

Adrienne Héritier

Quo Vadis, Europa?

Four paths and their plausibility

1 Introduction

Due to important shocks such as the Eurozone crisis, the migration crisis and Brexit the European Union is faced with the challenge to reconsider its institutional architecture in order to better deal with such shocks. Should it follow the path of (i) an ever closer union or United States of Europe; of (ii) a two-tier or more differentiated union; (iii) continue to muddle through with incremental changes on a path of “covert integration; or (iv) engage on a path of disintegration or dissolution? In the following I will ask which of the four possible scenarios in the immediate and mid-term future of the European Union, are most likely to unfold.

In order to answer this question I will use strategic interaction analysis, as developed by Lake and Powell (1999). Strategic interaction analysis distinguishes between two elements of strategic interaction: actors and their environments. On the actor side, strategic choice analysis distinguishes between two attributes. First, actors are assumed to have preferences, defined simply as how they rank the possible outcomes defined by the environment (Lake and Powell 1999, 9). Actors’ basic preferences are desires that remain the same across a wide variety of situations. Actors’ situational preferences (Frieden 1999) consist of the ranking of preferred outcomes in more specific situations and depend upon the particular problem constellation and constellation of actors and their preferences over outcomes they negotiate with. The second attribute of an actor are its prior beliefs about the preferences of other actors. In particular, when actors are uncertain, these beliefs are crucial for the decision about which

strategy to choose, and, in consequence, for the outcome of interaction (Lake and Powell 1999:11).

The strategic environment is composed, first, of the actions which are available for the actors, They are summarized according to what could be the outcome of interactions of actors, or the outcome of how decisions and events can unfold (Lake and Powell 1999, 8, 9), i.e. striving for one of the possible outcomes mentioned above i) A European State; ii) a differentiated and flexible EU; iii) covert integration; (iv) disintegration and/or dissolution. Second the environment is composed of an information structure that defines what the actors can know for sure and what they have to infer from the behaviour of others. Institutional rules play an eminent role here. Keohane (1984) argued that one way in which institutions facilitate co-operation among states is by providing more information to state actors, especially, by providing better possibilities of monitoring each other's behaviour (Lake and Powell 1999, 9).

The analytic distinction of actors' attributes and the attributes of the environment implies the possibility of broad kinds of conceptual experiments (Lake and Powell 1999). The first conceptual experiment varies the properties of the actors, i.e. their preferences and beliefs, while it holds the environment in which they interact constant, and derives conclusions or hypotheses about the likely outcome of the interaction. The second conceptual experiment varies attributes of the environment while the actors' attributes are held constant, and derives conclusions or hypotheses about the likely outcome of the interaction. Using this analytic scheme I will ask: how plausible are the four different developments described above?

The four developments, an ever closer union, differentiation, covert integration, and disintegration/dissolution constitute different features of the explanandum. I will argue that the likeliness of the respective scenarios happening depends on the following factors. The relevant factors are (a) the most important actors', i.e. member states and European institutions and their preferences over outcomes, i.e. a specific path of development; (b) important macro factors of the environment, such as the financial and economic crisis or a high/low influx of refugees; and (c) the decision-making rules applied when deciding over outcomes such as unanimity, QMV and the use of referenda in member states and court rulings.

Using this analytic scheme, I will first ask: what is the likeliness that a federal state or United States of Europe will materialize in a short and mid-term period?

2 Path One: A European federal state or “an ever closer political union”

A political union defined as a federal state is characterized by a concentration of decision competences for all policies and budgetary issues with institutions at the supranational level. Even more, the competence to allocate competences, the “Kompetenz-Kompetenz” rests with supranational institutions. Member states would be left with implementing powers of the legislative decisions taken at the central level. A European federal state would have a federal parliament which elects a government accountable to the parliament. In a two chamber form, the second chamber consisting of representatives of member states, would also engage in legislation at the supranational level.

Using the analytic scheme described above, in view of actors’ preferences over outcomes and given specific macro conditions, as well as in view of the institutional rules relevant for the decision making process, what is the likeliness that a European state will come about in the near future?

Which are the main actors’, i.e. large member states’ and institutions’ preferences over the outcome of a political union which would mean moving from a federation of states to a federal state? The large member states’ governments’ preferences, with the exception of France under the Presidency of the Republic of Macron, i.e. Germany, Italy, Spain and Poland, for a political union at the cost of national sovereignty, are assumed to be against such a political union that would imply a substantial additional up-loading of national competences. France with its plan for a fiscal union and a European finance minister may come closest to a step in direction of a political union. However, in the outline of its view, the powers of a finance minister (of raising a European tax and at which level for a European budget) remains unspecified. But none of the other governments have proposed such a plan or supported Macron’s plan. The German government’s chancellor’s response has arrived hesitantly and offered some support for a very restricted form of fiscal union. In all member states, in view of the increasing weight of right and left-wing

anti-European and anti-immigration parties, mainstream parties see themselves under pressure from populist parties using voters' discontent and anti-elite sentiments to build their strengths, to adjust their agendas against an ever closer union (if ever they favoured one).¹ Thus, except for a few small member states such as Belgium and Luxemburg which tend to favour a closer union, there is very little support for a political union from most national governments. In view of particularly strong sovereignist tendencies in the Visegrad countries, the preferences clearly are very diverse. Moreover, the so-called Hanse 2.O, with the Netherlands, the Scandinavian member states and the Baltic states, exert pressure in the direction of repatriating competences or at least strengthening the subsidiarity principle.

In contrast, the supranational institutions, i.e. the Commission and the European Parliament, as to judge from the Four and Five Presidents Reports, as well as the Juncker proposal of 2017 for a transformation of the European Stability Mechanism into a European Monetary Fund under the Commission's direction, point to preferences for a political union, at least for the Eurozone countries. The European Parliament in its majority support these plans of the Commission which would constitute steps in the direction of parliamentary democracy in the EU in which the EP elects the (Commission) government. The European Council, by contrast, reflecting the member states' positions, is assumed to predominantly oppose a political union. In sum, actors' preferences over outcomes are very diverse.

Linking these preferences to the given macro conditions I argue that that the main conditions influencing actors' preferences over outcomes and therefore the decision-making outcome, are the handling of the Eurozone crisis and the refugee crisis, both ongoing processes. This is because both conflicts imply redistributive issues. In the course of the crises the unwillingness to redistribute financial capacity and refugees across the members of the Union emerged very quickly. Thus, the interventions to solve the Euro, the sovereign debt and banking crisis led to a cleavage between creditor and debtor states. Both crises have not reinforced

¹ In Finland the right wing populists are part of the governing coalition. In Denmark they supported the governing coalition for 10 years, as was the case in the Netherlands although over a shorter period; in Poland and Hungary they dominate the governments (Hutter, Grande and Kriesi 2016). In Sweden, the Sweden Democrats have gained considerable ground in the election of 2018.

solidarity among member states, quite the opposite, they led to a North-South divide in economic and financial governance as well as to a West-East divide as regards the willingness to accept refugees. Overall these distributive issues strengthened centrifugal tendencies and weakened the political will of member states to support a deeper political union.

Adding the factor, decision making rule, i.e. the fact that incisive decisions as regards a reform of the institutional architecture of the European Union and the Euro zone have to be taken under unanimity rule, it follows from this majority of actors disinclination to form a European federal state, that a comprehensive treaty change in favour of a deepening union is unlikely to happen.

What is more, even if governments had the same preferences for a political union, the institution of referenda to be held at the national level in several member states in case of a treaty reform introduces an element of uncertainty. In the light of populist anti-European public opinion in an increasing number of member states would render the adoption of such a treaty change highly unlikely. A further institutional restriction to be taken into account is the national institutional rule that national parliaments have to confirm a treaty change. Some national constitutional courts, such as the German Constitutional Court, request that the national parliament has to confirm an uploading of national competences to the European level.

In conclusion, given actors' diverse preferences over outcomes, the negative influence of redistributive crisis hanging over Europe with its centrifugal impact and the requirement to adopt a treaty change by unanimity and submit it national parliaments' confirmation and/or to referenda in some member states, render this first path of development unlikely.

3 Scenario Two: Differentiation/two speed Europe

Differentiation or two-speed/two-tier Europe is defined (i) as a differentiation as to individual member states participating in joint policy making in specific areas, i.e. being offered opt-ins and opt-outs; a second feature (ii) is the designed cooperation of some member states in joint policy making and joint institutions across various policy areas (core Europe),

while others locate themselves around this core participating only in a free trade area, or a common market area with specific freedoms.

As assumed under scenario one, it is assumed that *actors' preferences* about how to shape the institutional architecture of the European polity are diverse, ranging from a few small member states favouring a political union, over a sizable number of large and small member states favouring a more differentiated, two tier development path of development. The Commission and the Parliament are assumed to favour a deepening of a political union and to be skeptical vis-a-vis a differentiated Union whereas the European Council, given diverse preferences of member governments, are assumed to favour a differentiated or flexible integration course.

The *macro conditions*, as under scenario one, are assumed to be a persisting impact of the financial/Eurozone crisis and resulting economic recession in a few member states and the persisting refugee/migration crisis. Both, given the diverse preferences over outcomes tend to deepen the conflicts and increase the difficulties of finding common solutions to redistributive problems.

Since – as under scenario one – unanimity is required to adopt a treaty reform and such reforms would need to be corroborated by national parliaments or in national referenda, in the light of diverse preferences over outcomes, only incremental changes or a decision-making deadlock can be expected. As regards policy measures in which co-decision and qualified majority vote are required, nonetheless consensual decision-making is still very frequent. Hence, pressure to accommodate diverse interests more than ever lead to incremental changes and compromises in the form of opt outs and increased voluntary cooperation. Thus, in reaction to the Eurozone crisis, we did not experience a big leap towards a political union. Rather the Six Pack und Two Pack, the Fiscal Compact, the European Stability Mechanism, and Banking Union, Open Monetary Transactions, reflect a mixed picture of deepening cooperation or centralization on the one hand and a strengthening of intergovernmental governance on the other. While the Eurozone group strengthened its own power of crisis management, Germany and other Northern creditor states, resisted further centralization in the form of common bond issuance or other measures to mutualize sovereign debt (Barber 2016). By contrast, when Germany, and more recently, Italy, tried to lead in a redistributive solution of the refugee crisis, they failed. What emerged is the notion of “flexible solidarity”, where a solution of a redistributive

problem offers different options in which to contribute. Instead of taking in refugees some member states may contribute to border control capacity or provide financial resources to the refugee problem. Or, in the case of external trade the threatened rejection of the CETA agreement with Canada by Belgium gave rise to a proposed new solution that Belgium could be excluded from the parts of the agreement which go beyond common competences while keeping it as a member under common competences (Bubrowski 2016).

In conclusion, given actors' diverse preferences over the desirability of the four paths of development, the influence of redistributive crises with their centrifugal impact, and given the need to adopt a treaty change by unanimity and submit it to national parliaments' consent and to referenda in some member states, makes it more likely that compromises are found in small steps. These small steps result in differentiated integration, such as opt-out clauses, a re-definition of solidarity, voluntary cooperation in some areas, in short, a more flexible union with diverse degrees of association which are not irreversible (Schmid, 2016).

4 Scenario Three: Covert integration

Covert integration is defined as a deepening of integration in terms of uploading of policy making competences and a definition of more stringent common policy solutions which take place *outside* of the main formal democratic political decision making arenas, Council, European Council and European Parliament.

As under scenarios one and two, *actors preferences* as regards the future design on the European institutional architecture, a deepening, a differentiated integration or a disintegration of the EU are assumed to diverge.

Similarly, *the macro conditions*, pressure of the financial crisis and the resulting economic recession in some member states, as well the on-going refugee/migration crisis, are assumed to persist. Both, given the diverse preferences over outcomes tend to deepen the conflicts and increase the difficulties of finding common solutions to redistributive problems. However, as opposed to scenario two under which differentiated solutions of integration are chosen in a process of designed and negotiated treaty revisions and policy changes in the central political arenas, under scenario three, these macro conditions are expected to lead to a process of covert integration, i.e. incremental policy and institutional changes *invisible* to the wider public.

This hidden process of deepening integration is a consequence of the existing formal decision-making rules, i.e. unanimity or consensus rules. Decision-making under these conditions increases the likelihood of vague formulations. Even under QMV given diverse preferences and the prevalent consensus practice, decision outcomes often are compromises containing vague formulations. This in turn allows for a re-bargaining of the specifics of a policy or an institutional rule in the course of their implementation. If actors in favour of deepening integration prevail in renegotiations, covert integration takes place outside of the public attention of the open arenas (Héritier 1999; 2016). Another typical path of specification of vague framework decisions is through executive or judicial actors with preferences for deepening integration; further paths are formulating policy changes in highly technical details, or cutting big salient controversial issues into small, technical, low salience issues which are not in the eye of public attention; the use of soft modes of integration based on voluntariness and/or including private actors in public policy making is yet another one, using soft power like benchmarking with naming and shaming as a means of deepening policy integration; or the introduction of parallel options of regulation, European and national, may lead to a crowding out of national regulations by European regulations because private actors comply with European regulations to save transaction costs; moreover, a delegation of decisions to independent regulatory authorities acting outside the political arena² is another important mode of deepening integration outside of the political arenas. A further mode of invisible integration of EU policies happens through transversal policies, such as competition policy. State aids, for instance, under the control of the Commission has been a powerful instrument of making an inroad into national policy shaping competences. By conditioning the acceptance of state aid on soft Commission policy criteria, member states see themselves induced to follow these criteria (Blauberger...).

In the past decades, a considerable part of deepening European policy integration evolved through these multiple, covert paths. Covert integration 'through the back door', raises obvious problems of democratic legitimization of European policy making once citizens realize that the extent of integration has progressed without their being aware of it.

² Or what Bickerton et al. under their notion of New Intergovernmentalism call 'de novo bodies' (Bickerton et al. 2015).

In conclusion, given actors' diversity of preferences of outcomes of future shape of Union, and given demanding decision-making rules of unanimity or consensus, covert integration is a likely path to be chosen and in fact has been used frequently in the past decades. The status quo of policy making is changed invisibly and without explicit democratic confirmation in the central political arenas, a circumstance which may trigger an anti-European backlash (Hobolt and Tilley 2014).

5 Scenario Four: Disintegration/Dissolution

Features of disintegration are defined first as a repatriation of specific policy making competences to the national level or the opting out of member states of specific joint policy areas; second it may take the shape of the exit of individual member states of the Monetary Union or/and the European Union entirely, such as decided in the Brexit vote of June 2016. Thirdly, dissolution of the entire Union is a planned step of designed institutional change of abolishing the Union altogether.

Actors' preferences are assumed not to favour a dissolution of the union, the third option. This holds for all member states and for the Commission and the European Parliament. Preferences for the second option, i.e. referenda over an exit of the European Union, as in Britain, are unlikely to be launched in other member states. Nor have explicit governmental positions of member states been put forward calling for a referendum over an exit from the monetary union. With increasing pressure of anti-European radical parties, however, and their possible electoral victories, such referenda cannot be excluded. The preferences of member states as regards the first option, i.e. repatriation of competences, are diverse. With the strengthening of the Visegrad formation of Poland, Hungary, Czech Republic and Slovakia, as well the Hanse 2.0 formation of the Netherlands, the Baltic States and Scandinavian states such preferences have become more pronounced with respect to migration policy (Visegrad) and fiscal policy (Hanse 2.0).

The *macro conditions*, as under scenario one, two, and three are assumed to be a persistent impact of the financial/ Eurozone crisis and resulting economic recession in some member states and the on-going refugee/migration crisis. Both, given the diverse preferences over outcomes tend to deepen the conflicts and increase the difficulties of finding common solutions to redistributive problems.

The *decision making rule* to bring about a treaty change with the intention of abolishing of the Union requires member states' unanimous decision. Given diverse preferences, and the lack of unanimity, it is unlikely to materialize. Individual national referenda over an exit from the union as individual steps of disintegration are more easily organized. Incentives to resort to such referenda would depend on the relative gain a country would draw economically from an exit, on geopolitical factors, on the handling of distributional economic and migration issues, the contentedness with the own national policies and institutions (de Vries 2016), but also the specific trade deal negotiated with Britain in the next years.

6 Conclusion: “Fluctuat nec mergitur”

From the analysis of the political dynamics resulting from actors preferences, macro conditions and given institutional rules, it is concluded that of the four possible scenarios, the scenario two of differentiated integration, multi-tier Europe and scenario three of a continuing covert incremental integration, rather than the scenario one of a political union or scenario four disintegration/dissolution, are the most likely to happen. It appears plausible to expect that the EU will continue ‘to be tossed, but will not sink’ (*fluctuat nec mergitur*) and will continue to be a ‘half-way house between intergovernmental cooperation and supranational powers’ (Barber 2016). Yet, floating along and reacting incrementally in the face of important changes in the economic and social environment may not be enough, and in the case of scenario three, risky, since covert integration ‘through the back door’, raises obvious problems of democratic legitimation of European policy making. When citizens at one point realize that integration has considerably deepened through hidden channels, without their being aware of it, this may trigger a backlash, manifesting itself, for instance, in the negative outcome of national referenda on European issues.

Going beyond the analysis of what might plausibly happen, a normative view would also argue that piecemeal interventions as a reaction to multiple crises tend to reinforce executive and non-majoritarian actors because they incur less coordination costs as compared to legislative action and treaty revisions. It also means that overall considerations of ‘reinventing the union’ are not tackled.

Notwithstanding, more recently, proposals for institutional reforms have been put forward from various quarters. Some relate to the overall

structure of the EU, others to specific institutional elements of the Eurozone governance. The most far-reaching plan was proposed by Martin Schulz, the then leader of the Social Democratic Party for a “United States of Europe” end of 2017. It was met with deafening silence (Muenchau 2017). The outcome of this advance reflects the analysis made under scenario one: the failure of a plan to establish a federal state.

As regards Eurozone governance, far-reaching proposals were introduced by the French President, Emmanuel Macron, as well as the President of the Commission, Jean-Claude Juncker. While Macron aims at a reform of the Eurozone architecture, proposing a Eurozone budget, a eurozone finance minister and a Eurozone parliament, the Commission’s proposals in particular aim at bringing the intergovernmental elements of economic governance created during the financial crisis, in particular the ESM, an intergovernmental agreement, into the institutional framework of the EU (Muenchau 2017). It also provides for the introduction of a Single Minister of Finance, a Eurozone budget and supports the proposal of transforming the EMS into a European Monetary Fund³ (Khan, 2017), as originally proposed by Germany in December 2017. Supported by the EP, the Commission moreover proposes that the EMF, which would develop new financial capacity, be subject to the normal legislative procedure. It would be able to build up a fund to give short-term loans to countries in economic difficulties and serve as a backstop for the funds that the EU’s banking resolution authority uses in rescuing banks. According to the Commission, the EMF would be accountable to the EP. The latter would be able to hold hearings with the agency’s head and would receive full yearly reports from the EMF on its activities (Smith-Meyer 2018; Charlet 2018).

By contrast, the Council is seeking to set up the EMF without resorting to the legislative process, but to maintain intergovernmental control over the EMF, as is presently the case under the ESM (Charlet 2018). For this purpose it has set up an informal task force reporting to the Economic and Financial Committee⁴. During the height of the financial crisis it had established the “task force on coordinated action” (Smith-Meyer 2018) to facilitate cooperation among finance ministers. Subsequently it made preparing work for the ESM, which is run by Eurozone finance

³ The German proposal provides for restructuring requests to countries receiving funds from the EMF.

⁴ Created in 1999 to review the economic and financial situation of member states.

ministers. It is the Economic and Financial Committee's task force that the Council now charged to deal with the Commission's EMF proposal to transform the ESM into an EMF. It is unlikely that it will follow the recommendation to subject the EMF to be accountable to the EP (Smith-Meyer 2018). Eurozone heads of state will decide in March 2018 on the EMF initiative (Muenchau 2017). This attempt of the Council to circumvent the Commission proposal by using existing, largely unknown, bodies to bring an important change of economic governance about, reflects the scenario three of covert integration.

Closely linked to the described plans of how to reform financial and economic governance institutions in the Eurozone, there is another on-going important debate centering on whether to go for a full fiscal union or, more modestly, to complete the Banking Union by adding to the Single Supervision Mechanism and to the Single Resolution Mechanism a Eurozone-wide deposit insurance scheme. It appears that in the face of a stiff opposition primarily from Northern member states the plan of a fiscal union is unlikely to materialize and the steps are at present directed to a completion of the Banking Union. However, this process has at present run into a deadlock over the question of whether banks should first engage in risk reduction (Northern member states) before going for a risk-sharing mechanism as favoured by a France-led coalition of Southern member states (Brunsdén, Khan and Chazan 2018). Both fiscal union and the deposit insurance fund under Banking Union are redistributive questions, albeit of a different scale. It, therefore, does not surprise that a decision about a fiscal union has not been tackled in view of diverse member states interests and the need to decide by unanimity. The deposit insurance fund raises the redistributive questions, as well, but – given that the two first important components SSM and SRM already exist – may be introduced in a differentiated⁵ an incremental way or allow for some differentiation and flexibility. This would reflect scenario two.

Finally, an option of a transformed EU architecture has to be mentioned where the overall objective is to re-build the EU in the sense of *both* selective deeper integration and at the same time devolution or repatriation of competences. According to this view, where there is an urgent need of joint action, such as in foreign and security policy as well as

⁵ Such as by allowing for access to a deposit insurance fund under differentiated economic conditions.

migration and asylum policy competences should be pooled. By contrast, other tasks with no trans-border effects such as some areas in environmental law, health, consumer policy, as well as labour law could be repatriated (Papier 2016).⁶ The principle of an ever closer union would be reversed to a need for a compelling legitimation of further communitarization. Such a recomposition of the EU with a simultaneous partial devolution of competences and partial additional communitarization would allow consensus building based on a compensation mechanism.

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⁶ Such options were discussed at the Bratislava Summit emphasizing that policy delivery was the order of the day, focusing on the economy/employment, security, i.e. fighting terrorism; protecting outside borders, digitalization (Herszenkron, 2016).

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