It simply seemed implausible that the leaders of powerful states would subcontract traditional 'core state powers' to supranational institutions, notably the European Commission and the Court of Justice, devising for themselves the limited role of members of a legislative chamber on par with the EP, which has become an increasingly powerful actor. The 1992 Maastricht Treaty for the first time laid bare this new attitude to further European integration on the 'new' policies. While the Union was assigned key roles in virtually all key areas of public policy, the vast majority of the new fields of EU activity were to be governed differently from the community method.

Though emphasising different aspects in their analysis and suggesting partially diverging pathways for future EU institutional developments, the editors and their collaborators of this special issue base their arguments on three closely related analytical frameworks aimed to conceptualise the evolution of the EU's institutional architecture in the post-Maastricht era and in particular in the context of post-Lisbon euro crisis management. They are associated with the concepts of: deliberative intergovernmentalism (Puetter 2012, 2014), new intergovernmentalism (Bickerton, Hodson, and Puetter 2015a, 2015b) and intergovernmental union (Fabbri 2015a, 2013) (see Table 1). The contributions to this special issue use these three baseline arguments as conceptual reference points. Partially, the above concepts are understood as being interchangeable, i.e. conveying the same theoretical message, partially the authors make reference to the diverging claims or the difference in emphasis contained in these concepts. This is intentional, as the idea is to further the understanding of contemporary EU institutional change and to identify likely pathways for the future development of the Union.

The basis for this dialogue and a common conceptual framework for this special issue is the shared analytical point of departure of all three approaches. Contemporary European integration is understood as a highly dynamic process which drastically reinforces policy and political interdependencies between the member states and existing EU institutions. Yet, the deepening of integration does not coincide with a further substantial empowerment of traditional supranational actors such as the Commission, the EP and the Court, nor is collective policy-making primarily institutionalised through the means of the traditional community method. This underlying trajectory of contemporary European integration has been labelled as an 'integration paradox' (Puetter 2012) and has been attributed to the fundamental political decision to institutionalise new areas of EU activity such as economic

Table 1. Three related analytical frameworks

	Deliberative intergovernmentalism	New intergovernmentalism	Intergovernmental union
Shared core	Post-Maastricht phase of integration/new areas of EU activity/central role of the European Council/integration without supranationalisation		
Focus	Micro Governance practices/operation of the European Council, the Council and comitology/respective roles of key institutional actors	Meso roles of key institutional actors/broader theoretical claims on the trajectory of contemporary European integration/uncertain legitimacy of integration	Macro formation of a dual constitutional order/competition between the two orders/limits concerning effectiveness and legitimacy of the intergovernmental order
Perspective	Predominantly analytical	Analytical/flags normative implications	Analytical and normative, makes claims regarding further constitutional development
Theoretical roots	Institutionalism, new governance, deliberation, socialisation, policy learning	New governance, political economy, integration theory	Neo-institutionalism, comparative federalism and constitutionalism

governance within Economic and Monetary Union (EMU), foreign and security policy as well as justice and home affairs outside the community method at Maastricht. The EU's Maastricht Treaty is thus seen as the beginning of a specific period of European integration (Bickerton, Hodson, and Puetter 2015a, 2015b) or as a 'critical juncture' that made possible the definition and implementation of a different path for integrating Europe (Fabbrini 2015a). Ever since then the guiding principle of institutional reform has been that new areas of EU activity should be strictly controlled collectively by national leaders and ministers. The main institutional venues for collective decision-making are the EU's main intergovernmental bodies. Moreover, policy-making resources are primarily located at the national level and are to be coordinated rather than transferred to the EU level. Though the supporters of such a prerogative for national governments to directly intervene into EU decision-making at all stages of the policy process may not have had a full understanding of the institutional consequences of such an attitude towards collective decision-making, the repercussions for institutional development are clearly detectable.

The three related analytical frameworks which provide the conceptual underpinning of this special issue, thus, claim validity for the whole period of post-Maastricht integration. Contemporary events such as the euro crisis and the refugee crisis are not seen as having caused these institutional dynamics but are rather understood as contexts in which the pressure to identify collective EU policy responses and to agree on institutional reform increases dramatically. The institutional fixes which are agreed are seen to express the integration paradox, i.e. the desire to achieve closer integration without greater supranationalisation. Yet, this underlying attitude towards EU integration had already matured by the time the Maastricht Treaty was adopted. The coexistence of a continuous functionalist pressure for further integration, on the one hand, and the apparent absence of an increased legitimisation of ever more powerful supranational actors; on the other hand, are understood to have led to the persistence and reproduction of this paradoxical attitude towards European integration on part of national governments.

The 'new intergovernmentalism' stresses the central role played by the European Council as opposed to the Commission while 'deliberative intergovernmentalism' looks at the way how the operation of the EU's core intergovernmental bodies is affected. Both deliberative and new intergovernmentalism seek to explain the repercussions of the paradoxical

insistence of both the need for further integration and the rejection of major competences transfers to supranational actors on institutional design and the practice of intergovernmental relations within the EU. Most importantly, these two approaches stress the consensus dependency of EU decision-making. In the absence of the possibility or willingness to delegate the enforcement of common policy objectives to supranational bodies, member state governments need to be constantly brought in line in order to enable the EU to act. Deliberative intergovernmentalism expects the institutional design of the European Council and the relevant groups of ministers to be developed in a way that it responds to this quest for consensus. The European Council as perhaps no other EU forum for collective decision-making except of the Eurogroup and the Foreign Affairs Council is based on face-to-face agreements among its members. European Council conclusions are not legal acts and they only partially reflect the results of European Council debate. What makes the institution work is the individual commitment on part of its members to implement decisions within their own respective domain of political authority, be it within a member state context or an EU institution. This logic triggers quests for secretive policy deliberation. There are no official minutes of European Council meetings and the same applies to the Eurogroup. Paradoxically, what is considered essential to forge collective agreement in these high-level intergovernmental forums – the ability to speak frankly and consider policy options beyond originally held government preferences – may contradict otherwise accepted standards for accountability (see the article by Hillebrandt and Novak (2016)). This is all the more important as the central role of forums such as the European Council and the Eurogroup reinforce the dominance of executive actors in EU politics, which in turn compromises the ability of parliamentary actors and the general public to be informed and to scrutinise the holders of political authority (Curtin 2014).

The new intergovernmentalism informs a broader view on post-Maastricht EU politics which it sees in constant doubt about the legitimacy of EU-level decision-making. The direct intervention of senior national politicians into EU decision-making is portrayed to restore legitimacy of EU action. Yet, the notion of the European Council as a venue which serves the most senior representatives of member state governments to politicise controversial issues in EU politics is contradictory too. The European Council has a track record in strategically politicising and depoliticising controversies about prominent EU policies. Though the practice of multiple national press briefings following European Council meetings suggests that the politicisation on part of national leaders is the prime driver of European Council politics, the Heads have been repeatedly engaged in forging consensus on downplaying the controversial and political nature of their decision-making. In fact, the European Council is the prime example for how much the boundaries between high and low politics have become blurred in contemporary EU politics and how often such efforts have been linked to the fact that political leaders are uncertain of their own legitimacy in the domestic arena (Bickerton, Hodson, and Puetter 2015a, 2015b; Puetter 2015).

The concept of an 'intergovernmental union' (Fabbrini 2013, 2015a) too hints at a specific decision-making regime for promoting integration through direct political agreement between representatives of member state governments rather than legislative decisions. As the above analytical frameworks, it recognises the central decision-making role played by the intergovernmental institutions. It interprets such centrality as an institutionalisation of a dual constitution (Fabbrini 2013, 2015a). Decision-making procedures are supranational for the larger part of the regulatory policies of the single market and intergovernmental in

the new areas of EU activity, whereas these policy domains are close to the old core state powers. While the first constitution is based on the principle of sharing powers between member states and EU institutions, the second constitution is instead based on the principle of pooling national powers within the intergovernmental institutions operating in Brussels. This dual constitution has its roots in important interstate compromises, in particular between France and Germany, that were reached during the Intergovernmental Conferences that prepared the 1992 Maastricht Treaty (Fabbrini 2015a). While the supranational constitution continues to preserve and to promote the idea of integration through law, the intergovernmental constitution instead promotes integration through consensual policy coordination between national leaders and ministers within specialised intergovernmental decision-making bodies. However, in the context of an existential crisis, as it was the case with the looming financial default of Greece in July 2015, for example, consensus makes way for more hierarchical patterns of decision-making. In that context and facing a dramatic cleavage between creditor and debtor member states, consensus was substituted by an unprecedented interstate conflict. To the point, indeed, that the possibility of a 'Grexit' (an exit of Greece from EMU) was raised by the finance minister of one of the creditor states, Germany. The consensual logic of the European Council and Euro Summit is thus exposed to suspension when the reciprocal trust between its members (and the Heads in particular) fades away.

For all the analytical frameworks, the emergence of specific venues and routines for intergovernmental decision-making is not seen as a transitory or marginal phenomenon in the context of contemporary European integration. Rather it is understood as a deeply institutionalised process which informs the EU's overall constitutional order. Intergovernmental union can be understood as the system of procedures and practices of collective decision-making which was inaugurated in Maastricht, gradually fine-tuned and finally endorsed and developed by the Lisbon Treaty. The election of a permanent president of the European Council, introduced by the 2009 Lisbon Treaty, epitomises more than other innovations the routinisation of the activities of the Heads' intergovernmental forum. It is important to stress that decision-making powers conferred to the European Council and the Council are enshrined in the EU Treaties and enhanced through specific decisions by the European Council, which partially locate quasi-constitutional powers outside the Treaty framework, the so-called Fiscal Compact is a case in point. It is true that policy coordination within the European Council is not unknown to the pre-Maastricht era, as critics of the new intergovernmentalism have stressed (Schimmelfennig 2015: 726). However, during that period the European Council mainly played the role of the EU's key strategic actor which rallies support for major steps and policy advancements in EU integration. This role has dramatically changed ever since Maastricht and in particular in the post-Lisbon era. Not only because the European Council has become a formal EU institution operating on a regular basis as a collective executive, but also because it has assumed functions of agenda-setting, decision-making and supervision that are proper of an executive.

Moreover, the three related analytical frameworks for the study of contemporary EU intergovernmentalist dynamics, which are outlined in this article, are different from older versions of intergovernmentalist theory, notably liberal intergovernmentalism (Moravcsik 1998). New intergovernmentalism, deliberative intergovernmentalism and the intergovernmental union aim to conceptualise the logic of decision-making practices and institutionalisation of intergovernmental policy-coordination within the EU's overall institutional architecture. Liberal

intergovernmentalism instead focuses on explaining the limited delegation of policy-making competences primarily to supranational actors under the community method based on a theory of domestic preference formation. Little to no attention is paid to how the EU's institutional architecture has evolved in the post-Maastricht period (cf. for the further discussion of this aspect the articles by Fabbrini and Puetter 2016).

Although the two authors of this article place slightly different emphasis on certain aspects of the institutionalisation of what they refer to as the intergovernmental union or the new intergovernmentalism, they nevertheless both agree that this new institutional configuration of power operates according to a different logic than the one operating in the supranational constitution of the single market. Although consensus is a general feature of EU politics, in the intergovernmental union it has been understood as unanimity, whereas in the supranational constitution of the ordinary legislative procedure it has not prevented the recourse to qualified majority voting in the Council and for that matter to absolute majority in the EP. It is rather on the interpretation of the nature of the deliberation process in the European Council and the Council that the two authors of this article might differ depending on what policy issues are at stake. While one of them is stressing the persistence and stickiness of consensual collegiality as a key feature of the intergovernmental decision-making process (see the article by Puetter 2016), the other highlights the inevitable formation of hierarchical relations within the policy coordination process under conditions of crisis (see the article by Fabbrini 2016). Yet, both authors agree that the current intergovernmental set-up of the EU relies on consensus. In other words, if consensus is threatened or impossible constitutional or redistributive adjustments are either inevitable in order to mitigate tensions and asymmetries between the Union's member states or, if these options are not available, there is a risk of disintegration. The two authors also agree that further empirical research is needed on when and how consensus-oriented decision-making practices within the EU's most senior forums for intergovernmental policy coordination are undermined or even abandoned. Moreover, consensus reached in different decision-making situations may be of a different quality. It may be based on routinised and long-term policy dialogue which involves the consideration of diverging policy options or may be reached under time pressure and may constitute an ad hoc agreement. The contributions to this special issue refer to different decision-making scenarios. This is intentional and should stimulate debate and encourage further research.

The new role of the European Council in EU politics

Ever since the entering into force of the Maastricht Treaty the European Council has been empowered further and further. In the post-Lisbon EU – and reinforced by the euro crisis – the European Council has become the EU's centre of political gravity (Puetter 2012: 161). The theoretical perspectives outlined in the previous section offer important insights into why this empowerment has occurred, why it is likely to remain for the foreseeable future and which consequences it has had with regard to the role of supranational institutions and actors. Because the European Council is still an under-investigated institution we indicate crucial points to consider for further research.

First, the new areas of EU activity are characterised by the absence of strong legislative competences. In the field of CFSP and CSDP decision-making the adoption of legislative acts is even explicitly forbidden by the Lisbon Treaty (Fabbrini 2014). Where these competences

do exist they are often limited in procedural terms and/or remain highly contested politically. The most prominent example is the rule-based framework for budgetary policy coordination within EMU economic governance. Despite the existence of budget rules and the watchdog role of the Commission, the enforcement of these rules depends on the political discretion of key forums for intergovernmental decision-making – notably the Eurogroup and the ECOFIN Council. As the experiences with the Stability and Growth Pact and later with the euro crisis have shown (cf. Hodson 2011), ultimately it is the European Council which is the only institution which can resolve political conflict about these rules and their implementation. As these decisions cut deep into domestic politics and crucially affect the ability of national governments to enjoy leeway in their economic policy orientation, procedural requirements and Commission authority alone are inadequate to deal with the related tensions. Unlike with most policies of the single market, non-compliance is not only a temporary or hypothetical threat but a key feature of the operation of the new areas of EU activity. Whereas, the field of single market governance too is not short of examples of non-compliance, the relevant procedures for their correction and Commission authority and ultimately the role of the Court in resolving disputes between member state governments and the supranational executive are generally respected. This is not to deny cases of persistent non-compliance or extreme political contestation, yet member states have pulled back from ultimately challenging the procedural prerogatives of the supranational institutions – a move which could destabilise the EU's entire legal system and distribution of competences. In the new areas of EU activity this distinction between disputes about individual policy issues and systemic questions does not exist. Conflict over policy can quite easily spoil the viability of broader coordination arrangements and entire policy fields and, thus, requires frequent intervention by the most senior national decision-makers: the heads of state and government in the European Council.

This leads to a second and related point to consider, the empowerment of the European Council is not only the result of the weakness of supranational actors and notably the Commission within the new areas of EU activity, it is also related to the high political salience of key policy issues. This implies that even powerful ministers of finance or the interior, which in most EU member states are central actors within member state governments, are unable to resolve the most controversial issues. Often the fate of incumbent governments is at stake when decisions are taken and, thus, the intervention of the heads of state and government is required. In particular within the euro area the political implications of EU policies on domestic budgetary policy have been acknowledged by the larger population, not only by the national political elites. Lacking a constitutional regulation of the unavoidable policy interdependencies within the euro area, the European Council, or in certain instances the Euro Summit, has emerged as the only institution that has the potential to control the politicisation of crucial issues. This role has not always been successful but it has become a key element of euro area politics (see the article by Glencross 2016).

Thirdly, the centrality of the European Council in EU decision-making is not a temporary or transitory phenomenon though its frequent efforts to manage often existential crisis situations may suggest so. Certainly, one should acknowledge that the European Council, constituted as an informal institution in 1974, has always played the crucial role of solving the most delicate interstate disputes. However, ever since the Maastricht Treaty and especially with the Lisbon Treaty the role of the European Council to deal with crisis situations has been more and more formalised (Van Middelaar 2013). It is the decentralised nature of

decision-making in the new areas of EU activity that makes so-called crisis management efforts a regular phenomenon of EU politics and routinely triggers European Council intervention. It is difficult to imagine a monetary union which does not face problems of debt sustainability, transfer payments and banking crisis of some kind. Yet, the euro area lacks a central authority to deal with these policy challenges unilaterally. This explains the enormous pressure on member state governments to reach collective agreements as they jointly exercise political authority within the euro area. Literally, every provision of EU financial assistance to countries in budgetary difficulties requires European Council intervention.¹ Moreover, the European Council has a Treaty mandate in all new areas of EU activity to regularly monitor and supervise the work of the Council and the Commission.

Fourthly, the central role of the European Council changes the interinstitutional dynamics within the EU quite fundamentally. Rather than exclusively focusing on medium and long-term guidance for EU development and constitutional issues, the European Council directly intervenes in day-to-day decision-making. It 'tasks' the Council and the Commission. This also concerns the initiation of new policies – a procedural prerogative of the Commission under the traditional community method. It is more and more often the European Council which devises new policy initiatives or solves dangerous policy stalemates (as during the Greek crisis after the 5 July 2015 referendum). The Heads do not hesitate to tell the Commission and the Council almost verbatim what policy changes they prefer. In 2012 it were the Heads who gave the four presidents of the European Council, the Eurogroup, the Commission and the ECB the mandate to prepare specific legislative initiatives for dealing with the euro crisis, which were later introduced by the Commission and voted through by the Council. Subsequent legislative reforms, the so-called Six-Pack and Two-Pack as well as the legislation on banking union were thus directly initiated or commissioned by the European Council. In the field of justice and home affairs, such a supervisory role of the European Council in relation to the legislative process is explicitly foreseen by the Lisbon Treaty (Article 68, TFEU).

The European Council and the EU's supranational actors

The role of the Commission has been anything but diminished by the lead role of the European Council but it certainly has become modified and/or is developing in different ways if one considers its role associated with the classic community method. First and foremost, the Commission enjoys its traditional role within fields of single market governance. Indeed, the consolidation of the single market and its expansion in the context of EU enlargement implies a consolidation if not a continuing empowerment of the Commission both as a policy and administrative body. The alignment between the Commission and the ever more powerful EP reinforces this trend. Yet, this traditional power base of the Commission needs to be understood against the background of a changing political environment. The powers, which the Commission enjoys, not necessarily work in its favour but rather inform the reluctance of member state governments to assign to it similar roles in the new areas of EU activity. Where it can be observed that member states do empower the Commission this is likely to be related to areas in which traditional single market competences overlap with policy priorities which have been developed within the new areas of EU activity. For example, this is the case in the field of energy policy in which close policy interdependencies exist between regulatory aspects related to market access and networks, on the one hand, and

questions of energy security and supply, on the other hand (see the article by Thaler 2016). Moreover, in the field of justice and home affairs legislative decision-making has become an important element of the overall policy portfolio, not least because of the very nature of the judicial aspects of this policy field. Thus, the Commission has gained in prominence as it plays an important role in the legislative process. However, as in the case of energy policy the Commission's role is different from the one enjoyed under the traditional community method (see the article by Maricut 2016). Both executive and legislative activity on part of the Commission occurs in close coordination with the European Council and the Council. In particular, there is little room for the Commission to play a political role in policy-making which openly challenges the consensus position within the European Council and the Council.

Another example for an increased role of the Commission is the 2011 'Six Pack' and the 2013 'Two Pack' which were adopted in response to the euro crisis. As in the case of the European Semester operating since 2011 the Commission has been given far reaching ex ante monitoring and reprimand powers regarding the budgetary processes within the member states, in particular of the euro area. Moreover, the Commission's role in the Excessive Deficit Procedure has been strengthened as now Commission proposals can be neutralised only through a reverse qualified majority. Yet, these powers are difficult to use for the Commission unless it commands the support of the Eurogroup and/or the European Council. Not only the experience of consensual decision-making within the Eurogroup speaks against the effectiveness of reverse qualified majority voting as an empowering device for the Commission, but the Commission continues to enjoy considerably less leeway for autonomous action than it had traditionally within the fields of single market governance (see the article by Bressanelli and Chelotti 2016).

It is thus not surprising that the Commission itself is careful not to oppose the new inter-governmentalism but rather seeks to find an active role within the changed environment (see the articles by Maricut 2016, Amadio Viceré 2016, Thaler 2016 and Puetter 2016). Rather than being 'hardwired' for further supranationalisation the Commission has been mainly complicit in European Council and Council leadership in the relevant policy domains (Bickerton, Hodson, and Puetter 2015a, 2015b). The Commission has tended to align itself with the European Council, preserving its autonomy in implementing the latter's instructions. Moreover, the Commission proactively seeks support for own policy proposals directly from the European Council as it is aware that politically controversial dossiers may not be passed through by the Council without prior authorisation by the Heads. At the end of the day, the *Spitzenkandidat* strategy adopted by the main European political parties during the 2014 EP elections has not met the expectations of its advocates.

The practice that the heads of state and governments themselves routinely take charge of ultimate decision-making within the new areas of EU activity has been also portrayed (by the Heads) as an act of controlling an otherwise uncontrollable administrative machinery. Press conferences after European Council meetings regularly see national leaders engaged in separate press briefings in which they portray themselves as defenders of the national interest who make sure that policy-making in Brussels does not get out of control. Seen from this perspective the European Council appears to be a key forum that contributes to the reinforcement of EU democratic legitimacy. EU officials in Brussels too acknowledge this when they speak of the governmental leaders of the European Council as those who carry real political legitimacy – as opposed to the representatives of EU institutions.

Yet, the question of legitimacy is more complex. Not only is it that national governments cannot be certain to enjoy popular support for their EU policies (Bickerton, Hodson, and Puetter 2015a: 714–15), the intergovernmental union has not found a place for the EP. First, the EP's co-decision powers do not come to bear to the full extent in the new areas of EU activity as legislative decision-making is limited. Wherever legislative decision-making occurs, such as in the euro crisis, the legislative agenda is largely driven by the overall coordination agenda, thus leaving little room for the EP to influence policy proposals (see the article by Bressanelli and Chelotti 2016). Second, the euro area is a key component of the intergovernmental union, yet the EP represents the citizens of the entire Union rather than those of the euro area. This is a constitutional problem that is not easy to solve within the framework of the Treaty (Fabbrini 2015b). The EP as a supranational parliament of the Union's citizens is inseparable by default. Third, the marginalisation of the EP in the intergovernmental union is informed by the idea that national leaders should account to national parliaments, not the EP. In the intergovernmental union, it is assumed that the legitimacy of national governments can be pooled in the EU's intergovernmental institutions. From a democratic theory's point of view (Piattoni 2015), however, legitimacy cannot be transferred from one level to another. Each decision-making level should have a source of legitimacy coming from the same level. For example, decisions taken on behalf of the euro area cannot be legitimised by the singular legitimacy of each of euro area member state. Here is probably the most evident Achilles's heel of the intergovernmental union, that is the impossibility of self-legitimation. Moreover, if national parliaments impose on their governments extremely detailed stances to be respected in intergovernmental negotiation, then the room of manoeuvring at the supranational level of national governments would be inevitably curtailed. On the contrary, if national parliaments were to leave ample room of manoeuvring to their governments, then they would reduce the national government's accountability.

The contributions to this special issue

The contributions to this special issue respond to the above-outlined questions and issues. The authors do not escape the challenge to study the new intergovernmentalism and the intergovernmental union in relation to difficult cases. This implies that several of them cover policy areas which offer a mix of community method decision-making and intergovernmental policy coordination. The role of supranational actors, notably of the Commission, is central to many of the contributions. The article by Glencross considers the European Council's role in the strategic (de-) politicisation of key issues in contemporary European integration and thus engages with a central element of the politics of the intergovernmental union. The article by Bressanelli and Chelotti takes up the question of how far the new intergovernmentalism has led to a reconfiguration of interinstitutional relations with a view to the EP and its role in the euro crisis. The article by Novak and Hillebrandt investigates the prominence of secrecy practices which are associated with the new intergovernmentalism and which are seen as a precondition for more efficient policy dialogue. The article by Maricut studies the role of the European Council and the Council in justice and home affairs policy as a domain which combines elements of the intergovernmental union with the community method. The article by Amadio Viceré looks at the roles of the European Council president and the High Representative in the context of the EU's foreign policy towards Kosovo. The article by Thaler demonstrates how the European Council takes a lead role in the field of EU

energy policy which, as justice and home affairs, combines elements of new intergovernmentalism and the community method. Each article discusses different aspects of inter-institutional relations, although preminent is the relation between the Commission and the European Council. The article by Fabbrini revisits the performance of the intergovernmental union in a crisis condition and the article by Puetter revisits the new intergovernmentalism as theoretical framework for the study of contemporary integration with a view to the role of consensual politics. Each article takes a different position on whether consensus politics are likely to persist or will be replaced by domination. Finally, the article by Dehousse critically engages with the new intergovernmentalism and the intergovernmental union more broadly by applying an alternative supranational perspective to the analysis of euro crisis institutional reforms.

Conclusion

The main argument behind this special issue is that post-Maastricht and even more so post-Lisbon EU politics are driven by the emergence of an intergovernmental logic or by the consolidation of an intergovernmental union. This institutional dynamic has developed within and alongside the previously existing EU institutional architecture which had evolved predominantly in relation to the project of single market governance. This has also raised the questions of how to investigate the boundaries between the two different spheres of EU politics and policy-making and of how to understand the respective roles of old and new institutional actors – notably the European Council. Such a sharp analytical distinction between traditional community method governance and the new intergovernmentalism may be considered problematic on several grounds. Yet, the editors of this special issue and their collaborators insist that this stark distinction is a necessary conceptual move to understand the current pattern and pathway of EU integration: the push for further integration without significantly enhanced supranationalisation. Rather than entering endless debates about whether it is appropriate to engage in periodisation and the delineation of different constitutional spheres of European integration, the intention behind this special issue is to foster empirical and analytical debate on these issues. This means to investigate those policy areas which have been designed to function largely autonomous of the core domains of traditional community method decision-making, but also those policy fields which combine features of both institutional logics, intergovernmental and supranational. Making reference to the three theoretical perspectives which inform the conceptual framework of this special issue the individual contributions to this special issue test the expectations regarding the lead roles of the European Council and the Council in contemporary EU politics and discuss implications for the future path of independence and scholarly attempts at explaining further EU integration.

Note

1. The only exception was the decision to provide ESM financial assistance to Cyprus. Technically, the Eurogroup is empowered to agree on the provision of ESM assistance, de facto it has only done so once without direct European Council authorisation. The lengthy negotiations with the Greek government under Alexis Tsipras in 2015 further attest to this claim. Though initially, the majority of EU member states refused to involve the European Council and, respectively, the Euro Summit to conclude negotiations with Athens, the two forums intervened eventually in July 2015.

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