



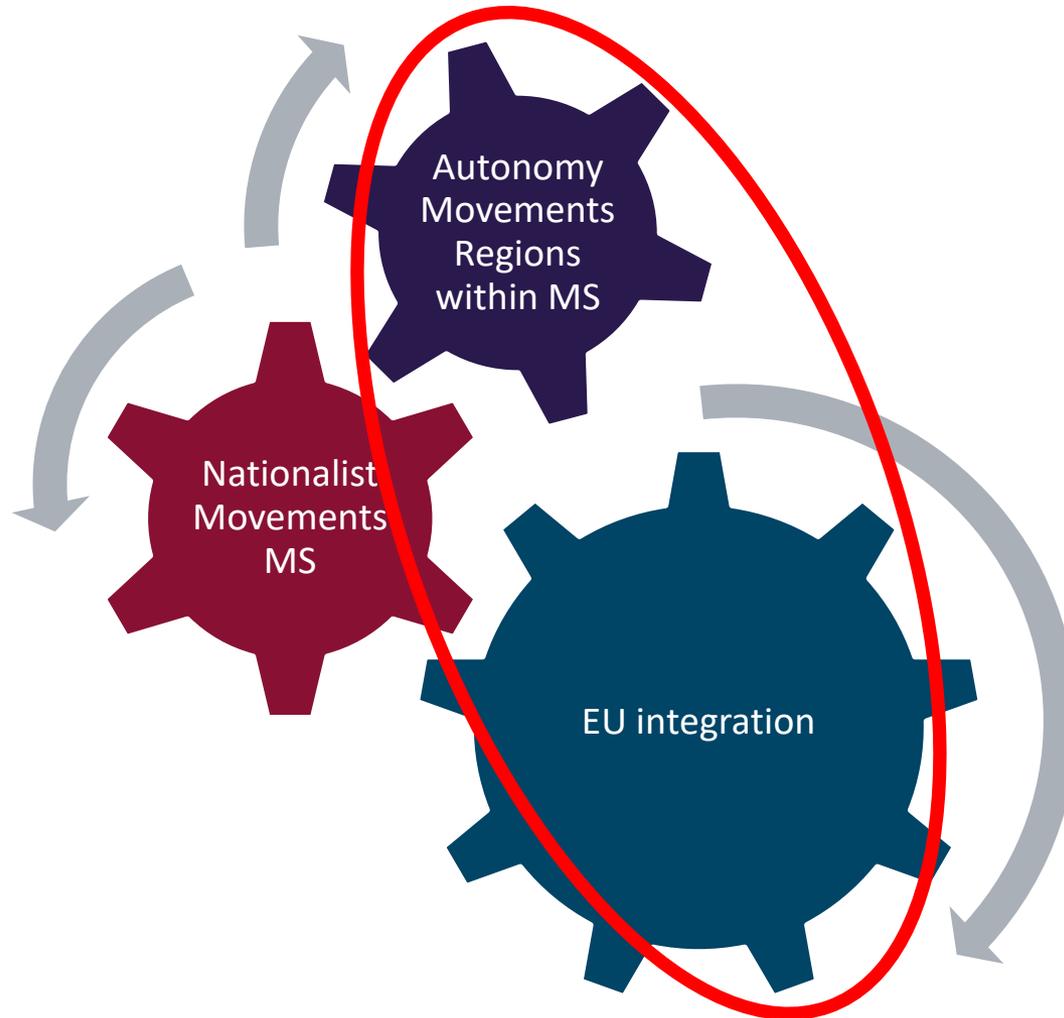
# A Multilevel Governance Perspective on Disintegrative Dynamics within the EU Integration Project

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# I. Introduction: Integrative and Disintegrative Dynamics within the EU



# Focus in this presentation



# Position

## Debate so far

- 1) From regional blindness to regional visibility
- 2) Secession: new State is no party to the EU Treaties – Art. 49 TEU applies (new membership)

## My position

- 1) Legal consequences
- 2) The EU is not a neutral bystander + attention should be given to the seceding and the remaining party

The EU is a constitutional system of multilevel governance that is impacted by fragmenting developments within the Member States

# Overview

- I. Introduction
- II. A normative perspective on MLG
- III. The EU's position towards the constitutional structure of its MS
- IV. The EU's position towards secession from a MS
- V. Conclusion

## II. MLG as a normative concept

### MLG Type I

- Dispersion of power over
- A limited number of
- Territorial, intersecting and general-purpose jurisdictions

EU Fundamental Structure



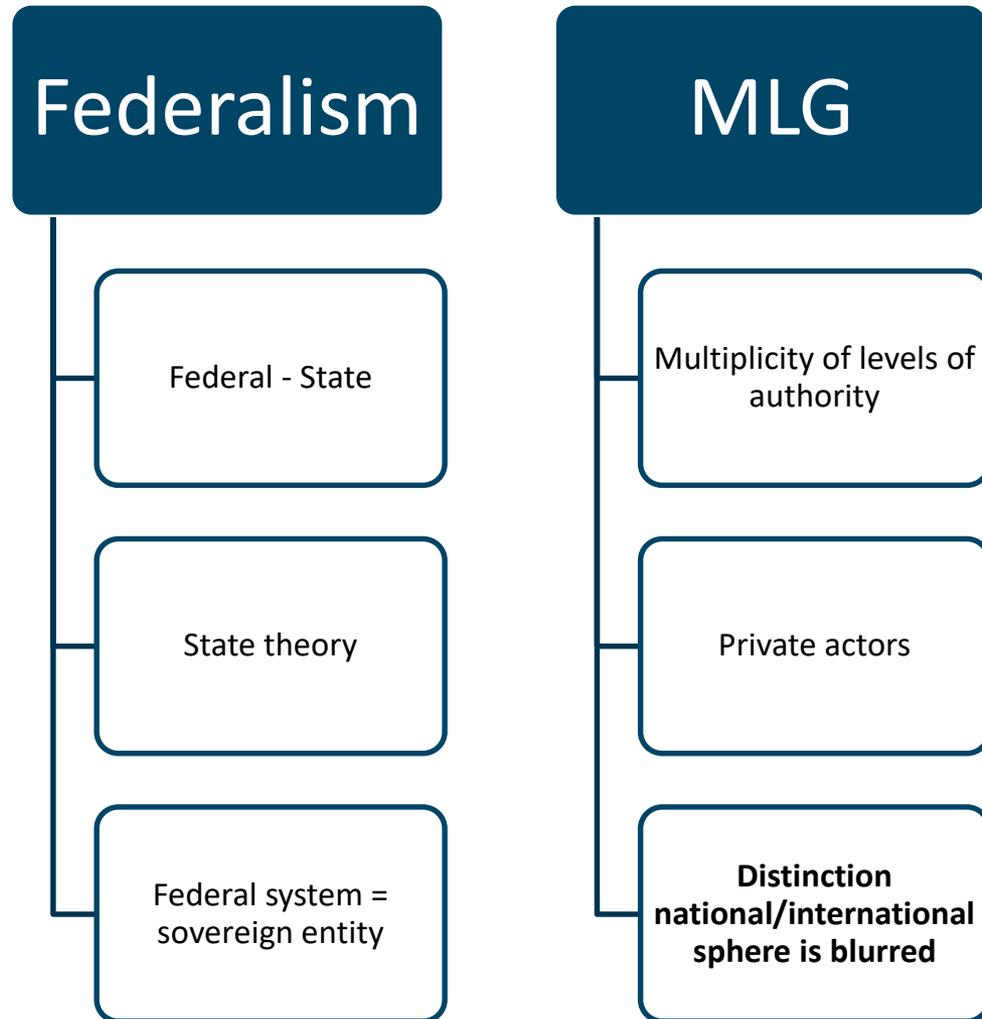
Federalism is intellectual foundation but NOT identical!

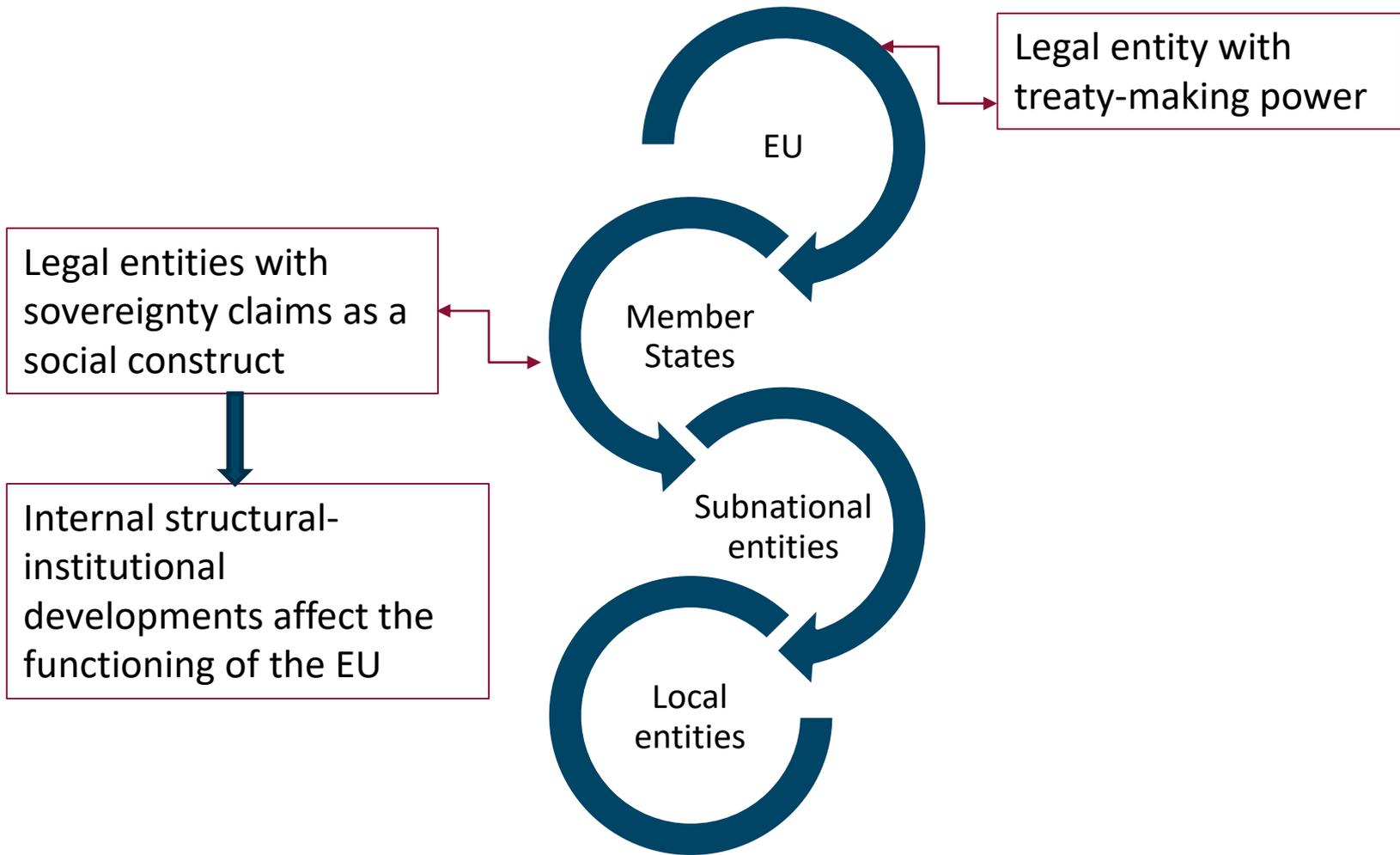
### MLG Type II

- Dispersion of power over
- A potentially vast number of
- Flexible, task-specific jurisdictions at various levels

Functional Structures Within the EU – e.g. Patent system

# Federalism vs MLG





# Normative Implications

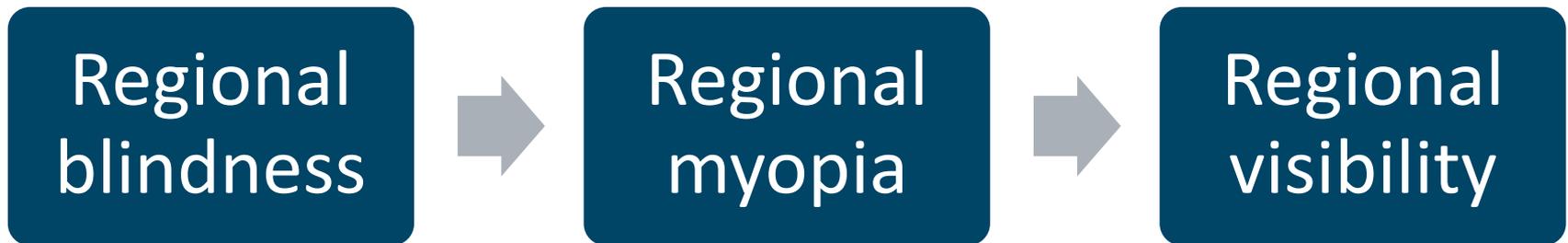
## Restraint

- As to structural developments within the MS

## Commitment

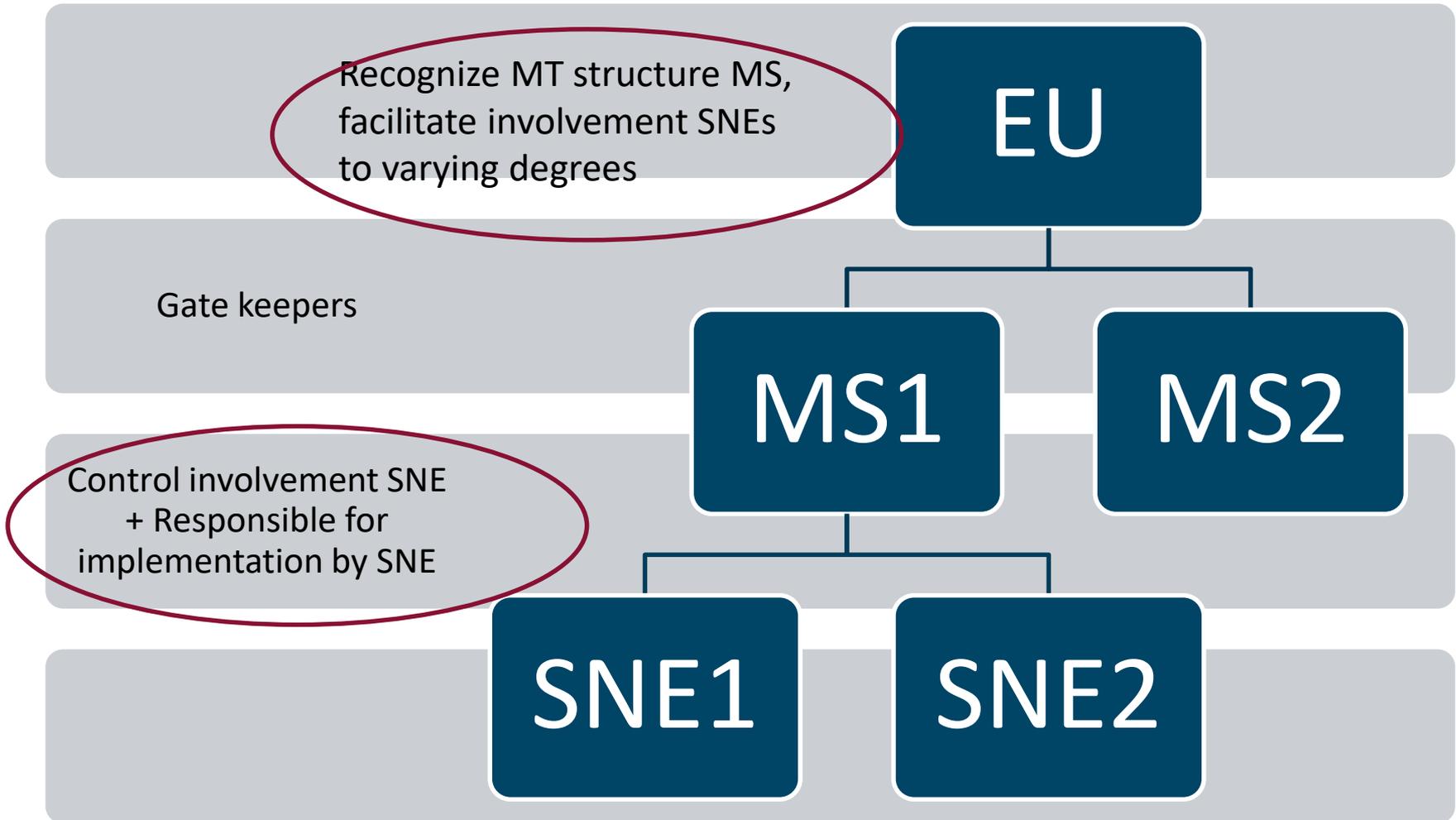
- As to how the EU deals with the implications of these developments for the EU as a whole

### III. The EU's position towards the constitutional structure of its Member States



= The EU in search of a balance between restraint and commitment

# The key position of the Member States



# Judicial consequences of internal structural developments within the MS

EU must involve regional gov in EU lawmaking

- EU reliant on SNE to implement EU law
- Committee of Regions
- Facilitating involvement in Council of Ministers
- Subsidiarity test: implications for SNE
- etc

EU must involve regional gov in EU policy making

- Cohesion policy: from a restraint position to a multi-tiered strategy
- Reduction of regional disparities
- Regionalization → direct involvement of the EU
- Direct involvement of the EU → informal pressure to regionalize
- → **idea of partnership between layers of authority**

Judicial consequences of recognition ML structure

- Duty to take account of the MT structure of MS when defining legal rights and obligations
- E.g. State aid: differentiated use of the geography selection criterion

## IV. The EU's position towards secession from a MS

### Can the seceding entity remain in the EU?

#### Art. 48 TEU

- Treaty amendment
- Minority position based on the entity's prior commitment to the integration project

#### Art. 49 TEU

- Accession new MS
- = official position EU
- Majority position based on equality and international law

# A MLG Perspective: 1. Restraint

- 1) Principle = EU is not to interfere in internal structural developments
- 2) If separation (consensual and negotiated procedure): EU cannot but take note of this fact
- 3) If unilateral declaration: Art. 4(2) TEU ensure territorial integrity = bias in favor of the (remaining) MS

An illustration (but not really):

**Cyprus**



# A MLG Perspective: 2. Commitment

- 1) The EU cannot keep ignoring political reality if this impacts on the MLG structure over the long term
  - If this leads to recognition of the unilaterally seceded entity: Art. 49 TEU applies
  
- 2) The EU cannot remain impartial to the secession process that takes place upon its territory
  - (i) Equality principle argument pro Art. 48 is countered
  - (ii) Public international law argument pro Art. 48: applicable?
  - (iii) MLG perspective begs for a short-track negotiation procedure

## (i) The equality argument

Argument = states that are newly formed after separation should not be treated more favorable than other third countries, or former Member States

Counter-argument = the equality principles requires different treatment in different situations

- Different from third countries: have already been deeply committed to the integration project
- Different from former MS: have not expressed a will to withdraw from the EU

## (ii) The public international law argument

Under international law:

- Presumption of continuity of treaties for states arising from dissolutions
- In practice: the seceding party is allowed a clean slate, BUT:
  - Continuation of bilateral agreements requires consent of the contracting parties
  - Multilateral treaties: presumption of treaty continuation is building BUT:
    - Seceding entity has the option to continue or not except in the case of fundamental rights treaties
    - Treaty continuity is ultimately dependent upon recognition of such claims by the international community
      - Cf art 4 ~34 Vienna Convention on the Succession of States in respect of Treaties: 'without prejudice to the rules concerning acquisition of membership or any other relevant rules of the organization
      - Cf rigid accession procedure EU

BUT in MLG systems the distinction between constitutional and international law becomes blurred...

## (iii) The MLG Perspective

- MLG systems are based on an interdependent network of actors at different layers of authority
  - Structural changes in any of its components has consequences for the other parts and the system as a whole
  - Cf partnerships under cohesion policy; EU citizens
  - Where Art. 50 TEU provides for a consensual and negotiated exit from the Treaties, it is difficult to accept that the majority will of a territorial entity to leave the nation state, automatically implies its withdrawal from the EU without negotiations:
    - For the seceding entity
    - For the EU: it is unacceptable that the EU would be left as a neutral bystander without being able to negotiate the terms under which the separating entity is to leave the EU
- The withdrawal of even a part of a MS, may distort power relations and has consequences for the functioning of the EU, especially if the seceding entity has particular value (GDP, population, strategic location...)

# Conclusion: proposal for a new Treaty provision

- Art. 49 TEU: simplified procedure BUT: procedure takes place in complete isolation from the preceding separation procedure
- Proposal Fasone: Monitoring accession to the EU under certain conditions:
  - Secession is negotiated and consensual and in respect of constitutional traditions, democracy and rule of law
  - EU must be kept informed of the separation process
  - Number of years must pass before full independence
- Loyalty principle = duty rump state to inform the EU and to strive for a reasonable term
- In addition:
  - Monitor withdrawal from the EU if EU membership is not requested or accession negotiations are not successful
  - Reassessment of the position of the remaining MS in terms of weight and representation, and possible membership of the Eurozone

