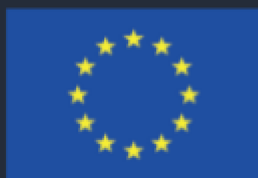
Working Paper

Differentiated Governance in European Economic and Monetary Union

From Maastricht to Next Generation EU

Stefania Baroncelli



With the support of the Erasmus+ Programme of the European Union

Electronic copy available at: https://ssrn.com/abstract=4107953

REBUILD Centre – Working Paper 2
May 2022

The European Commission's support for the production of this publication does not constitute an endorsement of the contents, which reflect the views only of the authors, and the Commission cannot be held responsible for any use which may be made of the information contained therein

Electronic copy available at: https://ssrn.com/abstract=4107953

Differentiated Governance in European Economic and Monetary Union: From Maastricht to Next Generation EU

Stefania Baroncelli[*]

Abstract: The article argues that differentiated governance within the Economic and Monetary Union has been reduced in recent times, thanks to the adoption of positive intervention programmes such as the Next Generation EU and SURE which apply to all the MS. He also explains that differentiated governance is not the preferable solution because it emphasises the differences between MS, whereas they need to be put on an equal footing if we want to reform EMU and the EU. The article looks at the three phases in which different types of governance were legally established as a reaction to the crises that occurred over time, highlighting the various legal solutions and the consequences for the institutional fragmentation among the MS. Furthermore, it illustrates the pros and cons of some institutional solutions bearing in mind both the need for a more efficient and reactive union in the face of difficulties and a clearer allocation of responsibilities while ensuring greater legitimacy. Although the assessment of the new policy instruments is positive in terms of reducing fragmentation among states, a reform to make EU governance more responsive and efficient and based on homogeneous constitutional principles is necessary.

Keywords: Differentiation, European Union Governance, Economic and Monetary Union, multi-speed Europe, Next Generation EU, Recovery and Resilience Fund.

[*] Full Professor of Law, Free University of Bozen/Bolzano, email: Stefania.baroncelli@unibz.it.

This article is forthcoming in a Special Section of *European Papers* (Baroncelli et al., eds.).

Electronic copy available at: https://ssrn.com/abstract=4107953

I. Introduction

This article argues that differentiation in governance within the Economic and Monetary Union (EMU) has been reduced in recent times, thanks to the adoption of positive intervention programmes such as the Next Generation EU (NGEU) and SURE, intended to revive the Member States (MS)' economies in the direction of a greener, more digital, more resilient and more inclusive society. It also explains that differentiated governance is not the preferable solution in view of EMU and EU reform, because it emphasises the differences between MS and their weaknesses, whereas they need to be on an equal footing in order to achieve a shared and resilient agreement. The article focuses on the three phases in which different types of governance were legally established as a reaction to the crises that occurred over time, highlighting the various legal solutions and the consequences for the institutional fragmentation among the MS.

This article is structured as follows. Section II outlines the rationale for a multi-speed Europe, based on the rules of the Treaties that distinguish states into two categories - with or without a derogation - and legitimise the opt-out of the UK and Denmark. The paragraph emphasises that differentiation led to the need for differentiated ECB bodies to represent the euro area countries and the EU as a whole. Section III analyses how differentiation in Member State governance has grown as a consequence of the financial and economic crisis. The types of governance are then distinguished according to whether they apply to (a) Eurozone states only, (b) Eurozone states but also EU MS (so called "hybrid models"), and (c) intergovernmental treaties that apply to all EU states. Section IV follows, dedicated to the Recovery Plan, where it is highlighted how EU programmes have regained a value for all MS, thanks to a logic of positive intervention built on the legal basis of cohesion funds. Section V takes up the themes of the previous three sections and links them, highlighting the consequences of differentiation for the resilience of the European governance and for the legitimacy of the EU. Section VI illustrates the pros and cons of some institutional solutions bearing in mind both the need for a more efficient and reactive union in the face of difficulties and a clearer allocation of responsibilities while ensuring greater legitimacy. Finally, in the conclusions, the article evaluates positively the approach of the new European intervention instruments such as SURE and NGEU for their ability to reduce the gap between the vanguard and the laggard countries. At the same time, it considers a reform of the Treaties and greater flexibility to be unavoidable, starting with an evaluation of the shared principles of constitutional homogeneity.

II. The path of differentiation in the Maastricht Treaty

During the negotiations leading to the Treaty of Maastricht, some rules were established that would influence the setting up of the "common currency". The currency would not be common to all the

Electronic copy available at: https://ssrn.com/abstract=4107953

states of the EU, but only to those that would submit to its specific discipline. EMU in fact adhered to a strict anti-inflationary criteria to guarantee lasting stability of the value of the currency and thus a "balanced economic growth and price stability" (art. 3 TEU). The objective of currency stability meant setting limits on the debt of each member state in the percentages, compared to GDP, of 3% for annual deficit and 60% for total debt. This meant that only the States who fulfilled the convergence criteria would be allowed to participate. Furthermore, the MS agreed to allow for opt-outs for those States that would not wish to participate to the EMU, even if entitled. The decision arose from the United Kingdom's unwillingness to give up its historic currency, the pound. The UK was granted an "opting-out" clause. First granted to the UK, it was also extended to Denmark. In the absence of a formal derogation, it was also de facto granted to Sweden, which joined the EU in 1995 after the Treaty of Maastricht was signed.

Denmark is, after Brexit, the only state with a legal opt-out from EMU. This differentiation is contained in the Edinburgh Agreement concluded following the two constitutional referendums held in Denmark for accession to the Maastricht Treaty (1992) and for participation in the single currency (2000).[1] Given the opt-out, Denmark has to rely on the willingness of EU Member States to conclude intergovernmental agreements. This was the case for the 1997 Stability and Growth Pact, the Fiscal Compact and the Banking Union. On this basis, a parallel system has been established that is very similar in content to the EU regulatory packages.

The Treaty of Maastricht ended up covering two distinct categories of member countries, 1) those admitted to the euro, referred to as "countries without a derogation" (euro area MS), and 2) those continuing to use their own currency, referred to as "countries with a derogation". The euro area countries were subject to stricter coordination rules and sanctions. The derogation was, however, intended to be provisional, with a view to all EU countries joining the euro area in the future. In fact, it was foreseen that every two years or at the request of the Member State with a derogation, an assessment of the fulfilment of the criteria set out in the Maastricht Treaty for access to EMU would be carried out.[2]

The presence of opt-outs and of States with a derogation has some implications for the institutional set-up of the ECB. The Maastricht Treaty assigns the management of monetary policy to the European System of Central Banks (ESCB), which includes the ECB and National Central Banks

---

[1] According to the Danish Constitution, whenever a portion of sovereignty is transferred to a supranational institution, a 5/6 majority in parliament is required. Failing that (as is often the case), the Constitution requires a referendum. The opt-out from EMU was necessary to obtain popular consent for the ratification of the Maastricht Treaty. S Klinge, 'EMU Governance and Constitutional Differentiation' Bridge conference "Beyond the Euro-crisis: Covid-19 and the Future of Europe" (1-2- October 2020, Bozen/Bolzano).

[2] The Commission and the ECB report to the Council in accordance with the procedure laid down in art. 140 TFEU. For the provisional nature of the derogation see also Art. 141, para. 1, TFEU, according to which "If and as long as there are Member States with a derogation".

Electronic copy available at: https://ssrn.com/abstract=4107953

(NCBs) of the 27 EU MS.[3] However, until all EU countries have adopted the euro, the ESCB remains a non-operational concept.[4] That is why since 1998, the term Eurosystem has been used to refer to the acts adopted by the ECB and the NCBs that have adopted the euro. Only the ECB and the NCBs of the countries whose currency is the euro are part of the Eurosystem (Art. 282 TFEU). The Eurosystem conducts the single monetary policy of the Union. As of 1st January 2022, the euro area comprises 19 countries.[5] Eight MS have not yet joined EMU. This is the case for Bulgaria, Croatia, Czech Republic, Denmark, Hungary, Poland, Romania, and Sweden.

The NCBs of the States outside of the euro area do not participate in full within the ECB. They do not nominate the President and vice-President of the ECB and the other members of the Executive Council.[6] In addition, their central banks' governors are not members of the Governing Council of the ECB. However, considering that some functions of the ECB pertain also to non-euro area States, a third organ was created by the Treaty of Maastricht, the General Council, which includes the President and vice-President of the Executive Council and the governors of all the NCBs of the MS of the EU.[7]

A parallel development to that which took place in the monetary area also occurred in economic governance. Here, too, there was a need for a more restricted body than ECOFIN in which only the finance ministers of the MS that had adopted the euro would participate. This is the reason why the Eurogroup was created in 1997 as an informal body to allow Eurozone finance ministers to meet without those of the non-Eurozone states. Following the entry into circulation of the euro, the Eurogroup strengthened its role. Firstly, it decided to nominate a permanent president for a two-year period. Secondly, it established a strong link with the Euro Summit, the informal body created in 2008 that brings together the heads of state and government of the Eurozone states. Finally, the role of the Eurogroup was formally recognized in the Lisbon Treaty by Protocol 14. This Protocol establishes that the Eurogroup meets once a month, before the meetings of the ECOFIN. The Protocol increased the term of office of the President of the Eurogroup to two and a half years. It also contains rules on the composition of the body: in addition to the finance ministers of the Eurozone countries, the European Commission and the ECB also take part in the meetings.

[3] Both art. 282 TFEU and art. 1 of the Statute of the ESCB and of the ECB (the "Statute") refer to the ESCB, which includes the ECB and all NCBs of EU countries.
[4] J-V Louis, 'Article I-30, La Banque centrale européenne', in L Burgorgue-Larsen, A Levade and F Picod (eds), *Traité établissant une Constitution pour l'Europe* (Bruylant 2007) 405.
[5] Euro area members: Austria, Belgium, Cyprus, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Slovakia, Slovenia and Spain.
[6] Art. 139 (2)(h) TFEU.
[7] Art. 141 TFEU and art. 44 of the Statute.

Electronic copy available at: https://ssrn.com/abstract=4107953

From the point of view of the objectives, however, the EMU designed in Maastricht was a well-integrated system within the EU institutional system and the EU Treaties, as can be seen in Figure 1.

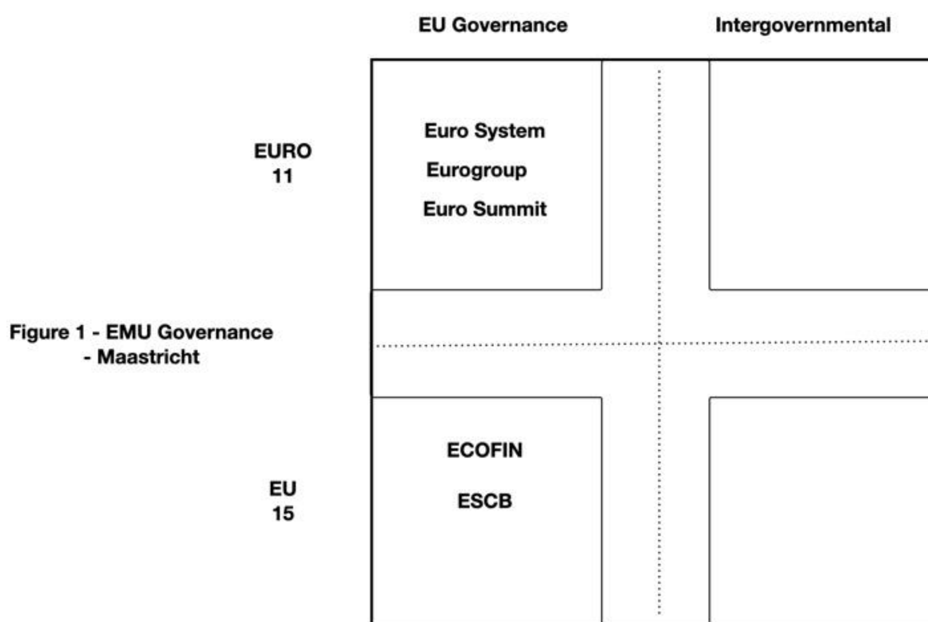


Figure 1 - EMU Governance - Maastricht

It can be concluded that the differentiation introduced by the new single currency manifested itself above all with regard to monetary policy, with the ECB establishing itself at the centre of the Eurosystem. However, the status of State with a derogation was considered as provisional, as the principle was "one EMU" as a goal. It was expected that all the EU Member States would have joined the monetary union, which was deemed irreversible. Not only were there no specific provisions in the Treaty on the possibility of states withdrawing from monetary union, but the choice to introduce a new currency implied a definitive choice, which could only be terminated in the case (not provided for in the Maastricht Treaty) of leaving the European Union. Furthermore, the degree of differentiation allowed was limited as is visible from the evidence that that the body with the legal competence to manage economic policy coordination was the ECOFIN and not the Eurogroup, which has only an informal role.

III. The post Maastricht path: the widening of differentiation

At the beginning of the 2000s, it became clear that the MS could not enforce the Stability and Growth Pact, and the EU did not have the sufficient legal basis and political instruments to impose it on the States. This situation worsened in the wake of the economic and financial crisis and the sovereign debt crisis that followed, as the euro area countries were most exposed to the risk of

Electronic copy available at: https://ssrn.com/abstract=4107953

contagion and bankruptcy due to speculation on the markets, which hit the most indebted euro area countries, betting on their failure. A *de facto* differentiation began to emerge clearly, dividing the euro area MS into economically weak states (or debtor states) and economically strong states (creditor states), based on the state of their public debt. The debtor states -- mainly in southern Europe, but also including Ireland -- were the target of speculative attacks, and the creditor states, which included Germany and the Netherlands, feared that this situation would lead to a transfer of funds between states, and thus ultimately weaken the control of their national budgets, undermining the principle of parliamentary control.

When, at the end of 2009 and the beginning of 2010, the Greek crisis emerged with the possibility of a full-blown default, the EU found itself without the means to react. The Maastricht model was designed for a system without major shocks. In fact, there is no article in the Treaties that would give the EU the power to intervene in the event of crisis affecting certain EMU Member States in particular. The only clause that could be used, Article 122 TFEU, which provides for EU financial assistance to states that are in difficulty or are seriously threatened by serious events such as natural disasters or exceptional circumstances, if certain conditions are met, was not used for fear that the principle of no bail-out would be questioned by southern European countries. The crisis, in fact, was spreading seriously, affecting above all the southern and peripheral countries with budget deficits, in particular Spain, Portugal, Ireland, Cyprus and Italy. In order to reduce the fragmentation among member states, the ECB had to intervene by adopting a number of unconventional monetary programmes. However, these interventions were opposed by the German Constitutional Court, which challenged these programmes before the EU Court of Justice (*Gauweiler* and *Weiss* judgments).[8] The division between North and South (or peripheral countries) within the euro area was now a reality.

Given the difficulty of revising the Treaties, the EU first enacted a series of secondary legislation, and then entered into a number of agreements outside the EU system, to provide urgent financial assistance to MS. Some of these targeted only euro area MS while others applied to a variable number of EU MS, fostering institutional and geographical fragmentation among EU MS. These include the “Treaty on Stability, Coordination and Governance in the Economic and Monetary Union” (TSCG), better known as the “Fiscal Compact”, the “European Stability Mechanism” (ESM), the “Two-Pack”, and the “Six-Pack”. The sub-sections below distinguish such measures on

[8] The German Constitutional Court considered that the purchase of MS’ securities by the ECB affected the economic policies of the Eurozone States, triggering a mutualisation of the MS' debts, which is prohibited by the treaties. See S Baroncelli, *Monetary Policy and Judicial Review*, in F Fabbrini and M Ventoruzzo (eds.), *Research Handbook on EU Economic Law* (Edward Elgar Publishing 2019), 199-231.

Electronic copy available at: https://ssrn.com/abstract=4107953

the basis of the type of differentiation allowed. The expansion of differentiation measures is illustrated by figure 2.

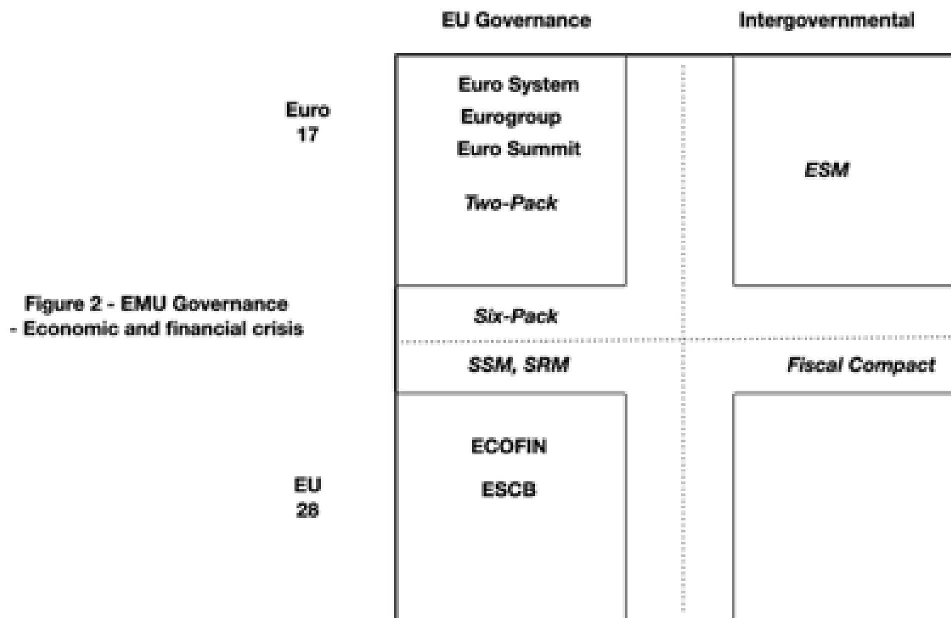


Figure 2 - EMU Governance - Economic and financial crisis

iii.1. Euro area governance

In a first phase, from 2011 to 2013, the EU institutions approved a package of regulations and directives (the so-called "Six-Pack" and "Two-Pack").[9] The Two Pack applies only to euro area MS and aims to adapt the rules on the European Semester. It introduces a common calendar and common budgetary rules specifically for euro area MS.[10] The new procedures allows euro area MS to strengthen the coordination and surveillance of their budgetary policies to ensure the necessary budgetary discipline in the EMU.[11]

An intergovernmental agreement that differentiates MS is the ESM. This is a permanent intervention instrument created in 2012 with the aim of granting financial assistance to countries in difficulty so that they can finance themselves on the market. To give the ESM a legal basis, art. 136

[9] Regulation (EU) 473/2013 of the European Parliament and of the Council of 21 May 2013 on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the euro area.

[10] Euro area Member States must publish by 30 April their medium-term budgetary plans (stability programmes), also indicating their policy priorities for growth and jobs for the following 12 months (national reform programmes) as part of the European semester on economic policy coordination; euro area Member States must publish their draft budgets for the following year by 15 October; euro area Member States must publish their budgets for the following year by 31 December.

[11] See art. 136 TFEU in combination with Article 121(6) TFEU.

Electronic copy available at: https://ssrn.com/abstract=4107953

TFEU was amended, and a third paragraph was added.[12] The same paragraph underlines that the granting of financial assistance "will be subject to strict conditionality". A simplified treaty amendment procedure was used to amend art. 136 TFEU. Based on art. 136 TFEU the ESM was established as an international intergovernmental treaty concluded between the States that are part of the euro area.

The ESM only entered into force in October 2012, due to appeals filed in Germany, Ireland and Estonia concerning its compatibility with their respective Constitutions and the use of the simplified treaty amendment procedure. In Germany, the Federal Constitutional Court rejected the appeal against the ESM but called for greater involvement of the *Bundestag* (Federal Parliament) in decisions on financial commitments. In Ireland, there was a preliminary reference to the Court of Justice of the EU, which resulted in a positive outcome in favour of the compatibility of the ESM with the no bail-out clause contained in art. 125 TFEU[13].

To raise the necessary funds, the ESM issues financial instruments or concludes financial agreements and understandings with its members, financial institutions or third parties. The main criticism of the ESM in southern States has been the strict conditionality attached to the disbursement of financial assistance. These conditions can range from a programme of macroeconomic corrections to the constant respect of predefined eligibility conditions (art. 12 ESM Treaty). In the case of loans, conditionality consists of a macroeconomic adjustment programme set out in a memorandum; in the case of precautionary credit lines provided to MS that are in sound economic and financial condition but affected by negative shocks, conditionality is less stringent. The ESM has so far provided financial assistance to Greece, Cyprus, Portugal, Ireland and Spain. As already said, only euro area States are members of the ESM. When a State adopts the euro, it automatically becomes member of the ESM, with full rights and obligations.

The ESM has also been heavily criticised for its governance, which introduces a further differentiation between states on the basis of their economic power. Indeed, it gives each state a voting right in the ESM Board of Governors equivalent in percentage terms to its contribution to the ESM budget, which in turn corresponds to GDP. This discipline established a *de facto* hierarchy among states, giving more power to the larger and economically stronger ones than to the smaller and weaker ones. This breaks a rule of respect for sovereignty and the principle of equality between states that has always been respected by the Community method, which includes States that differ greatly in size and economic power. Considering its content and procedures, which made possible a

[12] Art. 136 TFEU, para. 3: "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".

[13] Case C 370/12 *Thomas Pringle v Government of Ireland* ECLI:EU:C:2012:756.

Electronic copy available at: https://ssrn.com/abstract=4107953

differentiation among the MS, the ESM has been considered a politically risky solution, and therefore not usable. The ESM Treaty was amended in January 2021.

iii.2. Hybrid systems of governance that apply to the euro area and non euro area MS

Hybrid measures adopted during the euro crisis are primarily targeted at euro area states but are legally open to participation by all EU states. This is the case with the Six-Pack measures (European Semester) and, within the Banking Union, the Single Supervisory Mechanism (SSM) and the Single Resolution Mechanism (SRM).[14]

The rules of the Six-Pack have been specified and framed in a single system outlining a fiscal union. The Six-Pack also includes procedural rules that allow the European institutions to interact with the national institutions in the state budget approval phase, during the European Semester. The European Semester was introduced to facilitate *ex ante* coordination of MS' economic policies and provides for a set of procedures and acts to ensure the coordination and surveillance of the economic and budgetary policies of the euro area and EU MS. Such measures can be seen as a tightened version of the SGP and a new mechanism for macroeconomic imbalances which increases surveillance of public deficit and debt in the MS.[15]

The Six-Pack applies to all EU countries. However, the stricter rules providing for the imposition of financial sanctions are only applicable to euro area countries. The ECOFIN Council is organ of reference for national governments, while the initiative comes from the European Commission.

Other mechanisms relate to financial stability and have been designed within the Banking Union. As a completion of the single market, these mechanisms apply to all MS and are more firmly based in the EU Treaties, but some specific rules apply to non-euro area MS. While it is an obligation for euro area States to join the Single Supervisory Mechanism (SSM), non-euro area MS can decide to join if close cooperation exists between the ECB and the national competent authority of that State. However, if a state that decides not to join has branches of banking institutions in another state that is a member of the SSM, these will be subject to SSM supervision if they are large enough to be systemically relevant.

[14] On the banking Union see, in this Special Issue, the article by CA Petit on differentiated governance in Europe's Banking Union.

[15] The European Semester begins in November of the year preceding the reference year, when the economic and public finance situation of both the EU and euro area and the Member States is analysed. Between January and March, the economic and budgetary policy guidelines for the EU are adopted. The six-month period ends with the June European Council when recommendations on country-specific targets and policies are adopted. Budgetary procedures then continue at national level.

Electronic copy available at: https://ssrn.com/abstract=4107953

On the basis of the SSM 1024/2013 regulation, the euro and non-euro members have an equal role in the Supervisory Board of the SSM (rule “one member, one vote”).[16] However, if a participating State that has not adopted the euro disagrees with a draft proposal of the Supervisory Board, the Governing Council of the ECB will decide on the matter.[17]

iii.3. Intergovernmental treaties that apply to all EU MS

The 'Treaty on Stability, Coordination and Governance in the Economic and Monetary Union' (TSCG), better known as the “Fiscal Compact”, was signed in 2012. Due to UK opposition European leaders decided to resort to an international treaty outside the Union but open to signature by all MS. Just 25 out of the then 27 states decided to sign it, with the exception of Great Britain and the Czech Republic. However, following Brexit the Czech Republic ratified the TSCG in 2019, and also Croatia (which joined the EU in 2013) has now signed it. This treaty establishes exceptions to the procedures and competences of the institutions laid down in the Treaties and requires that the budgets of the states be in balance or in surplus. In the event of deviations from the medium-term objective, MS must establish binding corrective mechanisms and the Court of Justice of the EU could impose financial penalties to be transferred to the ESM.[18]

As a rule, the Fiscal Compact applies when a MS decides to join the euro area, unless it declares to be fully or partially bound by titles III (Fiscal Compact) and IV (Economic policy and coordination).[19] The Fiscal Compact also introduced a differentiation among the euro area MS, as it required only the ratification by 12 MS of the euro area to enter into force. Once entered into force, it applies to the other euro area MS following the deposit of their respective instrument of ratification. Up to now the Fiscal Compact (Title III of the TSCG) binds 22 MS of the EU: the 19 MS of the Eurozone plus Bulgaria (Titles III and V), Denmark (Titles III, IV and V) and Romania (Titles III, IV and V) who have decided to opt in. The other non-Eurozone MS apply only Title V (Croatia, Czech Republic, Hungary, Poland, Sweden). Some degree of differentiation is also allowed within euro area MS, as Latvia and Lithuania have been granted a longer timeframe for implementing the rules of the Fiscal Compact.

---

[16] Regulation (EU) 1024/2013 of the Council of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, art. 26 (6).

[17] Art. 7(8) Regulation 1024/2013 cit. The ECB will decide within five working days, taking fully into account the reasons put forward by the State, and explain in writing its decision.

[18] Under the Fiscal Compact, the rules were to take effect in the national law of the contracting states by 1 January 2014 at the latest "through binding provisions of a permanent nature - preferably constitutional - or whose faithful observance is otherwise strictly guaranteed throughout the national budgetary process". At the same time, the Fiscal Compact provided for an elaborate surveillance method centred on the European Commission, which had to monitor the behaviour of states and report on the provisions adopted, and on the Court of Justice of the EU, which could also impose financial penalties to be transferred to the ESM upon the complaint of another member state.

[19] Art. 1(2): “This Treaty shall apply in full to the Contracting Parties whose currency is the euro. It shall also apply to the other Contracting Parties to the extent and under the conditions set out in Article 14”.

Electronic copy available at: https://ssrn.com/abstract=4107953

Despite the discretion given to MS to apply the Fiscal Compact rules, all the euro area MS joined, given the very strong political pressure exerted by governments in national parliaments to ratify the treaty. The TSCG entered into force on 1 January 2013 following the procedure of ratification by the MS. All the larger MS, including Spain, Germany, France, and Italy, participated from the onset. The aim of the TSCG is to incorporate the content of the Treaty into EU legislation within 5 years. For the moment, however, the TSCG is remained an intergovernmental treaty.

IV. The pandemic and the Recovery Plan (Next Generation EU)

The pandemic caused by the spread of the Covid-19 virus triggered a new global economic crisis. In the EU, the crisis constituted a key step in raising awareness and changing the approach towards action by the MS.[20] The EU intervened in several areas. First, the Stability and Growth Pact (SGP) and state aid rules were suspended. Second, the Eurogroup relaxed the conditions under which countries can borrow funds through the ESM and removed them if the funds are used to finance healthcare services.

At the European Council of 17-21 July 2020, the historic decision was taken to finance a new plan amounting to some EUR 1,800 billion.[21] The plan consists of an agreement on the Multiannual Financial Framework 2021-27 (MFF - the EU's seven-year budget) and a recovery plan called 'Next Generation EU' (NGEU). NGEU allows the Commission to fund MS via grants and loans through a new instrument, the Recovery and Resilience Facility, to renovate Europe and make it greener, more digital and more resilient. The EU has become responsible for borrowing money on the financial markets at a better cost than that granted to individual MS and paying it back to the States to finance National Recovery and Resilience Plans (NRRPs). These funds are divided among the MS according to the severity of the crisis that has affected them and can be used either within the framework of existing operational programmes or by submitting an *ad hoc* programme to the European institutions.

The legal basis for Regulation 2020/2094, establishing an EU recovery instrument, was found in Article 122 TFEU. [22] This article allows the Council to decide on a proposal from the Commission and in a spirit of solidarity between MS on appropriate measures to respond to exceptional economic situations. This legal basis was not considered legitimate in the past case of the euro-crisis, as the event was not considered "out of the control of the states" because it was fuelled by the presence of out-of-control debts of some MS. This emphasis on budget debts led to a *de facto*

[20] F Fabbrini, 'Europe's Economic & Monetary Union Beyond Covid-19' (December 2020) gov.ie, <https://www.gov.ie/en/publication/7b196-europes-economic-monetary-union-beyond-covid-19/>.
[21] Special meeting of the European Council (17, 18, 19, 20 and 21 July 2020), Conclusions.
[22] Council Regulation (EU) 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis.

Electronic copy available at: https://ssrn.com/abstract=4107953

differentiation between northern and southern MS. A different approach is now being followed by the Council in the case of the economic and social consequences of the COVID-19 epidemic, an event for which specific countries cannot be blamed.[23] For this reason, the Council considered that a "coherent and unified approach at Union level" was required.[24] The legal basis also circumscribes the duration of the recovery instrument. Since it is an exceptional response to extreme and temporary events, the intervention must be rapid but also of limited duration and cannot be extended beyond the effects of the pandemic. Of course, there is the question of how long the negative effects of the pandemic will last, but in principle this should be a temporary intervention.

In addition to NGEU and the reform of the MFF, EUR 55 billion have been earmarked for cohesion policy 2014-2020 (React EU programme)[25] on the basis of art. 177 TFEU and funds have been set aside to finance MS for the risk of unemployment during the emergency (SURE programme), based on art. 122 TFEU.[26] The novelty of the instruments created to address the coronavirus crisis is that they are all within the EU framework and are addressed to all 27 EU countries, without differentiation. This is so for SURE, React EU and NGEU (see figure 3).

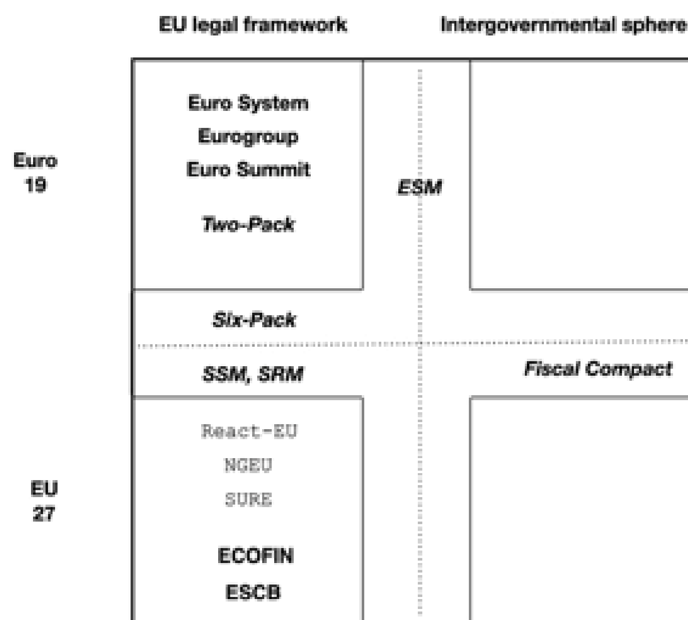


Figure 3 - EMU Governance - Coronavirus crisis

[23] P Dermine and M Markakis, 'EU Economic Governance and the COVID-19 Crisis: Between Path-Dependency and Paradigmatic Shift', (2020) 6(4) International Journal of Public Law and Policy, 326-345.

[24] Council Regulation (EU) 2020/2094, Preamble, (5).

[25] Regulation (EU) 2020/2221 of the European Parliament and of the Council of 23 December 2020 amending Regulation (EU) 1303/2013 as regards additional resources and implementing arrangements to provide assistance for fostering crisis repair in the context of the COVID-19 pandemic and its social consequences and for preparing a green, digital and resilient recovery of the economy (REACT-EU).

[26] Regulation (EU) 2020/672 of the Council of 19 May 2020 on the establishment of a European instrument for temporary support to mitigate unemployment risks in an emergency (SURE) following the COVID-19 outbreak.

Electronic copy available at: https://ssrn.com/abstract=4107953

The decision to adopt the NGEU was taken by the European Council unanimously, considering the needs of the various countries, but with the idea of not lowering the common denominator. The discussion brought out groups of countries with common interests. On the one hand, the northern European states (the Netherlands, Sweden, Austria, and Denmark) were successful in capping the next MFF and maintaining the rebates they enjoyed, which allow them to contribute less to the EU budget than they should according to their GDP. These States had proposed a vehicle to provide emergency loans to States and were against the idea of increasing the EU budget. On the other hand, the group of Eastern European countries obtained the removal of a specific reference to the requirement of conditionality for the respect of the rule of law, which would have reduced or even eliminated their power to receive the new funds. [27]

However, the following procedure to approve the rule of law clause has been tortuous. First, the European Parliament succeeded in raising the MFF ceiling. [28] Second, Poland and Hungary decided to veto the decision on the NGEU and the MFF, taking advantage of the fact that the regulation on the general conditionality regime and for the protection of the EU budget has to be adopted by unanimity. [29] However, this move did not avoid a political solution by the European Council, which, at its summit of 11 December 2020, made the application of the conditionality clause subject to the outcome of the future ruling of the EU Court of Justice on the legality of the regulation on appeal by Hungary and Poland.[30] This ruling came on 16 February 2022 and legitimised the conditionality mechanism enshrined in the EU regulation, which provides that the Council, on a proposal from the European Commission, can take protective measures such as suspending payments from the EU budget or suspending the approval of a programme remunerated by that budget in case of rule of law violation.[31] Interestingly, the Court identifies rule of law and solidarity as values on which the EU is founded and which must be protected by it. The regulation would give practical effect to these values. In fact, the Court points out, the EU budget is one of the main instruments of solidarity between the MS and its application lies in the mutual trust between the states in the responsible use of the common resources provided by the budget. This holding is antithetical to the interpretation

[27] European Council, 2020, para. 23 e 30.
[28] Art. 312 TFEU.
[29] Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget.
[30] European Council meeting (10 and 11 December 2020), Conclusions, I, 2 c): “Should an action for annulment be introduced with regard to the Regulation, the guidelines will be finalised after the judgment of the Court of Justice so as to incorporate any relevant elements stemming from such judgment".
[31] Case C-156/21: Action brought on 11 March 2021 — Hungary v European Parliament and Council of the European Union.

Electronic copy available at: https://ssrn.com/abstract=4107953

that emerged during the euro crisis, when relations between MS were marked by distrust and different attitudes towards mutualisation of debt, as highlighted above.

On the basis of NGEU the funds allocated to the MS are financed through the issuance of common EU debt - and not with transfers of State funds - to be repaid after 2028 and before 2058 through an increase in own resources ceilings and new EU taxes. An EU fiscal capacity has thus been created that reinforces the EU's ability to act in the event of a crisis in the MS, intervening and giving to those most in need, based on the principle of solidarity.[32]

As said before, the funds of NGEU and MFF are legally addressed to all the 27 EU countries. But as a matter of fact, the sums allocated are divided among the MS according to the severity of the consequences of the crisis that has affected them. A cap is provided for the non-repayable financial support entrusted to the MS. 70% of the sum is allocated on the basis of population, the inverse of the GDP per capita, and the relative unemployment rate of each Member State. 30% is calculated on the basis of the population, the inverse of the GDP per capita, and, in equal proportion, the change in real GDP in 2020 and the aggregated change in real GDP during the period 2020- 2021.[33] As of February 2022, 26 member countries have submitted their NRRPs and 22 of them have been approved. The funds are therefore intended for the MS that suffered most in 2020-21. However, such funds are not limited strictly to repay the Covid-19 consequences, as the difficulties encountered by the States during the pandemic derive also from previous cuts in health, pensions, and social services due to the management of the euro area crisis. NGEU can thus have the effect of mitigating the differentiation between the MS from the economic point of view, limiting the divide North/South that was typical of the euro area crisis.

From a strictly economic point of view, however, this is not certain, since part of the funds do not consist of grants, but of loans: they should be repaid and are counted within the debt of the MS. However, the time frame for repayment is so long that NGEU and FMM will have the time to revive the southern MS’s economy and put the relationship between the MS on an equal footing. Of course, it will depend on what happens to the other measures that have been suspended, such as the SGP and State aid rules. The previous approach based on controls on the MS has not disappeared. For example, Article 10 of Regulation 2021/241 provides for links between the new NGEU regime and the previous one. In particular, it establishes that funding to the States may be suspended by the Commission if the Council considers that a MS has not taken sufficient measures to correct a government deficit considered excessive, on the basis of the GSP.

[32] B De Witte, 'The European Union’s COVID-19 recovery plan: The legal engineering of an economic policy shift', (2021) Common Market Law Review, 635-682.

[33] Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, art. 11 and Annex IV.

Electronic copy available at: https://ssrn.com/abstract=4107953

Above all, the success of the NGEU will depends on whether its methodology will be maintained in the future, so as to create a kind of EU fiscal power capable of rebalancing the asymmetry between monetary and economic policy described in the previous paragraph. In short, it depends on the sustainability of the willingness to attribute to the EU some competences in the social field and to provide for payment through EU-wide taxes, as envisaged by the NGEU (plastic taxes, carbon border adjustment tax, digital tax and EU financial transaction tax).

The legal basis for NGEU was found in Article 175 of the TFEU on economic, social and territorial cohesion, which aims to reduce the differences between the development levels of regions and to catch up with the less favoured regions. [34] As stated in the text of the Recovery Instrument regulation, the EU should not only focus on measures that strengthen "competitiveness, growth potential and the sustainability of public finances", but should also introduce "reforms based on solidarity, inclusiveness, social justice and fair distribution of wealth [...] in order to create quality jobs and sustainable growth, ensure equality and access to opportunities and social protection, protect vulnerable groups and raise the standard of living of all Union citizens".[35]

The idea of using Article 175 TFEU as a legal basis for NGEU has the advantage of leveraging a logic of positive intervention since the funds are intended for all MS, without distinction, but at the same time allow them to be allocated to the regions within the states that need them most and that, due to their critical economic situation, have suffered most from the consequences of the pandemic. This is a logic that counterbalances the one based on market forces, which has led to a differentiation in the level of economic development of the MS and which EMU has increased following the complete liberalisation of the free movement of capital. This differentiation between states was predicted by the Delors Report, which proposed that the EU institutions should play a leading and encouraging role in structural adjustments to enable those States lagging behind to catch up with those ahead.[36] Moreover, the involvement of local and territorial authorities and citizens foreseen by the NGEU (and cohesion policy) also has the advantage of reducing the democratic gap by establishing a territorial legitimacy or local type democracy.

[34] Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 on the Recovery and Resilience Facility.

[35] 4th Preamble Regulation 2120/241 cit.

[36] The risk of asymmetric development is evident from the Delors Report on EMU presented to the European Council in 1989, which states: "historical experience suggests [...] that in the absence of balanced policies, the overall impact [of greater economic integration] on peripheral regions could be negative. Transport costs and economies of scale could favour a shift of economic activity from less developed regions, especially peripheral ones, to more developed areas in the centre. Economic and Monetary Union should encourage and guide structural adjustments that could help the poorer regions to reach the richer ones".

Electronic copy available at: https://ssrn.com/abstract=4107953

V. Which differentiation in the EMU? Paths and Issues

In the Maastricht model, differentiation between states within EMU was accepted as a consequence of the UK & Danish objection to the common currency and the different economic conditions of the States. The setting up of the economic and monetary union was influenced by the presence of two coalitions of states that shared different beliefs and interests and offered different solutions to the relationship between economic growth and monetary stability. On one side Germany, the Netherlands and Denmark. On the other side, France, Belgium, and Italy.[37] On the basis of the prevailing theory, price stability was envisaged as a core value of EMU. Euro area MS would also have to show fiscal restraint. A second element of vertical differentiation arose from the asymmetry between monetary (exclusive competence of the ECB) and economic policy, left to the discretion of the states. The asymmetry was reinforced by the presence of the no bail-out clause provided for by Art. 125(1) TFEU.

From the point of view of objectives, however, the EMU designed in Maastricht was a well-integrated system within the EU institutional system and the EU Treaties. The differentiation was managed by a set of rules and concerned the different pace at which states would join EMU, which was considered irreversible. Indeed, one cannot but criticise the choice made at Maastricht to place the economic principles of EMU in an international treaty that could only be amended by unanimity, without providing a way out in the event of a shock to the system. The idea behind EMU was that all states would join, sooner or later, the EMU, enshrining the principle of a multi-speed Europe as an intrinsic and transitional value in the Treaties. At Maastricht, it was also not yet clear whether the Union would be enlarged to include other states.

The euro crisis highlighted and exacerbated the initial differences between the economic and political preferences of the euro area MS, especially as the number of states had risen to 28. The crisis has reinforced the elements of differentiation that existed in EMU. First, coordination and surveillance among euro area MS has been strengthened through the adoption of the Two-Pack and the Six-Pack and the provisions of the European Semester. While the Two-Pack was aimed specifically at the Eurozone, the Six-Pack was aimed at all MS, but sanctions were only applicable to Eurozone states. Thus, the role of the Eurogroup and the Euro Summits became increasingly

[37] K Dyson and K Featherstone, *The Road To Maastricht: Negotiating Economic and Monetary Union* (Oxford University Press, 1999). The most influential group was represented by the German, Dutch and Danish governments and their central banks. These countries saw in price stability the core principle of European monetary policy. Euro area Member States would also have to show fiscal restraint. The second group was led by the French, Italian and Belgian governments and assisted by the European Commission.

Electronic copy available at: https://ssrn.com/abstract=4107953

important,[38] as did that of the Eurozone, to the extent that discussions began on a Eurozone budget and a Eurozone Parliament. [39]

To cope with the lack of political control of both the Eurogroup and the Euro Summit, it has been proposed to create a euro area parliamentary assembly, in order to reduce the problems related to the fact that the European Parliament represents all European citizens (Art. 14 TEU), including those from countries that are not part of the euro area. It is becoming increasingly difficult for the European Parliament to act as a counterweight to "differentiated" institutions such as the Eurogroup or the Euro Summit, which only include certain countries. It should also be mentioned that members of the European Parliament are elected on a national basis and according to national preferences, while using similar electoral procedures. In the Six-Pack and the Two-Pack, the president of the Eurogroup and the president of the Euro Summit can be invited by the ECO committee of the European Parliament as part of the economic dialogue. In the case of the Euro Summit, some principles of political accountability are provided for in the Fiscal Compact. In addition, there is the role of national parliaments under domestic law; however, the role of parliaments has been emptied precisely in cases where it should have been strengthened, in the case of control over the implementation of financial assistance programmes.

Second, responses to the crisis have been based on the principle of intergovernmentalism with the European Council playing the main role. Most of the solutions envisaged are international organisations linked to the EU, so-called hybrid systems such as the ESM and the Fiscal Compact.

Unfortunately, the governance created during the euro crisis has not worked well, because it is based on mistrust, if not distrust, between MS, whose main concern has been not to allow transfers between "rich" and "weak" states. It has also created a problem of legitimacy because the institutions that have emerged as relevant from the crisis - the ECB and the Eurogroup - are independent or informal, not to mention that the strengthening of the executive capacity of European institutions in the economic sphere has not led to the development of parliamentary control, limiting democratic control to that of national parliaments for the ratification of intergovernmental agreements such as the ESM and the Fiscal Compact. Sometimes there is a

[38] The Eurogroup has a President that is elected for two and a half years by the majority of the Eurozone countries; in addition, the Commissioner for economic and financial affairs as well as the President of the ECB participate on a regular basis in the meetings of the Eurogroup. Another organ which has seen its power growing is the Euro Summit. It is institutionalized by the TSCG (art. 12) and meets at least twice the year to discuss policy issues related to the euro area, including on governance and economic convergence.

[39] C Joerges, 'Comments on the Draft Treaty on the Democratisation of the Governance of the Euro Area' (2018) European Papers <https://www.europeanpapers.eu/es/e-journal/comments-on-draft-treaty-on-democratization-of-governance-of-euro-area> 75; N Lupo, 'A New Parliamentary Assembly for the Eurozone: A Wrong Answer to a Real Democratic Problem?' <https://www.europeanpapers.eu/es/e-journal/new-parliamentary-assembly-for-eurozone-wrong-answer> 83; A Manzella, 'Notes on the "Draft Treaty on the Democratization of the Governance of the Euro Area"' <https://www.europeanpapers.eu/es/e-journal/notes-on-draft-on-treaty-democratization-governance-euro-area> 93.

Electronic copy available at: https://ssrn.com/abstract=4107953

power of control for national parliaments, as in the case of the Fiscal Compact, but this is only a consultative power. Yet the decisions taken by these technocratic bodies have an impact on citizens' living standards and social rights, affecting the social pact and the European way of life itself.

This is why the NGEU has been defined as a fundamental step for the European Union, a "Hamiltonian moment" that can lead to profound changes in the EMU by virtue of the principle of *path dependency*.[40] Once an EU fiscal capacity has been created, there will be no going back as the EU's fiscal power will become the "new normal". The reference is to Alexander Hamilton, the first American Secretary of the Treasury, who managed to convince his contemporaries to replace the war-time debt of the former colonies and to convert it into joint obligations held by the new federation as a federal debt. Because, as Hamilton maintained in 1792, the "proper funding of the present debt will render it a national blessing".

It is difficult to compare in full the European and American cases. On the American continent, the pooling concerned the past debt accumulated by States due to war. In Europe, pooling concerns future debt, which is being contracted on the European market to invest in long-term projects. Yet, despite the historical and technical differences, the symbolic meaning is clear: can the pandemic function as a detonator to trigger a virtuous process of cooperation and solidarity among MS and lead to a union with a federal-like character and limit differentiation?

VI. Lessons to be learned from differentiation

The problems related to the euro-crisis measures and the adoption of the Recovery Fund have shown that one of the most urgent problems is to provide for a real crisis management system that is not based on intergovernmental organisations. In the latter, decisions are taken by unanimity and not by majority, with the consequence that the economically stronger (or smaller) countries can always block them, deepening the differentiation between strong and weak countries. This is ultimately the problem with the ESM, which was envisaged as the sole crisis management instrument but was not used by any Member State during the pandemic crisis, even though the element of conditionality had been removed. ESM is not politically sustainable in the MS, as it exposes the weaker MS to the decisions and possible vetoes of economically stronger EU countries. A solution could be to bring the ESM back in a modified version within the European institutional framework, in imitation of the Recovery Fund, as suggested by the European Commission.[41]

[40] Several authors have stressed this change of logic. Among the first commentators, see R Montgomery, 'A Hamiltonian Moment?', BRIDGE blog, 11 June 2020.

[41] G Zaccheroni, 'The Future of the ESM within a Hybrid EMU Law' (September 9, 2020) BRIDGE Network, Working Paper 6 <SSRN: https://ssrn.com/abstract=3689547> or <http://dx.doi.org/10.2139/ssrn.3689547>.

Electronic copy available at: https://ssrn.com/abstract=4107953

This solution would have the advantage of strengthening the European institutions (and not the Eurogroup) and making them more politically accountable to the European Parliament, simplifying the current procedures that are now based on the relationship with national parliaments. Moreover, this measure would not only refer to the Eurozone states, but would apply to all EU MS, reducing differentiation. Such a change would also have the advantage that it could be based on a broader interpretation of Art. 122 TFEU, by construing in a less narrow way the concept of "exceptional circumstances beyond the control of the State".

Of course, the ESM is not a stabilisation mechanism. Therefore, in addition to a reform of the ESM, there should be a fiscal stabilisation tool or an economic government to counterbalance the monetary competence of the ECB, which remains independent. This type of intervention remains a specific issue in the Eurozone – considering that the ECB monetary policy applies to the MS that have adopted the euro - and requires specific solutions. The Recovery Instrument could be a reference example, to create a fiscal capacity.

Another possibility to increase the European dimension of the Union, considering the growing international role of the euro, would be to change the mandate of the ECB in order to provide for a double mandate, adding (or emphasising) the task of employment growth to the one of monetary stability, considering that controlling inflation is an objective which has been reached by the ECB, or saying more clearly that the ECB has also the objective of increasing employment, after having reached price stability.

As an alternative, some authors have suggested to have recourse to new intergovernmental agreements or new treaties among some blocks of MS that are more homogenous. The pandemic has shown that Europe is structurally slow in coping with shocks, that have become a recurrent feature of the 21st century. It is also slow in dealing with international relations. Can a hybrid governance, in imitation of the ESM as recently reformed, work better than the present system? The ESM is outside the system of EU law and has limited judicial review but has the advantage of reacting much faster than the NGEU.

Certainly, the success and replication of the NGEU will be conditioned by the effectiveness that national investment programmes financed through EU loans and grants will have in the future. Considering that such projects are mainly managed at local or regional level, NGEU constitutes a real change of perspective as it links the destiny of future innovations in governance taken at EU level - amount of loans and grants, new EU-wide taxes and, maybe, a real fiscal capacity - to the management capability of local, regional and state administrations. This structure however is not new. It goes back to the 1988 reform of the structural funds and to the Treaty of Maastricht, which introduced a new financial instrument, the cohesion fund, with the aim to improve economic growth

Electronic copy available at: https://ssrn.com/abstract=4107953

in a sustainable way in the regions and to stimulate competitiveness. Such reform responded to the logic of positive intervention by the Community to address regional policies and it has always been used for the management of European structural and cohesion funds. From this point of view, it is not so surprising that cohesion policy is now being used to "legitimize" and prompt EU-wide governance reforms, investment programmes and possibly to reduce the differentiation between MS that has emerged during the last economic crises.

Certainly, if we want to raise the amount of funds available to the territories and limit the differences among the regions, it will be necessary to modify the EU budget rules, which are too rigid, especially the unanimity voting rule required by Art. 311 TFEU for the Council. According to this rule, only with unanimity is it possible to establish new categories of own resources or to abolish an existing category. This decision enters into force only with the approval of the MS in accordance with their respective constitutional rules. There is a need for a more efficient and more democratic system of decision-making in tax matters based on qualified majority voting. Of course, this would require a modification of the Treaties.

Given the difficulties that differentiated governance systems give rise to and the presence of different groups of MS, a solution for the EU crisis will only be possible when the main governance instruments are embedded in the EU legal framework and the EMU is made more flexible. Only in this way will it be possible to put all EU states on an equal footing and make it possible to have an all-round political discussion to achieve a common goal. Asymmetric solutions do not work well at the moment, because MS do not want to be a second-rate participant. In fact, mechanisms of enhanced cooperation have been applied so far only to minor cases.

Moreover, differentiated governance develops its own characteristics over time, making it more difficult for MS outside the euro area to interact and share the solutions and objectives identified and voted for within it. As a result, there is a risk that out-MS take a negative attitude towards participation or decide to join the euro area, but then feel obliged to apply a regulatory system that they did not contribute to creating, and therefore do not share it.[42]

VII. Conclusions

Asymmetries are an inherent element of the EU's system of economic and monetary governance. This kind of differentiation will increase if, as European Commission President Von der Leyen has said, the EU intends to pursue accession negotiations with the states of the Western Balkans area. Differentiation is legally possible, either by interpreting the articles of the Treaties extensively or by

[42] A Piekutowska and E Kuzelewska, 'Economic and Monetary Union as an Example of Differentiated Integration' (2015) Yearbook of Polish European Studies 506.

Electronic copy available at: https://ssrn.com/abstract=4107953

amending the Treaties, and in particular by substituting the unanimity voting with the majority voting in the area of economic and fiscal governance. The problem that arises, however, is the sustainability of asymmetries within the EU. Differentiations cannot undermine the unity of the legal system or the minimum conditions of its uniformity. To be subject to majority principles within the Union, one must be aware of being part of the community. It is only by virtue of this awareness that states will be able to subject themselves to majority rule, even if they take a different view. The problem is more complex in asymmetrical and stratified systems, such as the EU, because this relationship of political affiliation is twofold, since it applies to the national and European spheres; these two types of affiliation must therefore not be in conflict but rather complementary. In these asymmetrical systems, such as EMU, democratic control conducted at the exclusively European level appears limited, since the European Parliament also includes the political representatives of countries that are not part of the euro area and is exercised vis-à-vis opaque institutions, such as the Eurogroup and the Euro Summit.

Any kind of reform that will be approved - which, of course, must take into account the fact that the adoption of the euro is an ongoing process, so some form of body representing the Eurozone states and its democratic counterbalances must be envisaged - will have to refer to the principle of loyal cooperation between the EU and the MS, based on Article 4(3) TEU. The fact that the new NGEU and SURE are based on the principle of solidarity between States and apply to all the MS without differentiation bodes well for the development of an effective and accountable system and can be taken as a point of reference.

Of course, it must also be considered that the EU is confronted with increasingly competitive and innovative economic powers at global level. Therefore, an EMU reform should be discussed within the broader EU reform framework. Designing an inefficient and ineffective system of governance, where accountability is opaque and divided among different actors with no obvious responsibility, risks the failure of the European project. In this respect, experts need to reflect on the principles of constitutional homogeneity that are indispensable for all members to accept majority rules. These principles of constitutional homogeneity will have to guarantee the participation of the Member States on the basis of a principle of sustainable equality. Only in this way will it be possible to introduce governance mechanisms that are more flexible and able to take account of the different speed of development and growth of each Member State. Acknowledging this need does not mean giving up pushing for cohesive and inclusive European development programmes but could rather have the advantage of linking the economic growth of the "slower" countries to that of the "faster" ones.

Electronic copy available at: https://ssrn.com/abstract=4107953

Such an outcome, however, can only be found if a maximum effort is made to bring intergovernmental instruments such as the ESM and the Fiscal Compact into the EU framework and put MS on an equal footing. Only a stronger EU can fight the centrifugal forces disrespecting the rule of law in the Union and have the strength to find new governance patterns that are accepted by all MS (or, better, by all groups of MS).

Electronic copy available at: https://ssrn.com/abstract=4107953