
Emergent Invisible Power in EU Federalism

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Summary

In contrast to modern federations, the federalization of the EU has taken place without a constitutional answer to the question of the system's democratic legitimacy. The process of compound polity building under the shadow of the dilemma of the Union's *finalité politique* can be described as "hidden federalism". The major consequence of this process has been a gradual migration of decision-making from an intergovernmental toward a supra-governmental power-holder. On the one hand, due to an excessive Europeanization of governing tasks, national democratic institutions have lost the political autonomy necessary for shaping the relation between state and society, politics and the market, and individual and collective autonomy within member states. On the other hand, reforming the EU by creating democratically suspicious control mechanisms within its members' budget policies has not substituted the absence of the EU's governance autonomy to regulate politically sensitive fields such as fiscal, employment and social policies. With the escalation of the Eurozone crisis it has become evident that neither member states nor the EU have a sufficient level of autonomy to make policy choices related to the most sensitive issues of distributive justice. The implementation of the Fiscal Compact will decisively affect economic and social life in Europe; yet it is hardly possible to discern who should take credit or the blame for the nontransparent penalty mechanism embedded in this contract and aimed at regaining the Eurozone's stability. In this new historical context, institutions of constitutional democracy, being present on the national and to an extent on the European level, have been deprived of their original purpose. Instead of making power visible and accountable, they have actually enlarged the scope of an unaccountable power by maintaining the illusion that citizens can still determine their collective destiny through the political process.

Keywords: European Union, Invisible Power, Federalism, Crisis, Panopticon

Introduction

Today, after sixty years of European integration, the European Union is confronting a dilemma – How to go further? This is, however, not the first time that it has faced such a question. On the contrary, this question is typical for the form of integration undertaken by the EU. This type of integration is characterized by two features: the integration on the surface is calm and evolutionary, efficient, but almost imperceptible, while in its heart it is ambitious and uncertain, very strategic and almost fateful. The best illustration of the double face of the integration process – both the manifest and hidden sides – is its founding document, Schuman's Declaration (1950), which encompasses a spectrum of institutions from the modest Steel and Coal Community to a federal government at the deeper end of the process. What Jean Monnet projected on the basis of the Declaration was the concretization of the double face strategy: first, peaceful integration would be developed until it fulfills two declared aims – peace and welfare; second, in order to ensure the durability of peace and welfare, integration must gradually include some federal or quasi-federal mechanisms. From the very beginning of the EU's integration the founding fathers were aware that such aims could not be achieved through the classical mechanisms of international organizations or confederations. On the other hand, the federalization of the internal relations between member states was unacceptable from the point of view of its legitimacy. It is for this reason that the question "How to go further?" has been the frequent follower of the integration process.

Today, however, this question has another aroma. The surface has changed – there is no sufficient welfare guarantee for calm development. The hidden strategic level has changed – there is no strategic consent on the necessary reform measures. The current crisis is for the first time a crisis of development which is creating an existential crisis for the whole integration project. Earlier crises were solved through different measures of internal constitutional engineering. This crisis looks for a new constitutional choice of constituencies, which is still on the horizon. Our article begins right at this point.

We look at the crisis and the latest responses to it from the perspective of Niklas Luhmann's systemic theory (Luhmann 1978). According to Luhmann, each social system must be able to reduce its complexity in order to survive in constantly changing surroundings. In order to reduce complexity, the system has to develop within its confines a certain autonomy and the capability to selectively process information and make comparisons with other alternatives (*ibid.*: 145). The major argument of this paper is that the reduction of complexity in the EU's governing system has so far taken place through the constant isolation of the decision-making process from politics. With the escalation of the Eurozone crisis, however, this reduction has for the first time been achieved not only at the expense of demands

coming from parliaments, street demonstrators, unions, euro-sceptic political parties and constitutional courts, but also at the expense of demands coming from individual national governments regarding the most sensitive issues of fiscal policy. Nevertheless, given the loss of autonomy for both national and European institutions to shape social and economic life, it has become impossible to discern who is responsible for the political vision embedded in the latest European anti-crisis measures. Paradoxically, however, it is precisely this invisibility of the power-holder that gives stability to the system in the turbulent period of crisis.

The article is organized in the following way. First, we explain the way the process of European federalization has, step by step, isolated decision-making from the ideological battles taking place within member states' political arenas without transferring those battles to the European level. Secondly, we demonstrate that it cannot be determined who should be blamed or credited for the profound social and economic consequences of the political project aimed at resolving the Euro-zone crisis. Thirdly, we argue that the process of European federalization has failed in establishing an authentic European civil society; what's more, this process has transformed national boundaries into nontransparent walls separating paralyzed national civil societies from each other and disabling them from communicating and commonly responding to European governmental measures. Finally, we suggest there is an alternative way of reducing the system's complexity: if the major EU architects decide to grant some competences back to the member states while at the same time empowering European institutions to efficiently regulate those policy areas which are necessary for maintaining European unity, power could again become effective and accountable to individuals both as member states' citizens and as Europeans.

Hidden Federalization as an Instrument for Separating Politics from Policy-making

Through hidden federalism we consider the process of compound polity building in the shadow of the unresolved dilemma of the community's *finalité politique*, under the technocratic mask of economic integration. This was the strategy embraced by the European post-WWII integrationist elites once they realized that the major ingredient for building a united Europe was desperately missing – the willingness of European peoples to give away their sovereignty and independence for the sake of the creation of a United States of Europe. The absence of politically self-aware Europeans made Jean Monnet and his followers reject historically tested federal methods of community building (Burgess 1991: 27-39). Their solution for the problem of squaring the circle of European unity in diversity was to set off the integration process, which would slowly and invisibly separate policy-making from politics. In

order to implement this strategy it was necessary to establish a supranational governance sphere unchained by society's demands. At the same time, the policy-making process was to be removed step by step from member states' national arenas of open and democratic political competition. In contrast to the US founding fathers, the proponents of European unification deliberately avoided open constitutional debate on fundamental politico-philosophical issues, such as the relations between democracy and freedom, identity and political community or between the individual and system. Instead, they based the whole process on an undiscussed presupposition¹ that European integration represents a goal in itself.²

This technocratic approach follows the basic premises of Niklas Luhmann's systemic theory (Luhmann 1978). By making a decisive break with the Aristotelian tradition of political thinking, Luhmann has come to the conclusion that the search for a polity's concrete purpose and meaning is simply out of step with social reality (*ibid.*: 7). According to Luhmann it is no longer possible to integrate and hold together complex societies through normative structures (see also Habermas 1976: 131). Standing on the firm ground of systemic theory, major European decision-makers have bluntly rejected Altiero Spinelli's proposal to let the people decide on the final aim of European integration in the course of a classical constitution-making process (see Bartolini 2008). Instead, the European "cryptofederalists" have become indisputable promoters of the worldview according to which European integration represents peace, stability and welfare (Majone 2009: 81-90). The widespread expectation that the Promised Land is waiting at the end of the integration road – lucidly described as "political messianism" by Joseph Weiler – has for a long time successfully regulated the actions of all important players participating in the integration process (Weiler 2012: 257-260). Simply put, integrationist elites have been led by a reasonable apprehension that citizens' political participation in the building of Europe would make the governing system too complex and thus incapable of sustaining the challenges coming from an unstable surrounding. For that reason, political decision-making has been conferred to the privileged interpreters of citizens' best interests, i.e. national governments, the European Commission, the

¹ In his critique of Niklas Luhmann's systemic theory of society Habermas emphasizes the importance of the fact that Luhmann's theory "proceeds from the *undiscussed presupposition* that the creation of motivation needed by the system is in no way restricted today by independent (*eigensinnigen*) systems of norms that follow a logic of their own, but responds to steering imperatives alone" (Habermas 1976: 130).

² This approach is best reflected in the words of Henry Spaak, Belgian statesman and one of the EU's founding fathers: "Everything which tends toward European organizations is good" (quoted in Majone 2009: 73).

Court of Justice and the most powerful organizations representing financial and business interests.³

The strategy of Europe's hidden federalization is best reflected in the way competences were transferred from member states to the supranational power-holder. By deliberately avoiding to give an answer to the question of their project's *finalité politique*, the major architects of the EU have also left unanswered the question of whether the EU resides on treaties or on a constitution, and consequently, who has the final word with regard to the vertical division of competences. This "revolutionary strategy of avoiding the answer to the question of *finalité politique*" (Kirchhof 2006: 767) deprived the Union of a reliable guardian of the balance between the member states' collective autonomy and the necessity of acting together at the European level. In political reality the power to decide on who decides has been conferred to national governments, the Commission and the Court of Justice (Weiler 1999: 10-101). As for the national governments, they have for a long time perceived the centralization of competences at the European level as a chance to avoid domestic democratic control and to enlarge the scope of their unaccountable political action. As for the Commission and the Court of Justice, they have always been firmly determined to deepen the integration process, despite the occasional inertia of member states. Consequently, the power to shape the fine balance between the democratic demand for collective self-determination of European peoples and efficiency improvement-driven demand for a higher level of European unity has fallen into untrustworthy hands (Scharpf 2009).

Within a politically unfinished and highly heterogeneous community such as the EU, the economic, social and political organization of society essentially depends on a vertical division of governing tasks. With each further step in the process of establishing a common market and monetary union, member states' democratically elected authorities are being deprived of the necessary autonomy to protect domestic industry by trade barriers, subsidizing economic growth, influencing export and import by changing inflation rates, determining minimal wage, retirement age, the level of expenditure for social and health care and the educational system, etc. This means that every decision on the vertical transfer of competences should be considered as an actualization of a concrete political vision. Within democratic nation states political leaders are obliged to search for democratic support for their political projects in elections. In the EU, however, the advocates of the worldview

³ "In fact without a competition for political power, the EU is closer to a form of enlightened despotism than a genuine democracy. Enlightened despotism is a form of government which emerged in Europe in the eighteenth century, where monarchs agreed to consult representative bodies (the early parliaments) and were limited by constitutional rules and judicial bodies, and so generally enacted policies that promoted the interests of their citizens" (Hix 2008: 85).

according to which it is necessary to constantly deepen the integration process to the detriment of member states' autonomy, remain invisible, unaccountable and released from any substantial political control. If the establishment of an "ever closer union among European peoples" is conceived as a goal in itself, the question of the division of competences loses its political and ideological nature. It becomes a trivial technical issue of finding the most efficient way of attaining the "undiscussed" goal – the unification of Europe.

The European Parliament is usually perceived as the guarantor of democracy in the EU. However, constant growth in the Parliament's competences has not resulted in the establishment of a direct link between the society's demands and the supranational decision-making sphere. The simple fact that the Parliament neither chooses the European government nor determines its political agenda deprives voters of the possibility to influence policy-making and choose political leaders (Hix 2008: 76-85). Thus, it might seem that the European Parliament only gives a false impression of democratic participation. However, the illusion of citizens' democratic participation should be understood as a tool for enlarging the scope of the European governance process. Ever since the Single European Act, treaty changes enabling the penetration of European decisions into the ever more sensitive spheres of citizens' economic and social life have been followed by a strengthening of the Parliament's legislative role. By putting the ideological mask of representative democracy over the European governance process the EU architects have actually sought to enlarge the scope of the supranational sphere of decision-making.

More importantly, the uncontrolled transfer of competences to the supranational institutions has substantially diminished the sphere of citizens' influence on national policy-making (Schmidt 2009: 19-24). Consequently, national democratic competitions between liberals, social democrats, conservatives and socialists have been gradually transformed into fiction. Paradoxically, in sharp contrast to their original purpose, parliaments within the EU decision-making system have been transformed into tools for separating policy-making from politics. With the escalation of the Eurozone crisis it has become evident that the outcomes of the parliamentary elections no longer determine a member state's most sensitive political choices such as the privatization of public functions, the great diminishing of expenditure for health and education, social care, or the flexibility of the labour market (Krastev 2012).

The level of separation of the governing process that has attained so far from the potentially clashing demands of a highly heterogeneous continental-scale society would be unimaginable for a classic liberal-democratic state. For the line of reasoning developed in this paper the two following consequences play a major role:

First, in parallel to the deepening of the integration process the major decision-makers have become ever less politically accountable. As Joseph Weiler says, "it is

difficult to point to a single instance of accountability for political failure as distinct from personal accountability for misconduct in the annals of European integration” (Weiler 2012: 252). While European decisions were ever more visibly shaping citizens’ everyday life, decision-makers were becoming ever less visible. As policy-making has migrated from national arenas to the supranational power-holder, it has become less reliable to ascribe political responsibility to one of the dispersed centers of power within the EU – national governments, representatives of big business, national parliaments and constitutional courts, the European Parliament, the European Central Bank, the Court of Justice or Commission. Who is responsible for the fact that in Cyprus citizens were for some period deprived of the basic economic right to freely dispose of the salaries and pensions they had deposited in banks (Halimi 2013)? Or for the fact that in Greece persons with chronic illnesses are losing their right to free medicine (Noelle 2011)? Should national governments be blamed for too easily accepting the establishment of a common market and monetary union as treaty goals? Is it the fault of the European Central Bank, whose decisions are made independently from the political will of the member states, the Council and the Parliament? Should the Commission be blamed for strongly pushing the integration process forward, without fail, to the detriment of the member states’ autonomy (see Majone 2009: 72-99)? Should the EU Court of Justice be blamed for slowly transforming international treaties into a European constitution (see Stone 2004)? Should we blame the world’s strongest financial and crediting organizations, whose ex-employees have become prime ministers overnight in member states confronted with enormous public debts (Geuens 2012)? Is it the fault of member states’ constitutional courts that remained only grudging spectators to the erosion of national constitutional democracy (see recently Grimm 2009)? Or, should the citizens be blamed, whose “permissive consent” has opened the door for their elites to autonomously shape the destiny of Europe? The fact that the answer to these pertinent questions is missing reflects the most important consequence of Europe’s hidden federalization.

The second consequence of the hidden federalization method is that the process of economic, administrative and political supranational integration has not been followed by a rise in solidarity among European peoples (Hooghe, Marks 2008). In the time of common market building, while the integration was being perceived as beneficial by all interested actors, the issues of solidarity and of collective European identity could have been easily ignored. It was not until the escalation of the Eurozone crisis that the absence of a collective European identity became a tangible threat to the predictable functioning of the system. Ever since the first open manifestations of the crisis people have firmly rejected sacrificing their national economic interests for the sake of a common European future. So, the crisis has

jeopardized the essential condition of success for Monnet's depoliticized method of integration – the suddenly worsened conditions of social and economic life within member states have awakened citizens from their sleepy phase of indifference with regard to European integration (De Wilde, Zürn 2012). The important question of a just distribution of wealth between European peoples as well as between national and transnational classes has been successfully avoided by the hidden federalization process for decades. Today this question is being posed in the streets and in electoral campaigns (*ibid.*). But there is no answer. Paralyzed by the factual demand for consensual decision-making in all politically sensitive areas, European institutions have proven themselves ill-equipped to deal with the issue of distributive justice. On the other hand, while disposing of adequate institutional instruments for making collectively binding decisions in the fields of social and fiscal policy, member states have lost the necessary level of autonomy to actually do so, precisely thanks to the success of the hidden federalization process. Consequently, the crisis has revealed the weakening of member states' capacity to integrate their societies through political decision-making. Apart from the recent violent manifestations on the streets of southern European capitals, this tendency is best reflected in the rise of secessionism within the multinational states (Guibernau 2012, Keating 2012).

The rise of awareness among citizens that the integration is beneficial for some states and social classes to the detriment of others has paralyzed European governing elites in their efforts to achieve consensus on the best way of resolving the crisis (see Bellamy 2012: 150-151). From the perspective of Luhmann's systemic theory it turned out that the main cause of today's crisis is to be found in the lack of governing autonomy at the European level to select demands coming from individual national governments, now constrained by clear mandates of their awakened citizens, national parliaments, unions, constitutional courts or thousands of angry citizens on the streets of Athens, Madrid, Rome, etc.

The Crisis and the Responses to It – the Rise of the EU's Invisible Holder of the Truth

A crisis is a condition which seeks a decision not yet reached: a decision not only on the way to get out of the crisis, but also a decision which provides the content and the political purpose of systemic reforms. What is certain, however, is that the end of the crisis is imminent; even though it cannot be determined when this will occur (Kozielek 1997: 175). According to the historical experience of compound communities, a decision-maker resolving the crisis could be a victorious power in a civil war, like Lincoln's army of the North in the US civil war 1861-1865, or it could be a democratically elected president as was the case in the US crisis in the 1930s. If it takes too long to make this kind of a fundamental decision, the usual result is the

paralysis of the governing system, as was the case in Yugoslavia. The EU's experience of dealing with the crisis does not resemble any of these well-known historical cases. It is hard to deny that the EU's member states' visions of the final aim and the meaning of the integration process are essentially clashing (Schmidt 2009: 19-24). Yet, a decision on the EU's political nature favoring the interests of some states and social classes to the detriment of others is obviously being made (see Scharpf 2009, Bellamy 2012) – despite the fact that any kind of war option is excluded and despite the fact that the EU's institutions cannot base their decisions on the will of the majority of Europeans. So two questions arise: First, how is this decision being made? And second, who is actually making it?

With the escalation of the Eurozone crisis it has become evident that the European decision-making process concerning the most sensitive policy fields, such as fiscal and social policy, has been rapidly separated from the demands coming from individual member states. The dismissal of insufficiently cooperative political elites in member states (Papandreou in Greece and Berlusconi in Italy) was only an introduction to the systemic reforms that would essentially change the political nature of the EU. Namely, it was the adoption of the Six-Pack regulation⁴ in November 2011 and the Fiscal treaty in March 2012 that eventually destroyed the state of equilibrium between the need for European unity and democratic demand for the preservation of member states' autonomy.

The Excessive Imbalance Procedure *de facto* empowers the Commission to control the most sensitive fields of fiscal and social policy-making within member states.⁵ The Commission first defines a rather detailed list of macroeconomic performance indicators, such as the three year average of current account balance, net international investment position, real effective exchange rate, export market shares, nominal unit labour cost, deflated housing prices, private sector credit flow, private sector debt, general government debt and unemployment rate. At the same time, specific upper and lower “alert thresholds” for each country are defined autonomously from the political will of the respective member state's democratic authorities.⁶ If a state fails to keep the aforementioned indicators within the allowed thresholds, the government is asked to implement macroeconomic reforms in accordance with the Commission's recommendation. If the state fails to respond to the Commission's demands, it will be facing serious financial sanctions, again

⁴ Council Directive 2011/85/EU, Regulation (EU) No 1173/2011, Regulation (EU) No 1174/2011, Regulation (EU) No 1175/2011, Regulation (EU) No 1176/2011, Regulation (EU) No 1177/2011.

⁵ Regulation (EU) No 1176/2011.

⁶ http://ec.europa.eu/economy_finance/economic_governance/documents/alert_mechanism_report_2012_en.pdf, accessed 10 May 2013.

determined by the Commission. Even though the Council preserves the possibility to prevent the implementation of sanctions by qualified majority voting, the state in question has no right to vote on this issue as a Council member. In contrast to the situation when the Council and Parliament decide on general rules regulating member states' behavior, this procedure gives the Council an opportunity to decide on the justifiability of some member state's concrete economic policy (see Scharpf 2012: 28-29). This means that a democratically unaccountable supranational decision-maker is given large maneuvering space to judge the most sensitive national political decisions, such as determining a minimum wage, relations in the labour market, the privatization of public functions, the retirement age, and cutting expenditures for health, education and social care. Furthermore, this solution obviously jeopardizes the formal division of competences defined by the European treaties, according to which fiscal and social policy should remain the exclusive competences of member states.

Furthermore, by ratifying the Fiscal Compact, member states have taken the obligation to make the so-called "golden rule" – budget deficit below 3% of GDP and public debt below 60% of GDP – a part of their national constitutions.⁷ Consequently, national political competitions between different normative projects for dealing with the crisis have become senseless. Simply put, the potential decision of some future authentically socialist government to change social and fiscal policy by investing into big infrastructural projects, by spending more money for the improvement of social and health care or the educational system will be easily overturned by the state's constitutional court (McGiffen 2011).

Nevertheless, keeping in mind the historical experience of federal systems, the most striking peculiarity of this tendency of reducing the EU member states' self-rule is that it has not been accompanied by an improvement in the conditions for shared rule. Namely, the Fiscal Compact has not resulted in the establishment of a powerful European economic government. The autonomy to shape a society's economic and social life, which has been taken away from the member states, has not been conferred to some politically accountable European authority. Instead, the Fiscal Compact has only reinforced already existing control mechanisms at the supranational level, and introduced some new ones.⁸ Notwithstanding the obvious improvement of their monitoring and implementing roles, the Parliament and

⁷ Treaty on stability, coordination and governance in the economic and monetary union, Art. 3.2.

⁸ Apart from the strengthening of the Commission's surveying competences, the treaty has introduced the possibility for a member state to raise the case against another member state before the Court of Justice for not complying with fiscal discipline rules. Treaty on stability, coordination and governance in the economic and monetary union, Art. 8.

Commission have been almost completely excluded from the political decision-making on the best way of getting out of the crisis. Instead of being a source of ideas and political leadership, the Commission has only proven to be “faithful and effective as ‘His Master’s Voice’” (Weiler 2012: 254). What’s more, the Council itself has been deprived of its traditional role as the key decision-maker in the EU; instead, it has been transformed into “an elaborate rubber stamp to the Union’s two Presidents – Merkel and Sarkozy” (*ibid.*). In parallel to the weakening of the EU’s traditional supranational/intergovernmental decision-making structure, the power of the European Council was rapidly growing (Habermas 2012: VII). As the crisis was escalating, the unusually frequent meetings of heads of states and governments have become occasions when the most sensitive political decisions – directly or indirectly determining wages in the public and private sector, privatization, pension reforms, and employment in public sector, etc. – were being made behind closed doors (Deloire, Dubois 2012).

These recent transformations of both the EU and its member states obviously rest on a very concrete political vision.⁹ German sociologist Ulrich Beck has recently singled out the German chancellor as the main promoter of this new vision of the European Union (Beck 2012, see also Schönberger 2012). The major conclusion of his latest book *German Europe* seems rather radical: Not only that Europe is becoming German, but the truth itself is becoming German, truth which is actualized in the form of a policy of austerity (Beck 2013: 57).¹⁰ At first glance, this conclusion seems very puzzling in today’s era of mature constitutionalism. Citizens have the formal possibility to shape their collective destiny by participating in national and European elections. They also have a constitutionally assured right to strike and to organize massive street protests in order to make the authorities reconsider some important political choices. Nevertheless, all attempts so far to change the current way of dealing with the crisis by changing the government’s policy through elections (France, Italy), or by organizing numerous strikes and massive street protests (Athens, Madrid, Rome) have proven to be fruitless. So far, the national constitutional courts have proven to be the strongest barrier to the uniform European rules which jeopardize basic principles of trust and solidarity in member states. Several times in the last three years the Constitutional Court of Portugal has rejected national austerity measures demanded by the European Commission, European Central Bank and International Monetary Fund.¹¹ Nevertheless, not only have these decisions of the Portuguese Constitutional Court provoked dissatisfaction from

⁹ This new vision of the EU was recently called “a Union of rules” (Maduro 2012: 8-10).

¹⁰ This citation, which does not appear in the original German edition, can be found in the Italian edition of the book that was published in 2013 (Beck 2013).

¹¹ <https://www.wsws.org/en/articles/2013/04/09/port-a09.html>

European and German officials, but they also preceded immediate growth in the interest rates on Portugal's 10-year bonds.¹² This gives us a hint of what would happen if constitutional courts continued to protect national constitutional identities by contradicting the uniform understanding of the common interest of all Europeans – this would most probably result in the rapid growth of public debt followed by the escalation of economic, social and political instability.

In the period of the world economic crisis, a depoliticized supranational governance system like the EU simply cannot function predictably if it is obliged to fulfill demands coming from individual national governments, parliaments, unions, street protests or constitutional courts. Consequently, there remain only two options for avoiding the system's paralysis. The first is to make supranational authority democratically accountable and autonomous enough to select society's demands in the most sensitive fields of distributive justice. The second way is to completely isolate the governance process from the democratic sphere where different political projects compete for citizens' support. From this then it follows that the EU's major decision-makers have chosen the second path. By logical necessity, however, this presupposes the existence of an interpreter of the common interest of all Europeans, whose decisions can prevent further aggravating the economic, social and political situation. In 16th and 17th century Europe, it was the decision of absolutistic monarchs that saved societies from the chaos of religious and civil wars. The triumph of the principle *cuius regio eius religio* meant that all disputes about what is just, good and beautiful were to be moved from the public to the private sphere. By isolating the governance process from the confronted demands of religious communities, the absolute ruler gained sufficient autonomy to establish order, peace and stability. In parallel to the liberation of the ruler from the obligation to respond to conflicting religious worldviews that were tearing society apart, his responsibility for the collective destiny of its subjects was growing (Kozielek 1997: 70). The survival of today's EU in its current form will also depend on the success of the European leaders' attempts to completely isolate the governance process from different visions concerning the right way to shape the relations between state and society, politics and the market, collective and individual autonomy. Nevertheless, one thing essentially differentiates today's situation from the period of establishing absolute monarchies: the invisibility of today's truth-holder. The fact that austerity policy has its strongest promoter in German political and financial elite has led Ulrich Beck to the conclusion that the German chancellor represents the EU's new *Principe* (Beck 2012: 45-57). Nevertheless, the institutional instruments for determining who is politically responsible for decisions on which Europe's social, economic and political stability essentially depend are simply absent from today's EU. While Beck could speculate

¹² <http://online.wsj.com/news/articles/SB10001424052702304367204579268620744447600>

on who holds the ultimate decision-making power, he could hardly prove his thesis by pointing to some concrete and visible centre of power within the EU.

In contrast to the obvious legal and institutional accountability of the absolute monarch, the responsibility of today's European power-holder cannot be determined. Despite the fact that the austerity policy advocated by the German government vitally affects the lives of citizens in all member states, the German chancellor is legally and politically responsible only to the Germans (see Mueller 2013). It follows that Europe has come to a rather paradoxical situation: the original sense and meaning of formal equality of member states, democratic mechanisms within member states, the national and European parliaments, national constitutional courts and the Court of Justice have been essentially changed – they have been transformed into an invisibility cloak for the supranational power-holder. Deprived of a right to protest against the monarch, to associate, to freely speak, to democratically choose their representatives in legislative chambers, to restrict political power through courts' decisions, subjects of states under absolute rule have transferred all political and legal responsibility for community's collective destiny to the absolute monarch. As for today's Europeans, they simply remain helpless in attempts to distinguish who should be blamed for the serious worsening of their life conditions. The Italians, Greeks, and Portuguese can hold politically and legally responsible only their national governments – which citizens can change endlessly without, however, having any success in changing actual policy (Krstev 2012-2013). Massive movements enjoining undivided support of the whole society, as is the case for Spanish "Indignados", can relentlessly protest against the politics of eliminating welfare state functions without even the slightest success in changing actual policies. Constitutional courts can occasionally reject some national decisions aimed at the implementation of some European policies, without, though, being able to restrict the power of those who actually make policy choices. The Commission can propose reforms which are in sharp contrast to the actual anti-crisis strategy, but the strategy remains the same (Sidanski 2011). When going to the Euro summits, national leaders can make firm promises to their constituencies that they will change European policies by adapting them to their national interest, but the policy remains the same (Bulard 2013). Thus, the EU's invisible power-holder has acquired an ideal position. The implementation of its political will is impossible to restrain while its political and legal responsibility is impossible to determine.

Towards a Diagnosis: the Basic Lack of Societal Control Mechanisms

So far, we have discussed the EU's lack of systemic actors with the capacity to prevent, as well as to fight, the current crisis. More than that, we spoke about a newly emerging phenomenon – the establishment of an invisible power-holder delivering

anti-crisis solutions to EU institutions and member states. Instead of Adam Smith's invisible hand of the market that was supposed to guide the integration process, the invisible hand of the power elite has become such a guide. The real system of hidden federalism has been transformed into a real system of hidden leadership. This phenomenon exposes the depth of the EU crisis, which is not only functional, but also structural. The invisible leadership of the EU has been released from control by both formal EU institutions and the European civic sphere.

What is apparent in the attempts at crisis resolution (in the last six years) is that the exclusive players were the systemic actors of the EU – the European Council, ECOFIN, the Commission, and Summit of Eurozone – and that the role of social actors has been completely neglected. Nevertheless, the exclusion of social actors is simply taken for granted among EU observers. According to the dominant worldview shared by both academics and common people, the “social actors” are simply ill-equipped to contribute to crisis-resolution. Mentioning “social actors”, however, we do not discuss the issue of crisis-resolution, but the issue of viable controlling mechanisms over the decision-makers in crises. The EU has so far developed systemic control mechanisms of a kind – legal, political, administrative ones – but not a general one based on the model of civil society. While the systemic integration has been taking place over more than sixty years, there was no corresponding process of social integration. The latter predominantly remained within the national societies of the member states, which could not react properly to the supranational implications of the integration process.¹³

The functional differentiation between society and state is a fundamental feature of modern political communities. It guarantees autonomy of both sides – governmental autonomy for the state and productive autonomy (in the widest sense) on the side of the society. The whole idea of rule of law could not have been materialized in the absence of a strong and compact civil society, whose vital interests needed protection in the form of viable legal and institutional guarantees, but also in the form of society's immanent mechanisms of the control of power such as public opinion, civic initiatives and civil disobedience (see Riedel 1974: 719-800). What characterizes the original role of the citizen as a building block of civil society is her active role in public life. Unlike nationality, which exists as a legal connection between the individual and the state, citizenship reflects a political connection between the individual and the state. The first represents the passive role of the individual (*status passives*) but the latter her active role (*status actives*). Just as derived

¹³ Differentiation between systemic integration and societal integration comes from Habermas's analyses of the “late capitalism” in the 1970s. It could be fruitful for the analyses of the crisis environment of the Union since it provokes the crucial legitimacy issue of compound governmental systems of the Western world including the EU (see Habermas 1976: 1-8).

from the active, dynamic relationship of the citizen vis-à-vis the state, the right of participation became the crucial feature of modern democracy. By its origin, to participate meant not only the presence of citizens' representatives in decision-making bodies (such as legislation), but also participation in the public sphere of political society as a realm functionally separated from the state. In a word, the crucial role of such a public sphere consists of the permanent public control of the government (see Habermas 1992: 647).

The European Union, or more precisely its predecessors, the three Communities, originated as a systemic integration of the common market. The declared aim of the European Economic Community (1957) was the integrated internal market. By the achievement of this aim at the end of the 1980s the apolitical market society had been rounded off. It had become a society without its own (inherent) political citizenship. Differently than the typical "European model" that was internally divided along state-nation borders, the latter integration process that took place within the same historical and geographical space did not create a political society of individuals conscious of their needs and interests vis-à-vis the newly created system of government. Hence, the social substance of the European citizen did not originate. This means that Europe's hidden federalism has produced an integrated institutional system without its own social equivalent which has been captured within divided citizenship. However, while a societal integration within the EEC/EU has not been taking place, the systemic integration of the (market) society has been progressing in full harmony with its declared aims. The empty space between the non-existent society and the existent governing system has been fulfilled though a surrogate public sphere based on the "permissive consensus".

With the escalation of the big crisis¹⁴ it has become evident that power-holders within the EU can no longer count on permissive consensus. Today, there are actually many indications of civil resistance towards different measure-packages. However, within the social structure of practical disobedience there is not even a trace of "European citizenship". There is not any transnational synchronization, not to speak of organization, of the protests. That's why there is no visible strategy towards an alternative project that would be offered to the EU decision-maker from some engaged European public. Numerous nationally expressed protests are far from becoming one systemic resisting opposition to European citizenship. Having

¹⁴ It is possible to call the current crisis a big one since it encompasses not only the functioning of particular sectors of the system but also its vital mechanisms. The crisis started in 2005 after the collapse of the Constitutional Treaty project and manifested itself as a decline in citizens' confidence. The financial crisis of 2008, which is still going on, disturbed the institutional foundations of the system and opened the quest of its future (Taylor 2008, Hix 2008, Majone 2009, Habermas 2012, Beck 2012).

such an action deficit in mind, one can easily conclude that the crisis environment does not produce even a learning opportunity for the nationally divided population. On the contrary, one can notice the tendency of re-nationalization in the massive public reaction against the anti-crisis measures. As opposed to the institutional system and its hidden power-holder there is nobody who would represent a corresponding systemic reaction of citizens and their associations – no media, no trade unions, no political parties, nor any civic organization – in a word, nobody who would resist the rising process of authoritarian decision-making at the European level. Instead of being politically motivated to react, the citizenship of the EU has been frozen in its very rudimentary position.

The population of the EU is characterized today by a visible trend towards the re-nationalization of citizenship (see Bellamy 2012: 151-157). Underdeveloped at the European level, EU citizenship is witnessing the tendency of reunion around national elites. Citizens expect their representatives at EU institutions to defend primarily national interests in terms of employment, of the postponement and relief of public debt repayment, of more egalitarian social and education policy. All of this is taking place in the moment when there is no consensus on strategies of crisis solution or on economic development. Such a reaction by citizens is totally opposed to the idea of European citizenship.

Today's crisis is primarily a systemic crisis of integration, which finds its strongest incentive in the public financing of the member states. But, it did not start in this area. Particularly in the economic and monetary union, some inherent dysfunction of the system was already apparent from the very beginning of its implementation. An inefficient and procedurally complicated open method of coordination, also being implemented in other areas of public policy, presented deep systemic problems. The current efforts to solve the crisis are directed at this, the systemic (governmental) level of EU existence.¹⁵ For instance, a great issue of strengthening member states' budget control by the EU institutions represents just one issue of the new governing procedures within the existing systemic integration. It is, *mutatis mutandis*, the case with regard to the introduction of some kind of fiscal federalism, although still in the phase of preliminary discussion between systemic actors.

These currents, however, have a limited effect on the affirmation of the societal integration within the EU. Simultaneously, with proposed or adopted systemic measures there is no rise in the feeling of belonging among citizens to some commonwealth of cross-border space. What is worse, it seems that the set of values and

¹⁵ The Treaty on stabilization, coordination and governing (2012), corresponding Treaty on stabilization mechanism (2012), measures directed to overall banking control (so-called banking union, 2013) six-package measures (2011), all of them are typical governing measures.

the normative structure, which originated in the eighties and was maintained in the nineties, has been melting under the systemic disputes and under the consequences of new systemic solutions.

Today, the so-called “common European values” is a topic only among top politicians or the EU’s civil servants that serves for some form of ritual use. Actually, it is also a topic of scholars who are gradually less capable of interpreting the EU’s political nature beyond abstract theoretical or practically hermetic jargon. What was supposed to bind the people who have lived for decades under the same institutional roof and under the same rules of political behavior in a common feeling of belonging, has simply disappeared at the Union’s most critical moment.

What Could be Done in Terms of Constitutional Intervention?

The main problem with civil society as a fundamental guard against alienation of political power from citizens is that such a structure cannot simply be created. It can originate only as a form of society that produces itself in the societal spheres of material, cultural and moral reproduction, as an outcome of the spontaneous rise of normative and symbolic structures in the polity (Weber 1963, Ferguson 1767). It means that the building up of civil society is not at the disposal of political elites’ activity. The historical deficit of European civil society should, however, pay attention to the deep structural gap between the enormous complex of governing institutions, rules and procedures on the one side and the failure of corresponding societal integration on the other. We have noticed that the long-lasting effect of the Euro-crisis has not set in motion a learning process among European citizens that could come from some cross-border resistance of the population against unpopular political measures.¹⁶

Contrary to the construction of civil society, the institutional reforms actually stand at the disposal of political actors. However, what major European political actors did in the last four-to-five years did not contribute to overcoming the crisis in terms of raising the functional rationality of the system, even setting aside the widespread unpopularity of reform outcomes. Since the introduction of the Economic and Monetary Union and its enlargement, both in the first half of the first decade, the governing system of the EU became overly complex in comparison to its governing capacities. Or, observed from the other side, the governing capacities of the existing system, in spite of its changes in the Nice Treaty (2003), have not become sufficiently functional to satisfy the increased interest and preferences of the

¹⁶ For instance, enforcing the temporary prime-minister to Greece and Italy in 2010 by the invisible hand of high EU instances and global corporation, such as Goldman Sachs, was a real occasion for protests throughout the EU, not only in the two intervened countries. As it happened, the defense of democratic procedures was at the moment only the task of Greeks and Italians.

growing and more differentiated actors. The crisis of 2008 has enlarged the internal systems' tensions, but the simultaneous activities directed in treaty changes did not contribute to adequate functional changes.¹⁷

Today it is obvious that the EU cannot endure the existing scope of the system's complexity, particularly its ambitious goal to become a regional, at least European in the continental sense, structure of might. There is an unwritten rule in the history of empires and compound states – the more complex a polity, the more simplification of rule it needs. This unwritten rule is confirmed by the system theory of society and the premise that in some phase (degree) of complexity a system must take measures to reduce complexity for the sake of remaining functional (see Luhmann 1978: 127-283).

The major argument of this paper is that the EU's governing elites have so far attempted to reduce the system's complexity by selecting demands coming from individual member states according to the criteria of the EU's invisible power-holder. However, the question arises: is there another way of reducing the governing system's excessive complexity that would not completely ignore the demand for decision-makers' democratic accountability?

First of all, the EU could and should reduce its competences. Today one can hardly find a public activity or a sector that is not under some form of the EU's jurisdiction. Almost every part of public life within the member states is under its exclusive, shared (divided), coordinating, supporting and supplementing competences in accordance to their classification in the Lisbon Treaty. Some layman would suppose that there is a ubiquitous predomination of the EU institutions over those of the member states. In fact, the member states, as the masters of treaties, have transferred all those competences to the EU, under different executing regimes. But within each of the legally existing executing regimes they succeeded to keep decision-making under their firm control. The output of the governing process is generally determined by the executive branches of power, both at the European and member state levels. Such a tendency has been apparent from the very beginning of the integration process, but today, with the endless complexity of the system and multitude of competences, the system is steadily becoming uncontrollable and fatally undemocratic.

Having that in mind, a clearer delimitation of the competences between two levels of government based on a corresponding model of dual federalism could contribute to a reduction of its complexity. Roughly speaking, the EU level would

¹⁷ For example, the Lisbon Treaty maintained a mechanism of open method coordination, although it practically collapsed in its attempts at controlling the economic policies of the member states during its introduction at the beginning of the first decade. That's why new measures and procedures had to be taken during the last couple of years.

maintain all existing competences encompassing the common market, trade policy and monetary policy. A new power over some elements of fiscal policy would be added to the European level of governance because it should finally acquire a minimum of financial autonomy vis-à-vis member states (see also Maduro 2012). All these areas of competences would be put under the EU level regulatory regime. All other areas of governmental regulatory activities would remain in the hands of the member states. Shared (divided) competences would be maintained only in some areas of common interest, such as agricultural, regional policies and policy on scientific and technological development, all of them in the regime of the redistributive policy of the EU. Matters concerning a space of freedom, security and justice, as well as a common foreign, security and defense policy would remain within the current intergovernmental regime.

This kind of proposal, dealing with the vertical division of powers, would contribute to the corresponding reforms concerning the horizontal separation of power at the EU level. The prevailing concept of “governing without government” cannot satisfy the need for more efficiency and transparency among EU institutions.¹⁸ In this respect it is necessary to strengthen the Commission’s role as a kind of “economic government” of the EU. Its legitimacy would be strengthened through more direct electoral ties with the European Parliament, i.e. with its winning majority. Aside from that, the commissioners in the areas of economic development, financing and foreign economic relations would have a rank similar to the ministers in the member state governments. This would practically clarify the issue of accountability at the EU level that deals with crucial aspects of the crisis and the shaping of further economic development of the Union.

These proposals are by no means of a technical kind. They possess a political substance and push the systemic reforms towards the politicization of public policies and politics within the Union (see also Hix 2008: 87-178). As such, they could only be a consequence of some public political will in a wider spectrum of political actors. Political will is a crucial internal factor in the public life of a polity. It simply exists or does not exist. Testing the institutions’ ability for change means testing the chances of some political community for surviving.

Conclusion: The EU as Jeremy Bentham’s Panopticon

In the course of history rulers have always been inclined to remain out of sight of the subjects they rule (see Bobbio 1987: 79-97). Classical political thinkers, such as Plato or Bodin, have convincingly argued that a ruler has the right to deceive

¹⁸ There is a similar assessment in the editorial article “European Parliament Elections: Europe’s Fateful Choices”, *European Journal of International Law*, Vol. 24, no. 3, p. 748.

its subjects in the same manner as a doctor has the right to lie to his patients and a father must sometimes lie to his children (*ibid.*: 89). As a counter balance to secret decision-making processes, the monarch's responsibility for the life and death of its subjects was always glaringly visible (Foucault 1995: 32-73). In contrast to the absolute monarchy, the ideal of democracy represented the public rule of public power. In modern democratic nation-states the visibility of the ruling process is guaranteed by constitutional procedures defining the way political authority is to be established and constraining the exercise of political power. But who holds decision-making power within a compound supranational community that is no longer a confederation of democratic states, but has not yet become a democratic state itself? As this paper shows, in the EU political power is certainly removed from the democratic institutions of individual member states. At the same time, though, the power has not been conferred to the EU's traditional supranational and intergovernmental institutions. In parallel to the deepening of the integration process, power has been slowly transferred into the sphere of invisibility. The consequences of the invisibility of the power-holder within the EU, as an unintended outcome of the hidden federalization process, have become obvious since the escalation of the Eurozone crisis in 2009.

Political thinkers, long ago, came to the conclusion that invisible and all-seeing power is the most efficient form of power. Jeremy Bentham's model of Panopticon is usually considered to be an ideal ruling mechanism enabling power to be all-seeing and invisible at the same time (*ibid.*: 195-228). "Each individual, in his place, is securely confined to a cell from which he is seen from the front by the supervisor; but the side walls prevent him from coming into contact with his companions. He is seen but he does not see; he is the object of information, never a subject in communication. The arrangement of his room, opposite the central tower, imposes on him axial visibility; but the division of the ring, those separated cells, imply a lateral invisibility. And this invisibility is a guarantee of the order" (underlined by B. K.) (*ibid.*: 200). In the EU, political authority which decides on essential issues for citizens' everyday lives is indeed removed from the sight of the European peoples. Furthermore, the analogy between individuals captured within their cells whose side walls prevent them from communicating with each other and European peoples imprisoned by their national confines is striking. However, unlike the imagined supervisor of Bentham's Panopticon, the European invisible power-holder is hardly all-seeing. This is his greatest weakness. Neither was the absolute ruler even close to all-seeing; yet, he managed to establish order by the publicly performed atrocities of punishing mechanisms, enabling a power to be "recharged in the ritual display of its reality as 'super power'" (*ibid.*: 57). Furthermore, today's European power-holder faces much more challenging demands in its effort to regulate society's

economic life in an age of rapid globalization. So, unpredictable turbulence and challenges, such as a new crisis in the world's financial system, might easily continue to undermine the system's capacity to function predictably, even after the factual abolishment of national democracies and the establishment of durable asymmetric relations of power between the member states.

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