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The post-crisis European Union before the political union: coordinates and keys of the future institutional architecture

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Abstract

Historically, the European integration is a relatively recent process and in permanent evolution. Over time, the EU has moved from what is international towards what is political-constitutional. This last dimension has been stressed during the Euro crisis (bank union, fiscal...), in addition to becoming obvious to the citizens. The management of political conflicts requires political legitimacy and, consequently, the adjustment of institutional architecture. Apparently, now is the time to formalize the European political union. But, what type of union? It is mandatory to reflect on the basic political elements and on the institutional architecture such as federalism, distribution of competences, separation of powers or democracy. Moreover, the post-crisis European reality is characterized by the politicization and the constitutionalization of the EU. These elements constrain the institutional adaptation of the EU. Specifically, one of the keys is the establishment of guarantees for the articulation of multiple governments and institutions within the EU.

Key words: institutional reform, political union, functionalism, federalism, democracy

1. Introduction¹

In the last decade, the EU has gone through a hectic phase, at times, tumultuous and confusing. The ingredients of this situation are, among others, the Euro crisis (2008-2012), the Greek crisis (2015), the refugee crisis (2015) and the British referendum result on Brexit in June 2016. Retrospectively, there is not much that is new or unusual in this situation. It could be said that it is the usual scenario, normal in the EU since the late eighties (fall of the Berlin Wall, negotiations in Maastricht, the former Yugoslavia conflict, the failure of the constitutional Treaty, etc.). What is new in the current post-crisis context lies in the impact on state institutions (governments, parliaments, constitutions...), on public policies, on public opinion (political disaffection,

¹ Partially, the following ideas and questions can be seen *in extenso* in Pereira-Menaut, A. C.-Cancela-Outeda, C. (2012) *Resetting the European Union Constitutional Engine*, Regensburg, Universitätsverlag Regensburg.

Euroscepticism, populism...) and on European institutions (European Council, EC, EP, ECB...). After having channeled the Eurocrisis (bank union, fiscal union...), the removal of (political) competences that the state members have experienced is clear, as well as the created interdependencies, particularly in the Eurozone. Today, the divisions among states (north-south regarding Euro or east-west regarding immigration) are evident, generating political differences. After the crisis, it is explicit that the EU has adopted a redistributive profile that coexists with the regulatory profile, creating winners and losers. The reform of the European institutions should take into account the politicization (and constitutionalization) experienced by the EU. It also has to consider the attribution of new state competences to Brussels (taxation, budget...) to proceed with a new institutional reform (institutions and decision-making). At first sight, the EU is at a crucial juncture. The current European narrative points towards the political union. This way, there are many and complex questions in the European agenda: what type of union will be implemented, how and when it will be carried out, which institutional design will be adopted.

It is not necessary to insist that European integration is a successful experience. It has generated peace, prosperity, growth, better living standards... But, alone, these outcomes cannot justify (results legitimacy) the orientation of the post-crisis EU towards the political union. It is no longer possible to tiptoe around political terms with the citizens. These understand clearly that the adopted measures (bank union, fiscal union, financial rescues and memorandums...) have an impact on everyday life (public services) and that winners and losers have emerged among states and citizens. Despite the effort against some political forces, it seems that they have understood that national sovereignty is not the remedy. The EU is already a politicized and constitutionalized space (in part) that needs an institutional architecture in line with certain principles, values or basic elements.

In parallel to this crisis period, a reformist scenario was configured. It was created with some degree of optimism (supported by the general economic growth and increasing confidence in the EU) thanks to the increase of EU reform initiatives. There are numerous initiatives and with different profiles. The initiatives are different regarding ambition and objectives (reform, refoundation), origin (some are an output of the EU institutions, others are an output of leaders or national political representatives), scope (institutional reform of the Eurozone or the EU itself), some have a institutional profile confronting others that

are more personal, some are articulated and detailed (technocratic) and others are more general (political). Be that as it may, they create a context of institutional reform. Among the institutional ones, in 2015 *The Five President's Report: Completing Europe's Economic and Monetary Union* was presented. In 2016 the *Report on possible evolutions of and adjustments to the current institutional set-up of the European Union*² was passed. In March 2017 the European Commission launched the *White Paper on the Future of Europe*³. Later on, in September, Emmanuel Macron publicly presented *Initiative pour l'Europe. Une Europe souveraine, une Europe unie, une Europe démocratique*⁴. At the end of the same year, Martin Schulz, leader of the German SPD, proposed the constitution of the United States of Europe in 2025 through a constitutional treaty⁵. In 2018, the *Manifiesto para la democratización de Europa*⁶ was presented.

These help to identify political institutional deficiencies and challenges faced by the EU (institutions, democratization, European competences and federalism, European public policies...). Once these elements have been identified, it will be the time to perform EU institutional reform, to a more or less broad extent. As a previous step to this task, it is compulsory to review certain political structural questions regarding the integration process (principles, values, method, orientation...) that affect the institutional architecture of the EU. This should be able to give an answer to the question that the political community has to address: What type of society do we want to build?

² *Report on possible evolutions of and adjustments to the current institutional set-up of the European Union (2014/2248(INI) Committee on Constitutional Affairs Rapporteur: Guy Verhofstadt.* Available in http://www.europarl.europa.eu/doceo/document/A-8-2016-0390_EN.pdf (last access: 6th July 2019).

³ *White paper on the future of Europe,* https://ec.europa.eu/commission/sites/beta-political/files/white_paper_on_the_future_of_europe_en.pdf (last access: 15th July 2017)

⁴ It started by stating that “Faced with the great challenges of our times, such as defence and security, great migrations, development, climate change, the digital revolution and regulation of a globalized economy, have European countries found means to defend their interests and values, and to guarantee and adapt their democratic and social model that is unique worldwide? Can they address each of these challenges alone? We cannot afford to keep the same policies, the same habits, the same procedures and the same budget. No more can we choose to turn inwards within national borders. The only way to ensure our future, is the rebuilding of a sovereign, united and democratic Europe.

⁵ Available at <https://es.ambafrance.org/Initiative-pour-l-Europe-intervention-du-President-de-la-Republique> In 2019, just before the elections to the European Parliament, Emmanuel Macron published a letter called “A European Renaissance” (4th of March, 2019). In it, he mentions a variety of challenges and proposes the implementation of a set of institutions (common border policy, an Asylum European Office, a Home Security European Council, a European Security Council, European Climate Bank...). This document can be consulted at <https://es.ambafrance.org/Pour-une-Renaissance-europeenne>

⁶ This document can be consulted at <https://euobserver.com/political/140200>

⁶ Proposes the creation of a federal budget, under real democratic control and with the capacity to invest on a European level. Available at <http://tdem.eu/en/manifiesto/>

This chapter is structured around three main sections. The first is to position the current EU configuration in the political and constitutional arena. If the EU decides to advance towards political union, it will not be starting from scratch because in a significant number of fields it is already behaving as a political-constitutional system. The second section reviews a series of basic elements that should guide the movement towards political union: federalism, the distribution of competences, the separation of powers and democracy. To conclude, the third section gathers some notes on the EU institutional architecture towards the political union.

2. The post-crisis EU: political and constitutional coordinates

The scenario after the abovementioned crisis, in particular, the Euro crisis, placed the EU in a political (and constitutional) arena, particularly the states of the Eurozone. The European measures that have been adopted generated winners and losers among the member states and the citizens (Torreblanca, 2014). This leads to the justification of the EU politicization. Now it is obvious; it is sufficient to review the measures adopted and the reactions provoked among the different political agents (member states, constitutional courts or political parties). However, politicization is not only the result of the recent anti-crisis measures (Eurozone governance). Before, the single market and the Euro had already provoked divergences and economic, financial and monetary (structural) imbalances in the Eurozone with the consequent political differences (emergence of internal centrifugal forces, attitudes of no support or cooperation among the member states, coalitions or groups of member states) (Delaume & Cayla, 2017). Thus, it was possible to identify beneficiaries/winners and disadvantaged/losers in the single market and the Euro (concentration of wealth and deindustrialization). Now, the domestic decisions taken after the European political decisions to resolve the Euro crisis are undeniable. In technical terms, these were the result of the intervention of experts (ECB, Troika...). First lesson: inspiration and technocratic attitudes are not sustainable. That place must be occupied by political perspective. The current institutional architecture must be oriented towards the improvement of political legitimacy and to mitigate the structural divergences (for example, European budget nurtured with broad investment capacity). Also, it is important to provide it with European political leadership that supports and gives credibility to the European measures.

Certainly, European integration evolved from the functional-technocratic to the political-constitutional. With the founding of the European Coal and Steel Community,

the integration was developed in an accelerated and asymmetric manner, inspired by the functionalist method. It advanced towards political integration in certain areas (single market, common currency, foreign trade, etc.), areas where the member states gave the capacity of sovereign actions (supranationalism/federalism) in benefit of the European institutions. Meanwhile, other fields such as foreign policy, defense and security, taxation, etc., remained in the area of agreements among state governments (intergovernmentalism). In the nineties, approximately, the European integration showed a manifest political and constitutional dimension (partial and fragmentary). Until that time, the orientation and inspiration of the European institutional reforms had answered to specific needs, according to the functionalist approach (technocratic inspiration). From this time, the principles and values, the rights and liberties (European citizenship), the distribution of competences and democracy confirmed the agenda and the European political debate. The successive reforms of the constitutive Treaties were oriented, partially, towards that political dimension. The EU conversion to a compound political community progressively altered the interstate and interinstitutional interaction patterns. Academically, the EU started to be examined as a political system with the capacity to influence its member states and its citizens through public policies (Hix-Hoyland, 2011)⁷.

During the nineties, the integration sped up. In barely a decade, three modifications of the Treaties (Maastricht in 1992, Amsterdam in 1997 and Nice in 2001) inspired by the political and constitutional aspects (European citizenship, Economic and Monetary Union, distribution of competences and the principle of subsidiarity, improvement of the democratic legitimacy...) came into force⁸. Of course, the Convention on the future of Europe (2002) profoundly treated questions such as the distribution of competences, the rights and freedoms, the institutional powers, etc. After the constitutional crisis of 2005, the work was included almost completely in the Treaty of Lisbon. This intended to be a stop to European integration, but the Eurocrisis forced new singular institutional reforms, even outside the reform procedure established in the

⁷ At an academic level, this transformation influenced the emergence of new theoretical approaches. Thus, Hix writes that “the recognition of the EU as “just another polity” enabled a new generation of scholars to approach the EU from the fields of comparative politics and comparative public policy. This new generation brought a new set of research questions. Until the early 1990s, the main focus had been to explain bargaining between the member states, power relations between member states and the supranational institutions, and the general long-run process of economic and political integration in Europe, mainly from the field of international relations” (Hix, 2007).

⁸ The EU Charter of Fundamental Rights (2000), the Declaration 23 of the Treaty of Nice, the Laeken Declaration (2001) or the Lamassoure Report on the division of competences between the EU and the member states (2002) have political-institutional inspiration.

Treaties and the assumption of new state competences by the EU. At the same time, it has created a political dynamic (winners and losers) that stressed the mentioned politicization.

Moreover, a process of constitutionalization of the European integration occurred, that is to say, the progressive development of elements of a constitutional nature that were detectable from a material perspective and that affected the interactions among the EU institutions and between the EU and its member states (Pereira and Cancela, 2012). Thus, it is safe to say that “after the first decisions of the European Court of Justice (Van Gend & Loos, Costa/ENEL)⁹, the then Common Market started to develop a material, non-codified sort of a constitution. Over time, the European Court of Justice, the national constitutional courts, and the reformed Treaties have put on more touches to the portrait after a constructivist fashion, thus adding increasingly more elements of a constitutional nature (direct elections, fundamental rights, rule of law)”. Thereby, European integration has been the most powerful agent of constitutional changes in their member states. Over decades it was a case of what has been termed a ‘creeping constitutionalisation’, but after Maastricht its pace accelerated and the process became clearer and more ‘official’. Every important European modification has implicitly resulted in a reform or mutation of national constitutions (Pereira and Cancela, 2012). Proof of this are the conflicts arisen from the state constitutions (and the reaction of some constitutional courts) and, in some cases, the reforms in constitutional texts (and constitutional mutations). Consequently, the constitutional identity of the state members started to be affected by the European integration (Pereira and Cancela, 2012).

Nowadays, it is possible to support the existence of a non-formalized material European constitution (un-coded), disperse, fragmented and asymmetric, composed of

⁹The Court of Justice has supported a political-constitutional vision of European Integration. Thus, the decisions of the Court are understood. Decisions such as Van Gend & Loos (1962) where the principle of the direct effect was established in the Constitutive Treaties or the decision Costa/ENEL (1964), that established the principle of primacy of European Law over the state Law. In 1969, the protection line started with the fundamental rights and freedoms regarding the act of European institutions on the base of general principles, common constitutional traditions and the European Convention on Human Rights and Fundamental Freedoms (1950). Another remarkable legal contribution is that referred to as the consideration of the European Communities (today the EU) as a Legal community (the European institutions act subject to the rule of Law), to the safeguard of a certain separation of powers among the main European institutions, based on the principle of institutional balance. In this respect, the Court of Justice has acted somehow as a federal court, particularly when referring to the delimitation of the competences among the member States and the EU. The political significance of these decisions is unquestionable, in practice, moving the EU towards a federal style political system. Regarding EU constitutionalization, see Cancela, C (2001). *El proceso de constitucionalización de la Unión Europea. De Roma a Niza*, Santiago de Compostela, USC.

mixed parts, overlapping and interdependent (even inconsistent). It consists of constitutional parts from the TEU, TFEU and the Charter of Rights. Moreover, some protocols and declarations should be added: the Convention of Rome, jurisprudence from the Luxembourg and Strasbourg Court, some state constitutional courts, some articles from state constitutions, principles and values from the Treaties, common European traditions and certain parts from the *acquis communautaire*. This scheme relates to the constitutionalism of the post-modern political communities (Pereira and Cancela, 2012).

As these coordinates (politicization and constitutionalization) define the EU, its institutional architecture should allow the debate and definition of a European public interest and democratically legitimize the consequent public policies. Furthermore, they should guarantee the rights and freedoms, act in accordance with the *rule of law*, and respect the distribution of competences... In short, the politicization and the constitutionalization of the EU are key conditions for future institutional reforms. The EU has already started the reforms in both dimensions, so it will need institutional adjustments but it will not be necessary to completely rebuild the institutional architecture. However, there are some key elements to guide the institutional reform operation.

3. Political-constitutional bases of the EU institutional architecture

The development achieved by the European integration process demands that the EU adapts to and satisfies certain political and constitutional demands that are specific to a political community (for example, integration in a common political project and participation in making binding decisions). In part, it is already doing this, even though its current institutional architecture has political (and constitutional) weaknesses that were probably aggravated during the last decade. As a matter of fact, there is a mismatch between the political and the economical. Before outlining the institutional reform of the EU, a set of basic political-constitutional elements should be considered.

Federalism

It is common to point out that the EU lacks historical precedents or that it constitutes an “Unidentified Political Object”. It would be a singular, unique and original process. The truth is that history offers diverse political integration experiences (Roman Empire, United States, Germany, United Kingdom, France or Spain...). But it does not offer a unique political integration model (Pereira and Cancela, 2012). The EU is a case of partial

and imperfect federalism that has originated a political community composed of political communities whose self-governance must be guaranteed. Instead of the federal formula, the functionalist method was followed for the first decades of integration (when it scarcely presented any political-constitutional dimension). Functionalism involved an elitist and technocratic attitude oriented towards the achievement of results (peace, prosperity and economic growth). Its successes and achievements are obvious. Nevertheless, the posterior development of the political-constitutional dimension did not imply the abandonment of functionalism. From the nineties onwards, this method started to show its limitations facing the background problems and political challenges connected with the political union. It was unable to add a joint sense to the integration process, to face and eliminate its ambiguity and its political indetermination. The institutional reforms guided by a functional vision resulted partial and insufficient in order to advance towards the political union. Only from federalism is it possible to openly raise fundamental questions: Which political objects should the EU seek? Which principles and values should orient its political-institutional architecture?

At this time, Brexit demonstrates the constitutional and political dimension of the EU and the limits of the functionalist approach. It is not a simple retreat from an international organization (in practice it is similar to a negotiated secession process), it is not about the simple activation of a formal procedure (art. 50 TEU) supervised by technicians (jurists and economists), nor making financial calculations, whether more or less complex. This implies a dose of realism on the political nature of integration. From an integration point of view, this episode, as yet unresolved, acts as an EU adhesive rather than a diluent.

At this point in European integration, the needs are how to govern a political community composed of political communities (with their respective constitutions and constitutional identities), for which purpose the functionalist method is not the most adequate. As long as the EU did not develop this political and constitutional dimension, it didn't threaten the political and constitutional identity of the rest of member states. But, currently the state members do not deserve the condition of sovereign (they are in the sense of original holders of sovereignty). Justifiably, Colomer says that "in fact, 'national sovereignty' [...] has become one of the most obsolete political concepts nowadays. Currently, the EU is characterized by having a governance structure with multiple levels where nobody is sovereign: not the traditional states, "member" states of the Union,

prevented from competences in important political questions and subject to strong restrictions and controls by the EU institutions, not a single local or regional government could claim that ambition. The EU member states have transferred or shared powers derived from their previous sovereignties but so far, they have not created a new European sovereignty. Each level of government has exclusive powers in some fields, shares powers in other fields, each has to be specifically financed to cover the costs of their services and no one can impose their will over others in everything, as would be implied by sovereignty. The European population lives under various jurisdictions of different fields and scopes that usually overlap” Colomer, 2018. As a matter of principle, this multilevel scenario, characterized by the absence of sovereignty, is ideal for federalism.

Now, the EU has quickly advanced towards centralization and standardization¹⁰. The facts demonstrate that “it is not necessary to promote them [centralization and standardization], they come alone, that is why the objective is to counter them with constitutional mechanisms” (Pereira, 2017). For four decades, approximately, these constitutional limitations were not necessary, nor democratizing measures of a political power in formation. Now, in a composed political community, these mechanisms are needed, including federalism. Its implementation should be accompanied by the abandonment of the functionalist attitude (characterized by technocratism and efficiency) in favor of the federal attitude, which is more appropriate for the creation of the United States of Europe. From the political-constitutional perspective, the key is the articulation of the different political and constitutional levels (Pereira, 2017). The preservation of political capacities on these government levels (state, regional and local) is an inexorable condition. Avoiding its transformation into delegate agents of the EU, mere administrative or planning units is a characteristic of federalism. In order to achieve this, it is necessary to follow articulation criteria for government levels (and constitutionality levels to protect the constitutional identity of member states) such as subsidiarity, the restrictive interpreting of implicit powers or the distribution of competences among the

¹⁰ On uniformization, MacLaren wrote: “In attempting to achieve the internal market through the approximation of laws in the 1970s and early 80s, lengthy bargaining produced excessively detailed EC rules. Rather than secure total regulatory harmonization, the Commission has had to resort to mutual recognition of national regulations and a limited number of essential safety and technical requirements” (MacLaren, 2001). Regarding centralization, Hix points out the following: “for example, consider the evolution of competences in the EU and the US. Both polities started with a low level of policy centralization. However, policy centralization occurred remarkably quickly in the EU compared to the US, and in some area faster than others” (Hix, 2007).

EU and member states (and regional entities). Dual or Anglo-American federalism can offer relatively satisfying solutions¹¹.

Lastly, the key idea of centralism is the existence of a certain territorial balance among the federate states, characterized by equality among them and the preservation of an effective state political space. In the European case, the successive anti-crisis measures (accumulation and overlapping of measures, occasionally, with scarce rationality), have undermined that balance. Two examples illustrate this position. On one side, the passing of the European Stability Mechanism (ESM) and Fiscal Compact through international treaties, that allowed avoiding the needed agreement of all the member states and on the other side, the voting rights in the ESM reflect the respective financial contributions more than the condition of equal sovereign states (Dawson and De Witte, 2016).

Distribution of competences

The distribution of competences among the EU and the rest of government levels is closely linked to federalism. This issue was tackled by the successive reforms of the Treaties (in 2001, Laeken Declaration specifically insisted on the need to clarify the distribution of competences). In which fields can the EU act? In formal-legal terms, the answer involves the principle of attribution of competences (art. 1 and 5 TEU) and the three competence categories (exclusive, shared, supportive, coordination and complement), contained in the Lisbon Treaty (art. 2 and 3, TEU, mainly). We should also mention the presumption clause of general competence of the state (“Competences not conferred upon the Union in the Treaties remain with the Member States” art. 4.1 and 5.2 TEU) and the prevision of competences or implicit powers (art. 352 TFEU).

From a political point of view, generically, experience shows that the competences distribution is not fixed and, in the long term, tends towards centralization, to strengthening the federal institutions. The Lisbon Treaty does not establish a clear competence delimitation (inspired in dual federalism) nor establish limits to the competence expansion of Brussels. Secondly, the EU has great powers in certain fields (in addition to other implicit powers), but presents an imbalance, weakness and lack of cohesion in other fields. In practice, the EU is weak where it should be strong (defense,

¹¹But which federal version should inspire this process? The answer is not simple because there is no unique concept or meaning. Thus, “the term "federalism" evokes different models of government in the large states. Roughly speaking, to the Germans it describes a division of powers; to the French an association of nation states; to the British a super-state” (MacLaren, 2001).

foreign policy or immigration) and strong (excessively controlling and interventionist) where it should be weak (Pereira, 2017). Thus, it is possible to explain that it has been unable to maintain certain coherence regarding immigration but was able to impose restrictions and limits on Greece and Portugal that eliminate its sovereignty and constitutional identity.

Thirdly, the EU is going through continuous expansion of its competences. This is explained by the existence of horizontal or transversal competences based on the pursuit of goals with the effect of dilution of state competences¹². In addition, there is also generous use of the implicit powers clause and the jurisprudence of the TJEU. Thus, it is not surprising that important state competences are undermined, emptied or turned into mere delegated powers¹³. This is also the result of the method and the functional-technocratic attitude of the integration process. It is understandable and natural that the EU regulates, standardizes and centralizes certain material fields. Nevertheless, the intense micromanagement coexists with the lack, or the lack of exercise, of competences in central issues. In other cases, European competition exists but it was practiced with notorious political disorientation. This cannot be amended with greater competence shares for Brussels but rather deciding how do we want the political community and its constitution to be (Pereira, 2017). Thus, the attribution of more competences is not useful if it is not possible to define the political approach and will for its effective exercise or activation. Institutional reform should meet this defect that generates, in the medium and long term, important political consequences for the EU.

Lastly, the competence distribution is affected by the functionalist attitude and thinking that subsists in the EU. As Pereira points out, “the functionalist method, specialized in what is specific and ordinary, detects every possible mistake, it does not matter how hidden it is in the different social activities. As it is an alternative from technocracy, focused on regulating specific things being as efficient as possible, it tends to not question the constitutional aspects. Each regulated thing, relevant or not to the great

¹² The Treaties inspire planning, uniformity and regulation (and also soft policy tools). At this point, the French influence is remarkable. Thus, as MacLaren points out: “The French political class have also largely determined the nature of post-war European integration. The edifice in Brussels reflects above all their habits, interests and vision of Europe. (For example, the European Union is run by a bureaucratic elite like France itself.)” (MacLaren, 2001).

¹³ Hix warns that “for example, the states can be protected against policy drift to the center via a clear catalog of competences and independent judicial review of competence disputes. Nevertheless, under all constitutional designs, the division of competences is never completely fixed, and the long-term trend in most multi-level polities has been policy centralization” (Hix, 2007).

objective of the European Integration, tends to be centralized and standardized. As in each technocracy, this makes it difficult to tackle the great political problems, but it worked so well during the first decades that it grew roots. This way, Brussels is comfortable with the routine and the technical administration but before the great problems, its natural reaction is to absorb a new competence or to give it another opportunity” (Pereira, 2017).

From the dual federalism approach, the EU should count with relatively few and important competences and arrange institutional capacities to make them effective. In this regard, it needs to assume its political and constitutional dimension and disregard the functional-technocratic approaches. In this way, regarding the distribution of competences, the effective preservation of the state and regional governments is important, to avoid emptying. After all, a real multilevel governance system means levels of government endowed with original and effective political capacities. During the last years (at the same time of the management of the euro crisis), through the facts and without a reform of the Lisbon Treaty, the EU took measures that implied a great centralization of power and an assumption of important competences (Torreblanca, 2014; Kreuder-Sonnen, 2016). It turns out that the context is not beneficial for the restraint of centralization and the clarification of competences. The remedy would be the adoption of institutional measures.

Separation of powers

This is a classic constitutional mechanism to prevent power and to guarantee citizen freedom. It presents a political-constitutional objective: limiting power through power (prevention of tyranny). Generally, at a constitutional level, this is translated as the attribution of the main political functions (legislative, executive and judicial) to various institutions (parliament, government and courts). In a strict sense, the separation of powers is not specified in the political-constitutional systems. There is always some type of interaction configured among these institutions (presidential system, semi-presidential system and parliament system). The concept of “checks and balances” gathers the functioning logic of this mechanism that, moreover, presents connections with democracy and the rule of law.

With the current evolution state of the EU (political community), its integration to the institutional architecture is impossible. In part, it already has acknowledgement through the principle of institutional balance where each institution exercises the

competences conferred by the Treaties (art. 13.2 TEU). However, the EU political process is characterized by the growth of diverse agents and stakeholders (governance). This generates a high institutional complexity that impacts the institutional legitimacy when diluting the attribution of political responsibility and distances the citizens from the EU (Conway, 2011). An average European citizen should be able to answer the following question: Who runs the EU? Today, from a democratic point of view, this question does not have a clear and useful answer.

Firstly, the clarification of the functions carried out by the different institutions to favor the separation of powers, the demand for political responsibility and the increase of formal legitimacy is an urgent task. Thus, the Council, which holds executive functions, should be limited to adopting decisions by ordinary legislative procedure (Conway, 2011). Secondly, the future reform should aim towards the strengthening of a political leadership within the EU. Specifically, the coexistence of the five presidencies does not seem feasible (for several reasons, the EP and the ECB do not raise problems), that has a negative impact in the field of political responsibility and transparency. Politically, the situation of the European Commission, the European Council and the Euro group is compromising.

Thirdly, in general, decision-making in the EU is oriented towards avoiding conflict and reaching decisions by consensus. The presence of various institutions with the power to initiate the elaboration of public policies (agenda-setting power) or veto capacity (veto-players) during the legislative procedure slows down or blocks the decision making. To gain in dynamism and in speed of response is an essential objective because the vote rules are important (unanimity and qualified majority). Regarding this, during the management of the Eurocrisis, the EP and the European Commission were marginalized in the search for agility, efficiency and speed. This implied an alteration of the power balance (succession of formal and informal meetings of the European Council and the Eurogroup, use of international treaties), and it also implied a minoritization of the democratic legitimacy in favor of the technocratic component. Dawson and De Witte highlight this political-institutional impact when they write the following: “Since the start of the euro-crisis, we have seen a drastic change in the EU institutional structure towards executive dominance. Agenda-setting has shifted from the Commission to the European Council—with the Commission increasingly playing an enforcement role in monitoring compliance with its political choices, while the European Parliament (and national

parliaments) has been all but side lined from the new structures for economic and monetary governance. These changes, we argued, further decrease the stability and legitimacy of the Union by removing choices over binding norms away from representative institutions, which serve to mediate between different conceptions of the ‘good’ in society and as such, help to legitimize the policy choices they make” (Dawson and De Witte, 2016).

After the crisis, the EU intervened in redistributive issues that generated political and social conflicts. Thus, institutional reform should point towards internalization or integration within the EU (representation of different interests by the institutions) so that these issues receive political treatment and create legitimate political measures. In essence, it is necessary to overcome the institutional balance in favor of the separation of powers in such a way that the EU institutional reforms are aimed towards increasing legitimacy, representativity and efficiency.

Democracy

In institutional terms, politicization demands institutions that process demands and offer answers (collective decisions oriented towards the European common interest). For its part, the democratic component is composed of participation, control (limits) and responsibility from the rulers before the citizens. From the nineties, specifically from the Maastricht Treaty onwards, there is frequent referral to the “democratic deficit” of the EU. For several decades, European integration rested on the so-called “permissive consensus”, so that the (positive) results were legitimating its measures and it barely paid attention to the formal democratic legitimacy. To amend this situation, measures were adopted such as election by direct universal suffrage of the EP, the investment of the EC President and the College of Commissioners, the implementation of a co-decision procedure or ordinary legislative, or the citizen initiative...

With the Euro-crisis, the critics of the EU democratic legitimacy have increased, creating a democracy discomfort (Torreblanca, 2014). The anti-crisis measures, guided by efficiency, reduced the state’s decision capacity and also weakened the state democracy. The EU has penetrated the field of redistributive policies that presuppose agreements of a higher density. These policies have an impact on politically sensitive fields: taxation, budget, labor market, liberalization of public services, pensions, privatization, etc. Consequently, the state’s capacity for taking autonomous decisions

decreases in favor of the EU. Thus, the political conflict should be structured around a cleavage (conflict among citizens) that overcomes the national (conflict among states). From an institutional point of view, the existence of institutions that gather, channel and express the different preferences, needs and desires of different social group on a European level, are necessary. At this point, it is unnecessary to refer to the role to be played by political parties, trade unions, NGOs, mass media or social movements. We again find the functionalist inertia of the EU, since the competence delimitation prevents an open debate on the political orientation of the decisions. Moreover, another obstacle comes from the Treaties, because they establish fixed political preferences in certain fields (inflation, budget stability).

Lastly, the institutional architecture of the EU should consider the two dimensions offered by responsibility, that is to say, ex ante responsibility (responsiveness) and ex post responsibility (accountability). Thus, the democratic legitimacy will win at European level.

4. The institutional architecture of the EU facing the political union

For some, the European political unit could and should be a reality in a brief period of time, for others, it is a type of painkiller for the current political situation (Euro-skepticism, disaffection, low confidence) Be as it may, it is essential to reflect on the institutional machinery that the EU should adopt. In these last years, Euro-skepticism has advanced, together with populism and nationalism. The EU, because of action, not omission, has fed it with the adoption of unpopular measures due to the Euro-crisis (bank union, fiscal union, economical union) and the implementation of the economical governance. These measures have favored detachment from the EU institutions because the citizens have held them accountable for the responsibility of that technocratic, opaque management without accountability. Before the Euro - crisis, the EU adopted an authoritarian behavior that does not benefit stability and legitimacy (Dawson and De Witte, 2016, Pereira, 2019).

The correction of the deficiencies of the institutional design of the Economical and Monetary Union has oriented the decision making process towards intergovernmentalism (relevance of the state governments) represented by the European Council and the Eurogroup (and the signature of international Treaties) (Cancela, 2014). They were times of primacy of efficiency, speed, dynamism and boldness. The European

Commission has shown its weaknesses before this crisis. Without any political capacity to raise its voice and defend the common interest, nor to take the lead and generate credibility and foreseeability. The European Commission is an essential piece but the crisis has revealed that the advance without an institution that acts as a political leader (assumption of political responsibility) and bestowed of the capacity of taking critical decisions (without any condition from the states) is not possible. From a leadership point of view, the Commission should look to the European Central Bank. Within the framework of economic governance, it is necessary to strengthen the representative institutions, instead of the governments, with the capacity to control and to demand accountability.

It is undeniable that the EU needs to be reformed to guarantee a greater political integration as well as to counteract the democratic deficit induced by the exceptional and fast competence transfer in the economic, fiscal or budget field to the Commission and the Eurogroup, without widening the political control capacity of the European Parliament to them. The state governments have lost the capacity to carry out differentiated economical policies. In fact, there is an economical federation, but it lacks a political system capable of sustaining and legitimating it (Torreblanca, 2014). As a political community, the EU acts in the field of redistributive policies where it is possible to identify winners and losers. Thus, the arguing and the management of redistributive conflicts should be upon the social groups or sectors, not in attention of the state interests. The political process should channel and integrate the interests and preferences of the citizens (electorate), based on majorities, not based on consensus within different institutions in such a way that the political argument (common good) is fostered. Debate, control and legitimacy will be benefited. Thus, according to Dawson and De Witte (2016), “we need a radical overhaul of the Union’s decision-making process. Rather than bracketing social and political conflict (as the Union has done so far) and channeling it to the narrative that pits Member States against each other, the EU will need to foster and channel new forms of social and political conflict, so as to allow for common control of citizens over the conditions of life and so as to mediate between different conceptions of the ‘common good’”.

From a political point of view, the institutional reform should consider, as Hix and Hoyland think, that the “EU has gradually approached a “constitutional balance”. The basic EU political architecture now has certain logic and coherence” (Hix and Hoyland,

2012). The EU institutional system has evolved permanently (Chrysochoou et alii, 2003). Nevertheless, it shows a tendency towards stability in such a way that it is not possible to predict drastic changes that affect the relationships between EU-member states or interinstitutional relationships. Therefore, it won't consist of a demolition and reconstruction operation. However, it is necessary to take into account that the EU has increased its institutional complexity and enjoys power and a high capacity to influence the European population (Troitiño, 2017). Simplification of the institutional architecture is advisable, in such a way that makes it easy to assign political responsibility and to define of key institutions so that the citizens understand them as such and increase its legitimacy. Moreover, it should be oriented in such a way that the European institutions internalize the conflicts arisen from the differences between interest and preferences.

Note that the tension between the intergovernmental vision and the federal integration vision still exist. In the institutional field, this means that strengthening the role of institutions (federal dimension) such as the European Commission, the European Parliament or the European Central Bank undermines the European Council and the Council (intergovernmental dimension). On the other hand, this also impacts the reform method that will be carried out. For intergovernmentalism, the possible institutional adjustments must be carried out regarding the establishments of the Treaties (executive level negotiations, unanimity and ratification). For the federal vision, the formula would be a constitutional convention or similar to reform the treaties and add transparency, a democratic control and accountability.

The EU needs to reinforce its political legitimacy and its effectiveness, but at the heart of it there is an institutional fight for power. In connection with legitimacy, there is an agreement on the unfeasibility of the election formula for the high institutional positions (Commission, EP President, European Council, High Representative in Foreign Policy, ECB President). In July 2019, the designation of these positions has become the symbol of the dark, anti-democratic market (closed-door marathon negotiation sessions) of the head of States and the Union Government. The geographical and political criteria from the intergovernmental field are more important than the polls.

To finish, some brief notes on the specific institutions. Regarding the EU presidency, some prefer the election of a president for both the Commission and the European Council (unification) while others defend the election of the president of the European Council. The achievement is the exterior visualization and strengthening of the

democratic legitimacy of the EU. There are some key elements to determine (functions or the election formula, direct or indirect). Regarding the European Commission, the proposals move towards conversion in a real European government (Areilza, 2016). For some, this implies the increase of its faculties and direct election, according to the presidential formula. Others prefer the parliamentary model, where the European Parliament would be the one investing the President of the Commission and their government¹⁴. Consequently, the first would be enabled to demand political responsibility through a motion of censure. In any case, any of the formulas should guarantee efficient operation (size) and the establishment of government-opposition dialogue that involves the competence among different options and political visions.

Regarding the EU Council, designed as the representation body of state interests, it would be composed of state representatives, similar to a House of territorial representation, following the Bundesrat model. In order to act efficiently, the general rule for decision making would be the qualified majority, not unanimity. It would share this task with the Parliament. This is designed as a House of population representation. The reform proposals are aimed to reinforce the political role through the generalization of the ordinary legislative procedure and, considering legitimacy, to modify the election mode. Because of Brexit, using the seats released by the United Kingdom, a transnational list has been created (Colomina, 2018)¹⁵.

Conclusions

As a reaction to the situation of the Euro-crisis, the Bratislava Declaration (2016) pointed out that the EU should show unity and capacity to guarantee political control of events. With this desideratum and the historical (progressive politicization and constitutionalization) and recent (transference of substantive competences and development of redistributive policies) transformations, the political union seems, *a priori*, the most adequate path for the EU. This implies not only the execution of specific institutional reforms but, previously, reflecting and defining the political code, the basic elements (federalism, distribution of competences, separation of powers and democracy).

¹⁴ The *Spitzenkandidaten* formula consists of binding the winner of the elections to the European Parliament with the presidency of the European Commission. To elaborate on this formula and expand it for future European commissioners would contribute to the democratization and the transparency of the European executive designation process. But this path has been revoked by the member states in 2019.

¹⁵ This is one of the formulas included in the French president's Initiative for Europe. Specifically, he defended the need to have transnational lists for the European elections of 2019.

The above is an invitation for the EU to abandon the inertia derived from the functionalist method (technocracy, interventionism...), the political effects of which are profound and broad ranging (centralization).

As the EU already acts on a reality that creates political conflicts (political and social cleavages), this should be treated by the European representative institutions. Its reform must be oriented in such a way that politicians adopt decisions that channel these conflicts and allow for the configuration of alternative politics. Moreover, the institutional simplification is basic if the citizens understand the political process (who decides) and can assign political responsibilities (who is the political authority). Finally, the articulation of the government effective levels and the constitutional identities is essential. In a multilevel government, the final results do not only depend on the higher level but also on the inferior levels. This requires the adoption of a federal and plural approach and a concept of multilevel constitution (multilevel constitutionalism) in such a way that the articulation of several governments and constitutions within the EU can be articulated (Pereira-Cancela, 2012, Pereira, 2017).

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