



**The Citizen and  
the European Elections**

  
**EGMONT**

# **The European Elections: What is at stake for the citizen?**

**An analysis of the EU's  
legitimacy and policy challenges**



**THE EUROPEAN ELECTIONS:  
WHAT IS AT STAKE FOR THE CITIZEN?**

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policy challenges**

  
**EGMONT** Royal Institute  
for International Relations



**ACADEMIA PRESS**

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The European Elections: What is at stake for the citizen? – An analysis of the EU’s legitimacy and policy challenges

Gent, Academia Press, 2014, 171 pp.

ISBN 978 90 382 2362 9  
D/2014/4804/148  
NUR 740  
U2226

Lay-out: proexsmaes.be

Copy-editing, and translation articles by Michel Theys and Eneko Landaburu: Xavier FONDER

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# Foreword

From 22 to 25 May 2014, citizens across the European Union will decide the shape of the next European Parliament. In the past, European elections often received little attention from the media or the wider public. In our view, this is a mistake: elections at the EU level matter. In light of the growing role of the European Parliament, the European elections are now even more important than they were before. Neglecting them is simply no longer an option.

In order to highlight the importance of the 2014 elections, the Egmont Institute launched a project called “The Citizen and the European Elections”. As part of this project, we asked a range of authors to discuss some of the key issues that the EU will face during the European Parliament’s next term. This publication provides the collection of these various contributions.

The publication starts with an introduction by Michel Theys (EuroMedia Services) on the role of the European Parliament. On several occasions over the last years, the Parliament has been the guardian of the European citizens’ rights and liberties. Yet, as is rightly pointed out, the next Parliament will have to reassert its role as the voice of European citizens at the heart of European decision-making.

Subsequently, this publication contains two sections that each deal with a specific set of challenges for the EU. A first section concerns the need to ensure the EU’s legitimacy. The EU is often criticised for being insufficiently in touch with the European citizen. As Eline Severs and Alexander Mattelaer (VUB) explain in their article, this challenge is not limited to the EU alone; democracies worldwide are faced with the need of finding a narrative that legitimises their actions.

In the remainder of the section on legitimacy, three authors each discuss a particular way through which the EU might improve its connexion with the citizen. Pierre Defraigne (Madariaga-College of Europe Foundation) focuses on the big picture, by arguing that the EU needs a new common project or – as he puts it – a “commonality of destiny”. In the subsequent article, Philippe de Schoutheete (Egmont) discusses possible improvements to the EU’s institutional functioning. If properly timed and executed, these reforms would contribute to a more legitimate EU. Xavier Vanden Bosch (Egmont) concludes the section by focusing on the role that national parliaments can play in European democracy. He reviews the way in which national parliaments in Belgium deal with EU affairs, and provides recommendations on how their involvement can be improved.

The issue of EU legitimacy is of vital importance in the European debate. Yet, it should not be the only focus of discussions preceding the European elections. Such an approach would be overly inward looking, as it hides the major policy choices that the EU will be faced with in the coming years. For this reason, the second section of this publication provides an analysis of the EU’s upcoming policy challenges.

A first article in this section on policy challenges is directly linked to the euro crisis. Xavier Vanden Bosch and Stijn Verhelst (Egmont) argue that the eurozone needs to be strengthened by a combination of solidarity and discipline before the post-crisis window of opportunity for reform closes. In the following article, Frank Vandembroucke (KUL) argues that Europe should become more focused on social policies. He discusses the characteristics of a European Social Union, which he sees as an ambitious, but necessary, complement to Europe’s economic and monetary integration.

Some of the EU’s other policy challenges transcend the European continent. This is the case for climate and energy policies, which are dealt with by Clémentine d’Oultremont (Egmont). She explains that the future European Parliament will have to work towards ensuring the sustainability, security and cost-competitiveness of Europe’s energy supply. Migration is another issue that by its very nature transcends borders. As is discussed by Corinne Balleix (Sciences Po), the EU Member States will have to collaborate amongst themselves and with other countries in order to provide an adequate response to Europe’s migration challenges. As she argues, more solidarity will be required if the EU is to succeed in achieving its goals.

The final article of this publication discusses the EU's role in the world, the importance of which is underlined by the turmoil in Ukraine. Eneko Landaburu (former DG European Commission) argues that, until now, the EU has not been able to strengthen its voice on the international scene. He argues that the EU does not need new instruments to achieve a stronger role for Europe. Rather, the Member States should put the existing instruments into practice and rethink some of their current approaches.

Our choice for a focus on the EU's legitimacy and policy challenges is for a large part inspired by the specific election context in Belgium. Two pervasive problems in other countries are much less present in Belgium. Due to compulsory voting, we should not fear high abstention rates from the Belgians. In addition, no eurosceptic party is expected to make substantial progress at the May vote. Instead, the European elections in Belgium face another danger: that of being eclipsed by the simultaneously held national and regional elections. To counter this risk, we have to raise awareness among Belgian citizens of the European elections and the decisions that will have to be taken during the next legislature.

A better understanding of the issues facing the EU is a key step in bringing the citizen closer to European integration. It is our hope that this publication – and the wider project – can contribute to meeting this goal.

On behalf of the Egmont Institute,

Marc Lepoivre, Director of the European Affairs Programme  
Stijn Verhelst, Senior Research Fellow



# Introduction

## *Twenty-eight national elections for a Parliament in constant evolution*

MICHEL THEYS

In the City, the citizen is king. At least theoretically. In the European City currently being built around twenty-eight national democracies, the citizen will soon be called upon, in May, to democratically elect his or her representative in the European Parliament for the next five years. Since the very first election of Members of the European Parliament by direct universal suffrage in 1979, spectacular progress has been made by the “European Economic Community” that we now all know as the European Union. And the powers vested in citizen representatives are equally impressive. But there is a real possibility that European citizens will turn their backs on the upcoming European elections like never before. Why?

Viviane Reding, whose term as Vice-President of the European Commission is about to end, is probably right to claim that “*the elections of the European Parliament matter more than those of national parliaments because their outcome will affect the future of an entire continent,*”<sup>1</sup> but convincing the citizens of that state of affairs will be no easy task. Evidently, convincing Belgian political party leaders and media officials will be just as hard.

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<sup>1</sup> 2014, l’année du choix pour l’Europe – Rubrique “débats d’Europe” de l’Agence Europe, bulletin n°10994 du samedi 14 janvier 2014.

However, more than ever the future of the Belgians and their children will be decided at the European level. Change will come from the Union, because no single Member State – not even mighty Germany or nuclear powers like France or the United Kingdom – can hope to go solo on the international scene. Against all odds, there is strength in unity, “l’union fait la force.”

At the European level, the Belgian people is well aware of this fact. The Autumn 2013 Eurobarometer<sup>2</sup> revealed that even after 5 years of crisis, 70% of them still identified as European Union citizens, a number well over the Union average of 59%. On the other hand, only 47% felt that their vote actually gives them a say, which isn’t so bad compared to the... 66% of Europeans that think the very opposite. Another study done at the request of the Commission<sup>3</sup> found that 73% of respondents felt a gain in influence with local and regional elections, a number that falls to 70% for national elections... and even worse, to 54% for European elections. Such a mindset is clearly not conducive to the enthusiastic exercise of electoral right. In countries where, unlike Belgium, voting is not compulsory, this could result in record-breaking abstention levels.

## The European Parliament at the service of the electorate

The European does not deserve this scorn. For two reasons.

Firstly, the Lisbon Treaty that came into force on the 1st December 2009 broadened the scope and increased the prerogatives of Members of the European Parliament (MEP) considerably. Therefore as the legislative arm of the European Union, the European Parliament became co-legislator in 90% of cases as opposed to 60% under the Treaty of Nice, and the number of fields falling under the purview of the ordinary legislative procedure that puts MEPs and ministers on an equal footing rose from 33 to 73, including the sensitive areas of Justice and Home Affairs (JHA). If anything, this proves that European citizens do have a say, through the representatives they will elect on 25 May. On that day, they will be the decision-makers, those that, as explained by Vice-President Viviane Reding, will affect tomorrow’s Europe: “*Voters can decide whether Europe should take a more social or a more market-oriented direction. Voters can decide whether the future majority in the European Parliament will favour opening Europe’s borders to immigration or build a Fortress Europe;*

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<sup>2</sup> Eurobaromètre 80. [http://ec.europa.eu/public\\_opinion/index\\_fr.htm](http://ec.europa.eu/public_opinion/index_fr.htm)

<sup>3</sup> Eurobaromètre Flash 373, mars 2013

*whether we are tough with the U.S. when it comes to data protection or genetically-modified organisms, or whether we will instead favour the economic benefits of free trade.*"<sup>4</sup>

Secondly, the truth is that the European Parliament makes generous use of the powers it was granted, most often in the interest of the individuals to which it is accountable: the European voters! "*The European Parliament is paying very close attention to the individual when making use of its prerogatives,*" argues Professor Josiane Auvre-Finck, Director of the Centre for the Study of European Organisations Law (CEDORE) from the Université Nice – Sophia Antipolis, in recognition of its "*constant concern*" for the increased protection of the individual.<sup>5</sup> There are many examples of this.

- ♦ For instance, the European Parliament argued at length for the Erasmus+ budget to be increased by 40% compared to last year : over 4 million students under the age of thirty will thus be able to go abroad to study or receive training between 2014 and 2020; the previous figure was 2.8 million students. In addition to this, MEPs put their political affiliations aside long enough to push through a soft loan mechanism enabling students of lesser means to earn a Master's degree abroad. Such an investment in education and youth is common sense, but the programme would not have been as successful had the European Council been alone to call the shots.
- ♦ In a similar spirit, last November, the Parliament overwhelmingly approved a directive draft designed to ensure that the boards of directors of publicly listed companies would aim to have 40% of women directors by 2020 (as opposed to 17% at present). Even better, the MEPs chose to add the "*exclusion from all public invitations to tender*" to the list of sanctions against uncooperative companies devised by the Commission. Could any female citizens of the EU disagree with this show of parliamentary assertiveness?

Furthermore, the European Parliament is working on an overall strategy to ensure a high degree of consumer protection:

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<sup>4</sup> 2014, l'année du choix pour l'Europe – Rubrique "débat d'Europe" de l'Agence Europe, bulletin n°10994 du samedi 14 janvier 2014.

<sup>5</sup> Rapport introductif du texte du Traité de Lisbonne à son application – Dans "Le Parlement européen après l'entrée en vigueur du Traité de Lisbonne", sous la direction de Josianne Auvre-Finck. Editions Larcier, 2013.

- ♦ Starting tomorrow, you will be able to buy a charger for your smartphone regardless of its make. Thanks to European representatives that proved more demanding than even the Commission, the maximum cost of a call abroad from a mobile phone went from €0.35 per minute to €0.24 in 2013, and will fall to €0.19 on 1 July 2014 to coincide with the start of the holidays for tens of millions of citizens. And it doesn't stop here: from 2015 onwards and if MEPs have their way, roaming charges will be scrapped. Who could complain about that?
- ♦ A desire to strengthen EU tobacco law led to a revision process during which the electronic cigarette was discussed extensively. In order to promote their spread, the Parliament has authorised their sale from specialised stores and tobacco sellers, in contradiction with the proposal of the Commission and against the initial wishes of Member States, who wished to restrict their sale to pharmacies. The resulting health gains are undeniable.

Even more so than as a consumer, pampered and cared for extensively, it was the European citizen as an individual bearer of a set of rights and fundamental rights that stood at the very heart of all the work done by the European Parliament during its previous legislative term. Time and again, European representatives made it very clear that the current obsession with security would not infringe freely on citizens' rights to benefit from the highest degree of protection for their personal data. They requested the close examination of agreements made with the United States for the exchange of data, such as that of airline passengers for instance, to make sure that they are still relevant and justified in the current context. After an unambiguous vote in July 2012, the Parliament chose to discard the Anti-Counterfeiting Trade Agreement (ACTA) that would have forced Internet access providers to share the personal data of individuals found guilty of illegally downloading intellectual property with the copyright holders outside of any legal framework

In terms of equity, the restrictive influence of the European Parliament over the supervision of bankers' bonuses should also be underlined in the larger context of the consolidation and stabilisation of banks. It succeeded at making these bonuses the result of long-term performance rather than their short-term benefits.

All of these elements underline the fact that European citizens can tip the parliamentary balance one way or another. Therefore, why are they once again willing to take the risk of not showing up in sufficient numbers for their next opportunity to cast a ballot? Why choose to express their disagreements with policies that have nothing to do with how the future of Europe is built? This question cannot be answered unequivocally, but there are clues we can follow to more or less identify the various facets of the reasons behind the democratic malaise that the European Union is going through.

## The European project is a work in progress

First off, there is no denying that the European project is still a work in progress and quite outlandish from the point of view of classical representative democracy. Why? Because in the European Union the representative of the sovereign-citizen must often compromise, and are sometimes left to talk away without any influence on the decision-makers.

For example, let us look at the February 2013 European Council that dealt with the Multiannual Financial Framework for 2014-2020,<sup>6</sup> a set of restrictive measures that will affect the European Union for the upcoming 7-year period. A few days later, Alain Duhamel would comment that *“on this occasion, we witnessed egotistical national outbursts of uncommon ferocity and the decline of any hope for solidarity,”* and he came to the conclusion that *“euroscepticism won this round. The Europe of 27 goes down the path of a simple free trade area just like London had dreamed of all along. The United Kingdom more than ever combines the world’s best diplomacy with the least European mindset of the Northern Hemisphere.”*<sup>6</sup> Usually a very moderate figure, French MEP Alain Lamassoure, Chairman of the Parliament’s Committee on Budgets, also intervened: *“We are dealing with twenty-seven Mrs Thatcher around the table: each and every one of them is obsessed with getting something out of the European budget whilst at the same time contributing as little as possible to it.”*<sup>7</sup> Is this really how the interests of 500 million European citizens are best served? Is this how general interest will triumph?

Naturally, a large majority of MEPs are opposed to this ruling and worked until the month of November to remedy the situation as much as possible.

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<sup>6</sup> “Libération” du 14 février 2013

<sup>7</sup> “Le Monde” du 5 février 2013

Eventually they obtained that the seven-year plan – not even the USSR dared anything longer than five-year plans sniggered some of them – would be re-evaluated midway through to take into account the evolution of the economic context and to put a high-level working group in place tasked with finding a solution for the Union to return to “own resources” financing, freed from its dependence on national budgets. For the rest...

For the rest, nothing! Nothing because the financing system of the European Union remains, in the words of jurist Aymeric Potteau, “*the strict prerogative of the unanimous European Council and of the Member States that have to ratify the decision on own resources,*”<sup>8</sup> while the European Parliament is limited to providing an advisory opinion as per the Lisbon Treaty. In other words, the sovereign is made voiceless and disintegrates into twenty-eight state actors talking in its stead. In reality, the Parliament will only come to fill its role when it can share voting power on resources rather than just on how to spend them. It’s a long way off!

The truth is that citizens are not alone in their role of sovereign of the European City: they share this role with those that lead their respective States for the duration of their term and provided that they hold a majority in their parliament. Even the European Constitution dropped in 2005 by the French and Dutch people was not trying to hide this fact: whereas the Constitution of the United States as drawn up by the Philadelphia Convention in 1787 reads “*We, the people of the United States...*”, the European text read “*we, the representatives of the Members States*”. It’s not quite the same thing...

From this point of view, it matters little whether or not the measures taken to keep in check the multifaceted crisis that overwhelmed the Union after the subprime debacle were adequate. This is an issue of political relevance. The result is that the heads of state and government proved themselves capable of preventing the catastrophe. It’s also important to know whether or not the methods and procedures that lead to the adoption of these measures were fully respectful of the basic principles of democracy: were they or weren’t they democratically legitimate?

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<sup>8</sup> La mise en œuvre des nouvelles prérogatives budgétaires du Parlement européen – “Le Parlement européen après l’entrée en vigueur du Traité de Lisbonne”, sous la direction de Josianne Auvret-Finck. Editions Larcier, 2013.

In the eurozone, the crisis was so intense that European decision-makers had no choice but to equip themselves as quickly as possible with an arsenal of measures and countermeasures – Treaty on Stability, Coordination and Governance (TSCG), European Stability Mechanism (ESM), European Financial Stability Facility (EFSF), etc. – that they would have deemed completely strange or even out of place mere minutes before the crisis began. It took until the crisis gained in intensity for example in Greece, Ireland or Portugal for political wills to thaw. The start of... genuine economic governance in the European Union and the eurozone was delivered with the help of forceps. And often behind the closed doors of meeting rooms for the exclusive use of the members of the European Council.

As aptly observed by Yves Bertoncini, Director of “Notre Europe”, the think tank founded by Jacques Delors, “*the participants involved in the European Councils and the eurozone summits (...) became part of a crisis governance, subject to the unyielding scrutiny of the media that made it possible for observers and the public at large alike to grasp the interests and stakes at hand, despite the use of doublespeak by some heads of state.*”<sup>9</sup> The void of economic governance was filled in a hurry by heads of state and government. Evidently, there is no case to be made against this as democratically-speaking these Presidents and Prime Ministers possess the highest degree of legitimacy in their own countries at the national level. However, for many actors and observers of the European project this is a real issue.

This technocratic and intergovernmental management of the crisis was a boon for the strongest players amongst the European Council – and on the field, too. We owe Régis Debray for the accuracy of the following metaphor: “*If a concert calls for a conductor, with or without a podium – Prussia for the German Reich or Piedmont for Italian unity –, it’s only normal in these economy-driven times for Germany to be holding the baton.*”<sup>10</sup> This image makes sense, but it is dangerous; and it is utterly absurd in the European Union, lest we allow it to fatally regress.

Under pressure from the state of emergency and the balance of power within the European Council once community good manners are laid aside, and thus

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<sup>9</sup> Zone euro et démocratie(s) : un débat en trompe l’œil – Notre Europe / Institut Jacques Delors, *Policy Paper* n°94, 18 juillet 2013

<sup>10</sup> “Le Monde” du 16 mars 2013.

under the pressure exerted by the strongest Member State that is Germany, European leaders had no choice but to opt, gladly or not, for a federalism “tinged with ordoliberalism,” in the words of French economist Edwin Le Héron.<sup>11</sup> This mixture was fertile ground for discipline and austerity at the four corners of the European Union and led to the birth of the Troika. But are we certain that a policy that proved itself in one country, Germany in the present case, will be just as successful in other countries? Philosopher Jürgen Habermas thinks to the contrary that the policy being made to dominate Europe and defended by the (previous) Berlin government is a mistake for three reasons, the first two being the following: “*Firstly, Angela Merkel is unrelentingly pushing her own model onto other countries. As written by Chancellor Helmut Schmidt, she is squandering the trust that previous German governments spent half a century earning. Secondly, she is carried forward by the misguided belief that everything will be fine as long as countries respect the rules of the stability pact and she’s obsessed with sanctions.*”<sup>12</sup>

Consequently, the Europe of the European Council – and that of Germany in particular – has been giving the impression that it wants to impose a return to budgetary stability regardless of the cost to the citizens from countries “guilty” of slip-ups punished by the markets. From an economic standpoint, was this a sound strategy? Some doubt it.

From a psychological point of view, trying to impose this “*austeritarian Europe*” condemned by Nobel prize winner Paul Krugman has highly damaging consequences. First off because the responsibility of this burden was placed in its entirety on the shoulders of the countries guilty of having a lax budgetary stance. Within the “virtuous” countries (but who could forget that France... and indeed Germany were the first countries in the eurozone to take liberties with the rules set out by the Stability and Growth Pact (SGP), having escaped sanctions thanks only to their considerable influence?), citizens were led to believe, with the indirect help of national government and media officials, that they had to “*pay the bills for the extravagant lifestyle of the other Europeans*”<sup>13</sup>, in the perceptive – but sad – words of Fabian Amtenbrink from Erasmus University Rotterdam. And yet according to Paul De Grauwe, it’s the very

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<sup>11</sup> A quoi sert la Banque central européenne ? La Documentation française, collection “*Réflexe Europe / Débats*”, 2013.

<sup>12</sup> La constitution de l’Europe – Gallimard, collection “NRF essais”, 2012

<sup>13</sup> “*Empowerment and Disempowerment of the European Citizen*”, Niamh Nic Shuibhne et Eleanor Spaventa. Hart Publishing, 2012.

opposite: “*Fundamentally speaking, citizens from Northern Europe should be made aware that the crisis is the result of more than just the irresponsibility of Southern Europe and the accumulation of high external debts. It originates from Northern Europe and its boom years behaviour during which it supplied Southern countries with surplus banking credits without a moment’s thought. For each careless loan being requested by the South, there was a careless loaner ready to grant it in the North.*”<sup>14</sup>

Therefore it’s no surprise that it heralded a return to name-calling, to the point that even a thinker like Panagiotis Sotiris, who teaches social and political philosophy at the University of the Aegean, resorted to describing the “*reactionary mutation*” of the Union in those virulent words: “*Listen to the way they talk during those meetings of the Eurogroup or of European summits. That tone of voice is aggressive, arrogant, they speak as if they were granting themselves the power to impose diktats on society – going so far as to making fundamental changes to quality of life. Listen, for example, to the German Finance Minister suggesting that Greece should temporarily put democracy aside: this isn’t so different from neocolonialism.*”<sup>15</sup> It’s an understatement to say that Pandora’s box, which had been sealed by the Schuman Declaration six years after the end of the Second World War, has been reopened following the events of the European Council.

Once again, the way in which this policy was chosen matters: “*behind closed doors*”, like at the “*time of the Congress of Vienna, where national interests came first, and outside of any democratic control.*”<sup>16</sup> Even academic observers that tend to agree with the principle that, at the European Council and in the Union, some can be “more equal than others,” admit like Yves Bertoncini that “*the primacy of the Merkozy duo, at the expenses of the principle of formal equality between Member States of the EMU and the EU*” might have shocked some of them from a democratic point of view: “*The economic power, and thus the contribution capacity differentials (...), have indeed contributed to the legitimation of the variable weight of Member States in decisions about the use of the EFSF and the ESM. The emergence of the Franco-German duo and its domination of other heads of state and government, both in its form and substance,*

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<sup>14</sup> Des risques financiers aux risques sociaux et politiques dans la zone euro – “Bilan social de l’Union européenne de 2012”, sous la direction de David Natali et Bart Vanhercke. Europe Trade

<sup>15</sup> “Le Jeudi” du 23 février 2012

<sup>16</sup> Martin Schulz. Cité dans “Le Monde” du 9 mai 2013.

*shocked a lot of people, as it went against the normal behaviour at the European level, where actors strive to solve problems between countries by consensus.*<sup>17</sup>

Which brings us to the third mistake identified by Jürgen Habermas, who believes that the intergovernmental collaboration at the heart of Merkel's modus operandi has led to the "*hollowing out of the democratic process*," as this circumvention of national parliaments' financial laws is nothing short of a consecration of "*the unprecedented self-empowerment of the executive*."<sup>18</sup> To be absolutely clear, this state of affairs was translated by a journalist as the "*coup by the executive, that is by the European Council, and through it of the national executives*."<sup>19</sup> Is this statement insignificant because it is an exaggeration? Many will no doubt think so among those working to build a Union without undoing the sovereign prerogatives of the Member States. However, a doubt remains as evidenced by this question from MEP Sylvie Goulard: "*Who controls the European Council, this collective monarch who takes its decisions behind closed doors with no room for debate, no intention to be held to account, and who cannot be overthrown?*" In answer to this question from the French representative, grumbling journalist and federalist Jean-Pierre Gouzy would reply: "*The legitimization of its members at separate national elections that have barely anything to do with Europe are no longer enough*."<sup>20</sup> One cannot help but note that Yves Bertoncini is not denying the federalist's claim when he adds that it is "*at the heart of Member States that the democratic deficit*" in terms of the governance of the Economic and Monetary Union, "*can be felt most tangibly when numerous governments can take key decisions at the European level without being subjected to any kind of control or in-depth public scrutiny and debate*."<sup>21</sup>

## What can the European citizen do about this?

Because of these "opposing currents", the European citizen can react in two ways. The first one is unfortunately the most likely one: he will desert the ballot booth in May like he never had before, or he will cast his vote in favour of extremist parties, both to the right and to the left of the spectrum, as long as

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<sup>17</sup> Zone euro et démocratie(s) : un débat en trompe l'œil – Notre Europe / Institut Jacques Delors, *Policy Paper* n°94, 18 juillet 2013

<sup>18</sup> La constitution de l'Europe – Gallimard, collection "NRF essais", 2012

<sup>19</sup> *Bibliothèque européenne* de l'Agence Europe, n°10680/969, 4 septembre 2012

<sup>20</sup> Fedechoses... pour le fédéralisme, n°158, décembre 2012.

<sup>21</sup> Zone euro et démocratie(s) : un débat en trompe l'œil – Notre Europe / Institut Jacques Delors, *Policy Paper* n°94, 18 juillet 2013

they identify as eurospectic as a result of their nationalism, or even as completely europhobic. The analysis of a collective carried by Daniel Cohn-Bendit in anticipation of the last French presidential election is, in that respect, irrefutable: “*When part of the population is struck hard, when the majority feels vulnerable and confused, when the future is bleak, we embellish the past and feel safer when turning back upon ourselves; sovereignty is a comfort and being open is scary. And thus Europe is put at a distance. Populists from the right and the left rush into the vacuum and make an easy scapegoat out of Europe.*”<sup>22</sup> The demonstration is irrefutable, not even for Belgium, albeit to a lesser degree...

The second possible reaction would be for the citizen to rise against the tricks being played on the European project and to want to use his or her vote to remedy the flaws mentioned above. In the European City, things can indeed change if the citizen decides to truly take up its role of sovereign and to design the European Union it wants.

To that end, the sensible voting citizen could, for example, probe the heart of the candidates vying for the ballot to find out whether, once elected, they will carry on with the fight for the defence of the democratic principles that was consistently carried out by many of their predecessors during the legislative term about to end. “*Until now, the European representatives have played a useful role consisting in giving discussions and debates directions with a view to reorganize the EMU,*” as underlined by researcher Yves Bertoncini, immediately adding that: “*They were able to do it with the support of extensive reports and resolutions (...). The European representatives thus contributed to passing on the positions and expectations voiced by their electorate, but did so without the institutional power to impose their point of view on the main decision-makers*” of the Economic and Monetary Union.<sup>23</sup>

At the very least, the voting citizen should have the right to request of the man or woman that will represent him in the plenaries of Brussels and Strasbourg for the next five years the commitment to endeavour to “*make the European Council accountable to the European Parliament*” for all issues pertaining to the management of the eurozone in some way or other that still needs to be ascertained, as specified by Ambassador Philippe de Schoutheete, previously

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<sup>22</sup> “Le Monde” du 3 octobre 2012

<sup>23</sup> Zone euro et démocratie(s) : un débat en trompe l’œil – Notre Europe / Institut Jacques Delors, *Policy Paper* n°94, 18 juillet 2013

Belgium's permanent representative at the European Union, and Stéphane Micossi, reminding us that this will require the Treaty to be revised and that this will be no easy task.<sup>24</sup> They believe that the European Council should remain the main executive power of the Union, "*with the Commission playing a central role in the implementation of common policies rather than working to initiate and select them.*"<sup>25</sup> Very specifically, the budgetary guidelines to be respected by Member States in the framework of the European semester procedure should remain as a sole prerogative of heads of state and government under the parliamentary scrutiny – both national and European – that would need to be strengthened. It seems out of the question that the design of these guidelines could be left to any other institution than the European Council because it will place a heavy burden on governments and place them under threat of automatic sanctions: "*Asking of the European Parliament to deal directly with such constraints would turn it into a political matter, making the procedure less automatic, less predictable and therefore less credible,*"<sup>26</sup> conclude the Belgian diplomat and College of Europe professor.

This analysis is very perceptive and it is similar in spirit to the prevalent opinion found in the circles where Europe has been devised until now. A state of mind that is perfectly embodied in a couple of sentences from a recent report co-authored notably by Pierre de Boissieu, who worked as France's permanent representative to the European Union and as the Secretary-General of the Council, by Stephen Wall, who worked as the United Kingdom's permanent representative to the European Union, and by Antonio Vitorino, who was European Commissioner for Portugal:

*"The apparent logic, which would consist in progressively replacing national democracies with a hypothetical European democracy, can only end with failure. It's fanciful to think that a hybrid system can be transformed into a perfect and constitutionally rational construct. Democracy at the European level will have to coexist with the democratic procedures of each Member State, procedures at the local, regional and national level, and complement them. One should not*

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<sup>24</sup> On Political Union in Europe: The changing landscape of decision-making and political accountability – Centre for European Policy Studies, "*CEPS Essay*" n°4, 21 February 2013.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

*attempt to replace, but to establish pathways for communication and complementation between the various levels.”<sup>27</sup>*

Perfectly lucid, this point of view has been prevalent in Union since its very beginning. Nevertheless it is still being challenged by some because managing the common good that is the euro will be increasingly difficult in the context of national instructions in favour of state sovereignty and of democracies conceived and designed exclusively on the national level. As noted by economist Philippe Herzog who also worked as an MEP, *“the sovereignty of nation-states becomes a moon, an agent of obscurantism when we need to conceive a future to build together in Europe and the world.”<sup>28</sup>* Jean-Claude Juncker, long-serving Prime Minister of the Grand Duchy of Luxembourg and president of the Eurogroup, the gathering of Finance ministers from countries of the Eurozone, showed us the limits of this kind of political management when he declared: *“we know everything that needs to be done; what we don’t know is how to get reelected if we do it”* – which made Hugues de Jovenel raise the question whether *“our governing officials, in our democracies, are capable of having a real interest for issues pertaining to long term public interest”<sup>29</sup>...*

Against this background accusations were fired, such as the one from Mark Leonard and José I. Torreblanca, active members of the European Council on Foreign Relations: *“If by sovereignty we mean the capacity of citizens to choose what they want for their country, neither Northern nor Southern Europeans feel sovereign very often. A substantial part of democracy has disappeared from the national level, but has not been transferred to the European level.”<sup>30</sup>* This is the heart of the issue for more and more observers.

The more ambitious European voters, quite possibly dreamers and utopians in equal part, could also ask of the man or woman vying for their ballot whether he or she can agree to take action in favour of real European elections, freed of the shackles currently being kept in place by 28 national democracies, so that true European democracy can finally take flight. The picture painted by Mark Leonard and José I. Torreblanca might be a little grim and too inspired by

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<sup>27</sup> Refaire l’Europe: esquisse d’une politique – Synopia, septembre 2013.

<sup>28</sup> Europe, réveille-toi ! Editions Le Manuscrit, 2013.

<sup>29</sup> “Futuribles”, n°396, 2013.

<sup>30</sup> “Le Monde” du 25 avril 2013.

Goya's darker moments, but it does describe a reality that according to many, can no longer be ignored:

*“In a national political system that works properly, political parties should be able to express diverging points of view – and could even act as arbiters to help them find a consensus. But this is precisely what the European political system cannot do: because it does not have real parties, a real government and a public sphere, the European Union cannot compensate for the failings of national democracies. Instead of being a teeming heart for competing ideas, the Union finds itself sucked into a vicious circle where anti-European populism bumps into technocratic agreements between Member States scared by their own citizens.”*<sup>31</sup>

Until the 25 May, in Belgium, political parties will campaign around what is and will remain at the core of their profession: the federal level, and the regional level. Will the candidates for the European elections manage to make themselves heard about slightly different issues? Maybe slightly, but they will not be noticed by many. And if they are elected on the 25 May, they will soon learn that for five years they will be far removed from their party, much like European journalists are far removed from their editorial boards, so different are the preoccupations of national politics.

Consequently, the ambitious and romantic voting citizens could possibly ask of the men and women vying for their vote whether they are ready to fight for this very ballot to become identical in all Member States, governed by the same electoral process, if only to prevent the fourth representative on a list to be denied a seat after receiving more votes than the person in 3<sup>rd</sup> position if the party only has three seats, just because the hierarchy is decided internally. They could also ask these candidates if they are ready to fight during the upcoming legislature for European electoral campaigns to no longer be conducted by national parties but by European parties having filled and outgrown their currently empty husks, with real political programmes, conceived and approved in support of European public interests, shorn of the trappings and restrictions of national parties. Maybe the European citizen will ask of whomever can receive this ballot whether he or she will fight to make

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<sup>31</sup> “Le Monde” du 25 avril 2013.

the European Council take the results of the May election into account when choosing the next President of the Commission. These are all demands that, if met, would prevent the 2019 European elections from being robbed of their momentum by political eddies, all twenty-eight of them...

Will all of these demands ever produce real results? That remains to be seen, but they will at the very least add to the debate on democracy and birth life into a public European sphere that still remains largely absent today. In this fashion, it's not impossible that the sovereign citizen will eventually shake things up, create a new layer of genuine European democracy no longer held hostage by the national, regional, and local levels of democracy that it will nonetheless continue to cooperate with. This is the end for which it will have to fight, maybe for longer than a single legislature...



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# EU LEGITIMACY



# A Crisis of Democratic Legitimacy?

## *It's about Legitimation, Stupid!*

ELINE SEVERS & ALEXANDER MATTELAER

### **Abstract**

Are we witnessing a crisis of democratic legitimacy? While citizens may lose trust in political authorities, democratic principles and ideals continue to exercise considerable appeal. This article argues that this paradox must be understood as a crisis of legitimation. Research suggests that legitimacy is inherently subjective and must be constantly re-earned. Low levels of political trust can be explained as the result of the complexity of globalised yet fragmented societies. The present feeling of malaise calls for a redefinition of the relationship between citizens and the authorities by which they are ruled. If popular sovereignty is to mean anything in today's age, it requires a new legitimising narrative.



## **Introduction**

The issue of political legitimacy did not always dominate the political agenda. In the aftermath of the Second World War, political concerns were predominantly centred on the economic and political viability of nation-states. These concerns endured throughout the Cold War period when opposing regimes were seen to threaten each other's existence. It was only from the late 1960s onwards that questions over political legitimacy were being raised. The geopolitical pacification of the European continent and the increased economic inter-

dependence of nation-states allowed for alternative concerns to be raised, pertaining to the relationship between citizens and their rulers. By the late 1970s, scholars like Joseph Rothschild began to discuss nation-states' growing difficulties in evoking a sense of trust and belonging among the populations being governed. Popular interest for political legitimacy has increased exponentially ever since. Today, a growing number of instruments such as the Eurobarometer and the Economist's Democracy Index are devoted to evaluating the state of political legitimacy in contemporary democracies. These polls indicate that levels of political trust are worryingly low.

What are we to make of these figures? Are our political systems nearing a point of collapse? The 'legitimacy deficit' hypothesis is certainly not devoid of controversy. Contrary to the sense of disillusionment prevalent in the public debate, support for the *principles* of democracy is both high and widespread. As recent events in the European neighbourhood have shown, citizens' aspirations for democracy remain high. Citizens' satisfaction with their democratically elected *authorities* (parliaments, governments and parties), by contrast, appears low. Scholars who study trends in political support come to different conclusions depending on the methodologies they use and the cases they select. However, they generally agree that low levels of political support constitute reason for concern. The erosion of support for representative institutions – especially parliaments – is particularly disconcerting. It suggests that states are finding it increasingly difficult to forge meaningful connections with those governed. This difficulty may well lie at the heart of the perceived crisis of legitimacy that plagues contemporary democracies.

This article takes a closer look into the relationship between citizens and the political authorities by which they are ruled. It argues that changing state-society relations and the opening up of non-parliamentary avenues for political representation are crucial to understanding the feeling of political malaise in advanced industrial democracies. More than a generalised crisis in legitimacy, our democracies face a crisis of legitimation: political choices are in dire need of an explanatory narrative that binds citizens together. This discussion proceeds in four parts. First, we elaborate on what we mean by 'political legitimacy' and discuss its use in public debate. Second, we discuss empirical evidence on citizens' low levels of trust and consider the possible explanations for this trend. Whether a state is governed well (or not) does not always influence the legitimacy of the regime. This means that institutional reform is no

panacea: politics is as much about emotions as it is about effective governance. We therefore need to pay more attention to the subjective dimensions of politics, including culture, shared norms and attitudes. Third, today's growing disillusionment with politics reveals both citizens' growing political sophistication and the pressures on popular self-governance. The growing complexity of politics has eroded the belief that citizens are capable of democratic control – either through authorising their governors or controlling them. We conclude by suggesting that citizens need a popular narrative that reconfigures the expectations they may hold toward power-holders in function of today's politics. Narratives are like social contracts: they hold the key for enabling trust in political institutions. The present malaise is therefore not only about political performance, but also about identifying new, shared grounds for political legitimation.

### **Political legitimacy: what's in a name?**

Today's debates on legitimacy express an underlying concern for the stability of political systems and their capacity for solving problems. As popular protests on Tahrir Square and the streets of Kiev have shown, governments only exist by the grace of their citizens. All political regimes ultimately depend on their subjects' recognition and compliance: citizens must accept the rules and laws imposed by their government and indeed choose to abide by them. A sufficient reservoir of goodwill among the population is considered necessary for the government to enforce binding decisions. If levels of trust fall below a critical threshold, the stability of a regime is endangered. Under such conditions, the status of its political authorities becomes fundamentally contested. In many ways, the Tunisian street vendor Mohammed Bouazizi set not only himself on fire but also burned the very idea of the citizen that recognizes his or her government. Of course, advanced industrialised democracies are more sheltered from such violent outbursts of dissatisfaction by greater reservoirs of political trust and structures that allow citizens to express their discontent within the system itself. However, low levels of citizens' trust fuel anxieties over the possibilities for violent protests in Western capitals.

One can distinguish between two different meanings of political legitimacy. Harking back to the writings of Max Weber, political legitimacy can be analysed descriptively, i.e. by making reference to people's willingness to obey

the rules enforced on them. People may put faith in a particular regime because they have grown accustomed to it (tradition), because they have faith in its rulers (charisma), or because they trust the legality of the regime. Descriptive approaches to political legitimacy are typically not concerned with discerning whether citizens are right or mistaken in trusting their government. As David Easton famously remarked: ‘*Whether the basis of acceptance is legitimacy, fear of force, habit or expediency is irrelevant*’.

Measuring political legitimacy is tricky. Indications can be found in different forms of support, such as citizens’ levels of political participation, their active support for government actions, or alternative forms of adherence (such as the payment of taxes or the absence of protests). Despite these various manifestations, political legitimacy is most often measured as *political trust*. As a latent belief in the appropriateness of the political regime, trust is considered vital to the effectiveness of states. As argued by Sofie Marien and Marc Hooghe, trust reduces the (monitoring) costs of politics: it allows citizens to delegate decision-making responsibilities to entrusted others who can then make binding decisions on their part. Because it reduces the complexity of rule, trust is generally conceived as one of the most vital assets of democracies. Moreover, societies with higher levels of political trust perform better in terms of economic and political efficiency than societies with lower levels of trust.

Yet political legitimacy can also be approached as a normative question. Instead of merely describing declining trust levels, one can specify the features a polity must possess for it to be considered legitimate. In other words, one can focus on the moral appropriateness of different forms of rule and of people’s obedience. In contrast to descriptive approaches, approaches of this kind do elaborate on the conditions under which citizens’ trust may be justified – as opposed to mistaken. Generally, normative scholars introduce a differentiation between de facto authorities and legitimate authorities. While the authority of political bodies to enforce decisions may remain uncontested, their power may not be morally justified in the sense of meeting democratic principles such as equity, procedural fairness, transparency and accountability. Theorists such as Ronald Dworkin have argued that under such conditions, authorities fail to generate genuine political obligations. Failure to comply with these democratic principles may legitimise the choice of citizens to resist and rebel against their political authorities. This line of reasoning is also evident within the widespread support for the so-called ‘Arab Spring’ in 2011.

Beyond the descriptive versus normative dichotomy it is possible to focus on the question of how legitimacy comes to life and is expressed in democratic regimes. Jürgen Habermas first drew attention to the social dynamics of legitimacy and the active part which citizens and political leaders play in producing and challenging political legitimacy. While discussing political events or the decisions made by their authorities, citizens and political leaders renegotiate what is morally acceptable and defensible. As such they constantly redefine the moral foundations of political legitimacy. This insight inspired David Beetham to argue that political authorities are not legitimate because people believe in its legitimacy, but because they can be actively justified in terms of their beliefs. This understanding has strongly influenced contemporary studies of political trust. Arthur Miller and Ola Listhaug have, for instance, argued that political trust reflects *'evaluations of whether or not political authorities and institutions are performing in accordance with the normative expectations held by the public'*. When citizens conceive of their political authorities as largely responsive to their expectations and values, they are able to trust and confide in their political leaders. While this approach hinges on citizens' capacity for political judgment, it suggests that the low levels of trust in the representative institutions of advanced industrial democracies reflect a shift in citizens' expectations. Simply put, a trip to the polling booth may no longer satisfy the modern democratic palate.

## **Empirical evidence on political support: understanding trends**

The dissatisfaction of citizens in advanced industrial democracies is predominantly directed towards its key representative institutions: parliament, government, and political parties. The recent study of Carolien van Ham and Jacques Thomassen on patterns of political support in advanced industrial societies from the late 1970s onwards confirms that citizens' trust levels in their political community and the ideal of democracy are relatively high and stable. Within advanced industrial societies, country levels range on average above 80%. Similarly, citizens in advanced industrial societies express important beliefs in the principles and foundations of democracy; displaying country averages from 86% to 98%. In comparison, their satisfaction with the actual functioning of democracy and their support for political institutions are substantially lower – on average 60%. Aggregating data from the late 1970s till

present, van Ham and Thomassen find that support for parliament is stable over time (ranging between 40% and 60%). The most important declines in parliamentary trust took place before the late 1990s. In the recent period, evolutions in parliamentary trust have lost uniformity: while approximately seven of the fifteen countries included in the Eurobarometer polls demonstrate significant downward trends for parliamentary trust between 1997 and 2012, other countries display trendless fluctuations over time. Similarly, trust in national governments fluctuates strongly across countries (from averages of 29% in Italy to 72% in Luxembourg). Trust in government, however, appears to be declining more clearly towards the end of the 2000s, with the onset of the economic crisis. In addition, trust in political parties is very low in all advanced industrial countries; varying between about 20% and 30%.

These patterns suggest that political support is not experiencing a long-term and uniform decline in advanced industrial societies. Empirically speaking, trust in political institutions displays important variation across countries and does not reveal a clear pattern of decline across time. The underlying causes of low political support appear to be far more specific than general claims about advanced industrial societies allow for. In addition, citizens are well able to distinguish between the underlying principles and values of political life on the one hand and the performance of its political authorities on the other. While they remain firmly attached to the principles of democracy, they increasingly oppose central political authorities and feel dissatisfied with the policies produced by them. As the latest Eurobarometer rapport demonstrates, concerns over unemployment and inflation top the list at the national, personal and European levels.

Citizens' apparent capacity to differentiate their adherence to democracy from the performance of its real-life institutions has stoked interest in the impact of policy outcomes and economic performance on levels of citizens' trust. Simply put, does effective governance boost political trust? Strangely enough, the evidence is inconclusive. Scholars like Steven Van de Walle have not been able to find a significant correlation between institutions' performance and citizens' trust levels. In addition, citizens' perceptions of performance do not always correspond with the actual performance of the economy or state institutions. If citizens cast subjective judgments, then the remedy of institutional change can yield only limited results. Although efforts to align the functioning of government with the challenges of the global economy and the growing interdepend-

ence of politics are in themselves relevant to the stability of contemporary democracies, they are unlikely to engender spontaneous gains in terms of citizens' trust. Alternative, socio-cultural and psychological factors must be taken into account. Citizens' perceptions matter. In times of growing societal insecurity, they may matter more than states' GDP or other indicators of economic performance. Similarly, the perceived fairness of decision-making may outweigh the actual impact citizens have on their governments. Citizens who are familiar with the 'rules of the game' can probably live with the fact that their preferences are not always realised, as long as they believe that decisions result from a just process.

The understanding that citizens' judgment of political institutions is closely linked to their shared expectations has rekindled interest in political culture. The customs, values and beliefs that citizens hold have a major impact on their political trust. As argued by Marc Hooghe, '*political trust can be considered as a comprehensive assessment of the political culture that is prevalent within a political system, and that is expected to guide the future behaviour of all political actors*'. The popular mistrust of politics may therefore bear witness to two distinct phenomena. Firstly, it may signal a growing divergence between what citizens expect and their rulers' perceived capacity to fulfil their promises. Secondly, citizens' low trust levels may display growing uncertainty over the expectations they may hold vis-à-vis their rulers. In light of contemporary changes, such as the growing interdependence of national politics and the global economy, it is reasonable to assume that people's expectation patterns have lost stability. Put differently, the rules of the political game have become increasingly unclear. Popular belief in the realisation of self-government has effectively eroded because of the growing fragmentation, de-territorialisation and dislocation of political power. This has left citizens puzzled regarding the demands they may exercise over their rulers and the type of political arrangements necessary for enforcing them.

## **The principle of self-government: Growing insecurities in a complex age**

Discussions of political legitimacy deal with the division of labour between those enforcing rule on others and those subjected to it. Within liberal democracies, this debate relates to the practice of political representation. Representation

ensures that those absent from decision-making processes are nevertheless included through the actions of their representatives. The electoral system is generally considered crucial to warranting such inclusion. The principle of universal suffrage fosters a formal equality that allows all adult citizens to participate in government – by authorising and sanctioning their representatives. Together with citizens' possibility to stand for elections themselves, the principle of universal suffrage is considered key in facilitating a sense of '*government of the people, by the people, for the people*'. Electoral systems are designed with a view to allowing citizens to generate the policy outcomes they consider invaluable.

The electoral basis of popular self-governance has, however, come under increasing pressure in today's complex age. Because of the enhanced interdependence of national politics and the global economy, a growing range of political decisions have been moved out of citizens' reach – or even that of their elected appointees. When monetary policy made by technocratic elites substitutes for democratically unpalatable fiscal policies, citizens may justifiably feel bereft of control. But a certain loss of control is inevitable when dealing with convoluted policy problems that represent long-term and multidimensional challenges, such as climate change and financial regulation. If effective solutions involve multilateral agreements and broad stakeholder consultations, the relative simplicity that characterised politics in the past becomes impossible to achieve.

Citizens' low political confidence in the institutions of the European Union illustrates the struggle to come to terms with these long-distance political relations and multi-level forms of governance. A growing number of problems require policy reactions above the level of the nation-state, but a framework for organising supranational democracy is largely absent. It is therefore unsurprising that the roadmap towards a genuine European Monetary Union drawn up by European Council President Herman Van Rompuy includes a plan for action to promote democratic legitimacy and political accountability on the European level. It remains unclear, however, whether the measures considered by the EU (such as transparent reporting to national parliaments and inter-parliamentary cooperation) will prove to be a sufficient answer to the challenge of democratic governance. When decision-making in the governing council of the European Central Bank continues to demonstrate rifts along national lines, for instance, the strains on democracy may increase further. The recent ruling of the German Federal Constitutional Court on the legality of outright mone-

tary transactions makes this clear: *‘The democratic decision-making process ... is undermined when there is a unilateral usurpation of powers by institutions and other agencies of the European Union.’*

The complexity of contemporary politics is not limited to the international scene. Nation-states themselves are characterised by a growing pluralisation and fragmentation of representative relationships. The democratisation of politics, along with citizens’ enhanced political sophistication, has opened up regular avenues for voice and dissent outside parliament. These avenues have brought to the fore an unprecedented multitude of affected ‘constituents’ promoting the interests of non-territorial and non-partisan groups, such as ‘women’, ‘consumers’, ‘users’, ‘migrants’, ‘parents’, and ‘dog-owners’. Although this atomisation of ‘the sovereign’ may have increased political inclusiveness, it has also made discussion on who should be listened to more difficult. Similarly, the political sites in which citizens’ interests are at stake – e.g. the media, the national parliament, civil society etc. – have multiplied exponentially. In today’s societies, it has become virtually impossible for citizens to effectively monitor all the decisions that may impact upon their lives.

Unsurprisingly, today’s pluralisation of political constituents and democratic voices has made it increasingly difficult for elected representatives to read society and set the contours of policy. Citizens’ growing involvement in non-conventional forms of politics (such as civil society demonstrations but also, and increasingly, social media mobilisations) makes it increasingly difficult for representatives to determine whose judgment should be taken into consideration within decision-making. This complexity stands in sharp contrast to the 19th century ideal of parliamentary democracy in which the popular masses were governed by electorally controlled elites and constituted themselves clearly identifiable entities. In contemporary democracies, by contrast, citizens no longer add up to transparent entities. Neither are they governed by a neatly identifiable and easily controlled set of leaders. Instead, they are governed through vastly complex and changing constellations of power-holders; calling the original ‘many versus the few’ ratio of government into question.

The complexity of contemporary governance mechanisms warrants further proof of citizens’ inclusion in the political system. What demands may citizens justifiably put on their political leaders and by what arrangements may such demands be enforced? Besides the obvious problem of authorisation and

control, these evolutions draw attention to the broader question whether governance by means of popular consent is practically feasible. The growing technicality of policy questions increasingly requires the involvement of experts, even if underlying policy questions may be eminently political. The onset of budgetary austerity has set the scene for budget battles of epic proportions, for example. These circumstances require that a new balance between technocracy and democracy be established. This implies that citizens and political leaders should find a renewed conformity on the moral foundations of political rule and re-specify the actors on which they apply. If anything, citizens' low trust levels suggest that this process is still in development.

In this context it is more appropriate to speak of a 'crisis of legitimation' than a 'crisis of legitimacy'. Political legitimacy is often conceived as a static attribute of political institutions and draws attention to their past performances. However, the observation that the functioning of political institutions is no longer attuned to contemporary demands contributes little to our understanding of how to find a way out of the current political malaise. The notion of a 'crisis of legitimation', by contrast, acknowledges that legitimacy is not a fixed characteristic of political institutions. Instead, it conceives of legitimacy as a quality that must be earned and re-earned constantly. This allows us to consider the constant interplay (and potential misfit) between what politicians claim and what citizens genuinely accept as legitimate.

## Discussion and conclusion

The growing disillusionment with politics calls for a redefinition of how power is exercised in a complex world. But we must first be clear on what the problem is. Drawing from empirical evidence on citizens' trust levels in advanced industrial democracies, one can challenge the assumption that we are experiencing an unprecedented and general crisis of legitimacy. Based on data from the 1970s until the present, there has not been a general decline of political support for democratic ideals in advanced industrial societies. In contrast, citizens' confidence in their central political authorities is worryingly low – and in some countries declining further.

Far from dismissing the importance and potential implications of today's disillusionment with political authorities, we have demonstrated the need for greater attention to the subjective foundations of political support. In this

sense, we need to revise the ways in which we approach political legitimacy. Too often, political legitimacy is conceived as the result of past habits and accomplished rights and obligations. Such views dismiss the insight that political legitimacy is never fully given but requires constant legitimation. The need for perpetual renegotiation of the conditions to legitimate authority alerts us to the fact that, over time, the conditions under which individuals are willing to concede legitimacy may alter or, at least, become subject of debate.

In this article, we have argued that we are experiencing such a turning point today. The feeling of political malaise can be traced back to new forms of policy articulation in our globalised yet fragmented societies. While citizens' enhanced political sophistication has altered the input side of politics – opening up alternative, non-electoral avenues for voice and dissent – the growing interdependence of global politics has implied a transfer of decision-making powers to supranational levels. Both changes have implied an exponential multiplication of the political sites in which citizens' interests are at stake. This makes it virtually impossible for citizens to effectively control all decisions that may impact upon their lives. At the same time, citizens increasingly become political representatives themselves; representing views and beliefs outside the parliamentary arena. These new forms of policy articulation and delivery have not only made politics more complex, they have also contributed to citizens' feelings of insecurity; thereby making trust an increasingly scarce commodity. Yet trust is necessary to enable this complex and elusive system of governance to function. In this sense, the endurance of low levels of citizens' trust may indicate a '*crisis of legitimation*'. In the face of changing politics, the principle of electoral self-governance has been effectively unwound. New narratives of legitimation are needed. However, both political authorities and citizens appear apprehensive about redefining the moral grounds for civil obedience to power and the practical arrangements these require.

What may such a redefinition look like? The economic crisis – and the issue of youth unemployment in particular – is effectively setting the scene for a return of public interest in politics. At the same time, there is a clear appetite for simplicity: the narrative of complexity has too often been used as a smoke-screen masking the proverbial inconvenient truth. What is clear is that accountability is crucial: citizens will fight for a minimal ability to check policy choices and the ability to cast their vote in one way or another. This can be in the polling booth, but perhaps migration patterns amongst the young and

educated offer the starkest picture of public satisfaction with government. In addition, debate is needed on what constitutes the public interest. Both the legislative and the executive branches of government must make a case that they can offer a wider view on society, i.e. one that goes beyond private and sectorial interests. In essence, governments need to communicate the idea that they can provide something truly unique: a level playing field for all law-abiding citizens, a source for investment in societal and technological infrastructure, and a minimal shield against external interference. The added value of thinking in terms of a ‘crisis of legitimation’ – as opposed to a ‘crisis of legitimacy’ – lies precisely here: it allows us to consider discourses of this kind, and their reception by various relevant audiences. As such, it encourages us to think beyond the need for functional and institutional changes and to also consider the relevance of legitimating narratives. If the notion of popular governance is to mean anything, we need a story explaining how it may be attained in today’s complex age.

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# A European Commonality of Destiny

## *Through Social Justice and Strategic Autonomy*

PIERRE DEFRAIGNE

### **Abstract**

On its course toward integration, Europe has now reached a plateau of impotence. It no longer delivers what its citizens need, nor what third countries expect from a large and advanced economic and demographic power. Fundamentally, what is missing in Europe is a red thread to pull together separate key policy functions, so as to make the EU more predictable and accountable for citizens and for foreign countries. Europe today needs a reunifying concept to bring together the responsibilities of sustainable and fair development for all its Member States, and to design and implement a global strategy *vis-à-vis* the rest of the world.



## A United Europe Could Shape the New World Order

Economic globalisation has triggered a transition toward a new world economic order. Europe was, along with America, a leading force behind this trend: it contributed both to trade and financial liberalisation, and its multinationals played their part in the outsourcing and off-shoring drive. Yet today, the EU struggles to keep up with the movement it has initiated. It is at pains to retain its competitiveness in the most advanced high-tech sectors and resist competition from China's first global firms. It is at loss to understand, much less cope, with the geo-economic and geopolitical consequences of the East-West conver-

gence brought about by globalisation. The unconsidered rush into the unpromising TTIP negotiations is a sign of European disarray in the face of the new geopolitical landscape. It is evidence to many that Europe has no strategic vision, neither for its internal development, nor for a tentative common foreign policy.

The world is today facing a strategic vacuum. It is in search of a new global order, either grounded in rule-based multilateralism, or founded on a balance of power. As time elapses, globalisation is proving a far more radical and deep change than had been anticipated when it started, almost unnoticed in the early 80s. The product of a triple revolution – technological, political and managerial – globalisation has been seized by China and its East-Asian periphery seeking convergence with the West, with structural and systemic consequences for the rest of the world. Over the last two decades, America and Europe have been deprived of two ancient economic privileges: on the one hand as China turned into the factory of the world and began climbing up the technology ladder, the West lost its monopoly over manufacturing, putting its jobs and wages under the pressure of Asian labour markets; on the other, the race for energy and natural resources resulted in a reversal of terms in trade with the South as the prices of major manufactured goods went down whilst commodity prices went up. Moreover, over the course of two or three decades, the whole planet has been confronted with dramatic climate change which calls for difficult burden sharing and a new world energy order.

Besides the loss of such a ‘Western rent’ over the rest of the world, America, Europe’s security guarantor, has had to deal with the erosion of its strategic hegemony. China’s “peaceful rise” has nevertheless been accompanied by the development of a ‘blue water navy’ to protect its maritime supply lines, whose importance is increasing with China’s growing dependence on energy, commodity and food sources in Africa, the Middle East and Latin America. Someday China will be like the US today, a world maritime power. This new prospect drastically changes the world map of strategic power. It entails tremendous consequences for Europe. These consequences have not been addressed so far. Yet the changes brought about by globalisation make a decisive case for Europe’s political unity and the creation of a real strategic capacity.

What are the changes? Let us first mention the well identified threats and risks that will persist and which call for renewed efforts from the international

community: nuclear proliferation, rogue states, terrorism, pandemics, cyber-attacks, human trafficking and trans-border crime.

There are new challenges ahead though. The first one is the compatibility and rivalry between the development models of the US, Europe and the BRICs, mainly China. A variety of combinations of market capitalism models and political systems are coexisting in a global and interconnected market. On which legal ground do we keep trade markets open by tackling competition distortions? How shall we ensure the stability of the international monetary polycentric system that is shaping up? Can we develop a new multilateral system, on the basis of the Bretton-Woods foundations, but rebalance the leadership so as to factor in the new economic power balance, as well as provide more policy space for the converging economies so as to address their development needs? The severe loss of credibility of the Washington Consensus, after the 2008 financial crisis, leaves a political void with respect to ensuring the compatibility and convergence of the various development models. A muddy transition is therefore inevitable and could drag on. Will *ad hoc* cooperation to avoid policy conflicts and promote synergies despite systemic differences, be limited to US and China – a G2? Or would the EU be able to participate effectively in a G3, instead of simply outnumbering other participants in the G20, yet playing a modest role there?

A second threat lies in the fair access for all countries to natural resources – energy, minerals and food – at a time of rising demand. As GDP per person rises in the BRICs, so does their demand for commodities. Their sheer size makes the impact on prices of their productivity and consumption growth very serious. Access to resources based on market price competition favours rich countries at the expense of developing ones. Most of the BRICs are both emerging and developing economies at the same time. For commodity-import dependent countries such as China, any price rise amounts to a toll on development capacities. Therefore China, like major Western countries, implements a strategy to directly control commodity supply sources through financial investments or political deals. Among the latter, the strategy of offering “protection” to supplying countries, such as the ‘oil-for-security’ deal concluded in 1945 between Franklin D. Roosevelt and King Abdel Aziz on the USS Quincy, might present the risk of confrontation among large commodity users.

A third cause for concern is burden-sharing between advanced and emerging economies in the fight against climate change. Could effective and fair deals be

concluded or will unilateral CO<sub>2</sub> reduction policies impose carbon taxes on imports from reluctant exporters?

The fourth risk is the widening development gap, as the least developed countries are left aside by globalisation, or populations are left in abject poverty by corrupt governments and foreign intermediaries reaping the benefits in commodities-exporting countries.

## **Distributional Issues as the Disregarded Challenge**

But the most serious threat might come from within our own societies – Europe, America and China – as growth slows down, making social inequalities more and more unacceptable. The lack of consideration given to distributional issues is proving a serious social and political problem on each continent, which contains the seeds of civil strife and protectionism.

The neoliberal mantra exalted ‘trickle down growth’ supposed to improve the lot of the rich and the poor in such a way that income redistribution was deemed irrelevant by conservative economists. They ignore the ethical dimension, the deflationist risk entailed in rising inequalities which was recently highlighted by the IMF and the protectionist risk attached to high unemployment. They also overlooked the link between debt and stagnant wages, as the subprime loans granted to ‘Ninja’ (no income, no job, no asset) by unscrupulous bankers in America clearly illustrate.

Inequalities have been rising everywhere in all countries, including China and most BRICs. Western Europe has more or less contained the trend towards inequality, depending on the national social model. Today, as the growth wave is receding, it is uncovering the magnitude of the problem, which has taken macroeconomic proportions with potential severe political consequences.

America, where the concentration of wealth reaches appalling proportions, is today paralysed by the divide between Democrats and Republicans which blocks the correction of the fiscal deficit. The USA, which can no longer, to the same extent as in the past, issue dollars to finance private and public over-consumption, is now seriously confronted with the ‘guns and butter dilemma’: cutting spending or raising taxes. The ‘fiscal cliff’ is forcing the FED to push the limits of monetary policy, so far towards quantitative easing, and soon with higher interest rates. A significant portion of the cost of a monetary policy

exclusively serving American interest will be borne by the rest of the world. If the inequalities which remain unaddressed persist, they will eventually have a serious impact on trade.

China has built its exports-driven growth on consumption repression, allowing for explosive income gaps both between regions and between rich entrepreneurs and poor unskilled workers. The CCP is undertaking to correct this skewed development strategy by letting wages go up and setting up social networks, and possibly increasing the return on households savings through financial liberalisation. Yet the task is huge and complex, since it amounts to a deep reshuffling of China's economy, whose growth rates have come down from two digits to 7-8%, a figure which might not be enough to create jobs for the migrant workers moving from the country to the cities.

Europe is confronted with the fragility of its national social models, which have to correct growing primary inequalities stemming from technological progress and from global labour markets pressure. But due to tax competition, which takes on the air of a race to the bottom, and the need to reduce debt to GDP ratios, governments encounter growing difficulties in preserving the high level of solidarity and social protection which are the salient features of the European economic system.

All countries are today facing up to the social tensions which the combination of slow or slower growth and rising inequalities creates, with potentially dangerous political consequences. The remarkable thing is that, so far, protectionism has remained relatively low on the world markets, probably because of the constraints imposed on firms by the existence of global value chains and intra-firm trade of components.

But protectionism can take an aggressive form as it attempts to evict major partners from trade deals. It can also take the form of trade bilateralism, a modern version of mercantilism when it is imposed by large trading powers on their smaller partners. Such bilateralism can lead to the formation of trading blocks and possibly currency blocks which would fragment the multilateral trading systems. What can the EU do to measure up to these challenges which could hit at the heart of European societies if they are not dealt with at both the internal and the external level?

## A Waning European Influence

The EU's international standing is weakening. Since the Greek crisis it has been drifting away from the ascending trajectory towards global player status which it had enjoyed until then. This is reflected in three circumstances: first at multilateral level, its influence is waning in the WTO and in the climate forum whilst it is playing no role at all on the international monetary scene. Secondly, it often displays weakness in dealing with major powers such as US, China and Russia, essentially because of the rivalry among the main Member States which gives rise to "divide and rule" tactics. Thirdly, its recent record with regard to the Arab Spring, the Syrian crisis and the Ukrainian crisis reveals a lack of vision, of leadership and of capacity for effective action. The EU is definitely punching below its economic and demographic weight. As it does not succeed in gathering its own forces, there is a propensity in some leading circles to play the American card, as in the Cold War.

## Achieving Atlantic Political Parity

The nature and the quality of the Atlantic Alliance between America and Europe is by far the most relevant and important challenge for the future of the EU. The EU-USA relationship is both very rich and very challenging. The two partners share fundamental values. They have fought Nazism and Soviet imperialism together, and their joint fight forged a strong common legacy. Yet deep differences abound with regard to societal values – from genetic food treatment to the death penalty, from regulation *ex-ante* to litigation *ex-post*, from the dominant role of special interests in US politics to a more democratic control of business in Europe, from American competitive individualism to solidarity embodied in generous social policies in Europe, and last but not least, in the balance between security and individual freedoms with regard to the privacy of personal data and communications. What Europeans often overlook is the effective cost of their strategic dependency on the US. As America is the security guarantor of last resort for a defenceless Europe against serious threat, Europeans have to bear a hidden economic cost, instead of sharing a clear military or financial defence burden. At the end of the day, the hidden costs out price the straight ticket, which ultimately makes it a poor deal for Europe. Let's list a few. The first is the "exorbitant privilege" of the dollar whose depreciation must be absorbed by Europe in terms of market and jobs losses. The second is

the competitive edge, provided to the US economy by defence-led dual technologies paid for by the US taxpayer and by the foreign holders of US T-bonds, which gives it a comfortable lead on Europe in key high tech sectors. The third is the “digital vassality” of Europe, which puts its big data in American clouds whilst the NSA intercepts and treats sensitive information in private, business and strategic communications, with Europe so far keeping silent.

Some want to aggravate this dependency by rushing into a “Transatlantic common market”, notwithstanding the huge bargaining power gap between US lobbies and a Europe still confronted with the fragmentation of the Single Market in key areas such as telecommunications, defence equipment, energy, financial services and digital industry. While a wobbling euro and a significant energy cost differential would result in serious competition distortions, these risks remain ignored by TTIP promoters. Moreover, the TTIP would not only undermine WTO authority and further damage the multilateral trading system, but it would also turn Europe into an instrument of the US trade-based strategy of China containment. Such risk is enshrined in the twin TTIP and TPP trade strategies controlled by the US, since they both exclude China. This containment strategy could result in reactionary tactics from China, with the RCE trade deal. The latter could converge with the Chiang Mai (1998) swaps deal and eventually result in the emergence of a rival trading and monetary block. Such deals could pave the way toward a “continentalisation” of the global economy. Such continentalisation might nurture other confrontations, in particular with regard to market and resource access.

These situations create the potential for serious conflicts of interest between advanced and emerging economies. Therefore, Europe is confronted with a choice: either to defend its stakes as a politically united EU or, as a loose coalition, be sucked in as a junior partner in a US-led block, turning the Atlantic Alliance into an offensive ganging up against other large economies, such as China or Russia.

What also makes the EU-US partnership important is its relevance to NATO. NATO has been a powerful strategic tool in search of a strategic purpose since the end of the Cold War. Very effective for half-century as a deterrent, NATO has a narrow effective military record, in only the Kosovo war, and as an intelligence and transportation support to the Anglo-French engagement in Libya. In the future, either NATO will fulfil a strategic capacity whose mobi-

lisation is decided on a par by EU and USA; or it will become the framework for a broader political alliance between America and a coalition of individual Member States. In other words, either the Alliance is led by its instrument whose scope of responsibility would be extended to political and economic cooperation which would confine Europe to the status of “junior partner of America”, or NATO will be the common strategic tool of the US and the EU with decisions made on a par. This would require the EU to have a common defence and a strategic autonomy in order to reach political parity with the US. This ambitious course of action is only accessible to Europe if it chooses the path of fully-fledged political unity which implies both an internal and an external dimension, namely a common development model and strategic capacity.

## Europe’s Soul Searching

What is lacking for a European political Union or, preferably a political Community coinciding with the eurozone, is a sense of commonality of destiny shared by European people beyond their respective national identities. This stems first from serious divergence on what should and could be a true European social model which constitutes the common good of European societies. Also, the original schizophrenia between strategic security left to NATO, and economic growth entrusted to the EU, blurs the citizens’ sense of belonging to Europe. Fourthly, a lack of common defence turns the EU into a soft power without a hard power; that is, no power at all. Unanimity in decision-making on foreign policy ultimately exposes the EU to divide and rule tactics from third countries, and as a result makes the EU an unpredictable partner since it is easily divided.

The EU has not yet agreed on the ultimate objective of its integration process and still has no fixed frontiers. Huge divergences prevail among Member States with regard to a common social model, the institutional nature of the EU – federal or intergovernmental –, the future borders and the degree of strategic autonomy of the EU *vis-à-vis* the USA. Therefore the main developments in EU political integration do not originate from inner leadership, but result from the interaction between a growing economic interdependence inside, and external factors, of either economic or geopolitical nature. It is not an exaggeration to say that the EU is crisis-driven. Only crises carry the strength to bring

about the necessary sovereignty transfers. There is indeed no appetite for more Europe, and even less for a federal Europe among the leaders and among the public at large.

A growing number of people though want another Europe, more democratic and geared towards social progress and the construction of a strategic power. Yet a Europe of that sort also means, in fact, more Europe and a more federal one.

There is not yet a true EU leadership. It is the collective gathering of national Heads of State and Government which initiates and takes strategic decisions. They decide on compromises which are achieved through diplomatic procedures and never start from consistent and comprehensive blue-prints. They take decisions in emergencies and often do too little and too late. Gradualism and incrementalism are the rule within the European Council. Tensions reflecting conflicting political views or opposing interests from national constituencies are imposed in the negotiation of complex and hard-fought compromises. There is not yet any European demos, sharing a sense of common destiny and organised along ideological lines across national boundaries

Considering those constraints, it is astonishing that major decisions have been taken to rescue of the Euro and advance integration. The determination and courage of key national leaders, the diplomatic skills of high officials, expertise and imagination from European Commission and Central Bank technocrats explain how, despite strict political constraints, the EU survives and works.

Yet its accomplishments are more and more out of step with the pace of geopolitical change. EU leaders today are at pains to cope with a major crisis of a systemic and structural nature. Both geopolitics and the solution to the economic crisis call for a quantum leap and for a radical change in policies. Is European society ready for such a move? Probably more than one would expect. National voters are torn between their attachment to their Nation-state and the admission that, whatever its size and its past glory, the Nation-state is helpless to confront the new geopolitical deal and nascent global market capitalism. If the EU showed direction and initiated movement, it would reanimate democracy, presently at a very low ebb, in Europe. People indeed realise confusedly, beyond their respective national identities, that there is no future for them and their children, unless through common action at an EU level. A European conscience is surreptitiously building up on the basis of reason, tran-

scending waning national identities of a more emotional nature. Tensions about sovereignty transfers will persist, but they reflect more the usual conflict between tradition and modernity.

The crossing of a significant threshold towards a more political Europe must concentrate on the eurozone as the core of integration. It requires two prerequisites: on the one hand, redistributing economic policy competences between EU and Member States in order to eliminate severe institutional inconsistencies and to allow for coherence in handling the crisis and in shoring up the social model; on the other, repatriating strategic capacity under EU control within the Atlantic Alliance so as to cure the EU from its original schizophrenia. Achieving EU's fully-fledged political unity would allow its citizens to develop a commonality of destiny.

The EU today has reached a plateau and its integration is levelling off because of its inner heterogeneity. It has not proved able to match massive enlargement, imposed by geopolitical upheaval in Central and Eastern Europe, by deepening its political integration. Its trajectory towards global player status has abruptly stopped. This change did not pass unnoticed in foreign countries, especially among the largest ones and the emerging ones. The contrast with China, whose trajectory based on economic growth paralleled that of the EU based on integration until the early 2000s, is blatant. Paradoxically, it is a source of disquiet in Beijing, which is very eager to promote world multipolarity. But the ordinary citizen is also struck by the weakness of Europe in tackling the crisis and in harnessing global market capitalism which left unbridled, represents a major challenge for the integrity of the EU.

The EU won't reach political maturity as long as it does not re-appropriate its potential strategic capacity, which is today split between Member States and NATO as part and parcel of a European grand design. Citizens will never entrust EU with further responsibilities in the economic and social area, though is urgently needed for the eurozone's mere viability, unless they are reassured about Europe's ability to protect them against the uncertainty of a reshuffling global world. National identities forged by history and culture are strong and deep, but they are turned towards the past and undermined by the growing feeling that European Nation-States are becoming mere prey for global firms and emerging continental powers.

Citizens sense that the EU is exhausting its original model because governance is lagging behind economic integration. Yet the latter must go further towards a deeper industrial integration with the creation of EU-wide EADS type transnational groups, along with a eurozone-wide labour market, which are the twin structural conditions for enhancing innovation-led growth and for ensuring a fairer sharing of its benefits. A strong industrial basis goes hand in hand with a common social model.

## **Building Up a Common Social Model on a European Model of Market Capitalism**

Progress towards effectiveness and democracy at an EU level, calls for a confrontation between the “realist school”, as pragmatic leaders and seasoned diplomats refer to themselves, and the “prescriptive school” which focuses on institutional consistency and pan-European democracy with strong reference to shared values. Realists rely on intergovernmental negotiations using crises as a lever for change. Prescriptivists plead for an institutional quantum leap and a re-appropriation of Europe by citizens.

The EU is indeed suffering from a triple institutional inconsistency causing serious fault-lines which endanger the unity of the EU.

### *The Original Schizophrenia: Strategy and Economy*

EU is the product of Cold War. The Marshall Plan (1947), the OECE, NATO (1949) and the ECSC (1951), the latter making the rearmament of West Germany possible, are the key blocks of the US-led Containment Policy against Soviet Imperialism in Europe. The EEC has been confined to the task of constructing a common market, starting with a custom union. The “bicycle theory” suggested a mechanical process through which market integration would lead to economic union and then to a common currency. This approach, taught across the world by generations of Jean Monnet University Professors funded by the EC, has been twice proved wrong. On the one hand, real convergence among national economies did not result in deep industrial and financial integration through the emergence of genuine transnational companies. On the other, more integration did not prevent the return to economic divergence among countries within the eurozone, the flagship of the integration process. The EU in fact

turned into a common space for competition between firms and governments. The Lisbon Strategy and its successor, Euro2020, highlight this ambivalence of the EU, not as a political entity, but as a competition area. Moreover uncertainty about common defence, whose absence severely limits the very possibility of a common foreign policy, has also acted as an inhibitor for further political integration. Today it would look absurd to move towards a half-backed federalism covering only the domestic agenda whilst foreign policy would remain in the hands of the Member States, the latter often being subject to *de facto* coordination by Washington or through NATO when it comes to serious issues of security and defence. Separating economic security from strategic security seems all the more surreal as the US, the EU's ultimate security provider, is also Europe's major competitor. The US is still enjoying the exorbitant privilege of the dollar and puts an effective limit on Europe's capacity to exploit dual technology in defence industries, as a key factor of global competitiveness.

### *The Fatal Chasm: European Market, National Social Models*

After the rapid completion of the Custom Union (1968), economic integration, through the edification of the common market, took a slower pace since it was, like social and tax harmonisation, decided by consensus. Thanks to the quasi generalisation of the QMV, the Single Act speeded up the abolition of internal borders, whilst very little progress was made on the front of social and tax harmonisation which remained, and still is, blocked by the national veto. The four freedoms of movement – goods, service, labour and capital – took prominence in the hierarchy of objectives and instruments of economic and social policies. National industrial policies were slashed by the EU for generating competition distortions; protection of workers was often subordinated to free movement, and tax competition set in, especially on mobile factors – transnational firms and large financial assets – after the liberalisation of capital flows (1990) and the passage to the euro (1999).

A chasm appeared between EU's grand design – pursuing growth through market integration – and Member States' ability to preserve the effectiveness of their redistributive systems. The deceleration of growth, the increase in unemployment, the rising of inequalities nurtured by technological change, globalisation outsourcing and offshoring and the accession of 13 low wage countries, aggravated the original tension between market-led growth and national social

contracts. The latter's sustainability was undermined by the coinciding increase of inequalities and diminishing of the national tax revenues used to fund the redistribution.

Neoliberal thinking, as embodied both in the Broad Economic Policy Guidelines and in the Lisbon and Euro2020 Strategies, led to an exclusive emphasis on growth and its supposed trickle-down mechanism. It did not actually matter if growth – in fact on a declining trend – was obtained through more inequalities and more private and public debt. The EU's dysfunctional distribution of competences, and in particular the differences in the decision-making process between economic integration and social protection, have therefore resulted in a gaping confidence gap between the European and national elites on the one hand, and a large section of public opinion on the other. The failure of the French referendum on the Constitutional Treaty in 2005 was the first clear symptom of the growing distrust of citizens towards the sort of Europe emerging from a market-led integration. It became gradually clear to the ordinary people that, especially in a time of crisis, the EU's integration model was in fact on a collision course with the most advanced national redistribution models. An additional factor of distrust was the ineffectiveness of social dialogue between trade unions and employers at EU level. Several factors explain the lack of results: the narrow EU social mandate, the disaffiliation of workers from trade unions, the lack of unity of the latter, and the confederal nature of the European employers' association, Business Europe. But the main reason lays in the absence of a relevant social space in Europe, because labour markets remain national whilst employers are either national or multinational. A true social model calls for a hard core of genuine European transnational companies, a strong EU authority and more representative and more united trade unions.

### *The Wobbling Eurozone*

It was no secret from the start that the eurozone was designed for fair weather but would not withstand a severe storm. An orphan euro, i.e., without government, was also a one-legged euro, i.e. it had a federal monetary policy without its fiscal counterpart: no central budget; no banking union; no tax and no social harmonisation. ECB policy failures aggravated governance fault-lines by overlooking assets inflation, bank debt and massive purchases of toxic assets

which hastened and worsened the financial crisis imported from the US. The eurozone was doomed to fail as soon as the financial crisis broke out in 2008. It almost went bankrupt with the Greece sovereign debt crisis in 2010, which all of a sudden revealed the divergence dynamics at work behind the ‘*one-size fits all*’ ECB monetary policy. The euro was rescued by an energetic and clever intervention from the ECB and by the resolute action of the European Council under Herman Van Rompuy’s clever chairmanship. The worst is perhaps over, but a bare and cold landscape lies ahead: quasi deflation, structural unemployment and rising inequalities.

The incremental path chosen by the ECB and the European Council to prevent a secession from the euro and a new banking crisis, consists of a mix of limited financial solidarity – the EMS which is only an intergovernmental guarantee scheme – and of strict and intrusive fiscal discipline – the TSCG Treaty and the six-pack and two-pack regulations.

The European Council has opted for a debt exit strategy through fiscal austerity – spending cuts and tax hikes – which is the orthodox, but socially painful and politically hazardous route. Restoring current imbalances has been achieved through internal devaluations, namely diminishing wages, which can prove deflationary as they spread across the eurozone.

Neither a transfer union, nor any debt mutualisation has been agreed by the 18 eurozone Member States, with Germany pointing out the risk of massive moral hazard. But the orthodox route, already difficult for an isolated State, proves very dangerous for a monetary union because the burden of adjustment is necessarily shared in a very unequal way: social tensions in one country can turn into political confrontation and spill over in the eurozone, threatening its cohesion and its integrity. In that respect, large countries such as Spain, Italy and France, represent a far more serious risk than that represented by more severely hit but smaller countries, if only because the cost of a rescue would exceed the resources of the European Stability Mechanism. A race against the clock has begun for the eurozone: any severe recession in the present quasi-deflationary context could have unforeseeable consequences. The Damocles sword of the debt must be taken down, even by using heterodox policies: either inflation, very unlikely despite the accumulation of liquidities issued by the ECB quantitative easing policy, or some form of debt restructuring. As long as the eurozone is constrained by sovereign and bank debt, its survival represents

the most serious global uncertainty for the world economy and for the future of Europe.

## EU Foreign Policy, an Untransformed Essay

EU external action is a disappointment for the European citizen. The EU's impotence in dramatic circumstances, such as the Arab Spring, the Syrian civil war, where gas has been used against the civil population, and Ukraine, which has ended up losing Crimea through Russia's military pressure, as Georgia did South Ossetia in 2008, are blatant examples of the inability of Europe to gather its diplomatic and defence forces in order to ensure the territorial integrity and the respect of civilian lives in countries on its doorstep. EU's procrastination in Africa, where France is left alone fighting Islamist terrorism and ethnic and religious strife, is telling of the absence of strategic thinking of Europe.

Europe's record as a foreign policy player is a mixed one, and is on a declining trend. EU clarified its overall external strategy in 2003, in a brilliant document, the European Security Strategy, which sets out principles – prevention, comprehensiveness and preference for multilateral – which are never been completed by the identification of core interests and by the definition of priorities. The EU's foreign policy agenda is more eclectic than articulate. It is a mix of geographical targets – the immediate neighbourhood which is expanding as a result of successive enlargements and a list of strategic partnerships or dialogues more emphatic than effective with the US, Russia, China and Brazil; of instruments with their own national trade and development rationale; and of grand moral speeches about Human Rights and democracy. Trade policy, once focused on mercantilist interests, is pursuing a twin track of commercial interests and emphatic visions such as a “transatlantic internal market” from California to Romania and a FTA with Russia and its partners from Lisbon to Vladivostok, which was offered to Putin in Moscow on February 18 in a desperate attempt to entice him out of Crimea.

At the multilateral level, the EU plays a role in the WTO but is not represented in the IMF, while overrepresented in G20 and in fighting desperately to build an effective climate forum. For those who favour a step-by-step approach and “giving time to time”, foreign policy is the ideal playground for the EU. Progress is achieved on a millimetric scale and at a snail's pace. The Lisbon Treaty developments of the CFSP and CSDP, especially the creation of the

EEAS and the HRVP, have enhanced EU international standing in a significant manner. On the contrary, the EU has been losing its power of influence through its poor handling of the economic crisis and by its sheer inertia in the Syrian and Ukrainian crises.

Three ingredients are lacking for the EU's advancement: a clear definition of the EU's core interest, an effective decision making process base on QMV and common defence. Without a consensus on a common social model as its core vital interest and without strong strategic autonomy, the EU will remain a junior partner on the international scene. The contract is blatant between the rise of large continental powers, starting with China, which changes the global economic and environmental order and the strategic power balance, and the soul searching exercise of Europe, satisfying itself with political declarations disconnected from effective diplomacy backed up by financial resources and military might.

The EU was successful in stabilising Central and Eastern Europe after the collapse of Soviet Union, but its record stops here. And it was an odd foreign policy achievement, since success was obtained through enlargement which is not exactly a standard foreign policy action. Foreign policy is about influencing others. Enlargement is about transforming oneself. And this was done without further political integration, especially on the security front, which results in increased exposure to more serious threats without the internal cohesion and the external tools for coping with them. The vicinity of Russia and of the Middle East provides Europe with two major reasons to complete enlargement by developing an effective strategic capacity.

The EU is currently the most serious source of uncertainty for the world economy, despite EU claims to be a global economic player. It is failing where it should excel. Its credibility is severely dented as the IMF and China are called to rescue the eurozone from wreck because the EU does not take the appropriate steps to put its own house into order. Yet its contribution to the strength of the world economic and multilateral economic order would give the EU invaluable credentials for standing out as a key international actor.

The tragedy of Europe's foreign policy is captured by the eurozone's inability to shore up its governance and find an exit route from over-indebtedness. The eurozone leaders see their effort as a domestic challenge, not as an international stake. They mobilise their collective energy on governance reforms and

for deleveraging through growth paradoxically expected from restrictive fiscal policies aimed at restoring viable debt to GDP ratios and by wages diminution geared towards raising competitiveness.

But in this crucial and extremely difficult task, they completely overlook the fact that the world is watching and waiting. Third countries are eager to see the euro consolidated and growth resumed and maintained on the EU market because they need it, both for their own stability and for an exports outlet for themselves. Moreover, they want to know whether the European social model will eventually weather the storm, or whether it will be sacrificed to monetary stability and globalisation pressure. The euro crisis is the moment of truth for Europe. Europe is facing serious difficulties in establishing a strategic partnership on a par with its three most important partners.

## Conclusions

Faced with a protracted crisis at home, confronted with a brutal resurgence of military nationalism in Russia and with the rise of China as the new world giant, the EU is wobbling. The weakness of institutions and their persistent lack of support from citizens have forced Europe back into intergovernmentalism, with only half success and several unanswered questions.

On the domestic front, intergovernmentalism has worked, but on German conditions: the euro has been rescued from ruin at the cost of quasi-deflation, an unsustainable perspective. Germany's dominance is both reassuring and divisive. In the long term, it can't work even if cautious Berlin is reluctant to overplay its hand.

On the external front, intergovernmentalism has proved a non-starter: torn between narrow national strategic visions, inhibited by the rule of consensus and relying on an embryonic and defenceless diplomacy, the EU simply does not deliver on foreign policy. Its only foreign policy success has been the stabilisation of its Eastern flank, but that was done under American leadership and with NATO support in Kosovo, and has only been achieved through a legitimate but premature enlargement. The massive accession of ten countries should have led to more political integration, but actually it made the task more difficult because of the heterogeneity of membership divided on the social model, the institutional system, borders and the degree of strategic autonomy *vis-à-vis*

the USA. The enlargement, which over the long term will represent a plus for Europe, meanwhile proves an additional complication. Yet eurosceptical UK deliberate and systematic efforts to slow down work and political progression are far more harmful than the inevitable steep learning curve of the new Member States.

The persistence of the financial crisis, which inhibits the very possibility of inclusive and sustainable growth, constitutes a major pitfall for EU integrity and for social cohesion and political stability in several Member States. However, the helplessness of the EU as an international actor represents the most serious risk for its future. The Ukrainian crisis is pushing Europe back into a Cold War scenario where America, more reluctant though because of its Asian pivot, is once again called to help because Europe, divided on its energy, financial and defence industry interests, cannot speak with one voice and stand eye-to-eye with Putin.

Moreover, if the EU embarks on the creation of a “transatlantic internal market” through the TTIP, then there is every reason to fear that Europe will give up the ambition of a genuine social model and become just a subset of an Atlantic block which sooner or later will be sucked into a confrontation with China. This is the reality of the challenge European citizens are confronted with, but they don’t know it and they probably prefer not to hear about it. Democracy is on a declining trend in Europe, partly for deep cultural reasons – exacerbated individualism and ruling materialism, either as consumerism or as sheer greed – and partly for systemic reason – the irrelevance of Member States and Europe’s unpreparedness to cope with the two sides of globalisation, global market capitalism forces and emerging huge continental states. This is why the present incrementalism is not up to the challenges Europe is facing. A quantum leap with a twin objective is paramount: a common social model as the keystone of eurozone governance and a strategic capacity putting EU on a political par with the US.

The social model embodies Europe’s main values – freedom and justice – and Europe’s singularity, a concern for equality. It should resume its ambition of full employment, which is the condition of a sustainable welfare state, and of preventing and correcting excessive income and wealth inequalities and alleviating poverty. Restoring public finance viability and ensuring competitiveness are practical constraints, but not final priorities. The social model, which is a

political project, should replace the market, which – with the crisis – proves more and more divisive as the cement of Europe’s unity. A modern social model calls for a regulation of market capitalism at EU level, fully-fledged governance for the eurozone with a central budget funded by taxes levied on mobile bases – corporate profits and financial assets – a strong industrial base made up of European champions and a eurozone labour market framed by common social protection standards based on social dialogue.

Europe must project its social model as a benchmark for setting up a multilateral governance system on the foundation of the original Bretton Woods system inspired by the New Deal “embedded liberalism”. But since there is no such thing as a soft power, Europe needs to back up its policy of influence with a common defence policy.

A common social model, coupled with strategic autonomy, would stir up the perception of a commonality of destiny across national borders and contribute to the rise of a European demos, which so far, still remains the missing link of the European integration.



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# Institutional Reform in the EU

PHILIPPE DE SCHOUTHEETE

## Abstract

This article discusses the potential reforms of the EU institutions that can take place during the 2014-2019 legislative term. It argues that negotiations on Treaty change are a possibility, but they should only start in the second part of the legislature. In the meantime, several institutional reforms that can improve the functioning of the EU – and hence increase its legitimacy – should already be considered.



## Treaty Change?

The appetite for treaty change was seriously dampened in the European Union in the aftermath of the Lisbon treaty. Public opinion, European institutions, and above all Member States, were reluctant to consider a new exercise of the type which had been at the centre of the stage, from the Laeken European Council in 2001 to the final entry into force of the new treaty on 1 December 2009. There was large agreement that long and intricate institutional debates, negotiations and re-negotiations, failed referendums with risks of catastrophic failure were to be avoided at all cost.

Is this changing? Perhaps!

In her first speech in the Bundestag as newly re-elected Chancellor, on 18 December 2013, Angela Merkel clearly advocated treaty modifications. “We belong to those who say: when the treaty bases are not sufficient, then we must

re-examine the treaties. However, after the Lisbon treaty, we have a situation in Europe where everybody says that we can re-examine everything but the only thing we cannot change are the treaties. On that base I do not believe that we will be able to establish a Europe that works. I know that it is difficult to push treaty change in member states. But if we want more Europe, we must also accept change in specified fields of competence. Yes, we must make good treaties. But in a world in constant change, we cannot take the view that at a given point we concluded a treaty in Lisbon and will from then onwards never change the treaties again. That is not going to work!” (*Das wird nicht funktionieren*).<sup>1</sup>

Some weeks earlier a group of well-known German academics (lawyers, economists, political scientists) took the unusual step of publishing a joint statement with the title *Towards a Euro Union*. The group, known as the Glienicker Group, also calls for treaty change: “To achieve this political agenda, the euro area needs a new contractual basis of its own. What is called for now is a Euro-treaty to replace previous piecemeal reforms. With such a contract, collective insights and experiences from the crisis would be stored permanently. A Euro-treaty would re-focus public debate on Europe’s political needs and wishes, away from the current preoccupation with what is legally feasible”.<sup>2</sup>

Also towards the end of 2013, a group of Members of the European Parliament, called the Spinelli Group and known for sharing the federalist convictions of the Italian statesman, drafted and published a *Fundamental Law of the European Union*, which is “a comprehensive revision of the Treaty of Lisbon (2007). Replacing the existing treaties, it takes a major step towards a federal union”.<sup>3</sup>

We also know that, in January 2013, Prime Minister David Cameron indicated that the British Government wanted a “fundamental, far-reaching change”. The aim is to reach a new settlement based on flexibility and cooperation leading to an in-out referendum: “To stay in the EU on these new terms; or come out altogether”. The Prime Minister adds that “if there is no appetite

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<sup>1</sup> Merkel, A. 2013. *For a strong Europe*. Government Statement on the European Council Meeting, December.

<sup>2</sup> Glienicker Group. 2014. *Towards a Euro Union*.

<sup>3</sup> The Spinelli Group. 2013. *A Fundamental Law of the European Union*. Gütersloh: Bertelsmann Stiftung.

for a new Treaty for us all, then of course Britain should be ready to address the changes we need in a negotiation with our European partners.”<sup>4</sup>

It seems clear that the taboo, that for some time inhibited any suggestion of new treaty negotiation, has faded. It is now promoted by different people, with entirely opposite views of what is needed for the European Union.

Will this new tendency be successful?

In the medium term the arguments seem compelling. As Chancellor Merkel points out, there is no reason to believe that the Lisbon treaty is the last word in a political process which has developed, through various treaties, over sixty years, at the centre of European politics. The Glienicke Group may have a point when they say that the euro area needs a new contractual basis of its own, a Euro-treaty to replace previous piecemeal reforms. When David Cameron says that his government wants either to reach fundamental far-reaching change or to leave the Union, he clearly accepts that both alternatives imply a new treaty. Arguments may go in opposite directions, but they converge on the necessity of change. In the medium term they cannot be ignored.

The underlying question is about timing, and two considerations come to mind.

In the first instance it seems quite impossible, in the present circumstances, to draft any substantial new treaty which would find the required and unanimous support of all Member States. Public opinion is not in that mood. It feels the anguish created by the biggest economic and financial crisis in recent times, disillusionment, justified or not, about efforts to overcome that crisis, widespread concern about the future. This has led to acrimonious debate and resentment, between creditors and debtors, North and South, euro-ins and euro-outs. Some wounds go quite deep, and they are recent. Treaty negotiation in the European Union has always been a difficult exercise and the difficulty has logically increased with the number of member states. Regular recourse to direct democracy through referendums adds an element of uncertainty. To launch such an exercise in the present atmosphere seems condemned to dismal and dangerous failure.

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<sup>4</sup> Cameron, D. 2013. *EU speech at Bloomberg*.

But the atmosphere may change. A few years of economic growth, albeit slow growth, would make a difference. What would happen if the Union were to address, with what means it has, the problem of unemployment, favour mobility, devise initiatives for better training of workers, act jointly against illegal immigration and unreported employment and perhaps even address minimum social rights? If the Euro zone consolidated its currency by a banking union, effective macroeconomic policy coordination and credible budgets? If it seriously addressed energy policy and common rules on the environment? Perhaps even some progress on foreign policy coordination! None of this is impossible and the atmosphere would change. With the passage of time, perhaps two or three active years, wounds would heal and resentment decrease. A stronger and more dynamic Union could then consider treaty change with more equanimity.

A second consideration is linked to the position of the British Government. The European policy announced in January 2013 by David Cameron is a two-fold gamble. His first bet is that he will persuade European partners to accept fundamental and far-reaching change of some agreed policies or procedures that are no longer convenient for British public opinion and government. He then further bets that these changes will enable him to win a referendum in 2017 on the UK's future status in the European Union. This gamble may have its justification in British politics but it puts other member states in a quandary:

- ◆ They are requested to modify the fundamental objectives of the Union. It should become a flexible, adaptable structure pursuing the ideal of cooperation. Most Member States would look to OECD for that.
- ◆ They are requested to engage a negotiation in which each Member State indicates what part of the whole seems inconvenient to it (“outside its comfort zone”). This is, by its very nature, a highly destructive exercise.
- ◆ And the end-result would be submitted to a referendum which might well make the whole exercise useless if Britain decided to leave the Union.

But why should other Member States take those risks? Most of them are gradually coming to a completely opposite conclusion, namely that a higher level of integration will be necessary to consolidate their currency. It would seem, for them, much more rational, and infinitely easier, to invert the premises, namely

to await the result of the British referendum announced for 2017, before negotiating issues on the basis of its result. The fact is that you do not negotiate in the same way with someone who is going to leave and someone who is going to stay: you need to know!

Both these considerations lead to the conclusion that it would be most unwise to open negotiations on treaty change in the short term. But, given the justified pressure for change, it would be appropriate to open such negotiations, perhaps around 2018, in the second part of the future European Parliament legislature, in a more congenial atmosphere and at a time when Cameron's gamble would have been played out.

In the meanwhile we should consider what possible reform can be introduced in various institutions *without treaty change*.

## The European Parliament

It is well known that each successive European treaty has increased the powers of the European Parliament. This has been most obvious in recent years when the Union's life and activities were dominated by crisis management. The normative power of Parliament was confirmed by the important, at times decisive, role it had in the adoption of the various new legal instruments required, notably the *Six Pack* and the *Two Pack*. The Parliament also sees its control power indirectly increased by the unprecedented implementing powers given, by these new instruments, to the Commission, because, as the treaty says "The Commission, as a body, shall be responsible to the European Parliament". The December 2012 European Council conclusions say that "any new steps towards strengthening economic governance will need to be accompanied by further steps towards stronger legitimacy and accountability".

However the euro crisis has also highlighted two questions, linked to democracy and legitimacy, which need to be addressed.

First, the crisis has shown that many decisions have to be taken at one level (Union or euro area), and implemented at another (by the Member States), and they concern economic and social policies which frequently lie at the heart of the national political debate. Some of these decisions may be intrusive and constrain national decision making. In such cases democratic legitimacy and accountability are required both at European and national level: there is a need

for double legitimacy. This implies coordination and dialogue between European and national levels of democracy. The European Council stated that “new mechanisms to increase the level of cooperation between national parliaments and the European Parliament” could be useful, and recommended “the organization and promotion of a conference of their representatives to discuss EMU related issues”.<sup>5</sup> The TSCG asks the European Parliament and national parliaments together to determine the organisation and promotion of a conference of their representatives in order to discuss budgetary policies and other issues.<sup>6</sup> It may be too early to draw any conclusions from the few meetings this “conference” has held: it works on the basis of consensus, which is poorly adapted to such a large gathering. But the newly elected Parliament should obviously seek, by this or by other means, closer cooperation with national Parliaments.

Second, the European Parliament is occasionally called upon to deliberate on legal acts and policies affecting only the euro area. Parliament maintains that it is entitled to intervene in these matters as a unitary democratic representative of the Union polity. Others maintain that only MEPs from euro area countries could legitimately vote on euro area matters and participate in related accountability mechanisms. What would happen in case Parliament was called to vote on a given decision or recommendation linked to the euro area, and the decision was rejected due to the determinant vote of British MEPs? The potential problem that arises could only be settled in substance by treaty change. But the Commission has underlined that the European Parliament has the possibility of adapting its internal organisation to a stronger EMU. “For instance, it could set up a special committee on euro matters in charge of any scrutiny and decision-making pertaining especially to the euro area”.<sup>7</sup> The future Parliament may also want to consider that suggestion.

## The European Council

The European Council became an institution of the EU when the Lisbon treaty entered into force on 1 December 2009, at a moment when the world and

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<sup>5</sup> European Commission. 2012. *A Blueprint for a Deep and Genuine Economic and Monetary Union. Launching a European Debate*. COM(2012) 777 final/2.

<sup>6</sup> European Council. 2012. Conclusions. December, paragraph 14.

<sup>7</sup> European Council. 2012. *Treaty on Stability, Coordination and Governance in the Economic and Monetary Union*, Article 13.

the Union faced a major economic and financial crisis. It had been for many years, *de facto*, the major locus of power in the Union. But now it had become an institution, it had a permanent president, and it was operating as a major actor in a major crisis. This modified the institutional balance of the Union. The European Council was recognised as the initiator of new projects, the main crisis manager and the ultimate decision-maker. As a result, the traditional “institutional triangle” looked a bit different.

This institutional development is criticised in Parliament, by the Commission and elsewhere as a dangerous intergovernmental drift endangering the “Community method”, which has been central to European decision making for decennia. It is said to weaken the Commission and the visibility of its president, to be a source of confusion in the public eye and to escape parliamentary control.

It can be argued that the matter is not quite as clear cut; that the European Council with a permanent president is not purely and simply intergovernmental, that the implementing powers of the Commission are greater than ever and that the Community method is, by nature, essentially legislative (“the ordinary legislative procedure” art. 289 TFEU) and therefore has its limits.<sup>8</sup>

But the negative perception is quite widespread and needs to be addressed.

One option considered in the Convention, and advocated elsewhere from time to time, is to have one single president chairing both the European Council and the Commission. This is supposed to avoid competition between two presidents and two institutions, and give a single “political face” to the EU. It seems at least doubtful whether in fact a single person would be physically able to exercise adequately two such demanding and absorbing tasks with conflicting agendas. More importantly, it seems obvious that the independence of the Commission, so important for the smaller Member States, would be compromised if it was chaired by the President of the European Council, who would be duty bound to defend the positions taken by that institution. This option does not seem very fruitful.

A more promising line of thought is to suggest that the European Council, and its president, should accept a greater level of accountability to the European

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<sup>8</sup> De Schoutheete, P. 2012. *The European Council and the Community Method*. Notre Europe Policy Papers, (56), pp. 1-38.

Parliament. As indicated by Luuk van Middelaar,<sup>9</sup> members of the European Council operate both as national leaders and as members of an EU institution. As national leaders, they answer to their national legislature; as members of an EU institution they should accept some accountability towards the European Parliament. If this was an accepted practice and not a legal obligation, it would not require treaty change. It would undoubtedly strengthen the democratic legitimacy of the institutional structure.

## The Commission

There is no doubt that implementing powers of the Commission have been considerably increased by a number of legal instruments adopted as a consequence of the euro crisis. In some ways the Commission is more powerful than it was. “Never in the past have so many competences been exercised at EU level”, as President Barroso has underlined.<sup>10</sup>

Nevertheless, the Commission is generally perceived as weaker than it was in former years. This weakness is commonly attributed to excessive caution in the exercise of its power, and excessive concern not to offend the views of Member States, big Member States in particular. Political choices and personalities obviously have some impact on the strength of any institution, but in the case of the Commission, the following four structural problems can be identified.

First of all, for reasons known to everybody, the number of Commissioners has grown from 9, in the 1960s, to 28 today. It is difficult to establish that there are in fact 28 different functions to be exercised at Commission level, and that this justifies as many cabinets and even more directors general. The structure is top-heavy: some Commissioners, their cabinets, and their director generals are underemployed.

Secondly, the institution was defined as a college which had a mandate to define and formulate together the collective interest of the Community and initiate action. Collegiality has never been easy to apply in practice and experience generally shows that the principle is only workable with a limited number of participants. A bigger group needs a strong presidency and, as a result,

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<sup>9</sup> Middelaar, L. 2013. *The passage to Europe*. New Haven: Yale University press; and De Schoutheete, P. & Micossi, S. 2013. *On Political Union*. CEPS Essay, (4).

<sup>10</sup> Barroso, J. M. 2012. *The European way forward: Leadership and ownership*, Europe Day Address, Florence, 9 May.

participants, in practice, concentrate on their specific responsibility, not on the whole. Collegiality in the Commission has, compared to former years, diminished.

A third structural problem relates to the fact that the institution was conceived as a supranational and independent body. Upon appointment Commissioners swear to accept no instructions. However, Member States have repeatedly insisted that it was absolutely essential for them that one of their nationals should be member of the Commission. This insistence is, by itself, a source of confusion. Commissioners acquire a national character, and public opinion understands that Commissioners are appointed to defend national interests. Otherwise, governments would not be so insistent.

Finally, according to the treaty, the Commission takes its decisions by simple majority. In fact, for a number of years, it has never taken *votes*: it works by consensus. The fact that a simple majority could, in theory, exclude all major players is an obvious cause for reluctance to vote. Yet decision by consensus is a characteristic of intergovernmental structures and procedures. An institution which has a supranational character, as the treaty says, can be expected to vote. Executive institutions, such as the Commission, must, at times, act decisively and fast: consensus is not the best procedure to that end.

These points combine to create a structural weakness in the Commission, which is detrimental to the authority, legitimacy and credibility of the institution. Over the years its supranational character has been blurred. And all points of weakness are linked to size. The Lisbon treaty had foreseen a reduction of the number of Commissioners on the basis of a “system of strictly equal rotation between the Member States”. This seems to underline the “national” character of Commissioners. Many observers consider that such a system would be less than optimal, but it could only be altered by new treaty provisions. In any case it has been postponed to a distant future by the European Council.<sup>11</sup>

Some useful modifications of current practice could however be taken in consideration. When collegiality becomes unrealistic, it is advisable to increase the authority and the legitimacy of the Commission President. In the circumstances it strengthens the institution itself.

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<sup>11</sup> The relevant treaty article is art. 17 §5 TEU. See also: European Council. 2013. *The European Council decides on the number of members of the European Commission*. EUCO 119/13. 22 May.

One option, strongly advocated by the European Parliament, would be to appoint as President the candidate pre-selected by the winning party in European elections.<sup>12</sup> This would give the president of the Commission the democratic legitimacy coming from the support of at least a plurality in Parliament. Some point out however that this procedure carries the risk of politicising the Commission itself and giving a partisan character to an institution conceived as the independent guardian of the treaty. Up to now, the appointment of the President of the Commission has been agreed (sometimes with difficulty) by the Heads of Government. Whether the European Council fully shares the views of Parliament on the new procedure remains in doubt. Presumably this doubt will be clarified in the weeks following the elections.

Another option (which could be additional to, or independent from, the previous one) would be to give to the President elect a dominant role *de facto* in the selection of other members of the Commission. The European Council could agree to leave to him the first choice of each Commissioner. Combined with the following point it would give the President considerable and lasting authority in the Commission.

The President should be free to attribute competences to each Commissioner, and to modify these at a later stage. The Commission could be structured in clusters, each of these grouping a number of Commissioners, under the effective leadership of a Vice-President, with a collective responsibility for one field of Commission activity (external relations, budget finance and money, internal market etc.). Some Commissioners could be without portfolio, as commonly occurs in national governments. These could work within one cluster or have horizontal responsibilities such as relations with national Parliaments.

The administrative structure of the Commission has grown in parallel with the number of Commissioners, each of these wanting a director general answering to him. That link should be broken. A sizeable reduction of the number of general directorates (as was done some years ago within the Council secretariat) would streamline the administrative structure and facilitate internal coordination.

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<sup>12</sup> The legal basis is Art. 17 §7 TEU, which is open to various interpretations.

The Commission should, like the European Parliament, seek closer and more regular contact with national parliaments. This should become a part of its normal task.

## Conclusion

Suggestions for renegotiation of existing treaties are relatively new in the post-Lisbon European debate. They come from various quarters and with completely different and opposite motives, but some are put forward at a high level of political authority. The pressure is likely to increase and the most probable outcome, as past history shows, is indeed, in the medium term, renegotiation. But it would be unwise to attempt renegotiation in the present atmosphere of disillusionment, anxiety and resentment, and without clarifying the final choice of the United Kingdom.

Significant change in the working of the institutions can be made without treaty change. The European Parliament should consider further developments in its relationship with national parliaments and also address the singularity of the euro area. The European Council is also a part of the institutional framework of the Union and should accept, as such, some democratic accountability towards the European Parliament. The Commission suffers from its excessive size, but there are ways and means, outside treaty change, of mitigating that weakness.

There are obviously more pressing issues in the European electoral debate than institutional questions, but they will, as usual, be part of that debate.



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# The Belgian Parliaments and EU Affairs

## *The reasons behind their limited involvement*

XAVIER VANDEN BOSCH

### **Abstract**

Given their limited involvement in EU affairs, the Belgian parliaments at the different levels of the Belgian federation barely contribute to the legitimization process of the EU's actions. In order to strengthen their role, not only should governmental communication towards parliaments be improved but parliamentary activities should also adapt to the confederal features of Belgium. The latter poses a unique challenge in Europe.



## **Introduction**

Throughout the decades-long debate on the so-called 'democratic deficit' of the EU, it has often been claimed that not only the European Parliament but also national parliaments should play a stronger role in the EU decision-making process. For the followers of the 'de-parliamentarisation thesis', the erosion of the power of national assemblies, the most direct representation of citizens, would have created a legitimacy gap that the European Parliament has not been able to fill, despite taking progressive steps to that end.

European Treaties have progressively acknowledged the role of national parliaments and thereby the principle of dual legitimacy (Piedrafita, 2013).

However, both the perceptions of the necessity to increase the involvement of national parliaments and the opinions on the control mechanisms over EU policymaking exist in a multitude of shades, possibly reflecting diverging democratic traditions and parliamentary practices across the EU.

Nevertheless, in the context of the eurozone economic crisis, several developments may have reinforced the sentiment that the principle of dual legitimacy in the EU should be fostered (Stratulat & al, 2014). Firstly, acting as the highest executive body, the European Council played a major role in the context of the crisis and Euro summits were also created (between 2010 and 2013, the European Council convened 24 times, and 5 Euro summits took place). But, unaccountable as a whole, the European Council can only derive its legitimacy from national parliaments. Secondly, intergovernmental Treaties requiring (national) parliamentary ratifications were adopted (the Treaty on Stability, Coordination and Governance (TSCG), the Treaty on the European Stability Mechanism and – currently under negotiation – the treaty for the creation of a Single Resolution Fund). Finally, despite being adopted by the European Parliament, legislation strengthening European economic governance (six-pack, two-pack) does not grant any significant role to the European Parliament. At the same time, this strengthened economic governance directly impacts the sovereignty of national parliaments, and the EU institutions have tried to arouse the enthusiasm of national parliaments for recommendations in favour of structural reform at the national level.

This article, which will proceed based on the assumption that national parliaments should indeed be more involved in EU affairs, will focus on the consequences of such a claim for the Belgian parliamentary system. It first discusses the most direct mechanisms of involvement of Belgian parliaments, and the extent of their use. We will see that the control currently exercised by the Belgian parliaments over the main executive bodies of the EU – the European Commission, the European Council and the Council of the European Union – is very limited, as is their practical involvement in the approval of Treaties (part II). In a second step, we will investigate the main factors impeding the capacity of Belgian parliaments to act and what could be done to potentially mitigate their effects (part III). But first of all, we will underline the relevant peculiarities of Belgian federalism, an understanding of which is essential to the study of the meaning and role of ‘national parliaments’ within the Belgian political system (part I).

## 1. On Internal Coordination and Parliamentarism in the Belgian Federal State

In the EU Treaties – or in the extensive literature on the ‘democratic deficit’ of the EU – the mention of ‘national parliaments’ seems to implicitly refer to the classical unicameral or bicameral concepts of parliamentary systems (Dopagne & Delpérée, 2010). However, neither of these conceptions apply to the parliamentary system of the Belgian federal state. To lift the ambiguity of the term ‘national parliaments’ used in the Lisbon Treaty, Belgium actually deemed it necessary to include annexed Declaration 51 stating that ‘*not only the Chamber of Representatives and Senate of the Federal Parliament but also the parliamentary assemblies of the Communities and the Regions act, in terms of the competences exercised by the Union, as components of the national parliamentary system or chambers of the national Parliament.*’

The degree of involvement in EU affairs of these multiple Belgian ‘national parliaments’ (up to 9) is in turn intrinsically linked to how the executives of the Federal State, the Regions and the Communities coordinate their views on EU affairs in order to define a single ‘Belgian’ position – the only one recognised by the EU. This coordination mechanism is regulated by a cooperation agreement drawn up in 1994 following the fourth reform of the Belgian State that constitutionalized its federal character.<sup>1</sup> The agreement also specifies how the Representation of Belgium in the Council of the EU is shared between the federal, regional or community level according to their respective competences.

According to the terms of this cooperation agreement, in order to define the Belgian position at the Council of the EU, systematic horizontal coordination takes place within the Directorate-General Europe (DGE) of the Ministry of Foreign affairs which presides and provides the secretariat for the meetings, and more generally ensures that ‘*the principles and coherence of the European policy of Belgium are respected*’.<sup>2</sup> A multitude of officials are consistently invited to the meetings: members of the cabinets of (i) the ministers of the ruling

<sup>1</sup> Accord de coopération entre l’Etat fédéral, les Communautés et les Régions, relatif à la représentation du Royaume de Belgique au sein du Conseil de Ministres de l’Union européenne’ (M.B. 17.11.1994). In practice, the agreement also followed the insertion of art.146 of the Maastricht Treaty (currently art. 16 TFUE) which states that “The Council shall consist of a representative of each Member State at ministerial level, authorized to commit the government of that Member State”. This mention reflected the demand of federated entities of Belgium (and Germany) that aimed to introduce a decentralized system of representation of a Member State in the Council of Ministers.

<sup>2</sup> In Point 5 in the development of the Cooperation Agreement op.cit. 1.

federal coalition (thus representing the Prime minister and the vice-Prime Ministers), (ii) the federal State Secretary for European Affairs, (iii) the Presidents (head of government) of the different regions and communities, as well as (iv) regional or community ministers with a portfolio that includes international affairs. Depending on the agenda of the meeting, are also invited members of the cabinet of functionally competent regional and community ministers as well as some civil servants of those same ministries. They can also include members of the Belgian permanent representation (federal civil servants or regional/community level attachés). On average, of the hundred individuals potentially involved, around twenty attend each meeting.

Although it might seem that this mechanism could foster competition in the Belgian federal system, as multiple negotiators hold veto rights, it was unequivocally demonstrated that this coordination mechanism actually fosters cooperation (Beyers and Bursens, 2006). Consensus is nearly always found at the DGE level, and very rarely requires the involvement of the formal higher inter-ministerial instances, namely the Inter-ministerial Committee for External Affairs or, as a last resort, the Concertation Committee.

For the purpose of this article, two important preliminary observations can be made. Firstly, the intergovernmental and horizontal nature of this cooperation between the executives leaves little room for the parliaments to influence the Belgian position that will be officially endorsed in the EU institutions – we will come back to this. And secondly, this coordination mechanism reflects the constitutional equal-footing on which the federal level and the federated levels are placed. This feature affects the relevance of the comparison with the parliamentary practices of other federal countries (Germany, Austria) or countries with a very decentralised system (Spain) because, unlike Belgium, these countries depend on a hierarchy between the federal/central level and the sub-entities (Boronska-Hryniewiecka, 2013). In other words, no other European country has gone as far as Belgium down the path of confederalism (Schock, 2004) and this affects the scope of parliamentary action in European affairs.

## 2. How Belgian Parliaments Deal with EU Affairs

Let us now examine the involvement of Belgian parliaments in the ratification process of European Treaties (A), as well as how and to what extent they use the ‘early warning mechanism’ and ‘political dialogue’ to control the European

Commission (B), and control the Belgian position within the European Council (C) and within the Council of the EU (D).

## 2.1. *Assenting to Treaties*

Belgian Regions and Communities (federated entities) were granted important constitutional rights to conceive and adopt international treaties.<sup>3</sup> Most European treaties concern both the federal and federated entities and thus once they have been negotiated and signed, all Belgian parliaments need to assent to these treaties for the ratification process to be complete.<sup>4</sup> The procedure does take some time, as evidenced by the time it took for the TSCG to successfully go through all nine parliaments in 2013.

In principle, the veto of a single parliament would prevent Belgium from ratifying the Treaty. Because of this, the parliaments of the federated entities were granted maximal authority. From a European perspective, this could create absurd situations if, for example, the parliament of the German Community representing 80.000 citizens rejected a Treaty requiring the unanimous approval of all Member States.

Although parliaments can only approve or reject the Treaty as a whole without being able to suggest amendments, they are made aware of any negotiations for EU Treaty revisions as soon as they begin and receive the draft Treaty before it is signed.<sup>5</sup> In principle, all the Belgian assemblies could therefore weigh in on the Belgian position in the midst of the negotiations but in truth their influence is hardly felt at all (Dumont, 2013). The debate on the recent TSCG suggests that parliaments were not truly involved in the process and mostly found themselves faced with the ‘fait accompli’, as was also the case elsewhere in Europe.

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<sup>3</sup> Art.167 (3) of the Belgian Constitution allows Regions and Communities to conclude Treaties on Matters for which their Parliament are competent.

<sup>4</sup> Following the sixth reform of the Belgian State, and its entry into force after the elections of May 2014, the Senate will not have to approve the so-called mixed Treaties anymore. Hence, eight instead of nine Parliamentary assemblies will have to approve them. Initially considered, the possibility that the ‘new’ Senate, now directly representing the federated entities, would consent to the mixed Treaties in place of Regional and Community parliaments was finally not retained. This largely reflects the difficulty for federated entities to grant back to the federal level the veto rights they acquired.

See Dumont (2013) p.39 for a summary of how so called ‘mixed Treaties’ are negotiated (internally), how Belgian delegation for the negotiation is defined and the modalities for their signature.

<sup>5</sup> Art. 168 of the Belgian Constitution for the federal Chambers, and Art.16 §2 (2), of the Special Law of 8a August 1980 for regional and community Parliaments.

## 2.2. Monitoring of the principle of subsidiarity and political dialogue with the European Commission

The measure of control a national parliament holds over the initiatives taken by the European Commission depends on two processes: the control of the principle of subsidiarity and the so-called ‘political dialogue’. The first process must be understood as the control of the subsidiarity principle as defined by the Protocol No 2 of the Lisbon Treaty via the so-called ‘early warning mechanism’, a tool allowing any member parliament to submit a reasoned opinion stating why it considers that a draft legislative act does not comply with the principle of subsidiarity. Two votes are granted to the national parliaments of each Member State. If the number of opinions that find there is a breach of the subsidiarity principle exceeds the agreed threshold, the proposal must be reviewed, although the Commission can decide not to make any changes.<sup>6</sup>

The second process, the ‘political dialogue’, is an extension of this procedure. It results from the Commission’s 2006 initiative to allow a national parliament to express itself beyond the sole and strict subsidiarity principle. This unilateral, informal and non-binding initiative of the Commission aims to give national parliaments the possibility of voicing their broader opinion and concerns to the Commission, at an early stage of the European decision-making process.

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<sup>6</sup> The following table summarizes the early warning mechanism procedure. Taken from Piedrafita (2013).

	<b>‘Yellow card’ procedure</b>	<b>Orange card’ procedure</b> Only for ordinary legislative procedure
<b>Threshold</b>	A number of negative opinions representing: <ul style="list-style-type: none"> <li>• at least 1/3 of the total votes (2 votes per MS) or</li> <li>• ¼ for legislative acts concerning the area of freedom, security and justice</li> </ul>	A number of negative opinions representing at least a simple majority of the votes allocated to national parliaments
<b>Effect</b>	The initiating EU institution (usually the Commission) must review the proposal. It can maintain, amend or withdraw it.	The European Commission must review the proposal, and it can maintain, amend or withdraw it. If the European Commission decides to maintain the proposal, it has to justify its decision, and both the Council and the European Parliament can reject it before the end of the first reading if they find it incompatible with the subsidiarity principle.

In order to implement Protocol No 2 of the Lisbon Treaty and in keeping with Declaration 51 of Belgium, Belgian parliaments concluded a ‘cooperation agreement’ which regulates how the two national votes are shared, namely on the basis of their respective competences.<sup>7</sup> However, this improvised agreement has strictly no legal value and has not entered into force (Delpérée and Dopagne, 2010). Nevertheless, the parliaments behave according to this informal political agreement. The very limited use of the ‘early warning mechanism’ probably explains why this informality has yet to create any problems.

Indeed, since the entry into force of the Lisbon Treaty, the Belgian parliaments have barely used the mechanism. Considered as a whole, the Belgian parliamentary system is one of the least active in Europe in its use of the early warning mechanism. On average since 2010, Belgian parliaments were responsible for 1.4% of all the contributions from national parliaments across Europe.<sup>8</sup>

The most active Belgian assembly is the federal Chamber of Representatives. Out of the thousand documents it receives from the European Commission every year, about a hundred are included in a consolidated summary which includes a preliminary analysis of the respect of the subsidiarity principle. Three civil servants of the European cell of the Chamber are assigned to this task. This summary is then sent to the competent permanent parliamentary committee, which can express its own opinion or potentially refer it to the plenary. Since 2010, the Chamber issued 25 opinions on legislative proposals by the Commission, four of which can be strictly considered as reasoned opin-

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<sup>7</sup> The agreement signed by the presidents of 8 different parliaments in 2005 (in prevision of the Treaty establishing a Constitution for Europe) specifies that when one competent parliament submits a reasoned opinion, one vote is cast. When several competent parliaments submit a reasoned opinion, the total of the votes is split according to their domain of competence. When the proposal for a legislative act is linked to an exclusive federal competence, the two federal chambers maintain their capacity to cast the two votes. If the proposal is linked to the competences of regions and communities, “two votes are cast when at least two competent parliaments from a different linguistic regime communicate a reasoned opinion”. For a topic where a parliament is exclusively competent it can express the two votes (in practice the Flemish Parliament on fisheries). Finally, when the legislative project has a ‘mixed’ nature as it concerns both the federal and the regional/community levels, “two votes are cast when at least one federal chamber and one regional/community parliament submit a reasoned opinion”. The agreement also foresees that the Council of State would litigate in case of a disagreement regarding the respective competence of a parliament to submit a reasoned opinion.

The ‘agreement’ can be found in the annexes of rules of procedure of the House of Representatives at: [http://www.lachambre.be/kvvcr/pdf\\_sections/publications/reglement/reglement\\_FR\\_bijlage\\_10\\_2010.indd.pdf](http://www.lachambre.be/kvvcr/pdf_sections/publications/reglement/reglement_FR_bijlage_10_2010.indd.pdf)

<sup>8</sup> Own calculation based on the data covering 2010-2013 provided by the Directorate for the Relations with National Parliaments, European Parliament, on its website: <http://www.europarl.europa.eu/webnp/cms/pid/1876> (last consulted 14/02/2014). This is obviously a purely quantitative assessment. For example, the (hyper) activity (at least quantitatively) of the Italian Senate and the Portuguese Parliament makes them outliers in the dataset.

ions on the subsidiarity principle.<sup>9</sup> Two of these reasoned opinions were negative, one of which pertained to the Monti II legislative proposal regarding the right to strike, which was greeted by 19 negative votes coming from 12 chambers across Europe and was eventually withdrawn by the Commission.<sup>10</sup>

Other assemblies barely used the mechanism. The Senate issued three opinions since 2010 including a negative one that discussed the question of subsidiarity specifically.<sup>11</sup> Regional parliaments made an even more limited use of these procedures. The Flemish Parliament issued an opinion as part of the political dialogue in 2013.<sup>12</sup> The Walloon Parliament used the system only once in 2010, mostly to try it out.<sup>13</sup>

### *2.3. Control of the Belgian position at the European Council*

The Belgian position in the European Council can in principle be debated within the ‘Federal advisory committee on European affairs’ (the Committee) which associates ten members of the Chamber of Representatives, ten members of the Senate and ten Belgian Members of the European Parliament. The public hearing of the Prime Minister before and after the European Council constitutes the most visible and substantial activity of the Committee.

Although these hearings are not systematic, the custom is mostly observed, which makes Belgium a Member State where the frequency of such hearings is relatively high (Hefftlar et al., 2013). We can estimate that about a dozen individuals coming from both federal chambers attend these meetings. Belgian MEPs rarely show up, either because their agenda does not allow them to or because they do not find the meeting useful enough given the other information means at their disposal. It should also be noted that some parliamentarians that

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<sup>9</sup> Based on the IPEX database ([www.IPEX.eu](http://www.IPEX.eu)) and the dedicated page on the website of the Chamber of representatives at: <http://www.lachambre.be/kvvcr/showpage.cfm?language=fr&section=/pri/europe&story=sub.xml&rightmenu=right> (last consulted 21/02/2014).

<sup>10</sup> ‘Regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services’ (COM 2012 (130). For the details on the procedure, see the page: [http://oide.sejm.gov.pl/oide/en/index.php?option=com\\_content&view=article&id=14765&Itemid=793](http://oide.sejm.gov.pl/oide/en/index.php?option=com_content&view=article&id=14765&Itemid=793) and Fabrini and Granat (2013).

<sup>11</sup> Based on IPEX database and on the Senate database.

<sup>12</sup> The opinion was about a proposal establishing a framework on market access to port services and financial transparency of ports *COM (2013) 296*. See document Nr 2147 (2012-2013) 2 on the Flemish Parliament website at [www.vlaamsparlement.be](http://www.vlaamsparlement.be).

<sup>13</sup> The opinions were about directives COM2010 (94) and COM 2010(95), no objections were made, for more information see [http://parlement.wallonie.be/content/default.php?p=eur\\_avis](http://parlement.wallonie.be/content/default.php?p=eur_avis)

are not formally members of the EU affairs committee regularly participate in these hearings.

This informal character of the meetings reflects the *informative* rather than *deliberative* intrinsic nature of the Committee. The hearing is therefore similar to an information session where the Prime Minister begins by making a statement, followed by a series of comments and questions from the assembly. The Prime Minister in turn tries to answer them in the few closing minutes of the meeting. In practice, the Committee does not voice any form of statement regarding the Belgian position that the Prime Minister intends to defend at the European Council. This does not result from the impossibility of doing so since the Committee could adopt '*opinions, proposal for resolutions, recommendations or other final texts that are then submitted [...] to the plenary [...]*'.<sup>14</sup> In the past, resolutions were directed at Treaty revisions, and almost never in relation to a session of the European Council.<sup>15</sup>

## 2.4. Control of the Belgian position at the Council of the EU

Belgian parliaments also have the possibility of controlling and influencing the Belgian position that will ultimately be put forward in the Council of the EU. They may do so by scrutinising proposals of legislative acts as well as non-legislative documents published by the European Institutions. Influence can be exercised with classical instruments of parliamentary control: by putting questions to the government, organising debates, bringing forward proposals for the adoption of resolutions, etc.

The rules of the House of Representatives mention that '*each permanent committee includes in its monthly agenda an exchange of views on European affairs that concern it and that are also included in the agenda of the Council of the European Union [...]*'<sup>16</sup> Each Committee also selects a 'europromotor' from among its members whose mission is to follow European issues of relevance to the Committee, and to act in favour of their inclusion in the agenda of the

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<sup>14</sup> Art.68 (4) of the rules of procedure of the Chamber of Representatives (Règlement de la Chambre des représentants).Own translation.

<sup>15</sup> The last resolution adopted by the Chamber concerned the European Council of Laeken of 2001, see (Doc. Ch. 50 1527/002). For the complete overview of the output of the Chamber on EU affairs, see: [http://www.lachambre.be/kvvcr/pdf\\_sections/pri/europe/RAPPORTS\\_19\\_10\\_2012.pdf](http://www.lachambre.be/kvvcr/pdf_sections/pri/europe/RAPPORTS_19_10_2012.pdf).

<sup>16</sup> Art.37 of the rules of procedure of the Chamber of Representatives (Règlement de la Chambre des représentants).Own translation.

Committee. The Flemish Parliament and the Parliament of the French Community adopted a somewhat similar concept of ‘europromotor’.<sup>17</sup>

Although in practice it is difficult to evaluate the degree of control of parliaments in EU affairs, it is obvious that their involvement is quite limited as a whole. Hearings of ministers before and after the meetings of the Council of the EU are far from systematic. Although it must in principle do so, the government also fails to systematically provide an annotated agenda before each Council, and to report on it afterwards. According to an analysis made by the services of the House of Representatives, less than 5% of parliamentary questions have a link with EU affairs (D’Hollander, 2013). The system of europromotors cannot apparently be considered as adequate and satisfactory in this respect.<sup>18</sup> Delreux and Randour (2013) report that only 5 questions regarding EU affairs were asked in the plenary in 2012, but that none of them dealt specifically with a legislative proposal. They also state that the few questions asked in the permanent parliamentary committees concern major orientations of EU policy rather than specific legislative acts to be debated in the Council of the EU.

### 3. Overcoming the Main Factors behind the Limited Involvement of Belgian Parliaments into EU Affairs

What are the main reasons for the limited involvement and influence of Belgian parliaments in European affairs discussed so far? We can broadly distinguish between three main reasons.

#### 3.1. *Belgian political system and pro-Europeanism*

In Belgium, coalition government typically relies on a docile parliamentary majority, made possible by strong party discipline and homogeneity within parliamentary groups. The negative connotation of ‘particracy’ is often associated with this regime in which parties can exercise a great deal of control. *De*

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<sup>17</sup> See Art 31 of Règlement intérieur du Parlement de la Fédération Wallonie-Bruxelles and for the Flemish Parliament the following webpage: <http://www.vlaamsparlament.be/vp/informatie/diensteuropa/beleidsdomein/algemeen/europromotoren.html>. (last consulted 14/02/2014).

<sup>18</sup> See the comments made by Turtelboom, Chevalier, Vautmans and Dierickx in their proposal for a modification of the Rules of Procedure of the Chamber of Representatives concerning the follow-up of EU affairs. DOC Chambre 51 2337/001, 14 March 2006.

*facto*, one of the main characteristics of the Belgian political system is thus the control of the executive on the legislature, rather than vice versa (Delreux and Randour, 2013). The activities of parliaments on European Affairs are no exception.

Moreover, Belgian political parties (at least the ‘traditional’ parties – and by extension the majority of parliamentary groups) are very much pro-European. This consensus tends to work against any debate on EU affairs. Political parties do not take positions on EU affairs because the overall Belgian public opinion strongly favours European integration. Parties are not pressed to take a stance on EU affairs in the public arena, including and starting with parliamentary assemblies (Delreux and Randour, 2013).

However, if the Belgian political system and the widely shared pro-Europeanism can *explain* the limited involvement of Belgian parliaments in EU affairs, this should not *justify* it. Even if pro-Europeanism dominates the political landscape, it could be concealing starkly divided views on the future of European integration. For example, it is noteworthy that some extremely ambitious blueprints put forward by the EU institutions on the future of the Economic and Monetary Union were barely discussed within Belgian parliaments. This absence of public deliberation certainly prevents these political opinions from being clarified.

### *3.2. Adapting parliamentarism to the coordination of the executives in the Belgian federation*

As mentioned in part I, the role of parliaments is heavily constrained in the Belgian institutional system where the executives of the federal, regional and community levels of the federation dominate the decision-making process on EU affairs. Parliaments are excluded from the internal coordination process that is exclusively conducted by governments and the administration. Greater parliamentary involvement is therefore conceivable either before (*ex-ante*) or after (*ex-post*) this internal coordination takes places.

#### *Ex-ante – Prior to internal coordination*

*Ex-ante*, the parliaments get a chance to express their views on EU proposals to their respective federal/regional/community governments, just as they have

the opportunity to do so with the Commission within the political dialogue framework. This approach supposes that parliaments may influence the position of a specific government before it enters into the Belgian internal coordination process, as soon as EU documents are made available.

Such an *ex-ante* involvement is however bound to be quite demanding for parliamentary assemblies. Deprived of the official stance of the executive, they would have to switch from *reactivity* to *proactivity*. This would require the member of parliament to have an impressive array of skills and abilities: a sound technical understanding of the topic at hand, the capacity of detecting the politically salient aspects of EU proposals, and a good grasp of the respective competences of federal or federated entities. This proactivity would also require the right amount of support from parliamentary services. This kind of support would require closer attention to be paid to the organisation and capabilities of parliaments, thus promoting and giving them the means for greater involvement in EU affairs.

Moreover, this proposal for more *ex-ante* involvement raises a fundamental question: would the greater degree of involvement of parliaments not undermine the capacity of the entities of the Belgian State to forge compromises in the internal negotiation process when diverging interests are at stake? This fundamental question not only reflects a classical equilibrium between legitimacy and efficiency, in Belgium, this question also touches upon the tension between the respect of the external autonomy of federated entities and the need to safeguard the coherence of the Belgian external positioning.

#### *Ex-post – After internal coordination*

The possibility for *ex-post* control of the Belgian position runs into the issue of the fragmentation of the parliaments in the multi-level and largely non-hierarchical structure of Belgium.<sup>19</sup> First, there is no single government responsible for the Belgian position. This position is always the result of a coordination process between all governments that compose the Belgian State. Secondly and as a result, no parliamentary assembly is entitled to control this position. An assembly representing all levels of the federations where the concerted Belgian

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<sup>19</sup> This brief consideration could certainly be further explained by the plural and hesitant Belgian doctrine on federalism, which in general considers ‘sovereignty’ as relative concept in Belgium. See Piret (2007) for an overview.

position as a whole could be jointly discussed, controlled and influenced, simply does not exist in Belgium. In principle, the Federal Chamber may only control the federal government's position, the Flemish government the Flemish position, the Walloon Parliament the Walloon position, etc. While the executives and the bureaucracy from all levels regularly convene – in working groups, at the DG E and other inter-ministerial fora – in order to define a single Belgian position, parliamentarians from the federal, regional and community levels do not convene to jointly control that single Belgian position.

In this respect, the reform of the Senate undertaken as part of the sixth reform of the Belgian State will not facilitate parliamentary control over EU affairs, quite to the contrary. If the Senate will indeed become a chamber of 'federated entities' as Senators will come directly from the regional and community Parliaments, it was essentially designed as a forum for future institutional reforms in Belgium.<sup>20</sup> The Senate will be stripped of most of its external affairs competences and will not be entitled to approve international treaties anymore. As a non-permanent body, the Senate will in any case not be able to control the government. Whether the participation of senators to the federal EU Affairs Committee will be maintained is also uncertain. In sum, the federal level is evolving more towards a unicameral system than towards a bicameral federal system that would be of particular relevance to the external affairs of the Belgian federation, and EU affairs in particular.

If these constraints cannot be ignored, practical and partial solutions can nevertheless be advocated to circumvent the problem. For example, stronger parliamentary control can be promoted within the federal Chamber on *mostly* federal competences for EU affairs (notably in areas such as: General Affairs, Ecofin, Justice and Home Affairs, Energy, Telecom, Employment, Social Policy, Consumer Affairs). In these cases, members of the federal Chamber would in principle be entitled to act as the resulting *Belgian* position is mostly *federal*. Accordingly, it would be advisable to organise hearings of the Finance Minister on the decisions to be taken at the Governing Council of the European Stability Mechanism,<sup>21</sup> and within the Eurogroup which gained pre-eminence during the crisis. Likewise, the Flemish Parliament is most clearly

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<sup>20</sup> See Matthijs (2013) and Muyle (2013) for details on the Senate reform.

<sup>21</sup> A proposal for a resolution for control of the decision taken in the European Stability Mechanism was put forward without success in the Chamber. See the Chamber document n°53 2103/001, 'Proposition de résolution concernant le mandat de la Belgique au sein du Mécanisme Européen de Stabilité', 14 March 2012.

entitled to have a say on the stance of the Flemish government regarding fisheries.

However, in the numerous ‘mixed’ areas where both the federal and regional/community levels are concerned, parliamentary dialogue with their respective government on the concerted Belgian position cannot be anything but informative. For example, the regional Walloon minister of the economy could inform Walloon deputies about the Belgian position on a proposal to be discussed in the Competitiveness Council. But in no possible way are regional deputies entitled to control, influence or change a Belgian position that has already been determined and concerns the two other regions in addition to the federal level.

### *3.3. Improving governmental communication with parliaments*

The quality and relevance of the information at the disposal of the parliamentarians is crucial for effective control to take place. However, the parliament is usually poorly informed about the position a government intends to adopt when it concerns European affairs.

Wherever stronger parliamentary scrutiny is considered, better governmental communication is required. Information on the result of internal coordination meetings could turn out useful. An increased number of regular hearings, both before and after the Council of the EU takes place would be advisable.

Belgium could learn much from the Netherlands where one well-established practice consists in the government systematically sending out a report at an early stage and with the support of its administration which not only summarises every proposition of the Commission but also specifies what the respective Dutch position will be (*Beoordeling Nieuwe Commissievoorstellen* (BNC) *fiche*).<sup>22</sup> The information also specifies administrative and budgetary consequences as well as a first analysis regarding the principles of subsidiarity and proportionality. Moreover, before attending the Council, the Dutch Minister sends a letter specifying his or her intention (an annotated agenda) and a report is also provided for the Parliament after the Council. Of course, the information does not necessarily contain extremely salient Dutch positions, but

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<sup>22</sup> For more information on this system, consult the dedicated pages on the *Tweede Kamer* website, at [http://tweedekamer.nl/hoe\\_werkt\\_het/tweede\\_kamer\\_en\\_europa/nederlands\\_standpunt/index.jsp](http://tweedekamer.nl/hoe_werkt_het/tweede_kamer_en_europa/nederlands_standpunt/index.jsp).

the process undoubtedly increases the visibility of the EU proposals currently being discussed for the members of parliament.

## Conclusion

In this article, we underlined that Belgian parliaments – understood as all nine assemblies composing the Belgian parliamentary system – are barely involved in EU affairs. Therefore they can hardly be considered as contributing to the legitimation process of EU action. Although all its assemblies have to give assent to European Treaties as they are touching upon both federal and regional or community competences (bar the Senate that will lose all Treaty assent competences following the sixth Belgian state reform), in practice their veto right cannot compensate for the lack of early involvement and debate. Besides, Belgian parliaments were not much active in their use of the instruments that the EU put at their disposal such as the early warning mechanism for the control of the subsidiarity principle, and by extension the ‘political dialogue’ with the Commission. There is very little parliamentary follow-up on the proposals from EU institutions, even when they display some political salience and relevance for Belgium. Accordingly, the influence of the Belgian parliamentary system on the Belgian position defended in the Council of the EU and the European Council is almost non-existent.

One major consideration underlined in this article is that the kind of federalism that developed in Belgium significantly restrains the potential involvement of the elected assemblies. First, the federal and federated levels (and thus political parties across levels) have to coordinate their views in order to define a unique Belgian position to defend at the EU level. Belgian assemblies are *de jure* excluded from this coordination mechanism which takes place exclusively within the executive and the administration. Moreover, the Belgian parliaments are *de facto* deprived from much of their control capability and influence before and after this coordination takes place. This follows from the simple consideration that no single government of the Belgian federation can in principle be fully held accountable for the Belgian position as a whole since it is always the concerted position among all entities of the federation. Moreover, no single parliamentary assembly is entitled to control this position. Notably, the reform of the Senate further deprives the federal level of a possible forum able to ensure collective oversight on the Belgian position in EU affairs.

Despite the difficulties imposed by the strong confederate features of the internal decision-making process on EU affairs, the Belgian parliaments could still develop their influence. They could mostly do so at an early stage, before the internal coordination (*ex-ante*), in the first weeks following the publication of legislative or non-legislative acts by the EU institutions. They would thereby seize the opportunity to voice their opinion not only to the Commission but also to their respective governments. At a later stage, once the internal coordination process has defined a Belgian position (*ex-post*), stronger control by the Chamber of Representatives should particularly be possible on the matters of mostly federal competences both before and after a Council of the EU. This would in any case require much better communication between the government and the Chamber on its position than current standards. A greater degree of involvement would also require that parliamentary groups of the governmental majority take up a more leading role in the debates on EU affairs, rather than leaving it all out to the executive. They would however need to do so without jeopardizing the effectiveness of the Belgian internal coordination system, where cooperation is essential. Only the realisation that EU affairs cannot be narrowly defined as *external* policy affairs, but rather as internal policies with a European dimension, may entice parliaments to redefine their role in this respect.

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*Xavier Vanden Bosch is Research Fellow at the Egmont Institute. The auteur would like to thank in particular Hugo D'Hollander, Hugues Dumont, Xavier Demoulin and Wampie Libon-van der Wal for the discussions that greatly helped for the writing of this article.*



# EU POLICY CHALLENGES



# What Future for the Eurozone?

## *Combining Discipline, Solidarity and Institutional Reforms*

XAVIER VANDEN BOSCH & STIJN VERHELST

### **Abstract**

This article discusses the challenges that await policymakers in reforming the EMU. A balance between discipline and solidarity will have to be found, while institutional reforms should improve the eurozone's legitimacy and efficiency. The key decisions on EMU reforms will have to be made during the 2014-2019 parliamentary term, as the window of opportunity for major reforms is likely to be closed afterwards.



### **Introduction**

The introduction of the euro was one of the most important steps in the European integration process. The eurozone crisis has shown, however, that the EU's Economic and Monetary Union (EMU) had several flaws in its design. Over the past years, an important reform process has taken place, which is likely to continue in the future.

The question can be raised: "what does the future hold for the eurozone?" The answer to this question will depend to a large extent on the policy choices that will be made during the European Parliament's 2014-2019 term. In this respect, the 2014 European elections will matter a great deal for the future shape and strength of the EMU.

A wide range of possible reforms of the eurozone has been advocated since the outbreak of the sovereign debt crisis. Some are pessimistic about the ability of certain countries to recover from the crisis and advocate a eurozone break-up, judging the common currency a failed experiment. More optimistic voices believe the eurozone should instead move forward, by mending its birth defects. Where most agree is that maintaining the architecture of the EMU in its present fragile state would leave it vulnerable to future crises.

Besides calls for reforms to make the eurozone sustainable in the long-term, policymakers will also be faced with the need for short-term decisions to genuinely exit the ongoing crisis. Fiscal and macroeconomic imbalances will have to be addressed, and additional solidarity might be needed to cope with the severe social toll in the countries most hit by the crisis. Insufficient economic growth or renewed periods of crisis could complicate the situation even further.

Without doubt, any discussions on the reforms of the EMU are bound to be difficult for Member States and the European Parliament. In essence, European Council President Herman Van Rompuy identified the four building blocks around which the eurozone reforms will evolve, involving (i) financial, (ii) budgetary, (iii) economic and (iv) legitimacy and accountability reforms. These four building blocks provide a sense of direction with regard to the areas where reforms are needed. However, this approach does not necessarily highlight the underlying challenges that the reforms will face. In this respect, this paper identifies three crucial challenges for the upcoming reform of the EMU.

The first two challenges relate to the substantive rules and instruments of the EMU (“*what*” the EMU is about). A first challenge is ensuring sufficient discipline in the conduct of policies that are of vital importance to the eurozone’s sustainability. This is to prevent the economic, fiscal and financial imbalances that occurred prior to the crisis. The discipline will likely have to be counterbalanced by solidarity across eurozone countries, which is the second challenge in the EMU reforms. Often, specific policymakers put the emphasis either on discipline or on solidarity. In reality, these two elements tend to be balanced against each other: discussions will have to consider both.

Besides the “*what*” of the EMU, a properly functioning eurozone will also require addressing the “*how*” question. This boils down to defining *how* the EMU’s institutional functioning should be organised. Organising the EU’s

legal and governance frameworks will be key in this respect, as well as defining the relation between the eurozone and the other Member States.

In what follows, we will discuss each of the three challenges in turn.

## Ensuring Discipline

A sustainable monetary union needs more than a mere common monetary policy. It notably requires sound fiscal and economic policymaking, as well as a stable financial sector. Prior to the crisis, these three policies were largely decided at the level of the individual Member States, with the EU having little ability to discipline national policymaking. As the eurozone crisis revealed substantial deficiencies in each of these policy fields, the European level had to strengthen its grip on all of them. Yet, the degree of European control differs from one policy field to another, resulting in distinct challenges for each of them over the 2014-2019 parliamentary term.

### *Public Finances*

The rules promoting discipline in public finances have traditionally been the most developed part of the EMU's economic arm. A Stability and Growth Pact was put in place to regulate public finances. Even so, the rules were not able to prevent lax fiscal policies in several Member States. To counter this weakness, the eurozone's fiscal rules have been considerably strengthened, *inter alia*, via the so-called six-pack and two-pack legislation packages and an intergovernmental treaty known as the Fiscal Compact.

The degree of strictness and flexibility in the application of the fiscal rules will be a key issue during the next parliamentary term. It remains to be seen to what extent Member States will be willing to respect the pace and scale of envisaged fiscal consolidation. The response of the EU to deviations from fiscal objectives by a Member State will be closely watched. In essence, European policymakers will have to find a balance between two distinct approaches. They could, on the one hand, opt for a strict, mechanical application of the rules. This would offer the advantage of clarity, but a too rigid application would undermine the legitimacy of the EU's rules and actions. The alternative is a more flexible application of the EU fiscal rules. By considering the specific circumstances such an approach would allow for more economic and political

judgement. The risk is, however, that this discretion might lead to the same laxity as was seen prior to the crisis.

A similar balance will have to be found in terms of sanctions for the non-respect of the European rules. Applying a sanction would worsen a country's fiscal problem, but the lack of sanctions as a possible stick would weaken the rules' credibility. A potential way to overcome this predicament is to foresee positive incentives for troubled Member States to carry out the necessary reforms, making the sanctions part of a wider package (see the section on solidarity).

As the EU's framework of fiscal rules was put in place in the midst of a full scale sovereign debt crisis, Europe is likely to benefit from a review of its rules during calmer times. The envisaged assessment by 2018 of whether the Fiscal Compact should become an integral part of regular EU law offers a good opportunity for such an examination. The review can assess the fields in which a more flexible approach is warranted. A possible course of action in this sense is allowing for more attention for public investment when applying the EU fiscal rules – in line with the traditional meaning of the golden rule for fiscal policy. Alternatively, a review might result in increased European powers to discipline fiscal policies. While even stricter fiscal rules do not seem desirable, future reforms could give the EU more powers in the national budget making process. In this respect, the EU could potentially be given a veto right over draft national budgets.

### *Economic Policy*

Before the crisis there was little willingness in the Member States to grant the EU a large role in economic policymaking, which was thus limited to surveillance and non-binding recommendations. The Europe 2020 Strategy, which replaced the Lisbon Strategy, is the cornerstone of this non-binding approach. The lack of more compulsory European control proved problematic, as large economic imbalances between eurozone countries emerged.

As a consequence, several reforms were introduced to increase the EU's role in economic policymaking. This notably led to the introduction of the Macroeconomic Imbalance Procedure. Despite this evolution, it still seems the EU lacks the instruments to compel a Member State to revise its economic policies at an

early stage, i.e. before problems result in large economic weaknesses. During the next parliamentary term, a discussion is set to take place on a further strengthening of the EU's role in economic policymaking.

Some argue for endowing the EU level with its own economic policymaking powers. In ambitious views this would result in a "European economic government". Inevitably, such increased European powers would limit to a large extent national sovereignty in economic policymaking and would have to be coupled with sufficient political legitimacy at the EU level.

A somewhat less ambitious – but more likely – step in the direction of more European control may come from the introduction of "contractual arrangements" between the EU and each individual eurozone country. In such contracts, the EU and the Member State would agree on the economic reforms that a country will undertake in subsequent years. The EU's aim is that the contractual nature of the document will lead to higher compliance than is the case for the EU's existing recommendations. Importantly, the contracts would be linked to a form of solidarity for countries that implement the agreed reforms.

Beyond the question of the degree of control the EU should have on economic policy, a crucial question is the type of economic policies that the European level should actually advocate. The EU's approach is at times criticised for being overly oriented on structural reforms and for insufficiently enforcing a symmetric adjustment involving not only the most vulnerable but also the most competitive eurozone countries. Others insist that the EU should pay more attention to social policies (see Frank Vandenbroucke, 2014). Economic policy is to a large extent determined by political choices. Hence, the outcome of the European and national elections can have a determining influence on the EU's position with regard to economic policymaking.

### *The Financial Sector*

Over the years, financial regulation has become largely determined at the EU level, even though national differences persist. The financial sector itself has increasingly transcended national borders. Supervision of the sector had not followed this trend, as it remained a national prerogative. The same holds true for the management of problems and crises in the financial sector.

As for fiscal and economic policymaking, the eurozone crisis has demonstrated the weaknesses of this system. National supervisors paid insufficient attention to the inter-linkages in the European financial sector and cross-border supervisory cooperation was flawed. When problems occurred, the cost of bailing out banks proved very large for some Member States, leading to questions about their own solvency.

This approach to financial supervision and crisis management will be radically altered with the launch of a European Banking Union. The European control over the financial sector will actually be stronger than its control over fiscal and economic policies. From November 2014 onwards, a Single Supervisory Mechanism (SSM) will be in place in which the eurozone and potentially other Member States will participate. Supervision of the banks in the SSM will be jointly exercised by the national supervisors and the European Central Bank (ECB), with the latter having the final say on supervisory decisions. In terms of crisis management, a similar system will be put in place through the creation of a Single Resolution Mechanism (SRM).

In normal times, exercising these competences is essentially the responsibility of independent supervisors. Hence, it lies mostly outside of the hands of the European Parliament and national governments. The European co-legislators will nonetheless play an important role in the success of the Banking Union, as they are to provide an environment in which the project can be effective.

The latter will require putting the necessary solidarity instruments in place (see *infra*). In addition, policymakers will have to work towards strong, harmonised rules for the banking sector. If the national rules differed considerably across Member States, the different legal frameworks would create tremendous complications for the work of the European level supervisory and crisis management authorities. As part of the regulatory response to the financial crisis, legislators will also have to deal with the structure of the banking sector and its too-big-to-fail problem. Finally, a timely review of the functioning of the Banking Union is called for during the 2014-2019 period. This will notably include assessing the interaction between the national supervisors and the ECB, the Banking Union's membership conditions for non-eurozone countries, as well as the envisaged crisis management procedures.

## Providing Solidarity

The content and scope of solidarity instruments to consider for the EMU represents a second challenge for policymakers. As a complement to fiscal, economic and financial discipline, several measures implying the sharing of sovereign risks between eurozone countries will continue to be debated. Some solidarity mechanisms could bring partial relief to the public debt deleveraging process of the eurozone. Other instruments may facilitate the economic adjustment-process taking place in countries most badly hit by the crisis. More immediately, concrete steps involving solidarity are to be discussed in the setting-up of the Banking Union.

## *Reducing Debt Levels beyond Austerity*

Eurozone policymakers developed several new instruments and policies to deal with the sovereign debt crisis. A European Stability Mechanism (ESM) was created, which can provide loans to eurozone countries that are no longer able to access financial markets at affordable rates. The real turning point in the eurozone crisis, though, was the declaration by ECB President Mario Draghi over the summer of 2012 that the ECB would do “whatever it takes” to save the euro, and the subsequent introduction of the Outright Monetary Transaction (OMT) programme. Since then, sovereign yield spreads have considerably narrowed which led many to claim the eurozone debt crisis was effectively over.

However, as the 2014 judgement of the German Constitutional Court on the OMT illustrated, the ECB intervention is still vehemently opposed in Germany, the eurozone’s largest economy. Critics of the ECB notably claim that the institution acts beyond its mandate by directly financing Member States, thereby providing illegal financial assistance and undermining discipline. The debate on the degree of risk sharing and solidarity necessary in the case of eurozone countries facing the risk of losing access to financial markets is hence far from conclusive, and will likely remain so in the years to come. Yet, given the extreme challenge that public debt reduction entails for many eurozone countries, repeated calls from the most distressed Member States for new arrangements involving solidarity are bound to continue.

Discussions on what ought to be the role of the ECB in mitigating sovereign debt risks will remain central. Given the ECB’s independence and its mandate

enshrined in the EU Treaties, the scope for steering monetary policy will be limited. Common debt emissions by the eurozone countries, dubbed “Eurobonds” in the past, may also come back to the forefront. Large scale projects for Eurobonds have been opposed by creditor countries, but perhaps smaller scale types of Eurobonds could be discussed. The conditionality and the type of support from the ESM will also be the focus of discussions if eurozone countries require help once again. In countries with high public debt, political and social forces pushing for radical ways of reducing their debt burden – i.e. debt restructuring or partial defaults – may gain ground in years to come.

In a shorter time perspective, a more concrete issue will be the situation of countries still under a European bailout programme. Eurozone leaders will notably have to decide whether debt relief and new financial assistance should be granted to Greece. In this case, a so-called “Public Sector Involvement” would imply that past official loans from other eurozone countries are not entirely reimbursed, which *de facto* amounts to increased solidarity.

### *Economic Shock Absorption*

Numerous economists have argued that the single currency lacks a European-level mechanism to deal with “asymmetric economic shocks”, i.e. shocks that hit a specific part of the eurozone. A European shock absorption mechanism would allow to compensate for a part of the economic and social consequences in the countries that are hit the hardest by a crisis.

A modest instrument to compensate for economic shocks will be on the table of policymakers as soon as the 2014-2019 term gets going. If the contractual arrangements discussed above would be introduced, they are to be accompanied by a “solidarity mechanism” that may involve grants or, less ambitiously, cheap loans to Member States. It is clear that this solidarity mechanism would be limited. It might compensate for some of the political and economic costs of carrying out reforms, but it would not be able to play a substantial role in dealing with large economic shocks. The solidarity attached to the contractual arrangements could, however, provide a step-up to a more sizable form of solidarity in the future.

A genuine and sizeable economic shock absorption mechanism would allow for transfers between EU countries of the monetary union, for example to address differentials in economic output or unemployment owing to such shocks. Such

an instrument requires a specific budget at the eurozone level. This eurozone budget should in principle be backed by a “fiscal capacity” (i.e. have its own revenues) and possibly be coupled with a borrowing capacity (i.e. the ability to issue common European debt). While a shock absorption mechanism might be advocated by several economists, politically it remains a very controversial issue. Behind the technicalities of the possible instruments, what is essentially at stake is the desirable scope of transfers within the EMU. Many fear that such transfers would become permanent despite claims of the contrary. Others believe transfers may be conceivable in a European Social Union (Vandenbroucke, 2014).

Hence, any shock absorption mechanism involving major reforms could only be considered as a long-term prospect. A substantial step in this direction will remain controversial – and will require political sacrifices. Yet, without additional solidarity instruments in the EMU architecture, the emphasis will continue to lie on the fiscal and economic discipline of each individual Member State. As a result, all the burden of the adjustment is borne by the countries that are hit the hardest by a crisis. Limiting the support coming from the rest of the eurozone to loans in case of major financial distress may prove insufficient in the delicate balance to strike between discipline and solidarity in the EMU.

### *Joint Management of Financial Crises*

After the 2014 elections, solidarity in the banking sector will be both a short-term and a long-term issue. In the short-term, an assessment by the ECB might detect weaknesses that cannot be addressed by a bank itself or the individual Member State in which the bank is based. In such a scenario, European solidarity would be required, most likely by making use of the European Stability Mechanism.

Once the Banking Union is fully operational, the need for a common approach during financial crises will become even bigger. The reason is that the pooling of supervisory responsibilities implies that member countries of the Banking Union will also have to deal jointly with problems in their banking sector. This inevitably calls for long-term European solidarity, in the form of risk-sharing instruments. Three types of instruments will be discussed during the 2014-2019 parliamentary term.

In the first place, a European resolution fund is to be financed by levies on the banking sector. A genuinely common European resolution fund will only be put in place over the course of several years. This slow pace and the relatively small size of the eventual fund are expected to be put under scrutiny during the years to come.

While the new regulatory framework tries hard to prevent this, it might prove unavoidable that public money will be used to deal with a systemic bank crisis. That is why a second element in the debate on cross-border solidarity concerns the potential need for a European common public “backstop”. Such a backstop is to provide public financial resources for crisis management when no other realistic alternatives are left. The conditionality of this backstop, its size and the date of entry into force will all be major food for discussions.

Finally, the question of an EU-level common deposit guarantee is likely to be raised in the future. The idea is that such a common guarantee would cover deposits in all Banking Union countries, replacing the existing national deposit guarantees schemes. It might contribute to financial stability by preventing massive bank runs in one specific country during a crisis. Despite its potential advantages, it is unsure whether the common deposit guarantee will be politically acceptable. While it would render the Banking Union more stable, it might also result in sizable transfers across national borders.

## **Managing the Institutional Set-up**

After having discussed the balance between discipline and solidarity, we now turn to the question of how the functioning of the EMU should be organised. In dealing with the institutional issues of the EMU, two interlinked goals will have to be considered, namely the quests for efficiency and legitimacy of the EMU.

In the past, policymakers would refer to the need for a “political union” to deal with these issues. As of 2014, there is more reluctance to call upon this concept. Instead people refer to the need for “accountability” in the EMU. The difference in semantics perhaps reflects a decreased willingness to take large steps in this field. The institutional question remains nonetheless crucial as it forms the basis that will enable the elements of discipline and solidarity in the EMU discussed above.

## *A Eurozone Treaty?*

A first institutional issue that will probably be high on the agenda during the next legislative term revolves around the legal framework of the eurozone. An essential question is whether additional reforms should take place inside the EU's legal framework or on an intergovernmental basis. Both forms have their own advantages and problems. Using the EU's legal framework might involve changing the existing Treaties, implying a complex and hazardous decision-making procedure. In contrast, an intergovernmental approach that takes place outside the EU legal framework is easier to agree on. However, the latter procedure makes it more difficult to rely on the EU Institutions. In addition, intergovernmental Treaties are not allowed to override the EU's own Treaties and thus do not offer a way around the EU Treaties' limitations.

As Philippe de Schoutheete describes in this publication, the widespread reluctance to Treaty changes seems to gradually make place for openness to reconsider the EU's primary law. While still not certain to happen, this evolution makes Treaty modifications that revise the functioning of the eurozone a genuine possibility. Nonetheless, ensuring the ratification of a Treaty change in all Member States would be a most difficult endeavour.

When considering the scope of Treaty change for the eurozone, Member States basically have the choice between an extensive and a narrow approach. An extensive approach to Treaty reform would consist in reconsidering all Treaty articles relevant to the EMU. This allows for a structural modification of the eurozone's functioning, but comes with high political risks as it would open Pandora's box in terms of multiple and diverging national demands. In contrast, a Treaty reform with a narrower scope would involve only a limited set of amendments to Treaty articles. These amendments would concern specific Treaty obstacles, so as to open up the possibility for reforms that are desired by some. This might concern the full separation of bank supervision and monetary policy, the introduction of some form of Eurobonds, and a revision of the EMU's corrective procedures. Such a narrow scope approach might be somewhat easier to implement, but it would not allow for a radical overhaul of the eurozone's functioning – which is perhaps needed.

## *Eurozone Specific Decision-making*

In terms of the reform of the EU institutions, the most important consideration for the EMU will likely be the extent to which a separate decision-making framework for the eurozone should be put in place. Linked to this question is the degree of involvement of the non-eurozone countries. Such differentiated decision-making, combined with closer economic integration of some Member States, would lead to a further increase in the EU's multi-speed and multi-tier integration. Discussions on eurozone specific decision-making will have to take into account the specificities of each of the EU's institutions.

In the Council of Ministers and the European Council, a eurozone/non-eurozone separation has already occurred to a certain degree. With regard to the heads of state and governments, Euro Summits take place in addition to the ordinary European Council meetings. The Eurogroup only gathers eurozone finance ministers and functions as a body that informally prepares all Council decisions related to the eurozone. To increase the importance and efficiency of the Eurogroup, Germany and France are considering endowing it with a full-time president based in Brussels. As the Eurogroup's informal role is embedded in the Treaty, a formal decision-making role for the body would require changing the EU's Treaty framework.

In the European Parliament, there has been more resistance than in the Council to distinguish between eurozone and non-eurozone members. The cohesion of the Parliament is deemed to be at stake. At the same time it might make little sense to give to MEPs from the UK or Poland the same say on the eurozone as MEPs from the eurozone itself, which is the case today. Differentiation between general parliamentary activities and activities specific to the eurozone would almost certainly involve setting-up a eurozone subcommittee in the European Parliament. The precise design of such a eurozone committee would raise difficult questions, both with regard to the participation and the voting rights of non-eurozone countries. In the short-term, some steps towards a eurozone subcommittee could already take place. A legislative role for such a committee would, once again, require a Treaty change.

With regard to the Commission, making a distinction between Commissioners that originate from a country from the eurozone and those from other Member States seems very unlikely. Alternative approaches may strengthen eurozone decision-making. One option is to merge the function of President of the Euro-

group with the position of Commissioner for EMU affairs. Another possibility is to have several “junior” Commissioners that are each responsible for a specific part of the EMU, with one “senior” Commissioner taking the lead on EMU affairs. This latter option would simultaneously deal with the large number of Commissioners.

For the European Central Bank, the key institutional reform would be to endow non-eurozone countries with an equal say on decision-making on bank supervision as the eurozone countries. This would require a Treaty change. The same holds true for any modification to the institution’s monetary mandate.

Transcending the EU level, the eurozone countries could also modify their role in decision-making in international organisations, such as the Bank for International Settlements (BIS) and the International Monetary Fund (IMF). Some argue that the eurozone countries should replace their individual national representations with common representation. Several eurozone countries, however, do not seem ready to give up their seat in these organisations. Closer collaboration between eurozone countries’ representations could be a compromise between these different views.

### *Governance Procedures*

During the 2014-2019 parliamentary term, the economic governance procedures are expected to be scrutinised, including the procedures that have been put in place during the eurozone crisis.

A key governance element that might face future parliamentary scrutiny is the procedure for economic and fiscal policy coordination, which is centred on the European Semester. The overall procedure is already seen by practitioners as highly demanding administratively. If the proposed contractual arrangements would simply be added to the existing procedures, this would further increase this complexity – potentially damaging effectiveness. Policymakers will therefore have to consider how new instruments can be integrated in current policy coordination without unduly increasing the administrative workload. In addition, a reduction of the yearly workload could consist in lifting some reporting requirements out of the European Semester and replacing them with multi-annual programming (in line with the contractual arrangements). The annual governance procedures could then focus on the most important economic adjustments.

Besides the annual “regular” governance procedure, the crisis governance in case of bailout programmes for countries, involving the “Troika” (the ECB, the Commission and the IMF), might be revised. Some argue for a reduction of the role of the ECB in the bailout programmes, while others plead for the replacement of the existing European Stability Mechanism with a proper European Monetary Fund. The latter is meant to fully substitute the “Troika” with another governance structure to deal with bailout programmes.

In terms of legitimacy and national ownership of the economic governance procedures, the involvement of the European parliament and its national counterparts could also be reconsidered. The role of the parliaments has for the most part been limited to legislative work, with little involvement from parliaments in the governance procedures. Different ways to improve their role can be considered, such as voting on EU recommendations and national commitments in the relevant parliaments. The evolution of the Inter-parliamentary Conference on Economic and Financial Governance, which brings together members of the European parliaments and of national parliaments in application of the Fiscal Compact, will be of particular relevance. However, increased involvement of parliaments will have to be balanced with the need to ensure the procedures’ efficiency.

## Conclusion

This article discussed three challenges that await policymakers in their efforts to reform the eurozone: ensuring enough discipline, counterbalancing it with solidarity and enhancing the institutional workings of the eurozone. The challenges of discipline and solidarity are typically distinctively championed by different sides around the negotiating table. Yet, both discipline and solidarity are necessary for the eurozone to be successful. Therefore, discussions on the future of the EMU should not result in minimalist compromises. Instead, additional instruments ensuring discipline should necessarily be coupled with an increase in the scope of instruments for solidarity, and the other way around.

The third and final challenge of the EMU consists in the establishment of a proper institutional framework for the eurozone. This is needed to provide the foundation for addressing the first two challenges. Some of the more ambitious reforms in terms of discipline and solidarity call for changes to the EU’s Treaty framework. In particular, the institutional organisation will need to

ensure the legitimacy and efficiency of the EMU, which requires a reflection on the governance procedures and the degree of eurozone specific decision-making.

By 2019, when the next European elections will be held, the debate in Europe will be very different from the current election debate. By then, the eurozone crisis may be conceived as something of the past. Unless a new similar crisis occurs, we cannot expect future politicians to have a particular sense of urgency in reforming the EMU. Hence, any envisaged comprehensive reform decisions for the EMU will have to occur during the 2014-2019 parliamentary term. This should convince all political parties that will participate in the European elections of May 2014 to spell out their vision for the future of the eurozone. A crucial test awaits us in the next five years: turning ideas for the EMU into reality. If successful, the eurozone countries are likely to reap the benefits of the single currency. If not, they might once more face the consequences of its incomplete and fragile construction.

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# The Case for a European Social Union

FRANK VANDENBROUCKE

## Abstract

This article discusses the notion of a ‘European Social Union’, in which European countries would cooperate with an explicit social purpose. A European Social Union should not be seen as an idealistic bridge too far. Instead, a Social Union is both desirable and necessary for the eurozone and wider European integration.



## Introduction

In this article, I argue that we need to develop a coherent conception of a *European Social Union*. I use the expression ‘Social Union’ deliberately, for three reasons. First, it invites us to propose a clear-cut concept, in contrast to the rather vague notion of ‘a social Europe’, which often surfaces in discussions on the EU. Second, it signals that we should go beyond the conventional call for the EU to gain a ‘social dimension’. As a matter of fact, it would be wrong to assert that the EU has no social dimension today. The coordination of social security rights for mobile workers, standards for health and safety in the workplace, directives on workers’ rights... This constitutes a non-trivial *acquis* of fifty years of piecemeal progress. The EU also developed a solid legal foundation from which to enforce non-discrimination among EU citizens. The notion of a ‘European Social Union’ is not premised on a denial of that posi-

tive *acquis*. But if the next steps we have to take can build on that *acquis*, their nature and rationale respond to a new challenge. We have to understand the novelty of that challenge, which is about more than just adding ‘a social dimension’. Third, the emphasis on a Social *Union* is not a coincidence. A European Social Union is not a European Welfare State: it is a Union of national Welfare States.

Proposing a European Social Union may seem an idealistic bridge too far, given the state of play of European politics today. However, I hope to show that the idea is neither far-fetched nor unduly idealistic. The core idea can be summarised as follows: a Social Union would support national welfare states *on a systemic level* in some of their key functions and guide the *substantive development* of national welfare states – via general social standards and objectives, leaving ways and means of social policy to Member States – on the basis of an operational definition of ‘the European social model’. In other words, European countries would cooperate in a union with an explicit social purpose – hence, the expression ‘European Social Union’ (ESU).

From the outset, some misunderstandings should be avoided. Below I will insist on the necessity of convergence, but convergence is not the same as harmonisation. More generally, the practice of a Social Union should be far removed from a top-down, ‘one-size-fits-all’ approach to social policymaking in the Member States. Also, a Social Union is not a defensive ‘Maginot line’ to preserve the social status quo; European welfare states are in a continuous process of reform and many need further reform. Finally, the notion of ESU does not point to a parallel and separate social pillar to be added to the existing pillars.

A Social Union, so conceived, is not only desirable but necessary. To make that analysis is not to say that an operational concept of ESU is already on the table. We are in uncharted territory: important issues need to be clarified. First of all, we must be clear about the rationale and motivation for a ESU; that is the subject of the first part of this article. In section 1, I distinguish arguments applying specifically to the eurozone from arguments applying to the EU as a whole. In section 2, I introduce the notion of solidarity underpinning a Social Union, and I argue that the idea of ESU marks a return to the inspiration of the founding fathers of the European project. The second part of this article links the idea of a Social Union to current debates on social policy.

Section 3 presents ‘social investment’ as a unifying policy concept for the EU. Section 4 briefly argues that clarification is needed with regard to policy methodologies and tools (notably: mainstreaming, contractual arrangements, and a possible eurozone stabilisation scheme). Section 5 discusses minimum wages and minimum income protection. Finally, a conclusion is provided.

## 1. Why do we need a European Social Union?

### 1.1. *The incomplete monetary union*

The case for a European Social Union is first and foremost based on a *functional* argument with regard to EMU. Members of a currency area are confronted with a *trade-off* between symmetry and flexibility. In textbooks on monetary unions, the need for flexibility is explained in terms of wage and price flexibility, labour mobility, and migration, which determine a country’s internal adjustment capacity. Flexibility implies choices that are not socially neutral: less regulated labour markets, temporary shock absorbing mechanisms such as ‘Kurzarbeit’ in Germany, a highly skilled and versatile labour force... All provide different ways and means to achieve labour market flexibility, which can be mixed in different ways, according to social preferences. There might be a ‘high road’ to labour market flexibility, based predominantly on skills, as opposed to a ‘low road’, based predominantly on mere deregulation of labour markets. Relying on migration as an adjustment variable and making a success of it, implies societal choices *par excellence*.

Economic textbooks define symmetry in economic terms, but sustaining symmetry in the long run may imply a degree of social convergence: there seem to be limits to the diversity in social systems that can be accommodated in a monetary union, not with regard to the details of their organisation, but with regard to their fundamental parameters. The insistence of the European Commission that retirement ages be indexed on longevity in all European Member States can be interpreted in this sense: apart from the fact that it may be good policy *per se*, for any welfare state, to establish a link between retirement ages and longevity, it is plausible to argue that unsustainable pension systems in some Member States of the eurozone would lead to budgetary imbalances that threaten the eurozone as such.

The previous paragraph suggests the need of a long-term perspective of social convergence. From a short-term perspective, the automatic stabilisation capacity that normally characterises welfare states has been constrained by the actual functioning of EMU. Hence, EMU should be equipped with a stabilisation mechanism to compensate for the decreased stabilisation capacity of national welfare states. That presupposes *more solidarity* in the eurozone than is present at this moment. Neither flexibility nor symmetry, nor indeed a stabilisation mechanism, are socially neutral choices. By the process of monetary unification, a consensus on the social order which the monetary union has to serve is forced upon the participating countries. This entails discussions about sensitive social issues such as the degrees of freedom between countries with regard to pension systems and retirement age; but also with regard to the skills of their labour force and educational achievements; with regard to the role of migration, etc.

We not only need a consensus on the concept; we also need a convergence of fundamental social parameters. What we see today is the exact opposite: increasing *divergence* which undermines the sustainability of the EMU. *Excessive social imbalances* threaten the monetary union as much as excessive economic imbalances (Vandenbroucke et al., 2013b). The expression ‘excessive social imbalances’ describes a set of social problems that affect member states very differently (thus creating ‘imbalances’). Youth unemployment and child poverty are two examples. These imbalances should be a matter of common concern for all eurozone members. Politically, social divergence in the eurozone threatens the sustainability of the project in that it will steadily undermine the credibility of the European project. In economic terms, current levels of youth unemployment and child poverty in Europe illustrate inadequate investment in human capital on a massive scale. A comparatively high level of youth unemployment and child poverty is synonymous with an investment deficit that may be cause and effect in a vicious circle of underperforming labour markets, child care, education systems and transfer systems. If some members of the eurozone get trapped into such a vicious circle, the resulting bad equilibrium creates a problem with regard to the economic symmetry that is required among the members of a monetary union.

In sum, (1) managing the trade-off between symmetry and flexibility, (2) repairing the decreased stabilisation capacity of welfare states, and (3) preventing excessive social imbalances presuppose an operational basic

consensus on common, normatively charged objectives of social policy within the eurozone.

## *1.2. Integration and social regulation in the EU28*

Other arguments in favour of adding an active social dimension to the EU transcend the eurozone problematic, as they apply to the EU as a whole. A well-known argument holds that economic integration without social harmonisation induces downward pressure on social development in the most advanced Member States. Although in the past the spectre of large-scale social dumping has never materialised, in the enlarged EU of today blatant cases of illegal working conditions and exploitation do occur, resulting from the interplay of lacunae in the domestic implementation of social and employment protection in the Member States, reduced legal sovereignty of the Member States, and the absence of common social standards in a very heterogeneous entity.

Fears of social dumping, but also welfare tourism, are causing considerable social and political tensions with regard to labour migration. These discussions will not be easily resolved, but a crucial condition for European public opinion to accept migration is that migration and posting of workers should fit into a regulated social order not undermine it. Hence the importance of the recent agreement reached by Social Affairs Ministers (December 2013) on the controversial posting-of-workers enforcement directive. The latter is supposed to resolve various legal, administrative and practical forms of abuse, circumvention of regulations, and fraudulent practices when workers are temporarily posted in another country. The revised directive now falls to negotiations between EU countries and the European Parliament.

The extent to which Member States can uphold social standards in a context of free movement is particularly relevant with regard to minimum wages. In Member States such as Germany and Sweden, trade unions traditionally resisted state regulation of minimum wages: they considered that it fell under the purview of collective bargaining and that it was a no-go area for public authorities; thus, they applied a domestic principle of subsidiarity. The *Viking* and *Laval* judgments by the European Court of Justice suggest that that traditional position may be unsustainable: the Court argues that only *predictable* systems of minimum wage protection can be imposed on foreign companies that post workers, i.e. Member States must create a legal context in which only generally

applicable minimum wage protection has to be respected by foreign service providers. If that argument is accepted, it would mean that social partners should reconsider traditional positions on subsidiarity within welfare states, i.e. they should reconsider the respective roles of social partners and public authorities, or reconsider the relation between nationwide collective bargaining and local bargaining. The actual responses in Sweden and Denmark to the *Laval* case reaffirm the autonomy of collective bargaining, but introduce conditions for the exercise of collective action: collective agreements can only be enforced through collective action against foreign service providers if they correspond to existing nationwide collective agreements and do not define conditions beyond the hard core of the posted workers directive (Blauberger, 2012). Hence, the Swedish and Danish domestic responses also change the rules of the game in terms of the subsidiarity of the national versus local level. Politically, this strengthens the case for a pan-European framework with regard to the concept and regulation of minimum wages: both at the domestic and the European level, we must reconsider the application of subsidiarity principles.

Fundamentally, the challenge is to preserve the regulatory capacity of national governments and social partners, whilst allowing labour migration and the cross-border delivery of services. Reconciling national regulatory capacity with mobility has also constituted – and still constitutes – a challenge in the domain of health care. The impact of the European legal constellation – notably legislation shaping the internal market – on a sector such as health care shows that a neat separation between ‘market issues’, belonging to the supranational sphere, and ‘social issues’, belonging to the national spheres, is unsustainable. In 2002, I was inspired by this observation to propose a ‘horizontal social clause’ in the European legal architecture, to provide clearer guidance to all European institutions in the grey area between state and markets (Vandenbroucke, 2002). That idea found its way, via the Lisbon Treaty, into Article 9 TFEU, which formulates the requirement that all EU actions take into account ‘the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health’. Will this clause play an important role in guiding the Court of Justice and other key actors? Will it serve as a reference for social impact assessments? The jury is still out. So far, the horizontal social clause did not play a visible role when designing macro-economic adjustment programmes – where it should have played a role.

## 2. A shared notion of solidarity

The foregoing discussion shows that we have to combine two perspectives on the meaning of solidarity in Europe: a pan-European notion of solidarity and solidarity within national welfare states. The pan-European notion of solidarity refers to upward economic convergence and cohesion on a European scale. But it also refers to the rights of individuals to improve their own lives by working in a Member State other than the Member State where they were born, or to the rights of patients to benefit, under certain conditions, from medical care in other Member States than their state of residence, etc. Solidarity within national Member States refers to social insurance, income redistribution, and the balance of social rights and obligations, which define national welfare states. This dual perspective on solidarity – when used in the European context – makes it inherently complex and multifaceted. There should be no denying that it can imply trade-offs between national solidarity and pan-European solidarity, certainly in the short term. However, the political legitimacy of the European project depends on its capacity to avoid a negative trade-off or, in other words, to avoid a zero-sum game between national cohesion and pan-European cohesion. In yet other words, the legitimacy of the European project requires a virtuous circle of growing pan-European and national cohesion. Sustaining such a virtuous circle should be the primary objective of a European Social Union.

In fact, this means that we should revisit the fundamental goals that have been part and parcel of the European project since the Treaty of Rome of 1957: the simultaneous pursuit of *economic progress* on the one hand, and of *social progress and cohesion* on the other, both *within* countries (through the gradual development of the welfare states) and *between* countries (through upward convergence across the Union). The founding fathers of the European project optimistically assumed that growing cohesion between and within countries could be reached by supranational economic cooperation, together with some specific instruments for raising the standard of living across the Member States (which were later brought together in the EU's 'economic, social and territorial' cohesion policy). Economic integration was to be organised at the EU level, and would boost economic growth and create upward convergence; domestic social policies were to redistribute the fruits of economic progress, while remaining a national prerogative. Consecutive enlargements as well as monetary unification made this complex notion of solidarity even more

demanding and difficult to handle. Indeed, what is seen by some as ‘the dynamics of upward convergence’ associated with the enlargement of the EU, is seen as social dumping by others. At the same time, the discussion above demonstrated that monetary unification requires forms of solidarity which were, thus far, a no-go area in European politics. We risk getting caught in a trap: we badly need more European solidarity, whilst it is becoming more difficult to manage. Instead of a virtuous circle, that is a vicious circle.

### 3. The social investment imperative

How can we create a virtuous circle whereby both pan-European cohesion and national cohesion are enhanced? There is a huge disparity in the performance of European welfare states. They also display very different profiles with regard to the educational achievement of their population. The southern EU15 Member States combine low employment rates with a high share of people with no more than lower secondary education. The OECD PISA tests of the skills of 15-year old students also illustrate the disparity across Europe with regard to investment in human capital in today’s younger generation, with weak average scores for countries such as Greece, Italy and Spain (and even weaker scores for Bulgaria and Romania). I do not suggest that there is a simple causal relationship between educational attainment and employment: it is the combination of a poor record in employment and education that is so alarming. These data not only illustrate the particular deficit of Southern eurozone welfare states – compared to other eurozone members – with regard to education and employment, they also underscore the huge education agenda the whole EU is confronted with. The European Union certainly recognises the challenge: in the *Europe 2020* agenda, reducing the number of early school-leavers is singled out as one of the *headline targets*. The European Commission has developed a comprehensive agenda on education, training and skills, and issued excellent recommendations on the modernisation of education systems. However, the question remains as to whether this educational agenda carries sufficient weight at the highest levels of European political decision-making and in the setting of budgetary priorities: the answer seems negative. Real public expenditure on education was lower in 2011 than in pre-crisis 2008 in 10 Member States, including those that badly need to improve their education system. That is not to say that the quality of education systems can be measured in simply by looking at the level of public spending on education,

but it seems very hard to improve education systems significantly whilst disinvesting.

The strong record of Northern welfare states, with regard to both employment and poverty, has been linked to their long-term orientation towards ‘social investment’, i.e. activation, investment in human capital, and capacitating social services such as child care (Hemerijck, 2013). Obviously, investment in education and child care are no panacea; welfare states also differ with regard to the effectiveness of their social protection systems. For instance, Greece does not have a system of minimum income assistance, and minimum income protection in Italy is generally considered to be inadequate. Cash transfer systems are highly fragmented in a number of welfare states. Welfare state performance depends on the complementarity of effective investment in human capital – by means of education, training and child care – and effective protection of human capital – by means of adequate transfer systems and health care. The redistributive role of social protection remains important *per se* (Cantillon and Vandenbroucke, 2014).

So conceived, a social investment strategy offers an interesting perspective, with regard to both pan-European cohesion and national cohesion. Social investment emerged gradually as a social policy perspective in the 1990s in response to fundamental changes in our societies, with a focus on policies that ‘prepare’ individuals, families, and societies to adapt to various transformations (such as changing career patterns and working conditions, the emergence of new social risks, and ageing populations) rather than on simply generating responses aimed at ‘repairing’ damage caused by market failure, social misfortune, poor health, or prevailing policy inadequacies. Social investment is not an easy panacea. Successful social investment presupposes a well-designed complementarity between ‘protecting human capital’ by means of traditional instruments of social protection (cash benefits, health care) and ‘developing human capital’, by means of education, training and activation.

The Social Investment Package, launched by the European Commission (2013a) in February 2013, presents a similar argument and provides an interesting common orientation for EU Member States with its focus on early childhood education and care, preventing early school leaving, lifelong learning, affordable child care (as part of an active inclusion strategy), housing support (fighting homelessness), accessible health services and helping people live independently in old age. Together with Anton Hemerijck and Bruno Palier,

I called for a true ‘Social Investment Pact’ for the EU (Vandenbroucke, Hemerijck, Palier, 2011). Obviously, a ‘Package’ is not a ‘Pact’; the idea of a ‘Pact’ underscores the sense of reciprocity that is needed: all Member States should be committed to policies that respond to the need for social investment; simultaneously, Member States’ efforts in this direction – notably efforts by Member States who face a difficult budgetary and economic context – should be supported in a tangible way.

#### 4. The need to clarify policy methods and tools

In section 1, I wrote that *excessive social imbalances* threaten the monetary union as much as excessive economic imbalances. The first step to restoring (upward) convergence is to fight such excessive social imbalances, notably within the eurozone. This requires a toolkit, in which three types of instrument are made to work in the same direction: general mainstreaming, contractual arrangements, and the European Funds.

Fernandes and Maslauskaitė (2013a) rightly argue that the social dimension should be mainstreamed into all EU policies, notably into macroeconomic and budgetary surveillance, rather than it being constituted as a separate social pillar. In principle, the *Europe 2020* frame should guarantee such mainstreaming; in practice, the social and education objectives of *Europe 2020* do not carry the same weight as the economic and budgetary objectives. This is, first and foremost, a political problem, and solving it presupposes the willingness to take social objectives into account at the highest level of EU decision-making. But apart from that, although the notion of mainstreaming seems straightforward, clarification is needed about the institutional actors that should take the lead in it and exactly how this should be done. Refining the MIP Scoreboard, which is used in the Macroeconomic Imbalances Procedure, was a first step towards such mainstreaming. Social and employment indicators have indeed been added to the set of ‘auxiliary indicators’ that are used in the economic reading of the MIP Scoreboard. However, some nervousness exists about the ownership and control of the process in which they will be used. As a matter of fact, there is more than one ‘scoreboard’. Next to the auxiliary indicators in the MIP, a scoreboard of (a few) employment and social indicators was adopted by the EPSCO Council in December 2013, to inform macroeconomic and fiscal policies, both at EU and national levels, in the context of the European Semester. In itself, that can be seen as promising. However, the

European Council's confirmation of "the relevance of the use of a scoreboard of key employment and social indicators" (European Council, 2013: §38) and especially that "the use of this wider range of indicators will have the sole purpose of allowing a broader understanding of social developments" (Ibid: §39) is unsatisfactory. The precise role of this new scoreboard *vis-à-vis* the strong analytical tools developed recently by the EPSCO Council – the Employment Performance Monitor and Social Protection Performance Monitor – should be further defined. Finally, mainstreaming should include monitoring the impact of social and labour market reforms in Member States having signed a Memorandum of Understanding. In short, if mainstreaming social policy objectives is deemed necessary, the content, the process, and the role of the different policy strands have to be clarified, in order to make such mainstreaming effective and legitimate in the perception of all actors involved.

Well-conceived contractual arrangements between the EU and the Member States – proposed by the European Commission as part of a 'convergence and competitiveness instrument' (European Commission, 2012, 2013b) – may be a way forward if they are based on the genuine reciprocity that is objectively needed in the EU today. The idea of contractual arrangements raises many issues, as explained in the article by Xavier Vanden Bosch and Stijn Verhelst. The key question is whether the contracts envisage a bilateral top-down approach with the Council and the Commission dictating policies to specific countries (a 'principal-agent model' with financial incentives), or alternatively, solidarity in commonly agreed structural welfare state reform. In the run-up to the December Council, many governments, including the Belgian government, have taken a rather defensive approach in the discussion about contractual arrangements. In a sense, this is understandable, given the impression that these contracts would simply reinforce a top-down implementation model of policies that are controversial in Member States. However, a less defensive approach in this debate is needed if one wants to turn the proposal into 'solidarity in structural welfare reform'. So conceived, the questions at hand echo the questions raised with regard to the European funds. Cohesion policy is supporting 'inclusive growth' more effectively than it did before, mainly thanks to a concentration of efforts. The case could be made that not only the ESF, but also the ERDF and other funds should support the employment and social policy thematic objectives, and have corresponding social investment priorities. There is a risk that the contractual arrangements overlap with existing cohe-

sion policy programmes with a clear social commitment. Contractual arrangements and cohesion policy operational programmes should be made consistent and complementary policy tools, in order to increase – instead of merely substitute – efforts at the EU level in employment and social policies.

The paragraph focused on solidarity in structural reform. A separate question concerns the organisation of solidarity in adverse cyclical circumstances. For the sake of brevity, I will not develop this important issue here; I refer the reader to the article by Xavier Vanden Bosch and Stijn Verhelst.

## 5. Minimum wages and minimum income protection

In their joint statement of 29 May 2013, France and Germany proposed *‘considering implementing minimum wage floors, defined at national level that would guarantee a high level of employment and fair wages – leaving the choice between legislation and collective-bargaining agreements.’* Interestingly, this joint statement immediately added a consideration on the enhancement of cross-border mobility, *‘calling for encouraging cross-border worker mobility by removing obstacles, improving cooperation between employment services (building upon the EURES platform) and facilitating the portability of rights in case of mobility’* (Bundesregierung (2013)). This lends support to the idea that cross-border mobility is a positive development, if organised in compliance with existing social regulation, such as decent minimum wages.

Eurofound (2013) published an in-depth investigation of proposals with regard to European minimum wage coordination. It shows that a European minimum wage threshold at 60% of national median wages would be very demanding in terms of the number of workers affected and the increase in wage levels at the bottom end of the income distribution. A pan-European approach would also encounter huge institutional difficulties, given the differences in wage-setting institutions across the EU. Simultaneously, the report notes a number of arguments in favour of minimum wage coordination at the European level, such as the fact that it would minimise the negative effects on intra-European competitiveness. A gradual approach might therefore be appropriate. The report also underscores that the main justification for minimum wages is not the reduction of poverty (the impact on poverty is rather limited, since household poverty is more related to not working at all than to having low wages); the essential – and important – justification for minimum wages is the establishment of

minimum labour standards below which no employment relationship is considered socially acceptable.

With regard to fighting poverty, the EAPN (European Anti-Poverty Network) proposes a draft directive on adequate minimum income. It would stipulate that ‘every Member State shall introduce a minimum income scheme, that guarantees the right to an adequate minimum income to all people living on their territory’ (EAPN, 2010). The objective would be to ensure that the combined effect of their minimum income provisions and other policy measures are sufficient to lift all individuals above the poverty threshold (60% of the national median income, in a first stage). A European framework with regard to minimum income protection would indeed give substance and political salience to social rights in a ‘caring Europe’. But, given the heterogeneity between European Member States, any binding agreements on minimum income would have to be introduced flexibly and gradually, and implemented in unison with a convergence in activation measures and minimum wage (Vandenbroucke et al, 2013a). Moreover, since such a scheme – even if it is moderate in its initial ambition – requires a significantly greater budgetary effort on behalf of some of the poorer Member States in Eastern and Southern Europe, it raises a complex question about the meaning of solidarity within the EU.

In the poorer Member States ‘the rich’ are poorer than ‘the poor’ in the richer Member States. Hence, a minimal condition for a ‘caring Europe’, that attempts to upscale minimum income protection, is that it should help the poorer Member States, not just by opening up markets and implementing successful macro-economic policies at the EU level, but also by putting at their disposal generous Structural Funds for the foreseeable future. Simultaneously, a caring Europe would put positive pressure on poorer and richer Member States to gradually improve the overall quality and efficiency of their welfare regimes. Introducing conditionality with regard to aspects of social inclusion policy in the European Social Fund may be one way to develop more leverage. Simultaneously, existing strategies – notably *Europe 2020* – should be taken seriously and given real bite. If this were the overall context, then the prospect of gradually introducing a more binding EU framework on minimum income protection may become realistic and useful, for the political reasons indicated above and as a measure to increase the quality and efficiency of domestic social systems. Fundamentally, enhanced solidarity within Member States cannot be decoupled from enhanced solidarity among Member States – and *vice versa*.

## Conclusions: from a sense of survival to a sense of common purpose

The eurozone must be supplemented with a genuine social dimension for it to be sustainable in the long term. A Social Union would support national welfare states *on a systemic level* in some of their key functions (such as macro-economic stabilisation) and guide the *substantive development* of national welfare states – via general social standards and objectives, leaving ways and means of social policy to Member States – on the basis of an operational definition of ‘the European social model’. In other words, European countries would cooperate in a union with an explicit social purpose – hence, the expression ‘European Social Union’. Such a ESU is not only desirable, it is also necessary.

My arguments with regard to EMU are premised on the idea that the tuning of economic strategies requires a minimal tuning of social policy, even if this should not lead to the application of an undifferentiated social policy: Member States should retain sovereignty in specific areas (e.g. the organisation of health care), and they must be able to effectively assume the responsibilities they bear. That is one of the reasons why the idea of a Social Union is not confined to the eurozone, although some specific arguments only apply to the eurozone. At the level of the EU28, we must deepen our mutual understanding of the social goals to be achieved by market integration and the mobility of people, services, goods and capital; and it must be possible to maintain principles of social regulation that serve those goals.

The practice of a Social Union should be far removed from a top-down, ‘one size fits all’ approach to social policymaking in the Member States. What is needed today is a more balanced approach to macro-economic coordination, i.e. a combination of greater room for manoeuvre and tangible support for Member States that opt for a social investment strategy, and policy guidance based on clear and sufficiently stringent and constraining objectives with regard to well-defined social outcomes on the one hand, and genuine scope for exploration and mutual learning on the ways and means to achieve those outcomes on the other hand.

A Social Union is not a defensive Maginot Line to fight yesterday’s battles: we need reform, not a status quo. In policy terms, the challenge is to make *long-term* social investments and *medium-term* fiscal consolidation mutually

supportive and sustainable, under improved financial and economic governance. In political terms, European citizens need a reformist perspective that gives the *social acquis* they cherish a credible future. A European Social Union should build on that *acquis*; simultaneously, building on that *acquis* requires reform. That is the quintessence of the call for a ‘social investment pact’.

At the moment of writing, signs of economic recovery are getting stronger. Maybe, the actions of the Member States will no longer be guided by day-to-day crisis management. However, without a sense of common purpose, it will not be possible to overcome the legacy of the crisis; it will not be possible to avoid the spectre of sluggish economic growth for many years; and it will not be possible to fight the mounting euroscepticism.<sup>1</sup> Moving from a ‘sense of survival’ to a ‘sense of common purpose’ is a basic condition for building a Social Union.

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<sup>1</sup> See Fernandes & Maslauskaitė (2013b), who’s Scenario C also inspired the subtitle of this section.

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# Re-designing the European Climate and Energy policies post-2020

CLÉMENTINE D'OULTREMONT

## Abstract

Ensuring the sustainability, security and cost-competitiveness of energy supplies for the EU citizens are the main objectives of the EU climate and energy policy, which remains high on the EU agenda. The next European legislature will have the difficult task to reconcile these different objectives into a comprehensive 2030 framework for climate and energy policies.

Taking into account the changing energy dynamics, this paper analyses thus the state of play of these objectives today in order to better understand how the 2030 framework for climate and energy policies should be designed.



## Introduction

Tackling climate change and building a 'European energy community' are among the most important challenges of the EU in the forthcoming years. As such, they clearly represent an important stake of the EU's new leaders as they take charge following the 2014 elections to the European Parliament.

So far, the EU is the only significant region of the world that has really tried to integrate its energy and climate policies. In 2009, it agreed upon the 2020 Climate and Energy package, which resulted in the so-called 20-20-20 targets on carbon emissions, renewable energy and energy efficiency. Building on the lessons learnt from the 2020 framework, the EU is now thinking about the

next package post-2020. On 22 January 2014, the European Commission released the proposal on the 2030 framework for Climate and Energy Policies, which was discussed at the 20-21 March 2014 European Council. Together with the Council of Ministers, it will be the task of the new European Parliament to adopt it.

The EU climate and energy policy area is based on a triangle of three objectives: the sustainability, security, and cost-competitiveness of energy supplies. When the 20-20-20 targets were adopted, climate change was clearly the primary focus of the EU strategy, while the more traditional goals of ensuring the security and affordability of energy supplies came in second line.

However, the past few years have revealed that the objective of sustainability versus the objectives of competitiveness and security of supply can be pushed aside by various factors, such as an economic and/or political crisis, the national development of renewable energy sources, the changing global energy landscape, the depletion of EU energy resources, and the lack of consensus for a global climate agreement. While many Member States are facing budgetary constraints, the energy prices for households and industry alike are on the rise. This is partly due to the increasing costs of energy imports but also to the costs of national measures related to the green transition. Competitiveness and affordability of energy costs are thus of increasing concern and the price-differential with countries such as the U.S. is widening. The new circumstances have thus brought competitiveness and to a lesser extent security of supply to the top of the triangle of the climate and energy policy.

After analysing what has changed since the adoption of the last climate and energy package and the state of play of the three-objectives, this paper will examine whether the proposed 2030 framework provides a good basis to face the challenge of ensuring affordable energy prices and industrial competitiveness, while responding to climate change and the increased energy dependency.

## **1. Many factors have changed since the adoption of the last 2020 framework**

At the European and global levels, many factors have changed since the adoption of the 2020 Climate and Energy Package in 2007-09. These changes are mainly the followings:

- ♦ **The economic and financial crisis** has clearly contributed to decreasing carbon emissions through a reduction of industrial production but it has also greatly reduced the ability of the public and private sectors to invest in low-carbon technologies. A number of Member States are under huge budgetary constraints, particularly those subject to austerity policies.
- ♦ The cornerstone of the EU's decarbonising strategy, i.e. **the EU Emissions Trading Scheme**, did not prove efficient at promoting low-carbon investment. Since 2008, more carbon allowances have been issued each year than used, leading to a huge surplus of allowances in circulation. Consequently, carbon prices have collapsed. This surplus is mainly due to the economic recession, but also to an over allocation of offset credits<sup>1</sup> in the EU ETS; other EU climate policies that contributed to increasing the supply of allowances by reducing carbon emissions; and some additional allowances from three exceptional sources<sup>2</sup> that have emerged on the market in 2012-2013. Overall, this surplus is expected to amount to more than 1.5 billion allowances. It is thus already clear that carbon prices will stay low in the forthcoming years, delaying the necessary low-carbon investment.
- ♦ The **development of national policies** in response to the economic crisis, the low carbon prices, and the development of intermittent renewable energy sources, is fragmenting the market. The completion of the internal energy market, and the 'cost-efficient' European solutions it is supposed to bring, could even be threatened.
- ♦ **The changing global energy landscape** has important implications in terms of economic competitiveness, security of supply and sustainability. These new energy dynamics include, among others: the development of unconventional oil and gas in the US, the discoveries of new hydro-carbon reserves in Africa, Azerbaijan and elsewhere, the consequences of the Fukushima nuclear disaster, the impact of the recent Russian actions in Ukraine and the shift towards renewable energy sources, particularly in the EU. In response to these changes, major disparities in energy prices among countries and regions have emerged, sparking a debate about the role of energy in international competitiveness. For

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<sup>1</sup> Additional credits from emission reductions that took place outside the EU.

<sup>2</sup> These three sources are: 1) Unused allowances from the national new entrants reserves of the 2<sup>nd</sup> phase (2007-2012); 2) A fixed amount of allowances from the 3<sup>rd</sup> phase (2012-2020) new entrant reserves is sold to fund projects related to new green technologies; 3) A number of 3<sup>rd</sup> phase allowances have been auctioned in order to avoid the scarcity that was feared at the time the climate package was negotiated.

instance, gas price in the US is three times less expensive than in the EU and five times lower than in Japan. In terms of security of supply, the International Energy Agency is also warning that international energy demand, spurred by economic growth in emerging countries (particularly China, India and the Middle East), will increase by more than one-third by 2035, thereby increasing competition for energy sources. Globally, fossil fuels will continue to meet a prevailing share of global energy demand, increasing global emissions and delaying the necessary shift towards a sustainable global economy.

- ◆ The expectations in terms of **global climate governance** have changed since the Climate and Energy Package has been negotiated in 2007-09. Both a global climate change agreement and a global carbon market were expected to arise, but neither of these has yet materialised. Since the Conference of the UNFCCC Parties held in Copenhagen in 2009, new guidelines for the negotiation of an international agreement have replaced the old international regime. While the Kyoto Protocol adopted in 1997 was based on a “top-down” determination of legally-binding emission reduction objectives for developed countries and a global carbon market, the new system lies upon a “bottom-up” approach whereby all countries can make voluntary pledges, and on institutions in charge of organising an international solidarity in terms of finance, technology transfer and adaptation. It is under this new decentralised governance that a global climate agreement is expected to be reached in 2015 in Paris.

Considering all these changes, it is clear that a new design adapted to the new situation is needed. It is essential for policymakers to be well aware of the dynamics underpinning the energy and climate developments in order to reconcile the three objectives of the climate and energy policy.

## 2. State of play of the three objectives

The implementation of the 2020 Climate and Energy Package has showed that it is not easy to strike the right balance between competitiveness, security of supply and sustainability, particularly in a period of economic crisis. The different national policies supporting the European climate objectives have created increasing problems related to energy prices and security of supply within energy markets.

## *Sustainability*

The 2020 Package was clearly oriented towards sustainability with its 20-20-20 targets, including a 20% reduction in greenhouse gas emissions from 1990 levels; a raise of the share of renewables to 20%; and a 20% improvement in energy efficiency. However, if climate objectives are European, each country is responsible for its energy mix, its security of supply and its energy transition policies, making the coordination among member States in the achievement of these European objectives difficult.

The EU is on track to meet its objective of 20% reduction in greenhouse gas emissions. However, it was greatly helped by the economic crisis and the resulting decrease in industrial production. Consequently, the huge surplus of allowances mentioned above has prevented the EU ETS to deliver the right price signal for investments in low-carbon technologies. Abatement efforts in the EU are thus expected to remain limited relative to the emissions reduction resulting from the economic crisis. In 2011-2012, carbon emission have even increased rather than decreased in some Member States. Concerned with the lack of incentive to invest in low-carbon technologies and hence the risk of “carbon lock-in”, several Member States have taken, or are considering taking additional national measures to complement the EU ETS.<sup>3</sup> However, these national measures are undermining the cost-effectiveness of the EU ETS across sectors and countries. The weakened ETS could thus encourage the adoption of more national measures, creating a vicious circle that would lead to the fragmentation of the single carbon market and the end of the level playing field it was meant to create. Although we are on the trend to achieve the 20% emissions reduction target, serious progress must thus be made in order to restore the credibility of the EU ETS as an instrument to promote low-carbon technologies in the long-term.

With respect to the renewable target, the EU annual energy consumption of renewable energy sources reached 13% in 2013. It is expected that the 20% target will be met, but access to finance will clearly be difficult. The raise of renewable energy sources in the system requires dealing with two important challenges. Firstly, renewable energy sources are still expensive and should become more cost-efficient over-time. However, although the costs of technolo-

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<sup>3</sup> For instance, a tax for carbon intensive fuels in ETS sectors or a national carbon floor price that is supposed to exceed the ETS carbon price.

gies like on-shore wind and solar are coming down, it is expected that most renewable energy sources will not be cost-competitive before 2025. The share of higher-cost renewable energy sources will thus continue to grow in the national energy mixes, as Member States will have to meet their 2020 national renewable energy targets. Accordingly, governments prefer continuing to promote investment via different national incentive regimes, although they contribute to fragmenting the market and increasing power costs. Secondly, the intermittent nature of wind and solar power cannot strategically deal with demand peaks. Maintaining a match between supply and demand is thus increasingly complex in the EU electricity markets. This issue of generation adequacy is forcing governments into developing national back-up capacity schemes for renewables. Ultimately, the lack of coordination among Member States with respect to these national support schemes for renewables and back-up capacity is problematic and could endanger the very construction of an EU internal energy market. Moreover, over-generous support schemes, which do not seek the best return on investment, increase prices for consumers and reduce the EU's competitiveness.

As for the 20% improvement in energy efficiency (compared to 2005 levels), it is very likely that this non-legally binding target will not be met. Before the adoption of the Energy Efficiency Directive in 2012, it was expected to achieve only a 10% saving of the EU's primary energy consumption. Now, if all measures are correctly implemented by Member States, calculations show that we will probably reach a 17% saving. This comprehensive legislative framework (with indicative national targets but obligations to achieve certain amounts of energy savings) has thus provided a real boost. Nevertheless, there is still an enormous untapped potential in the EU that needs to be developed, particularly in buildings, transport and industry. As often mentioned, the most environment friendly energy unit is the one which is not spent.

Ultimately and ironically, Member States often intervene into the market in order to correct the market failures associated with the costs of climate change policies at a time where public policies and regulations are required to pull back from the market in order to let it work effectively. The problem is that if these interventions are not harmonised between Member States, they risk fragmenting the market even more, leading to a slide backwards towards renationalisation of the climate and energy policies.

## *Security of supply*

The EU is facing important challenges linked to its security of supply both outside and inside its borders.

Externally, Europe is in a vulnerable position, due to its significant dependency on imported energy. While in 2007, the EU already imported 53% of its energy consumption with natural gas representing 60% of these external needs, its energy import dependency should reach 59% in 2030 with natural gas dependency accounting for 83%.<sup>4</sup> Moreover, the EU's primary energy supplies are often concentrated among relatively few partners. In 2010, about three quarters of gas imports came from Russia (35%), Norway (27%) and Algeria (14%). Russia also remains the main supplier of crude oil (34.5 % in 2010) and has recently become the principal supplier of hard coal (27.1 % in 2010).<sup>5</sup> In view of the last developments in Ukraine and the Russian illegal annexation of Crimea, it is clear that the EU cannot continue to rely so much on an energy supplier, which is known to use energy as a political bargain chip. However, although their import volumes remain relatively small, there is some evidence of new partner countries emerging, such as Qatar and Libya for natural gas and Kazakhstan and Azerbaijan for crude oil. Besides, the discoveries of new producers in Africa and Latin America; the development of shale gas; the new supply routes thanks to, among others, the Liquefied Natural Gas (LNG) and the new Southern gas corridor; as well as the technological progress are various new factors that should help the EU to diversify and secure its energy supply.

Internally, the development of renewable energy sources has increased Member States' fear about their long-term security of supply. The major challenge of renewables is to manage their intermittency. When the sun is not shining or the wind is not blowing, it is very difficult to maintain a match between supply and demand. Back-up generation capacities such as gas or coal power plants are thus necessary to quickly respond to these variations. However, investments in flexible conventional power plants as gas become increasingly risky. As renewables benefit from a priority dispatch and access on the network, some very efficient conventional power plants operate far behind the necessary amount of hours to be profitable and are unable to recover their costs. Many

<sup>4</sup> Eurostat. 2012. *Energy production and imports*.

<sup>5</sup> *Ibidem*

gas power plants have been forced to shut down, making coal the most profitable energy sources in the EU today. Therefore, some countries have decided or are planning to support electricity producers for developing national back-up capacity schemes. The irony of the situation is that consumers end-up paying twice for renewables and back-up conventional power plants in order to ensure sufficient flexibility is available.

When security of supply is at stake, Member States tend to think nationally. However, according to the European Network of Transmission System Operators for Electricity (ENTSO-E), the EU has adequate generation capacity for the next 10 years, even if the flexibility of this generation capacity is not guaranteed. For instance, in Bulgaria, violent protests against high power prices occurred in February 2013. Yet, Bulgaria is able to produce much more than its national demand. This high supply capacity should normally positively affect price level. However, various factors contribute to unsustainable energy prices such as privileges accorded to some State-owned energy utilities, the rapid development of renewables at high feed-in tariffs and the high preferential tariffs paid to “cogeneration” plants. In order to reduce its power prices, Bulgaria could use retained excess capacity to create competition, including export to its neighbouring countries. However, the neighbouring countries face similar challenge and the Internal Energy Market regulation is not fully in place. This leads to counterproductive allocations of available generation assets as cheap power plants in one country might have to be switched off while more expensive power plants in well-connected neighbouring countries are still running.

The full integration of Europe’s electricity networks is thus essential to reducing the intermittency problem of renewable energy sources but also to ensure cost-efficient energy supplies, guarantee energy savings and allow individual foreign supplies to be replaced when possible. However, the development of interconnections is hampered by national political and economic considerations, as well as difficult public acceptance. Therefore, interconnections take time to build. Cross-border transmissions can take up to 10 years to gain planning permission and to get built, while the installation of some renewable can take a matter of months. If the development of interconnection does not meet the growth of renewable energy sources, volatility of electricity prices could increase. An efficient European grid infrastructure transporting wind power from the North and sun power from the South would greatly reduce the costs of renewable integration.

If the integration of the European networks is not significantly upgraded in the near future, the national development of renewable energy will not bring many benefits, as Member States will have no other choice than to develop national back-up fossil fuel capacity in order to deal with the intermittency of renewables. This would not only increase the energy bills of consumers but also prevent the energy transition towards a low-carbon economy with all the opportunities that the latter could bring in terms of growth. If not well-designed and coordinated at the EU level, these short-term national measures could thus spoil the whole long-term EU project.

### *Competitiveness – energy prices*

The last main objective of the EU energy and climate policy is to ensure that it does not undermine the competitiveness of the EU economy. However, concerns over high-energy prices have increasingly taken over climate concerns. Many Member States and industrial actors fear that a strong energy and climate policy will have a bad impact on their economies.

In order not to distort EU competitiveness, energy prices must not only be internationally competitive but also be affordable for final consumers. Yet, energy prices for households and industry have increased significantly in Europe these last couple of years. Between 2005 and 2011, average electricity prices for households and industries have increased by 29% in the EU, while they have grown by only 5% in the USA and by 1% in Japan. Moreover, the EU's industrial electricity price is currently twice higher than in the US – which benefits from its shale gas boom – and 20% higher than in China – and these price-differentials are widening. However, these are average figures that hide a very diverse picture across the EU, as energy prices in different Member States can vary by a factor of about 3-4.

According to the “energy prices and costs report” released by the Commission in January 2014, while retail energy prices have increased significantly during the period 2008-2012, wholesale electricity prices have decreased by between 35% and 45% and wholesale gas prices have stayed the same despite some fluctuations. This is mainly due to the increased competition between electricity and/or gas companies, the development of liquid and transparent wholesale markets, the growth of renewables with low operating costs, and the fall in

consumers' energy demand in many Member States due to the financial and economic crisis.

However, retail energy prices have risen and are expected to continue to rise in the forthcoming years for the following reasons:

- ◆ The taxes motivated by general fiscal considerations and levies justified by energy and climate policies have increased significantly these last years. This is particularly due to national support schemes for renewables. In 2011, the net support for the electricity produced with renewables in the EU reached about €37 billion and is expected to increase to about €50 billion by 2020.<sup>6</sup> However, these figures hide significant national differences in the relative shares and in absolute values of the tax and levy component of energy prices. For instance, Germany and Denmark currently have the highest electricity retail prices due to the important proportion of taxes and levies dedicated to the promotion of renewable energy sources.
- ◆ Then, network costs have also largely contributed to the costs increase. Strategic interconnections, intelligent networks and smart grids are key elements to connecting a growing share of intermittent renewable energy sources to the electricity network and to ensuring the security and diversification of supply. According to the Commission's Energy 2020 strategy, €210 billion are needed to upgrade Europe's gas and electricity grids between 2010 and 2020, with very little funds coming from the EU budget.
- ◆ The regulated energy prices in some member states are also preventing the markets from working properly, creating high market concentration.
- ◆ The cost of investments to replace and modernise the EU's ageing power generation infrastructure to consumers.
- ◆ The rise of energy imports within the EU combined with the high prices of basic energy commodities, particularly gas. Our dependence on fossil fuels costs us about €400 billion/year and creates price uncertainty.
- ◆ Electricity and gas regulations is becoming increasingly stringent, imposing, among others things, new safety requirements, the use of emissions-reducing technologies and/or the closure of high-emission power plants.

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<sup>6</sup> BusinessEurope. 2013. *A competitive EU Energy and Climate Policy – BusinessEurope recommendations for a 2030 Framework for Energy and Climate policies*. P.7.

Competitiveness is also about preventing “carbon leakage”, i.e. the delocalisation of industry to regions with less carbon constraints. By making the EU industry pay for its carbon emissions via the EU ETS, the EU must be careful that the imbalance in carbon constraints between the EU and third countries does not become a source of carbon leakage. So far, the carbon prices have been too low to really impact on the competitiveness of the EU industry. However, for a small number of energy intensive sectors, the risk of carbon leakage could become very real in the future. For these European energy intensive companies, competing globally could represent a significant challenge, as carbon prices are expected to rise in the EU, the cap on the EU ETS allowances will become more stringent, industries at risk should receive less free allowances, while the economy is likely to recover. This risk is even more actual that the main EU competitor – the US – is benefiting from comparatively low energy prices for its industry.

To conclude, the competitiveness of the EU economy will remain an important issue in the upcoming years. While one can witness that the financing of climate policies is becoming less reliant on public support, the use of private funds from households or businesses to finance the energy transition poses a dilemma related to competitiveness. If households pay via taxes and subsidies, retail energy prices will increase, stressing the issue of energy poverty which already concerns between 50 and 125 million people in Europe (mainly in Eastern and Southern Europe).<sup>7</sup> If businesses pay through higher carbon prices, as expected by most market analysts, this will also increase the carbon costs on the electricity prices, and hence increase the risk of carbon leakage.

### **3. How to rebalance the three objectives in the new 2030 framework?**

On 22 January 2014, the European Commission released its proposal on the 2030 climate and energy framework. This proposal was accompanied by a report on energy prices and costs and a communication for a European Industrial Renaissance, showing the significance of industrial competitiveness on the EU’s agenda. Rebalancing energy and climate policies to ensure affordable energy prices, industrial competitiveness, security of supply and achievement of

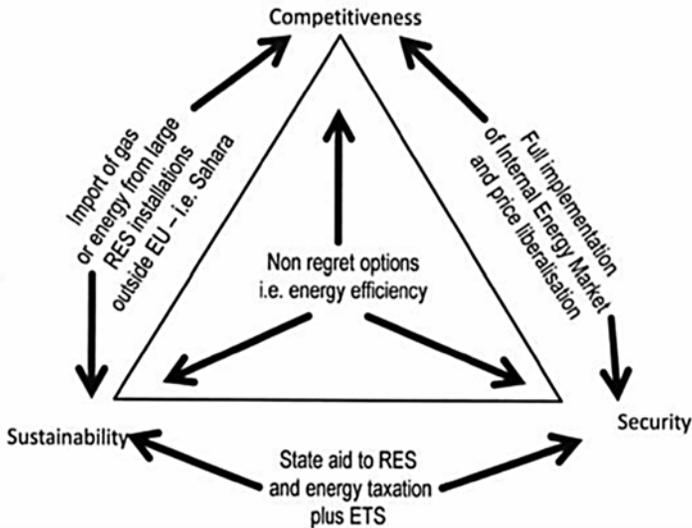
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<sup>7</sup> Chérel, D. 2009. *Study of Fuel Poverty in Europe*. EPEE, p. 1.

our climate and environmental objectives was thus one of the main issues discussed at the summit of the European Council on 20-21 March 2014.

The most important lesson learned from the 2020 package is that if we want an energy and climate policy in the EU, it has to be comprehensive, not simply linked to sustainability. The achievement of economic sustainability in terms of competitiveness and security of supply must also be taken into account. It has been witnessed that there are interactions between the instruments to meet the three objectives triangle (see graph here-under). However, these interactions can be counter-productive and negatively affect the achievement of an objective. For instance, the overlapping scope with the ETS of the EU targets for energy efficiency and renewables has undermined the efficiency of the ETS. The challenge for the 2030 framework is therefore to design instruments and policies that will not be contradictory but at best mutually reinforcing with the achievement of the climate and energy objectives.

*Figure 1: The competitiveness, sustainability and security of supply triangle*



This section will explain the current proposal on the 2030 framework and investigate whether it allows a mutual reconciliation of the three energy and climate objectives through the analysis of each of these objectives.

## *Sustainability*

In terms of targets, the proposed 2030 framework differs from the previous 2020 package, as it gives the primacy to the emissions reduction target. By 2030, the EU must reduce its greenhouse gas emissions by 40% below the 1990 level. This target would be met through binding national targets. Considering that commissioner Oettinger had pragmatically recommended a 35% reduction in order to preserve EU competitiveness, this target can be considered as a relatively prudent compromise. However, many environmentalists have criticised it for not being based on science, as it would give us a 50/50 chance of exceeding 2°C of global warming. We can thus wonder if it should not have been the role of the Commission to propose higher ambitions, rather than proposing directly an acceptable target for Member States. It is not even sure that Member States will accept this level of emissions reduction, as this objective did not figure in the conclusions of the last European Council Summit in March. Taking into account the timeline for the conclusion of a global climate agreement at the UN Conference of Parties in Paris in 2015, the European Council conclusions have nevertheless confirmed that the EU will agree on its climate contribution at the latest by October 2014.

The EU ETS will remain the cornerstone for reducing industrial emissions. Without a sustained carbon price, there will be no long-term investment signal. In order to address the surplus of emission allowances and improve the scheme's resilience to major shocks the Commission proposes to create a market stability reserve that would automatically adjust the supply of allowances to be auctioned.

The proposed framework also suggests an EU-wide binding renewable energy target of at least 27%. The big difference with the 2020 framework is that Member States have no more binding national targets. The objective is to leave flexibility for Member States to transform their energy system in a way that is adapted to national preferences and circumstances. However, it is not yet known how this EU-wide target would be enforced should the national contributions not be enough.

Despite the importance of energy efficiency, no target has been set so far. Its role in the future framework should be defined in a review of the Energy Efficiency Directive due to be concluded by mid-2014. If the review shows that the non-binding energy savings target for 2020 did not bring sufficient progress, a

mandatory approach to set the 2030 target might be considered. As a no-regret option for Europe, energy efficiency measures must be incentivised, even if it could affect the efficiency of the EU ETS. If, on the contrary, the 2020 non-binding target supported by the Energy Efficiency Directive shows sufficient progress, the flexible solution of a non-binding target should be preferred. It is already expected that a carbon emissions reduction target of 40% should lead to increase energy savings by at least 25% by 2030. On the basis of the review, the best energy efficiency measures with respect to buildings, transport, industry, and product standards should also be selected.

Although, the absence of national targets for renewables might affect investment decisions in this sector, one main emissions reduction target is a rather positive element of the proposal. It should incentivise investments in low-carbon and energy-efficient technologies, while helping to avoid the counter-productive mutual influence between the different targets and their instruments. It has been explained that in order to meet their national renewable targets by 2020, Member States have developed different unsustainable national support schemes, distorting the whole market and hampering the EU ETS' efficiency. It is thus positive that the 2030 framework provides flexibility for member states in how they deliver their commitments. This will hopefully result in more adequate instruments and policies across the EU.

In the meanwhile, the European Commission should adopt new Guidelines on Environmental and Energy State Aid for the period 2014-2020 before mid-2014. These guidelines include rules which could significantly limit EU Member States' freedom to adopt and maintain national support schemes, while proposing common principles and specific compatibility requirements. Accordingly, national support schemes for renewables should be gradually adapted to the increasing penetration and decreasing costs of renewable technologies in the market.

The flexibility of the new framework takes place in a new governance system based on national plans for competitive, secure and sustainable energy, which will be organised and assessed by the Commission. The objective of these plans elaborated under a common approach is to ensure stronger investor certainty and enhance coherence at the EU level. Equity mechanisms to ensure a fair effort sharing between Member States will thus have to be developed. The challenge of this new governance will be to trust Member States, which will remain rightfully sovereign in their choice of energy mix and capacities, while

imposing rules that guarantee that the 2030 targets are met in a cost-efficient and coordinated manner.

### *Security of supply*

It has been explained that the challenge of ensuring EU security of supply is increasingly influenced by changing energy dynamics in the EU and worldwide. In order to respond to these changes, the EU must thus prepare itself both externally and internally.

Externally, the EU should continue to diversify its energy supply sources by concluding various binding international agreements and energy partnerships with key producer and transit countries, while avoiding relationships that focus exclusively on supply. In this global new context, the EU and its Member States will only make themselves heard if they speak with a single voice abroad. Consequently, the EU should be in a position to question commercial deals at the national level when they do not align with Europe's security of supply as a whole. Moreover, the EU needs to make a more systematic, structured and coherent use of the set of foreign policy instruments that contribute to the development and strengthening of the Union's external relations in the field of energy (i.e. CFSP, trade agreements, development policy association treaties, European Neighbourhood policy, strategic partnership, etc.).

Internally, the best way to improve the EU security of supply is to achieve the transition towards a low-carbon economy in the longer term and to complete the creation of an internal energy market in the short-medium term. Ultimately, the aim of the EU is to replace its significant reliance on external supply with energy savings and new indigenous energy sources, such as renewables, but also shale gas or nuclear. As long as environmental and safety considerations remain the first priority, new nuclear and shale gas resources should be considered by Member States. With respect to shale gas, it is unlikely that the indigenous resources in Europe will become a game changer like in the US. Nevertheless, a clear regulatory framework for its European development should be defined, all the more so as the EU is under pressure to become an example of shale gas exploitation elsewhere. Before that, the priority is to complete the internal energy market so that Member States can benefit from the most efficient use of production capacities. This requires managing the development of renewables through a flexible electricity system

based on market principles and accompanied by European measures to develop large investments in strategic interconnections, storage facilities and smart grids that would allow better demand-side management.

In this context, the issue of generation adequacy is one of the major challenges. The new Guidelines on Environmental and Energy State Aid for the period 2014-2020 that should be implemented before mid-2014 include rules on state aid to secure generation adequacy. Accordingly, back-up capacities for renewable energy would be supported only if additional energy infrastructure or alternative measures – such as a more responsive demand side or electricity storage – cannot address concerns about a sufficient flexible generation capacity. Moreover, such aid should not unduly favour national generation or particular technologies, in order to limit the risks of strong distortions of competition and environmental harm. Ultimately, the best way to fix the issue of generation adequacy would be to fully integrate Europe's energy networks with smart infrastructure in transmission and distribution. The upcoming guidelines should thus also include rules for assessing infrastructure support, particularly on projects improving cross-border energy flows and promoting infrastructure in less developed regions.

### *Competitiveness*

Rebalancing energy and climate policies to tackle competitiveness is central in the new 2030 framework. The climate and energy policies need to be designed pragmatically in the aim of not harming countries' economic growth. According to the Commission, the climate and competitiveness challenges “are not contradictory, but mutually reinforcing”. The costs of the energy transition should be compensated by the benefits of the green economic growth, including new jobs, the reduction of the high import dependency costs, improved energy efficiency, the development and deployment of new technologies, as well as social and health benefits. However, this will require making the right political and investment decisions. All these decisions should be based on comprehensive examinations of the true costs and benefits of different energy sources, consumer products and transport modes all along the value chain.

In the proposal of the Commission on the 2030 framework, a set of key energy indicators for competitive, affordable and secure energy has been proposed to assess progress over time and to provide a factual basis for policy action as

needed. For instance, these indicators should relate to energy price-differentials with major trading partners, supply diversification, reliance on indigenous energy sources, and interconnection capacity between member states. This will make it possible to assess if the three objectives are well balanced.

In the meanwhile, the completion of the internal energy market remains the priority. The full implementation of the internal market legislation in order to develop and use more efficiently energy infrastructure as well as to increase competition in the market is crucial to keeping prices in check.

As it is expected that energy prices will continue to rise in the forthcoming years, sustained efforts in mitigating these prices supported by the consumers are required. The European Council Summit of March 2014 recognises the necessity of these efforts, in particular through: the implementation of energy support schemes in line with the State aid guidelines and best practice guidance provided by the Commission; the fuller use of the electricity generation capacity available on the internal market rather than relying on national capacities alone; sustained investment in energy efficiency and demand-side management; the promotion of domestic resources rather than an expensive reliance on external supply; as well as increased competition on gas supply markets and renegotiation of gas contracts. With respect to this last aspect, the EU should supervise the renegotiation of long-term contracts for gas with foreign suppliers (especially Russia) in its aim of applying the same range of gas prices everywhere within the EU.

Considering that carbon prices are expected to increase in the future, the EU ETS post-2020 should continue to support energy intensive industrial sectors at risk of carbon leakage by evidence-based measures so as to ensure a global playing field.

For the first time, the European energy and climate policy will benefit from an important financing of about €35 billion from the EU budget 2014-2020 in order to support research and development, energy efficiency, renewables, as well as infrastructure for transport and storage.

## Conclusion

The proposal of the Commission on the 2030 energy and climate framework is a good start. Taking into account the new energy landscape, it tries to redesign

climate and energy policies to turn them into true industrial growth drivers. It thus reconciles climate objectives with cost-competitiveness, while keeping an important focus on security of supply. However, if the proposal provides direction, it does not provide the means yet. The next European term will thus have to translate this proposal into concrete measures to be implemented by Member States with the support of the industry and individual consumers. The challenge will be to design adequate measures that will not be contradictory but at best mutually reinforcing with the achievement of the climate and energy objectives.

As all the difficulties related to the energy objectives triangle will not be overcome at once, the first priority of the EU's new leaders will be to complete the internal energy market. This will require that the EU and its Member States improve their coordination in identifying and implementing clear priorities. Otherwise, the very construction of an EU internal energy market could be compromised by the fragmentation of countries' energy sectors from each other.

Finally, the EU should make all necessary efforts to conclude a global climate agreement at the 21<sup>st</sup> UN Conference of Parties in Paris in 2015 if it wants to succeed in showing that sustainability and competitiveness are mutually complementary and not contradictory.



*Clémentine d'Oultremont is Research Fellow at the Egmont Institute. The author would like to thank Jarosław Pietras – Director-General of Environment, Education and Transport at the Council of the European Union – for his valuable comments.*



# From Lampedusa to the Post-Stockholm Programme

## *Difficult European solidarity in the field of migration*

CORINNE BALLEIX

### **Abstract**

Solidarity is a founding principle of the European migration policy. To hold true, Member States must be faithful to their common commitment to European migration rules and implement fair burden sharing of the costs attached to border controls. However, solidarity among Member States appears altogether fragile and under threat, a situation that could jeopardise the founding principle of the free movement of persons in the European Union's space. The recent solidarity crisis among Member States was solved by an increased externalisation of the European migration policy. Consequently, for the EU to live up to its values, it will have to prove itself generous towards third countries.



### **Introduction**

As the European Union prepares for the next European parliamentary election of May 2014, any talk of migration issues appears to have mostly been relegated to far-right parties that could be tempted to renationalise the European immigration policy. Moreover after the tragic events off the coast of Lampe-

dusa, where 360 people drowned with their ship attempting to cross over to Italy, the European migration policy was accused of being non-existent, inefficient or at least of **showing insufficient solidarity** towards some European Member States.

The Task Force Mediterranean was set up following the Justice and Home Affairs Council of 7-8 October 2013. Chaired by the European Commission, it made concrete proposals on December 3<sup>rd</sup> intending to prevent such tragedies from happening ever again, that were well-received by the December European Council.<sup>1</sup> These proposals will also be discussed during the preparation of the post-Stockholm Programme, which should be adopted by June 2014 and should provide the European Union with a roadmap in terms of Justice, Freedom and Security for 2015-2020. Considering the Task Force's conclusions, what type of solidarity is likely to develop within the framework of the post-Stockholm Programme?

## 1. Solidarity as a founding principle of the European migration policy

### *1.1. Evolution of the European migration policy*

In spite of a large diversity of migration flows<sup>2</sup> and Member State policies, the European common asylum and immigration policy has experienced huge developments in the last thirty years. Absent from the Rome Treaty and from the Single European Act, it first developed in a totally intergovernmental process within the framework of the 1985 Schengen convention. Then, with the 1992 Maastricht treaty, it was introduced within the third intergovernmental pillar. After the Amsterdam treaty, it has progressively become a common policy and, since the Lisbon Treaty, the ordinary legislative procedure (art. 77 to 79 TFEU) applies to it. The European migration policy, which counts among the EU shared competencies (Art. 4 TFEU) now includes border controls, asylum, legal immigration (family and labour immigration), as well as integration of third-country nationals. Three main factors may help us to understand these evolutions: 1) improvements in the free movement of persons within the

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<sup>1</sup> European Commission. 2013. *Communication from the Commission to the European Parliament and the Council on the work of the task Force Mediterranean*. COM(2013) 869 final.

<sup>2</sup> 77% of the third-country citizens living in the EU stay in Germany, Spain, Italy, the United-Kingdom and France. Cf. Eurostat. 2013. *European Social Statistics*.

European space made control of its borders an issue of common interest, as all kinds of traffic could benefit from the removal of internal borders; 2) the strain felt by Member States tackling the complexity of transnational migration phenomena on their own; and 3) the fact that immigrants mostly focus on a couple of specific Member States made solidarity between Member States with borders doubling as EU external borders and the main EU end-destination countries necessary.

Solidarity among European Member States can be understood in two ways. It's because Member States are faithful to their common commitment to reinforce European external borders that they can accept free movement of persons within the European space (Art. 67 TFEU). But for the Member States that experience the largest migration flows, solidarity also means a fair burden sharing of the costs attached to border controls (Art. 80 TFEU). In 2013, Italy and Malta received €92 and €23 million respectively from the External Borders, Return, and Refugee funds. For 2014-2020, two new funds – the “Asylum and Migration Fund” (€3.1 billion), and the “Internal Security Fund” (€3.7 billion) – are in charge of burden sharing among Member States.

### *1.2. Various instruments of migration solidarity have developed over the last thirty years*

**Most of them were developed to be used in the field of border controls. The 2006 Schengen code** aims at defining common conditions and modalities of border checks at the external and internal borders of the EU. The **2009 Visa Code** sets out two lists of countries whose nationals shall – or not – buy a visa to be allowed to enter the Schengen Area. It aims at defining common conditions and procedures for issuing visas, which should contribute to harmonising the power of attraction of Member States to third-country nationals.

In order to enhance the efficiency of border controls, European Member States also developed **several common information systems**. The Schengen Information System (SIS) set up in 1985 and renewed in April 2013 (SIS-II) allows the sharing of information about people whose entry within the Schengen Area was refused, either because they are considered as a danger to the public order and national security, or because they were deported after an irregular stay in a member state of the Schengen Area. The Visa Information System (VIS) established in 2004 allows visa applications to be traced in order to fight “visa

shopping”, and “to contribute to the prevention of threats to the internal security of any of the Member States”. Consequently, the amount of data collected by VIS is significant. The EU Border Surveillance Initiative (EUROSUR) which came into force in December 2013 allows Member States to exchange operational information and to cooperate between themselves and with the FRONTEX Agency to reduce the number of migrants entering the EU illegally and to prevent cross-border criminality. Ultimately, the project of a Smart Border Package, which has been under discussion since February 2013, aims at using new technology in order to improve border control efficiency. A reliable and quick system of registration could simplify border checks for people who frequently come into the EU, and an enter/exit system could, among other things, allow the identification of people who overstay their welcome in the EU after their visa has expired.

Moreover, several operational mechanisms support Member States in their management of border checks: the FRONTEX Agency, set up in 2005, supports Member States in their naval, air and land-based common external operations. Regarding visa applications, some agreements between Member States could allow those with small diplomatic networks to use the visa facilities of Member States that have larger diplomatic networks.

Thus, European solidarity in the field of border checks is well-developed.

**In the field of asylum**, the Dublin Regulation sets out rules to designate the Member State in charge of examining an asylum application. This Member State might not be the point of original entry into European space in cases of family reunification for instance. But the Dublin Regulation tends to put responsibility on the Member State which played the biggest role in the entry of a migrant. However, the renewed Dublin Regulation provides a rapid alert mechanism which makes it easier to identify Member States (like Greece, potentially) whose national asylum system proves unsatisfying, and organises solidarity measures in favour of these Member States. Moreover, the 2001 “temporary protection directive” aims at ensuring the balanced distribution of asylum seekers among Member States when their flow increases dramatically, for example during conflicts.

Operational mechanisms of solidarity also developed in the field of asylum. The recording of migrants’ fingerprints within the EURODAC system makes it possible to trace them within the EU and helps Member States in their fight

against “Asylum shopping”. Consequently, asylum seekers might be transferred back to the Member State that was first designated to examine their claim. The European Asylum Support Office (EASO), which started operating in Malta in June 2011 also aims at supporting concrete cooperation among Member States, such as sharing information on the situation of human rights in the countries of origin, sending technical support teams to Member States facing difficulties, or promoting the transfer of asylum seekers.

**Eventually, in the field of legal immigration**, various directives (on long-term residency, researchers or highly skilled workers (see the “blue card directive”) tend to harmonise the conditions of entry and residence of these migrants. These rules are less developed since Member States competing with each other to attract certain categories of third-country workers are reluctant to see their competitiveness fully harmonised.

Regarding all the existing solidarity measures, it would thus be unfair to say that a European migration policy does not exist.

## 2. Solidarity among Member States appears altogether fragile and under threat

Whatever the common European migration rules are, Member States always remain the authority of last resort when deciding whether or not to allow the entry or issuance of a residence permit to third-country nationals. However, their national policies vary a lot and this has an impact on their appeal for migrants. In 2012, while Greece provided international protection to only 0.9% of its asylum seekers in first instance, Malta provided international protection (subsidiary protection) to 90.1% of them.<sup>3</sup> Moreover, the European immigration policy has a variable geometry. UK, Ireland and Denmark benefit from derogatory clauses, allowing them to choose to take part – or not – in some elements of this policy. The lack of solidarity is also reflected in the fact that European rules do not provide for an automatic recognition of international protection allowed by one Member State in another one.<sup>4</sup> In 2012, a European pilot relocation programme helped with the relocation of 105 protected people

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<sup>3</sup> Eurostat. 2013. *EU Member States granted protection to more than 100.000 asylum seekers in 2012*. Eurostat news release. 9/6/2013.

<sup>4</sup> Cf. Ruling by the Cour nationale du droit d'asile, sections réunies, 31 janvier 2013, affaire Kariye Anshur.

in Malta to another Member State. However, another 307 individuals were resettled in the United States. Thus, in this particular instance, American solidarity vis-à-vis Malta proved greater than European internal solidarity.

Moreover, **several European provisions designed to enhance solidarity among Member States are not or rarely used and cannot be developed.** Very few common visa issuance centres have been created (in Chisinau, Moldavia and in Praia, Cape Verde) and their record appears disappointing because Member States are very reluctant to share their sovereign rights in this field. Regarding asylum, the 2001 directive on temporary protection has never been implemented although the migration flows linked to the Arab Spring and the Syrian crisis would fully justify resorting to this directive.<sup>5</sup> Moreover, although the Dublin/EURODAC system and the EASO are supposed to organise transfers of asylum seekers between Member States, these transfers only account for 1.7% of asylum applications in France.<sup>6</sup> The cost and administrative complexity of this mechanism explain that Member States gave up on using it. Moreover, in 2011, the European Court of Human Rights and the European Court of Justice banned the transfer of asylum seekers to Greece, considering that the asylum procedures and reception conditions were inhuman and the treatment or punishments degrading.<sup>7</sup> Another example of rarely used provisions in the field of legal immigration is the blue card directive. Because Member States fight each other to attract highly skilled workers, they only agreed on facultative provisions aiming to harmonise the reception conditions of these types of migrants. The lack of European solidarity in the field of legal migration, which affects very sensitive issues such as employment, is also reflected in the fact that the European Commission had to withdraw the idea of a European immigration code aiming at organising any kind of legal migration. As a consequence, legal immigrants are still confronted with very fragmented statuses (researchers, seasonal workers...) and the rights they enjoy might change significantly according to their status.

Another telling sign of the lack of solidarity between Member States is the fact that **they are not always fair in the implementation of common rules.** In practice, the Dublin/EURODAC system doesn't work properly because some

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<sup>5</sup> France 24. 2013. *Le nombre des réfugiés syriens dépasse les 2 millions selon l'ONU.*

<sup>6</sup> La Cimade 2011. *Le règlement Dublin II et son application en France.*

<sup>7</sup> CEDH, 21 janvier 2011, *MSS c/Belgique et Grèce*, req. no 30696/09 et CJUE, 21 décembre 2011, *N.S. / Secretary of State for the Home Department, et M.E. e. a. / Refugee Applications Commissioner Minister for Justice, Equality and Law Reform*, aff. jointes C-411/10 et C-493/10.

Member States (Greece, Italy, Malta) are slow to register or do not register the asylum seekers' fingerprints, allowing the latter to leave the territory and seek asylum in another Member State. During the Arab Spring, in early 2011, Italy, considering that the EU wasn't being supportive enough while it faced an influx of 28.000 migrants, unilaterally decided on April 5<sup>th</sup> to grant all of them 6-month humanitarian permissions to stay and move freely within the European space, possibly infringing the loyal cooperation principle. Consequently, France, fearing an increased flow of migrants, reintroduced border checks vis-à-vis Italy.<sup>8</sup> However, the flow of migrants did not account for more than 400 people. Thereby, France probably infringed the proportionality principle.

**This Franco-Italian dispute, which shows a lack of solidarity among Member States, could jeopardise the principle of the free movement of persons within the European space**, even though it is a fundamental principle of European integration. In reaction to this, the Schengen Area governance reform which was adopted on October 8<sup>th</sup> 2013<sup>9</sup> added new criteria. Beyond threats to public order and internal security, Member States are allowed to reintroduce internal border checks within the Schengen Area in case a Member State encounters serious and persistent deficiencies in controlling the external borders of the Schengen Area. Hence, as the liberalisation of the movement of persons made the development of European solidarity necessary for the control of external borders, failing to control them might bring about the reinstatement of internal borders within the Schengen Area.

### 3. Was the recent solidarity crisis among Member States solved by the externalisation of the European migration policy?

After the tragic sinking of boats off the coasts of Lampedusa and Malta, in October 2013, calls were made to enhance European solidarity and alleviate the burden taken on by Italy and Malta.

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<sup>8</sup> Carrera, S., Guild, E., Merlin, M. and Parkin, J. 2011. *Race against Solidarity. The Schengen Regime and the Franco-Italian Affair*. CEPS Paper in Liberty and Security in Europe.

<sup>9</sup> Council of the European Union. 2013. *3260th Council meeting, Justice and Home Affairs*. Press release.

### *3.1. Internal solidarity is flawed*

The Commission decided to give €30 million to Italy and €20 million to other Member States experiencing the largest flows of migrants. However, the Task Force stresses that solidarity among Member States – especially *via* FRONTEX joint operations, EASO support and relocation of protected people in Italy or Malta – should go hand in hand with the full acceptance of their responsibility in the control of the EU external borders.

Moreover, a new reform of the Dublin Regulation, including a system to distribute asylum seekers was discussed. However, considering that, in 2012, Italy and Malta received 15.700 and 2.000 asylum applications respectively, while Germany received 77.500 of them and France 60.500,<sup>10</sup> heads of states and governments refused to remove the responsibility of controlling the EU external borders from peripheral Member States. Consequently, they also refused to modify the Dublin Regulation and to implement a new method of distribution of asylum seekers among Member States.

During the European Council of 24<sup>th</sup> and 25<sup>th</sup> October 2013, Member States showed solidarity in two fields: “the priority of prevention and protection” and “the principle of solidarity and of a fair sharing of responsibilities”. These orientations were developed in the conclusions of the Task Force Mediterranean,<sup>11</sup> and were agreed on 19<sup>th</sup> and 20<sup>th</sup> December 2013 at the European Council.

### *3.2. Preventing irregular immigration and protecting the EU from it?*

In order to improve the control of the migration flows, the European Council and the Task Force propose intensifying the fight against human smuggling and human trafficking and increasing the effectiveness of return policies.

To this end, Europol will enhance its cooperation with other European agencies fighting against human trafficking and organised crime (FRONTEX, EASO and Interpol), and with Member States. To achieve this, the Task

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<sup>10</sup> Eurostats. 2013. *The number of asylum applicants registered in the EU27 rose to more than 330.000 in 2012*. Eurostatsnewsrelease. 48/2013.

<sup>11</sup> European Commission(2013). *Communication from the Commission to the European Parliament and the Council on the work of the task Force Mediterranean*, COM(2013) 869 final.

Force proposes that FRONTEX and Europol rapidly sign operational agreements allowing exchange of personal data. Moreover, the EU supports capacity building programs in third countries mostly concerned with human trafficking and organised crime, especially in Africa. Besides, there is talk of using certain instruments of foreign and defence policy in order to fight criminal organisations which operate in third countries. Eventually, the European Union aims at enhancing European texts that organise sanctions against people supporting entry transit and irregular stay (November 2002 directive). However, one should be careful that exchanges of personal data do not infringe on migrants' fundamental rights, and that sanctions, which are necessary to make the fight against criminal networks credible, do not lead to the incrimination of humanitarian assistance. Furthermore, one must be aware that, without smugglers, most of people in need of international protection could not reach Europe, since it is very difficult for them to get visas from European Member States. Therefore, intensifying the fight against migrant smuggling and trafficking could also reduce the access of migrants to European asylum procedures, unless more visas are issued.

The EU will also develop more **readmission agreements** according to which third countries commit themselves to readmitting their nationals, third-country citizens or stateless people who pass through their territory. Since 1999, the European Union negotiated 18 readmission agreements with third countries such as the Russian Federation, Ukraine, Pakistan, Sri Lanka, Balkan countries and Cape Verde. 13 of these agreements have been applied.

In order to help these countries fight irregular immigration, the EU can support the development of their border control systems. However, the EU appears more interested in these agreements than third countries that would not benefit from migrants' remittances anymore and would have to pay for their readmission. Without counterparts such as visa facilitation or increase in development aid, some of these agreements, which are sometimes under discussion for years (with Morocco for instance) have not been approved so far. Above all, the asylum systems of third countries do not always provide asylum seekers with the same guarantees of their fundamental rights than those of the Member States.<sup>12</sup> For instance, Ukraine, having signed a readmission agreement with the EU in 2007, tried to send people who had been recognised as

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<sup>12</sup> Association européenne des droits de l'homme (AEDH). 2013. *L'AEDH s'oppose aux accords de réadmission de l'UE*.

refugees by the UNHCR back to Russia.<sup>13</sup> Moreover, some readmission agreements were signed with countries – such as Sri Lanka in 2005, or Pakistan in 2010 – where persecutions on grounds of religion, political opinions or ethnic belonging are not a thing of the past.

Adopting the same approach, Member States within the European Council agreed to enhance the FRONTEX activities in the Mediterranean and off the South-Eastern borders of the EU, and on promoting cooperation with other agencies such as the European Maritime Safety Agency and the European Union Satellite Centre. The implementation since December 2013 of the European Border Surveillance System will allow an extension to Libya, then Morocco and Egypt of a Sea Horse Network program organising FRONTEX cooperation with third countries in order to enhance detection of irregular trans-border movements. The detection of small boats carrying irregular immigrants should be improved from their point of departure. Every ship will be reminded of its international duty to provide rescue at sea to migrants in distress, while guaranteeing that it won't be sanctioned and that it will be able to quickly unload people who have been saved.

The choice was made to intervene as far as possible off the European shores in order to reduce (as much as possible) the ability of migrants to reach EU territory. However, this could impede the implementation of the 2008 return directive, which applies only to third-country nationals staying irregularly “on the territory of a member state”. But this directive, although heavily criticized,<sup>14</sup> provides common norms and procedures that protect the fundamental rights of people from third countries staying irregularly in a Member State. Member States shall for instance take into account the child's superior interest, the family unity and the returnee's state of health, and they shall also respect the principle of non-deportation.

Stopping migrants as far as possible from the EU might contribute to solving the problem of sharing the burden of asylum seekers and the reception of immigrants among Member States, as Italy, Malta, and Greece but also France and Germany would receive a reduced number of these migrants.

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<sup>13</sup> Amnesty International. 2010. *Amnesty demande à l'Ukraine de ne pas extraditer un Tchétchène en Russie.*

<sup>14</sup> It was for instance criticised for allowing an extension up to 18 months of the returnee's retention, which may apply also to minors, and to organise the possibility of banning any new entry into the EU for a period of time lasting up to 5 years, which could prove an obstacle to family grouping.

As a matter of fact, externalisation of the European migration policy could prevent Member States from squabbling over the burden sharing of immigrants, and keep temptations of reintroducing **internal** borders within the Schengen Area at bay.

However, will this externalisation of the EU migration policy, which moves the burden on to third countries receiving immigrants compensate for the weakness of intra-European solidarity? Isn't this externalisation at risk of being to the detriment of the migrants' fundamental rights?

### *3.3. Solidarity and fair sharing of responsibilities with third countries?*

In order to maintain a high level of fundamental rights protection of migrants in general, and asylum seekers more specifically, the **European Council and the Task Force Mediterranean** proposes enhancing EU cooperation with third countries in the field of development as well as in that of asylum. This requires a lot of work.

**An extensive cooperation programme with third countries:** in view of short and mid-term actions to limit migrant flows, the EU's declared goal is to discourage illegal migrants from setting off on perilous journeys. Hence the EU is planning to support third countries' **border control infrastructures**, particularly in the south and east of the Mediterranean. Information campaigns about the dangers linked to illegal immigration will be developed. Moreover, work to strengthen the capacities of these countries, notably via the provision of European Liaison Offices (ILO), is due to be supported, notably by Turkey and Morocco. A new generation of Euromed police programmes are due to be implemented this year and the West African Police Information System (WAPIS) programme led by Interpol is due to be strengthened. FRONTEX's Atlantic Seahorse Cooperation Network programme with third countries which presently involves Spain, Portugal, Senegal, Mauritania, Cape Verde and Morocco in the fight against illegal immigration, is due to be extended to Libya and Egypt. Mobility partnerships between the EU and third countries like Tunisia, Jordan, Egypt, Libya, Algeria and Lebanon, which aim to set up legal migration in exchange for the latter countries' commitment to countering illegal immigration, are also due to be finalised or negotiated. However, the Task Force Mediterranean highlights that for the effective implementation of this cooperation the goodwill

of third countries and the necessary consideration of their expectations by the EU are required.

**In terms of asylum, regional protection programmes** financed by the EU aim to help third countries improving their local infrastructures and their administrative and legal capabilities to host asylum seekers and the processing of their requests. Some programmes have already been established in North Africa (with Libya, Tunisia and Egypt) and in the Horn of Africa (Kenya and Djibouti). They are due to be enhanced by the inclusion of the countries of the Sahel. In September 2013, the EU, encompassing the Commission and the Member States, made €1.8 billion available in support of 7 million people affected by the Syrian conflict. This seemed to spearhead emergency reconstruction aid in support of this region. More specifically, the European Commission is elaborating a regional protection programme to include Lebanon, Jordan and Iraq to address the consequences of the conflict in Syria and to limit the risks associated with the destabilisation of the neighbouring countries which at present are hosting 2.3 million refugees. However, the experience of the regional protection programmes has shown that when launched in countries that are not exemplary in terms of Human Rights' protection (Ukraine, Belarus) they are not always implemented in the spirit of protecting the fundamental rights that they are supposed to disseminate.

The Task Force and the European Council of December 2013 also highlighted the importance of **resettlement programmes**. These programmes aim to offer people who have been recognised as refugees outside of Europe by the UN Refugee Agency the possibility of settling down legally in a Member State in the long term. The challenges seem enormous when we realise that in 2012, only 4.500 people<sup>15</sup> benefited from resettlement in a Member State and, in December 2013, the European Union had only taken in 12.340 people fleeing the Syrian conflict (i.e. 0.54% of the total number of people displaced by this conflict) mainly for humanitarian reasons, and not based on conventional protection.<sup>16</sup>

In the first half of 2014 the Commission is planning to organise a conference with the HCR on the resettlement of the most vulnerable populations.

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<sup>15</sup> Eurostat. 2013. *EU Member States granted protection to more than 100.000 asylum seekers in 2012*. Eurostat news release. 96/2013.

<sup>16</sup> Amnesty International. 2013. *An International Failure: The Syrian Refugee Crisis*. Amnesty International Briefing.

Undoubtedly, the European Union, which took 17% of all refugees in the world in 2012,<sup>17</sup> would then have to fully accept its global share of processing and taking in asylum seekers.

Moreover in view of the **European strategy that will replace the Stockholm Programme (2010-2014)**, the Commission will make proposals aiming to define a joint response to the granting of humanitarian visas to people seeking protection. This humanitarian protection might be less of a constraint for Member States than the existing conventional and subsidiary protection, since the rights offered to people benefiting from it would in all likelihood be more precarious.<sup>18</sup> The Task Force is also planning a feasibility study on the possibility of processing asylum claims according to the joint European procedures, but outside of the EU. The EU's selection of people who really need international protection would then be undertaken as close to the zones of conflict as possible. The externalised application of European procedures and criteria would guarantee the respect of the asylum seekers' fundamental rights during the processing of their request. But how would the funding of their resettlement in Europe be organised should they be granted the status of refugees? What about the risk of these claims being processed in a hurry in order to reduce these costs?

Beyond this, **in order to address the deep causes of these flows** like Human Rights infringements, conflicts, and lack of economic prospects, the European Council is asking for the appropriate support of the countries of transit and origin thanks to development aid secured as part of the European Neighbourhood Policy in particular, and as part of a global approach to migration.

Hence since 2005 the European Union has been trying to develop a **global approach to migration based on** a triple win: European labour market requirements would be satisfied, migrants would benefit from a more stable status and development, and the country of origin would be given support. The organisation of legal immigration should therefore help reduce illegal migration pressure.

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<sup>17</sup> 34% of the refugees in the world live in Asia and the Pacific. Cf. UNHCR. 2012. *Displacement. The New 21st Century Challenge*. Global trends.

<sup>18</sup> According to the "qualification" directive, which was renewed in December 2011, the minimum duration of a residence permit shall be 3 years for a person benefiting from conventional protection, and 1 year for a person benefiting from a subsidiary protection. Cf. Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless people as beneficiaries of international protection, for a uniform status for refugees or for people eligible for subsidiary protection, and for the content of the protection granted (recast).

Since 2010, a European immigration portal provides information on Member States' labour market requirements. Various directives on researchers, students and highly qualified staff aim to secure certain rights linked to the residence of these people such as an improved recognition of their diplomas, and fostering circular migration.

A directive on seasonal workers that is under discussion at present should also help to develop circular migration.

During the period 2014-2020, European development aid for migration will notably pass via a new programme named Euromed Migration which will represent 7% of the thematic actions in the Development Cooperation Instrument (DCI), i.e. €1.37 billion. It will be directed in particular towards the development of professional and university training adapted to the requirements of the countries of origin. Moreover, measures will be taken to foster migrant remittances, which represent more than three times the official figures for development aid (\$406 billion in migrant remittances against \$126 billion in world ODA in 2012).<sup>19</sup> Mobility partnerships are also becoming a part of this global approach to migration.

### *3.4. How can the European Union guarantee the implementation of its cooperation programme with third countries?*

Achieving the stated goal of improving the control of migration flows in the respect of fundamental rights will require major support from third countries' asylum and border control systems.

**Should aid be conditioned according to third countries' results in the fight to counter illegal immigration?** European financial support, which is supposed to help reintegrating migrants in their countries of origin, is sometimes seen by the migrants as a pull factor and the conditions governing their allocation could be better regulated.

However as far as border control negotiations are concerned, the EU is not always in a position of strength vis-à-vis third countries, which do not see the

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<sup>19</sup> Banque Mondiale. 2012. *Les envois de fonds en direction des pays en développement se monteront à plus de 400 milliards de dollars en 2012.*  
Nations Unies. 2013. *Dans le monde, l'aide publique au développement s'est élevée à 126 milliards de dollars en 2012.*

urgency of controlling borders as much as the EU does, since they benefit from migrant remittances and have to bear the financial burden of their readmission.

The readmission agreements with Morocco, Algeria and China are struggling to become a reality because these countries deem the incentives offered by the EU inadequate. The agreements with Ukraine, Russia and Turkey were completed only once the EU had committed to negotiate a relaxation in their visa regimes on their request.<sup>20</sup> In an extremely weakened state like Libya, which has many other concerns than its borders, a suspension of European aid due to a lack of efficacy in its border controls could be counterproductive, since Libya will not invest alone in borders checks.

In view of the extension of the Seahorse Mediterranean Maritime Surveillance Programme, the Task Force notes that it will be necessary to “convince” Tunisia, Algeria and Egypt to take part in this network. Conditioning aid may meet limited success, except in an extremely small number of cases.

**If it wants to involve third countries in the fight to counter illegal immigration the European Union will have to pay the price.** The Task Force Mediterranean has suggested providing development aid in addition to the “Asylum and Migration Fund” and the “Internal Security Fund”. This aid will come in particular from the future neighbourhood instrument (€15.4 billion overall), the EDF (European Development Fund) (€30.2 billion overall) and even from the Stability Instrument (€2.3 billion overall) to help people living in refugee camps. As all of these funds will probably be insufficient, the Task Force is also calling for additional financing from Member States.

**In order for third States to really become involved in the European objectives for the control of migration flows, they must be convinced that their interests have truly been taken on board.** In this regard migration financing should not be mixed up with development aid. The latter should not be used to finance border control infrastructures that do not have any national economic impact.

Moreover, requests from third countries focus on extended legal immigration possibilities to the European Union, notably by the flexible award of visas. These requests will not diminish in the short term since development will not

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<sup>20</sup> Commission européenne. 2013. *Cecilia Malström signe l'accord de réadmission avec la Turquie et entame, avec ce pays le dialogue sur la libéralisation du régime des visas*. IP/13/1259. European Commission. 2011. *Communication from the Commission to the European Parliament and the Council Evaluation of EU Readmission Agreements*. COM(2011) 76 final.

lead – at least at first– to a reduction in migration flows.<sup>21</sup> Furthermore the ageing EU population needs migrants, particularly highly qualified people, in order to maintain its growth prospects.<sup>22</sup> Therefore work to **regulate legal migration flows**, which is cheaper than development aid and border controls, is due to continue. This means strengthening the efficacy of the global approach to migration, which is often perceived as an instrument used excessively for “selective” immigration in the EU, and improving the perks that migrants and third countries can benefit from.

Research should therefore continue in two specific areas:

- ◆ **Highly qualified migrants:** at present Europe’s appetite for highly qualified migrants does not guarantee strong commitment in the fight to counter brain-drains. This is notably reflected in the not extremely binding ethical code of conduct of the “Blue Card” directive. Moreover, Member States do not always implement the optional measures of this directive when they find themselves in competition with each other to attract highly qualified migrants. The same problem appears in the finishing negotiations for a directive on intragroup posting, which will allow international firms to post their employees in various Member States. Member States particularly concerned about controlling migrant entries and promoting competition between the various social systems have encountered great difficulties in harmonising their reception conditions for highly qualified migrants. They will therefore have to overcome their differences to make the rights of these migrants safe across the entire Union and make circular migration more attractive. This would allow the results produced by these migrations to be maximised for the countries of origin, notably via reintegration strategies.<sup>23</sup>
- ◆ **Migrant remittance terms, which** represent 9 to 24% of some developing countries’ GDP, should also be improved from the point of view of reducing costs and increasing their impact on development.<sup>24</sup> This

<sup>21</sup> Wihtol de Wenden, C. 2013. *Pour accompagner les migrations en Méditerranée*. Paris :L’Harmattan.

<sup>22</sup> European Migration Network 2012. *Satisfying Labour Demand through Migration*.

Commission européenne. 2012. *Vers une reprise génératrice d’emplois*. COM (2012) 173 final.

<sup>23</sup> Traoré, S. 2010. *La migration circulaire au Mali. Aspects démographiques et économiques*. CARIM. Note d’Analyse et de Synthèse (55). Also: Flahaux, M.-F., Mezger, C. and Saljo, P. 2011. *Migration circulaire des Sénégalais*. CARIM. Note d’Analyse et de Synthèse (72).

<sup>24</sup> Bourenane, N., Bourjij, S. and Lhériaux, L. 2011. *Réduire les coûts des transferts d’argent des migrants et optimiser leur impact sur le développement*. Outils et produits financiers pour le Maghreb et la zone franc, AFD, Epargne sans frontière. Also: Banque africaine de développement. 2008. *Les transferts de fonds des migrants, un enjeu de développement*.

would notably mean improving the regulatory framework in order to step up competition between money transfer operators and to limit informal transfers, which are sometimes opaque. It would also require the development of banking activities in the countries of origin using the country of residence as a base.<sup>25</sup> Finally, it would require the support of financial innovation (e-banking), thereby developing systems to finance work that will help third countries develop.

## Conclusion

While preparing for the next European parliamentary elections and discussing migration issues, the European Union will only live up to its values if it does not satisfy itself with reinforcing its border controls and externalising its migration policy. It will be able to ask for solidarity from third countries only if it shows the example of being generous towards them. This will require supporting them in a more effective and innovative manner with respect to their asylum system and their development process.



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<sup>25</sup> Bi-bancarisation refers to an easier access to banking services for migrants in their residence country and in their country of origin, within the framework of North-South cooperation of banks, which link up bank-accounts in the North and in the South.



# The Role of the European Union in the World

ENEKO LANDABURU

## Abstract

Despite the hopes raised by the most recent Treaties, the Lisbon Treaty in particular, the European Union has been unable to strengthen, let alone develop its role on the international stage. A couple of weeks away from the European Parliament elections, we need to ask ourselves what can reasonably be done by the upcoming Parliament to ensure that significant progress is made with respect to the EU's foreign policy.

Some of this progress could result from the implementation of the European Security Strategy or originate from the role and initiatives of the High Representative/Vice-president of the Commission. In addition, rethinking specific approaches could allow for significant improvements in key areas such as the EU's dealings with neighbouring countries, its commercial relationship with the US, its energy security or its common security and defence policy.



## Introduction

In recent years, preoccupied by the debt crisis, the fragility of its financial institutions, the fight it wages for growth and against unemployment, and the rise of populism, the European Union (EU) failed to strengthen, let alone increase its influence and presence on the international stage.

Therefore, a couple of weeks before European citizens are called to exercise their great democratic right to elect a new European Parliament, the big ques-

tion is this: in light of harsh realities and past failures, what can reasonably be done by the next Parliament to make significant progress with the Union's foreign policy?

## The decline of Europe

The reasons of this decline are no secret. However, the degradation of its economic impact relative to the significant growth of emerging markets should be mentioned. These emerging markets used market capitalism bolstered by information technologies to create economic and social development of exceptional speed and scope, thus greatly reducing poverty. It did not take long for a complete reshuffle of global geopolitics to follow.

Europe, having lost much of its former technological upper hand and having to bear the high cost of its social model, is clearly losing a lot of its competitiveness on global markets.

It no longer is a matter of strengthening the EU's place in the world, but a question of restoring it. To that end, the consolidation of the single currency would be the place to start because the euro's equivalence to the deutsche mark has allowed it to keep its credibility. To make its voice heard, the EU's only alternative is to prioritise the exit from the financial, economic and social crisis and to consolidate the single currency. Succeeding at both these tasks requires greater political integration, and an increase in shared monetary, economic, fiscal and social sovereignty also calls for stronger democratic legitimacy within the EU.

A lot of hope was placed in the political role and influence of the EU in the world when the Maastricht Treaty was signed, because it institutionalised the Common Foreign and Security Policy (CFSP). This treaty was a political statement in answer to the upheaval of the European continent: the fall of the Soviet Union, the democratisation of Eastern and Central European countries, of the Balkans, and the German reunification to mention only the main events: it revealed just how much appeal was generated by a forward-thinking Europe.

This treaty established specific objectives for the EU's foreign policy and served as a base for the gradual improvement of these objectives until the Lisbon Treaty, which brought together all of the EU's external action objectives under Art. 21. For example, we should mention:

- ◆ Safekeeping the EU's values, fundamental interests, safety, independence, and integrity;
- ◆ Consolidating and upholding democracy, the rule of law, human rights and the principles of international law;
- ◆ Preserving the peace, preventing conflicts and strengthening international security. Quite a big undertaking!

These three objectives bear testimony to the very high hopes placed in the EU by its Member States. It seems obvious that 20 years later, the results are few and far between, and a far cry from what had been announced.

It's true that the Common Foreign and Security Policy (CFSP) was created at the dawn of the violent uprisings that would be characteristic of the post-Cold War era: ethnic cleansing in ex-Yugoslavia, the Rwandan genocide, the reprisal of Israeli-Palestinian hostilities on top of the 9/11 terrorist attacks, the Iraq war, and more recently the wars in Libya, Syria and Mali. In all of these conflicts, the EU most often proved itself powerless, absent, or spectacularly divided as was the case over Iraq or the military operations in Libya.

This track record is clearly a negative one, and above all it reveals the disagreements between Member States over the needs, aims and content of a foreign policy for the EU. It also reveals the Europeans' predilection for institutional commitment and convoluted flow charts, for legal subtleties with no operational impact like constructive abstention, and for diplomatic interventions made of sweeping, high-flying statements illustrated by the numerous common positions that emerge from the Council of the EU as well as innumerable conclusions about major international crises originating from European Councils.

The main lesson to be learned here is that the objectives set out in the Treaties cannot be met because of three reasons: the insufficiency of the operational capabilities of both the Union and its Member States, the predominance of the intergovernmental procedure, and the cumbersome decision-taking procedures. Therefore, there is a real possibility that the EU will be marginalised on the international stage, where only the main Member States could hope to remain at the forefront; but even then, for how long?

## Existing strengths

Despite this loss of economic and political influence, there is no denying that the EU possesses a wide array of strengths to play a definite role in world affairs.

The first thing to consider is that the EU derives its visibility and influence on the world stage from its unity on subjects such as its trade policy, competition policy, and the standards it sets for the world's largest market.

As the first economic power for some time yet, it also has the world's second leading currency and spreads over lands that hold 500 million citizens who benefit from high living standards and a social model sought after throughout the world.

Demographically, the European population is ageing and stagnating, but in this it is not alone. In 2050, the EU will still be more populated than the US, remaining in the third place of global rankings behind India and China. The EU attracts significant migratory flows, and is the main source and destination of tourists in the world.

As member of both the G8 and G20, the EU is the largest donor of development aid in the world and has imposed itself as a key player in the development of the south. The consensus on cooperation commits Member States to a common set of values and principles. In addition to this, it also has one of the world's most efficient humanitarian intervention departments in the Humanitarian Aid and Civil Protection department of the EC.

Last but not least, the EU is a powerful and influential source of cultural innovation and creation. It is seen by a large slice of humanity as a model of democracy, stability, and solidarity.

## Available instruments

These are undeniable facts, but the EU is equipped with a set of tools to act on the world stage that is far from negligible and that only needs to be put to better use.

Its external relations policy instruments are among its most notable. For a number of years now, this policy implemented by the Commission has enabled the development of economic relations thanks to hundreds of international

agreements, and it has secured the reliable and influential presence of the EU in a great number of countries.

Supported by its 140 or so delegations in the world's capitals and largest international organisations, it has a steady and definite global presence with its multiple common policies. We already mentioned two of these, both essential: its trade policy and its development aid policy. We should also mention the external dimensions of the environment, agriculture and fisheries, transport, energy, research and development, and migration policies.

With the Lisbon Treaty, these delegations went from being delegations of the European Commission to being delegations of the European Union, and gained additional foreign policy responsibilities under the authority of the new European External Action Service and the High Representative/Vice-president of the Commission. This is an active administration that implements the international agreements at the core of European diplomacy. As the sole representatives of the EU, these heads of delegation have gained in visibility and efficiency.

In the toolbox at the EU's disposal can also be found a number of instruments and prerogatives of the CFSP and the CSDP that were added between the Maastricht Treaty and the Lisbon Treaty, and that are just waiting to be put to better use.

On the basis of these treaties, a number of improvements took place. This does not purport to be an exhaustive list, but the following are worth mentioning as examples: the Berlin Plus agreement, and the 1999 Washington NATO Summit that put NATO means and capabilities at the disposal of the EU, notably for the planning of operations in which the Alliance does not involve itself (ALTHEA Operation in Bosnia, 2009).

Let us also recall the decisions of the December 1999 Helsinki European Council that made the deployment of military forces numbering between 50.000 and 60.000 people possible. The ambition was high: giving the Union the means to remain on the field for as long as necessary. Although this project has not been implemented, it is good that it exists.

Finally, let us evoke the Lisbon Treaty, which enables the Council to entrust an operation to a group of Member States that have the required means to act. This Treaty also implements permanent and structured cooperation procedures

for defence purposes, more flexible than those in place for enhanced cooperation.

As noted, this is a poor track record and the potential of these tools and initiatives has not been put to good use. This is mostly due to political reasons, as the EU is currently unable to agree on a real foreign policy. The EU will probably never be a classical power with a common foreign policy and defence policy. Several times over, Jacques Delors indicated that formulating a CFSP would still require a lengthy intellectual and political coming of age.

## **Necessary improvements within grasp**

### *European Security Strategy*

The first priority for the next European policy-makers will be to put forward, get approved, and implement a European Security Strategy that will set the priorities in terms of foreign policy objectives and the EU's place in the world.

We are not starting from scratch. The European Security Strategy of 2003 was the Europeans' first attempt at defining their strategic environment and selecting the fundamental priorities of their foreign policy: an affinity for multilateralism, prioritising the Union's neighbour relations in response to its geopolitical vision, and the will to commit to the management of crises both at the civilian and military levels.

It has now been over 10 years. The Union should rethink the conceptual framework and update the content of this 2003 attempt, combining the Community's external policy with diplomatic and military action. Vision and strategy are key elements of the credibility of European external action, and vital to the building of trust between Member States and to the increased coherence of their initiatives. This common project needs to be redefined, not to overwhelm Member States with the creation of a Westphalian Union, but to replace what divides us with the interdependencies and the solidarity on which our survival depends. There is no reason why what was accomplished thanks to the impetus of Javier Solana could not be updated and repeated. The EU would benefit greatly from clarifying what is at stake, explaining what the dangers are, and refining its approach and priorities. The visibility of EU internal and external initiatives would improve significantly. Let's get to work!

This is no easy task because the challenge is to demonstrate in concrete terms how the interests and values of the European peoples are threatened, and more importantly, which strategies and initiatives will allow us to meet those threats and protect our interests to the best of our ability. The recent and serious developments in Ukraine only add to the need for such a process.

### *Putting the current toolbox to better use: the role of the High Representative*

At this point, wide ranging institutional adjustments or reform would be very difficult to achieve, which means that the design of the external policy will only mature if current capabilities and instruments are put to better use. For example, I will expand on what I believe to be the most promising path, namely the possibilities offered by the Lisbon Treaty with regards to the office of High Representative and its prerogatives.

The innovative approach of the Lisbon Treaty and initiatives such as the High Representative's prerogatives and the creation of the External Action Service did not produce the expected results. Progress is urgently needed in the near future. This can be achieved. Remember that the High Representative is the Vice-President of the Commission and that as such, he is capable of ensuring the better coordination of Community policies and their external impact. Much remains to be done – and can be done – to ensure the consistent and coordinated presence of these policies outside of our borders.

In addition to this, the High Representative presides over the Foreign Affairs Council. This prerogative and responsibility enables him or her to direct the work of the Council for 5 years, and thus to produce a roadmap setting out the topics that need to be discussed during that time. The point would be to establish common stances feeding into a doctrine and a European identity relative to concerns with universal appeal. Would it be that difficult to establish a common stance to agree on a strategy with Mr Putin's Russia or for our future dealings with Africa? There are many areas of interest for which the EU could develop and settle its own stance at little expense. This would result in a clear European doctrine, with a consolidated identity, and improved visibility and external capabilities. It would be worth a try to bring together the Member States with the strongest disagreements to see if they can find topics they can

agree on, outside of the usual 28 Member States-strong meetings, and maybe identify points of consensus.

There is no doubt that to coordinate European Commission policies (in their external dimension), to preside over the Foreign Affairs Council or to exercise his or her authority relative to the CFSP/CSDP, the High Representative must gain in efficiency and influence by being able to rely on the independence of the External Action Service from any and all actions of the Commission and Member States. To achieve this, the High Representative should be given the effective authority to coordinate the services that contribute to the Union's external action. This is a case where progress is possible provided that existing instruments are used to their fullest extent.

## Rethinking some approaches

### *The EU and its neighbours*

Enlargement policy remains of the main instruments of the elusive “Foreign and Security Policy”. This policy has already made it possible for the EU to contribute to the stability and economic development of many of its neighbouring countries, and consequently became a major vector of the EU's influence. Although the prospect of accession cannot be the only instrument in the European neighbourhood policy arsenal, it is worth underlining that it has not yet lost all of its political power.

Nevertheless, several points of the EU's enlargement strategy should be revised. It can only become more efficient and more legitimate by going through legal, social, and political adjustments. Faced with the naivety and political rush that were characteristic of the last enlargements, what now matters is to proceed more carefully through the enlargement process, by making sure that candidates are subject to stricter controls both during the negotiations and during the actual process. It is imperative to make sure that the new countries are fully capable of respecting and functioning according to the rule of law that guarantees public freedoms.

It is probable that no other accession will take place in the next couple of years, principally for political reasons, but that possibility should be left open. A clear EU stance on the external borders of Europe should also be defined in order to prevent any further inconsiderate enlargements.

Similarly to the Eastern revolutions in recent years, the Arab Spring has led to the consolidation of another pillar of external policy, namely the “European Neighbourhood Policy”, which was raised to the rank of common policy by the Lisbon Treaty. Introduced at the beginning of the years 2000, it has produced mixed results. It was meant to attract our southern and eastern neighbours with agreements based around common values, thus enabling them to improve their democratic life and economic integration with the domestic market. There is no denying that we are quite off the mark, but this has more to do with the internal upheaval of these countries than with the political failure of neighbouring countries. Many partner countries are now facing serious political, economic, social, security, or even humanitarian crises – be it in the south with Syria, Egypt, Libya or Tunisia or to the east with Ukraine, Georgia, etc.

Many of these countries no longer have any desire to create additional ties with the EU; because of ideological reasons that often have to do with an estrangement from Western values; because they fail to see any sufficiently tangible benefits to this rapprochement; or because, like Ukraine, they are divided between those in favour of collaborating more closely with the EU, and those that want to work more closely with Russia. The very objectives of the European Neighbourhood Policy that rest on sharing values are being challenged more often than ever.

Despite these restrictions, the fact remains that the EU’s relationship with its neighbours is of the utmost priority. Consequently, this policy would benefit greatly from being redirected in order to redefine the less-ambiguous, clearer stance of the EU relative to two of its key partners: Turkey and Russia.

One of the first tasks the High Representative/Vice-President of the Commission should tackle with regards to the EU’s neighbours will be to offer Member States a new, stronger, more realistic global strategy, better able to take into account the defence of our interests whilst making the European Union look more appealing. Once more, the EU has a good hand to deal with, both from an economic and political standpoint, provided that the Member States understand and agree to the efforts required to safeguard their long-term interests.

## *Trade agreement with the United States*

The fight against unemployment will remain one of the major challenges of the EU, but its outcome will depend in great part on the capability of the Union to develop its external trade policy to the benefit of its needs and interests.

In this context, the decision to negotiate a Transatlantic Trade and Investment Partnership (TTIP) with the United States is a major initiative because there is no such agreement between partners of this economic weight. Together the EU and the US represent close to half of the world economy and the trade that goes on between them amounts to 30% of all global trade.

The importance of such talks is due to the fact that – in addition to what is traditionally at stake with free trade agreements (reduction of tariffs, restriction of subsidies) – this project also touches upon non-tariff barriers. This key point would result in a narrowing of regulatory differences that would have a bigger impact on the increase of trade than any tariff reduction could possibly have because it would streamline multinational production chains.

How this negotiation is handled by the EU and the scope of the agreement that will be signed by the next European Parliament will have a significant economic and geopolitical impact. It will also incite Europeans to be ambitious in their promotion of regulation for regulatory convergence at the global level, beyond the United States.

The ultimate challenge will be for the EU to take advantage of the TTIP talks and to rely on a strategy of active involvement with the new economic powers to promote the allocation of the competence to monitor regulatory convergence to the WTO. This would put regulatory convergence in a multilateral framework.

The strengthening of global governance to promote cooperation on issues relating to the environment, intellectual property, human rights or food safety is also at stake.

## *Energy security*

Another area where the EU should and can make some progress in terms of its external policy is that of energy. In recent years, the EU has become more and more dependent on foreign countries for its needs in energy. The EU was

already importing 54% of its energy in 2006 and that figure will climb to 67% in 2030. Even though most of the countries in Western Europe have diversified their energy supply geographically, others – principally countries from Central and Eastern Europe, but not only – remain completely or mostly dependent on a single supplier, namely Russia. Because of this, energy not only becomes a factor in the competitiveness and sustainable development of these countries, but also and increasingly so a factor in foreign policy. In this context, the safety of energy supply lines is crucially important to Europeans.

The diversification of supply lines is a key element of the solution. Therefore it seems essential for industrial actors to continue their search for new energy sources, as they are doing in Africa, for example. It's also necessary for the EU to speak with one voice on the international stage for energy to build useful partnerships with supplier and transit countries outside of European borders, and to find the agreements most beneficial to the whole of the EU. This would also require the development of interconnections in order to pool together some supply capabilities. The success of such a project would be a major step forward for the CSFP.

In addition to this, the EU could also adopt a stronger stance to use the numerous instruments and external action policies it can wield. Thus it would essentially be a case of putting into perspective its neighbouring policies with the East and with the South, strategic partnerships, first of all with Russia, but also its enlargement policy, notably with Turkey, or its development policy, particularly in Sub-Saharan Africa. It would also benefit from continuing with the systematic addition of energy objectives to its external policies. Here is a task for the next Commission and the next External Action Service.

### *Pragmatic approach in the Common Defence and Security Policy*

The CDSO was not conceived with a mind to enter the EU in the race for military power in which the new economic powers have thrown themselves. The defence spending of BRIC (Brazil, Russia, India, China) countries has gone from 8 to 13,5% between 2001 and 2011, relative to a drop from 30% to 18% for Europeans, whereas the United States have remained at 41%.

But the traditional dichotomy between territorial defence and external intervention no longer exists. Most of the new dangers and threats are unclear and

need to be dealt with outside of EU borders. The instability of the EU periphery, particularly to the south, requires a great deal of strategic planning and a shorter response time. This is made even more pressing by the willingness of the United States to withdraw from this area to focus on Asia.

Despite its meagre results, the European Council of December 2013 had the right methodology. Indeed, it resisted the appeal of grand and ambitious declarations by focusing on specific roadmaps and objectives, including among other things an accelerated agenda of 18 months before they meet again in June 2015. The main points of improvement have to do with:

1. **Military capabilities:** creation of a club for users of American drones, commitment to produce European drones, development of ground resupply capabilities, etc.;
2. **European industry:** discussion of strategic autonomy with the objective of not having to depend on external partners for, among other things, the maintenance and spare parts of infrastructure in the industrial sector;
3. The study of the issue of external operations financing;
4. The desire to update the European Security Strategy in light of the new threats and priorities.

As recently pointed out by Etienne Davignon, the alternative of a “Europe of defence” or NATO is out of date. NATO capabilities are no longer sufficient to deal with the security concerns to the south and in the Mediterranean East, as well as the Sahel. Which collective instances of crisis management can contribute to stabilising the South should be determined. Task delegation should also be clarified within the Union, notably in the European Commission, and community rules should be adapted to the highly-specific defence market.

Of course, we are still too far from the objectives set forth by the different Treaties but the urgency of certain threats should contribute to certain decisions being taken to implement a step-by-step policy, the only possible one at this point. This policy is indispensable if we want to maintain a shred of credibility on the international stage.

## Conclusion

If Europe has indeed lost some of its influence in the affairs of the world, both from an economic and political standpoint, it does not change the fact that it remains a major player.

The EU's foreign policy has failed to meet the hopes it had raised, but it cannot be denied that the EU still has numerous attractive features and instruments to deal with current issues and gain ground.

The long intellectual and political coming-of-age process discussed by Jacques Delors contains real opportunities for common policies that could bolster and increase the presence of the EU in the world and hold off its loss of influence.

Without being completely thorough, we presented a couple of the areas where progress is necessary and achievable: the European Security Strategy, putting the current tools and instruments to better use, the role and action of the High Representative/Vice-President of the Commission, a new neighbourhood policy, going deeper into the areas of trade and energy policies, and finally, a pragmatic approach to the Security and Defence Policy.

This significant undertaking will play its part in deciding for the renewal or decline of Europe, and thus it seems more important than ever for the EU to be able to rely on the convergence of the positions of Member States.

The Member States will indeed play a determining role, just as much as their respective populations will do so through their choice of leaders. Consequently, the next elections of the European Parliament will be crucially important in determining if the assembly will be in favour of more Union or not. The ambitions that the European Institutions will set for themselves in terms of integration for the next couple of years will depend on the outcome of this election.



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