

## Differentiated integration in the EU: towards “condominio”

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*Instead of one Europe with recognized and contiguous boundaries, there would be many Europes. Instead of a Eurocracy accumulating organizationally distinct but politically coordinated tasks around a single center, there could be multiple regional institutions acting autonomously to solve common problems and produce different public goods. (Schmitter 1996: 136)*

Philippe Schmitter's idea of a “condominio”, in which European integration would advance in a set of overlapping, non-mutually exclusive and task-specific jurisdictions, offers a radical picture of differentiated integration and a striking alternative to the vision of a homogeneous, supranational polity striving towards federal features. This picture may irritate at first glance, as it is deeply in contrast with the way we have come to think about European integration – both on the side of its supporters and on the side of its challengers. Indeed we have come to think about the EU as an increasingly encompassing and increasingly political Union which is gradually shifting from regulatory politics to core state powers, leaving little room for more selective and task-specific forms of participation by Member States and associated third countries. The “postfunctionalist” turn in integration theory reflects this vision when arguing that European integration today has become a question of identity politics that cuts across European societies with people being either for or against stronger unification (Hooghe and Marks 2009). The question of (national) identity is the driving motive behind the increasing politicisation of the European project and the rise of Eurosceptic political parties. Ultimately, this risks resulting in stalemate or even disintegration.

Indeed recent developments like Brexit, the EU's incapacity to reform its asylum and immigration policy, or the enduring difficulties with the Economic and Monetary Union counteract the EU's ambition to shift from a primarily economic, regulatory community towards a political Union with core state powers (Lavenex 2018). But the opposition between an ever more “federalist” EU and its disintegration into a Europe of nations overlooks that the EU is much more diverse, fragmented and multi-layered than uniform depictions suggest. As pointed out by Liesbet Hooghe and Gary Marks in their earlier writings, the EU is a complex multilevel system that combines politically and territorially encompassing federalist features with task-specific, intersecting and non-exclusive functionalist ones. More concretely, whereas the federalist features are represented by the central decision-making bodies – the Commission, Council and Parliament, as well as the Court, the functionalist architecture of the EU is represented by the myriad of sector-specific agencies, bodies and committees that span across Member States' administrations. Whereas the federalist features require EU Member States to be members (otherwise they are simply not EU Member States), the

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functionalist features are much more malleable towards differentiated memberships both among EU Member States and towards associated third countries (Lavenex 2011, 2015).

This complex architecture of the European project as comprising both encompassing federalist features and differentiated functionalist ones takes us back to the early debates on the shape of world government and European integration:

*A federal system is bound to be closed and exclusive; a functional system is naturally open, as changes in membership can be absorbed without doing violence to policy and administration. (Mitrany 1965: 141)*

Early writers introduced the functionalist system as a radical alternative to the nation state: a functionalist system is built up “to tackle concrete problems instead of spectacular attempts at [world] constitution-making” (ibid.: 144). It is limited to administrative devolution to produce common goods rather than far-ranging political transformation. This functionalist vision privileges forms of cooperation in which states share competences horizontally rather than pooling them vertically towards a higher, encompassing unit. This sharing of competences occurs through the networking between functionally specialised units within states' administrations that enjoy some freedom of action from central government. Such delegation to administrative bodies is a ubiquitous feature of the post-World War II period, and has been studied under the notion of the regulatory state (Levi-Faur 2011; Majone 1994, 1996). This phenomenon has been stated for local administrations (e.g., Ostrom 1990), national regulatory authorities (e.g., Gilardi 2008), international transgovernmental networks (e.g., Slaughter 2004) – and, very much so, for European regulatory agencies, bodies and committees (e.g. Benz and Papadopoulos 2006; Egeberg and Trondal 2017; Hooghe and Marks 2001; Majone 1996).

Why is it useful or even important to take the EU's functionalist features seriously when thinking about the future of European integration in times of politicisation and political blockade?

The important point is that in a functionalist vision jurisdictions are organised along functional lines. Membership in such regulatory bodies results from the structure of interdependence of a particular problem; these bodies are limited to specific tasks and sectors; they have intersecting, “polycentric” memberships across multiple levels – sometimes public and private; and they have flexible designs allowing them to adapt to changing situations (Hooghe and Marks 2003). In short, the EU's sector-specific regulatory bodies have more fluid boundaries, necessitate less of a demarcation between levels of governance – including international ones – and hinge differently on political community. This permeability stems from their organisational features. EU regulatory agencies and bodies such as Frontex, the European Environmental Agency, the European Competition Network, the European Medicines Agency, or non-EU but nevertheless overlapping bodies such as the Basel Committee on Banking Regulation, are organised as networks based on horizontal ties between their members (Keohane and Nye 1974; Newman and Zaring 2013; Raustiala 2002; Slaughter 2004). Policy-making usually consists in the co-ordination of national regulations and frequently “soft law” rather than the production of “hard law”. While internally these properties of task-specific regulatory bodies relativise the importance of territorial boundaries, externally they allow member regulators to “follow function” and develop webs of foreign relations that blur the distinction between insiders and outsiders. Thus, the associated countries of the European Economic Area enjoy general access to EU agencies, bodies and committees covered by the agreement, whereas Switzerland has negotiated access in the framework of its bilateral agreements, and accession countries such as Serbia or Turkey have received access to several agencies – so have European Neighbourhood Policy countries such as Israel. Depending on the policy area and the patterns of interdependence, the reach of EU regulatory bodies goes beyond the circle of privileged neighbours and span transatlantically to the US and Canada (Lavenex 2014, 2015).

Now of course the EU is not only a conglomerate of sector-specific transgovernmental networks but a complex political system based on both federalist and functionalist features. In order to imagine its future in terms of more differentiated forms of integration it is indispensable to study more closely the scope, the forms and the functioning of EU Member States' and non-Member States' participation in this understudied "functionalist" realm of European integration.

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