

# 1 *Between Crises and Decision-Making*

## 1.1 Brussels in Hard Times: Who Decides?

### 1.1.1 Introduction

How did the European Union (EU) behave in the hard times of the 2010s and 2020s crises? This chapter (Sections 1.1 and 1.2) introduces to the *problematic*s analysed in detail in the entire book. Since 2009 the EU has seen a sequence of crises that have rocked its very institutional structure. It is noteworthy that 2009 was also the year in which the Lisbon Treaty, the last of the treaties approved, came into force. The idea of the Treaty was to close the long and troubled period of the EU's institutional consolidation exemplified by the major enlargement in 2004–2007. So, while the Lisbon Treaty thought it had completed the consolidation stage, the crises reopened it. How did the EU institutions perform during the post-2009 crises? To answer that, it is preliminary to identify the features of the EU governance system.

Literature on governance is a growing industry, particularly in the field of EU studies (Börzel 2016; Sabel and Zeitlin 2012; Piattoni 2010). This literature has contributed to our understanding of how a multi-level and complex system, such as the EU, functions. EU governance has been interpreted as 'a way of governing that does not assume the presence of a traditional, hierarchical *government* at the helm of the polity' (Christiansen 2016a: 97, italics in the original). Thus, governance is generally considered to be a horizontal mechanism for dealing with a broad range of problems in which public and private actors interact to reach mutually satisfactory and binding decisions. The opposite of government that is understood as the hierarchical organisation of the decision-making process, where decisions are taken by exclusively public actors controlling the institution at the top of the institutional hierarchy. The distinction between governance and government, although theoretically clear, is more nuanced empirically

(see Chapter 5). Most of all, that distinction does not capture the characterising features of the decision-making system that has been institutionalised in the EU.

Here, I will proceed as follows: first, I will introduce the features of the EU governance (discussed more at length in Sections 2.1 and 2.2); second, I will conceptualise the crises of the post-Lisbon Treaty (analysed in detail in Sections 3.1, 3.2, and 4.1), and then I will consider the enlargement's implications induced by the Russian war (Section 4.2), to discuss their governance by the EU. I will conclude by arguing that the EU has an unresolved problem with executive power.

### *1.1.2 Monnet and the Crises*

The institutionalised area where governance takes place in the EU consists of different decision-making approaches that give form to a composite system (Fabbrini 2015a). According to the 2009 Lisbon Treaty, four institutions participate in the (political) decision-making process, two on both the executive and legislative sides. On the executive side, the European Commission (hereinafter the Commission, consisting of twenty-seven commissioners, including the president of the institution) and the European Council (consisting of the twenty-seven national heads of government, premiers or presidents, plus the president of the institution, the Commission president, and, when international issues are on the agenda, the High Representative of the Union for Foreign Affairs and Security Policy, who is also a vice-president of the Commission, hereinafter the High Representative). On the legislative side, the Council of Ministers (hereinafter the Council, in the various functional compositions of 27 national ministers) and the European Parliament (hereinafter the EP, 705 members elected in the 27 member states, which will become 720 as from 2024), although some configurations of the Council play, in specific policies, an executive role too. Moreover, regulatory agencies and institutions, such as the European Central Bank (ECB), affect the decision-making process, but they will not be considered here because of the technocratic (i.e. non-political) nature of their statute (although their decisions might have political effects). It was with the 1992 Maastricht Treaty that the EU internally institutionalised different decision-making regimes (or pillars), a supranational one for single market regulatory policies and an intergovernmental one for strategic policies, traditionally close to

### 1.1 *Brussels in Hard Times: Who Decides?*

3

the heart of national sovereignty (core state powers such as security, foreign affairs and defence, home affairs and political asylum, fiscal policy but also health, energy, and military aid policies; Genschel and Jachtenfuchs 2014). The same institutions play different roles in different policies, through different inter-institutional frameworks. The 2009 Lisbon Treaty abolished the pillar structure, but it preserved the decision-making differentiation.

In supranational governance, which was prefigured in the 1957 Rome Treaties and then clarified with the Single European Act of 1986, the Commission monopolises legislative initiative, while the Council and then (since 1979) the EP have the power whether or not to approve (with differing majorities among them) the proposals (regulations and directives) put forward by the Commission, with the European Council of heads of state and government called on to intervene only when disputes emerge on politically sensitive issues. This decision-making regime was enhanced by various treaties approved after 1992, up to becoming, in the 2009 Lisbon Treaty, the ordinary legislative procedure (Dehousse 2011). Instead, in intergovernmental governance, decisions on core state power policies are rarely of a legislative (but rather political) nature and are taken based on the initiative by one or other national government (rather than by the Commission). The decision-making process is coordinated by the Council and the European Council, with the Commission acting as a secretariat and the EP sidelined (it is informed of the decisions taken but rarely has the chance to approve or reject them) (Bickerton et al. 2015a).

In August 1954, Jean Monnet said something that became an unchallengeable truth in pro-European thinking, that is, ‘Europe will be forged in crises, and will be the sum of the solutions adopted for these crises.’ However, the differentiation in EU governance makes Monnet’s phrase problematic. As Anghel and Jones (2023: 767) noted, ‘Any argument that Europe is forged through crisis is unlikely to tell us much about what Europe is or where it may be headed.’ Considering supranational and intergovernmental approaches, it would be necessary to specify which form of governance is favoured ‘by the solution adopted for the crisis’ in question. This can, in fact, lead to an acceleration of the integration process in either a supranational or intergovernmental direction (Fabbrini and Puetter 2016). Which form of governance came to be favoured by the crises of the 2010s and 2020s?

### 1.1.3 Conceptualising Crises

Not all crises are equal (Lehne 2022). They differ in terms of their nature, magnitude, and their ‘cognitive construction’ (Schmidt 2015a). Despite reflecting empirical phenomena, crises are generally constructed by constellations of political actors successfully mobilising ideas that fit their own interests or views. In the EU context, the construction of a crisis is conditioned by three main factors. First, by the *allocation of treaty competences* to deal with the crisis. The crises of the 2010s and 2020s here considered (the sovereign debt crisis, the pandemic crisis, and the energy and military aid crises induced by the Russian war)<sup>1</sup> exploded in policy fields where national governments had statutory pre-eminence over supranational institutions in terms of competence. What Bojar and Kriesi (2023: 431) argued is true, namely ‘Under crisis conditions of high urgency and uncertainty, executive decision-making is generally likely to become the policy-making mode.’ However, because ‘in the multi-level polity of the EU, executive decision-making primarily involves the EU Commission, the European Council, and the governments of the member states’ (Bojar and Kriesi 2023 and Kriesi 2023), the crises examined here prioritised the action of the European Council and national governments rather than the Commission (Zgaga, Capati and Hegedus 2023). Second, by the *nature* of the crisis, that is, by whether the crisis is due to an internal or external chock (i.e. its source is endogenous or exogenous) and affects some or all the member states (i.e. its impact is asymmetrical or symmetrical). There is no correlation between the source and the impact of a crisis. Whether the sovereign debt crisis was an endogenous and asymmetric crisis, the pandemic crisis was an exogenous crisis with symmetric effects, the energy crisis had an exogenous origin (the Russian war) but its effects were asymmetric, while the security crisis was exogenous (the Russian war) but its effects were mixed, symmetric regarding the military

<sup>1</sup> I will focus on the crises that have generated a governance or an institutional outcome. This has not been the case of the migration crisis which, although of a great relevance, was still unsettled at the time of the last revision of this book. On 20 December 2023, a provisional agreement was reached on the draft of the Asylum and Migration Deal. With few amendments, the EP approved the agreement (known then as Migration Pact) on April 2024 and the Council on May 2024. See also Chapter 4.2.

### 1.1 *Brussels in Hard Times: Who Decides?*

5

threat (a threat potentially affecting all the EU member states, but faced through another organisation, NATO) and asymmetric regarding the need to aid military Ukraine (a commitment perceived more by the eastern than the western member states). Different types of crises thus generate different opportunity structures for political action. Third, by the *political leadership's* commitment to construct a crisis according to a specific interest or view. If a crisis pertains to the realm of national governments' competences, that commitment will then be affected by the distribution of national government preferences, as well as by the culture and motivation of the potential leaders (premiers or presidents). In any case, a crisis faced by national leaders will unlikely generate a supranational solution that could jeopardise the power of those national leaders.

The sovereign debt crisis in the first half of the 2010s had a distributive character because it impacted the relations among the member states regarding the costs to be met to manage or resolve it but did not call into question the main paradigm to handle a budgetary crisis. Despite having a distant external origin (in the 2007–2008 global financial crisis), it was constructed as endogenous by the national leaders of creditor states (due to the fiscal profligacy of debtor member states), asymmetric (hitting the southern member states rather than the northern ones), and reinforcing the predominant policy paradigm (each member state is responsible for the state of its public finance, the so-called moral hazard paradigm) (Carstensen and Schmidt 2018). The sovereign debt crisis rocked the Economic and Monetary Union (EMU) or Eurozone, based on a single currency and distinct national budgetary policies, although the latter are highly regulated to ensure their compliance with precise macroeconomic parameters. As Bongardt and Torres put it (2022: 283), the crisis hit 'an EMU left incomplete in its economic part'. The crisis' solution led to a strengthening of the regulatory model, in the form of new legal measures and new intergovernmental treaties (outside the EU), to prevent conduct entailing moral hazard by the EMU member states. The dominant policy paradigm was confirmed. It should be the national responsibility to deal with the crisis, also because the debtor member states did not construct an alternative interpretation of the latter. That solution generated a deep division between southern and northern members of the Eurozone (Matthijs and Blyth 2015), with the institutionalisation of reciprocal distrust among them.

The pandemic crisis (exploded in 2020) and the energy and military aid crises (induced by the Russian aggression against Ukraine in 2022) were instead a blow to the structure of the EU and not (as with the sovereign debt crisis) to distributive relations among the member states. For this reason, they can be conceptualised as constitutive crises because they called into question the policy models that have organised the material constitution of the EU in those policy fields. The pandemic's magnitude showed the inconsistencies in the health-care model based on the member states' responsibility to guarantee the protection of their citizens from epidemics (Schmidt 2020a) and the impossibility to rely on national resources for recovering from the latter. The programme of Next Generation EU (NGEU) epitomised a change of paradigm, based, as it was, on EU debt managed by the Commission together with the Council of economic and financial ministers (ECOFIN Council). However, the programme had a temporary character (it should last till June 2026), and the funds derived by the debt were distributed to the member states, although managed by their national governments in accordance with a National plan of recovery and resilience negotiated with the Commission and implemented under the Commission's supervision. At the end of day, NGEU favoured national governments and not supranational institutions. Also, the war waged by Russia showed the inconsistencies in the growth and defence model adopted by the EU member states with the end of the Cold War. In just one night, the Russian leadership wiped out the efforts by European countries (Germany, in particular) to appease and trade with that country, efforts which were driven by significant economic interests. The post-Cold War approach of 'peace through trade' had enabled Germany to enjoy low-cost energy with which to support its national industry, thus making their products competitive on international markets (specifically the Chinese market). Despite the Russian annexation of Crimea and some eastern areas of Ukraine in 2014, Germany (but also Italy and the countries connected to German industries' chain of values) had continued to rely in industrial terms on two authoritarian regimes, Russia for energy and China for markets (Dempsey 2022). At the same time, the military security of Europeans continued to be guaranteed by the US commitment to NATO (an example of European free riding).

However, contrary to the pandemic that led to a new paradigm of policy through NGEU (a common threat should be dealt in common),

### 1.1 *Brussels in Hard Times: Who Decides?*

7

the Russian war did not change national preferences (favouring national and not European answers to its energy and security implications). Putin aggression was faced with the policy of economic sanctions against Russia and the reduction of the energy's dependence on Russia, a policy that affected the EU member states differently. At the same time, the answer to the military side of the aggression was left to NATO, with the EU member states limiting themselves to help Ukraine through transfer of finance and weapons, a commitment that, too, was differently interpreted by them. The Russian military aggressiveness represented certainly a collective challenge (threatening potentially all the member states); however, it was constructed as a challenge for NATO more than the EU. After all, the EU had no military defence system of its own, despite the rhetoric about its strategic autonomy, depending completely on the Americans through NATO. The EU found itself without a European defence industry too, a sector that was fragmented owing to jealousy among the various member states. Military aid to Ukraine was thus the only policy the EU could pursue through coordination of national governments in the European Council; yet also, this policy approach showed differences in interests, resources, and views among them.

At the end of 2023, national governments agreed (with the constant opposition of the Hungarian government) on twelve sanction packages, promoted by the High Representative, as well as on helping Ukraine militarily through the intergovernmental programme of the European Peace Facility and then the supranational programme of the Macro-Financial Assistance Instrument (MFA+) (only for 2023, with features like the NGEU). Yet, the policy coordination model, adopted for reaching those goals, could not go further, not only because no national leader emerged (as during the pandemic) for proposing a collective solution to the energy and security transition problems (as it was NGEU) but also because national leaders were elected for making primarily the interests of their domestic voters end not those of the EU as such. If the paradigm of 'national responsibility first' was confirmed by the sovereign debt crisis, it was challenged by the pandemic, and the energy and security consequences of the Russian invasion of Ukraine brought it back again. Notwithstanding the different source and impact of the crises, intergovernmentalism (in its various sub-types, tight as in the fiscal policy or loose as in the energy policy) remained the predominant governance model for managing



both distributive and constitutive crises. In all those crises, national governments claimed pre-eminence in competence ahead of supranational institutions (Ferrara and Kriesi 2022), although they needed the Commission's support for delineating their proposed solutions. In this context, the European Council acted as the institution where the medium-term solutions to the crises were devised, not only as the institution for managing the crises in the short term. Let us now introduce the governance of the crises of the 2010s and 2020s.

#### *1.1.4 Taking Decisions in Hard Times*

In the sovereign debt crisis, successfully constructed as endogenous and asymmetric, the European Council (and the Euro Summit of the national leaders of the member states of the Eurozone) had the strict monopoly over decisions, with the support of the economy and finance ministers of the Eurozone or Eurogroup. Within the latter, the leadership (in terms of resources and communication) was exercised by the northern creditor states, Germany in particular. The solution to the crisis promoted by the national government leaders of the north led to the strengthening of intergovernmental governance, also thanks to the intergovernmental treaties agreed outside the EU. However, intergovernmental governance created more problems than solutions (see Section 3.1). The Euro Summit/European Council, which functions according to a criterion of unanimity, cannot handle crises that need immediate and efficient responses (Fossum 2020). During the sovereign debt crisis, the European Council was indeed criticised for decisions that were 'too little and too late'. When a decision implies the unequal distribution of costs and benefits, then the deliberative nature of intergovernmental governance disappears, to give way to more Weberian power relations (in the case of a financial crisis, of creditor countries over debtor countries). Once constructed as a distributive crisis, the intergovernmental decision-making process ended up in generating costs for some and benefits for other member states. An outcome that, without the EP allowed to take part in the decision-making process, is inevitably perceived as illegitimate by those who pay the costs (the citizens of the debtor countries). Indeed, the institutional solution adopted for the sovereign debt crisis (defined as unconstrained intergovernmentalism because it made tighter the principle of 'national responsibility first') triggered a populist reaction in almost



### 1.1 *Brussels in Hard Times: Who Decides?*

9

all the debtor countries, delegitimising the Eurozone system overall (Hopkins 2020). Populism has become, since then, a permanent feature of European democracies (Mény and Kermer 2021).

With the pandemic, successfully constructed as exogenous and symmetrical, an intergovernmental solution struggled to take hold, although the European Council was the centre of the decision-making process (Fabbrini 2023b). Moreover, some national (the German chancellor) and European leaders had personally experienced the destabilising effects of that approach (an example of policy learning). As no one could be held responsible for the pandemic, the crisis was framed as a common threat that required a common (not to confound with European) response. That response arrived through interstate divisions, implying different narratives about the crisis, between coalitions of member states (see Section 3.2), as indeed happened also in established federations such as the United States of America or USA (Fiorina 2023), where however the interstate division was ideological rather than territorial. Because of the magnitude of the pandemic, and the conflict of interests between the member states, the European Council had to solicit (or to accept) a more active role by the Commission. Due to the rising costs for vaccines generated by competition among states to buy them, the Commission had to step in as the sole agency for their purchase, thus lowering their cost. Given the interstate divisions generated by the need to support the various national economies, it was necessary to acquire new resources for the recovery and resilience of national economies through the NGEU. This is a programme consisting of loans and grants (guaranteed by the budget of the EU and those of its members states as well as by own new resources, so far only the plastic tax) managed by the Commission and the Council, under the supervision of the European Council yet deprived of the power of veto. The supranationalism of the NGEU was, however, constrained in terms of time (the programme will end in 2026), institutional scope (the EP had no decision-making role to play), and logic (the resources acquired are distributed to member states and not used autonomously by supranational institutions). One might say that it is a supranationalism at disposal of national governments, who are the owners of the programme. The latter is co-managed by the Commission with the national governments, where the Commission has not the power to pursue its own policies. With the pandemic,

the EU was given an ad hoc fiscal capacity (Fabbrini 2022), however temporally and dependent on national governments preferences. Not exactly the capacity for dealing with new challenges.

Challenges that arose with the Russia's aggression against Ukraine. For facing that aggression, the European Council and national governments claimed their decision-making competence, although they had to rely on action by the Commission (and the High Representative) to advance immediate common answers. Through the High Representative's initiative, the European Council has approved, at the end of 2023, twelve packages of economic sanctions against Russia, despite repeated veto's threats by the Hungarian government delaying their implementation. However, the need to reduce the dependence on Russian gas led to divisions on how (and whether) to control its price, since national policies on energy differed significantly. Taking advantage of the temporary suspension of the regulation that prohibits state aid,<sup>2</sup> some national governments intervened with policies to support companies and citizens in the energy transition. On 9 November 2022, under the Temporary Crisis Framework, for a total amount of approximately 253 billion euros authorised by the Commission as state aid, two member states accounted for roughly the 80 per cent of the requests (France for 160 billion and Germany for 36 billion euros). Thus, the Temporary Crisis Framework accentuated the differences between countries that had fiscal space for helping their firms and families and other countries restricted by high public debt. The inter-governmental model of national policy coordination has thus further fragmented the EU energy policy.

Also, the military assistance for Ukraine ended up having distorting effects. Some member states sent old munitions to Kyiv but then asked to be reimbursed as if they were new (Finland claimed 100 per cent of the reimbursement based on new purchase prices, Latvia

<sup>2</sup> On March 23, 2022, two years after the adoption of the 'State aid Temporary Framework' in the context of the pandemic, the Commission adopted (because of its exclusive competence on the policy) a 'Temporary Crisis Framework' to address the hardships and global energy market disruption caused by Russia's invasion of Ukraine. The 'Temporary Crisis Framework' allows member states to grant different forms of aid to support undertakings affected by the economic consequences of the crisis, in particular to intensive energy user companies that are suffering the full force of the exceptional gas and electricity price increases, but also families. See State Aid EU Response to the Energy Crisis through State Aid Measures | Cleary Gottlieb.