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THE EUROPEAN UNION IN TIMES OF CRISIS IS THE NATION-STATE STILL HERE?

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Abstract

In 1966, S. Hoffmann boldly argued that nation-states, often inchoate, economically absurd, administratively ramshackle and impotent, yet dangerous in international politics, remain the basic units in spite all the remonstrations and exhortations. Is it still the case considering the European Union and the financial crisis it had to react to? This article argues that the European states are transnational integrated and that with each phase of European integration, they redefine their national sovereignty. In doing so, it discusses the new institutional architecture of the European financial supervision using the lenses of the multi-level governance theory. The final statement of the article is that nation-states continue to exist, yet in a cross-cutting framework of flexible governance.

Keywords: nation-state, European integration, financial crisis, European financial supervision, multi-level governance

1. Introduction

Scholars of international relations have abundantly and continuously argued on whether nation-states or European institutions are the coal inside the steaming engine of the Union or if the actual motion of the machine using the coal is important [1-8]. There was, for instance, a time when a particularly strong interest was given to the race between the logics of integration and diversity. Whilst in an integration logic, the freedom of movement of the national governments would have been gradually restricted by the double pressure of necessity (the interdependence of social fabric, which would have obliged policy-makers to integrate even sectors originally left uncoordinated) and men (action of the supranational agents); in a diversity logic, in areas of key importance to the national interest, nations would have preferred the certainty or the self-controlled uncertainty, of the national self-reliance, to the uncontrolled uncertainty of an untested integrative process [1]. Sometimes, even the European Union itself was questioned using the basic 'what are you' routine: a state, a supranational entity, a complex web of regulatory networks? After all, if sovereignty implies the right to domestic autonomy and the right to make

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treaties, then the European Union is a particularly dramatic example of tension between the two (giving that becoming a Member State is acknowledging different settings for your national autonomy) [9]. Today however, in this article, I do not attempt to answer questions of who and what about the European Union, but rather, to discuss the how. Considering the present short amount of studies on the implications of the crisis for the academic realm of European integration [10], I will leave aside the traditional argument national versus supra-national and will focus instead on how Member States (and not specifically Nation-states) have managed to accept the expert opinion of the de Larosière Report (2009) and accordingly agreed on supporting the new system of European financial supervision. The attention will be thus granted to the European crisis policy framework and more particularly, to its possible implications for the study of multi-level governance.

2. European integration and types of multi-level governance

One possible interpretation of the multi-level governance inside the European Union is that it names the relations between, on one side, local, regional and national authorities and on the other, the European institutions, bodies, offices and agencies. For G. Peters and J. Pierre [11], the model of multi-level governance is informal, based on negotiation rules (theoretically it presents at least one advantage to formal regulations, as it allows the game to be played by multiple players and encompasses at least one disadvantage, that of disregarding almost consistently, the principle of equality between players), and structurally different from the traditional inter-governmental relations (as it involves the European tier of government, it focuses on institutional relations, negotiations and networks and gives value to satellite organizations not formally part of the governmental game).

These multi-level patterns of delegation have led D. Coen and M. Thatcher [12] to analyse the network governance in the field of regulation. They pointed to three key elements, namely: 1) the linkage of actors from different institutional levels – national, European and international – and both the public and the private sector; 2) a shift of power from previously well-established levels to organizations or individuals whose main role is linking and coordinating actors; 3) a change in the mode of governance, away from hierarchy and towards consultation, negotiation and soft law [12].

In the same vein, but under a different name, L. Hooghe and G. Marks [3] concentrate on flexible governance as an alternative to a centralized government that poorly accommodates diversity and flexibility. The former allows policy-makers to adjust the scale of governance to reflect heterogeneity and is multi-level. In terms of structure, it may vary between a model of general-purpose jurisdictions, with non-intersecting memberships, limited number of levels and a system-wide architecture (Type I) and one of task-specific jurisdictions, with intersecting memberships, unlimited number of levels and a flexible design (Type II). Type I multi-level governance is generally made as a systemic institutional choice, with an elected legislature, an executive and a system of courts. It basically refers to three levels of jurisdiction: local, intermediate and central, across which power is well dispersed, but bundled in a small number of packages. In reverse, in type II multi-level governance, jurisdictions are more likely to appear as a response to citizens' changing preferences or as a result of a functional requirement, and therefore are task-specific, stretch around multiple tiers of government (international, central, etc.) and accommodate different centres of power.

Both types of multi-level governance appear in the contemporary world and produce fundamentally contrasting outcomes. In fact, it has been argued that public sector institutions involved in the field of global finance display both Type I and Type II characteristics [13]. The remainder of the article will shortly describe the economic governance in the European Union prior and after the de Larosière Report, and will examine the European System of Financial Supervision (ESFS) as an example of a Type II form of multi-level governance.

3. Economic governance in the European Union

The Maastricht Treaty created a monetary union with no real transfer of competence from national to European authorities outside monetary policy, and contained no significant European budget, no integrated financial supervision, no strong political counterpart to the central bank, and no provision for crisis resolution [14, 15].

In fact, in 2001, at the specific request of the European Union's Economic and Finance Ministers (ECOFIN), the Committee of Wise Men chaired by A. Lamfalussy spoke in its Report (generally referred to as the Lamfalussy Report) of a Union too slow, too rigid, complex and ill-adapted to the peace of global finance market change, where inconsistencies occur in the treatment of the same type of business [*Final Report of the Committee of Wise Men on the Regulation of European Securities Market (The Lamfalussy Report)*, Bruxelles, 2001, p. 7]. The Committee advocated then for only one serious alternative, without which the European financial market would continue to fragment, lose benefits and opportunities [p. 8]. That alternative implied a set of regulatory reforms and a complex multi-level system of European rule–making and enhanced co-operation between national supervisory authorities, underpinned by new European committees and reformed committees [16]. Addressing rule-making and dealing also with the implementation, application and enforcement of European legislation [17], the Lamfalussy process was based on a four level approach, including the normal EU legislative procedure, the establishment of two new committees (on Securities and Securities Regulators), the enhanced cooperation and networking among EU security regulators and a strengthened enforcement of the EU law through the Commission.

However, the only ex-ante crisis management arrangement that existed at the European level prior to the financial crisis was a Memorandum of Understanding on cooperation between banking supervisors, central banks, and finance ministries of the European Union in financial crisis situations (2005) [15]. It specifically dealt with the sharing of information, views and assessments among the authorities potentially involved in a crisis situation, the appropriate procedures for such sharing of information and the conditions for cooperation and information flow at the national and cross-border level. In order to further support the enhanced cross-border co-operation between authorities, the Memorandum also included arrangements for the development, at the national and European level, of contingency plans for the management of crisis situations, along with stress-testing and simulation exercises.

And since 2007, these plans were put to action: the most serious and disruptive financial crisis since 1929 hit the world, and alongside, the European Union [*Report of the High level group on Financial Supervision in the European Union (The de Larosière Report),* Bruxelles, 2009, p. 6]. In the Commission's words: "The EU's response has been swift and decisive" [18, p. iii]. It supported interventions to stabilize, restore and reform the banking sector, launched the European Economic Recovery Plan and called for vertical coordination between the various strands of economic policy (fiscal, structural, financial) and horizontal coordination between Member States.

As such, in 2009, the Group of experts chaired by J. de Larosière was called to address the problem of fragmented financial supervision and to provide advice on the future of financial regulation and supervision in the European Union. Firstly, the Report highlighted the weaknesses of the former arrangements, pin pointing at the lack of cohesiveness due to the wide diversity of national transpositions related to local traditions, legislations and practices [*The de Larosière Report*, para 102] and suggested that the problem be solved at two different levels:

1) at the global level: with The Union participating in a number of international arrangements (e.g. Basel Committee) and multilateral institutions (e.g. International Monetary Fund) that could be unilaterally changed by the European Union;

2) at the European level, with the coordination between European institutions and level 3 committees. [*The de Larosière Report*, para 109].

Furthermore, it advocated in favour of divided responsibility for the macro-prudential supervision, between individual Member States and the European level [*The de Larosière Report*, para 153].

Two of the recommendations issued by the de Larosière Report are of specific interest for this article, namely Recommendations no. 16 and no. 18. According to former, a new body called the European Systemic Risk Council (ESRC), to be chaired by the European Central Bank President, was to be set up. Its tasks would be to pool and analyse all information, relevant for financial stability, pertaining to macro-economic conditions and to macro-prudential developments in all the financial sectors, while ensuring a proper flow of information between the ESRC and the micro-prudential supervisors. The latter, in return, advised for the setting up of the European System of Financial Supervisors (ESFS), a political independent, yet accountable, decentralized network of national supervisors, new European Authorities and colleges of supervisors for all major cross-border institutions.

Soon after the de Larosière Report was presented, the Commission issued two ‘Driving European Recovery’ [19] and ‘European Financial Supervision’ [20], the ECOFIN Council of 9 June 2009 and the European Council of 17 and 18 June 2009 decided on the establishment of a new two-tier supervisory structure, consisting of a European Systemic Risk Board (ESRB) and a European System of Financial Supervisors (ESFS) [21].

In September 2010, the European Parliament voted for the new supervisory framework and in November 2010, the ECOFIN Council confirmed the new setting. As of January 2011, three European supervisory authorities (ESAs: a European Banking Authority, a European Securities and Markets Authority, and a European Insurance and Occupational Pensions Authority) and a European Systemic Risk Board (ESRB) began their mandate.

4. ESFS as flexible governance

One of the experts of the de Larosière Group, O. Ruding, recently argued that Europe was facing a financial ‘trilemma’ [15], consisting of a combination of three elements: 1) financial integration, particularly liberalisation of financial services; 2) stability of the financial system and regulation; and 3) supervision of financial institutions which is still predominantly based on autonomous policies and decisions of the individual member countries. For him, to move away from this trillema was to switch from the essentially national regime of bank regulation and supervision (in force prior to 2010) to a system with a substantial degree of decision-making by European authorities [22]. In order words (those of M. Sefcovic, the Vice-President of the European Commission): „One has to look to more Europe rather than less Europe” [*Dealing with the Crisis – the Strength of the European Approach*, speech delivered at the Breakfast Briefing of The Institute of International and European Affairs, on 17.02.2012, available online at: http://www.iiea.com/events/dealing-with-the-crisis--the-strength-of-the-european-approach (last access: April 13, 2012)].

Surely, such an opinion raised a couple of (national) eye-brows during the public consultation on the future of financial services supervision in the EU. This consultation was organized between March 10 and April 10, 2009, with the specific intent of taking into account the views of all interested party on the financial services supervision in the European Union. The official report following the consultation procedure stated that there were registered 116 responses, of which 26 belonged to public authorities, 16 to registered organizations, and 74 to individuals. Among these feedbacks, the Czech National Bank and the Polish Financial Supervision Authority were radically against entrusting any binding powers in crisis emergency situations to ESAs. Also the Romanian Government expressed its concern that ‘mediation competencies belonging to the European authorities would interfere with the national authorities competencies’. Similar comments were also raised by the

United Kingdom, Slovenia and Slovakia [21] and led finally to a compromise: the ESAs were given binding decision-making power in case of disagreement between home and host state supervisors over the jurisdiction of a struggling cross-border financial institution. But the ESAs could not instruct national governments to bail out a struggling bank or let it fail. Decisions on how to use taxpayer money remained firmly with national governments. [21].

As such, although it may seem that the reform advocated by the de Larosière Group has shifted power slightly in favour of the EU-level, there is still a serious margin a balancing left between national and European levels [23]. For instance, due to the fact that ESAs lack in own resources, they rely on national competent authorities to perform their task and to give support in collecting relevant data for monitoring purposes. Also, none of the ESAs, except for the European Securities and Markets Authority in relation to Credit Rating Authorities, has micro-prudential supervisory powers.

However, one should not underestimate the power of ESRB and ESAs. Although hard law has been known as more practical for sanctioning reasons, to say the least, in the case of the ESFS, the choice of soft law tools might have just saved the day(s): by leaving more room for informal bargaining and allowing Member States to maximize their influence over policy outcomes, the vulnerability of the system at large might have been avoided [21]. Also, for the case of ESRB, the higher the quality of the analysis and the less refutable the quality of the recommendations for addressing the problem identified, the more difficult it will be for addressees to ignore the warnings received. Hence, the success of the ESRB will crucially depend on the quality of its analysis and its communication to the markets [23, 24].

With the ERSB an EU-level body mandated to act in an impartial way and solely in the interest of the Union as a whole, and the ESAs with overlapping jurisdictions, the institutional design of ESFS seems a genuine multi-level arrangement, and under certain limits, of type II: task-specific and stretching around multiple tiers of government (European, central, etc.).

In fact, considering the governance of global finance [13], as formed out of:

1. formal intergovernmental organizations (The International Monetary Fund, the World Bank, the Organization for Economic Cooperation and Development, the Bank for International Settlements, the International Organization of Securities Commissions, and the World Trade Organization);
2. informal groupings and networks (like the Basel Committee on Banking Supervision, the International Association of Insurance Supervisors, the Committee on Payments and Settlement Systems, and the Committee on the Global Financial System); and,
3. public sector groupings (the G7/8 and the G20),

and the place of ESFS within it, the multi-level argument may be further researched with the possibility of suggesting possible policy outcomes.

5. Conclusion: is the nation-state still here?

In not so many words, yes, the nation-state is still here. But not because nothing else exists, but rather because it does: multi-level arrangements seem to have proliferated in the international arena. According to J. Rosenau [25], there is no more up or under, no lower or higher, no dominant class of actor; rather a wide range of public and private actors who collaborate and compete in shifting coalitions.

The flexible governance, structured on multi-levels may encompass two different types: one rather rigid, as it normally outlives the conditions that brought it into being, based on general purpose jurisdictions, with limited number of levels (usually three) (type I) and one mostly flexible, with tasks specific jurisdictions, organized across a large number of levels (type II). Where does then the European Union and the ESFS stand? To state the obvious, the European Union and its economic governance were multi-levelled even before the crisis emerged. However, it is rather recent that the old debate 'national' versus 'European' has once more become vocal. It is possible, yet not specifically addressed by this article, that this might have happened due to the moving of decisions around the multiple levels of governance in crisis [26] and the raise of the question of whether the advocated temporal institutions of ESFS might become permanent.

Be it as it may, the current architecture of ESFS involves multiple partners, and several levels of decision-making. Balancing between global, European, national and regional preferences is what may determine the success or failure of the regulatory reforms proposed by the de Larosière Group and could represent a further subject of research.

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