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Reforming the European Union: A political and democratic imperative

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Beyond the various crises that have occurred over the last ten years (euro zone crisis, with its economic and social consequences, Brexit, migratory crisis etc.) which to a certain degree can be considered to be cyclical, the European Union, faces more than anything else, a political challenge which is a structural one^[1]. And the Union will not be able to guarantee a durable end to the recent crises (and to address possible future shocks) if it does not settle this problem. This is all the more urgent since the Union is facing major geopolitical challenges, in particular security issues regarding its Eastern and Southern neighbourhood; here again, the Union, undermined by its lack of legitimacy and by its political weakness, may very well neglect its historic responsibilities.

The ideas that follow suggest a series of practical measures that aim to strengthen the Union's political and democratic dimension; they are both audacious in content and minimalist in form because they can be undertaken without changing the treaties.

1. DIAGNOSIS AND METHOD

The European Union's main structural problems, related to issues of efficiency, transparency, democracy, and more generally, to the low level of trust it enjoys from its citizens, can be linked to the following points:

- The low level of citizens' identification to Europe's supranational political identity;
- The very weak link between the citizens' will, as expressed in elections, and the Union's political orientations;
- The feeling of a kind of "inevitability" or "irreversibility";
- The lack of political leadership.

These four factors are closely related: it is all the harder for citizens to identify with the Union politically because they feel that it is a technocratic, extremely distant machine that is "moving forward", without their vote making any difference whatsoever. Moreover, the progress of European integration is presented as the result of "necessity"^[2] and its various "acquis"^[3] as being practically irreversible. This feeling is all the more frustrating since political accountability is barely perceptible, with the Union remaining more or less ethereal, without any political

representation of its own, which would be audible and commonly perceived as legitimate. This is reflected in a lack of any real political leadership, which is both the consequence and the cause of this. The Union is caught up in a vicious circle: the citizen does not see the Union's accountable political representation, which heightens his/her mistrust and his/her inability to identify with it politically. Yet this lack of support by the citizens is undermining this representation, rendering it even weaker and therefore even less perceptible.

Hence, it is the issue of political leadership – and also mandate – which it seems appropriate to address first and foremost. A Union of 511 million inhabitants cannot develop without leadership. A Union that has competences as wide and as varied, including whole swathes of sovereign areas, cannot do without political leadership, based on democratic legitimacy. Yet a Union of 28 or 27 States cannot find this kind of leadership enduringly at national level alone. Although it is possible for a handful of national leaders (or even one of them) to take leadership provisionally for the entire Union at the height of a crisis, a situation like this cannot last. The half a billion European citizens cannot accept forever the leadership of a political personality who, from

1. This text is the highly edited version of an article initially published in A. Laquièze, P. Perrineau and Y.-C. Zarka (dir.), *L'Union européenne entre implosion et refondation*, Editions Mimesis, 2016. What follows is the opinion of the authors only.

2. Cf. the theme of « necessity » in the Jean Monnet's *Mémoires*.

3. The usual meaning of the term "community acquis" to indicate the Union's law is revealing.

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an electoral point of view, only represents a few dozen million of them. A mandate resulting from a national election can never be truly deemed European. The same applies to the simple addition of national mandates: although the legitimacy of national action taken by the leaders of the Member States cannot be contested, the story is different as far as their collective action at the European level[4] is concerned. In other words, the addition of national political legitimacies does not lead to one that is European and the addition of national political mandates does not create one that is European.

To end this stalemate the emergence of a true political representation of the European Union has to be fostered, which has to be able to assert itself more not against, but alongside and autonomously from the Member States. A political representation confident of its legitimacy and therefore capable of defining and deploying its own political agenda and which is not just restricted to the smallest common denominator of the national political agendas. Of course, this political agenda would not be able to ignore or negate the will of the Member States. But it would have to create a new dynamic, establish constructive tension between the European and national levels.

This means "politicising" the Union more. For over 20 years now it has been presented not as a political space of choice, but as one of technocratic regulation, whose legitimacy comes from the results it delivers. It is made to seem that political choice merely comprises two options: on the one hand, nationalist populism and on the other European technocracy made up of depoliticised experts – and that between these two options, European political life is just about diplomatic negotiations between the heads of State and government, with all negative effects this perception implies in terms of accountability and legitimacy. And yet in both cases the idea conveyed is that there is no functioning system for political representation, which is dangerous! A situation like this should lead us to consider

popular sovereignty at Union level, which enables expression via a parliamentary framework. The vital thing here is the establishment and the visible demonstration of how the institution works so that people can take part in the European democratic system directly – via a system that is clear and easy to interpret, so that they legitimately feel that they are exercising their political influence.

Such increased politicisation of the European institutions should help the latter to rely more on a democratic mandate and to make the way they operate more grounded in partisan approach. This is a tricky direction to take, but if we insist on avoiding it we might not be able to avoid derailing completely. This involves a significant rebalancing with the culture of consensus that dominates at European level, the introduction of a majority/opposition polarisation and the entry of the expert into the political arena, without this necessarily leading to federalism. Indeed, politicising European decision-making does not mean providing it sovereignty to the detriment of the States[5].

From the point of view of method, it is striking to note that since the start of the crisis, thought given to the reforms to be introduced at European level are most often restricted to the euro zone. But limiting reform of the Union just to the euro zone alone (which raises a series of issues), should not be a prerequisite but only a possible "plan B". Hence debate on this point should be led by the following principles:

- The base should always consist in a sincere attempt to move forward as 28 (27, post-Brexit).
- If this bid leads to an impossible stalemate, everything should be done to introduce the measure in question within the widest perimeter of Member States as possible; from this standpoint, the euro zone is just one possibility amongst others.

This is how the Union moved forward on the Treaty on Stability, Coordination and Governance with 25 out of the 27[6] joining. Falling automatically back

4. By definition in regard to any serious subject European action obliges some or all national leaders to leave behind their strict national mandate to a certain degree. But once removed from the national mandate, where does the democratic legitimacy of their action lie? If there is a "democratic deficit" in the EU, this is where it lies.

5. Cf. the internal development in the number of Member States (France, Poland, Czech Republic and Slovakia for example) which undertook regionalisation via the introduction of regions that have elected assemblies and which now have a undeniably political representation ; without this leading to the federalisation of their country with the regions remaining political but extremely distant – due to their competences notably – of what we might call federal bodies such as the German Länder and the Belgian communities.

6. The two States which refused to sign the TSCG being the UK and the Czech Republic.

to the euro zone would have led to a sub-optimal solution, which would have also led to additional tension and frustration within the Union. Similarly, the Permanent Structured Cooperation in Defence was initially just the initiative of a few, and now finally includes 25 Member States.

This is why this paper advocates measures to adopt at the Union level. Implementation at the euro zone level alone (or via enhanced cooperation, supported by a differently defined group of Member States) should only occur if the specific solidarity of the Member States involved enables progress in areas that the other Member States do not favour.

Finally, all of the proposals that follow are ambitious, and a priori difficult to accept for all Member States or at least for a good number of them. But they are no less a coherent, realistic agenda, as:

- They require no Treaty changes: where the Treaties remain sufficiently vague, these proposals aim to establish institutional practice implemented by the greatest number of States as possible, in anticipation of a possible modification of the Treaties that would codify this practice. Therefore, it will contribute to create a kind of “constitutional convention”;
- The method of their implementation is based on two factors: initiating the movement with at least some of the Member States; counting on peer pressure between Member States to increase progressively the number of those who comply - in the best scenario - to achieve the general spread of the custom at Union level;
- Their implementation can be progressive and can start with a more or less limited number of Member States;
- They form a clear and concrete agenda for the supporters of the Union’s political deepening at national level: it is possible put pressure on each government individually because the usual excuse “in any case this Member State or another does not want it” no longer works.

2. WHAT IS TO BE DONE?

Proposal 0: the President of the Commission must be the leader of a parliamentary majority and the representative (appointed ahead of time) of the political group that wins the greatest number of seats in the European Parliament in the European elections.

We have called this “proposal 0” because this interpretation of article 17.7 of the TEU seemed to be established - with the election of Jean-Claude Juncker as head of the European Commission in 2014. This said, we shall have to wait until 2019 to see if this manner of proceeding has become a precedent to be respected by all of the players in the institutional system and signs are growing that this might not be the case.

However, the upholding of this principle, as well as improvements in the methods used for its implementation, to foster its acceptance by the European electorate, is the inevitable point of departure for any programme that aims to politicise the functioning of the European Union. And yet, since the Treaties are ambiguous on this point, this *acquis* remains fragile. Indeed, the European political parties have to play the game and the European Parliament has to be able to assert itself in the face of the heads of State and government assembled in the European Parliament, who may – as it was the case in 2014 – want to try and adhere to a minimalist interpretation of the said article[7] whereby the choice of the President of the Commission must be the result of a diplomatic negotiation between the heads of State and government “taking into consideration the elections on the European Parliament.”

But even if this measure becomes the norm, it will not be enough.

The number of States required to make this measure possible: the qualified majority of the European Council.

7. As Jean-Claude Juncker said in his speech on the State of the Union on 13th September 2017: “Whoever wants to strengthen European democracy cannot accept that democratic progress comprising the innovation of the lead candidates – “Spitzenkandidaten” – would not to be renewed”.

Proposal No.1: merger of the post of President of the Commission and the President of the European Council

The Lisbon Treaty does not rule out this scenario in the future: the European Council would just have to decide to appoint the same person for two posts, which would make it possible to substitute the present risk of competition in the system, for greater coherence. It was to open a path in this direction that the ban on the accumulation of a national mandate, but not with another European mandate, was provided for in the draft constitutional treaty by the Convention on the Future of Europe – and this measure was retained in the Lisbon Treaty. This would be advantageous for the following reasons:

- It would prevent rivalry that is potentially damaging to the efficiency and legibility of the Union's work;
- It would help the Union to speak with one voice;
- It would create a post invested with a strong and double legitimacy, both from the democratic and the intergovernmental manner;
- It would simplify the European institutional structure and would embody it better, which undoubtedly is a necessary prerequisite for greater identification (whether this is positive or negative) between the citizens and the Union.

Using this option would mean finally giving a major political role to the President of the Commission, who would accumulate community and governmental legitimacy and who would be politically accountable to the European Parliament.

A modification of this nature requires no changes to the Treaties. An inter-institutional agreement would be enough[8] .

This single president would be elected by indirect universal suffrage according to the model in force in most Member States of the European Union (appointment by parliament).

With Treaties as they stand, the European Council can take the step to put forward as president of the Commission the candidate presented by the party that wins the European elections (cf. proposal 0) and then elect as president of the Council, the president of the European Commission[9] .

The number of States required to make this measure possible: the qualified majority of the European Council (+agreement with the European Parliament).

Proposal No.2: introducing a "ticket" system to appoint the President of the Commission/ European Council, the President of the Eurogroup and the High Representative of the Union for Foreign Affairs and the Security Policy.

At present, the system of political balance (therefore of consensus) is privileged, to the detriment of the coherence of the political line of the European institutions, their legibility and the logic of alternative choices.

This would mean major stakeholders in the interinstitutional system (Member States, political groups in the European Parliament, national and European political parties) agreeing that during the European elections and during the appointment procedures of the posts in question they would self-limit their choice, respecting a system of politically coherent "tickets" which compete in the European electoral campaign.

The number of States required to make the measure possible: the qualified majority (+ agreement with the political parties at national and European level).

Proposal No.3: allow the President of the European Commission to build a politically coherent team.

To strengthen the Commission's democratic accountability, the political legibility of its action by Europe's citizens and the emergence of a true system of alternating political power at the top of

8. An interinstitutional agreement is an act adopted jointly by the EU's institutions in their area of competence, whereby they regulate the means of their cooperation or commit to respecting the basic rules. The interinstitutional agreements are not born of the practical need tested by the institutions to specify certain measures in the treaties which regard them, in order to avoid disputes and to adjust their respective competences. Since they were not provided for originally in the treaties they were formally introduced by the Lisbon Treaty in article 295 of the Treaty on the Functioning of the European Union.

9. The President of the European Commission, Jean-Claude Juncker, recently supported this proposal; cf. speech on the State of the Union 2017, op. cit.

the Union, a necessary base for the democratic process, the future President of the Commission must be able to choose a more politically coherent college.

This means convincing the Member States not to put forward just one name for the post of President of the Commission, but for example a list of three personalities, each being chosen by one of the three main parliamentary groups at national level, in agreement with the head of government, so that the latter is not obliged to put forward names that might seem unacceptable to him.

The number of States required to make the measure possible: just one State can start to use this method.

Proposal No.4: in anticipation for the implementation of proposal number one, reforming the procedure to appoint the President of the European Council.

The appointment of H. van Rompuy, and that of D. Tusk took place in a totally opaque manner and without the slightest public debate accessible to citizens. As long as the appointment of the holder of this post does not develop towards the merger of the Presidency of the Commission, we have to move towards a procedure that makes it a high point in European political debate:

- By demanding a true act of candidacy, including a clear political programme of each candidate, ruling out the possibility for a personality to be able to hold this post without this prerequisite;
- By organising public hearings and debate between the candidates;
- By making the debate and the vote of the European Council on this issue public.

The number of States required to make this measure possible: the qualified majority of the European Council (even the simple majority, given the fact that it is a decision of procedure). Incidentally, a simple blocking minority can demand an act of application by clearly declaring that it will automatically be against any candidate that does not comply with this.

Proposal No5: synchronisation of national electoral cycles to foster European political dynamic at the institutions' intergovernmental level.

Since the Council is still the main player in the European decision-making process, work that aims to increase the political legibility and accountability of the Union's decisions is greatly weakened by the relative instability of the composition of the Council as the national executives are renewed. Without calling for a perfect synchronisation of national elections (which would suppose, for example the Member States' giving up the possibility of convening snap elections, which is obviously unacceptable), progress can be made in this direction, fostering greater political stability of the Council, therefore greater predictability of the Union's action. If the general election dates in a number of Member States were to be -more or less - the same in the middle of the European Parliament's mandate, this would enable the consolidation or sanction of the European majority in office, which would strengthen the political accountability of the European organisations. Moreover, this kind of development would help strengthen European themes in national electoral campaigns and the emergence of transnational political dynamics, which in turn would foster the emergence of true European citizenship.

We should note that this kind of development would match a trend that has been visible for about the last fifteen years, i.e. increasing interest in elections in a Member State not only on the part of the political leaders, but also more generally public opinion in other States. This development is a logical reflection of the increasing interdependence between the Member States. From this point of view, one of the effects of the repeated crises of the last ten years is that they have favoured a form of Europeanisation of national public spaces, as seen notably in the increasing visibility of European issues in national political spaces and the presence of European political personalities in national political spaces. In France, Germany and Slovakia never have the Greek elections been observed as much, because never before were

the results clearly national but also European, since the major challenge was the survival of the euro zone itself. Hence the Union's political life is turning into a permanent expectation of the next national election: the Union went into slow motion in expectation of the French presidential election, but as soon as this was over, attention turned to the German elections, then to those in Italy. This is leading to a great loss of time and political energy and is even condemning the Union to a kind of semi- permanent state of paralysis. The number of States required to make the measure possible: at least two; of course, it would be an extremely strong sign if for example Germany and France opted for such a rapprochement of their national political life.

Proposition No 6: reform the electoral system in the election of the European Parliament.

Undoubtedly this is the most difficult measure to implement, because it requires the unanimity of the Member States (and a majority in Parliament). Hence, we shall not develop this point here. However, it is clear that to strengthen the dynamic of politicising the European Union an electoral mode is required that would strengthen the majority (whilst retaining the strong representativeness of the European Parliament – the path to explore undoubtedly being that of a "majority bonus" to the winning political group) which would enable and even foster the constitution of supranational lists.

The debate over the future of the seats freed up by the British MEPs opens an extremely interesting path in this regard. The approach in the shape of a majority bonus matches one of the main arguments put forward by those who are against the distribution of seats, in part or totally, of this quota of 73 seats, to a transnational list system. Indeed, if only some MEPs from a transnational list are elected the system would undoubtedly favour the most populous States. However, if all of the candidates from a majority list are elected, it would be enough to guarantee fair representation of all of the States on each list.

Moreover, the idea of electing a transnational list alongside the 27 national lists may settle several issues:

- There is no danger of it unpredictably upsetting the distribution of seats within the European Parliament set by the European Council in virtue of article 14.2TUE.
- It enables the introduction of the "Spitzenkandidat" in the electoral system (this is problematic if he/she stands in one State only).
- It improves the governability of the Union by facilitating the creation of a majority in the European Parliament.
- It would not be necessary to use the two-vote system: each national list would previously declare which transnational list they would be supporting; by adding the number of votes won by all of the national lists supporting the same transnational list, an overall score for the latter would be achieved.

The number of States required to make the measure possible: unanimity (cf. art. 14 TEU and 223 TFEU).

Proposal No7: defining an opposition status within the European Parliament

Opposite the President of the Commission, the leader of a parliamentary majority, an opposition leader must emerge in a clear and understandable way for the citizens. Hence, every MEP would be able to submit an alternative motion to the political programme presented by the President of the Commission to the vote, and the person whose motion wins the greatest number of votes would become the opposition leader, enjoying a certain number of rights, in terms of speaking time, the means provided to him etc... thereby turning this person into a kind of privileged opponent of the President of the Commission and the probable leading challenger in the following elections.

In the event of proposal No2 being implemented it would be wise to adopt the custom whereby the post of the President of the Parliament would be granted to the opposition (without the latter being

the same person as the leader of the opposition). The number of States required to make this measure possible: it does not depend on the Member States. Work has to be undertaken with the national and European political parties and with political groups within the European Parliament.

Proposal No8: as long as lists are defined at national level, encouraging national political parties to adopt binding rules regarding the selection of the candidates.

The low esteem that certain MEPs (in certain Member States in particular) seem to have for the European mandate also damages the efficacy and legitimacy of the European Parliament. It would therefore be highly desirable for the national parties that put the lists together to demand a certain number of commitments on the part of each candidate which are publicly expressed on honour:

- Adopting a distribution key between those standing for a first, second or third consecutive European mandate, so that there is a balance between continuity and renewal in the European Parliament;
- Non-accumulation of a European mandate with any other type of electoral mandate;
- A code of good conduct regarding effective participation in the Parliament's work;
- Promise not to stand for a national mandate during the European legislature (and to resign immediately from the European mandate in the event of an MEP not keeping this promise if he stands in a national election, before knowing the election result);

The parties might commit publicly not to put a candidate forward in the next elections if he/she had infringed one of these commitments.

The number of States required to make this measure possible: this does not depend on the Member States. Work has to be undertaken with the national and European political parties.

Proposal No9: creating a system to finance the European political parties that would encourage

the promotion of true European political dynamics, thereby contributing to the emergence of a European public space.

The major share of political communication lies in the hands of national political parties, which concentrate most of their financial means, whether this be public or private, or in some countries, via political foundations. In this context it is not surprising that campaigns remain profoundly national and that European political parties remain unknown to the man in the street.

A financing system for the political parties has to be designed and especially European electoral campaigns that allocate the means on the basis of strict conditionality requiring the undeniably transnational, European nature of the work being financed. The development of European political foundations with a strong financial base would be more than welcome.

The number of States required to make this measure possible: a qualified majority in the Council in agreement with the majority in the European Parliament (cf. art. 224 TFEU).

Proposal No10: starting quite simply "to do politics"

All of the previously mentioned measures will serve to little purpose if they are not supported by a radical change in attitude by the European political staff who must start "to do politics" in the widest and most basic sense of the term, by making the European political space visible and by investing national political spaces with dynamism. The commissioners and MEPs must become inevitable players in national debate, by asserting themselves in the media, by entering parliamentary debates, and by responding in the strongest manner possible to those who attack the Union.

This requires rethinking the organisation of their teams, defining European political strategies, reviewing work with the media. The implementation of proposal No6 would help: MEPs elected on a transnational list would naturally form the close

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guard of the President of the Commission and his political spokespeople, who would have a high media profile in the 27 national political arenas.

The implementation of these 10 proposals would herald a final break with functionalism, comprising the reduction of the Union's legitimacy to the simple a posteriori assessment of the results produced, thereby opening the way to the birth of a truly political Union, whose legitimacy would be based on the fact that the decisions taken, and the orientation of public policies would be the result of majority choices made by the citizens.

It would be vain to expect this to be a linear, fast transformation: it will simply be progressive and may encounter more than one stumbling-block, but this will be the price of a durable solution to the confidence crisis which the European Union now faces.

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