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## *Itinera Europea*

### Four Scenarios and Their Plausibility

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**Abstract:** Based on strategic interaction analysis, the chapter assesses the plausibility of the future paths of development of the European Union: a federal state, a differentiated and flexible union, covert integration, or disintegration. Systematically varying either the preferences of the main actors or the macro decision-making rules and external shocks/crises, the analysis comes to the conclusion that a differentiated and flexible union and covert integration are the most likely paths of development. The chapter discusses implications of specific scenarios, such as a possible popular backlash against ‘covert integration’ and elaborates on the desirability of practical proposals of a change in the European institutional architecture.

#### I. Introduction

In recent years, the European Union (‘EU’) has been faced with critical developments, such as the Eurozone crisis, the migration crisis, Brexit, and increasing sovereign popular movements, as well as geopolitical shifts in the international environment. All these developments pose a challenge to EU actors to reconsider the EU’s institutional architecture in order to deal with such incisive developments in a better way. Being a ‘halfway house’ between a supranational and an intergovernmental polity with complex interlinked decision-making processes means that the European Union has been relatively slow in reacting to sudden changes in its external environment and indeed changes also stemming from within the Union. Therefore, the calls for a reconsideration of the given institutional architecture have become more frequent and more urgent.

This chapter, therefore, raises the question of whether the European Union will follow the path of (i) an ever-closer union or a United States of Europe; of (ii) a

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two-tier or more differentiated union with elements of flexibility; (iii) continuing to muddle through with incremental changes on a path of 'covert integration; or (iv) engaging 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.

Analytically, in order to answer this question, I will use strategic interaction analysis, as developed by Lake and Powell.<sup>2</sup> Strategic interaction analysis departs from the assumption that in order to go beyond the description of political decision making and its outcomes and to seek to explain outcomes, micro and macro aspects of political decision making need to be distinguished. Of course, in reality, actor aspects and environment aspects are closely linked when decisions are taken. But in order to come to systematic explanations and not merely describe decision-making situations, the two aspects need to be distinguished and systematically varied.

On the actor/micro side, strategic choice analysis distinguishes between two attributes of actors. First, actors are assumed to have preferences, defined simply as how they rank the possible outcomes defined by the environment.<sup>3</sup> Actors' basic preferences are desires that remain the same across a wide variety of situations. Actors' situational preferences, by contrast,<sup>4</sup> consist of the ranking of preferred outcomes in specific interaction or negotiation situations which in turn is defined by the particular problem at issue and the constellation of the other actors and their preferences over outcomes with which they negotiate. The second attribute of an actor is his or her prior beliefs about the preferences of other actors with which he or she negotiates. In particular, when actors are uncertain, these beliefs are crucial for the decision about which strategy to choose, and, as a consequence, for the outcome of interaction.<sup>5</sup>

The strategic environment, the macro side, is composed, first, of the actions which are available for the actors. They are summarised according to what could be the outcome of interactions of actors, or the outcome of how decisions and events can unfold.<sup>6</sup> In the context of the question posed here concerning the plausibility of a specific path that the European polity may follow in its further development, the outcomes are (i) a European state; (ii) a differentiated and flexible European Union; (iii) covert integration; and (iv) disintegration and/or dissolution. Second, the environment is composed of an information structure that defines what the actors can know for certain and what they have to infer from the behaviour of the

<sup>2</sup> David A. Lake and Robert Powell, *Strategic Choice and International Relations* (Princeton University Press 1999).

<sup>3</sup> *Ibid.* 9.

<sup>4</sup> Jeffrey Frieden, 'Actors and Preferences in International Relations' in *ibid.* 3–38.

<sup>5</sup> *Ibid.* 11.

<sup>6</sup> *Ibid.* 8, 9.

other interaction partners. Here institutional rules play an eminent role. Keohane<sup>7</sup> argued that one way in which institutions, or institutional rules regulating behaviour, facilitate cooperation among states is by providing more information to state actors of how the other actors are likely to behave, and by providing better possibilities of monitoring each other's behaviour.<sup>8</sup>

As mentioned above, the analytic distinction of actors' attributes and the attributes of the environment implies the possibility of two broad kinds of 'conceptual experiments'.<sup>9</sup> The first conceptual experiment varies the properties of the actors, that is their preferences and beliefs (micro side), while it holds the environment in which they interact (macro side) 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 is it that the four different developments—a European state, differentiated/flexible integration, covert integration, disintegration/dissolution—will be empirically observed?

The four developments constitute different features of the explanandum. I will argue that the plausibility of the respective scenarios happening depends on the micro side (i) who are the most important actors, that is member states and European institutions, and their preferences over a specific path of development; and on the macro side (ii) important factors of the environment, that is the financial and economic crisis; the migration crisis; and (iii) the decision-making rules applied when deciding over the future shape of the polity, that is unanimity, qualified majority voting ('QMV'), simple majority, the use of referenda in member states and the recourse to court rulings.

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

## II. Scenario One: A European Federal State

A political union defined as a federal state is characterised by a concentration of decision-making competences for all policies and budgetary issues with institutions at the supranational level. 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 with

<sup>7</sup> Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton University Press 1984).

<sup>8</sup> Lake and Powell (n 2) 9.

<sup>9</sup> Ibid..

a majority of members 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. A central court is responsible for controlling the constitutionality of the laws adopted by the government and the observation of individual rights of the citizens.

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 specific institutional rules relevant for the decision-making process, is it plausible that a European state will come about in the near future?

Which are the main actors' preferences regarding a political union or a European state? The main actors shaping the European polity are assumed to be the large member states and the three institutions: the European Council, the European Parliament ('EP'), and the Commission. As to the large member states' preferences, it is only France under President Macron which favours taking some steps to a deepening integration, such as a fiscal union with a European budget and appointing a European finance minister. However, in the outline of its view, the powers of a finance minister (of raising a European tax and appointing such a minister at which level for a European budget) remains unspecified. None of the other large member states of Germany, Italy, Spain, and Poland have proposed such a plan nor have they supported Macron's plan. The German Government's response to Macron's proposal was hesitant and offered limited support for a very restricted form of fiscal union.<sup>10</sup>

More recently, groupings of smaller and larger member states formed joint positions and expressed their preferences as to a possible political union. The Visegrad countries, Poland, Hungary, the Czech Republic, and Slovakia, and the so-called New Hanse League, the Netherlands, Denmark, Finland, and Sweden, and the Baltic states, also stated preferences against the formation of a European state and at best for a weak form of fiscal union, and, what is more, asked for a repatriation of competences or at least strengthening the subsidiarity principle.

In all member states, in view of the increasing influence of right- and left-wing anti-European and anti-immigration parties, the mainstream parties see themselves as under pressure from populist parties using voters' discontent and anti-elite sentiments to build their strength to adjust their agendas against an ever closer union (if ever they favoured one).<sup>11</sup> Thus, except for a few small member states

<sup>10</sup> Macron originally proposed a budget of about 3% Eurozone gross domestic product ('GDP') leading step by step to common fiscal and economic policies with part of the resources coming from a European tax on large tech companies or the financial sector (Jim Brunnsden and Mehreen Kahn, 'Macron's lofty Eurozone budget gets downgraded' *Financial Times* (London, 28 March 2019) <<https://www.ft.com/content/f0cda4c0-5104-11e9-9c76-bf4a0ce37d49>>).

<sup>11</sup> In Finland, the right-wing populists are part of the governing coalition. In Denmark they supported the governing coalition for ten years, as was the case in the Netherlands, although over a shorter period; in Poland and Hungary, they dominate the governments (Sven Hutter, Edgar Grande, and Hanspeter Kriesi, *Politicising Europe: Integration and Mass Politics* (Cambridge University Press 2016)).

such as Belgium and Luxembourg which tend to favour a closer union, there is very little support for a political union from most national governments.

In contrast, judging from the Four and Five Presidents Reports of 2012 and 2015, as well as the White Paper on the Future of Europe of 2017 and the Juncker proposal of 2017 for a transformation of the European Stability Mechanism into a European Monetary Fund ('EMF') under the Commission's direction, the supra-national institutions, the Commission and the EP, point to preferences for a political union, at least for the Eurozone countries. The Commission drew up plans for a Eurozone budget in which governments would be offered financial incentives to implement economic reforms agreed with the Commission. Each member state would be set a maximum budget, to be decided in the budget negotiations in 2019, which would be paid out once agreed-upon steps and targets of a reform or investment commitment would need to have been implemented.<sup>12</sup> The EP in its majority supports the plans of the Commission which would constitute steps in the direction of a parliamentary democracy in which the EP elects the (Commission) government. The European Council, by contrast, reflecting the member states' positions, is assumed predominantly to oppose a political union. In sum, actors' preferences as to the scenario of a single European state are very diverse.

The multiple actors' preferences are linked to given macro conditions, important factors in the EU environment, and the relevant decision-making rules in order to explain the outcome of the decision-making process. These macro conditions are the consequences of the handling of the Eurozone crisis and its economic repercussions in member states, and the migration crisis, both ongoing processes. Both conflicts imply redistribution issues. In the course of these crises, the unwillingness to redistribute financial capacity and migrants across the members of the Union emerged very quickly. Thus, the interventions to solve the Euro and the sovereign debt and banking crises led to a cleavage between creditor and debtor states. Both crises have not reinforced 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 migrants. These issues weakened the political will of member states to support a deeper political union. In the light of populist sovereign anti-European public opinion in an increasing number of member states, the popular support for such a treaty change appears unlikely.

If we add the macro factor of the relevant decision-making rule—the fact that a reform of the treaties is subject to unanimity rule—it follows that an ambitious reform of the treaty is implausible since the majority of actors is disinclined to form

In Sweden, the Sweden Democrats have gained considerable ground in the election of 2018; in Italy, they are in government.

<sup>12</sup> Brunsden and Kahn (n 10).

a European state. In short, a comprehensive treaty change in favour of a deepening union is implausible.

Moreover, assuming that member states held the same preferences with regard to a political union, there are additional institutional rules which come to bear at the lower, national level in the event of a treaty reform that introduce an element of uncertainty. National parliaments have to confirm a treaty change. Some national constitutional courts, such as the German Constitutional Court, request that the national parliament must confirm an uploading of national competences to the European level. In some member states, national referenda need to be held before a treaty reform can enter into force.

In conclusion, given actors' diverse preferences over the desired outcomes, the negative influence of the various redistribution crises hanging over Europe with their divisive impact, and the requirement to adopt a treaty change by unanimity and submit it national parliaments for confirmation and/or to national referenda in some member states, render a single European federal state improbable.

### III. Scenario Two: A Differentiated, Flexible Union

A differentiated or two-speed/two-tier Europe is defined by the feature (i) of individual member states participating in joint policy making in specific areas, while others do not participate in joint policy making in this area (opt-outs); a second feature (ii) is the designed cooperation of a (core) number of member states in joint policy making and joint institutions across *various* policy areas beyond trade integration, while others locate themselves around this core, participating only in a free trade area, or a common market area with specific freedoms.<sup>13</sup>

As assumed under the first scenario, *actors' preferences* about how to shape the institutional architecture of the European polity diverge, ranging from a few small member states favouring a political union, a sizable number of large and small member states favouring a more differentiated, two-tier scenario, and very few opting for disintegration/dissolution. By contrast, the Commission and the EP are assumed to favour a deepening of political union and to be sceptical vis-a-vis a differentiated Union. For the EP, a differentiated Union where its competences would vary, depending on whether the Community method or intergovernmental methods are used,<sup>14</sup> is not attractive. The European Council, given diverse

<sup>13</sup> Bellamy and Kroeger make an interesting distinction between 'substantive differentiation' as regards policy contents, and 'sovereignty' differentiation referring to varying competences' of the involved actors in decision making (Presentation Sandra Kroeger on Differentiated Integration, Robert Schuman Center, 27 March 2019).

<sup>14</sup> As in the case of some measures under the Eurozone governance, e.g., the European Stability Mechanism, or under the Banking Union's Single Resolution Fund, where the form of an international agreement outside the treaties was chosen in order not to include the European Parliament in the decision process (Magnus G. Schoeller and Adrienne Héritier, 'Driving Informal Institutional Change: The

preferences of member governments, are assumed to favour a differentiated or flexible integration course.

The *macro conditions*, as under the first scenario, are assumed to be ongoing effects of the financial/Eurozone crisis and a resulting economic recession in a few member states and the continuing refugee/migration crisis. Both, given the diverse preferences economic policies and dealing with migration, tend to deepen the conflicts among member states and increase the difficulties of finding common solutions to redistributive problems. Since—as under the first scenario—unanimity is required to adopt any kind of 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. Even as regards policy measures in which co-decision and QMV are required, nonetheless consensual decision making is still very frequent. Given these institutional macro conditions, differentiated integration offers a way out of the decision-making impasse into which the unanimity rule and consensual decision making may lead. However, it also implies political costs, as we will see later.

In short, pressure to accommodate diverse interests more than ever lead to incremental changes and compromises in the form of opt outs, two-speed integration, 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 and Two Pack measures to strengthen the European Stability and Growth Pact, the Fiscal Compact, the European Stability Mechanism, Banking Union, and Open Monetary Transactions all reflect a mixed picture of deepening cooperation or centralisation at the supranational level under the auspices of the European Central Bank and the Commission on the one hand, and a strengthening of intergovernmental governance by member states on the other. While the Eurozone group strengthened its own power of crisis management, Germany and other Northern creditor states resisted further centralisation in the form of common bond issuance or other measures to mutualise sovereign debt.<sup>15</sup> By contrast, when Germany, and more recently, Italy, tried to lead a redistributive solution to the refugee crisis, they failed. What emerged was the notion of ‘flexible solidarity’, where a solution of a redistributive problem offers different options in which nations can contribute. Instead of taking in refugees, some member states may contribute to border control capacity or provide financial resources to the refugee problem.

European Parliament and the Reform of the Economic and Monetary Union’ (2019) 41.3 *Journal of European Integration* 277).

<sup>15</sup> Schoeller and Héritier 2019 (n 14); Lionel Barber, ‘Britain after Brexit: Lionel Barber’s lecture in Tokyo’ *Financial Times* (London, 15 October 2016) <<https://www.ft.com/content/e1f4c680-8722-11e6-a75a-0c4dce033ade>>.

In conclusion, given actors' diverse preferences over the desirability of the four scenarios, the influence of redistributive crises with their divisive impact, and 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 incremental compromises are found. These small steps result in differentiated integration, such as opt-out clauses, member states' agreements outside the treaties, voluntary cooperation in some areas; in short, a more flexible union with diverse degrees of association which are not irreversible,<sup>16</sup> resulting in an ever more complex and fragmented institutional overall structure.

#### IV. 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* the main formal democratic political decision-making arenas, Council of Ministers, the European Council, and the EP.

As under scenarios one and two, *actors' preferences* as regards the future design of the European institutional architecture, a political union, or European state, a differentiated integration or a disintegration of the European Union, are assumed to diverge.

Similarly, *the macro conditions*, pressure of the financial crisis, and the resulting economic recession in some member states, as well ongoing migration pressures, are assumed to persist. Given the diverse preferences over outcomes, these conditions 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, that is, incremental policy and informal institutional<sup>17</sup> changes *invisible* to the wider public.

This hidden process of deepening integration is a consequence of the existing formal decision-making rules, that is, unanimity or consensus rules under conditions of divergence of interests. 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 renegotiation of the

<sup>16</sup> Thomas Schmid, *Europa ist tot, es lebe Europa! Eine Weltmacht muss sich neu erfinden* (Random House 2016).

<sup>17</sup> Informal institutional changes are defined as mostly unwritten rules of behaviour which are not subject to formal third party dispute resolution (court decisions).



specifics of a policy or an institutional rule in the course of their application outside the public attention of the open arenas.<sup>18</sup> If actors in favour of deepening integration prevail in these renegotiations, this may inadvertently lead to more ambitious integration in individual policy areas, when specified by executive or judicial actors. Further patterns of covert integration are the delegation of policy making to independent regulatory authorities formulating policy changes in highly technical details, or cutting big, salient controversial issues into small, technical, low-salience issues which are not in the public eye. Similarly, the introduction of parallel options of regulation, European and national, may lead to a crowding out of national regulation because private actors comply with European regulations to save transaction costs. The use of soft modes of integration based on voluntary activities and/or including private actors in public policy making is yet another option, using soft power like benchmarking, with naming and shaming as a means of deepening policy integration. A delegation of decisions to independent regulatory authorities acting outside the political arena<sup>19</sup> is another important mode of deepening integration beyond the political arenas. A further mode of invisible integration of EU policies happens through transversal policies, such as competition policy. State aid, for instance, under the control of the Commission, has been a powerful instrument for 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 and have to make plausible why policy measures other than state aid would not be likely to solve the problem at hand. This offers the Commission the possibility of assessing all types of national policy measures even though they do not fall under European competences.<sup>20</sup> In her work on monetarist solidarity, Schelkle shows another mechanism of building upon existing institutions and using their latent capacities 'to bear, diversify and absorb risks' of the Eurozone.<sup>21</sup> She shows how TARGET,<sup>22</sup> by lending to banks with liquidity deficits and borrowing from banks in countries with excess reserves,

<sup>18</sup> Adrienne Héritier, 'Covert Integration of Core State Powers: Renegotiating Incomplete Contracts' in Philipp Genschel and Markus Jachtenfuchs (eds.), *Beyond the Regulatory Polity? The European Integration of Core State Powers* (Oxford University Press 2014); Adrienne Héritier, *Policy Making and Diversity in Europe: Escape from Deadlock* (Cambridge University Press 1999).

<sup>19</sup> Or what Bickerton and colleagues under their notion of New Intergovernmentalism call 'de novo bodies' (Christopher J. Bickerton, Dermot Hodson, and Uwe Puetter, 'The New Intergovernmentalism: European Integration in the Post-Maastricht Era' (2015) 54.3 *Journal of Common Market Studies* 703).

<sup>20</sup> Michael Blauburger, 'Of "Good" and "Bad" Subsidies: European State Aid Control Through Soft and Hard Law' (2009) 32 *West European Politics* 719.

<sup>21</sup> Waltraud Schelkle, 'The Political Economy of Monetary Solidarity: Revisiting the Euro Experiment' (2018) 44.3 *Wirtschaft und Gesellschaft* 371, 399.

<sup>22</sup> 'TARGET is a platform for registered users with access to central bank reserves, typically wholesale and retail commercial banks, to make payments to each other ... instead of each bank having to entertain an account with every other bank in order process payments' (ibid. 387) they have an account with TARGET.

inadvertently became ‘the interbank market maker of last resort’,<sup>23</sup> despite this not being its original intention.

Over the past decades, a considerable part of deepening European policy integration evolved through these multiple, hidden paths. Covert integration ‘through the back door’ raises obvious problems of democratic legitimation of European policy making once citizens realise that the extent of integration has progressed without their being aware of it.

In conclusion, given actors’ diversity of preferences of outcomes with regard to the future shape of the 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 very frequently recently. 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.<sup>24</sup>

## V. 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 was decided in the Brexit vote of June 2016. Dissolution of the entire European Union is a planned step of designed institutional change of abolishing the Union altogether.

Actors’ preferences are assumed not to favour a planned dissolution of the union, the third option. This holds for all member states and for the Commission and the EP. Preferences for the second option, referenda over an exit of the European Union, as in the United Kingdom, 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 from anti-European nationalist parties, however, and their possible electoral victories, the possibility of such referenda being held cannot be excluded. The exit decision of the United Kingdom in 2016 did not trigger other exit referenda in other member states. But through the interconnectedness of European politics, it appears to have reinforced nationalist forces in other member states<sup>25</sup> where pro- and anti-Europe divides have emerged, such as in Germany, France, Italy, Spain,

<sup>23</sup> Ibid. 388.

<sup>24</sup> Sara B. Hobolt and James Tilley, *Blaming Europe? Responsibility Without Accountability in the European Union* (Oxford University Press 2014).

<sup>25</sup> Sergio Fabbrini, *Europe’s Future: Decoupling and Reforming* (Cambridge University Press 2019).

and Poland, and nationalist populist governments are in power in Italy, Hungary, and Poland, and are part of the governing coalition in Austria.<sup>26</sup>

The preferences of member states as regards the first option, that is, repatriation of competences, are diverse. With the strengthening of the Visegrad formation of Poland, Hungary, the Czech Republic, and Slovakia, as well the New Hanse League formation of the Netherlands and the Baltic 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 scenarios one, two, and three, are assumed to be a legacy of the financial/Eurozone crisis and resulting economic recession in some member states and the ongoing refugee/migration crisis. Both, given the diverse preferences the policy measures to take, 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, this is unlikely to materialise. Individual national referenda over an exit from the Union as individual steps of disintegration are more easily organised. 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, and the contentedness with the own national policies and institutions,<sup>27</sup> but also the specific exit conditions and with the legacy of Brexit. This experience, in particular due to the implosion of British domestic politics, has not been such as to invite other member states to follow the British example.

## VI. Conclusion: '*Fluctuat nec mergitur*'

From the analysis of the political dynamics resulting from actors preferences, macro conditions, and given institutional rules, our conclusion is that, of the four possible scenarios, scenario two of differentiated integration and a 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 plausible paths to be chosen. This leads to the expectation that the European Union will continue 'to be tossed, but will not sink' (*'fluctuat nec mergitur'*) and will continue to be a 'half-way house between intergovernmental

<sup>26</sup> Gideon Rachman, 'Brexit is part of a wider European struggle' *Financial Times* (London, 25 March 2019) <<https://www.ft.com/content/c074e980-4ee0-11e9-b401-8d9ef1626294>>.

<sup>27</sup> Catherine de Vries, 'Should I Stay or Should I Go? A Reference Point Theory of Public Opinion Towards European Integration' (September 2016) unpublished manuscript, Bergen Stein Rokkat Workshop.

cooperation and supranational powers.<sup>28</sup> 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, may be risky, since covert integration ‘through the back door’ raises obvious problems of democratic legitimation of European policy making. When citizens at one point realise that integration has deepened dramatically via 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 or in increasing nationalism. Piecemeal interventions as a reaction to multiple crises tend to reinforce executive and non-majoritarian actors and administrative centralisation<sup>29</sup> because they incur less coordination costs compared to legislative action and treaty revisions.

Scenario two of differentiated and flexible integration is linked with political costs as well. The political costs consist in an even more fragmented and complex institutional decision-making structure which makes it difficult to understand the overall working of the European Union. It also implies that there is no central arena in which *all* relevant issues are brought to the table, considered, and discussed in their entirety by all relevant actors in order to conclude compromises and package deals with the view of reciprocity over time for all concerned and the aim of avoiding that structural minorities always losing out.

Both scenarios also mean that overall considerations of ‘reinventing the European 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 European Union, 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.<sup>30</sup> 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 European Stability Mechanism (‘ESM’), an intergovernmental

<sup>28</sup> Barber (n 15).

<sup>29</sup> Federico Fabbrini, *Economic Governance in Europe: Comparative Paradoxes and Constitutional Challenges* (Oxford University Press 2016) 15.

<sup>30</sup> Wolfgang Muenchau, ‘Lack of eurozone reform outranks Brexit as the EU’s biggest threat’ *Financial Times* (London, 17 December 2017) <<https://www.ft.com/content/47c734d8-e1af-11e7-8f9f-de1c2175f5ce>>.

agreement, into the institutional framework of the European Union.<sup>31</sup> It also provides for the introduction of a Single Minister of Finance, a Eurozone budget, and supports the proposal of transforming the ESM into an EMF,<sup>32</sup> 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.<sup>33</sup>

By contrast, the Council is seeking to set up the EMF without resorting to the legislative process, but wishes to maintain intergovernmental control over the EMF, as is presently the case under the ESM. For this purpose, it has set up an informal task force reporting to the Economic and Financial Committee.<sup>34</sup> During the height of the financial crisis, it established the 'task force on coordinated action'<sup>35</sup> to facilitate cooperation among finance ministers. Subsequently it prepared work for the ESM, which is run by Eurozone finance ministers. It is the Economic and Financial Committee's task force that the Council has 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.<sup>36</sup> Eurozone heads of state will decide in March 2018 on the EMF initiative.<sup>37</sup> This attempt of the Council to circumvent the Commission proposal by using existing, largely unknown, bodies to bring about an important change of economic governance, reflects the scenario three of covert integration.

Closely linked to these plans of how to reform financial and economic governance institutions in the Eurozone is another ongoing important debate revolving around whether to go for a full fiscal union or, more modestly, to complete the Banking Union by adding a Eurozone-wide deposit insurance scheme to the Single Supervision Mechanism and to the Single Resolution Mechanism. It appears that in the face of a stiff opposition, primarily from Northern member states, the plan of a fiscal union is unlikely to materialise and the steps are at present directed towards a completion of the Banking Union. However, this process has run into a

<sup>31</sup> Ibid.

<sup>32</sup> The German proposal provides for restructuring requests to countries receiving funds from the EMF; Mehreen Khan, 'Expectations over euro summit reform push downgraded' *Financial Times* (London, 15 December 2017) <<https://www.ft.com/content/478fc732-e173-11e7-a8a4-0a1e63a52f9c>>.

<sup>33</sup> Bjarke Smith-Meyer, 'Capitals' power grab for Eurozone enforcer' *Politico* (13 February 2018) <<https://www.politico.eu/article/council-plays-for-total-control-of-european-monetary-fund/>>.

<sup>34</sup> Created in 1999 to review the economic and financial situation of member states.

<sup>35</sup> Smith-Meyer (n 33).

<sup>36</sup> Ibid..

<sup>37</sup> Muenchau (n 30).

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 French-led coalition of Southern member states.<sup>38</sup> Both fiscal union and the deposit insurance fund under Banking Union are redistributive questions, albeit on a different scale. It is, therefore, unsurprising 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 redistributive questions, as well, but—given that the two first important components SSM and SRM already exist—it may be introduced in a differentiated<sup>39</sup> and incremental way, or might 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 rebuild the European Union 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 migration and asylum policy, competences should be pooled. By contrast, other tasks with no transborder effects, such as some areas in environmental law, health, consumer policy, as well as labour law could be repatriated.<sup>40</sup> The principle of an ever closer union would be reversed to a need for a compelling legitimisation of further union. Such a recomposition of the EU with a simultaneous partial devolution of competences and partial additional closer union would allow consensus building based on a compensation mechanism.

Such ideas are to some extent captured in a comprehensive proposal for a renewal of the institutional architecture of the European Union aiming for a ‘decoupling and reforming’ of the European Union<sup>41</sup> by forming two separate, but linked, organisations. They would consist of a political federal union on the one hand and an economic community on the other, allowing the European Union to overcome the impasse between ‘statists’ in favour of scenario one, and nationalists in favour of partial disintegration or repatriation of competences of scenario four.

<sup>38</sup> Jim Brunsten, Mehreen Khan, and Guy Chazan, ‘Battle for banking union hangs over the eurozone’ *Financial Times* (London, 14 December 2017) < <https://www.ft.com/content/d38945d6-e030-11e7-a8a4-0a1e63a52f9c>>.

<sup>39</sup> Such as by allowing for access to a deposit insurance fund under differentiated economic conditions.

<sup>40</sup> Such options were discussed at the Bratislava Summit emphasising that policy delivery was the order of the day, focusing on the economy/employment, security, i.e., fighting terrorism; protecting outside borders, digitalisation (David M. Herszenhorn, ‘After Brexit... more solidarity, against Euroskeptical barrage’ *Politico* (Virginia, 16 September 2016); Hans-Jürgen Papier, ‘Zerfällt Europa? (17): Europa zwischen Nationalstaatlichkeit und Einheit’ *Frankfurter Allgemeine Zeitung* (Frankfurt am Main, 21 October 2016) <<https://www.faz.net/aktuell/politik/zerfaellt-europa/zerfaellt-europa-17-europa-zwischen-nationalstaatlichkeit-und-einheit-14484032.html>>.

<sup>41</sup> Fabbrini (n 29) 15.

Similar to the argument developed in this chapter, Schelkle advocates in general terms that reforms

‘that avoid the need for grand state-building are ... not only the more realistic alternative ... but the more desirable alternative.’<sup>42</sup> Incremental reform ... will remain the order of the day. It is the *modus operandi* or legitimate decision making in a diverse union of democracies: political majorities and their representatives in different member states disagree on such consequential, hard to revise decisions. “Unity in diversity” is a more worthwhile goal for the time being than an “ever closer union.”<sup>43</sup>

<sup>42</sup> Schelkle (n 21).

<sup>43</sup> *Ibid.* 399.