

Kryzys legitymizacji UE z perspektywy paradygmatu międzyrządowego

Streszczenie

W pracy przedstawiono ocenę źródeł kryzysu legitymizacji UE z punktu widzenia międzyrządowości, naturę tego kryzysu wynikającą ze sposobu rozumienia legitymizacji UE oraz projekcję sposobów zwiększenia stopnia legitymizacji dla Wspólnoty zgodnych z założeniami międzyrządowości. Autor stoi na stanowisku, że z punktu widzenia międzyrządowości kryzys legitymizacji to efekt tego, że w danym momencie „Europy jest za dużo”, a nie „za mało”. Uwzględniając stanowisko Andrew Moravcsika na międzyrządowość kryzys UE będzie bowiem rezultatem poczucia, że Unia Europejska przestała być postrzegana za skuteczne narzędzie realizacji interesów państw, ewentualnie państwa zaczęły nieracjonalnie określać swoje preferencje w procesie integracji.

Słowa kluczowe: *Unia Europejska, legitymizacja, międzyrządowość*

Abstract

The aim of the paper is to analyse the sources of the crisis of legitimacy of the EU from the perspective of the intergovernmental paradigm. The paper also focuses on the nature of this crisis and the possibilities of increasing the legitimacy of the EU. The author claims that the crisis of legitimacy is a result of the fact that there is “too much Europe”, not “too little”. According to Andrew Moravcsik’s approach to intergovernmentalism, the EU crisis is a result of feeling that the European Union has ceased to be seen as an effective tool for realising the interests of the states, or that the states started to define their preferences in the integration process in an unreasonable way.

Key words: *European Union, legitimacy, intergovernmentalism*

Lukasz Zamecki

*Institute of European Studies, Faculty of Journalism and Political Science,
University of Warsaw*

The crisis of legitimacy of the EU from the perspective of intergovernmentalism¹

Moving from negative to positive integration and expanding the functional area of the European Community in the European integration process, created a sense of need for greater legitimacy. Mainly because of this the scientific debate on the legitimacy of the European Union (or rather on its dysfunctions) grew bigger in recent years (so called third phase of theoretical reflection in European studies). This text proposes to look at the recent crisis of legitimacy of the European Union from the perspective of intergovernmentalism. The method of critical discourse analysis is used in the article to explain how intergovernmentalists perceive the sources and the nature of the crisis of legitimacy.

It has to be emphasised that the majority of works of the intergovernmentalists lack direct reference to the “crisis of legitimacy” phenomena. Because of this, the deduction in this article will arise from the general theses of intergovernmentalism and that is why the reader might feel that it lacks the numerous references to individual representatives of intergovernmentalism. However, the author includes the supporter of liberal intergovernmentalism Andrew Moravcsik among the representatives of intergovernmentalism, besides the classic representatives such as Stanley Hoffmann.

The paper presents the assessment of the sources of the crisis of legitimacy of the EU from the perspective of intergovernmentalism, the nature of this crisis, which stems

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from the understanding of the legitimacy of the EU, and shows the ways of increasing the legitimacy in the European Community that are in line with the premises of intergovernmentalism. The division is somewhat artificial because all these questions are bound up with the perception of the sources of the crisis of the supporters of intergovernmentalism.

Putting aside the detailed explanation of what intergovernmentalism means as a theory of integration, we should, however, present its basic assumptions. We have to do so because the intergovernmentalist approach had to compete with neofunctionalism, which was very popular in the first phase of the West European economic integration.

The classic intergovernmentalist approach emphasises the key role of the sovereign state in the integration processes. While neofunctionalism weakened the role of the sovereign state and put it *de facto* in the processes that were beyond state control, intergovernmentalism restitutes national interests. The European integration process is a result of horse-trading between sovereign states, not supranational institutions. It is the preferences of the member state, not the supranational institutions, that are the force behind rapprochement. Although the day-to-day functioning of the EU is carried out through supranational institutions, it is the state actors who initiate and control the integration process. In this way the supranational organisations support the states. The potential autonomy of the supranational institutions is, in this case, a result of a conscious delegation of power by the member states (Ruszkowski 2007: p. 110–112). The supporters of intergovernmentalism stress that the nation states are a permanent feature of the politics and that the integration process does not lead to their decline. The state-centric nature of intergovernmentalism manifests itself very clearly through this feature.

The sources of the crisis

The crisis of legitimacy, understood as a disproportion between the current level of acceptance (seen, *inter alia*, in public opinion surveys) of the EU actions by its citizens to the social expectations of how it is to function, has specific origins, according to the supporters of the intergovernmental theory of integration. However, the supporters focus mainly on the sources of this crisis, not on the way it could be defined. It should be emphasised that “the integration crisis” is not in the mainstream narrative of the intergovernmental integration theories, or any other theories.

In the general debate on the sources of the crisis of legitimacy of the EU the supporters of intergovernmentalism stand by the argument that the crises result from moving the integration processes to supranational positions (Borkowski 2013: p. 377ff.). Unlike the supporters of functionalism, those in favour of intergovernmentalism believe that the crisis might be a result of the fact that it is “intergovernmentalism” that plays too small of a role in the integration process, not “supranationalism”. In recent years, the examples used by intergovernmentalists are provided mainly by the financial crisis, which began in 2008². Not only did the supranational institutions not solve the problems of the Eurozone, but intensified them. Since there are significant economic differences between the member states, the macroeconomic situation of each state is different and the uniform policy of the European Central Bank is not favourable for every member state. Decision-making by way of international agreements would be a more effective mechanism of managing the Union. Paweł Borkowski writes that: “at a time when emergency measures were necessary, it became clear who has the legitimacy and the means to apply them, and which institutions or authorities are expected to formulate the answer to the challenge that had been evaluated as threatening to the whole integration process” (Borkowski 2013: p. 350). It was the member states not the EU institutions that people turned to when they were looking for a solution to the problems and needed a formulated strategy (*vide* aid to Greece).

The legitimacy of the EU is in a crisis because legitimacy was sought in a supranational political system, not through the member states (the so called indirect legitimacy). For example, the levels of legitimacy of cost-saving measures are higher (or at least there is no objection being manifested) when the measures are implemented by national politicians chosen in democratic elections, rather than by states who are forced to do so by the EU officials. The answer to the lack of democratic legitimacy in the European Union could be utilitarian legitimacy, legitimacy that stems from the effectiveness of the EU authorities. Borkowski doubts whether the EU citizens recognise that effectiveness and attribute it to the EU authorities (Borkowski 2013: p. 350). Zbigniew Czachór, after analysing the arguments of intergovernmentalists, wrote that “the intensive institutionalisation, which affects more and more areas of integration, leads not to freedom and common European space but to disturbances in the EU and, consequently, to limited integration or even the reverse of integration” (Czachór 2013: p. 142).

² It is characteristic that the same crisis has also been used by the supporters of supranationalism in the process of European integration.

The essence of the crisis of legitimacy

The crisis of legitimacy is *de facto* a problem of reaching the state of legitimacy, which means a situation when the society is subordinated to authority, even when particular decisions are not accepted by the general public. Taking a different route to legitimacy entails a different analysis of potential malfunctions of that process. The fundamental question asked in the debate on legitimising the EU according to the theory of intergovernmentalism is whether, according to intergovernmentalists, an international organisation *sui generis* such as the EU can be the object of legitimacy.

There are various theories of legitimacy of the European Union. One of the more popular ones is the theory of utilitarian legitimacy, which emphasises the output of the political system. If we assume that the objective of the European integration, according to intergovernmentalists, is to increase the effectiveness of pursuing national interests, then the European Community is needed, because, as a tool of a national state, it promotes maximising its interests.

Intergovernmentalists seem to not take into account the social and ideological legitimacy (or, using a different typology, the technocratic, procedural and parliamentary legitimacy). According to them the EU is legitimised indirectly. It rests upon the recognition that the Community has legitimacy because of the legitimacy of democratic authorities in individual member states.

When looking at Christopher Lord's and Paul Magnette's division of types of legitimacy (Lord, Magnette 2004: p. 185), it can be observed that intergovernmentalists are in favour of perceiving the legitimacy of the EU as international legitimacy, which is not based on self-legitimacy but on indirect legitimacy. The constitutional structure of the EU is based on properly concluded treaties that have been implemented into the national laws of the member states; the treaties give the Community the right to propose normative acts. It is, therefore, the Council of the European Union that has to be the representative of national interests in the process of developing the secondary law. Only the Council of the European Union has indirect legitimacy. Thus the intergovernmentalists do not undermine David Beetham's concept of legality being the fundamental dimension of legitimacy.

This form of legitimacy does not give the EU the right to interfere in internal matters of the member states. In other words, it does not allow the member states to interfere indirectly in the internal affairs of other member states. Such action goes against the logic of intergovernmentalism, which is based on the idea of safeguarding national

interests. The states cooperate and enter into intergovernmental negotiations to pursue their own interests more effectively. The governments thus protect their own values from other states trying to influence their policies.

It is difficult to identify legitimacy of each states with the legitimacy of the whole EU. The Community is to pursue national interests, it does not have autonomous legitimacy. Although there are some authors (Erik Oddvar Eriksen and John Erik Fossum, for example) who emphasise that the Union developed so much over decades that its legitimacy cannot be based solely on the legitimacy of the member states (Eriksen, Fossum 2004: p. 441), and the constitutional changes within the EU introduced dual legitimacy of the Community (in some areas, such as foreign policy, it is intergovernmental legitimacy, in others, such as monetary policy, legitimacy is supranational; cf. Fabbrini 2013), the supporters of intergovernmentalism cannot agree with this position.

According to the general concept of “output”, the European Union can be legitimised indirectly by the member states or directly by the Union’s citizens. If intergovernmentalism is based on the premise that the national state plays a key role in the integration process then legitimacy should be granted through the states, that is by their participation in the process of decision-making in the EU. It is important to notice that according to intergovernmentalists the crisis of legitimacy in this situation may indicate the failure of the state to control the integration process or, as Andrew Moravcsik remarks, the failure to create national preferences by the states or promoting them in intergovernmental negotiations³.

Failure of the elite to create preferences does not have to be a result of their weakness (although it might be); it is rather a result of widespread changes within the international environment. The nation states may not be able to deal with today’s global challenges.

According to Moravcsik, we move towards searching for legitimacy in the “output”, which means legitimising the EU through the results of its actions. Working from this assumption a key question arises: why would the states become less efficient in pursuing their own interests within the Community in the recent years (the years of noticeable decline in support for the EU)? It might be the result of, inter alia, the enlargement of the Community, which hinders reaching compromises. Some researchers also emphasise, despite some objections, a certain axiological difference between the

³ For Moravcsik’s views on the deficit of democracy in the EU see: A. Moravcsik (2002), *In Defence of the ‘Democratic Deficit’: Reassessing Legitimacy in the European Union*, “Journal of Common Market Studies”, no. 4.

Western European countries and the Central and Eastern European countries, which makes reaching a consensus in the Community more difficult.

It seems, however, that the answer to the question about the difficulty of pursuing national interests goes deeper. Firstly, one cannot forget about the changes in the international system – globalisation, and all the connected processes that obscure the idea of how the nation states are supposed to function. Managing the global economy from the national position is very difficult, if not impossible in the long term. The free movement of goods, services and capital makes the distinctions between nation states less clear: the states are unable to control their internal markets. Such a statement leads on to an interesting question: can intergovernmentalism tackle this challenge? Perhaps international regulations and global management of these processes are necessary.

Secondly, over the last two decades there have been changes both in the Community itself and the context in which it functions. Increased competences of the EU face challenges connected with the deficiency of determinants that initiated the integration of the Western Europe after the Second World War, which naturally had to lead to the dilution of the identity of the Community. Intergovernmentalism involves intergovernmental cooperation based on negotiations and a reasonable compromise to fulfil national interests. Perhaps, there is no room for the continuous recognition of different national interests. The convergence of interests, objectively speaking, cannot continue any longer. We have reached, within the Union, the limits of the convergence of national preferences and the EU institutions are not able to help the nation states in fulfilling their interests.

According to the theory of intergovernmentalism it is also the politicians of the member states who bear responsibility for the crisis of legitimacy in the EU, because they “export” their national problems to the Union and define the national preferences incorrectly. In this situation the weakness of the political elites is the problem, not intergovernmentalism. The “exporting” of problems does not have to be the result of the incompetence of the elites. It might be a conscious decision of handing over the responsibility to the Union, when the aforementioned problems impede the resolution of national problems.

The EU citizens do not see the purpose of the organisation’s functioning because it is the member states, not the EU, that pursue redistribution policies, which legitimise the actions of the political actors and are more interesting to the average citizen than the outcomes of regulatory policies (in which the Union specialises).

The crisis of legitimacy of the EU from the perspective of the intergovernmentalism can also stem from the problem with the legitimacy of national governments. There has been a visible weakening of legitimacy of the Western states in the last few decades. Seen from this perspective, the crisis of legitimacy of the EU would be a crisis of the member states. A question of feedback between the actions of the Community and the nation states also arises. Perhaps it is the participation in the integration project that causes the weakening of national legitimacy? Over the years, researchers have been pointing to the fact that the executive branch of power has been gaining power to the detriment of the legislature in the process of European integration. Limiting the legislative competences of the national parliaments vis-à-vis the states negotiating compromises at intergovernmental level strengthens the executives, which in turn are less legitimised. Simultaneously, change of governments does not result in changing public policies completely, because they are developed within the framework of the EU legislation. As a result, anti-establishment politicians and groups have been gaining more and more popularity.

Increasing the legitimacy of the EU

The global financial crisis and the problems it caused in the EU could have been the instrument for regaining control over the integration process by intergovernmentalists. When the supranational mechanism of regulating the situation in the EU failed, it became natural to turn to the authorities of the member states. The German-French directorate during the Greek crisis was part of this line of action. This vision of increasing legitimacy of the EU following the logic of intergovernmentalism became feasible because it has been called for by the most important European politicians: Nicolas Sarkozy, in his speech in Toulon in December 2011, proposed to strengthen the control of the EU with intergovernmental “tools” (Sarkozy 2011).

However, according to intergovernmentalism, to increase legitimacy of the EU means to solve problems mentioned earlier. Broadly speaking, the actions of the EU are going to be legitimised as long as they are going to be authorised by the nation states in regards to input, and, regarding output, they are going to pursue national interests (Lord, Magnette 2004: p. 188). The diagnosis of the current crisis of legitimacy would suggest that it requires the legitimacy of national policies to increase. As the supporters of intergovernmentalism point out, there is no EU action if the policies are not legiti-

sed at national level. It should be remembered that the Community is only a tool in the hands of the member states.

If we recognise that the EU contributes to the implementation of the goals of the member states in the extremely competitive world, the next matter should be improving the citizen – government communication on the achievements of the Union. If the member states want to have this tool at their disposal, they should be loyal and clearly present the objectives that they have achieved with the help of the European Union, which would otherwise be impossible to reach. Those goals could be of trade nature or connected with international security and, assuming that the migration of people cannot be stopped, objectives connected with cooperation in the field of internal security.

In this situation the Union needs a new vision for the future. Renewal, according to intergovernmentalism, can only come with a new proposal of tasks to fulfil by the organisation. It would be necessary for the member states to find new “common denominators”. The existence of the EU would then be justified by the realisation of specific activities and by the capability of achieving results. Increasing the legitimacy of the EU does not have to mean assuming a completely new identity, but maybe returning to the earlier vision of integration.

The method of increasing legitimacy in the spirit of intergovernmentalism, could be returning to the form of European integration from the beginning of the European Community, which would mean increasing the role of the member states, reducing bureaucracy and the amount of regulations. This might lead to limiting the Union’s role, promoting national authorities and their motivation for supporting the EU, and limiting the competences of the national executives to the detriment of the legislatures.

Conclusion

The performed analyses are obscured by the diversity of intergovernmental approaches and the fact that the discussion on the legitimacy of the EU needs to be multi-layered, because there is a difference between, let say, the legitimacy of the Common Agricultural Policy, monetary policy and that in the field of education. However, the analysis of the texts written by intergovernmentalists lets us assess the crisis of legitimacy from the perspective of this theoretical school.

In summary, the crisis of legitimacy is a result of the fact that there is “too much Europe”, not “too little” at a given moment. Taking into account the position of Andrew

Moravcsik on intergovernmentalism, the EU crisis is thus a result of feeling that the European Union has ceased to be seen as an effective tool for realising the interests of the states, or the states started to define their preferences in the integration process in an unreasonable way. According to the theory of intergovernmentalism the phenomenon of “deep integration” may also be a result of the member states’ inability to achieve the “lowest common denominator”⁴ or the fact that the Union ceased to protect their sovereignty.

The said global processes also hinder achieving coherence of the interests of the member states. The discrepancies are visible, not only in the division into Western and Eastern Europe, but, maybe to an even greater extent, into Northern and Southern Europe.

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⁴ According to the Moravcsik’s constituent elements of intergovernmentalism.