

Anastasia Golofast

Managing EU's complexity under shock

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The paper gives an insight into how the European Union's complex principal-agent arrangement gets transformed being faced with an external game changer - the refugee crisis - and discusses the available policy options. This study was financially supported by the CGES, which has helped significantly to collect the data, consult with senior researchers in Europe and get an access to research facilities.

Anastasia Golofast, PhD candidate in sociology at the Institute of Philosophy, Russian Academy of Sciences. Her academic interests include philosophy of complexity, synergetics, digital single market, European integration, multilevel governance, future studies, interdisciplinary studies of technological progress.

Contact: nastya1555@gmail.com



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Abstract. The refugee crisis is an external challenge that stimulates the EU's authority delegation system to elaborate a coherent strategy of joint action. Multiple principals (member states) of the EU's political system face difficulties in the elaboration of concrete set of actions for the agents (supranational institutions), while simultaneously pressing the latter to quickly remedy the underprovision of governance. This opens the "window of opportunity" for the European Commission as an institutional entrepreneur to initiate supranationality strengthening by pushing the states to delegate more authority to the EU level.

Key words: authority delegation, EU, refugee crisis, principal-agent arrangement, supranationalization.

Introduction

Throughout the decades that have passed since the birth of Europe's supranational polity, the EU has postulated itself as a complex self-organizing system (Spolaore, 2013). Historically, the deadlocks of authority delegation have been overcome either by breaking inefficient status quo arrangements by means of enlargement (Kaveshnikov, 2010). Or, crises broke the taboo on institutional innovations by changing priorities of the parties involved so that the main advocate of integration - the European Commission - could efficiently promote supranationalization (see Zolnhöfer & Rüb, 2016). The EU has formed its fractal - the overall institutional structure that repeats the structure of its parts, - and its attractor - the focal point of numerous strategies of potential development (see Budanov, 2006, 2007).

Migrant influx is one of the most relevant stress tests for the European institutional system. Initially, it launched the renationalization tendency with member-states starting to unilaterally decide how to solve the problem. This implies establishing border controls and taking an independent stance about whether to accept migrants or not solely based on the national interests. European institutions got under pressure to provide quick and efficient response. The co-decision legislative procedure, which is used to decide on refugee issues, gives several chances to block the passage of a draft law either in the European Parliament or in the Council of Ministers. If the law passes, next issue arises in the implementation phase: the EU possesses no instruments to solve the free-rider problem: inevitably there appear actors who are interested in getting access to the benefits while escaping from the real or perceived costs.

This is the case when sanctioning mechanisms should be applied. The EU has practically none, except for the infringement procedure, regulated by Art. 258 of the Treaty on the Functioning of the European Union. Under the infringement procedure, the European Commission may demand that the subjected state should adopt and implement the common legislation. In case of non-compliance, the EC may ask the Court of Justice to impose a penalty on the free-rider country. In the active phase of the refugee crisis, nine infringement proceedings were launched - against Germany (2 cases), Estonia, Slovenia (2 cases), Greece, France, Italy and Latvia (European Commission, 2016). But the procedure lasts more than a year and does not imply a punishment which is strict enough to modify the cost-benefit calculus of subjected states.

European integration is about creating common good for the countries involved: it is aimed at providing joint policy outcomes elaborated within the European institutions for the sake of ensuring credible long-term benefits for all participants even if the implementation may require short-term costs. In the broadest sense, the term "common good" implies security, welfare, positive interdependence and sustainability of the countries involved. Three major factors influence the production of common good: nonrival consumption,

excludability of benefits and aggregation technology (Bossong, 2011). Nonrival consumption means that all peer actors included in the institutional arrangement that produces common good have access to it. For instance, all of the countries that entered Schengen automatically acquire access to its Information System. The use of this Information System by one of them does not result in any opportunity costs for others.

Excludability of benefits refers to the situation where free-rider problem emerges: if the strongest EU members invest in a joint project such as Schengen, where weaker states also participate, the former share the benefits with weak reciprocal contributors (those who contribute poorly to the project or do not contribute at all) but bear most of the costs themselves. The essence of the problem is that weak reciprocal contributors use the benefits but successfully avoid taking their share of costs. The aggregation technology is a term which concerns policy elaboration: the European institutions gather policy preferences of the EU members to make the policy choice without being able to timely prove whether the aggregated data corresponds with reality.

As an exogenous shock, refugee crisis is a “game changer” which provides the EU members as well as the supranational institutions to which they delegate authority with incentives for the system change because: it is outside the system’s locus of control; it is difficult to anticipate; it aggravates the differences among the member states, which makes them likely to react in a Brownian motion mode. I argue that given the external challenge, the presence of multiple principals (28 member states) in the EU’s multilevel governance system extends deadlock interval in the decision-making process while opening the “opportunity window” for strengthening their agents (supranational institutions).

The article consists of a theoretical part featuring principal-agent theory and of a case study. The selected theory suits for the case because it reveals the vulnerabilities of power delegation by the principals (member states) to the agents (supranational institutions) and brings to the surface the relations between superordinates and subordinates. Principal-agent approach is a tool of researching the dynamics of actorness both of nation-states and of supranational authorities with actorness being a complex characteristic defined by four criteria: recognition (acceptance of the polity and its interaction with others), authority (legal competence to act), autonomy (some degree of independence from other political entities) and cohesion (the actor should have a single clear stance on the subject of bargaining and should be consistent in pursuing its strategic goals) (Caropaso & Jupille, 1998). Studying EU politics within the paradigm of the principal-agent theory can help reveal the conditions under which the institutional agreement may be revised either by the principals or by their agents.

Principal-agent contract

Principal-agent approach is part of non-cooperative game theory (see e.g. Von Neumann & Morgenstern, 1953). It was originally borrowed from economics where it is applied to study the relations of authority delegation between managers and ordinary employees. When applying this theory to political process, it should be noted that employee/employer relation in economy differs significantly from that in politics. Political agents govern their principals, which makes the relations mutually interdependent and far more complex (Grant & Keohane, 2005). In political science, principal-agent approach is used to examine authority delegation and the dynamics of accountability both in the nation-states and in integration projects. In the EU studies, it has a potential to reconcile intergovernmentalism with neofunctionalism (Morsut, 2012, p. 3).

Basic premise of the principal-agent theory is that independent political subjects (principals) delegate jurisdictions to their agents, which acquire some degree of decision-making autonomy with the passage of time. The quality of principle-agent interactions is the subject of a framework contractual agreement. This agreement defines what kind of behavior is “illegal” for the parties involved. Balance of power in the agreement is in favor of the principals if they can easily withdraw resources from the agent, if authority of the agent lies within a limited policy area, if the role of the agent is mainly technical and if the principals can unilaterally revise the arrangement in their interests. Balance of power in the principal-agent agreement is in favor of the agent when decisions of the agent are binding for the principals and the agent can sanction them for non-compliance, when the role of the agent is strategic and the agent pursues the ends that are partly conflicting or even completely incompatible with the ends of the principals.

Having decided to delegate their competences to agents, principals face two major problems: adverse selection (ex-ante opportunism) and moral hazard (ex-post opportunism). Adverse selection is the term describing that principals tend to balk the delegation process in order to limit prospective transaction costs (Gailmard, 2012). Moral hazard is the threat that agents may choose policy options that are closest to their own interests while the principals have no tools to change this policy choice. The main challenge of authority delegation is to ensure accountability of the agents so that they do not exploit their position for the means, which are unfavorable for the principals (Kassim & Menon, 2003).

Delegation process in the EU naturally derives from the multilevel governance system, which is comprised of 28 principals. Among them are donors and recipients, strong and weak reciprocators, those who promote “more Europe” and those who oppose supranationalization (Fehr et al., 2002). All of them are to some extent motivated to delegate authority to supranational institutions to make the interactions result-oriented (Pollack, 2006). They use agents as mediators and rely on their policy choice, which is expressed in one-fits-all initiatives with unequal redistribution of costs and benefits between the

principals. Authority delegation is an important tool for the principals to displace responsibility for unpopular decisions and to avoid regulatory competition of multiple players in the decision-making (Kassim & Menon, 2003). If the first option is misused, population of such a principal country votes to quit the project.

Institutional choice of the principals is based on the following factors: readiness to delegate the authority in a specific policy area; perceived balance of costs and benefits of authority delegation; behavior of other principals. Path dependence is a powerful constraint of modifying the institutional design, and the options that radically differ from the principals' sequence of previous choices turn to be unavailable (Libman, 2008). The advancement of authority delegation is possible due to the changing interests and changing weights of the principals in the bargaining process (Kauert, 2007).

Communication channels existing between the principals are insufficient. Consequently, the states have to act under the circumstances of a prisoner's dilemma: they try to minimize the costs in advance by claiming that they are ready to invest in the common good less than they really can. Each of the principals makes a claim about its preferences and the resources available to take part in the common regulation. This information cannot be verified and even if it could be, it would soon become outdated due to the internal dynamics in each of the principal countries. Based on this information, which is inherently wrong, common institutional choice is made. When the agency institution starts functioning, it turns out that this agent is more likely to follow the interests of strong reciprocators (countries whose share of investment into the common good is bigger). The notion of reciprocity describes the exchange relation between several principals. It is the act of giving benefits to a counterpart in return for direct or indirect benefits received (Molm et al., 2007).

Competing interests of the principals raise the issue of agency control. Once the agent (supranational institution) has been designed, it starts acting on behalf of the principals. The behavioral pattern of the agent changes with the passage of time. The agent first needs to reassure the principal that the agent is precisely following the principal's interests to get reach of the principal's resources. Having acquired the resource control, the agent may start pursuing its own ends (Hill & Jones, 1992).

Coalitional bargaining on refugee policy

European states are legally obliged to take the refugees being signatories of the UN's Refugee Convention (1951) and of the Protocol Relating to the Status of Refugees (1967). The central point of these treaties is the "non-refoulement" - the recipient state cannot repatriate the refugees to their countries of origin, where their lives are at risk (Wigmore, 2016). In 2015 about 1 321 600 asylum applications were made in the 28 EU member countries – almost twice as many

as in 2014. The number of reported illegal border crossings in 2015 became 6 times as high as in 2014 (Sánchez-Montijano, 2015). Thus, European institutional system faced a serious challenge that posed a question of whether EU member states are now ready to invest in the resilience of the system, the advantages of which they have been previously enjoying without charge.

The Treaties do not contain detailed description of the form in which member states should exhibit solidarity towards partners. As a result, there appears a wide room for interpretations of this concept depending on the national interest. The idea of "flexible solidarity" introduced by the Visegrad states - the Czech Republic, Hungary, Poland and Slovakia - is one of the interpretations. The essence of this idea is the division of labor between states accommodating refugees and those paying for their stay in the Schengen area. Eckart Stratenschulte calls the idea of "flexible solidarity" that of "fake solidarity" as it reflects the desire to escape from responsibility rather than an offer for help. Solidarity deficit in the Schengen area with regard to the refugee crisis may serve as an example of Schelling's remark that collective satisfaction of spatially defined interests may not be possible (Schelling, 1978).

With regard to the refugee crisis, EU members turned into principals possessing a different scale of compliance with the *acquis*; the ability to form coalitions of veto-players (political subjects that block the passage of legislation if it is against their interests) (Tsebelis, 1991); varying degree of readiness to delegate authority to the supranational level. Different levels of compliance are a by-product of varying bargaining positions of the principals. Exogenous crisis evokes conflict of interests, which results in strengthening of previously existing coalitions and creating new coalitions of countries, which did not use to cooperate in this configuration previously (Coser, 1956).

According to Paul Sabatier, the formation of a coalition requires the match in core values and policy values of potential coalition partners. Core values constitute the pillars of a political community, whereas policy values define the attitude to a particular issue, which requires mobilization of project participants in the form of a coalition (Sabatier, 1987). The congruence of these two components enables the formation of a coalition even though the states inevitably have different attitudes to a wide range of other aspects, defined by national interests and geographical position. The formation of coalitions with regard to the refugee crisis in the EU is in itself a proof that the participants of the integration project have multiple adherent points.

The degree of consolidation of the coalitions is moderate, because they have no formal hegemons - all coalition participants have the same legal status. Resources of the coalitions vary depending on the quality of the solution they favor. If the solution is pro-European in nature, the coalition of its advocates may count on the administrative resource of the European Commission. If the solution does not presuppose the production of the EU's common good as a remedy for the crisis, the coalition may influence the agenda-setting. This requires one of its members to hold the presidency in the Council of Ministers.

Visegrad countries have been acting as a veto-coalition that voices discontent with the European regulations in terms of the refugee crisis. The leaders of this coalition are Poland and Hungary. Visegrad veto-coalition associates unfavorable policies with the initiatives of pro-European principals with a strong bargaining position, such as Germany. Visegrad group considers supranational institutions as mediators in the dialogue with stronger states. Italy and Greece join the radical coalition due to their geographic position at the border of Schengen with the rest of the world.

The second coalition is the coalition promoting selective participation in the Schengen regulations. The principals forming this coalition are Ireland and Iceland. They aim at participating in the information exchange across Schengen without taking obligations to accept the refugees. The third coalition of the principals favors reintroduction of border controls. It is the broadest coalition comprised of Austria, Belgium, Denmark, Sweden, Slovenia and Croatia. Its members prioritize national security over solidarity within the EU.

There is a coalition of two principals (Bulgaria and Romania), who are in favor of expanding Schengen. These two countries find refugee crisis a good timing to become members of the visa-free area in spite of the problems with the Roma population. Coalitions can be aggregated in larger groups by the principle of either "more Europe" or "less Europe", and then the degree of competition between competing blocs becomes higher. But generally, even members of the "less Europe" bloc are not against authority delegation per se, because it helps them to legitimize national authorities by blaming supranational bodies of being unable to fix the vulnerabilities of crisis management.

The specific feature of the coalitional institutional entrepreneurship in the case of the Schengen area lies in the fact that coalitions fight not directly between each other but rather enter into a competition for the access to the Commission's administrative resource. Each of coalitions wants the Commission to issue a draft law containing the preferential crisis management option. Therefore, competitive bargaining of coalitions eventually strengthens the role of the Commission in the EU's governance system. This aspect establishes an important link between formal and informal political processes within the Union's institutional structure.

Commission's institutional entrepreneurship

The existence of four alternative coalitions opens a "window of opportunities" for the European Commission (EC) as an agent to increase its power by justifying the need for enhanced supranationality. The agent gets a chance to profit from the "multiple principals trap": the situation when there is no consensus in expectations from its actions. Supranational institutions naturally take the role of integration promoters. They tend to take action on their own disregarding the interests of their creators. Supranational authorities gradually become drivers of

intensified integration by affecting the way their creators perceive their own interests and motivations (Niemann, 2012). Thus, by its very nature, the European Commission does not and cannot initiate “anti-European” legislation. The European Commissioners have pledged to serve the EU interests, not the national interests of the states of their origin (Egenhofer et al., 2011). All the EC’s initiatives are suggestions to jointly regulate the issues that it puts on the agenda.

The more issues are subjected to Europe’s joint problem solving, the more competences the EU’s supranational agents get due to the functional spillover. An example of the European Commission acting in favor of supranationality is its proposal to introduce amendments to the EU budget for 2016. Additional 100 million euros in commitments and 80.2 million euros in payments were made available to tackle the migration crisis (European Commission, 2016). Increased financing of joint crisis management mechanisms is the first step towards accumulating new competencies.

The Commission plays the guiding role in the strategically important very first and the very last stages of the policy cycle. The cycle consists of agenda-setting, elaboration of policy proposals, selection of a viable alternative and policy implementation. The Commission’s functions include: setting priorities, proposing laws, drawing up annual budget, supervising the way joint funding is spent, enforcing EU law as a guardian of the Treaties and speaking on behalf of the Union internationally.

Although being structurally constrained by the mode of co-decision, the EC acts as a policy entrepreneur – an advocate of change willing to invest time, effort, reputation and money to promote and to sell a policy proposal. It operates in the network and promotes coalition-building to facilitate problem solution (Mintrom & Norman, 2009). The EC upgrades the principals’ common interests and facilitates package deals taking advantage of its central position in a web of policy networks and relations (Niemann, 2012). The EC’s initial strategy in bringing the refugee policy into the agenda was based on the conceptual link between the Schengen and the single market as well as between intra-European refugee policy and the universal Geneva Convention (Kauert, 2009).

In practice, the Commission has a monopolized right to initiate legislation without being directly legitimized - there is no popular vote on the Commission membership. The EU uses co-decision (or ordinary legislative procedure) as a decision-making tool for the policy on asylum, immigration, visa and external border controls. The European Commission first consults the Council’s expert groups and then issues a draft bill. It has to make out the best of power-maximizing before the first reading, because later multiple amendments will be introduced by the Council and by the Parliament. There is no time limit for the first reading, which is why it may last more than 12 months. If the Parliament or the Council introduces amendments, the bill returns to the Commission for corrections and validation. At this stage, the Commission may decide to no further elaborate the bill.

After the second reading, the renewed draft is passed over to the European Parliament, which can consult the committee where the document was initially considered. Absolute majority in the Council is necessary for the amendments to be included in the text of the prospective law. If at this stage an absolute majority of the MPs vote against the text, the law will not go through. After consideration in the Parliament, draft bill is sent to the Council, which either approves the amendments of the Parliament, or rejects them. In case of rejection, the procedure of conciliatory committee is launched. At the final stage, the bill requires approval of the Commission. The Commission's rejection can be overridden by a unanimous vote in the Council. The average length of the whole procedure is about 22 months. Total number of laws adopted yearly under co-decision differs dramatically - from several dozens to more than 170 (Costa et al., 2011).

The design of the procedure implies that European Parliament and the Council of Ministers are the two bodies that can block the passage of a bill. They represent the principals, but not comprehensively. Voter turnout for the elections to the European Parliament is traditionally lower than that to the national parliaments. Citizens of the principal states do not consider these elections decisive for their future and use them to release the potential of protest voting. Meanwhile, the Commission is directly responsible to the Parliament: the latter may vote to dismiss it (Bergström et al., 2007).

External shock is a legitimizing factor for supranationalization as migration crisis provides prerequisites for strengthening the actorness of the European Commission. Firstly, the fear of uncertainty leads to the increase in interactions within the EU institutions. The Commission is at the heart of these interactions as a mediator and a recipient of impulses about policy preferences of the principals. It reinforces recognition as a first criterion of the EC's actorness. Secondly, there is a demand for the EC to generate policy proposals in order to provide crisis response. It raises authority as another component of actorness. Thirdly, the EC is rather autonomous in the phase of initiating draft proposal before it gets amended by the Parliament and the by Council during co-decision. Therefore, the criterion of autonomy is satisfied. Lastly, the Commission's stance on the strategy of regulating migration crisis is consistent, which speaks in favor of cohesion as the final criterion of the EC's actorness.

If the threat comes from outside the borders of the EU and is securitized by the principals, they seek to find the way of protecting the system from failure. The costs of this interaction and bargaining of the principals would be too high if no supranational mechanism were used to mediate the process. However, significant conflict potential of the four coalitions makes it extremely difficult for them to set specific and concrete targets for the agent.

Consequently, the contract between the principals and the agents becomes loose because the message conveyed to the agent by the principals is that the former should solve the problem with no means specified. Europe's refugee crisis may push the EU's political system to a more optimal institutional design if

all the principals reach the agreement that the costs of maintaining status quo are higher than the costs of institutional change. In the medium term perspective, migrant influx raises the question of common tax system and rules of labor market regulation. In the long term, this exogenous shock may cause reconsideration of the EU's goal-setting in general.

Medium-term policy options

At the time of the crisis, any of the options listed below will eventually result in changes in the European project, be they intended or unintended. Crisis generates a preferable timing for change ranging from policy modification to institutional innovations because it gives way to the externalia, which may outweigh the effect of the institutional inertia. Under these conditions, the risks sharpen, new options get tested and new political realia emerge with the pace of the light. Much depends on the principals, which are able to modify the agents. There are basically three available variants to consider:

1) The choice in favor of the waiting game for the maintenance of the status quo would be exceptionally costly both for the principals and for the agents of the European institutional system. Time plays against the EU when it comes to dealing with crises. Lengthy bargaining about the most suitable institutional design to tackle migration crisis leads to the low governance efficiency. As a result, the EU has to respond to challenges in a reactive rather than in a proactive manner.

For the principals, this scenario means the increase of uncertainty and greater informational asymmetries. The risk of unilateral harsh decisions grows progressively and may provoke a domino effect. For the agents, the waiting policy option would be a threat of legitimacy loss, because crisis management in failing states, which export refugees, takes long. The absence of effective solutions during this time would seriously damage credibility of the agents. On the larger scale, the choice in favor of the status quo will not let the European institutional system adapt to exogenous crises of this nature. Meanwhile, there is no guarantee that the situation will not reemerge with the passage of time.

2) Renationalization option implies the return of crisis management competences in terms of refugee influx to the principals in case the agents cannot elaborate joint action strategy. This is seemingly the path of least effort, but it is highly unlikely to be chosen by the principals, because of the strong institutional inertia. High level of path dependence makes radical breakdown of the institutional structure exceptionally costly for the parties of the principal-agent arrangement. Renationalization is a set of tactical actions of the principals rather than a coherent and well-thought strategy. This scenario is still probable and may be implemented in case the inefficient "status quo" variant is used and the pressure for action eventually leaves no alternative.

3) Strengthening supranational governance is an option, which makes it possible to preserve the most important integration achievements, particularly, the Schengen area and the Eurozone. Common European crisis response is an expensive project for the principals: its implementation will demand elaboration and further enforcement of control institutions to monitor the provision of the agents with valid information about economic, social and other possibilities of the principals. By partially hiding this information, principals currently maintain their status of "Herren der Verträge" ("Masters of the Treaties") with relative freedom of action.

For the agents, this policy outcome is very favorable due to the possibility to increase authority and to initiate power delegation in other policy areas following the functional spillover logic. For the EU as a political system, more supranationality would mean increased efficiency and more resilience at the times of crisis. However, it may mean the refusal of some of the principals to take part in the renewed EU, because of the reluctance to take more obligations. As a result, the EU may find itself with reinforced supranationality stronger but with fewer and more committed principals. Others may selectively participate within the framework of "Europe of variable geometry".

Conclusion

Exogenous shock pushes the EU's institutional system to fill the gaps in the loose contract between the principals and the agents. The problem of accountability, which is usual for this sort of arrangements, reemerges in the new context. In crisis, it is important not only for the supranational agents to be accountable in front of the principals for acting in their interest. It becomes vital that the principals are held accountable by the supranational bodies for implementing binding supranational decisions. This is inevitable for the resilience of the authority delegation framework, because only the Commission initiates policy proposals aimed at producing common good for the project as a whole, whereas national institutional entrepreneurs only push for the initiatives based on their national interests. The direction of modifying authority delegation contract as a result of crisis depends on the Commission's ability to ensure the adoption of joint European crisis management initiatives and then to ensure their implementation through the mechanism of adverse accountability.

Europe's refugee stress test is a trigger of institutional change because it demonstrates vulnerabilities of the European project. These vulnerabilities are: relatively low credibility of the agents (supranational institutions); the gap between the principals' demands with regard to supranational governance and the available resources granted to the agents; prisoner's dilemma of the principals: none of them currently wants to be the first to invest in common good for fear of being exploited by potential free-riders. Simultaneously, none of them wants to become the first "victim" of control and sanctioning mechanism either.

This is a non-cooperative game with multiple principals, where the agent has an opportunity to take stage. Nevertheless, institutional change is constrained by the existing system and partly shaped by a sequence of unpredictable events.

The pressure for the Commission to take action for the sake of the refugee crisis settlement is exerted by the strong pro-European principals, whereas weak principals are less likely to comply with the common European regulations and more likely to insist on ripping the benefits without taking their share of costs. Exogenous shock raises demand for the reduction of uncertainty and for bridging the gap between the actual potential of the agent and expectations from it. It implies increased funding of the supranational institutions, which would mean their better equipment for building a resilient system. Supranationalization reduces the bargaining time, which is vital for efficient and timely crisis response. It would mean that the EU's regulations become obligatory for the parties involved due to the establishment of control and monitoring mechanisms.

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Рабочие тетради Центра изучения Германии и Европы

Universität Bielefeld – Fakultät für Soziologie
Postfach 100131 – 33501 Bielefeld – Deutschland

Staatliche Universität St. Petersburg – 7/9 Universitetskaja Nab.
199034 St. Petersburg – Russland

<http://zdes.spbu.ru/>

info@zdes.spbu.ru