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Supranational agents as de-commitment devices:

The ECB during the Eurozone crisis

Philipp Genschel & Tobias Tesche

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Abstract

We argue that the independent agency of EU institutions can serve not only to tie the member states to previous policy commitments, as argued in the extant literature, but also to untie member states from commitments that have become outdated and harmful. The European Central Bank saved the Euro in 2012 not by enforcing the monetary financing prohibition or the no-bail-out clause of the Treaty more strictly but by flouting them. We develop our de-commitment account of supranational agency theoretically, show its workings empirically by a case study of the Eurozone crisis, and discuss its scope conditions. We surmise that supranational de-commitment is a common feature of EU politics.

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1. Untying Ulysses

Eurylochus and Perimedes bound me with still stronger bonds till we had got out of hearing of the Sirens' voices. Then my men took the wax from their ears and unbound me. Ulysses book XII

Sometimes it is a clever strategy to tie oneself to the mast. Ulysses passed the Sirens that way. At other times, it is better to undo old ties. Ulysses managed to navigate Scylla and Charybdis because his men had unbound him after the Sirens. Commitment strategies often have an expiration date beyond which they lose their usefulness. When the environment changes, or when crisis strikes, a firm tie to a previously successful policy may turn into an obstacle to policy adjustment (Elster 1989, 198; 2000; Schelling 1963, 39). The problem with pre-commitment strategies is not only how to make them credible ex ante but also how to 'de-commit' from them once unforeseen circumstances make flexibility desirable ex post.

Think of European Monetary Union (EMU) as an example. EMU was built on a firm commitment to strict national responsibility in fiscal policy. This commitment was enshrined, most visibly, in the no-bail-out and the no-monetary financing rules of the Maastricht Treaty. The purpose was to protect EMU from the siren songs of fiscal irresponsibility and inflation. Yet, when the Eurozone crisis hit in 2010, this commitment turned into an obstacle to crisis management hindering the timely and effective fiscal risk sharing that was required to mitigate contagion risks and keep EMU afloat. The rescue of the Euro came to depend on de-commitment, i.e. on effective strategies to dismiss, ignore or work around the fiscal rules of the Maastricht treaty (e.g. Kreuder-Sonnen and Zangl 2015, 584).

The EU literature emphasizes the credibility part of the commitment problem but largely neglects the de-commitment part. According to a now standard argument, unilateral temptations to defect often hinder EU member states from realizing joint gains from economic and political integration. To escape this predicament, the member states delegate the authority to propose, legislate, implement, interpret or enforce EU policies to relatively independent and integration-minded supranational agents, including the European Commission, the European Court of Justice (CJEU), and the European Central Bank (ECB). By empowering these agents to ensure compliance, the member states empower themselves to adopt collectively superior, but defection-prone EU policies. EU institutions exist because they serve as commitment devices for the member states (e.g. Franchino 2007; Moravcsik 1998; Pierson 1996; Pollack 2003; Stone Sweet and Sandholtz 1997; Tallberg 2002; Thatcher and Stone Sweet 2002).

The EU literature has much less to say on 'de-commitment'. When and how will EU member states untie themselves from outdated commitments? As we argue, there are two basic modes of de-commitment. One is intergovernmental re-contracting: the member states renegotiate the formal terms of their policy cooperation in light of changed circumstances. The other is supranational agency: EU institutions de-commit the member states informally by implementing the terms of obsolete policy agreements in novel, more accommodating ways, thus giving national governments wiggle room to deal with unforeseen challenges. Re-contracting is the 'clean' solution: the member state principals take collective responsibility for adjusting collective commitments. Yet, supranational agency is often politically convenient because it avoids the distributive conflicts and domestic politicization that intergovernmental re-contracting almost inevitably bring into the open. If the value of

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continued cooperation is substantive but the political costs of re-contracting are high, the member states may tacitly agree to defer to supranational de-commitment. A 'technocratic fix' (Seddon 2015, 61) then substitutes for a new political settlement. Supranational EU institutions created to facilitate intergovernmental decision-making by enhancing credible commitment, turn into default policy makers that compensate for intergovernmental non-decision.

The Eurozone crisis illustrates both modes of de-commitment. Virtually all member state governments and considerable majorities in national publics wanted to save the Euro during the crisis. Still, re-contracting the no-bail-out and no-monetary-financing rules was deadlocked by conflict between creditor and debtor countries and by domestic politicization within them. While there were some intergovernmental agreements on fiscal risk sharing, they were too little, too late, and too much contaminated by the continued insistence on strict national liability to stop the market panic. This left the main burden of crisis management to supranational EU agents and, in particular, to the ECB. After some initial hesitation, the ECB took on the task and stopped the crisis by effectively flouting the no-bail-out and no-monetary-financing rules in order to do 'whatever it takes' to save the Euro. The commitment device turned into a de-commitment agent with ambiguous consequences for itself. The ECB is now more powerful than ever before but also more vulnerable.

The remainder of the paper is structured into four sections. We begin with a brief review of the literature on supranational agency in the EU, showing the centrality of the commitment argument (section 2). We then turn to the de-commitment problem. We compare the costs and benefits of de-commitment by intergovernmental re-contracting and by supranational agency, discuss strategic interdependencies between both strategies and explore their implications for member state principals and supranational agents (section 3). We illustrate our theoretical argument by a case study on de-commitment during the Eurozone crisis (section 4). In conclusion, we discuss the prevalence and scope of supranational de-commitment in the EU (section 5).

2. Supranational agents as commitment devices

Supranational delegation refers to the transfer of policy-making authority from member state principals to independent EU agents including the European Commission, the CJEU and the ECB. Why would member states ever agree to such a move? Simplifying heroically, the literature suggests two explanations: information and credible commitment (e.g. Pollack 2003; Majone 2001; Moravcsik 1998).

According to the *information* account, the purpose of supranational delegation is to reduce informational barriers to integration. The centralization of policy authority facilitates the coordination of national positions in Council decision-making. It provides EU institutions with superior access to political information. This allows the European Commission and the Council Presidency to help member state governments identify common ground and agree on mutually beneficial strategies (Pollack 2003). The centralization of policy authority also secures economies of scale and scope in technical information. Allegedly, the Commission's superior technical expertise was a main driver behind the EU's innovative system of social regulation that allegedly ensured higher levels of risk protection than any member state had ever realized before (Majone 1993; Eichener 1992).

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According to the *commitment* account, supranational delegation serves to reduce defection risks. EU institutions are usually more willing and more able to monitor and enforce compliance with EU policies than national governments: they are more willing because their institutional self-interest crucially depends on the success of EU policies; they are more capable because they are relatively insulated from the domestic mass politics and interest group pressures that often tempt member states towards non-compliance. Hence, by delegating to supranational EU institutions, member state governments can collectively lock-in preferred policies and protect them from defection by other member states or overturn by the domestic opposition. Supranational delegation facilitates intergovernmental agreement on ambitious but politically contested and defection-prone integration projects.

The information account dominated early thinking about supranational delegation (i.e. Haas 1964). More recently, however, the commitment account has emerged as the dominant theoretical rationale in both intergovernmentalist (Moravcsik 1998) and neo-functionalist (Sandholtz and Stone Sweet 2012) theories of integration. Purportedly, commitment problems are more widespread in the EU than information problems.

Commitment problems derive from two main sources: time inconsistency and political uncertainty (e.g. Majone 2001; Moe 1990). Time inconsistency arises when the government's best long-run policy is not also best during all the short-runs along the way. This creates incentives to renege on long-term policy goals for short-term advantage. The standard example is the corrosive effect of the short-term benefits of surprise inflation on long-term policy commitments to low inflation. The general problem is to bind oneself to a superior course of action. Political uncertainty refers to the risk of a power shift to opposition forces with different policy preferences. As this risk increases, the capacity of the incumbent government to enter into long-term commitments decreases. The standard example is the electoral competition between left and right parties in liberal democracies. Here the general problem is to bind others to a preferred course of action.

In the EU, commitment problems are aggravated by interdependence: the commitment of any member state to common EU policies depends on the commitment of all others. If others seem at risk of succumbing to time inconsistency or political uncertainty, the same risk also increases at home; if others don't comply, the benefits of, and the political support for, own compliance decrease. Failure to bind oneself may breed failure to bind others, and vice versa. This creates extra 'demand' for supranational commitment agents (Moravcsik 1998, 73-6; Pollack 2003, 30).

The effect of interdependence is conditioned by intergovernmental conflict and domestic politicization. Intergovernmental conflict aggravates commitment problems by favoring narrow and incomplete, lowest common denominator agreements that leave some member states relatively aggrieved and with few incentives to comply. Small temptations may then be sufficient to lure them towards non-compliance, or at least towards the opportunistic exploitation of gaps in the incomplete intergovernmental contract. Domestic politicization increases commitment problems because EU policies that are highly salient and controversial in the domestic arena are likely to raise issues of time inconsistency and political uncertainty that undermine incentives for compliance. Note that intergovernmental conflict and domestic politicization feed on each other. High levels of conflict between member states tend to increase the stakes domestic actors have in the conflict and the attention they pay to it. High levels of domestic politicization, in turn, tend to constrain the government's scope for compromise at the European level thus aggravating intergovernmental conflict.

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Obviously, the demand for supranational commitment does not automatically generate its own supply. Ceding power to independent EU institutions is potentially costly for member state governments precisely because EU institutions may use it to overrule national governments on issues of distributive significance and political salience. These costs are aggravated by the risk of agency loss: EU institutions may abuse their delegated powers to radicalize the interpretation and enforcement of policy commitments with a view to strengthening their own institutional autonomy and standing. The Commission's and the Court's 'single-minded' pursuit of the 'four freedoms' (Scharpf 1999, 62) is a standard example. It is common to assume that EU institutions have a general preference for 'greater competences for the European Union as a whole and a specific preference for greater competences for themselves' (Pollack 2003, 384). If circumstances permit, they will engage as supranational 'engines of European integration' that bind the member states tighter to EU rules and policies than any member state government ever intended (Pollack 2003; see also Pierson 1996; Sandholtz and Stone Sweet 2012).

3. Supranational de-commitment

Supranational commitment agents solve first-order problems of time inconsistency, political uncertainty and intergovernmental conflict. Yet, in doing so, they may cause second-order problems of excessive policy rigidity. No policy is optimal forever. If the environment changes in fundamental ways, it may be useful or indeed imperative, to switch to a new policy. The fiscal rules of the Maastricht treaty provide a drastic example, as we will demonstrate below. Yet, de-commitment problems are neither new nor limited to EMU. Just think of the Common Agricultural Policy 'originally praised as a successful solution … now [i.e. in the 1970s and 1980s] increasingly criticized for being outrageously wasteful' (Scharpf 1988, 251), or the Dublin Regulation introduced in 1997 to bring order to the distribution of asylum seekers in the EU and ending up being a contributing cause to the migration crisis 2015 (Genschel and Jachtenfuchs 2018). In all these cases, 'a systematic deterioration of the "goodness of fit" between [EU] public policy and the relevant policy environment' (Scharpf 1988, 257) creates a need to abandon outdated policy commitments in order facilitate policy adjustment. In this section, we compare two basic approaches for doing so (intergovernmental re-contracting and supranational agency) and discuss strategic interdependencies between them.

The obvious approach to de-commitment is *intergovernmental re-contracting*. The member states follow the EU's standard legislative procedures in order to rewrite the rules of EU policy and adapt the mandates of their supranational commitment agents accordingly. The pre-condition is, of course, that they agree on the obsolescence of old policy rules and on the design of the new policy commitments to replace them. Again, the difficulties of agreement will increase with the intensity of intergovernmental conflict and with the level of domestic politicization. If member state governments disagree whether there is a policy failure in the first place, and how to fix it, and if domestic audience costs are high, then intergovernmental agreement is difficult, deadlock is likely, and chances are that even clearly deficient policy commitments will remain in force (Scharpf 1988). Crisis conditions may facilitate the exit from the joint trap by focusing the minds of governments and mass publics on common problems and interests, favoring a cooperative 'problem-solving' interaction orientation. Yet, crises can also hinder agreement by revealing the depth of intergovernmental divides, by

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incentivizing blame shifting and beggar thy neighbor policies, and by pushing actors into a competitive 'bargaining' orientation (Scharpf 1997, 84-9).

The alternative approach to de-commitment is *supranational agency*: EU institutions de-commit the member states by interpreting, implementing and enforcing outdated policy commitments in novel, more accommodating ways. Policy adjustment comes through an informal change in the operational meaning of EU rules rather than through formal rule change. This presupposes, of course, that the EU institution has discretionary power to decide, interpret, implement or enforce policy rules in the first place. Purely advisory institutions can neither commit the member states to, nor de-commit them from, any policy commitment. The likelihood of supranational de-commitment increases with problem pressure and with the inability or unwillingness of the member states to agree on intergovernmental re-contracting. If the de-commitment problem is vital and if re-contracting is blocked by intergovernmental conflict and domestic politicization, EU agents have an incentive to do 'whatever it takes' to safeguard the viability of EU policies, and, hence their own viability and standing.

Yet, supranational de-commitment is a mixed blessing for EU institutions. On the one hand, it offers an opportunity to enhance supranational authority. As trouble-shooters of last resort, EU institutions gain extraordinary power to set rules and select policies. On the other hand, supranational de-commitment corrodes the legitimacy of EU institutions as effective and impartial, non-majoritarian agents. If the de-commitment problem is severe, i.e. if the clash between old policy commitments and new policy requirements is fundamental, informal de-commitment requires that EU institution resolutely bend the law and courageously stretch their mandates. Doing so makes them susceptible to legal proceedings, corroding their non-majoritarian legitimacy. Supranational de-commitment also undermines the effectiveness of EU policies. De-committing from existing rules without formally breaking these rules is rarely a straightforward affair. It forces supranational agents to adopt contrived policy approaches that are rarely optimal (Seddon 2015). Finally, supranational de-commitment implicates EU institutions, willy-nilly, in the intergovernmental conflicts and domestic politics that block de-commitment by intergovernmental re-contracting. This tarnishes their image as impartial trustees of the Community interest and exposes them to political contestation and scapegoating.

To be sure, crisis conditions may increase the tolerance of governments and mass publics for unorthodox policy moves and supranational assumptions of 'emergency powers' (Dyson 2013; White 2015; Kreuder-Sonnen and Zangl 2015). Even then, the risks of supranational de-commitment are serious. To the extent that EU institutions care not only for the scope but also for the legitimacy and effectiveness of their authority, they have incentives to avoid supranational de-commitment.

If there is sufficient agreement for intergovernmental re-contracting, the member states have little reason to defer to EU institutions for de-commitment purposes. Re-contracting will then be the preferred option. Yet, if intergovernmental disagreement is pronounced and/or governments face a strong constraining dissensus at home, supranational de-commitment may be an attractive alternative: it avoids policy breakdown, at least in the short run, and, at the same time, allows national governments to ostensibly insist on their policy ideal points – to the benefit of national distributive interests and their domestic mass publics. Member states can have their cake and eat it too – the political equivalent to Immaculate Conception. If the strategic setting in the Council resembles a chicken game combining a strong common aversion to a breakdown of joint policies with a strong distributive conflict among member

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states, governments are especially likely to engage in a collective flight into non-decision in order to force EU institutions into supranational de-commitment. Either they refuse to re-contract and thereby pressure EU institutions to act in their stead, or they re-contract on an inconsistent compromise of their contrary positions and leave it to EU institutions to make it work. For the member states, the joint-decision trap is no longer the problem but the (short-term) solution: 'principal loss' rather than 'agency loss'.

In conclusion, we highlight four key differences between our de-commitment account of supranational agency and the standard commitment account:

- *Purpose* of supranational agency: In the commitment account, supranational agents exist to facilitate integration. By providing credible commitment to member states they allow for the pursuit of joint policies under conditions of time inconsistency and political uncertainty. In the de-commitment account, supranational agents exist to prevent disintegration in situations where old policy commitments have become dysfunctional but intergovernmental agreement on new commitments is elusive.
- Effect on *member state principals*: In the commitment account, supranational agency facilitates intergovernmental contracting by unburdening member states from the commitment problems involved. In the de-commitment account, supranational agency hinders intergovernmental re-contracting by allowing member states to avoid the political costs of intergovernmental compromise. In the former perspective, supranational agency reduces time inconsistency and political uncertainty at the national level thus enabling joint decision making; in the latter perspective, it causes time inconsistency and political uncertainty thus preventing joint decision making.
- Effect on *supranational agents*: In the commitment perspective, the consequences are unambiguously positive for the agents. Supranational agency strengthens integration and enhances the power of EU institutions over the member states. In the de-commitment perspective, the consequences are more ambiguous. On the one hand, supranational de-commitment will also enhance the power of EU institutions by increasing the member states' dependence on supranational assistance. On the other hand, it tends to erode the non-majoritarian legitimacy of EU institutions, undermining their reputation for political neutrality, technical effectiveness and strict legality.
- *Risks*: The commitment account highlights the danger of 'agency loss'. EU institutions may exploit their commitment power to push integration beyond the member states' collective ideal point. The joint-decision trap prevents effective counteraction by the member states. The de-commitment account, by contrast, highlights the danger of 'principal loss': Member states exploit the institutional self-interest of EU institutions to offload the political costs of maintaining integration on these institutions. They refuse to revise outdated policy commitments because they trust EU institutions to working around them lest integration fails. Rather than seeking to escape from the joint-decision trap to take collective control, they collectively flee into the trap in order to force EU institutions into action.

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4. De-commitment during the Eurozone crisis

The story of the Eurozone crisis has been told many times. We tell it again to highlight the contrast it presents to the standard commitment account of supranational agency. As we show, the Eurozone crisis was essentially a de-commitment problem. We explain why the member states failed to solve this problem by intergovernmental re-contracting, why the ECB stepped in to provide supranational de-commitment, and how the ability and willingness of the ECB to step in created principal loss.

Outdated commitments

The institutional set-up of monetary union was shaped by fears of political uncertainty and time inconsistency. France pressed for monetary integration in order to break the German Bundesbank's control of the European Monetary System (EMS). Germany, in turn, insisted on protections against the inflationary fall out of economic and budgetary laxity in France (not to mention Italy).

In the end, France agreed to a monetary union largely on German terms in order to get any monetary union at all. The peace formula enshrined in the Maastricht Treaty combined a commitment to supranational monetary integration with a commitment to national liability in fiscal and economic policy. Monetary authority was delegated to the newly created, supranational ECB. Fiscal and economic policy authority, by contrast, remained the sole responsibility of the individual member states. On the one hand, the Treaty invested the ECB with political independence (art. 130 TFEU) and a narrow mandate focused on price stability (art. 127 TFEU) in order to protect it from the Siren songs of monetary profligacy potentially emanating from fiscally irresponsible member states. On the other hand, the Treaty closed possible channels of European fiscal solidarity in order to contain moral hazard and highlight national responsibility: the monetary-financing prohibition (art. 123 TFEU) foreclosed a monetary bail out of over-indebted member states through the ECB; the no-bail-out rule (art. 125 TFEU) foreclosed a fiscal bail out through other member states or EU institutions. National governments were left with no defense against excessive debt but higher taxes, lower spending, and, ultimately, outright default. It was hoped that the commitment to national responsibility would incentivize fiscal prudence and prevent inflationary debt dynamics. The convergence criteria (art. 140 TFEU) and the stability and growth pact (SGP) (art. 121, 126 TFEU and Protocol No. 12) provided additional safeguards for fiscal discipline (Heipertz and Verdun 2010; Schelkle 2017, 138; Brunnermeier, James, and Landau 2016, 99).

The policy commitments of the Maastricht Treaty aimed to deter fiscal crisis. Yet, when the Eurozone crisis broke nevertheless, they turned into a liability impeding the fiscal risk and burden sharing that most market actors and many policy experts considered critical for keeping the Eurozone afloat. Over-indebted member states like Greece or Italy, or member states having to bailout an over-indebted private sector like Spain or Ireland needed sufficient fiscal guarantees to reassure markets of their solvency. It was clear that the default of any of these countries would trigger defaults in other debtor states, which in turn would threaten the stability of banks in Northern creditor states and shatter the viability of the Eurozone (Sims 2012; De Grauwe 2012, 2013; Frieden and Walter 2017, 385). Hence, the

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EU's success in crisis management came to depend crucially on its ability to de-commit from the risk sharing prohibitions of the Maastricht Treaty.

Intergovernmental re-contracting

The obvious way to de-commit from the risk sharing taboo was to renegotiate the terms of the Maastricht treaty. Indeed, some re-contracting did take place. Yet, it failed to solve the de-commitment problem and may actually have exacerbated it.

The onset of the Eurozone crisis highlighted the collective interest of all member states in preserving the Euro. No government seriously considered a unilateral exit or a multilateral breakup. Large popular majorities supported the defense of the Euro (Schimmelfennig 2014; Aslett and Caporaso 2016). The crisis also highlighted the need for bold decisions: if the fiscal troubles of a relatively small member state such as Greece were sufficient to throw the entire Eurozone into disarray, something fundamental was obviously amiss with the fiscal rules of the Maastricht treaty. Yet, what was the problem exactly and how to fix it?

This question divided the Eurozone into two fairly consolidated camps (Hall 2012; Caporaso and Kim 2012; Frieden and Walter 2017; Schelkle 2017; Biermann et al. 2017; Genschel and Jachtenfuchs 2018): debtors (including Greece, Ireland, Italy, Portugal, Spain, Cyprus) and creditors (including Austria, Finland, Germany, the Netherlands). The debtors wanted to socialize the costs of their national debts through European risk and burden sharing: through ad hoc debt restructuring or debt forgiveness, temporary financial assistance or, preferably, permanent supranational transfers such as Eurobonds, European taxes or a Eurozone budget. The creditor states, by contrast, wanted to avoid risk and burden sharing as far as consistent with the maintenance of monetary union, and to force the debtor countries to absorb most of the adjustment costs through domestic spending cuts, tax hikes and belt tightening. The debtors wanted a clear de-commitment from the Maastricht restrictions on risk and burden sharing. The creditors wanted to double down on them. Domestic politicization fueled the conflict. In creditor countries, public outrage fed on a narrative of 'northern saints' and 'southern sinners' (Matthijs and McNamara 2015). The debtor's counter-narrative focused on the complicity of the creditor countries in the onset of the crisis and fanned outrage about the 'fiscal waterboarding' of debtor countries (Matthijs and McNamara 2015, 230; Varoufakis 2017, 23, 306).

The irreconcilable positions of both camps blocked any radical reform of the Maastricht framework. The creditors ensured that articles 123 and 125 survived the crisis formally unscathed. The disciplinarian regime of the SGP was beefed up through the six pack, fiscal compact and two pack. Yet, the issue of risk sharing could not be dodged completely, if an accidental breakup of the Eurozone was to be prevented. The creditors agreed to the first Greek rescue package of May 2010, the temporary European Financial Stability Facility (EFSF) in June 2010, and the permanent European Stability Mechanism (ESM) replacing it in October 2012 (Gocaj and Meunier 2013), increasing the EU's lending capacity step by step but insisting on clear limits to risk sharing. The ESM's lending capacity was capped at €500 billion. This was high, but probably not high enough to bail out Italy and Spain, undermining the ESM's credibility as a lender of last resort. Yet the creditors refused to lift the lending cap, for instance by giving the ESM a banking license. They also refused joint liability for the ESM meaning that the ESM lending capacity would be at its lowest when need was highest, i.e. when a large debtor like Italy required assistance (Ban and Seabrooke 2017, 12; Henning 2017, 168).

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In conclusion, the Eurozone crisis triggered an intergovernmental reaction. Yet, this reaction did not solve the de-commitment problem, and quite possibly made it worse. The lack of a clear break with the fiscal burden sharing taboo of the Maastricht Treaty, and the limits creditor countries attached to EFSF and ESM lending fueled rather than calmed the market panic; the tightening of the SGP fueled pro-cyclical retrenchment.

Supranational de-commitment

The failure of de-commitment by intergovernmental re-contracting created demand for de-commitment by supranational agency. The pressure on the ECB mounted to provide the risk sharing through the 'monetary backdoor' (Schelkle 2014) that the member states wouldn't allow through the fiscal front door. As we show next, the ECB gave in to these pressures, but only reluctantly.

Already in 2010, France, Portugal, and Italy had called upon then ECB President Trichet to unfreeze capital markets by buying government bonds of distressed debtor states. Trichet pushed back, reminding them that fiscal policy was a national responsibility under the Treaty, and that the ECB had no mandate to protect them from the consequences of their fiscal and economic follies (Barber 2010). Yet, cognizant of the impending risks to the Euro, the ECB did not withhold financial assistance completely. Rather, it tried to use the promise of assistance to nudge member states towards taking collective responsibility for the Euro through intergovernmental agreement on risk sharing and through national risk reduction: the ECB relaxed the collateral rules for Greek bonds in May 2010 only after the political leaders had adopted the Greek rescue package (European Central Bank 2010); the ECB premised its first bond-buying scheme (also in May 2010), the Securities Market Programme (SMP) on prior intergovernmental agreement on the ESFS (Henning 2016, 180); the ECB sent letters to the governments of Italy and Spain in August 2011 to extract promises of structural reform as a quid pro quo for an expansion of ECB purchases of Italian and Spanish government bonds (Beukers 2013); it made the launch of so-called long-term refinancing operations (LTROs) 'informally contingent' (Henning 2016, 185) on the prior adoption of the Six-Pack in December 2011.

None of these activities convinced the markets. To the contrary, the ECB's insistence on a quid pro quo raised doubts about its willingness to stand behind embattled debtors. Hence, when the crisis worsened again in spring 2012, the ECB upped the ante. In July 2012 during a now famous speech in London, ECB President Mario Draghi promised that the ECB would 'do whatever it takes to preserve the Euro'. This was followed, two month later, by the announcement of Outright Monetary Transactions (OMT), a bond-buying program pledging unlimited support to member states receiving ESM assistance. In effect, OMT removed the ESM's lending cap that the member states had failed to remove by intergovernmental agreement (Schelkle 2017, 216). Most observers agree that OMT effectively ended the Eurozone crisis (Chang and Leblond 2015; Matthijs and Blyth 2015; De Grauwe and Ji 2015). Yet, it did so by bending, if not breaking, EU rules: de facto the ECB assumed lender of last resort powers that de jure it did not have (Kreuder-Sonnen and Zangl 2015; Lombardi and Moschella 2015; Schelkle 2014; Scicluna 2017).

The ECB tried to hedge the political and legal risks implied by OMT in various ways. One was outright denial: the ECB insisted that OMT was covered by its mandate and was fully compatible with the monetary financing prohibition of the Treaty (i.e. art. 123 TFEU). Allegedly, the program served only to correct 'unfounded fears of investors' upsetting the proper functioning of the 'monetary policy transmission mechanism' but did not amount to a

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monetary financing of public debts (see German Federal Constitutional Court 2014, 7). Another strategy was informality. The ECB announced the OMT program by a press release without any accompanying legal act, hoping (in vain) that this would preempt judicial scrutiny (Zilioli 2016). Third, the ECB secured the 'implicit backing' of important member states (Brunnermeier, James, and Landau 2016, 95). Obviously, national governments couldn't endorse OMT explicitly without fueling the intergovernmental and domestic conflicts that vitiated intergovernmental re-contracting. But at least they could abstain from crying foul (see Schoeller 2018, 86). Arguably, the OMT announcement would not have tamed the markets without Berlin's 'deafening silence' signifying tacit consent (Schelkle 2017, 215-6). Finally, the ECB tried – again – to prod the member states towards common risk sharing, this time through banking union. Allegedly, 'the Central Bank was only able to take this decision [OMT] because of the preliminary political decision [in June 2012], by the EU's Heads of State and Government to build a banking union' (Van Rompuy 2014).

Principal loss

Thus far, we have argued that the failure of intergovernmental re-contracting forced the ECB to engage in supranational de-commitment. Yet, as we show next, the former was partly endogenous to the latter: Precisely because it was common knowledge that the ECB would be willing and able to do 'whatever it takes' to save the Euro, the governments of the member state were under less pressure to do so by intergovernmental agreement. They didn't have to waste political capital on revising the fiscal risk sharing prohibitions of the Maastricht Treaty but could leave it to the ECB to deliver risk sharing through unconventional monetary policies. They could insist on their conflicting distributive interests and still rely on the ECB to protect the Euro for them. In short, the availability of a supranational de-commitment agent facilitated the principals' collective flight into political irresponsibility. It turned non-decision, i.e. the joint-decision trap, into an attractive exit from a collective conundrum.

From the start of the crisis, it was clear to all relevant actors that the ECB's capacity 'to print money' gave it the power to backstop sovereign bond markets and act as an effective lender of last resort (De Grauwe 2012, 2013; Buiter and Rahbari 2012). It was also clear that the ECB would use this power if necessary to save the Euro. As Schoeller (2018, 88) explains: 'in the event of a Eurozone collapse, MS [member states] would lose their common currency, but the ECB would cease to exist'. The combination of ability and willingness made the ECB vulnerable to exploitation. The situation resembled an asymmetrical 'chicken-game' between the ECB and its collective member state principal in which it was prior knowledge that the ECB would give way. The pliability of the ECB encouraged principal loss.

One graphic example of principal loss is provided by Angela Merkel's and Nicolas Sarkozy's decision, at Deauville in October 2010, to push for private sector involvement (i.e. the imposition of losses on private investors) in future Eurozone bail outs. The declaration confirmed the spirit of the no bail out rule and reassured French and German voters that the era of unconditional bailouts was over. Yet ECB President Trichet had explicitly advised against private sector involvement because it thwarted all attempts to rebuild investor confidence in Southern debt. The ECB lobbied other member states to block the Franco-German initiative but to no avail. As a consequence, sovereign rate spreads started to grow again, increasing the pressure on the ECB to provide emergency liquidity (Orphanides 2014, 220-2).

The ECB's attempt to extract structural reforms as a quid pro quo for purchases of Italian and Spanish bonds through an informal exchange of notes was equally unsuccessful. When the

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Italian government failed to implement the promised reforms, the ECB suspended its bond purchases as announced. The consequence was market panic and a domestic political crisis in Italy, both increasing the pressure on the ECB to act (Schelkle 2017, 226 fn.7).

Likewise, once the ECB's OMT announcement started to calm the markets, member states began reneging on banking union. While all member states had agreed in June 2012 to allow for direct bank recapitalization through the ESM, Germany, Finland and the Netherlands quickly withdrew their support. While an ESM direct recapitalization instrument was adopted in the end, it was subject to stringent condition that complicated its activation and reduced its value as a risk sharing instrument (Epstein and Rhodes 2016, 425; Howarth and Quaglia 2016, 173-4). In a similar vein, creditor countries block the introduction of a European deposit insurance scheme (Donnelly 2018).

In conclusion, the story of the Eurozone crisis deviates from the commitment account of supranational agency in four important respects. First, the pivotal role of the ECB in crisis management did not derive from its power to commit but from its power to de-commit. Second, the key problem of ECB agency was principal loss, not agency loss. Third, member state governments made no effort to prevent the ECB from pushing the boundaries of its mandate. Rather, it was the ECB itself that tried to restrain its agency. Finally, supranational de-commitment left the ECB more powerful but also more vulnerable than before. The ECB gained de facto power as a policy authority of last resort. It gained de jure power, for instance through banking union. Yet, it also become more exposed to inconsistent demands involving it in political trade-offs that undermine its non-majoritarian legitimacy and public trust (Torres 2013; Tesche 2019).

5. Scope conditions

In this paper we have developed a de-commitment account of supranational agency in the EU. It shows that the independent agency of EU institutions can serve not only to tie the member states to previous policy commitments but also to untie them from commitments that have become outdated and untenable. It also shows that the interaction between supranational agency and intergovernmental decision-making is more ambiguous than conventional theories suggest. EU institutions can not only unblock the joint-decision trap and facilitate intergovernmental decision-making, as often highlighted in the literature (e.g. Scharpf 2006; Falkner 2011). It can also cause non-decision and encourage a collective flight into the joint-decision trap: When old EU policy commitments clash with new policy requirements in fundamental ways, as during the Eurozone crisis, but, at the same time, an intergovernmental re-contracting of commitments is deadlocked by distributive conflict and high levels of politicization, the lowest common denominator solution for the member states may be to agree to disagree and thereby shift the responsibility for dealing with the de-commitment problem to EU institutions. EU institutions turn into 'garbage trucks of integration' (Genschel and Jachtenfuchs 2016, 54) that keep the EU afloat by disposing of potentially harmful but non-negotiable policy commitments.

Given the EU's peculiar combination of a deadlock-prone system of intergovernmental decision-making and strong supranational institutions, we expect supranational de-commitment to be a common feature of EU politics. Testing this proposition is not easy, however, because EU institutions have little incentive to expose their supranational de-commitment activities to public view. As our case study has shown, the ECB's unconventional

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policies have turned the operational meaning of the fiscal rules of the Maastricht Treaty on its head. Yet for political and legal reasons the ECB insisted that these policies were entirely covered by its mandate and in line with treaty rules. Even if EU institutions do supranational de-commitment, they will deny it. Still, it is quite obvious that not only the ECB engaged in de-commitment during the Eurozone crisis. Think, for instance, the CJEU's Gauweiler judgement, giving a 'generous blessing' to OMT, and effectively allowing the ECB to use unconventional monetary policies that ostensibly clash with the fiscal policy commitments of the Maastricht Treaty (Zilioli 2016, 173). Or take the European Commission's interpretative communication on 'Making the best use of the flexibility within the existing rules of the Stability and Growth Pact' that effectively undercut the ostensible purpose of the Six Pack to tighten the Pact and give it teeth (Hodson 2016).

Even if we accept that supranational de-commitment is a prominent feature of EU politics, this does not prove the commitment logic of supranational agency wrong or irrelevant. To the contrary, our de-commitment account builds on and complements this logic. First, most fundamentally, the power to de-commit derives from the power to commit. Supranational agents that lack the power to enforce policy obligations on member states also lack the power to relieve member states from such obligations. EU institutions can operate as de-commitment agents only to the extent that they have commitment power. Second, the commitment logic is likely to shape the initial grant of power to EU institutions. When member states first agree on a new EU policy their main concern will be to provide credible commitment to that policy rather than to provide for its decommissioning at an unspecified future date. Hence, the design of EU institutions tends to reflect the commitment problems prevalent at the time of policy creation. Third, during times of normal history when EU policy rules are broadly in line with member state interests and functional requirements, EU institutions have little incentive to engage in de-commitment. To the contrary, they will seek to strengthen commitment to prevailing rules. Finally, even in times of crisis, when EU policy commitments hinder adjustment to new challenges, EU institutions will engage in supranational de-commitment only if intergovernmental re-contracting is blocked and if the coherence of EU policies and institutions cannot be defended otherwise. This was the case during the Eurozone crisis but not, for instance, during the Brexit negotiations.

One main problem of the Brexit negotiations is that the EU's commitment to the 'four freedoms' hinders agreement on a Post-Brexit modus vivendi with UK. Conceivably the Commission and its chief negotiator Michel Barnier could break the impasse by subtly relaxing the commitment. Yet, they have little incentive to do so because this could trigger a domino effect among the remaining EU-27 member states that unravels the normative and political foundations of the EU. A no-deal 'hard Brexit' scenario may be bad. Yet, from the institutional perspective of the Commission, disunity and conflict among the remaining EU members would be even worse. We find it unlikely therefore that Barnier will use the de-commitment powers he may potentially have to grease bilateral negotiations with the UK. Rather he will insist on a purist reading of the four freedoms to protect consensus among the EU-27 and rely on the EU's bargaining power to gain agreement with the UK.

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