

European issues

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Governance of the European Union: changing approaches without changing the treaties

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A free proposal for reflection on the future of the Union

The European Union has become part of the political landscape. Within the nations of the continent, integration is no longer criticised in principle, but it is so now in its conditions. The Union has established itself on paper. It must prove itself in reality. Yet its effectiveness in action is regularly challenged^[1].

Thus, with regard to the fight against the Covid-19 pandemic, the Commission has seen the main criticisms of slowness, bureaucracy and even lack of transparency focused on the European institutions, arguments which were already being levelled at it with regard to other policies such as competition or trade.

This is the paradox of a European construction that is about to celebrate its 70th anniversary. It was on 18 April 1951 that the first European treaty was signed, the one establishing the European Coal and Steel Community. As it has become more and more accepted, it has been increasingly questioned. Its methods of action must adapt to a new era.

Within the Member States, the end of the 20th century was marked by vigorous institutional debates on the goals of integration. Federation, confederation, federalism or union of nation States were the concepts that for a long time opposed Eurosceptics and supporters of federalism.

Circumstances have made them obsolete in the main. Under pressure, European States have increasingly

acted together to confront unprecedented crises. The emergence of new, fast-growing economic competitors has, for its part, changed the very foundations of certain policies.

The Member States have responded to these demands with new European steps forward. The public debt crisis gave rise to the embryo of a European Monetary Fund. The Common Diplomatic Service (EEAS) was created to bring national foreign policies closer together. Agencies, such as Europol, Eurojust and Frontex, were set up to meet new needs.

Finally, the euro has proved to be a consensual protector, with the European Central Bank deploying all its capacities and becoming the main federal economic policy tool for Europeans.

Opposition to the European Union has become marginal, minority and residual. Few Europeans contest the very principle of integration and criticism now focuses on individual policies or even the absence of common policies.

Despite appearances public opinion has overwhelmingly rejected Euroscepticism. Opponents, even when successful - the 2005 referendums in France and the Netherlands - have not benefited politically and have often been rejected in turn.

Brexit, its management and its aftermath have disavowed sovereignists. Nigel Farage's party, like the

[1] This article takes up a major part of the paper that was published in the "Schuman Report on Europe, the State of the Union", dir. Pascale Joannin, éditions Marie B, collection Lignes de repères, May 2021.

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Alternative für Deutschland in Germany, was founded against the European Union and the euro, but is now looking for other causes, such as immigration.

Finally, the prospect of coming to power on the anti-system populist wave has calmed the anti-European ardour of extremist parties. The Italian *Lega* is participating in Mario Draghi's government, as is the 5 Star Movement. The French *Rassemblement National* accepts the euro, accepts the Schengen agreements and uses the European Court of Human Rights as a reference!

Emmanuel Macron has shown that you can win a presidential election under the European flag. Because campaigning against Europe is the assurance of closing any chance of winning an election. The European Union has become part of political normality and has imposed itself on national political worlds.

Opinion polls are more favourable to European integration including during the crisis. However, they also express high expectations, which are often reflected in negative opinions. The European dimension is demanded and hoped for, but the common institutions are also strongly criticised.

A TRIAL OF EFFICIENCY

To further justify their failure to respect basic freedoms, authoritarian regimes in China, Russia or Turkey claim the relevance of their models by conducting a veritable smear campaign accusing the European Union of inefficiency.

This propaganda must be taken seriously because the perception of the results of European policies has a direct influence on the citizens' feeling of belonging, or even pride of belonging to Europe. The adaptability of European policies as well as the responsiveness of the common institutions are often brought into question.

Competition, trade policy, consumer preference, lack of industrial policy - these are all issues to which the Union seems to have responded with the same arguments since its creation. The Union's traditional policies are struggling to evolve, even though the Commission has begun to review them.

Much progress has been made in principle, but the implementation of European decisions remains a recurrent problem. Decision-making with 27 members has never been easy or straightforward, but it must be acknowledged that this difficulty has 'radiated' throughout the institutions.

The Council struggles to be ambitious and remains hampered by the unanimity rule. Above all, because of its essentially overly diplomatic functioning, it is burdened by a lack of trust between partners, who too often wish to focus solely on the defence of their "national interests" for reasons of domestic policy.

The Commission itself refrains from taking bold steps to avoid clashing head on with the Member States, whose administrations are responsible for the implementation of community decisions in the field. This caution reflects in its services and in the organisations which depend on it.

Finally, the Parliament sometimes pursues objectives that have more to do with the balance between the political families that make it up, or even with its wish to impose itself on the other institutions. Its procedures are cumbersome and slow, both in the complex legislative process that guarantees parliamentary expression and in its relations with other institutions.

All these factors weigh on the speed of the institutions' respond, to the extent that they are often interpreted as a failure, a lack of decision-making ability on the part of Europe.

The Union's governance has become a recurrent problem. Subject to criticism that is sometimes inspired by foreign campaigns, and not easily understood by the uninitiated, it has become the main obstacle to Europe's development.

CHANGING APPROACHES FIRST

The European institutions have been built up gradually, through eleven treaties that have transformed and expanded their competences. They are now at the limit of their powers. From a simple "community of law",

the Union has gradually become, with the agreement of the States, a common instrument of public policy, from which more and more is demanded. It has endeavoured to adapt to this, but its capacity for action remains limited by the treaties that one day will have to be updated. Everyone agrees on the difficulty of doing this, and which also is incompatible with emergency situations.

The lack of a feeling of belonging to a real Union among citizens is an obstacle to many European developments and therefore to possible modifications of its treaties. To overcome this, it might therefore be wiser to reverse the usual institutional reasoning and emphasise the perception of the effectiveness and visibility of European policies, thus opening the way for subsequent legal changes.

A more pragmatic objective might be to restore confidence through showing the efficacy of European action. A more operational division of tasks would certainly prove more effective.

The Union's external representation is shared between the Commission and the President of the European Council, the Treaty distinguishing between foreign policy and other policies. In reality, this division depends on the actors in office. José Manuel Barroso travelled the world, while Jean-Claude Juncker almost never went anywhere, with the exception of a successful negotiation with the American President. Just elected, Ursula von der Leyen went to the African Union headquarters with the laudable intention of marking the European priority for Africa. But the failure of her trip to Turkey on 6 April 2021 with Charles Michel shows that the Union exposes itself to risks when it is not able to ensure the unity of its external representation. Would it not be wiser for the President of the Council, assisted by the High Representative for the Common Foreign and Security Policy, to take on more of a representative role, while the Commission concentrates on the Union's internal affairs? Wouldn't the Member States feel more involved in these trips made on their behalf and would the Commission have a problem with this if the High Representative is also its Vice-President, sitting in the College and therefore having its services and resources at its disposal?

Inter-institutional relations deserve a long explanation. The Parliament has gradually imposed a genuine European constitutional right outside the treaties through inter-institutional agreements negotiated with the Commission after each European election. It has thus conquered exorbitant rights over the Commissioners, such as the automatic and individual dismissal of those who no longer have its confidence. It draws some rather dramatic lessons from this in the famous 'hearings' prior to the appointment of Commissioners, which are sometimes politically motivated and often show little respect for the rights of the persons concerned.

The "trilogues", negotiations between the Parliament, the Council and the Commission, deserve some in-depth consideration. Rather than holding difficult three-way discussions, would it not be more effective for the European legislative power to agree on a text first, before deliberating with the Commission, which is the only one with the initiative to propose such a text?

The Parliament should also pay more attention to its own representativeness. The Treaty stipulates that it shall propose to the Council, before each general election, a composition which takes account of the principle of degressive proportionality, i.e. proportionality tempered by the assurance that each State will send at least six Members to Parliament, and the constraint that the largest States may not designate more than ninety-six Members. However, to obtain a consensus within an assembly where the smallest are over-represented, Parliament has never had the wisdom to suggest any real increase in the representation of the large States. Its distorted representativeness leads it to adopt positions that are not in line with the majority of European citizens. Its legitimacy is also affected and contested, notably by the German Constitutional Court, and it also struggles to establish itself in the minds of Europeans.

Finally, the independence of the institutions, which is claimed by each of them, is not really put into practice. It is statutory for the Central Bank, the Court of Justice and the Court of Auditors, and this is not open to debate. It could be extended to the Common Diplomatic Service (EEAS), to certain executive agencies, and even to the

Anti-Fraud Office (OLAF), which is currently only one of the Commission's services and could constitute, with the new European Public Prosecutor, a powerful body in terms of controlling Community funds.

The common European institutions must learn a more systematic distribution of competences and powers. This is particularly true of the Commission, whose tendency from the outset has been to concentrate all competences in the name of the necessary federalisation of certain policies. This attitude slows down the devolution of competences at European level; it "angers" the States and slows down the development of common tools.

This is especially so in terms of foreign policy. The High Representative is supposed to have the upper hand in external relations. He is appointed by the Member States and sits as a Vice-President of the Commission, but six other members of the College deal with international issues and do not always report to him (International Partnerships, Neighbourhood and Enlargement, Crisis Management, Humanitarian Aid, Security and Defence, Trade).

The Commission retains control over the appropriations, which are very important for development aid and humanitarian action - but it also controls the management of diplomatic personnel. However, there can be no strong European presence on the international scene without considering development aid, humanitarian aid and international policy guidelines in foreign policy, in conjunction with the Member States. Without the latter, the Common Foreign Policy will always be in stalemate; without the mobilisation of all Community resources, diplomatic action, including that of the Member States, will remain deprived of the strengths it needs. The time has come for a more open reflection that is less "constrained" by the usual Brussels responses. Wouldn't a more independent common diplomatic service be more effective?

DELEGATION, SIMPLIFICATION AND COMMUNICATION

A study by the European Parliament's Research Service, published in May 2020[2], highlights all the unused

or underused resources of the European treaties. From the fight against terrorism to European health, this document provides the existing legal bases on which common actions could be developed to respond concretely to current needs. Admittedly, many of these innovations would require legislative decisions or the unanimous agreement of the Member States and are therefore complex to implement. However, many of them appear to be quick and easy to implement, from decisions to strengthen certain administrative capacities to targeting specific funding. Furthermore, it is clear that bridging clauses, those provisions which allow for a unanimous decision to be taken by qualified majority in areas where unanimous agreement is normally required, are insufficiently used. It might be possible to make more use of them in crises, when urgency makes it easier to reach a consensus.

Three concepts could embody even more innovative practices: delegation, simplification and communication.

Full and genuine trust between Member States must be restored through permanent political dialogue that diplomatic tools have somewhat frozen via incessant and complex negotiations. The European Council must regain its true role as a driving force – and it should not rely too often on diplomacy for the implementation of its decisions. We need to find forums where the heads of State and government can talk about foresight, policy and major orientations. They must also be able to confide in each other about their internal constraints and data.

Governments must then find the means, each according to their specificities and constitutional constraints, to give their European policies more solid national roots. Perhaps national representatives should be more closely involved, as is already the case in some Member States. With strengthened confidence, unused Treaty provisions could be drawn upon.

This is the case, for example, with the delegation of Article 42 of the Treaty on European Union, which the Council can give to a group of Member States to carry out a mission on the Union's behalf. This facility has never been used, although the facts show the need

[2] Étienne Bassot Research service for MEPs 651.934 – May 2020

for it. France intervened militarily in the Sahel and was supported by several Member States. This intervention led to the creation of an EU mission to support and train local armies. Germany, through the action of its Chancellor, took the lead in negotiating with Turkey at the height of the migratory crisis and in initiating a dialogue. It did the same with China by concluding an investment protection agreement. NATO's reassurance missions in the Baltic and Polish areas could also be delegated to participating Member States.

If the European Union is indeed an addition of the strengths and qualities of the States that make it up, the two articles of the Treaty that organise this form of delegation should finally be used. Every Member State of the Union has a particularity on the international scene. Is it not time to use these qualities, which are numerous and often very specific, to give a mandate to one or other of them to represent the Union, for example in international bodies, or even to act on its behalf? Could such a division of tasks not be organised more systematically, anticipating a de facto evolution that has already begun?

The principle of delegation, which requires trust, could also be applied to other institutions. Parliament itself should accept that one or other of its committees can exercise control that escapes it today. Is it not shocking that its totally legitimate request to know which contracts had been signed by the Commission with the major laboratories to finance and acquire vaccines was only belatedly accepted by the Commission, under shameful conditions - no copies, reading in a secure room - and very partially satisfied by the communication of truncated and smudged documents? As in all parliaments, a Commission could have exercised parliamentary control on behalf of the entire Assembly, which is justified by its human and budgetary implications.

The same applies to the Commission, which intends to monitor closely the exercise of European competences, even when they do not fall within its remit. How many heads of mission have been surprised by the fussy controls of its services when they were far away in difficult, often dangerous terrain that would

have justified greater trust and room for manoeuvre, obviously compensated by the obligation to be accountable?

We might also raise the issue of the governance of the six executive agencies, which depend on the Commission and which are in fact decentralised services.

The 37 decentralised agencies, which are more autonomous and on whose boards the Member States and the Commission are represented, should be placed under the control of the European Parliament, which is not even represented on their boards today.

Accepted and orderly delegations are much better than dislocations conceded under the weight of circumstances. The European institutions must accept the principle of delegation. This will probably require regulatory or legislative adjustments. But daily practice can accompany and anticipate inevitable developments towards more autonomy and more ex-post controls.

SIMPLIFICATION

The complexity of European texts is matched only by the difficulty of adopting them. The Member States have long had different legal traditions and immediate national interests are not always identical; the European Parliament is increasingly keen to make its mark; and translations into 24 official languages do not make the job any easier. This affects European texts. They are complicated. Directives are addressed to the Member States, which are responsible for transposing them into national law. They are therefore intended for experts responsible for implementing them. But the Union is now increasingly legislating by means of regulations, which are directly applicable within the Member States and therefore enforceable against citizens. These regulations can only really be understood with a certain expertise in European legislation. Shouldn't we start a real codification process sooner or later?

Moreover, the procedures for awarding contracts are long, complex and often costly. Moreover, they run counter to the principle of preference practised by all States on all continents: across the world public

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contracts financed by taxpayers are reserved, with some exceptions, for national companies. This is not the case with money from the European budget.

The recovery plan decided to face the health crisis could be an opportunity to favour European companies more, thus contributing to the support of the economy. This practice should be extended to other EU budget expenditure. How better to explain to citizens that Europeans form a community than by avoiding, for example, driving to Africa in Asian vehicles or by refraining from systematically calling on large British or American firms for auditing operations, as is unfortunately the case today? The symbolic dimension of the use of European public money is part of the conquest of a sense of belonging.

COMMUNICATION

For a long time, the European institutions were forbidden by the Member States to address citizens directly. The increase in the number of European policies and decisions calls for a real overhaul of the institutions' communication policy. Its content and methods seem largely obsolete. It gives people the impression that it is geared more towards governments than towards citizens.

A real revolution is needed here. The most active commissioners are generally those who take care, as politicians, to talk about their work and who do not entrust anyone with the task of explaining what they do. This rule should be imposed on all commissioners.

Communication content must also change. It is no longer about convincing people of the added value of the European dimension, which is now obvious to most Europeans. It is necessary to explain the reasons for and the means of common policies, to teach them in all transparency and to demonstrate in concrete terms the foresight of which the Union is capable. In the same way, we must not hesitate to recognise the errors and failures in the implementation of some of them. Arrogance is no longer an option in a society of transparency and compassion.

The European Union has made much more progress in recent years than it lets on. The health crisis has once again prompted it to react. Ultimately, its achievements in dealing with the pandemic will be praised whereas they were too quickly criticised. Europe will become the world's champion of vaccines in record time and at the lowest cost. Yet it failed to explain this during the crisis, as did the Member States.

Because Europeans have not been spared the regressive movement of withdrawal and the revival of nationalism. Demagogues are at work in all democracies; conspiracy theorists surf on people's anxieties; citizens' expectations have evolved faster than the institutions. Within the Union several Member States are playing their own game in a difficult context in which all have been caught off guard by the pandemic.

This period has seen violent criticism of the common institutions, accused of bureaucracy, slowness and even incompetence. Yet do we know that it is the responsibility of the Member States' administrations to implement European decisions taken by their political leaders?

Europe generally displays over-administration rather than agile management of affairs. We know how to administer. But do we really know how to manage, that is to say, how to tackle a problem by taking risks?

The European institutions are merely the heirs of the administration of the Member States, a sometimes-bizarre mixture of traditions, customs and rules. They have still not found the right tempo for communication and, through excessive caution; they often spoil the presentation of good decisions.

For all that, and contrary to the bad omens, the Union is less threatened now than ever before. Its existence is accepted, and the criticism levelled at its policies demonstrates better than anything else how much it is now part of the public landscape.

More worrying, however, is the decline in morale (accentuated by the Covid-19 pandemic) that is now affecting European populations. Protected as never before by public safety nets, whether financial, sanitary or regulatory, and at peace for more than seventy years, a situation that is unique in history, Europeans have been hit by the doldrums. Their morale is low, they see everything in black and especially the emergence of new competitors. They seem tired and fatalistic. The new race for supremacy between the United States and China worries them because they unconsciously understand the political stakes: individual freedom and human rights once again require a determined fight. Yet they have the means to impose the existence of a European model of society that enjoys greater independence, and which is prouder than it is now.

The European Union's crisis of maturity demonstrates its success, but also the importance of the challenges it faces. Efficiency conditions the feeling of belonging. Even before considering any treaty changes, the EU's institutional players can change their approach. New governance would already constitute considerable progress. In reality, the continent has every reason to be proud of the level of integration already achieved. It has claimed many successes of which it should not be ashamed. The world of 2021 also needs a Europe that asserts itself and assumes greater responsibility.

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