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Can ‘Differentiated Integration’ Lead to a Federation in Europe?

Abstract: *This article explores whether the phenomenon of ‘differentiated integration’ can accelerate the federalisation of the European Union. In particular, it analyses the crisis of the euro area (focused on the period 2010–2014). Did this crisis favour reforms which could turn the EU into a democratic federation? Could the trend towards differentiated integration (or the concept of the so-called ‘two-speed Europe’) facilitate the creation of a federation? Or does it feed political and systemic tendencies that run opposite to federalism?*

Keywords: differentiated integration, political segmentation, intergovernmentalism, confederation, federation

Introduction

European integration merges elements of supranationalism and intergovernmentalism, i.e. contains features of both a federation and a confederation. The aim of this article is to explore whether the phenomenon of ‘differentiated integration’ – in other words the disparity of competences of different European member states in the process of integration – can accelerate the federalisation of the European Union. The goal of the differentiation process is to boost the pace of integration of a selected group of member states, which will in some measure contribute to building a federation within the scope of certain delegated competences. Differentiation involves transferring more and more

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competences to the European level, including some competences which are often the prerogative of the federal government in federal systems. In connection with this, a vital problem for the EU involves the difficulties in transferring electoral democracy to the European level, a phenomenon sometimes referred to as the EU's 'democratic deficit'. This problem creates a systemic gap between the growing federalisation in terms of competences, but without the simultaneous introduction of corresponding institutions of a democratic federation (i.e. a full federation in the political sense of the term).

Additionally, even though the provisions for differentiation were expected to be the vanguard of integration, they do not necessarily lead to the establishment of an 'only temporary division' between the 'federated' members and those outside (i.e., in the sense that they could or should also move towards full unification and integration at the deeper level). In truth, some forms of division between the EU members are of a more permanent character (e.g. the Economic and Monetary Union [EMU]). For this reason, the current course of differentiation can be seen as more conducive to a permanent segmentation than to creating greater flexibility of integration. Hence it should not be regarded as just a temporary solution. At the same time, federalism is aimed at harmonisation and at preventing permanent segmentation or – in its most forceful form – even preventing the possibility of secession (which in the EU is recognized in the Treaty as a right of the member states). What's more, the period of the eurozone crisis (which began in 2010) can be seen as proof that segmentation tendencies are becoming more robust. Scholars point out¹ that in recent years initiatives targeted at differentiated integration are more permanent than before; they are also more institutionalised and less open (less inclusive). In addition they tend to strengthen intergovernmental management, especially under the aegis of the strongest member states. The following part of this article offers a more detailed analysis of these processes. If above phenomena are confirmed, then it would appear that differentiated integration as currently implemented is more conducive to confederation than federation. Additionally, it would serve to strengthen the existing power hierarchy, whereby political power descends from the strongest and most economically powerful states down to the weaker ones, which are mired in economic depression or located in the peripheries of the European Union.

¹ F. Chatzistavrou, *Is Flexible Integration Harming the Prospect of a Common Acquis?* "The International Spectator", Vol. 49(1)/2014, pp. 98–112.

1. Between confederation and federation in Europe

Before addressing the central question of the article, the definitions of two systems referred to in the text should be clarified. A *democratic federation* is a system in which there exists a political communities on the federal and on the national level (i.e. of those political units that form the federation), and where organs of government are chosen by public elections held both on the national level and on the level of the federation itself.² Therefore, on both levels there exist political institutions which can be called 'majoritarian' – i.e. are the result of democratic elections and use majoritarian principles in their decision-making. Both levels are also subject to a system of constitutional law, which entails the existence of a formal constitution and constitutional courts. The two levels both have sovereignty and each has its own areas of responsibilities. While there are different types of federal systems, in each of them the federal level is usually supreme in some matters, for instance with regard to national unity and defence.³ The hierarchy between the two levels pertains to two spheres, and is especially visible in the legislative sphere and in the supremacy of the federal law over states' law, even though the state legislatures retain some measure of legislative autonomy. At the same time this legislative hierarchy is strongly enforced in the field of judicial interpretation. An additional proof of the existence of a clear hierarchy is the transfer to the federal level of executive competences deemed as crucial for sovereignty, such as foreign policy and defence, internal security etc. And still another sign of power-shifting is visible in the well-developed political and administrative institutions on the federal level and the endowment of the federal level with fiscal (budgetary and tax-related) competences. All these prerogatives essentially turn the federation into a supra-state, and one that is as a rule effectively managed.

A slightly different definition of a federation can be found in the writings of the distinguished political scientist Daniel Elazar.⁴ According to him, a federation is called into being not only by member states, but

² A. Cuyvers, *The Confederal Comeback: Rediscovering the Confederal Form for a Transnational World*, "European Law Journal", No. 19(6)/2013, pp. 711–738 [713].

³ R. Scruton, *The Palgrave Macmillan dictionary of political thought*, 3rd edition, Palgrave Macmillan Press, Houndmills 2007, p. 246.

⁴ D.J. Elazar, *The United States and the European Union: Models for Their Epochs in: The Federal Vision. Legitimacy and Levels of Governance in the United States and the European Union*, K. Nicolaidis and R. Howse (eds.), Oxford University Press, Oxford–New York 2003, pp. 31–53 [51].

also by the citizens themselves. Elazar also posits that a federation (and especially the USA) puts more emphasis on citizens' rights than it does on the rights of the federal states. Therefore, it is the political community made up of all citizens (*demos*) that plays the sovereign role, and not the member states. Elazar argues that it is exactly the other way round in confederations, which put more weight on the rights and responsibilities of member states and their political communities than on the rights of individual citizens (or even on respect for human rights).

On the whole, the extant definitions of confederation highlight the relatively loose structure of this form of organisation. Typically, a confederation is a union of states that in itself is not a state.⁵ It does not possess a political community or *majoritarian institutions* at the confederation level. The member states remain the dominant political actors. A confederation, acting as a union of states, can exert certain functions and competences on their behalf. Usually, however, these competences do not include those that are deemed pivotal for sovereignty, or those over which national voters exert democratic control (in particular fiscal and budgetary matters). For this reason, fiscal and administrative power at the confederacy level is usually relatively small.

It should be added that a basic characteristic of federal systems is a tendency towards the harmonization of law and enforcement of the competences of the federal authorities throughout the entire area, thus counteracting any exclusions of certain parts of the federation. For example, in the US there is no possibility of excluding certain States from defense policy or a common currency. In contrast, confederations allow for more flexible forms of management.

Scholars have diverse opinions on the subject of which political system can be deemed to be emerging in European Union. Elazar claims that it is a highly developed confederacy, and that it does not stand a chance to turn into a full democratic federation in the future.⁶ Giandomenico Majone concurs with this view and calls the EU 'a successful confederation' that, however, has failed to transform into a federation.⁷ The member states' strong national identities and the over four centuries of robust development of nation states in Europe, as well as the well-developed politicization of

⁵ A. Cuyvers, *op.cit.*, p. 714.

⁶ D.J. Elazar, *op.cit.*, p. 49.

⁷ G. Majone, *Federation, Confederation, and Mixed Government: A EU-US Comparison* in: *Comparative Federalism: The European Union and the United States in Comparative Perspective*, A. Menon and M. Schain (eds.), Oxford University Press, Oxford–New York 2006, pp. 121–148 [136].

national electoral systems – all these characteristics are responsible for the fact that even though the transfer of competences to the European level can be gradually increased, democracy and the most important political institutions cannot be transplanted from the national level to the EU level. According to Elazar, one of the reasons behind Europe's preference for confederation is the popularity of the political theories of Jean Bodin in Europe.⁸ Bodin rules out the possibility that citizens' subjectivity can be more important than the subjectivity of sovereign states. His thinking is furthermore highly elitist. The preference for discretionary and elitist 'diplomatic politicization' at the EU level over 'electoral politicization' (the latter encompassing public debate and electoral choices) can be viewed as a proof of the indebtedness of EU politics to Bodin's thinking.⁹

Other scholars agree that the EU project started as a confederation, but they claim that over the course of its existence the EU has developed a federal 'superstructure'.¹⁰ They also posit that the European Union has become systematically strengthened, even if at the same time member states maintain considerable power.¹¹ The EU is thus described as a hybrid organism,¹² or a federation of sovereign states,¹³ which *de facto* involves a combination of the two models described above. This perspective is also shared by Joseph Weiler, the distinguished authority on international

⁸ D.J. Elazar, op.cit., p. 33; J. Bodin, *The Six Bookes of a Commonweale*, Arno Press, New York 1979.

⁹ T.G. Grosse, *O polityczności dwupoziomowego systemu politycznego w Europie (Politicization in the two-level political system in Europe)* in: *Multi-level governance w Unii Europejskiej*, J. Ruszkowski and L. Wojnicz (eds.), Instytut Politologii i Europeistyki Uniwersytetu Szczecińskiego, Instytut Europeistyki Uniwersytetu Warszawskiego, Szczecin–Warszawa 2013, pp. 133–151.

¹⁰ A. Cuyvers, op.cit., pp. 712, 720.

¹¹ P. Genschel and M. Jachtenfuchs, *Conclusion: The European Integration of Core State Powers* in: *Beyond the Regulatory Polity? The European Integration of Core State Powers*, P. Genschel and M. Jachtenfuchs (eds.), Oxford University Press, Oxford–New York 2014, pp. 249–270 [249].

¹² R.L. Watts, *Comparing Federal Systems*, McGill-Queens University Press, Montreal–Kingston 1999, p. 69; N. Scicluna, *When Failure isn't Failure: European Union Constitutionalism after the Lisbon Treaty*, "Journal of Common Market Studies", No. 50(3)/2012, pp. 441–456 [441]; C. Joerges, *Taking the Law Seriously: On Political Science and the Role of Law in the Process of European Integration*, "European Law Journal", No. 2(2)/1996, pp. 105–135 [125]; T.G. Grosse, *Hybrydowy ustrój Unii Europejskiej: dwie logiki zmian w projekcie traktatu konstytucyjnego (The hybrid system of the European Union: two logics behind the changes in the draft Constitutional Treaty)*, "Analizy Natolińskie", No. 3(26)/2008.

¹³ A. Dashwood, *The Relationship between the Member States and the European Union/Community*, "Common Market Law Review", No. 41(2)/2004, pp. 355–381 [355]; R. Schütze, *European Constitutional Law*, Cambridge University Press, Cambridge–New York 2012, p. 49.

law, who calls the EU a combination of a federation and a confederation. The features of confederation within the EU include the institutional dimension, i.e. the dominant role of intergovernmental institutions and relative weakness of the central government at the European level, balanced by strong political power on the national level. On the other hand, the features of federation include a hierarchy of the regulatory system, forming a basis for the supremacy of European law over national laws, and the direct effect of European regulations within the member states. As a consequence, the system is characterised by a top-down hierarchy of laws (norms), and a bottom-up hierarchy of political power and authority (or real power), i.e. a confederal institutional system and a federal regulatory system.¹⁴ For this reason in Europe there is a growing gap between the confederal political base and the federal regulatory 'superstructure'. For the time being, however, the latter lacks democratic legitimisation, and therefore real political power.¹⁵ This is precisely the reason why the pace of systemic change in Europe is so slow, and why it is so difficult to introduce reforms which would constitute *an institutional breakthrough* (a term coined to denote a series of reforms leading towards a democratic federation).¹⁶

Summing up the state of research on the subject, one can point to several features of confederation in the uniting Europe. First of all, there is no political community (*demos*) on the European level,¹⁷ no democratically-elected government, and a deficit of representative democracy (with the exception of the European Parliamentary elections, which nonetheless are sometimes viewed as being paradoxically of more national than European importance).¹⁸ The EU also lacks the avowed sovereign in the shape of a democratic community composed of all citizens, who would constitute a point of reference for the regulatory system functioning in Europe and the source of political legitimisation for European law (which aspires to be treated as constitutional law in Europe). The EU remains first and foremost a union of member states, which is visible, for example, in the dominant role of intergovernmental institutions in the Union's decision

¹⁴ J.H.H. Weiler, *Federalism Without Constitutionalism: Europe's Sonderweg* in: *The Federal Vision. Legitimacy and Levels of Governance in the United States and the European Union*, K. Nicolaidis and R. Howse (eds.), Oxford University Press, Oxford–New York 2003, pp. 54–70 [57–58].

¹⁵ A. Cuyvers, op.cit., pp. 712, 727.

¹⁶ T.G. Grosse, *Europa na rozdrożu (Europe at a crossroads)*, Instytut Spraw Publicznych, Warszawa 2008, chapter 10.

¹⁷ J.H.H. Weiler, op.cit., p. 56.

¹⁸ S. Hix and M. Marsh, *Second-order effects plus pan-European political swings: an analysis of European Parliament elections across time*, "Electoral Studies", No. 30/2011, pp. 4–15.

making processes. The character of the EU's *superstructure* can therefore be said to be supplementary, not paramount, in relation to the member states.¹⁹ Its principal goal is to facilitate the achievement of national objectives, especially those of the member states with the greatest power in the EU.

The European Union is not a 'state,' and its institutional, administrative and financial potential is far from impressive.²⁰ The number of EU employees is very small when compared to the vast cohorts employed in national administrations. Another example of the EU's relative weakness can be seen in the limits on its enforcement of the EU regulatory area, which is primarily put in the hands of the administration and courts of member states.²¹ Likewise, the EU budget is very modest, as it only amounts to 1 percent of GDP in the European Union, which constitutes only 2 per cent of all public funds in Europe. In comparison, the federal budget in the US constitutes 51 per cent of all public expenditures, and in Switzerland it amounts to 33 per cent.²² The EU does not have its own fiscal revenue that would make it independent of the member states.²³ It utterly lacks competences that could be viewed as examples of 'positive fiscal federalism' (in other words, the possibility to create its own fiscal potential at the federal level.).

Similarly, the most important competences – especially those deemed crucial for sovereignty – also remain the prerogative of the member states and are transferred to the European level only to a negligible degree. While this is especially the case with foreign policy and defence,²⁴ other important competences which the EU lacks include those connected to redistribution in the field of fiscal (and budgetary) policy. Examples of this phenomenon include

¹⁹ A. Cuyvers, *op.cit.*, pp. 711, 737.

²⁰ P. Genschel and M. Jachtenfuchs, *op.cit.*, pp. 254, 266.

²¹ D. Keleman, *Building the New European State? Federalism, Core State Powers, and European Integration in: Beyond the Regulatory Polity? The European Integration of Core State Powers*, P. Genschel and M. Jachtenfuchs (eds.), Oxford University Press, Oxford–New York 2014, pp. 211–229 [223].

²² *Ibidem*, p. 220.

²³ The revenues of the EU budget include customs duties on articles imported from third countries, tariffs on agricultural products imported from third countries, and income from the value added tax. All of them, however, are collected by the Member States, after which (part of the revenues) is transferred to the EU. See M. Hallerberg, *Why Is there Fiscal Capacity but Little Regulation in the US, but Regulation and Little Fiscal Capacity in Europe? The Global Financial Crisis as a Test Case in: Beyond the Regulatory Polity? The European Integration of Core State Powers*, P. Genschel and M. Jachtenfuchs (eds.), Oxford University Press, Oxford–New York 2014, pp. 87–104 [88].

²⁴ A. Menon, *Defence Policy and the Logic of High Politics in: Beyond the Regulatory Polity? The European Integration of Core State Powers*, P. Genschel and M. Jachtenfuchs (eds.), Oxford University Press, Oxford–New York 2014, pp. 66–84 [67].

social, educational, and health policy. Granted, a gradual Europeanisation in the field of internal security can be observed. Competences in this sphere are being transferred to the European level or coordinated therein, but in spite of these tendencies, internal security still remains very much the domain of national governments.²⁵ Any changes to the treaties (or laws that have constitutional status) require unanimity – which is a standard procedure for confederations. The possibility of a member state's secession from the union is also a feature of confederations (at least in principle).²⁶ It is worth pointing out that in the United States an attempt at secession resulted in the Civil War (1861–1865), the outcome of which led to the further strengthening of federal power and limiting the states' autonomy.

At the same time, the European Union does retain some federal features, most notably in its legal system, which is based on the principles of supremacy and direct effect.²⁷ Some specialists stress that both these principles can be traced back to the experiences of federal states, not to the sphere of international organisations.²⁸ In the case of the latter organisations, the weaker norm of reciprocity is usually employed. Reciprocity makes it possible to apply legal regulations in a more flexible way, and also makes it easier to exit a given legal regime. Conversely, the principle of supremacy should (at least in theory) be applied unconditionally, in a definitive manner, and on the whole territory of the federation – and therefore the principle itself also plays a unifying role. Another federal feature found in the EU is the tendency toward the harmonization of European law (*acquis communautaire*) – 'a single set of policies and obligations that would more or less apply in the same way to all member states at the same time'.²⁹ Under this logic, any derogation from this harmonization should be tolerated only temporarily, and the assumption is that it should lead to deeper integration and a stronger centralization of powers at the European level.

The transfer of competences to the EU in the area of internal and external trade policies and creating policies that support the functioning

²⁵ D. Keleman, *op.cit.*, p. 218.

²⁶ G. Majone, *op.cit.*, p. 142.

²⁷ P. Genschel and M. Jachtenfuchs, *op.cit.*, p. 268.

²⁸ W. Phelan, *Why do the EU Member States Accept the Supremacy of European Law? Explaining Supremacy as an Alternative to Bilateral Reciprocity*, "Journal of European Public Policy", No. 18(5)/2011, pp. 766–777.

²⁹ See B. Leruth and C. Lord, *Differentiated integration in the European Union: a concept, a process, a system or a theory?* "Journal of European Public Policy", No. 22(6)/2015, pp. 754–763 [755].

of the common market can also be viewed as features of a federation.³⁰ Similarly, the competences of the European Union in the field of fiscal policy are gradually growing. They concern primarily the regulation of national budgetary policies and the attempts to harmonise fiscal policies across all member states – actions that can be described as ‘negative fiscal federalism.’ Another feature that brings the European Union system closer to a federal one is abandonment of the rule that each member state has the same number of votes in intergovernmental institutions, and the growing tendency to rely on majoritarian principles in decision-making. Finally, the drive towards federation is also visible in the strengthening of the political role of the European Parliament, especially since the time of introducing direct elections (1979) and the incremental increase of the Parliament’s role in the legislative process.

The next section of this article explores the phenomenon of differentiated integration in Europe. My intention is to demonstrate that from the very beginning the discussion of this phenomenon has been vague and rooted in disparate political concepts concerning the development of European integration, including at the systemic level. Among the proposed solutions to the eurozone crisis, those that gained the most widespread popularity were those that implied segmentation of the eurozone and supported the creation of asymmetrical power relationships between member states.

2. Political segmentation in Europe

Differentiated integration became a way of securing the development of European integration – both as an answer to successive enlargements (i.e. ‘widening’ by accepting new member states into the EU) and because of the need to ‘deepen’ cooperation in Europe.³¹ It can be treated therefore as one of the main methods to ensure that the progress of integration and its evolution in the current political order of Europe is kept alive, and it is why some scholars describe the European Union as ‘the system of differentiated integration’.³² The term ‘differentiated integration’ represents a departure from the harmonising (or consolidating) integration of all member states in all fields of political cooperation (i.e. in the sphere of public policies and specific areas of European law).³³ This latter type of full

³⁰ A. Cuyvers, op.cit., p. 721.

³¹ D. Leuffen, B. Rittberger and F. Schimmelfennig, *Differentiated Integration. Explaining Variation in the European Union*, Palgrave Macmillan, Houndmills, New York 2013, pp. 12–45.

³² Ibidem.

³³ A. Stubb, *Categorization of differentiated integration*, “Journal of Common Market Studies”, no. 34(2)/1996, pp. 283–295; A. Kölliker, *Bringing Together or Driving Apart the Union?*

unification is treated as the ideal state, which for various reasons cannot be implemented in practice. The pursuit of full harmonisation may even hinder (at least temporarily) the progress of integration in Europe. Therefore, differentiated integration is often viewed as a compromise solution to these difficulties. Some scholars posit that differentiation also includes different methods of management or different degrees of centralization of European policies.³⁴ However, the essence of differentiation lays in the different levels of participation of the EU member states in various European policies.

When the European integration process began, the basic premise was to strive for complete uniformity. Any exceptions from this rule were regarded as temporary (i.e. they took the form of transitional periods). Therefore, we cannot assume that the process of differentiation began in the 1990s with the introduction of the monetary union in the Maastricht Treaty, a union which included only selected members of the community. The EU also introduced at that time permanent derogations (*opt-outs*) for some countries in specific areas of European policies (EMU, social policy, and defence.) Subsequent changes to the treaties further intensified this phenomenon and also introduced a range of new forms of differentiation. The Treaty of Amsterdam introduced the mechanism of 'closer cooperation,' which in the Treaty of Nice was re-calibrated as 'enhanced cooperation.' During the eurozone crisis, this mechanism was implemented for the first time (e.g. with regard to the single European patent [25 member states], international divorce [15] and the financial transaction tax [11 member states initially]).³⁵

Another mechanism of differentiation is 'permanent structured cooperation,' introduced by the Treaty of Lisbon into the Common Security and Defence Policy (CSDP). Yet another proof of differentiation is evidenced by the treaties concluded by some EU members outside

Towards a Theory of Differentiated Integration, "West European Politics", No. 24(4)/2001, pp. 125–151; A. Kölliker, *Flexibility and European Unification. The Logic of Differentiated Integration*, Rowman & Littlefield, Lanham 2006, p. 2; K. Holzinger and F. Schimmelfennig, *Differentiated integration in the European Union: Many concepts, sparse theory, few data*, "Journal of European Public Policy", No. 19(2)/2012, pp. 292–305 [293].

³⁴ D. Leuffen, B. Rittberger and F. Schimmelfennig, op.cit., p. 8.

³⁵ N. von Ondarza, *Na drodze do unii w Unii. Instytucjonalne następstwa zróżnicowanej integracji w ramach strefy euro dla UE (On the way to the union in the Union. The institutional implications of differentiated integration in the Eurozone for the EU)*, "Nowa Europa – Przegląd Natoliński", No. 3(16)/2013, pp. 132–162. German version: *Auf dem Weg zur Union in der Union. Institutionelle Auswirkungen der differenzierten Integration in der Eurozone auf die EU*, "Integration", No. 1/13/2013, pp. 17–33. In English: *Strengthening the Core or Splitting Europe? Prospects and Pitfalls of a Strategy of Differentiated Integration*, "SWP Research Paper, Berlin", March 2013.

the structures of the Community (despite the fact that they are targeted at strengthening European cooperation). An early example of this phenomenon was the Schengen Agreement (later incorporated into European law), and most recently the so-called Fiscal compact.³⁶

Currently, approximately 40 per cent of EU law is subject to differentiated integration principles.³⁷ These principles are mainly in force in the common market, the area of freedom, security and justice (AFSJ), and the EMU, as well as to a lesser extent in the CSDP and the Charter of Fundamental Rights. Most of the exemptions are temporary, but the scope of permanent derogations is gradually increasing. According to specialists, differentiated integration is a clear and growing trend.³⁸ It is characterized by the predominance of intergovernmental management over community solutions (where intergovernmental decisions often preponderate over the delegation of powers to the EU technocratic institutions). For the largest states, it is seen as an opportunity to increase their political influence.³⁹ However, some areas of differentiation retain their dual (both intergovernmental and community) character. A prime example of this type is the EMU. Other spheres are subject to gradual takeover by the Community (e.g. AFSJ). Thus, differentiation has become a method in the development of European integration. To a large extent it is also a way of shaping the political and systemic future of the European project.

The concept of political segmentation should therefore be defined in the context of differentiation. Segmentation is a method of differentiation which is characterised by permanence and contains systemic implications for the integration process. While temporary differentiation may potentially pave the way for federation, permanent segmentation is essentially contrary to the spirit of federation. Segmentation singles out countries which are more 'valuable' in terms of the further development of the EU, and establishes a group of countries that are less involved in, or even excluded from, certain areas of cooperation. The former group can be defined as the core states in the integrating Europe, while the latter group forms a secondary or less influential tier of integration. For this reason, and also with regard to their geographical location – the less involved states are often described as 'peripheral'. The division of Europe into a core and

³⁶ The Fiscal Compact, formally the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union is an intergovernmental treaty introduced as a new stricter version of the previous Stability and Growth Pact, signed on 2 March 2012.

³⁷ F. Schimmelfennig and T. Winzen, *Instrumental and Constitutional Differentiation in the European Union*, "Journal of Common Market Studies", No. 52(2)/2014, pp. 354–370 [354].

³⁸ *Ibidem*, p. 359.

³⁹ D. Leuffen, B. Rittberger and F. Schimmelfennig, *op.cit.*, p. 19.

peripheries not only affects the states' participation in various European policies, but also the scope of their authority and voice in the integration process. In this way, political segmentation may be viewed as creating the conditions for a permanent hierarchy of membership (or a gradation of authority from the most central to the most peripheral states.) It also allows for political management of the entire EU (including the second tier of integration) by the core countries.

Reflecting on the difference between *differentiated integration* and *political segmentation* in Europe, it may be useful to refer to a division proposed by Frank Schimmelfennig and Thomas Winzen.⁴⁰ These two scholars postulated the necessity of disassociating two kinds of differentiation. One is 'instrumental differentiation,' which is usually temporary and affects mostly operational and technical issues related to a state's participation in various European policies. The other is 'constitutional differentiation,' which constitutes a permanent (or long-term) exemption of a state from the provisions of a policy, and which is associated most often with a retention of national sovereignty and with reluctance to participate in the further 'deepening' of European integration.

As has been mentioned, differentiated integration is an instrument for shaping the integration process. For this reason it is often used by politicians to present their own visions of the future of the EU. By analyzing the visions of various politicians, we can discover three models of differentiated integration that correspond to different positions of the three largest member states in the debate on the future of European integration. The first of these concepts was the idea of 'gradual integration' (*Abstufung der Integration*) introduced by Willy Brandt (1974) and also supported by Leo Tindemans (1975). This concept later became known as the 'multi-speed Europe'. Within this model, a certain group of member states become the vanguard of integration, but it was assumed that other countries would subsequently catch up and that over time a full harmonization of Community law would emerge. Within this model, differentiation is only temporary and should occur within the framework of the EU legal order. This 'vanguard model' is closest to the German vision of the future of European integration, and is not aimed at introducing lasting political segmentation. Exemptions are of a technical or organizational nature, e.g. they can result from the need to adjust a country's economy to the needs of the monetary union.⁴¹ This model could potentially lead to the creation

⁴⁰ F. Schimmelfennig and T. Winzen, op.cit., pp. 361–363.

⁴¹ The concept of 'hard core' (Kern Europe) proposed by Wolfgang Schäuble and Karl Lamers (1994), seems to be of such a character. It was related to the discussion of monetary

of a federation (at least in terms of competences), because the process of differentiation contained therein is by definition temporary.

The British responded to this vision with a model of flexible integration which has been dubbed 'Europe à la carte'. The concept was first proposed by Ralf Dahrendorf (1979), and later also championed by John Major (1994). This model implies a minimum of harmonization (mainly in the sphere of the common market) and absolutely voluntary participation in other areas of European cooperation, primarily through the medium of intergovernmental relations. The British model was designed to hinder the progress of integration, understood as the growing harmonization of European law and the rise of the Community method (the 'à la carte' model also weakens the role of supranational institutions). The British model would prevent the permanent political segmentation in Europe, because it makes it impossible to clearly define the boundaries between the different tiers of integration. The concept is based on a model of a confederation, and is designed to block federalist trends (especially because it opposes the continued transfer of powers and hinders the harmonization of laws.)

The third model was proposed by the French, who were the greatest proponents of political segmentation in Europe. This model took its inspiration from the 'variable geometry' (*géométrie variable*) proposal of Gérard Tardy (1979), which was followed by the 'concentric circles' (*cercles concentriques*) model of Eduard Balladur (1994). The essence of these proposals was the introduction of a permanent division between the tiers of integration, in other words between core and peripheral states. The French models are primarily concerned with the concentration of power within the core, which would facilitate the management of the entire Community, including its outer tier. The model is targeted at rebuilding the effectiveness of European governance, and not incidentally at boosting the waning power of France in Europe. For this reason, the French proposals often incorporate mechanisms of intergovernmental cooperation, which in some areas undermine the Community method and the mandate of supranational institutions. Thus, the projects of political segmentation carry the risk of disintegration, or at least they endeavour to change the existing integration model. The French model seems only marginally concerned with the transfer of competences to the European level, and much more preoccupied with ensuring a hierarchy of power that would favour the core states. The French model might thus initiate the

union in Europe, and treated the distinction of the core states as a temporary mechanism. Comp. F. Tekin and W. Wessels, *Flexibility within the Lisbon Treaty: Trademark or Empty Promise?* "EIPAscope", No. 1/2008, p. 26.

creation of a system that could be called an 'asymmetric confederation,' i.e. that kind confederation which is based on the core states political supremacy over the peripheral ones.

The period of the eurozone crisis seemed to favour the latter (French) model of integration. During this time, one of the key goals of French diplomacy was to strengthen the political segmentation in the EU. The French goal was dubbed (not very accurately) a 'two-speed Europe.' In truth, Paris intended to use the eurozone crisis to strengthen segmentation and to introduce a permanent division between the two tiers of European integration.⁴² In this context, the reference to 'speed' may be confusing because it suggests temporary differences in the pace of integration. In truth, the eurozone was supposed to become the core of these processes – and the proponents of this model also called for its institutional strengthening. Germany was reluctant to focus exclusively on the eurozone in the bid to deepen European integration, because such course of action would strengthen the geopolitical role of Paris and its allies in Europe. For this reason, German diplomacy stressed the need to make the new solutions proposed for the eurozone open also to those countries which might adopt the euro as their currency in the future, or who would voluntarily seek to take part in the new institutions. This stipulation included Poland (among others), as Poland was a close ally of Germany in the European arena at the time.

During the crisis, the profile of the Eurogroup was raised, and it also received support in the form of additional clerical staff and bureaucratic resources. A new institution, namely the summit of the leaders of the Eurozone (or *Euro summit*), was set up. In this way, a separate structure of intergovernmental institutions designed exclusively for the euro area was launched.⁴³ New support instruments, specifically designed for the EMU, were also introduced, e.g. the European Stability Mechanism. Informal mechanisms of power, favouring decision-makers from within the EMU, also appeared. According to scholars the position of President of the European Commission can in practice only be filled by a politician coming from one of the eurozone countries.⁴⁴ By the same token, the Polish Presidency in 2011 failed to obtain authorization to participate

⁴² Based on an interview with an official from the General Secretariat of the Council of the European Union, June 2015.

⁴³ N. von Ondarza, *op.cit.*, pp. 141–142.

⁴⁴ *Ibidem*, p. 151. An example of a reverse trend may be the selection of Donald Tusk (from Poland) as the new President of the European Council and of chairing the Euro summit (2014).

in the meetings of the Eurogroup, even though the meetings' agendas included legal and organizational solutions that would be instrumental in conquering the crisis.

Discussions over other measures targeted at creating a special status for the eurozone members quickly ensued. The proposed solutions included the launch of a separate chamber within the European Parliament for the monetary union members; the appointment of a separate budget for the euro area; and the division of the European Commission's Commissioners into those representing the EMU and those representing the rest of the EU.⁴⁵ In fact, in many of the mentioned institutions informal processes of political segmentation or division into two tiers of integration appeared (e.g. only officials coming from eurozone countries could handle matters concerning the EMU).⁴⁶ An example of this phenomenon may be the introduction in the Juncker Commission of the new post of Commissioner for the Euro (with the rank of Vice-President) (2014). Likewise, the launch of the EU banking union and measures taken to supervise the banking industry were restricted to the eurozone. According to a press release issued by the European Commission, the banking union was a milestone for deepening political integration within the monetary union.⁴⁷ Other countries were welcome to participate, but only on an asymmetric basis. They can implement decisions and guidelines issued by the ECB, but have only restricted decision-making powers.⁴⁸ Worth mentioning at this point is the proposal for appointing a Minister of Finance within the Commission who would have far-reaching powers and influence over national budgets – primarily for the Eurozone, but also for the entire EU.⁴⁹ Such measures increase the inequality of political power between the two tiers of integration in the European Union. The most crucial decisions can in fact be taken primarily by the core members who belong to the monetary union. Such decisions are, obviously, influenced by their particular political and economic agendas.

⁴⁵ *Final Report of the Future of Europe Group of the Foreign Ministers of Austria, Belgium, Denmark, France, Italy, Germany, Luxembourg, the Netherlands, Poland, Portugal, and Spain*, 17 September 2012, www.msz.gov.pl (last visited 29.09.2012); J.-C. Juncker, D. Tusk, J. Dijsselbloem, M. Draghi and M. Schulz, *Completing Europe's Economic and Monetary Union*, European Commission, Brussels 22.06.2015, p. 19.

⁴⁶ N. von Ondarza, *op.cit.*, p. 155.

⁴⁷ *Commission proposes new ECB powers for banking supervision as a part of a banking union*, Press Release, European Commission, Brussels, 12 September 2012, p. 2.

⁴⁸ D. Howarth and L. Quaglia, *Banking Union as Holy Grail: Rebuilding the Single Market in Financial Services, Stabilizing Europe's Banks and 'Completing' Economic and Monetary Union*, "Journal of Common Market Studies", Vol. 51, Annual Review 2013, pp. 103–123 [115].

⁴⁹ *Germany pushes eurozone fusion*, "Financial Times", 28 March 2014, p. 3.

Cooperation within the banking union and other eurozone institutions will be conducive to the consolidation of political cooperation within the EMU. Scholars agree that the crisis has demonstrated the importance of the eurozone for further cooperation within the EU generally, and that it could have a far-reaching impact on other public policies and areas of differentiated integration.⁵⁰ In this sense, the eurozone to an increasing extent demarcates the boundary between the inner and outer tiers of integration. It also makes it more probable that the emerging political model will be based on permanent political segmentation.⁵¹ At the same time, the six founding member states of the Community retain their pivotal role within the euro area. These six states are exempt from differentiation (they always belong to the European vanguard). The crisis has also highlighted the importance of the two largest countries in the euro area, i.e. Germany and France.⁵² Decisions taken within this political core can subsequently be transferred to the outer tier e.g. through the medium of Community regulations. This mechanism could extend beyond just issues related to the financial markets or affecting the common market, and include many other public affairs.⁵³ The impact of the six core members would be further strengthened by the reform of the voting system in the EU's intergovernmental institutions, introduced by the Treaty of Lisbon, which came into force in 2014.⁵⁴ Under the new system, the EMU countries automatically have the so-called qualified majority in these European institutions.⁵⁵ Thus the Lisbon voting system and the enhanced cooperation within the eurozone could increase the decision-making capability of the European institutions and rebuild the political influence of the two largest member states. It would also perpetuate the division into two tiers of integration in Europe.

⁵⁰ N. von Ondarza, op.cit., pp. 132–133, 137, 150; F. Schimmelfennig and T. Winzen, op.cit., p. 366; D. Leuffen, B. Rittberger and F. Schimmelfennig, op.cit., p. 19.

⁵¹ N. von Ondarza, op.cit., p. 158.

⁵² Ibidem, pp. 147–149.

⁵³ W. Münchau, *Banking union will not end Europe's crisis*, "Financial Times", 21.10.2012; P. Whyte, *What a banking union means for Europe?* Centre for European Reform, December 2012, pp. 1, 6–7; *Safeguarding the Single Market: How to achieve a balanced European Banking Authority*, Open Europe, London, October 2012, pp. 4–6.

⁵⁴ S. Fabbrini, *Podejście międzyrządowe i jego granice: ocena odpowiedzi Unii Europejskiej na kryzys strefy euro*, "Nowa Europa, Przegląd Natoliński", No. 3(16)/2013, pp. 46–83. English version: *Intergovernmentalism and Its Limits: Assessing the European Union's Answer to the Euro Crisis*, "Comparative Political Studies", No. 46(9)/2013, pp. 1003–1029.

⁵⁵ Although during a transitional period until 2017 the former voting method can be used at the request of a single member state.

It should also be added that the banking union is likely to increase the economic dependence of the outer tier on the core countries and their economic entities. According to scholars, the ECB will be guided primarily by the interests of the eurozone and will pay less attention to the situation in countries in the outer tier of integration.⁵⁶ Some scholars believe that it will be possible to build a coalition consisting of the supervisors from the 'host' countries in the ECB Supervisory Board (i.e. countries hosting external financial institutions).⁵⁷ Such a coalition could defend the interests of the less developed or peripheral markets. It seems doubtful however that such cooperation could be sustainable and effective in the long term. It far more likely that the largest countries of the EMU will exert their dominance and promote the interests of their largest and most important financial groups. The points of view of supervisors from the home members' countries will be more privileged than the opinions of those from the host countries.

Some scholars confirm my conclusions that the Eurozone crisis has contributed to strengthening the permanent political segmentation between the euro area and the 'outer tier' of integration.⁵⁸ At the same time the crisis also increased the divisions within the EMU – between the core states and the states considered to be peripheral and relying on European support (the so-called PIGS countries). This process also contributed to a change in the nature of European integration. It strengthened intergovernmental management and the hierarchy of power between members. It would be difficult to argue that these changes might be conducive to federalization. It seems much more probable that they will lead towards building an *asymmetric confederation* in Europe.

Conclusions

The European Union is a hybrid system that possesses the characteristics of both a confederation and a federation. The EU has its roots in a union of member states, therefore it has the structure of a confederation. But over time changes have been introduced which transformed the EU and pushed it in the direction of federalism. Nonetheless, the EU will presumably not transform into a full federation in the foreseeable future. Its hybrid status is reflected in the continuing gap between the democratic

⁵⁶ J. Zettelmeyer, E. Berglöf, and R. De Haas, *Banking union: The view from emerging Europe* in: *Banking Union for Europe. Risk and Challenges*, T. Beck (ed.), CEPR, London 2012, pp. 63–76.

⁵⁷ S. Kluza, *Bilans unii bankowej może być korzystny* (*The balance of the banking union may be beneficial*), "Dziennik Gazeta Prawna", 18 grudnia 2012, p. A11.

⁵⁸ B. Leruth, C. Lord, *op.cit.*, p. 756.

power exercised at the national level and the administrative and judicial *superstructure* at the EU level. The national elites are mostly reluctant towards the idea of turning the EU into a full political federation, even though the Europeanised elites of the EU *superstructure* consistently push in this direction (although at the same time they seem more interested in the regulatory sphere than the strictly political one).

The eurozone crisis has forced changes in the direction of fiscal federalisation, encouraging the transfer of competences to the European level, but without making adequate changes in the political system. This system therefore remains predominantly that of a confederation. Thus we have witnessed strong pressures aimed at effecting a transfer of administrative power to the European level, while simultaneously changes towards a democratic federation have been blocked.⁵⁹ In the long run, the dissonance between the robust sphere of technocratic institutions and the deficit of democratic institutions in the EU threatens to become destabilising and conducive to conflicts, even if in the short run it seems to improve management efficiency.⁶⁰

In some respects, the confederal features of the EU were even strengthened during the crisis. Many scholars stress that at that time the importance of intergovernmental institutions grew significantly, while the influence and autonomy of other EU institutions (especially the Commission, but also the Parliament) was relatively weakened.⁶¹ These trends find confirmation in the fact that the task of developing the initial reform package (later called the 'Sixpack') was entrusted to an intergovernmental team spearheaded by European Council President Herman Van Rompuy (2010). Scholars claim that this decision constituted an informal weakening of the Commission's right to take the legislative

⁵⁹ J. Pisani-Ferry, *The Euro Crisis and Its Aftermath*, Oxford University Press, Oxford–New York 2014, p. 169.

⁶⁰ Compare T.G. Grosse, *A Potential for Revolution in Europe?* in: *European Union on The Global Scene: United or Irrelevant?* B.J. Góralczyk (ed.), Warsaw 2015, pp. 203–223.

⁶¹ S. Fabbrini, op.cit., p. 56; R. Cisotta, *Jaką rolę ma odgrywać Komisja Europejska w nowym zarządzaniu Unią Gospodarczą i Walutową?* "Nowa Europa, Przegląd Natoliński", No. 16(3), pp. 163–187. English version: *What Role for the European Commission in the New Governance of the Economic and Monetary Union?* "IAI Working Papers", No. 1324/2013; D. Hodson, *Governing the Euro Area in Good Times and Bad*, Oxford University Press, Oxford–New York 2011; U. Puetter, *Europe's deliberative intergovernmentalism: the role of the Council and European Council in EU economic governance*, "Journal of European Public Policy", No. 19(2)/2012, pp. 161–178; D. Dinan, *Governance and Institutions: Impact of the Escalating Crisis*, "Journal of Common Market Studies", Vol. 50, Annual Review 2012, pp. 85–98; M. Chang, *Understanding the rules of European economic governance: Economics, politics, and wishful thinking*, "Journal of European Integration", No. 34(3)/2012, pp. 297–303.

initiative.⁶² Another confirmation of this trend can be seen in the new agreements adopted during the crisis, such as the treaty regulating the functioning of the European Stability Mechanism⁶³ and the Fiscal compact. These were created outside EU law as purely intergovernmental agreements of the signatory countries, which limited the role of the Community institutions.⁶⁴ In addition, during the crisis various existing intergovernmental institutions in the EU were organizationally strengthened, such as the enlargement of the secretariat of European Council President Herman Van Rompuy and the increased administrative support of the Eurogroup and eurozone summits. The latter institution was established informally in 2008, but officially recognised in the Fiscal compact in 2012.

Although during the crisis there was also an observable tendency to strengthen the competences of the European institutions (e.g. the Commission and the European Central Bank), it was associated with intense political pressure exerted on these institutions by the strongest governments. This, in turn, resulted in weakening the autonomy of these institutions with respect to intergovernmental institutions and informal political influences of the largest countries. This phenomenon was accompanied by passivity on the part of the European Parliament and a relatively low activity by the Court of Justice of the European Union in fighting the crisis. This 'stepping back' of these institutions demonstrates that in a crisis situation, only states have the appropriate political mandate and financial resources to take decisive action. It would be hard to find a better proof that the EU system rests on the foundations of a confederation. One should also add that the crisis revitalised Eurosceptical groups and in general led to dwindling social support for integration. It also gave rise to greater activity on the part of national institutions, particularly parliaments and constitutional courts, which called for greater respect for the sovereign rights of the member states within EU policies. These tendencies eroded the willingness of the political elites (both European and national) to undertake reforms that would lead in the direction of transforming the EU into a democratic federation.

⁶² M.Chang, *Fiscal Policy Coordination and the Future of the Community Method*, "Journal of European Integration", No. 35(3)/2013, pp. 255–269.

⁶³ *The Treaty Establishing the European Stability Mechanism* was signed by the member states of the eurozone to found the European Stability Mechanism (ESM), an international organisation located in Luxembourg, to act as a permanent source of financial assistance for member states in financial difficulty. The ESM commenced its operations at a meeting on 8 October 2012 (after Germany's ratification on 27 September 2012).

⁶⁴ Later a separate treaty amending Article 136 of the Treaty on the Functioning of the European Union authorized the establishment of the ESM under EU law.

The crisis was conducive to the cause of differentiated integration, also referred to as a 'two-speed Europe.' It deepened the division between the euro area and the rest of the EU (but also introduced divisions within the euro area itself). These differentiation tendencies were visible at least since the Treaty of Maastricht, even though their purported aim was to further the development of European integration. The aim of this process was to strengthen the political centre in Europe, e.g. through the transfer of ever more competencies to the EU institutions (including competences that are considered important for national sovereignty, such as monetary, fiscal and defence policies and internal security.). From the very beginning, differentiation has aroused controversies, which are inherently rooted in the three political visions of the future development of European integration. In fact, as has been demonstrated in this article, only the German vision could potentially pave the way for a federation. In the German vision, the period of territorial differentiation was envisaged as temporary. After some time, the outsiders would join and participate in the enhanced cooperation in a given field. It was supposed to be the same with respect to intergovernmental solutions and cooperation (thus within the confederation framework). It was assumed that after some time this management would be fully transferred to the EU institutions and become subject to European law.

The crisis has demonstrated that differentiated integration will more probably lead to permanent segmentation than to temporary divisions. It is difficult to reconcile this with the idea of moving towards a federal system. After all, within a federal system there is a tendency towards harmonization and coherence, and the exclusion of a part of the federal territory from the federal regime is both impermissible and unthinkable. Even the instances of 'enhanced cooperation' during the crisis (which involved e.g. the single European patent or international divorce) constituted, according to most scholars, instances of violation of applicable procedures and were detrimental to the coherence of the European law system.⁶⁵ Political segmentation in the EU would be consistent with federalism only if the strengthening of the euro area would lead to the disintegration of the rest of the EU. In such scenario a new union would emerge based only on the euro area, which would deepen the process of political integration towards a federation. Another problem, however, is that the changes which have taken place during the time of crisis have more strengthened intergovernmental management than built democratic institutions indicative of political federation in the Eurozone. In addition,

⁶⁵ S. Fabbrini, *op.cit.*; F. Chatzistavrou, *op.cit.* pp. 100–102.

it turned out that the crisis created an opportunity to further accentuate the hierarchy of power and to strengthen the hegemony of the stronger countries over the weaker and peripheral ones. This phenomenon was not conducive to the expansion of democracy at the European level, which must be deemed indispensable in order to establish a full political federation in Europe.

All in all, the management dysfunctions of the confederal system within the EU, which became apparent during the crisis, were not resolved through consistent federalization, but were dealt with in part by the delegation of powers to European institutions, and in part through segmentation and by increasing the power of the stronger countries over the weaker ones. This aforementioned asymmetry makes the integration process not only far removed from any semblance of a federation, but also it exacerbates the development of political tensions within the political system. It could also potentially be a factor that might bring about the disintegration of Europe.

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